# ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

BETWEEN:

#### **ROYAL BANK OF CANADA**

Applicant

and

#### PEACE BRIDGE DUTY FREE INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

#### MOTION RECORD

(Returnable 25 July 2023)

17 July 2023

#### **GOWLING WLG (CANADA) LLP**

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Lawyers for Buffalo and Fort Erie Public Bridge Authority

TO: THE SERVICE LIST

## ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

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# TAB 1

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

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#### NOTICE OF MOTION

BUFFALO & FORT ERIE PUBLIC BRIDGE AUTHORITY, (the "Authority") will make a Motion to a Judge of the Ontario Superior Court of Justice (Commercial List) on 25 July 2023 at 10:00 a.m., or as soon after that time as the motion can be heard, via Zoom.

PROPOSED METHOD OF HEARING: The Motion is to be heard by video conference.

#### THE MOTION IS FOR

- 1. An Order
  - (a) Granting the Authority leave to issue a default notice or default notices in respect of the defaults identified in the Affidavit of Ron Rienas sworn 17 July 2023;

- (b) If necessary, redacting and/or sealing the documents provided to Peace Bridge

  Duty Free ("PBDF") in redacted form;
- (c) If necessary, redacting and/or sealing the Agendas for and Minutes from the executive sessions of the meetings of the Authority's board of directors that have not already been disclosed to PBDF.
- 2. Such further and other relief as to this Honourable Court may seem just.

#### THE GROUNDS FOR THE MOTION ARE:

- 1. The Affidavit of Ron Rienas sworn 17 July 2023.
- 2. Such further and other grounds as the lawyers may advise and this Honourable Court may accept.

#### THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. The Affidavit of Ron Rienas sworn 17 July 2023.
- Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

17 July 2023

#### GOWLING WLG (CANADA) LLP

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#### Christopher Stanek (LSO# 45127K)

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Lawyers for Buffalo and Fort Erie Public Bridge Authority

TO: THE SERVICE LIST

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

## ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

BETWEEN:

#### ROYAL BANK OF CANADA

Applicant

- and -

#### PEACE BRIDGE DUTY FREE INC.

Respondent

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

### SERVICE LIST (as at 6 October, 2022)

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AND TO: PEACE BRIDGE DUTY FREE INC.

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#### **ROYAL BANK OF CANADA**

Applicant

-and-

#### PEACE BRIDGE DUTY FREE INC.

Respondent

### ONTARIO SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

#### NOTICE OF MOTION

#### **GOWLING WLG (CANADA) LLP**

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Lawyers for Buffalo and Fort Erie Public Bridge Authority

# TAB 2

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

## ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

BETWEEN:

#### **ROYAL BANK OF CANADA**

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and

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#### AFFIDAVIT OF RON RIENAS

(Sworn 17 July 2023)

I, RON RIENAS of the City of Port Colborne, in the Province of Ontario, MAKE OATH AND SAY:

- 1. I am the General Manager of Buffalo and Fort Erie Public Bridge Authority (the "Authority") and, as such, have personal knowledge of the matters herein deposed save and except where I rely on information and belief, in which cases I identify the source of that information and verily believe it to be true.
- I am swearing this Affidavit in support of a Motion by the Authority for an Order granting the Authority leave to deliver to Peace Bridge Duty Free Inc. ("PBDF") a notice of notices of default in respect of the defaults by PBDF under the Building Lease dated as of 28 July 2016 between PBDF and the Authority (the "Lease").

#### The Lease and Non-payment Defaults

- 3. Attached as **Exhibit "A"** is a true copy of the Lease.
- 4. The terms of the Lease are based on a proposal by PBDF made in response to a RFP by the Authority (the "Tenant Proposal"). The Tenant Proposal is attached as Schedule D to the Lease and forms part of the Lease. I note that Art 2.01 of the Lease includes a definition of "Tenant Proposal" at (tt).
- 5. The Authority is stayed by the Order dated 17 December 2021, a true copy of which is attached as Exhibit "B" from exercising any enforcement rights under the Lease in respect of defaults by PBDF under the Lease.
- 6. In addition to what the Authority asserts are payment defaults by PBDF, PBDF is in default of other provisions of the Lease:

Default	Provision(s) of the Lease
Failure to operate the duty free consistent with the Proposal.	Art 9.02(n) and Tenant Proposal
Failure to provide food services.	Art 9.02(n) and Tenant Proposal, Tab E
Altering the interior of the duty free without the prior written approval of the Authority. Specifically, installing a wall without approval.	12.02(a)
Failure to keep the Leased Premises in a first class condition.	Art 9.02 (n) and 12.01(b).
Failure to spend at least \$1MM per year on marketing and sales initiative.	Art 9.02(n) and Tenant Proposal Tab G
Failure to spend at least \$1.25MM in capital refurbishments in Year 6 of the Lease-2022.	Art 9.02(n) and Tenant Proposal Tab H.

 Article 9.02(n) of the Lease requires that PBDF operate and manage the duty free in a manner consistent with the Tenant Proposal.

#### The Lease and Non-payment Defaults

- 3. Attached as **Exhibit "A"** is a true copy of the Lease.
- 4. The terms of the Lease are based on a proposal by PBDF made in response to a RFP by the Authority (the "Tenant Proposal"). The Tenant Proposal is attached as Schedule D to the Lease and forms part of the Lease. I note that Art 2.01 of the Lease includes a definition of "Tenant Proposal" at (tt).
- 5. The Authority is stayed by the Order dated 14 December 2021, a true copy of which is attached as Exhibit "B" from exercising any enforcement rights under the Lease in respect of defaults by PBDF under the Lease.
- 6. In addition to what the Authority asserts are payment defaults by PBDF, PBDF is in default of other provisions of the Lease:

Default	Provision(s) of the Lease
Failure to operate the duty free consistent with the Proposal.	Art 9.02(n) and Tenant Proposal
Failure to provide food services.	Art 9.02(n) and Tenant Proposal, Tab E
Altering the interior of the duty free without the prior written approval of the Authority. Specifically, installing a wall without approval.	12.02(a)
Failure to keep the Leased Premises in a first class condition.	Art 9.02 (n) and 12.01(b).
Failure to spend at least \$1MM per year on marketing and sales initiative.	Art 9.02(n) and Tenant Proposal Tab G
Failure to spend at least \$1.25MM in capital refurbishments in Year 6 of the Lease-2022.	Art 9.02(n) and Tenant Proposal Tab H.

 Article 9.02(n) of the Lease requires that PBDF operate and manage the duty free in a manner consistent with the Tenant Proposal.

- 8. The Tenant Proposal contemplates that PBDF will provide food services. In the Tenant Proposal, PBDF referred to agreement with Tim Horton's and McDonald's to establish operations in the duty free. The floor plan that forms part of the Tenant Proposal identifies the portion of the duty free that is to be allocated to food services generally and Tim Horton's and McDonald's specifically.
- 9. Both Tim Horton's and McDonald's exited the duty free and have not been replaced by PBDF. As matters currently stand, there are no food services being offered by PBDF
- 10. Article 12.02(a) of the Lease prohibits PBDF from altering the interior of the duty free without the prior written approval of the Authority. PBDF has, without the Authority's approval, constructed a wall inside the duty free. This wall was built to "wall-off" the portion of the duty free that was occupied by Tim Horton's and McDonald's.
- In addition to being required to operate the duty free in accordance with the Tenant Proposal, Article 12.01(b) of the Lease requires that PBDF keep the Leased Premises in a "first class condition". The Tenant Proposal included a number of graphic depictions of how PBDF proposed to present the Leased Premises. Attached as Exhibit "C" are true pictures of the interior and exterior of the duty free. I note that what is depicted in these pictures does not compare favourably to the renderings and pictures that are in the Tenant Proposal.
- 12. The Tenant Proposal contemplates that PBDF will spend at least \$1MM annually on marketing and sales initiatives, and projects that it would spend significantly in excess of \$1MM. While the Authority appreciates why PBDF did not incur costs on sales and marketing initiatives while the duty free was closed, there is no excuse for PBDF now not meeting its obligation in terms of what it is spending on sales and marketing initiates.

- 13. PBDF committed in the Tenant Proposal to spend \$1.25MM to refurbish the duty free in years 6, 11 and 16 of the Lease. Year 6 of the Lease was 2022. I am not aware of PBDF incurring any costs to refurbish the duty free in 2022.
- 14. The Authority raised the foregoing non-payment defaults with PBDF in a letter dated 26 June 2023. There was no substantive response received from PBDF,
- 15. Certain of the non-payment defaults on the part of PBDF—as opposed to any lingering impact of the Government's legislative response to COVID—may, in my view, be the cause of PBDF's on-going financial issues.
- 16. As I understand, the Tenant Proposal describes how PBDF would operate the duty free to grow per vehicle sales in an environment of declining vehicular traffic over the Peace Bridge. In the Tenant Proposal, PBDF refers to: (a) the steady decline in vehicular traffic over the Peace Bridge—according PBDF, a 38% decline between 2000 and 2015; and (b) PBDF knowing how to address the challenges presented by declining vehicular traffic by growing sales per vehicle.
- 17. Based on data collected by the Authority, vehicular traffic over the Peace Bridge has, as of June of 2023, rebounded to over 85% of pre-COVID levels, which the Authority considers "normal" given the steady decline in vehicular traffic that was being experienced during the years prior to COVID. PBDF's sales appear, however, to continue to lag and PBDF does not appear to have been able to grow per vehicle sales as contemplated by the Tenant Proposal. I believe that this may be because PBDF is not operating the duty free in the manner contemplated by the Tenant Proposal and Art 9.02(n) of the Lease.
- 18. The Tenant Proposal refers, for example, to how PBDF will make use of billboard signage along major highways to direct vehicular traffic to the duty free store. Post-COVID, PBDF

has not, however, replaced pre-COVID billboard signage and it is difficult to determine from the highway whether the duty free is even open, which is part-and-parcel of the issues with the general appearance of the duty free. PBDF also referred in the Tenant Proposal to the importance of: (a) the Tim Horton's and McDonald's operations; and (b) sales and marketing initiatives to duty free sales.

#### Correspondence Exchanged by PBDF and the Authority re Disclosure

- 19. Attached as Exhibit D are true copies of:
  - (a) 8 June 2023 letter from Gowling to Blaney;
  - (b) 23 June 2023letter from Gowling to Blaney;
  - (c) 26 June 2023 letter from Gowling to Blaney;
  - (d) 30 June 2023 Letter from Blaney to Gowling;
  - (e) 7 July 2023 letter from Gowling to Blaney; and
  - (f) 7 July 2023 letter from Gowling to Blaney.
- 20. As noted in the 7 July 2023 letter from Gowling to Blaney attached as Exhibit D(e), the Authority may seek a determination as to the relevance of certain documents, and an order sealing and/or redacting certain documents depending on what relief, if any, PBDF seeks with respect to those documents. The Authority will file a stand-alone Affidavit responding to any Motion by PBDF and in support of any Cross-Motion by the Authority.

6

SWORN BEFORE ME remotely at the City of Port Colborne and the City of Toronto, in the Province of Ontario, this 17th day of July, 2023 In accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely

A COMMISSIONER FOR TAKING AFFIDAVITS

**RON RIENAS** 

This is **Exhibit "A"** to the affidavit of Ron Rienas, sworn before me and witnessed by me through videoconferencing on 17/July 2023.

E. Patrick Shea, KC, a Commissioner, etc., Province of Ontario, for Gowling WLG (Canada) LLP, Barristers and Solicitors.

#### **BUILDING LEASE**

#### BETWEEN

#### BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

- AND -

PEACE BRIDGE DUTY FREE INC.

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#### SCHEDULES:

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SCHEDULE "B"

PLAN OF LEASED PREMISES

SCHEDULE "C"

RULES AND REGULATIONS

SCHEDULE "D"

TENANT'S PROPOSAL

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

#### BETWEEN:

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, duets, 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 boliday 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.
- (1) "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.
- (II) "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 Tenn 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 preauthorized 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	() <u></u>	\$ 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 reestimate 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 reallocation 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;
- 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;
- (1) 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:
  - 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 damages 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 asphalting of cracks or holes or asphalting 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,

EDC\_LAW\ 1389402\19 07/20/16 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 sceking 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 "Transferce") 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 Transferce, 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 Licensec 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.

	PALO AND FORT EXTEROBLIC
BRI	DGE AUTHORITY
	10xh /
Per	HOLL
	Strong U. A. Plaine
	Title: general manager 1/20/
	THE GENERAL Managere 7/25
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Per	
	Name:
-	Title:
	*****
1/11/	have authority to bind the Compact
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PEA	CE BRIDGE DUTY FREE INC.
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1 01	Name: GREGORY G. O'HARA
30	Title: PRESINENT

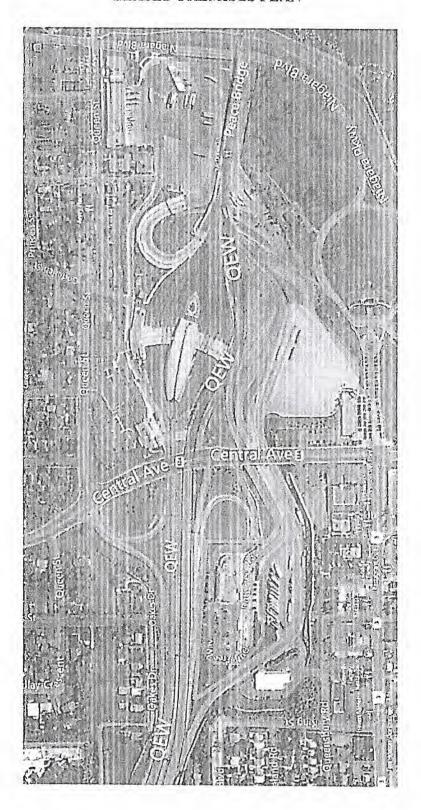
I have the authority to bind the Corporation

#### SCHEDULE "A" LEGAL DESCRIPTION OF THE LANDS

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

Being all of PIN 64220-0290 (LT)

# SCHEDULE "B" LEASED PREMISES PLAN



# SCHEDULE "C" RULES AND REGULATIONS

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

# SCHEDULE "D" TENANT'S PROPOSAL

Please see attached as labeled Schedule D

# SCHEDULE D

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

# The Technical Proposal May 9, 2016

Submitted to: Buffalo and Fort Erie Public Bridge Authority

Attn: Kimberlee Kaiser, Executive Assistant

100 Queen Street Fort Erie, Ontario

L2A 3S6

Proponent:

Peace Bridge Duty Free Inc.

1 Peace Bridge Plaza Fort Erie, Ontario

L2A 5N1

Contact:

Gregory G. O'Hara

President and Chief Executive Officer

905-871-5400 ext. 107 gohara@dutyfree.ca

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

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P.C. Box 339 Peace Oridge Plaza Fort Erie, Ontario LZA SN1 Canada P.O. Box 572 Buffalo, New York USA 14213-0572 T; 905-871-5400 F; 905-871-6335

May 9, 2016

Klmberlee Kalser Executive Assistant Buffalo & Fort Erle Public Bridge Authority 100 Queen Street Fort Erie, ON L2A 356

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.

**≜** Duty Free



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

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

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

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

Yours truly,

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

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

**№ Duty Free** 

# Non-collusive Proposal Certification



R.O. Box 339 Peace Bridge Plaza Fort Erle, Ontario L2A SM Canada R.O. Box 572 Buffalo, New York USA 14213-0572 T: 905-871-5400 Ft 905-071-5335

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



9.0. Box 339 Peace Bridge Plaza Fort Erie, Oñtario I.2A 5141 Canada P.O. Box 572 Buffalo, New York USA 14713-0572 Tr 905-871-5400 Fr 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.

全 Duty Free

# Statement of Insurability



April 26, 2016

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

Attention: Jim Pearce

Dear Sir:

I have estimated 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 in addition to the lease requirements, we have added the following enhancements:

- 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 losurance, which is a standard exclusion in Canada, has been purchased through the international markets to cover the main location for property and less 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 besitate to contact me.

Sincerely yours,

Tim McAvoy, BA, RIB

McAyoy, Belan & Campbell

351 CANBORD ROAD RIDGEVILLE ON LOS 1MO 905.892.9590

350 KING-STREET PORT GOULDRINE ON 1.3K A133 905.834.3666

mbefinancial.ca

# Consent to Surety



Chris Miotto Senior Account Manager Commercial Financial Services Granthem Shopping Pleza Branch 380 Scott Street St. Cathadnes, ON L2M 3W4 Transit 04242

Tel: (906) 934-4415 Fex: (905) 934-4676 E-mall: <u>chrls.mlotto@rbc.com</u>

April 6, 2016

Jim Pearce Manager Finance Peace Bridge Duty Free Inc. P.O. Box 339, Peace Bridge Plaza Fort Erle, 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 Landford, the Buffalo & Fort Erie Public Bridge Authority in the amount of \$600,000.

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

Chris Miette

Senior Account Menager

# Independence Statement



P.O. Box 339 Peace Bridge Plata Fort Erie, Ontario L2A 5N1 Canada P.O. Box 572 Riffalo, New York USA 14213-0572 Tt 905-871-5400 Ft 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

DUTY FREE

P.O. Box 339 Peace Bridge Plaza Fort Erle, Ontario LZA SN1 Canada P.O. Rox 572 Ruffalo, New York USA 14213-0572 Tr: 905-871-5400 Fr: 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:

- 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;
- 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 digarettes to someone under age. PBDF has re-educated all staff and is making additional system improvements to lessen any chance of reoccurance.
- vil. 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;

全 Duty Free



P.O. Box 339 Peace Bridge Plaza Fort Erie, Ontario L2A 5M1 Canada P.O. Box 572 Duffalo, New York USA 14213-0572 T: 905-871-5400 F: 905-871-6335

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

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

Gregory G, O'Hara

President and Chief Executive Officer

Peace Bridge Duty Free Inc.

**№ Duty Free** 

# Qualifications and Experience

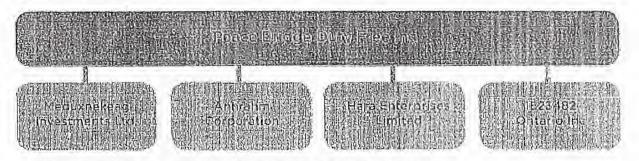
#### a. Proponent Name and Location of Proponent Headquarters

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. I 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 Erle, 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 evidence 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 <u>proprietary</u> and <u>exclusive</u> 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 preorder 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 trl-partnership with Budweiser/Labatt and Ellte 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 Clty, 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 GEW corridor from Mississauga to Fort Erle 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 though 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.

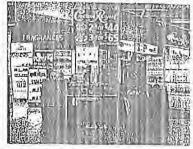


PBDF has entered into key contracts for strategic billboard placements. PBDF strategically uses billboard signage located along major highways to direct vehicular traffic to the Peace Bridge Plaza. This signage has proven to be effective at creating awareness, to showcase specific product offers and 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



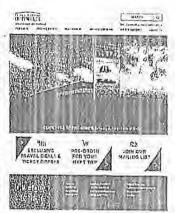
border for the start of summer for the Canadian and American long weekends. Special events such as Buffalo Bills, Buffalo Sabres and Buffalo Bison games are promoted with discount ticket, merchandise and product offers during their specific seasons. During the holidays, PBDF runs a very unique marketing 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 <u>proprietary</u> and <u>exclusive</u> 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

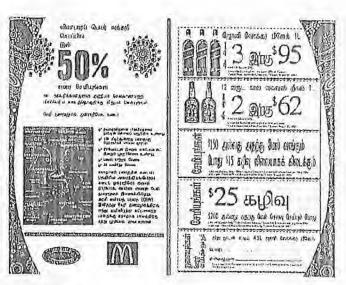


#Found@PBDF is an example of a digital campaign that leveraged Twitter, Facebook, and YouTube to generate social conversation around the brand. The campaign encouraged customers to share the great deals, interesting finds and favourite brands purchases at the Store, on their social networks, using #Found@PBDF. 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 noticable 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 retall operations are

Ron Rienas
General Manager
Buffalo and Fort Erie Public Bridge Authority
rr@peacebridge.com
905-871-1608

Lauren Yaksich
Director, Marketing and Communications
John C. Munro Hamilton International Airport
lyaksich@flyhamilton.ca
905-679-1999

#### 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

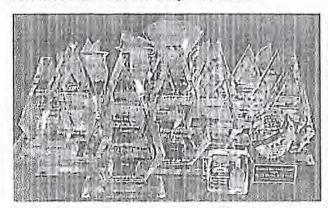
The attached bid includes confidential business and commercial information pertaining to Peace Bridge Duty Free Inc. Peace Bridge Duty Free Inc. respectfully requests that the contents of the bid not be disclosed to anyone other than employees, officers, directors or evaluation committee members of the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

Tab	Submission Elements	Page
A	Sales Initiatives	1
В	Design	5
С	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
Н	Capital Investment	12
	<ul> <li>Mood Board</li> </ul>	
	Floor Plan	
	<ul> <li>Exterior Rendering</li> </ul>	

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 <u>proprietary</u> and <u>exclusive</u> 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 instore 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.

D3/22

#### 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 Sale	2S	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: <u>Applicable Percentage Rent Rate x Tenant's Gross Sales during the month for which Percentage Rent is being calculated.</u> The <u>Applicable Percentage Rent Rate is based on the Tenant's Year-to-Date Annual Gross Sales.</u>

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.

McDonalds

Tim Hortons.

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

#### Forecasted Sales

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

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

#### These opportunities include:

- New Merchandlse 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

#### 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	3,151	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	14,587	15,008	15,441	15,885	16,343	16,813	17,293	17,791	18,299	18,822
Costs										

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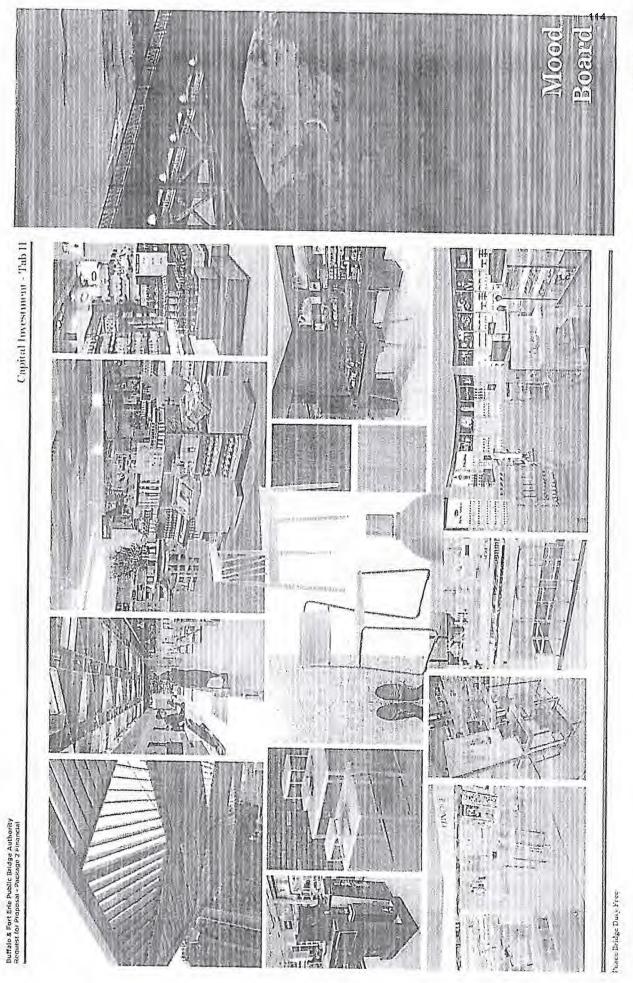
#### Capital Investment

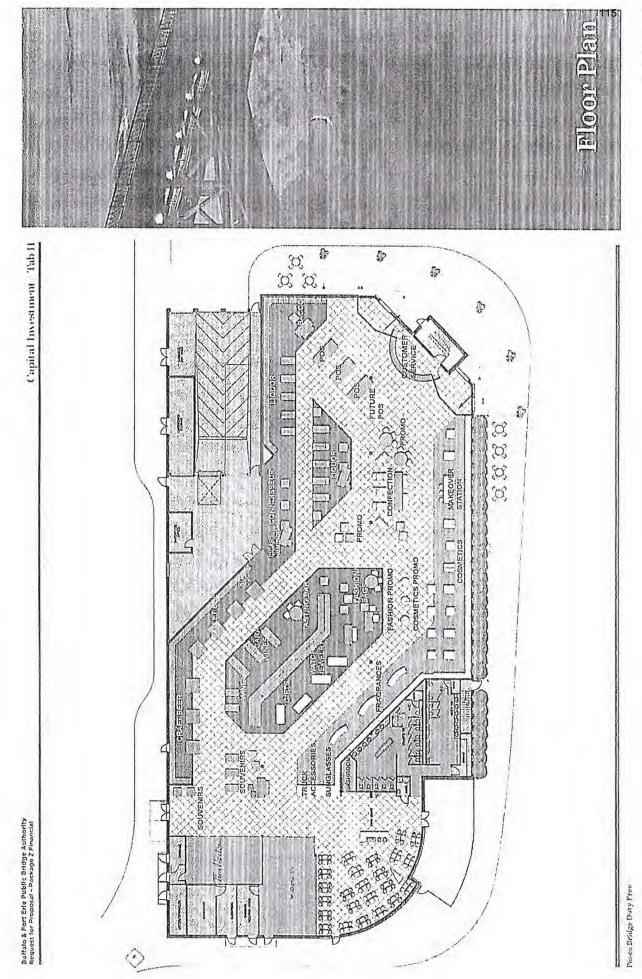
Our initial Store Capital Investment is estimated to be \$6,000,000. Below is a breakdown of the key components.

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

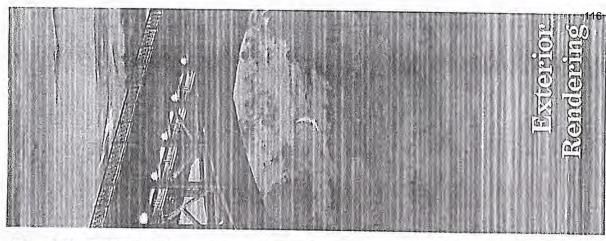
In addition to the initial capital described above, Peace Bridge Duty Free has provided for Refurbishment Capital in years 6, 11, and 16 of this lease. The amount allocated in each refurbishment year is \$1.25 million. The total amount of Store capital investment that PBDF will commit to over the course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

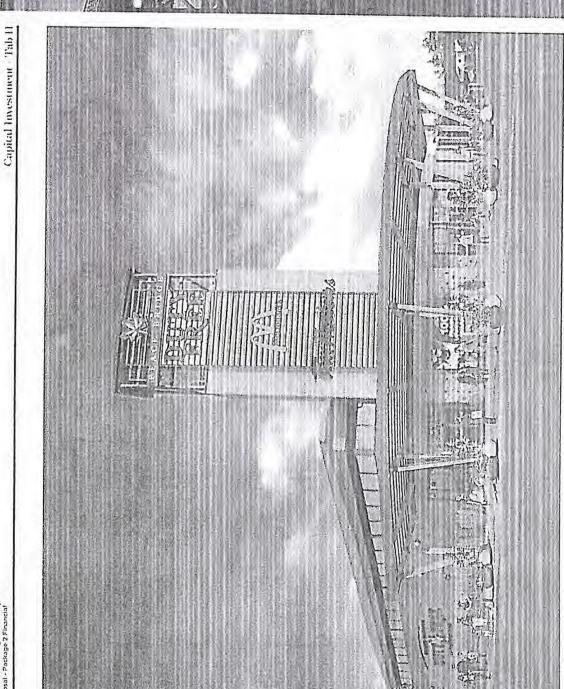
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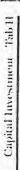
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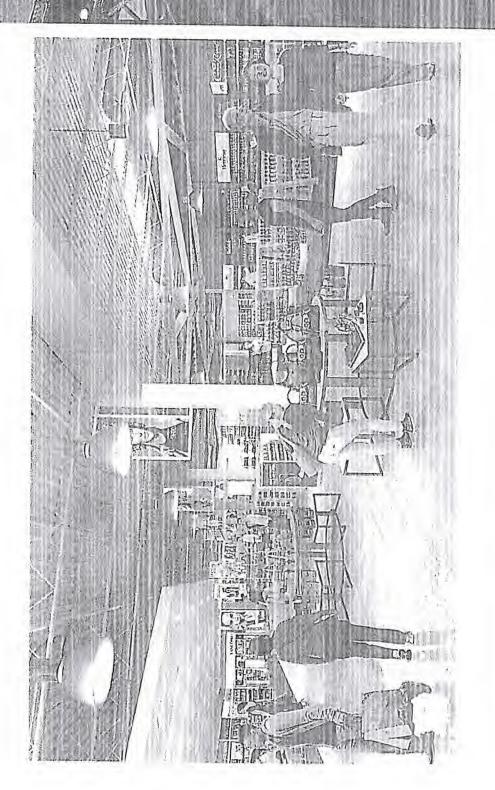


Buffalo & Fort Erle Public Bridge Authority Request for Proposal - Package 2 Financial

Peace Bridge Duty Free



D1143



Buffalo & Fort Erle Public Bridge Authority Request for Proposal - Package 2 Financial

This is **Exhibit "B"** to the affidavit of Ron Rienas, sworn before me and witnessed by me through videoconferencing on 17 July 2023.

E. Patrick Shea, KC, a Commissioner, etc., Province of Ontano, for Gowling WLG (Canada) LLP, Barristers and Solicitors.

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

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

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

#### ROYAL BANK OF CANADA

Applicant

- and -

#### PEACE BRIDGE DUTY FREE INC.

Respondent

## ORDER (appointing Monitor)

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

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

#### SERVICE

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

#### APPOINTMENT

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

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

- (a) the Monitor shall not take possession or control, nor shall it be deemed to have taken possession or control, of the Debtor's business or the assets, property or undertaking of the Debtor (the "Property"), and that the Debtor shall retain all operational control of their Property, business and operations;
- (b) the Monitor shall not be and shall not be deemed to be a receiver for purposes of subsection 243(1) of the Bankruptcy and Insolvency Act (the "BIA") or under any other statute;
- (c) the Monitor shall have none of the obligations of a receiver under Part XI of the BIA, other than section 247, and for greater certainty it shall not send notice of its appointment or this order to the Superintendent in Bankruptcy or to the known creditors of the Debtor; and
- (d) the appointment of the Monitor shall not be and shall not be deemed to be a change of control of the Debtors.

#### MONITOR'S POWERS

- 4. THIS COURT ORDERS that the Monitor is hereby empowered and authorized, but not obligated, to act at once and, without in any way limiting the generality of the foregoing, the Monitor is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Monitor considers it necessary or desirable:
  - (a) to monitor the Property and any and all proceeds, receipts and disbursements arising out of or from the Property:
  - (b) to take physical inventories of the Property as may be necessary or desirable;
  - (c) to monitor the business of the Debtor;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including without limitation those conferred by this Order;
  - (e) to monitor receipts and disbursements of the Debtor;
  - (f) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable; and
  - (g) subject to the limitations in section 3 of this Order, to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

#### DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

- 5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Monitor.
- 6. THIS COURT ORDERS that all Persons, including but not limited to Canada Border Services Agency and Canada Revenue Agency, shall be authorized to share information, with the Monitor, provided the Debtor shall be entitled to request and receive copies of all such information from the Monitor.

#### NO PROCEEDINGS AGAINST THE MONITOR

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

#### NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

#### NO EXERCISE OF RIGHTS OR REMEDIES

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

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

#### NO INTERFERENCE WITH THE MONITOR

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

#### CONTINUATION OF SERVICES

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

#### CASL

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

#### LIMITATION ON THE MONITOR'S LIABILITY

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

#### MONITOR'S ACCOUNTS

- 14. THIS COURT ORDERS that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Monitor and counsel to the Monitor shall be entitled to and are hereby granted a charge (the "Monitor's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings limited to the amount of \$100,000, and that the Monitor's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
- 15. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
- 16. THIS COURT ORDERS that prior to the passing of its accounts, the Monitor shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Monitor or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### SERVICE AND NOTICE

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

- website at <a href="http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/">http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/</a>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "Rules") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.
- 18. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Monitor is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

- 19. THIS COURT ORDERS that exhibit N will be removed from the Affidavit of Jim Pearce as filed and the Debtor shall file a copy of that exhibit with the Court in a sealed envelope which shall be sealed until a further order of this court. Parties to the Service List in possession of that Exhibit as served shall treat it as sealed by this court, pending a further order of this court..
- 20. THIS COURT ORDERS that the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
- 21. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as a trustee in bankruptcy of the Debtor.
- 22. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this

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

- 23. THIS COURT ORDERS that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
- 24. THIS COURT ORDERS that RBC shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of RBC's security or, if not so provided by RBC's security, then on a substantial indemnity basis to be paid by the Monitor from the Debtor's estate with such priority and at such time as this Court may determine.
- 25. THIS COURT ORDERS that any interested party, including without limitation the Debtor, may apply to this Court to vary or amend this Order or discharge the Monitor on not less than seven (7) days' notice to the Monitor, the Debtor, the Applicant and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
- 26. THIS COURT ORDERS that the application is otherwise adjourned to January 17, 2022 at 2 pm.

#### ROYAL BANK OF CANADA

#### - and - PEACE BRIDGE DUTY FREE INC.

Applicant Respondent

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

# ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

Proceedings commenced at Toronto

### ORDER (appointing Monitor)

#### AIRD & BERLIS LLP

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

#### Sanj Mitra (LSO # 37934U)

Tel: (416) 865-3085 Fax: (416) 863-1515

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#### Jeremy Nemers (LSO # 66410Q)

Tel: (416) 865-7724 Fax: (416) 863-1515

Email: jnemers@airdberlis.com

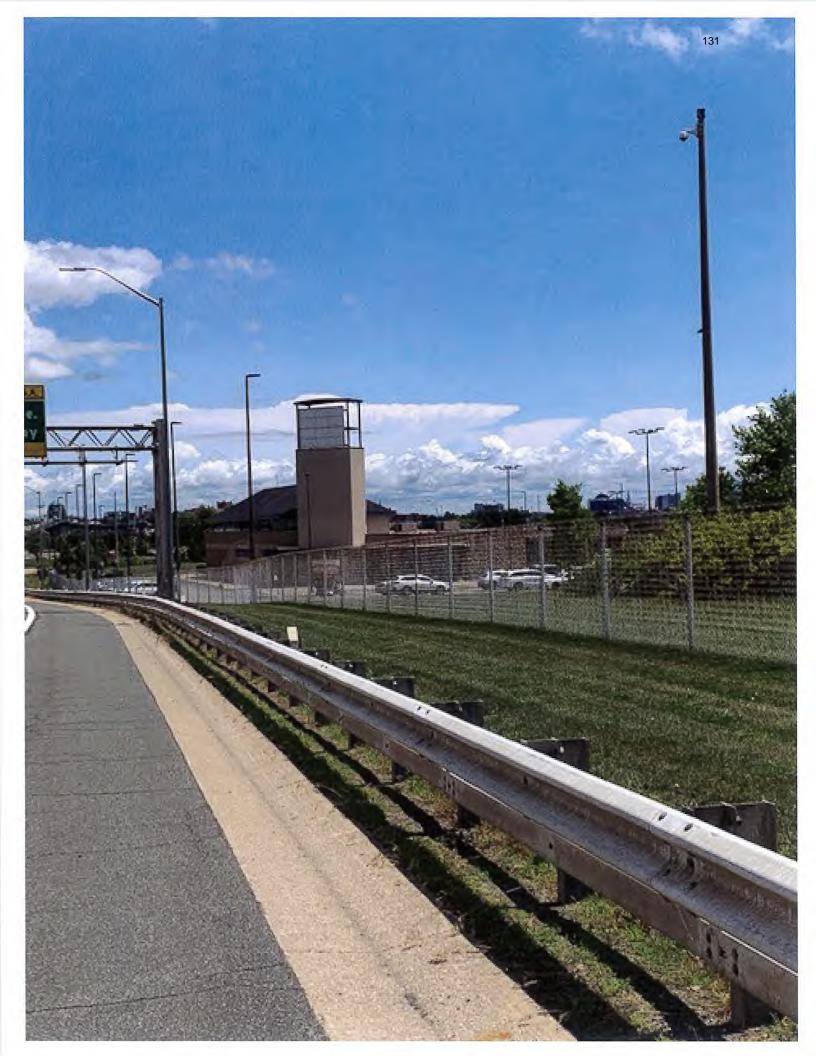
Lawyers for Royal Bank of Canada

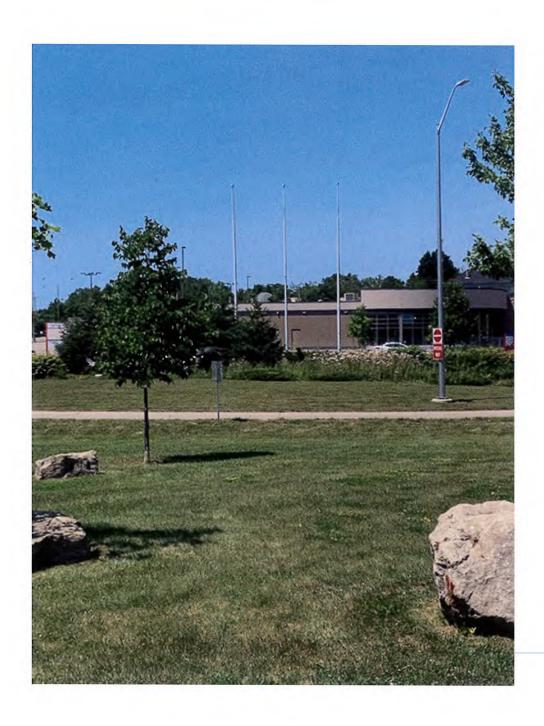
This is **Exhibit "C"** to the affidavit of Ron Rienas, sworn before me and witnessed by me through videoconferencing on 17 July 2023.

