

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent
(Appellant)

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

EXHIBIT BOOK OF PEACE BRIDGE DUTY FREE INC.

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INDEX

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INDEX

Tab No.	Document	References	Date (yyyy-mm-dd)
1.	Affidavit of Jim Pearce dated December 12, 2021	Paras 5, 7, 11-12, 16, 17-19, 24, 39	2021-12-12
2.	Affidavit of Jim Pearce dated November 13, 2022	Paras 11, 15, 37, 43, 45, 50, 52, 54, 62, 90, 93	2022-11-13
3.	Affidavit of Jim Pearce dated December 12, 2021, Exhibit “A”, PBA - PBDF Lease 2016	Exhibit A	2016-07-28
4.	Affidavit of Ben Mills sworn January 1, 2023, Exhibit “B”, Historical Traffic Information	Exhibit B	0000-00-00
5.	Supplementary Affidavit of Jim Pearce dated February 13, 2023	Paras 6, 8, 9, 10, 15-18, 25	2023-02-13
6.	Affidavit of Ben Mills sworn January 1, 2023	Paras 9-10	2023-01-01
7.	Transcript of cross-examination of Ben Mills dated August 17, 2023	Page Number 32-33, Questions 90-98	2023-08-17

Tab No.	Document	References	Date (yyyy-mm-dd)
8.	Exhibit 1 to the cross-examination Transcript of Ben Mills dated August 17, 2023	Exhibit 1	0000-00-00
9.	Tab H of Landlord's (Respondent's) Disclosure Brief	Page 448	0000-00-00
10.	Transcript of Examination of Karen Costa dated May 30th, 2023	Questions 134 and 159.	2023-05-30
11.	Supplementary Affidavit of Jim Pearce dated February 13, 2023, Exhibit "C", Email from Costa dated July 19, 2016	Exhibit "C"	2016-007-19
12.	Affidavit of Jim Pearce dated November 13, 2022, Exhibit "X", Letter from Tony Baldinelli to Deputy Prime Minister Crystia Freedland dated April 1st, 2022	Exhibit "X"	2022-04-01
13.	Affidavit of Jim Pearce dated November 13, 2022, Exhibit "F", Letter from Duty Free dated April 3, 2020	Exhibit "F"	2020-04-03
14.	Transcript of cross-examination of Ron Rienas dated August 23, 2023	p.102, q. 320.; p. 129, q. 419; p.191, q.609' p.194, q.623 p. 78, q.241 p. 86, q. 265 p.110-111, q. 353-356. p.109-110, q. 347-352	2023-08-23
15.	Affidavit of Ephraim Stulberg dated September 26, 2023, August 16, 2023 Report ("MDD Report")	Paras 41, 44, Schedule 1a., p. 2 of 15 and Schedule 4, p. 7 of 15,	2023-08-16
16.	Transcript of examination of Tim Clutterbuck dated May 30, 2023	p.95, q. 238; p.104-105, q. 275.	2023-05-30
17.	Exhibit 1.3 to the cross-examination Transcript of Jim Pearce dated March 31, 2023, Letter dated October 26, 2021	Exhibit 1.3	2021-10-26
18.	Exhibit 3 to the Transcript of Ephraim Stulberg dated September 29 th , 2023, Letter dated March 21, 2023	Exhibit 3	2023-03-21
19.	Affidavit of Jim Pearce dated November 13, 2022, Exhibit "D",	Exhibit "D"	0000-00-00
20.	Supplementary Affidavit of Jim Pearce dated February 13, 2023	Exhibit "I"	0000-00-00

Tab No.	Document	References	Date (yyyy-mm-dd)
21.	Affidavit of Jim Pearce dated December 12, 2021, Exhibit “B”	Exhibit “B”	2020-04-22
22.	Transcript of cross-examination of Jim Pearce held August 31, 2023, Exhibit 1.2, Email dated November 18, 2020	Exhibit 1.2	2020-11-18
23.	Transcript of cross-examination of Jim Pearce held August 31, 2023, Exhibit 1.2, Email dated November 13, 2020	Exhibit 1.2	2020-11-13
24.	Affidavit of Lisa Hutcheson dated September 26, 2023, J.C. Williams Group report (“ JWC Report ”),	Exhibit “A” at p. 29	2023-09-26
25.	Transcript of cross-examination of Ron Rienas dated August 23, 2023, Exhibit 3, First Amendment to DFA Lease and response to undertaking number 4.	Exhibit 3; Response to Undertaking No. 4	1995-05-01
26.	Transcript of Examination of Karen Costa dated May 30th, 2023, Exhibit 2, April 27 th , 2021 email and attachment p.13.	Exhibit 2 at p 13.	2021-04-27
27.	Affidavit of Jim Pearce dated November 13, 2022, Exhibit D, THRP-CERS Summary	Exhibit “D”	0000-00-00
28.	Supplementary Affidavit of Jim Pearce dated February 13, 2023, Exhibit “I”	Exhibit “I”	0000-00-00
29.	Transcript of cross-examination of Ron Rienas dated August 23, 2023, Exhibit 1, and response to undertaking No. 3	Exhibit 1; Response to Undertaking No. 3	2023-01-05
30.	Transcript of cross-examination of Ron Rienas dated August 23, 2023, Exhibit 4	Exhibit 4	2020-06-30
31.	Transcript of cross-examination of Ron Rienas dated August 23, 2023, Exhibit 10	Exhibit 10	2020-12-21
32.	Transcript of cross-examination of Ron Rienas dated August 23, 2023, Exhibit 7	Exhibit 7	2020-12-09
33.	Transcript of cross-examination of Ron Rienas dated August 23, 2023, Exhibit 5	Exhibit 5	2020-11-20
34.	Affidavit of Ron Rienas dated September 7, 2022	Exhibit 2	2020-04-27
35.	Affidavit of Ron Rienas dated September 7, 2022	Exhibit 3	2021-09-08

TAB 1

with RBC and had entered into a forbearance with RBC, which was terminated over concerns with the landlord. Absent RBC's concerns about the landlord terminating our lease, I believe that RBC would not be bringing a receivership application.

4. I make this affidavit in support of Duty Free's request to have the receivership application adjourned to allow for more time for good faith negotiations with the landlord and RBC to reach an acceptable resolution. If negotiations stall and the landlord continues to dispute that its enforcement rights are stayed under Part IV of the *Commercial Tenancies Act* (the "**Act**"), Duty Free seeks an opportunity to bring an application for an order enjoining the landlord from taking any enforcement steps in accordance with the Act.

Background

5. Duty Free is an Ontario corporation with a registered office address located at 1 Peace Bridge Plaza, Fort Erie, Ontario (the "**Leased Premises**").

6. By lease dated July 28, 2016, Duty Free leased the Leased Premises from the Buffalo and Fort Erie Public Bridge Authority (the "**Landlord**") for a fifteen (15) year term commencing on November 1, 2016 and ending on October 31, 2031, subject to Duty Free's option to extend for an additional period of five (5) years through 2036 (the "**Lease**"). The terms of the Lease were amended by rent deferral agreements, which are further detailed below. Attached as **Exhibit "A"** is a copy of the Lease.

7. The Landlord is an international entity created by the State of New York and the Government of Canada. It is governed by a 10 member Board of Directors consisting of five members from New York State and five members from Canada.

8. As the name suggests, Duty Free operates a land border duty free shop with 26,000 square feet of retail space from the Leased Premises. The retail store sells alcohol, tobacco and other products such as fragrances, cosmetics, jewelry and sunglasses. Other services provided at the store include currency exchange, motor coach parking and travel services, such as processing customs paperwork for truck drivers. The duty-free store is located at the border crossing with Buffalo, New York, which is the main north-south travel corridor between Canada and the United States.

9. Before the pandemic, the duty free shop would at times have more than 500 customers in the store, with approximately 60% of customers from Canada and 40% from the United States. Particularly during busy travel times, the store would be at capacity and the parking lot full of buses and cars. The duty free shop is a destination retail store for Western New York State. Duty Free has also done extensive marketing campaigns to bring tourists to Canada, including bus tour companies from Asia and Southern United States. Duty Free was awarded second place as the Best Land Border Store in the Americas and was a finalist in the Best Land Border store in the world.

10. Prior to the COVID-19 pandemic, the retail store also had a full-service Tim Hortons on site, but it closed in August 2020. There is currently no food vendor in the Leased Premises.

11. The duty free store is typically open 24 hours a day and 365 days a year, although the store's hours were impacted by the pandemic. The business previously employed approximately 90 staff, including cashiers, product specialists/buyers, customer service, sales staff, supervisors, marketing professionals, and support staff in replenishment, customs paperwork, inventory and cash control. Forty employees were full-time staff, including myself. All staff live locally and all

functions are performed at the store location. The Fort Erie store is one of the busiest stores in the 49th Parallel and is steady from mid-March through to December.

12. The pandemic, and particularly the border closures between Canada and the United States, greatly impacted Duty Free's business. The land border was closed between March 2020 and August 2021 for all non-essential travel. The retail store entirely closed on or about March 21, 2020 and was partially reopened on September 19, 2021. Canada only reopened its land border to fully vaccinated Americans on August 9, 2021, and the United States did not re-open its border to Canadian travelers until November 8, 2021.

13. When the retail store was closed for approximately a year and a half, Duty Free maintained staff to secure the Leased Premises. Washroom facilities were opened for truckers and essential workers in the Spring of 2020. Since the store reopened to retail customers in mid-September 2021, the business has approximately 20 employees and is operating at 30% capacity as compared to pre-pandemic levels.

14. In addition to the duty free store operating from the Leased Premises, Duty Free also operates a duty free shop and convenience store at the Hamilton International Airport by way of a lease with Hamilton International Airport Limited. Inventory for the Hamilton store is shipped from the Leased Premises. There are no issues with the lease or the landlord relating to the Hamilton Airport location.

Tenant Improvements to the Leased Premises

15. Duty Free was the successful bidder in a request for proposal ("RFP") process initiated by the Landlord prior to entering into the Lease. As part of the RFP, Duty Free was required to and

agreed that it would undertake significant capital improvements to the Leased Premises. As a result, Duty Free undertook a major renovation of the Leased Premises, including reconfiguring the space with new entrance and exit ways, redoing the stucco and exterior, installing a new roof, gutting the interior and putting in new floors, ceiling, and walls, and fixing the parking lot. The renovation work started in August 2018 and finished in May 2019. During the renovation, the duty free shop operated at half capacity because we renovated half of the store at a time.

16. The renovations were significant in scale and cost Duty Free over \$6 million. As will be explained in greater detail below, Duty Free obtained financing from RBC in the amount of approximately \$4.2 to fund the project. In addition, Duty Free invested more than \$1.8 million of company assets into the improvements.

The Fort Erie Tenancy

17. Under the Lease, Duty Free agreed to pay Base Rent, Percentage Rent and Additional Rent. As a result, the Rent payable is tied to Duty Free's Gross Sales.

18. The amount payable for Base Rent and Percentage Rent are set out in subsections 4.02 and 4.03 of the Lease and can generally be described as approximately 20% of sales with a floor of \$4,000,000.

19. The agreement on the amount of Rent was largely based on traffic and revenue expectations, as attached at Schedule D to the Lease. Obviously, the worldwide pandemic that prohibited virtually all cross-border travel destroyed any business during the time the bridge was closed to non-essential travel.

24. On April 27, 2020, Duty Free entered into a rent deferral agreement prepared by the Landlord due to travel restrictions and economic hardship created by the Covid-19 pandemic. A copy of the April rental deferral agreement is attached hereto and marked as **Exhibit "B"**.

25. During the Rent Deferral Period, Duty Free was required to pay all Additional Rent, which it did, and Base Rent was deferred to be paid over an amortized period.

26. The first agreement expired on July 31, 2020. The parties continued to act as if the agreement had been extended.

27. In November 2020, Duty Free accepted the Landlord's offer to enter into a second deferral agreement, which had the same terms as the first agreement except that the amortization period to repay rent was doubled to two years. The Rent Deferral Period under the second deferral agreement was to be extended to the earlier of (i) March 31st, 2021 or (ii) the last day of the month following the date the duty free shop fully reopened for business after the restrictions on non-essential travel between Canada and the US are lifted.

28. Duty Free executed the second deferral agreement and delivered it to the Landlord in accordance with the Landlord's request on November 19, 2020. The Landlord has not yet delivered an executed copy of the agreement to us. A copy of the second rental deferral agreement is attached hereto and marked as **Exhibit "C"**. The parties have conducted themselves in accordance with the rental deferral agreement since November 19, 2020.

29. Notwithstanding that under the rent deferral agreement the Rent Deferral Period ended on March 31, 2021 and the Restart Date was April 1, 2021, the Canada-US border remained closed

35. Duty Free applied for and was approved for CERS. Duty Free obtained rent assistance under CERS between September 25, 2020 through to October 23, 2021, when the program was completed. A summary of the timing and amounts of funds received by Duty Free related to CERS is attached hereto and marked as **Exhibit "D"**.

Landlord Delivers Notices of Default

36. On September 8, 2021, the Landlord provided Duty Free with two Notices of Default, one relating to purported monetary defaults and one relating to non-monetary defaults. A copy of the Notices of Default are attached as Exhibit "G" to the Affidavit of Christopher Schulze, sworn December 2, 2021 ("**Schulze Affidavit**").

37. The monetary default sought payment of approximately \$5.9 million of rent arrears 9 days later, which represented the full amount of all unpaid Rent. The Landlord threatened to seize our property and/or terminate the Lease if this payment was not made.

38. The monetary Notice of Default asserts that Duty Free's arrears at the time were \$5,931,389, despite the fact that the Deferred Rent was to be payable in equal installments over a two-year period (as set out in the amortization schedule in subsection 2.3 of the November rent deferral agreement). There had been no previous Notice of default or allegation of an Event of Default. Duty Free disputes the accuracy of the amount of arrears of Rent identified in the monetary Notice of Default and takes the position that the Notice of Default is invalid.

39. The second Notice of Default was a non-monetary default alleging that Duty Free breached the Lease by not being open for business 24 hours a day, 7 days a week, 365 days a year, and also alleged Duty Free had abandoned the Leased Premises in March 2020. The notice further said that

Duty Free breached the Lease by being closed for 10 consecutive days without the prior consent of the Landlord. Finally, the notice alleged that Duty Free did not provide a replacement letter of credit after the Landlord, without notice and contrary to the parties' course of conduct to that point, applied Duty Free's full \$50,000 letter of credit toward Rent even though the Canada-US border and the duty free shop had not re-opened. The Landlord demanded payment in 14 days of three month's accelerated rent, being about \$1.2 million dollars plus \$10,000 of legal expenses and more taxes.

40. The total amount demanded to be paid by certified cheque in 14 days under the two Notices of Default exceeded \$7 million and the Duty Free was not yet open for business.

41. Regarding the second (non-monetary) notice of default, Duty Free has restored the \$50,000 letter of credit and reopened the duty-free store, thus curing the non-monetary defaults, to the extent they were *bona fide* defaults.

42. Since re-opening for business on September 19, 2021, in addition to Additional Rent and CERS payments, Duty Free has made the following payments to the Landlord, which represent 20% of gross sales: \$19,533 for September rent paid; \$61,600 for October rent; and \$109,400 for November rent. Unfortunately, as of November 2021, traffic across the bridge and Duty Free's gross sales remain down approximately 70-60% from pre-Covid-19 levels.

Duty Free Subject to Eviction Moratorium under the Act

43. Duty Free advised the Landlord that, as a result of qualifying for CERS, it was protected by the eviction moratorium mandated by the Ontario government as set out in the Act. Duty Free further advised the Landlord that it had applied for, been approved to receive and did receive CERS

TAB 2

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

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

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

Border Restrictions

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

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

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

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

- bb) January 22nd, 2022: **U.S. allowed** non-U.S. **individuals** traveling via land ports or entry at US-Canada borders to be **fully vaccinated and to show proof of vaccination** for essential and non-essential reasons;
- cc) February 28th, 2022: **Fully vaccinated travellers arriving from any country to Canada would be randomly selected for arrival testing and accepting either a negative rapid antigen or PCR test from travellers as well as ArriveCAN;**
- dd) April 1st, 2022: Fully vaccinated travellers no longer required to provide a pre-entry COVID-19 test result to enter Canada by air, land or water, but **ArriveCAN required;**
- ee) April 25th, 2022: Border measures eased - **rapid testing no longer required, but ArriveCAN and double vaccination still required;**
- ff) October 1st, 2022: **Canadian Covid-19 border measures ended** including all requirements including vaccination and mandatory use of ArriveCAN.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Duty Free's payment of rent

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

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

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

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

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

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

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

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

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

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

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

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

Communication with Federal Government

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

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

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

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

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

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

Damages resulting from the Authority wrongfully causing receivership application

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

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

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

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

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

TAB 3

This is Exhibit “A” referred to in the Affidavit of Jim Pearce sworn remotely this 12th day of December 2021.

A handwritten signature in blue ink, appearing to read 'Alexandra Teodorescu', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

Alexandra Teodorescu

BUILDING LEASE

BETWEEN

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

- AND -

PEACE BRIDGE DUTY FREE INC.

ARTICLE I BASIC LEASE TERMS.....	7
1.01 Basic Lease Terms	7
ARTICLE II DEFINITIONS AND INTERPRETATION	7
2.01 Definitions.....	7
2.02 Net Lease	14
2.03 Extended Meanings.....	14
2.04 Entire Agreement	14
2.05 Governing Law	14
2.06 Time of the Essence	14
2.07 No Limitation.....	14
2.08 Headings and Captions	15
2.09 Severability	15
2.10 Successors and Assigns.....	15
2.11 No Partnership or Agency.....	15
2.12 Joint and Several Liability	15
2.13 Landlord as Agent.....	15
2.14 Interpretation.....	15
2.15 Reasonableness	16
2.16 Conflict with Schedules	16
2.17 Amendment and Waiver	16
ARTICLE III GRANT AND TERM	16
3.01 Demise	16
3.02 Commencement and Termination Date of Term	17
3.03 “As Is” Condition of Leased Premises.....	17
3.04 Delay in Possession.....	17
3.05 Restrictive Covenant.....	17
3.06 Right to Extend the Term.....	17
ARTICLE IV RENT	18
4.01 Covenant to Pay	18
4.02 Base Rent	18
4.03 Percentage Rent	18

4.04	Accrual of Rent	19
4.05	Rent and Payments Generally	20
4.06	Letter of Credit	20
ARTICLE V FINANCIAL INFORMATION		21
5.01	Monthly Statements	21
5.02	Annual Statements	21
5.03	Traffic Reports	22
5.04	Books and Records	22
5.05	Right to Examine	22
5.06	Audit	23
5.07	Confidentiality	23
5.08	Tenant's Failure	23
ARTICLE VI PROPERTY TAXES AND OPERATING COSTS		24
6.01	Property Taxes Payable by the Tenant	24
6.02	Contesting Property Taxes	24
6.03	Business Taxes	25
6.04	Operating Costs	25
6.05	Payment of Operating Costs	26
ARTICLE VII UTILITIES		27
7.01	Charges for Utilities	27
7.02	Tenant Not to Overload Facilities	27
7.03	No Liability	27
ARTICLE VIII HVAC		28
8.01	HVAC System	28
8.02	Landlord's Right to Maintain / Repair HVAC System	28
8.03	Tenant's Responsibility	28
ARTICLE IX USE OF THE LEASED PREMISES		28
9.01	Use of the Leased Premises	28
9.02	Conduct and Operation of Business	29
9.03	Nuisance and Waste	30
9.04	Observance of Law	30
9.05	Additional Services of the Landlord	30
9.06	Traffic Direction	30

ARTICLE X TENANT'S ENVIRONMENTAL COVENANT AND INDEMNITY	31
10.01 Compliance with Environmental Laws and Environmental Approvals	31
10.02 Release of a Contaminant	31
10.03 Environmental Site Assessment.....	32
10.04 Tenant's Environmental Indemnity	32
10.05 Governmental Authority Requirements.....	32
10.06 Pre Existing Contaminants.....	32
10.07 Responsibility for Environmental Contaminants.....	32
ARTICLE XI INSURANCE AND INDEMNITY	33
11.01 Tenant's Insurance.....	33
11.02 Requirements of Insurance	34
11.03 Sign Insurance.....	35
11.04 Increase in Insurance Premiums	35
11.05 Cancellation of Insurance	35
11.06 Landlord's Insurance	36
11.07 Loss or Damage	36
11.08 Indemnification of the Landlord	37
ARTICLE XII MAINTENANCE, REPAIRS AND ALTERATIONS	37
12.01 Maintenance and Repairs and Replacement by the Tenant	37
12.02 Landlord's Approval of Alterations	38
12.03 Landlord's Inspection.....	39
12.04 Surrender of the Leased Premises.....	39
12.05 Repair where Tenant at Fault.....	39
12.06 Tenant Not to Overload Floors	39
12.07 Removal and Restoration by the Tenant.....	39
12.08 Tenant Capital Expenditures and Improvements.....	40
12.09 Notice of Defects	40
12.10 Liens.....	40
12.11 Signs and Advertising.....	41
ARTICLE XIII DAMAGE AND DESTRUCTION AND EXPROPRIATION	41
13.01 Damage or Destruction to the Leased Premises	41
13.02 Rights to Termination	41
13.03 Certificate Conclusive.....	42

13.04 Insurance Proceeds.....	42
13.05 Landlord's Rights of Rebuilding.....	42
13.06 Negligence of the Tenant.....	42
13.07 Expropriation	42
ARTICLE XIV ASSIGNMENT, SUBLETTING, PARTING WITH POSSESSION AND CORPORATE CONTROL.....	43
14.01 Transfers	43
14.02 Landlord's Option to Terminate	43
14.03 Consent Required.....	44
14.04 No Advertising of the Leased Premises.....	45
14.05 Corporate Ownership.....	45
14.06 Assignment or Transfer by the Landlord	45
ARTICLE XV ACCESS.....	46
15.01 Right to Show the Leased Premises.....	46
15.02 Emergencies.....	46
15.03 Access Not Re-entry	46
15.04 Roof Rights	46
15.05 Right to Install Solar Panels.....	47
ARTICLE XVI STATUS STATEMENT, ATTORNMENT AND SUBORDINATION.....	48
16.01 Status Statement.....	48
16.02 Subordination and Attornment.....	48
16.03 Financial Information.....	48
ARTICLE XVII DEFAULT	49
17.01 Event of Default.....	49
17.02 Rights of the Landlord	50
17.03 Expenses	51
17.04 Waiver of Exemption from Distress	51
17.05 Remedies Generally	52
ARTICLE XVIII MISCELLANEOUS.....	52
18.01 Rules and Regulations.....	52
18.02 Overholding	52
18.03 Notices	52
18.04 Registration.....	53

18.05	Quiet Enjoyment	53
18.06	Landlord's Co-Operation and Access	53
18.07	Regulatory Changes	53
18.08	Unavoidable Delay	53

Execution Page

SCHEDULES:

SCHEDULE "A"	LEGAL DESCRIPTION OF THE LANDS
SCHEDULE "B"	PLAN OF LEASED PREMISES
SCHEDULE "C"	RULES AND REGULATIONS
SCHEDULE "D"	TENANT'S PROPOSAL

THIS LEASE is dated as of the 28th day of July, 2016.

B E T W E E N:

**BUFFALO AND FORT ERIE PUBLIC BRIDGE
AUTHORITY**, an entity created pursuant to an Act of the State of
New York, with the consent of the United States Congress, and by
an Act of the Government Of Canada

(the "Landlord")

AND:

PEACE BRIDGE DUTY FREE INC., a corporation incorporated
under the laws of the Province of Ontario

(the "Tenant")

ARTICLE I BASIC LEASE TERMS

1.01 Basic Lease Terms

- (a) Landlord: Buffalo and Fort Erie Public Bridge Authority

Address of Landlord:

- (b) Tenant: Peace Bridge Duty Free Inc.

Address of Tenant:

- (c) Leased Premises: The Building and the portion of the Lands as identified in Schedule "B".
- (d) Term: 15 years.
- (e) Commencement Date: November 1, 2016.
- (f) Termination Date: October 31, 2031.
- (g) Letter of Credit: \$50,000.
- (h) Extension Options: One option to extend the term for an additional period of five years.

ARTICLE II DEFINITIONS AND INTERPRETATION

2.01 Definitions

In this Lease and the schedules forming part of it, the following definitions apply:

- (a) **"Additional Rent"** means all money or charges which the Tenant is required to pay under this Lease (except Base Rent, Percentage Rent and Sales Taxes) whether or not they are designated "Additional Rent" whether or not they are payable to the Landlord or to third parties.
- (b) **"Additional Services"** means those services provided to the Tenant at its request, as additional services, which are not part of the services provided by the Landlord to the Tenant in accordance with the terms of this Lease and charged as Operating Costs including, but not limited to, maintenance, repair, janitorial or cleaning services. Additional Services also includes any services provided by the Landlord on behalf of the Tenant in respect of any obligations of the Tenant required under this Lease which the Tenant fails to observe and perform.
- (c) **"Adverse Effect"** means any one or more of:

- (i) impairment of the quality of the natural environment for any use that can be made of it;
 - (ii) injury or damage to property or to plant or animal life;
 - (iii) harm or material discomfort to any Person;
 - (iv) an adverse effect on the health of any Person;
 - (v) impairment of the safety of any Person;
 - (vi) rendering any property or plant or animal life unfit for human use;
 - (vii) loss of enjoyment of a normal use of property; and
 - (viii) interference with the normal conduct of business.
- (d) **“Alterations”** has the meaning ascribed to that term in Section 12.02.
- (e) **“Applicable Laws”** means any statutes, laws, by-laws, regulations, ordinances and requirements of governmental and other public authorities having jurisdiction over or in respect of the Leased Premises or the Property, or any portion thereof, and all amendments thereto at any time and from time to time, and including but not limited to the Environmental Laws.
- (f) **“Architect”** means the architect, engineer or land surveyor named by the Landlord from time to time.
- (g) **“Base Rent”** means the annual base rent payable by the Tenant and described in Section 4.02.
- (h) **“Building”** means the building located on the Lands as shown on Schedule B as it exists from time to time.
- (i) **“Building Systems”** means: (i) the equipment, facilities and all systems, services and installations from time to time installed in or servicing the Leased Premises (or any portion thereof) including, but not limited to: mechanical (including plumbing, sprinkler, drainage and sewage) and electrical systems and appurtenances thereto; utilities (including, without limitation, electricity, water, hydro and gas), lighting, sprinkler, life safety (including fire prevention, communications, security and surveillance); computer (including environmental, security and lighting control); and (ii) all machinery, appliances, equipment, apparatus, components, computer software and appurtenances forming part of or used for or in connection with any of such systems, services, installations and facilities including, but not limited to, boilers, motors, generators, fans, pumps, pipes, conduits, ducts, valves, wiring, meters and controls, and the structures and shafts housing and enclosing any of them.

- (j) “**Business Day**” means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.
- (k) “**Business Taxes**” means every tax, duty and licence fee which is levied, rated, charged or assessed against or in respect of the business carried on in the Leased Premises or in respect of the use or occupancy of the Leased Premises by the Tenant whether the taxes, rates, duties, assessments or licence fees are rated, charged or assessed by any Government Authority during the Term.
- (l) “**Claims**” means any threatened or actual claim, demand, action, cause of action, administrative order, requirement or proceeding, damage, loss, cost, fine, penalty, interest, liability and expense including, without limitation, reasonable engineering and legal fees and disbursements on a full indemnity basis.
- (m) “**Commencement Date**” means the date set out in Section 1.01(e).
- (n) “**Contaminants**” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an Adverse Effect and includes any waste, dangerous good, hazardous product, controlled substance or any other substance or thing regulated or reportable under any Environmental Laws.
- (o) “**Environmental Approvals**” means all applicable permits, licences, authorizations, consents, directions and approvals required by Governmental Authorities pursuant to Environmental Laws in respect of the Leased Premises and the equipment, structures, substances and activities located or carried on therein or thereon by the Tenant.
- (p) “**Environmental Laws**” means all existing and future federal, provincial and municipal laws, regulations, by-laws, ordinances, notices, orders, rules, protocols, policies, directions and guidelines and all present and future principles of common law and equity relating to the protection of the environment, including Contaminants, pollution and waste management.
- (q) “**Environmental Site Assessment**” or “**ESA**” includes a visual and instructive inspection of property, buildings, structures, soils, bedrock and groundwater, including the installation of monitoring and measurement devices, for the purpose of determining the presence of Contaminants or compliance with Environmental Laws.
- (r) “**Event of Default**” has the meaning ascribed to that term in Section 17.01.
- (s) “**Extension Term**” has the meaning ascribed to that term in Section 3.06.
- (t) “**Governmental Authorities**” means all applicable federal, provincial and municipal agencies, boards, tribunals, ministries, departments, inspectors, officials, employees, servants or agents having jurisdiction and “**Government Authority**” means any one of them.

- (u) **"HVAC System"** means the whole of any systems required for the supply of heating, ventilating or air-conditioning to the Building and the improvements, fixtures, appurtenances, equipment and systems associated with or required therefor and for the further processing and distribution or exhaust of air such as ducts, diffusers, reheat coils, controls and other apparatus and equipment therefor.
- (v) **"Landlord"** means the party named in Section 1.01(a) and all successors and assigns of such party.
- (w) **"Lands"** means the lands more particularly described in Schedule "A".
- (x) **"Leased Premises"** means collectively the Building and the portion of the Lands as identified in Schedule "B".
- (y) **"Leasehold Improvements"** means all fixtures, improvements, installations, Alterations and additions from time to time made, erected or installed by or on behalf of the Tenant or any former occupant of the Leased Premises, including cabling, trenches, concrete bases, doors, hardware, partitions (including moveable partitions) and wall-to-wall carpeting, but excluding furniture and equipment not in the nature of fixtures.
- (z) **"Letter of Credit"** means the letter of credit described in Section 4.06.
- (aa) **"Licence"** shall mean the licence, permission, registration, authorization, appointment, power, jurisdiction, or other similar right granted or conferred by the Government of Canada upon the Tenant and allowing the Tenant to operate a duty free shop at the Leased Premises.
- (bb) **"Mortgage"** means any mortgage or other security against the Leased Premises or the Landlord's interest in this Lease, from time to time.
- (cc) **"Mortgagee"** means the holder of any Mortgage from time to time.
- (dd) **"Operating Costs"** has the meaning ascribed to that term in Section 6.04.
- (ee) **"Percentage Rent"** means the percentage rent payable by the Tennant and described in Section 4.03
- (ff) **"Permitted Use"** means the operation of a duty free shop and related services (such as banking and travel related services).
- (gg) **"Person"** if the context allows, includes any person, firm, partnership or corporation, or any group of persons, firms, partnerships or corporations or any combination of them.
- (hh) **"Prime Rate"** means the annual rate of interest announced from time to time by the Canadian chartered bank chosen by the Landlord as the daily rate of interest used by such bank as a reference rate in setting rates of interest for Canadian dollar

commercial loans and commonly referred to by such bank as its Canadian “prime rate”.

- (ii) **“Property Taxes”** means all real property taxes, rates, duties, levies, fees, charges (including local improvement charges) and assessments, whether general or special, that are levied, rated, charged or assessed against the Lands, the Leased Premises or any part of it from time to time by any lawful taxing authority, whether federal, provincial, regional, municipal, school or otherwise and any taxes or other amounts which are imposed in lieu of, as a substitute for or in addition to, any of the foregoing whether or not similar to or of the foregoing character or not and whether or not in existence at the Commencement Date, and any such taxes levied or assessed against the Landlord on account of its ownership of the Lands or its interest in it, including capital taxes imposed on the Landlord and including taxes levied on the Landlord on account of rents payable by the Tenants, and all legal and other professional fees and interest and penalties on deferred payments incurred by the Landlord in contesting or appealing any Property Taxes.
- (jj) **“Release”** means, in respect of Contaminants, without limitation, a spill, leak, disposal, dumping, pumping, pouring, emission, emptying, discharge, deposit, injection, escape, release or leaching.
- (kk) **“Released Persons”** includes the Landlord, the property manager for the Leased Premises, if any, the Mortgagee and their respective directors, officers, employees, agents, contractors and other Persons for whom they are responsible in law.
- (ll) **“Rent”** means collectively the Base Rent, Percentage Rent and Additional Rent payable under this Lease.
- (mm) **“Rental Year”** means a period of time, the first Rental Year of the Term commencing on the Commencement Date and ending on October 31, 2017. After the first Rental Year each Rental Year of the Term will consist of a period of twelve (12) calendar months, but the last Rental Year of the Term will terminate on the Termination Date or earlier termination of the Term. Despite what is stated above, if the Landlord considers it necessary or convenient, it may from time to time, by written notice to the Tenant, specify an annual date from which each subsequent Rental Year is to commence for the purposes of any other provision of this Lease, and the Rental Year then current for that purpose or those purposes will terminate on the day immediately preceding the commencement of the new Rental Year.
- (nn) **“Rules and Regulations”** means the rules and regulations promulgated by the Landlord from time to time pursuant to the terms of this Lease.
- (oo) **“Sales Taxes”** means all goods and services, harmonized sales taxes, business transfer, value-added, national sales, multi-stage sales, sales, use or consumption taxes or other taxes of a similar nature imposed by any lawful taxing authority upon the Landlord or the Tenant with respect to Rent, this Lease, the rental of space pursuant to this Lease, or the goods and services provided by the Landlord to the

Tenant, including, without limitation, the provision of administrative services to the Tenant hereunder.

- (pp) **“Tenant”** means the party named in Section 1.01(b). A reference to “Tenant” includes, where the context allows, the employees, agents, contractors, invitees and licensees of the Tenant, and any other Persons over whom the Tenant may reasonably be expected to exercise control, including but not limited to any and all sub-tenants, licensees or assignees of the Leased Premises or any portion thereof, and such other Persons for whom the Tenant is responsible at law.
- (qq) **“Tenant’s Audited Gross Sales”** shall mean a statement of the Tenant’s Gross Sales prepared and verified by the auditor of the Tenant in accordance with generally accepted auditing principles completed in a form and manner satisfactory to the Landlord acting reasonably.
- (rr) **“Tenant Construction Criteria”** means the criteria provided, upon request, by the Landlord to the Tenant from time to time setting out the construction criteria relating to Alterations and which may also provide for Landlord’s reasonable review and supervision fees.
- (ss) **“Tenant’s Gross Sales”** means the total dollar amount of all sales of goods or services made on or from the Leased Premises by the Tenant to the Tenant’s customers (and by any subtenant to the subtenant’s customers) during the specific period(s) of time referred to herein. In the case of currency exchange or financial services it shall mean the gross revenue derived from that service and not the total of the actual currency exchanged. In the case of ticket sales, it shall mean the gross revenue derived from the service and not the total face value of actual ticket sales. In the case of Travel Services, it shall mean the gross revenue derived from the Travel Services and not the total face value of any accommodation booking or travel ticket sales. Tenant’s Gross Sales includes but is not limited to:
 - (i) orders taken or received at the Leased Premises or any offsite sales outlet servicing the Leased Premises, whether by telephone, internet or other electronic means, or in writing or other form of communication and whether the orders are filled from the Leased Premises or elsewhere,
 - (ii) deposits not refunded to purchasers; and
 - (iii) all other receipts and receivables from sales or services (including interest, instalment and finance charges) from business conducted in or from the Leased Premises,

whether the sales or other receipts or receivables are made by cheque, cash, credit, charge account, exchange or otherwise and whether the sales are made by means or mechanical or other vending devices in the Leased Premises. Bank charges or uncollectible credit accounts or charges made by collection agencies will not be deducted and no allowances will be made for bad debts. Each charge or sale made on instalment or credit will be treated as a sale for the full selling price in the month

for which the charge, sale or rental is made, regardless of the time when the Tenant receives payment (whether full or partial).

There shall be excluded or deducted, as the case may be, from the calculation of Tenant's Gross Sales:

- (i) all refunds of merchandise, the sale price of which has already been included in the Tenant's Gross Sales;
 - (ii) all sales taxes, harmonized sales taxes, goods and services taxes, or any other taxes imposed in lieu thereof;
 - (iii) discounts, allowances or credits given to the Tenant's customers;
 - (iv) all interest, finance or carrying charges charged by the Tenant above the selling price to its customers, as incidental to the sale and with no profit to the Tenant;
 - (v) gift or merchandise certificates or cards provided that such gift or merchandise certificate or card shall be included in the calculation of Gross Sales at the time of their redemption on the Leased Premises;
 - (vi) any sales of the Tenant's used fixtures, chattels or other equipment out of the ordinary course of business; and
 - (vii) transfers of merchandise between any of the Tenant's other stores
- (tt) **"Tenant's Proposal"** means the Tenant's proposal for capital expenditures for the Leased Premises and for the general operation and management of the duty free shop from the Leased Premises as detailed in Schedule "D".
- (uu) **"Term"** means the period of time set out in Section 1.01(d).
- (vv) **"Termination Date"** means the date set out in Section 1.01(f).
- (ww) **"Transfer"** has the meaning ascribed to that term in Section 14.01.
- (xx) **"Transferee"** has the meaning ascribed to that term in Section 14.01.
- (yy) **"Travel Services"** means providing services for booking reservations at hotels, inns, campsites and other accommodations and for selling or reserving travel tickets.
- (zz) **"Unavoidable Delay"** means any delay by a party in the performance of its obligations under this Lease caused in whole or in part by any acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, sabotage, war, blockades, insurrections, riots, epidemics, washouts, nuclear and radiation activity or fallout, arrests, civil disturbances, explosions, unavailability of materials,

breakage of or accident to machinery, any legislative, administrative or judicial action which has been resisted in good faith by all reasonable legal means, any act, omission or event, whether of the kind herein enumerated or otherwise, not within the control of such party, and which, by the exercise of control of such party, could not have been prevented. Insolvency or lack of funds on the part of such party shall not constitute an unavoidable delay.

2.02 Net Lease

This Lease is a completely carefree net lease to the Landlord. Except as otherwise stated in this Lease, the Landlord is not responsible for any costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the Leased Premises, or the use and occupancy of the Leased Premises, or the contents or the business carried on in the Leased Premises; and the Tenant will pay all charges, impositions, costs and expenses of every nature relating to the Leased Premises.

2.03 Extended Meanings

Use of the neuter singular pronoun to refer to the Landlord or the Tenant is considered a proper reference even though the Landlord or the Tenant is an individual, a partnership, a corporation, or a group of two or more individuals, partnerships or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships or individuals, males or females, will in all instances be assumed as though they were fully expressed.

2.04 Entire Agreement

There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease, save as expressly set out or incorporated by reference herein and this Lease and the schedules attached hereto constitute the entire agreement duly executed by the parties hereto.

2.05 Governing Law

This Lease shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

2.06 Time of the Essence

Time is of the essence of this Lease and each part of it.

2.07 No Limitation

Any statement or provision in this Lease followed by words denoting inclusion or example, such as "including" or "such as", and then listing or referring to specific matters or items shall not be read so as to limit or restrict the generality of such statement or provision regardless of whether or not words such as "without limitation" or "without limiting the generality of the foregoing" precede such list or reference.

2.08 Headings and Captions

The table of contents, article numbers, article headings, section numbers and section headings in this Lease are inserted for convenience of reference only and are not to be considered when interpreting this Lease.

2.09 Severability

Each provision of this Lease is distinct and severable. If any provision of this Lease, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Lease, or the legality, validity or enforceability of that provision in any other jurisdiction.

2.10 Successors and Assigns

The rights and liabilities of the parties shall enure to the benefit of their respective successors and assigns, subject to any requirement for consent by the Landlord hereunder.

2.11 No Partnership or Agency

The Landlord does not in any way or for any purpose become a partner of the Tenant in the conduct of its business, or otherwise, or a joint venturer, or a member of a joint enterprise with the Tenant, and the relationship of principal and agent is not created as a result of the entering into of this Lease.

2.12 Joint and Several Liability

The liability to pay Rent and perform all other obligations under this Lease of each Person signing this Lease as the Tenant where the Tenant is more than one Person, shall be deemed to be joint and several.

2.13 Landlord as Agent

The Tenant agrees that the Landlord acts as agent or trustee for the Released Persons to the extent necessary to ensure that all exculpatory provisions and indemnities included in favour of the Released Persons in this Lease are enforceable by the Landlord against the Tenant.

2.14 Interpretation

The Landlord and the Tenant agree that notwithstanding any rule of law or equity, presumption, principle of construction, law or statutory enactment to the contrary:

- (a) in any controversy, dispute, contest, arbitration, mediation or legal proceeding of any kind, including an action, lawsuit, motion, application, reference or appeal regarding the interpretation, validity or enforcement of this Lease or any of its provisions, there shall be no inference, presumption or conclusion drawn whatsoever against either the Landlord or the Tenant by virtue of that party having

drafted this Lease or any portion thereof or by virtue of this Lease being drawn using the Landlord's form;

- (b) any deletion of language or wording from this Lease prior to execution by the Landlord and the Tenant shall not be construed to have any particular meaning or to raise any presumption, construction or implication including, without limitation, any implication that by the deletion of certain language or wording, the Landlord and the Tenant intended to state the opposite of the deleted language or wording; and
- (c) the selection or use of any bold, italicized, underlined or coloured print in this Lease shall not be construed to have any particular meaning or to raise any presumption, construction or implication.

2.15 Reasonableness

Except as may be otherwise specifically provided in this Lease, whenever the Landlord or the Tenant is required to use its discretion or to consent or approve any matter under this Lease, the Landlord and the Tenant agree that such discretion shall be reasonably exercised and that such approval or consent will not be unreasonably or arbitrarily withheld or delayed.

2.16 Conflict with Schedules

Any conflict or inconsistency between the provisions contained in the Schedules of this Lease and the provisions contained elsewhere in the Lease will be resolved in favour of the provisions contained elsewhere in the Lease.

2.17 Amendment and Waiver

No supplement, modification, amendment, waiver, discharge or termination of this Lease is binding unless it is executed in writing by the party to be bound. No waiver of, failure to exercise, or delay in exercising, any provision of this Lease constitutes a waiver of any other provision (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

ARTICLE III GRANT AND TERM

3.01 Demise

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord demises and leases to the Tenant and the Tenant rents from the Landlord the Leased Premises.

3.02 Commencement and Termination Date of Term

The Tenant will have and hold the Leased Premises for and during the Term commencing on the Commencement Date and expiring on the Termination Date, unless terminated earlier pursuant to the provisions hereof.

3.03 “As Is” Condition of Leased Premises

The Tenant agrees to accept the Leased Premises in an “as is, where is” condition, except as otherwise provided herein. The Tenant further agrees that, except as may be specifically set out herein, there is no promise, representation or undertaking binding upon the Landlord with respect to any alteration, remodelling or decoration of the Leased Premises or with respect to the installation of equipment or fixtures in the Leased Premises, or to prepare them or make them suitable for the Tenant's occupancy and use.

3.04 Delay in Possession

Should the Tenant be delayed by any fault of the Landlord or any other reason (other than the fault of the Tenant) in taking possession of the Leased Premises at the start of the Commencement Date, then and only then shall the Commencement Date and the Term be postponed for the same number of days that the Tenant is delayed in taking possession of the Leased Premises. The Tenant acknowledges and agrees that such postponement shall be full settlement for any claims it might have against the Landlord for such delay.

3.05 Restrictive Covenant

The Landlord hereby agrees that it shall not at any time during the Term, lease, sublease, licence or allow the occupation of any part of the Landlord's property located in Canada, servicing U.S. bound traffic, for any duty-free, banking, currency exchange or for any other retail operation, services or purposes which are or may be in any way competitive with the facilities and services offered within the Leased Premises.

3.06 Right to Extend the Term

Provided that the Tenant: (i) is itself in physical occupation of the whole of the Leased Premises; (ii) has duly and regularly paid the Rent, (iii) is actively operating from the Premises and performs all of the covenants, provisos and agreements on the part of Tenant to be paid and performed in this Lease; and (iv) has given Landlord no less than twelve (12) months' written notice and no more than eighteen (18) months' written notice prior to the expiry date of the Term of its election to extend the Term, Tenant shall have the right and option to extend the Term for one (1) additional period of five (5) years (the “Extension Term”) upon the same terms and conditions as in this Lease except that there shall be no further right to extend the term. If Tenant elects to exercise its said option to extend, the Term shall be automatically extended for the Extension Term covered by the option so exercised. If Tenant shall fail to give notice in writing exercising its option to extend within the time stipulated in this section 3.06 the Tenant's rights to extend the Term of this Lease shall be null and void. There will be no further right to extend the Term beyond the Extension Term.

The parties shall execute a lease extension agreement prepared by the Landlord to reflect the terms of the Extension Term.

ARTICLE IV RENT

4.01 Covenant to Pay

The Tenant will pay Rent as provided in this Lease, together with all applicable Sales Taxes, duly and punctually by way of electronic funds transfer (“**EFT**”) from the Tenant’s bank account. The Tenant undertakes to execute and deliver concurrently with this Lease such documentation as may be required by the Landlord and its bank in order to effect payment of Rent by EFT. Any invoice sent by the Landlord to the Tenant pursuant to the provisions of this Lease, other than for pre-authorized monthly Rent payments, shall be paid for by cheque to the Landlord at its address set out in Section 1.01(a) or as the Landlord otherwise directs.

4.02 Base Rent

The Tenant covenants and agrees to pay to the Landlord the annual Base Rent payable in twelve (12) equal monthly instalments on the first day of each month during the Term herein in advance together with all applicable taxes. For the first year of the Lease the Base Rent shall be \$4,000,000. The Base Rent for the second year and each succeeding year of the Lease shall be the greater of (i) \$4,000,000 or (ii) 75% of the aggregate of the Base Rent and the Percentage Rent payable by the Tenant to the Landlord for the immediately preceding Rental Year.

4.03 Percentage Rent

The Tenant covenants and agrees with the Landlord that the following Percentage Rent rates will apply for the initial Term of this Lease and for any Extension Term.

Annual Gross Sales	Percentage
\$0 - \$20,000,000	20%
\$20,000,000 - \$25,000,000	22%
>\$25,000,000	24%

The Tenant covenants and agrees with the Landlord that for each month (including any broken calendar month) of the Term or Extension Term, if applicable, the above percentage rates will be applied to the Tenant’s Gross Sales during such monthly period (with the applicable percentage rate based on the Tenant’s year to date Gross Sales for the then current Rental Year). If, during any month (including any broken calendar month) of the Term or the Extension Term the

calculation of Percentage Rent in such monthly period (based on the Tenant's year to date Gross Sales for the then current Rental Year) exceeds (i) the Base Rent payable for such period (based on the year to date Base Rent payable for the then current Rental Year) plus (ii) the amount of Percentage Rent previously paid by the Tenant for the then current Rental Year, the Tenant will within twenty-five (25) days following the conclusion of such monthly period, pay the resulting difference together with all applicable taxes, to the Landlord as Percentage Rent.

The Landlord and the Tenant agree that any money required to be paid as Percentage Rent as set forth in the Lease shall be deemed to be Rent and be collectible as Rent and the Landlord shall have the same remedies in respect of arrears of Percentage Rent as it has in respect to arrears of Base Rent.

For clarity, below is an example of the calculation of Base Rent and Percentage Rent in accordance with Sections 4.02 and 4.03 of the Lease:

Year	Gross sales	75% PY rent Calculation	Base rent Minimum	Calculated annual % rent	Additional % Rent due	Total rent Due
1	\$ 24,000,000		\$ 4,000,000	\$ 4,880,000	\$ 880,000	\$ 4,880,000
2	\$ 26,000,000	\$ 3,660,000	\$ 4,000,000	\$ 5,340,000	\$ 1,340,000	\$ 5,340,000
3	\$ 35,000,000	\$ 4,005,000	\$ 4,000,000	\$ 7,500,000	\$ 3,495,000	\$ 7,500,000
4	\$ 24,000,000	\$ 5,625,000	\$ 4,000,000	\$ 4,880,000	\$ -	\$ 5,625,000
5	\$ 22,000,000	\$ 4,218,750	\$ 4,000,000	\$ 4,440,000	\$ 221,250	\$ 4,440,000
6	\$ 20,000,000	\$ 3,330,000	\$ 4,000,000	\$ 4,000,000	\$ -	\$ 4,000,000

In the example above Base Rent and Percentage Rent would be as follows: in year one of the Lease Base Rent is \$4,000,000 and Percentage Rent is \$880,000; in year two Base Rent would be \$4,000,000 and Percentage Rent would be \$1,340,000; in year three Base Rent would be \$4,005,000 and Percentage Rent would be \$3,495,000; in year four Base Rent would be \$5,625,000 and Percentage Rent would be \$0; in year five Base Rent would be \$4,218,750 and Percentage Rent would be \$221,250; and in year six Base Rent would be \$4,000,000 and there would be no Percentage Rent.

In year four, because the annual calculated Percentage Rent is less than the Base Rent for that year, no additional Percentage Rent would be due. In year five, Base Rent is \$4,218,750 (greater of \$4,000,000 or 75% of prior year total rent). The total calculated Percentage Rent for year five is \$4,440,000. Because the calculated Percentage Rent is greater than the Base Rent, the difference of \$221,250 would be due as Percentage Rent for that year.

4.04 Accrual of Rent

Rent shall be considered as accruing from day to day hereunder from the Commencement Date. If it is necessary for any reason to re-calculate such Rent for an irregular period during the relevant Rental Year, an appropriate apportionment and adjustment shall be made on a per diem basis based upon a 365 day calendar year.

4.05 Rent and Payments Generally

All Rent and other payments by the Tenant to the Landlord of whatsoever nature required or contemplated by this Lease, which are payable by the Tenant to the Landlord, shall:

- (a) be paid when due hereunder, without prior demand therefor and without any abatement, set-off, compensation or deduction whatsoever (except as otherwise specifically provided for in this Lease);
- (b) be applied towards amounts then outstanding hereunder in such manner as the Landlord determines in its sole discretion;
- (c) bear interest at a rate equal to twenty-four percent (24%) per annum, calculated and payable monthly from the date such Rent or other payments became due to and including the date of payment;
- (d) an administrative charge of \$150.00 will be charged in connection with any late payment or returned cheque to cover the Landlord's additional administration costs;
- (e) in addition the Tenant shall pay all Sales Taxes. The amount of such Sales Taxes will be calculated by the Landlord in accordance with the applicable legislation and will be paid to the Landlord (or to the lawful taxing authority, as the Landlord may direct) on the due date of the amounts in respect of which such Sales Taxes are payable. All such payments shall be made prior to the date that the same shall become due and payable and any interest and any penalties assessed as a result of any default in or late payment of same shall be the sole responsibility of the Tenant. Notwithstanding any other provision of this Lease, the amount payable by the Tenant under this section shall be deemed not to be Rent but the Landlord shall have all of the same remedies for and rights of recovery of such amount as it has for the recovery of Rent under this Lease or otherwise; and
- (f) if the Commencement Date is on a day other than the first day of a calendar month or if the Term ends on any day other than the last day of the month, Rent for the fractions of a month at the Commencement Date and at the end of the Term shall be calculated on a pro rata basis.

