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

Negotiation of subsection 18.07 of the Lease

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

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

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

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

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

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

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

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

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

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

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

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

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

c. The reduced Base Rent would be abated, not deferred, as the Authority already had a mechanism in the Lease for percentage rent recovery.

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

Communication with the Authority following the outbreak of Covid-19

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

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

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

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

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

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

are also aware that the Lease does not provide for any rent abatement due to a decline in sales." Ms. Costa's letter completely contradicted her representations to me during our July 18th, 2016 meeting and the acknowledgement in her July 19th, 2016 email (Exhibit "C") that subsection 18.07 of the Lease would apply in the event of changes in governmental regulations that materially impact Duty Free's business. Attached as **Exhibit "E"** is a copy of the Authority's April 3rd, 2020 letter.

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

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

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

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

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

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

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

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

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

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

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

29. Effectively, if Duty Free were to pay the minimum Base Rent, plus costs of sale, plus payment to RBC, Duty Free would have incurred $22,956,053 in costs and expenses to generate $12,837,041 in Gross Sales from April 2020 to January 2023. In this calculation, the costs exceed the revenue by $10,119,013 (excluding the impact of government rent subsidies).

30. Based on the formula of Base Rent being 20% of Gross Sales, which was the stated premise in the Lease behind how Base Rent was set in the Lease, Duty Free's Base Rent for the period from April 2020 to January 2023 would be $2,567,408 (which sum has been paid in full). In this calculation, the costs still exceed revenue by $1,353,099 (excluding the impact of government rent subsidies).

31. It must be emphasized that Duty Free must take into account its considerable prospective tax obligation that will result from the final change in its expenses resulting from adjusting the minimum Base Rent over this period to reflect the actual rent payable. If Base Rent is reduced by about 50% as proposed by the authority, it is estimated the tax liability to be accrued could be approximately $1 million plus. Any funds on hand are set aside for this tax liability, as well as contingencies as payment of Normal Rent may result in a financial loss

32. Duty Free has paid Normal Rent based on Base Rent payments of 20% of Gross Sales. That is the very most that Duty Free has been able to pay since the outbreak of Covid-19 and the associated changes in Applicable Laws that have negatively affected Duty Free's business. Duty Free made these payments in good faith as the maximum it is reasonably able to pay. It is simply not possible for Duty Free to pay Base Rent of more than 20% of Gross Sales and survive as a going concern while it is impacted by the changes in Applicable Laws and in the absence of any meaningful government assistance.

33. Having said that, it must also be noted that as soon as Duty Free's indebtedness to its secured creditor RBC is retired in or about January 2027, and any income tax liability related to a resolution of the rent issue is paid current, it will result in a materially greater ability of Duty Free to meet its other obligations.

SWORN (OR AFFIRMED) remotely by way of video conference by Jim Pearce stated as being located in the Town of Fort Erie, in the Province of Ontario, before Brendan stated as being in the City of Toronto, in the Province of Ontario on this 13th day of February, 2023, in accordance with O.Reg. 431/20, Administering the Oath or Declaration remotely.	)	**JIM PEARCE**
A Commissioner for Taking Affidavits, **Brendan Jones**		

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

____

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

Clarity items

2.01 (ss) Tenant's Gross Sales - as an example, hotel reservations for Erie PA are a great marketing draw and currently we don't process but may be a possibility

- add Travel Services - "Ticket Sales and Travel Services"

(iii) to clarify so not to include non-sales or service items such as investment income, etc
- add "all other receipts and receivables from sales or services (including interest, installment and finance charges) from business conducted in or from the Lease Premises…

4.03 Percentage Rent
- for clarity, we just need wording to tie in the Monthly Payments to the Annual Reconciliation and the Example shown

- suggested - "the calculation of Accumulated YTD Percentage Rent exceeds the Accumulated YTD Monthly Base rent for the same period, then the Tenant will pay…..

Art 5 Financial Information - the traffic counts are extremely important to our marketing and decision-making
- add - continue to receive the daily bridge traffic counts

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

5.06 Confidentiality
- add - "(other than the Landlord's directors, officers, employees or professional advisors who have a need to know such financial information, all of whom shall be obligated to keep such information confidential)"

yes ok Schedule "B" - is this for a map of the Leased Premises ?

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

Schedule "E" - would like deleted - will have a proper legal document sent to PBA asap and any future changes we acknowledge we will get consent and are obligated to report
- concern is this shouldn't be part of the lease as others (outside parties) may seek or need access to the lease and this may become more public that we desire

Typo's - 8.02 - no "Art 7.5"
14.01 - "13.02" s/b "14.02"

Jim Pearce

Explanations

6.04 (f) - exclude normal wages + costs
~~support/documentation of costs~~

2

15.04 Roof Rights - add subject to the Tenant's right of quiet enjoyment

15.03
what's the plan.

?

15.05 - Solar Panels - yes agree but delete second sentence

- something not covered
- percentage Rent not > Dom

Business disruption due to bridge closure -

In the event there is a closure or shutdown of the bridge due to any cause that such bridge closure lasts longer than 24 hours, the rent payable by the tenant shall be abated. The rent abatement only applies to the extent that the loss caused by the bridge closure is not covered by the tenant's business interruption insurance. For the purpose of this provision the abatement in rent is to be calculated on the per diem rate of base rent payable during the period of closure (i.e. $4,000,000 / 365 days).

Agree not part of the lease but would like to have a letter indicating we agree to discuss the following:

- possible sharing the subsidizing of the rents payable by the Food Concessions

- insurance clauses - have the PBA's and PBDF's insurers review and propose the most efficient way to address the insurance related clauses

- in the event that during the Term and should it be necessary, that issues arise (something catastrophic) beyond the Tenant's control (including but not limited to vehicle traffic volume declines, bridge construction, changes in government regulations, etc.) that materially impact the Tenant's duty free sales, then the Landlord and the Tenant, both acting reasonably and in good faith, agree to discuss the lease (including but not limited to the rent terms, term, etc.).

18.07
ok

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

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

- 95% is for clarity - just to clean up the language
- may be a few other points that hopefully we can meet somewhere in the middle on -want to get this done - will double back today/tonight/tomorrow whatever is needed
- get the "final" notes to your lawyer and Greg is back mid-week to wrap-up

2.01 (ss) Tenant's Gross Sales ADD TRAVEL SERVICES
- expand Ticket Sales to include other marketing initiatives, for example booking hotel reservations - working very well for capturing traffic

(iii) to clarify, and as discussed, so not to include items such as investment income, ... -
- add "all other receipts and receivables from sales or services (including interest, installment and finance charges) from business conducted in or from the Lease Premises..."

4.03 Percentage Rent - - for clarity, we just need wording to tie in the Monthly Payments to the Annual Reconciliation and the Example shown
- we did discuss using Accumulated YTD Sales in the calculation of the Monthly Amounts paid but it didn't find it's way into the draft lease

Art 5 Financial Information - - add - request we continue to receive the daily bridge traffic counts as they are extremely important to our decision-making.