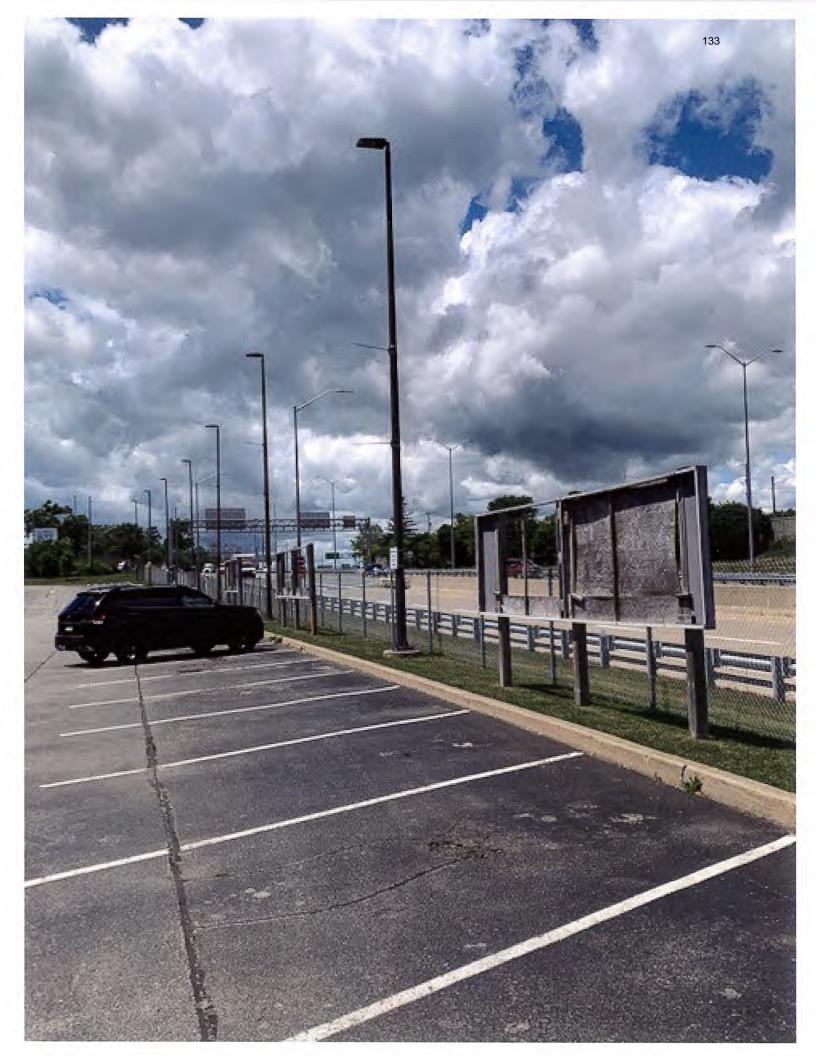
E. Patrick Shea, KC, a Commissioner, etc.,
Province of Ontario, for Gowling WLG (Canada) LLP,
Barristers and Solicitors.

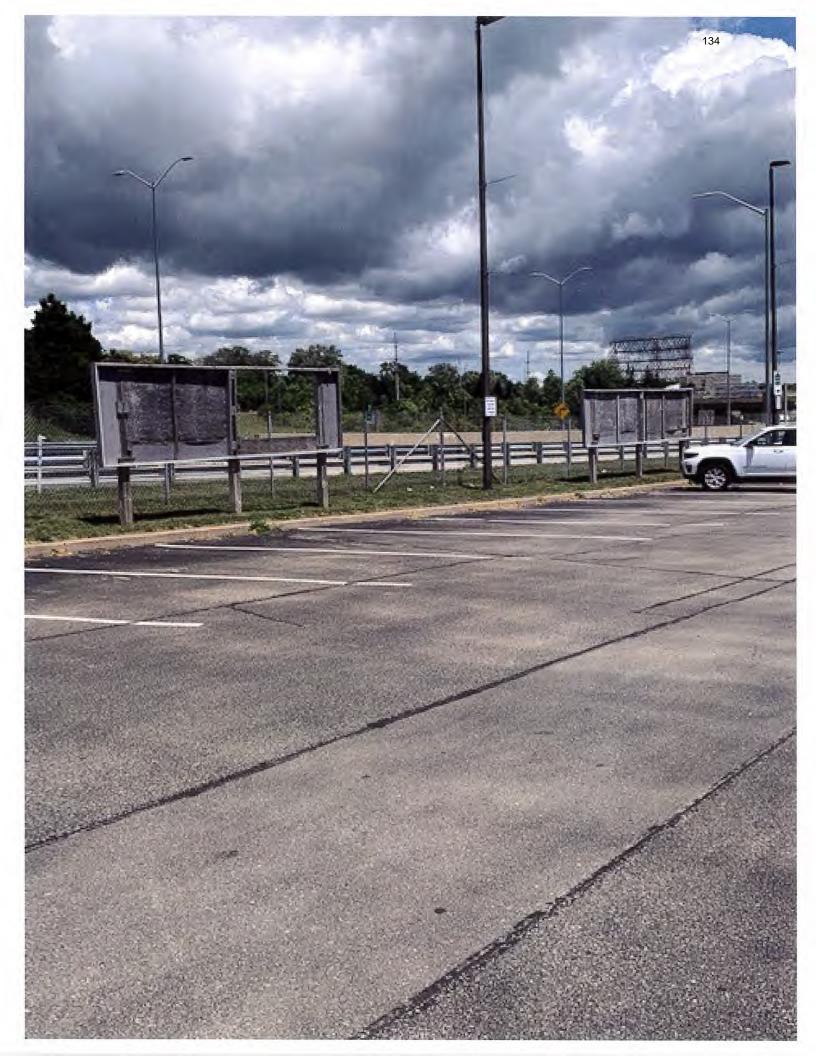




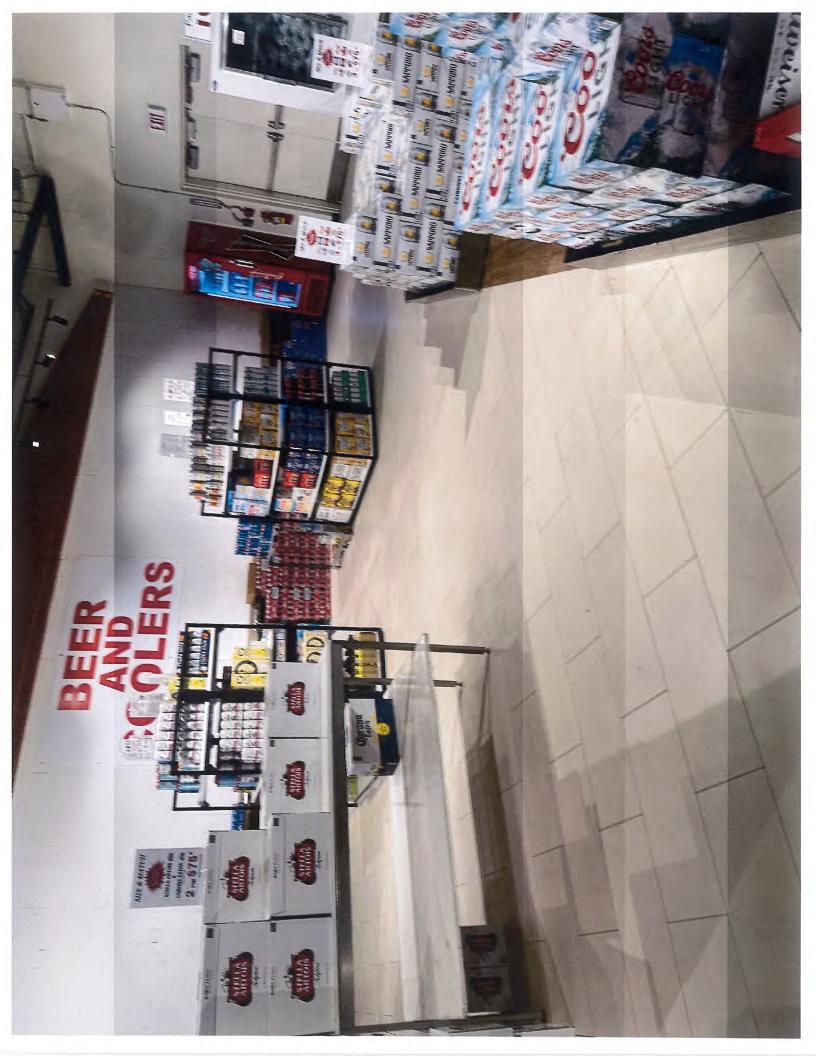




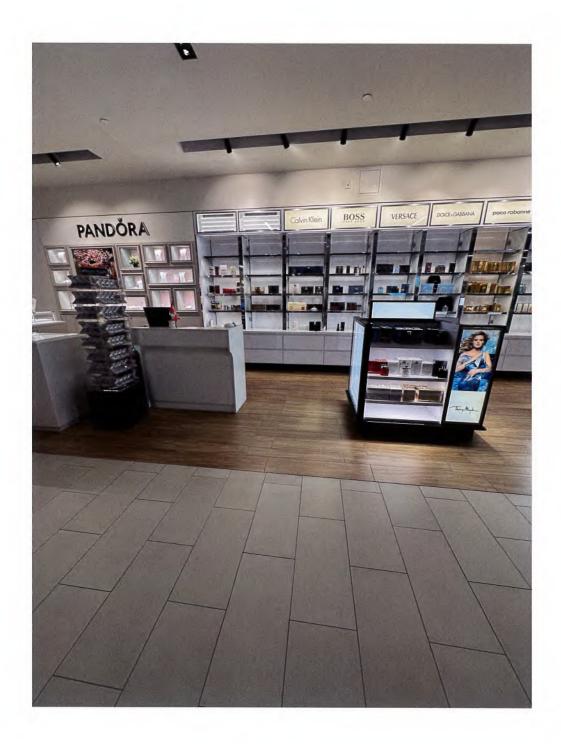












This is **Exhibit "D"** to the affidavit of Ron Rienas, sworn before me and witnessed by me through videoconferencing on 17 July 2023.

E. Patrick Shea, KC, a Commissioner, etc., Province of Ontario, for Gowling WLG (Canada) LLP, Barristers and Solicitors.

# TAB A



08 June 2023

Sent by E-Mail (B.Jones@blaney.com)

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

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

Dear Mr. Jones:

#### Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

Thank you for your letters of 1 and 4 June 2023, copies of which are attached for ease of reference.

**Authority's Disclosure.** On 4 April 2023, Her Honour directed that, by 5 May 2023, the parties provide what was described as limited disclosure. Her Honour directed the parties to disclose non-privileged internal documents relating to approval and authorization: (a) regarding Art 18.07 or its subject matters from the period in 2016 during which the Lease was being negotiated; and (b) regarding requests made and responses given with respect to concessions to be provided or given under Art 18.07 from March of 2020 to December of 2021.

In compliance with Her Honour's direction, the Authority's delivered its disclosure on 4 May 2023. That disclosure consisted of a "hard-copy" brief of documents and a USB containing e-mails. The transmission letter clearly identified what was on the USB and why it was being provided.

We heard nothing from you concerning the Authority's disclosure until your letter of 16 May 2023, a copy of which is attached for ease of reference.

At the attendance on 17 May 2023, Mr. Ullman described the issues raised in your letter of 16 May 2023 as "minor" in nature and did not indicate that those concerns would in any way impact the schedule set out in Her Honour's endorsement of 4 April 2023. Mr. Ullman did not raise any issue with the Authority's compliance with Her Honour's Endorsement of 4 April 2023 in terms of the Authority's disclosure

On 19 May 2023, you requested an index of the disclosure that we had provided to you on 4 May 2023.

On 25 May 2023, we e-mailed you a PDF of the Authority's disclosure, which, because of the addition of a large number of tabs, had to be broken into three (3) volumes, with a detailed index. Hard copies of the three (3) volumes were sent to you by overnight courier.



We subsequently sent to you a Word copy of the index of the hard-copy brief and the USB to assist you. We expressly identified that the Word included an index/listing of the e-mails on the USB in the order they are listed on the USB. Given how e-mails are saved, that is the best way to address them without PDF-ing and (re)naming them. The USB itself has an index that lists all of the files that are on the USB. We note, in passing, that PBDF's disclosure was provided as a "data dump" of individual documents that we had to organize to correspondent to an index that was provided as a stand-alone document.

**Examinations.** Notwithstanding Her Honour's endorsement of 4 April 2023 that Rule 39.03 examinations be scheduled early, you did not even begin to schedule examinations until 16 May 2023 and did not schedule your Rule 39.03 examinations to take place until 30 May 2023, which was after the deadline established by Her Honour.

You refused to conduct your Rule 39.03 examinations via Zoom and insisted on conducting the examinations in-person.

On 26 May 2023, you indicate that you were unable to locate a court reporter in Fort Erie for 30 May 2023 and indicated that the examinations would have to be re-scheduled. It was then left to the Authority to reach out to court reporters in the area around Fort Erie to locate a court reporter and we ultimately located a court reporter in St Catharines who was available on 30 May 2023.

You conducted the Rule 39.03 examinations on 30 May 2023. On 2 June 2023, before waiting to receive the responses to their undertakings and refusals, you unilaterally determined to cancel the cross-examination of Mr. Mills that was scheduled to take place 5 May 2023, the cross-examination of Mr. Rienas that was scheduled to take place 6 June 2023, and the cross-examination of Mr. Pearce that was scheduled to take place on 7 June 2023 based on the assertion that our disclosure was not complete or in accordance with Her Honour's direction of 4 April 2023. You did not, however, seek an attendance before Her Honour to address your concerns.

We advised you that, in our view, your position that the scheduled cross-examinations could not take place until you had completed your Rule 39.03 examinations was not legally correct and we were entitled to proceed to collect evidence by way of cross-examination of Messrs Mills and Pearce even if you did not wish to cross-examine Mr. Rienas. You confirmed that, notwithstanding that we indicated our clear intention to proceed with the cross-examinations scheduled for 5 and 7 June 2023, PBDF was not going to produce and either Mr. Mills or Mr. Pearce to be cross-examined on their affidavits

We attended on 5 June 2023 to examine Mr. Mills and on 7 June 2023 to examine Mr. Pearce. Neither Mr. Mills nor Mr. Pearce attended to be examined and Certificates of Non-attendance were obtained—a first for me in the context of case-managed litigation on the Commercial List.

Refusing to conduct cross-examinations and not producing affiants for cross-examination is not, in our view, appropriate in the context of a process where limited disclosure was directed by a Commercial List Judge who is case managing a litigation.



With respect to your assertion that Rule 39.02(1) somehow prevented the Authority from cross-examining Messrs Mills and Pearce as scheduled, we would note: (a) the Authority elected to not conduct examinations under Rule 39.03(3) such that Rule 39.02(1) did not present a barrier to the cross-examination of Messrs Mills and Pearce; (b) Rule 39.02(1) does not apply to the Authority's exercise of rights under 39.03(2) on your Rule 39.03 examinations; and, if there are any issues, (c) Her Honour has jurisdiction under Rule 39.02(2) to permit any required Rule 39.03 examinations to be conducted.

Authority Disclosure. You have identified two (2) broad issues with the Authority's disclosure: (a) failure to provide copies of Report over which privilege is being claimed; and (b) failure to produce a list of privilege communications.

With respect to the Reports over which the Authority asserts privilege, that issue should not have resulted in PBDF cancelling the cross-examination of Mr. Rienas or failing to produce Messrs Mills and Pearce to be cross-examined. The fact that the Authority asserts privilege over certain Reports from 2021 did not prevent you from making inquiries as to what the Board considered in connection with requests made and responses given with respect to concessions to be provided or given under Art 18.07.

There are three (3) Reports over which the Authority asserts solicitor-client and/or litigation privilege: 933/21 (30 April 2021), 938/21 (28 May 2021) and 953/21 (2 September 2021).

The Reports in issue were prepared in the context of contemplated litigation with PBDF over the breach of the Lease by PBDF. All of the Reports are marked "Confidential" and were provided to the Directors to convey legal advice and factual information to permit them to provide instructions to the Authority's lawyers:

Report 933/21 refers to advice sought and received from Gowling with respect to the issues between the Authority and PBDF. An e-mail chain between Gowling to Mr. Rienas is attached to the Report in which legal advice is provided to the Authority.

Report 938/21 incorporates Report 933/21 by reference and attaches responses from Gowling to legal questions asked by the Board.

Report 953/21 incorporates and attaches Reports 933/21 and 938/21, and refers to legal advice provided by Gowling.

Unless there is agreement, the issue as to whether Reports 933/21, 938/21 and Report 953/21 must be disclosed, in whole or in part, will need to be determined by Her Honour. We propose to deliver the Reports to Her Honour only for the purposes of the attendance on 14 June 2023 so that Her Honour will be in a position to determine whether the documents should be disclosed. However, to resolve the matter, the Authority is prepared to produce Reports 933/21, 938/21 and 953/21 redacted to remove all reverences to legal advice, provided PBDF agrees that this does not



constitute a waiver of privilege. This will permit cross-examinations to be completed by 30 June 2023.

We addressed certain of the specific disclosure-related concerns raised in your letter of 1 June 2023 in our letter of 2 June 2023, a copy of which are attached for ease of reference. We note:

- 1. You have not identified any specific documents that are in the brief that was delivered on 4 May 2023, but not the indexed brief that was delivered on 25 May 2023.
- With respect to the assertions that the Authority has not provided disclosure of all of the documents upon which the Board relied in making determinations with respect to the concessions to be provided to PBDF, you will note from the responses by Mr. Clutterbuck to the undertakings that he gave on 30 May 2023 that, with the exception of those Reports over which the Authority claims privilege, all of the reports and briefing notes that "led to" relief offers from the Authority have, in fact, been produced.

Any speculation on your part that there may have been undisclosed documents considered by the Board: (a) regarding Art 18.07 or its subject matters from the period in 2016 during which the Lease was being negotiated; or (b) regarding requests made and responses given with respect to concessions to be provided or given under Art 18.07 from March of 2020 to December of 2021 appears, based on Mr. Clutterbuck's evidence, to be without merit. While we appreciate that you may believe that there must have been other documents before the Board, the fact of the matter is that there were not and the Authority may make of that what you wish in argument at the hearing in July of 2023.

- 3. With respect to the e-mail on 19 November 2020 on 30 May 2023, you asked Ms Costa for an undertaking to produce Report 909/20 referred to in that e-mail. Report 909/20 is, in our view, outside of the scope of the disclosure directed by Her Honour. You will, however, find it attached to the responses to Ms Costa's undertaking so you can see for yourself that it does not relate in any way to approvals or authorizations regarding requests made and responses given with respect to concessions to be provided or given under Art 18.07. Report 909/20 relates only to internal Authority financial matters.
- 4. With respect to the Minutes from 20 November and 17 December 2023, the Authority claims privilege over those Minutes because the resolutions reflected in those Minutes were made based on legal advice, although the Authority's lawyers were not present at those meetings. They have, however, now been provided in response to the undertakings given by Mr. Clutterbuck on the express understanding that in doing so no privilege is being waived. We note that Mr. Clutterbuck answer your questions and answered undertakings given in



connection with the issues that were the subject of the resolutions reflected in those Minutes.

5. With respect to the assertion that information redacted from Reports that have been produced is relevant to the issue of whether the Authority may have given "preferential treatment" to the US duty free, none of the information relating to the US duty free that you assert should have been disclosed relates to approvals and authorizations: (a) regarding Art 18.07 or its subject matters from the period in 2016 during which the Lease was being negotiated; or (b) regarding requests made and responses given with respect to concessions to be provided or given under Art 18.07 from March of 2020 to December of 2021. We propose to deliver the unredacted Reports to Her Honour only for the purposes of the attendance on 14 June 2023 so that Her Honour will be in a position to determine whether the Reports should be disclosed unredacted.

With respect to specifically-identifying all of the Authority's privileged documents, we appreciate that you were not in attendance before Her Honour, but this is not something that PBDF requested before Her Honour on 4 April 2023 or 17 May 2023 and it is not something that the Authority was, in the circumstances, prepared to do as a condition of PBDF producing Messrs Mills and Pearce to be cross-examined.

Should Her Honour direct that the parties produce such lists, your list will have to be corrected because it is unclear in a number of instances why privilege is being asserted over the document as there is no indication on your list that the communication is with a lawyer and not copied to any third party(ies) or the notes were prepared by a lawyer.

**PBDF's Disclosure.** We have concerns with respect to whether PBDF's own disclosure is complete. It seems strange, for example, that there are so few internal PBDF documents: (a) regarding Art 18.07 or its subject matters from the period in 2016 during which the Lease was being negotiated; and (b) regarding requests made and responses given with respect to concessions to be provided or given under Art 18.07 from March of 2020 to December of 2021. There appear to be only three (3) pieces of (relevant) internal correspondence disclosed and no PBDF board minutes or resolutions.

In our view the proper way to address those issues was to ask questions of Mr. Pearce with respect to the disclosure provided so that any issues could be addressed at the attendance before Her Honour on 14 June 2023 based the issues having been "flushed out". PBDF's refusal to produce Mr. Pearce for cross-examination has deprived the Authority with the opportunity to make inquiries to determine if there are additional documents that may not (yet) have been disclosed by PBDF.

Conclusion. In conclusion, we fail to see how your approach—demanding that the Authority prepare a list of privileged communications and produce Reports over which it has legitimate concerns with respect to privilege as conditions of conducting examinations and cross-



examinations in accordance with a scheduling order—is productive or co-operative. There is, in our view, no conceivable link between the cross-examination of Messrs Mills and Pearce on the Affidavits that they have sworn in these proceedings and the Reports prepared for the Authority's Board, and the cross-examination of Mr. Rienas may have provided some light on the disclosure-related issues that you raised.

Sincerely,

GOWLING WLG (CANADA) LLP

E. Patrick Shea, MStJ, LSM, CS

EPS:jm

Enclosure

cc. Christopher Stanek

57063787\1



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

(T) 416-593-1221 (W) Blaney.com

Brendan Jones D: 416-593-2997 F: 416-594-3593 BJones@blaney.com

May 16th, 2023

Via Email Patrick.Shea@gowlingwlg.com

Mr. Patrick Shea Gowling WLG (Canada) LLP Barristers & Solicitors 1 First Canadian Place 100 King Street West Suite 1600 Toronto, ON, M5X 1G5

Dear Mr. Shea:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

We are writing with respect to the examinations to be completed in the coming weeks and the recent disclosure in accordance with Justice Kimmel's April 4th, 2023 endorsement.

## Rule 39.03 examinations and cross-examinations of affiants

We intend to examine Karen Costa and Tim Clutterbuck pursuant to Rule 39.03. We also intend to examine Ron Rienas on his various affidavits.

We are available on May 19th, 26th for the Rule 39.03 examinations. Alternatively, we can schedule the Rule 39.03 examinations to take place before the cross-examinations of the affiants to take place during the week of May 29th to June 2<sup>nd</sup>. We can accommodate examinations any day that week.

#### Document briefs

You requested our position regarding the use of the document briefs for the motion before Justice Kimmel on July 25th to 27th, 2023.

As a practical matter, the Authority has not produced a list of documents that it disclosed. It produced a hard copy disclosure brief, which only separates the documents by year, and a separate "email dump" on a USB key. These emails are not organized and are not identified in a list or index. The Authority also has not identified any of the documents it is claiming privilege over.

The Authority's disclosure in its current state is not useful to consider admitting as evidence at the hearing. Please confirm that an organized brief with a list of the documents will be provided.

With respect to the content of the disclosure, the only Board Reports and Board Minutes are from 2016. The Authority has not disclosed any reports or minutes after the border restrictions came into effect. Is it the Authority's position that no such records exist?

We also ask that you kindly clarify what use you propose be made of the document brief(s). Specifically:

- 1. Are the documents to be admitted as authentic true copies of the originals?
- 2. Are all correspondence and other documents to be admitted as having been prepared, sent and received on or about the dates set out in the documents, unless demonstrated otherwise?
- 3. Is the content of any particular document to be admitted for the truth of its contents?
- 4. Are there any documents to be treated as exceptions to the general agreement on the treatment of the documents in the document book?
- 5. Does the Authority object to any of the documents in either of the briefs being relied upon?
- 6. Can Justice Kimmel rely on any documents in the document brief that have not specifically been referred to or relied upon by the parties?

#### Request for response

We look forward to hearing from you regarding scheduling the examinations as set out above.

We also request a response with respect to the issues relating to the document briefs well in advance of the examinations.

We would be pleased to discuss these matters with you.

Yours very truly,

BLANEY MCMURTRY LLP

Brendan Jones

BJ/gf

cc: David T. Ullmann and John C. Wolf



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

T) 416-593-1221

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Brendan Jones D: 416-593-2997 F: 416-594-3593 BJones@blaney.com

June 1st, 2023

#### Via Email

Patrick Shea and Christopher Stanek Gowling WLG (Canada) LLP Barristers & Solicitors 1 First Canadian Place 100 King Street West Suite 1600 Toronto, ON, M5X 1G5

Dear Counsel:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

We are writing further to the examinations of Mr. Clutterbuck and Ms. Costa on Tuesday May 30<sup>th</sup>, 2023 and the Authority's Disclosure Brief delivered in hard copy on Friday May 26<sup>th</sup>, 2023.

The Authority has not to date complied with Justice Kimmel's April 4th, 2023 Endorsement regarding production of its internal documents.

Specifically, paragraph 17.b. of Justice Kimmel's Endorsement requires:

- b. Non-privileged internal documents of the Tenant and the Landlord relating to approval and authorization:
- i. Regarding s. 18.07 of the Lease or its subject matter when the Lease was being negotiated and signed (circa 2016). On the Landlord's side, this will also include communications between the Landlord and its external fairness advisor in the Lease RFP process; and
- ii. Regarding the requests made and responses given with respect to concessions to be provided/given under s. 18.07 of the Lease from and after the border restrictions came into effect (in the period from March 2020 to December 2021).

Despite the evidence given by Mr. Clutterbuck that:

- Any lease amendment or rent relief in the form of a deferral or abatement would require direction from the board of directors;
- The board of directors would give direction to staff by way of resolution given at its meetings;

- The board meetings are scheduled on a monthly basis;
- The board of directors would rely on briefing notes, reports or summaries to give directions;
- 5. Resolutions would be recorded in the minutes of board meetings;
- 6. Agendas would be circulated before board meetings; and
- 7. Board meetings held virtually were recorded so far as he understood it.

The Authority produced one (redacted) report from the post-Covid period, which is dated April 24th, 2020 that relates to the first rent deferral agreement.

As an example of the Authority improperly withholding records, an email from Mr. Rienas to the board (Tab C25) indicated that the second rent deferral agreement would be discussed at the November 20<sup>th</sup>, 2020 meeting. Those minutes along with the report considered at the meeting have not been disclosed.

Similarly, the December 17th, 2020 meeting minutes and reports relied upon have not been produced despite a December 17th, 2020 email from Mr. Rienas (Exhibit 1 of Ms. Costa's examination) that indicates the deferred rent was discussed and direction was given to staff by way of resolution that was "subject to legal approval", which implies that the Authority's lawyers were not at the meeting.

The November 20th and December 17th, 2020 meetings are critical meetings because the Authority somehow went from receiving a recommendation to defer all rent payments until at least March 31st, 2021 to demanding immediate payment of \$1 million and refusing to defer any rent.

In any event, the Authority cannot withhold production of the entire meeting minutes or reports relied upon based on solicitor-client privilege without any explanation.

With respect to redactions made, for example in the reports at Tab F and elsewhere in the Disclosure Brief, it is apparent that information was redacted from documents that are otherwise relevant and go directly to issues raised in the notice of motion (including that the Authority gave preferential treatment to its other duty-free store tenant).

There were also a number of emails that were identified as being relevant and produced in the first disclosure brief, that were subsequently not included in the second disclosure brief (possibly because they are unhelpful to the Authority's position) without any explanation and without identifying what was removed.

Please provide a list of all documents (noting subject matter, date, to and from) for which privilege is claimed as well as the basis for privilege.

By failing to comply with Justice Kimmel's Endorsement, the Authority has prevented our client from being able to ask Ms. Costa and Mr. Clutterbuck about key records that have been withheld. You will recall that to streamline the litigation, Justice Kimmel's April 4th, 2023 Endorsement required production of documents in advance of the Rule 39.03 examinations.

Instead, the Authority caused a significant number of undertakings to produce documents that should have been available before the examinations; and which will likely result in a bifurcation of examinations.

As you are aware, under Rule 39.02(2), the Rule 39.03 examinations must be completed before the cross-examinations on affidavits.

The Authority must disclose all of its records prior to completion of the Rule 39.03 examinations. Once we receive full production of documents and information about claims of solicitor-client privilege, we will advise regarding scheduling the continuation of the examinations of Ms. Costa and Mr. Clutterbuck arising from the documents the Authority failed to produce.

We ask that you produce the Authority's documents as a supplementary brief of indexed documents with a schedule of privileged documents included as soon as possible.

Should you wish to discuss these matters, please contact us.

Yours very truly,

BLANEY MCMURTRY LLP

Brendan Jones

BJ/gf

cc: David T. Ullmann and John C. Wolf



02 June 2023

Sent by E-Mail (BJones@blaney.com)

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

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

Dear Mr.Jones:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

Thank you for your letter of 1 June 2023.

We believe that we have complied with Her Honour's direction in terms of productions and we will address the undertakings given during the Rule 39.03 examinations of Mr. Clutterbuck and Ms. Costa.

Any issues, including whether witnesses are required to re-attend, can be addressed before Her Honour at the next attendance on 14 June 2023 and there is no basis for there to be any delay in completing the scheduled cross-examinations. Rule 39.02 contemplates that the Court may permit the continuation of your Rule 39.03 examinations of Mr. Clutterbuck and Ms Costa notwithstanding that you have cross-examined Mr. Pearce. The cross-examination of Mr. Pearce may, in fact, assist you in determining whether there is actual substantive merit to the issues raised in your letter and a need to conduct further Rule 39.03 examinations of Mr. Clutterbuck and Ms. Costa.

Without engaging a debate or argument as to the merits of your assertions, we wish to clarify certain of the assertions made in your letter:

- 1. The Authority has produced two—not one—reports to the Board during the post-COVID period in which the arrangements with PBDF were referenced. The e-mail at J1 is the report that was produced for the purposes of the Board meeting on 20 November 2020.
- 2. With respect to the 17 December 2020 Board meeting, there was no report prepared for the purposes of that meeting.
- 3. The explanation for claiming privilege over Board-related materials is straight-forward—lawyers were in attendance at the meeting, legal advice was discussed at the meeting or the report prepared for the purposes of the meeting provides or summarizes legal advice. Provided you agree that by producing them no privilege is being waived, the Authority would be pleased to produce the Minutes from the 20 November 2020 and 17 December 2020 meetings today.



- 4. With respect to the Board's conditional approval of the Second Rent Deferral, you requested from Mr. Clutterbuck an undertaking to provide an explanation and one will be provided. We suspect that you will also cross-examine Mr. Rienas on that issue.
- 5. Can you please identify which e-mail(s)—the date, who the e-mail was from and to whom it was sent-that you assert were included in the first printed disclosure brief, but not in the second? You were provided with all of the documents in both briefs as well as a USB containing the documents that were not provided to us in "hard" copy. The only difference between the first and second in terms of what was included was to be the inclusion of a detailed index as requested by you and tabs. If there were documents that were left out of the second brief, it was unintentional—the fact that you purport to have identified that emails are missing from the second brief clearly means that there has been no prejudice.
- We will not be providing you with a list of privileged documents. PBDF did not request, 6. and Her Honour did not order, that Affidavits of Documents be produced and PBDF did not request, and Her Honour did not require, that either side deliver a list of privileged documents.

We would, of course, be pleased to discuss the foregoing in advance of your cross-examination of Mr. Pearce on 6 June 2023.

Sincerely,

GOWLING WLG (CANADA) LLP

E. Patrick Shea, MStJ, LSM, CS

EPS:im

CC. Chris Stanek

57041683\1



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(T) 416-593-1221

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Brendan Jones D: 416-593-2997 F: 416-594-3593 BJones@blaney.com

June 4th, 2023

#### Via Email

Patrick Shea and Christopher Stanek Gowling WLG (Canada) LLP Barristers & Solicitors 1 First Canadian Place 100 King Street West Suite 1600 Toronto, ON, M5X 1G5

Dear Counsel:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

We are writing in response to Mr. Shea's letter dated June 2nd, 2023, which followed Blaney's letter following the commencement of Rule 39.03 examinations.

## Continuation of Adjourned Rule 39.03 Examinations

The Rule 39.03 examinations are presently adjourned and incomplete as there are a large number of outstanding undertakings to produce undisclosed relevant documentation.

Without the receipt of proper responses to undertakings PBDF is unable to determine whether a continued examination of Mr. Clutterbuck and/or Ms. Costa is required; although it is PBDF's current belief that further examinations will be required.

We assume that in such an event Mr. Stanek will wish to continue his own Rule 39.03 examinations of the witnesses, meaning the Authorities examinations are also incomplete.

## Cross Examinations Begin After Rule 39.03 Examinations Are Complete

Further, and perhaps more importantly, by reason of Rule 39.02(1) and (2) all Rule 39.03 examinations must be completed, including delivery of responses to undertakings, before cross-examinations on the affidavits can begin. The information and documents that are produced by way of undertakings in the Rule 39.03 examinations will thus be available for the cross-examinations. This cannot be resolved by the parties agreeing to continue the Rule 39.03 examinations after the cross-examinations are completed.

Had the Authority produced the records at first instance in accordance with Justice Kimmel's endorsement this situation would likely have been avoided.

It is inappropriate for PBDF to be deprived from having a complete record of documents and evidence of the Rule 39.03 witnesses available for the cross-examination of Mr. Rienas.

The examinations scheduled for June 5th to 7th, 2023 will need to be rescheduled until the Rule 39.03 production issues are rectified and those examinations are complete.

#### Other Relevant Factors Impacting Examinations and Cross Examinations

While we anticipate based upon past practice that the Authority's initial reaction may well be to object to a short postponement of the cross-examinations until the Rule 39.03 examinations are complete, please consider the following:

- The Authority's initial disclosure brief did not identify any individual documents. Instead it was a
  hard copy brief separated (mostly) by year and a USB key "email dump" of unindexed and
  unorganized emails. The absence of the courtesy of ordinary documentary organization, made
  examinations more difficult and time consuming.
- The Authority did not identify any documents that it was claiming privilege over in its initial disclosure brief. At the end of the day on Thursday May 24th, 2023, the Authority sent a three-volume disclosure brief in PDF by email. The index only identified four emails from the USB key. The index disclosed for the first time that the Authority was claiming wholesale privilege over certain meeting minutes and reports relied upon by the Authority in respect of its rent relief considerations under subsection 18.07 of the Lease.
- The following day, the Friday before the Tuesday Rule 39.03 examinations, the Authority delivered hard copies of the three volume disclosure brief. Again, the index only identified four emails from the USB key, the same as the PDF version.
- Contemporaneously the Authority sent an email attaching a word document index to only one of the PBDF's lawyers. The covering email did not advise the word document index was different than the PDF version or the hard copy version that were sent and it appeared to be the same index as provided in PDF and hard copy. We have now learned that the word version contained ten additional pages of index listing the emails from the USB key, although we have not been able to confirm whether the word document list corresponds with the USB "email dump".
- It was never disclosed to us. nor to date has it been explained why the USB emails were not
  included and produced in the second disclosure brief either in PDF form or hard copy or organized
  chronologically as the other emails were.
- Ordinary disclosure practice in litigation, would result in counsel believing the different manners of
  delivering documents (email/hardcopy/UBS) included the <u>same</u> documents- and not a "find the
  difference if you can" approach to identify the USB documents that were omitted from the word
  and hard copy documents provided. This is especially so when the Authority elected to not engage
  in the courtesy of noting to PBDF that a difference existed.
- Whether intentional or not, the Authority's actions caused PBDF to be misled about the Authority's productions.
- In its second disclosure productions, the Authority improperly asserted complete privilege over the entirety of various reports and meeting minutes. In effect the Authority has withheld any disclosure about who authored the reports and minutes, who received them, the purpose of the creation of any such documents. The Authority has not identified who was at the meetings for which it has claimed privileged over the minutes in their totality. Obviously, parts of each such document are not privileged and they should have been delivered in advance of Rule 39.03 examinations with redactions as necessary.
- With respect to item #1 in your June 2<sup>nd</sup>, 2023 letter, the email at tab J1 indicates that Ms. Costa was going to be discussing Report 909/20 with the Board in the context of "potential collectability issues" relating to PBDF's lease. At that meeting, the Board elected not to execute the second rent relief agreement despite Mr. Rienas' recommendation to do so.
- With respect to item #6 in your June 2<sup>nd</sup>, 2023 letter, the assertion that the Authority has no obligation to disclose what documents it elected to assert a claim of privilege over that would have otherwise been producible pursuant to Justice Kimmel's April 4<sup>th</sup>, 2023 Endorsement is extremely

problematic. Without disclosure, there is no way to test whether the privilege is appropriate or to even know that a privilege has been asserted.