4.06 Letter of Credit

The Tenant covenants that, on or before the Commencement Date, the Tenant shall deliver to the Landlord an irrevocable and unconditional letter of credit or other form of cash collateral security satisfactory to the Landlord (the "**Letter of Credit**") in favour of Landlord issued by a Schedule 1 Canadian chartered bank in the amount of \$50,000.00, which shall be held by the Landlord during the Term and any Extension Term. The Letter of Credit shall be in such form as is approved in advance by the Landlord. If at any time during the Term or any Extension Term, the Tenant defaults in the payment of any Rent or other amounts payable under this Lease or in the performance of any of its other obligations under this Lease or if this Lease is surrendered, terminated, disclaimed or repudiated whether by Landlord as a result of default of Tenant or in connection with any insolvency or bankruptcy of Tenant or otherwise, then Landlord at its option

may, in addition to any and all other rights and remedies provided for in this Lease or at law, draw a portion of or all of the principal amount of the Letter of Credit, whereupon the proceeds thereof shall be applied to compensate Landlord for damages suffered by it as the result of Tenant's default, and the balance, if any, will be returned to the Tenant. If the Landlord draws all or part of the Letter of Credit, the Tenant shall provide the Landlord with a replacement Letter of Credit in the full amount of \$50,000 upon written demand from the Landlord to do so.

The rights of Landlord hereunder, in respect of the Letter of Credit, shall continue in full force and effect and shall not be waived, released, discharged, impaired or affected by reason of the release or discharge of Tenant in any receivership, bankruptcy, insolvency, winding-up or other creditors' proceedings including, without limitation, any proceedings under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies Creditors' Arrangement Act* (Canada), or the surrender, disclaimer, repudiation or termination of the Lease in any such proceedings and shall continue with respect to the periods prior thereto and thereafter as if the Lease had not been surrendered, disclaimed, repudiated, or terminated.

At the end of the Term or any Extension Term if applicable and provided that the Tenant is not then in default, which default remains uncured, under the terms of this Lease, the Landlord shall return the Letter of Credit, or the remaining balance of the Letter of Credit if it has been drawn upon in accordance with the terms hereof, to the Tenant.

ARTICLE V FINANCIAL INFORMATION

5.01 Monthly Statements

The Tenant shall furnish in writing to the Landlord by the tenth (10th) calendar day of the succeeding month, monthly statements of the Tenant's Gross Sales, patron counts, vehicle counts for the preceding month, and any other similar financial or statistical information which the Landlord may request. The monthly statement of the Tenant's Gross Sales shall: (i) state that the Tenant's Gross Sales as reported in the monthly statement is in accordance with the definition of Tenant's Gross Sales in Section 2.01(ss) (ii) contain a certification by the Tenant that the monthly statement is correct; (iii) is in the detail and form that the Landlord requires; and (iv) without limiting the requirements stated above, shows (1) the amount of Tenant's Gross Sales for the preceding month, (and fractional months, if any, at the commencement or end of the Term); (2) the amount of Tenant's Gross Sales for all preceding months of the Rental Year, (and fractional months, if any, at the commencement or end of the Term); and (3) the monthly payments made on account of Basic Rent and Percentage Rent for the Rental Year.

Failure of the Tenant to comply with this provision shall at the option of the Landlord constitute a default under the terms of this Lease and the Landlord shall be entitled to exercise all of its rights and remedies as herein provided.

5.02 Annual Statements

The Tenant shall furnish in writing to the Landlord within forty five (45) calendar days of the end of each year of this Lease and any renewal thereof, the Tenant's Audited Gross Sales statements. Failure of the Tenant to comply with this provision shall at the option of the Landlord constitute a

default under the terms of this Lease and the Landlord shall be entitled to exercise all of its rights and remedies as herein provided.

If the total of the Percentage Rent paid by the Tenant in respect of a Rental Year is less than the amount of Percentage Rent payable for such Rental Year calculated based on the Tenant's Audited Gross sales statement delivered in accordance with this Section 5.02, the Tenant shall pay the difference to the Landlord no later than the first day of the month immediately following the month in which the Landlord receives the statement. Provided that the Tenant is not in default, if the Percentage Rent paid is greater than the actual amount of Percentage Rent payable for such Rental Year, the difference shall be applied in reduction of future payments, if any, due under this Lease, or if no future payments are due, shall be refunded to the Tenant.

5.03 Traffic Reports

The Landlord shall provide the Tenant with a copy of the daily bridge traffic counts for the Peace Bridge.

5.04 Books and Records

The Tenant will keep in the Leased Premises or at its principal office in Canada, for at least four (4) years after the end of each Rental Year, adequate books and records kept in accordance with generally accepted accounting principles that show inventories and receipts of merchandise at the Leased Premises and daily receipts from all sales, charges, services and other transactions, in or from the Leased Premises made by the Tenant and any other Persons conducting business in or from the Leased Premises as well as sales tax returns, pertinent original sales records, and any other sales records that the Landlord reasonably requires and that would normally be examined by an accountant pursuant to accepted auditing standards in performing a detailed audit of Tenant's Gross Sales. The Tenant will also cause the records described above to be kept by all Persons doing business in or from the Leased Premises. The Tenant, and all other Persons conducting business in or from the Leased Premises, will record at the time of the sale, in the presence of the customer, all receipts from sales, charges, services or other transactions whether for cash or credit, in a cash register or registers having a sealed cumulative total and any other control features that are required by the Landlord.

5.05 Right to Examine

The Tenant shall make available for inspection and audit by a representative of Landlord, at reasonable times during business hours, all such books, records and other information in order to allow Landlord to verify such statements of Tenant's Gross Sales and the inventories of merchandise at the Leased Premises. The Landlord and its authorized representatives may examine the Tenant's records and procedures during regular business hours, and may have a Person in the Leased Premises to check, verify and tabulate the Tenant's Gross Sales, or to examine accounting records and procedures including control features affecting the determination of the Tenant's Gross Revenue.

5.06 Audit

The Landlord may, at reasonable times, cause a complete audit to be made of the Tenant's business and records relating to the calculation of the Tenant's Gross Sales completed by an auditor who shall be a chartered accountant or other accredited public accountant independent of the Landlord. If the auditor reports that the Tenant's records and procedures are insufficient to permit a determination of the Tenant's Gross Sales for a Rental Year, or a part of a Rental Year, or that the Tenant is not complying with this ARTICLE V, the Landlord may deliver to the Tenant an estimate (which will be final and binding on the Tenant) of the Tenant's Gross Sales for the relevant period and the Tenant will immediately pay to the Landlord the amount shown in the estimate to be owing.

If any inspection or audit by Landlord reveals an understatement by Tenant of the Tenant's Gross Sales by more than two percent (2%) and such understatements occur twice or more within any five-year period, Tenant shall pay Landlord on demand for the cost of each such inspection and audit, as well as five (5) times the amount by which Rent was understated or underpaid for each applicable period. If the Tenant substantially, continually or repeatedly fails to produce records and follow procedures sufficient to permit a determination of the Tenant's Gross Sales or if the Tenant's Audited Gross Sales is understated by two percent (2%) or more on more than three (3) occasions, then in addition to any other remedies of the Landlord under this Lease or otherwise, the Landlord may terminate this Lease on five (5) days' prior written notice to the Tenant. Landlord must inspect and audit such records within two years after the date of each annual statement and Landlord's inspection and audit shall be limited to the period covered by such statement.

5.07 Confidentiality

The Landlord undertakes to treat the financial information of the Tenant provided to the Landlord under this Lease as strictly confidential and not to divulge such financial information to any person, firm, corporation or other entity (other than the Landlord's directors, officers, employees or professional advisors who have a need to know such financial information and who shall be obligated to treat all such financial information confidential). The confidentiality obligations under this Section 5.07 shall not apply to: (i) information which is generally available to the public; (ii) information which after disclosure by the Landlord becomes generally available to the public, otherwise than through any act or omission on the part of the Landlord; or (iii) information which the Landlord is obligated to disclose by law.

5.08 Tenant's Failure

If the Tenant fails to deliver a statement or an audit opinion required under this ARTICLE V within the time required, the Landlord may, on five (5) days' notice to the Tenant, employ an auditor to examine the Tenant's books and records to certify the amount of the Tenant's Gross Sales for the period related to the statement or the audit opinion, and the Tenant will pay to the Landlord, on demand, as Additional Rent the cost of the examination together with the sums shown by the examination to be owing on account of Percentage Rent with interest on the latter calculated from the date the statement or the audit opinion was required at five percent (5%) above the Prime Rate.

ARTICLE VI PROPERTY TAXES AND OPERATING COSTS

6.01 Property Taxes Payable by the Tenant

The Tenant shall pay to the Landlord, as Additional Rent, all Property Taxes levied, rated, charged or assessed throughout the Term, on or in relation to the Leased Premises, or any part thereof, in accordance with the following:

- (a) payment shall be due in equal monthly installments over each taxation period or such shorter period as Landlord may reasonably require such that the Landlord will have received an amount sufficient to pay each installment of Property Taxes when due to the taxing authorities. Prior to the commencement of each taxation period, the Landlord shall estimate the amount of such equal monthly installments and notify the Tenant in writing of such estimate. From time to time during the taxation period, the Landlord may re-estimate the amounts payable for such taxation period, in which event the Landlord shall notify the Tenant in writing of such re-estimate and fix monthly installments for the remaining balance of such taxation period;
- (b) to the extent that a separate assessment and separate tax bill for Property Taxes in respect of the Leased Premises are not provided by the assessment and/or taxing authorities, the Tenant will pay a share of Property Taxes levied, rated, charged or assessed on or in relation to all of the Lands on such basis as the Landlord shall reasonably and equitably determine. To the extent the Leased Premises are assessed and billed separately with respect to any Property Taxes, then, at the election of the Landlord, the Tenant's share of such Property Taxes shall be computed on the basis of such separate assessments or apportionments; and
- (c) if the Landlord so directs, the Tenant shall pay Property Taxes directly to the taxing authorities. In that event, the Tenant shall make payment on or before the due date of each installment and shall provide to the Landlord on demand evidence of payment in the form of receipted bills.

6.02 Contesting Property Taxes

Property Taxes, or the assessments in respect of Property Taxes which are the subject of any contest by Landlord or Tenant, shall nonetheless be payable in accordance with the foregoing provisions hereof, provided, however, that in the event Tenant shall have paid any amount in respect of Property Taxes in excess of the amount ultimately found payable as a result of the disposition of any such contest, and Landlord receives a refund in respect thereof, the appropriate amount of such refund shall be refunded to or, at the option of Landlord, credited to the account of Tenant. Landlord may contest any Property Taxes with respect to the Leased Premises or all or any part of the Lands and appeal any assessments related thereto and may withdraw any such contest or appeal or may agree with the relevant authorities on any settlement, compromise or conclusion in respect thereof and Tenant consents to Landlord's so doing. Tenant will co-operate with Landlord in respect of any such contest and appeal and shall make available to Landlord such information in respect thereof as Landlord requests. Tenant will execute forthwith on request all

consents, authorizations or other documents as Landlord requests to give full effect to the foregoing.

Tenant will not contest any Property Taxes or appeal any assessments related to the Leased Premises or the Lands. However, provided Landlord is not otherwise contesting such assessment, Tenant may contest any separate assessment that relates solely to the Leased Premises, with the consent of Landlord, such consent not to be unreasonably withheld, provided that Tenant shall be solely responsible, and shall indemnify Landlord, for all costs, penalties or fees, relating to such contest, including without limitation, any resulting increase in Property Taxes. Tenant shall pay to Landlord forthwith upon demand such reasonable share as allocated by Landlord, acting reasonably, of all costs and expenses of any kind incurred by Landlord bona fide and acting reasonably in obtaining or attempting to obtain information in respect of or a reduction or re-allocation in respect of Property Taxes and any assessments related thereto including, without limitation, legal, appraisal, administration and overhead costs.

6.03 Business Taxes

In each and every year during the Term, the Tenant shall either pay all Business Taxes as Additional Rent or discharge within fifteen (15) days after they become due and indemnify the Landlord from and against payment of, and any interest or penalty in respect of Business Taxes.

6.04 Operating Costs

In each Rental Year, the Tenant will pay to the Landlord, as Additional Rent, the costs, expenses, fees, rentals, disbursements and outlays of every nature and kind paid, payable or incurred by or on behalf of the Landlord in owning, maintaining, repairing, replacing, operating, administering and managing the Leased Premises (the “**Operating Costs**”). The Operating Costs shall include, without limitation or duplication, all of the following costs, expenses, fees, rentals, disbursements and outlays:

- (a) the cost of the Landlord's insurance premiums on lands, buildings, improvements, equipment and other property in the Leased Premises together with all amounts falling below the level of the Landlord's insurance deductibles which are paid by the Landlord in connection with claims made against it, including the costs of the insurance detailed in Section 10.06. The Landlord's insurance and costs of insurance may include, without limitation, (A) loss of insurable gross profits attributable to the perils insured against by the Landlord or commonly insured against by landlords, including loss of Rent and other amounts receivable from the Tenant pursuant to this Lease, (B) commercial general liability coverage including the exposure of personal injury, bodily injury and property damage occurrence, including all contractual obligations coverage and including actions of the employees, contractors, subcontractors and agents working on behalf of the Landlord and (C) costs and expenses for defending and payment of claims below deductibles;

- (b) accounting, auditing, legal and other professional and consulting fees relating to any reports or actions required to be taken by the Landlord under the terms of this Lease;
- (c) the cost of any and all environmental inspections and Environmental Site Assessments of the Leased Premises conducted by the Landlord from time to time which are not the responsibility of the Tenant;
- (d) the cost of any and all repairs, replacements (including major repairs and any repairs and replacements required to comply with all Applicable Laws, or the requirements of the Landlord's insurers), preventative and ongoing maintenance and operation, inspection, engineering and service contracts and consulting services, if any, relating to the Leased Premises;
- (e) all costs incurred in contesting or appealing Property Taxes with respect to the Leased Premises or related assessments, including legal, appraisal and other professional fees and administration and overhead related thereto;
- (f) all other direct and indirect costs and expenses of every kind, to the extent incurred in or allocable to the operation, supervision, administration or management of work or maintenance at all or any part of the Leased Premises, or any of its appurtenances; and
- (g) Sales Taxes on the purchase of goods and services included in the calculation of Operating Costs to the extent that the Landlord has not recovered an input tax credit or refund in respect of the same; notwithstanding any other provision of this Lease, the amount payable by the Tenant under this paragraph shall be deemed not to be Rent but the Landlord shall have all of the same remedies for and rights of recovery of such amount as it has for the recovery of Rent under this Lease or otherwise.

6.05 Payment of Operating Costs

Before the commencement of each Rental Year, the Landlord will estimate the Operating Costs. The Tenant shall pay such estimated amount to the Landlord in equal consecutive monthly instalments, each in advance on the first day of each month during such Rental Year. The Landlord may from time to time during a Rental Year re-estimate any items of Operating Costs and may fix monthly instalments for the then remaining balance of the Rental Year so that such items will have been entirely paid during such Rental Year.

Within one hundred and twenty (120) days after the end of such Rental Year, the Landlord will determine and provide the Tenant with a statement in reasonable detail for the relevant Rental Year of the Operating Costs and Property Taxes. If the total of the monthly instalments paid by the Tenant in respect of estimated Operating Costs and Property Taxes for such Rental Year is less than the amount of Operating Costs and Property Taxes payable for such Rental Year shown on such statement, the Tenant shall pay the difference to the Landlord no later than the first day of the month immediately following the month in which the Tenant receives the statement. Provided that the Tenant is not in default, if the estimated amount of such monthly instalments paid is greater than the actual amount of Operating Costs and Property Taxes payable for such Rental Year, the

difference shall be applied in reduction of future payments, if any, due under this Lease, or if no future payments are due, shall be refunded to the Tenant. Neither party may claim a re-adjustment in respect of Operating Costs and Property Taxes for a Rental Year except by written notice delivered to the other party within one year after the delivery date of the Landlord's statement of Operating Costs and Property Taxes.

ARTICLE VII UTILITIES

7.01 Charges for Utilities

The Tenant shall pay promptly when due all charges, costs, accounts and any other sums payable by reason of the supply of the utilities to the Leased Premises and shall indemnify the Landlord from and against payment of, and any interest or penalty, in respect of all such utilities. The Tenant, at its own cost and expense, shall procure each and every permit, licence or other authorization required pertaining to any work required in respect of utilities consumed in or for the Leased Premises. The Tenant acknowledges and agrees that in the event any such utility supplier requires as a condition of the utility supply, or as a condition of constructing any infrastructure or installing any equipment to enable the utility supplier to provide such utility for the Tenant's use or consumption, that an agreement or contract shall be entered with the utility supplier and/or that a letter of credit or other form of security be posted with or delivered to the utility supplier, the Tenant shall, upon the written request of the Landlord, execute and deliver such agreement in the Tenant's name to such supplier, and cause to be issued, at the Tenant's sole cost and in the Tenant's name and deliver such letter of credit or other security to such supplier. Should the Tenant fail to execute and deliver any such agreement or to cause to be issued and delivered such letter of credit or to pay such other security deposit, within twenty (20) days of receipt of the Landlord's written notice that it do so, the Landlord shall be entitled on behalf of and as lawful attorney for the Tenant to execute and deliver such agreement in the name of and on behalf of the Tenant, and to pay such deposit on behalf of the Tenant, and in such event the Landlord's costs of so doing shall be payable by the Tenant forthwith upon demand as Additional Rent.

7.02 Tenant Not to Overload Facilities

The Tenant shall not install any equipment which overloads the capacity of any utility, electrical or mechanical facilities in the Leased Premises. The Tenant agrees that if any changes proposed or use by the Tenant requires additional utility, electrical or mechanical facilities, the Landlord may, in its sole discretion, if they are available, elect to install them in accordance with plans and specifications to be approved in advance in writing by the Landlord and the cost thereof, together with an administration fee equal to fifteen percent (15%) of such cost, shall be payable on demand by the Tenant as Additional Rent.

7.03 No Liability

In no event shall the Landlord be liable for any injury to the Tenant, its employees, agents or invitees, or to the Leased Premises, or to any property of the Tenant or anyone else, for any loss of profits or business interruption, indirect or consequential damages, or for any other costs, losses

or damages of whatsoever kind arising from any interruption or failure in the supply of any utility or service to the Leased Premises.

ARTICLE VIII HVAC

8.01 HVAC System

The Tenant shall be responsible, at its sole cost, for operating, maintaining, repairing and replacing the HVAC System throughout the Term. The Tenant covenants and agrees to take out and keep in force throughout the Term a standard servicing contract with a reputable company for the preventative maintenance and service of the HVAC System. Thirty (30) days prior to the end of each Rental Year (excluding the initial 2016 partial Rental Year), the Tenant will provide the Landlord with a certificate from a recognized, reputable heating and air-conditioning contractor approved in writing by the Landlord, stating that the HVAC System is in good working order. If such certificate is not provided, the Landlord may obtain such a certificate on behalf of the Tenant and if required, perform all necessary repairs and replacements to the HVAC System, and the cost of such certificate and work, together with an administration fee equal to fifteen percent (15%) of such cost, shall be payable by the Tenant to the Landlord as Additional Rent, forthwith on demand.

8.02 Landlord's Right to Maintain / Repair HVAC System

In the event that the Tenant neglects or refuses to maintain and repair the heating, ventilating and/or air conditioning system and equipment serving the Leased Premises, then the Landlord, after five (5) days written notice to the Tenant during which period the Tenant has not commenced to maintain or repair the system and equipment, may maintain and repair the heating, ventilating and/or air conditioning system and equipment serving the Leased Premises and the Tenant shall reimburse the Landlord its costs and expenses of all such repairs, replacements to and maintenance and operation of the heating, ventilating and air conditioning equipment and systems which serve the Leased Premises in accordance with the terms of Section 9.05.

8.03 Tenant's Responsibility

The Tenant will heat and ventilate the Leased Premises at all times throughout the Term in order to maintain reasonable conditions of temperature and humidity within the Leased Premises, in accordance with the terms of this Lease and all Applicable Laws.

ARTICLE IX USE OF THE LEASED PREMISES

9.01 Use of the Leased Premises

The Tenant shall not use the Leased Premises for any purpose other than the Permitted Use. The Tenant acknowledges that the Landlord is making no representations with respect to the zoning of the Property or the compliance therewith of the Tenant's Permitted Use and it shall be the Tenant's sole responsibility to satisfy itself in this regard.

9.02 Conduct and Operation of Business

The Tenant shall occupy the Leased Premises during the Term of the Lease and shall continuously and actively carry on the Permitted Use in the whole of the Leased Premises. In the conduct of the Tenant's business pursuant to this Lease the Tenant shall:

- (a) operate its business 24 hours a day, seven days a week, 365 days a year with due diligence and efficiency and maintain an adequate staff to properly serve all customers;
- (b) observe and obey the reasonable rules and regulations of the Landlord promulgated from time to time for reasons of safety, health or preservation of property or for the maintenance of the good and orderly appearance and operations of the Peace Bridge. Without limiting the generality of the foregoing, the Landlord, after consulting with the Tenant, may provide rules setting out where customers of the Tenant shall park their vehicles and may further provide for the orderly flow of traffic entering and exiting from the area of the Leased Premises provided such rules are reasonable and acceptable to the Tenant, acting reasonably. The Tenant agrees that it shall be responsible to provide any and all traffic direction required in or upon the Leased Premises.
- (c) abide by all reasonable rules and regulations and general policies formulated by the Landlord from time to time relating to the delivery of goods and merchandise to the Leased Premises;
- (d) not erect, maintain or display any signs or any advertising at or on the exterior of the Leased Premises without the prior written approval of the Landlord, such approval not to be unreasonably withheld;
- (e) keep the Leased Premises clean, neat and free of hazards and fire dangers at all times;
- (f) perform all landscaping and maintenance of all outside areas, including cleaning, line painting, snow and ice clearing and removal and salting of sidewalks, driveways and parking facilities and all lawn and garden maintenance;
- (g) provide policing, supervision and security as required;
- (h) maintain proper lighting in the parking facilities;
- (i) take any and all action necessary to prevent any of its employees from affecting the orderly flow of traffic in or upon the Leased Premises or any other lands owned by the Landlord;
- (j) dispose of all waste or recyclable material at a location in the Leased Premises at such times and in such manner as may be directed by the Landlord from time to time and in accordance with Applicable Law;

- (k) obtain a Licence and maintain its Licence in good standing;
- (l) provide adequate public restrooms for the anticipated number of travelers using the Peace Bridge, including persons who may not be patrons of the duty free shop;
- (m) in the event that the Tenant's Licence is terminated, revoked or suspended for any period of Time, or has expired, the Tenant shall cause its Licence to be reinstated or renewed within 60 days of such termination, revocation, suspension or expiration;
- (n) operate and manage the business at the Leased Property in a manner consistent with the Tenant's Proposal; and
- (o) abide by any and all directives of Canada Border Services Agency in regards to the conduct of the Tenant's business.

9.03 Nuisance and Waste

The Tenant shall not commit any waste upon, or damage to, the Leased Premises or commit any nuisance or other act or thing and will not perform any acts or carry on any practices which may damage the Leased Premises. The Tenant will not permit any odours, vapours, steam, water, vibrations, noises or other undesirable effects to emanate from the Leased Premises or any equipment or installation therein which, in the Landlord's opinion, are objectionable, and the Tenant will not cause any interference with the safety, comfort or convenience of the Landlord.

9.04 Observance of Law

The Tenant shall, at its own expense, comply with all Applicable Laws affecting the Leased Premises or the use or occupation thereof including, without limitation, police, fire and health regulations and requirements of the fire insurance underwriters. The Tenant shall carry out modifications, alterations or changes to the Leased Premises and the Tenant's conduct of business in or use of the Leased Premises which are required by any such authorities and shall keep its Licence in good standing.

9.05 Additional Services of the Landlord

The Tenant shall pay to the Landlord the costs of all Additional Services provided by the Landlord to the Tenant, together with an administration fee equal to fifteen percent (15%), forthwith on demand as Additional Rent.

9.06 Traffic Direction

In the event that the Landlord, after consultation with the Tenant, determines that additional traffic personnel are required as a result of the operations of Tenant, Landlord shall add such additional personnel as may be required, and Tenant and Landlord shall each pay one-half of the cost of such additional personnel.

ARTICLE X
TENANT'S ENVIRONMENTAL COVENANT AND INDEMNITY

10.01 Compliance with Environmental Laws and Environmental Approvals

The Tenant shall comply with all applicable Environmental Laws and shall obtain and comply with any Environmental Approvals that may be required for the Tenant's use of the Leased Premises. Without restricting the generality of the foregoing, the Tenant shall not use, generate, handle, transport, manufacture, refine, treat, store, remove, recycle or dispose of any Contaminant on the Leased Premises except in compliance with all applicable Environmental Laws.

10.02 Release of a Contaminant

- (a) In the event of a Release of a Contaminant at or from the Leased Premises other than in compliance with Environmental Laws, the Tenant shall immediately notify the Landlord of the Release and shall at its own expense, immediately retain a qualified environmental consultant acceptable to the Landlord, acting reasonably, to prepare a report assessing the full nature and extent of the Release and recommending the work plan to remediate the Release and to restore the Leased Premises, any affected abutting lands, as well as the natural environment, to the condition they were in before the Release, and the Tenant shall submit this report to the Landlord for the Landlord's approval acting reasonably.
- (b) Upon the Landlord's approval of the report and at the sole option of the Landlord, either the Tenant shall arrange for the implementation of the work plan, or the Landlord shall arrange for the implementation of the work plan, in either case at the cost of the Tenant, together with an administration fee of fifteen percent (15%) of such cost, which shall be payable as Additional Rent forthwith upon receipt of written demand for payment from the Landlord.
- (c) In the event that the Landlord, acting reasonably, does not approve of the report submitted by the Tenant, the Landlord shall retain a qualified environmental consultant to prepare a report, the cost of which plus an administration fee of fifteen percent (15%) of such cost, shall be borne by the Tenant. Upon the completion of the report, at the sole option of the Landlord, either the Tenant shall arrange for the implementation of the work plan, or the Landlord shall arrange for the implementation of the work plan, in either case at the cost to the Tenant together with an administration fee of fifteen percent (15%) of such costs, which shall be payable as Additional Rent forthwith upon receipt of written demand for payment from the Landlord.
- (d) In addition, the Tenant shall be liable to the Landlord for loss of rent, loss of profits, or for any consequential, incidental, indirect, special or punitive damages of any kind resulting from the Release and any remediation required pursuant to this Section.

10.03 Environmental Site Assessment

The Landlord and its agent shall have the right to enter upon the Leased Premises and conduct an Environmental Site Assessment from time to time. In the event the ESA discloses a Release, any apparent or imminent contravention of Environmental Laws or other matter requiring remediation or other action in order to prevent a Claim from arising for which the Tenant or any person for whom the Tenant is responsible at law, the Tenant shall pay for the ESA; in the event the ESA does not disclose such a Release or other condition, the cost of the ESA shall be paid for by the Landlord.

10.04 Tenant's Environmental Indemnity

The Tenant hereby indemnifies and saves harmless the Released Persons from and against any and all Claims which may be made against the Released Persons as a direct or indirect result of the failure or neglect by the Tenant to comply with any Environmental Laws or Environmental Approvals in respect to the Leased Premises, as a direct or indirect result of the existence on, in, under or adjacent to the Leased Premises of any Contaminant attributable to the Tenant's use or occupation of the Leased Premises or as a result of any Claims made against the Tenant arising from or involving Environmental Laws. This indemnity shall survive the termination or surrender of this Lease or any renewal or extension thereof and shall continue in full force and effect without time limit.

10.05 Governmental Authority Requirements

If any Governmental Authority having jurisdiction shall lawfully require the investigation, monitoring or remediation of any Contaminant used, held, released, discharged, abandoned or placed upon the Leased Premises or Released into the environment by the Tenant, then the Tenant shall, at its own expense, subject to Section 10.02, carry out all lawfully required work and shall provide to the Landlord full information with respect to all such work and comply with all applicable Environmental Laws with respect to such work. At the option of the Landlord, the Landlord may itself undertake such work or any part thereof at the cost and expense of the Tenant and that cost and expense plus an administration fee equal to fifteen percent (15%) shall be paid to the Landlord forthwith on demand as Additional Rent.

10.06 Pre Existing Contaminants

The Landlord hereby releases the Tenant from liability to the Released Persons for any and all Claims which may be made against the Released Persons as a result of the existence as at the Commencement Date of any Contaminant on, in, under or adjacent to the Leased Premises.

10.07 Responsibility for Environmental Contaminants

- (a) Despite any statutory provision or rule of law to the contrary, any Contaminants brought to or resulting from activities carried out on the Leased Premises during the Term or any renewal or extension thereof shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord despite the degree of affixation of the Contaminants or the goods contained in the Contaminants to the Leased Premises and despite the expiry, repudiation,

disclaimer or earlier termination of this Lease; and, at the option of the Landlord, to the extent there is non-compliance with applicable Environmental Laws, any substance, including soil and groundwater contaminated by such Contaminants shall become the property of the Tenant.

- (b) The Tenant covenants and agrees to carry out at the request of the Landlord at its own cost and expense, remediation of all Contamination of the Leased Premises arising out of the Tenant's uses or occupation thereof so that the soil and groundwater condition of the Leased Premises and any affected areas beyond the Leased Premises or property owned or controlled by a third party, complies with remediation criteria set out in guidelines, policies, criteria or otherwise established under Environmental Laws. Risk assessment will not be used unless agreeable to the Landlord. This covenant shall survive the Termination Date.
- (c) At the option of the Landlord, the Landlord may itself undertake such work or any part thereof at the cost and expense of the Tenant and that cost and expense plus an administration fee equal to fifteen percent (15%) shall be paid to the Landlord forthwith on demand as Additional Rent; but having commenced such work, the Landlord shall have no obligation to the Tenant to complete such work.
- (d) The obligations of the Tenant hereunder relating to Contaminants shall survive any assignment, expiry, repudiation, disclaimer or earlier termination of this Lease. To the extent that the performance of those obligations requires access to or entry upon the Leased Premises, the Tenant shall have such entry and access after such expiry, repudiation, disclaimer or earlier termination only at such times and upon such terms and conditions as the Landlord may reasonably from time to time specify.

ARTICLE XI INSURANCE AND INDEMNITY

11.01 Tenant's Insurance

The Tenant will obtain and maintain the following insurance throughout the Term and any renewal or extension thereof:

- (a) "All risks" (including flood and earthquake) property insurance for the full replacement cost, insuring (a) all property owned by the Tenant, or for which the Tenant is responsible, and located within the Leased Premises including, but not limited to, fittings, fixtures, additions, alterations, partitions and all other Leasehold Improvements, and (b) the Tenant's furniture, inventory and equipment;
- (b) broad form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount equal to at least the replacement cost of the property with respect to all boilers and machinery owned or operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant in the Leased Premises;

- (c) Business interruption insurance for a minimum period of twenty-four (24) months or such longer period that will reimburse the Tenant for direct and indirect loss of earnings and profit attributable to damage caused by the perils insured against under Subsections (a) and (b) above, and other perils insured by prudent tenants, or attributable to prevention of access to the Leased Premises by civil authorities;
- (d) Commercial general liability insurance under a standard commercial general liability form which shall include coverage against bodily injury, including death, and property damage. Such insurance shall:
 - (i) include extensions such as personal injury, blanket contractual liability, employers liability, owner's and contractor's protective liability, cross liability, severability of interests coverage, breach of warranty clause and non-owned automobile insurance;
 - (ii) cover the Tenant's use of the Leased Premises, including all of the Tenant's activities and operations therein and any other Persons performing work on behalf of the Tenant, and those for whom the Tenant is responsible at law;
 - (iii) be written on an "occurrence" form with inclusive limits of liability not less than Five Million Dollars (\$5,000,000.00) per occurrence or such higher limits as the Landlord may require from time to time;
 - (iv) include tenant's legal liability insurance covering the perils of "all risks" for the replacement cost of the Leased Premises, including loss of use thereof; and
 - (v) include standard automobile insurance covering third party liability with limits of liability not less than One Million Dollars (\$1,000,000.00) per accident, plus accident benefits, for all automobiles owned or operated by or on behalf of the Tenant; and
- (e) Any other form of insurance the Tenant, the Landlord or its Mortgagee may require from time to time, in form, in amounts insured, and for perils or risks insured against, which a prudent tenant would insure.

11.02 Requirements of Insurance

- (a) The policies required under Sections 11.01(a), 11.01(b), 11.01(c) and 11.01(d) above will also contain a waiver of all subrogation rights which the Tenant's insurers may have against the Released Persons whether or not the damage is caused by their act, error, omission or negligence.
- (b) All policies will:
 - (i) be placed with insurers acceptable to the Landlord, in a form acceptable to the Landlord;

- (ii) name the Released Persons and such other Persons as the Landlord may designate from time to time, as additional insureds;
 - (iii) be primary, and not excess or contributing with any other insurance available to the Landlord;
 - (iv) provide for deductibles which are acceptable to the Landlord;
 - (v) not be invalidated as respects the interests of the Released Persons, or any of them, by reason of any breach or violation of warranty, representation, declaration or condition contained in the policies, or any of them; and
 - (vi) contain a condition by insurers to notify the Released Persons in writing not less than thirty (30) days before any cancellation or material change in policy conditions is effected.
- (c) The Tenant will deliver certificates of insurance duly executed by the Tenant's insurers or their duly authorized representatives, evidencing that all such insurance described above is in full force and effect prior to going into occupancy of the Leased Premises and thereafter at least thirty (30) days prior to the expiry of the then current term of the insurance. Such certificates must confirm the limits and special conditions of such insurance as required by this Section. No review or approval by the Landlord of any such insurance certificates shall operate to derogate from or diminish the Landlord's rights under this Lease.

11.03 Sign Insurance

The Tenant shall insure and keep insured, at its expense, all signs relating to the Tenant's business placed or erected on the exterior of the Leased Premises for and in its name and in the name of the Landlord. The Tenant waives any right of complaint as to the form and location of the Landlord's existing signs.

11.04 Increase in Insurance Premiums

The Tenant will comply promptly with all requirements of the Insurer's Advisory Organization and of each insurer pertaining to the Leased Premises. If the occupancy of the Leased Premises, the conduct of business in the Leased Premises or any acts or omissions of the Tenant in the Leased Premises, or any part thereof, cause an increase in premiums for the insurance carried from time to time by the Landlord on the Leased Premises, the Tenant shall pay the increase as Additional Rent immediately after invoices for the additional premiums are rendered by the Landlord.

11.05 Cancellation of Insurance

If any insurance policy on the Leased Premises is cancelled, or threatened by the insurer to be cancelled, or if the coverage under any insurance policy is reduced in any way by the insurer because of the use or occupation of any part of the Leased Premises by the Tenant or by any occupant of the Leased Premises, and if the Tenant fails to remedy the condition giving rise to the cancellation, threatened cancellation or reduction of coverage within forty-eight (48) hours after

notice by the Landlord, the Landlord may either: (a) re-enter and take possession of the Leased Premises immediately by leaving upon the Leased Premises a notice of its intention to do so, following which the Landlord will have the same rights and remedies as are contained in Article XVII; or (b) enter upon the Leased Premises and remedy the condition giving rise to the cancellation, threatened cancellation or reduction of coverage, and the Tenant will immediately pay the costs and expenses to the Landlord, together with an administration fee equal to fifteen percent (15%) of such costs and expenses, which costs and expenses may be collected by the Landlord as Additional Rent, and the Landlord will not be liable for any damage or injury caused to any property of the Tenant or others located on the Leased Premises as the result of the entry. Such an entry by the Landlord is not a re-entry or a breach of any covenant for quiet enjoyment.

11.06 Landlord's Insurance

The Landlord will obtain and maintain the following insurance throughout the Term of this Lease and any renewal or extension thereof:

- (a) insurance on the Building and improvements and equipment contained therein owned or leased by Landlord or which Landlord desires to insure against damage by fire and extended perils coverage in those reasonable amounts and with those reasonable reductions that would be carried by a prudent owner of a reasonably similar premises, having regard to size, age and location;
- (b) broad form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount equal to at least the replacement cost of the boilers and machinery owned by the Landlord, including the HVAC System;
- (c) public liability and property damage insurance with respect to the Landlord's operations in the Leased Premises, in those reasonable amounts and with those reasonable deductibles, that would be carried by a prudent owner of a reasonably similar premises, having regard to size, age and location; and
- (d) such other forms of insurance which the Landlord or the Mortgagee considers advisable from time to time.

Despite this Section 11.06, and regardless of any contribution by the Tenant to the costs of insurance premiums: (i) the Tenant is not relieved of any liability arising from or contributed to by its negligence or its wilful acts or omissions; and (ii) no insurable interest is conferred upon the Tenant under any policies of insurance carried by the Landlord and the Tenant has no right to receive any proceeds of any such insurance policies. The costs of the Landlord's insurance under this Section 11.06 will be included in Operating Costs.

11.07 Loss or Damage

None of the Released Persons shall be liable for any death or injury from or out of any occurrence in, upon, at or relating to the Leased Premises, or damage to property of the Tenant or of others located on the Leased Premises, and will not be responsible for any loss of or damage to any property of the Tenant or others from any cause whatsoever, whether or not the death, injury, loss

or damage results from the negligence of the Released Persons, or any of them. Without limiting the generality of the foregoing, the Released Persons will not be liable for any injury or damage to Persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Leased Premises or from the pipes, appliances, plumbing works, roof, subsurface of any floor or ceiling or from the street or any other place, or from any dampness or by any other cause whatsoever. None of the Released Persons shall be liable for any damage caused by occupants of adjacent property, or the public, or caused by construction or by any private, public or quasi public work. All of the property of the Tenant kept or stored on the Leased Premises shall be kept or stored at the risk of the Tenant only, and the Tenant will indemnify the Released Persons and save them harmless from any claims arising out of any damages to that property including, but not limited to, any subrogation claims by the Tenant's insurers.

11.08 Indemnification of the Landlord

Despite anything to the contrary contained in this Lease, the Tenant will indemnify the Released Persons and save them harmless from and against any and all Claims (including loss of Rent payable by the Tenant under this Lease), in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of this Lease, or any occurrence in, upon or at the Leased Premises, or the occupancy or use by the Tenant of the Leased Premises, or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be on the Leased Premises by the Tenant. If a Released Person, without fault on its part, is made a party to any litigation commenced by or against the Tenant, then the Tenant will protect, indemnify and hold the Released Person harmless and will pay all costs, expenses and reasonable legal fees (on a substantial indemnity basis) incurred or paid by the Released Person in connection with that litigation. The Tenant will also pay all costs, expenses and legal fees (on a substantial indemnity basis) that may be incurred or paid by the Landlord in enforcing the terms, covenants and conditions in this Lease, unless a court decides otherwise. This indemnity will survive the Termination Date.

ARTICLE XII MAINTENANCE, REPAIRS AND ALTERATIONS

12.01 Maintenance and Repairs and Replacement by the Tenant

The Tenant shall, throughout the Term and any extension or renewal thereof, at its sole cost, keep the Leased Premises in a first class condition, as required by the Landlord. The Tenant shall, at its sole cost and expense, maintain, repair and replace, as required, the following:

- (a) the whole of the Leased Premises including, but not limited to, entrances, and all glass, windows and doors, including their frames and mouldings;
- (b) all signs (both interior and exterior), partitions, trade fixtures and Alterations located in or upon the Leased Premises;
- (c) the exterior areas of and facilities on the lands included in the Leased Premises which include, without limitation, the parking areas, driveways, sidewalks, loading

areas, concrete aprons, curbs, gutters, access points, control gates, security barriers or fences, landscaped areas;

- (d) the structural components of the Building including, without limitation, the roof (including the roof deck and roof membrane), foundations, interior walls, interior concrete slab floors and exterior walls; and
- (e) all Building Systems.

If any of the foregoing repairs or replacements (excluding repairs or replacement of the HVAC System) are of a capital nature that are required as a result of the useful life of a capital asset coming to an end and are capable of being amortized by the Landlord according to generally accepted accounting principles, the Tenant may request that same be paid for by the Landlord and charged back to Tenant as Additional Rent with the costs of such items to be amortized over such period as determined by Landlord, provided that such determination is made in accordance with generally accepted accounting principles, on a straight line basis to zero and interest to be calculated and paid annually during the Term on the unamortized cost of such items in respect of which amortization is included at 4% per annum in excess of the Prime Rate. For greater certainty, capital repairs do not include (i) repairs necessary to keep an asset in as good working condition as such asset was as of the Commencement Date (reasonable wear and tear excepted); (ii) any wear on or elimination of parking lot lines, black topping or asphalt sealing, or tarring or asphaltting of cracks or holes or asphaltting of less than the entire of the driveway or parking lot; or (iii) any replacement of glass in the windows.

The Landlord shall cooperate with the Tenant so that in the performance of the Tenant's covenants in this Section 12.01 and the Tenant will have the benefit of any warranties held by the Landlord in respect of the Building.

12.02 Landlord's Approval of Alterations

- (a) Except as provided in Section 12.02(b), the Tenant will not make any repairs, alterations, replacements, Leasehold Improvements or improvements (collectively the "**Alterations**") to the Leased Premises without first obtaining the Landlord's prior written approval. Prior to commencing any Alterations, the Tenant will submit to the Landlord: (i) details of the proposed Alterations including drawings and specifications; (ii) any indemnification or security against liens, costs, damages and expenses the Landlord requires; and (iii) evidence that the Tenant has obtained the necessary consents, permits, licences and inspections from all governmental authorities having jurisdiction.
- (b) The Tenant shall not be required to obtain the Landlord's prior written approval for any minor decorations to the interior of the Building.
- (c) Alterations shall be performed at the Tenant's sole cost in a good and workmanlike manner by competent workmen, in accordance with the drawings and specifications approved by the Landlord and subject to the reasonable restrictions imposed by the Landlord, all in accordance with the Tenant Construction Criteria.

- (d) Despite anything to the contrary contained in this Section, the Landlord may, at its option, complete the Alterations. Upon completion of the Alterations, the Tenant will pay to the Landlord, upon demand, as Additional Rent, the cost of the Alterations as well as any fees related thereto as may be set out from time to time in the Tenant Construction Criteria, together with an administration fee equal to fifteen percent (15%) of such costs,

12.03 Landlord's Inspection

The Tenant permits the Landlord and its agents, upon reasonable prior notice to the Tenant and during normal business hours (except in emergency) of the Tenant without interference to the operations of the Tenant, to enter the Leased Premises to examine the condition, management and operation thereof. In addition to the Tenant's obligations under Section 12.01, the Tenant shall effect the maintenance and carry out any work referred to in that Section in accordance with notice from the Landlord following its inspection. The failure to give the notice does not relieve the Tenant from its obligations under Section 12.01.

12.04 Surrender of the Leased Premises

On the Termination Date or earlier termination of the Term, the Tenant shall peaceably surrender up the Leased Premises to the Landlord in first class condition, will deliver all of the keys for the Leased Premises to the Landlord and will inform the Landlord of all combinations of locks, safes and vaults, if any, in the Leased Premises. The Tenant shall also remove its trade fixtures and the Leasehold Improvements in accordance with the provisions of Section 12.07 at the Termination Date or earlier termination of the Term.

12.05 Repair where Tenant at Fault

Despite anything to the contrary contained in this Lease, if the Leased Premises or any part thereof, requires repair or replacement because of the act of the Tenant, the cost of such repair or replacement, together with an administration fee equal to fifteen percent (15%) of such cost, shall be paid by the Tenant to the Landlord as Additional Rent on demand.

12.06 Tenant Not to Overload Floors

The Tenant will not bring upon the Leased Premises, or any part thereof, any machinery, equipment, article or thing that by reason of its weight, size or use might in the opinion of the Landlord damage the Leased Premises and shall not at any time overload the floors of the Building.

12.07 Removal and Restoration by the Tenant

- (a) Any Leasehold Improvements made by the Tenant, or made by the Landlord on the Tenant's behalf, immediately shall become the property of the Landlord and will not be removed from the Leased Premises except that: (i) the Tenant may, during the Term, in the usual course of its business, and with the prior written consent of the Landlord, remove the trade fixtures which it has installed, but only if they have become excess for the Tenant's purposes or if the Tenant is substituting new and similar trade fixtures, and the Tenant is not in default under this Lease; (ii) the

Tenant will, at the expiration of the Term, at its cost, remove all of its trade fixtures installed in the Leased Premises and those Leasehold Improvements which the Landlord requires to be removed; and all Contaminants required pursuant to ARTICLE X.

- (b) The Tenant will repair any damage to the Leased Premises caused by the installation or removal of the items described in subsection (a) above. This obligation will survive the Termination Date or earlier termination of the Term.
- (c) If the Tenant does not remove any of the items described in subsection (a) which it is required to remove, the Landlord may do so and the Tenant will pay the Landlord's removal, disposal, sale and storage charges. Any Leasehold Improvements or other items not removed shall, at the Landlord's option, become the property of the Landlord and may be removed from the Leased Premises and sold or disposed of by the Landlord in such manner as it deems advisable.
- (d) The parties agree that the Tenant's trade fixtures do not include any of the following: (i) the HVAC System; (ii) floor coverings, ceilings, partitioning and draperies; (iii) light fixtures; (iv) washroom fixtures and hot water tank; (v) electrical service including any transformer; (vi) internal stairways; (vii) show windows and doors; and (viii) signs, all of which are Leasehold Improvements.

12.08 Tenant Capital Expenditures and Improvements

The Tenant shall, in compliance with the provisions contained in this Lease, complete the capital expenditures and Leasehold Improvements that are detailed in the Tenant's Proposal, which is attached to this Lease (as Schedule D) for purposes of outlining the proposed capital expenditures and Leasehold Improvements.

12.09 Notice of Defects

The Tenant will notify the Landlord of any damage to, or deficiency or defect in, the Leased Premises, and any equipment, utility systems or installations located therein or thereon, immediately following the date the Tenant becomes aware of such damage, deficiency or defect, whether or not the Landlord has an obligation to repair the damage, or remedy the deficiency or defect.

12.10 Liens

The Tenant will promptly pay its contractors, material men, suppliers and workmen and will do everything necessary to ensure that no lien is registered against the Leased Premises or against the Landlord's interest in the Leased Premises, or against the Tenant's interest in the Leased Premises. If such a lien is made, filed or registered on title to the Leased Premises, the Tenant will discharge it, or cause it to be discharged, immediately, at the Tenant's expense. If the Tenant fails to discharge any such lien as required herein, the Landlord, in addition to its other remedies hereunder, at law or in equity may, but shall not be required to, discharge the lien by paying the amount claimed into court, together with any security for costs, or by paying the amount claimed directly to the lien claimant and the amount so paid, together with all related costs and expenses,

including solicitor's fees (on a substantial indemnity basis) and an administration fee equal to fifteen percent (15%) of such costs and expenses, all of which shall be payable by the Tenant on demand as Additional Rent.

12.11 Signs and Advertising

The Tenant shall not paint, affix or display any sign, picture, advertisement, notice, lettering or decoration on any part of the exterior of or in any part of the Building without, in each case, the prior written approval of the Landlord, such approval not to be unreasonably withheld. All signs erected by the Tenant shall comply with all Applicable Laws.

ARTICLE XIII DAMAGE AND DESTRUCTION AND EXPROPRIATION

13.01 Damage or Destruction to the Leased Premises

Subject to the following, if the Building, or any portion thereof, are damaged or destroyed by fire or by other casualty, Rent shall abate in proportion to the area of that portion of the Building which, in the opinion of the Architect, is thereby rendered unfit for the purposes of the Tenant until the Building is repaired and rebuilt, and the Landlord shall repair and rebuild the Leased Premises. Notwithstanding the foregoing, if the Tenant has caused or contributed to the damage or destruction, it shall not be entitled to any abatement of Rent. Rent shall recommence to be payable one (1) day after the Landlord notifies the Tenant that the Tenant may reoccupy the Building for the purpose of undertaking its work.

13.02 Rights to Termination

Notwithstanding Section 13.01:

- (a) if the Building or any portion thereof are damaged or destroyed by any cause whatsoever and cannot be rebuilt within one hundred and eighty (180) days of the damage or destruction, the Landlord may, instead of rebuilding the Building, terminate this Lease by giving to the Tenant notice of termination within thirty (30) days after the occurrence of such damage or destruction and thereupon Rent shall be apportioned and paid to the date of the occurrence of such damage or destruction and the Tenant shall immediately deliver up vacant possession of the Leased Premises to the Landlord; and
- (b) if the Building shall, at any time, be wholly or partially damaged or destroyed to the extent that twenty-five percent (25%) or more of the Building has become unfit for use, the Landlord may elect, within thirty (30) days from the date of the occurrence of such damage or destruction, to terminate this Lease on thirty (30) days' notice to the Tenant, in which event Rent shall remain payable until the date of termination (unless it has abated under Section 13.01).

13.03 Certificate Conclusive

Any decisions regarding the extent to which the Leased Premises have become unfit for use or the length of time required to complete any repair or reconstruction shall be made by the Architect whose decision shall be final and binding upon the parties.

13.04 Insurance Proceeds

Notwithstanding Sections 13.01 and 13.02, in the event of damage or destruction occurring by reason of any cause in respect of which proceeds of insurance are insufficient to pay for the costs of rebuilding the Building, or are not payable to or received by the Landlord, or in the event that any Mortgagee or other Person entitled thereto shall not consent to the payment to the Landlord of the proceeds of any insurance policy for such purpose, or in the event that the Landlord is not able to obtain all necessary approvals and permits from Governmental Authorities to enable it to rebuild the Building, the Landlord may elect, on written notice to the Tenant, within thirty (30) days following the occurrence of such damage or destruction, to terminate this Lease, and the Tenant shall immediately deliver up vacant possession of the Leased Premises to the Landlord in accordance with the Landlord's notice.

13.05 Landlord's Rights of Rebuilding

In performing any reconstruction or repair, the Landlord may use drawings, designs, plans and specifications other than those used in the original construction of the Building and may alter or relocate the Building. The Landlord shall have no obligation to grant to the Tenant any allowances or inducements to which it may have been granted at the beginning of the Term, and shall not be required to repair any damage to Leasehold Improvements (which include the HVAC System), fixtures, chattels the Tenant's trade fixtures or any other property of the Tenant.

13.06 Negligence of the Tenant

Notwithstanding anything to the contrary contained in this Lease, if any damage or destruction by fire or other casualty to all or any part of the Leased Premises is due to the fault or the negligence of the Tenant, the Tenant shall be liable for all costs and damages incurred or suffered by the Landlord without prejudice to any other rights and remedies of the Landlord and without prejudice to the rights of subrogation of the Landlord's insurer.