5.05 Audit - some is our lawyer's notes & while shouldn't ever occur, would like some language concerning the appointed auditor

5.06 expand on directors - add "(other than the Landlord's directors, officers, employees or professional advisors who have a need to know such financial information, all of whom shall be obligated to keep such information confidential

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

Schedule "D" - in addition to our proposal, should we also add a copy of the RFP ?

Schedule "E" - the ownership of the holding companies is thought to be confidential to the corporation
- will get consent and report as in the lease - not getting away from that
- for outside parties who seek or need a copy of the lease, we want to be able to decide what "Corporate" info they receive

---

6.04 (f) tighten up
- while acknowledging we will receive an estimate for the next lease year, is there a schedule or estimate we could receive now
- we are assuming that except for items specified in the clause, there wouldn't be anything new except of course any direct third party costs to passed to us
- but for supervision, administration or management, would this be related to addressing issues that arise from the Lease and not normal Landlord salaries and costs ?

15.04 Roof Rights - what all is involved with this clause and what kinds of Roof-Top Equipment are thought of
- agree in concept but just not sure what we are agreeing to and if it's reasonable for us
- in the essence of time, should we agree to work on a separate agreement for this
- concerned about the affects whatever this equipment may be, on areas such as quiet enjoyment, frequency of access, impact on our signage, ...

- competing provisions that are basic to any lease - Tenant's right of quiet enjoyment and any Landlord request

15.05 -Solar Panels - delete second sentence - your lawyer seems to be giving us something here we don't need

Business Interruption clause - two things here - somewhat a feel good for us and really the whole lease & and we we exist is based on us having traffic

At the end of the year, the Annual Percentage Rent most likely would be the total amount paid. So if we were shut down for a couple of days but Annual Percentage Rent exceed Annual Base Rent, then this is a moot point ?

We would like the following added as some protection for us. To clarify, it would only apply to where our insurance doesn't cover and in reality would only apply if Annual Percentage Rent doesn't exceed Annual Base Rent.

This type of construction on the bridge is somewhat new to everyonme

Areas agree to discuss - while not part of the lease, would like to have a letter indicating we agree to discuss the following -

- possible sharing the subsidizing of the rents payable by the Food Concessions

- Insurance clauses - have the PBA's and PBDF's insurers review and propose the most efficient way to address the insurance related clauses

- In the event that during the Term, there are issues that arise beyond the Tenant's control (including but not limited to vehicle traffic volume declines, bridge construction, changes in government regulations, etc.) that materially impact the Tenant's duty free sales, then the Landlord and the Tenant, both acting reasonably and in good faith, agree to discuss the lease (including but not limited to the rent terms, term, etc.).

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

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

Jim Pearce

From: Karen L. Costa [klc@peacebridge.com]
Sent: Tuesday, July 19, 2016 11:47 AM
To: JIM PEARCE;jimp9999@gmail.com
Cc: Karen L. Costa;Ron Rienas
Subject: PBDF Lease
Importance: High
Attachments: Duty Free Shop Building Lease-EDC_LAW-1389402-v18B.PDF; Duty Free Shop Building Lease-EDC_LAW-1389402-v18.pdf

Jim talk to Karen
Ben " " Graham

Hi Jim –

Please find attached a redlined (18B) copy and a clean copy of the Lease (18).

We reviewed the additional requests from yesterday and have accommodated the majority of your requests. There are a few, upon advice from counsel, that we will not consider.

- 15.04 – Roof Rights and quiet enjoyment. – 15.03? There is a quiet enjoyment clause in the lease. That is sufficient.
- Schedule D – it is not appropriate to include the actual RFP as an attachment to the lease. Your Proposal is included as a reference to OK the lease as the representations made in the Proposal were the basis for your group being selected as the successful Proponent. Including your Proposal as a Schedule to the lease provides assurance that the representations will be carried out.
- Business disruption due to bridge closure – the lease requires you to insure for the risk of business interruption (Section XI). Your broker should ensure you have the proper coverage for this risk. We will not include any rent abatement for an insurable risk.

un-insurable risk

You have also requested we have further discussions on the following topics:

1. Possible sharing the subsidizing of the rents payable by the food concessions – their gross sales are to be included in the calculation of Tenant Gross Sales as defined in Section 2.01 (ss)
2. Insurance clauses – we have agreed to have our insurance broker meet with you insurance broker so that they can help determine the proper insurance is carried. All insurance coverages will comply to the lease Section XI as it is currently written.
3. Lease discussion in the event of a catastrophic event – we reviewed the examples listed as catastrophic. We agree that changes in governmental regulations could materially impact the business and have added section 18.07 to the lease. All other events listed were are routine events at a border crossing.

Jim, we very much would like to get this wrapped up in the next few days so that the motion to approve the lease can be brought to our July board meeting. This will ensure that we are complying with the 30 day negotiation period as defined in the RFP. The 30 day period ends this week. In your proposal your group clearly indicated that you accepted the form of lease in the RFP as is with no changes. This fact was considered in the scoring of your proposal. The PBA has acted in good faith in considering your requests and has agreed to the vast majority of them. We consider our negotiations complete and the attached lease to be the final version.

I hope that your group can agree to execute the lease so that we can move forward for another 20 years.

Thanks!
Karen

Karen L. Costa, CPA
Finance Manager
Buffalo & Fort Erie Public Bridge Authority

100 Queen Street, Fort Erie, ON L2A 3S6 | 1 Peace Bridge Plaza, Buffalo, NY 14213
klc@peacebridge.com |T 905-994-3679| T 716-884-8638| F 905-871-9940 | F 716-884-2089

For up to the hour traffic conditions, visit **mobile.peacebridge.com**

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

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

RE: Rent

Greg O'Hara

Fri 4/3/2020 11:46 AM

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

Cc:Jim Pearce <JimP@dutyfree.ca>;

Ron,

Your response is very disappointing.

As you know, the government of Canada, the Province of Ontario, the US Government and the NY State government have introduced various regulations and decrees ranging from travel restrictions, border crossing restrictions and restrictions on our ability to operate as a non-essential business. These changes in applicable law have had and will continue to have "material adverse effect" on our operations.

Article 18.07 of the lease expressly provides that "in the event an anticipated introduction of or a change in 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 the Applicable Laws to the Lease".

Article 18.07 was included in the lease as we all recognized that the duty free shop is heavily dependent on the flow of traffic over the border and that such a flow could be affected by changes in law.

These are things that need to be discussed so that we can find a way forward. The store has no ability to generate revenue and that is expected to be the case for at least the coming two months and perhaps longer.

I look forward to discussing this issue with you.

Regards, Greg

From: Jim Pearce <JimP@dutyfree.ca>
Sent: April-03-20 11:15 AM
To: Greg O'Hara <gohara@dutyfree.ca>
Subject: Fw: Rent

Ron

From: Ron Rienas <rr@peacebridge.com>
Sent: Wednesday, April 1, 2020 3:13 PM
To: Greg O'Hara
Cc: Jim Pearce
Subject: Re: Rent

Greg,

We have reviewed the lease with our lawyers. There is no provision for delay or abatement of rent so we require payment in accordance with the terms of the lease.