Whether or not the Authority agrees with the position set out above, we trust that you understand that the examinations scheduled for June 5<sup>th</sup> to 7<sup>th</sup>, 2023 must be adjourned until the Rule 39.03 examinations are completed. While this is not ideal, and Blaney would have preferred to proceed as scheduled, the delay is entirely outside of Blaney's control.

We also note the Authority effectively is in control of the amount of delay by the timing of production of undertakings, and ideally its reconsidering of the demand to itemize privileged documents. We also note there is no prejudice to the Authority from any short delay as it is currently receiving full rent.

PBDF is hopeful that the parties can move past the current status quo in a co-operative manner such that a full and complete record is available. In this regard the PBDF is at a loss as to understand why the Authority has refused to date to make appropriate disclosure as to its documentations for which a claim of privilege is asserted.

If the Authority disagrees about the scope of production requested, we suggest a case conference be convened with Justice Kimmel to address these matters.

Yours very truly,

BLANEY MCMURTRY LLP

Brendan Jones

BJ/gf

cc: David T. Ullmann and John C. Wolf

# TAB B



23 June 2023

Sent by E-Mail (DUllmann@blaney.com BJones@blaney.com) E. Patrick Shea, LSM, CS Prof Corp Direct 416-369-7399 patrick.shea@gowlingwlg.com

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

Dear Sirs:

#### Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

On 16 June 2023, Her Honour directed that the Authority provide any further productions and disclosures by 23 June 2023.

#### I. Refusals on Rule 39.03 Examinations

#### Karen Costa

The only refusal from the Rule 39.3 examination of Ms Costa was to produce a copy of the secondplace response to the RFP. The Authority will not produce that document. It is the Authority's position that it is not relevant to the issues that are before the Court and that issue will be resolved at the hearing on 25 and 26 July 2023. The second-place proposal does not includes reference to any rent deferral(s) or abatement(s) in the event that there is a change in legislation has an impact on the duty free store. Indeed, PBDF's own proposal included no request that such a provision be included in any lease between PBDF and the Authority. That request was made by PBDF after it was selected.

#### **Tim Clutterbuck**

The following are additional answer to undertaking and refusals given by Mr. Clutterbuck:

Undertaking		Answer	
To provide copies of any emails, text messages or other written communication between the board members and operational staff between January 2020 and December 2021 that relates to the Duty Free stores tenancies, both on	24	The Authority believes that this request raises issues of proportionality. During 2020 and 2021 there were 12 individuals who held office as Directors, two of who are no longer serving as Directors. The Authority currently has over 80 employees.  The only employees with whom Directors would have communicated involving operational issues are Mr. Rienas and Ms. Costa. Mr. Rienas is the General Manager. Ms. Costa is the CFO.	



Undertaking	Page	Answer	
the Canadian side and on the American side.		Ms Costa and Mr. Rienas undertook searches of their current and archived e-mails from 2020 and 2021. These searches would have captured any e-mails received from the Directors. Aside from a generalized searches for e-mails relating to PBDF, specific searches were conducted using the following terms: "abatement", "deferral" and "18.07". If you wish to have any other (reasonable) word-specifics searches conducted by Ms Costa or Mr. Rienas of their e-mails, we would be please to consider such a request.	
To advise if there were brackets provided to staff with respect to what would be acceptable for the RFP process in 2016.	27	The Authority engaged a fairness monitor/consultant to provide professional advice on the operation of the RFP process and to assist in the evaluation of the proposals submitted in response to the RFP. The consultant would have advised the Authority on the fairness of the RFP process. The consultant was not involved in the negotiation of the Lease or the drafting of Art 18.07.  In addition, PBDF raised a legal issue with the right of the Authority to conduct the RPF and argued that the Authority was required to negotiate a lease with PBDF and could not issue and RFP. The Authority sought and obtained legal advice on that issue.	
To provide all reports and briefing notes that led to rent relief offers from the Authority to Duty Free.	37	See below.	
To provide all the unredacted board minutes for the regular and executive board meetings from January 2020 to December 2021.	40	There were 39 meetings of the Authority's Board—22 regular meetings and 17 executive sessions—between January of 2020 and December of 2021. The Minutes of all meetings at which (a) Ar 18.07 or its subject matter; or (b) requests made and responses giver with respect to concessions to be provided or given under Art 18.07 were addressed have been produced.	
To provide the unredacted version of the reports listed in the disclosure brief as privileged or advise what has been redacted and why, who authored the reports and who they were directed to.	65	See below.	
To provide copies of video board meetings held over the internet.	87	Mr. Clutterbuck was referring to two separate matters: (a) use o Zoom for meetings; and (b) audio recordings. Zoom was used fo meetings, but there were no Zoom recordings taken. The only recordings were audio and they were dealt with as per the response to undertakings.	



#### II. Reports 554/16, 573/16 and 869/20

We understand that you are taking the position that your client is entitled to an unreducted version of Reports 573/16 and 869/20, which Report have been provided reducted.

#### Report 554/16

Report 554/16 relates to the process the led up to the RFP. The redacted portion of the Report relays legal advice provided by Gowling.

#### Report 573/16

Report 573/16 deals with the approval by the Authority of PBDF's proposal submitted in response to the RFP. It is relevant only insofar as it recommends the approval of a lease with PBDF. At the time the Report was prepared, Art 18.07 was not anticipated, at least by the Authority and there is no reference in the Report to Art 18.07 or the issue(s) addressed by Art 18.07.

The parts of the Report that are redacted detail and compare the various proposals submitted in response to the RFP. We believe that test applicable to sealing records as set out in *Sherman Estate* v. *Donovan*, 2021 SCC 25 (CanLII) can be satisfied in connection with this information. We note that PBDF itself recognized the confidential nature of the proposal-related information that the Authority has redacted. PBDF's own proposal included the following:

The attached bid includes confidential business and commercial information pertaining to Peace Bridge Duty Free Inc. Peace Bridge Duty Fee 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.

We have no issue providing PBDF with the unredacted version of Report 573/16 on the basis that: (a) PBDF will sign an appropriate confidentiality/non-disclosure agreement; and (b) PBDF, including the officers, directors and shareholders, agree that they will not participate in a future RFP should the Lease be terminated.

#### Report 869/20

Report 869/20 deals with approval of the rent deferral agreements entered into with PBDF and the operator of the US duty free.

The redactions in the Report relate to: (a) the finances of the operator of the US duty free; and (b) the specific agreement that was entered into between the Authority and the operator of the US duty free. We believe that test applicable to sealing records as set out in *Sherman Estate* v. *Donovan*, 2021 SCC 25 (CanLII) can be satisfied in connection with this information. We note that the financial information that has been redacted is of the same type as the information concerning PBDF's finances that has been sealed.



We further note that the specific agreement between the US operator and the Authority is not relevant to the issue to be determined by the Court.

However, the foregoing notwithstanding, the Authority has no issue providing PBDF with an unredacted copy of Report 869/20 provided that it does not become part of the Court's file and no specific reference(s) to the economics of the US operator's business will be made in any materials filed by PBDF, but the terms of the rent deferral given to the US operator can be referenced.

#### III. Reports 933/21, 938/21 and 953/21

The Authority claims litigation and/or solicitor-and-client privilege over Reports 933/21, 938/21 and 953/21, but is, as previously indicated, is prepared to provide redacted copies of the Reports on the basis that in doing so no privilege is being waived.

The redactions in the attached Reports 933/21, 938/21 and 953/21 are:

#### Report 933/21

Page 1—Relays legal advice from Gowling.

Page 2—Relays steps taken by the Board based on legal advice from Gowling.

Page 3—Relays legal advice.

Attachment—E-mail from Gowling to Authority providing legal advice.

#### Report 938/21

Page 1—Relays legal advice from Gowling.

Attachment A-E-mail from Gowling to Authority providing legal advice.

#### Report 953/21

Page 2—Relays legal advice from Gowling.

Reports 933/21 and 938/21 are deleted for the sake of convenience, but they are otherwise provided in redacted form.



#### IV. Solicitor-and-client Communications

A list of e-mails from the relevant time periods that would have been disclosed were it not for the fact that the Authority is claiming solicitor-and-client privilege is attached.

Sincerely,

GOWLING WLG (CANADA) LLP

E. Patrick Shea, MStJ, LSM, CS

EPS:jm Encl.

cc. Christopher Stanek

57288767\1

## CONFIDENTIAL Report No. 933/21

## Peace Bridge Authority

Prepared for: B

Board of Directors

Agenda Date: Ap

April 30, 2021

SUBJECT

Peace Bridge Duty Free (Canada)

#### RECOMMENDATION

THAT this Report be received for information.

#### BACKGROUND

The Duty Free Stores are an important source of non-toll revenue to the Authority. The Canadian store is owned by the Authority but operated by a concessionaire, Peace Bridge Duty Free Inc. (PBDF). The store has approximately 28,000 sq. ft. of retail space and expansive car and truck parking. In 2019 it had sales of \$19,581,696 (CAD). Rent paid to the Authority was \$4,000,000 (CAD).

Due to the Covid-19 pandemic, PBDF stopped paying rent as of April 1, 2020. On April 27, 2020, a rent deferral agreement was executed with PBDF which allowed rent payments to be suspended and deferred to as late as July 31, 2020. The unpaid rent was to be repaid in 12 equal monthly installments with a 4% interest rate following reopening. This agreement expired on July 31, 2020.

PBDF closed the store on March 21, 2020 and it has remained closed ever since. Repeated requests by the Authority to open the store have been denied with PBDF claiming they are required to remain closed due to government restrictions. That is not true as a number of Canadian land duty free stores have remained open. These include Ambassador Bridge, Detroit-Windsor Tunnel, Blue Water Bridge, Sault Ste. Marie Bridge, Thousand Islands Bridge, Seaway International Bridge and other non-bridge duty free stores. PBDF is in default of the lease for failure to open the store.



The PBDF rent structure was arrived at as a result of a Request for Proposal (RFP) process in 2016. PBDF won this competitive process and the rent structure in the lease is exactly as proposed by PBDF. The rent structure is as follows:

#### 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 Landford 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%	

As of April 28, 2021, total base rent due for the period 4/1/2020 – 4/30/2021 is \$4,333,333.29. PBDF has paid \$160,828.04 over this time period (all of which is attributed to the Canada Emergency Rent Subsidy (CERS) program, resulting in rent arrears of \$3,969,171.90.



In addition to the above noted events of default, over the course of the past year, PBDF has not been forthright in its communications with the Authority, provided incomplete financial information, refused to provide washroom services for essential travelers resulting in the Authority providing that service and failed to provide any reasonable recovery plan that includes addressing the rent that is in arrears. Based upon Management's analysis, it appears that PBDF has not taken steps to infuse necessary working capital into their business, although they have in various letters indicated that they intended to investigate potentially taking on new partners. It has not applied for the Business Credit Availability Program (BCAP) program providing up to \$12.5 million in loans for COVID relief, nor the Highly Affected Sectors Credit Availability Program (HASCAP) offering up to a \$1 million loan guarantee. It has delayed applying for open CERS periods nor has it made any meaningful effort in working with the Authority as a partner to come to a mutually agreeable solution to address the growing unpaid rent balance.

The Authority recently received the 12/31/2020 audited financial statements from PBDF (Attachment B). Upon review of the financial statements significant concerns exist as to the PBDF's ability to continue as a going concern. The significant concerns noted are as follows:

Going Concern uncertainty footnote – meaning there is doubt as to the ability to continue as
a going concern, no mention of PBDF being in default of their lease with the Authority which
in Management's opinion appears materially misleading while potentially technically
permissible under IFRS accounting standards. (Note 2)

 Amount disclosed as CERS applied for as of 12/31/2020 is different from the amount paid to the Authority (Note 2) and leads to questions if they are complying with the CERS program requirements of eligible expenses used to claim CERS being paid within 60 days.



To date we have only been received proof that PBDF has applied for periods 1 and 2

Management has concerns that the CERS program may be being used by PBDF as a means to delay the Authority's ability to pursue legal remedies under the lease.

As illustrated in the financial statements, PBDF is insolvent, it is in violation of its loan
covenant and the bank debt has been moved from a long term liability to a current liability
which typically means it has become a demand note. It is unclear if a bank waiver on the
DSCR of 1.25 was requested and denied, or not requested.

#### Additional areas of concern are:

- Under Lease Section 16.01 (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). PBDF was asked specifically about
  potential loan covenant violations and stated none were known.
- PBDF provided a business plan to the Authority that dld not include any repayment of the rent in arrears. The plan did not include any infusion of working capital from current partners or any new partners, or any other sources of working capital credit, although PBDF stated that they were looking at that those options in other communications with the Authority. The business plan presented solely relied on the Authority forgiving all rent in arrears and accepting a % rent payment only going forward. This plan was rejected by the Authority.
- PBDF stated on 12/30/2020 that they had started the BCAP process, but there has been no
  update provided to the Authority on the status of their application.
- PBDF stated on 12/30/2020 that they had spent over \$550,000 since the pandemic began to keep the building secure and operational despite it being closed and that they had developed a plan to fund those costs going forward, but have provided no such plan to the Authority.
- PBDF has available credit lines but has not used them in any meaningful way to pay rent in arrears or to pay the demand for \$1,000,000 made in December 2020.
- PBDF pledged as collateral for its bank loan all inventory and assets and fire insurance proceeds — which Management believes may violate the Authority's rights to insurance proceeds and remedies for unpaid rent under the Lease.
- PBDF continues to refuse to open the store to serve the traffic that is crossing at the Peace Bridge. Using their figures, they potentially lost \$1,000,000 of revenue from March 21-December 31, 2021.

PBDF is not providing the required notification of CERS applications, and has stated that a
recent payment was period 3 CERS, but the Authority has only received proof for CERS
periods 1 and 2.

The above concerns were conveyed to PBDF on April 28, 2021. (Attachment C).

#### Impact to Authority

The annual rent of \$4,000,000 is a significant source of revenue for the Authority. The going concern uncertainty disclosed in the PBDF's audited financial statements, default status on the lease and rent deferral agreement and the lack of any meaningful progress on a plausible business recovery plan puts the Authority's ability to fully collect the unpaid rent in question. In 2020 the Authority reserved \$2,500,000 (USD) as bad debt against the 2020 unpaid rent. In 2021 additional amounts of unpaid rent will likely be required to be written off.

Based on the 2021 budget, a total write-off of the 2021 rental revenue attributed to PBDF (with all other budget items remaining unchanged) would reduce the Authority's DSCR from 1.45x to 1.02x which would violate the Authority's debt covenants leading to a requirement to hire a traffic consultant to set toll rates to a level that would provide enough net pledged revenues to maintain the DSCR at 1.25x. That event in and of Itself Is not considered a reportable event required by the Securities and Exchange Commission to be reported on Electronic Municipal Market Access (EMMA) website (which is the municipal market's free source of data and information on virtually all municipal bonds) but it could impact the Authority's credit ratings and any downgrade is a required reportable event on EMMA.

#### Summary

The past year of border restrictions has been a difficult time for all businesses, the Authority included. To mitigate the impacts of the restrictions and the reduction in revenue, the Authority implemented many strategies to ensure its financial and operational ability to continue its essential mission of operating the international crossing between Fort Erie, Ontario and Buffalo, NY ensuring all the essential travelers were able to perform their services and deliver their goods to support both the US and Canadian citizens and the bi-national economy.

Management despite its continued efforts to engage PBDF to reopen the store, has seen no willingness over the past year by PBDF to assist not only the essential traveler, but to help itself recover any revenues. It appears that the only strategy PBDF is interested in implementing is to accept all government relief that is forgivable, and ask the Authority for rent forgiveness – essentially funding its working capital deficit with no meaningful contribution from itself or its owners. While current COVID relief programs may provide a period of eviction protection, the more telling result of this situation is that it does not appear that the Authority has a willing, transparent and financially secure partner to operate the Canadian duty free store.

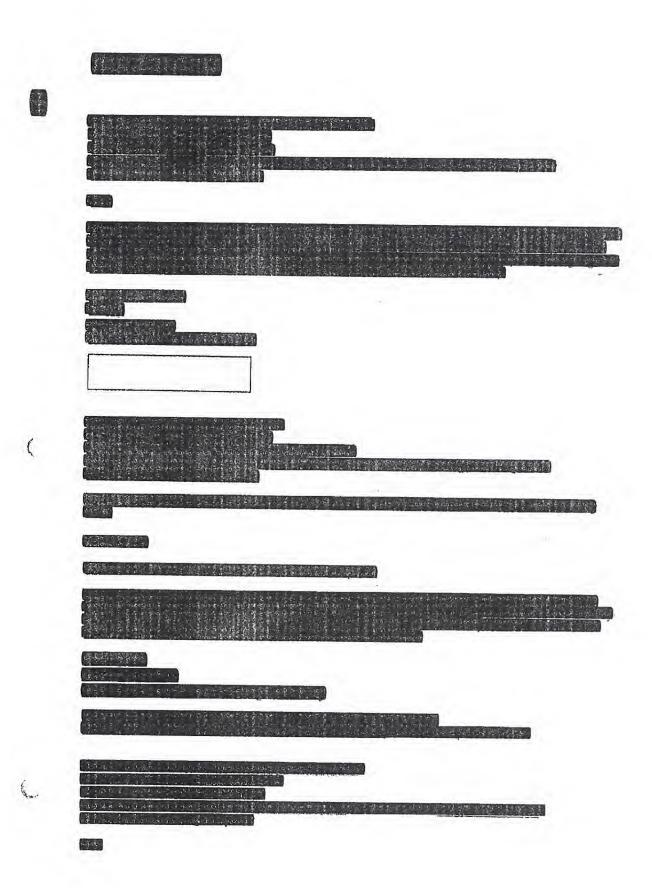
Management will continue to aggressively pursue a resolution in the best financial interests of the Authority.

PREPARED & SUBMITTED BY

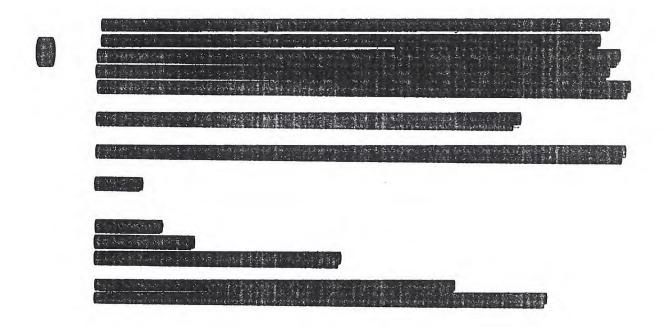
Karen Costa

Chief Financial Officer

Roa Rienas General Manager



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# Canada: Leasing Bulletin: Update On The Commercial Eviction Ban - Bill 229, Protect, Support And Recover From COVID-19 Act (Budget Measures), 2020

11 December 2020

#### by Minden Gross LLP

Minden Gross LLP

The ban on commercial evictions for certain types of tenancies has once again been extended. On December 8, 2020, <u>Bill 229, Protect, Support and Recover from COVID-19 Act</u> (Budget Measures), 2020 ("Act") received Royal Assent. The Act re-enacts provisions in Part IV of the Commercial Tenancies Act, with retroactive effect to October 31, 2020. These provisions limit landlords' abilities to evict tenants and exercise the right to distress.

#### Background

The ban on commercial evictions was first imposed through <u>Bill 192, Protecting Small Business Act. 2020</u>. The original ban on commercial evictions applied to tenancies (the "CECRA Eligible Tenants") where either:

- the landlord was eligible to receive assistance under the former Canada Emergency Commercial Rent Assistance program ("CECRA"), or
- the landlord would be eligible to receive assistance under CECRA if the landlord entered Into a rent reduction agreement with such tenent in compliance with CECRA.

Notably, the original commercial eviction ban did not apply to tenancies who actually were receiving assistance under CECRA (although under CECRA, landlords were required to anter into a rent reduction agreement that had its own moratorium on rent evictions until the tenant was no longer receiving a rent reduction or credit under such agreement). Bill 192 covered the period from May 1, 2020 to September 1, 2020, when it was automatically repealed. A subsequent bill, Bill 204, Helping Tenants and Small Businesses Act, 2020, came into effect on October 1, 2020, and essentially extended the ban on commercial evictions to cover the period from September 1, 2020 to October 30, 2020.

#### The new Bill 229

#### Restrictions during the non-enforcement period

The passing of Bill 229 likewise extends the moratorium on commercial evictions for CECRAeligible tenants. Similar to the previous moratoriums, judges are prohibited from ordering a writ of possession that is effective during the applicable non-enforcement period if the basis for ordering the writ is an arrears of rent. As well, the amendments prohibit landlords from seizing any goods or chattels as a distress for arrears of rent and from exercising a right of re-entry (irrespective of the nature of the tenant's default) during the applicable non-enforcement period.

#### Possession of the premises retroactive to October 31, 2020

Bill 229 is also effective retroactive to October 31, 2020. If a landlord exercised a right of re-ontry between October 31, 2020, and the start of the new moratorium, the landlord must restore possession of the premises to the tenant or, if unable to do so, must compensate the tenant for damages. Also, if a landlord seized a tenant's goods between October 31, 2020, and the start of the non-enforcement period as a distress for arrears of rent, the landlord must return any unsold goods to the tenant.

#### New additions to the Bill

However, there are several notable differences in the current legislation as contrasted with the previous moratoriums:

- 1. No prescribed end date: The previous legislation provided for a prescribed non-enforcement period, which would automatically end on a fixed date. However, Bill 229 ends on a "prescribed date," which has not been announced. Currently, there is no indication as to when the moratorium will end. The amendments are only repealed two years from December 8, 2020, leaving the ominous possibility that this may not be a short-term moratorium.
- 2. Application to a broader class of tenancies: Bill 229 applies not only to CECRA-eligible lenants, but also to tenants who did receive assistance under CECRA. Prior to Bill 229, nothing prevented a landlord who had received CECRA assistance in respect of a tenancy from exercising its remedies of termination or distress in respect of that tenancy, subject only to the terms of the rent reduction agreement. Accordingly, a CECRA approved tenant who failed to pay the reduced rent (typically 25% of the contract rent) could have its lease terminated by its landlord. Now that Bill 229 has extended protection to tenants who received CECRA assistance, landlords can no longer exercise those remedies for default against those tenancies.

In addition, Bill 229 allows additional classes of tenancies to be prescribed and be subject to all or part of the moratorium. In other words, new regulations can be passed to apply the moratorium not only to those tenants that were or would have been eligible for CECRA, but to other types of tenancies entirely.

#### Concerns

In our view, the scope and timing of the current moratorium are of concern for several reasons.

- CECRA Eligibility. The currently identified protected tenancies are still those who would have been eligible for CECRA. However, one of the main eligibility requirements for CECRA was a 70% revenue loss between April-June, 2020. This prior period may have little bearing on who needs protection at this juncture. A tenant whose business was suffering earlier this year may have turned around its business and be in a position to pay its rent to its landlord. Conversely, tenants whose fortunes may have taken a turn for the worse with the recently-mandated shutdowns may not be protected simply because they managed to tread water earlier in the year.
- CERS Eligibility: The CECRA program has ended and has been replaced with the Canada Emergency Rent Subsidy (CERS). One major difference between these two programs is that CECRA could only be applied for by landlords, whereas tenants can apply directly for CERS. When CECRA was in effect, the moratorium acted to incentivize landlords to participate in CECRA. The logic was simple; if a landlord did not apply for CECRA, its tenant could stop paying rent entirely, and the landlord would have little recourse. If the landlord did apply for CECRA, the landlord would no longer be subject to the general moratorium on evictions and could evict a tenant who did not pay the reduced rent. However, under CERS, tenants can apply on their own and receive the subsidy. Landlords are now faced with a situation where tenants could potentially receive a subsidy, still not remit any rent, and the landlord would still be deprived of its remedies. (Note that under CERS, the individual who is responsible for the tenant must submit an attestation to the Canada Revenue Agency confirming that the tenant has paid or will pay its landlord the full amount of the rent that has been subsidized by CERS within 60 days following the tenant's receipt of its first subsidy payment).

It is unclear why the moratorium was essentially extended in its current form when circumstances have so drastically changed. It would be somewhat understandable if the legislation was enacted only as a stop-gap measure to cover the period between the expiry of CECRA and the beginning of the disbursement of the subsidies under CERS. In this scenario, these tenants would continue to be protected until they were able to receive the CERS subsidies. At that point, the subsidies would be refled on to cover tenants' rental payments. If rent was then not paid to the landlord, the landlord would have all its rights under the lease and at law, including the right to terminate the lease. However, the lack of a prescribed end date and the implementation of the moratorium several weeks after CERS took effect seems to imply the current moratorium will remain in effect alongside CERS.

#### What Bill 229 means for landlords

The unfortunate result is that landlords are in a more precarious position than ever. The federal government has redirected the distribution of rental subsidies directly to tenants. In contrast, the provincial government has lied landlords' hands with respect to their ability to exercise any remedies for the non-payment of rent. While commercial tenants desperately need additional protections to survive this pandemic, it is unclear whether this moratorium will, in fact, protect the most vulnerable and deserving of this protection. Arguably this protection would be better accomplished by government programs that subsidize tenant expenses without shifting the burden to landlords to bear the risk of a tenant who may not pay any rent.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.



# ATTACHMENT B

Financial Statements

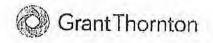
Peace Bridge Duty Free Inc.

December 31, 2020

Peace Bridge Duty Free Inc.

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# Independent Auditor's Report

Grant Thornton LLP 222 Catharine Street, Suite B PO Box 336 Port Corborne, ON L3K 5W1

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To the Shareholders of Peace Bridge Duty Free Inc.

#### Opinion

We have audited the financial statements of Peace Bridge Duty Free Inc., which comprise the balance sheet as at December 31, 2020, and the statements of loss, retained earnings, and cash flows for the year then ended, and notes to the financial statements, including a summary of significant accounting policies.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the company as at December 31, 2020, and its results of operations and its cash flows for the year then ended in accordance with Canadian accounting standards for private enterprises.

#### Basis for opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are independent of the company in accordance with the chical requirements that are relevant to our audit of the financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

#### Emphasis of matter

We drow your attention to Note 2 to the financial statements, which indicates that the company incurred a net loss of \$3,631,210 during the year ended December 31, 2020 and, as of that date, the company's current liabilities exceed its current assets by \$4,555,327. As stated in Note 2, these events or conditions, along with other matters as set forth in Note 2, indicate that a material uncertainty exists that may cause significant doubt on the company's ability to continue as a going concern. Our opinion is not modified in respect of this matter.

Responsibilities of management and those charged with governance for the financial statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with Canadian accounting standards for private enterprises, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the company or to cease operations, or has no realistic alternative but to do so.

# Independent Auditor's Report (continued)

Those charged with governance are responsible for overseeing the company's financial reporting process.

Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material If, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements. As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit, We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the company's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the company's ability to continue as a going concern. If we conclude that a moterial uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the company to cease to continue as a going concern.
- Evaluate the overell presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in Internal control that we identify during our audit.

Port Colborne, Canada April 21, 2021

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Chartered Professional Accountants Licensed Public Accountants

Grant Thornton LIP

Peace Bridge Duty Free Inc. Statement of Loss			
Year ended December 31		2020	2019
Sales	\$	3,107,805 \$	21,317,847
Cost of sales		1,642,462	10,227,531
Gross profit	-	1,465,343	11,090,316
Store expenses Rent - Buffalo and Fort Erie Public Bridge Authority Rent - Hamilton International Airport Wages and benefits Marketing Insurance Building maintenance Utilities Store supplies Commercial taxes Communications		4,000,000 56,084 1,301,745 54,117 292,868 45,785 73,978 20,941 50,268 17,175	3,946,764 127,064 2,427,599 533,901 266,310 156,087 121,682 104,778 51,318 19,801
Administrative expenses Automobile Collection fees Computer Miscellaneous Office Professional fees Travel and promotion		5,912,961 4,835 54,974 24,405 37,640 5,051 61,651 14,827 203,363	7,754,304 1,911 287,899 62,493 106,861 16,307 109,959 29,413 614,843
Amortization		562,722	373,887
		6,679,066	8,743,034
Loss) income before other income (item) and income taxes (recovery)  Capital lease and lease line of credit interest  Sovernment subsidies (Note 15)		(5,213,723) (204,785) 543,685	2,347,282 (208,261)
Other income	_	69,522	177,455
Loss) income before income taxes (recovery)	1	(4,805,401)	2,316,476
Income taxes (recovery) (Note 4) Income taxes Future		(1,136,291) (37,900)	520,466 64,300
	•	(1,174,191)	584,766
Net (loss) income	\$	(3,631,210) \$	1,731,710

Peace Bridge Duty Free Inc. Statement of Retained Earnings Year ended December 31		2020	2019
The proof to the Colonial Colo	CONTRACTOR NAME AND ADDRESS.	2020	2019
Retained earnings, beginning of year	\$	5,505,753 \$	5,134,043
Net (loss) income		(3,631,210)	1,731,710
Dividends	-	(160,000)	(1,360,000)
Retained earnings, end of year	\$	1,714,543 \$	5,506,753

Peace Bridge Duty Free Inc. Balance Sheet			
December 31	2020		2019
Assets			
Current			
Cash and cash equivalents (Note 5)	\$ 90,158		2,178,75
Receivables (Note 6) Income taxes recoverable	734,128		672,10
inventory (Note 7)	1,262,120		236,086
Prepaid expenses and deposits	1,724,768		1,900,78
s special supported and dapped to	88,291	-	126,962
	3,899,465		5,114,689
Long-term			
Lease security deposit Equipment and leasehold improvements (Note 8)	50,000		50,000
Future income taxes	6,248,270		6 712.712
Take Modific takes	168,000	_	165,500
	\$ 10,365,735	\$_	12,042,901
Liabilities			
Current			
Bank indebtedness (Note 9) Payables and accruals (Note 10)	\$ 210,000		•
Current portion of capital lease obligation (Note. 10)	3,771,057		1,626,703
a site parties of supriest leader obligation (Note: 10)	4,473,735	_	624,703
	8,454,792		2.251.406
Long-term Capital lease obligation (Note 11)			2223
Future income taxes	475.400		4,053,942
. dista monto toxes	175,400	-	210,800
	8,630,192	-	6,516,148
Shareholders' equity			
Capital stock			
Issued 4 common shares			
Retained earnings	21,000		21,000
	1,714,543		5,505,753
	1,735,543		5.526,753
	\$ 10,365,735	5_	12,042,901
Commitments (Note 12)			
COVID-19 pandemic and going concern uncertainty (Note 2)			
On behalf of the board			
- Strain of the budge			
Director			Director

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Peace Bridge Duty Free Inc. Statement of Cash Flows Year ended December 31		2020	2019
Increase (decrease) in cash and cash equivalents (bank indebted	dness		2010
Operating Net (loss) income Items not affecting cash	\$	(3,631,210)\$	1,731,710
Amortization Future Income taxes		662,722 (37,900)	373,887 64,300
Change in non-cash working capital items		(3,106,388)	2,169,897
Receivables		(62,025)	(311,642)
Income taxes		(1,026,034)	(267,910)
Inventory		176,016	(504,559)
Prepaid expenses and deposits		38,671	(10,972)
Payables and accruals	-	2,144,355	259,566
		(1,835,405)	1,334,380
Financing			
Refinancing of lease line of credit			(2,427,146)
Repayment of capital lease obligation		(307,684)	(252,123)
Proceeds of capital lease obligation		102,774	4,930,768
Dividends	_	(160,000)	(1,360,000)
	<u></u>	(364,910)	891,499
Investing			
Purchase of equipment and leasehold improvements		(98,281)	(3,269,894)
Decrease in cash and cash equivalents (bank indebtedness)		(2,298,596)	(1,044,015)
Cash and cash equivalents (bank indebtedness)			
Beginning of year		2,178,754	3,222,769
End of year	\$	(119,842) 5	2,178,754
		the second secon	70 F0F 715 (CCC 4 +124 -4
Bank indebtedness) cash and cash equivalents consists of: Cash and cash equivalents		22 142 1	
Bank indebtedness	\$	90,158 \$ (210,000)	2,178,754
			B (55 55
	<b>D</b>	(119,842) \$	2,178,754

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December 31, 2020

#### 1. Nature of operations

The company was incorporated under the laws of Ontario on December 30, 1985 and is primarily involved in the operation of retail duty free stores.

### 2. COVID-19 pandemic and going concern uncertainty

Since December 31, 2019, the consequences of the COVID-19 pandemic and the related closure of the Canada-US border have materially and adversely affected the company's sales and ability of the company to maintain its normal activities and therefore, its operating results have been negatively impacted. These events have negatively impacted the traffic crossing over the Peace Bridge and the number of flights out of Hamilton Airport.

The measures of the federal and provincial governments have required the closure of the company's main store at the Peace Bridge in March, 2020. The company had operating losses, negative cash flows from operations and working capital deficiencies from March, 2020 and this has continued into 2021. As at December 31, 2020, the company has current liabilities that exceed current assets by \$4,555,327, a nel loss of \$3,631,210 and retained earnings of \$1,714,543. The company is also in violation of its debt covenant as disclosed in Notes 9 and 11.

#### Store closures

On March 21, 2020, in response to quarantines and border closures related to the spread of COVID-19, the company closed its Peace Bridge Duty Free store in Fort Erie while keeping the Hamilton Airport store open. The Peace Bridge store represented average monthly sales of approximately \$ 1.6 million during fiscal 2019 and the Hamilton Airport store represented monthly sales of approximately \$ 125,000.

The closures reduced the following expenses by the following amounts on a monthly basis:

Store expenses \$ 157,000 Administrative expenses \$ 34,000

### Layoffs

As a result of store closures due to public health measures and the border closure related to the spread of COVID-19, the company announced its intention to temporarily reduce its workforce at both of its stores by the end of March, 2020, by means of either reductions in hours or temporary leave. The company continued to provide health benefits for furloughed employees until October, 2020.

#### Government subsidies

The company applied and received, or will receive, the following government subsidies

Canada Emergency Wage Subsidies (CEWS) \$ 328,397 Canada Emergency Rent Subsidies (CERS) \$ 215,189

The company plans to continue to apply for these and any other government subsidies available in the future.

December 31, 2020

## 2. COVID-19 pandemic and going concern uncertainty (continued)

The financial statements have been prepared using accounting principles applicable to a going concern. The going concern basis assumes that the company will continue its operation for the foreseeable future and will be able to realize its assets and discharge its liabilities and commitments in the normal course of business. In assessing whether the going concern assumption is appropriate, management considers all available information about the future, which is at least, but not limited to, twelve months from the end of the reporting period.

Access to the company's main store at the Peace Bridge is based on customers being able to cross the border. At present the border is closed to non-essential travel, it is uncertain when the border will reopen, and the customers will be able to access the store. It is also uncertain whether and when the company will return to profitability and positive cash flows from operations. These conditions indicate the existence of a material uncertainty which may cast significant doubt on the company's ability to continue as a going concern.

These financial statements do not include any adjustments to the amount and classification of assets and liabilities that might be necessary should the company be unable to continue as a going concern. If the company is not able to continue as a going concern, the company may be required to realize its assets and discharge its liabilities in other than the normal course of business and at amounts different from those reflected in these financial statements. The differences could be material.

## 3. Significant accounting policies

#### Basis of presentation

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The company has prepared these financial statements in accordance with Canadian accounting standards for private enterprises ("ASPE").

### Revenue recognition

Revenue on retail sales is recognized at the point of sale, when the customer receives and pays for the goods.

#### Government assistance

The company recognizes government assistance toward current expenses in the statement of income. When government assistance received is specified to relate to future expenses, the company defers the assistance and recognizes it in the statement of income as the related expenses are incurred. When government assistance relates to the acquisition of equipment and leasehold improvements, the company deducts the assistance from the cost of the related equipment and leasehold improvements.

December 31, 2020

### 3. Significant accounting policies (continued)

#### Income taxes

The company has elected to apply the future income taxes method of accounting. Future tax assets and liabilities are recognized for the future tax consequences attributable to differences between financial statement carrying amounts of assets and liabilities and their respective tax bases. Enacted or substantively enacted tax rates anticipated to be in effect when these differences reverse are used to calculate future income taxes. To the extent that the company does not consider it to be more likely than not that a future tax asset will be recovered, if provides a valuation allowance against the excess

#### Cash and cash equivalents

The company's policy is to present bank balances under cash and cash equivalents, including bank overdrafts with balances that fluctuate frequently from being positive to overdrawn. Also included in cash and cash equivalents are term deposits with a maturity period of three months or less from the date of acquisition.

#### Inventory

The cost of inventory comprises all costs of purchase and other costs incurred in bringing the inventories to their present location and condition. The costs of purchase comprise the purchase price, import duties, non-recoverable taxes, transport, handling and other costs directly attributable to the acquisition of the goods.

Inventories are measured at the lower of cost and net realizable value. The cost is determined using the average cost method or the first-in, first-out method ("FIFO") and comprised of the purchase price, inbound freight, brokerage, import duties and other taxes not recoverable by the company, net of supplier discounts and rebates.

Net realizable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale, less any applicable variable selling costs.

Inventories are written down to net realizable value when the cost of inventories is not estimated to be recoverable. The cost of inventories may not be recoverable if those inventories have been damaged, become obsolete, selling prices have declined or their estimated costs of completion or the estimated costs to be incurred to make the sale have increased.

The amount of any write-downs of inventories to net realizable value and all losses of inventories are recognized as an expense, and included in cost of sales, in the period the write-down or loss occurs.