13.07 Expropriation

If all or any part of the Leased Premises is taken or expropriated by any lawful expropriating authority, or purchased under threat of such taking, or if part of the Leased Premises is taken so that substantial alteration or reconstruction of the Building is necessary or desirable as a result thereof, this Lease shall automatically terminate on the date on which the expropriating authority takes possession. Upon any such taking or purchase, the Landlord shall be entitled to receive and retain the entire award or consideration for the affected lands and improvements, and the Tenant shall not have, and shall not advance, any claim against the Landlord for the value of the Tenant's property or its leasehold estate or the unexpired Term, or for costs of removal or relocation, or business interruption expense or any other damages arising out of such taking or purchase. Nothing herein shall give the Landlord any interest in or preclude the Tenant from seeking and

recovering on its own account from the expropriating authority any award or compensation attributable to the taking or purchase of the Tenant's improvements, chattels or trade fixtures, or the removal, relocation or interruption of its business. If any such award made or compensation paid to either party specifically includes an award or amount for the other, the party first receiving the same shall promptly account therefor to the other.

ARTICLE XIV

ASSIGNMENT, SUBLETTING, PARTING WITH POSSESSION AND CORPORATE CONTROL

14.01 Transfers

The Tenant shall not assign this Lease in whole or in part, sublet all or any part of the Leased Premises or part with or share possession of all or any part of the Leased Premises to any Person, mortgage, charge or encumbrance of this Lease or the Leased Premises or any part of the Leased Premises or other arrangement under which either this Lease or the Leased Premises become security for any indebtedness or other obligation (in each case, a “**Transfer**” and any such assignee, sub-tenant, occupant or any other Person to whom a Transfer is to be made is a “**Transferee**”) without the Landlord’s prior written consent, which consent, subject to the Landlord’s termination right set out in Section 14.02, shall not be unreasonably withheld. At the time the Tenant requests the Landlord’s consent to a Transfer, the Tenant shall provide the Landlord with a true copy of the offer and any information the Landlord may require with regard to the reputation, financial standing and business of the proposed Transferee, together with payment of a non-refundable Landlord’s administrative fee as determined from time to time by the Landlord (which fee is currently One Thousand, Two Hundred and Fifty Dollars (\$1,250.00) plus applicable Sales Taxes). This restriction on Transfer also applies to any Transfer by operation of law.

14.02 Landlord’s Option to Terminate

Within thirty (30) days following the date the Tenant requests the Landlord to consent to a Transfer and provides all the information required by the Landlord in order to consider such request, the Landlord shall notify the Tenant in writing (i) whether or not it elects to terminate this Lease or such part of it as is the subject of the Transfer and (ii) the date of such termination of this lease, if applicable. If the Landlord elects to terminate this Lease or such part of it as is the subject of the Transfer, the Tenant shall, within fifteen (15) days after receipt of the Landlord’s notice of its election to terminate, notify the Landlord whether it shall: (i) refrain from the Transfer; or (ii) accept the termination of this Lease or such part of it as is the subject of the Transfer. If the Tenant fails to deliver its notice within the fifteen (15) day period, this Lease, or such part of it as is the subject of the Transfer, shall be terminated upon the date for termination provided for in the Landlord’s notice. If the Transfer relates only to part of the Leased Premises, and this Lease is terminated as to that part, then the Tenant shall be required, at its sole cost and expense and subject to the terms of Section 12.02, to demise the Leased Premises to permit such termination to occur. If the Tenant advises the Landlord that it intends to refrain from the Transfer, then the Landlord’s election to terminate this Lease, or such part of it as is the subject of the Transfer, will have no effect.

14.03 Consent Required

- (a) The Landlord shall not be considered to be unreasonably withholding its consent, and may, whether or not it would otherwise be considered unreasonable, refuse to give its consent, if its reason or reasons for doing so is or are based upon all or any of the following factors:
 - (i) any factor which a court of law would consider to be reasonable;
 - (ii) the Tenant is in default under this Lease, whether or not an Event of Default has occurred;
 - (iii) the proposed Transfer does or could result in violation or breach of any covenants or restrictions affecting the Lands;
 - (iv) the Transferee does not have a good credit rating, is not of substantial means, is not capable of financing its acquisition of the Tenant's business and this Lease on terms and conditions at least as favourable as those originally obtained by the Tenant or has a history of unsuccessful business operations in the business conducted on the Leased Premises;
 - (v) the Transferee previously has been bankrupt or insolvent or has defaulted under the terms of any lease for industrial, commercial or office premises whether leased from the Landlord or other parties; or
 - (vi) any Mortgagee, whose consent is required, refuses to consent to the Transfer for whatever reason.
- (b) Upon any Transfer, the Landlord may collect Rent from the Transferee and apply the net amount collected to the Rent required to be paid under this Lease, but no acceptance by the Landlord of any payments by a Transferee shall be construed as a waiver of any right of the Landlord, or the acceptance of the Transferee as tenant or a release of the Tenant from the performance of its obligations under this Lease. Any document effecting the Transfer of this Lease and every document consenting to the Transfer shall be prepared by the Landlord or its solicitors and the legal costs and other expenses in connection with such documents shall be paid to the Landlord by the Tenant upon demand, as Additional Rent, in addition to the administration fee described in Section 14.01.
- (c) Any Transfer shall be subject to the following conditions:
 - (i) the Transferee and the Tenant shall promptly execute an agreement agreeing with the Landlord whereby the Transferee shall be bound by all the Tenant's obligations under this Lease as if the Transferee had originally executed this Lease as tenant and the Tenant shall agree to remain jointly and severally liable with the Transferee on this Lease and any renewals or extensions thereof and will not be released from any obligations under this Lease as amended from time to time;

- (ii) if the Transferee agrees to pay the Tenant or any Person any amount in excess of the Rent payable under this Lease or provides any other benefit in each case in consideration for the Transfer, the Tenant shall pay such excess amount or an amount equal to such benefit to the Landlord at the same time as the Rent is due and payable hereunder; and
- (iii) the Tenant shall pay for all of the Landlord's reasonable legal costs incurred to approve and complete all agreements necessitated by the Transfer.

14.04 No Advertising of the Leased Premises

The Tenant shall not advertise the whole or any part of the Leased Premises or this Lease for the purpose of a Transfer and will not permit any broker or other Person to do so on its behalf.

14.05 Corporate Ownership

- (a) If the Tenant is a corporation, any transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription from time to time of all or any part of the corporate shares of the Tenant, or of any holding body corporate or subsidiary body corporate of the Tenant, or any corporation which is an affiliated body corporate of or is associated with the Tenant (as those terms are defined in the *Canada Business Corporations Act*, as amended, which results in any change in the present effective voting control of the Tenant by the Person holding that voting control at the date of execution of this Lease (or at the date of a Transfer to a corporation) shall be considered to be a Transfer to which Section 14.01 of this Lease apply. The Tenant shall make all corporate books and records of the Tenant available to the Landlord for inspection at all reasonable times.
- (b) Section 14.05(a) does not apply to the Tenant as long as: (i) the Tenant is a public corporation whose shares are traded and listed on any recognized stock exchange in Canada or the United States; or (ii) the Tenant is a private corporation and is controlled by a public corporation described in item (i).
- (c) The Tenant represents and warrants to and in favour of the Landlord that it has provided to the Landlord a certificate of an officer of the Tenant showing the current ownership and effective voting control of the Tenant as at the date hereof.

14.06 Assignment or Transfer by the Landlord

If the Landlord sells, leases or otherwise disposes of the Leased Premises, or if it assigns this Lease or any interest of the Landlord in it, then, to the extent that the purchaser, transferee or assignee assumes the obligation of the Landlord under this Lease, the Landlord shall, without further agreement, be released from all liability with respect to the Landlord's obligations under this Lease. In addition, upon the Landlord transferring any outstanding Letter of Credit to the purchaser, transferee or assignee, the Landlord shall be released from all liability to the Tenant in connection therewith.

ARTICLE XV ACCESS

15.01 Right to Show the Leased Premises

The Landlord and its agents have the right to enter the Leased Premises at all times to show them to prospective tenants.

15.02 Emergencies

If the Tenant is not personally present to permit an entry into the Leased Premises at any time when for any reason an entry is necessary or permitted, the Landlord or its agents may forcibly enter them without liability and without affecting this Lease.

15.03 Access Not Re-entry

Any entry by the Landlord on the Leased Premises in accordance with the provisions of this Lease shall not be considered a re-entry or a breach of covenant for quiet enjoyment.

15.04 Roof Rights

- (a) The Landlord may at any time, and from time to time, prior to or during the Term, grant a licence (a “**Roof licence**”) to third parties (individually a “**Roof Licensee**”) for the purpose of installing, operating and maintaining equipment (“**Roof-Top Equipment**”) on the roof of the Building, it being understood and agreed that the Roof-Top Equipment does not include any part of the HVAC System. Without limiting the rights which the Landlord may grant to the Roof Licensee, the Roof Licensee shall:
 - (i) be entitled to have such access to the Leased Premises at times agreed upon by the Tenant, the Tenant hereby agreeing to act reasonably in dealing with a Roof Licensee’s request for such access, as it may require in order to install, operate, maintain and repair the Roof-Top Equipment. For greater certainty, the foregoing right shall apply to the Roof Licensee’s employees, servants, agents, contractors and those Persons for whom the Roof Licensee is responsible in law (collectively, the “**Roof Licensee’s Employees**”);
 - (ii) be entitled to:
 - (1) sell or otherwise deal with any good or service generated or provided by the Roof-Top Equipment in such manner as a Roof Licensee may determine; and
 - (2) install such equipment and wiring and cabling as may be required so that goods or services generated or provided by the Roof-Top Equipment can be distributed off-site of the Property; and

- (iii) be under no obligation to sell or otherwise make available to the Tenant any good or service generated or provided by the Roof-Top Equipment.

The Tenant shall not interfere with the exercise by the Roof Licensee of any rights granted to it by the Landlord.

- (b) If the Landlord grants a Licence to a Roof Licensee, then upon the commencement of the installation of the Roof-Top Equipment on the roof of the Building:
 - (i) the Tenant will have no further maintenance, repair or replacement obligations with respect to any damage to the Leased Premises caused by the Roof Licensee or the Roof Licensee's Employees; and
 - (ii) the Landlord shall thereafter be responsible, at its sole cost, for repairing all damage:
 - (1) caused to the roof (including, without limitation, the roof membrane) by the Roof-Top Equipment, including, without limitation, repairing all leaks in the roof caused by the Roof-Top Equipment; and
 - (2) to the Leased Premises caused by the Roof Licensee or the Roof Licensee's Employees, the Landlord and its contractors being entitled to have such access to the Leased Premises as may be required in order to carry out repair of any such damage.
- (c) except as set out in Section 15.04(b)(ii), the Landlord shall have no liability whatsoever for and the Tenant hereby releases the Landlord from all Claims arising out of damages, injuries (including, without limitation, bodily injuries) or losses (including without limitation, loss of life) caused or contributed to by the Roof-Top Equipment, the Roof Licensee or the Roof Licensee's Employees; and
- (d) if the Roof-Top Equipment is subsequently removed from the roof of the Building, the Landlord will (at its sole cost) repair all damage to the roof of the Building caused by the installation and removal of the Roof-Top Equipment and thereafter the provisions of Section 15.04(b) shall cease to have effect.

15.05 Right to Install Solar Panels

The Landlord shall be entitled to have such access to the Leased Premises at times agreed upon by the Tenant, the Tenant hereby agreeing to act reasonably in dealing with the Landlord's request for such access, as it may require in order to install, operate, maintain and repair solar panels on the roof of the Building. The Landlord will not disturb the operation of the Tenant's business any more than is reasonably necessary in the circumstances while carrying on such work.

ARTICLE XVI

STATUS STATEMENT, ATTORNMENT AND SUBORDINATION

16.01 Status Statement

Within ten (10) days after a written request by the Landlord, the Tenant shall deliver, in a form supplied by the Landlord, a status statement or certificate to any Mortgagee or purchaser of the Leased Premises, or to the Landlord, stating the following:

- (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification agreements) or if this Lease is not in full force and effect, the certificate shall so state;
- (b) the Commencement Date;
- (c) the date to which Rent has been paid under this Lease;
- (d) whether or not there is any existing default by the Tenant in the payment of any Rent or other monies due and owing under this Lease, and whether or not there is any existing or alleged default by either party under this Lease with respect to which a notice of default has been served and if there is any such default, specifying the nature and extent of it;
- (e) whether there are any set-offs, defences or counter claims against enforcement of the obligations to be performed by the Tenant under this Lease; and
- (f) with reasonable particularity, details respecting the Tenant's financial standing and corporate organization.

16.02 Subordination and Attornment

The Tenant's rights under this Lease are subordinate to any Mortgages registered on title to the Lands, or any part thereof, from time to time. Upon request, the Tenant shall subordinate this Lease and all of its rights under it, in the form the Landlord requires, to any such Mortgage, and if requested, the Tenant shall attorn to the Mortgagee. The Tenant shall, if possession is taken under, or any proceedings are brought for the foreclosure of, or the power of sale is exercised under any Mortgage granted by the Landlord or otherwise in existence against the Leased Premises, attorn to the Mortgagee, and recognize the Mortgagee, as the Landlord under this Lease.

16.03 Financial Information

- (a) The Tenant shall, upon request, provide the Landlord with such information as to the financial standing and corporate organization of the Tenant as the Landlord or the Mortgagee requires. Failure of the Tenant to comply with the Landlord's request shall be a default under this Lease.

- (b) Without limiting the generality of the foregoing, the Tenant shall provide the Landlord with its most recent audited annual financial statements immediately upon request and in any event within one hundred and twenty (120) days of the end of each fiscal year of the Tenant.
- (c) The Tenant agrees to provide to the Landlord prompt notice of any impending financial difficulties that could lead to a secured creditor exercising, or providing notice of an intention to exercise, its remedies, including a notice under Section 244 of the *Bankruptcy and Insolvency Act* (Canada).

ARTICLE XVII DEFAULT

17.01 Event of Default

An “**Event of Default**” shall be considered to have occurred when any one or more of the following happens:

- (a) the Tenant fails to pay any Rent when it is due and such failure continues for five (5) days after notice from the Landlord to the Tenant of such failure;
- (b) the Tenant fails to observe or perform any other of the terms, covenants, conditions or agreements contained in this Lease and such failure continues for ten (10) days after notice from the Landlord to the Tenant specifying the failure (except as set out in paragraphs (c)–(n), both inclusive, below where the Landlord shall have no obligation to provide such notice to the Tenant);
- (c) the Term or any of the goods, chattels or fixtures of the Tenant on the Leased Premises are seized or taken in execution or attached by any creditor;
- (d) a writ of execution or sequestration is issued against the goods, chattels or fixtures of the Tenant;
- (e) the Tenant makes a sale in bulk of all or a substantial portion of its assets other than in a Transfer approved by the Landlord;
- (f) the Tenant sells or disposes of the goods, chattels or fixtures or removes them or any of them from the Leased Premises without complying with Section 12.07;
- (g) the Tenant abandons or attempts to abandon the Leased Premises or the Leased Premises remain vacant for ten (10) consecutive days or more without the prior written consent of the Landlord;
- (h) the Leased Premises are used by any Person other than those Persons entitled to use them under this Lease;
- (i) the Tenant makes an assignment for the benefit of creditors or commits any act of bankruptcy as defined in the *Bankruptcy and Insolvency Act* (Canada) or any

successor of it, or becomes bankrupt or insolvent or takes the benefit of any legislation now or hereafter in force for bankrupt or insolvent debtors;

- (j) an order is made for the winding up or liquidation of the Tenant, or the Tenant voluntarily commences winding-up procedures for liquidation;
- (k) an order or appointment is made for a receiver or a receiver and manager of all of the assets or undertaking of the Tenant;
- (l) any insurance policy covering any part of the Leased Premises is, or is threatened to be, cancelled or adversely changed or the premium cost is, or may be, significantly increased as a result of any act or omission by the Tenant or any person for whom the Tenant is responsible in law;
- (m) the Tenant's Licence is revoked, suspended or terminated; or
- (n) any default or event of default occurs under any lease or agreement to lease relating to other properties owned by the Landlord, leased to or occupied by the Tenant or any Person related to the Tenant.

17.02 Rights of the Landlord

Upon the occurrence of any Event of Default the following provisions apply:

- (a) The Landlord may terminate this Lease by notice to the Tenant, or re-enter the Leased Premises and repossess them and, in either case, enjoy them as of its former estate and the Landlord may remove all Persons and property from the Leased Premises and the property may be sold or disposed of by the Landlord as it considers advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant, all without service of notice or resort to legal process and without the Landlord being guilty of trespass or being liable for any loss or damage which may be occasioned thereby.
- (b) If the Landlord elects to re-enter the Leased Premises as provided in this Section, or if it takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time, without terminating this Lease, make those alterations and repairs which are necessary in order to re-let the Leased Premises or any part of them for a term (which may be for a term extending beyond the Term) and at a rent and upon those other terms, covenants and conditions which the Landlord, in its discretion, considers advisable. Upon each reletting, the rent received by the Landlord from the reletting shall be applied first to the payment of any indebtedness other than Rent due under this Lease from the Tenant to the Landlord; second to the payment of any costs and expenses of the reletting including brokerage fees and solicitors' fees and the costs of the alterations and repairs; third to the payment of Rent due and unpaid under this Lease; and the residue, if any, shall be held by the Landlord and applied towards payment of future Rent as it becomes due under this Lease. If the rent received from the reletting during any month is less than the Rent to be

paid during that month by the Tenant under this Lease, the Tenant will pay the deficiency, which shall be calculated and paid monthly in advance on or before the first day of each month. No re-entry or taking possession of the Leased Premises by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of that intention is given to the Tenant. Despite any reletting without termination, the Landlord may at any time afterwards elect to terminate this Lease for the previous breach. If the Landlord at any time terminates this Lease for any breach, in addition to any other remedies it may have, it may recover from the Tenant all damages it incurs by reason of the breach including, without limitation, the costs of recovering the Leased Premises, solicitors' fees (on a substantial indemnity basis) and the worth, at the time of the termination, of the excess, if any, of the amount of Rent and charges equivalent to Rent required to be paid under this Lease for the remainder of the Term over the then reasonable rental value of the Leased Premises for the remainder of the Term.

- (c) The Landlord may remedy, or attempt to remedy, the default of the Tenant and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Leased Premises to do any work or other things therein or thereon, in which case all the Landlord's costs and expenses, together with an administration fee of fifteen percent (15%) of such costs and expenses, shall be payable on demand by the Tenant as Additional Rent. The Landlord will not be liable for any loss or damage resulting from any action or entry by the Landlord under this Subsection 17.02(c) and will not be considered to have breached any covenant for quiet enjoyment.
- (d) The Landlord may recover from the Tenant the full amount of the current month's instalment of Rent together with the next three (3) months' instalments of Rent, all of which shall be deemed to be accruing on a day-to-day basis, and shall immediately become due and payable as accelerated Rent, and the Landlord may immediately distrain for such accelerated Rent together with any other Rent arrears.

17.03 Expenses

If legal action is brought for recovery of possession of the Leased Premises, for the recovery of Rent or any other amount due under this Lease, or because of the breach of any other terms, covenants or conditions contained in this Lease on the part of the Tenant to be kept or performed, and a breach is established, the Tenant shall pay to the Landlord all the expenses incurred in connection with it, including solicitor's fees (on a substantial indemnity basis), unless a court otherwise awards.

17.04 Waiver of Exemption from Distress

Despite anything to the contrary contained in this Lease or the provisions of applicable legislation, none of the goods and chattels of the Tenant on the Leased Premises at any time and from time to time during the Term, or any extension or renewal thereof, shall be exempt from levy by distress for Rent in arrears and the Tenant hereby waives any rights it has or might otherwise have under any such applicable legislation in that regard. If any claim is made for such an exemption by the

Tenant, or if distress is made by the Landlord, this Section may be pleaded as an estoppel against the Tenant in any action brought to test the right of the levying upon any of those goods which are named as exempted in any sections of any applicable legislation.

17.05 Remedies Generally

The exercise by the Landlord of any particular remedy does not preclude the Landlord from exercising any other remedy in respect of the occurrence of an Event of Default. No remedy shall be exclusive or dependant upon any other remedy, and the Landlord may from time to time exercise one or more of its remedies generally or in combination, those remedies being cumulative and not alternative.

ARTICLE XVIII MISCELLANEOUS

18.01 Rules and Regulations

The Rules and Regulations set out in Schedule "C" attached hereto form part of this Lease and the Tenant shall comply with and observe such Rules and Regulations throughout the Term. The Tenant's failure to comply with and observe the Rules and Regulations shall be a default under this Lease in the same manner as if the Rules and Regulations were set out as covenants in this Lease. The Landlord may from time to time establish new Rules and Regulations or amend, supplement or terminate the existing Rules and Regulations. Notice of the Rules and Regulations and any amendments, supplements or termination thereof, shall be given to the Tenant and the Tenant shall comply with and observe same from the date upon which it is so notified. The Rules and Regulations shall not conflict with or contradict the other provisions of this Lease.

18.02 Overholding

If the Tenant remains in possession of the Leased Premises after the end of the Term, or any renewal or extension thereof, without having executed and delivered a new lease, it shall be considered to be occupying the Leased Premises as a tenant from month-to-month on the same terms and conditions as are set out in this Lease, except that it shall be liable for payment of Rent at the rate equal to 150% of the Base Rent and Percentage Rate which it was responsible for paying during the last month of the Term, or any renewal or extension thereof, together with Additional Rent as set out in this Lease. In addition, the Landlord may exercise all of its rights and remedies under this Lease and at law to remove the Tenant from the Leased Premises.

18.03 Notices

Any notice, demand, request, consent or other instrument which may be or is required to be given under this Lease shall be delivered in person or sent by registered mail postage prepaid and shall be addressed: (a) if to the Landlord at the address set out in Section 1.01(a) or to such other Person or at such other address as the Landlord designates by written notice; (b) if to the Tenant, at the address set out in Section 1.01(b) or at such other address as the Tenant designates by written notice. If there is more than one Tenant, any notice under this Lease may be given by or to any one of them and will have the same effect as if given by or to all of them. Any notice, demand, request, consent or other instrument shall be conclusively deemed to have been given or made on

the day upon which the notice, demand, request, consent or other instrument is delivered, or, if mailed, then seventy-two (72) hours following the date of mailing and the time period referred to in the notice begins to run from the time of delivery or seventy-two (72) hours following the date of mailing. Either party may at any time give notice in writing to the other of any change of address of the party giving the notice and upon the giving of that notice, the address specified in it shall be considered to be the address of the party for the giving of notices under this Lease. If the postal service is interrupted or is substantially delayed, or is threatened to be interrupted, any notice, demand, request, consent or other instrument will only be delivered in person.

18.04 Registration

The Tenant will not register this Lease or any notice thereof on title to the Lands without the prior written consent of the Landlord and the Landlord's approval of the form and content of such registration.

18.05 Quiet Enjoyment

Provided the Tenant pays the Rent and other sums provided for under this Lease, and observes and performs all of the terms, covenants, and conditions on its part to be observed and performed, the Tenant will peaceably and quietly hold and enjoy the Leased Premises for the Term without hindrance or interruption by the Landlord or any other Person lawfully claiming by, through or under the Landlord subject, however, to the terms, covenants and conditions of this Lease.

18.06 Landlord's Co-Operation and Access

The Landlord will make commercially reasonable efforts to assist the Tenant with any reasonable request for co-operation in increasing the revenue to be generated from the Leased Premises, provided that such requests do not result in any interference with the Landlord's operations. The Landlord shall co-operate in order to allow vehicular traffic including cars, trucks and motor coaches, free and open access to the duty free shop operated at the Leased Premises.

18.07 Regulatory Changes

In the event an unanticipated introduction of or a change in any Applicable Laws causes a material adverse effect on the business operations of the Tenant at the Leased Premises, the Landlord agrees to consult with the Tenant to discuss the impact of such introduction of or change in Applicable Laws to the Lease.

18.08 Unavoidable Delay

Notwithstanding anything to the contrary contained in this Lease, if any party hereto is *bona fide* delayed or hindered in or prevented from performance of any term, covenant or act required hereunder by reason of Unavoidable Delay, then performance of such term, covenant or act is excused for the period of the delay and the party so delayed, hindered or prevented shall be entitled to perform such term, covenant or act within an appropriate time period after the expiration of the period of such delay. However, the provisions of this Section 18.06 do not operate to excuse the Tenant from the prompt payment of Rent and any other payments required by this Lease.

[END OF PAGE]

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

**BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY**

Per 

Name: *Ron Kleins*

Title: *general manager 7/28/16*

Per _____

Name:

Title:

I/We have authority to bind the Compact

PEACE BRIDGE DUTY FREE INC.

Per 

Name: *GREGORY G. O'HARA*

Title: *PRESIDENT*

I have the authority to bind the Corporation

SCHEDULE "A"
LEGAL DESCRIPTION OF THE LANDS

PT LT 229-233 PL 519, PT LT 166-180 PL 519, PT DOUGLAS ST PL 505, PT LANE PL 519 ABUTTING LT 229-233, PT MAIN ST PL 519 CLOSED BY R0691414, R0458946, BB98631 & R0114588, PT LT 221-223 PL 519, LT 224, 225, 226 PT LT 227 PL 519, PT FOURTH ST PL 519, PT WADSWORTH ST PL 505 CLOSED BY R0691414, LT 81-91 PL 519, LANE PL 519 ABUTTING LT 81 TO 88 & LT 88 TO 91 CLOSED BY BB57684, LT 116-126 PL 519, LANE PL 519 ABUTTING LT 119 TO 126 & 116 TO 119 CLOSED BY BB30073 & R0143454 LT 181-195 PL 519, LANE PL 519 ABUTTING LT 181-195 CLOSED BY R0691414, LT 55-85 PL 524, PT PRICELAND RD PL 524 CLOSED BY R0221079, LT 1-4 PL 505 E/S DOUGLAS ST, LT 5 PL 505 N/S GARRISON RD, PT LT 6 PL 505 N/S GARRISON RD, PT LT 7 PL 505 W/S WADSWORTH ST, LT 8-10 PL 505 W/S WADSWORTH ST, LT 1-4 PL 505 E/S WADSWORTH ST, PT LT 5-8 PL 505 W/S NORTH ST, PT QUEENSBURY RD PL 524 CLOSED BY R0691414 PT 1, 2, 5, 6, 7, 8, 9, 10, 11, 12 59R10134, PT 1, 2, 3, 12 59R8848, PT 1 59R9201, AS IN R0655269, R0660595, R0658993 EXCEPT PT 1 59R11984, S/T BB29712, S/T R0485157, S/T R0486298, S/T R0486299, S/T R0688285, S/T R0688286, S/T R0688288, T/W R0655269; FORT ERIE E.

Being all of PIN 64220-0290 (LT)

SCHEDULE "B"
LEASED PREMISES PLAN



SCHEDULE "C"
RULES AND REGULATIONS

1. The Tenant shall not place or cause to be placed any additional locks upon any doors of the Building without the approval of the Landlord and subject to any conditions imposed by the Landlord.
2. The washrooms and other water apparatus shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, ashes or other substances shall be thrown therein. Any damage resulting from misuse shall be borne by the Tenant by whom or whose agents, servants, or employees cause the damage. The Tenant shall not let the water run unless it is in actual use, and shall not deface or mark any part of the Building.
3. No one shall use the Building for sleeping apartments or residential purposes, or for the storage of personal effects or articles not required for business purposes.

SCHEDULE "D"
TENANT'S PROPOSAL

Please see attached as labeled Schedule D

SCHEDULE D

**Response to Request for Proposal
Operation of a Duty Free Shop at the Peace Bridge
Issued by the Buffalo and Fort Erie Public Bridge Authority**

**The Technical Proposal
May 9, 2016**

Submitted to: Buffalo and Fort Erie Public Bridge Authority
Attn: Kimberlee Kaiser, Executive Assistant
100 Queen Street
Fort Erie, Ontario
L2A 3S6

Proponent: Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie, Ontario
L2A 5N1

Contact: Gregory G. O'Hara
President and Chief Executive Officer
905-871-5400 ext. 107
gohara@dutyfree.ca

The attached bid includes confidential business and commercial information pertaining to Peace Bridge Duty Free Inc. Peace Bridge Duty Free Inc. respectfully requests that the contents of the bid not be disclosed to anyone other than employees, officers, directors or evaluation committee members of the Buffalo and Fort Erie Public Bridge Authority.

Tab	Submission Elements	Page
1	Table of Contents	
2	Transmittal Letter	
3	Disclosures & Certifications	
	• Non-collusive Proposal Certification	
	• Conflict of Interest Declaration	
	• Statement of Insurability	
	• Consent to Surety	
	• Independence statement	
	• Representations by the Proponent	
4	Qualifications & Experience	
	• Proponent Name and Location	1
	• Description of the Proponent	1
	• Proponent Experience in the Last 5 years	1
	• Financial Statements	3
	• Canadian Border Service Agency License	4
	• Past Marketing and Sales Programs	4
	• Experience of Manager and Key Personnel	7
	• Experience in Similar Retail Operations	9
	• Distinguishing Features	9
	• Identification of Potential Problems	11



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

May 9, 2016

Kimberlee Kaiser
Executive Assistant
Buffalo & Fort Erie Public Bridge Authority
100 Queen Street
Fort Erie, ON L2A 3S6

Dear Ms. Kaiser:

Peace Bridge Duty Free Inc. ("PBDF") is pleased to submit a proposal in response to the Request for Proposal (the "RFP") issued by the Buffalo & Fort Erie Public Bridge Authority (the "Authority") to develop and operate a duty free Store on the Canadian side of the Peace Bridge.

PBDF has reviewed the lease included in Appendix A of the RFP and confirms that PBDF understands the principal terms of the lease. If successful in this RFP process, PBDF is committed to entering into the lease in a form to be agreed upon by PBDF and the Authority, including those provisions identified as mandatory provisions in Part V, Section B of the RFP.

Peace Bridge Duty Free Inc. is the incumbent operator at the Peace Bridge Plaza and firmly believes that it is the best qualified to operate the duty free Store. The reasons for PBDF's belief in this regard are set out in full detail our proposal, which PBDF confirms is a firm and irrevocable offer.

PBDF believes that it is the best qualified to develop and operate the duty free Store at the Peace Bridge for many key reasons including:

- PBDF has a senior management group and staff that have extensive duty free industry business experience and its ownership is stable and has a strong financial capability.
- PBDF is an award winning duty free operator that has received numerous duty free industry distinctions over the years including the "Platinum Award" from the Frontier Duty Free Association in recognition for being the "Best Canadian Land Border Duty Free Store."
- PBDF has demonstrated a track record of generating incremental sales and mitigating significant business challenges including dealing with declining Peace Bridge vehicle traffic from Canada to the United States for more than a decade.





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T: 905-871-5400 F: 905-871-6335

- PBDF has engaged a renowned design team SmartDesign Group, that has a tremendous amount of experience with respect to specialized retail environments, to assist PBDF in creating an unparalleled luxury land border duty free shopping experience.
- PBDF has entered into many strategic relationships. These relationships will significantly enhance the business at the Store.

PBDF owners, staff and partners look forward to the exciting opportunity to develop and operate a land border duty free store at the Peace Bridge Plaza in Fort Erie, Ontario.

I, Gregory G. O'Hara, am an official with PBDF and will be the primary contact person with the Authority.

Yours truly,

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie, Ontario

Email: gohara@dutyfree.ca
Phone: 905-871-5400 ext. 107



Non-collusive Proposal Certification



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-5335

In accordance with Item (iv) of Part IV.A.1.2a. of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify that:

- This proposal is genuine and is not made in the interest of, or on behalf of, an undisclosed person or corporation;
- Peace Bridge Duty Free Inc. has not directly or indirectly induced or solicited any other Proponent to submit a false or sham Proposal, or decline to submit a Proposal;
- Peace Bridge Duty Free Inc. has not sought, by collusion, to obtain any advantage over any other Proponent or over the Authority; and
- I, Gregory G. O'Hara, am entitled to represent Peace Bridge Duty Free Inc., empowered to submit the bid, and authorized to sign a lease with the Authority.

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.



Conflict of Interest Declaration



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

In accordance with item (v) of Part IV.A1.2a. of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify, on behalf of Peace Bridge Duty Free Inc., that there is no actual or potential Conflict of Interest relating to the preparation of this proposal, and/or Peace Bridge Duty Free Inc. does not foresee an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP.

I also confirm that I have the power to bind Peace Bridge Duty Free Inc. and, therefore, I am entitled to make this certification and declaration on behalf of Peace Bridge Duty Free Inc.

In the interests of full disclosure, the only individual involved in the preparation of the proposal that has had any employment relationship with the Bridge Authority is an individual who worked as a summer student at the Buffalo and Fort Erie Public Bridge Authority ("**Authority**") over 35 years ago. The full details of his employment are:

Name: John Menchella

Last date of employment with the Authority: John Menchella was employed by the Authority for the summer terms of 1978 and 1979.

Name of last supervisor with the Authority: unknown

Description of individual's job functions at last position with the Authority: John Menchella was employed as a summer student with the Authority for a short period in 1978 and 1979. John Menchella was assigned tasks related to traffic direction.

Description of the nature of individual's participation in preparation of proposal: John Menchella acted as a consultant and provided advice regarding the preparation of the proposal.

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.



Statement of Insurability



McAvoy, Belan & Campbell
Insurance and Financial Services Ltd.

April 26, 2016

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

Attention: Jim Pearce

Dear Sir:

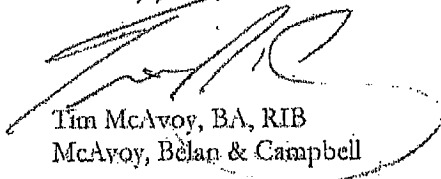
I have examined the lease requirements and confirm that we are currently providing and/or exceeding the required types and levels of insurance as outlined in the leasing conditions. We will have no problem maintaining these requirements in the future.

In addition to the lease requirements, we have added the following enhancements:

- 1) Business interruption on the main location has been extended to cover the bridge itself. This will allow the Duty Free income stream to continue if one of the same perils befalls the structure
- 2) Terrorism insurance, which is a standard exclusion in Canada, has been purchased through the international markets to cover the main location for property and loss of income. It has also been extended to cover the bridge structure as described above
- 3) Other coverage added to the main location include:
 - a. Privacy Breach Liability
 - b. Pollution Liability
 - c. Flood & Earthquake Coverage

If you require further information, please do not hesitate to contact me.

Sincerely yours,



Tim McAvoy, BA, RIB
McAvoy, Belan & Campbell

351 CANBORO ROAD
RIDGEVILLE ON
L0S 1M0
905.892.9590

350 KING STREET
PORT COLBORNE ON
L3K 4H3
905.834.3666

mbefinancial.ca

Consent to Surety



RBC
Royal Bank

Chris Miotto
Senior Account Manager

Commercial Financial Services
Grantham Shopping Plaza Branch
380 Scott Street
St. Catharines, ON L2M 3W4
Transit 04242

Tel: (905) 934-4415
Fax: (905) 934-4676
E-mail: chris.miotto@rbc.com

April 6, 2016

Jim Pearce
Manager Finance
Peace Bridge Duty Free Inc.
P.O. Box 339, Peace Bridge Plaza
Fort Erie, Ontario, L2A 5N1

Dear Jim:

Further to our discussions, we congratulate Peace Bridge Duty Free Inc. for their outstanding historical financial performance. This letter will confirm that RBC Royal Bank and Peace Bridge Duty Free Inc. have an outstanding business relationship spanning several years. RBC Royal Bank currently supports and will continue to support the company's vision and future plans.

We at RBC Royal Bank acknowledge the strong relationship that Peace Bridge Duty Free Inc. has with the Buffalo & Fort Erie Public Bridge Authority and such, offer the following surety statement. Based on the company's strong historical financial results, Peace Bridge Duty Free Inc. would qualify and be eligible for a Letter of Credit to be issued to the benefit of the Landlord, the Buffalo & Fort Erie Public Bridge Authority in the amount of \$500,000.

Peace Bridge Duty Free Inc. has made notable contributions to Fort Erie's community & economic development, and such, the outstanding financial results could not have been reached without the company's strong leadership and commitment to quality customer service.

Congratulations again, we trust the foregoing meets your requirements; however, should you require further information, please feel free to give me a call.

Yours truly,

A handwritten signature in black ink, appearing to read 'Chris Miotto', written over a horizontal line.

Chris Miotto
Senior Account Manager

Independence Statement



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

In accordance with Item 2 of Part IV.B of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify and declare, on behalf of Peace Bridge Duty Free Inc., that Peace Bridge Duty Free Inc. is independent of the Authority and that Peace Bridge Duty Free Inc. and its personnel will avoid any actual, apparent or perceived conflict of interest.

I, Gregory G. O'Hara, also confirm that I have the power to bind Peace Bridge Duty Free Inc. and, therefore, I am entitled to make this certification and declaration on behalf of Peace Bridge Duty Free Inc.

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.



Representations by the Proponent



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572 Buffalo, New York USA 14213-0572
T: 905-871-5400 F: 905-871-6335

In accordance with Item e of Part IV.B3. of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify and represent, on behalf of Peace Bridge Duty Free Inc., that:

- i. All financial statements provided as part of Peace Bridge Duty Free Inc.'s proposal have been prepared in accordance with GAAP and present fairly the financial condition of Peace Bridge Duty Free Inc. at the dates of such statements;
- ii. No material adverse change in the business or financial condition of Peace Bridge Duty Free Inc. has occurred since the date of the most recent financial statements provided as part of the Proposal;
- iii. Peace Bridge Duty Free Inc. has filed all tax returns required to be filed at the date of the Proposal and has paid all taxes owing as at the date of the Proposal;
- iv. During the three years prior to the date of the Proposal, Peace Bridge Duty Free Inc. has not been a party to or otherwise subject to any material litigation or judicial proceeding nor is any such litigation or proceeding threatened at the date of the Proposal;
- v. Peace Bridge Duty Free Inc. is in compliance, in all material respects, with all laws applicable to Peace Bridge Duty Free Inc. and its business;
- vi. During the three years prior to the date of the Proposal, Peace Bridge Duty Free Inc. has not received any notice from any government or governmental body or agency of, or otherwise been involved in, any investigation, inquiry, charge or proceeding involving or affecting Peace Bridge Duty Free Inc.; other than issuance of a ticket for \$365 from the Niagara Region under the Smoke Free Ontario Act (which is being contested) which is automatically issued after one of our long-term staff erroneously sold cigarettes to someone under age. PBDF has re-educated all staff and is making additional system improvements to lessen any chance of reoccurrence.
- vii. During the three years prior to the date of the Proposal, Peace Bridge Duty Free Inc. has not made an assignment in bankruptcy, being petitioned into bankruptcy or been the subject of a receivership or other insolvency proceeding;





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In accordance with Item (iv) of Part IV.A.1.2a. of the RFP, I, Gregory G. O'Hara, President and Chief Executive Officer of Peace Bridge Duty Free Inc., hereby certify that:

- This proposal is genuine and is not made in the interest of, or on behalf of, an undisclosed person or corporation;
- Peace Bridge Duty Free Inc. has not directly or indirectly induced or solicited any other Proponent to submit a false or sham Proposal, or decline to submit a Proposal;
- Peace Bridge Duty Free Inc. has not sought, by collusion, to obtain any advantage over any other Proponent or over the Authority; and
- I, Gregory G. O'Hara, am entitled to represent Peace Bridge Duty Free Inc., empowered to submit the bid, and authorized to sign a lease with the Authority.

Gregory G. O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free Inc.



Qualifications and Experience

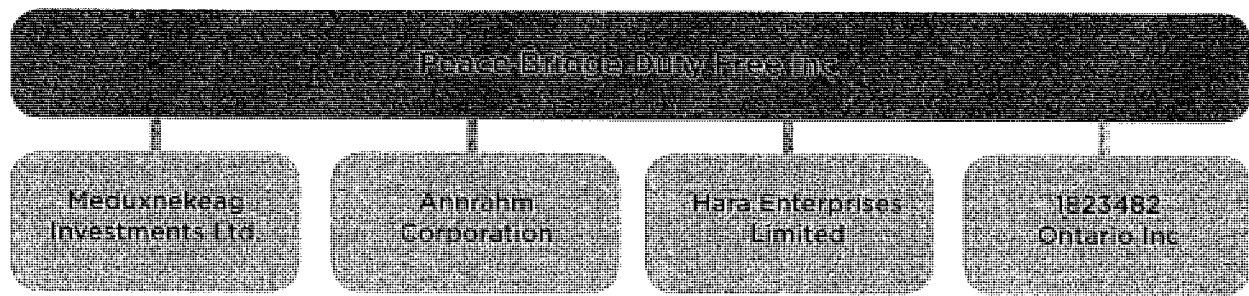
a. Proponent Name and Location of Proponent Headquarters

Peace Bridge Duty Free Inc. ("Proponent" or "PBDF") headquarters are located at 1 Peace Bridge Plaza, Fort Erie, Ontario, Canada where it operates the Peace Bridge duty free land border store ("Store").

All of the functions related to the duty free store will be based at 1 Peace Bridge Plaza in Fort Erie, Ontario. In addition, PBDF will have an off-site warehouse located at 1178 Concession Road, Fort Erie, Ontario to store fixtures not currently in use.

b. Description of Proponent

The ownership structure for Peace Bridge Duty Free Inc. is as follows:



Each shareholder has a 25% ownership in Peace Bridge Duty Free Inc.

The Directors and Officers of the Proponent are:

i) Directors

Barbara Slipp
Israel Harvey Rossman
John Michael Marsh
Gregory G. O'Hara

ii) Officers

Gregory G. O'Hara
Chairman
President
Chief Executive Officer

James Pearce
General Manager
Secretary-Treasurer

Brief Description of the Proponent's Business

PBDF is a business primarily focused on the operation of a land border duty free store. PBDF has operated a land border duty store on the Canadian side of the Peace Bridge crossing since November, 1986. PBDF is a major employer in the local community as it currently employs approximately 90 staff in its retail operations.

c. Proponent's Experience as an Operator of a Duty Free Store or Other Retail Operations for the Last Five Years.

Over the last five years PBDF has operated a land border duty free store and a duty free store at an international airport. Each will be described separately in response to the RFP information requested.

Land Border Duty Free Operations

i) Location:

Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie, Ontario, Canada

ii) Years in Business:

PBDF has successfully operated a large scale land border duty free store for 30 years since November, 1986.

It was managed by a true industry leader and innovator, George W. Slipp, from 1986 until his death in 2012. PBDF continues to follow Mr. Slipp's innovative business approach.

iii) Brief Description of Services Provided

PBDF is a multi-award winning land border duty free shop operator which currently manages approximately 28,000 square feet of duty free retail space. Peace Bridge duty free has won many prestigious awards over the years including the 'Platinum Award' for being the 'Best Canadian Land Border Duty Free Store' from the Frontier Duty Free Association.

PBDF is a full-line, full-service land border duty free store operator dedicated to providing its customers with quality merchandise and exceptional service at the Canada/USA border crossing in Fort Erie, Ontario. The land border duty free operation is open 24 hours a day, 365 days a year, and has a Tim Horton's and McDonald's, as well as a large food court on-site. In addition to its retail offering, PBDF also provides a FINTRAC authorized currency exchange service at competitive rates (with the guarantee 'better than the bank'), ample motor coach parking, and other travel services tied to selected marketing programs.

PBDF is a well established, highly successful, locally owned Canadian company that has been in operation since November 1986. PBDF has been a duty free leader in marketing as evidenced by its numerous industry awards and is devoted to promoting the border crossing and the local area as a destination and as a travel stop. As the last stop travelers will encounter prior to exiting Canada, PBDF takes its ambassadorial responsibilities very seriously and strives to provide each visitor leaving the Country with a very favourable lasting impression of Canada thereby ensuring their return visit.

PBDF is noted for offering luxury name brand products such as Ray Ban, Coach, Michael Kors, Tory Burch, Kate Spade, Tom Ford and more all which are sold at tax and duty free prices. PBDF is famous for its offering of quality luxury brand names and excellent customer service and holds the esteemed distinction of selling more Crown Royal than any other retailer in the world.

iv) Average Sales

The Store operation has generated average annual sales of \$22.4 million (approximately \$1.9 million per month or \$60,000 per day) over the last five years at the Peace Bridge Plaza location.

Airport Retail Operations

i) Location:

Hamilton International Duty Free and Departures ("HIDF")

Hamilton International Airport
9300 Airport Rd W
Mount Hope, Ontario

ii) Years in Business:

Peace Bridge Duty Free Inc, doing business as Hamilton International Duty Free and Departures, has operated the duty free and duty paid retail operations since 2007.

iii) Brief Description of Services Provided

PBDF offers passengers traveling internationally through Hamilton International Airport a duty free shopping experience. The HIDF retail outlet is located post-security in the Departures Lounge and also provides passengers traveling domestically with duty-paid 'convenience' item purchase options.

iv) Average Sales

PBDF has generated average annual sales of \$.5 million (approximately \$40,000 per month or \$1,400 per day) over the past five years at Hamilton International Airport.

d) Financial Statements

PBDF has audited financial statements for 2013 and 2014.

Audited financial statements for 2015 are not yet available and therefore the 2015 financial statements included in this RFP response are indicated as "Notice to Reader" at the time of this submission.

2016 Interim Financial Statements have also been provided in accordance with RFP requirements.

All the financial statements are found at the end of Tab 4.

As evidenced by the financial statements provided, PBDF has consistently demonstrated a strong financial position and is fully capable of financing the proposed Store development and operational plan.

e) Representations by the Proponent

Please see Tab 3 for Representations by the Proponent.

f. Canadian Border Services Agency (“CBSA”) License

PBDF currently has a license to operate the land border duty free shop at Fort Erie, Ontario, Canada. The CBSA license is effective until January 25, 2025.

PBDF does not have an impediment that would prevent it from obtaining a license from CBSA. Its current license extends beyond the proposed lease commencement date indicated in the RFP.

g. Description of Past Marketing and Sales Program

PBDF’s ownership believes that it is very important to continually invest in marketing and sales programs in order to stimulate sales. PBDF has directly invested approximately \$800,000 per year and in partnership with its brand partners invests well over \$1 million per year in marketing and sales programs.

PBDF has conducted a multitude of highly successful marketing and sales programs over the years in order to maximize sales at its land border duty free store located at Peace Bridge Plaza in Fort Erie, Ontario.

As an acknowledgment of PBDF’s effective and successful marketing and sales programs, PBDF has won many duty free industry awards in recognition of its efforts including the 2015 “Best Marketing” and “Best New Idea Awards” from the Frontier Duty Free Association.



Some examples of the effective marketing and sales programs that PBDF has developed and executed are as follow.

Loyalty Club Program

This is a **proprietary** and **exclusive** program developed and managed by PBDF. This program is designed to stimulate repeat business by offering the Store loyalty club members exclusive offers and targeted communications. Members are given the opportunity to pre-order products, access exclusive limited editions and receive special introductory prices. E-blasts are sent to members on a weekly basis, at a minimum.



PBDF has built the largest Canadian land border duty free loyalty program and has in excess of 60,000 loyalty club members and has a Facebook following of approximately 30,000. PBDF’s proprietary data indicates that this program is effective at generating loyalty and program members spend 15% more, on average, than the rest of its customers.

Partnerships

PBDF has entered into numerous partnerships in order to generate store awareness and stimulate sales.

A key partnership that PBDF has developed over the years is with Diageo, the largest liquor company in the world. Diageo has asked PBDF to participate in an exclusive global travel retail program. PBDF is the only Canadian land border duty free operator to be chosen by Diageo to participate in this initiative. This ongoing program involves special promotional displays, new branded fixtures, specialized training, targeted pricing promotions, external media and online campaigns, etc.

PBDF has established promotional based partnerships linked to Darien Lake Amusement Park, Kissing Bridge Ski Resort, Buffalo Bisons Baseball, Erie County Fair, Live Nation, Fantasy Island Amusement Park, etc. PBDF's partnership with these popular points of interest provides discounted tickets and coupon offers to the Store. These partnerships have led to many new customers visiting the Store.

PBDF has an exclusive partnership with the Buffalo Niagara International Airport ("BNIA"). As part of this exclusive agreement, PBDF is officially known as the duty free store of BNIA. Approximately 600,000 Canadians fly out of BNIA annually. PBDF created this partnership to increase the capture and sales of those travelers crossing the border on their way to BNIA. PBDF, as part of its travel services offering, coordinates Stay n Fly packages with hotels near the airport as well as discount parking and provides other Store discounts. PBDF is prominently marketed on the BNIA website and BNIA is featured on PBDF's website.

As the largest seller of beer on the Canada/USA border, PBDF has coordinated a tri-partnership with Budweiser/Labatt and Elite Sports, the number one bus company for sports trips. The purpose of this tri-promotion is to provide added value to the bus customer, generate more beer sales for Budweiser/Labatt and increase total sales for PBDF.

PBDF has a travel service which provides exclusive travel offers to key destinations in the states of New York and Pennsylvania. For example, PBDF offers Canadian customers the opportunity to utilize PBDF's travel service whereby PBDF will make hotel reservations to destinations such as Erie and Grove City, Pennsylvania Shopping Centers, Splash Lagoon Family Getaways, Peak n Peak Ski and Golf packages, Ellicottville promotional packages, etc. Customers not only get free travel services from PBDF but they also get discount coupons for products in the Store and offerings related to the outlet malls. Customers pick up their reservation materials at the Store and this results in increased customer traffic.

Media and Publications

For 30 years, PBDF has invested significant funds in traditional media venues. These include radio, newsprint, flyers, magazines, publications and television. Depending on the particular day of the week, month or season or the current economic, border or currency situations, PBDF would alternate target markets to Western New York, the Greater Toronto Area, the QEW corridor from Mississauga to Fort Erie as well as the Hamilton and Niagara regions.

PBDF has developed an excellent relationship with the LCBO and is one of their largest land border duty free customers. PBDF promotes its offering in the LCBO Food and Drink magazine, which has a distribution of over 500,000. The purpose of this promotional initiative is to create awareness for the Store, to highlight the savings to customers by shopping duty free and to promote exclusive products available only in the Store.





PBDF has launched a **proprietary** and **exclusive** "Freeway" magazine specifically developed to target potential duty free customers. Distribution of this magazine is done through LCBO stores and is a result of the unique relationship that PBDF has developed with the LCBO over the years. In addition, 50,000 copies of this magazine are distributed through Buffalo News and 10,000 copies are distributed through the Grimsby Travel Centre. This magazine promotes key products and is designed to stimulate sales into the Store.