Please understand that we are in similar circumstances and are also required to fulfil our obligations.

Ron
Sent from my iPhone

> On Apr 1, 2020, at 1:19 PM, Greg O'Hara <gohara@dutyfree.ca> wrote:
>
> Hi Ron,
>
> Further to our telephone conversation last Thursday, March 26th, have you made a decision regarding my request to delay our rent payment until our company and the Peace Bridge can work out a way forward? I was hoping to hear from you before the rent was due (today).
>
> Regards, Greg

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

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

1865

CROSSING PATHS ★ BUILDING FUTURES
THE PEACE BRIDGE

April 3, 2020

Greg O'Hara
1 Peace Bridge
Fort Erie, ON L2A 5N

Re: Peace Bridge Duty Free Minimum Rent Due

Dear Greg:

As per Article IV of the Lease between the Buffalo and Fort Erie Public Bridge Authority and the Peace Bridge Duty Free, rent is due on the first of the month. As of this morning, we have not received your April rent payment.

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

Your immediate attention to this matter is greatly appreciated.

Sincerely,

Karen L. Costa

Karen L. Costa
Chief Financial Officer
Buffalo and Fort Erie Public Bridge Authority

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

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

1867

PEACE BRIDGE

DUTY FREE

April 3, 2020

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

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

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

Board of Directors

Buffalo & Fort Erie Public Bridge Authority

Dear Directors:

We are writing to formally request a telephone conference meeting regarding the situation that has developed as a result of COVID-19 and the government measures that have been implemented on both sides of the border to address the situation.

This meeting is being requested on the basis that our operations have been deeply affected by the closure of the boarder to non-essential crossings. The closure of the borders to non-essential crossings has undermined our ability to generate revenue from the duty-free shop.

As a result of these measures and consistent with Government of Canada and Government of Ontario guidance, we closed the shop, effective March 21, 2020, so as to avoid the spread of COVID-19. We continue to have a staff member onsite to ensure that the building remains secure.

We request a meeting to discuss interim arrangements that can be put in place to address this unprecedented situation. We kindly request that this meeting occur as soon as possible so that we can have clarity, at least in the short-term, as to how we may best be able to address the fact that we have no ability to generate revenue from a business that is dependent upon the free flow of traffic across the border.

We have raised this issue with the Bridge Authority Senior Management but they have not responded to our request to explore how we might be able to address this unprecedented situation.

We kindly look forward to a call being scheduled as soon as possible. Please note that we have not paid the rent that was otherwise due pursuant to the lease on April 1, 2020. Until we can have a discussion to explore whether an interim solution can be put in place, we respectfully request that you not declare this non-payment a default so as to allow for a discussion to take place.

Also, we note that section 18.07 of the lease provides that where there is a change in Applicable Law that causes a material adverse effect on our business operations as the leased premises, the Bridge Authority is to consult with us to discuss the impact of such change to the lease. This provision was included in the lease because we all recognized that the lease and the viability of the duty free shop is entirely dependent on the manner in which the border is being regulated and

that any changes relating to crossings could have a material adverse effect on the duty free shop that may require adjustments to the lease.

Again, we look forward to hearing from you as soon as possible to schedule a telephone conference.

Regards,

Gregory G. O'Hara

President

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

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

CROSSING PATHS ★ BUILDING FUTURES
THE PEACE BRIDGE

April 6, 2020

Mr. Gregory G. O'Hara
President
Peace Bridge Duty Free
P.O. Box 339
Peace Bridge Plaza
Fort Erie, Ontario
L2A 5N1

Dear Mr. O'Hara:

Thank you for your April 3, 2020 letter.

There is no question that the current Covid-19 crisis is impacting all businesses and landlord-tenant relationships. I understand your loss of revenue concerns as the Peace Bridge Authority is also experiencing significant revenue losses within the context of our continuing financial obligations.

I agree that you should have a discussion with Authority management related to how rent obligations can continue to be fulfilled while recognizing the present circumstances. The Board has been apprised. Individual members will not be engaging with you on this issue. The Authority General Manager will be contacting you to discuss this issue.

This letter is without prejudice or waiver of any rights of either the Peace Bridge Authority or PBDF under the lease.

Yours truly,

Ken Manning

Ken Manning
Chairman

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

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

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

Greg O'Hara

From: Ron Rienas <rr@peacebridge.com>
Sent: May-06-20 12:47 PM
To: Greg O'Hara
Subject: RE: Peace Bridge - PBDF

Thanks Greg.

I don't disagree with you and recognize that we will in all likelihood have additional discussions as the full impact of the pandemic and post pandemic plays out.

Ron Rienas
General Manager
Buffalo & Fort Erie Public Bridge Authority

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

From: Greg O'Hara <gohara@dutyfree.ca>
Sent: Wednesday, May 6, 2020 12:31 PM
To: Ron Rienas <rr@peacebridge.com>
Subject:

Ron,

Thanks for your email. Attached is a signed copy of rent deferral arrangement.

As you know, we do not believe that this arrangement will address the situation as it develops in the coming months and even after the border officially opens to non-essential traffic. In our view, this is, at best, an arrangement that will allow for further discussion and consideration of how we can work together until things return to some semblance of normal.

Also, we have been following information regarding available government supports. Overall, except for the Wage Subsidy, our business has fallen through the cracks with respect to these programs.

Our primary issue (and an issue that all duty free shops are facing) is one of revenue in light of official traffic restrictions/advisories and, once those are lifted, the expected extraordinary low volume of cross-border traffic. The fundamentals of the business have changed because of COV-19 and we are of the view that there are lease terms to be assessed to determine if adjustments are necessary as a result.

Regards, Greg

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

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

EXHIBIT I

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

Total Apr2020 to Jan2023 Summary

	Base rent version
Sales	**12,837,041**
Costs&Expenses	**(11,287,190)**
Add'l rent	**(335,541)**
Base rent	**(11,333,322)**
Net loss	**(10,119,013)**

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

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

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

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

Applicant Respondent

Email address of recipient: See Service List

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

SUPPLEMENTAL AFFIDAVIT OF JIM PEARCE

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Barristers & Solicitors
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Alexandra Teodorescu (LSO #63889D)
Email: ateodorescu@blaney.com

Lawyers for the Respondent

TAB 19

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

PEACE BRIDGE DUTY FREE INC.

Respondent

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

AFFIDAVIT OF RON RIENAS
(Sworn 1 March 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 have personal knowledge of the matters herein deposed save and except where I rely on information provided to me by others, in which cases I identify the source of that information and verily believe it to be true.

2. I have reviewed the Affidavit of Jim Pearce sworn 13 February 2023 (the "**Pearce 13 Feb 23 Affidavit**") and am swearing this Affidavit in response.