When the circumstances that previously caused the inventories to be written down below cost no longer exist or when there is clear evidence of an increase in net realizable value because of a changed economic circumstance, the amount of write-down is reversed in the period of change.

The amount of any reversal of write-down of inventories, arising from an increase in net realizable value, shall be recognized as a reduction in the amount of inventories recognized as an expense in the period in which the reversal occurs. The reversal is limited to the amount of the original write-down.

December 31, 2020

## 3. Significant accounting policies (continued)

#### Equipment and leasehold improvements

Equipment and leasehold improvements are initially measured at cost and subsequently measured at cost less accumulated amortization. Amortization is provided for over the estimated useful life of the asset. The amortization method and estimated useful lives are reviewed on a regular basis.

The following are the useful lives of equipment and leasehold improvements used for amortization purposes:

Computer hardware and cash registers
Computer software
Computer software
Furniture, flxtures and equipment
Leasehold improvements

30% Declining balance
20% Declining balance
17 years Straight-line

### Impairment of long-lived assets

The company tests long-lived assets for impairment whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. An impairment loss is recognized when the carrying amount of the asset exceeds the sum of the undiscounted cash flows resulting from its use and eventual disposition. The impairment loss is measured as the amount by which the carrying amount of the long-lived asset exceeds its fair value.

#### Foreign currency transactions

The company translates all of its foreign currency transactions using the temporal method Monetary assets and liabilities are translated at the exchange rate in effect at the balance sheet date. Other assets and liabilities are translated at the exchange rate in effect at the transaction date Exchange gains and losses are included in the statement of income.

## Pension plans and other retirement benefit plans

The company has a defined contribution plan in which all employees are eligible to participate once they reach two years of service. The company matches the maximum eligible employee contributions and these contributions are expensed during the year.

#### Financial Instruments

The company considers any contract creating a financial asset, liability or equity instrument as a financial instrument, except in certain limited circumstances. The company accounts for the following as financial instruments:

- · cash and cash equivalents
- · trade and other receivables
- · lease security deposit
- · payables and accruals
- · capital lease obligation

A financial asset or liability is recognized when the company becomes party to contractual provisions of the instrument.

December 31, 2020

### 3. Significant accounting policies (continued)

### Financial instruments (continued)

#### Measurement

The company initially measures its financial assets and financial liabilities at fair value, except for certain non-arm's length transactions.

Financial assets or liabilities obtained in related party transactions are measured in accordance with the accounting policy for related party transactions except for those transactions that are with a person or entity whose sole relationship with the company is in the capacity of management in which case they are accounted for in accordance with financial instruments.

The company subsequently measures all of its financial assets and financial liabilities at amortized cost,

Financial assets measured at amortized cost include cash and cash equivalents and receivables.

Financial liabilities measured at amortized cost include bank indebtedness, payables and due to shareholders.

#### Use of estimates

The preparation of these financial statements in conformity with ASPE requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the current period. These estimates are reviewed periodically and adjustments are made to income as appropriate in the year they become known.

Items subject to significant management estimates include allowance for doubtful accounts, provision for obsolete inventory and the amortization of property and equipment.

#### 4. Income taxes

The provision for income taxes recorded in the financial statements differs from the amount which would be obtained by applying the statutory income tax rate of 26.50% (2019 - 26.50%) to the (loss) income for the years as follows:

	-	2020	2019
(Loss) income for the year before income taxes	<u>\$</u>	(4,805,401) 3	2,316,476
Anticipated income tax (recovery) Tax effect of the following:	\$	(1,273,431) \$	613,866
Effect of small business deduction		57,500	(70,000)
Permanent income differences		39,261	40,132
Timing income differences		40,379	(63,532)
Futuré income tax	1	(37,900)	64,300
Income tax (recovery) expense	\$	(1,174,191)\$	584,766

#### Peace Bridge Duty Free Inc. Notes to the Financial Statements December 31, 2020 Cash and cash equivalents 2020 2019 Cash on hand 43,500 \$ 512,318 Cash balances with banks 46,658 1,666,436 90,158 \$ 2,178,754 Receivables 2020 2019 Trade 86,792 \$ 432,489 Sales and excise taxes 427,591 239,614 Government subsidies (Note 15) 219,745 734,128 \$ 672,103 7. Inventory 2020 2019 Peace Bridge Duty Free 1,639,256 \$ 1,750,110 Hamilton International Airport 85,512 150,674 1,900,784 1,724,768 \$ Equipment and leasehold improvements 2020 2019 Accumulated Net Book Net Book Cost Amortization Value Value Computer hardware and cash registers 234,050 \$ 179,284 \$ 54,766 \$ 130,843 Computer software 161,220 156,553 4,667 35,186 Furniture, fixtures and equipment 648,088 397,137 250,951 218,433 Leasehold Improvements 599,827 6,537,713 5,937,886 6,328,250 7,581,071 1,332,801 \$ 6,248,270 \$

Included in equipment and leasehold improvements are assets under capital lease with a cost of \$4,930,769 (2019 - \$4,930,769) and accumulated amortization of \$841,131 (2019 - \$145,022).

6,712,712

December 31, 2020

#### 9. Credit facilities

4.

The company has three demand credit facilities. Under the terms of the first facility, the company may draw up to \$ 900,000 at an interest rate of prime plus 0.5%. At December 31, 2020, the company had drawn \$ 210,000 on the first facility (2019 - \$ Nil). Under the terms of the second facility, the company can issue up to \$ 600,000 by way of letters of credit. At December 31, 2020, \$ 575,900 (2019 - \$ 575,900) in letters of credit were outstanding in favour of the Canada Revenue Agency and the Hamilton International Airport. Under the terms of the third facility, the company has a \$ 5 million revolving lease line of credit.

A general security agreement covering all assets has been pledged as collateral for all the demand credit facilities, as well as an assignment of fire insurance. The company is also subject to a covenant to maintain a debt service coverage ratio of not less than 1,25:1 and at the balance sheet date the company is in violation with this covenant.

10. Payables and accruals	· energy	2020	-	2019
Trade Accrued liabilities Government remittances	\$	396,562 3,356,259 18,236	\$	1,236,803 364,234 25,666
	\$	3,771,057	5.	1,626,703
11. Capital lease obligation	-	2020		2019
Royal Bank of Canada Capital lease, repayable in 84 monthly installments of \$ 68,282 including interest at 4,5% per annum with a maturity date of January, 2027	\$	4,473,735	\$	4,678,645
Less current portion		4,473,735	_	624,703
	\$		5	4,053,942

Interest charges to the accounts of the company on the above during the year amounts to \$204,785 (2019 - \$89,228).

A general security agreement covering all assets has been pledged as collateral for all the demand credit facilities, as well as an assignment of fire insurance. The company is also subject to a covenant to maintain a debt service coverage ratio of not less than 1.25:1 and at the balance sheet date the company is in violation with this covenant.

December 31, 2020

#### 12. Commitments

The company is committed to the following payments related to outstanding letters of credit. Future minimum annual payments for these letters of credit are as follows:

2021	\$	12,237
2022	*	12,237
2023		12,237
2024		12,237
2025		12 237

### Leased premises - Peace Bridge store

Under the terms of the lease agreement, which commenced November 1, 2016, the company has agreed to make monthly rent payments for the first year of the lease at a base rent of \$ 4,000,000. The base rent for the second year and each succeeding year of the lease shall be the greater of (-) \$ 4,000,000 or (ii) 75% of the aggregate of the base rent and the percentage rent. Percentage rent is calculated as 20% of gross sales up to \$ 20,000,000, 22% on gross sales between \$ 20,000,000 and \$ 25,000,000, and 24% on gross sales over \$ 25,000,000. Total rent payable is calculated as the base rent plus percentage rent in excess of the base rent. The lease agreement expires October 31, 2031.

## Leased premises - Hamilton International Airport

The company has a lease agreement related to duty free sales, which commenced May 1, 2007, was amended on May 1, 2012, and extended on May 1, 2017 for ten years up to and including April 30, 2027, with no further rights to extend or renew the term thereafter. The company has agreed to make monthly rental payments equal to 10% on gross revenue up to \$ 40,000, 13% on gross revenue between \$ 40,001 and \$ 60,000, 14% on gross revenue between \$ 60,001 and \$ 80,000 and 16% on gross revenue greater than \$ 80,000.

The company has a lease agreement related to domestic sales, which commenced November 5, 2008, was amended on both January 1, 2009 and March 29, 2011, and was extended for the period up to and including April 30, 2017. On May 1, 2017, the lease agreement was further extended for ten years to and including April 30, 2027, with no further rights to extend or renew the term thereafter. The company has agreed to make annual rental payments equal to 6% on gross revenue up to \$ 500,000, 8% on gross revenue between \$ 500,001 and \$ 750,000 12% on gross revenue between \$ 750,001 and \$ 1,000,000 and 15% on gross revenue greater than \$ 1,000,000.

#### Letters of credit

The company has provided letters of credit in the amount of \$ 560,000 (2019 - \$ 560,000) to Canada Revenue Agency and \$ 15,900 (2019 - \$ 15,900) to Hamilton International Airport as at December 31, 2020.

December 31, 2020

#### 13. Financial Instruments

The company is exposed to various risks through its financial instruments. The following analysis provides a measure of the company's risk exposures and concentrations at December 31, 2020:

#### (a) Credit risk

Credit risk is the risk that one party to a financial instrument will cause a linancial loss for the other party by failing to discharge an obligation. The company's main credit risks relate to its accounts receivable as it provides credit to its sub-tenants in the normal course of its operations. In the opinion of management the credit risk exposure to the company is low and not material.

## (b) Liquidity risk

Liquidity risk is the risk that the company cannot pay its obligation when they become due to its creditors. The company is exposed to this risk mainly in respect of its bank indebtedness and accounts payable. The company reduces its exposure to liquidity risk by ensuring that it documents when authorized payments become due; maintains an adequate line of credit to repay trade creditors. As disclosed in Note 2, the company is in violation of its debt covenants as disclosed in Notes 9 and 11. As outlined in Note 2, there is significant uncertainty around the company's ability to continue as a going concern, as the company has had operating losses, negative cash flows from operations and working capital deficiencies.

#### (c) Market risk

Market risk is the risk that the fair value or expected future cash flows of a financial instrument will fluctuate because of changes in market prices. Market risk comprises three types of risk: currency risk, interest rate risk and other price risk. The company is mainly exposed to currency risk.

#### (i) Currency risk

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates. The company's currency risk arises primarily from the sale and purchase of goods in US dollars and the holding of US cash and cash equivalents. Consequently, some assets and liabilities are exposed to foreign exchange fluctuations. As at December 31, 2020, cash and cash equivalents of \$ 34,505 (2019 - \$ 408,080) and accounts payable of \$ 29,157 (2019 - \$ 159,348) are denominated in US dollars and converted into Canadian dollars.

December 31, 2020

## 14. Related party transactions

The company is owned by four shareholders, each having an equal interest. Management fees paid to these shareholders are outlined below and are included in the statement of income in wages and benefits expense.

#### Revenue

		2020		2019
Meduxnekeag Investments Limited John M. Marsh Annrahm Corporation Hara Enterprises Limited	\$	10,654 10,654 10,654 20,654	\$	10,654 10,654 10,654 10,654
	\$ marketing	52,616	3	42,616

### 15. Pension expense

The company's contribution to the defined contribution plan during the year was \$16,900 (2019 - \$29,375) and is included in wages and benefits expense in the statement of income.

## Attachment C

From: Ron Rienas

Sent: Wednesday, April 28, 2021 4:42 PM To: 'Jim Pearce' < JimP@dutyfree.ca> Ce: 'Greg O'Hara' < gohara@dutyfree.ca>

Subject: PBDF Financial Statements and other outstanding items

#### Jim.

We acknowledge receipt of PBDF's 2020 audited financial statements on April 23, 2021. The statements provided raise serious concerns and questions that require answers and clarifications, particularly when compared to previous information supplied by PBDF, and to enable the PBA to properly assess the information.

Please provide answers to the following:

## Statement of Loss:

- The amount reported for Sales on the 12/31/2020 internal financial statements provided to us on January 28, 2021 was \$2,542,920. The sales reported on the audited financial statements was \$3,107,805. Please provide an explanation for the large variance.
- The amount reported for Cost of Sales on the 12/31/2020 internal financial statements
  provided to us on January 28, 2021 was \$1,380,382. The cost of sales reported on the
  audited financial statements was \$1,642,462. Please provide an explanation for the large
  variance.
- Rent Hamilton Airport why was \$0 reported on the 12/31/2020 internal financial statements provided to us on January 28, 2021 and the audited statements reflect \$56,084 - please explain.
- 4. Wages and benefits on the 12/31/2020 internal financial statements provided to us on January 28, 2021 wages and benefits were reported at \$887,832 net of CEWS (Canada Emergency Wage Subsidy). Adding the amount of CEWS reported in Note 2 of \$328,397 would bring the amount of wages and benefits to \$1,216,229 \$85,516 less than what is reported on the audited statements. Please explain in detail the adjustments that were made between the information reported to the Authority on 1/28/2021 and the audited financial statements. We also request a detailed listing of employees and amounts paid in compensation to each.
- Miscellaneous -- we would like a detailed breakdown of this expense category and
  explanation of the increase from the amount reported on the 12/31/2020 internal financial
  statements provided to us on January 28, 2021 and the audited statements -- the increase
  of \$26,310.
- Automobile what is the nature of this expense, why was it not reported on the 12/31/2020 internal financial statements provided to us on January 28, 2021 and why did it increase \$2,924 (or 153%) from 2019?

- 7. Capital Lease and lease line of credit interest what was the interest paid on the line of credit and what was the interest paid on the capital lease debt?
- 8. Government Subsidies comment states (Note 15) however, Note 15 is a note on Pension expense. Please clarify.
- Other Income please explain the change in the amount reported on the 12/31/2020 internal financial statements provided to us on January 28, 2021 as other income \$199,581 and the amount reported on the audited financial statements of \$59,522.

## Balance Sheet:

- 1. Cash -
  - a. please explain the difference between cash on hand and cash balances with banks. Why is there a distinction? Is one restricted in some way? Is the cash on hand physical cash at the store? Is the \$90,158 available to be used for any purpose?
- 2. Receivables -
  - a. Please provide details on the Trade AR. With the store closed for over a year—what trade receivables remain?
  - b. Please provide the detail and an explanation for the sales and excise taxes receivable of \$427,591. It increased 78% from 2019. Please explain what activity would generate this type of receivable and is it cash you expect to receive in the form of a refund in 2021.
  - c. Please provide the detail of the amounts included as government subsidies receivable – including what program and dollar amount. Again, reference is made to Note 15 which is Pension expense.
- 3. Income taxes recoverable what is the anticipated time frame to receive this refund? Have all required returns been filed that support this refund?
- 4. Inventory Duty Free store what is in inventory and is there any obsolete or spailage issues that should be considered?
- 5. Bank Indebtedness what are the repayment terms on the bank indebtedness.
- Payables and Accruals please provide a payables aging and a detailed schedule of the amounts that make up the accrual balance.
- Current portion of capital lease obligation the balance sheet indicates Note 10 which
  is the Payables and Accruals footnote.
  - a. Please provide explanation as to the circumstances that led to the reclassification of the capital lease debt from long-term to current.
    - i. Are all payments current on this debt? Please provide a current loan statement as evidence of the current status of the loan
    - ii. Has the debt now become a demand note?
    - iii. What are the scheduled repayment terms?
    - iv. What time line has the bank provided to cure the DSCR default?
    - v. Has the bank indicated that they intend to call the loan due and payable?
    - vi. How and when was the bank aware of the loan covenant violation?
    - vii. When did PBDF become aware of the loan covenant violation?

viii. Was a waiver of the violation requested from the bank?

ix. What is the official position of the bank on the access to credit? Something in writing that states they do not intend to call the debt due and that PBDF still has full access to the existing lines of credit

8. Why is the separate area at the hottom of the balance sheet listing. Note 12 and Note 2 not signed? It appears that as part of the final financial statements that it should be signed – please explain.

### Footnotes:

Note 2 - The footnote indicates that the PBDF has going concern uncertainty. This
footnote fails to disclose the fact that the PBDF is in default of its lease with the
Authority. Please provide explanation on why this fact is not clearly stated in the
financial statement disclosure. We believe this is a material misstatement of facts.

When did the PBDF know the financial statements were going to be issued with a going concern uncertainty?

The Hamilton Airport Duty Free remained open yet you closed the Peace Bridge store. Why?

Government subsidies are listed at \$215,189 for CERS (Canada Emergency Rent Subsidy. Please provide a detailed accounting and explanation of the variance between the amount of CERS applied for and the amount of CERS received in 2020. Also specify what amounts were applied for in 2020 but received in 2021 and the date each was received. Please also provide a detailed accounting and explanation of amounts paid to PBA and Hamilton Airport relative to CERS in 2020.

2. Note 9 - Credit Facilities - please provide detailed explanation of the third \$5,000,000 lease line of credit facility - as per the 2019 audited financial statements, it was indicated in Note 10 that this lease LOC was temporary and was converted to an 84 month loan. Please explain if this LOC is truly available and what its terms of use are.

The first (\$900,000) demand LOC - as per the audited statements, there was \$210,000 outstanding at \$2/31/2020. Please provide a current statement to show the current amount drawn on this line and dues dates and amounts of repayments required.

- Note 12 Commitments there is no mention of the rent in arrears due to the Authority included in the disclosure. We believe this is a material misstatement of facts.
- 4. Note 13 Financial Instruments (b) Liquidity Risk again no mention of rent in arrears or that the PBDF is in default of its lease with the Authority.
- 5. Note 14 Related Party Transactions Please explain the increase in the amount paid to Hara Enterprises Limited.

In addition, I continue to await answers to issues raised in my letter of April 15, 2021. We acknowledge the transfer of funds to the PBA in the amount of \$58,053.31 on April 20 2021, which you advised on April 23 was a CERS payment for claim period #3. It will be applied towards outstanding rent. However, we require the CERS application summary claim form

similar to what was provided for Claims #1 and #2. Please provide immediately. Why is it that we are only now receiving funds for CERS Claim period #3 when that period closed December 19, 2020? You are aware that the government is currently processing Claim period #7 that closed April 10 with a turn-around time of 3-8 days. Why have you not remitted all CERS payments through claim period #7? Further, PBDF has not responded to my request for PBDF's CERS application dates and approvals. Please provide immediately.

I reiterate my April 13 2021 request that PBDF immediately replace the \$50,000 security deposit.

As required, on April 22, 2021 the PBA paid \$130,000 to the government for HST attributable to the rent. The PBA requires immediate reimbursement of this amount.

Lastly, as previously stated, the PBA reiterates its position that the Duty Free Store could and should be open.

Upon receipt of the requested information and our review of same we will be able to schedule a meeting to further discuss.

Ron Rienas General Manager Buffalo & Fort Erie Public Bridge Authority

100 Queen Street, Fort Eric, ON L2A 3S6 | 1 Peace Bridge Plaza, Buffalo, NY 14213 rt@peacebridge.com T 905-994-3676 T 716-884-8636 F 905-871-9940 | F 716-884-2089 | C 905-651-2206

TAIL.

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April 12, 2021

Ron Reinas

General Manager

Buffalo & Fort Erie Public Bridge Authority

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Filephone, 1932 - 831 - 8406.
Cas. 5005 (18) 1-8333.

Ron,

This letter is in response to your letter of April 1, 2021.

PBDF is fully within the CERS guidelines which are perfectly clear. PBDF applies amounts received from CERS to rent and additional rent that are due under the lease.

PBDF has not yet received audited financial statements from Grant Thornton. We had hoped to receive the statements by March 31, 2021. We expect to receive the audited financial statements before the end of April and will provide them to PBA upon receipt from Grant Thornton. PBDF is cognizant of its obligation under Article 16.03(b) of the lease.

Thank you for providing the requested property assessment information. PBDF is cognizant of Article 6.02 of the lease.

We wholeheartedly disagree with the opinion expressed in the closing paragraph of your letter. Your assessment is out of touch with the reality in Ontario. Ontario has been subject to numerous lockdowns and the border is closed to non-essential traffic. Ontario is entering into a further lockdown period due to rising infection and hospitalization rates.

Despite the present lockdown, increasing vaccination rates provide a basis for a positive outlook. On that basis, it makes sense for PBDF and the PBA to have a discussion regarding the lease going forward.

We, again, respectfully request that a meeting be arranged between PBDF and representatives of the PBA. This process of back-and-forth letter writing does not allow for a dialogue or provide an opportunity to explore alternative approaches in good faith. As mentioned previously, we are agreeable to this meeting being facilitated by a mediator or some other neutral party.

If the PBA is going to decline our request to engage in a good faith discussion, we kindly request that you explain why the PBA refuses to do so.

Regards,

Gregory G. O'Hara

President and CEO

Peace Bridge Duty Free Inc.

CROSSING PATHS & BUILDING FUTURES
THE PEACE BRIDGE

April 13, 2021

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

In response to your April 12, 2021 letter, the PBA continues to be prepared to have discussions with PBDF, when PBDF has provided its 2020 audited financial statements. You had previously indicated that we were to receive them "by the end of March at the latest". I would also draw your attention to my letter to you dated January 19, 2021 (attached) wherein I responded to your proposed business plan. In your letter of March 25, 2021 you resubmitted the same business plan without addressing any of the Items In my January 19th letter.

Up until the end of March 2021, PBDF has only paid 5.1% of the base and additional rent required by the lease, including CERS remittances. Notwithstanding that the CERS program is currently processing claim period 7, our records indicate PBDF has chosen to only remit CERS funds to the PBA for claim periods 1 and 2 which ran from September 27 – November 2, 2020. Please provide the dates for each PBDF CERS application and approval.

PBA will be drawing all of the \$50,000 PBDF security deposit and applying it towards a portion of the unpaid rent as allowed for by Article 4.06. This letter constitutes the PBA's demand for immediate full replacement of the security deposit with either a Letter of Credit or cash.

As was established by other Duty Free store operators in Ontario, there was nothing preventing PBDF from remaining open during the pandemic and the various lockdowns. PBDF chose not to open nor did PBDF make any effort to provide on-line with curbside pick-up options as retail stores did that were actually required to be closed.

I look forward to receiving the 2020 audited financial statements and scheduling a meeting.

Tron Rienas

General Manager

Encls.

TA

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

100 QUEEN STREET, FORT ERIE, ON L2A 3S6 = 1 PEACE BRIDGE PLAZA, BUFFALO, NY 14213-2495
PHONE (905) 871-1608/(716) 884-6744 • FAX (905) 871-9940/(716) 884-2089

www.dcascbridge.com

CROSSING PATHS TO BUILDING FUTURES
THE PEACE BRIDGE

January 19, 2021

Mr. Gregory O'Hara President and Chief Executive Officer Pence Bridge Duty Free P.O. Box 339 Peace Bridge Plaza Fort Erle, ON L2A SN1

Dear Mr. O'Hara:

RE: LEASE DATED JULY 28, 2016 (THE "LEASE") BETWEEN BUFFALO AND FORT ENJE PUBLIC BRIDGE AUTHORITY, AS LANDLORD, AND PEACE BRIDGE DUTY FREE INC., AS TENANT

In response to your letter of January 15, 2021, Peace Bridge Duty Free's (PBDF) proposed financial business plan of eliminating the base rent and moving to only % rent is unacceptable. It also ignores all the rent currently owed to the Peace Bridge Authority (PBA). Even in the rent deferral agreement that expired on July 31, 2020, PBDF agreed to pay deferred rent with interest over time. Your plan is also silent on accessing federal government relief programs like the Business Credit Availability Program (BCAP) and the Highly Affected Sectors Credit Availability Program (HASCAP).

In a competitive, public RFP process in 2016 for concession rights, PBDF submitted a proposal that stated: "PBDF proposes a Minimum Base Rent of \$4,000,000".

Your rent proposal was the key element in PBDF winning the concession and was included unamended in the lease (Article 4.02) between PBDF and PBA. The PBA is not prepared to alter the basis upon which the concession was awarded. To do so would be unfair to the other bidders in the procurement process.

With PBDF continuing to employ staff on site, you know that the PBA has consistently taken the position that PBDF could have remained open in some fashion (curbside purchases, on-line with curbside pick-up, etc.) to service trucks and other essential travel. You state that 7% of PBDF's revenue comes from trucks. Together with other essential traffic it would not be unreasonable to suggest that PBDF lost over \$1 million in potential revenue in 2020 by choosing to remain closed. The lease requires PBDF to be open 24 hours a day seven days a week, 365 days a year (Article 9.02 (a)).

We understand that the pandemic has impacted many businesses and acknowledge the duty free industry has been particularly hard hit. We note, based on website information, that PBDF is not a member of the Frontier Duty Free Association (FDFA), the industry association for Canada's land border duty free shops. On December 2, 2020 the FDFA applauded the Canadian government's efforts to support the industry. <a href="https://www.moodledayittreport.com/frontier-duty-free-association-applauds-canadian-government-support-measures/">https://www.moodledayittreport.com/frontier-duty-free-association-applauds-canadian-government-support-measures/</a>. That is not to say the federal government will not provide additional support. But if it does, I am certain it will not be specific to PBDF.

I relterate what I said in my letter of December 29, 2020; that we would support any effort you undertake to lobby the Government of Canada. That includes meeting with Mr. Badawey. In your letter of December 30, 2020 you said you would arrange for that meeting and advise us as to his availability. We await the date and time.

Tibur Rienas General Manager

Years truly

N

BUFFALO AND FORT BRIE PUBLIC BRIDGE AUTHORITY

100 QUBEN STREET, FORT BRIE, ON L2A 386 \* 1 PEACE BRIDGE PLAZA, BUFFALO, NY (4213-2495
PHONE (905) 871-1608/(716) 884-6744 \* FAX (905) 871-9940/(716) 884-2089

YWW.pcacebridge.com

# CONFIDENTIAL Report No. 938/21

Peace Bridge Authority

Prepared for: Board of Directors Agenda Date: May 28, 2021

SUBJECT Peace Bridge Duty Free (Canada)

RECOMMENDATION

THAT this Report be received for information.

## BACKGROUND

At the April 30, 2021 Board meeting the Board considered an extensive report (Report 933/21) as to the status of the Peace Bridge Duty Free lease.



PBDF has only made three CERS payments for three claim periods, the last of which ended on December 19, 2020. The federal government is currently processing claim period #8 which runs to May 8, 2021 with payment by the government being made within 3-8 days. This means that PBDF could have by now paid the Authority an additional appoximate \$300,000. PBDF chooses not to do so but technically is in compliance with the CERS program. It also means that the moratorium on eviction remains in place as described by Ontario's Bill 229 (the Protect, Support and Recover from COVID-19 Act, 2020) which in summary states:

"A tenant who is approved to receive CERS, and has provided their landlord proof of approval, will be protected from eviction for a 12-week period from the date of approval.

If a tenant reapplies for a new CERS payment, the 12-week ban is effectively restarted from the date of the new CERS approval. Tenants must provide their landlord proof of each new approval.

The last possible date a CERS-approved tenant could be protected from evictions is April 22, 2022."

The CERS program was scheduled to expire in June 2021 but the recently approved federal budget extends the program until September 25, 2021 with a provision to further extend until November 20, 2021. It remains to be seen if the Province of Ontario will extend the eviction moratorium.

Attached as Appendix B are the May 13 meeting notes from the meeting between PBDF and the Authority. The Authority has requested submission of realistic business plan by June 1, 2021, that addresses Authority concerns.

PREPARED & SUBMITTED BY

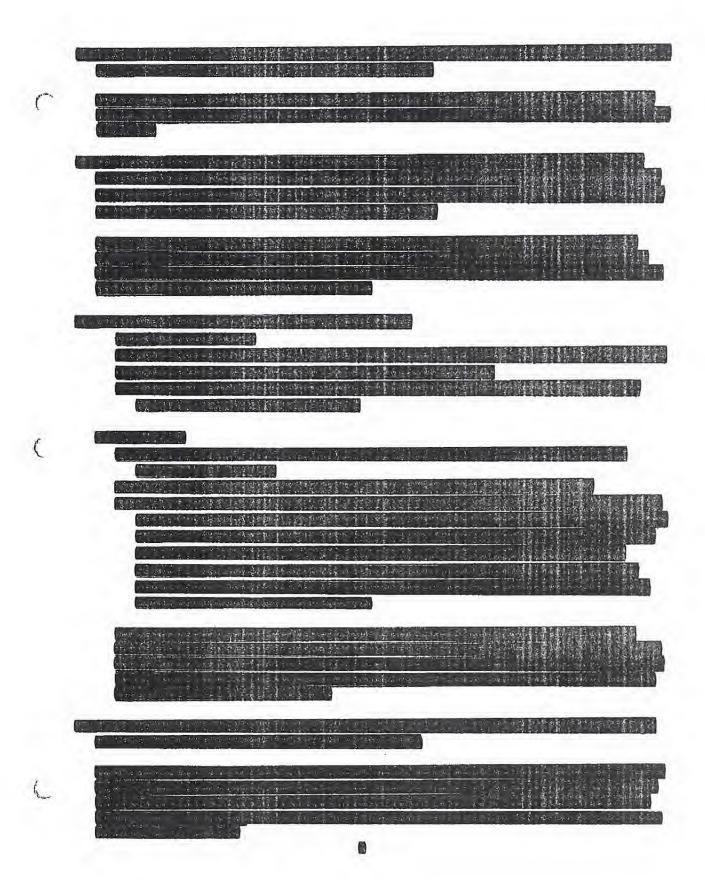
General Manager

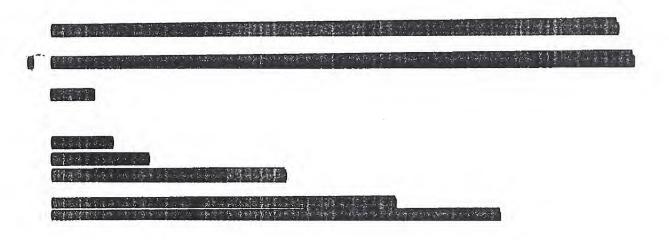
# ATTACHMENT A

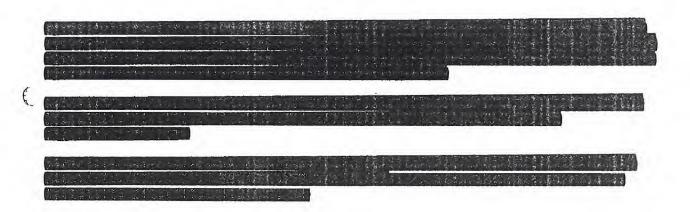




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## ATTACHMENT B

CROSSING PATHS PER BUILDING FUTURES

To:

File

From:

Karen Costa and Ron Rienas

Date:

May 13, 2021

Subject:

Meeting with PBDF

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On May 13, 2021 at 2pm Jim Pierce (PBDF General Manager) and Greg O'Hara (President and Managing Partner) met with Ron Rienas and Karen Costa to discuss the situation and events relative to the closure of the PBDF store since March 21, 2020 as part of the COVID border restrictions on travel and the subsequent lease defaults.

The highlights of the meeting and commentary are as follows:

 PBDF was asked if they would continue to operate the store under the terms in the Lease – Greg O'Hara stated: "not a chance".

PBDF was asked about a personal guarantee from ownership of the rent in arrears –

Greg O'Hara said "absolutely not",

PBDF resubmitted the business plan provided in January 2021 – we stated it was already
rejected in January, and again in April and is still unacceptable as it does not address
any rent in arrears. Jim Pierce stated: "ok, now we know."

 The income tax refund PBDF received in January of \$1.2 million is planned to keep the store operational and to keep the bank current. It is not intended for any payment to

the Authority.

 Everything for PBDF boils down to base rent and in "post-covid" world that proposition is no longer possible for them to remain profitable. They want to restructure the lease.

- Current bank DSCR is .49. The requirement is 1.1. PBDF is uncertain if the bank will
  provide HASCAP (Highly Affected Sectors Credit Assistance Program) funding however it
  appears that the government is guaranteeing up to a \$1 million loan and PBDF meets
  the criteria.
- We asked about the BCAP (Business Credit Availability Program) which provides up to \$6.25 million to help cover operating costs during a period where revenues have been temporarily reduced due to the pandemic. PBDF stated: "why would we pursue the BCAP program and incur debt to pay off debt" (the back rent) — they did not answer if they ever applied for the program.

Greg O'Hara stated that ownership will not infuse any working capital. They would only
consider it once they had a "deal" with the "deal" being 100% rent forgiveness on all

rent in arrears and only % rent going forward.

PBDF took exception to the letters Ron has sent as they "only quote the Lease"

 PBDF stated that there is no way they can "afford" \$6 million in back rent to the Authority – they made comments that the company has no money – again ignoring any access to capital they do have



Reference was made that the bank has been "hammering" them - they have to keep the bank current or they will continue to pressure. We stated: "you are paying the bank but choosing not to pay the Authority."

Greg O'Hara stated that everything and all assets under the Lease were pledged as collateral to the bank, including inventory. We stated we believed they had no rights to pledge collateral that is not theirs and that inventory cannot be sold under CBSA rules.

They said they could return inventory to the LCBO, but they owe the LCBO \$300,000 so

it is not likely LCBO will be buying back inventory.

PBDF did not deny that they wanted the Authority to forgive all back rent, change the terms of the lease so that they could then have a chance to be viable. We stated that was not an option.

We discussed the uncertainty of PBDF being a viable business, they pushed back on that, but then also stated there was no way the business could pay the back rent or the minimum rent going forward. They also took exception to us pointing out that based on their financial statements and the comments made, that they are insolvent.

They indicated no willingness on their part to "help themselves" salvage their business. It was pointed out by us that they have to date not provided any good faith effort to provide rental or partial rental payments, that ownership has shown no willingness to infuse working capital, that they delay paying us CERS payments two months after they receive it from the government, and they refuse to open the store even though staff are present and could provide curbside service.

PBDF presented their previously provided business plan and Greg said that surly there must be someone on the Board who could understand their situation - to which we replied that the Board was fully apprised, is up to date on the ongoing situation and has determined that their previously submitted business proposal (the one that requires 100% forgiveness of rent) was unacceptable. We pointed out that we are not aware of any landlord forgiving 100% rent and that PBDF ignored our December request for a 1 million dollar rent payment, representing 1/3 of the amount owing at the time and that PBDF has paid zero rent with the exception of government CERS payments.

They kept repeating that they are getting the pieces together for their plan but that the bank and everyone else is waiting on what the Authority is going to do. They did not provide any additional information or new proposal.

It is clear that at this time the PBDF is insolvent, that they have no intention of paying the rent in arrears, there are no plans to take on additional capital partners and they will have no ability to pay the ongoing minimum rent as per the lease unless and until their sales return to \$18-\$20M annual

The end result of the meeting is that we suggested PBDF provide a realistic business plan that includes all potential sources of funding that addresses Authority concerns,

# CONFIDENTIAL Report No. 953/21

# Peace Bridge Authority

Prepared for: Board of Directors Agenda Date: September 2, 2021

SUBJECT

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Peace Bridge Duty Free (Canada)

### RECOMMENDATION

THAT the Authority proceed to evict Peace Bridge Duty Free for lease defaults.

THAT staff be authorized to negotiate a new lease with IGL Duty Free to be submitted to the Board for approval.

## BACKGROUND

Peace Bridge Duty Free (PBDF) is in default of its lease agreement with the Authority. The defaults include:

- failure to keep store open
- failure to pay rent
- failure to replace security deposit
- being Insolvent

With the exception of limited Canada Emergency Rent Subsidy (CERS) payments totaling \$160,828 and assigning the \$50,000 security deposit, PBDF has not paid any base rent since the Covid-19 pandemic began. PBDF currently owes the Authority \$5,931,389.

Previous Board reports 938/21 and 933/21 provide complete context and are attached.

## ANALYSIS

Attached is PBDF's proposal to reopen the store and new rent proposal. This is the proposal the Authority requested on May 13, 2021.

In summary, PBDF expects the Authority to waive all outstanding rent (currently \$5,931,389). Moving forward, the minimum rent (\$4 million) would be eliminated and PBDF would pay rent of 20% of gross revenue. This is similar to the proposal the Authority rejected in January and April and again in May. It would also appear that PBDF's reopening of the store is contingent on the Authority agreeing to its rent proposal.

As described in the previous Board reports, it has been difficult working with PBDF. This proposal is no different. For example:

PBDF states it maintained the washrooms since the pandemic began. That is not true. The Authority did so until December 8, 2020 to provide washroom service for the trucking community as PBDF refused to do so. PBDF only began cleaning the washrooms after that date when the Authority threatened to use the PBDF's security deposit to reimburse the Authority's costs.

- The reference to food tenants is designed to further reduce the rent payable to PBA as currently all food sales are included in gross revenue. PBDF wants food sales excluded and to only include the rent paid to PBDF by tenants.
- PBDF commits to "process all CERS applications". The last CERS payment the Authority received was for claim period 3 on April 20, 2021. The government is currently processing claim period 12. PBDF could and should have submitted to the Authority funds for claims periods 4 through 12 totaling approximately \$500,000, but chose not to.

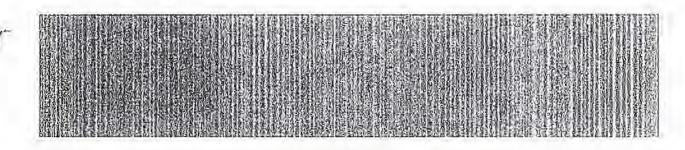


We have checked with the Niagara Falls Bridge Commission and their current position is to not provide rent abatement to its Duty Free stores. The Peace Arch Duty Free store in British Columbia reopened in mid-August and it paid all of its accrued back rent.