PBDF has entered into key contracts for strategic billboard placements. PBDF strategically uses billboard signage located along major highways to direct vehicular traffic to the Peace Bridge Plaza. This signage has proven to be effective at creating awareness, to showcase specific product offers and to highlight that Tim Horton's and McDonald's are located in the Store. The Tim Horton's and McDonald's brands have proven to be high traffic generators.

In-store Promotional Areas

In-store promotional areas are important because they are utilized to showcase new product launches and to stimulate sales. Many of the in-store promotions are done in partnership with PBDF's key Brand partners.

PBDF has developed a seasonal marketing calendar that highlights promotions based on the month, holidays and the events on both sides of the border. Promotions are strategically planned with billboards, signage and displays in store based on the time of year. For example during May, promotions are run on both sides of the border for the start of summer for the Canadian and American long weekends. Special events such as Buffalo Bills, Buffalo Sabres and Buffalo Bison games are promoted with discount ticket, merchandise and product offers during their specific seasons. During the holidays, PBDF runs a very unique marketing campaign to encourage Americans to do their holiday shopping at PBDF during their lunch hours with a Let US Pay Your Toll reward for coming to shop during this time.



An example of a successful in-store promotion was one which involved celebrity **Dan Ackroyd**, who is brand owner of Crystal Head vodka. He drew over 1000 customers and as a result of his appearance, PBDF set a duty free industry record for one day sales of Crystal Head vodka.

Digital Marketing

PBDF has developed a **proprietary** and **exclusive** website which has the domain of www.dutyfree.ca. This site is used to create awareness for the Store and to highlight key promotions in order to generate sales. The domain www.dutyfree.ca is ranked #1 in the duty free industry by Google and has surpassed 1 million visitors to the site, over 4 million page views and achieved a 28% return rate.

PBDF has purchased strategic digital ad placements on many high traffic websites including The Toronto Star, buffalonews.com, Buffalo Niagara International Airport, The Globe and Mail, The Weather Network, Yelp, TripAdvisor, Google, Facebook, Chinese Professional Association and crossbordershopping.ca

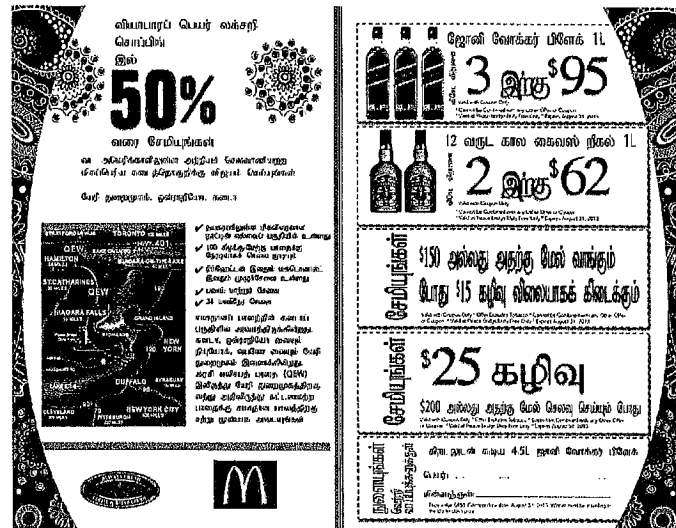


#Found@PBDF is an example of a digital campaign that leveraged Twitter, Facebook, and YouTube to generate social conversation around the brand. The campaign encouraged customers to share the great deals, interesting finds and favourite brands purchases at the Store, on their social networks, using #Found@PBDF. This initiative helped to create positive buzz and consumer advocacy and worked to brand the Store in terms of selection, uniqueness and exclusivity of products.

Another recent example of a digital marketing initiative is one that was conducted in March, 2016. PBDF enacted a heavily targeted online strategy with the Buffalo News and Western New York radio stations' email lists to encourage US audiences to travel to the Store as a destination stop. PBDF offered a "Pay Your Toll" reimbursement and gift cards as incentive offers and created a visual online campaign "This is What 30% more looks like" with a large money pile that visually enforced the additional savings our US customers would receive. The campaign was very successful and achieved 792,000 impressions with approximately 12,000 clicks.

Ethnic Marketing

PBDF has developed an Ethnic marketing program. PBDF utilizes this type of marketing to target specific groups with more focused and appropriately presented messages with the ultimate goals of generating increased store awareness and to stimulate sales. For example, PBDF utilized this type of marketing to target the almost one million East Indians that live in the Toronto area. Flyers were developed in their native language and distributed to neighborhoods populated by this customer segment. The flyers identified popular products and promoted special offers and pricing. This campaign was extremely successful and generated a noticeable increase in business.



Experience of Manager and Key Personnel

In 2010, PBDF made changes to its senior management team. Since these changes were implemented, PBDF sales have outperformed traffic by 10%. The current management team has been successful in creating a positive team focused culture to the complete satisfaction of staff.

All of PBDF's management, buying, accounting, marketing, sales and support staff live in the community where the Store is located. The key personnel that will be involved in the development and operation of the Store are indicated below. Their respective resumes are provided at the end of Tab 4.

Gregory G. O'Hara President and CEO

Greg has been President and CEO of PBDF since 2012 and has been a Director of PBDF since 1993. He has over 30 years of retail experience much of which has been in the duty free industry. In addition to PBDF, Greg is an owner in Hara Enterprises, a venture capital firm. Greg has a Master of Business Administration degree from Miami University, Ohio.

Greg will be the executive liaison with the Authority and will be responsible for leading the PBDF organization.

James Pearce

General Manager

Jim has been an employee of PBDF for 24 years and has experience in all aspects of the land border duty free business. He has held several key management positions throughout his career including at the PBDF Currency Exchange and Tourist Information Centre, PBDF retail at the Fort Erie Truck Plaza and duty free operations at Hamilton International Airport. Jim is a Chartered Professional Accountant and a Certified Management Accountant.

Jim will have oversight responsibilities for all aspects of the proposed operation including managing a team of 12 buyers for the various product categories sold at the PB store.

Bonnie Gates

Marketing Manager

Bonnie began her career at PBDF in 1997 as a retail floor supervisor. Since 2009, she has been the Marketing Manager at PBDF. She is responsible for the development and implementation of the PBDF marketing program and her efforts have resulted in PBDF receiving numerous marketing awards in recent years. Bonnie has a bachelor degree from the University of New Brunswick.

Bonnie will be responsible for developing and implementing the proposed marketing program and in-store merchandising.

Sandy Rienzo

Store and Operations Manager

Sandy has served in various management roles at PBDF for 25 years. Prior to joining PBDF, he held management positions in retail and in the food and beverage industry across Canada and Spain. Sandy attended the Western University - Engineering, Mohawk College - Electronic Technology and Niagara College - Operations Management.

Sandy will be responsible for providing oversight to PBDF full complement of ten supervisors and for effective sales and support of the operations.

Other PBDF Support

PBDF has entered into a consulting agreement with John Menchella, President of Menchella Consulting Group, Inc. John has over 30 years of business experience and has held various senior management positions at many large retail corporations in Canada during his career.

He has an extensive background in business development, marketing, general management and finance. John also has over 15 years of experience in the duty free industry. Prior to founding his own consulting company in 2014, John was Senior Vice President of Business Development and a member of the Executive Management team for one of the world's largest, global duty free organizations, The Nuance Group.

John attained a Bachelor of Business Administration from Wilfrid Laurier University and is a Chartered Professional Accountant and a Certified Management Accountant.

John has provided assistance to PBDF in their RFP response and if PBDF is the Successful Proponent, he will assist in the proposed store development. John will be part of an Advisory Board that will be established by PBDF to oversee the Store operations, be responsible for long range planning and business development initiatives.

Experience in Similar Retail Operations

Please see section c above for a description of other similar retail operations. In addition to its land border duty free operation at the Peace Bridge, PBDF has developed and operates a duty free operation at Hamilton International Airport. This operation serves customers traveling to international destinations and has been in existence since 2007.

The landlord contacts that can confirm PBDF's operational experience at these retail operations are:

<p>Ron Rienas <i>General Manager</i> Buffalo and Fort Erie Public Bridge Authority rr@peacebridge.com 905-871-1608</p>	<p>Lauren Yaksich <i>Director, Marketing and Communications</i> John C. Munro Hamilton International Airport lyaksich@flyhamilton.ca 905-679-1999</p>
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Distinguishing Features

PBDF is an award winning leader in the land border duty free industry since 1986 and has operated one of the largest land border duty free stores in the Americas since 1998. Over that time, it has gained unsurpassed knowledge of the challenges and opportunities of the Peace Bridge Plaza retail environment in which it operates. In recognition of its outstanding performance during the last several years, PBDF has received numerous awards including the prestigious "Platinum Award" bestowed by the Frontier Duty Free Association. This award has been received multiple times by PBDF and is for the distinction of being recognized as the "Best Canadian Land Border Duty Free Store."

PBDF has also been recognized in the duty free industry for its many outstanding marketing and sales programs. It is a multiple winner of industry awards in recognition of its exceptional marketing program including the 2015 "Best Marketing" award. Please see section g of this submission for examples of some of the many marketing and sales programs conducted by PBDF.

PBDF has major key distinguishing features when compared to other similar business. The key distinguishing features are commitment to:

- Investment in Innovative Marketing Initiatives
- Strategic partnerships
- Local Community Involvement

Investment in Innovative Marketing Initiatives

A key distinguishing feature of PBDF is that it does not rest on its past accomplishments despite having a distinguished record of growing its business significantly from the time it first began operations in 1986.

PBDF prides itself on being an **innovator** in the duty free business and an organization that evolves to meet industry and customer trends in order to maximize sales. Over the years, PBDF has developed and implemented many new innovative marketing initiatives.

PBDF has developed a comprehensive digital marketing strategy in order to promote the Store and to increase sales.

The PBDF domain www.dutyfree.ca is the #1 ranked site for all duty free searches according to

Google and has had over **one million visitors**. PBDF is in the process of developing a state of the art retail website that will further drive customer awareness and stimulate sales. This new website will be launched in the Fall of 2016 just in time for the holiday season. It will feature full product search, pre-order shopping cart features, travel reservation services, PBDF created videos and product information.

The new website will support all social media channels and will attempt to engage consumers of all age demographics. PBDF will have a full digital strategy to leverage these platforms that will include the development of the PBDF YouTube channel. With over 2 billion views a day, YouTube is the second most visited site in the world and an important platform to share short videos with people and an extremely powerful tool to help educate the duty free consumer. PBDF will utilize YouTube by inserting videos into product descriptions which will help grow the PBDF channel and increase awareness about the brands and exclusive products offered at PBDF.

PBDF is also exploring the use of the fastest growing social application Snapchat. Snapchat is an app where you can share a photo or video and allows PBDF to send exclusive content to its followers. Snapchat is an effective way to generate a buzz around a new product launch and highlight duty free exclusive offers. Similar to a response on Facebook or Twitter, PBDF will use Snapchat to send personalized messages and videos to thank customers for their loyalty.

PBDF is also exploring the use of mobile messaging applications to increase capture to the store. Ping Perks is a mobile push messaging service that leverages beacon technology to offer consumers relevant SMS promotions based on shopping behaviors.

Strategic Partnerships

In order to create awareness and to increase sales at the Store, PBDF has entered in many strategic partnerships over the years and will continue to look for new opportunities in this area in the future.

An important strategic initiative in this regard was to enter into an agreement to have high profile brands **Tim Horton's** and **McDonald's** establish operations within the Store. This initiative is important because it has proven to increase Store customer capture rates and ultimately generate increased duty free sales.

PBDF is currently seeking to enter into a key partnership with DFASS Distribution, LLC, a **DFASS Group** affiliated company ("DFASS"). DFASS, headquartered in Miami, Florida, is an award winning, global leader in duty free and specialty retail operations. DFASS generates \$600 million in annual revenue and has operations on five continents. DFASS is the world's largest in-flight duty free enterprise and also has many land border and international airport duty free operations. Some of the prominent international airports where DFASS has duty free operations include Chicago O'Hare, Dallas/Fort Worth, Fort Lauderdale/Hollywood and Orlando.

DFASS and PBDF intend to enter into a supply/services agreement which will include DFASS supplying PBDF specific product categories and assistance with merchandise planning related services. This relationship is important to PBDF because it provides PBDF access to the DFASS global supply network and economies of scale. It will also allow PBDF to leverage the DFASS global customer database to enhance customer buying preference understanding and this will translate into better targeted product offerings and increased sales.

The key benefit to the Authority of this partnership will be more revenue through increased sales.

PBDF continues to team up with many other strategic partners including key Brand Partners such as Diageo, the largest liquor brand owner in the world, in order to promote important duty free products; Destination Partners such as the Buffalo Bisons, Buffalo Sabres, Buffalo Bills and key Tour Bus Operators in order to drive additional customer traffic into the Store.

Most recently, PBDF entered into an agreement with a significant Asian Tour Bus Operator. This is very important because the Asian customer is by far the highest spending nationality in the duty free industry and a customer that buys very high end duty free brands.

This partnership is expected to result in significant incremental sales growth.

Local Community Involvement

PBDF is committed to supporting the local community. It has done so by providing approximately 90 local employment opportunities and by investing significantly in local community programs.

PBDF offers local community staff highly competitive wages and it is considered a major employer in Fort Erie. In addition to competitive wages, PBDF offers comprehensive benefit packages including a health program and a pension plan. Additionally, it provides incentive programs to its employees that recognize and rewards exceptional performance. PBDF strongly believes that this is a key part of its overall compensation program so that its employees are fully aligned with senior management in maximizing sales at the Store.

In recognition of its employment program efforts, PBDF was awarded "2011 Employer of the Year" by the Fort Erie Chamber of Commerce.

PBDF is also an integral part of the community because it employs local contractors, trades, cleaning staff, etc. in the maintenance and operation of its Store.

PBDF is proud to be a major donator and sponsor of many worthwhile programs both in the Niagara Region and Western New York. Some of the local initiatives that PBDF has supported or continues to support local schools and local athletic programs (e.g. Fort Erie Minor Hockey and Baseball), Walker Cancer Foundation, Champ Foundation of Buffalo, Douglas Memorial Hospital, Visitor Convention bureaus, Buffalo/Niagara Partnership, Cystic Fibrosis Fundraiser, Association of Childhood Diabetes and many more worthwhile community programs.



Identification of Anticipated Potential Problems

As the incumbent duty free operator, PBDF knows best the ongoing challenges and potential problems of operating the land border duty free store at Peace Bridge Plaza in Fort Erie. Some the the current challenges that it deals with includes:

- Fluctuating currency exchange rate related issues
- Enhanced retail competition
- Vehicle traffic issues including a steady decline in volumes
- Customer awareness and traffic perceptions and delays

PBDF knows best how to address these ongoing challenges and prides itself on successfully mitigating these issues by being innovative in its business and by being able to grow sales per vehicle despite these challenges. Examples of how PBDF addresses each of these challenges are contained in the section below.

i) Currency Exchange Rate Issues

Recently, when the exchange rate dramatically swung in favor of American tourism, PBDF promoted Canada, Toronto and Niagara to US markets through aggressive radio, TV and online campaigns. PBDF used best exchange rate guarantees ("better than the bank") to give the American consumer the confidence that they would receive the maximum benefit for the US dollar at the Store.

In the past, when the Canadian dollar strengthened versus the US dollar, Canadians intensified their cross-border shopping and visits to US destinations. To take advantage of this trend, PBDF partnered with many US based organizations such as Grove City, Kissing Bridge, Darien Lake, Buffalo Bisons, Erie County Fair, Fantasy Island and Buffalo Niagara International Airport, etc. in cross promotions designed to make the Store a stop for Canadians on their way to these locations.

ii) Retail Competition

PBDF has implemented a very successful sales campaign targeted to Canadian shoppers called "start your cross-border shopping at PBDF". PBDF sourced both different and competitive products from the US, including non-traditional duty free products, adjusted prices to be competitive with the large US retailers, and added the PBDF level of customer service not found at many of the competitive retail stores.

iii) Vehicle Traffic Issues Including a Steady Decline in Volumes

Since a peak of 3.3 million in Peace Bridge passenger vehicles from Canada to the United States in 2000, there has been a steady decline in this amount. In 2015, traffic declined to 2.1 million. This represents a 38% decline in passenger vehicles utilizing the Peace Bridge since 2000.

PBDF is proud of the fact that despite the significant reduction in passenger vehicles, during the same time period, duty free sales related to to passenger vehicles declined by only 12%, from \$21.0 million of sales in 2000 to \$18.5 million of sales in 2015. This achievement by PBDF was a result of it's many efforts to increase sales per vehicle through many initiatives including promotions, pricing and enhanced customer service. PBDF was able to increase sales per vehicle from \$50.33 in 2000 to \$64.27 in 2015. **This represents an average sales increase of 28% per vehicle.**

PBDF is proud that despite this significant challenge, sales at the Store have consistently outperformed traffic volume levels as measured by sales per outbound vehicle.

iv) Customer Awareness and Traffic Perceptions and Delays

In addition to numerous awareness generating marketing programs discussed earlier in this section, PBDF was successful, due to the great cooperation with the Authority, in creating Duty Free Way. This successful initiative involved the implementation of overhead signage on the QEW which directed travelers onto a dedicated roadway leading into the Store.

In addition, PBDF launched an advertising campaign called Fastest Border Crossing Guarantee. If customers experienced a longer wait time at the Peace Bridge versus any other Regional bridge they received 10% off their purchase.

In 2009, when changes to the US immigration documentation requirements was set to dramatically affect cross-border traffic, PBDF was successful and thrilled to have Erie County Clerk Kathy Hochul visit PBDF to hold a news conference with all media from Canadian and US to help educate people on the new requirements needed to cross the border. With PBDF's assistance, it worked with customers to help them obtain the proper identification. In conjunction with the Authority, PBDF issued toll handouts and organized clinics to sign new NEXUS applicants.



As evidence by the initiatives above, PBDF has consistently and effectively addressed the many challenges impacting the Store and continues to be proactive in this regard.

**Response to Request for Proposal
Operation of a Duty Free Shop at the Peace Bridge
Issued by the Buffalo and Fort Erie Public Bridge Authority**

**The Financial Terms Proposal
May 9, 2016**

Submitted to: Buffalo and Fort Erie Public Bridge Authority
Attn: Kimberlee Kaiser, Executive Assistant
100 Queen Street
Fort Erie, Ontario
L2A 3S6

Proponent: Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie, Ontario
L2A 5N1

Contact: Gregory G. O'Hara
President and Chief Executive Officer
905-871-5400 ext. 107
gohara@dutyfree.ca

The attached bid includes confidential business and commercial information pertaining to Peace Bridge Duty Free Inc. Peace Bridge Duty Free Inc. respectfully requests that the contents of the bid not be disclosed to anyone other than employees, officers, directors or evaluation committee members of the Buffalo and Fort Erie Public Bridge Authority.

Tab	Submission Elements	Page
A	Sales Initiatives	1
B	Design	5
C	Transition	6
D	Proposed Rent	7
	• Section 4.03 - In the Form of Lease	
E	Sub Tenancy Arrangements	9
F	Forecasted Sales	10
G	Operating & Capital Costs	11
H	Capital Investment	12
	• Mood Board	
	• Floor Plan	
	• Exterior Rendering	
	• Interior Rendering	

Tab A – Sales Initiatives

Peace Bridge Duty Free Inc. ("PBDF" or "Proponent"), incumbent operator of the Peace Bridge Plaza Land Border Duty Free Store ("Store"), has demonstrated its ability over the years to increase efficiency, customer traffic and sales while maintaining high quality services. This achievement is evidenced by the numerous industry awards that PBDF has received including the "Platinum Award" bestowed by the Frontier Duty Free Association. This award was given in recognition for being "Best Canadian Land Border Duty Free Store."



PBDF has been able to **increase efficiency** by studying customer traffic volumes and patterns and ensuring that it has adequate staffing during peak periods in order to reduce transaction processing wait times. PBDF understands that efficient transaction processing is an important part of the sales process and places a key emphasis in this area. Product placement in the Store is important in order to direct customers to key areas and to increase add on sales as customer approach the point of sale ("POS") counters.

PBDF has been and continues to be proactive in increasing customer capture rates into the store and stimulating sales. Initiatives implemented to increase store traffic and sales include:

Loyalty Club Program



This is a **proprietary** and **exclusive** program developed and managed by PBDF. This program is designed to stimulate repeat business by offering the Store loyalty club members exclusive offers and targeted communications. Members are given the opportunity to pre-order products, access exclusive limited editions and receive special introductory prices. E-blasts are sent to members on a weekly basis, at a minimum.

PBDF has built the largest Canadian land border duty free loyalty program and has in excess of 60,000 loyalty club members and has a Facebook following of approximately 30,000. PBDF's proprietary data indicates that this program is effective at generating loyalty and program members spend 15% more, on average, than the rest of its customers.

Brand Partner Promotions

PBDF has created a path-to-purchase route for its brand partners to invest in. This starts with e-blasts and external media advertising, followed by billboard and on-site signage and finishes in-store with promotional areas and offers.

Another example of a brand partner promotion is utilizing a tasting bar that will be set up in the liquor area for customers who wish to try new whisky brands. PBDF will also organize special tasting events with guest speakers and whisky makers for members of the PBDF Whisky Club. These members will get advanced notifications of all new and exclusive products and invitations to special gala events.

Strategic Alliances with Motor Coach Operators

PBDF has been an active member of the Ontario Motor Coach Association and the American Motor Coach Association for the past 25 years. As a result of these partnerships, PBDF has built very successful relationships to include the Store as a destination on their route crossing the border to the USA.

In the Summer of 2016, PBDF will implement a strategic alliance with an Asian Tour Company which will bring visitors from China to Canada. PBDF will be a dedicated stop on these tours when they return to the United States. This new business is projected to increase stores sales by over \$1 million.

PBDF has invested in creating the most generous bus incentive program on the border. The loyalty that these tour groups show with their partners is very strong and encouraging for PBDF to expand to other Asian tour groups.



In a separate motorcoach initiative, PBDF has partnered with a Southern US based travel company who bring almost 300 buses to Toronto/Niagara every year. PBDF is projecting that it will secure 80% of those buses. PBDF's investment will be in training and compensating staff to act as tour guides that travel with these motor coaches on the Canadian portion of their tour. PBDF staff will assist the tours throughout Niagara and Toronto and direct the buses back through PBDF as they return home. This partnership is projected to add \$600,000 in sales annually. It will also give valuable exposure to other US based tour agencies.

Another partnership has been established with Elite Sports Tours, Ontario's #1 Sport Travel Company, with over 50 bus tours dedicated to PBDF. PBDF introduced Budweiser/Labatt to Elite Sports and combined have created the largest Sports partnership in the duty free industry.

Other Strategic Alliances

In order to create awareness and to increase sales at the Store, PBDF has entered in many strategic partnerships over the years and will continue to look for new opportunities in this area in the future.

An important strategic initiative in this regard was to enter into an agreement to have high profile brands **Tim Horton's** and **McDonald's** establish operations within the Store. This initiative is important because it has proven to increase Store customer capture rates and ultimately generate increased duty free sales.

PBDF is currently seeking to enter into a key partnership with DFASS Distribution, LLC, a **DFASS Group** affiliated company ("DFASS"). DFASS, headquartered in Miami, Florida, is an award winning, global leader in duty free and specialty retail operations. DFASS generates \$600 million in annual revenue and has operations on five continents. DFASS is the world's largest in-flight duty free enterprise and also has many land border and international airport duty free operations. Some of the prominent international airports where DFASS has duty free operations include Chicago O'Hare, Dallas/Fort Worth, Fort Lauderdale/Hollywood and Orlando.

DFASS and PBDF intend to enter into a supply/services agreement which will include DFASS supplying PBDF specific product categories and assistance with merchandise planning related services. This relationship is important to PBDF because it provides PBDF access to the DFASS global supply network and economies of scale. It will also allow PBDF to leverage the DFASS global customer database to enhance customer buying preference understanding and this will translate into better targeted product offerings and increased sales.

PBDF continues to team up with many other strategic partners including key Brand Partners such as Diageo, the largest liquor brand owner in the world, in order to promote important duty free products: Destination Partners such as the Buffalo Bisons, Buffalo Sabres, Buffalo Bills and key Tour Bus Operators in order to drive additional customer traffic into the Store.

The key benefit to the Authority of these partnerships will be more revenue through increased sales.

Digital Awareness

PBDF is working on several programs that will increase customer awareness through digital technology. For example, if PBDF is the selected Proponent for the Peace Bridge Duty Free concession, as part of the proposed capital program, PBDF will implement exterior digital signage visible from the QEW in order to increase customer traffic into the Store.

New sales generating initiatives in progress include:

Website Enhancements

PBDF's proprietary domain www.dutyfree.ca has the distinction of receiving the number 1 ranking from Google for being the most visited duty free website. PBDF's website is being enhanced in order to evolve it into an ecommerce tool. Features of the website will include a product search engine that will highlight the full product portfolio. Additionally, the new website will include a pre-order option for customers to add all their items to a virtual basket and have them ready and waiting when they arrive. This newly enhanced website will be launched in the Fall of 2016.

Social Media

PBDF is constantly investigating the use of modern digital technologies that can assist in increasing awareness, growing sales and reward customer loyalty. A new, state of the art retail website will support all social media channels and attempt to engage new and old consumers of all age demographics. PBDF will have a full digital strategy to leverage social platforms that will include the development of the PBDF YouTube channel. YouTube's platform will give PBDF the ability to share videos with consumers which will not only educate but grow a loyal database. Videos will be produced by PBDF with support from suppliers and will be integrated into the new website increasing brand awareness.

PBDF will be experimenting with new advertising opportunities by utilizing some of the fastest growing social applications including Snapchat and Instagram. Snapchat is the trendiest social app with the 24-35 demographic which PBDF continues to target. Snapchat offers a personalized experience which PBDF can leverage to build brand awareness.

PBDF is also exploring the use of mobile messaging applications to increase capture to the store. Ping Perks is a mobile push messaging service that leverages beacon technology to offer consumers relevant SMS promotions based on shopping behaviors.



Maintaining High Quality Services

PBDF is dedicated to maintaining high quality services. As an industry leader, we take pride in our ability to provide a positive lasting impression to our Duty Free customers. PBDF strives to maintain its high standards with a proactive approach to measuring and maintaining customer satisfaction. This is accomplished by the following means:

- Mystery shopper inspections
- Customer surveys for satisfaction and areas for improvement
- Quality Assurance Checklist - A management checklist of exterior and interior operational standards, staff communication to customers, merchandising and customer sales service

- Continual staff training from customer service to product knowledge seminars
- Customer feedback from email and in person is immediately addressed by the Store Manager and reported to Executive Management
- Annual staff reviews with bonuses based on achieving specific customer service criteria
- Frequent interaction between supervisors and staff on new ways to improve the customer experience

The overall goal of PBDF is to ensure that the customer has a great experience when shopping in the Store and leave a lasting, favourable impression of PBDF.

Design - Renovations Plan for the Store

PBDF is excited about the opportunity to invest in a new store as part of a long-term concession contract, and is pleased to be working with SmartDesign Group to see its vision come to fruition.

SmartDesign Group, an award-winning full-service firm, focuses on the creation and development of commercial success through design. Their unique understanding of consumer behaviour and global trends, coupled with creative talent and solid strategic thinking, has helped operators around the world reach and exceed their business goals. SmartDesign Group's extensive experience provides a true understanding of passenger behaviour, and their innovative and creative solutions surprise and delight their customers.

In the proposed new vision for the Peace Bridge store, customer experience is at the forefront, with an improved exterior presence, increased visibility within the interior space, and an improved intergration of the latest technology, plus unique features such as a tasting bar in the liquor section and a makeover station in fragrance and cosmetics. Specifically, technology will be utilized to promote products and provide product knowledge. (i.e. iPads, digital display screens, etc)

The customer experience begins upon approach to the store, with an expanded wood and metal canopy and a landscaped area that greets travellers, offering a new covered area for unloading tour bus passengers in addition to creating a natural congregation point for visitors. Inside the store, an open space provides a natural place for an evolving promotion display. The layout has also been redesigned to enhance flow and to reorganize merchandise categories.

The design allows clear sightlines to the major product categories, with fragrance and cosmetics prominent on the left, liquor on the right, and confection and promotion in the centre. The customer flow is enhanced with differing materials that lead shoppers easily throughout the space, looping back around the liquor section before leading to the POS stations, with tobacco as a nearby final purchase option.

The new layout exposes the entire store, encouraging a strong sense of discovery. High-volume products have been located to drive traffic, and fixtures and displays provide opportunities for browsing and impulse purchases. Previously underutilized warehouse space has been opened up to allow for an additional 1,810 sq.ft. of shopping area and new merchandise opportunities. New ceiling structures bring refinement and warmth to the store and allow for the introduction of accent lighting.

Overall, the store now has a more contemporary look, with a neutral palette that enhances merchandise display. Sustainable options for all proposed materials and finishes have been considered, to convey respect for the environment and to display the relationship with the region and its natural beauty.

Demonstration bars in the fragrance area, a makeover station in cosmetics, a tasting bar in liquor and special promotion areas throughout the store provide both educational and enhanced service opportunities. Dedicated 'shop-in-shop' installations for premium liquor, regional wine and craft beer will offer additional memorable experiences, helping to ensure that this store is must for cross-border shoppers!

At the end of Tab H, you will find a mood board, floor plan, interior rendering, and exterior rendering. These will provide visuals of PBDF's proposed design intentions for the store.

All these design enhancements mentioned above will create an exciting new retail environment in the Store. These enhancements will improve customer flow and product displays, and will result in significantly increased sales.

Transition

PBDF as the incumbent operator does not require a start up plan, as it will have continuous operations. PBDF plans a complete major renovation of the Store starting in January 2017 and construction is expected to continue for 4 consecutive months.

PBDF is confident in its ability to implement a phased approach to the proposed renovation and upgrade of the current facility. PBDF will rely on the expertise of SmartDesign Group, a leading retail design consultant, with global experience executing duty free construction projects under very tight timelines and constraints.

PBDF can guarantee that there will be continuous service and sales throughout the renovation and with increased signage and awareness combined with knowledgeable staff, customers will not be affected by a phased construction schedule.

PBDF will deliver continuous operations/sales throughout the renovation of the Store.

Proposed Minimum Base Rent, Percentage Rent, Proposed Section 4.03 and Form of Lease

PBDF is pleased to offer the following financial terms (all in Canadian dollars) to the Authority in accordance with the guidelines provided in the RFP (including Appendix G).

Minimum Base Rent:

PBDF proposes a Minimum Base Rent of \$4,000,000.

Percentage Rent:

The Annual Percentage Rent proposed is based on the Tenant's Annual Gross Sales, as follows:

Annual Sales			Rent % Applicable to Range of Sales
\$0	up to	\$20,000,000	20
>\$20,000,000	up to	\$25,000,000	22
>\$25,000,000			24

To facilitate monthly payments of the Percentage Rent pursuant to section 4.03 of the Lease, PBDF proposes that Percentage Rent payable in a given month will be calculated on the basis of the Applicable Percentage Rent Rate based on Aggregate Year-to-Date Gross Sales x Tenant's Gross Sales during the month for which Percentage Rent is being calculated.

At the end of each year, there will be a reconciliation to ensure that the Percentage Rent paid on a monthly basis equals the Percentage Rent payable on the basis of the Tenant's Annual Gross Sales.

The tenant's annual gross sales will include sales related to products from the Store, currency exchange revenue and sales of its sub tenants and any other elements defined in the lease.

For clarity, based on \$25,000,000 in Tenant's Annual Gross Sales the Annual Percentage Rent would be \$5,100,000.

Proposed Section 4.03 (Percentage Rent)

PBDF is pleased to provide a completed section 4.03 (Percentage Rent) in the Form of Lease on the basis of PBDF's financial proposal. Please note that PBDF proposes that the Percentage Rent will be the same for the initial term of the lease and the extension term of the lease. This is reflected in section 4.03 proposed below.

4.03 Percentage Rent

The Tenant covenants and agrees with the Landlord to pay Annual Percentage Rent, as follows:

- The Tenant will pay to the Landlord 20% of the Tenant's Annual Gross Sales that are \$0 up to \$20,000,000
- The Tenant will pay to the Landlord 22% of the Tenant's Annual Gross that are in excess of \$20,000,000 but less than \$25,000,000
- The Tenant will pay to the Landlord 24% of the Tenant's Annual Gross Sales that are equal to or greater than \$25,000,00

To facilitate monthly payments of the Percentage Rent, the Tenant covenants and agrees with the

Landlord that if, during any month (including any broken calendar month) of the Term of the Lease or any Extension Term of the Lease, the Calculated Percentage Rent (which is based on the Tenant's Gross Sales during such monthly period) exceeds the monthly Base Rent for the same monthly period, the Tenant will within twenty-five (25) days following the conclusion of such monthly period, pay the resulting difference between the calculated Percentage Rent and the Base Rent together with all applicable taxes, to the Landlord as Percentage Rent.

The Calculated Percentage Rent is to be calculated as follows: Applicable Percentage Rent Rate x Tenant's Gross Sales during the month for which Percentage Rent is being calculated. The Applicable Percentage Rent Rate is based on the Tenant's Year-to-Date Annual Gross Sales.

At the end of each year, there will be a reconciliation based on the Tenant's audited Annual Gross Sales to ensure that the Tenant pays the higher of the Annual Percentage Rent or Minimum Base Rent.

Form of Lease:

PBDF confirms that it does not propose any changes to the Form of Lease.

Sub Tenancy Arrangements

PBDF currently has a sub tenancy agreement with the Tim Horton's restaurant and McDonald's restaurant which will expire on October 31, 2016.

PBDF proposes to continue with these sub tenancy agreements and has included the projected sales from the Tim Horton's and McDonald's restaurants located within the Store into its Pro forma.

PBDF is currently discussing with Tim Horton's and McDonald's the continuation of these sub tenancy agreements if PBDF becomes the Successful Proponent.



These sub tenants will increase Store awareness, customer volumes and sales.

Forecasted Sales

PBDF's financial projections for this opportunity were developed based on its extensive experience in land border duty free operations and consideration of many factors including reference to its proprietary database to determine what products appeal to key customer demographics, its analysis of the retail environment (i.e. traffic flows, customer volume, store flow and sight lines, etc.) and by soliciting input from key brand partners and duty free industry consultants.

PBDF began its analysis by examining the actual performance metrics of the current Store and the passenger demographics/volumes and associated spending behaviors. In addition to understanding the current situation, PBDF also looked at many new opportunities that would allow for a significantly improved business.

These opportunities include:

- New Merchandise Categories/Brands and optimization and expansion of the retail space.
- Improved proposed retail store design that will make the Store more inviting and increase customer penetration.
- New innovative technology applications, online activities and marketing initiatives.
- Consideration of how future traffic flows, customer volumes and changing demographics would impact store performance.

PBDF used projected proprietary passenger demographic/volume information and coupled it with its understanding of spending by customer segment. This information, in addition to many brand considerations, guided it on its proposed merchandise mix for the Store.

The Store will have appropriate foreign language speaking staff in order to converse with significant customer segments in their language of preference to stimulate sales.

PBDF's estimated spend per customer segment (car, bus and truck customer) is a function of many factors including customer demographics, customer volume, store design, increased retail space, product offerings, marketing initiatives, price, brand/product appeal, operational programs, and dwell time. Annual customer volume growth and associated average transaction value was projected by customer segment.

In Year 1, store downtime due to construction has been factored into the sales estimate. Store downtime due to construction was mitigated by taking a more expensive phased approach to the store development. This additional cost was partially offset by the benefit of continuous sales.

Based on the above, the forecasted sales at the Store including currency exchange revenue and its sub tenants sales during the term of the lease are as follows:

Forecasted Sales (\$ million)

Year	1	2	3	4	5	6	7	8	9	10
Sales	26.3	29.8	30.5	31.3	32.1	32.9	33.7	34.5	35.4	36.3

Year	11	12	13	14	15	16	17	18	19	20
Sales	37.2	38.1	39.1	40.0	41.0	42.1	43.1	44.2	45.3	46.4

Tab G - Operating and Capital Cost**Operating Costs:**

Forecasted operating costs were projected based on a combination of PBDF's actual operating cost experience for the land border duty free operation, using 2015 financial results as a baseline, and by adjusting future costs by taking into consideration many key items including projected customer volumes by segment, new capital investment, property tax adjustments due to the new store development, etc.

PBDF projects to spend \$1 million annually on marketing and sales initiatives.

PBDF examined its fixed versus variable cost structure and considered this as it projected its expenses in relation to projected customer volumes and associate sales.

The inflation rate used for expense growth was 3%.

Capital Investment:

PBDF's capital projection included several items including new store development, new computer systems, equipment, etc. Details of our capital cost related to the facility/property only are described in more detail in Tab H of this submission.

Below are PBDF's forecasted operating and capital costs during the term of the lease.

Forecasted Operating and Capital Costs (\$000)

Year	1	2	3	4	5	6	7	8	9	10
Rent to Authority	5,405	6,246	6,425	6,608	6,796	6,988	7,185	7,388	7,595	7,807
Rent from Subtenant	-178	-201	-206	-211	-217	-222	-228	-233	-239	-245
Rent Cost to PBDF	5,227	6,045	6,219	6,397	6,579	6,766	6,958	7,154	7,355	7,562
Compensation	2,648	2,727	2,809	2,893	2,980	3,069	3,161	3,256	3,354	3,454
Marketing	1,021	1,052	1,083	1,116	1,149	1,184	1,219	1,256	1,293	1,332
Other	1,314	1,444	1,487	1,532	1,578	1,625	1,674	1,724	1,776	1,829
Total Operating Costs	10,210	11,268	11,598	11,938	12,286	12,644	13,012	13,390	13,778	14,177
Capital	7,000					1,250				

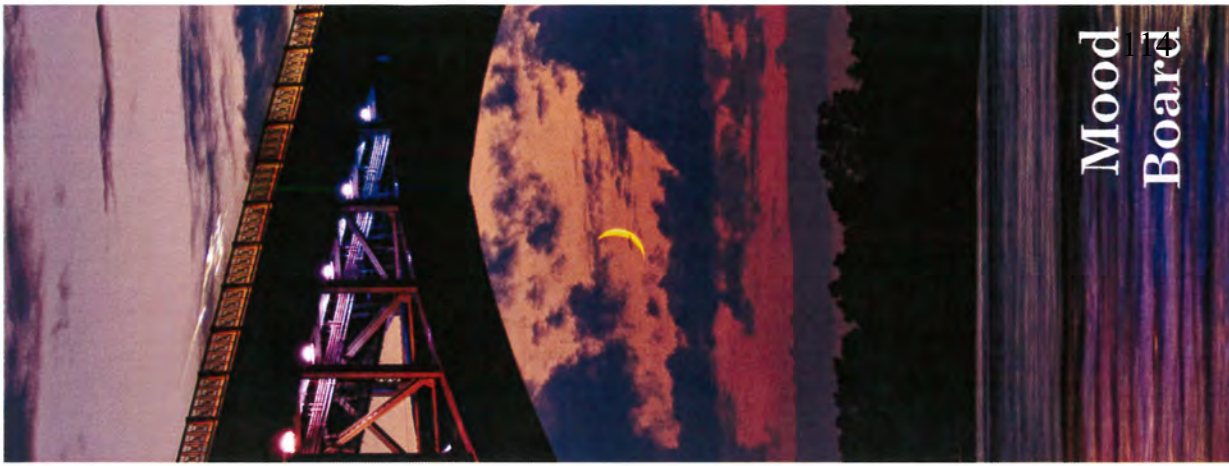
Year	11	12	13	14	15	16	17	18	19	20
Rent to Authority	8,025	8,248	8,477	8,711	8,951	9,198	9,450	9,709	9,974	10,246
Rent from Subtenant	-251	-258	-264	-271	-278	-284	-292	-299	-306	-314
Rent Cost to PBDF	7,773	7,990	8,212	8,440	8,674	8,913	9,158	9,410	9,668	9,932
Compensation	3,558	3,665	3,775	3,888	4,005	4,125	4,248	4,376	4,507	4,642
Marketing	1,372	1,413	1,456	1,499	1,544	1,591	1,638	1,688	1,738	1,790
Other	1,884	1,940	1,998	2,058	2,120	2,184	2,249	2,317	2,386	2,458
Total Operating Costs	14,587	15,008	15,441	15,885	16,343	16,813	17,293	17,791	18,299	18,822
Capital	1,250					1,250				

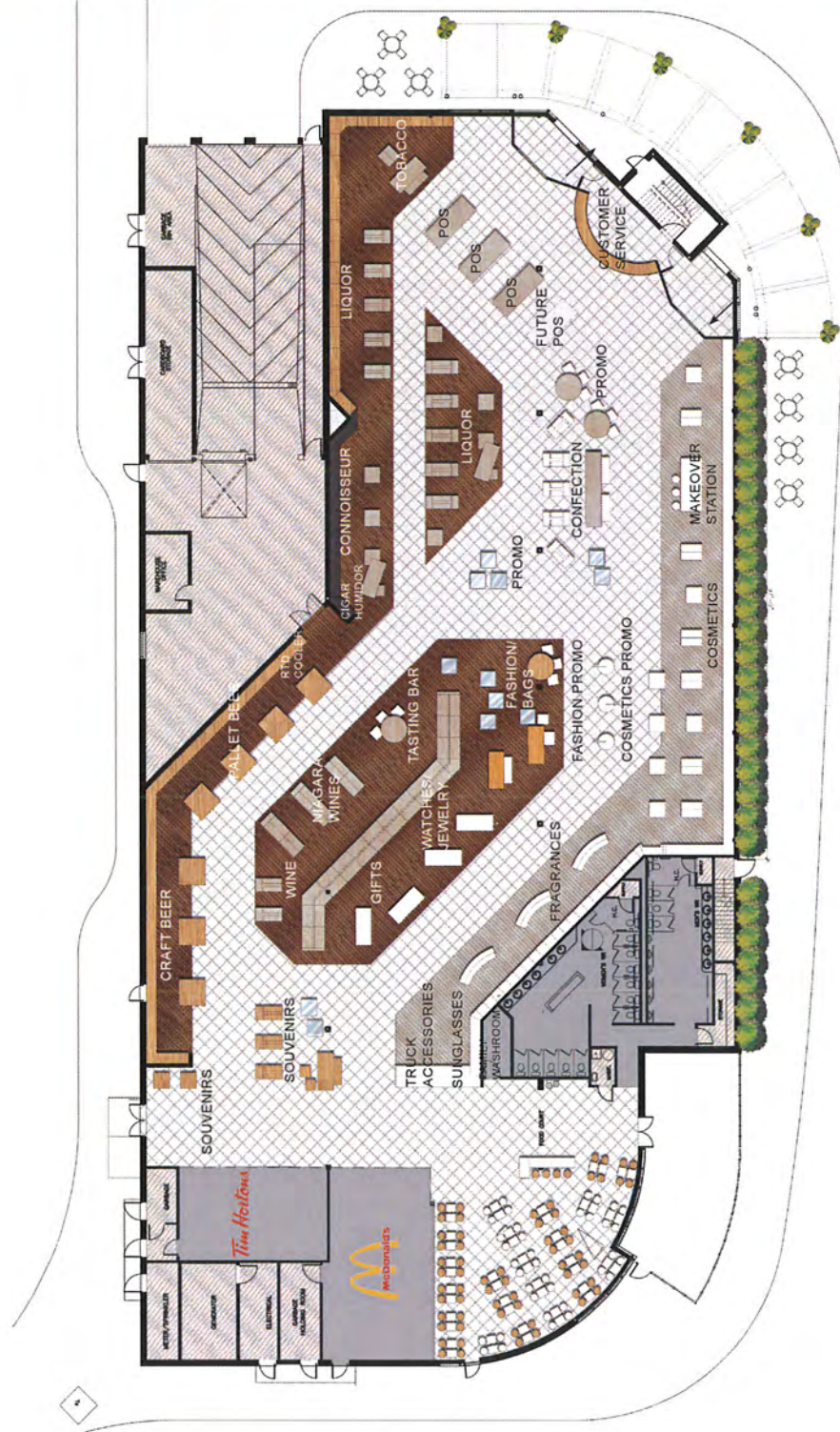
Capital Investment

Our initial Store Capital Investment is estimated to be \$6,000,000. Below is a breakdown of the key components.

General Construction including millwork/POS	\$ 4,975,000
FF&E (Food Court/Exterior Seating)	125,000
Lighting & Media	300,000
	<hr/>
Subtotal Before Consultant Fees	\$ 5,400,000
	<hr/>
Consultant Fees	600,000
	<hr/>
Total Initial Store Capital Investment	<u><u>\$ 6,000,000</u></u>

In addition to the initial capital described above, Peace Bridge Duty Free has provided for Refurbishment Capital in years 6, 11, and 16 of this lease. The amount allocated in each refurbishment year is \$1.25 million. The total amount of Store capital investment that PBDF will commit to over the course of the lease is \$9.75 million.







Peace Bridge Duty Free



Exterior
Rendering



TAB 4

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



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.

TAB 5

3. Capitalized terms not defined in this affidavit have the same meaning ascribed to them in the Lease (as defined in the Notice of Motion and my affidavit sworn December 12th, 2021) and my December 12th, 2021, November 13th, 2022 and December 2nd, 2022 affidavits.

Negotiation of subsection 18.07 of the Lease

4. Since I swore my December 2nd, 2022 affidavit, I have located records from July 2016, when I, on behalf of Duty Free, was negotiating the Lease with the Authority.

5. At the time, Duty Free was concerned about outside events beyond its control interrupting Duty Free's business and preventing it from generating sufficient revenue to pay minimum Base Rent (since the Base Rent structure in the Lease was based entirely on the anticipated Gross Sales of the duty-free store without material interruption or change in products which could be lawfully sold).

6. Specifically, Duty Free was quite concerned about three types of regulatory changes that were entirely beyond Duty Free's control that could prevent it from being able to pay the Rent provided for in Article IV of the Lease, namely: (1) changes impacting the sale of tobacco; (2) changes impacting the sale of alcohol; and (3) changes impacting volume of traffic over the Peace Bridge. Duty Free was also concerned about a fourth risk being construction on or impacting the bridge which would impact the volume of traffic flow.

7. As Duty Free and the Authority were negotiating revisions to the Lease before it was executed, I had a meeting with Karen Costa from the Authority on July 18th, 2016. One of the issues we addressed at that meeting was Duty Free's concern conveyed to the Authority in writing that if something catastrophic occurred during the Term that was beyond Duty Free's control and

that materially impacted sales, Duty Free would need an abatement of Rent, and potentially other terms of the Lease to be addressed as well, otherwise there would be no way that Duty Free would be able to pay minimum Base Rent. During our meeting, I made it clear to the Authority that Duty Free's main concern was its ability to pay minimum Base Rent and if Duty Free's business was materially impacted by a significant event or change in circumstance outside its control, it would require a rent abatement that would be in proportion to what Duty Free could afford to pay during the affected period having regard to its Gross Sales. Attached as **Exhibit "A"** to this affidavit is a copy of the handout provided at the July 18th, 2016 meeting with certain of my contemporaneous hand-written notes. Attached as **Exhibit "B"** to this affidavit is a copy of my typed notes which I believe were prepared following the July 18th, 2016 meeting.

8. At the July 18th, 2016 meeting, Ms. Costa, on behalf of the Authority, conveyed to me that the Authority did not want the language of subsection 18.07 of the Lease to expressly refer to a formulaic rent abatement, or a right to a rent abatement because it was concerned that such an express contractual right might prejudice the ability to successfully make a business interruption claim in the event of an event that was covered by insurance, by reason of an insurer arguing that the contractual abatement right meant that no or a reduced loss existed in terms of any right to be compensated by insurance. As a result, the Authority objected to express language about abating rent for fear it would assist an insurer to attempt to reduce insurance proceeds otherwise payable. However, Ms. Costa made it very clear to me that the Landlord did not in fact object to the need for a rent abatement to address events including changes in regulatory rules that caused a material negative impact on Duty Free's business.

9. Ms. Costa made it crystal clear to me that the intention of the Authority was that when circumstances required it, and subsection 18.07 of the Lease was triggered, with no right to

business interruption insurance proceeds, that a rent abatement would be implemented. Given the lengthy landlord-tenant relationship to date, and our generally good relationship with the Authority over that period, I had no concerns about taking Ms. Costa at her word.

10. After the meeting, Ms. Costa emailed me on July 19th, 2016 with the revised version of the Lease. In her email, Ms. Costa confirmed that the changes in government regulations could materially impact Duty Free's business and she acknowledged that subsection 18.07 of the Lease was intended to address that concern (ability to pay minimum Base Rent and the need for a rent abatement) that I raised at our meeting. She also noted that the Authority agreed to the vast majority of Duty Free's requests for revisions to the Lease. Based on my meeting with Ms. Costa, and her subsequent confirming email, it was clear to me that the Authority and Duty Free were aligned on the need to abate minimum Base Rent if Duty Free's business was materially affected by regulatory changes.

11. I want to emphasize that it was expressed to me by the Authority that the only reason subsection 18.07 does not explicitly say minimum Base Rent will be abated is because the Authority was concerned about the language of subsection 18.07 of the Lease impacting receipt of insurance proceeds as noted above. Attached as **Exhibit "C"** to this affidavit is a copy of Ms. Costa's July 19th, 2016 email.

12. My understanding of subsection 18.07 of the Lease based on the language that was agreed to and the representations made to Duty Free by the Authority was that in the event subsection 18.07 was triggered:

- a. the Authority would agree to reduce minimum Base Rent during the time Duty Free's business was affected;

- b. minimum Base Rent would be reduced to a level that Duty Free could afford to pay taking into consideration the impact of changes of sales such that Duty Free would not be asked to operate at a loss due to the level of Base Rent being charged during the time Duty Free's business was affected (in other words at worst Duty Free would break even taking into consideration sales, and its operating expenses but my expectation was that Duty Free would be permitted to retain some earning for its owners); and
- c. The reduced Base Rent would be abated, not deferred, as the Authority already had a mechanism in the Lease for percentage rent recovery.

13. When the Lease was agreed to and executed, I understood that the Authority acknowledged the intent of subsection 18.07 of the Lease was, if and when triggered, to provide Duty Free with a minimum Base Rent abatement. The Authority's position when negotiating the Lease is entirely inconsistent with the position it is taking now that subsection 18.07 of the Lease does not create any obligation to abate minimum Base Rent during the period the government closed the border to non-essential travellers and during the period Duty Free's business continues to be materially affected by those changes in Applicable Laws. Based on my direct involvement in discussions with the Authority and the representations made by the Authority, including Ms. Costa, this is exactly what subsection 18.07 of the Lease was intended to do.