3. At the core of the dispute between the Authority and Peace Bridge Duty Free Inc. ("**PBDF"**) is whether Art 18.07 of the Lease dated 28 July 2016 (the "**Lease**") requires that the Authority amend the

provisions of the Lease that requires that PBDF pay minimum rent as a result of the impact that the Government's legislative response to COVID had on PBDF's business

4. The minimum rent provided for in the Lease was an important component of the offer that PBDF made to the Authority when it responded to the RFP that resulted in the Authority entering into the Lease with PBDF. Were it not for the minimum rent, the Authority might very well have chosen a different duty free operator. There were other responses to the RFP and offered lease terms comparable to those offered by PBDF. The main difference between those responses and that of PBDF was the offer by PBDF to pay minimum rent. In the course of its own financial planning, the Authority has relied on PBDF paying the minimum rent required by the Lease.

5. Much of the information provided by Mr. Pearce in his Affidavit relates to his personal ex post factor recollection of the negotiations that took place during the Summer of 2016 and are intended to support PBDF's current interpretation of Art 18.07. The Lease includes an "entire agreement" clause—Art 2.04—for exactly this reason—to prevent either party from introducing personal recollections of the back-and-forth the occurred during negotiations to interpret the Lease.

6. From the Authority's perspective, Art 18.07 says that in the event of any change in the Applicable Laws that result in a material Adverse Effect on PBDF's business or operations the Authority will consult with PBDF to discuss the impact of the change in the Applicable Law to the Lease. The Authority did not agree in Art 18.07—or anywhere else in the Lease—to provide PBDF with a rent abatement or to adjust the minimum rent payable by PDBF under the Lease based on any change in the Applicable Laws.

7. The Authority has complied with its obligations under Art 18.07. Based on the Government's legislative response to COVID and the effect that had on PBDF's business, the Authority: (a) signed the First Rent Deferral; and (b) considered the (limited) financial information provided by PBDF and made an offer to

PBDF to share the impact of COVID. PBDF: (a) unilaterally and over the objection of the Authority stopped paying the minimum rent required by the Lease; (b) refused to provide the Authority with a counter-proposal backed by a business plan; and (c) in an attempt to reduce the rent that it owes, is pursuing a damage claim based on allegation that the Authority acted in bad faith and breached the Lease.

8. With respect to the assertion in paragraphs 5 and 6 of the Pearce 13 Feb 23 Affidavit, I cannot speak to what PBDF's specific concerns were in the Spring of 2016. However, PBDF signed the Lease and the Lease contemplates that PBDF will pay minimum rent of $4MM per year—$333,333 per month. There are no provisions in the Lease to which PBDF can point that require the Authority to agree to reduce or abate the rent payable by PBDF.

9. With respect to the assertions in paragraph 7 of the Pearce 13 Feb 23 Affidavit, there is no dispute that, during the negotiation of the Lease, PBDF requested that the Lease include a rent reduction should a catastrophic event occur that materially impacted PBDF's sales. There is also no dispute that: (a) the Authority rejected PBDF's request that the Lease contemplate any rent reduction(s); and (b) the parties agreed to Articles 18.07 and 18.08, neither of which contemplates PBDF having the right to a rent abatement.

10. I have spoken to Karen Costa. She has advised me that her recollection of the meeting that took place on 18 July 2016 referred to in paragraphs 7 through 10 of the Pearce 13 Feb 23 Affidavit differs from that of Mr. Pearce. Ms Costa recollects that Mr. Pearce was told the Authority was not prepared to agree to commit to giving PBDF a rent abatement.

11. With respect to the assertions in paragraphs 8, 9 and 18 of the Pearce 13 Feb 23 Affidavit to the effect that Ms Costa indicated to Mr. Pearce that the Authority did not object to the need for a rent abatement or would provide an abatement, I am advised by Ms Costa, a verily believe, that she was clear with Mr.

Pearce that the Authority would not agree to include provisions in the Lease that would require that the Authority provide a rent abatement.

12. With respect to the assertions in paragraph 8 of the Pearce 13 Feb 23 Affidavit and the Authority's insurance, I am advised by Ms Costa, and verily believe, that she does not recall discussing the Authority's business interruption insurance with Mr. Pearce, but at some point there was discussion around the fact that PBDF should ensure that its own business interruption insurance provided coverage for any issues with which PBDF was concerned that might impact its inability to pay the minimum rent provided for in the Lease. This is reflected in the e-mail attached as Exhibit C to the Pearce 13 Feb 23 Affidavit. There has been no information from PBDF with respect to its business interruption insurance.

13. With respect to the assertion in paragraph 11 of the Pearce 13 Feb 23 Affidavit as to why Art 18.07 does not provide for a rent abatement, the reason Art 18.07 does not say the rent payable by PBDF under the Lease will be abated is the Authority did not agree to provide PBDF with a rent abatement.

14. The assertions in paragraphs 12 and 13 of the Pearce 13 Feb 23 Affidavit as to what Art 18.07 was intended to provide runs contrary to not only the plain reading of Art 18.07, but also what was negotiated in the First Rent Deferral and the (unsigned) Second Rent Deferral.

15. With respect to the assertion in paragraphs 16 and 18 of the Pearce 13 Feb 23 Affidavit that there were assurances that Art 18.07 would be applied to adjust the minimum rent payable under the Lease, there were no such assurances given to PDBF. The Authority has been clear with PBDF that the Lease does not require that the Authority agree to any rent abatement.

16. I note that the following e-mail exchange took place between Mr. Pearce and Ms Costa in October of 2016:

-----Original Message-----
From: Jim Pearce <jimp@dutyfree.ca>
Sent: Monday, October 17, 2016 3:44 PM
To: Karen L. Costa <klc@peacebridge.com>
Subject: RE: PBDF

Hi yes that works - thanks

-----Original Message-----
From: Karen L. Costa [mailto:klc@peacebridge.com]
Sent: Monday, October 17, 2016 2:40 PM
To: Jim Pearce
Cc: Karen L. Costa
Subject: RE: PBDF

Hi Jim -

I added my template as PBA tab. Based on the Lease (section 4.02 and 4.03), the $4,000,000 is the minimum rent due in 12 monthly installments ($333,333)- regardless of sales level. In the month that annual sales exceed $20,000,000 then the percentage rent kicks in. There is no provision in the lease to reduce the minimum rent due for any reason.

Please review the attached and let me know if you have any questions or concerns.

Thanks!
Karen

-----Original Message-----
From: Jim Pearce [mailto:jimp@dutyfree.ca]
Sent: Friday, October 14, 2016 4:17 PM
To: Karen L. Costa <klc@peacebridge.com>
Subject: PBDF

Hi - I took the liberty of creating a template for the various rent calculations for the new lease - please look it over or if you already have a model, that's fine. I attempted to track YTD Sales/Rent Due and YTD Rent Paid.

Also, we are still interested in reviewing the marketing & promotional ideas from the other RFP bidders. Please let us know some dates that are convenient.

Have a good "Bills" & "Jays" weekend,
Jim

17. With respect to my statement referred to in paragraph 21 of the Pearce 13 Feb 23 Affidavit, the Authority recognized, in May of 2020 ,that further discussions would likely be necessary to address how PBDF would repay what it owed to the Authority. As noted, the Authority ultimately offered to forgive 50% of

the arrears and to adjust minimum rent for a number of years, but PBDF rejected this offer. PBDF requested a 75%-100% rent abatement and that the Lease be amended to remove the requirement that PBDF pay minimum rent. This was not acceptable to the Authority from a business perspective.