Should the Authority proceed to evict PBDF then immediate steps must be taken to replace them with a qualified licensed operator. The Authority has had discussion with the runner-up to the 2016 RFP process. This operator, IGL Duty Free, operates three Duty Free stores at three Quebec border crossings and would be interested in operating at the Peace Bridge assuming the existing lease with some term modifications and a one-time lump sum payment in lieu of store improvements which have already been completed by PBDF. Site visits, due diligence, LCBO and CBSA licenses etc. would all still be required. IGL would reopen the store as soon as possible.

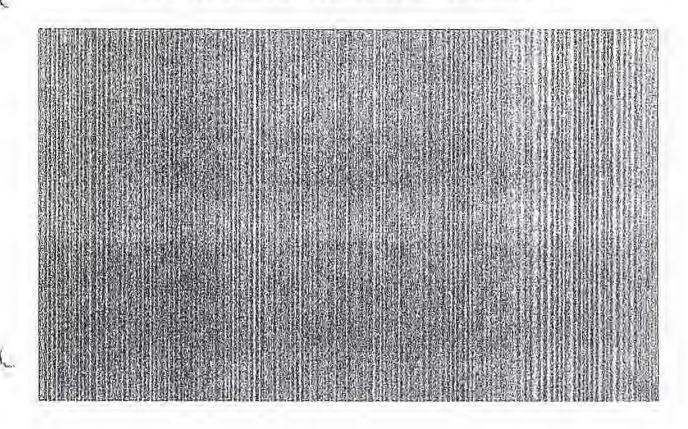
PREPARED AND SUBMITTED BY

Ron Rjenas General Manager





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



### A. Introduction

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

### B. Current Situation

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

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

	Food Sales Revenue	Duty Free Revenue	Total Lease Revenue	Base Rent Paid	Percentage Rent Paid	Total Rent Paid	Effective Rate
2019	829,834	19,182,317	20,012,151	4,000,000	2,673	4,002,673	20.0
2018	614,353	19,312,598	19,926,951	4.000,000	-	4,000,000	20.0
2017	1,102,781	21,108,271	22,211,052	4,000,000	486,431	4,486,431	20.2

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

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

## D. The Plan for Recovery

 The plan for recovery is simple. We will regrow the business on the basis of our market knowledge and commitment to retail excellence.

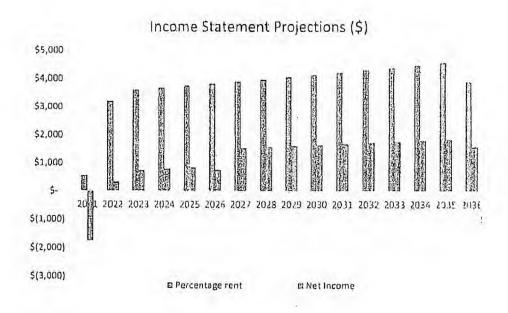
## 22. This plan includes:

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

## E. The proposal

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

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



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

#### F. Financial Information and Projections

Peace Bridge Day Free Inc.

Statement																****	· <del>* </del>
Projections	2021	-2022	2023	2024	2025	2028	2027	2021	2029	2030	2031	2032	20.33	2034	2035	2016	2021-36
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Other expenses	371	693	595	506	619	331	G44	856	670	683	697	710	725	719	754	.67U	10,330
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## Privileged Documents—Solicitor-and-claim Communications

#### 2016

6 Jul 2021 E-mail from Gowling to Authority re draft Lease

7 Jul 2016 E-mail exchange between Gowling and Authority re draft Lease

7-13 Jul 2016 E-mail exchange between Gowling and Authority re draft Lease

11 Jul 2016 E-mail from Gowling to Authority re draft Lease

12 Jul 2016 E-mail exchange between Gowling and Authority re draft Lease

13 Jul 2016 E-mail from Gowling to Authority re draft Lease

18 Jul 2016 E-mail from Authority to Gowling providing instructions re draft Lease

18 Jul 2016 internal E-mail from K Costa and R Rienas relaying Gowling legal advice re draft Lease

18 Jul 2016 E-mail exchange between Gowling and Authority re draft Lease

18/19 Jul 2016 E-mail exchange between Gowling and Authority re draft Lease

18/19 Jul 2016 E-mail exchange between Gowling and Authority re draft Lease

19 Jul 2016 E-mail exchanges between Gowling and Authority incl report on communications with PBDF lawyers

19 Jul 2016 E-mail exchange between Gowling and Authority re draft Lease

20 Jul 2016 E-mail from Gowling to Authority re draft Lease

20 Jul 2016 E-mail exchange between Gowling and Authority re draft Lease

7 Jul 2016 E-mail exchange between Gowling and Authority re draft Lease

11/12/13 Jul 2016 E-mail exchange between Gowling and Authority re draft Lease

#### 2020

24-26 Mar 2020 E-mail exchange between Gowling and Authority

3 Apr 2020 E-mail exchange between Gowling and Authority re Art 18.07

4 Apr 2020 E-mail from Gowling to Authority

- 7 Apr 2020 E-mail from Gowling to Authority
- 21 Apr 2020 E-mail from Authority to Gowling
- 23 Apr 2020 E-mail from Authority to Gowling
- 6 May 2020 E-mail from Authority to Gowling re Rent Deferral

#### 2021

- 20 Jan 2021 E-mail from Authority to Gowling
- 1 Apr 2021 E-mail exchange between Gowling and Authority
- 5 May 2021 E-mail exchanges (2) between Gowling and Authority
- 19 Aug 2021 E-mail from Gowling to Authority
- 30 Aug 2021 E-mail exchanges (2) between Gowling and Authority
- 30 Aug 2021 E-mail from Gowling to Authority
- 2 Sept 2021 E-mail from Authority to Gowling
- 3 Sept 2021 E-mail from Gowling to Authority
- 7 Sept 2021 E-mail exchanges (2) between Gowling and Authority
- 16 Sept 2021 E-mail exchanges (3) between Gowling and Authority
- 17 Sept 2021 E-mail exchanges (9) between Gowling and Authority
- 20 Sept 2021 E-mail exchanges (4) between Gowling and Authority
- 21 Sept 2021 E-mail from Authority to Gowling
- 22 Sept 2021 E-mail exchanges (5) between Gowling and Authority
- 23 Sept 2021 E-mail exchanges (3) between Gowling and Authority
- 24 Sept 2021 E-mail exchanges (2) between Gowling and Authority
- 27 Sept 2021 E-mail exchanges (6) between Gowling and Authority
- 28-29 Sept 2021 E-mail chain between Gowling and Authority
- 30 Sept 2021 E-mail from Gowling to Authority

- 14 Oct 2021 E-mail exchanges (3) between Gowling and Authority
- 15 Oct 2021 E-mail exchanges (4) between Gowling and Authority
- 26 Oct 2021 E-mail from Authority to Gowling
- 10 Nov 2021 E-mail from Gowling to Authority
- 18 Nov 2021 E-mail exchanges (8) between Gowling to Authority re PBDF proposal
- 26 Nov 2021 E-mail exchanges (2) between Gowling and Authority

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## TAB C



26 June 2023

Sent by E-Mail (DUllmann@blaney.com BJones@blaney.com) E. Patrick Shea, LSM, CS Prof Corp Direct 416-369-7399 patrick.shea@gowlingwlg.com

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

Dear Sirs:

### Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

On 16 June 2023, Her Honour directed any additional disclosures and productions be provided by 23 June 2023. The Authority has complied with Her Honour's direction. We received nothing from PBDF except your letter dated 23, June 2023, which is addressed below.

On 16 June 2023, Her Honour also directed that by 30 June 2023: (a) the parties exchange a list of any remaining outstanding requests, deficiencies and/or production inquiries; and (b) the Authority identify any issues with PBDF's performance of its obligations under the Lease.

Can you please by close of business tomorrow—27 June 2023—advise as to what, if any, issues PBDF asserts remain with the information and documents provided by the Authority and on what basis PBDF believes it is entitled to any specific information or documents that has not already been provided so we can attempt to narrow the issues as directed by Her Honour?

With respect to PBDF's disclosures and productions, we have, of course, been unable to properly explore any deficiencies because the cross-examinations of Messrs Pearce and Mills were cancelled. We did, however, note what appear to be issues with PBDF's disclosures in the Aide Memoire filed for the attendance on 14 June 2023.

There will not doubt be undertakings requested of Messrs Mills and Pearce when they are cross-examined, but we will, at the very least, request the following information/documents:

- (a) the amount each shareholder received from PBDF by way of dividend or other distribution: (i) from 1986 to November of 2016; and (ii) from November of 2016 to January of 2022;
- (b) the amount each shareholder contributed to PBDF by way of equity injection or loan from March of 2020 to January of 2022;
- (c) copies of all drafts of PBDF's proposal delivered in response to the RFP;



- (d) the specific changes in Applicable Laws that PBDF asserts triggered Art 18.07 and details of how each of those changes in Applicable Laws caused a material adverse effect on the business and operations of PBDF at the Leased Premises;
- (e) copies of all communications from PBDF to the Authority identifying a change in Applicable Laws asserting that Art 18.07 was triggered and requesting concessions under Art 18.07;
- (f) copies of all internal financial projections, models and business plans prepared by PBDF during the period March 2020 to December 2021;
- (g) copies of communications between PBDF and its auditor with respect to PBDF's obligation to pay rent under the Lease in calendar 2020 and 2021; and
- (h) copies of all communications between Mr. Pearce and Mr. Mills upon which Mr. Mills relies in making the statements in para 15 of his Affidavit sworn 1 January 2023.

We expect that PBDF will produce the forgoing information/documents in advance of any cross-examination of Messrs Pearce and Mills. If PBDF will not, can you please identify what grounds PBDF has for not producing the information/documents?

With respect to issues with PBDF's performance under the Lease, the Authority asserts that the following on-going breaches exist:

Default	Art of Lease
Failure to operate the duty free consistent with the Proposal.	9.02(n) and Proposal (Lease Schedule D).
Failure to provide food services.	9.02(n) and Proposal (Lease Schedule D) Tab E.
Altering the interior of the duty free without the prior written approval of the Authority. Specifically, installing a wall without approval.	12.02(a).
Failure to keep the Leased Premises in a first class condition.	9.02 (n) and 12.01(b).
Failure to spend at least \$1.25MM in capital refurbishments in Year 6 of the Lease-2022.	9.02(n) and Proposal (Lease Schedule D) Tab H.
Failure to spend at least \$1MM per year on marketing and sales initiative.	9.02(n) and Proposal (Lease Schedule D) Tab G



In addition to the foregoing, there have been other miscellaneous breaches of the Lease. For example, PBDF failed to provide audited financial for 2022 by the date required by Art 16.03(b) and failed to obtain the Authority's consent to grant a security interest in the Lease to RBC as required by Art 14.01.

We are in receipt of your letter dated 23 June 2023 referencing, for the first time, that there may be additional disclosures coming from PBDF. You will appreciate that your letter raises concerns with the quality of PBDF's disclosures.

Can you please advise as to how PBDF intends to address the fact that there may be additional disclosures?

We note that there were a number of pre-2017 e-mails included in your disclosures. Why were the disclosed e-mails "recoverable", but the 6,800 e-mails referenced in the e-mail attached to your letter not?

We also note that the e-mail attached to your letter appears to be in response to another e-mail or e-mails. Can you please provide all of the e-mails in the chain?

Finally, we note that Mr. Jenkins appears to have been instructed to only extract e-mails that contained the "gohara@dutyfree.ca' address. Why was the search limited to this e-mail address?

Sincerely,

GOWLING WLG (CANADA) LLP

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

cc. Christopher Stanek

57349251\1

## TAB D



Blaney McMurtry LLP | Lawyers 2 Queen Street East | Suite 1500 Toronto, Ontario M5C 3G5 T) 416-593-1221

(W) Blaney.com

Brendan Jones D: 416-593-2997 F: 416-594-3593 BJones@blaney.com

June 30th, 2023

#### Via Email

Patrick Shea and Christopher Stanek Gowling WLG (Canada) LLP Barristers & Solicitors 1 First Canadian Place 100 King Street West Suite 1600 Toronto, ON, M5X 1G5

Dear Counsel:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

We are writing in response to your letters of June 23rd and 26th, 2023 and Justice Kimmel's June 16th, 2023 endorsement.

#### Response to additional answers to undertakings of Tim Clutterbuck

#### Page 24 answer

Regarding the question at page 24 of the transcript, the question relates to communications about the duty-free store tenancies on both the Canadian and the American side of the bridge. The Authority has not provided its documents that are responsive to the request in respect of the duty-free store on the American side of the Peace Bridge.

The question relates to communications between board members themselves and between Board members and Authority staff. The Authority has not provided any communications between Board members themselves regarding PBDF's tenancy during the requested time period or disclosed any attempt to obtain those records. All texts, emails, and summaries of verbal communications between all Board members at the relevant time related to either of the tenancies should be produced.

#### Page 40 answer

Regarding the question at page 40 of the transcript, the Authority's response purports to limit disclosure to the direction given in Justice Kimmel's April 4th, 2023 endorsement, which she expressly indicated was not intended to be a closed list of potentially relevant categories of production and disclosure.

Although you have indicated that all meetings at which (a) Art. 18,07 or its subject matter; or (b) requests made and responses given with respect to concessions to be provided or given under Art. 18,07 were addressed have been produced, the Authority's Document Brief identified six sets of Board meeting minutes over which privileged was claimed. To date, only two have been produced. The four outstanding Board meeting minutes are: April 30<sup>th</sup>, 2021, May 28<sup>th</sup>, 2021, October 8<sup>th</sup>, 2021 and November 21<sup>st</sup>, 2021.

The minutes of the Board meetings during the Covid-19 pandemic are potentially relevant to the issues before the court. We understand from Mr. Clutterbuck's examination that the 22 regular session meetings were open to the public, so there should not be any confidentiality concerns in producing those minutes. With respect to the executive meeting minutes, to the extent there are confidentiality concerns, we are prepared to discuss a "counsel eyes only" arrangement so we can determine relevance,

#### Page 55 answer

Regarding the question at page 55, the Authority has not provided the agendas for the Board meetings. Mr. Clutterbuck gave evidence that there was an agenda for each Board meeting, but none have been produced. The Authority previously took the position that the basis for the refusal was that it was beyond the disclosure order of Her Honour. This is not a valid ground to refuse production as clarified by Justice Kimmel.

#### Page 58 answer

Regarding the question at page 58, the Authority has not responded regarding production of notes taken by the executive assistant that were turned into meeting minutes. The Authority previously took the position that the basis for the refusal was that it was beyond the disclosure order of Her Honour. This is not a valid ground to refuse production as clarified by Justice Kimmel.

#### Page 66 answer

Regarding the question at page 66, the Authority has not produced the agenda for the June 23<sup>rd</sup>, 2016 meeting. Please provide us with the agenda for that meeting and any other meetings in 2016 relating to approval of PBDF's RFP submission or the Lease.

Since the Authority refuses to disclose information about the "scoring" of the RFP, we trust that the Authority agrees that it will not seek to lead or rely on any evidence or take the position that the Base Rent in PBDF Lease was a determining factor, or a significant contributing factor, in the outcome of the RFP process.

#### Page 71 answer

Regarding the question at page 71, please provide us with all written communication, including emails, letters, texts, etc. between the Authority and IGL Duty Free, or any other potential operator that was contacted regarding potentially operating the Duty Free store if PBDF was eventually evicted.

#### Page 87 answer - recordings

Regarding the Authority's response to the question at page 87 regarding recordings of Board meetings, please provide us with the following information: Who took the recordings? When were the recordings deleted? On whose instructions were the recordings deleted? What steps have been taken to recover them? Will the Authority agree to make available the recording device(s) to forensic experts to retrieve information?

#### Page 87 answer - November 20th, 2020 and December 17th, 2020 Board meetings

Regarding the Authority's response to the question at page 87 regarding the November 20<sup>th</sup>, 2020 and December 17<sup>th</sup>, 2020 Board meetings, the Authority's response to the undertaking was that, although there were no lawyers present at the meetings, the Authority claimed privilege over the minutes because the resolutions as reflected in the minutes were based on advice from counsel. However, the Authority has not listed any privileged communication with counsel in the six months leading up to those meetings or the month afterward. Please confirm that there is no basis for the previously asserted claims of privilege over those meetings.

#### Page 101 answer

Regarding the response to the question at page 101, please provide us with all documents that Mr. Clutterbuck reviewed that led to his recollection in the response to undertaking that the Board's direction to Mr. Rienas was different than what is set out in the November 20th, 2020 meeting minutes.

#### US Duty Free Store Information and Report 869/20

The Authority has not disclosed the agreements with the US duty-free store operator and has elected to redact information relating to the US duty-free store in otherwise relevant documents. Although the Authority has taken the position the information is not relevant in your June 23<sup>rd</sup>, 2023 letter, during the Rule 39.03 examinations, Mr. Stanek advised that he recognized the relevance of these documents. As you are aware, PBDF has alleged that the Authority arbitrarily gave preferential treatment to the US duty-free store. Further, the impact of the Border Restrictions on the US duty-free store lease at the very same border crossing would certainly be relevant information to determine what the impact was on PBDF's lease.

#### Requests for concessions in exchange for disclosure

The Authority is seeking to destroy PBDF's business because of Covid-19 and the governments' response, including the Border Restrictions. It appears the Authority is now seeking to take advantage of the situation by seeking to extract concessions from PBDF, and its officers, directors and shareholders, who are non-parties to the Lease or this litigation, regarding participation in future RFPs, and possibly limiting the submissions that PBDF may make about the Authority's treatment of the US Duty Free store. PBDF is not going to agree to concessions that the Authority is now seeking to extract, nor is it appropriate for the Authority to attempt to extract concessions in exchange for records that should have been produced some time ago.

#### June 26th, 2023 Letter from Gowlings

You indicated that you noted issues in PBDF's disclosure in the Authority's Aide Memoire filed for the attendance on June 14<sup>th</sup>, 2023. In response to the issues raised by the Authority, there were no formal PBDF board meetings for years 2020, 2021 and 2022. Regarding the suggestion that PBDF's disclosure was an "IKEA" format "data dump" that the Authority had to organize itself, we disagree with that characterization. PBDF produced a detailed index organized in chronological along with PDF documents that were individually labelled by date "YYYY-MM-DD". To the extent any organizing was required by the Authority, it should have simply been to click a button to organize the PDF's by name, so they align with the detailed index that was provided.

Regarding the questions listed at paragraphs (a) through (h), these appear to be in the nature of premature cross-examination questions rather than the documentary disclosure directed by Justice Kimmel. Nonetheless, in the spirit of disclosure PBDF is able to provide the following information:

- (a) The Authority has every Audited Financial Statement since inception where all this information is detailed. With respect to November 2016 to January 22, this information was detailed in PBDF's proposal sent to the Authority in the fall of 2021. Since then, no dividends payments have been made.
- (b) Nil. The position taken by the Authority in these proceedings makes an injection of capital virtually impossible. In the event the Authority and PBDF are able to reach a reasonable resolution an injection of capital may be possible.
- (e) We believe these were produced already. If any additional documents become available, they will be provided.

To the extent PBDF can cooperate in providing appropriate responses to the remaining questions, it will attempt to do so before the cross-examinations, so long as the information requested is properly producible and not subject to litigation or solicitor-client privilege.

#### Possible additional disclosure

You raised questions in your letter about recently recovered emails. In the event PBDF determines there is additional relevant and producible disclosure that exists, PBDF will address existence of such disclosure at that time. The purpose of our letter was to provide a courtesy that PBDF just became aware of the possibility that further documentation may exist.

We trust the forgoing is satisfactory and we look forward to receiving responses to the issues raised in this letter.

Please let us know as soon as possible if the Authority intends to engage in a cooperative disclosure of the outstanding records or not so we can make arrangement regarding whether a disclosure motion is required on July 25-26, 2023.

Yours very truly,

BLANEY MCMURTRY LLP

Bush for

Brendan Jones

BJ/gf

cc: David T. Ullmann and John C. Wolf

## TABE



7 July 2023

Sent by E-Mail (BJones@blaney.com)

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

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

Dear Mr. Jones:

## Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

Thank you for your letter of 30 June 2023. Your suggestion that the Authority is somehow not being co-operative is somewhat ironic insofar as you have not conceded on any of the issues you have raised and offered no practical solutions in terms of how to address the issues you have raised—you simply want the Authority to disclose everything you want to see.

#### Page 24 Answer

With respect to document relating to the US duty free, we believe that Her Honour has indicated that the relevance of this information/documentation will be determined at the up-coming attendance on 25-26 July 2023. We do not believe that the information/documentation is relevant and is properly redacted. We expect that you will file materials to establish the relevance of the information/documentation and serve the operator of the US duty free.

With respect to the e-mail between the Authority's director: (a) the directors are not given Authority-owned computers or phones and are not assigned Authority e-mail accounts; and (b) e-mail and texts sent from or received into the directors' personal accounts are not under the control of the Authority. We question how personal e-mail exchanges between directors can be relevant to corporate decisions made by the Authority. If you wish to obtain this information, you will need to bring a Motion seeking same on notice to the individual directors.

#### Page 40 Answer

We will, under separate cover, provide the Minutes from the "regular" meetings held between January of 2020 and December of 2021. You will note that they are, as we previously advised, of no relevance.

With respect to the executive sessions, we have produced all of the (non-privileged) Minutes from meetings at which the Lease and accommodations requested by or offered to PBDF under Art 18.07 were addressed.



It is our position that the Minutes for the other executive sessions deal with confidential financial and other matters involving third parties, and are not relevant to the issues that will be determined by Her Honour. If PBDF insists on disclosure of these Minutes, it will have to bring a Motion on 25-26 July 2023. For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.

Privilege is claimed over the identified Minutes for the following reasons:

30 Apr 2021—The Minutes approve legal questions to be put to Gowling based on Report 933/21. The legal questions and the answers are redacted from Report 938/21. There are no direct references to Art 18.07 in the Minutes. We will produce these Minutes if you will agree that by producing the Minutes the Authority is not waiving privilege over the questions posed to Gowling and the answers provided.

28 May, 8 Oct and 19 Nov 2021—The Authority's lawyers were present at the Meeting and the Minutes refer to the legal advice provided by Gowling.

If PBDF insists on disclosure of these Minutes it will have to bring a Motion on 25-26 July 2023. For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.

#### Page 55 Answer

We will, under separate cover, provide agendas for the "regular" meetings between January of 2020 and December of 2021, and agendas that were prepared for executive sessions for which Minutes have been provided. If PBDF insists on disclosure of the agendas from the other executive sessions, it will have to bring a Motion on 25-26 July 2023. As noted above, it is our position that the other executive sessions deal with confidential financial and other matters involving third parties, and are not relevant to the issues that will be determined by Her Honour. For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.

We note that "stand alone" Minutes from 2021 approving an amendment to a pension plan (20 January 2021) and a contract for work undertaken on the Peace Bridge (6 July 2021) are not included. These Minutes are not relevant to the issues to be determined by Her Honour and refer to sensitive information. If PBDF insists on disclosure of these Minutes, it will have to bring a Motion on 25-26 July 2023. For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.

#### Page 58 Answer

Any paper notes would have reflect only to who proposed and seconded motions. Any paper notes are destroyed once the Minutes for the meeting are approved.



#### Page 66 Answer

Attached are the agendas for the meetings held on 23 June 2016.

With respect to not leading or relying on evidence, we will rely on whatever evidence is in the Record, including the Affidavits sworn by Mr. Rienas. Your client is free to cross-examine Mr. Rienas on the factors considered by the Authority, whether the minimum rent offered by the potential tenants was a factor and, if so, how significant a factor it was in the Authority's decision to select PBDF. You could even ask him, should you wish, the delta between what PBDF offered in terms of minimum rent and the next-highest proposal. It is not necessary for the full economics of the other proposals made in response to the RFP to be produced for such questions to be asked. Nor are the full economics of the other proposal relevant to the interpretation of Art 18.07.

We note that we have proposed a solution that would allow your client to see the full economics of the various proposals as the "scoring" while ensuring the fairness of any future RFP. You have rejected that proposal, but not provided any alternative means of ensuring the fairness of any future RFP.

#### Page 71 Answer

There were no written communications. Mr. Rienas reached out to the IGL Duty Free via telephone once to see if there was interest in operating the duty free should the opportunity arise. There are no notes from that conversation. There was no further outreach to IGL Duty Free.

#### Page 87 Answer—Recordings

There is no recording device per se. The recordings were taken via a function available to record "to the cloud" audio only during on-line meetings.

There were no specific instructions given to delete the recordings. All recordings are deleted by Authority staff as a matter of practice after the Minutes of the meeting are approved. This policy ensures that there is only one official record of what was determined at a meeting—the approved Minutes for that meeting.

No steps have been taken to recover deleted recordings. It is the Authority's understanding that recordings were stored "in the cloud" and can no longer be recovered after 30 days of being deleted.

#### Page 87—Minutes

You have been provided the Minutes. Can you please explain what specifically you are now requesting and why? Should you wish to have a determination as to whether, in releasing the Minutes, the Authority has somehow waived privilege, you are free to seek such a determination on 25-26 July 2023.



#### Page 101 Answer

Mr. Clutterbuck reviewed no documents in responding to his undertaking other than those attached to his response to undertakings. As far Mr. Clutterbuck recalls, the 20 November 2020 communication from Mr. Rienas to PBDF attached to his response reflects the verbal instructions given to Mr. Rienas by the Board.

We assume that there is no dispute that, even assuming the Second Rent Deferral was enforceable against the Authority: (a) the agreement contemplated a deferral of rent and not an abatement; (b) PBDF had the *de facto* advantage of the deferral contemplated by the agreement; (c) the contemplated deferral period has expired; and (d) PBDF has not made any of the arrears payments contemplated by the agreement.

#### Report 869/20

As noted above, Her Honour has indicated that the relevance of this information would be determined at the up-coming attendance. We expect that you will file materials to establish the relevance of the information and serve the operator of the US duty free. We do not believe that the relevance of the information you are seeking has ever been "recognized".

#### Conditions for Disclosure

Contrary to your assertion, we are not imposing conditions on disclosure. There are legitimate issues as to whether the confidential information your client is seeking is relevant and, if so, whether it should be sealed or disclosed based on conditions. We are attempting to work out an arrangement that would permit your client to see that information. You are clearly not interested in any sort of negotiated resolution and we will seek an order determining the relevance of the information and, if necessary, an order sealing the information and/or limiting disclosure to protect the integrity of any future RPF process.

#### Our Letters/Additional Disclosure

You don't seem to appreciate the irony of demanding disclosure of every document you want to see while, at the same time, expecting the Authority to take your client's word that it has produced everything that is relevant, particularly in the face of disclosure on the part of PBDF that appears at least to be deficient. The very fact that there are in excess of 6,800—the 6,800 e-mails referenced in your letter were recovered from only one e-mail account—e-mails that were not reviewed calls into question the quality of your client's disclosure.

We appreciate that the questions that we posed are "premature" cross-examination, but we had hoped PBDF would co-operate in order to make the cross-examination of Mr. Pearce more efficient. In reply to the specific matter addressed in your letter with respect to the distributions made to PBDF's shareholders, we had hoped that it would be more efficient to have your client



answer what should be a very simply question rather then force the Authority to put to Mr. Pearce multiple audited financial statements to have them introduced as exhibits and then refer to the distribution(s) to shareholders referenced in each. To the extent that Mr. Pearce is not aware of the total amount distributed to each of the shareholders during the identified period(s), can you please ensure that he informs himself of this information so that he is prepared to answer the question when he is cross-examined?

Sincerely,

GOWLING WLG (CANADA) LLP

E. Patrick Shea, MStJ, KC, LSM

EPS:jm Encl,

cc. Christopher Stanek

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# Executive Session Agenda June 23, 2016 Regular Meeting of the Board

1.	Ex	ecutive Session Minutes	Page					
	a)	Regular Board Meeting — May 26, 2016 THAT the Board approve the minutes of the Regular Board Meeting Executive Session dated May 26, 2016.	1-2					
		Moved by: Seconded by:						
2.	New Business							
	a)	<u>Canadian Duty Free RFP – Report No. 573/16</u> THAT the lease concession for the Canadian Duty Free be awarded to Peace Bridge Duty Free, Inc.	3-24					
		THAT staff be authorized to enter into final lease negotiations with Peace Bridge Duty Free, Inc.						
		THAT the final lease agreement be submitted to the Board for approval at the August 25, 2016, Board Meeting.						
		Moved by:						
		Seconded by:						



## Regular Meeting of the Board Agenda

Ji	ıne	23, 2016	8	3:15 AM
1.	Ci	all to Order		Page
2.	R	oll Call		
3.	D	isclosure of Conflicts of I	nterest	
4.		doption of Minutes  Regular Board Meeting – M  THAT the minutes of the R  presented.	lay 26, 2016 egular Board Meeting held on May 26, 2016, be approved as	1-3
		p 43 4 13 4 1	Moved by:	9. S
	b)	Special Board Meeting – Ju THAT the minutes of the presented.	ne 3, 2016 Special Board Meeting held on June 3, 2016, be approved as	4
		X 94.09.07.	Moved by:	:
5.	Ne	w Business		
	a)	NY Gateways Connections I THAT the Board approve th	Improvement Project – Supplemental 1 – Report No. 571/16 ne resolution included as Appendix A to Report No. 571/16.	5-24
			Moved bySeconded by	
	b)	THAT the Board authorize	<u>Project – Construction Inspection – Report No. 575/16</u> es the execution of a contract with LiRo Engineers, Inc. for vices associated with the Peace Bridge Rehabilitation project, in 2,677,600 USD.	25-27
			Moved bySeconded by	
	c)	2016 Sponsorship Request - THAT the Board approve/no Buffalo and Brock University	- Report No. 575/16 ot approve \$6,500 (USD) and \$8,500 (CAD) for the University at y bi-national economic/planning study.	Email 9.
			Moved by	
	d)	May 2016 Traffic Statistics -	- Report No. 570/16	28
	e)	May 2016 Operating Statem	nent & Balance Sheet - Report No. 574/16	29-35
	f)	2016 Capital Expenditures t	hrough May 31, 2016 - Report No. 572/16	36-37
		THAT items d - f be received		
			Moved by	
			Seconded by	

#### 6. Communications

- 7. Enquiries by Board
- 8. Scheduling of Meetings

Thursday, July 28, 2016 — Regular Board Meeting — 8:15 AM
Thursday, August 25, 2016 — Regular Board Meeting — 8:15 AM
Friday, October 7, 2016 — Regular Board Meeting — 8:15 AM (budget meeting)

- 9. Executive Session (property, personnel, legal issues only)
- 10. Adjournment

## TAB F



7 July 2023

Sent by E-Mail (DUllmann@blaney.com BJones@blaney.com) E. Patrick Shea, LSM, CS Prof Corp Direct 416-369-7399 patrick shea@gowlingwlg.com

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

Dear Sirs:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

As per my letter of earlier today, attached are: (a) the agendas and Minutes for the meetings in 2020 and 2021; and (b) the agendas for the executive sessions, the Minutes of which have already been provided. There was no agenda prepared for the executive session on 20 November 2020.

To the extent that PBDF intends to seek substantive relief on 25-26 July 2023, we ask that you serve your materials sufficiently in advance that the Authority has an opportunity to respond and bring any necessary cross-motion.

Sincerely,

GOWLING WLG (CANADA) LLP

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

Encl.

cc. Christopher Stanek

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## Regular Meeting of the Board Agenda

PIN CL;O
Pag
12 proved as
y;
d by:3-6 proved as
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red until 3 months
by:
7 8-10 11-13 14-43
ed by:
44



THE PEACE BRIDGE
MINUTES

### Buffalo and Fort Erie Public Bridge Authority Regular Board Meeting Via Zoom Video Conference January 29, 2021

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:24 AM

#### 2. ROLL CALL

Present

Absent

K. Manning, Chair

M. Russo (with regrets)

T. Clutterbuck

M.T. Dominguez

L. Holloway

T. Masiello

I. Meharry

J. Persico

P. Robson

D. Zimmerman

#### **Staff Present**

R. Rienas, General Manager

T. Boyle, Chief Operating Officer

K. Costa, Chief Financial Officer

K. Kaiser, Executive Assistant

#### Also Present

F. Cirillo, NYS Department of Transportation

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

1

#### 4. ADOPTION OF MINUTES

a) Moved by T. Masiello Seconded by P. Robson

"THAT the minutes of the regular Board Meeting held on December 17, 2020, be approved as presented."

CARRIED

b) Moved by L. Holloway Seconded by I. Meharry

"THAT the minutes of the Electronic Board Meeting held on January 20, 2021, be approved as presented."

#### 5. NEW BUSINESS

a) Toll Rates – Verbal Moved by D. Zimmerman Seconded by I. Meharry

"THAT the scheduled March 1, 2021, increase of the cash/credit toll rates be deferred until 3 months after the Canada-U.S. border is fully reopened."

CARRIED

- b) December 2020 Traffic Statistics Report No. 913/21
- c) Year-to-Date Pension Plan Summary as at September 30, 2020 Report No. 915/21
- d) Year-to-Date OPEB Plan Summary as at September 30, 2020 Report No. 916/21
- e) Peace Bridge Newcomer Centre Report No. 914/21
  Moved by T. Clutterbuck
  Seconded by M.T. Dominguez

"THAT items b-e be received for information."

CARRIED

#### 6. COMMUNICATIONS

None

#### 7. ENQUIRIES BY BOARD

None

#### 8. SCHEDULING OF MEETINGS

Friday, February 26, 2021 – Regular Board Meeting – 8:15 AM Friday, March 26, 2021 – Regular Board Meeting – 8:15 AM Friday, April 30, 2021 – Regular Board Meeting – 8:15 AM

#### 9. EXECUTIVE SESSION

Moved by D. Zimmerman Seconded by P. Robson

"THAT the meeting move into Executive Session for property matters."

CARRIED

Meeting in Regular Session called to order by the Chairman at 9:34 AM.

#### 10. ADJOURNMENT

Moved by M.T. Dominguez Seconded by T. Masiello

"THAT the meeting be adjourned at 9:44 AM."

CARRIED

Ron Rienas, Secretary to the Board



## Agenda

Fe	bruary 26, 2021	THE RESERVE OF THE SAME OF THE		8:15 AM
				Pages
1.	Call to Order			
2.	Roll Call			
3.	Disclosure of Con	flicts of Interest		
4.		umsden & McCormick		
	THAT the 2020 Fina	incial Statements be approved as presented		1-36
			Moved by:	
			Seconded by:	
		to those Charged with Governance" issued preparation of the 2020 Financial Statemen		37-39
			Seconded by:	
5.	Chairman's Rema	rks		
6.	Election of Chairn	nan		
		ons for Chairman be opened.		
		A STATE OF SELECTION AND A PROPERTY.	Moved by:	
			Seconded by:	
	THAT the nominatio	ons for Chairman be closed.		
			Moved by:	
		Committee of the commit	Seconded by:	
	THAT	be elected as Chairman.		
			Moved by:	
			Seconded by:	
7.	Election of Vice C	hairman		
	THAT the nominatio	ons for Vice Chairman be opened.		
		and and care are an and an are	Moved by:	
			Seconded by:	
	THAT the nominatio	ons for Vice Chairman be closed.	Anna Caran	
			Moved by:	
	22402		Seconded by:	
	THAT	be elected as Vice Chairman.	Mayad bu	
			Moved by:	8
			seconded by;	

8. Newly Elected Chairman's Remarks

An	nual Board Meeting Agenda	Page 2	February 26	, 2021
9.	Adoption of Minutes  a) Regular Board Meeting – January 29, 20 THAT the minutes of the Regular Board presented.		19, 2021, be approved as	40-41
		<u> </u>	Moved by: Seconded by:	
10.	New Business  a) January 2021 Traffic Statistics – Report  b) January 2021 Operating Statement & B  c) 2021 Capital Expenditures through Janu  THAT items a through d be received for	alance Sheet – Report No. Jary 31, 2021 – Report No.		42 43-50 51-52
			Seconded by:	
1.1	. Communications None			
12.	Enquiries by Board			
13.	Scheduling of Meetings Friday, March 26, 2021 – Regular Board Meriday, April 30, 2021 – Regular Board Meriday, May 28, 2021 – Regular Board Meriday, May 28, 2021 – Regular Board Meriday, May 28, 2021 – Regular Board Meriday	eting - 8:15 AM		

14. Executive Session (property, personnel, legal issues only) - NONE

15. Adjournment

### MINUTES

## BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY ANNUAL BOARD MEETING VIA ZOOM VIDEO CONFERENCE FEBRUARY 26, 2021

M. T. Dominguez (with regrets)

Absent

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:20 AM

#### 2. ROLL CALL

#### Present

K. Manning, Chair

- T. Clutterbuck
- L. Holloway
- T. Masiello
- J. Persico
- P. Robson
- M. Russo
- F. Cirillo

#### Staff Present

- R. Rienas, General Manager
- T. Boyle, Chief Operating Officer
- K. Costa, Chief Financial Officer
- K. Kaiser, Executive Assistant

#### Also Present

- S. Hennard, Lumsden & McCormick (item 4 only)
- D. Gonser, Lumsden & McCormick (item 4 only)
- R. Homewood, CDN Consulate

### 3. DISCLOSURE OF CONFLICTS OF INTEREST

## 4. PRESENTATION BY LUMSDEN & McCORMICK

D. Gonser and S. Hennard of Lumsden & McCormick presented the 2020 Audit findings as well as the Financial Statements.

Moved by T. Masiello

Seconded by L. Holloway

"THAT the 2020 Financial Statements be approved as presented."