Communication with the Authority following the outbreak of Covid-19

14. Following the closure of the border to non-essential travellers and the Ontario government's order requiring non-essential businesses to close, Duty Free engaged with the Authority to discuss how the Lease would be impacted by the change in Applicable Laws. At that

time, it was anticipated by all that Covid-19's impact on the border crossing would be temporary, with projections changing with the passage of time. At that time, Duty Free (and likely the Authority as well) never expected that Covid-19 would continue to materially impact its business for three years.

15. Following a March 26th, 2020 telephone conversation about delaying Duty Free's April Rent payment until the parties could work out a way forward based on the application of subsection 18.07 of the Lease, Duty Free followed up with the Authority to provide its position.

16. Inexplicably, despite the Authority's prior assurances subsection 18.07 of the Lease would apply to adjust minimum Base Rent in the event of a change in government regulation that materially negatively impact Duty Free's business, the Authority responded by email that *"There is no provision for delay or abatement of rent so we require payment in accordance with the terms of the lease."*

17. Duty Free responded that the Authority's response was very disappointing. Duty Free noted that subsection 18.07 of the Lease was specifically included because both Duty Free and the Authority *"recognized that [Duty Free] is heavily dependent on the flow of traffic over the border and that such flow could be affected by changes in law."* Duty Free asked to discuss these matters to find a way forward and give effect to subsection 18.07. Attached as **Exhibit "D"** is a copy of the email exchange between Duty Free and the Authority from April 1st, 2020 to April 3rd, 2020.

18. On April 3rd, 2020, Ms. Costa sent a letter on behalf of the Authority to Duty Free saying rent is due on the first of the month and that the Authority had not received Duty Free's April rent payment. Notwithstanding subsection 18.07 of the Lease, the closure of the border to non-essential travellers and the closure of all non-essential businesses, the Authority took the position that *"You*

are also aware that the Lease does not provide for any rent abatement due to a decline in sales.”

Ms. Costa’s letter completely contradicted her representations to me during our July 18th, 2016 meeting and the acknowledgement in her July 19th, 2016 email (Exhibit “C”) that subsection 18.07 of the Lease would apply in the event of changes in governmental regulations that materially impact Duty Free’s business. Attached as **Exhibit “E”** is a copy of the Authority’s April 3rd, 2020 letter.

19. On April 3rd, 2020, Duty Free wrote to the Authority’s board of directors requesting that the Authority engage with Duty Free about how the Lease would be adjusted as a result of the changes to Applicable Laws to give effect to subsection 18.07 of the Lease. Attached as **Exhibit “F”** is a copy of Duty Free’s April 3rd, 2020 letter.

20. The Authority responded saying the Authority General Manager would contact Duty Free. Attached as **Exhibit “G”** is a copy of the Authority’s April 6th, 2020 letter.

21. Following discussions with the Authority, in early May 2020, Duty Free signed and returned the Authority’s April 27th, 2020 rent deferral agreement that was presented as a take it or leave it offer. Duty Free noted that the rent deferral agreement provided by the Authority was at best an arrangement to allow further discussions and consideration of how the parties can work together until things return to normal. Duty Free’s stated position was that the fundamentals of the business had changed because of Covid-19 and the associated regulatory changes and the Lease had to be assessed to determine if adjustments were necessary as a result. Mr. Rienas replied, *“I don’t disagree with you and recognize that we will in all likelihood have additional discussions as the full impact of the pandemic and post pandemic plays out.”* Attached as **Exhibit “H”** is a copy of the email exchange between Duty Free and the Authority dated May 6th, 2020.

It is and was impossible for Duty Free or any duty-free store operator at this location to pay minimum Base Rent of \$4 million per year as a result of the changes in Applicable Laws due to Covid-19

22. Attached as **Exhibit “I”** is a chart prepared by me setting out Duty Free’s expenses, sales and rent subsidies from November 2016 to January 2023.

23. From April 2020 to January 2023, Duty Free’s total Gross Sales were \$12,837,041.

24. During that time, Duty Free’s operating costs, excluding rent and net of wage subsidies, was approximately \$9,375,294.

25. Duty Free received a total of \$1,057,276 in government rental subsidies that were paid to the Authority. For clarity, the minimum paid to the authority each month was the amount of the rental subsidy received for that period. Duty Free remitted to the Authority any difference between monthly rental subsidies it received and the payments it made on account of Additional Rent and Base Rent, up to the point where Additional Rent and Base Rent payments exceeded the amount of the monthly rental subsidies received for a particular month. For simplicity, the government rental subsidy receipts and payments have been excluded from the chart at **Exhibit “I”**.

26. If full minimum Base Rent was payable during that period, Duty Free would have had to pay \$11,333,322 in minimum Base Rent.

27. Additional Rent paid is a further \$335,541 for this period.

28. In addition, Duty Free paid its secured creditor, RBC, \$1,911,896 during that period for financing related to leasehold improvements.

TAB 6

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

TAB 7

Court File No. CV-00673084-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

TW/sp

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

This is the Cross-Examination of BEN MILLS on his Affidavit sworn the 1st day of January, 2023, held via videoconference at the Offices of VICTORY VERBATIM REPORTING SERVICES, Suite 900, 222 Bay Street, Toronto-Dominion Centre, Toronto, Ontario, on the 17th day of August, 2023.

A P P E A R A N C E S:

CHRIS STANEK

--- for the Buffalo and
Fort Erie Public
Bridge Authority

BRENDAN JONES
DAVID ULLMAN

--- for the Respondent

B. Mills - 32

1 underlined, but as part of the lease, because it's a
2 change that...whether somebody legally accepted it,
3 I don't know, but it's a change that was accepted
4 through the word processing process.

5 89. Q. And this change...

6 A. Yes.

7 90. Q. ...that you received...I think your
8 evidence is for the first time you received this
9 change on the 13th of July, 2016. Have I got that
10 right?

11 A. That's when I...well, I don't know
12 if I...okay, let me check my files then. I believe
13 that is the case.

14 91. Q. At the latest, it's July 13th, 2016?

15 A. Yes, that's when I received...I
16 received it on...that is my understanding, anyway,
17 yes, yes.

18 92. Q. Okay.

19 A. That's what I...I have got an e-mail
20 saying...

21 93. Q. We don't have any evidence of you
22 receiving it earlier, but at the latest, you
23 received it July 13th, 2016?

24 A. Correct, yes. To be clear, I don't
25 believe I received it earlier, but yes...

B. Mills - 33

1 94. Q. I understand.

2 A. ...I can't confirm that, yes.

3 95. MR. STANEK: I understand, I understand,
4 but the document that I sent to you,
5 which...can I mark as Exhibit 1?

6 MR. JONES: That's fine.

7 96. MR. STANEK: Okay.

8
9 --- EXHIBIT NO. 1: Building lease between Buffalo and
10 Fort Erie Public Bridge Authority
11 and Peace Bridge Duty Free, draft
12 with tracked changes, dated June 13,
13 2016

14
15 BY MR. STANEK:

16 97. Q. In Exhibit 1, what appears there is
17 the same thing that appears in what Mr. Pearce sent
18 to you on the 13th of July, correct?

19 A. That 18.07, yes, I confirm that.

20 98. Q. And 18.07 in that form, completely
21 unchanged, is the same thing that gets into the
22 final lease?

23 A. Yes, I confirm to you...like, I can
24 take your word for it, but I'll confirm it.

25 99. Q. Don't take my word for it. Please

TAB 8

BUILDING LEASE**BETWEEN****BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY****- AND -****PEACE BRIDGE DUTY FREE INC.**

TABLE OF CONTENTS

	Page
ARTICLE I BASIC LEASE TERMS.....	2
1.01 Basic Lease Terms.....	2
ARTICLE II DEFINITIONS AND INTERPRETATION	3
2.01 Definitions	3
2.02 Net Lease	9
2.03 Extended Meanings	9
2.04 Entire Agreement.....	9
2.05 Governing Law	10
2.06 Time of the Essence.....	10
2.07 No Limitation.....	10
2.08 Headings and Captions	10
2.09 Severability	10
2.10 Successors and Assigns	10
2.11 No Partnership or Agency	10
2.12 Joint and Several Liability	11
2.13 Landlord as Agent.....	11
2.14 Interpretation.....	11
2.15 Reasonableness	11
2.16 Amendment and Waiver	11
ARTICLE III GRANT AND TERM	12
3.01 Demise	12
3.02 Commencement and Termination Date of Term	12
3.03 "As Is" Condition of Leased Premises	12
3.04 Delay in Possession	12
3.05 Restrictive Covenant.....	12
3.06 Right to Extend the Term	12
ARTICLE IV RENT.....	13

TABLE OF CONTENTS
(continued)

	Page
4.01 Covenant to Pay	13
4.02 Base Rent	13
4.03 Percentage Rent	13
4.04 Accrual of Rent	14
4.05 Rent and Payments Generally	14
4.06 Letter of Credit	15
ARTICLE V FINANCIAL INFORMATION	16
5.01 Monthly Statements	16
5.02 Annual Statements	16
5.03 Books and Records	16
5.04 Right to Examine	17
5.05 Audit	17
5.06 Tenant's Failure	17
ARTICLE VI PROPERTY TAXES AND OPERATING COSTS	18
6.01 Property Taxes Payable by the Tenant	18
6.02 Contesting Property Taxes	18
6.03 Business Taxes	19
6.04 Operating Costs	19
6.05 Payment of Operating Costs	20
ARTICLE VII UTILITIES	21
7.01 Charges for Utilities	21
7.02 Tenant Not to Overload Facilities	21
7.03 No Liability	21
ARTICLE VIII HVAC	22
8.01 HVAC System	22
8.02 Landlord's Right to Maintain / Repair HVAC System	22
8.03 Tenant's Responsibility	22
ARTICLE IX USE OF THE LEASED PREMISES	22
9.01 Use of the Leased Premises	22

TABLE OF CONTENTS
(continued)

	Page
9.02 Conduct and Operation of Business	23
9.03 Nuisance and Waste.....	24
9.04 Observance of Law	24
9.05 Additional Services of the Landlord.....	24
9.06 Traffic Direction	25
ARTICLE X TENANT'S ENVIRONMENTAL COVENANT AND INDEMNITY	25
10.01 Compliance with Environmental Laws and Environmental Approvals	25
10.02 Release of a Contaminant	25
10.03 Environmental Site Assessment	26
10.04 Tenant's Environmental Indemnity	26
10.05 Governmental Authority Requirements.....	26
10.06 Pre Existing Contaminants	26
10.07 Responsibility for Environmental Contaminants.....	27
ARTICLE XI INSURANCE AND INDEMNITY	27
11.01 Tenant's Insurance	27
11.02 Requirements of Insurance	29
11.03 Sign Insurance	29
11.04 Increase in Insurance Premiums	29
11.05 Cancellation of Insurance	30
11.06 Landlord's Insurance.....	30
11.07 Loss or Damage	31
11.08 Indemnification of the Landlord	31
ARTICLE XII MAINTENANCE, REPAIRS AND ALTERATIONS	32
12.01 Maintenance and Repairs and Replacement by the Tenant	32
12.02 Landlord's Approval of Alterations	33
12.03 Landlord's Inspection.....	33
12.04 Surrender of the Leased Premises.....	33
12.05 Repair where Tenant at Fault.....	34
12.06 Tenant Not to Overload Floors	34

TABLE OF CONTENTS
(continued)

	Page
12.07 Removal and Restoration by the Tenant.....	34
12.08 Tenant Capital Expenditures and Improvements.....	35
12.09 Notice of Defects	35
12.10 Liens	35
12.11 Signs and Advertising.....	35
ARTICLE XIII DAMAGE AND DESTRUCTION AND EXPROPRIATION	35
13.01 Damage or Destruction to the Leased Premises	35
13.02 Rights to Termination	36
13.03 Certificate Conclusive	36
13.04 Insurance Proceeds	36
13.05 Landlord's Rights of Rebuilding.....	36
13.06 Negligence of the Tenant.....	37
13.07 Expropriation	37
ARTICLE XIV ASSIGNMENT, SUBLETTING, PARTING WITH POSSESSION AND CORPORATE CONTROL.....	37
14.01 Transfers	37
14.02 Landlord's Option to Terminate	38
14.03 Consent Required.....	38
14.04 No Advertising of the Leased Premises.....	39
14.05 Corporate Ownership.....	39
14.06 Assignment or Transfer by the Landlord.....	40
ARTICLE XV ACCESS.....	40
15.01 Right to Show the Leased Premises.....	40
15.02 Emergencies.....	40
15.03 Access Not Re-entry	40
15.04 Roof Rights.....	40
15.05 Right to Install Solar Panels	42
ARTICLE XVI STATUS STATEMENT, ATTORNMENT AND SUBORDINATION	42
16.01 Status Statement.....	42

TABLE OF CONTENTS
(continued)

	Page
16.02 Subordination and Attornment	43
16.03 Financial Information	43
ARTICLE XVII DEFAULT	43
17.01 Event of Default.....	43
17.02 Rights of the Landlord	44
17.03 Expenses	46
17.04 Waiver of Exemption from Distress	46
17.05 Remedies Generally	46
ARTICLE XVIII MISCELLANEOUS	46
18.01 Rules and Regulations	46
18.02 Overholding	47
18.03 Notices	47
18.04 Registration.....	47
18.05 Quiet Enjoyment.....	47
18.06 Landlord's Co-Operation and Access.....	48
18.07 Unavoidable Delay	48

Execution Page

SCHEDULES:

SCHEDULE "A"	LEGAL DESCRIPTION OF THE LANDS
SCHEDULE "B"	PLAN OF LEASED PREMISES
SCHEDULE "C"	RULES AND REGULATIONS
SCHEDULE "D"	TENANT'S PROPOSAL
SCHEDULE "E"	TENANT OWNERSHIP

THIS LEASE is dated as of the 10 day of 10, 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 ~~the last day of the month of December next following 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. ~~{NTD: Review if using a calendar year is preferred or if we can use the annual period based on the Commencement Date}~~
- (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. 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;

- (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". ~~INTD: Consider including only an excerpt of the proposal with the required provisions as opposed to the entire proposal~~
- (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) **"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 for 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.

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:

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 \$3,500,000 \$3,495,000; in year four Base Rent would be

\$5,628,750 and Percentage Rent would be \$0; in year five Base Rent would be \$4,221,563 and Percentage Rent would be \$178,437; and in year six Base Rent would be \$4,000,000 and there would be no Percentage Rent.

In year 4, ~~four~~, because the annual calculated ~~percentage rent~~ Percentage Rent is less than the ~~base rent~~ Base Rent for that year, no additional ~~percentage rent~~ Percentage Rent would be due. In year 5, ~~base rent~~ five, Base Rent is \$4,221,563 (greater of \$4,000,000 or 75% of prior year total rent). The total calculated ~~percentage rent~~ Percentage Rent for year 5 ~~five~~ is \$4,440,000. Because the calculated ~~percentage rent~~ Percentage Rent is greater than the ~~base rent~~ Base Rent, the difference of \$178,437 ~~218,437~~ would be due as ~~percentage rent~~ 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(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 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.

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 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.

5.06 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). The confidentiality obligations under this Section 5.06 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.

5.07 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, 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. ~~[NTD: Confirm if there are other items in the Tenant's Proposal other than the capital expenditures that should be specifically referenced.]~~

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 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).
- (c) The Tenant represents and warrants to and in favour of the Landlord that the current ownership and effective voting control of the Tenant is as shown in Schedule E attached hereto.

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~~ 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 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 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 ~~18.07~~ 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.

- 2 -

SCHEDULE "D"
TENANT'S PROPOSAL

- 3 -

SCHEDULE "E"

TENANT OWNERSHIP

Note to draft: Need ownership chart of the Tenant showing ownership through various holding corporations or entities leading to the individual persons who legally or beneficially own the Tenant so we can determine the present effective voting control of the Tenant.

Document comparison by Workshare Compare on July-13-16 2:20:39 PM

Input:	
Document 1 ID	PowerDocs://EDC_LAW/1389402/13
Description	EDC_LAW-#1389402-v13-Duty_Free_Shop_Building_Lease
Document 2 ID	PowerDocs://EDC_LAW/1389402/14
Description	EDC_LAW-#1389402-v14-Duty_Free_Shop_Building_Lease
Rendering set	Firm Standard

Legend:	
<u>Insertion</u>	
<u>Deletion</u>	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
<u>Moved deletion</u>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	30
Deletions	34
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	64

TAB 9

Jim PearceClarity 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" *OK*

*i.e. receipts to clients / commissions
other than
does not include goods
multimedia*

OK
- 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...

OK
4.03 Percentage Rent *OK*

- 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...."

will add
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

*currently receive traffic counts from
PBA - they want to make sure
we agree to give them.*

OK
5.05 Audit *OK*

- add "auditor chosen to be professional, independent and acting reasonably"

OK
5.03 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)"

OK
Schedule "B" - is this for a map of the Leased Premises

updated map
RFP proposal

NO
Schedule "D" - in addition to our proposal add a copy of the RFP?

ask Graham

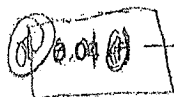
*NO not referenced in
the lease
is there something
specific there?*

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 *OK*

- 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

Jim Pearce

Explanations



items that arise from the lease. Want to make sure it's not on the table & we are working on PBOF. no unbr specific

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).

Business disruption due to bridge closure -
this involves a third party not typical BK per se BK a balance of good to get involved in the insurance should cover & we do not want to cover a loss.

this involves a third party not typical BK per se BK a balance of good to get involved in the insurance should cover & we do not want to cover a loss.

this involves a third party not typical BK per se BK a balance of good to get involved in the insurance should cover & we do not want to cover a loss.

this involves a third party not typical BK per se BK a balance of good to get involved in the insurance should cover & we do not want to cover a loss.

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 PBOF'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.).

We agreed to give a letter, lease premises we have obligations.

4.02 Calculation of Future Base rent - change the fourth line to
 "The Base rent for the second and each succeeding year of the Lease shall be the greater of: (i) the Base Rent of \$4m, and (ii) 75% of the total rent payable by the Tenant to the Landlord for the immediately preceding year of the Lease."

Agree to discuss 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

1.01 Basic Lease Terms - g) & 4.06 - L/C \$500k - Delete

5.01 Monthly Statements - first line - change "by the fifth (5th) calendar day" to "by the tenth (10th) calendar day"

15.02 Annual Statements - first line - change "within thirty (30) calendar days" to "within forty-five (45) calendar days"

5.05 Audit - second last line - add underlined word "If any inspection and audit by the Landlord reveals an understatement by Tenant of the Tenant's Audited Gross Sales by"

9.02 (d) re: Signage - add underlined wording "without prior written approval of the Landlord which will not be unreasonably withheld"

12.02 (c) - delete reference to union affiliations

12.10 Signage and Advertising - add underlined wording "without, in each case, the prior written approval of the Landlord which will not be unreasonably withheld"

Add the following clauses from the current lease

6.03 - Exclusive use or right of first refusal

16.01 - Landlord's covenants

16.03 - Access

Add and review RFP items as amendments to the Lease

✓ 2.01 (rr) Definitions - for the definition of Tenant's Gross Sales

✓ use, from the current lease 1.01 Definitions (o) Tenant's Gross Sales *update*

✓ - add - "In the case of Ticket Sales it shall mean the net proceeds derived from the service and not the total of actual tickets sales." *update*

✓ Article V - add a confidentiality clause *5.04*

6.02 - clarity on appealing property taxes - Tenant be allowed to contest property tax assessments, be responsible for fees, and have support of the landlord *updated per attorney*

17.01 (a) Event of Default - add wording so a clerical error won't trigger default - "the Tenant fails to pay any Rent, that is of material nature, within 15 days after receiving written notice from the Landlord" *update sales*

For the calculation of the monthly rent payments. - use the Accumulated Basis Method (i.e. running total so there's not excess at end of the year) *with use running total.*

Business disruption due to bridge closure: *complete*

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). *complete*

In the event that during the Term, there are issues that arise 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 amend this lease (including but not limited to the rent terms, term, etc.) as appropriate in a fair and equitable manner. (As a guideline, a material impact would be one in which duty free sales decline over a comparable three month period by 5% or more.) *18.07*

Clarity

TAB 10

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

* * * * *

EXAMINATION FOR DISCOVERY

of **KAREN COSTA**, a non-party witness, herein,
at the office of Penfound's Inc.,
at St. Catharines, Ontario,
held on Tuesday, the 30th day of May, 2023,
at ten o'clock in the forenoon,
pursuant to an appointment.

* * * * *

APPEARANCES :

Mr. Brendan Jones
(Blaney McMurtry LLP)

Counsel for the Respondent

Mr. Christopher Stanek
(Gowling WLG)

Counsel for the Buffalo and
Fort Erie Public Bridge Authority

* * * * *

36
Karen Costa - May 30, 2023

be any place where you could look for the notes
of a specific discussion ...

A. I could look through ...

MR. STANEK: ... you had with Ron Rienas on
July 18 or July 19, 2016?

A. I could look.

MR. STANEK: Okay, we'll look. ^

MR. JONES: Thank you.

MR. JONES:

131. Q. Okay, now if I could ask you --.

Actually, before we flip forward, can you read what
that top note is?

A. On -- where are we?

132. Q. On the four four six (446) page.

A. Top note --.

133. Q. Just the handwriting near the top, I can't
read it.

A. It says, "Cost associate with issues
arising from the leased premises."

134. Q. Okay, thank you. Now, if I could ask you
to turn to four four eight (448). Now, this is also
notes from the same meeting, is it?

A. I will assume that they are.

135. Q. Now, the second last paragraph there's the
word "Complete" is written into various places.

understand what you're asking me.

159. Q. Okay, maybe I can help clarify. So what I'm -- what I'm indicating to you is, first there's the list of -- the list of events that Mr. Pearce, correct me if I'm wrong, these are the events he said were catastrophic that would require consideration.

A. These were the lists of events that he wanted consideration and to have the lease include words that say, "Rent abatement" connected to them.

160. Q. Correct. And then he goes on to say, "If any of these events happen, that materially affect the Duty Free sales, then the landlord and tenant, both acting reasonably and in good faith, agree to amend the lease including but not limited to the rent terms -- term, et cetera." So what I'm saying is, he said if these things happen then this will happen, right? That's essentially what's in his email -- or sorry, in the handout here.

A. I mean, his paragraph just says what the paragraph says.

161. Q. Yes. And so your email addresses the list of events.

A. It appears to.

162. Q. And your email doesn't say anything about the consequences for one of those events occurring as

TAB 11

This is Exhibit “C” referred to in the Supplemental Affidavit of Jim Pearce sworn remotely this 13th day of February 2023.



Commissioner for Taking Affidavits (or as may be)

Brendan Jones

From: Karen L. Costa [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
Attachments: Duty Free Shop Building Lease-EDC_LAW-1389402-v18B.PDF; Duty Free Shop Building Lease-EDC_LAW-1389402-v18.pdf

203 18

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 | 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

This communication is intended solely for the addressee(s) and contains information that is privileged, confidential, and subject to copyright. Any unauthorized use, copying, review or disclosure is prohibited. If received in error, please notify us immediately by return e-mail.

TAB 12

THIS IS **EXHIBIT "X"** 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.



Tony Baldinelli, MP

Member of Parliament
Niagara Falls

205 196

205

April 1, 2022

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

Dear Minister Freeland,

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

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

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

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

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

Ottawa

Room 645
Confederation Building
Ottawa, Ontario
K1A 0A6
Tel.: 613-995-1547
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

TAB 13

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



Commissioner, etc.

HST remitted to PBA

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

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

TAB 14

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

* * * * *

CROSS-EXAMINATION UPON AFFIDAVITS

sworn September 22, 2022, November 26, 2022 and March 1, 2023

by **RON RIENAS**, a non-party witness, herein,
at the office of Penfound's Inc.,
at St. Catharines, Ontario,
held on Wednesday, the 23rd day of August, 2023,
at ten o'clock in the forenoon,
pursuant to an appointment.

* * * * *

APPEARANCES :

Mr. Brendan Jones Counsel for the Respondent
Mr. David T. Ullmann (Via Zoom)
Mr. Nadav Amar (Student-at-Law)
(Blaney McMurtry LLP)

Mr. Christopher Stanek Counsel for the Buffalo and
(Gowling WLG) Fort Erie Public Bridge Authority

* * * * *

A. Mmhm. Right.

240. Q. But that wasn't part of the Board direction either.

A. Correct.

5 241. Q. So that was on your own initiative?

A. Correct. Because we weren't getting the information. You have to understand the circumstances, what we're dealing with at that time. We're in the pandemic, it's the end of the year, we're concerned about our year end. We want to make sure we have that service covered, ratios for our bonding. We've frozen wages, the Board has totally redone its budget to reflect the fact that we are facing financial strain. What else were we dealing with at the time? We see that they have not submitted CERS, all of these things. So we're being slow-rolled at this point. We have a year end coming up, and we wanted to make sure that we were -- we put ourselves in the best possible position. So that's why I asked what I did, and I subsequently went to the Board to formalize that.

242. Q. Sorry, best possible position for what?

A. For our financial statements.

243. Q. Okay. So ...

25 A. Because we didn't feel we should be

A. Mmhmm.

265. Q. And that -- I'm putting to you that the board knew that the Authority -- or the Peace Bridge Duty Free store could not reasonably have paid that?

5 A. Yeah, you have to understand there's a couple of reasons for saying that. One was to get the Duty Free to understand that -- that there has to be some sharing of the pain with the -- with the Peace Bridge in this thing. The other thing was to get their attention to actually respond to what we're looking for. And that letter had the desired effect because two weeks later we finally got the business plan from -- from Peace Bridge Duty Free that we had been -- that we had been seeking for some time so --.

15 266. Q. But what you're asking for here isn't sharing the pain, that's paying everything?

A. Well, yeah, because what have they done up until this point? Nothing. Nothing.

20 267. Q. So I'm putting it to you that the Authority knew that it could not comply with this demand?

A. We anticipated we would get a response from them which we did.

25 268. Q. I'm putting it to you that the Authority knew that the Peace Bridge Duty Free store could not

Ron Rienas - August 23, 2023

those types of issues were in play at the end -- end of December. Now we had a wage freeze on our employees, we totally recast the budget, we -- we stopped capitol works project, we deferred maintenance project, we did all of those things, part of that was we need to get revenue from Peace Bridge Duty Free because they could actually afford to pay us something.

320. Q. Okay, so in terms of -- and this came up earlier, in terms of the boarder restrictions as I understand the United States lifted it's final Covid-19 vaccine requirement on May 11th, 2023 do you agree with me on there?

A. Correct.

321. Q. And we talked about when the US border reopened, and I think that's at paragraph thirty (30) of your Affidavit, you say it reopened on November 8th, 2021?

A. Mmhmm.

322. Q. And so that's the border that -- that's the border crossing that Peace Bridge Duty Free serves?

A. Correct.

323. Q. And you would -- would you agree with me that this lease is premised on there being a free and

MR. JONES: Yup.

MR. STANEK: Where's the fifth amendment?

A. I think we covered this already, didn't we?

MR. STANEK: We'll cover things multiple times.

A. So what's your question?

MR. JONES:

347. Q. I was just asking you to confirm that the requirement was that if you pay -- the deferral be paid back starting January 1st, 2021 over the period of a year?

A. Right.

348. Q. And that didn't happen?

A. Correct, similar to the Peace Bridge Duty Free deferral agreement.

349. Q. Right and the US store was allowed to continue just paying the sixteen percent (16%) of sales?

A. Whatever the lease required as the percentage said, the percentage is -- is variable.

350. Q. Well the lease required base rent as well.

A. We talked about that.

351. Q. Okay, so you're just saying whatever the percentage rent, they were just required to pay their

percentage rent

A. Which is variable.

352. Q. And not just -- okay, gotcha. And so just to confirm then, from July, 2020 onward until the new agreement in December, 2022 they did not pay any base rent?

A. Correct.

353. Q. And there was no demands for a lump sum payment?

A. Right.

354. Q. And so ...

A. Because the discussions we had with them, they indicated how they were -- we were going to handle -- handle that, which was reflected in the -- in the final amendment. They were going to pay us back the base -- base rent.

355. Q. And did the Authority send any default notices like it did to the Peace bridge duty Free?

A. No.

356. Q. Did it threaten -- it didn't threaten enforcement?

A. No, because they were open.

357. Q. So even when Peace Bridge Duty Free opened the Authority refused to accept percentage rent?

A. We wanted to pay in accordance with the

129

Ron Rienas - August 23, 2023

actual impact to the lease of the applicable -- of
the changes in the applicable laws?

5 A. And like I said to you before, applicable
law refers to laws as it applies to the Duty Free
store, that's what the context of eighteen oh seven
(18.07) was when we -- when it was included into the
-- into the lease. And like I said before, whether
eighteen oh seven (18.07) is in the lease, whether
the -- whether it's in the lease or not -- whether
10 it's in the lease or not we did not engage with --.
I'll give the perfect example, we engaged in
discussion with Duty Free Americas, we don't have an
eighteen oh seven (18.07) clause with -- with Duty
Free Americas, likewise here, regardless of eighteen
15 oh seven (18.07) we would have had discussions with
Peace Bridge Duty Free, that's what a prudent
landlord and a tenant do.

418. Q. So as it stands, the only impact to the
lease as far as the Authority's concerned resulting
20 from the changes in laws and regulations arising from
Covid-19 is that the base rent from April to June
2020 as deferred until July 1st, 2020, that's the only
impact to the lease?

A. No we didn't say that.

25 419. Q. Well what -- what other impact has there

been, how has the lease been impacted?

5 A. Well as we've stated before and as was included in our offer to Duty Free in October of 2021, we recognized that there's an impact, we offered a significant rent abatement, not only for past rent but future rent moving forward, clearly indicates that we recognize that there was an impact as a result of -- of -- of covid. In fact, when you add it all up, when you add it all up the rent 10 deferral that we were offering in October of 2021 amounts to about two point something million dollars (\$2,000,000.00), two point seven, two point eight million dollars (\$2,800,000.00). The rent reduction moving forward through 'til '26 amounts to about six 15 million dollars (\$6,000,000.00), so that's a total of eight million dollars (\$8,000,000.00) in rent abatement that we offered to Duty Free, that -- the Duty Free store was closed for eighteen (18) months, eight million dollars (\$8,000,000.00) is two years 20 worth of rent that we're -- we offered to Duty Free to write off.

420. Q. And so the Peace Bridge Duty Free had a different view of what the impact was to the lease?

MR. STANEK: We don't know what their idea is.

25 A. I don't know.

meeting in July of 2016, weren't you?

A. Like I said, it's seven years ago, I don't recall if I was in a meeting or not.

5 607. Q. During those discussions do you recall discussing Peace Bridge Duty Free's concerns about revenue declines that were caused by issues outside of its control?

A. Like I said, I don't even recall the meeting, so I don't recall -- I don't recall that.

10 608. Q. You don't recall having those discussion?

A. No, I'm sure there were discussions, but I can't recall them.

15 609. Q. Okay. So paragraph seven of your Affidavit you're saying that the signing the first rent deferral agreement was in furtherance of the Authority's obligations in eighteen point oh seven (18.07)?

A. In part. We had more discussions than that.

20 610. Q. So that was just the first part of its compliance?

A. Well, I ...

MR. STANEK: There's other parts that are set out in paragraph seven.

25 MR. JONES:

the change in laws affects the business, right?

5 A. Yeah, and at the end of the day the board has to approve any amendment to the lease. The lease is as it is until it gets amended, and there's nothing in eighteen oh seven (1807) that, in any way, stipulates that there will be a rent abatement given certain circumstances, that's not what it says.

621. Q. No, it's more flexible than that?

10 A. The point is, we could've consulted throughout and there could've -- we could've said there's not gonna be an rent abatement, nothing for the past rent, nothing for the future, we would still have complied with eighteen oh seven (1807).

622. Q. That's your position? That's your view?

15 A. Because if we consulted and we come to the conclusion that's what it would've been. We've complied with article eighteen oh seven (1807).

20 623. Q. So there's no obligation to reasonableness?

25 A. Depends again, depends on the circumstances. In this particular case we made it very clear that we believe it is reasonable, given the circumstances, to give a rent abatement. But it was not presupposed by eighteen oh seven (1807) that we must give a rent abatement.

TAB 15

PEACE BRIDGE DUTY FREE INC.

ANALYSIS OF RENT

**REPORT OF EPHRAIM STULBERG
DATED AUGUST 16, 2023**

41. As a result of the lower traffic and sales levels, PBDF reported net pre-tax losses totalling \$10.2M over the three years from 2020 to 2022 (based on reported base rent of \$4M per year).
42. In summary, PBDF's financial results were heavily impacted by the pandemic, and continue to be impacted (though to a lesser extent).

The Authority – Pandemic Results

43. In 2020 and 2021, the Authority reported a decrease in revenues, reporting US\$24.5M in 2020 and US\$26.3M in 2021 before rebounding to US\$30M in 2022. Operating income was US\$7.1M in 2020 and US\$5.9M in 2021; it rose to US\$10.9M in 2022 (Schedule 8a).
44. Thus, while the Authority has suffered a decline in income as a result of the pandemic, its revenues have continued to exceed its expenses each year. This is largely a function of the fact that its main source of income, tolls from commercial trucks, was relatively unimpacted by COVID-19 (as compared with passenger vehicle travel).
45. The above amounts are net of bad debts that the Authority has written off in respect of the PBDF lease and the duty-free store on the US side of the border: reported bad debts are US\$2.5M in 2020, US\$3.19M in 2021 and \$2.1M in 2022.¹¹
46. We understand that the US duty-free store has remained open during the pandemic and has been paying a percentage of its actual sales as rent.¹²
47. We note that other bridge authorities appear to have taken different approaches to the COVID-19 pandemic and their commercial tenants, decreasing lease rates by different levels. Thus, as set out at Schedule 9 to this report:
 - a) The Niagara Falls Bridge Commission (which operates the Rainbow Bridge and the Queenston-Lewiston Bridge) reported a decline in rental income of 29% in fiscal 2020 and 18% in fiscal 2021. This decrease was sufficient to reduce annual net income from a pre-pandemic level of \$3M to \$5M into a loss of \$3M in fiscal 2020 and \$7M in fiscal 2021.

¹¹ Authority 2021 annual report, p. 11

¹² Authority 2021 annual report, p. 13

Summary of Rent Scenarios - 2020 to 2022

Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Sch	FYE December 31,			
	2020	2021	2022	Total

1. Breakeven Analysis

Pre-tax income/(loss) (before base rent)	2A	\$	(805,401)	\$	(615,906)	\$	3,228,719	\$	1,807,412	
Less: Base Rent to Pay									1,807,412	A
Pre-Tax Net Income/(Loss)								\$	-	
Actual Base Rent Paid	4							\$	3,428,640	B
Unpaid Base Rent to Pay								\$	-	MAX(A-B,0)

2. 20% of Revenue

Pre-tax income/(loss) (before base rent)	2A	\$	(805,401)	\$	(615,906)	\$	3,228,719	\$	1,807,412	
Less: Base Rent to Pay - 20% of Revenue									2,928,039	A
Pre-Tax Net Income/(Loss)								\$	(1,120,627)	
Actual Base Rent Paid	4							\$	3,428,640	B
Unpaid Base Rent to Pay								\$	-	MAX(A-B,0)

3. Loss of 50% of Equity

Pre-tax income/(loss) (before base rent)	2A	\$	(805,401)	\$	(615,906)	\$	3,228,719	\$	1,807,412	
Less: Base Rent to Pay to Result in Loss of 50% of Retained Earnings									4,560,289	A
Pre-Tax Net Income									(2,752,877)	
Actual Base Rent Paid	4							\$	3,428,640	B
Additional Rent to Pay								\$	1,131,649	MAX(A-B,0)

NOTES

Based on 20% of total sales for 2020 to 2022, as follows:
Total sales (Sch 5)
Base rent at 20%

\$ 14,640,197
\$ 2,928,039

Based on half of book value of equity as of Dec 31/19, as follows:
Book value of equity - Dec 31/19
50% thereof

\$ 5,505,753
\$ 2,752,877

Summary of Rent Paid by PBDF

Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Description	Amount Paid	Rent	CAM	Gov't Subsidies
2020				
Rent - Jan 2020	\$ 333,333	\$ 333,333		
CAM Jan2020	6,541		6,541	
Rent 2020 - Feb	333,333	333,333		
CAM Feb2020	8,167		8,167	
Rent 2020 - Mar	333,333	333,333		
CAM Mar2020	8,167		8,167	
CAM April 2020	8,167		8,167	
CAM May 2020	8,167		8,167	
CAM June 2020	8,167		8,167	
CAM July 2020	8,167		8,167	
CAM Aug 2020	8,167		8,167	
CAM Sep 2020	8,167		8,167	
CAM Oct 2020	8,167		8,167	
CAM Nov 2020	8,167		8,167	
CAM Dec 2020	8,167		8,167	
CERS - Oct 24	43,442			43,442
2021				
CAM Jan 2021	8,167		8,167	
CAM Feb 2021	8,167		8,167	
CAM Feb 2021	883		883	
CERS-Period2-Nov 21	40,583			40,583
CAM Mar 2021	9,050		9,050	
CERS-Lockdown	18,750			18,750
CAM Apr 2021	9,050		9,050	
CERS-Period3-Dec20	58,053			58,053
CAM May 2021	10,812		10,812	
CAM Jun 2021	10,812		10,812	
CAM July 2021	10,812		10,812	
CAM Aug 2021	10,812		10,812	
CAM Sep 2021	10,812		10,812	
CERS-Per11 Jan2021	59,333			59,333
CERS-Per5/12 Feb 2021	58,450			58,450
CERS-Per6/13 Mar 2021	39,700			39,700
CERS Period 7/14 Apr 10/21	39,700			39,700
CERS-Period 8/15 May 8/21	37,938			37,938
CERS-Period 9/16 Jun 5/21	37,938			37,938
CERS-Period 10/17 July 3/21	37,938			37,938
CERS-Period 11/18 Jul 31/21	34,188			34,188
CERS-Period 12/19 Aug 28/21	19,188			19,188
CAM Oct 2021	10,812		10,812	
Rent - Sept	19,533	19,533		
CERS Period 13/20 Sep 25/21	19,188			19,188
CAM Nov 2021	10,812		10,812	

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

Respondent

* * * * *

EXAMINATION FOR DISCOVERY

of **TIM CLUTTERBUCK**, a non-party witness, herein,
at the office of Penfound's Inc.,
at St. Catharines, Ontario,
held on Tuesday, the 30th day of May, 2023,
at ten o'clock in the forenoon,
pursuant to an appointment.

* * * * *

APPEARANCES :

Mr. Brendan Jones
(Blaney McMurtry LLP)

Counsel for the Respondent

Mr. Christopher Stanek
(Gowling WLG)

Counsel for the Buffalo and
Fort Erie Public Bridge Authority

* * * * *

238. Q. Okay, and would you agree with me that, you know, the extent of the adverse impact on the business would influence what's reasonable in terms of the level of consideration given in response to a change in regulatory rules?

A. I think in the subsequent offers made by the Peace Bridge we did recognize that there was an offer for abatement, so, you know, what you're saying I would say is fair to say.

239. Q. Yeah.

A. The level of it I guess is what you have to really determine.

240. Q. Right, so it's a matter of degree, like a small impact on business it would be reasonable for a small response, bigger impact reasonably requires a larger response?

MR. STANEK: I mean, on both businesses, right?

MR. JONES: I'm asking about with respect to ...

MR. STANEK: You're only talking about one business?

MR. JONES: ... this lease. No, I'm just asking about the lease.

MR. STANEK: Okay.

can't recall.

273. Q. Okay, well you'd agree with me that whatever basis it was it was a monetary issue that was leading to the intention to terminate the lease?

5 A. Our positions were clearly opposed, quite different, in other words you're looking -- your client was look for full rent abatement and a much different go forward situation, and the Peace Bridge Authority felt that it had a right to some past rent, 10 they made an offer to that and those positions were maintained through a period of transfers back and forth, nothing much changing so it seemed like a stalemate, and at that point we -- we moved to terminate.

15 274. Q. All right. So if I can paraphrase, that was basically we haven't come to an agreement now and we're proceeding with lease termination ending these negotiations that are not going anywhere?

20 A. There's probably in the course of a discussion fifteen (15) points supporting that decision, so whether that's just the point that you're making or a number of other things, the dialogue was fluid.

25 275. Q. Okay, and when you said that the Authority had made an offer for some sort of rent abatement and

the Peace Bridge store had made an offer for what it wanted the rent abatement to be, and so is it fair to say basically, you know, the two sides were putting their position of what the appropriate rent abatement solution would be for their own perspective under eighteen oh seven (1807) and it just -- they didn't align?

A. It would be a fair statement and I guess on top of that we would -- we had seen no movement. So it's not like we made one offer and then said okay, you're going to terminate.

276. Q. Right.

A. There's just been no movement.

277. Q. So it just didn't come to an agreement?

A. Right.

278. Q. Okay.

MR. STANEK: No, he said that there was no movement.

MR. JONES: Right, so there's no movement and it didn't result in an agreement.

A. Mmhmm.

MR. JONES: I think ...

MR. STANEK: We meant no movement from your client.

MR. JONES:

TAB 17



October 26, 2021

Via Email - gohara@dutyfree.ca

Gregory G. O'Hara
President, CEO
Peace Bridge Duty Free Inc.
1 Peace Bridge
PO BOX 339 STN Main
Fort Erie, Ontario
L2A 5N1

Christopher M. Stanek
Direct +1 416 862 4369
christopher.stanek@gowlingwlg.com
File no. K0565679

Dear Mr O'Hara:

Re: Buffalo and Fort Erie Public Bridge Authority and Peace Bridge Duty Free Inc.

I am writing in response to your October 15, 2021 letter, which has been referred to me for a response.

Our client's Board of Directors has met to consider your "without prejudice proposal". The proposal in your letter does not adequately address Peace Bridge Duty Free Inc.'s ongoing default under the Lease and will not be sufficient to meet our client's obligations.

Please note that the minimum that our client is financially able to consider as an amendment to the existing Lease, is the following:

Back rent:

- 50% of back rent due and owing shall be paid upon execution of the amendment to the Lease
- Our client will apply any HST credits received to the remaining rent outstanding.

Future rent: (year begins November 1, 2021)

- 2022 – Base rent of \$2,500,000 or 20% of sales, whichever is greater
- 2023 – Base rent of \$3,000,000 or 20% of sales, whichever is greater
- 2024 – Base rent of \$3,500,000 or 20% of sales, whichever is greater
- 2025 – Base rent of \$4,000,000 or 20% of sales, whichever is greater
- Beyond 2025, existing Lease applies

Food service:

- Food service tenant rents to be at market rates, approved by, and payable to, our client.

Gowling WLG (Canada) LLP
Suite 1600, 1 First Canadian Place
100 King Street West
Toronto ON M5X 1G5 Canada

T +1 416 862 7525
F +1 416 862 7661
gowlingwlg.com

Gowling WLG (Canada) LLP is a member of Gowling WLG, an International law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at gowlingwlg.com/legal



Please advise if these terms are acceptable.

Sincerely,

Gowling WLG (Canada) LLP

A handwritten signature in black ink, appearing to read "Christopher M. Stanek", written over a horizontal line.

Christopher M. Stanek

CMS:cc

c.c. Ben Mills
Conlin Bedard LLP

Bcc: Client

TAB 18



21 March 2023

Sent by E-Mail (dulllumn@blalley.com)

E. Patrick Shea, LSJL, CS Prof Corp
Direct 416-369-7399
patrick.shea@gowlingwlg.com

David T. Ullmann
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Dear Mr. Ullmann:

Re: Rent Owing by Peace Bridge Duty Free Inc. ("PBDF")

The Board of Directors of the Buffalo and Fort Erie Public Bridge Authority (the "**Authority**") has met to consider your without prejudice proposal dated 13 March 2023.

Unfortunately, the proposal in your letter does not adequately address PBDF's ongoing default under the Lease dated 28 July 2016 (the "**Lease**").

Claim Against the Authority

We do not see PBDF's assertion that it has a claim against the Authority as having any merit. It is not a factor that the Authority has considered in determining what accommodation(s) will be provided to PBDF.

Should PBDF determine to pursue a claim against the Authority, that claim will be defended and the Authority is confident that PBDF will be found to owe the full arrears asserted by the Authority and that PBDF will be required to pay the minimum rent required by the Lease.

Counter-Proposal

The Authority is prepared to agree to amend the Lease as follows:

Back Rent

Seventy-five (75) per cent of rent owing by PBDF for the period to 1 November 2021 as calculated in accordance with the Lease shall be paid to the Authority within ninety (90) days execution of the amendment to the Lease.

We have considered the tax-related issues related to the Authority abating any material portion of the outstanding rent. While the Authority is prepared to consider a further abatement of up to 50%, it is not prepared to provide a rent abatement only to have PBDF's ability to repay the amounts owing eroded by taxes payable by PBDF. Any taxes payable by PBDF as a result of any abatement of rent will have to be paid using funds contributed to PBDF by the shareholders or other financing.

[PBDF Position: Accepted with amount to be paid to be \$2,851,500, being 50% of the rent arrears for the period up to Nov 2, 2021]



Rent for 2021-2025 (from 1 November)

The Lease will be amended as follows:

- 2021 - Base rent of \$2,000,000 or 20% of sales, whichever is greater. **[PBDF: Accepted]**
- 2022 - Base rent of \$2,500,000 or 20% of sales, whichever is greater. **[PBDF: Accepted]**
- 2023 - Base rent of \$3,000,000 or 20% of sales, whichever is greater. **[PBDF: Accepted]**
- 2024 - Base rent of \$3,500,000 or 20% of sales, whichever is greater. **[PBDF: Accepted]**
- 2025 - Base rent of \$4,000,000 or 20% of sales, whichever is greater.

[PBDF: For the Lease year ending Oct 31, 2026 and thereafter, our client slightly amends your proposal and offers that it be Base rent (which will be equal to previous year's rent until \$4m rent is reached at which time the Lease resumes) or 20% of sales, whichever is greater.]

Beyond 2025, current Lease terms apply and there will be no further amendments to the Lease. **[PBDF: Lease to contain two further 5 year options to 2041]**

All amounts owing for 2021, 2022 and 2023 will be paid to the Authority within sixty (60) days execution of the amendment to the Lease. **[PBDF: This payment cannot be made within 60 days. PBDF will pay \$1,000,000 within 60 days of execution of the amendment to the Lease, \$1,000,000 on the anniversary of that date, and the balance on the second anniversary of that date.]**

Food Service Tenant(s)

PBDF will, within sixty (60) days execution of the amendment to the Lease, sublet the food service space at market rates approved by the Authority. All rent will be payable to the Authority. **[PBDF: Will use its best efforts to find a replacement tenant once the settlement is finalized and the court proceeding is discontinued]**

Sincerely,

GOWLING WLG (CANADA) LLP

E. Patrick Shea, MStJ, LSM, CS
EPS:jm

TAB 19

THRP Subsidy program	Period 22 Nov20 2021	Period 23 Dec18 2021	Period 24 Jan15 2022	Period 25 Feb12 2022	PP26 Mar12 2022	PP27 Apr9 2022	PP28 May7 2022
						232	086
Maximum claim amount	75,000	75,000	75,000	75,000	75,000	75,000	75,000
THRP Subsidy rate	71.8%	61.8%	61.3%	75.0%	75.0%	27.65%	23.15%
THRP Subsidy	53,850	46,350	45,975	56,250	56,250	20,738	17,362.50
Lockdown support	18,750	18,750	18,750	18,750	-	-	-
Total THRP Subsidy received	72,600	65,100	64,725	75,000	56,250	20,738	17,362.50
PBDF							
PBDF Revenues	432,391	565,466	416,763	238,878	442,366	542,511	739,975
Percentage rent paid-20%	86,478	113,093	83,353	47,776	88,473	108,502	147,995
Additional Rent-Taxes&Insurance	10,812	10,812	10,812	10,812	10,812	10,812	10,812
Total Rent paid to PBA	97,291	123,906	94,165	58,588	99,286	119,314	158,807
Net balance	(24,691)	(58,806)	(29,440)	16,412	(43,036)	(98,577)	(141,445)
Net balance paid to PBA	0	0	0	16,412	0	0	0

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

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

TAB 20

EXHIBIT I

	PBDF Sales	Cost of Sales Wages (net) Expenses	RBC Lease	Add'l Rent	Rent	Net
Jan2020	920,345	(435,666)	(68,282)	(6,541)	(333,333)	76,523
Feb2020	977,455	(468,306)	(68,282)	(8,167)	(333,333)	99,367
Mar2020	553,247	(234,029)	(68,282)	(8,167)	(333,333)	(90,564)
Jan-Mar2020	2,451,048	(1,138,001)	(204,846)	(22,875)	(999,999)	85,326
Apr2020.	0	(31,833)	0	(8,167)	0	(40,000)
May2020	0	(31,833)	0	(8,167)	0	(40,000)
Jun2020	0	(31,833)	0	(8,167)	0	(40,000)
Jul2020	0	(31,833)	0	(8,167)	0	(40,000)
Aug2020	0	(31,833)	0	(8,167)	0	(40,000)
Sep2020	0	(31,833)	0	(8,167)	0	(40,000)
Oct2020	0	(31,833)	(68,282)	(8,167)	0	(108,282)
Nov2020	0	(31,833)	(68,282)	(8,167)	0	(108,282)
Dec2020	0	(31,833)	(68,282)	(8,167)	0	(108,282)
Apr-Dec2020	-	(286,498)	(204,846)	(73,502)	-	(564,846)
Total 2020	2,451,048	(1,424,500)	(409,692)	(96,377)	(999,999)	(479,520)
Rent 20%						
Jan2021	0	(51,833)	(68,282)	(8,167)	-	(128,282)
Feb2021	0	(50,950)	(68,282)	(9,050)	-	(128,282)
Mar2021	0	(50,950)	(68,282)	(9,050)	-	(128,282)
Apr2021	0	(50,950)	(68,282)	(9,050)	-	(128,282)
May2021	0	(49,188)	(68,282)	(10,812)	-	(128,282)
Jun2021	0	(49,188)	(68,282)	(10,812)	-	(128,282)
Jul 2021	0	(49,188)	(68,282)	(10,812)	-	(128,282)
Aug2021	0	(49,188)	(68,282)	(10,812)	-	(128,282)
Sep2021	97,691	(148,845)	(68,282)	(10,812)	(19,538)	(149,787)
Oct2021	309,754	(274,877)	(68,282)	(10,812)	(61,951)	(106,168)
Nov2021	545,927	(422,963)	(68,282)	(10,812)	(109,185)	(65,316)
Dec2021	571,208	(435,604)	(68,282)	(10,812)	(114,242)	(57,732)
	1,524,579	(1,683,723)	(819,384)	(121,816)	(304,916)	(1,405,260)
Jan2022	266,652	(258,326)	(68,282)	(10,812)	(53,330)	(124,099)
Feb2022	317,739	(273,870)	(68,282)	(10,812)	(63,548)	(98,773)
Mar2022	574,900	(409,863)	(68,282)	(10,812)	(114,980)	(29,037)
Apr2022	803,466	(540,664)	(68,282)	(10,812)	(160,693)	23,015
May2022	839,157	(557,795)	(68,282)	(10,775)	(167,831)	34,473
Jun2022	942,743	(612,517)	(68,282)	(10,775)	(188,549)	62,621
Jul2022	1,332,856	(789,771)	(68,282)	(10,775)	(266,571)	197,457
Aug2022	1,295,437	(771,810)	(68,282)	(10,775)	(259,087)	185,483
Sep2022	1,189,993	(739,297)	(68,282)	(10,775)	(237,999)	133,641
Oct2022	1,214,518	(750,824)	(68,282)	(10,775)	(242,904)	141,734
Nov2022	980,000	(635,600)	(68,282)	(10,775)	(196,000)	69,343
Dec2022	860,000	(579,374)	(68,282)	(10,775)	(172,000)	29,569
	10,617,461	(6,919,709)	(819,384)	(129,449)	(2,123,492)	625,427
Jan2023	695,000	(485,364)	(68,282)	(10,775)	(139,000)	(8,421)
Apr 2020 to Jan2023	12,837,041	(9,375,294)	(1,911,896)	(335,541)	(2,567,408)	(1,353,099)

Total Apr2020 to Jan2023 Summary

	Base rent version		Percentage rent version
Sales	12,837,041	Sales	12,837,041
Costs&Expenses	(11,287,190)	Costs&Expenses	(11,287,190)
Add'l rent	(335,541)	Add'l rent	(335,541)
Base rent	(11,333,322)	Percentage Rent	(2,567,408)
Net loss	(10,119,013)	Net loss	(1,353,099)

Note: Net loss does not include deductions for professional expenses related to the process, additional funds posted as security to RBC as per court order and anticipated taxes.