18. The Authority tracks traffic over the Peace Bridge 'in real time'. The volume of traffic over the Peace Bridge in January and February of 2023 was about 86% of the volume for the same months of 2019 and 2020. The Authority considers this variance to be "normal" and I believe it is primarily reflective of issues such as the economy, currency exchange, weather, etc. as opposed to any lingering effects of the Government's legislative response to COVID. As noted in Schedule D to the Lease, when PBDF responded to the RFP in 2016, traffic over the Peace Bridge had been declining year-over-year. .

19. I note that: (a) throughout COVID in the course of claiming government financial assistance, PBDF represented that it was obliged to pay minimum rent of $333,333 per month; (b) PBDF's audited financial statements for 2020 and 2021, copies of which are attached as Exhibit A and B, show PBDF generated a loss based on paying rent of $4MM and indicate that PBDF is in default of its obligations under the Lease.

20. If PBDF and the Authority cannot come to a mutually-acceptable agreement with respect to the rent that PBDF owes and PBDF cannot pay the rent for which it has contracted under the Lease, PBDF will have to vacate so that the space occupied by the PBDF can be leased to another duty free store operator.

SWORN BEFORE ME remotely at the City of Toronto and the City of Port Colborne, in the Province of Ontario, this 1st day of March, 2023	)	
	)	
A COMMISSIONER FOR TAKING AFFIDAVITS PSHEA	)	**RON RIENAS**

This is Exhibit "A" referred to in the

Affidavit of Ron Rienas

Sworn before me, this 1st day of March, 2023

A COMMISSIONER FOR TAKING AFFIDAVITS

Grant Thornton

Financial Statements

Peace Bridge Duty Free Inc.

December 31, 2020

Peace Bridge Duty Free Inc.

Contents

Grant Thornton

Independent Auditor's Report

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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 ethical 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 draw 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 material 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 overall 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.

Grant Thornton LLP

Port Colborne, Canada
April 21, 2021

Chartered Professional Accountants
Licensed Public Accountants

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	4,000,000	3,945,764
Rent - Hamilton International Airport	56,084	127,064
Wages and benefits	1,301,745	2,427,599
Marketing	54,117	533,901
Insurance	292,868	266,310
Building maintenance	45,785	156,087
Utilities	73,978	121,682
Store supplies	20,941	104,778
Commercial taxes	50,268	51,318
Communications	17,175	19,801
	5,912,961	7,754,304
Administrative expenses		
Automobile	4,835	1,911
Collection fees	54,974	287,899
Computer	24,405	62,493
Miscellaneous	37,640	106,861
Office	5,051	16,307
Professional fees	61,651	109,959
Travel and promotion	14,827	29,413
	203,383	614,843
Amortization	562,722	373,887
	6,679,066	8,743,034
(Loss) income before other income (item) and income taxes (recovery)	(5,213,723)	2,347,282
Capital lease and lease line of credit interest	(204,785)	(208,261)
Government subsidies (Note 15)	543,585	-
Other income	69,522	177,455
(Loss) income before income taxes (recovery)	(4,805,401)	2,316,476
Income taxes (recovery) (Note 4)		
Income taxes	(1,136,291)	520,466
Future	(37,900)	64,300
	(1,174,191)	584,766
Net (loss) income	$ (3,631,210)	$ 1,731,710

See accompanying notes to the financial statements.

Peace Bridge Duty Free Inc.
Statement of Retained Earnings

Year ended December 31		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**	$	5,505,753

See accompanying notes to the financial statements.

Peace Bridge Duty Free Inc.
Balance Sheet

December 31	2020	2019
Assets		
Current		
Cash and cash equivalents (Note 5)	$ 90,158	$ 2,178,754
Receivables (Note 6)	734,128	672,103
Income taxes recoverable	1,262,120	236,086
Inventory (Note 7)	1,724,768	1,900,784
Prepaid expenses and deposits	88,291	126,962
	3,899,465	5,114,689
Long-term		
Lease security deposit	50,000	50,000
Equipment and leasehold improvements (Note 8)	6,248,270	6,712,712
Future income taxes	168,000	165,500
	$ 10,365,735	$ 12,042,901
Liabilities		
Current		
Bank indebtedness (Note 9)	$ 210,000	$ -
Payables and accruals (Note 10)	3,771,057	1,626,703
Current portion of capital lease obligation (Note 10)	4,473,735	624,703
	8,454,792	2,251,406
Long-term		
Capital lease obligation (Note 11)	-	4,053,942
Future income taxes	175,400	210,800
	8,630,192	6,516,148
Shareholders' equity		
Capital stock		
Issued		
4 common shares	21,000	21,000
Retained earnings	1,714,543	5,505,753
	1,735,543	5,526,753
	$ 10,365,735	$ 12,042,901

Commitments (Note 12)

COVID-19 pandemic and going concern uncertainty (Note 2)

On behalf of the board

____________________ Director ____________________ Director

See accompanying notes to the financial statements.

Peace Bridge Duty Free Inc.
Statement of Cash Flows

Year ended December 31	2020	2019
Increase (decrease) in cash and cash equivalents (bank indebtedness)		
Operating		
Net (loss) income	$ **(3,631,210)**	$ 1,731,710
Items not affecting cash		
Amortization	**562,722**	373,887
Future income taxes	**(37,900)**	64,300
	(3,106,388)	2,169,897
Change in non-cash working capital items		
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)
	(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)**	$ 2,178,754

(Bank indebtedness) cash and cash equivalents consists of:		
Cash and cash equivalents	$ **90,158**	$ 2,178,754
Bank indebtedness	**(210,000)**	-
	$ **(119,842)**	$ 2,178,754

See accompanying notes to the financial statements.

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
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 net 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.

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

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.

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, it 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.

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	30% Declining balance
Computer software	30% Declining balance
Furniture, fixtures and equipment	20% Declining balance
Leasehold improvements	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.

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
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	**$ (4,805,401)**	$ 2,316,476
Anticipated income tax (recovery)	**$ (1,273,431)**	$ 613,866
Tax effect of the following:		
Effect of small business deduction	**57,500**	(70,000)
Permanent income differences	**39,261**	40,132
Timing income differences	**40,379**	(63,532)
Future income tax	**(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

5. 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

6. 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
	$ 1,724,768	$ 1,900,784

8. Equipment and leasehold improvements

	Cost	Accumulated Amortization	2020 Net Book Value	2019 Net Book 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	6,537,713	599,827	5,937,886	6,328,250
	$ 7,581,071	$ 1,332,801	$ 6,248,270	$ 6,712,712

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).

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
December 31, 2020

9. Credit facilities

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

	2020	2019
Trade	$ **396,562**	$ 1,236,803
Accrued liabilities	**3,356,259**	364,234
Government remittances	**18,236**	25,666
	$ **3,771,057**	$ 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
	$ **-**	$ 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.

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
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 (i) $ 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.

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 financial 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.