CARRIED

CARRIED

Moved by P. Robson Seconded by J. Persico

"THAT the Report to those Charged with Governance issued by Lumsden & McCormick in connection with the preparation of the 2020 Financial Statements be received for information."

#### 5. CHAIRMAN'S REMARKS

Ken Manning commented that the past year was unfortunately spent primarily reacting to the COVID-19 pandemic and travel restrictions due to the border closure. He complimented PBA and its management team for being so readily able to cope with the situation and still being able to maintain a positive financial position.

Regular Board Meeting Minutes

Page 2

February 26, 2021

#### 6. ELECTION OF CHAIRMAN

Moved by P. Robson Seconded by L. Holloway

"THAT Tim Clutterbuck be elected Chair."

CARRIED)

#### 7. ELECTION OF VICE CHAIRMAN

Moved by T. Masiello Seconded by M. Russo

"THAT Ken Manning be elected Vice Chair."

CARRIED

## 8. NEWLY ELECTED CHAIRMAN'S REMARKS

Tim Clutterbuck commented that he has enjoyed his work with PBA and its Board over the past year and said he was very impressed with the entire Board and their cooperative efforts, especially with respect to coping with the COVID-19 pandemic. He said he looks forward to working closely with Ken Manning as Vice Chair and appreciates his continuing assistance and contributions to the Board.

### 9. ADOPTION OF MINUTES

Moved by K. Manning Seconded by P. Robson

"THAT the Minutes of the Regular Board Meeting held on January 29, 2021, be approved as presented."

#### 10. NEW BUSINESS

CARRIED)

a) <u>January 2021 Traffic Statistics – Report No. 919/21</u>

b) January 2021 Operating Statement & Balance Sheet - Report No. 921/21

c) 2021 Capital Expenditures through January 31, 2021 – Report No. 921/21 Moved by F. Cirillo Seconded by J. Persico

"THAT items a-c be received for information."

CARRIED

#### 11. COMMUNICATIONS

None

### 12. ENQUIRIES BY BOARD

None

#### 13. SCHEDULING OF MEETINGS

Friday, March 26, 2021 – Regular Board Meeting – 8:15 AM Friday, April 30, 2021 – Regular Board Meeting – 8:15 AM Friday, May 28, 2021 – Regular Board Meeting – 8:15 AM

#### 14. EXECUTIVE SESSION

None

#### 15. ADJOURNMENT

Moved by T. Masiello Seconded by P. Robson

"THAT the meeting be adjourned at 9:17 AM."

<u>CARRIED</u> Ron Rienas, Secretary to the Board



## Regular Meeting of the Board Agenda

Ma	arch 26, 2021	8:15 AM
		Pages
	Call to Order	
2.	Roll Call	
3.	Disclosure of Conflicts of Interest	
4.	Adoption of Minutes  a) Regular Board Meeting – February 26, 2021  THAT the minutes of the Regular Board Meeting held on February 26, 2021, be approved as presented.	1-2
	Moved by:Seconded by:	
5.	New Business	
	a) Pension Plan Status Buck Investment Managers to present: - Year-end plan performance - Asset Liability Analysis	
	b) <u>Peace Bridge Structural Integrity and Inspection Protocols – Report No. 928/21 and presentation</u> THAT this Report be received for information.	3-10
	Moved by: Seconded by:	
	Seconded by:  C) February 2021 Traffic Statistics Report No. 922/21  d) February 2021 Operating Statement & Balance Sheet Report No. 926/21  e) 2021 Capital Expenditures through February 28, 2021 Report No. 925/21  f) Year-to-date Pension Plan Summary as at December 31, 2020 Report No. 923/21  g) Year-to-date OPEB Plan Summary as at December 31, 2020 Report No. 924/21	11 12-18 19-20 21-23 24-25
	THAT items c through g be received for information.	
	Moved bySeconded by	
6.	Communications None	
7.	Enquiries by Board	
8.	Scheduling of Meetings Friday, April 30, 2021 – Regular Board Meeting – 8:15 AM Friday, May 28, 2021 – Regular Board Meeting – 8:15 AM	
9.	Executive Session (property, personnel, legal issues only) THAT the Board move into Executive Session for property and legal matters.  Moved by:	26
	Seconded by:	

10. Adjournment



MINUTES

## Buffalo and Fort Erie Public Bridge Authority Regular Board Meeting Via Zoom Video Conference March 26, 2021

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:17 AM

#### 2. ROLL CALL

Present 1

Absent

T. Clutterbuck, Chair

M. Russo (with regrets)

M. T. Dominguez

- L. Holloway
- K. Manning
- T. Masiello
- J. Persico
- P. Robson
- D. Zimmerman

#### Staff Present

- R. Rienas, General Manager
- T. Boyle, Chief Operating Officer
- K. Costa, Chief Financial Officer
- K. Kaiser, Executive Assistant

#### Other Present

- F. Cirillo, NYS DOT
- H. Chao, Buck Consultants (for item 5a)
- M. Mecca, Buck Consultants (for item 5a)
- R. Ford, Buck Consultants (for item 5a)

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

a) Moved by T. Masiello Seconded by T. Clutterbuck

"THAT the minutes of the regular Board Meeting held on February 26, 2021, be approved as presented."

CARRIED

#### 5. NEW BUSINESS

1,

a) Pension Plan Status

Buck Investment Managers presented 2020 pension investment results and de-risking strategies. The U.S. Pension Plan is currently funded at 122% on a going concern basis. The Canadian Pension Plan is currently funded at 101% on a solvency basis.

#### Regular Board Meeting Minutes

Page 2

March 26, 2021

Moved by D. Zimmerman Seconded by K. Manning

"THAT the Board authorize Buck Consultants to prepare an Asset Liability Study for the U.S. Pension Plan in the amount of \$30,000.

CARRIED

b) <u>Peace Bridge Structural Integrity and Inspection Protocols – Report No. 928/21 and Presentation</u>
Moved by K. Manning
Seconded by P. Robson

"THAT this Report be received for information."

CARRIED

The Board directed that the 2021 bridge inspection report, when completed, be referred to the OCM Committee for review.

- c) February 2021 Traffic Statistics Report No. 922/21
- d) February 2021 Operating & Financial Statements Report No. 926/21
- e) 2021 Capital Expenditures through February 29, 2020 Report No. 925/21
- f) Year-to-Date Pension Plan Summary as at December 31, 2020 Report No. 923/21
- g) Year-to-Date OPEB Plan Summary as at December 31, 2020 Report No. 924/21 Moved by J. Persico Seconded by T. Masiello

"THAT items c through g be received for information."

CARRIED

#### 6. COMMUNICATIONS

None

#### 7. ENQUIRIES BY BOARD

None

#### 8. SCHEDULING OF MEETINGS

Friday, April 30, 2021 – Regular Board Meeting – 8:15 AM Friday, May 28, 2021 – Regular Board Meeting – 8:15 AM

#### 9. EXECUTIVE SESSION

Moved by K. Manning Seconded by L. Holloway

"THAT the meeting move into Executive Session for property and legal matters."

Meeting in Regular Session called to order by the Chairman at 10:09 AM.

CARRIED

#### 10.ADJOURNMENT

Moved by L. Holloway Seconded by J. Persico

"THAT the meeting be adjourned at 10:09 AM."

CARRIED



# CROSSING PATHS FBUILDING FUTURES THE PEACE BRIDGE Regular Meeting of the Board Agenda

MA	IIII 50, 2021	8:15 AM
		Pages
1.	Call to Order	
2.	Roll Call	
3.	Disclosure of Conflicts of Interest	
4.	Adoption of Minutes  a) Regular Board Meeting – March 26, 2021  THAT the minutes of the Regular Board Meeting held on March 26, 2021, be approved as presented.	1-2
	Moved by:	
	Seconded by:	
5.	New Business	
	<ul> <li>a) March 2021 Traffic Statistics - Report No. 929/21</li> <li>b) March 2021 Operating Statement &amp; Balance Sheet - Report No. 930/21</li> <li>c) 2021 Capital Expenditures through March 31, 2021 - Report No. 931/21</li> <li>d) 2020 Continuing Disclosure Report - Report No. 932/21</li> </ul>	3 4-10 11-12 13
	THAT items a through d be received for information.	
	Moved by	
	Seconded by	
6.	Communications None	
7.	Enquiries by Board	
8.	Scheduling of Meetings Friday, May 28, 2021 – Regular Board Meeting – 8:15 AM Thursday, June 24, 2021– Regular Board Meeting – 8:15 AM Thursday, July 29, 2021 – Regular Board Meeting – 8:15 AM Thursday, August 26, 2021 – Regular Board Meeting – 8:15 AM	
9.	Executive Session (property, personnel, legal issues only) THAT the Board move into Executive Session for property matters.	14
	Moved by: Seconded by:	
	Seconded by	

10. Adjournment



CROSSING PATHS TO BUILDING FUTURE
THE PEACE BRIDGE

### MINUTES

# Buffalo and Fort Erie Public Bridge Authority Regular Board Meeting Via Zoom Video Conference April 30, 2021

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:20 AM

#### 2. ROLL CALL

Present

Absent

T. Clutterbuck, Chair

A. Masiello (with regrets)

- F. Cirillo
- L. Holloway
- K. Manning
- J. Persico
- P. Robson
- M. Russo
- D. Zimmerman

#### Staff Present

- R. Rienas, General Manager
- T. Boyle, Chief Operating Officer
- K. Costa, Chief Financial Officer
- K. Kaiser, Executive Assistant

Chair Clutterbuck recognized Mike Russo's ten years of service on the Board and his distinction of being appointed by three successive NYS Attorney Generals.

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

Moved by P. Robson
 Seconded by K. Manning

"THAT the minutes of the regular Board Meeting held on March 26, 2021, be approved as presented."

CARRIED

#### 5. NEW BUSINESS

- a) March 2021 Traffic Statistics Report No. 929/21
- b) March 2021 Operating & Financial Statements Report No. 930/21
- c) 2021 Capital Expenditures through March 31, 2021 Report No. 925/21
- d) 2020 Continuing Disclosure Report Report No. 932/21 Moved by D. Zimmerman

Seconded by J. Persico

"THAT items a through d be received for information."

CARRIED

6. COMMUNICATIONS

None

#### 7. ENQUIRIES BY BOARD

None

#### 8. SCHEDULING OF MEETINGS

Friday, May 28, 2021 – Regular Board Meeting – 8:15 AM Thursday, June 24, 2021 – Regular Board Meeting – 8:15 AM Thursday, July 29, 2021 – Regular Board Meeting – 8:15 AM Thursday, August 26, 2021 – Regular Board Meeting – 8:15 AM

#### 9. EXECUTIVE SESSION

Moved by P. Robson Seconded by L. Holloway

"THAT the meeting move into Executive Session for property matters."

CARRIED

Meeting in Regular Session called to order by the Chairman at 9:25 AM.

#### 10.ADJOURNMENT

Moved by P. Robson Seconded by K. Manning

"THAT the meeting be adjourned at 9:25 AM."

CARRIED



# Regular Meeting of the Board Agenda

M	ay 28, 2021		8:15 AM
1.	Call to Order		Page
2.	Roll Call		
3.	Disclosure of Conflicts of Interest		
4.	Adoption of Minutes  a) Regular Board Meeting – April 30, 2021  THAT the minutes of the Regular Board Meeting held on April presented.	30, 2021, be approved as	1-2
		Moved by:	-
6	<ul> <li>b) April 2021 Operating Statement &amp; Balance Sheet - Report No</li> <li>c) 2020 Capital Expenditures through April 30, 2021 - Report No</li> <li>THAT Reports a - c be received for information.</li> </ul> Communications		4-10 11-12
6.	None		
7.	Enquiries by Board		
8.	Scheduling of Meetings Thursday, June 24, 2021 – Regular Board Meeting – 8:15 AM Thursday, July 29, 2021 – Regular Board Meeting – 8:15 AM Thursday, August 26, 2021 – Regular Board Meeting – 8:15 AM		
9.	<b>Executive Session (property, personnel, legal issues only)</b> THAT the Board move into Executive Session for legal matters.	Moved by Seconded by	13
10	Adjournment		



# BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY REGULAR BOARD MEETING VIA ZOOM VIDEO CONFERENCE MAY 28, 2021

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:16 AM

#### 2. ROLL CALL

#### Present

- T. Clutterbuck, Chair
- F. Cirillo
- L. Holloway
- K. Manning
- T. Masiello
- M. Neubauer
- J. Persico
- P. Robson
- M. Russo
- D. Zimmerman

#### Staff Present

- R. Rienas, General Manager
- T. Boyle, Chief Operating Officer
- K. Costa, Chief Financial Officer
- K. Kaiser, Executive Assistant

Chair Clutterbuck welcomed Margaret Neubauer to the board as the newest Canadian Government appointee.

### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

1

#### 4. ADOPTION OF MINUTES

 Moved by T. Masiello Seconded by J. Persico

"THAT the minutes of the regular Board Meeting held on April 30, 2021, be approved as presented."

CARRIED

#### 5. NEW BUSINESS

- a) April 2021 Traffic Statistics Report No. 935/21
- b) April 2021 Operating & Financial Statements Report No. 936/21
- c) 2021 Capital Expenditures through April 30, 2021 Report No. 937/21

Moved by K. Manning Seconded by P. Robson

"THAT items a through c be received for information."

CARRIED

#### Regular Board Meeting Minutes

Page 2

May 28, 2021

d) Appointment of Committees – Executive, Finance & Audit, and OCM Moved by M. Russo

Seconded by K. Manning

"WHEREAS PBA By-Laws state: "The Chairman shall appoint, with Board approval..." Committees.

NOW THEREFORE, be it resolved that the Board approve the following appointments.

Executive

Tim Clutterbuck, Chair Ken Manning, Vice Tony Masiello Debbie Zimmerman Finance & Audit

Debbie Zimmerman, Chair Jen Persico, Vice Mike Russo

Margaret Neubauer Ken Manning Tim Clutterbuck Operations Capital Maintenance

Tony Masiello, Chair Lew Holloway, Vice

Marie Therese Dominguez

Patrick Robson Ken Manning Tim Clutterbuck"

CARRIED

6. COMMUNICATIONS

None

7. ENQUIRIES BY BOARD

None

8. SCHEDULING OF MEETINGS

Thursday, June 24, 2021 – Regular Board Meeting – 8:15 AM Thursday, July 29, 2021 – Regular Board Meeting – 8:15 AM Thursday, August 26, 2021 – Regular Board Meeting – 8:15 AM

9. EXECUTIVE SESSION

Moved by P. Robson Seconded by T. Masiello

"THAT the meeting move into Executive Session for legal matters."

CARRIED

Meeting in Regular Session called to order by the Chairman at 9:28 AM.

10.ADJOURNMENT

Moved by P. Robson Seconded by L. Holloway

"THAT the meeting be adjourned at 9:28 AM."

CARRIED



# Regular Meeting of the Board Agenda

J	ine 24, 2021	8:15 AM
1.	Call to Order	Page
2.	Roll Call	
3.	Disclosure of Conflicts of Interest	
4.	Adoption of Minutes  a) Regular Board Meeting – May 28, 2021 THAT the minutes of the Regular Board Meeting held on May 28, 2021, be approved as presented.	1-2
	Moved bySeconded by	_
5.	New Business  a) May 2021 Traffic Statistics – Report No. 939/21  b) May 2021 Operating Statement & Balance Sheet – Report No. 941/21  c) 2021 Capital Expenditures through May 31, 2021 – Report No. 940/21  d) Year-to-Date Pension Plan Summary as at March 31, 2021 – Report No. 942/21  e) Year-to-Date OPEB Plan Summary as at March 31, 2021 – Report No. 943/21	3 4-10 11-12 13-15 16-17
	THAT items a-e be received for information.  Moved by Seconded by	<del>3 6</del> (
6.	Communications None	
7.	Enquiries by Board	

9. Executive Session (property, personnel, legal issues only) - none

Thursday, July 29, 2021 - Regular Board Meeting - 8:15 AM
Thursday, August 26, 2021 - Regular Board Meeting - 8:15 AM
Friday, October 8, 2021 - Budget Board Meeting - 8:15 AM
Friday, November 19, 2021 - Regular Board Meeting - 8:15 AM
Thursday, December 16, 2021 - Regular Board Meeting - 10:00 AM

10. Adjournment

8. Scheduling of Meetings



CROSSING PATHS BUILDING FUTURES
THE PEACE BRIDGE

### MINUTES

## Buffalo and Fort Erie Public Bridge Authority Regular Board Meeting Via Zoom Video Conference June 24, 2021

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:19 AM

#### 2. ROLL CALL

Present

Absent

T. Clutterbuck, Chair

J. Persico

F. Cirillo

L. Holloway

K. Manning

T. Masiello

M. Neubauer

P. Robson

M. Russo

D. Zimmerman

#### Staff Present

- R. Rienas, General Manager
- T. Boyle, Chief Operating Officer
- K. Costa, Chief Financial Officer
- K. Kaiser, Executive Assistant

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

 Moved by K. Manning Seconded by T. Masiello

"THAT the minutes of the regular Board Meeting held on May 28, 2021, be approved as presented."

CARRIED

#### 5. NEW BUSINESS

- a) May 2021 Traffic Statistics Report No. 939/21
- b) May 2021 Operating & Financial Statements Report No. 941/21
- c) 2021 Capital Expenditures through May 31, 2021 Report No. 940/21
- d) Year-to-Date Pension Plan Summary as at March 31, 2021 Report No. 942/21
- e) Year-to-Date OPEB Plan Summary as at March 31, 2021 Report No. 943/21

Moved by M. Russo Seconded by T. Masiello

"THAT items a through e be received for information."

CARRIED

#### 6. COMMUNICATIONS

The Chairman updated the Board regarding a meeting that he, K. Manning and R. Rienas had with the Canadian Consul General with respect to the border closure and impacts on the Authority.

#### 7. ENQUIRIES BY BOARD

D. Zimmerman questioned the Authority's policy on diversity within the workplace. R. Rienas advised that Authority policies had been updated within the last couple years to reflect all legislative requirements in effect on both sides of the border but would welcome any additional information on recent best practices.

#### 8. SCHEDULING OF MEETINGS

Thursday, July 29, 2021 – Regular Board Meeting – 8:15 AM
Thursday, August 26, 2021 – Regular Board Meeting – 8:15 AM
Friday, October 8, 2021 – Budget Board Meeting – 8:15 AM
Friday, November 19, 2021 – Regular Board Meeting – 8:15 AM
Thursday, December 16, 2021 – Regular Board Meeting – 10:00 AM

#### 9. ADJOURNMENT

Moved by K. Manning Seconded by T. Masiello

"THAT the meeting be adjourned at 8:47 AM."

CARRIED



# Regular Meeting of the Board Agenda

via Zoom July 29, 2021 8:15 AM Page 1. Call to Order 2. Roll Call 3. Disclosure of Conflicts of Interest 4. Adoption of Minutes a) Regular Board Meeting - June 24, 2021 1-2 THAT the minutes of the Regular Board Meeting held on June 24, 2021, be approved as presented. Moved by: Seconded by: \_\_ b) Electronic Meeting - July 6, 2021 THAT the minutes of the Electronic Board Meeting held on July 6, 2021, be approved as 3-7 presented. Moved by: Seconded by: 5. New Business a) June 2021 Traffic Statistics - Report No. 946/21 8 b) 2020 Capital Expenditures through June 30, 2021 - Report No. 947/21 9-15 c) June 2021 Operating Statement & Balance Sheet - Report No.948/21 16-17 THAT items a-c be received for information. Moved by: Seconded by: d) Bridge Completion/Border Reopening Celebration discussion 6. Communications a) Letter to Finance Minister and Transport Minister regarding COVID impacts - July 26, 2021 18-24 7. Enquiries by Board 8. Scheduling of Meetings Thursday, August 26, 2021 – Regular Board Meeting – 8:15 AM

Thursday, August 26, 2021 – Regular Board Meeting – 8:15 AM Friday, October 8, 2021 – Budget Board Meeting – 8:15 AM Friday, November 19, 2021 – Regular Board Meeting – 8:15 AM Thursday, December 16, 2021 – Regular Board Meeting – 10:00 AM

- 9. Executive Session (property, personnel, legal issues only) None
- 10. Adjournment



THE PEACE BRIDGE
MINUTES

# BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY REGULAR BOARD MEETING VIA ZOOM VIDEO CONFERENCE JULY 29, 2021

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:23 AM

#### 2. ROLL CALL

Present

T. Clutterbuck, Chair

M. T. Dominguez

K. Manning

J. Persico

P. Robson

M. Russo

#### Absent

L. Holloway, with regrets

A. Masiello, with regrets

M. Neubauer, with regrets

D. Zimmerman, with regrets

#### Others Present

F. Cirillo, NYS DOT

#### Staff Present

- R. Rienas, General Manager
- T. Boyle, Chief Operating Officer
- K. Costa, Chief Financial Officer
- K. Kaiser, Executive Assistant

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

a) Moved by P. Robson Seconded by K. Manning

"THAT the minutes of the regular Board Meeting held on June 24, 2021, be approved as presented."

CARRIED

b) Moved by M. Russo Seconded by K. Manning

"THAT the minutes of the Electronic Board Meeting held on July 6, 2021, be approved a presented."

CARRIED

#### 5. NEW BUSINESS

- a) June 2021 Traffic Statistics Report No. 946/21
- b) June 2021 Operating & Financial Statements Report No. 948/21
- c) 2021 Capital Expenditures through June 30, 2021 Report No. 947/21 Moved by M. Russo Seconded by T. Masiello

"THAT items a through e be received for information."

CARRIED

July 29, 2021

d) Bridge Completion/Border Reopening Celebration

A discussion took place regarding having an event to celebrate the completion of the lighting project, painting project, pier rehab project, and redecking project. The pier project is scheduled to be complete in November. An event will be scheduled and details arranged as we approach the completion of the pier rehab project.

#### 6. COMMUNICATIONS

a) Letter to Finance Minister and Transport Minister regarding COVID impacts - July 26, 2021

#### 7. ENQUIRIES BY BOARD

None

#### 8. SCHEDULING OF MEETINGS

Thursday, August 26, 2021 – Regular Board Meeting – 8:15 AM Friday, October 8, 2021 – Budget Board Meeting – 8:15 AM Friday, November 19, 2021 – Regular Board Meeting – 8:15 AM Thursday, December 16, 2021 – Regular Board Meeting – 10:00 AM

The General Manager asked with the Canadian border reopening August 9 if there was a desire to resume in-person meetings. It was agreed that this would be a decision left to the individual U.S. members whom would be subject to the strict border regulations. Possibly the meetings could be in-person for those that are comfortable and still accommodate Zoom for others.

#### 9. EXECUTIVE SESSION

Moved by K. Manning Seconded by P. Robson

"THAT the meeting move into Executive Session for personnel matters."

CARRIED

Meeting in Regular Session called to order by the Chairman at 9:13 AM.

#### 10.ADJOURNMENT

Moved by P. Robson Seconded by J. Persico

"THAT the meeting be adjourned at 9:13 AM."

CARRIED



# CROSSING PATHS \*\* BUILDING FUTURES THE PEACE BRIDGE Regular Meeting of the Board Agenda

August 26, 2021		8:15 AM
1. Call to Order		Pages
2. Roll Call		
3. Disclosure of Conflic	cts of Interest	
<ol> <li>Adoption of Minutes</li> <li>a) Regular Board Mee THAT the minutes presented.</li> </ol>		12
5. New Business		
<ul><li>b) July Operating and</li><li>c) Capital Expenditure</li></ul>	tatistics - Report No. 950/21 Financial Statements - Report No. 951/21 es through July 31, 2021 - Report No. 952/21 received for information.	3 4-10 11-12
	Moved by: Seconded by:	_
6. Communications a) Letter from Tony B	aldinelli to Deputy Prime Minister & Minister of Finance, Chrystia Freelan	
7. Enquiries by Board		
Friday, November 19,	<b>ngs</b> 2021 – Regular Board Meeting – 8:15 AM ( <i>budget meeting</i> ) 2021 – Regular Board Meeting – 8:15 AM 2021 – Regular Board Meeting – 10:00 AM	
9. Executive Session (p	property, personnel, legal issues only) - none	
10. Adjournment		



### MINUTES

# BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY REGULAR BOARD MEETING VIA ZOOM VIDEO CONFERENCE AUGUST 26, 2021

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:16 AM

#### 2. ROLL CALL

Present

Absent

T. Clutterbuck, Chair

A. Masiello, with regrets

K. Manning, Vice Chair

F. Cirillo

L. Holloway

M. Neubauer

J. Persico

P. Robson

M. Russo

D. Zimmerman

#### Staff Present

R. Rienas, General Manager

T. Boyle, Chief Operating Officer

K. Costa, Chief Financial Officer

K. Kaiser, Executive Assistant

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

 Moved by K. Manning Seconded by P. Robson

"THAT the minutes of the regular Board Meeting held on July 29, 2021, be approved as presented."

CARRIED

#### 5. NEW BUSINESS

a) July 2021 Traffic Statistics - Report No. 950/21

b) July 2021 Operating & Financial Statements - Report No. 951/21

 2021 Capital Expenditures through July 31, 2021 — Report No. 952/21 Moved by K. Manning Seconded by J. Persico

"THAT items a through c be received for information."

CARRIED

#### 6. COMMUNICATIONS

a) Letter from Tony Baldinelli to Deputy Prime Minister & Minister of Finance, Chrystia Freeland

#### 7. ENQUIRIES BY BOARD

None

### 8. SCHEDULING OF MEETINGS

Thursday, October 8, 2021 – Budget Board Meeting – 8:15 AM Friday, November 19, 2021 – Regula: Board Meeting – 8:15 AM Thursday, December 16, 2021 – Regula: Board Meeting – 10:00 AM

#### 9. EXECUTIVE SESSION

None

#### 10.ADJOURNMENT

Moved by K. Manning Seconded by M. Neubauer

"THAT the meeting be adjourned at 8:33 AM."

CARRIED

8:15 AM



### Regular Meeting of the Board Agenda

October 8, 2021

10. Adjournment

Pages 1. Call to Order 2. Roll Call 3. Disclosure of Conflicts of Interest 4. Adoption of Minutes a) Regular Board Meeting – August 26, 2021 1-2 THAT the minutes of the Regular Board Meeting held on August 26, 2021, be approved as presented. Moved by: Seconded by: 5. New Business a) 2021/2022 Operating and Capital Budget - Report No. 954/21 and Presentation 3-31 THAT the projected 2021 Budget and the 2022 Operating Budget (Schedule A) be approved; THAT the 2021 Amended Capital Budget and the 2021 - 2025 Capital Budget (Schedule B) be approved; THAT the Projected Capital Improvement Reserve Fund & Projected Outstanding Debt Schedule (Schedule C) be received for information; THAT the Board confirm the toll schedules as presented that will be effective January 1. 2022 and at a date to be determined in 2022 (Schedule E). Moved by: Seconded by: 32-34 b) 2021 Peace Bridge Inspection Report Summary - Report No. 958/21 35 c) August 2021 Traffic Statistics - Report No. 955/21 36-42 d) August 2021 Operating Statement & Balance Sheet - Report No. 956/21 e) 2021 Capital Expenditures through August 31, 2021 - Report No. 957/21 43-44 That items b - e be received for information. Moved by: Seconded by:\_ 6. Communications None 7. Enquiries by Board 8. Scheduling of Meetings Friday, November 19, 2021 - Regular Board Meeting Thursday, December 16, 2021 - Regular Board Meeting 9. Executive Session (property, personnel, legal issues only) - Legal 45



CROSSING PATHS BUILDING FUTURES THE PEACE BRIDGE

## MINUTES

# BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY REGULAR BOARD MEETING VIA ZOOM OCTOBER 8, 2021

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:15 AM.

#### 2. ROLL CALL

#### Present

- T. Clutterbuck, Chair
- F. Cirillo
- L. Holloway
- K. Manning
- A. Masiello
- M. Neubauer
- J. Persico
- P. Robson
- M. Russo
- D. Zimmerman

#### Staff Present

- R. Rienas, General Manager
- T. Boyle, Chief Operating Officer
- K. Costa, Chief Financial Officer
- K. Kaiser, Executive Assistant

#### Also Present

R. Homewood, Canadian Consul General's Office

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

a) Moved by L. Holloway Seconded by D. Zimmerman "THAT the minutes of the Regular Board Meeting held on August 26, 2021, be approved as presented."

CARRIED

#### 5. <u>NEW BUSINESS</u>

2021/2022 Operating and Capital Budget – Report No. 954/21 and Presentation Moved by D. Zimmerman Seconded by K. Manning

"THAT the projected 2021 Budget and the 2022 Operating Budget (Schedule A) be approved;

THAT the 2021 Amended Capital Budget and the 2021-2025 Capital Budget (Schedule B) be approved;

THAT the Projected Capital Improvement Reserve Fund & Projected Outstanding Debt Schedule (Schedule C) be received for Information;

THAT a review of the Capital Improvement Reserve Fund and Operating and Capital Planning Process Policy be conducted prior to preparing the 2023 Operating and Capital Budget.

THAT the Board confirm the toll schedules as presented that will be effective January 1, 2022 and at a date to be determined in 2022 (schedule E)."

CARRIED

#### 6. EXECUTIVE SESSION

Moved by P. Robson Seconded by J. Persico

"THAT the meeting move into Executive Session for legal matters."

CARRIED

Meeting in Regular Session called to order by the Chairman at 9:45 AM.

#### 7. NEW BUSINESS (continued)

- b) 2021 Peace Bridge Inspection Report Summary and Presentation Report No. 958/21

  T. Boyle provided the Board with a presentation of the bridge inspection findings. The Board requested that additional information be provided at the November Board Meeting with respect to inspection frequency.
- c) August 2021 Traffic Statistics Report No. 955/21
- d) August 2021 Operating & Financial Statements Report No. 956/210
- e) 2021 Capital Expenditures through August 31, 2021 Report No. 957/21 Moved by D. Zimmerman Seconded by K. Manning

"THAT items b through e be received for information."

CARRIED

#### 8. COMMUNICATIONS

None

#### 9. ENQUIRIES BY BOARD

None

#### 10.SCHEDULING OF MEETINGS

Friday, November 19, 2021 – Regular Board Meeting – 8:15 AM Thursday, December 16, 2021 – Regular Board Meeting – 8:15 AM

#### 11.ADJOURNMENT

Moved by K. Manning Seconded by L. Holloway

"THAT the meeting be adjourned at 10:20 AM."

CARRIED



### Regular Meeting of the Board Agenda via Zoom

November:	10	2021
INDACIIINCI .	4-1	4V44

8:15 AM

-	THE STATE OF THE PARTY OF THE P	8:15 AM
1.	Call to Order	Page
	Roll Call	
	Disclosure of Conflicts of Interest	
	Adoption of Minutes  a) Regular Board Meeting – October 8, 2021  THAT the minutes of the Regular Board Meeting held on October 8, 2021, be approved a presented.	12 s
	Moved by:	
5.	New Business  a) Conduent to Present  - Investment Managers Review and Pension Plan and OPEB Plan Performance and Pension Plan Asset Liability Analysis.	U.S.
	b) Year-to-Date Pension Plan Summary as at June 30, 2021 – Report No. 963/21 THAT this Report be received for information.	3-5
	Moved by: Seconded by:	
	Statement of Investment Policies and Procedures for the Pension Plans – Report No. 968, THAT the "Statement of Investment Policies and Procedures for the Pension Plan Employees of Buffalo & Fort Erie Public Bridge Authority in Canada" be amended as follows:	for 6-26
	Section 4 – Liabilities - update the information to reflect the latest actuarial valuation a December 31, 2020; Add a note to specify that the liabilities shown in the table are going concern basis	as of on a
	➤ Section 6 – Asset Mix – update asset mix to reflect Portfolio 75;	
	> Section 6 - Update the actuarial rate of return to 3.50%;	
	Appendix A – Update the Plan's current benchmark composition and the value-ac objective of the Plan	lded
	THAT all other items included in the "Statement of Investment Policies and Procedures the Pension Plan for Employees of Buffalo & Fort Erie Public Bridge Authority in Canada reconfirmed as presented.	for " be
	Moved by: Seconded by:	
	THAT this Report be received for information.	27-28
	Moved by:Seconded by:	······································

R	e <b>gu</b> e)	lar Board Meeting Agenda Page 2  Statement of Investment Policies and Procedures for the Retire employees of the Buffalo and Fort Erie Public Bridge Authority - THAT the "Statement of Investment Policies and Procedures (OPEB) for the employees of the Buffalo and Fort Erie Public B as follows:	e Medical Plan (OPEB) for the Report No. 967/21 for the Retiree Medical Plan	2021 29-52
		Section 4 – Liabilities – update the information to reflect the of December 31, 2020;	e latest actuarial valuation as	
		THAT all other items included in the "Statement of Investment the Retiree Medical Plan (OPEB) for the employees of the Buffa Authority" be reconfirmed as presented.	lo and Fort Erie Public Bridge	
			Moved by:Seconded by:	
	f)	Review of Pension Plan Governance – Report No. 959/21 THAT the Board reconfirm the Self-Assessment Questionnaire a Pension Plan.	pplicable to the Canadian	53-59
		(Chain Fight	Moved by:	
	g)	Review of Pension Plan Service Providers for the period ending THAT this Report be received for information.		60-61
			Moved by:Seconded by:	
	h)	Bridge Inspection — Report No. 969/21 THAT the Board authorize interim off-year bridge inspections ut system (UAS) technology.	ilizing unmanned aerial	62-64
		27 (	Moved by:Seconded by:	
		October 2021 Traffic Statistics – Report No. 961/21 October Operating and Financial Statements – Report No. 965/2 Capital Expenditures through October 31, 2021 – Report No. 96 THAT items i-k be received for information.		65 66-72 73-74
		THAT Items is be received for information.	Moved bySeconded by	
	a)	mmunications Letter to Honourable Omar Alghabra dated November 16, 2021 quiries by Board		75-83
	Scl	heduling of Meetings ursday, December 16, 2021 – Regular Board Meeting – 8:15 AM		
	a)	2022 Board Meeting Schedule - Report No. 962/21 THAT the 2022 meeting schedule be approved.	Moved by	84
			Moved bySeconded by	
9	FY	ecutive Session (property, personnel, legal issues only) - none		

10. Adjournment



# BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY REGULAR BOARD MEETING

VIA ZOOM VIDEO CONFERENCE NOVEMBER 19, 2021

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:19 AM

#### 2. ROLL CALL

#### Present

- T. Clutterbuck, Chair
- F. Cirillo
- L. Holloway
- K. Manning
- T. Masiello
- M. Neubauer
- J. Persico
- P. Robson
- M. Russo
- D. Zimmerman

#### Staff Present

- R. Rienas, General Manager
- T. Boyle, Chief Operating Officer
- K. Costa, Chief Financial Officer
- K. Kaiser, Executive Assistant

#### **Others Present**

- M. Mecca Buck Consultants (item 5a only)
- C. Snel Buck Consultants (item 5a only)
- D. Smith Buck Consultants (item 5a only)
- K. Spanier Buck Consultants (item 5a only)

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

 a) Moved by T. Masiello Seconded by J. Persico

"THAT the minutes of the regular Board Meeting held on October 8, 2021, be approved as presented."

CARRIED

#### 5. NEW BUSINESS

a) Buck Presentation

Buck updated the Board with respect to the OPEB Plan and U.S. and Canadian Pension Plans' performance and their analysis of the U.S. Plan with respect to a de-risking strategy.

Moved by L. Holloway Seconded by K. Manning

"THAT the Board directs Staff to have Buck Consultants proceed with de-risking the U.S. Pension Plan and move the asset allocation strategy of the Plan to Alternative #1 as presented to reduce volatility without impacting the liability discount rate.

CARRIED

#### 6. EXECUTIVE SESSION

Moved by T. Masiello Seconded by L. Holloway

"THAT the meeting move into Executive Session for property matters."

CARRIED

Meeting in Regular Session called to order by the Chairman at 9:13 AM.

#### 7. NEW BUSINESS (continued)

b) Year-to-Date Pension Plan Summary as at June 30, 2021 – Report No. 963/21 Moved by J. Persico Seconded by K. Manning

"THAT this Report be received for information."

CARRIED

Statement of Investment Policies and Procedures for the Pension Plans – Report No. 968/21
 Moved by L. Holloway
 Seconded by J. Persico

"THAT the "Statement of Investment Policies and Procedures for the Pension Plan for Employees of Buffalo & Fort Erie Public Bridge Authority in Canada" be amended as follows:

- Section 4 Liabilities update the information to reflect the latest actuarial valuation as of December 31, 2020; Add a note to specify that the liabilities shown in the table are on a going concern basis.
- Section 6 Asset Mix update asset mix to reflect Portfolio 75.
- Section 6 Update the actuarial rate of return to 3.50%.
- Appendix A Update the Plan's current benchmark composition and the value-added objective of the Plan.

THAT all other items included in the "Statement of Investment Policies and Procedures for the Pension Plan for Employees of Buffalo & Fort Erie Public Bridge Authority in Canada" be reconfirmed as presented."

CARRIED

d) Year-to-Date OPEB Plan Summary as at June 30, 2021 – Report No. 964/21 Moved by P. Robson Seconded by J. Persico

"THAT this Report be received for information."