TAB 21

RENT DEFERRAL AGREEMENT

THIS AGREEMENT made the 27th day of April, 2020.

BETWEEN:

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
(the "Landlord")

AND

PEACE BRIDGE DUTY FREE INC.
(the "Tenant")

WHEREAS:

- A. By a lease made July 28, 2016 between the Landlord and the Tenant, the Tenant leased from the Landlord certain premises (the "**Premises**") municipally known 1 Peace Bridge, Fort Erie, Ontario, for a term commencing November 1, 2016 and expiring October 31, 2031; and
- B. Due to travel restrictions and economic hardships created across the world by the COVID-19 pandemic, the Tenant requests rent relief.

NOW THEREFORE THIS AGREEMENT WITNESSES in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt of sufficiency whereof is hereby acknowledged, the parties agree as follows:

1. INTERPRETATION

1.1 **Expressions in Lease:** Unless expressly provided to the contrary in this Agreement, all terms defined in the Lease shall have the same meaning in this Agreement.

1.2 **Definitions and Interpretation:** The Lease is amended by adding the following definitions thereto:

"**Amortization Period**" means the one year period commencing on the Restart Date.

"**Suspension Date**" means April 1, 2020.

"**Deferred Rent**" means the Base Rent otherwise payable by the Tenant pursuant to the Lease during the Rent Deferral Period but for the terms of this Agreement.

"**Rent Deferral Period**" means the period commencing on the Rent Suspension Date to and including the earlier of:

- i. July 31, 2020; or

- ii. the last day of the month following the date that the Tenant has fully reopened the Duty Free Shop for business after the restrictions on non-essential travel between Canada and the United States are lifted (for greater clarity, a partial reopening to accommodate essential travel does not constitute a full reopening).

"Required Conditions" means:

- i. the Tenant pays all Additional Rent throughout the Rent Deferral Period, including without limitation, all Operating Costs and Property Taxes;
- ii. the Tenant does not seek benefit or protection of any statute for the benefit of bankrupt or insolvent debtors, including without limitation, a proposal, assignment or arrangement with its creditors or the repudiation or disclaimer of the Lease;
- iii. there has not been a Transfer (as defined in section 14.01 of this Lease); and
- iv. the Tenant strictly complies with all of the terms of the Lease and there is no Event of Default; and
- v. the Tenant strictly complies with all of the terms of this Agreement (including without limitation, the representations and warranties herein).

"Restart Date" means the day immediately following the last day of the Rent Deferral Period.

2. RENT DEFERRAL

2.1 Tenant's Representations and Warranties: The Tenant represents and warrants to the Landlord the following:

- (a) the Tenant temporarily closed its business at the Premises on or about March 21, 2020 and will fully re-open for business at the Premises as soon the restrictions on non-essential travel between Canada and the United States of America are lifted; and
- (b) the Tenant has and will continue to use its best efforts to take advantage of all government programs offering financial relief from the effects of the COVID-19 pandemic, including without limitation, any income tax deferral or reduction, rent assistance, employee wage and benefit subsidies and the like, with a view to ensuring that the Tenant is and remains a financially viable business, and shall keep the Landlord apprised of the Tenant's efforts in this regard.

2.2 Rent Suspension and Deferral: Provided the Required Conditions are met both throughout the Rent Deferral Period and the Amortization Period, then notwithstanding anything in this Lease to the contrary, the Tenant's obligation to pay the Deferred Rent during the Rent Deferral Period shall be suspended and deferred and shall not be payable until the Restart Date. The Tenant shall, however, be bound by all the other terms and conditions of this Lease during the Rent Suspension Period. For the purpose of clarity, it is understood and agreed that if any of the Required Conditions are not met, the Tenant's right to suspend and defer payment of Deferred Rent during the Rent Suspension Period shall be immediately forfeited and withdrawn retroactive to the Rent Suspension Date and the Deferred Rent that would otherwise have been payable during the Rent Suspension Period to the date of such forfeiture shall be immediately due and payable together with interest thereon at the rate set forth in the Lease for non-payment of Rent, calculated from the date each such installment of Deferred Rent would otherwise have been payable pursuant to Lease but for this Agreement. Except as expressly

suspended and deferred in accordance with this section, the Tenant shall continue to pay all Rent in accordance with the Lease.

- 2.3 **Repayment of the Deferred Rent:** Repayment of the Deferred Rent shall commence on the Restart Date. The aggregate amount of Deferred Rent together with interest thereon at the rate of 4% per annum shall be amortized over the Amortization Period and repaid by the Tenant in equal consecutive monthly instalments on the first day of each month from and including the Restart Date, without abatement or set-off, in the same manner as Rent. The Tenant covenants and agrees that if at any time, any of the Required Conditions are not met, the Landlord's agreement to amortize the repayment of the Deferred Rent shall be deemed to have been immediately withdrawn and the Tenant shall immediately pay to the Landlord the then outstanding unamortized balance of the Deferred Rent together with interest thereon at the rate of 4% per annum.

3. **ACKNOWLEDGEMENT**

- 3.1 **Acknowledgement:** The Tenant confirms that, as of the date hereof, (a) the Landlord is not in default under any obligation of the Landlord under the Lease and (b) there are no disputes or claims outstanding by the Tenant against the Landlord in respect of any past billings, rental recoveries or other matters pertaining to the Lease.

4. **NO AGREEMENT**

- 4.1 This Agreement shall be deemed not to have been executed and delivered by the Landlord until:
- i. this Agreement has been duly executed by all the other parties hereto and the Landlord has received at least one executed original hereof; and
 - ii. the Landlord has received payment of the sum of \$3,000 plus the applicable HST thereon, being the estimated legal fees incurred by the Landlord in relation to the request for rent-relief and the preparation of this Agreement.

Until the aforesaid deliverables have been received by the Landlord, the Landlord may, at its sole option, by written notice to the Tenant, withdraw any agreement in respect of rent-relief and this Agreement shall be null and void and of no further force or effect.

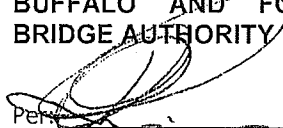
5. **AGREEMENT PART OF LEASE**

- 5.1 **Agreement Part of Lease:** This Agreement shall be read in conjunction with the Lease and shall form a part thereof and all provisions of the Lease insofar as applicable and except as amended by this Agreement shall continue in full force and effect and shall be binding upon and shall enure to the benefit of the parties, their successors and permitted assigns.
- 5.2 **Further Assurances:** Each party shall at any time and from time to time, upon the request of the other party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.
- 5.3 **Counterparts:** This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered to all of the parties shall be deemed to be and shall be read as a single agreement among the parties.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement with effect on the date first set out on the first page of this Agreement.

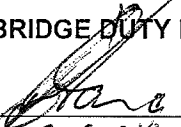
**BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY**

Per: 
Name: ■ Ron Rienas
Title: ■ General Manager c/s

Per: _____
Name: ■ _____
Title: ■ _____

I/~~We~~ have authority to bind the corporation

PEACE BRIDGE DUTY FREE INC.

Per: 
Name: ■ G.G. O'HARA
Title: ■ PRESIDENT c/s

Per: _____
Name: ■ _____
Title: ■ _____

I/We have authority to bind the corporation

TAB 22

Shea, Patrick

From: Ron Rienas
 Sent: November-18-20 5:06 PM
 To: Greg O'Hara
 Cc: Jim Pearce
 Subject: RE: Peace Bridge - Rent Deferral Agreement
 Attachments: Rent Deferral Agreement-EDC_LAW-2243121-v4.pdf

Greg, Jim,

Attached is the revised Rent Deferral Agreement as discussed, with a March 31, 2021 deferral date and removal of the legal expenses clause. Please sign and return as I need to also have the PBA board approve at its meeting on November 20.

Here is some info regarding the revised Canada Emergency Rent Subsidy (CERS)
<https://www.remynetnetwork.com/articles/cers-draft-legislation-awaits-adoption/>

Please forward the HST reimbursement to the PBA immediately.

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: Greg O'Hara <gohara@dutyfree.ca>
 Sent: Monday, November 16, 2020 12:23 PM
 To: Ron Rienas <rr@peacebridge.com>
 Cc: Jim Pearce <JimP@dutyfree.ca>
 Subject: RE: Peace Bridge - Rent Deferral Agreement

From: Greg O'Hara
 Sent: November-16-20 12:19 PM
 Cc: Jim Pearce <jimp@dutyfree.ca>
 Subject: FW: Peace Bridge - Rent Deferral Agreement

Ron,

There is no reason for concern, or to be threatening. As I'm sure you can imagine, we have a lot of balls in the air and are trying to respond to your original e-mail as completely as possible. I wasn't aware there was such urgency to complete this as it took you almost 3 months to provide the amended agreement. Your latest e-mail will also require thought, but we will endeavor to respond to everything by the end of the week.

One question. Why would the amended agreement have an expiry of December 31st (6 weeks away)? Why not extend this to at least March 31st (or sooner if the bridge is fully open).

In response to some of the items:

4. snowplowing - yes we've arranged with Stevensville Lawn just as in past years
 5. Insurance certificate - attached
 6. HVAC - reaching out to PCL who just recently signed off on the renovations but as a fyi, note that the HVAC systems are new and were replaced as part of the renovations
 2. washroom cleaning -- we can discuss this.
 3. Gov't programs - yes we're receiving assistance on programs where we may meet the criteria and note we are working with our bank, the government and consultants on this matter
 4. HST - yes will remit to the PBA - note that HST has been remitted on the CAM (taxes & insurance) and would only be the HST on the base rent
- Should we schedule a call this week to discuss some of these points.

Greg

From: Ron Rlenas <rr@peacebridge.com>
Sent: Friday, November 13, 2020 11:41 AM
To: Greg O'Hara
Cc: Jim Pearce
Subject: RE: Peace Bridge - Rent Deferral Agreement

Greg,

It has now been more than two weeks since I sent you the below e-mail. Your failure to respond is a significant concern.

Further to my below e-mail, please be advised of the following:

1. The Rent Deferral Agreement expired July 31, 2020. You have not responded to an amended deferral agreement meaning the original lease agreement entered into on July 28, 2016 applies.
2. Article 9.02 (a) of the lease agreement requires PBDF to operate 24 hours a day, seven days a week 365 days a year. There is no legal reason why the store cannot be open. Failure to do so is clearly a lease default.
3. Article 9.02 (l) requires PBDF to provide restrooms for travelers using the Peace Bridge, including persons who may not be patrons of the Duty Free store. Article 9.02 (e) requires PBDF to keep the premises clean and neat. The PBA has been providing the janitorial services for the restrooms and will cease doing so November 29 and require PBDF to provide those services. Failure to do so is a lease default.
4. With the winter season approaching Article 9.02 (f) requires PBDF to perform snow and ice clearing and removal and salting of sidewalks, driveways and parking facilities. Failure to do so is a lease default.
5. Section 11.02 requires PBDF to provide current certificates of insurance evidencing all coverages are in full force and effect at least 30 days prior to the expiry of the current term of insurance. Karen Costa earlier this week requested Jim Pearce to provide these immediately and that the certificates we have on file expired August 11, 2020. Failure to provide is a lease default.
6. Section 8.01 requires PBDF to provide on October 1 of each year, a certificate from a recognized and reputable HVAC contractor certifying that the HVAC system is in good working order. Failure to provide by November 27, 2020 will result in the PBA obtaining the certificate and doing any necessary work at PBDF's expense plus 15%.

Failure to respond by November 18, 2020 to this e-mail and my earlier e-mail of October 29, 2020 describing how you will address the issues raised in both e-mails will result in the PBA issuing a formal notice of default in the manner prescribed by Article 18.03.

Ron Rienas
General Manager
Buffalo & Fort Erie Public Bridge Authority

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

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

From: Ron Rienas
Sent: Thursday, October 29, 2020 4:03 PM
To: Greg O'Hara <gohara@dutyfree.ca>
Cc: Jim Pearce <JimP@dutyfree.ca>
Subject: Peace Bridge - Rent Deferral Agreement

Greg,

~~As the period of the exiting rent deferral is past, we require a new agreement. It is attached. The amortization period has been changed from one year to two years, and the rent deferral date has been extended to December 31, 2020.~~

A few issues:

1. As per the lease agreement, PBDF is required to be open 24/7. In April you argued that provincial Covid shutdown legislation required you to be closed. That has not been the case since May 11, 2020. While cross border car traffic is restricted to essential only, truck traffic is pretty well back to pre-pandemic levels. Our position is that the store could and should be open, at least partially. I would note that our Duty Free Americas store has remained open.
2. To provide a service to the commercial customers and to avoid unsanitary urination and defecation in the landscaped areas around the store, we requested that the washrooms be opened and PBA staff cleaned them (4X/day, ½ hr/time). As PBA staff is required for upcoming winter control operations we are requesting that PBDF assume these responsibilities. We note that there are PBDF employees present at the store daily and they could perform those functions.
3. The rent deferral agreement requires PBDF to provide information to us:

"the Tenant has and will continue to use its best efforts to take advantage of all government programs offering financial relief from the effects of the COVID-19 pandemic, including without limitation, any income tax deferral or reduction, rent assistance, employee wage and benefit subsidies and the like, with a view to ensuring that the Tenant is and remains a financially viable business, and shall keep the Landlord apprised of the Tenant's efforts in this regard."

To date we have not received anything from PBDF. Please provide.

4. For the 2nd and 3rd quarter of 2020 we were required to submit HST payments to the federal government totaling \$266,370.12 notwithstanding that PBDF has not paid us any rent for that period of time. The lease agreement requires PBDF to pay all sales taxes. Sales taxes are defined as including HST "...with respect to rent, this lease, the rental of space pursuant to this lease..." Please provide a cheque in that amount payable to the Buffalo & Fort Erie Public Bridge Authority.

Please return a signed copy of the deferral agreement and respond to the issues raised in this e-mail.

Thank you.

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 905-631-2206

TAB 23

Shea, Patrick

From: Ron Rienas
 Sent: November-13-20 11:41 AM
 To: Greg O'Hara
 Cc: Jim Pearce
 Subject: RE: Peace Bridge - Rent Deferral Agreement

Greg,

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Failure to respond by November 18, 2020 to this e-mail and my earlier e-mail of October 29, 2020 describing how you will address the issues raised in both e-mails will result in the PBA issuing a formal notice of default in the manner prescribed by Article 18.03.

Ron Rienas
 General Manager
 Buffalo & Fort Erie Public Bridge Authority

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

From: Ron Rienas

245

103

Sent: Thursday, October 29, 2020 4:03 PM

To: Greg O'Hara <gohara@dutyfree.ca>

Cc: Jim Pearce <JimP@dutyfree.ca>

Subject: Peace Bridge - Rent Deferral Agreement

Greg,

As the period of the exiting rent deferral is past, we require a new agreement. It is attached. The amortization period has been changed from one year to two years, and the rent deferral date has been extended to December 31, 2020.

A few issues:

1. As per the lease agreement, PBDF is required to be open 24/7. In April you argued that provincial Covid shutdown legislation required you to be closed. That has not been the case since May 11, 2020. While cross border car traffic is restricted to essential only, truck traffic is pretty well back to pre-pandemic levels. Our position is that the store could and should be open, at least partially. I would note that our Duty Free Americas store has remained open.
2. To provide a service to the commercial customers and to avoid unsanitary urination and defecation in the landscaped areas around the store, we requested that the washrooms be opened and PBA staff cleaned them (4X/day, ½ hr/time). As PBA staff is required for upcoming winter control operations we are requesting that PBDF assume these responsibilities. We note that there are PBDF employees present at the store daily and they could perform those functions.
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"the Tenant has and will continue to use its best efforts to take advantage of all government programs offering financial relief from the effects of the COVID-19 pandemic, including without limitation, any income tax deferral or reduction, rent assistance, employee wage and benefit subsidies and the like, with a view to ensuring that the Tenant is and remains a financially viable business, and shall keep the Landlord apprised of the Tenant's efforts in this regard."

To date we have not received anything from PBDF. Please provide.

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Please return a signed copy of the deferral agreement and respond to the issues raised in this e-mail.

Thank you.

Ron Rienas
General Manager
Buffalo & Fort Erie Public Bridge Authority

246

104

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

TAB 24

6.6 Compare Net Economic Return (NER) to the current Duty Free operator and a new operator acquired through Request for Proposal (RFP).

Net Economic Return (NER) is an accounting/real estate term that describes how much an investor can expect to make on an investment over a specified period of time. I have been instructed to analyze the remaining Lease term from January 1, 2024 – October 31, 2031.

In this case, the NER is referring to how much profit the Landlord can expect to make through the leasing of PBDF for the remainder of its current Lease term (October 31, 2031). Therefore, our calculation considers leasing revenue and costs of retaining a new tenant through RFP.

Table 10 illustrates a high-level break down of the NER that the PBA could expect if they were to seek a new operator for the PBDF, and that the operator could expect, for the remainder of the original Lease (October 31, 2031):

	Low	Medium	High	Retaining Current Tenant
Operator Sales Revenue	\$128,049,639	\$144,055,844	\$160,062,049	\$160,062,049
Base	\$13,824,000	\$20,736,000	\$28,800,000	\$32,000,000
Percentage Rent	\$0	\$684,974	\$951,353	\$951,353
Costs to Retain New Tenant (over remaining Lease)	-\$2,333,333	-\$2,876,667	-\$3,893,333	\$0
NER	\$11,490,667	\$18,544,307	\$25,858,019	\$32,951,353

Table 10: NER scenarios for Landlord and tenants through RFP process and current Tenant retention. A full breakdown can be found in [Appendix E](#).

Based on rental rates and costs incurred by the Landlord, replacing the current Tenant through the RFP process would generate between \$11,460,667 - \$25,858,019 as compared to \$32,951,353 through the current operator remaining at PBDF. The current PBDF operator would generate between \$7,093,333 - \$21,460,686 (or 21.5% to 65.13%) more than if the Landlord were to replace the current operator.

Based on my analysis of the quantified NER, the Landlord is materially better off in terms of rent received retaining the current Tenant.

TAB 25



THIS IS EXHIBIT # 3
ON THE EXAMINATION OF:

Ron Ruelas IN

RBC

vs.

Peace Bridge Duty Free

LEASE

THIS LEASE (the "Lease") made as of the 1st day of May, 1995, by and between the Buffalo and Fort Erie Public Bridge Authority, a body OFFICIAL EXAMINER constituting a public benefit corporation created under the laws of the State of New York and the government of Canada and consented to by the United States government, and having an office at Peace Bridge Plaza, Buffalo, New York 14213 (hereinafter called the "LESSOR"), and AMMEX Tax and Duty Free Shops, Inc., a Maryland corporation licensed to do business in the State of New York, having an office at 63 Copps Hill Road, Ridgefield, Connecticut 06877 (hereinafter called the "LESSEE").

WHEREAS, the parties hereto on January 1, 1991, entered into a lease that expires on December 31, 2000; and

WHEREAS, the parties desire to cancel the said previous agreement, and to enter into a new agreement all on the terms and conditions as hereinafter set forth; and

WHEREAS, LESSOR has agreed to allow LESSEE to construct a duty free store on the premises of Peace Bridge Plaza, pursuant to LESSOR's special meeting held January 6, 1995; and

WHEREAS, LESSOR has approved the drawings and plans for the duty free store and parking area; and

WHEREAS, LESSEE will invest a substantial amount of money in the construction of the duty free store;

NOW, THEREFORE, in consideration of these covenants, the parties agree as follows:

1. Letting

As of the commencement of the term of this Lease (as provided in Section 2 below) the Lease dated as of December 1, 1991 between LESSOR and LESSEE shall terminate and cease to be of effect. LESSOR hereby lets to LESSEE and LESSEE hereby hires and takes from LESSOR, the sole and exclusive right to operate a duty free store to be constructed on the demised premises as more particularly described in Exhibit A.

2. Term

The term of this Lease commences as of the date hereof and shall, unless sooner terminated, expire on December 31, 2005. The term of this Lease may be extended as provided in Section 3 below. Each "year" or "lease year" referred to in this Lease is a calendar year; likewise "annual" shall refer to a calendar year.

3. Renewal

Provided that there has been no default by LESSEE under this Lease, LESSEE shall have the option to extend the term of this Lease for an additional 5 year period (the "Renewal Term") on the terms and conditions set forth herein, except that during the Renewal Term, LESSEE shall pay Base Rent (as defined below) and Additional Rent (as defined below) as provided in Section 5 below.

If LESSEE desires to exercise this option, it shall give LESSOR written notice of such intention on or before December 31, 2004, time being of the essence with respect to such date.

4. Exclusivity

LESSOR grants to LESSEE the exclusive right to sell duty free products on the United States Peace Bridge Plaza, as such Plaza may be reconfigured from time to time (the "Peace Bridge Plaza").

5. Rental

All payments of Base Rent and Additional Rent (as defined below) shall be made to LESSOR, without notice or demand, and with no abatement or right of set-off whatsoever, at the address specified in the first paragraph of this Lease.

A. Base Rent

During the term of the Lease, LESSEE agrees to pay LESSOR the following monthly rental (hereinafter referred to as "Base Rent"):

- (a) For the period from the commencement of the term hereof to December 31, 1995 at the rate of \$740,000.00 per annum or \$61,666.67 per month,
- 1.4 (b) For the period from January 1, 1996 to December 31, 1996 at the rate of \$750,000.00 per annum or \$62,500.00 per month,
- 1.3 (c) For the period from January 1, 1997 to December 31, 1997 at the rate of \$760,000.00 per annum or \$63,333.33 per month,
- 1.3 (d) For the period from January 1, 1998 to December 31, 1998 at the rate of \$770,000.00 per annum or \$64,166.67 per month,

- 1.3 (e) For the period from January 1, 1999 to December 31, 1999 at the rate of \$780,000.00 per annum or \$65,000.00 per month, and
- 1.3 (f) For the period from January 1, 2000 to December 31, 2000 at the rate of \$790,000.00 per annum or \$65,833.33 per month.
- 3.8 (g) For the period from January 1, 2001 to December 31, 2001 at the rate of \$820,000 per annum or \$68,333.33 per month.
- 3.1 (h) For the period from January 1, 2002 to December 31, 2002 at the rate of \$850,000 per annum or \$70,833.33 per month.
- 3.6 (i) For the period from January 1, 2003 to December 31, 2003 at the rate of \$880,000 per annum or \$73,333.33 per month.
- 3.4 (j) For the period from January 1, 2004 to December 31, 2004 at the rate of \$910,000 per annum or \$75,833.33 per month.
- 3.3 (k) For the period from January 1, 2005 to December 31, 2005 at the rate of \$940,000 per annum or \$78,333.33 per month.

During the Renewal Term, LESSEE shall pay the following Base Rent:

- (i) For the period from January 1, 2006 to December 31, 2006 at the rate of \$960,000 per annum or \$80,000.00 per month.
- (ii) For the period from January 1, 2007 to December 31, 2007 at the rate of \$980,000 per annum or \$81,666.67 per month.
- (iii) For the period from January 1, 2008 to December 31, 2008 at the rate of \$1,000,000 per annum or \$83,333.33 per month.
- (iv) For the period from January 1, 2009 to December 31, 2009 at the rate of \$1,020,000 per annum or \$85,000.00 per month.
- (v) For the period from January 1, 2010 to December 31, 2010 at the rate of \$1,040,000 per annum or \$86,666.67 per month.

Base Rent shall be payable in advance on the first day of each and every month during the term (and any Renewal Term) of this Lease.

B. Additional Rent

In addition to Base Rent payable during the initial term (and the Renewal Term, if any), LESSEE shall pay additional rent ("Additional Rent") in an amount equal to the difference between (i) the total Base Rent for each year and (ii) a percentage of the gross sales of LESSEE at the demised premises for such year, such percentage to be calculated as follows:

- (a) Sixteen percent (16%) of the first Three Million Dollars (\$3,000,000.00) of all gross sales for such year,
- (b) Nineteen percent (19%) of the next Three Million Dollars (\$3,000,000.00) of all gross sales for such year,
- (c) Twenty-one percent (21%) of the next Two Million Dollars (\$2,000,000.00) of all gross sales for such year,
- (d) Twenty-four percent (24%) of the next Two Million Dollars (\$2,000,000.00) of all gross sales for such year, and
- (e) Twenty-five percent (25%) of all gross sales for such year in excess of Ten Million Dollars (\$10,000,000.00).

Not more than thirty (30) days after each installment of Additional Rent for any given year LESSEE shall submit to LESSOR a statement setting forth the gross sales for such year, certified by a financial officer of LESSEE. Each Lease year shall constitute a separate accounting period. The computation of Additional Rent due for any one Lease year shall be based on the gross sales for that year without reference to or adjustment for the gross sales of any other Lease year.

LESSEE shall keep at its accounting offices, true and complete books and records and all other information necessary in order to determine gross sales on a current daily basis. Upon seven (7) days prior written notice, LESSEE shall make

available for inspection and audit by a representative of LESSOR, at reasonable times during business hours, all such books, records and other information in order to allow LESSOR to verify such statements of gross sales. LESSOR must inspect and audit such records within two years after the date of each annual statement and LESSOR's inspection and audit shall be limited to the period covered by such statement. If any inspection or audit by LESSOR reveals an understatement by LESSEE of gross sales by more than two percent (2%) and such understatements occur twice or more within any five-year period, LESSEE shall pay LESSOR on demand for the cost of each such inspection and audit, as well as five (5) times the amount by which Additional Rent was understated or underpaid for each applicable period. LESSOR shall hold in confidence all sales figures and other information obtained from LESSEE's records and statements.

C. Definition of Gross Sales

For purposes hereof, "gross sales" shall mean the gross receipts of LESSEE or others from all businesses or other activities conducted upon or from the demised premises (and from warehouses or other facilities of LESSEE located within a five-mile radius of the Peace Bridge Plaza), to include, but not be limited to, all amounts received from the sale of goods, wares and merchandise, together with the amount of all orders taken, received or filled at the demised premises, and for services performed; but provided that to the extent that the sales price of merchandise has originally been included in gross sales, there may be deducted from gross sales allowances made for

refunds actually made on merchandise returned, discounts and rebates granted at the point of sale.

D. Net Lease

This Lease is intended to be, and shall be construed as, an absolutely net lease, whereby under all circumstances and conditions (whether now or hereafter existing or within the contemplation of the parties) the Base Rent and Additional Rent shall be an absolutely net return to LESSOR throughout the term hereof (including the Renewal Term, if any), free of any expense, liability, obligation, charge or other deduction whatsoever, with respect to the demised premises and/or the ownership, leasing, operation, management, maintenance, repair, rebuilding, use or occupation thereof, or any portion thereof, or with respect to any interest of LESSOR therein, except as otherwise expressly provided in this Lease.

E. Late Payment

If payment of Base Rent, Additional Rent or any other sum due LESSOR, or any part thereof, shall not be made on or prior to fifteen (15) days of the date when it is due and payable, a late charge of five percent (5%) of the sums overdue shall immediately be due and payable.

6. Building

A. LESSOR grants to LESSEE the right to demolish the existing structure used by LESSEE on the Peace Bridge Plaza and to construct a duty free store with parking on the Peace Bridge Plaza at the location shown on Exhibit A. LESSOR shall

have the right to oversee all aspects of such demolition and construction and to approve in advance all plans and drawings. LESSEE agrees to cause such construction to be completed in a workman-like manner using contractors and materials approved in advance by LESSOR.

B. The building and parking area will be maintained by LESSEE in good and safe condition at all times during the term (and the Renewal Term, if any) of this Lease. The parking area shall be as designated in Exhibit A hereto. LESSEE shall be responsible for the maintenance and repair (to include replacement) of the building, including internal and external, structural and non-structural elements of such building, as well as all mechanical and utility systems and equipment on, and/or servicing, the demised premises.

C. To the extent that the building is portable (the parties contemplate that the building will be portable) as well as any and all trade fixtures and appliances, machinery, tools, equipment, articles or personal property, installed by LESSEE and used by LESSEE in the conduct of its business shall be and shall remain the property of LESSEE and shall be removed by LESSEE upon any termination of the Lease or the surrender of possession by LESSEE, and LESSEE shall, at its expense, repair any damage caused by such removal.

D. LESSEE's use of the parking area shall be subject to all reasonable rules and regulations imposed from time to time by LESSOR. LESSEE shall abide by these rules and regulations and cause its officers, agents and employees to do the same, and use its best efforts to cause its customers to do the same.

E. LESSEE covenants and agrees that it shall not do or allow anything to be done by which the demised premises or any other part of the Peace Bridge Plaza is encumbered by any mechanics lien, any other lien or any notice of an intention to file such a lien. Whenever any such notice is delivered, or lien is filed, purporting to be for labor or materials furnished or to be furnished to or on behalf of LESSEE, LESSEE shall discharge the same within forty-five (45) days after the date of filing, or delivery of notice as the case may be, by bonding or otherwise. LESSOR shall not be liable for any labor or materials furnished or to be furnished to LESSEE and no mechanic's or other liens for any such labor or materials shall attach to or otherwise affect LESSOR's interest in the demised premises or any other part of the Peace Bridge Plaza. LESSEE shall pay promptly when due the entire cost of any work to be done to the demised premises.

7. Use and Early Termination

LESSEE shall use the demised premises solely and exclusively for the sale of "tax and duty free" and gift items, for storage and delivery thereof to persons departing from the United States to Canada on the Peace Bridge. During the full term of this Lease, LESSEE shall continuously operate the store on the demised premises with due diligence and efficiency so as to maximize gross sales, as hereinabove defined, and, without limiting the foregoing, LESSEE shall be open for business at least 24 hours per day, seven days a week (except for Christmas), and shall carry a stock of merchandise of a size, character and quantity as shall be reasonably designed to maximize such gross sales. At no time shall LESSEE cause or permit any waste on the demised

premises or cause or permit any nuisance to exist on the demised premises. If at any time during the term (and the Renewal Term, if any) of this Lease any governmental body shall promulgate laws which make it impossible to carry on a "tax and duty free" business, LESSEE and LESSOR shall each have the right to cancel this Lease effective thirty (30) days after service of a notice of cancellation by registered mail which notice may not be delivered prior to the effectiveness of such legislation.

8. Government Requirements

A. LESSEE shall procure, at its sole cost, from all governmental authorities having jurisdiction over the operations of LESSEE at the demised premises, all licenses, certificates, permits or other authorization which may be necessary for the construction of the building and other improvements on the demised premises and for the conduct of its operations and shall indemnify and hold harmless LESSOR from any and all loss or damage which LESSOR may suffer as a consequence of action taken by governmental authorities having or claiming jurisdiction over the said operations.

B. LESSEE shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to the operations of LESSEE on the demised premises or its occupancy thereof, and if LESSEE is exempt from any such compliance by reason of the demised premises being owned by a public body, LESSEE shall, at the option of LESSEE, nonetheless comply therewith.

9. Rules and Regulations

LESSEE, at all times, shall use its best efforts to assist LESSOR in its objective of safely and effectively facilitating the movement of commercial and passenger traffic across the Peace Bridge and, without limiting the foregoing, LESSEE shall promptly comply with all requests, demands and directives (whether written or oral) made by LESSOR in furtherance of such objective.

10. Indemnity; Insurance; Damage and Destruction

A. LESSEE shall indemnify and hold harmless LESSOR from all injury, loss, claims, costs, liabilities, suits, penalties, demands or damages, including fees and expenses of counsel (collectively, "Claims"), to or with respect to any person or property occasioned by or arising from LESSEE's demolition, construction, maintenance and/or operations at the demised premises or from any other cause at the demised premises. Such Claims shall include, but not be limited to, those for death, personal injury, property damages, breach of contract or regulatory violations. LESSEE shall, at its expense, defend all suits or actions which may be brought against LESSOR or in which LESSOR may be impleaded with others upon any such above mentioned matter or Claim. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon and defense thereof.

B. LESSEE shall furnish, maintain and pay the premiums on a policy or policies of comprehensive general liability insurance and property damage insurance. Such policy or policies shall include products liability coverage and shall cover

LESSEE's operations hereunder and the indemnity obligation of LESSEE under subsection A hereinabove and shall be effective throughout the term of this Lease (including any Renewal Terms or extensions), such policy or policies to include LESSOR as a named insured party. General liability coverage shall have not less than a combined single limit of \$5,000,000.00 and coverage for damage to property shall have a minimum limit of \$100,000.00.

C. At all times during the term of this Lease, LESSEE shall keep the building and improvements on the demised premises insured at full replacement cost for the benefit of LESSOR against loss or damage by risks now or hereafter embraced by "All Risks" coverage and against such other risks as LESSOR from time to time may designate, including, without limitation, business or rent interruption insurance, all in amounts sufficient to prevent LESSOR from becoming a co-insurer under the terms of the applicable policies. Such policies shall waive subrogation against LESSOR. Such policies shall be primary and LESSEE shall not carry any additional insurance which shall have the effect of reducing the insurance coverage for the benefit of LESSOR or causing LESSOR to become a co-insurer.

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D. LESSEE shall provide LESSOR with verification of the required coverages, sending to LESSOR current certificates of insurance detailing the coverages and the inclusion of LESSOR as an insured party, such certificates to be given to LESSOR no later than the commencement of construction by LESSEE on the demised premises and thereafter no later than thirty (30) days before the expiration of any such policy. The insurance shall be issued by insurers of recognized responsibility, duly licensed in New York State and acceptable to LESSOR in its

reasonable judgment. All such policies shall provide that they cannot be canceled or materially changed unless and until 30-days prior written notice has been received by LESSOR at the address of record.

E. In the event of damage or destruction to the demised premises, within 120 days of the event causing such damage or destruction LESSEE shall, at its sole cost, rebuild the building, substitute a new building (if the building is portable) or make any repairs necessary to restore the demised premises to the condition thereof existing immediately before such damage or destruction.. Rent shall not abate by reason of such damage or destruction or the repair thereof.

11. Signs

LESSEE shall not erect, maintain or display any signs and/or temporary or other banners or any advertising at or on (or otherwise visible from) the exterior of the building on the demised premises, or elsewhere on the Peace Bridge Plaza, without the consent of LESSOR (which shall not be unreasonably withheld), except that LESSOR consents that LESSEE may erect and install appropriate signs bearing the AMMEX name/corporate logo, the size, type and location of which shall be subject to LESSOR's consent (which shall not be unreasonably withheld). In the event that LESSEE desires to erect a sign that contains the words "Peace Bridge" LESSEE shall obtain the prior consent of LESSOR, which shall not be unreasonably withheld, LESSEE shall repair all damage caused by installation or removal of any signs.

12. Liability of Lessor

LESSOR shall not be responsible under any circumstances for the property of LESSEE or the contents of, or merchandise stored in, the building of LESSOR or elsewhere on the demised premises or Peace Bridge Plaza.

13. Utilities

LESSEE shall make the necessary arrangements for the connection of electricity, gas, water, sewer and telephone connections, as the case may be, in the demised premises at its sole cost and expense and shall provide for the installation of separate meters, as required, for such utilities. LESSEE shall restore to original condition any portion of the demised premises (or other portions of the Peace Bridge Plaza) that may be damaged during the construction process and installation of utilities.

14. Merchandise Delivery

Merchandise of LESSEE shall be delivered to the demised premises during off-peak traffic hours, such delivery to be made by a truck into the storage area with access being provided at the direction of LESSOR.

15. Maintenance and Storage

LESSEE shall confine the storage of all merchandise, shelves, displays, articles and packaging to the interior areas of the building on the demised premises and the van type delivery truck. LESSEE shall keep such area and all of the demised premises (interior and exterior) clean, neat, safe and free of hazard and fire danger at all times.

LESSEE shall be responsible for the maintenance of same. LESSOR shall provide normal snow plowing service for the Peace Bridge Plaza and LESSEE shall be responsible for hand shoveling on the demised premises. In the event that the Authority, in its sole and absolute discretion, hauls snow off the Peace Bridge Plaza, including the demised premises, LESSEE shall pay a pro rata share of the cost.

16. Conflict of Laws

Nothing in this Lease shall contravene any state or federal laws pertaining to the operations of or the activities of LESSOR, and LESSEE acknowledges that this Lease and LESSOR's obligations and liabilities hereunder as well as LESSEE's rights and remedies hereunder are subject to such laws.

17. Assignment or Sublease

A. LESSEE shall not directly or indirectly sublet the demised premises or any part thereof, or assign, sell, convey, transfer, mortgage or pledge this Lease, without the express prior written approval of LESSOR in each instance. Any transfer of stock of LESSEE (in one or more steps, and whether or not over a period of time) that has the effect of changing the voting control of the stock of LESSEE shall for all purposes hereunder constitute an assignment of this Lease.

B. Notwithstanding the foregoing, if LESSEE is not in default hereunder, LESSEE shall have the right to assign this Lease to a parent or subsidiary corporation which has substantially the same ownership and common control. No assignment or

subletting, whether or not permitted or consented to, shall relieve LESSEE of its obligations or liabilities hereunder, either retrospectively or prospectively.

18. Default

A. In the event that:

(i) LESSEE shall fail to pay Base Rent, Additional Rent or other sum due under this Lease within ten (10) days after the same shall become due; or

(ii) LESSEE shall fail to keep or perform any of the other terms, conditions or covenants of the Lease to be kept or performed by LESSEE for more than twenty (20) days after notice of such failure shall have been given to LESSEE; or

(iii) LESSEE shall vacate or abandon the demised premises or fail to operate its business in the demised premises for ten (10) consecutive days (other than due to activity of the LESSOR); or

(iv) LESSEE shall make an assignment for the benefit of creditors or file a voluntary petition in bankruptcy or be adjudicated a bankrupt by any court or voluntarily or involuntarily take the benefit of any insolvency act or be dissolved thereunder, or

(v) A receiver or trustee shall be appointed for LESSEE's property; then, in any such event, LESSEE shall be in default under this Lease, and the LESSOR, besides other rights or remedies it may have, shall have the right to (a) terminate this Lease upon the expiration of ten(10) days after written notice of such intent is given to LESSEE, in which event the term hereof shall expire and terminate with the same force and effect as though the date set forth in said notice were the date

originally set forth herein and fixed for the expiration of the term hereof, and/or (b) re-enter the demised premises either by force or otherwise, dispossess LESSEE and/or other occupants of the demised premises, remove all property from the demised premises and store the same in a public warehouse or elsewhere at the cost of, and for the account of, LESSEE, and hold the demised premises as hereinafter provided, without notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby, LESSEE hereby agreeing that, by itself, no such re-entry or taking possession of the demised premises by LESSOR shall be construed as an election on LESSOR's part to terminate this Lease, such right however, being continuously reserved by LESSOR.

B. In the event LESSOR elects to re-enter the demised premises, LESSOR may, but shall not be obligated to, make such alterations and repairs as it may deem necessary in order to re-let the demised premises, and may re-let the demised premises or any part thereof for such term or terms (which may extend beyond the term of this Lease) and at such rental and upon such other terms and conditions as LESSOR in its sole discretion may deem advisable. Upon each such re-letting all rentals and other sums received by LESSOR from such re-letting shall be applied, first, to the payment of any indebtedness other than of Base Rent, Additional Rent or other charge due hereunder from LESSEE to LESSOR; second, to the payment of any costs and expenses of such re-letting, including reasonable brokerage fees and attorneys' fees and payment of costs of such alterations and repairs; third, to the payment of Base Rent, Additional Rent and other charges due and unpaid hereunder; and the residue, if any, shall be held by LESSOR and applied in payment of future Base Rent, Additional

Rent and other charges as the same may become due and payable hereunder. If such rentals and other sums received by LESSOR from such re-letting during any month be less than that to be paid during that month by LESSEE hereunder, LESSEE shall pay such deficiency to LESSOR on demand. If such rentals and sums are more, LESSEE shall have no right to the excess. Notwithstanding any such re-entry by LESSOR, if this Lease has not theretofore been terminated, LESSOR may at any time thereafter elect to terminate this Lease for such previous default.

C. Should LESSOR at any time terminate this Lease for any default, in addition to any other remedies it may have, LESSOR may recover from LESSEE all damages LESSOR may incur by reason of such default, including, without limitation, the cost of recovering the demised premises, reasonable attorneys' fees, and including the worth at the time of such termination of the excess, if any, of the amount of Base Rent, Additional Rent and other charges reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the demised premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from LESSEE to LESSOR. In determining the Additional Rent that would be payable by LESSEE hereunder, subsequent to default, the Additional Rent for each year of the unexpired term shall be equal to the greatest amount of Additional Rent payable by LESSEE in any prior year. The failure or refusal of LESSOR to re-let the demised premises shall not reduce or otherwise affect LESSEE's liability hereunder and LESSEE shall not be obligated to re-let. The terms "entry" and "re-entry" are not limited to their technical meanings.

D. LESSOR and LESSEE hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of LESSOR and LESSEE, LESSEE's use or occupancy of the demised premises, and any emergency statutory or any other statutory remedy. LESSEE shall not interpose any counterclaim in a summary proceeding or other action based on termination or holdover.

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E. Mention in this Lease of any particular remedy shall not preclude LESSOR from any other remedy, in law or in equity. LESSEE hereby expressly waives any right of redemption granted by or under any present or future law in the event of LESSEE being evicted or dispossessed for any cause, or in the event of LESSOR obtaining possession of the demised premises, by reason of the violation by LESSEE of any of the covenants and conditions of this Lease or otherwise.

F. If LESSEE become the debtor in a case under the Bankruptcy Code (11 U.S.C. 101 et. seq.), and if LESSOR's right to terminate this Lease shall be subject to the rights of the Trustee therein to assume or assign this Lease, then, to the greatest extent permitted by law, the parties hereto agree that such Trustee shall not have the right to assume or assign this Lease unless such Trustee (a) promptly cures all defaults (declared and undeclared) under this Lease; (b) promptly compensates LESSOR for monetary damages incurred as a result of such default, and (c) provides "adequate insurance of future performance", which shall mean, in addition to any other requirements of 11 U.S.C. Section 365(b)(3), that all of the following have been satisfied: (i) in addition to all rents and other sums payable under this Lease, such

Trustee shall establish with LESSOR a security deposit equal to three (3) months' rent (to include Base Rent, Additional Rent and other charges hereunder); (ii) such Trustee shall maintain said security deposit in said amount whenever the same is reduced below said amount; (iii) such Trustee has agreed that the business in the demised premises shall be conducted in a first-class manner, and (iv) the use limitations of the demised premises, as hereinabove set forth, shall not change. If all of the foregoing are not satisfied, LESSEE and such Trustee shall be deemed not to have provided LESSOR with adequate assurance of future performance of this Lease.

19. Relocation of LESSEE Premises

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LESSEE acknowledges that the Peace Bridge Plaza may be substantially re-configured and re-built during the term (including any Renewal Term) of this Lease. LESSOR shall have the right upon written notice, delivered at least one hundred and twenty (120) days in advance of the proposed moving date specified in the notice, to move LESSEE to different premises on property owned or controlled by LESSOR. LESSEE shall pay any and all expenses and costs arising from such relocation, including without limitation, any and all moving expenses and the cost of building a new building acceptable to LESSOR on the Peace Bridge Plaza for making duty-free sales. All such costs, or a reasonable estimate thereof, shall be prepared by LESSEE and delivered to LESSOR within thirty (30) days after written demand therefor is given to LESSEE by LESSOR. LESSOR shall have no liability to LESSEE for consequential damages or other damages or loss of income in the event that LESSEE is unable to operate its business during construction or moving periods or in any other event with

respect to such construction or moving. Base Rent shall not be abated for the period during which LESSEE is unable to operate its business during such relocation.

20. No Brokers

LESSEE warrants and represents that LESSEE has not had any dealings with any realtor, broker or agent, in connection with this Lease or the negotiation thereof. LESSEE agrees to pay, and to hold LESSOR harmless from, any cost, expense (including reasonable costs of suit and attorneys fees) or liability for any compensation, commission or charges claimed by any realtor, broker or agent.

21. Liability of LESSOR

Anything in this Lease to the contrary notwithstanding, LESSEE agrees LESSOR shall have no liability to LESSEE under or with respect to this Lease and that LESSEE shall look solely to the estate and property of LESSOR in the demised premises (and subject to any prior rights therein), for the collection of any judgment (or other judicial process) requiring the payment of money by LESSOR in the event of any default or breach by LESSOR with respect to any of the terms, covenants and conditions of this Lease to be observed and/or performed by LESSOR and no other assets of LESSOR shall be subject to levy, execution or other procedures for the satisfaction of LESSEE's remedies against LESSOR and/or with respect to this Lease and/or the demised premises.

22. Traffic

In the event that LESSOR, after consultation with LESSEE, determines that additional traffic personnel are required as a result of the operations of LESSEE, LESSOR shall add such additional personnel as may be required, and LESSEE and LESSOR each shall pay one half of the cost of such additional personnel.

23. Entire Agreement; Governing Law; Severability

This Lease shall be binding upon the successors and assigns of LESSOR and LESSEE and shall inure to the benefit of the successors and permitted assigns of the LESSEE and the successors and assigns of the LESSOR and cannot be changed or terminated orally. The Lease shall be governed by the laws of the State of New York. In the event that any term, provision, paragraph, or article of this Lease is or is declared illegal, void or unenforceable, same shall not affect or impair the other terms, provisions, paragraphs or articles of this Lease. The doctrine of severability shall be applied. The parties do not intend by this statement to imply the illegality, voidness or unenforceability of any term, provision, paragraph or article of this agreement. All references to dollar amounts herein are in United States dollars.

23. Notices

Any notice under or with respect to this Lease shall be in writing and shall be personally delivered or sent by certified or registered mail, return receipt requested, or by Federal Express Service or other overnight courier service, to:

if to LESSOR:

Buffalo and Fort Erie Public Bridge
Authority
Peace Bridge Plaza
Buffalo, New York 14213

if to LESSEE:

AMMEX Tax and Duty Free Shops, Inc.
63 Copps Hill Road
Ridgefield, Connecticut 06877

Any such notice shall be deemed given upon personal delivery or, if mailed as provided above, effective two (2) business days after such mailing; provided, however, any notice mailed to or from Canada shall be deemed given only upon actual receipt. Any notice sent by Federal Express or other overnight courier service shall be deemed given on the first business day after timely delivery to Federal Express or such other overnight courier service for next-day delivery. Any notice may be given by LESSOR's attorney on behalf of LESSOR and by LESSEE's attorney on behalf of LESSEE.

24. No Partnership

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Additional Rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of lessor and lessee.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of
the day and year first above written.

BUFFALO AND FORT ERIE
PUBLIC BRIDGE AUTHORITY

By: RLL

AMMEX TAX AND DUTY FREE SHOPS, INC.

By: SA Z
Executive Vice President & COO

ATTEST:

Michael R. Meyer

ATTEST:

J. Coyne

FIRST AMENDMENT TO LEASE
BETWEEN
BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
AND
AMMEX TAX AND DUTY FREE SHOPS, INC.

This First Amendment to Lease (this "Amendment") is dated as of the 23 day of April, 2004 and amends the Lease dated May 1, 1995 (the "Lease") between the Buffalo and Fort Erie Public Bridge Authority (as "Lessor") and AMMEX Tax and Duty Free Shops, Inc. (as "Lessee").

In consideration of the covenants and agreements contained herein, the parties agree as follows.

1. Lessee accepts all of the rights and obligations of AMMEX Tax and Duty Free Shops, Inc. under the Lease and hereunder. Capitalized terms used herein and not defined herein shall have the respective meanings given them in the Lease. In the event of any conflict between the terms and conditions of this Amendment and the terms and conditions of the Lease, this Amendment shall be controlling.

2. Section 1 of the Lease (**Letting**) is amended by deleting the second sentence of Section 1 and replacing it with the following:

Lessor hereby lets to Lessee and Lessee hereby hires and takes from Lessor the exclusive right to operate a duty free store as follows:

(a) As of the date hereof, the demised premises as described in Exhibit A of the Lease (the "Current Store"); and

(b) As of the First Relocation Date (as defined in Section 5A(iv) of this Amendment) at the premises to be constructed at such location as is determined by the Lessor, after consultation with Lessee, in accordance with a design to reconfigure the U.S. Peace Bridge Plaza prior to the design and construction of a Capacity Expansion Project (as defined in paragraph (c) below)(the "Transition Store"); and

(c) As of the Second Relocation Date (as defined in Section 5A(iv) of this Amendment) at such location as is

7

determined by the Lessor, after consultation with Lessee, in accordance with the design of the U.S. Peace Bridge Plaza that results from the Record of Decision adopted by the Federal Highway Administration in accordance with the Bi-National Environmental Review process that is in process as of the date hereof or such other process followed by Lessor that results in an expansion of the capacity of the current Peace Bridge and/or the current Peace Bridge Plaza (the "Capacity Expansion Project"), such store that is designed and built by Lessee in conjunction with the Capacity Expansion Project being referred to herein as the "Permanent Store."

(d) In connection with each re-location of the duty free store operated by Lessee, the term "demised premises" under the Lease, as amended hereby, shall refer to such locations within the Peace Bridge Plaza as Lessee shall have operations (including demolition operations, construction operations and/or operation of a duty-free store). For example, if Lessee is demolishing the Transition Store while simultaneously constructing the Permanent Store, the "demised premises" shall refer to both the site of the Transition Store (under demolition) and the site of the Permanent Store (under construction). Upon completion of the demolition work, the site of the former Transition Store shall be released from the "demised premises" and the term, "demised premises" shall then refer only to the site of the Permanent Store.