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
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	$ **10,654**	$ 10,654
John M. Marsh	**10,654**	10,654
Annrahm Corporation	**10,654**	10,654
Hara Enterprises Limited	**20,654**	10,654
	$ **52,616**	$ 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.

This is Exhibit "B" referred to in the

Affidavit of Ron Rienas

Sworn before me, this 1st day of March, 2023

A COMMISSIONER FOR TAKING AFFIDAVITS

Grant Thornton

Financial Statements

Peace Bridge Duty Free Inc.

December 31, 2021

Peace Bridge Duty Free Inc.

Contents

Grant Thornton

Independent Auditor's Report

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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, 2021, and the statements of loss, deficit, 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, 2021, and the results of its 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 ethical 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 draw your attention to Note 2 to the financial statements, which indicates that the Company incurred a net loss of $ 3,530,032 during the year ended December 31, 2021 and, as of that date, the Company's current liabilities exceed its current assets by $ 7,793,805. 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 cost 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.

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

Independent Auditor's Report (continued)

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 material 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 overall 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.

Grant Thornton LLP

Port Colborne, Canada
April 19, 2022

Chartered Professional Accountants
Licensed Public Accountants

Peace Bridge Duty Free Inc.
Statement of Loss

Year ended December 31	2021	2020
Sales	$ 1,897,214	$ 3,107,805
Cost of sales	912,976	1,642,462
Gross profit	984,238	1,465,343
Store expenses		
Rent - Buffalo and Fort Erie Public Bridge Authority	4,000,000	4,000,000
Rent - Hamilton International Airport	20,027	56,084
Wages and benefits	921,455	1,301,745
Marketing	53,670	54,117
Insurance	186,103	292,868
Building maintenance	31,884	45,785
Utilities	62,291	73,978
Store supplies	48,821	20,941
Commercial taxes	68,715	50,268
Communications	17,249	17,175
	5,410,215	5,912,961
Administrative expenses		
Automobile	3,905	4,835
Collection fees	25,458	54,974
Computer	20,673	24,405
Miscellaneous	37,871	37,640
Office	3,802	5,051
Professional fees	169,724	61,651
Travel and promotion	1,784	14,827
	263,217	203,383
Amortization	511,954	562,722
	6,185,386	6,679,066
Loss before other income (item) and income taxes recovery	(5,201,148)	(5,213,723)
Capital lease interest	(191,940)	(204,785)
Government subsidies (Note 2)	760,200	543,585
Other income	16,982	69,522
Loss before income taxes recovery	(4,615,906)	(4,805,401)
Income taxes recovery (Note 4)		
Income taxes	(865,474)	(1,136,291)
Future	(220,400)	(37,900)
	(1,085,874)	(1,174,191)
Net loss	$ (3,530,032)	$ (3,631,210)

See accompanying notes to the financial statements.

Peace Bridge Duty Free Inc.
Statement of Deficit

Year ended December 31	2021	2020
Retained earnings, beginning of year	$ 1,714,543	$ 5,505,753
Net loss	(3,530,032)	(3,631,210)
Dividends	-	(160,000)
(Deficit) retained earnings, end of year	$ (1,815,489)	$ 1,714,543

See accompanying notes to the financial statements.

Peace Bridge Duty Free Inc.
Balance Sheet

December 31	2021	2020
Assets		
Current		
Cash and cash equivalents (Note 5)	$ 1,770,372	$ 90,158
Receivables (Note 6)	270,396	734,128
Income taxes recoverable	865,474	1,262,120
Inventory (Note 7)	1,378,441	1,724,768
Prepaid expenses and deposits	92,933	88,291
	4,377,616	3,899,465
Long-term		
Lease security deposit	50,000	50,000
Equipment and leasehold improvements (Note 8)	5,736,316	6,248,270
Future income taxes	213,000	168,000
	$ 10,376,932	$ 10,365,735
Liabilities		
Current		
Bank indebtedness (Notes 5 and 9)	$ -	$ 210,000
Payables and accruals (Note 10)	7,331,802	3,771,057
Current portion of capital lease obligation (Note 11)	3,839,619	4,473,735
Current portion of long-term debt (Note 12)	1,000,000	-
	12,171,421	8,454,792
Long-term		
Future income taxes	-	175,400
	12,171,421	8,630,192
Shareholders' (deficiency) equity		
Capital stock		
Issued		
4 common shares	21,000	21,000
(Deficit) retained earnings	(1,815,489)	1,714,543
	(1,794,489)	1,735,543
	$ 10,376,932	$ 10,365,735

Commitments (Note 13)

COVID-19 pandemic and going concern uncertainty (Note 2)

On behalf of the board

DocuSigned by:
Greg O'Hara
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Director

Director

See accompanying notes to the financial statements.

Peace Bridge Duty Free Inc.
Statement of Cash Flows

Year ended December 31	2021	2020
Increase (decrease) in (bank indebtedness) cash and cash equivalents		
Operating		
Net loss	$ **(3,530,032)**	$ (3,631,210)
Items not affecting cash		
Amortization	**511,954**	562,722
Future income taxes	**(220,400)**	(37,900)
	(3,238,478)	(3,106,388)
Change in non-cash working capital items		
Receivables	**463,732**	(62,025)
Income taxes recoverable	**396,646**	(1,026,034)
Inventory	**346,327**	176,016
Prepaid expenses and deposits	**(4,642)**	38,671
Payables and accruals	**3,560,745**	2,144,355
	1,524,330	(1,835,405)
Financing		
Repayment of capital lease obligation	**(634,116)**	(307,684)
Proceeds of capital lease obligation	**-**	102,774
Issue of long-term debt	**1,000,000**	-
Dividends	**-**	(160,000)
	365,884	(364,910)
Investing		
Purchase of equipment and leasehold improvements	**-**	(98,281)
Increase (decrease) in (bank indebtedness) cash and cash equivalents	**1,890,214**	(2,298,596)
(Bank indebtedness) cash and cash equivalents		
Beginning of year	**(119,842)**	2,178,754
End of year	$ **1,770,372**	$ (119,842)

See accompanying notes to the financial statements.

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
December 31, 2021

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

The outbreak of a novel strain of coronavirus ("COVID-19") was declared a global pandemic by the World Health Organization in March, 2020. 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 for most of 2020 and the first eight months of 2021. The main store reopened in mid-September, 2021. 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, 2021, the Company has current liabilities that exceed current assets by $ 7,793,805 (2020 - $ 4,585,327), a net loss of $ 3,530,032 (2020 - $ 3,631,210) and a deficit of $ 1,815,489. The Company is also in default of its credit facilities as disclosed in Notes 9, 11 and 12 and is in default of its Peace Bridge store lease agreement as disclosed in Note 13. The impact of the measures and the steps taken by the Company to mitigate losses are as follows:

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 reopened on September 19, 2021. Prior to the pandemic, the Peace Bridge store represented average monthly sales of approximately $ 1.6 million 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.

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
December 31, 2021

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

Bank relief and new financing

The Company received relief from its bank, RBC, in 2020, allowing the Company to make interest only payments for six months on its capital lease obligation.