CARRIED

e) Statement of Investment Policies and Procedures for the Retiree Medical Plan (OPEB) for the employees of the Buffalo and Fort Erie Public Bridge Authority – Report No. 967/21 Moved by J. Persico Seconded by M. Russo

"THAT the "Statement of Investment Policies and Procedures for the Retiree Medical Plan (OPEB) for the employees of the Buffalo and Fort Erie Public Bridge Authority" be amended as follows:

Section 4 – Liabilities – update the information to reflect the latest actuarial valuation as of December 31, 2020.

THAT all other items included in the "Statement of Investment Policies and Procedures for the Pension Plan for Employees of Buffalo & Fort Erie Public Bridge Authority in Canada" and "Statement of Investment Policies and Procedures for the Retiree Medical Plan (OPEB) for the employees of the Buffalo and Fort Erie Public Bridge Authority" be reconfirmed as presented."

CARRIED

f) Review of Pension Plan Governance — Report No. 959/21 Moved by D. Zimmerman Seconded by K. Manning

"THAT the Board reconfirm the Self-Assessment Questionnaire applicable to the Canadian Pension Plan."

CARRIED

g) Review of Pension Plan Service Providers for the period ending 06/30/2021 - Report No. 960/21 Moved by D. Zimmerman Seconded by J. Persico

"THAT this Report be received for information."

CARRIED

h) Bridge Inspection – Report No. 969/21 Moved by P. Robson Seconded by M. Russo

"THAT the Board authorize interim off-year bridge inspections utilizing unmanned aerial system (UAS) technology."

CARRIED

i) October 2021 Traffic Statistics - Report No. 961/21

j) October 2021 Operating & Financial Statements - Report No. 965/21

 K) Capital Expenditures through October 31, 2021 – Report No. 966/21 Moved by D. Zimmerman Seconded by Holloway

"THAT items I - k be received for information."

CARRIED

#### 8. COMMUNICATIONS

a) Letter to Honourable Omar Alghabra dated November 16, 2021

#### 9. ENQUIRIES BY BOARD

None

#### Regular Board Meeting Minutes

Page 4

November 19, 2021

#### 10. SCHEDULING OF MEETINGS

Thursday, December 16, 2021 - Regular Board Meeting - 8:15 AM

a) 2022 Board Meeting Schedule – Report No. 962/21 Moved by P. Robson Seconded by J. Persico

"THAT the 2022 meeting schedule be approved."

CARRIED

#### 11. ADJOURNMENT

Moved by P. Robson Seconded by D. Zimmerman

"THAT the meeting be adjourned at 9:38 AM."

CARRIED



# Regular Meeting of the Board Agenda

De	ecember 17, 2021	8:15 AM
1.	Call to Order	Page
	Roll Call	
3.	Disclosure of Conflicts of Interest	
4.	<ul> <li>Adoption of Minutes</li> <li>a) Regular Board Meeting – November 19, 2021</li> <li>THAT the minutes of the Regular Board Meeting held on November 19, 2021, be approved as presented.</li> </ul>	1-4
	Moved by:	
		_
5,	New Business	
	a) Pre-Audit Planning Meeting with Lumsden & McCormick – Seth Hennard & Donna Gonser	Verbal
	b) Year-to-Date Pension Plan Summary as at September 30, 2021 – Report No. 971/21 THAT this Report be received for information.	5-7
	Moved by:	
	c) Statement of Investment Policies and Procedures for the Pension Plan for Employees Buffalo & Fort Erie Public Bridge Authority in the United States — Report No. 973/21  THAT the "Statement of Investment Policies and Procedures for the Pension Plan Employees of Buffalo & Fort Erie Public Bridge Authority in the United States" be amended follows:	for
	➢ Section 4 – Liabilities - update the information to reflect the latest actuarial valuation as December 31, 2020;	of
	➢ Section 6 – Asset Mix - update asset mix to reflect to reflect the change in investme strategy based on the asset liability study recommendation as approved on November 1 2021;	
	THAT all other items included in the "Statement of Investment Policies and Procedures for the Pension Plan for Employees of Buffalo & Fort Erie Public Bridge Authority in the United States" be reconfirmed as presented.	
	Moved by: Seconded by:	
	Seconded by:	_
	d) Year-to-Date OPEB Plan Summary as at September 30, 2021 – Report No. 972/21 THAT this Report be received for information.	26-27
	Moved by:	_

Regular Board Meeting Agenda	Page 2	December 17, 2021
e) November 2021 Traffic Statistics – Rep f) November 2021 Operating Statement (g) 2021 Capital Expenditures through Nov	<u>&amp; Balance Sheet – Report N</u> vember 30, 2020 – Report I	
THAT items e-g be received for informa		Moved by: Seconded by:
6. Communications None		
7. Enquiries by Board		
8. Scheduling of Meetings Friday, January 28, 2022 – Regular Board Norday, February 25, 2022 – Regular Board Friday, March 25, 2022 – Regular Board Me	Meeting 8:15 AM	
9. Executive Session (property, personnel, leg THAT the Board move into Executive Session		38
10. Adjournment	S	Moved by:econded by:



### MINUTES

# BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY REGULAR BOARD MEETING VIA ZOOM VIDEO CONFERENCE DECEMBER 17, 2021

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:15 AM

#### 2. ROLL CALL

Present

Absent

T. Clutterbuck, Chair

J. Persico (with regrets)

M.T. Dominguez

L. Holloway

K. Manning

T. Masiello

M. Neubauer

P. Robson

M. Russo

D. Zimmerman

#### Staff Present

R. Rienas, General Manager

T. Boyle, Chief Operating Officer

K. Costa, Chief Financial Officer

K. Kaiser, Executive Assistant

#### Others Present

F. Cirillo - NYS Department of Transportation

D. Gonser - Lumsden McCormick (item 5a only)

S. Hennard - Lumsden McCormick (item 5a only)

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

 a) Moved by T. Masiello Seconded by K. Manning

"THAT the minutes of the regular Board Meeting held on November 19, 2021, be approved as presented."

CARRIED

#### 5. NEW BUSINESS

- a) <u>Pre-Audit Planning Meeting with Lumsden McCormick Seth Hennard & Donna Gonser</u> Lumsden McCormick presented the 2021 year end audit plan to the Board.
- b) Year-to-Date Pension Plan Summary as at September 30, 2021 Report No. 971/21 Moved by P. Robson Seconded by D. Zimmerman

"THAT this Report be received for information."

CARRIED

December 17, 2021

c) Statement of Investment Policies and Procedures for the Pension Plan for Employees of Buffalo & Fort Erie Public Bridge Authority in the United States – Report No. 973/21

Moved by D. Zimmerman Seconded by K. Manning

"THAT the "Statement of Investment Policies and Procedures for the Pension Plan for Employees of Buffalo & Fort Erie Public Bridge Authority in the United States" be amended as follows:

- Section 4 Liabilities update the information to reflect the latest actuarial valuation as of December 31, 2020;
- Section 6 Asset Mix update asset mix to reflect the change in investment strategy based on the asset liability study recommendation as approved on November 19, 2021.

THAT all other items included in the "Statement of Investment Policies and Procedures for the Pension Plan for Employees of Buffalo & Fort Erie Public Bridge Authority in the United States" be reconfirmed as presented."

CARRIED

d) <u>Year-to-Date OPEB Plan Summary as at September 30, 2021 – Report No. 972/21</u>
Moved by M. Russo
Seconded by A. Masiello

"THAT this Report be received for information."

CARRIED

- e) November 2021 Traffic Statistics Report No. 970/21
- f) November 2021 Operating & Financial Statements Report No. 974/21
- g) Capital Expenditures through November 30, 2021 Report No. 975/21 Moved by A. Masiello Seconded by K. Manning

"THAT items e - g be received for information."

CARRIED

#### 6. EXECUTIVE SESSION

Moved by M. Neubauer Seconded by K. Manning

"THAT the meeting move into Executive Session for property matters."

CARRIED

Meeting in Regular Session called to order by the Chairman at 8:52 AM.

#### 7. COMMUNICATIONS

None

#### 8. ENQUIRIES BY BOARD

None

#### 9. SCHEDULING OF MEETINGS

Friday, January 28, 2022 – Regular Board Meeting – 8:15 AM Friday, February 25, 2022 – Regular Board Meeting – 8:15 AM Friday, March 25, 2022 – Regular Board Meeting – 8:15 AM

#### 10.ADJOURNMENT

Moved by A. Masiello Seconded by L. Holloway

"THAT the meeting be adjourned at 8:53 AM."

CARRIED



# Regular Meeting of the Board Agenda

Ja	nnuary 31, 2020	8:15 AM
1	Call to Order	Page
	Roll Call	
	Disclosure of Conflicts of Interest	
4.	<ul> <li>Adoption of Minutes</li> <li>a) Regular Board Meeting – December 19, 2019</li> <li>THAT the minutes of the Regular Board Meeting held on December 19, 2019, be approas presented.</li> </ul>	
	Moved by:	
	Seconded by:	
5.	a) 2020 Property Insurance Renewal – Report No. 848/20 THAT this Report be received for information.	5-8
	Moved by: Seconded by:	
	Seconded by:	
	b) 2019 Sponsorship Request – 849/20 THAT the Board approve/not approve a \$7,000 sponsorship (\$3,500 USD and \$3,500 request from the Canadian/American Border Trade Alliance.	9-1.2 O CAD)
	Moved by:	<u> </u>
	Seconded by:	
	c) <u>December 2019 Traffic Statistics – Report No. 847/20</u> THAT this Report be received for information.	1.3-1.7
	Moved by:	Section Section 2
	Seconded by:	
6.	Communications None	
7.	Enquiries by Board	
8.	Scheduling of Meetings Friday, February 28, 2020 – 8:15 AM – Annual General Meeting Friday, March 27, 2020 – 8:15 AM – Regular Board Meeting Friday, April 24, 2020 – 8:15 AM – Regular Board Meeting	

9. Executive Session (property, personnel, legal issues only) - none

10. Adjournment

#### Karen L. Costa

From:

Sent: Monday, January 27, 2020 6:13 PM

To: Tim Clutterbuck; Debbie Zimmerman; Sam Gurney; Mike Russo; Tony Masiello; Isabel

Meharry; Patrick Meredith (DOT); Patrick Robson; Lew Holloway; Ken Manning

Cc: Karen L. Costa; Kimberlee A. Kaiser; Thomas A. Boyle

Subject: Friday Jan. 31 Board meeting

Five Board members are unable to attend the meeting this Friday January 31, meaning that there will not be a quorum. Accordingly, with the consent of the Chairman, the meeting is cancelled.

The agenda was short, did not contain any pressing items and will be transferred to the February meeting.

Kim will send an Outlook cancellation in the morning.

Ron

Sent from my iPhone



# crossing paths a building futures the peace bridge Annual Meeting of the Board

Agenda

8:15 AM

Pages

Fe	bruary 28, 2020		
12.15			and the second
1.	Call to Order		
2.	Roll Call		
3.	Disclosure of Conflic	cts of Interest	
4.	Presentation by Lun THAT the 2019 Finance	nsden & McCormick ial Statements be approved as presented.	
			Moved by:Seconded by:
		those Charged with Governance" issued eparation of the 2019 Financial Statemen	
5.	Chairman's Remark	S	
6.	Election of Chairman	n for Chairman be opened.	
			Moved by:
	THAT the nominations	for Chairman be closed.	Seconded by.
			Moved by:
	and the same of th	7.0. 14.0000 00 4.000000	Seconded by:
	THAT	be elected as Chairman.	Mayod by
			Moved by:Seconded by:
			Decorrada by
7.	Election of Vice Cha		
	THAT the nominations	for Vice Chairman be opened.	11
			Moved by:Seconded by:
	THAT the nominations	for Vice Chairman be closed.	Seconded by.
	THE COMMISSIONS	To The charmen be closed.	Moved by:
			Seconded by:
	THAT	be elected as Vice Chairman.	
			Moved by:
			Seconded by:

8. Newly Elected Chairman's Remarks

N	OW THEREFORE, be it re	esolved that the Board approve	the following appointments.
K T	xecutive en Manning, Chair Im Clutterbuck, Vice ony Masiello ebbie Zimmerman	Finance & Audit Debbie Zimmerman, Chair Sam Gurney, Vice Patrick Robson Mike Russo Ken Manning Tim Clutterbuck	Operations Capital Maintenance Tony Masiello, Chair Lew Holloway, Vice Marie Therese Dominguez Isabel Meharry Ken Manning Tim Clutterbuck
			Moved by:
	doption of Minutes  Regular Board Meeting THAT the minutes of the as presented.		on December 19, 2019, be approved
	us presented!		Moved by:
	lew Business		
a		ice Renewal - Report No. 848/ eceived for information.	<u>20</u>
			Moved by: Seconded by:
b	THAT The Board appr	uest – Report No. 849/20 rove/not approve a \$6,000 (\$3 adian/American Border Trade A	,000 USD and \$3,000 CAD) sponsorship liance.)
			Moved by:Seconded by:
ď	January 2020 Traffic S	c Statistics - Report No. 847/20 Statistics - Report No. 852/20 Sting Statement & Balance Shee	
f)	January 2020 Operatin	ng Statement & Balance Sheet Jures through January 31, 2020	- Report No. 855/20
	THAT items c through	g be received for information.	Moved by:
			Seconded by:

# 12. Communications None

## 13. Enquiries by Board

Annual	Board	Meeting	Agenda
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Page 3

February 28, 2020

14. Scheduling of Meetings

Friday, March 27, 2020 – Regular Board Meeting – 8:15 AM Friday, April 24, 2020 – Regular Board Meeting – 8:15 AM Thursday, May 28, 2020 – Regular Board Meeting – 8:15 AM

15. Executive Session (property, personnel, legal issues only)

THAT the Board move into Executive Session for a property matter.

Moved	by:
Seconded	by:

16. Adjournment



# Buffalo and Fort Erie Public Bridge Authority Regular Board Meeting Board Room February 28, 2020

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:17 AM.

#### 2. ROLL CALL

#### Present

#### Absent

S. Gurney (with regrets)

- K. Manning, Vice Chair (chaired meeting)
- T. Clutterbuck (via teleconference)
- F. Cirillo
- L. Holloway (via teleconference)
- A. Masiello
- I. Meharry
- P. Robson
- M. Russo
- D. Zimmerman (chaired the meeting for the election of Chairman for 2020)

#### Staff Present

- T. Boyle, Chief Operating Officer
- K. Costa, Chief Financial Officer
- K. Kaiser, Executive Assistant

#### Also Present

- D. Gonser, Lumsden & McCormick (Item 4 only)
- S. Hennard, Lumsden & McCormick (item 4 only)
- R. McCarthy, Buffalo News
- 3. Vice Chair Manning introduced Frank Cirillo, Deputy for NYSDOT Commissioner, Marie Therese Dominguez.

## 4. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 5. PRESENTATION BY LUMSDEN & MCCORMICK

Donna Gonser and Seth Hennard from Lumsden & McCormick presented a summary of the 2019 Financial Statements.

Moved by D. Zimmerman Seconded by T. Masiello

"THAT the 2019 Financial Statements be approved as presented."

CARRIED

Moved by P. Robson Seconded by M. Russo

"THAT the "Report to those Charged with Governance" issued by Lumsden & McCormick in connection with the preparation of the 2019 Financial Statements be received for information."

CARRIED

#### 6. CHAIRMAN'S REMARKS

T. Clutterbuck reflected on the successful year and the culmination of the three-year rehabilitation project, the completed energy efficient light project, the implementation of the new toll and payroll systems, and the successful renewal of a 20-year GSA lease. In addition he thanked the Board and staff for their support over the past year.

#### 7. ELECTION OF CHAIRMAN AND VICE CHAIRMAN

Moved by T. Masiello Seconded by M. Russo

"THAT Ken Manning be elected Chair."

CARRIED

I. Meharry abstained K. Manning abstained

Moved by P. Robson Seconded by D. Zimmerman

"THAT Tim Clutterbuck be elected Vice Chair."

CARRIED

I. Meharry abstained T. Clutterbuck abstained

#### 8. NEWLY ELECTED CHAIRMAN'S REMARKS

K. Manning stated that while we spent time on financials this morning, he would like to spend time on Pension and OPEB over the next year, and also the NEXUS program and how it will affect operations.

### 9. APPOINTMENT OF COMMITTEES - EXECUTIVE, FINANCE & AUDIT, AND OCM

Moved by M. Russo

Seconded by D. Zimmerman

"WHEREAS PBA By-Laws state: "The Chairman shall appoint, with Board approval..." Committees.

NOW THEREFORE, be it resolved that the Board approve the following appointments.

Executive Finance & Audit Operations Capital Maintenance K. Manning, Chair D. Zimmerman, Chair T. Masiello, Chair T. Clutterbuck S. Gurney, Vice Chair L. Holloway, Vice Chair T. Masiello P. Robson M.T. Dominguez D. Zimmerman M. Russo I. Meharry K. Manning K. Manning T. Clutterbuck T. Clutterbuck"

CARRIED

I. Meharry abstained

#### 10. ADOPTION OF MINUTES

a) Moved by P. Robson
 Seconded by M. Russo

"THAT the minutes of the Regular Board Meeting held on December 19, 2019, be approved as presented.

CARRIED

# 11. NEW BUSINESS

a) 2020 Property Insurance Renewal – Report No. 848/20 Moved by P. Robson Seconded by T. Masiello "THAT this Report be received for information."

CARRIED

b) 2020 Sponsorship Request - Report No. 849/20 Moved by I. Meharry Seconded by D. Zimmerman

"THAT the Board approve a \$6,000 (\$3,000 USD and \$3,000 CAD) sponsorship request from the Canadian/American Border Trade Alliance.)

CARRIED

- c) December 2019 Traffic Statistics Report No. 847/20
- d) January 2020 Traffic Statistics Report No. 852/20
- e) December 2019 Operating Statement & Balance Sheet Report No. 853/20
- f) January 2020 Operating Statement & Balance Sheet Report No. 855/20
- g) 2020 Capital Expenditures through January 31, 2020 Report No. 856/20

Moved by D. Zimmerman Seconded by M. Russo

"THAT items c through g be received for information."

CARRIED

#### 12. COMMUNICATIONS

None

#### 13. ENQUIRIES BY BOARD

None

#### 14. SCHEDULING OF MEETINGS

Friday, March 27, 2020 — Regular Board Meeting —  $8:15\,\mathrm{AM}$  Friday, April 24, 2020 — Regular Board Meeting —  $8:15\,\mathrm{AM}$  Thursday, May 28, 2020 — Regular Board Meeting —  $8:15\,\mathrm{AM}$ 

#### 15. EXECUTIVE SESSION

Moved by D. Zimmerman Seconded by P. Robson

"THAT the Board move into Executive Session for a property matter."

CARRIED

#### 16. ADJOURNMENT

Moved by F. Cirillo Seconded by I. Masiello

"THAT the meeting be adjourned at 9:45 AM,"

CARRIED

Thomas A\ Boyle, Chief Operating Officer



M	arch 27, 2020	ISSE COLUMN TO THE PARTY OF THE	8:15 AM
1.	Call to Order		Pages
	Roll Call		
4.			
3.	Disclosure of Conflicts of Interes	\$	
4.	<ul> <li>Adoption of Minutes</li> <li>a) Regular Board Meeting – Februar THAT the minutes of the Regular as presented.</li> </ul>	y 28, 2020 Board Meeting held on February 28, 2020, be approved	1-3
		Moved by:	
		Seconded by:	
5	New Business		
	a) 2020 Sponsorship Request – Buff THAT the Board approve/not app Niagara International Trade Gates		4-6
		Moved by: Seconded by:	
		Seconded by:	
	<ul> <li>d) 2020 Capital Expenditures throug</li> <li>e) Year-to-date Pension Plan Summa</li> </ul>	Report No. 860/20 ent & Balance Sheet - Report No. 862/20 h February 29, 2020 - Report No. 861/20 ary as at December 31, 2019 - Report No. 864/20 y as at December 31, 2019 - Report No. 863/20	7 8-13 14-15 16-18 19-20
	THAT items b through f be received		
	THAT Items b dirought i be receive	Moved by	
		Seconded by	
G.	Communications None		
7.	Enquiries by Board		
8.	Scheduling of Meetings Friday, April 24, 2020 – Regular Boa Thursday, May 28, 2020 – Regular B Thursday, June 25, 2020 – Regular B	oard Meeting – 8:15 AM	
9.	Executive Session (property, person THAT the Board move into Executive	e Session for personnel matters.	
		Moved by:	
		Seconded by:	

10. Adjournment



MINUTES

#### Buffalo and Fort Erie Public Bridge Authority Regular Board Meeting Via Teleconference March 27, 2020

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:15 AM

#### 2. ROLL CALL

#### Present

- K. Manning, Chair
- F. Cirillo
- T. Clutterbuck
- S. Gurney
- L. Holloway
- T. Masiello
- I. Meharry
- P. Robson
- M. Russo
- D. Zimmerman

#### Staff Present

- R. Rienas, General Manager
- T. Boyle, Chief Operating Officer
- K. Costa, Chief Financial Officer
- K. Kaiser, Executive Assistant

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

a) Moved by T. Masiello
 Seconded by T. Clutterbuck

"THAT the minutes of the regular Board Meeting held on February 28, 2020, be approved as presented."

CARRIED

#### 5. NEW BUSINESS

a) 2020 Sponsorship Request – Buffalo Niagara ITGO – Report No. 857/20 Moved by L. Holloway Seconded by T. Masiello

"THAT the Board approves a \$5,000 USD sponsorship request from the Buffalo Niagara International Trade Gateway Organization (ITGO)."

CARRIED

M. Russo abstained

#### Regular Board Meeting Minutes

Page 2

March 27, 2020

- b) February 2020 Traffic Statistics Report No. 860/20
- c) February 2020 Operating & Financial Statements Report No. 862/20
- d) 2020 Capital Expenditures through February 29, 2020 Report No. 861/20
- e) Year-to-Date Pension Plan Summary as at September 30, 2019 Report No. 864/20
- f) Year-to-Date OPEB Plan Summary as at September 30, 2019 Report No. 863/20 Moved by D. Zimmerman Seconded by S. Gurney

"THAT items b through f be received for information."

CARRIED

#### 6. COMMUNICATIONS

None

#### 7. ENQUIRIES BY BOARD

T. Clutterbuck asked if Staff had any knowledge of impacts of troops at the border as being reported in the media. R. Rienas explained that it would be for areas between ports of entry and more directed at land areas. It is believed that the proposal was withdrawn.

#### 8. SCHEDULING OF MEETINGS

Friday, April 24, 2020 – Regular Board Meeting – 8:15 AM Thursday, May 28, 2020 – Regular Board Meeting – 8:15 AM Thursday, June 25, 2020 – Regular Board Meeting – 8:15 AM

#### 9. EXECUTIVE SESSION

Moved by T. Clutterbuck Seconded by M. Russo

"THAT the meeting move into Executive Session for personnel and legal matters.

THAT due to the unprecedented circumstances related to Covid-19, the Executive Session be conducted via teleconference, notwithstanding Authority past practice."

CARRIED

Meeting in Regular Session called to order by the Chairman at 9:34 AM.

### 10. COLLECTIVE AGREEMENT BETWEEN THE AUTHORITY & TEAMSTERS LOCAL 879 (CANADA) - REPORT NO. 858/20

Moved by D. Zimmerman Seconded by L. Holloway

"THAT the Board authorize Staff to execute the Collective Agreement between the Authority and Canadian Teamsters Local Union No. 879 for the period January 1, 2020, through December 31, 2024, as presented."

CARRIED

I. Meharry abstained

#### 11.ADJOURNMENT

Moved by P. Robson Seconded by T. Clutterbuck

"THAT the meeting be adjourned at 9:36 AM."

14

CARRIED



# crossing paths tibuilding futures the peace bridge Regular Meeting of the Board Agenda

A	oril 24, 2020	THE COLUMN AND ADDRESS OF THE COLUMN ASSESSMENT AND ADDRESS OF THE COLUMN ASSESSMENT AND ADDRESS OF THE COLUMN ASSESSMENT	8:15 AM
4	Call to Order	30 (4 10 Tab)	Pages
2.	Roll Call		
3,	Disclosure of Conflicts of Interest		
4.	Adoption of Minutes  a) Regular Board Meeting – March 27, 2020 THAT the minutes of the Regular Board Meeting held on Ma presented.		1-2
		Moved by:	
		Seconded by:	•
5.	New Business		
	a) March 2020 Traffic Statistics – Report No. 866/20 b) March 2020 Operating Statement & Balance Sheet – Report c) 2020 Capital Expenditures through March 31, 2020 – Report	<u>No. 867/20</u> No. 868/20	3 4-10 11-12
	THAT items a through c be received for information.		
	· · · · · · · · · · · · · · · · · · ·	Moved by	
	d) <u>Covid-19 Status Report – TO BE DISTRIBUTED APRIL 23</u> THAT this Report be received for information.	Moved bySeconded by	
	The state of the s	Moved by	
		Moved bySeconded by	
6.	Communications None		
7.	Enquiries by Board		
8.	Scheduling of Meetings Thursday, May 28, 2020 – Regular Board Meeting – 8:15 AM Thursday, June 25, 2020 – Regular Board Meeting – 8:15 AM Thursday, July 30, 2020 – Regular Board Meeting – 8:15 AM Thursday, August 27, 2020 – Regular Board Meeting – 8:15 AM		
9.	Executive Session (property, personnel, legal issues only) THAT the Board move into Executive Session for property matter	ers.	
		Moved by:	
		Seconded by:	
10.	Adjournment		



# Buffalo and Fort Erie Public Bridge Authority Regular Board Meeting Via Teleconference April 24, 2020

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:16 AM

#### 2. ROLL CALL

#### Present

K. Manning, Chair

T. Clutterbuck

M.T. Dominguez

S. Gurney

L. Holloway

T. Masiello

I. Meharry

P. Robson

M. Russo

D. Zimmerman

#### Others Present

F. Cirillo, NYS Department of Transportation

#### Staff Present

R. Rienas, General Manager

T. Boyle, Chief Operating Officer

K. Costa, Chief Financial Officer

K. Kaiser, Executive Assistant

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

a) Moved by P. Robson
 Seconded by T. Masiello

"THAT the minutes of the regular Board Meeting held on March 27, 2020, be approved as presented."

CARRIED

#### 5. NEW BUSINESS

a) March 2020 Traffic Statistics - Report No. 860/20

b) March 2020 Operating & Financial Statements - Report No. 862/20

c) 2020 Capital Expenditures through March 31, 2020 - Report No. 861/20

Moved by D. Zimmerman Seconded by F. Cirillo

"THAT items a through c be received for information."

#### Regular Board Meeting Minutes

Page 2

April 24, 2020

d) Covid-19 Status Report – Report No. 871/20
Moved by L. Holloway
Seconded by T. Clutterbuck

"THAT staff be directed to prepare a new 2020 budget for the June 25, 2020 Board meeting encompassing expense reductions due to Covid-19."

CARRIED

#### 6. COMMUNICATIONS

R. Rienas asked the Board for comments regarding future out of office meetings being handled via video conferencing if the Covid-19 restrictions are still in place for the May meeting. All Board Members were agreeable to using a video service instead of teleconference.

#### 7. ENQUIRIES BY BOARD

None

#### 8. SCHEDULING OF MEETINGS

Thursday, May 28, 2020 – Regular Board Meeting – 8:15 AM Thursday, June 25, 2020 – Regular Board Meeting – 8:15 AM Thursday, July 30, 2020 – Regular Board Meeting – 8:15 AM Thursday, August 27, 2020 – Regular Board Meeting – 8:15 AM

#### 9. EXECUTIVE SESSION

Moved by T. Masiello Seconded by P. Robson

"THAT the meeting move into Executive Session for property matters."

CARRIED

Meeting in Regular Session called to order by the Chairman at 9:32 AM.

### 10. PROPOSED SALE OF AUTHORITY PROPERTY (GARRISON RD & CENTRAL AVE) - No. 870/20

Moved by M. Russo

Seconded by T. Masiello

"THAT the Board approve the draft agreement of purchase and sale for property on the west side of Central Ave, north of Garrison Road to Compass Heights Developments.

THAT Staff be authorized to execute the agreement in substantially the form presented."

CARRIED

### 11. DUTY FREE RENT DEFERRAL AGREEMENTS DUE TO COVID-19 - Report No. 869/20

Moved by T. Clutterbuck Seconded by P. Robson

Seconded by P. Robson

"THAT the rent deferral agreements negotiated with Peace Bridge Duty Free and Duty Free Americas be approved."

CARRIED

#### 12.ADJOURNMENT

Moved by D. Zimmerman Seconded by L. Holloway

"THAT the meeting be adjourned at 9:34 AM."

CARRIED



### Regular Meeting of the Board Agenda

Ma	ay 28, 2020	(	8:15 AM
4	Call to Order		Page
	can to Orger		
2.	Roll Call		
3.	Disclosure of Conflicts of Interest		
a,	Adoption of Minutes  a) Regular Board Meeting – April 24, 2020 THAT the minutes of the Regular Board Meeting held on April presented.	24, 2020, be approved as	1-2
	1,1554,955	Moved by:	
		Seconded by:	
	b) Finance & Audit Committee Meeting Minutes – May 20, 2020 THAT the minutes of the Finance & Audit Committee Meeting approved as presented.	ng held on May 20, 2020, be	3-13
		Moved by:	
		Moved by:	
	<ul> <li>New Business</li> <li>a) 2020 Capital Expenditures through April 30, 2020 – Report No THAT this Report be received for information.</li> </ul>	. 874/20 Moved by Seconded by	14-15
	Communications None		
7.	Enquiries by Board		
	Scheduling of Meetings Thursday, June 25, 2020 – Regular Board Meeting – 8:15 AM Thursday, July 30, 2020 – Regular Board Meeting – 8:15 AM Thursday, August 27, 2020 – Regular Board Meeting – 8:15 AM Thursday, October 8, 2020 – Budget Board Meeting – 8:15 AM		
9.	Executive Session (property, personnel, legal issues only) - none		
.0.	Adjournment		



# BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY REGULAR BOARD MEETING VIA ZOOM VIDEO CONFERENCE MAY 28, 2020

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:19 AM

#### 2. ROLL CALL

Present

Absent

K. Manning, Chair

M. Russo (with regrets)

T. Clutterbuck

M. T. Dominguez

S. Gurney

L. Holloway

T. Masiello

I. Meharry

P. Robson

D. Zimmerman

#### Others Present

F. Cirillo, NYS Department of Transporation

#### Staff Present

R. Rienas, General Manager

T. Boyle, Chief Operating Officer

K. Costa, Chief Financial Officer

K. Kaiser, Executive Assistant

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

a) Moved by T. Masiello
 Seconded by D. Zimmerman

"THAT the minutes of the regular Board Meeting held on April 24, 2020, be approved as presented."

CARRIED

b) Moved by D. Zimmerman Seconded by T. Masiello

"THAT the minutes of the Finance & Audit Committee Meeting held on May 20, 2020, be approved as presented."

CARRIED

#### 5. NEW BUSINESS

 a) 2020 Capital Expenditures through April 30, 2020 -- Report No. 874/20 Moved by T. Clutterbuck Seconded by L. Holloway

"THAT this Report be received for information."

#### 6. COMMUNICATIONS

R. Rienas advised the Board that he had a conference call with CBSA and Public Health Canada (PHC) regarding the handling of Covid-19 at the border. PHC will start having representatives at the northern border crossings to assist CBSA with health evaluations of travelers that CBSA may have concerns about. The conversation focused on the potential re-opening of the border on June 21. PHC stated that they will require travelers entering Canada to self-quarantine for 14 days. Ron expressed his concern about the optics of an open border when in reality the requirement would be unrealistic for most travelers. He suggested the need for flexibility and used the example of seasonal home owners that want to get to their property.

#### 7. ENQUIRIES BY BOARD

a) I. Meharry would like the Board to look at revising the Board compensation policy for attending meetings. She feels that Canadian members should be paid some amount of remuneration even if attending by teleconference or video conference. R. Rienas responded that pursuant to NYS legislation only Canadian members receive compensation for meetings. T. Masiello acknowledged that U.S. members have not been compensated dating back to an Executive Order issued by Governor Mario Cuomo.

Moved by D. Zimmerman Seconded by I. Meharry

"THAT the Board review Board compensation at a future meeting."

CARRIED

b) T. Masiello asked the Canadian members how their economy is being impacted by the pandemic. Members discussed how certain areas of the country are doing better than others. Would like to see the government have a re-open strategy similar to NYS where they re-open by region. T. Clutterbuck raised concern about nationalism and how this may effect trade between Canada and the U.S. P. Robson indicated post-secondary institutions will be adversely impacted by the border uncertainties.

#### 8. SCHEDULING OF MEETINGS

Thursday, June 25, 2020 – Regular Board Meeting – 8:15 AM Thursday, July 30, 2020 – Regular Board Meeting – 8:15 AM Thursday, August 27, 2020 – Regular Board Meeting – 8:15 AM Thursday, October 8, 2020 – Budget Board Meeting – 8:15 AM

#### 9. ADJOURNMENT

Moved by D. Zimmerman Seconded by L. Holloway

"THAT the meeting be adjourned at 9:00 AM."

CARRIED



### Regular Meeting of the Board Agenda

ine	25, 2020	8:15	AM
-	all to Order	Part op as Address Land of	Page
Ro	oli Cali		
Di	sclosure of Conflicts of Interest		
			1-2
	Moved by:		
FJA	Seconded by:	_	
		0	3-9
	THAT the 2020/21 Operating Budget and Capital Budget meeting date be changed from Thursday October 8, 2020 to Thursday October 1, 2020.	n	
	Moved by:		
	May 2020 Traine Statistics - Report No. 875/20	-	10
	May 2020 Operating Statement & Balance Sheet – Report No. 876/20 2020 Capital Expenditures through May 31, 2020 – Report No. 877/20		1-17
-)		1.	8-19
	Seconded by	<del></del>	
En	quiries by Board		
Thu	ursday, July 30, 2020 - Regular Board Meeting — 8:15 AM		
Ex	ecutive Session (property, personnel, legal issues only) - none		
Ad	journment		
	Can Re Di Aca)  Ne a)  Ne a)  Ne c)  Co No En Thirther Exc	Roll Call  Disclosure of Conflicts of Interest  Adoption of Minutes  a) Regular Board Meeting – May 28, 2020 THAT the minutes of the Regular Board Meeting held on May 28, 2020, be approved as presented.  Moved by: Seconded by: New Business  a) Revised 2020 Operating and Capital Budget in response to Covid-19 Pandemic – No. 878/2 THAT the Board approve the revised 2020 Operating and Capital Budget, as presented.  THAT the 2020/21 Operating Budget and Capital Budget meeting date be changed from Thursday October 8, 2020 to Thursday October 1, 2020.  Moved by: Seconded by:  b) May 2020 Traffic Statistics – Report No. 875/20 C) May 2020 Operating Statement & Balance Sheet – Report No. 876/20 d) 2020 Capital Expenditures through May 31, 2020 – Report No. 877/20 THAT items b-d be received for information.	Call to Order  Roll Call  Disclosure of Conflicts of Interest  Adoption of Minutes  a) Regular Board Meeting – May 28, 2020 THAT the minutes of the Regular Board Meeting held on May 28, 2020, be approved as presented.  Moved by: Seconded by:  New Business  a) Revised 2020 Operating and Capital Budget in response to Covid-19 Pandemic – No. 878/20 THAT the Board approve the revised 2020 Operating and Capital Budget, as presented.  THAT the 2020/21 Operating Budget and Capital Budget meeting date be changed from Thursday October 8, 2020 to Thursday October 1, 2020.  Moved by: Seconded by:  Di May 2020 Traffic Statistics – Report No. 875/20 C) May 2020 Operating Statement & Balance Sheet – Report No. 876/20 d) 2020 Capital Expenditures through May 31, 2020 – Report No. 877/20 THAT items b-d be received for information.  Moved by: Seconded by:  Communications None  Enquiries by Board  Scheduling of Meetings Thursday, July 30, 2020 - Regular Board Meeting – 8:15 AM Thursday, August 27, 2020 – Regular Board Meeting – 8:15 AM Executive Session (property, personnel, legal issues only) - none



#### Buffalo and Fort Erie Public Bridge Authority Regular Board Meeting Via Zoom Video Conference June 25, 2020

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:16 AM

#### 2. ROLL CALL

#### Present

- K. Manning, Chair
- T. Clutterbuck
- M.T. Dominguez
- S. Gurney
- L. Holloway
- T. Masiello
- I. Meharry
- P. Robson
- M. Russo
- D. Zimmerman

#### Staff Present

- R. Rienas, General Manager
- T. Boyle, Chief Operating Officer
- K. Costa, Chief Financial Officer
- K. Kaiser, Executive Assistant

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

Moved by L. Holloway
 Seconded by P. Robson

"THAT the minutes of the regular Board Meeting held on May 28, 2020, be approved as presented."

I.Meharry indicated that she would like the minutes amended to reflect her comments that Canadian board members receive "some" amount of remuneration for attendance via tele or video conference.

Moved by D. Zimmerman Seconded by I. Meharry

"THAT the minutes of the Regular Board Meeting dated May 28, 2020, be approved as amended."

CARRIED

June 25, 2020

#### 5. NEW BUSINESS

Revised 2020 Operating and Capital Budget in response to Covid-19 Pandemic – Report No. 878/20
 Moved by D. Zimmerman
 Seconded by M. Russo

"THAT the Board approve the revised 2020 Operating and Capital Budget, as presented.

THAT the 2020/21 Operating Budget and Capital Budget meeting date be changed from Thursday, October 8, to Thursday, October 1, 2020."