3. Section 3 of the Lease (**Renewal**) is amended by deleting Section 3 and replacing it with the following.

(a) Provided that there has been no default by Lessee beyond applicable grace and cure periods under the Lease, as amended, Lessee shall have the option to extend the term of this Lease for up to three (3) successive renewal periods of five years each (each an "Option Period"). Upon exercise of each such option the applicable Option Period shall become part of the term of the Lease. For clarity, the term of the Lease terminates on December 31, 2005 (as provided in Section 2 of the Lease), the first Option Period shall extend through December 31, 2010, the second Option Period shall extend through December 31, 2015, and the third Option Period shall extend through December 31, 2020.

(b) During the Option Periods, Lessee shall pay Base Rent and Additional Rent as provided in Section 5 of the Lease (as amended hereby).

(c) If Lessee desires to exercise its options as provided in this section, it shall give Lessor written notice of such intention on or before December 31, 2004, in the case of the first Option Period, and December 31, 2009, in the case of the second Option Period, and December 31, 2014 in the case of the third Option Period.

(d) In addition, in the event that Lessor requires Lessee to demolish the Transition Store and construct the Permanent Store, as contemplated in Section 5A(ii) of this Amendment (with the result that Lessee demolishes and builds two stores in addition to the Current Store during the term of the Lease), Lessee shall have the right to extend the term of this Lease for a fourth option period of ten (10) years which (assuming Lessee elects to extend the term for both the first Option Period, the second Option Period, and the third Option Period) would terminate on December 31, 2030 (the "Fourth Option Period").

(e) Wherever the term "Renewal Term" appears in the Lease, it shall refer to the Option Periods as defined in this Amendment.

(f) Lessor shall have no liability to Lessee for consequential damages or other damages or loss of income in the event that Lessee is unable to operate its business during the demolition, construction and moving periods contemplated herein or in any other event with respect to such demolition, construction or moving.

4. Section 5 of the Lease (**Rental**) is amended by deleting Section "5 A" of the Lease and replacing it with the following.

All payments of Base Rent and Additional Rent shall be made to Lessor, without notice or demand, and with no abatement or right of set-off whatsoever, at the address specified in the first paragraph of the Lease.

A. Base Rent

During the term of the Lease and any option periods as provided for in Section 3, Lessee agrees to pay Lessor the following monthly rental as "Base Rent".

11

The Base Rent shall be equal to fifty percent (50%) of the aggregate of the Base Rent and the Additional Rent paid by Lessee to the Lessor in the immediately preceding year of the lease, payable in twelve (12) equal monthly installments.

Base Rent shall be payable in advance on the first day of each and every month during the term (and the Option Periods) of this Lease. Base Rent shall not be abated for any period during which Lessee is unable to operate its business during any relocation of its store(s) contemplated in this Amendment.

Further, Section B of Section 5 of the Lease (**Additional Rent**) shall be amended by adding the following provision at the end of Section B.

In addition to the reports and certificates required to be submitted by Lessee to Lessor specified in this Section B, and notwithstanding anything to the contrary in the Lease, Lessee shall provide to Lessor by the 7th day of each month a monthly statement of the preceding month's gross sales certified by a financial officer of Lessee. Such reports shall also contain transaction counts and bus counts and any other similar financial or statistical information which Lessee may have available to it and which may be reasonably provided to Lessor in order to enable Lessor to verify and track Lessee's gross sales information. Failure of Lessee to comply with the provisions of this section within seven (7) days after Lessee's receipt of written notice thereof, at the option of Lessor, shall constitute a default under the Lease and Lessor shall be entitled to exercise all of its rights and remedies provided in the Lease, as amended. The obligations of Lessee under this section shall survive termination of the Lease.

The Lessee shall furnish in writing to the Lessor within thirty (30) days of the end of each year of this Lease and any renewal thereof, a gross sales statement certified by the Chief Financial Officer of Lessee, along with the payment for any and all Additional Rent due. In addition, the Lessee shall furnish in writing to the Lessor within one hundred twenty (120) days of the end of each year of this Lease and any renewal thereof, a statement of the Lessee's gross sales prepared and verified by an independent auditor of the Lessee in accordance with generally accepted auditing standards. Failure of Lessee to comply with the provisions of this section within seven (7) days after Lessee's receipt of written notice thereof, at the option of Lessor, shall constitute a default under the Lease and Lessor shall be entitled to exercise all of its rights and remedies provided in the Lease, as amended. The obligations of Lessee under this section shall survive termination of the Lease.

5. Section 6 of the Lease (**Building**) is amended by deleting Section "A" and replacing it with the following

A. Construction of Stores

(i) At any time during the term of the Lease (including all applicable Option Periods), upon written request of Lessor, Lessee shall commence construction of the Transition Store (as defined in Section 2 of this Amendment) and/or demolish the Current Store (as defined in Section 2 of this Amendment). Upon making such request, such construction and/or demolition shall become a requirement of Lessee under the Lease. Lessee shall promptly comply with such requests of Lessor. Lessee's construction of the Transition Store shall be accomplished in six months or less (interior finishing work may take longer) following such request and Lessor's approval of all plans and drawings in connection therewith. Lessor shall have the right to oversee all aspects of such demolition and construction and to approve in advance all plans and drawings, including all aesthetic aspects of the external appearance of the building and signage. Lessor may appoint a construction manager, in Lessor's sole discretion and at its sole cost and expense, to oversee such demolition and construction and Lessee shall submit all plans and drawings to such construction manager. Lessee shall make best efforts to complete such demolition within six (6) weeks of the date on which the Current Store is vacated. It shall not, however, be considered a default under this Lease if such demolition is not completed within such six (6) weeks time frame provided that Lessee is diligently pursuing such demolition. For purposes hereof, "diligently pursuing such demolition" may include using night shifts and overtime shifts in order to accommodate traffic re-routing by and construction requirements of Lessor. Lessee agrees that such demolition shall be undertaken so as to provide Lessor with a clean site (demolition of the building, removal of debris, capping utilities, subgrading, cutting concrete foundations to approximately two (2) feet below grade and filling with material to be determined by the Lessor); provided that Lessee shall not be obligated to (a) demolish or remove any improvements not made by or on behalf of Lessee, or (b) remediate, remove, abate or treat any contamination caused by Hazardous Materials (as defined below), unless such Hazardous Materials were introduced by Lessee. Lessee agrees to cause such construction to be completed in a workman-like manner using contractors and materials reasonably approved in advance by Lessor or its construction manager. Lessee shall undertake the demolition of the Current Store and construction of the Transition Store in accordance with applicable City of Buffalo building code requirements, which Lessor, as an international compact entity, will comply with in this instance.

Upon completion of construction of the Transition Store, Lessee shall convey to Lessor all right title and interest to such Transition Store and Lessor shall be the fee title owner of such improvements in consideration of \$100.00. In the event that the parties neglect to execute a formal assignment evidencing such transfer of title to the improvements, such transfer shall be deemed to have been

effected as of the first day that Lessee commences operations in the Transition Store. Upon completion of construction of the Transition Store, Lessee shall determine the total cost of such construction. Lessee shall submit to Lessor a statement of the total cost of such construction, together with supporting documentation which will enable Lessor to substantially verify such computation. If necessary, the parties shall meet in order to discuss any disagreements with respect to the computation of such total cost. The parties shall agree in writing upon the amount of such total cost. This amount shall be used for purposes of reimbursement (if any) by Lessor pursuant to paragraph (vi) below.

(ii) At any time during the term of the Lease (including all applicable Option Periods), upon written request of Lessor, Lessee shall commence construction of the Permanent Store (as defined in Section 2 of this Amendment) and/or demolish the Transition Store (as defined in Section 2 of this Amendment). Upon making such request, such construction and/or demolition shall become a requirement of Lessee under the Lease. Lessee shall promptly comply with such requests of Lessor. Lessee's construction of the Permanent Store shall be accomplished in six months or less (interior finishing work may take longer) following such request and Lessor's approval of all plans and drawings in connection therewith. Lessor shall have the right to oversee all aspects of such demolition and construction and to approve in advance all plans and drawings, including all aesthetic aspects of the external appearance of the building and signage. Lessor may appoint a construction manager, in Lessor's sole discretion and at its sole cost and expense, to oversee such demolition and construction and Lessee shall submit all plans and drawings to such construction manager. Lessee agrees that such demolition shall be undertaken so as to provide Lessor with a clean site; provided that Lessee shall not be obligated to (a) demolish or remove any improvements not made by or on behalf of Lessee, or (b) remediate, remove, abate or treat any contamination caused by hazardous materials, unless such hazardous materials were introduced into the demolition site by Lessee. Lessee shall make best efforts to complete such demolition within six (6) weeks of the date on which the Transition Store is vacated. It shall not, however, be considered a default under this Lease if such demolition is not completed within such six (6) week time frame provided that Lessee is diligently pursuing such demolition. For purposes hereof, "diligently pursuing such demolition" may include using night shifts and overtime shifts in order to accommodate traffic re-routing by and construction requirements of Lessor. Lessee agrees to cause such construction to be completed in a workman-like manner using contractors and materials reasonably approved in advance by Lessor or its construction manager. Lessee shall undertake the demolition of the Transition Store and construction of the Permanent Store in accordance with applicable City of Buffalo building code requirements which Lessor, as an international compact entity, will comply with in this instance. In the event that a Transition Store has not been constructed prior to implementation of the Capacity Expansion Project, the foregoing references to a "Transition Store" in this paragraph shall apply to the Current Store (ie: Lessee shall demolish the Current Store and construct the Permanent Store).

Upon completion of construction of the Permanent Store, Lessee shall convey to Lessor all right title and interest to such Permanent Store and Lessor shall be the fee title owner of such improvements in consideration of \$100.00. In the event that the parties neglect to execute a formal assignment evidencing such transfer of title to the improvements, such transfer shall be deemed to have been effected as of the first day that Lessee commences operations in the Permanent Store.

(iii) In each case of demolition and construction referred to in paragraphs (i) and (ii) above, Lessor shall exercise reasonable discretion in approving plans and drawings of Lessee and shall not unreasonably withhold or delay its consent or comments. Lessee shall at all times comply with the requirements of Lessor and its construction manager in implementing such demolition and construction. Lessee's demolition of the Current Store and, if applicable, the Transition Store, shall be accomplished in six weeks or less following the opening of the Transition Store and Permanent Store, as applicable.

(iv) The term, "First Relocation Date," shall refer to the date on which demolition of the Current Store or construction of the Transition Store (whichever is first) is required to begin pursuant to the written request of Lessor. The term, "Second Relocation Date," shall refer to the date on which demolition of the Transition Store or the Current Store (as the case may be), or construction of the Permanent Store (whichever is first), is required to begin pursuant to the written request of Lessor. The parties anticipate that in each case Lessee will undertake construction of the new store prior to demolition of the then current store. If necessary, during each such demolition and construction period, the parties may endeavor to have temporary store facilities in operation and to take such further steps as are reasonably necessary to minimize any interruption in providing duty free goods to customers using the Peace Bridge.

(v) In each case of demolition and construction referred to in paragraphs (i) and (ii) above, Lessee shall bear the entire cost of all aspects of such demolition and construction, except as provided in paragraph (vi) below.

(vi) Lessor shall reimburse Lessee for a portion of the total cost of the construction of the Transition Store based upon the year in which the "Second Relocation Date" occurs. The portion of such cost to be reimbursed by Lessor shall be as follows:

Year in Which Relocation Date Occurs	Percentage Reimbursed
2010	25%
2011	20%
2012	15%
2013	10%
2014	5%

With respect to each relocation of Lessee's store(s) contemplated in this Section 5, Lessee shall bear all of its moving costs.

(vii) In the case of each of the Transition Store and the Permanent Store, such Stores shall be constructed so as to: (a) provide adequate public restrooms for the anticipated number of travelers using the Peace Bridge, including persons who may not be patrons of the Store, (b) comport with aesthetic considerations of Lessor, including reasonable considerations articulated by neighborhood groups based in the area surrounding the Peace Bridge, (c) provide enclosed areas for dumpsters or other waste collection facilities and (d) comport with the overall plans and designs for the respective plaza configurations in which the respective Transition Store and Permanent Store will be contained.

(viii) In addition to the demolition and construction contemplated above, any alterations, improvements or additions to the demised premises, from time to time, must be approved by Lessor in advance. Notwithstanding the foregoing, the Lessee may, without having to obtain Lessor's prior approval, make interior alterations or improvements which are not of a structural nature nor materially affecting the base building systems where the building is located, provided same are completed in a good and workmanlike manner and in conformity with all laws, ordinances and regulations of public authorities having jurisdiction. Lessee shall provide Lessor with written notice of any such alterations, improvements or additions at least seven (7) days prior to the commencement of any such work, together with a detailed description of the nature and extent of such alterations, improvements and/or additions including any and all plans, sketches or drawings that are available.

(ix) In the absence of a request of Lessor to Lessee, as provided in paragraphs 5A(i) and/or 5A(ii) above, Lessee shall not be required to relocate its duty free store. The parties agree that the circumstances described in paragraphs 5A(i) and/or 5A(ii) above represent the parties' best efforts to anticipate the relocation requirements and plaza reconfiguration steps anticipated by Lessor and the parties agree to cooperate to accommodate changes in such requirements if actual circumstances are different from those currently anticipated.

6. Section 10 of the Lease (**Indemnity; Insurance; Damage and Destruction**) is amended by adding to Section 10A of the Lease the indemnification requirements set forth in Exhibit A to this Amendment.

Section 10 of the Lease is further amended by deleting the last sentence of paragraph B and replacing it with the following:

General liability coverage shall have not less than a combined single limit of \$5,000,000, and damage to property shall have a minimum limit of \$500,000 with a per claim deductible of \$25,000. Lessee's insurance may be maintained by

Lessee under a blanket or umbrella policy covering the Premises as well as other premises of Lessee.

In addition, with respect to Paragraph D of Section 10 of the Lease there shall be added the following:

Lessee also shall provide Lessor with verification of the required coverages, as described herein and in Exhibit A to this Amendment, no later than the commencement by Lessee of each demolition and/or construction (whichever comes first) following the First Relocation Date and following the Second Relocation Date. By their terms, such policies shall not be terminable or cancelled without thirty (30) days' prior written notice to Lessor.

7. Section 11 of the Lease (**Sigs**) is amended by adding the following:

At any time Lessor may object to the size, content or aesthetics of any sign erected or displayed by Lessee, in which case Lessor and Lessee shall meet in order to discuss mitigating the objectionable aspect of such sign(s) (if possible). In the event that the parties are unable to agree upon how to mitigate the objectionable aspect on any such sign(s), Lessor in its sole discretion (which may be unreasonable) may require the removal of any sign(s) within ten (10) days of its written request. Notwithstanding the foregoing, Lessee may utilize any sign, decoration, lettering or advertising matter within the interior of the Premises on a temporary basis to advertise special sales or promotional events without Lessor's approval, provided that such temporary signs are professionally made and in good taste.

8. Section 16 of the Lease (**Conflict of Laws**) is amended by adding the following provision.

- (a) Governing Law. The Lease, as amended hereby, shall be construed in accordance with, and governed by, the laws of the State of New York applicable to contracts made and to be performed wholly within the State of New York.
- (b) Submission to Jurisdiction; Service of Process. The parties hereto hereby irrevocably submit to the jurisdiction of the state courts of the State of New York in Erie County and to the jurisdiction of the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of or based upon the Lease, as amended hereby, or the subject matter of the Lease. The parties hereto, to the extent permitted by applicable law, hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding brought in the above-named courts, any claim that it is not subject personally to the jurisdiction of such courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue

of the suit, action or proceeding is improper or that the Lease or the subject matter of the Lease may not be enforced in or by such court. Each of the parties hereto hereby consent to service of process by mail, at its address to which notices are to be given to it pursuant hereto.

9. Section 19 of the Lease is deleted.

10. Lessee shall pay, or reimburse Lessor for payment of, any taxes or payments in lieu of taxes to the City of Buffalo, the Niagara Frontier Transportation Authority (or any successor thereto), the County of Erie, the State of New York and/or any other taxing authority charged to Lessor which are based upon or derived from rental income received by Lessor under the Lease, as amended hereby. As of the date of this Amendment, no such charges exist and payments currently made by Lessor to the City of Buffalo and the Niagara Frontier Transportation Authority are not considered by Lessor to be based upon or derived from rental income received by Lessor under the Lease, as amended hereby.

Further, should Lessee's business conducted at the demised premises be subject to taxation (including without limitation sales tax, use tax, value added tax upon Lessee's business or upon goods sold by Lessee (including any and all taxes and/or fees levied on goods sold by Lessee before Lessee's having accepted delivery or taken possession of such goods at the demised premises), governmental fees or other assessment by a government or governmental agency at any time during the Term of the Lease (including all Option Periods), any and all such taxes, fees or other assessments shall be the responsibility of Lessee and Lessee shall promptly reimburse Lessor for any payments made by Lessor arising from the imposition of any taxes, fees or other assessments upon Lessee's business.

Lessee shall have the right to contest or review the imposition of any of the foregoing taxes, fees or assessment by legal proceedings or in such manner as Lessee, in its opinion, shall deem advisable (which proceedings or other steps taken by Lessee shall be conducted diligently). No such contest shall defer or suspend Lessee's obligation to pay the foregoing taxes, fees or assessments as herein provided pending the contest (which amounts may be paid into an escrow as agreed upon by Lessor and Lessee, if appropriate, during the pendency of such proceedings).

Lessee, upon request by Lessor, will promptly exhibit to Lessor all paid bills for taxes, fees or assessments (as contemplated herein) payable during the preceding twelve (12) months.

11. (a) For purposes of this Lease, "Hazardous Materials" means any explosives, radioactive materials, hazardous wastes, or hazardous substances, including without limitation substances defined as "hazardous substances" in the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. 9601-9657; the Hazardous Materials Transportation Act of 1975, 449 U.S.C. 1801-1812; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.

6901-6987; or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials, waste, including infectious waste, or substances now or at anytime hereafter in effect (collectively, "Hazardous Materials Laws").

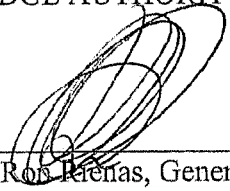
(b) Lessee will not cause or permit the storage, use, generation, or disposition of any Hazardous Materials in, on, or about the demised premises by Lessee, its agents, employees, or contractors. Lessee will not permit the demised premises to be used or operated in a manner that may cause the demised premises or any part of the Peace Bridge Plaza to be contaminated by any Hazardous Materials in violation of any Hazardous Materials Laws. Lessee will immediately advise Lessor in writing of (i) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed, or threatened pursuant to any Hazardous Materials Laws relating to any Hazardous Materials affecting the demised premises and (ii) all claims made or threatened by any third party against Lessee, Lessor, or the demised premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials on or about the demised premises. Without Lessor's prior written consent, Lessee will not take any remedial action or enter into any agreements or settlements in response to the presence of any Hazardous Materials in, on or about the demised premises or the Peace Bridge Plaza.

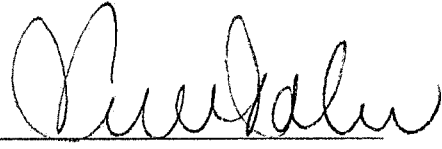
(c) Lessee will be solely responsible for and will defend, indemnify and hold Lessor, its agents, and employees harmless from and against all claims, costs and liabilities, including attorney's fees and costs, arising out of or in connection with Lessee's breach of its obligations in this Section. To the extent the Hazardous Materials were introduced by Lessee, Lessee will be solely responsible for and will defend, indemnify, and hold Lessor, its agents, and employees harmless from and against any and all claims, costs, and liabilities, including attorney's fees and costs, arising out of or in connection with the removal, cleanup, and restoration work and materials necessary to return the demised premises and any other property of whatever nature located at the Peace Bridge Plaza to their condition existing prior to the appearance of Lessee's Hazardous Materials on the demised premises. Lessee's obligations under this Section will survive the expiration or other termination of the Lease.

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

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY AMMEX TAX AND DUTY FREE SHOPS, INC.

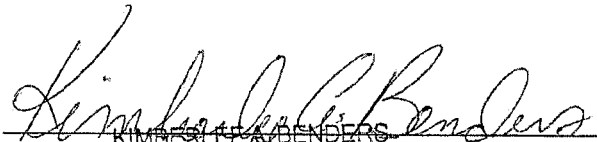
By:  _____
Ros Perenas, General Manager

By:  _____

A

STATE OF NEW YORK)
)
 COUNTY OF ERIE) ss:

On the 22 day of April, in the year 2004, before me, the undersigned, a notary public in and for said state, personally appeared, Ron Rienas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individuals or the person on behalf of which the individual acted, executed the instrument.

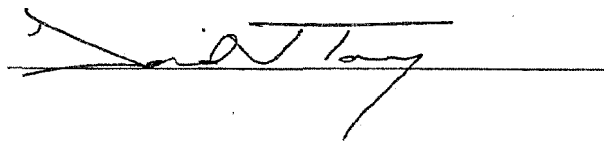


KIMBELLE BENDERS
 Notary Public, State of New York
 Reg. #01BE6005513
 Qualified in Niagara County
 My Commission Expires April 13, 2006

Notary Public

STATE OF FLORIDA)
)
 COUNTY OF MIAMI-DADE) ss:

On the 23rd day of April, in the year 2004, before me, the undersigned, a notary public in and for said state, personally appeared, Simon Falic, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individuals or the person on behalf of which the individual acted, executed the instrument.



Notary Public



Handwritten mark

EXHIBIT A

FIRST AMENDMENT TO LEASE

Indemnification.

(a) To the fullest extent permitted by law, Lessee shall defend, indemnify and hold harmless Lessor and consultants, agents, officers, directors and employees of Lessor (individually or collectively, "Indemnitees") from and against all claims, damages, liabilities, losses and expenses, including but not limited to attorneys' fees, arising out of or in any way connected with the performance or lack of performance of the work contemplated in Section 5 of the Amendment, including without limitation any act or omission of Lessee or anyone directly or indirectly retained or engaged by Lessee. Lessee's obligations hereunder shall apply regardless of whether or not any such claim, damage, liability, loss or expense is or may be attributable to the fault or negligence of Lessee.

This promise by Lessee to defend, indemnify and hold harmless the Indemnitees shall not extend to claims, damages, liabilities, losses or expenses which are solely the result of the Indemnitees' own negligence or acts.

(b) With respect to any and all claims against an Indemnitee by any employee of Lessee or anyone directly or indirectly retained or engaged by Lessee or anyone for whose acts Lessee may be liable, the indemnification obligation hereunder shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Lessee under workers' compensation acts, disability benefit acts or other employee benefit acts.

(c) The indemnification obligation hereunder shall not be limited in any way by the amount or type of insurance required to be provided to or for the benefit of an Indemnitee as described in Section 6 of the Amendment.

Insurance

Lessor shall be named as an additional insured under a \$25 million general liability/excess liability policy(ies) obtained by Lessee on a primary and non-contributory basis. A waiver of subrogation in favor of the additional insured shall apply to general liability and workers compensation insurance. Lessor shall be entitled to review and reasonably accept or reject the form of such insurance. In addition, Lessee shall obtain insurance covering Lessee's indemnification obligations hereunder. Lessor shall also be named as an additional insured under the general liability policy(ies) maintained by Lessee's contractors and subcontractors, as related to the construction of the Transition Store and Permanent Store.

SECOND AMENDMENT TO LEASE

BETWEEN

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

AND

AMMEX TAX AND DUTY FREE SHOPS, INC.

This Second Amendment to Lease (this "Amendment") is effective as of the 13th day of February, 2006 and amends the Lease dated May 1, 1995 (the "Lease") between the Buffalo and Fort Erie Public Bridge Authority (as "Lessor") and AMMEX Tax and Duty Free Shops, Inc. (as "Lessee"), such Lease having been amended by the First Amendment to Lease dated April 23, 2004 (the "First Amendment").

The Lease, as amended, is in full force and effect. The "Transition Store," as that term is defined in Section 2(b) of the First Amendment, has been completed and is open to the public. The parties desire that certain designated space in the Transition Store be made available to the Lessor, which in turn shall make such space available to the General Services Administration of the United States Government ("GSA"). In consideration of the covenants and agreements contained herein, the parties agree as follows.

1. Occupancy Agreement. Lessee shall permit Lessor to occupy and control the space designated in the premises of the Transition Store shown in Schedule A attached hereto and made a part hereof (the "Designated Space"). Lessor shall have access to the Designated Space at all times, provided that the Designated Space shall have its own entrance, and Lessor's access to and/or use of the Designated Space shall not interfere with the conduct of Lessee's business in the Transition Store. Such occupancy rights shall extend for a period of ten (10) years following the date hereof, provided, however, that such occupancy rights shall terminate at such time as the Transition Store is closed to the public as provided in the First Amendment in order to accommodate the Capacity Expansion Project as defined in Section 2(c) of the First Amendment.

2. Assignment to GSA. Lessor shall assign the occupancy rights granted pursuant to paragraph 1 above to GSA. Lessee hereby consents to such assignment. GSA shall agree to the terms and condition of Section 11 of the First Amendment (prohibition on storage of hazardous substances). Lessee agrees to execute and deliver such further documentation as may be required in order to effect such assignment, including a consent to such assignment in favor of GSA and an estoppel certificate addressed to GSA.

3. Occupancy Fee. Lessor shall pay Lessee a monthly fee on the first day of each month equal to \$640.00 per month, prorated based upon days in the month for any partial month of occupancy.

4. Utilities and Insurance. Lessee shall maintain the insurance on the Designated Space as provided in the Lease, as amended by the First Amendment; provided that, in the event the nature of Lessor's or GSA's use of the Designated Space warrants additional insurance

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coverage or different types of insurance, Lessor and/or GSA shall obtain such insurance at its/their sole cost and expense. Lessor shall pay all utilities associated with the Designated Space.

5. No Other Change. Except as modified by this Amendment, none of the terms or conditions of the Lease, as amended by the First Amendment, are modified or waived.

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

BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY

By: 

Ron Rienas, General Manager

DUTY FREE AMERICAS, INC.

By: 

STATE OF NEW YORK)

COUNTY OF ERIE)

ss:

On the 16 day of February, in the year 2006, before me, the undersigned, a notary public in and for said state, personally appeared, Ron Rienas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individuals or the person on behalf of which the individual acted, executed the instrument.

KIMBERLEE A. BENDERS
Notary Public, State of New York
Reg. #01BE6005513
Qualified in Niagara County
My Commission Expires April 13, 2006

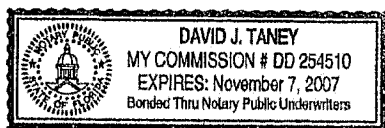
Kimberlee A. Benders
Notary Public

STATE OF FLORIDA)

COUNTY OF ~~MIAMI-DADE~~ ^{BROWARD})

ss:

On the 14th day of February, in the year 2006, before me, the undersigned, a notary public in and for said state, personally appeared, Jerome Folic, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individuals or the person on behalf of which the individual acted, executed the instrument.

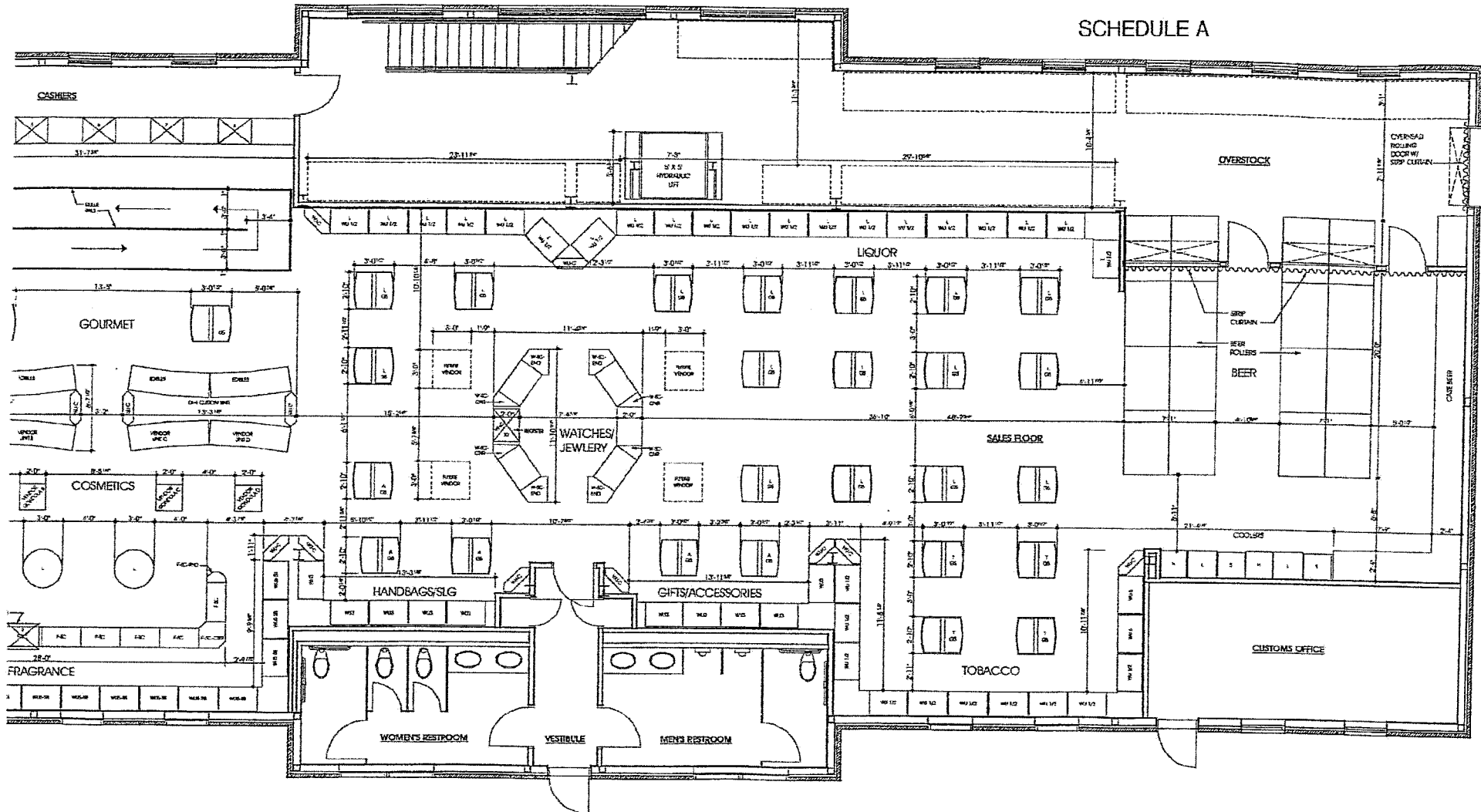


David J. Taney
Notary Public

SCHEDULE A
DESIGNATED SPACE

256703

SCHEDULE A



EQUIPMENT SCHI

NUMBER	QUANTITY	DESCRIPTION
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THIRD AMENDMENT TO LEASE
BETWEEN
BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
AND
AMMEX TAX AND DUTY FREE SHOPS, INC.

This Third Amendment to Lease (this "Amendment") is dated as of the 17 day of March, 2009 and amends the Lease dated May 1, 1995 between the Buffalo and Fort Erie Public Bridge Authority ("Lessor") and AMMEX Tax and Duty Free Shops, Inc. ("Lessee") (the "Original Lease") as such Original Lease was amended by a First Amendment to Lease (the "First Amendment") between Lessor and Lessee dated April 23, 2004 and by a Second Amendment to Lease (the "Second Amendment") between Lessor and Lessee dated February 13, 2006 (such Original Lease as amended by the First Amendment and the Second Amendment being referred to herein as the "Lease").

In consideration of the covenants and agreements contained herein, the parties agree as follows.

1. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given them in the Lease. The Term, "Additional Rent" is given a new definition in Section 3 below. In the event of any conflict between the terms and conditions of this Amendment and the terms and conditions of the Lease, this Amendment shall be controlling.

2. As of the date of this Amendment, Base Rent has been paid and is current, however, Additional Rent (as defined in the Lease) for the year ended December 31, 2008, in the amount of \$2,039,056.60 was due on January 31, 2009 and was not paid by Lessee on time. The parties have entered into a letter agreement dated February 4, 2009 (the "Letter Agreement") prescribing the payment schedule for Additional Rent for the year ended December 31, 2008. The Letter Agreement contemplates that as a condition of accepting the payment schedule, the parties would enter into this Amendment.

3. Section 5 B. of the Original Lease is deleted and replaced by the following provision governing the payment of Additional Rent.

Monthly Payment of Additional Rent. In addition to Base Rent payable during the initial term (and any Renewal Term), commencing as of April, 2009, Lessee shall pay on the 21st day of each month of the Term and any Renewal Term additional rent ("Additional Rent") calculated as follows. Each monthly payment of Additional Rent shall be the amount equal to the difference between (i) the aggregate Base Rent paid by Lessee during the then current Lease year (January through the end of the month prior to the month in which the payment is made) and (ii) a percentage of the aggregate gross sales of Lessee at the demised premises for such then current Lease year (January through the end of the month prior to the month in which the payment is made), such percentage to be calculated as follows:

- (a) Sixteen percent (16%) of the first Three Million Dollars (\$3,000,000) of all gross sales for such year,
- (b) Nineteen percent (19%) of the next Three Million Dollars (\$3,000,000) of all gross sales for such year,
- (c) Twenty-one percent (21%) of the next Two Million Dollars (\$2,000,000) of all gross sales for such year,

- (d) Twenty-four percent (24%) of the next Two Million Dollars (\$2,000,000) of all gross sales for such year, and
- (e) Twenty-five percent (25%) of all gross sales for such year in excess of Ten Million Dollars (\$10,000,000).

The computation of Additional Rent due for any one Lease year shall be based on the gross sales for that year without reference to or adjustment of the gross sales of any other Lease year. Lessee shall keep at its accounting offices, true and complete books and records and all other information necessary in order to determine gross sales on a current daily basis. Upon seven (7) days prior written notice, Lessee shall make available for inspection and audit by a representative of Lessor, at reasonable times during business hours, all such books, records and other information in order to allow Lessor to verify such statements of gross sales. Lessor must inspect and audit such records within two years after the date of each annual statement and Lessor's inspection and audit shall be limited to the period covered by such statement. If any inspection or audit by Lessor reveals an understatement by Lessee of gross sales by more than two percent (2%) and such understatements occur twice or more within any five-year period, Lessee shall pay Lessor on demand for the cost of each such inspection and audit, as well as five (5) times the amount by which Additional Rent was understated or underpaid for each applicable period. Lessor shall hold in confidence all sales figures and other information obtained from Lessee's records and statements.

4. Additional Rent for the months of January and February, 2009, shall also be due and paid on April 21, 2009, calculated in the manner provided above.

5. Section 5 E. of the Original Lease is deleted and replaced by the following provision governing Late Payment.

If payment of Base Rent, Additional Rent, or any other sum due LESSOR, or any part thereof, shall not be made on or prior to fifteen (15) days of the date when it is due and payable, a late charge of five percent (5%) of the sums overdue shall immediately be due and payable. Provided that Lessee shall have timely paid (a) monthly Base Rent for the prior year, or (b) any interim adjusted monthly Base Rent, whichever is less, then any adjustments to Base Rent from the prior year shall be exempt from the aforementioned late charge for the period during which the statement of Lessee's gross sales is being prepared and verified by an independent auditor pursuant to Section 5B of the First Amendment.

6. The reports and certifications required by Section 4 of the First Amendment shall be unaffected by this Amendment and shall continue to be provided by Lessee as required in Section 4 of the First Amendment.

7. By amending the Lease as provided herein, the Authority is not waiving any right or remedy it has or may have under the Lease.

8. Notwithstanding the venue paragraph in the Letter Agreement, the parties agree that Section 8 of the First Amendment (which includes a venue provision) shall control and remain as a binding provision of the First Amendment.

9. Except as provided in this Amendment, no other provision of the Lease, the First Amendment, or the Second Amendment is amended by this Amendment and the Lease remains in full force and effect.

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

BUFFALO AND FORT-ERIE PUBLIC
BRIDGE AUTHORITY

By: 

Ron Rienas, General Manager

AMMEX TAX AND DUTY FREE SHOPS,
INC.

By: 


SIMON FALIC, COO

STATE OF NEW YORK)

COUNTY OF ERIE)

ss:

On the 17 day of March, in the year 2009, before me, the undersigned, a notary public in and for said state, personally appeared, Ron Rienas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individuals or the person on behalf of which the individual acted, executed the instrument.


Notary Public

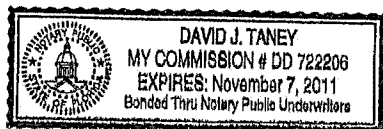
KIMBERLEE A. KAISER
Notary Public State of New York
Reg #01KA600661
Qualified in Niagara Co.
My Commission Exp. 4/18/2010

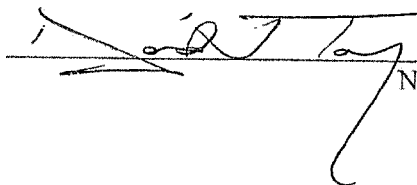
STATE OF FLORIDA)

COUNTY OF ~~MIAMI DADE~~ BROWARD)

ss:

On the 12 day of March, in the year 2009, before me, the undersigned, a notary public in and for said state, personally appeared, SIMON FALIC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individuals or the person on behalf of which the individual acted, executed the instrument.




Notary Public

FOURTH AMENDMENT TO LEASE
BETWEEN
BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
AND
AMMEX TAX AND DUTY FREE SHOPS, INC.

This Fourth Amendment to Lease (this "Amendment") is dated as of the ____ day of November, 2019 and amends the Lease dated May 1, 1995 between the Buffalo and Fort Erie Public Bridge Authority ("Lessor") and AMMEX Tax and Duty Free Shops, Inc. ("Lessee") (the "Original Lease") as such Original Lease was amended by a First Amendment to Lease (the "First Amendment") between Lessor and Lessee dated April 23, 2004, by a Second Amendment to Lease (the "Second Amendment") between Lessor and Lessee dated February 13, 2006 and by a Third Amendment to Lease (the "Third Amendment") between Lessor and Lessee dated March 17, 2009 (such Original Lease as amended by the First Amendment, the Second Amendment and the Third Amendment being referred to herein as the "Lease").

In consideration of the covenants and agreements contained herein, the parties agree as follows.

1. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given them in the Lease. In the event of any conflict between the terms and conditions of this Amendment and the terms and conditions of the Lease, this Amendment shall be controlling.
2. The parties acknowledge that the Current Store has been relinquished to Lessor pursuant to the First Amendment.
3. Provided that there has been no default by Lessee beyond applicable grace and cure periods under the Lease, as amended, Lessee shall have the option to extend the term of the Lease for one additional Option Period of five years (such additional Option Period will be considered an "Option Period"), which Option Period will commence on January 1 2021 and expire on December 31, 2025. Upon exercise of such Option Period, such Option Period shall become part of the term of the Lease. If Lessee desires to exercise such option to extend for such Option Period, Lessee will provide notice to Lessor on or before December 31, 2019. During such Option Period, Lessee will pay Base Rent and Additional Rent, as required under the Lease.
4. Section 3(d) of the First Amendment is amended to provide that the Fourth Option Period will terminate on December 31, 2035.
5. Sections 1, 2, 3, and 4 of the Second Amendment are hereby deleted in their entirety. Lessee will be responsible, at its sole expense, to restore the premises leased by Lessee to a useable condition and to remove any improvements made in connection with the Designated Space, as defined in the Second Amendment.

6. By amending the Lease as provided herein, the Authority is not waiving any right or remedy it has or may have under the Lease.


7. Except as provided in this Amendment, no other provision of the Lease, the First Amendment, the Second Amendment or the Third Amendment is amended by this Amendment and the Lease remains in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY

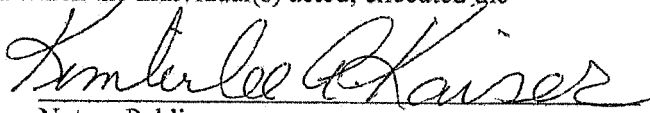
AMEX TAX AND DUTY FREE SHOPS, INC.

By: 
Ron Rienas, General Manager


By: 
Timothy McCloskey, Chief Financial Officer

STATE OF NEW YORK)
)
 : ss.
COUNTY OF ERIE)

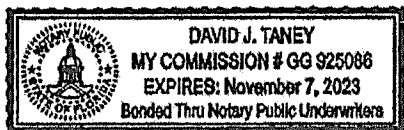
On the 14 day of November, in the year 2019, before me, the undersigned, personally appeared Ron Rienas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

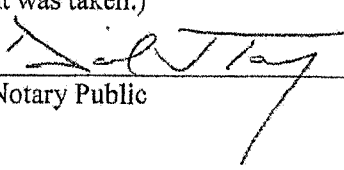

Notary Public

STATE OF FLORIDA)
)
 : ss.
COUNTY OF BROWARD)

KIMBERLEE A. KAISER
Notary Public State of FL
Reg #01KA6005513
Qualified in Niagara County
My Commission Exp. 4/13/2022 

On the 13th day of November, in the year 2019, before me, the undersigned, personally appeared Timothy McCloskey, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the Hollywood, Florida. (Insert the City or other political subdivision and the state and county or other place the acknowledgment was taken.)




Notary Public

FIFTH AMENDMENT TO LEASE
BETWEEN
BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
AND
AMMEX TAX AND DUTY FREE SHOPS, INC.

This Fifth Amendment to Lease (this "Amendment") is dated as of the 22 day of April, 2020 and amends the Lease dated May 1, 1995 between the Buffalo and Fort Erie Public Bridge Authority ("Lessor") and AMMEX Tax and Duty Free Shops, Inc. ("Lessee") (the "Original Lease") as such Original Lease was amended by a First Amendment to Lease (the "First Amendment") between Lessor and Lessee dated April 23, 2004, by a Second Amendment to Lease (the "Second Amendment") between Lessor and Lessee dated February 13, 2006, by a Third Amendment to Lease (the "Third Amendment") between Lessor and Lessee dated March 17, 2009 and by a Fourth Amendment to Lease between Lessor and Lessee dated as of November 14, 2019 (the "Fourth Amendment") (such Original Lease as amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment being referred to herein collectively as the "Lease").

Due to the severe economic hardships created across the world by the COVID-19 pandemic and in consideration of the covenants and agreements contained herein, the parties agree as follows.

1. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given them in the Lease. In the event of any conflict between the terms and conditions of this Amendment and the terms and conditions of the Lease, this Amendment shall be controlling.

2. Base Rent due and owing under the Lease for the calendar months of April, May and June, 2020 (collectively, the "Crisis Months Deferred Base Rent") will be deferred as set forth below, provided that Lessee performs its covenants set forth in the Lease and in this Amendment.

3. Additional Rent otherwise due and owing under the Lease for the months of April, May and June, 2020 ("Crisis Months Additional Rent") will still be due and payable for each of those months, as provided in the Lease.

4. To the extent that the Base Rent paid during calendar year 2020, together with the Crisis Months Additional Rent, is less than the Base Rent which would have otherwise been due and payable under the Lease without this Amendment, then such difference (the "Unpaid Rent") will be due and owing in twelve equal month installments, at an interest rate of 4 percent per annum computed as of December 31, 2020, along with the payments of Base Rent otherwise due and owing under the Lease, starting January 1, 2021 and continuing until the Base Rent payment due and owing on December 1, 2021.

5. For purposes of computing Base Rent during calendar year 2021, Base Rent and Gross Sales will be the Base Rent and Gross Sales, respectively, from calendar year 2019.

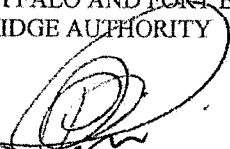
6. By amending the Lease as provided herein, the Authority is not waiving any right or remedy it has or may have under the Lease.

7. Except as provided in this Amendment, no other provision of the Lease, the First Amendment, the Second Amendment, the Third Amendment or the Fourth Amendment is amended by this Amendment and the Lease remains in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY

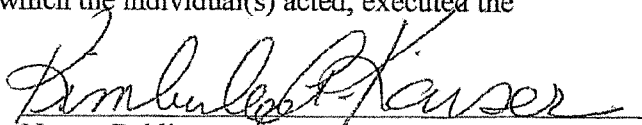
By: 
Ron Richas, General Manager

AMEX TAX AND DUTY FREE SHOPS, INC.

By: 
Simon Falic, CEO

STATE OF NEW YORK)
: ss.
COUNTY OF)

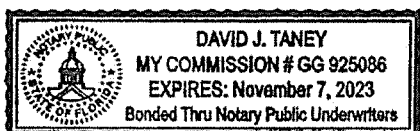
On the 27 day of April, in the year 2020, before me, the undersigned, personally appeared Ron Richas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

KIMBERLEE A. KAISER
Notary Public, State of New York
Reg. #01KA6005513
Qualified in Erie County
My Commission Exp. 4/13/2022

STATE OF FLORIDA)
: ss.
COUNTY OF BROWARD)

On the 29th day of April, in the year 2020, before me, the undersigned, personally appeared Simon Falic, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the Hollywood, Florida. (Insert the City or other political subdivision and the state and county or other place the acknowledgment was taken.)




Notary Public

SIXTH AMENDMENT TO LEASE
BETWEEN
BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
AND
AMMEX TAX AND DUTY FREE SHOPS, INC.

This Sixth Amendment to Lease (this "Amendment") is dated as of _____, 2022, is effective as of January 1, 2023 (the "Effective Date") and amends the Lease dated May 1, 1995 between the Buffalo and Fort Erie Public Bridge Authority ("Lessor") and AMMEX Tax and Duty Free Shops, Inc. ("Lessee") (the "Original Lease") as such Original Lease was amended by a First Amendment to Lease (the "First Amendment") between Lessor and Lessee dated April 23, 2004, by a Second Amendment to Lease (the "Second Amendment") between Lessor and Lessee dated February 13, 2006, by a Third Amendment to Lease (the "Third Amendment") between Lessor and Lessee dated March 17, 2009 and by a Fourth Amendment to Lease between Lessor and Lessee dated as of November 14, 2019 (the "Fourth Amendment"), as amended by a Fifth Amendment to Lease between Lessor and Lessee dated as of April 27, 2020 (such Original Lease as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment being referred to herein collectively as the "Lease").

Due to the severe economic hardships created across the world by the COVID-19 pandemic and in consideration of the covenants and agreements contained herein, the parties agree as follows.

1. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given them in the Lease. In the event of any conflict between the terms and conditions of this Amendment and the terms and conditions of the Lease, this Amendment shall be controlling.
2. As of the Effective Date, the Fifth Amendment is revoked and terminated in its entirety.
3. On or before January 10, 2023, Lessor will notify Lessee of the amount of unpaid Base Rent and Additional, and accrued interest and penalties, if any (the "Unpaid Rent"), due and owing by Lessee to Lessor under the Lease for the period from April 1, 2020 to December 31, 2022 (the "Rent Default Period").
3. Provided Lessee does not default under the Lease for the balance of the Term, Lessor agrees to waive collection of 20% of the Unpaid Rent. If Lessee defaults under the Lease beyond applicable notice and cure periods at any time during the balance of the Term, the Unpaid Rent will become immediately due and owing.
4. Beginning on the Effective Date and continuing on the first day of each calendar month up to and including December 1, 2027, Lessee will pay the remaining Unpaid Rent to Lessor in equal monthly payments, based on the amount of Unpaid Rent outstanding

from time to time, with addition of a per annum variable interest rate (the "Variable Rate") equal to one-quarter percentage (.25%) above the US Prime Rate, as published in the *Wall Street Journal* from time to time.. On the first day of any calendar month following a change in the Variable Rate (each such date, an "Adjustment Date"), the monthly payment of Unpaid Rent will be recalculated using the outstanding Unpaid Rent owing as of such Adjustment Date and the new Variable Rate. All payments of Unpaid Rent will be in addition to the Base Rent and Additional Rent otherwise due and payable under the Lease.

5. Notwithstanding anything to the contrary in the Lease, the current Term expires on December 31, 2025. Provided that there has been no default by Lessee beyond applicable grace and cure periods, Lessee will have the option to extend the term of the Lease for one additional Option Period of five years, to December 31, 2030 by notice to Lessor no later than December 31, 2029, and a second additional Option Period of five years, to December 31, 2035, by notice to Lessor no later than December 31, 2034. All of the terms and conditions of the Lease will apply to any such option terms, except as to the number of option terms remaining. During each such Option Period, Lessee will pay Base Rent and Additional Rent, as required under the Lease.

6. Lessee will commence construction of the Permanent Store on or before December 31, 2035, after which time, each of the Option Periods will be deemed exercised, if not previously exercised by Lessee, and the term will be further extended to December 31, 2045, on all of the same terms and conditions set forth in the Lease. Lessee will complete construction of the Permanent Store on or before December 31, 2036.

7. By amending the Lease as provided herein, the Authority is not waiving any right or remedy it has or may have under the Lease.

8. Except as provided in this Amendment, no other provision of the Lease, the First Amendment, the Second Amendment, the Third Amendment or the Fourth Amendment is amended by this Amendment and the Lease remains in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY


AMMEX TAX AND DUTY FREE SHOPS, INC.

By: 
Ron Rienas, General Manager

By: 
Joseph Kearney, Senior Vice President

STATE OF NEW YORK)
)
COUNTY OF Erie) : ss.

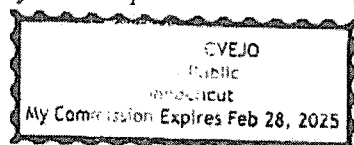
On the 21st day of December, in the year 2022, before me, the undersigned, personally appeared Ron Rienas, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

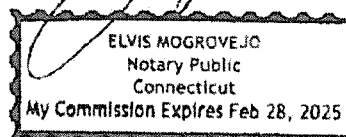
STATE OF Connecticut)
)
COUNTY OF Fairfield) : ss.

LYNDIA LEE DUBUC,
Notary Public, Province of Ontario,
limited to the attestation of instruments and
the taking of affidavits, for the Buffalo and
Fort Erie Public Bridge Authority.
Expires November 23, 2024.

On the 19th day of December, in the year 2022, before me, the undersigned, personally appeared Joseph Kearney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the Town of Norwalk. (Insert the City or other political subdivision and the state and county or other place the acknowledgment was taken.)