In November 2021 the Company obtained a new $ 1,000,000 loan through the Business Development Bank of Canada's Highly Affected Sectors Credit Availability Program (HASCAP) as an additional RBC credit facility.

Government subsidies

The Company applied and received the following government subsidies:

Canada Emergency Wage Subsidies (CEWS)	$ 232,330 (2020 - $ 328,396)
Canada Emergency Rent Subsidies (CERS)	$ 527,870 (2020 - $ 215,189)

The Company plans to continue to apply for any other government subsidies available in the future.

These financial statements have been prepared in accordance with accounting principles that apply 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 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.

While the Company is in default of its credit facilities and lease agreement as described above, the Company has obtained a court ordered stay, which prevents the lender and the landlord from taking action until June 23, 2022. The ability for the Company to remain a going concern is dependent on the ability of the Company to continue to have legal support and to reach agreeable terms with the Buffalo and Fort Erie Public Bridge Authority to improve working capital conditions. Although in the opinion of management the use of the going concern assumption is appropriate, there can be no assurance that the steps management is taking will be successful. 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.

The financial statements do not reflect adjustments that would be necessary if the going concern assumption were not appropriate, because management feels that the Company will be successful in receiving the necessary support to continue to mitigate the effect of the conditions and facts that raise significant doubt about the appropriateness of this assumption. 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 statement. The differences could be material.

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
December 31, 2021

3. Significant accounting policies

Basis of presentation

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 loss 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.

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, it 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.

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
December 31, 2021

3. Significant accounting policies (continued)

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.

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	30% Declining balance
Computer software	30% Declining balance
Furniture, fixtures and equipment	20% Declining balance
Leasehold improvements	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 loss.

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
- receivables
- lease security deposit
- payables and accruals
- capital lease obligation
- long-term debt

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

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
December 31, 2021

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 instruments in related party transactions

Financial assets and financial liabilities in related party transactions are initially measured at cost, with the exception of certain instruments which are initially measured at fair value. The Company does not have any financial assets or financial liabilities in related party transactions which are initially measured at fair value.

Gains or losses arising on initial measurement differences are generally recognized in net income when the transaction is in the normal course of operations, and in equity when the transaction is not in the normal course of operations, subject to certain exceptions.

Financial assets and financial liabilities recognized in related party transactions are subsequently measured based on how the Company initially measured the instrument. Financial instruments initially measured at cost are subsequently measured at cost, less any impairment for financial assets. Financial instruments initially measured at fair value, of which the Company has none, would be subsequently measured at amortized cost or fair value based on certain conditions.

The Company subsequently measures all of its financial assets and financial liabilities at amortized cost.

Financial assets and liabilities measured at cost less any reduction for impairment include cash and cash equivalents, receivables, lease security deposit and payables and accruals.

Financial liabilities measured at amortized cost include capital lease obligation and long-term debt.

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.

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
December 31, 2021

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% (2020 - 26.50%) to the loss for the years as follows:

	2021	2020
Loss for the year before income taxes	$ (4,615,906)	$ (4,805,401)
Anticipated income tax recovery	$ (1,223,215)	$ (1,273,431)
Tax effect of the following:		
Effect of small business deduction	135,000	57,500
Permanent income differences	5,023	39,261
Timing income differences	(80,663)	40,379
Benefit of income tax loss carried forward	298,381	-
Future income tax	(220,400)	(37,900)
Income tax recovery	$ (1,085,874)	$ (1,174,191)

5. Cash and cash equivalents

	2021	2020
Cash on hand	$ 207,451	$ 43,500
Cash balances with banks	937,021	46,658
0.45% guaranteed investment certificate maturing October, 2022	625,900	-
Bank indebtedness (Note 9)	-	(210,000)
	$ 1,770,372	$ (119,842)

6. Receivables

	2021	2020
Trade	$ 59,159	$ 86,792
Sales and excise taxes	211,237	427,591
Government subsidies	-	219,745
	$ 270,396	$ 734,128

7. Inventory

	2021	2020
Peace Bridge Duty Free	$ 1,305,933	$ 1,639,256
Hamilton International Airport	72,508	85,512
	$ 1,378,441	$ 1,724,768

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
December 31, 2021

8. Equipment and leasehold improvements

			2021	2020
	Cost	Accumulated Amortization	**Net Book Value**	Net Book Value
Computer hardware and cash registers	$ 234,050	$ 213,623	**$ 20,427**	$ 54,766
Computer software	161,220	159,663	**1,557**	4,667
Furniture, fixtures and equipment	648,088	483,115	**164,973**	250,951
Leasehold improvements	6,537,713	988,354	**5,549,359**	5,937,886
	$ 7,581,071	$ 1,844,755	**$ 5,736,316**	$ 6,248,270

Included in equipment and leasehold improvements are assets under capital lease with a cost of $4,930,769 (2020 - $4,930,769) and accumulated amortization of $725,113 (2020 - $435,068).

9. Credit facilities

The Company has three demand credit facilities as at December 31, 2021. The first is a credit card facility of $ 50,000. Under the terms of the second facility, the Company can issue up to $ 575,900 by way of letters of credit. At December 31, 2021, $ 575,900 (2020 - $ 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 lease line of credit (Note 11).

The Company has a fourth credit facility in the form of a HASCP loan (Note 12).

At December 31, 2020 the company also had a demand credit facility of up to $ 900,000 of which it had drawn $ 210,000.

A general security agreement covering all assets and the guaranteed investment certificate (Note 5) have 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 and the Company is in default of its credit facilities agreement.

10. Payables and accruals

	2021	2020
Trade	**$ 641,233**	$ 396,562
Accrued liabilities	**6,645,761**	3,356,259
Government remittances	**44,808**	18,236
	$ 7,331,802	$ 3,771,057

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
December 31, 2021

11. Capital lease obligation

	2021	2020
Royal Bank of Canada Capital lease obligation, repayable in blended monthly installments of $ 68,282 principal and interest at 4.5% per annum with a maturity date of January, 2027	$ 3,839,619	$ 4,473,735
Less current portion	3,839,619	4,473,735
Due beyond one year	$ -	$ -

Interest charges to the accounts of the Company on the above during the year amounts to $185,273 (2020 - $204,785).

A general security agreement covering all assets and the guaranteed investment certificate (Note 5) have 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 and the Company is in default of its credit facilities agreement.

12. Long-term debt

	2021	2020
4.0% HASCAP loan, interest only payable until October, 2022, then monthly principal payments of $ 9,259 plus interest beginning November, 2022, maturing November, 2031	$ 1,000,000	$ -
Less current portion	1,000,000	-
Due beyond one year	$ -	$ -

The HASCAP loan is a term facility under the Business Development Bank of Canada's Highly Affected Sectors Credit Availability Program through the Royal Bank of Canada. As security for the HASCAP loan, the Company has provided a general security agreement covering all assets, as well as an assignment of fire insurance. The Company is In default of its RBC credit facilities agreement.

Interest on the above debt amounted to $6,667 (2020 - $nil) for the year.