CARRIED

- b) May 2020 Traffic Statistics Report No. 875/20
- c) May 2020 Operating & Financial Statements Report No. 876/20
- d) 2020 Capital Expenditures through May 31, 2020 Report No. 877/20

Moved by P. Robson Seconded by L. Holloway

"THAT items b through d be received for information."

CARRIED

#### 6. COMMUNICATIONS

R. Rienas advised the Board that the PBA and Niagara Falls Bridge Commission have been discussing the impacts of Section 6 of the Canadian Customs Act on each organization due to COVID-19. The Board agreed to a joint letter seeking relief from Section 6. The draft letter will be circulated to the Board,

#### 7. ENQUIRIES BY BOARD

a) I. Meharry asked what the plan was for holding meetings in the PBA administrative offices. Due to the continuation of the border closure until July 21 at this time, it was decided that the July 30 meeting will be conducted via teleconference. A discussion will take place at that meeting when there is more information regarding the status of the border closure.

#### 8. SCHEDULING OF MEETINGS

Thursday, July 30, 2020 – Regular Board Meeting – 8:15 AM (via teleconference) Thursday, August 27, 2020 – Regular Board Meeting – 8:15 AM (location TBD) Thursday, October 1, 2020 – Budget Board Meeting – 8:15 AM (location TBD)

#### 9. ADJOURNMENT

Moved by L. Holloway Seconded by I. Meharry

"THAT the meeting be adjourned at 9:09 AM."

CARRIED

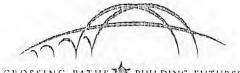


### Regular Meeting of the Board Agenda

via Zoom July 30, 2020 8:15 AM Pages 1. Call to Order 2. Roll Call 3. Disclosure of Conflicts of Interest 4. Adoption of Minutes a) Regular Board Meeting – June 25, 2020 1-2 THAT the minutes of the Regular Board Meeting held on June 25, 2020, be approved as presented. Moved by: Seconded by: 5. New Business a) Bridge Rehabilitation Closeout - Report No. 884/20 3-10 THAT this Report be received for information. Moved by: Seconded by: b) Peace Bridge Feature Lighting Upgrade Project Contract Award - Report No. 885/20 11-15 THAT the Board authorize the execution of a contract with Weinmann Ltd for the Peace Bridge Feature Lighting Upgrade Project in the bid amount of \$2,122,014 CAD (\$1,564,773 USD), including the Basic Bid and Alternates 2, 3, and 5. THAT the Bridge Lighting Upgrade Project capital budget be increased by \$200,000 to \$1,617,671 to cover the contract value with a contingency of 3% to cover currency fluctuations and unanticipated costs. Moved by: Seconded by: \_\_ c) Peace Bridge Inspection Programs - Report No. 886/20 16-42 THAT this Report be received for information. Moved by: Seconded by: d) June 2020 Traffic Statistics - Report No. 879/20 43 e) June 2020 Operating Statement & Balance Sheet - Report No. 883/20 44-50 f) 2020 Capital Expenditures through June 30, 2020 - Report No.882/20 51-52 g) Year-to-Date Pension Plan Summary as at March 31, 2020 - Report No. 881/20 53-55 h) Year-to-Date OPEB Plan Summary as at March 31, 2020 - Report No. 880/20 56-57 THAT items d-h be received for information. Moved by:\_ Seconded by:

R	egular Board Meeting Agenda	Page 2	July 30, 2020
6.	Communications a) NEXUS update – NPR Article dated July	y 24, 2020	58-59
7.	Enquiries by Board		
8.	. Scheduling of Meetings Thursday, August 27, 2020 – Regular Board Meeting – 8:15 AM Thursday, October 1, 2020 – Budget Board Meeting – 8:15 AM Friday, November 20, 2020 – Regular Board Meeting – 8:15 AM Friday, December 18, 2020 – Regular Board Meeting – 10:00 AM		
9.	Executive Session (property, personnel, I	egal issues only) - Property	60

10. Adjournment



CROSSING PATHS BUILDING FUTURES
THE PEACE BRIDGE

#### MINUTES

#### Buffalo and Fort Erie Public Bridge Authority Regular Board Meeting Via Zoom Video Conference July 30, 2020

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:22 AM

#### 2. ROLL CALL

Present

Absent

K. Manning, Chair

D. Zimmerman (with regrets)

F. Cirillo

T. Clutterbuck

S. Gurney (joined meeting at 8:35 am)

L. Holloway

T. Masiello

I. Meharry (left meeting at 9:25 am)

P. Robson

M. Russo

#### Staff Present

R. Rienas, General Manager

T. Boyle, Chief Operating Officer

K. Costa, Chief Financial Officer

K. Kaiser, Executive Assistant

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

 Moved by I. Meharry Seconded by F. Cirillo

"THAT the minutes of the regular Board Meeting held on June 25, 2020, be approved as presented."

CARRIED

#### 5. NEW BUSINESS

a) Bridge Rehabilitation Closeout - Report No. 884/20
Moved by T. Masiello
Seconded by I. Meharry

"THAT this Report be received for information."

CARRIED

 Peace Bridge Feature Lighting Upgrade Project Contract Award – Report No. 885/20 Moved by I. Meharry Seconded by L. Holloway

"THAT the Board authorize the execution of a contract with Weinmann Ltd for the Peace Bridge Feature Lighting Upgrade Project in the bid amount of \$2,122,014 CAD (\$1,564,773 USD), including the Basic Bid and Alternates 2, 3, and 5.

THAT the Bridge Lighting Upgrade Project capital budget be increased by \$200,000 to \$1,617.671 to cover the contract value with a contingency of 3% to cover currency fluctuations and unanticipated costs.

CARRIED

c) Peace Bridge Inspection Programs – Report No. 886/20

Moved by P. Robson Seconded by M. Russo

"THAT this Report be received for information."

CARRIED

- d) June 2020 Traffic Statistics Report No. 879/20
- e) June 2020 Operating & Financial Statements Report No. 883/20
- f) 2020 Capital Expenditures through June 30, 2020 Report No. 882/20
- g) Year-to-Date Pension Plan Summary as at March 31, 2020 Report No. 881/20
- h) Year-to-Date OPEB Plan Summary as at March 31, 2020 Report No. 880/20

Moved by L. Holloway Seconded by F. Cirillo

"THAT items d through h be received for information."

CARRIED

#### 6. COMMUNICATIONS

a) NEXUS update – NPR Article dated July 24, 2020 – R. Rienas advised that DHS has lifted the suspension on New York residents participating in the Trusted Traveler Program. He cautioned there will be lengthy processing delays due to a backlog and Enrollment Centers being closed due to the Pandemic. M. Russo also updated the board with respect to the court proceeding and that the Judge in the case has requested additional information from DHS and stated it is an ongoing case.

#### 7. ENQUIRIES BY BOARD

- a) K. Manning asked if there had been any response regarding Section 6. R. Rienas advised that the NFBC was advised that the matter was referred to the Minister of Public Safety and was told that a response would be forthcoming in mid-August.
- b) Due to changes at the NFTA Board and likely new appointee to PBA, the Board thanked Sam Gurney for his service and contribution to the Authority. Sam has served on the Board since 2012.

#### 8. SCHEDULING OF MEETINGS

Thursday, August 27, 2020 – Regular Board Meeting – 8:15 AM (via teleconference)

Thursday, October 1, 2020 - Regular Board Meeting - 8:15 AM (location TBD)

Friday, November 20, 2020 – Budget Board Meeting – 8:15 AM (location TBD)

Friday, December 18, 2020 – Regular Board Meeting – 10:00 AM (I. Meharry requested the meeting be moved to December 17 due to increased holiday traffic. Chairman Manning indicated the item would be deferred to the August meeting.)

#### 9. EXECUTIVE SESSION

Moved by T. Masiello Seconded by T. Clutterbuck

"THAT the meeting move into Executive Session for property matters."

CARRIED

Meeting in Regular Session called to order by the Chairman at 9:51 AM.

#### 10. ADJOURNMENT

Moved by T. Masiello Seconded by P. Robson

"THAT the meeting be adjourned at 9:52 AM."

CARRIED



# Regular Meeting of the Board Agenda

August 27, 2020 8:15 AM Pages 1. Call to Order 2. Roll Call 3. Disclosure of Conflicts of Interest 4. Adoption of Minutes a) Regular Board Meeting - July 30, 2020 1-2 THAT the minutes of the Regular Board Meeting held on July 30, 2020, be approved as presented. Moved by: Seconded by: 5. New Business a) July 2020 Traffic Statistics - Report No. 888/20 3 b) July Operating and Financial Statements - Report No. 890/20 4-12 c) Capital Expenditures through July 31, 2020 - Report No. 889/20 13-14 THAT items a-c be received for information. Moved by Seconded by 6. Communications None 7. Enquiries by Board 8. Scheduling of Meetings Thursday, October 1, 2020 - Regular Board Meeting - 8:15 AM (budget meeting) via Zoom Friday, November 20, 2020 - Regular Board Meeting - 8:15 AM (location TBD) Friday, December 18, 2020 - Regular Board Meeting - 10:00 AM (date & location TBD) 9. Executive Session (property, personnel, legal issues only) - property

10. Adjournment



# Buffalo and Fort Erie Public Bridge Authority Regular Board Meeting Via Zoom Video Conference August 27, 2020

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:20 AM

#### 2. ROLL CALL

Present

Absent

K. Manning, Chair

S. Gurney

F. Cirillo

T. Clutterbuck

L. Holloway

T. Masiello

I. Meharry

P. Robson

M. Russo

D. Zimmerman

#### Staff Present

R. Rienas, General Manager

T. Boyle, Chief Operating Officer

K. Costa, Chief Financial Officer

K. Kaiser, Executive Assistant

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

a) Moved by L. Holloway
 Seconded by T. Clutterbuck

"THAT the minutes of the regular Board Meeting held on July 30, 2020, be approved as presented."

CARRIED

#### 5. NEW BUSINESS

- a) July 2020 Traffic Statistics -- Report No. 888/20
- b) July 2020 Operating & Financial Statements Report No. 890/20
- c) Capital Expenditures through July 31, 2020 Report No. 889/20

Moved by D. Zimmerman Seconded by P. Robson

"THAT items a through c be received for information."

CARRIED

#### 6. COMMUNICATIONS

- a) R. Rienas advised the Board that he has not yet received a reply to the letter sent to Canadian government officials at the end of June with respect to Section 6 of the Canadian Customs Act and the impacts of COVID-19.
- b) T. Boyle provided an update on the status of the painting project. 90% of the U.S. painting is complete and should be finished by the end of September. All arch work over the river is expected to be complete by the end of November. Canadian approach work will commence in spring. Overall the project is 70% complete and 60% paid to date. Change orders are equal to approximately 1% of the total contract cost.

#### 7. ENQUIRIES BY BOARD

Chairman Manning requested that the Board be kept apprised as to the status of the Authority's pension plans.

#### 8. SCHEDULING OF MEETINGS

Thursday, October 1, 2020 – Regular Board Meeting – 8:15 AM (location TBD)
Friday, November 20, 2020 – Budget Board Meeting – 8:15 AM (location TBD)
Friday, December 18, 2020 – Regular Board Meeting – 10:00 AM (A discussion regarding moving this meeting to Thursday at I. Meharry's request, will be held closer to the meeting date after more information is available regarding the opening of the border.)

#### 9. EXECUTIVE SESSION

Moved by T. Masiello Seconded by T. Clutterbuck

"THAT the meeting move into Executive Session for property matters."

CARRIED

Meeting in Regular Session called to order by the Chairman at 8:48 AM.

#### 10.ADJOURNMENT

Moved by T. Clutterbuck Seconded by D. Zimmerman

"THAT the meeting be adjourned at 8:48 AM."

CARRIED



#### Regular Meeting of the Board Agenda

October 1, 2020 8:15 AM Pages 1. Call to Order 2. Roll Call 3. Disclosure of Conflicts of Interest 4. Adoption of Minutes a) Regular Board Meeting - August 27, 2020 1-2 THAT the minutes of the Regular Board Meeting held on August 27, 2020, be approved as presented. Moved by: Seconded by: 5. New Business a) 2021 Operating and Capital Budget - Report No. 892/20 and Presentation 3-32 THAT the 2021 Operating Budget (Schedule A) be approved; THAT the 2020 Amended Capital Budget and the 2020-2024 Capital Budget (Schedule B) be approved; THAT the Projected Capital Improvement Reserve Fund & Projected Outstanding Debt Schedule (Schedule C) be received for information; THAT the Board confirm the toll schedules as presented that will be effective December 1, 2020, and March 1, 2021 (Schedule E). Moved by: Seconded by: b) Contract Amendment to General Engineering Consultant (GEC) 5-Year Term Agreement for 33 PARE 3.0 - Report No. 895/20 THAT the Board approve a Contract Amendment for WSP USA Inc. in the amount of \$372,000 USD for the design of civil infrastructure relating to the joint PBA and US CBP Pre-Arrival Readiness Evaluation (PARE 3.0) initiative. Moved by: Seconded by: c) August 2020 Traffic Statistics - Report No. 891/20 34 d) August 2020 Operating Statement & Balance Sheet - Report No. 894/20 35-42 e) 2020 Capital Expenditures through August 31, 2020 - Report No. 893/20 43-44 That items c - e be received for information. Moved by: Seconded by: 6. Communications a) Letter from Public Safety Canada Assistant Deputy Minister, Jill Wherrett - 09/02/2020 45-51 7. Enquiries by Board

8. Scheduling of Meetings
Friday, November 20, 2020 – Regular Board Meeting
Friday, December 18, 2020 – Regular Board Meeting

9. Executive Session (property, personnel, legal issues only) - None

10. Adjournment



# Buffalo and Fort Erie Public Bridge Authority Regular Board Meeting via Zoom October 1, 2020

Absent

A. Masiello (with regrets)

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:17 AM.

#### 2. ROLL CALL

Present

K. Manning, Chair

T. Clutterbuck

M.T. Dominguez

L. Holloway

I. Meharry

J. Persico

P. Robson

M. Russo

D. Zimmerman

#### Staff Present

R. Rienas, General Manager

T. Boyle, Chief Operating Officer

K. Costa, Chief Financial Officer

K. Kaiser, Executive Assistant

#### Also Present

F. Cirillo, NYS Department of Transportation

The Chairman welcomed Jennifer Persico to the board as the new representative for the NFTA chairwoman.

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

 Moved by D. Zimmerman Seconded by P. Robson

"THAT the minutes of the Regular Board Meeting held on August 27, 2020, be approved as presented."

#### 5. NEW BUSINESS

 a) 2021 Operating and Capital Budget – Report No. 892/20 and Presentation Moved by D. Zimmerman Seconded by P. Robson

"THAT the 2021 Operating Budget (Schedule A) be approved;

CARRIED

CARRIED

#### Regular Board Meeting Minutes

Page 2

October 1, 2020

Moved by L. Holloway Seconded by T. Clutterbuck

THAT the 2020 Amended Capital Budget and the 2020-2024 Capital Budget (Schedule B) be approved;

CARRIED

Moved by T. Clutterbuck Seconded by D. Zimmerman

THAT the Projected Capital Improvement Reserve Fund & Projected Outstanding Debt Schedule (Schedule C) be received for information;

CARRIED

Moved by L. Holloway Seconded by T. Clutterbuck

THAT the Board confirm the toll schedules as presented that will be effective December 1, 2020 and March 1, 2021 (schedule E)."

CARRIED

b) <u>Contract Amendment to General Engineering Consultant (GEC) 5-Year Term Agreement for PARE 3.0</u>
– Report No. 895/20

Moved by P. Robson

Seconded by I. Meharry

"THAT the Board approve a Contract Amendment for WSP USA Inc. in the amount of \$372,000 USD for the design of civil infrastructure relating to the joint PBA and US CBP Pre-Arrival Readiness Evaluation (PARE 3.0) initiative."

CARRIED

- c) August 2020 Traffic Statistics Report No. 891/20
- d) August 2020 Operating & Financial Statements Report No. 894/20
- e) 2020 Capital Expenditures through August 31, 2020 Report No. 893/20 Moved by D. Zimmerman Seconded by M. Russo

"THAT items c through e be received for information."

CARRIED

#### 6. COMMUNICATIONS

- Letter from Public Safety Canada Assistant Deputy Minister, Jill Wherrett 09/02/2020
- b) The General Manager advised the Board that a response from the Government of Canada has not yet been received regarding Section 6 concerns.

#### 7. ENQUIRIES BY BOARD

None

#### 8. SCHEDULING OF MEETINGS

Friday, November 20, 2020 – Regular Board Meeting – 8:15 AM Thursday, December 17, 2020 – Regular Board Meeting – 8:15 AM

#### 9. ADJOURNMENT

Moved by J. Perisco Seconded by P. Robson

"THAT the meeting be adjourned at 10:13 AM."

CARRIED



# CROSSING PATHS TO BUILDING FUTURES THE PEACE BRIDGE Regular Meeting of the Board

#### Agenda via Zoom

November 20, 2020

8:15 AM

1.	Call to	Order		Pages
2.	Roll C	all		
3.		sure of Conflicts of Interest		
A,	a) Reg	ion of Minutes gular Board Meeting – October 1, 2020 AT the minutes of the Regular Board Meeting held on Octo sented.	ober 1, 2020, be approved as	1-2
	b) Fin	ance & Audit Committee Meeting – October 21, 2020 AT the minutes of the Finance & Audit Committee Meeting	Moved by: Seconded by:  1 held on October 21, 2020, be	3-5
	арр	proved as presented.	Moved by:	
5,	Motion	ns from Committee		
		nual Investment Manager Review Summary—Pension & OP AT this Report be received for information.	EB Performance - No. 906/20  Moved by: Seconded by:	6-8
	TH/ Em	tement of Investment Policies and Procedures for the Pen AT the "Statement of Investment Policies and Proced ployees of Buffalo & Fort Erie Public Bridge Authority in th pws:	ures for the Pension Plan for	9-46
	A	Section 4 – Liabilities – update the information to refleas of December 31, 2019;	ect the latest actuarial valuation	
	A	Section 6 – Investment Guidelines – update the target mix/operation of the Plan and update the US Equity accurate benchmark composition;	mix to reflect the current asset benchmark to reflect a more	
	THA Em	AT the "Statement of Investment Policies and Proced ployees of Buffalo & Fort Erie Public Bridge Authority in Ca	ures for the Pension Plan for anada" be amended as follows:	
	>	Section 4 – Liabilities - update the information to reflect of December 31, 2019;	the latest actuarial valuation as	
	>	Section 6 – Asset Mix – update the date of the s determine the portfolio mix;	solvency funding ratio used to	
	A	Section 6 – Total Fund Investment Return Objectives - fees to CPI+2%; update the actuarial rate of return to		

ular Board Meeting Agenda	Page 2	November 20
THAT all other items included in the 'the Pension Plan for Employees of Buff "Statement of Investment Policies and Buffalo & Fort Erie Public Bridge Author	falo & Fort Erie Public Bridg Id Procedures for the Pens	e Authority in Canada" and ion Plan for Employees of
c) Statement of Investment Policies and Femployees of the Buffalo and Fort Erie THAT the "Statement of Investment (OPEB) for the employees of the Buffalos as follows:	Public Bridge Authority - Re Policies and Procedures for	eport No. 902/20 the Retiree Medical Plan
Section 4 – Liabilities – update the of December 31, 2019;	information to reflect the l	atest actuarial valuation as
Section 6 – Asset Mix – update the asset mix of the Plan;	e targeted asset mix of the	Plan to reflect the current
Section 6- Total Fund Investment I to reflect a more accurate benchma	Return Objectives – update ark composition;	the US Equity benchmark
THAT all other items included in the " the Pension Plan for Employees of Buff "Statement of Investment Policies and the employees of the Buffalo and For presented.	alo & Fort Erie Public Bridge Procedures for the Retire	e Authority in Canada" and e Medical Plan (OPEB) for
		Moved by:
		Seconded by:
<ul> <li>Review of Pension Plan Governance – R THAT the Board reconfirm the Self-Asse Pension Plan.</li> </ul>	Report No. 897/20 essment Questionnaire appli	cable to the Canadian
		Moved by:
		Seconded by:
New Business		
a) October 2020 Traffic Statistics - Report	No. 007/20	

	October 2020 Traffic Statistics - Report No. 907/20		81
(מ	October Operating and Financial Statements - Report No. 909/20		82-88
	THAT items a-b be received for information.		
		Moved by	

c) <u>Capital Expenditures through October 31, 2020 – Report No. 908/20</u> THAT the attached Capital Expenditures Schedule A be received for Information.

89-90

THAT the Bridge Painting capital project funds be reallocated from 2021 by increasing the amount for 2020 by \$2,100,000 to \$17,210,000.

THAT the Coal Docks capital project funds be deferred to 2021 by reducing the 2020 allocation by \$490,000 to \$60,000.

Moved b	У
Seconded	by

Seconded by\_

Deardon	Daned	Meeting	Amanda
negular	buaru	MAGGERING	MURCHICIA

Page 3

November 20, 2020

Regu	nar Board Meeting Agenda	Page 3	woveinder zu,	2020
d)	Appointment to Finance & Audit Comm WHEREAS PBA By-Laws state: "The Ch Committees.		d approval"	VERBAL
	NOW THEREFORE, be it resolved that to the Finance & Audit Committee to fi	fill the current vacancy.	ved by	
		Seco	nded by	
e)	Resolution of Appreciation — Patricia A WHEREAS the Town of Fort Erie and to community leader with the death of Pa	the bi-national region lost a value		VERBAL
	WHEREAS Patricia Anzovino was a tire and environmental concerns;	eless and outspoken advocate for	social justice, equity	
	WHEREAS Patricia Anzovino was a fou supporting refugees at the Peace Bridge	ınding member of Casa El Norte, ge in partnership with Vive Shelte	welcoming and er in Buffalo; and	
	WHEREAS Patricia Anzovino served wii Public Bridge Authority from 2005-200		Buffalo and Fort Erie	
	NOW, THEREFORE be it resolved:			
	THAT the Buffalo and Fort Erie Public I	Bridge Authority hereby:		
	• honours with great admiration, the n	memory of Patricia Anzovino,		
	o celebrates her legacy of relentless ac	dvocacy for less fortunate individ	uals;	
	<ul> <li>remembers her many contributions t Bridge; and,</li> </ul>	to the bi-national refugee commu	inity at the Peace	
	• extends its sincerest condolences to		oy:	
		Second	ed by:	
a) b)	mmunications Fitch Ratings Press Release: Fitch Affiri Anzovino Remembered for Giving Back Follow-up letter to Minister Blair — Sect	c, Advancing Social Causes - Niag		91-96 97-101 102-105

#### 8. Enquiries by Board

#### 9. Scheduling of Meetings

Thursday, December 17, 2020 - Regular Board Meeting - 8:15 AM (via Zoom)

a) 2021 Board Meeting Schedule – Report No. 904/20 THAT the 2021 meeting schedule be approved.

106

#### 10. Executive Session (property, personnel, legal issues only) - NONE

#### 11. Adjournment



CROSSING PATHS BUILDING FUTURES
THE PEACE BRIDGE

### MINUTES

# Buffalo and Fort Erie Public Bridge Authority Regular Board Meeting Via Zoom Video Conference November 20, 2020

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:21 AM

#### 2. ROLL CALL

#### Present

#### Absent

K. Manning, Chair

D. Zimmerman (with regrets)

T. Clutterbuck

M.T. Dominguez

L. Holloway

T. Masiello

I. Meharry

J. Persico

P. Robson

M. Russo

#### Staff Present

R. Rienas, General Manager

T. Boyle, Chief Operating Officer

K. Costa, Chief Financial Officer

K. Kaiser, Executive Assistant

#### Others Present

F. Cirrillo, NYS Department of Transportation

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

 a) Moved by T. Masiello Seconded by P. Robson

"THAT the minutes of the regular Board Meeting held on October 1, 2020, be approved as presented."

CARRIED

Moved by M. Russo
 Seconded by L. Holloway

"THAT the minutes of the Finance & Audit Committee Meeting held on October 21, 2020, be approved as presented."

CARRIED

#### 5. MOTIONS FROM COMMITTEE

Annual Investment Manager Review Summary -Pension & OPEB Performance – Report No. 906/20 Moved by P. Robson Seconded by M. Russo

"THAT this Report be received for information."

CARRIED

1.

b) <u>Statement of Investment Policies and Procedures for the Pension Plans – Report No. 900/20</u> Moved by J. Persico Seconded by L. Holloway

"THAT the "Statement of Investment Policies and Procedures for the Pension Plan for Employees of Buffalo & Fort Erie Public Bridge Authority in the United States" be amended as follows:

- Section 4 Liabilities update the information to reflect the latest actuarial valuation as of December 31, 2019;
- Section 6 Investment Guidelines update the target mix to reflect the current asset mix/operation of the Plan and update the US Equity benchmark to reflect a more accurate benchmark composition;

THAT the "Statement of Investment Policies and Procedures for the Pension Plan for Employees of Buffalo & Fort Erie Public Bridge Authority in Canada" be amended as follows:

- Section 4 Liabilities update the information to reflect the latest actuarial valuation as of December 31, 2019;
- > Section 6 Asset Mix update the date of the solvency funding ratio used to determine the portfolio mix;
- ➤ Section 6 Total Fund Investment Return Objectives update the rate of return after fees to CPI+2%; update the actuarial rate of return to 4.25%;

THAT all other items included in the "Statement of Investment Policies and Procedures for the Pension Plan for Employees of Buffalo & Fort Erie Public Bridge Authority in Canada" and "Statement of Investment Policies and Procedures for the Pension Plan for Employees of Buffalo & Fort Erie Public Bridge Authority in the United States" be reconfirmed as presented."

CARRIED

c) Statement of Investment Policies and Procedures for the Retiree Medical Plan (OPEB) for the employees of the Buffalo and Fort Erie Public Bridge Authority – Report No. 902/20 Moved by J. Persico Seconded by L. Holloway

"THAT the "Statement of Investment Policies and Procedures for the Retiree Medical Plan (OPEB) for the employees of the Buffalo and Fort Erie Public Bridge Authority" be amended as follows:

- ➤ Section 4 Liabilities update the information to reflect the latest actuarial valuation as of December 31, 2019;
- Section 6 Asset Mix update the targeted asset mix of the Plan to reflect the current asset mix of the Plan;
- > Section 6- Total Fund Investment Return Objectives update the US Equity benchmark to reflect a more accurate benchmark composition;

THAT all other items included in the "Statement of Investment Policies and Procedures for the Pension Plan for Employees of Buffalo & Fort Erie Public Bridge Authority in Canada" and "Statement of Investment Policies and Procedures for the Retiree Medical Plan (OPEB) for the employees of the Buffalo and Fort Erie Public Bridge Authority" be reconfirmed as presented."

CARRIED

d) Review of Pension Plan Governance – Report No. 897/20
Moved by T. Masiello
Seconded by P. Robson

"THAT the Board reconfirm the Self-Assessment Questionnaire applicable to the Canadian Pension Plan."

CARRIED

#### 6. NEW BUSINESS

(

a) October 2020 Traffic Statistics - Report No. 907/20

 b) October 2020 Operating & Financial Statements – Report No. 908/20 Moved by M. Russo Seconded by J. Persico

"THAT items a and b be received for information."

CARRIED

Capital Expenditures through October 31, 2020 – Report No. 908/20
 Moved by T. Clutterbuck
 Seconded by T. Masiello

"THAT the attached Capital Expenditures Schedule A be received for information.

THAT the Bridge Painting capital project funds be reallocated from 2021 by increasing the amount for 2020 by \$2,100,000 to \$17,210,000.

THAT the Coal Docks capital project funds be deferred to 2021 by reducing the 2020 allocation by \$490,000 to \$60,000."

CARRIED

d) Appointment to Finance & Audit Committee

Moved by T. Masiello Seconded by T. Clutterbuck

"WHEREAS PBA By-Laws state: "The Chairman shall appoint, with Board approval..." Committees.

NOW THEREFORE, be it resolved that the Board approve the appointment of Jennifer Persico to the Finance & Audit Committee to fill the current vacancy."

CARRIED

e) Resolution of Appreciation - Patricia Anzovino

Moved by P. Robson Seconded by T. Masiello

"WHEREAS the Town of Fort Erie and the bi-national region lost a valued and generous community leader with the death of Patricia Anzovino on October 10, 2020;

WHEREAS Patricia Anzovino was a tireless and outspoken advocate for social justice, equity and environmental concerns;

WHEREAS Patricia Anzovino was a founding member of Casa El Norte, welcoming and supporting refugees at the Peace Bridge in partnership with Vive Shelter in Buffalo; and

WHEREAS Patricia Anzovino served with distinction on the Board of the Buffalo and Fort Erie Public Bridge Authority from 2005-2008

NOW, THEREFORE be it resolved:

THAT the Buffalo and Fort Erie Public Bridge Authority hereby:

#### Regular Board Meeting Minutes

Page 4

November 20, 2020

- honours with great admiration, the memory of Patricia Anzovino,
- celebrates her legacy of relentless advocacy for less fortunate individuals;
- remembers her many contributions to the bi-national refugee community at the Peace Bridge; and,
- extends its sincerest condolences to her family and many friends."

CARRIED

I. Meharry suggested that there should be a more permanent memento for Ms. Anzovino. It was agreed that a memorial tree planting be conducted in 2021 when able to do so.

#### 7. COMMUNICATIONS

- a) Fitch Ratings Press Release: Fitch Affirms Peace Bridge \$17.5 MM Rev Rfdg Bonds at "A"
- b) Anzovino Remembered for Giving Back, Advancing Social Causes Niagara Falls Review
- c) Follow-up letter to Minister Blair Section 6 of Customs Act

#### 8. ENQUIRIES BY BOARD

None

#### 9. SCHEDULING OF MEETINGS

Thursday, December 17, 2020 - Regular Board Meeting - 8:15 AM (via Zoom)

a) 2021 Board Meeting Schedule - Report No. 904/20

Moved by P. Robson Seconded by J. Persico

"THAT the 2021 meeting schedule be approved as amended."

CARRIED

#### 10. EXECUTIVE SESSION

Moved by T. Masiello Seconded by P. Robson

"THAT the meeting move into Executive Session for property matters."

CARRIED

Meeting in Regular Session called to order by the Chairman at 9:18 AM.

#### 11. ADJOURNMENT

Moved by T. Masiello Seconded by J. Persico

"THAT the meeting be adjourned at 9:19 AM."

CARRIED



### Regular Meeting of the Board Agenda

Total Control	ecenner 17, 2020		8:15 AM
			Page
1.	Call to Order		
2.	Roll Call		
3.	Disclosure of Conflicts of Interest		
4.	Adoption of Minutes  a) Regular Board Meeting – November 20, 2020  THAT the minutes of the Regular Board Meeting held on Nover as presented.		
		Moved by:	_
5.	New Business	occorded by.	
	a) Pre-Audit Planning Meeting with Lumsden & McCormick — Seth	Hennard & Donna Gonser	Verbal
	<ul> <li>b) November 2020 Traffic Statistics – Report No. 910/20</li> <li>c) November 2020 Operating Statement &amp; Balance Sheet – Report No. 2020 Capital Expenditures through November 30, 2020 – Report No. 910/20</li> </ul>	rt No. 912/20 ort No. 911/20	5 6-12 13-14
	THAT items b-d be received for information.		
		Moved by: Seconded by:	_
6.	Communications a) Letter from Minister of Public Safety dated December 2, 2020		15-19
7.	Enquiries by Board		
8.	Scheduling of Meetings Friday, January 29, 2021 – Regular Board Meeting 8:15 AM Friday, February 26, 2021 – Regular Board Meeting 8:15 AM Friday, March 26, 2021 – Regular Board Meeting 8:15 AM		
	Executive Session (property, personnel, legal issues only) THAT the Board move into Executive Session for property matters.	Moved by:	20
10.	Adjournment	Seconded by:	



#### MINUTES

# Buffalo and Fort Erie Public Bridge Authority Regular Board Meeting Via Zoom Video Conference December 17, 2020

#### 1. CALL TO ORDER

The Chair called the meeting to order at 8:17 AM

#### 2. ROLL CALL

#### Present

- K. Manning, Chair
- T. Clutterbuck
- F. Cirillo
- L. Holloway
- T. Masiello
- I. Meharry
- J. Persico
- P. Robson
- M. Russo
- D. Zimmerman

#### Staff Present

- R. Rienas, General Manager
- T. Boyle, Chief Operating Officer
- K. Costa, Chief Financial Officer
- K. Kaiser, Executive Assistant

#### Also Present

- D. Gonser, Lumsden & McCormick item 5a only
- S. Hennard, Lumsden & McCormick item 5a only

#### 3. DISCLOSURE OF CONFLICTS OF INTEREST

None

#### 4. ADOPTION OF MINUTES

 Moved by T. Masiello Seconded by P. Robson

"THAT the minutes of the regular Board Meeting held on November 20, 2020, be approved as presented."

CARRIED

#### 5. NEW BUSINESS

a) Pre-Audit Planning Meeting with Lumsden & McCormick Donna Gonser and Seth Hennard reviewed the scope of work for the upcoming 2020 financial audit and preparation of the financial statements.

- b) November 2020 Traffic Statistics Report No. 910/20
- c) November 2020 Operating & Financial Statements Report No. 912/20
- d) Capital Expenditures through November 30, 2020 Report No. 911/20 Moved by D. Zimmerman Seconded by T. Masiello

"THAT items b-d be received for information."

CARRIED

#### 6. COMMUNICATIONS

a) Letter from Minister of Public Safety dated December 2, 2020

#### 7. ENQUIRIES BY BOARD

None

#### 8. SCHEDULING OF MEETINGS

Friday, January 29, 2021 – Regular Board Meeting – 8:15 AM Friday, February 26, 2021 – Regular Board Meeting – 8:15 AM Friday, March 26, 2021 – Regular Board Meeting – 8:15 AM

#### 9. EXECUTIVE SESSION

Moved by T. Masiello Seconded by I. Meharry

"THAT the meeting move into Executive Session for property matters."

CARRIED

Meeting In Regular Session called to order by the Chairman at 9:23 AM.

#### 10. ADJOURNMENT

Moved by T. Masiello Seconded by J. Persico

"THAT the meeting be adjourned at 9:23 AM."

CARRIED



# Executive Session Agenda April 24, 2020 Regular Meeting of the Board

1.	Ex	ecutive Session Minutes	Pages		
	a)	Regular Board Meeting – March 27, 2020 THAT the Board approve the minutes of the Regular Board Meeting Executive Session dated March 27, 2020.	1-2		
		Moved by: Seconded by:			
2.	New Business				
	a) Proposed Sale of Authority Property (Garrison Rd & Central Ave) — Report No. 870/20  THAT the Board approve the draft agreement of purchase and sale for property on the west side of Central Ave, north of Garrison Road to Compass Heights Developments.				
	THAT Staff be authorized to execute the agreement in substantially the form presented.				
		Moved bySeconded by			
	b) <u>Duty Free Rent Deferral Agreements due to Covid-19 – Report No. 869/20</u> THAT the rent deferral agreements negotiated with Peace Bridge Duty Free and Duty Free Americas be approved.				
		Moved bySeconded by			



# Executive Session Agenda December 17, 2020 Regular Meeting of the Board

Pages

1. New Business

a) Adoption of Minutes
a) Regular Board Meeting Executive Session – November 20, 2020
THAT the minutes of the Regular Board Meeting Executive Session held on November 20, 2020, be approved as presented.

Moved by \_\_\_\_\_\_
Seconded by \_\_\_\_\_

b) Peace Bridge Duty Free Update

Verbal



### Executive Session Agenda January 29, 2021 Regular Meeting of the Board

THE T	ETIMES.		
			<u>Pages</u>
1.	Ne	w Business	
		Adoption of Minutes  a) Regular Board Meeting Executive Session – December 17, 2020  THAT the minutes of the Regular Board Meeting Executive Session held on December 17, 2020, be approved as presented.	
		Moved bySeconded by	=r +0
		<u>Cybersecurity Update - Report No. 918/21</u> THAT this Report be received for information.	3-11
		Moved by Seconded by	=
	c)	Peace Bridge Duty Free Update	Verbal



## Special Meeting Executive Session of the Board Agenda

October 25, 2021

3:00 PM

P	3	n	0	2
1	$\underline{a}$	м	6	2

- 1. Call to Order
- 2. Roll Call
- 3. Disclosure of Conflicts of Interest
- 4. Executive Session (property, personnel, legal issues only)
  THAT the Board move into Executive Session for legal matters.

Moved by\_\_\_\_\_\_ Seconded by\_\_\_\_\_

- 5. New Business
  - a) Peace Bridge Duty Free (Canada) Discussion

Verbal

6. Adjournment

Applicant

#### PEACE BRIDGE DUTY FREE INC.

Respondent

## ONTARIO SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

#### **AFFIDAVIT OF RON RIENAS**

(Sworn 17 July 2023)

#### **GOWLING WLG (CANADA) LLP**

Barristers & Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 Toronto ON M5X 1G5

#### Christopher Stanek (LSO# 45127K)

Tel: 416-862-4369 Fax: 416-862-7661

E. Patrick Shea, KC (LSO# 39655K)

Tel: 416-369-7399 Fax: 416-862-7661

Lawyers for Buffalo and Fort Erie Public Bridge Authority

#### **ROYAL BANK OF CANADA**

Applicant

-and-

PEACE BRIDGE DUTY FREE INC.

Respondent

## ONTARIO SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

#### MOTION RECORD

#### **GOWLING WLG (CANADA) LLP**

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