Notary Public



UNDERTAKINGS AND REFUSALS

Undertakings Requested		Answer
1.	To produce the documents received from PBDF that support the contention that PBDF did not pay the full amount that it received in CERS to the Authority.	<p>See attached. The Authority also relies on:</p> <p>(a) Exhibit G to Mr. Pearce's Affidavit sworn on 2 December 2021;</p> <p>(b) Exhibit D to Mr. Pearce's Affidavit sworn on 13 November 2022; and</p> <p>(c) paragraph 25 of Mr. Pearce's Affidavit sworn on 13 February 2023.</p> <p>The Authority asserts that PBDF was required to pay over 100% of what it received from CERS. The Authority acknowledges that PBDF may have a different legal position.</p>
2.	To provide written report or documents provided to the Board with respect to 17 December 2020 meeting.	There were no reports of documents prepared for the meeting.
3.	To inquire of Ms Costa to determine whether the amount reflected on Exhibit 1 ("Unpaid Rent for the Rent Default Period") is before or after the 20% reduction.	This is the rent before the 20% abatement.
4.	To advise how the base rent was calculated for 2020, 2021 and 2022 for the US tenant.	Base rent was calculated in accordance with the lease that was provided to PBDF.
5.	To check emails to see if he received a draft of the 19 July 2016 email from Ms. Costa before Ms. Costa sent it. REFUSED	Mr. Rienas searched his e-mail archives from July of 2016 and could not locate a draft of the 19 July 2016 e-mail.

TAB 26

Ariyana BotejueTHIS IS EXHIBIT # 2
ON THE EXAMINATION OF:

From: Karen L. Costa
Sent: April 27, 2021 3:09 PM
To: Kristina Carroll; Nancy C. Teal
Cc: Karen L. Costa; Mark DeVreede
Subject: PBDF
Attachments: PBDF - Payments Received.xlsx; PBDF Deferred Rent Balances.xlsx; 20210413 140732.pdf; DFA 2020 rent due.xlsx; WDF Deferred Rent Balances.xlsx

KAREN COSTA INRRC

vs.

PEACE BRIDGE DUEY FILESHELD ON MAY 30 2023Larry Southwell
OFFICIAL EXAMINER
at St. Catharines, Ontario

Hi –

Can we meet to discuss PBDF tomorrow. Ron needs a report to the board for this week's meeting that I need to have completed by tomorrow end of day.

I need the attached filled out for both US and PBDF each month and every time we receive funds.

Please see the attached letter - as for the \$58,053.31 payment received from PBDF – We are drawing the \$50,000 letter of credit and need to apply that to the outstanding rent. Then \$50,000 of the amount just paid is to be recorded as replenishment of the security deposit and the remaining \$8,053.31 is to be applied to rent. I want the entries to reflect that is what we did.

Both entities are in default of the rent deferral agreements.

Thanks!

Karen

Karen L. Costa, CPA
 Chief Financial Officer
 Buffalo & Fort Erie Public Bridge Authority

100 Queen Street, Fort Erie, ON L2A 3S6 | 1 Peace Bridge Plaza, Buffalo, NY 14213
klc@peacebridge.com | T 905-994-3679 | T 716-884-8638 | F 905-871-9940 | F 716-883-7246

For up to the hour traffic conditions, visit mobile.peacebridge.com

This communication is intended solely for the addressee(s) and contains information that is privileged, confidential, and subject to copyright. Any unauthorized use, copying, review or disclosure is prohibited. If received in error, please notify us immediately by return e-mail.

Peace Bridge Authority
 Analysis of Revenue - World Duty Free
 12/31/2020 - REVISED

Calculated Rent			
	Base	Rent Paid	Unpaid Rent
1/20			
2/20			
3/20			
4/20	100,382.88	19,545.64	80,837.24
5/20	100,382.88	21,601.55	78,781.33
6/20	100,382.88	30,926.35	69,456.53
7/20	100,382.88	26,918.84	73,464.04
8/20	100,382.88	27,101.86	73,281.02
9/20	100,382.88	34,349.09	66,033.79
10/20	100,382.88	28,242.19	72,140.69
11/20	100,382.88	31,451.62	68,931.26
12/20	100,382.88	49,450.53	50,932.35
Totals	903,445.92	269,587.67	633,858.25

633,858.25

TAB 27

THRP Subsidy program	Period 22 Nov20 2021	Period 23 Dec18 2021	Period 24 Jan15 2022	Period 25 Feb12 2022	PP26 Mar12 2022	PP27 Apr9 2022	PP28 May7 2022
						306	086
Maximum claim amount	75,000	75,000	75,000	75,000	75,000	75,000	75,000
THRP Subsidy rate	71.8%	61.8%	61.3%	75.0%	75.0%	27.65%	23.15%
THRP Subsidy	53,850	46,350	45,975	56,250	56,250	20,738	17,362.50
Lockdown support	18,750	18,750	18,750	18,750	-	-	-
Total THRP Subsidy received	72,600	65,100	64,725	75,000	56,250	20,738	17,362.50
PBDF							
PBDF Revenues	432,391	565,466	416,763	238,878	442,366	542,511	739,975
Percentage rent paid-20%	86,478	113,093	83,353	47,776	88,473	108,502	147,995
Additional Rent-Taxes&Insurance	10,812	10,812	10,812	10,812	10,812	10,812	10,812
Total Rent paid to PBA	97,291	123,906	94,165	58,588	99,286	119,314	158,807
Net balance	(24,691)	(58,806)	(29,440)	16,412	(43,036)	(98,577)	(141,445)
Net balance paid to PBA	0	0	0	16,412	0	0	0

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

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

TAB 28

EXHIBIT I

	PBDF Sales	Cost of Sales Wages (net) Expenses	RBC Lease	Add'l Rent	Rent	Net
Jan2020	920,345	(435,666)	(68,282)	(6,541)	(333,333)	76,523
Feb2020	977,455	(468,306)	(68,282)	(8,167)	(333,333)	99,367
Mar2020	553,247	(234,029)	(68,282)	(8,167)	(333,333)	(90,564)
Jan-Mar2020	2,451,048	(1,138,001)	(204,846)	(22,875)	(999,999)	85,326
Apr2020.	0	(31,833)	0	(8,167)	0	(40,000)
May2020	0	(31,833)	0	(8,167)	0	(40,000)
Jun2020	0	(31,833)	0	(8,167)	0	(40,000)
Jul2020	0	(31,833)	0	(8,167)	0	(40,000)
Aug2020	0	(31,833)	0	(8,167)	0	(40,000)
Sep2020	0	(31,833)	0	(8,167)	0	(40,000)
Oct2020	0	(31,833)	(68,282)	(8,167)	0	(108,282)
Nov2020	0	(31,833)	(68,282)	(8,167)	0	(108,282)
Dec2020	0	(31,833)	(68,282)	(8,167)	0	(108,282)
Apr-Dec2020	-	(286,498)	(204,846)	(73,502)	-	(564,846)
Total 2020	2,451,048	(1,424,500)	(409,692)	(96,377)	(999,999)	(479,520)
Rent 20%						
Jan2021	0	(51,833)	(68,282)	(8,167)	-	(128,282)
Feb2021	0	(50,950)	(68,282)	(9,050)	-	(128,282)
Mar2021	0	(50,950)	(68,282)	(9,050)	-	(128,282)
Apr2021	0	(50,950)	(68,282)	(9,050)	-	(128,282)
May2021	0	(49,188)	(68,282)	(10,812)	-	(128,282)
Jun2021	0	(49,188)	(68,282)	(10,812)	-	(128,282)
Jul 2021	0	(49,188)	(68,282)	(10,812)	-	(128,282)
Aug2021	0	(49,188)	(68,282)	(10,812)	-	(128,282)
Sep2021	97,691	(148,845)	(68,282)	(10,812)	(19,538)	(149,787)
Oct2021	309,754	(274,877)	(68,282)	(10,812)	(61,951)	(106,168)
Nov2021	545,927	(422,963)	(68,282)	(10,812)	(109,185)	(65,316)
Dec2021	571,208	(435,604)	(68,282)	(10,812)	(114,242)	(57,732)
	1,524,579	(1,683,723)	(819,384)	(121,816)	(304,916)	(1,405,260)
Jan2022	266,652	(258,326)	(68,282)	(10,812)	(53,330)	(124,099)
Feb2022	317,739	(273,870)	(68,282)	(10,812)	(63,548)	(98,773)
Mar2022	574,900	(409,863)	(68,282)	(10,812)	(114,980)	(29,037)
Apr2022	803,466	(540,664)	(68,282)	(10,812)	(160,693)	23,015
May2022	839,157	(557,795)	(68,282)	(10,775)	(167,831)	34,473
Jun2022	942,743	(612,517)	(68,282)	(10,775)	(188,549)	62,621
Jul2022	1,332,856	(789,771)	(68,282)	(10,775)	(266,571)	197,457
Aug2022	1,295,437	(771,810)	(68,282)	(10,775)	(259,087)	185,483
Sep2022	1,189,993	(739,297)	(68,282)	(10,775)	(237,999)	133,641
Oct2022	1,214,518	(750,824)	(68,282)	(10,775)	(242,904)	141,734
Nov2022	980,000	(635,600)	(68,282)	(10,775)	(196,000)	69,343
Dec2022	860,000	(579,374)	(68,282)	(10,775)	(172,000)	29,569
	10,617,461	(6,919,709)	(819,384)	(129,449)	(2,123,492)	625,427
Jan2023	695,000	(485,364)	(68,282)	(10,775)	(139,000)	(8,421)
Apr 2020 to Jan2023	12,837,041	(9,375,294)	(1,911,896)	(335,541)	(2,567,408)	(1,353,099)

Total Apr2020 to Jan2023 Summary

	Base rent version		Percentage rent version
Sales	12,837,041	Sales	12,837,041
Costs&Expenses	(11,287,190)	Costs&Expenses	(11,287,190)
Add'l rent	(335,541)	Add'l rent	(335,541)
Base rent	(11,333,322)	Percentage Rent	(2,567,408)
Net loss	(10,119,013)	Net loss	(1,353,099)

Note: Net loss does not include deductions for professional expenses related to the process, additional funds posted as security to RBC as per court order and anticipated taxes.

TAB 29



THIS IS EXHIBIT # 1
ON THE EXAMINATION OF:

Ran Rinas IN

RBC

VS.

Peace Bridge Duty Free

HELD ON Aug 23, 2023


OFFICIAL EXAMINER
at St. Catharines, Ontario

January 5, 2023

Joel Epstein
Business Development Manager
Duty Free Americas
6100 Hollywood Boulevard
Suite 700
Hollywood, Florida 33024

RE: Unpaid Base Rent

Dear Joel:

Pursuant to the Sixth Amendment to the Lease between the Buffalo and Fort Erie Public Bridge Authority (Authority) and AMMEX Tax and Duty Free Shops, Inc., the Authority has determined that the amount of the Unpaid Rent for the Rent Default Period is \$1,255,447.74.

Sincerely,

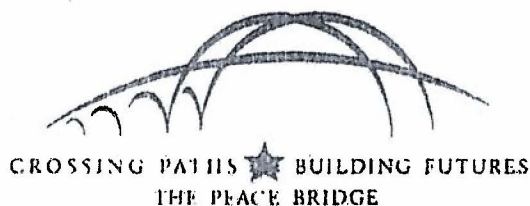


Karen L. Costa
Chief Financial Officer
Buffalo and Fort Erie Public Bridge Authority

UNDERTAKINGS AND REFUSALS

Undertakings Requested		Answer
1.	To produce the documents received from PBDF that support the contention that PBDF did not pay the full amount that it received in CERS to the Authority.	<p>See attached. The Authority also relies on:</p> <p>(a) Exhibit G to Mr. Pearce's Affidavit sworn on 2 December 2021;</p> <p>(b) Exhibit D to Mr. Pearce's Affidavit sworn on 13 November 2022; and</p> <p>(c) paragraph 25 of Mr. Pearce's Affidavit sworn on 13 February 2023.</p> <p>The Authority asserts that PBDF was required to pay over 100% of what it received from CERS. The Authority acknowledges that PBDF may have a different legal position.</p>
2.	To provide written report or documents provided to the Board with respect to 17 December 2020 meeting.	There were no reports of documents prepared for the meeting.
3.	To inquire of Ms Costa to determine whether the amount reflected on Exhibit 1 ("Unpaid Rent for the Rent Default Period") is before or after the 20% reduction.	This is the rent before the 20% abatement.
4.	To advise how the base rent was calculated for 2020, 2021 and 2022 for the US tenant.	Base rent was calculated in accordance with the lease that was provided to PBDF.
5.	To check emails to see if he received a draft of the 19 July 2016 email from Ms. Costa before Ms. Costa sent it. REFUSED	Mr. Rienas searched his e-mail archives from July of 2016 and could not locate a draft of the 19 July 2016 e-mail.

TAB 30



June 30, 2020

VIA EMAIL (marc.garneau@parl.gc.ca)

The Honourable Marc Garneau
Minister of Transport
House of Commons
Ottawa, ON K1A 0A6

VIA EMAIL (bill.morneau@canada.ca)

The Honourable William Morneau
Minister of Finance
House of Commons
Ottawa, ON K1A 0A6

VIA EMAIL (ps.ministerofpublicsafety-ministredelasecuritepublique.sp@canada.ca)

The Honourable Bill Blair
Minister of Public Safety and Emergency Preparedness
269 Laurier Avenue West
Ottawa, ON K1A 0P5

VIA EMAIL (president@tbs-sct.gc.ca)

The Honourable Jean-Yves Duclos
President
Treasury Board of Canada Secretariat
8th Floor
90 Elgin Street
Ottawa, ON K1A 0R5

THIS IS EXHIBIT # 4
ON THE EXAMINATION OF:

Ron Rienas IN

RBC

vs.

Peace Bridge Duty Free

HELD ON Aug 23 2023

OFFICIAL EXAMINER
at St. Catharines, Ontario

RE: INTERNATIONAL BRIDGES AND COVID-19 IMPACT

Dear Honourable Ministers and President of the Treasury Board:

The four Queen Elizabeth Way corridor international bridges in southern Ontario are the Peace Bridge operated by The Buffalo & Fort Erie Public Bridge Authority (PBA); the Rainbow Bridge, Whirlpool Bridge and Lewiston-Queenston Bridge operated by the Niagara Falls Bridge Commission (NFBC). Not only do the PBA and NFBC operate the bridges, we are also required to provide and maintain the Customs plazas and all Customs buildings for both Canada and the United States. In 2019, these bridges and plazas processed 9.6 million cars and 1.9 million commercial trucks, supporting the economies of both countries.

Both the PBA and NFBC are bi-national public entities with governing boards composed equally of Canadians and Americans, politically appointed. Both are legislatively mandated to operate on a self-sustaining basis, at arms-length from their respective governments. Both derive their revenue from vehicle tolls and rental income, including from Duty Free stores.

Due to the Covid-19 pandemic, the governments of Canada and the United States closed the border on March 21, 2020 to all but essential travel. Since that date, car traffic has declined by 95% and truck traffic has declined by 22%. The Canadian Duty Free stores have been closed and the U.S. Duty Free stores are seeing only a small fraction of their normal business. Both federal governments have deemed our bridges an essential service to maintain critical bi-national supply chains. Accordingly, we are required to keep the border crossings operating while the revenues required to do so have been decimated.

In the United States we are compensated for providing facilities for Customs and Border Protection (CBP) through a lease agreement. In 2020 the PBA will receive \$2.4 million (USD) and the NFBC will receive \$3.9 million (USD) from the U.S. government for providing and maintaining these Customs facilities. During the Covid-19 pandemic the lease payments have continued unabated by the U.S. Government. Requests for building modifications and enhanced janitorial services required for officer and public safety are reimbursed in addition to the monthly rent payments.

In Canada, under Section 6 of the Customs Act, we are required to provide and maintain all Canada Border Services Agency (CBSA) plazas and facilities free of charge to the Government of Canada. This includes building the facilities, paying all utilities, taxes, janitorial, maintenance, property management, insurance and depreciation. For the Peace Bridge this cost is approximately \$3 million annually, not including depreciation. For the NFBC it amounts to \$6 million annually. CBSA is currently reimbursing both organizations for additional janitorial services and building modifications to address Covid-19 concerns.

We are requesting that the Government of Canada compensate the PBA and NFBC for all the costs associated with providing services to the Government of Canada as defined by Section 6 of the Customs Act.

We know that Section 6 is not equally applied by the government at all of the international bridges along the Canada – U.S. border. For example, the Ogdensburg Bridge does not provide any Section 6 services because it chooses not to as a sole New York State Authority. The Seaway International Bridge also does not pay for any Section 6 services because it has a structural revenue issue as the majority of its users do not pay a toll and therefore the government of Canada picks up the costs.

The Federal Bridge Corporation Limited (FBCL) is the federal crown corporation responsible for the Canadian half of four international crossings between Canada and the U.S. While its bridges are subject to Section 6 (except for Seaway International), it receives federal government funding (\$3.4 million in 2019) and could avail itself of additional relief funds through the normal federal budget process.

We understand how important the border is to Canada. Nowhere is that more evident than Canada's commitment to the Gordie Howe Bridge. When the bridge opens, the government of Canada will be required to make availability payments totaling more than \$150 million annually for 30 years to the private sector partner and therefore Section 6 will not be applicable at that crossing.

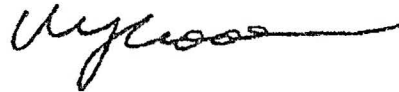
We would respectfully request that during this unprecedented time of revenue loss and necessity for our Section 6 responsibilities to continue, the Government of Canada review our request for just compensation through the lens of simple fairness.

We thank you for your consideration.

Sincerely,



Kenneth Manning
Chairperson
Buffalo & Fort Erie Public Bridge Authority



Michael Goodale
Chairperson
Niagara Falls Bridge Commission

cc: Prime Minister Trudeau
Tony Baldinelli, MP
Chris Bittle, MP
Vance Badawey, MP
Jim Bradley, Niagara Regional Chair
Wayne Redekop, Fort Erie Mayor
Jim Diodati, Niagara Falls Mayor
Betty Disaro, Niagara-on-the-Lake Mayor

TAB 31

Nadav Amar

From: Ron Rienas
Sent: Monday, December 21, 2020 12:24 PM
To: Kenneth A. Manning
Cc: Debbie Zimmerman; Dominguez, MarieTherese (DOT); Frank Cirillo; Isabel Meharry; Jennifer Persico; Kimberlee A. Kaiser; Lew Holloway; Mike Russo; Patrick Robson; Tim Clutterbuck; Tony Masiello; Karen L. Costa
Subject: RE: Peace Bridge Duty Free (PBDF)
Attachments: 20201221_113534.pdf

Ken,

Attached is the letter sent today to PBDF, as prepared by Gowlings.

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

THIS IS EXHIBIT # 10
 ON THE EXAMINATION OF:

Ron Rienas IN

RBC

vs.

Peace Bridge Duty Free

HELD ON Aug 23 2023

OFFICIAL EXAMINER
 at St. Catharines, Ontario

From: Kenneth A. Manning <KManning@phillipslytle.com>
Sent: Thursday, December 17, 2020 8:18 PM
To: Ron Rienas <rr@peacebridge.com>
Cc: Debbie Zimmerman <d.zimmerman@grapegrowersofontario.com>; Dominguez, MarieTherese (DOT) <MarieTherese.Dominguez@dot.ny.gov>; Frank Cirillo <Frank.Cirillo@dot.ny.gov>; Isabel Meharry <meharryisabel@gmail.com>; Jennifer Persico <jpersico@lippes.com>; Kimberlee A. Kaiser <kak@peacebridge.com>; Lew Holloway <lholloway37@gmail.com>; Mike Russo <michael.russo@ag.ny.gov>; Patrick Robson <robson.patrickj@gmail.com>; Tim Clutterbuck <tim.clutterbuck@valbrunaasw.ca>; Tony Masiello <tony@mmcassoc.com>; Karen L. Costa <klc@peacebridge.com>
Subject: Re: Peace Bridge Duty Free (PBDF)

Ron,

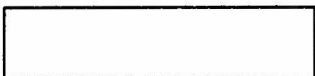
Thank you for consulting with Gowlings.

Please share their letter in due course.

Ken

Sent from my iPhone

Kenneth A. Manning
 Partner



One Canalside
 125 Main Street
 Buffalo, NY 14203-2887
 Phone 716 847 7041
 Fax 716 852 6100
KManning@phillipslytle.com
www.phillipslytle.com
[Download vCard](#)



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On Dec 17, 2020, at 7:56 PM, Ron Rienas <rr@peacebridge.com> wrote:

ATTENTION EXTERNAL EMAIL: Use Caution with attachments and links!

CONFIDENTIAL

As discussed at this morning's Board meeting, Karen and I had a conference call with our legal counsel, Gowlings, this evening.

I forwarded Gowlings the resolution that the Board approved this morning:

Peace Bridge Duty Free

"THAT subject to legal approval, the Board adopts the below resolution:

THAT the Buffalo and Fort Erie Public Bridge Authority demand a partial rent payment from Peace Bridge Duty Free in the amount of \$1 million by December 31, 2020.

THAT a rent repayment schedule and associated guarantees of full payment be developed with legal counsel.

THAT in the event of default by Peace Bridge Duty Free, and subject to legal review, staff be authorized to negotiate lease terms with the 2nd bidder in the June 2016 RFP process."

Their recommendation was that the last paragraph be deleted. While they agree with the sequential nature of the resolution, should this end up in court the last paragraph appears pre-determinative and could be construed as the PBA having a plan to oust PBDF. What happens in the event of default can be determined by the Board at a later date.

Insofar as demanding payment, Gowlings advised that any request needs to be reasonable, 315 notwithstanding that no payments have been made as required by the lease. If the request is not reasonable then it is likely that PBDF would bring an action called "relief from forfeiture". This allows a tenant to ask the court to grant relief and the courts have wide discretion to do so under the Law and Equity Act if such relief would be fair and just under the circumstances. The Covid pandemic would certainly be a circumstance that justifies relief. With the financial analysis that Karen provided, Gowlings agreed that a \$1 million demand is reasonable, noting that it is based only on what PBDF provided to us thus far. For example, we do not have audited financial statements.

While the PBDF lease does not have a force majeure clause, Gowlings advised that Courts are leaning towards all leases being treated as having a force majeure clause even if they don't, given the unique and long term nature of the Covid pandemic. They said no judge want to put an established long term business out of business because of Covid. In this case it is not only Covid but the resultant actions by the government that closed the border to most traffic, distinguishing it from other businesses.

Gowlings recommended that PBDF be required to provide a repayment schedule and that would be the opportunity negotiate timing and guarantees of full rent payment.

Gowlings will be preparing a letter for my signature demanding the \$1 million payment and requesting a payment schedule.

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



December 21, 2020

Via Registered Mail

Peace Bridge Duty Free Inc.
Attn: Greg O'Hara
P.O Box 339
Peace Bridge Plaza
Fort Erie, ON L2A 5N1

Dear Mr. O'Hara:

RE: LEASE DATED JULY 28, 2016 (THE "LEASE") BETWEEN BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY, AS LANDLORD, AND PEACE BRIDGE DUTY FREE INC., AS TENANT

As you know, the Tenant's last payment of rent under the Lease was on March 2, 2020. The Landlord and the Tenant entered into a rent deferral agreement dated April 27, 2020, to, among other things, defer the payment of certain rent arrears until July 31, 2020, after which the deferred rent was to be paid in accordance with the rent deferral agreement and all other regular payments of rent was to be paid as and when due under the Lease. Following the expiry of the rent deferral period, the Tenant has not made any payment of rent to the Landlord. As noted above, the Tenant's last payment of rent under the Lease was on March 2, 2020. As at the date of this letter, the Tenant owes \$3,130,000 in rent arrears under the Lease through December 31, 2020.

This letter services as notice to the Tenant of its default under the Lease for nonpayment of rent.

The Landlord demands that the Tenant pay to the Landlord an amount of \$1,000,000.00 in rent arrears owing under the Lease on or before December 31, 2020. In addition to the payment of the \$1,000,000.00 referred to above, the remaining portion of the unpaid rent arrears (in the amount of \$2,130,000) is also to be paid by the Tenant and the Landlord requires a payment schedule for such portion of the unpaid rent arrears, to be satisfactory to the Landlord. For greater certainty, the Tenant's obligation to pay rent under the Lease as it regularly falls due continues notwithstanding the payment of the rent arrears and all unpaid rent arrears must be paid in full.

This letter is an offer that does not alter the Landlord's strict legal rights under the Lease, which remain in full force and effect.

Yours truly,

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Per: 

Ron Rienas, General Manager
Authorized Signatory



BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
100 QUEEN STREET, FORT ERIE, ON L2A 3S6 ▪ 1 PEACE BRIDGE PLAZA, BUFFALO, NY 14213-2495
PHONE (905) 871-1608/(716) 884-6744 ▪ FAX (905) 871-9940/(716) 884-2089
ACTIVE_CA\ 42685606\2 www.peacebridge.com

TAB 32

Brendan Jones

From: Ron Rienas
Sent: December 9, 2020 4:21 PM
To: Karen L. Costa
Subject: FW: PBA Information request

THIS IS EXHIBIT # 7
 ON THE EXAMINATION OF:

Ron Rienas IN

RBC

vs.

Peace Bridge Duty Free

HELD ON Aug 23 2023

OFFICIAL EXAMINER
 at St. Catharines, Ontario

From: Ron Rienas
Sent: Wednesday, December 9, 2020 4:17 PM
To: Jim Pearce <JimP@dutyfree.ca>
Subject: PBA Information request

Jim,

We do not believe that PBDF is being at all forthcoming in providing requested information and is delaying and obfuscating at every opportunity. As I have indicated previously, the PBA needed to have a degree of comfort before extending the rent deferral to March 31, 2021.

I want to make it clear that the PBA is not prepared to be PBDF's bank and are not prepared to defer *all* of the rent payments till March 31, 2021. Accordingly, the PBA is demanding payment of 1/3 of the outstanding 2020 rent, amounting to \$1 million, by December 31, 2020 with the balance of the 2020 unpaid rent and anticipated 2021 unpaid rent to be deferred to March 31, 2021.

Please see my comments in red below to your e-mail of yesterday

From: Jim Pearce <JimP@dutyfree.ca>
Sent: Tuesday, December 8, 2020 1:41 PM
To: Ron Rienas <rr@peacebridge.com>
Subject: PBA Information request

Ron

PBDF is writing in response to your request for certain financial and other information.

Further to your request, and in accordance with article 16.03(a), PBDF can provide the following: *Let me reiterate our request and Article 16.03 "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".*

- interim 2020 financial statements YTD 11/30/2020

- recent interim financial statements have not been prepared. We are asking for reasonable financial information. We are not prepared to wait till end of March 2021 for audited statements. I am sure you have internal financial statements or other internal financial information that you are using to monitor PBDF's ongoing financial position. For example, you would have bank statements.

- on its own accord, PBDF and Grant Thornton have started the preliminary audit work on the annual audited statements and the plan is to have the audited statements ready earlier than required (by end of March at the latest before the time the latest deferral ends) . This is not extraordinary. We begin our preliminary work in November for the Board's AGM at the end of February.

- a list of the government COVID relief programs that the PBDF has applied for and what relief has been received. If programs were not applied for, why was PBDF not eligible.

- CEWS - ongoing monthly relief is being received Please provide total amount received.

- CERS - recently applied We assume that you will be successful in receiving \$75,000 for each of the three claim periods currently available, for a total of \$225,000

- CEBA - do not meet qualifying criteria

- a copy of the construction contract for the leasehold improvements and also include the description, date in service, cost, accumulated depreciation/amortization

- construction contract is attached The contract provided is not fully executed and appears to be a draft. Please provide fully executed contract.

- depreciation note is attached This just the footnote from the 2019 financial statements. We are looking for the detailed listing of the assets that are included in the line "Leasehold Improvements" in the footnot you provided.

- current balances due on the demand credit facilities

- as of Nov 30th, balance drawn on the credit facility was \$115,000. Your financial statements indicate two lines of credit . One has \$900,000 available (Or \$785,000 remaining assuming the \$115,000 is drawn against this line) and the other permits \$600,000 in Letters of Credit to be issued against it. At 12/31/19 there was \$575,900 outstanding on the line. Please provide documentation from the bank indicating the **current** credit extended. The agreement also indicates the existence of a \$300,000 visa business credit line – what is due on that?

Please provide a copy of the banks general Form 924.

The credit lines provide the ability for business loan insurance – did PBDF obtain this coverage?

The agreement you provided is not executed – Please provide an executed copy so we can ascertain if it is the final and current agreement.

- copy of the security agreement in place for the demand credit facilities and also the capital lease obligation with the Royal Bank of Canada. Specifically, include the assignment of the fire insurance proceeds as security.

- RBC Credit Facility and RBC Master Lease agreements are attached. You have only provided the Master Lease agreement. Please provide the leasing schedule(s) that lists all the assets subject to the lease.

- current status of the debt related covenants (debt service coverage ratio) and a calculation of the debt service coverage ratio as of 11/30/2020. If PBDF is in violation or anticipates being in violation of this covenant at 12/31/2020 what communications has PBDF had with its lenders. You did not provide the DSCR. The DSCR is required to be calculated at year end and PBDF should know where it currently stand on this now.

- PBDF has not been notified of any violation Typically, lenders do not notify of a default. That is something that a debtor monitors and certifies to the bank.

- a current statement that shows the capital lease obligation is current

- RBC Lease Debit Notice (confirming bank withdrawal) is attached **We note that all debt payments are current.**

- any other means PBDF has pursued to gain additional access to credit.

- PBDF continues to monitor changes to existing support programs and new program releases from the various governments

- PBDF is in discussions with the Duty Free Association and with a lobbyist to see if the federal government will offer support to the duty free industry and/or to the landlords of the duty free stores

- further to your request under article 16.03 (c), PBDF can report that it does not presently believe it has the financial difficulties that could lead to this action. **I assume you are basing that statement based on internal financial analysis. As requested above, please provide this documentation**

Also, PBDF provides the following additional information in response to the PBA request:

- A copy of PBDF's 2020/21 winter control contract with Stevensville Lawn Service

- agreement is attached **You have not provided the entire contract. You only provided the General Conditions. There need to be Schedules attached that include definitions, drawings showing the premises covered, and specifications detailing how the work will be performed.**

- A certificate from a recognized and reputable HVAC contractor certifying that the HVAC system is in good working order.

- HVAC service was performed last Friday and the report is expected shortly. **Received today**

- Washroom cleaning

- PBDF will assume cleaning duties and this is scheduled to start tomorrow. Please have PBA Supervisor contact PBDF Supervisor. **PBDF cleaning began today.**

- PBDF does request the PBA does not charge us for cleaning during the time this issue was being discussed. **PBA notified PBDF on October 29, and on November 13 and again on November 26 that PBA would cease cleaning the washrooms on November 29 and require PBDF to do so in accordance with the lease. PBDF deliberately ignored that requirement. PBA will charge \$800.00 for the 7 day period from December 2-8 plus the cost of a PBA plumber and supervisor for repairs that needed to be undertaken.**

Regards,

Jim Pearce

General Manager

Peace Bridge Duty Free

Thank you

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

TAB 33

CONFIDENTIAL

At the Regular Board Meeting
Executive Session
Via Zoom Video Conference
November 20, 2020

THIS IS EXHIBIT # 5
 ON THE EXAMINATION OF:

Ron Rienas IN

RBC

vs.

Peace Bridge Duty Free

HELD ON Aug 23 2023

OFFICIAL EXAMINER
 at St. Catharines, Ontario

1. CALL TO ORDER

The Chairman called Executive Session to order at 9:02 AM.

2. ROLL CALL

Present

K. Manning, Chair
 T. Clutterbuck
 M.T. Dominguez
 L. Holloway
 T. Masiello
 I. Meharry
 J. Persico
 P. Robson
 M. Russo

Absent

D. Zimmerman (*with regrets*)

Staff Present

R. Rienas, General Manager
 K. Costa, Chief Financial Officer
 T. Boyle, Chief Operating Officer
 K. Kaiser, Executive Assistant

Others Present

F. Cirillo – NYS Department of Transportation

3. CONFLICTS OF INTEREST

None

4. NEW BUSINESS

- a) Peace Bridge Duty Free Rent Deferral Agreement – Verbal
 Moved by K. Manning
 Seconded by T. Clutterbuck

"THAT the rent deferral agreement with Peace Bridge Duty Free be approved."

CARRIED

A discussion took place around the need to extend the deferral agreement executed in April due to the ongoing pandemic and continuing border restrictions.

5. RETURN TO REGULAR SESSION

Moved by P. Robson
 Seconded by T. Masiello

"THAT the meeting return to regular session."

CARRIED

Ron Rienas,
 General Manager

TAB 34

RENT DEFERRAL AGREEMENT

THIS AGREEMENT made the 27th day of April, 2020:

BETWEEN:

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
(the "Landlord")

AND

PEACE BRIDGE DUTY FREE INC.
(the "Tenant")

WHEREAS:

- A. By a lease made July 28, 2016 between the Landlord and the Tenant, the Tenant leased from the Landlord certain premises (the "Premises") municipally known 1 Peace Bridge, Fort Erie, Ontario, for a term commencing November 1, 2016 and expiring October 31, 2031; and
- B. Due to travel restrictions and economic hardships created across the world by the COVID-19 pandemic, the Tenant requests rent relief.

NOW THEREFORE THIS AGREEMENT WITNESSES in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt of sufficiency whereof is hereby acknowledged, the parties agree as follows:

1. INTERPRETATION

1.1 Expressions in Lease: Unless expressly provided to the contrary in this Agreement, all terms defined in the Lease shall have the same meaning in this Agreement.

1.2 Definitions and Interpretation: The Lease is amended by adding the following definitions thereto:

"Amortization Period" means the one year period commencing on the Restart Date.

"Suspension Date" means April 1, 2020.

"Deferred Rent" means the Base Rent otherwise payable by the Tenant pursuant to the Lease during the Rent Deferral Period but for the terms of this Agreement.

"Rent Deferral Period" means the period commencing on the Rent Suspension Date to and including the earlier of:

- 1. July 31, 2020; or

- II. the last day of the month following the date that the Tenant has fully reopened the Duty Free Shop for business after the restrictions on non-essential travel between Canada and the United States are lifted (for greater clarity, a partial reopening to accommodate essential travel does not constitute a full reopening).

"Required Conditions" means:

- I. the Tenant pays all Additional Rent throughout the Rent Deferral Period, including without limitation, all Operating Costs and Property Taxes;
- II. the Tenant does not seek benefit or protection of any statute for the benefit of bankrupt or insolvent debtors, including without limitation, a proposal, assignment or arrangement with its creditors or the repudiation or disclaimer of the Lease;
- III. there has not been a Transfer (as defined in section 14.01 of this Lease); and
- IV. the Tenant strictly complies with all of the terms of the Lease and there is no Event of Default; and
- V. the Tenant strictly complies with all of the terms of this Agreement (including without limitation, the representations and warranties herein).

"Restart Date" means the day immediately following the last day of the Rent Deferral Period.

2. RENT DEFERRAL

2.1 Tenant's Representations and Warranties: The Tenant represents and warrants to the Landlord the following:

- (a) the Tenant temporarily closed its business at the Premises on or about March 21, 2020 and will fully re-open for business at the Premises as soon the restrictions on non-essential travel between Canada and the United States of America are lifted; and
- (b) the Tenant has and will continue to use its best efforts to take advantage of all government programs offering financial relief from the effects of the COVID-19 pandemic, including without limitation, any income tax deferral or reduction, rent assistance, employee wage and benefit subsidies and the like, with a view to ensuring that the Tenant is and remains a financially viable business, and shall keep the Landlord apprised of the Tenant's efforts in this regard.

2.2 Rent Suspension and Deferral: Provided the Required Conditions are met both throughout the Rent Deferral Period and the Amortization Period, then notwithstanding anything in this Lease to the contrary, the Tenant's obligation to pay the Deferred Rent during the Rent Deferral Period shall be suspended and deferred and shall not be payable until the Restart Date. The Tenant shall, however, be bound by all the other terms and conditions of this Lease during the Rent Suspension Period. For the purpose of clarity, it is understood and agreed that if any of the Required Conditions are not met, the Tenant's right to suspend and defer payment of Deferred Rent during the Rent Suspension Period shall be immediately forfeited and withdrawn retroactive to the Rent Suspension Date and the Deferred Rent that would otherwise have been payable during the Rent Suspension Period to the date of such forfeiture shall be immediately due and payable together with interest thereon at the rate set forth in the Lease for non-payment of Rent, calculated from the date each such installment of Deferred Rent would otherwise have been payable pursuant to Lease but for this Agreement. Except as expressly

are not done

24/

suspended and deferred in accordance with this section, the Tenant shall continue to pay all Rent in accordance with the Lease.

- 2.3 **Repayment of the Deferred Rent:** Repayment of the Deferred Rent shall commence on the Restart Date. The aggregate amount of Deferred Rent together with interest thereon at the rate of 4% per annum shall be amortized over the Amortization Period and repaid by the Tenant in equal consecutive monthly instalments on the first day of each month from and including the Restart Date, without abatement or set-off, in the same manner as Rent. The Tenant covenants and agrees that if at any time, any of the Required Conditions are not met, the Landlord's agreement to amortize the repayment of the Deferred Rent shall be deemed to have been immediately withdrawn and the Tenant shall immediately pay to the Landlord the then outstanding unamortized balance of the Deferred Rent together with interest thereon at the rate of 4% per annum.

3. ACKNOWLEDGEMENT

- 3.1 **Acknowledgement:** The Tenant confirms that, as of the date hereof, (a) the Landlord is not in default under any obligation of the Landlord under the Lease and (b) there are no disputes or claims outstanding by the Tenant against the Landlord in respect of any past billings, rental recoveries or other matters pertaining to the Lease.

4. NO AGREEMENT

- 4.1 This Agreement shall be deemed not to have been executed and delivered by the Landlord until:
- i. this Agreement has been duly executed by all the other parties hereto and the Landlord has received at least one executed original hereof; and
 - ii. the Landlord has received payment of the sum of \$3,000 plus the applicable HST thereon, being the estimated legal fees incurred by the Landlord in relation to the request for rent-relief and the preparation of this Agreement.

Until the aforesaid deliverables have been received by the Landlord, the Landlord may, at its sole option, by written notice to the Tenant, withdraw any agreement in respect of rent-relief and this Agreement shall be null and void and of no further force or effect.

5. AGREEMENT PART OF LEASE

- 5.1 **Agreement Part of Lease:** This Agreement shall be read in conjunction with the Lease and shall form a part thereof and all provisions of the Lease insofar as applicable and except as amended by this Agreement shall continue in full force and effect and shall be binding upon and shall enure to the benefit of the parties, their successors and permitted assigns.
- 5.2 **Further Assurances:** Each party shall at any time and from time to time, upon the request of the other party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.
- 5.3 **Counterparts:** This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered to all of the parties shall be deemed to be and shall be read as a single agreement among the parties.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement with effect on the date first set out on the first page of this Agreement.

**BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY**

Per: 

Name: ☐ Ron Kienas

Title: ☐ General Manager c/s

Per: _____

Name: ☐ _____

Title: ☐ _____

I/We have authority to bind the corporation

PEACE BRIDGE DUTY FREE INC.

Per: 

Name: ☐ G.B. O'HARA

Title: ☐ PRESIDENT c/s

Per: _____

Name: ☐ _____

Title: ☐ _____

I/We have authority to bind the corporation

TAB 35



September 8, 2021

Via Registered Mail

Christopher M. Stanek
Direct +1 416 862 4369
christopher.stanek@gowlingwlg.com
File no. K0555679

Peace Bridge Duty Free Inc.
PO BOX 339 STN Main
Fort Erie, Ontario
L2A 5N1

1 Peace Bridge
Fort Erie, Ontario
L2A 5N1

Attention : Greg O'Hara and Jim Pearce

Dear Mr O'Hara and Mr. Pearce:

Re: Buffalo and Fort Erie Public Bridge Authority and Peace Bridge Duty Free Inc.

Please find enclosed a Notice of Default, dated September 8, 2021 and Notice of Default pursuant to Subsection (19)2 of the *Commercial Tenancies Act*, dated September 8, 2021.

Sincerely,

Gowling WLG (Canada) LLP

A handwritten signature in black ink, appearing to read "Chris Stanek", with a long horizontal flourish extending to the right.

Christopher M. Stanek

CMS:cc
Encls.

Gowling WLG (Canada) LLP
Suite 1600, 1 First Canadian Place
100 King Street West
Toronto ON M5X 1G5 Canada

T +1 416 862 7525
F +1 416 862 7661
gowlingwlg.com

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at gowlingwlg.com/legal

ACTIVE_CA\47417783\1

NOTICE OF DEFAULT

TO: PEACE BRIDGE DUTY FREE INC. (hereinafter called the "Tenant")
PO Box 339 STN Main
Fort Erie, ON L2A 5N1
Attn: Greg O'Hara / Jim Pearce

and to:

1 Peace Bridge
Fort Erie, ON L2A 5N1
Attn: Greg O'Hara / Jim Pearce

RE: A lease dated as of July 28, 2016 between Buffalo and Fort Erie Public Bridge Authority (the "Landlord") and the Tenant for premises (the "**Leased Premises**") comprising certain lands and the building located thereon all as more particularly described therein (the "**Lease**")

You have failed to pay Rent (as defined in the Lease) as and when due in accordance with the Lease. Further, you have failed to pay Rent as and when due in accordance with the *Canada Emergency Rent Subsidy* program administered by the *Canada Revenue Agency*.

As of today's date, your arrears of Rent amount to \$5,931,389 (the "**Arrears**"), the details of which are set out in the attached Appendix 1. This is not acceptable and must be remedied immediately.

The Landlord requires payment of the Arrears (\$5,931,389) in full, by certified funds, by 4:00 p.m. EST on September 17, 2021 delivered to the Landlord at 100 Queen Street, Fort Erie, Ontario L2A 3S6 to the attention of Karen Costa, Chief Financial Officer, failing which, the Landlord will have no choice but to resort to its remedies, both under the Lease and at law, without further notice to you, including without limitation, distraining (seizing and selling) your goods and applying the proceeds on account of the payment of the Arrears, or alternatively, re-entering the Leased Premises and terminating the Lease.

Finally, please be advised that no assets may be removed from the Leased Premises if the purpose of such removal is to defeat the Landlord's right to seize and sell those assets to satisfy the Arrears. If you do so, both you and any person who knowingly assists in this removal will be subject a penalty to be paid to the Landlord equal to double the value of the removed assets. We refer you to section 50 of the *Commercial Tenancies Act* in this regard.

The date of delivery of this notice shall be the date of its delivery to the Leased Premises, notwithstanding that a copy may be sent by registered mail, courier, facsimile or email to any other person or to the Tenant at any other address for the purposes of confirmation or courtesy only.

...2

We regret being compelled to send you this notice but you have left us with no alternative.

Govern yourself accordingly.

Dated at Toronto, Ontario, this 8th day of September 2021.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
by its solicitors,
GOWLING WLG (CANADA) LLP

Per: 

Christopher Stanek
Partner

ACTIVE_CAI4741621311

Peace Bridge Duty Free
Details of Arrears
As of 9/7/2021

	Calculated Rent						CDN			
	CAM		CAM HST		Outstanding					
	Base	Base rent HST	(Operating)	(Operating)			Paid		September 7, 2021	
1/20	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -				
2/20	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -				
3/20	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -				
4/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333	\$ 210,829	\$ 122,504	
5/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
6/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
7/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
8/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
9/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
10/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
11/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
12/20	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
1/21	\$ 333,333	\$ 43,333	\$ 8,167	\$ 1,062	\$ 385,895	\$ 9,229	\$ 43,333		\$ 333,333	
2/21	\$ 333,333	\$ 43,333	\$ 9,050	\$ 1,177	\$ 386,893	\$ 10,287	\$ 43,333		\$ 333,273	
3/21	\$ 333,333	\$ 43,333	\$ 9,050	\$ 1,177	\$ 386,893	\$ 10,167	\$ 43,333		\$ 333,393	
4/21	\$ 333,333	\$ 43,333	\$ 9,050	\$ 1,177	\$ 386,893	\$ 10,227	\$ 43,333		\$ 333,333	
5/21	\$ 333,333	\$ 43,333	\$ 10,812	\$ 1,406	\$ 388,885	\$ 12,218	\$ 43,333		\$ 333,333	
6/21	\$ 333,333	\$ 43,333	\$ 10,812	\$ 1,406	\$ 388,885	\$ 12,218	\$ 43,333		\$ 333,333	
7/21	\$ 333,333	\$ 43,333	\$ 10,812	\$ 1,406	\$ 388,885	\$ 12,218			\$ 376,667	
8/21	\$ 333,333	\$ 43,333	\$ 10,812	\$ 1,406	\$ 388,885	\$ 12,218			\$ 376,667	
9/21	\$ 333,333	\$ 43,333	\$ 10,812	\$ 1,406	\$ 388,885				\$ 388,885	
Totals	\$ 6,000,000	\$ 780,000	\$ 162,880	\$ 21,174	\$ 6,964,055	\$ 171,837	\$ 650,000	\$ 210,829	\$ 5,931,389	

DETAILS OF ARREARS

APPENDIX 1

NOTICE OF DEFAULT PURSUANT TO SUBSECTION 19(2)
OF THE *COMMERCIAL TENANCIES ACT*

TO **PEACE BRIDGE DUTY FREE INC.** (hereinafter called the "Tenant")
PO Box 339 STN Main
Fort Erie, ON L2A 5N1
Attn: Greg O'Hara / Jim Pearce

and to:

1 Peace Bridge
Fort Erie, ON L2A 5N1
Attn: Greg O'Hara / Jim Pearce

RE: A lease dated as of July 28, 2016 between Buffalo and Fort Erie Public Bridge Authority (the "**Landlord**") and the Tenant for premises (the "**Leased Premises**") comprising certain lands and the building located thereon all as more particularly described therein (the "**Lease**")

TAKE NOTICE that the Tenant is in breach of the following sections of the Lease:

"4.06 Letter of Credit

The Tenant covenants that, on or before the Commencement Date, the Tenant shall deliver to the Landlord an irrevocable and unconditional letter of credit or other form of cash collateral security satisfactory to the Landlord (the "Letter of Credit") in favour of Landlord issued by a Schedule 1 Canadian chartered bank in the amount of \$50,000.00, which shall be held by the Landlord during the Term and any Extension Term. The Letter of Credit shall be in such form as is approved in advance by the Landlord. If at any time during the Term or any Extension Term, the Tenant defaults in the payment of any Rent or other amounts payable under this Lease or in the performance of any of its other obligations under this Lease or if this Lease is surrendered, terminated, disclaimed or repudiated whether by Landlord as a result of default of Tenant or in connection with any insolvency or bankruptcy of Tenant or otherwise, then Landlord at its option may, in addition to any and all other rights and remedies provided for in this Lease or at law, draw a portion of or all of the principal amount of the Letter of Credit, whereupon the proceeds thereof shall be applied to compensate Landlord for damages suffered by it as the result of Tenant's default, and the balance, if any, will be returned to the Tenant. If the Landlord draws all or part of the Letter of Credit, the Tenant shall provide the Landlord with a replacement Letter of Credit in the full amount of \$50,000 upon written demand from the Landlord to do so. ..."

"9.02 Conduct and Operation of Business

The Tenant shall occupy the Leased Premises during the Term of the Lease and shall continuously and actively carry on the Permitted Use in the whole of the Leased Premises. In the conduct of the Tenant's business pursuant to this Lease, the Tenant shall:

- (a) operate its business 24 hours a day, seven days a week, 365 days a year with due diligence and efficiency and maintain an adequate staff to properly serve all customers;..."

"17.01 Event of Default

An "Event of Default" shall be considered to have occurred when any one or more of the following happens:

- (g) the Tenant abandons or attempts to abandon the Leased Premises or the Leased Premises remain vacant for ten (10) consecutive days or more without the prior written consent of the Landlord;"

The Tenant is in breach of the foregoing sections of the Lease in that:

- (i) it has failed to provide the Landlord with a replacement Letter of Credit in the full amount of \$50,000 upon written demand from the Landlord to do so;
- (ii) it has not continuously and actively carried on the Permitted Use in the whole of the Leased Premises and it has not operated its business 24 hours a day, seven days a week, 365 days a year;
- (iii) it abandoned the Leased Premises on or about March 24, 2020;
- (iv) it has let the Leased Premises remain vacant for ten (10) consecutive days or more without the prior written consent of the Landlord; and
- (v) it has failed to re-open the Leased Premises notwithstanding that a proposal issued by the Tenant and received by the Landlord on August 20, 2021 states that the Tenant is ready to re-open, and despite the Landlord's repeated requests for the Tenant to re-open.

As such, the current month's instalment of Rent (as defined in the Lease) and the next three (3) months' instalments of Rent became immediately due and payable pursuant to subsection 17.02(d) of the Lease.

Pursuant to the provisions of the Lease and subsection 19(2) of the *Commercial Tenancies Act*, the Tenant is hereby required to remedy the above noted breaches on or before 4 p.m. (local time) September 22, 2021 and is required to make money compensation to the Landlord in respect of the full amount of the current month's instalment of Rent together with the next three (3) months' instalments of Rent, plus legal fees and disbursements in the amount of \$10,000, plus HST.

The Landlord hereby gives further notice that if the Tenant does not make such payments and remedy such defaults on or before 4 p.m. (local time) September 19, 2021, then, at any time thereafter and without further notice or demand to the Tenant, the Landlord intends to exercise its rights under the Lease or at law.

The date of delivery of this notice shall be the date of its delivery to the Leased Premises, notwithstanding that a copy may be sent by registered mail, courier, facsimile or email to any other person or to the Tenant at any other address for the purposes of confirmation or courtesy only.

Dated at Toronto, Ontario, this 8th day of September 2021.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
by its solicitors,
GOWLING WLG (CANADA) LLP

Per: 

Christopher Stanek
Partner

ROYAL BANK OF CANADA

and

PEACE BRIDGE DUTY FREE INC.

Applicant

Respondent (Appellant)

Email addresses for service recipients:

christopher.stanek@gowlingwlg.com

patrick.shea@gowlingwlg.com

smitra@airdberlis.com

jnemers@airdberlis.com

mmanchanda@spergel.ca

lwilliams@tgf.ca

AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca

steven.groeneveld@ontario.ca

insolvency.unit@ontario.ca

lwilliams@tgf.ca

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at **Toronto**

EXHIBIT BOOK OF PEACE BRIDGE DUTY FREE INC.

BLANEY MCMURTRY LLP

Barristers & Solicitors

2 Queen Street East, Suite 1500

Toronto, ON, M5C 3G5

David T. Ullmann (LSO #42357I)

Tel: (416) 596-4289

Email: dullmann@blaney.com

John Wolf (LSO #30165B)

Tel: (416) 593-2994

Email: jwolf@blaney.com

Brendan Jones (LSO #56821F)

Tel: (416) 593-2997

Email: bjones@blaney.com

Lawyers for the Respondent (Appellant)