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
December 31, 2021

13. 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:

2022	$	17,775
2023		17,775
2024		17,775
2025		17,775
2026		17,775

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
December 31, 2021

13. Commitments (continued)

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 (i) $ 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.

As at December 31, 2021 the company was in default of this lease agreement as it has been unable to pay the entire base rent. There is a dispute as to the quantum of rent payable during the fiscal year. The Company's landlord states minimum rent is payable. The Company, being the tenant, is relying on a section of the lease agreement which obliges the landlord to consult with the tenant to address any unexpected introduction or change of applicable laws causing a material adverse effect on the business operations of the store. The lease agreement requires both parties to discuss reasonable amendments if the business of the tenant is materially adversely interrupted, such as is the situation with the COVID-19 border restrictions on all non-essential traffic, the closure of retail premises for various periods of time, and the public authority warning to avoid travel to the USA. The issue as to what monies are payable during the fiscal year is the subject of discussions between the parties, and in the absence of an agreement, will be judicially determined.

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 (2020 - $ 560,000) to Canada Revenue Agency and $ 15,900 (2020 - $ 15,900) to Hamilton International Airport as at December 31, 2021.

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
December 31, 2021

14. 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, 2021:

(a) Credit risk

Credit risk is the risk that one party to a financial instrument will cause a financial 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, 11 and 12 and its Peace Bridge store lease agreement as disclosed in Note 13. 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, 2021, cash and cash equivalents of $ 159,755 (2020 - $ 34,505) and accounts payable of $ Nil (2020 - $ 29,157) are denominated in US dollars and converted into Canadian dollars.

Peace Bridge Duty Free Inc.
Notes to the Financial Statements
December 31, 2021

15. Related party transactions

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

	2021	2020
Meduxnekeag Investments Limited	$ 7,720	$ 10,654
John M. Marsh	7,720	10,654
Annrahm Corporation	7,720	10,654
Hara Enterprises Limited	7,720	20,654
	$ 30,880	$ 52,616

16. Pension expense

The Company's contribution to the defined contribution plan during the year was $ 19,243 (2020 - $ 16,900) and is included in wages and benefits expense in the statement of loss.

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

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

Applicant Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF RON RIENAS
(Sworn 1 March 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)
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Fax: 416-862-7661

Lawyers for Buffalo and Fort Erie Public Bridge Authority

TAB 20

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

ONTARIO

SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

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

AFFIDAVIT OF EPHRAIM STULBERG

I, **Ephraim Stulberg**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am Senior Vice President at MDD Forensic Accountants and have knowledge of the matters to which I hereinafter depose.

2. At the request of the Respondent, Peace Bridge Duty Free Inc., I prepared an Analysis of Rent Report. My analysis and opinions are set out in my Analysis of Rent report dated August 16th, 2023.

3. Attached hereto and marked as **Exhibit "A"** is a true copy of the Analysis of Rent Report dated August 16th, 2023.

4. Attached hereto and marked as **Exhibit "B"** is a true copy of my signed Form 53 Acknowledgement of Expert's Duty.

5. Attached hereto and marked as **Exhibit "C"** is a true copy of my current curriculum vitae.

6. This affidavit is sworn in support of the Respondent's motion and for no improper purpose.

SWORN or *Affirmed* before me: *(select one):* ☐ in person OR ☒ by video conference by Ephraim Stulberg being located in the City of Toronto before me at the City of Toronto, in the Province of Ontario, on this 26th day of September 2023, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely.	)
Brendan Jones A Commissioner for Taking Affidavits	**EPHRAIM STULBERG**

This is Exhibit “A” referred to in the Affidavit of Ephraim Stulberg
sworn remotely this 26th day of September 2023.

____
Commissioner for Taking Affidavits (or as may be)

Brendan Jones

PEACE BRIDGE DUTY FREE INC.

ANALYSIS OF RENT

REPORT OF EPHRAIM STULBERG
DATED AUGUST 16, 2023

Table of Contents

MATSON DRISCOLL & DAMICO LTD

4 King Street West, Suite 400 • Toronto, ON M5H 1B6
T 416.366.4968 **F** 416.366.4973 **W** mdd.com

August 16, 2023

Private and Confidential

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

Attn: Mr. John Wolf

RE: Royal Bank of Canada v. Peace Bridge Duty Free Inc.

Dear Sir:

You have asked us as independent professional accountants experienced in economic loss quantification matters to prepare an Expert Report[1] setting out our analysis of the ability of Peace Bridge Duty Free Inc. ("**PBDF**") to pay rent during: a) the period from March 2020 to December 2022, and b) in 2023, as a result of the decline in its revenues due to government-imposed restrictions on international travel following the outbreak of the COVID-19 pandemic.

We understand that you require our report in connection with a dispute between PBDF, its landlord (the Buffalo and Fort Erie Public Bridge Authority) and its bank (Royal Bank of Canada).

Please contact the undersigned with any questions concerning the contents of this report.

Sincerely,

Matson, Driscoll & Damico Ltd.

Ephraim Stulberg, CPA, CA, CBV, CFF
estulberg@mdd.com / 647-929-4968

[1] As defined by the Canadian Institute of Chartered Business Valuators (CICBV).

A. EXECUTIVE SUMMARY[2]

Background

1. PBDF is a corporation that has operated the duty-free store on the Canadian side of the Peace Bridge since 1986. The Peace Bridge traverses the international border between the United States and Canada, linking the cities of Buffalo, New York and Fort Erie, Ontario.

2. PBDF leases its premises from the Buffalo and Fort Erie Public Bridge Authority (the "**Authority**"). Under the terms of the lease agreement commencing November 1, 2016 and expiring on October 31, 2031 (the "**Lease**"), PBDF was required to pay Base Rent equal to the greater of:

   a) $4M per year; and

   b) A percentage of annual sales, consisting of:

      i. 20% of the first $20M in the year;

      ii. 22% of all sales between $20M and $25M in the year; and,

      iii. 24% of all sales in excess of $25M in the year.

3. Section 18.07 of the Lease states that:

> **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.

4. As a result of the COVID-19 pandemic, PBDF closed its store in March 2020 and did not reopen until September 2021. Traffic at the Peace Bridge border crossing has remained lower than normal; as of mid-2023, it was at around 70% to 80% of pre-pandemic levels.

5. We understand that PBDF and the Authority are in a dispute over how Section 18.07 of the Lease is to be applied, and how much rent PBDF should be paying under the Lease. We understand it is PBDF's position that absent an agreement between the Landlord and PBDF, the court will set the amount of base rent in a manner that is commercially reasonable for both parties.

[2] All currency amounts in this report are in Canadian dollars, unless otherwise indicated as being in US dollars (US$).

6. You have asked us to provide financial analysis of PBDF's operations and its ability to pay rent during the following two periods:

   a) From 2020 to 2022

   b) In 2023 (and potentially onwards).

MDD Conclusions

7. Our conclusions, as set out in more detail in Section D of this report, can be summarized as follows:

From 2020 to 2022

8. In the three full years of 2020, 2021 and 2022, PBDF earned combined pre-tax income of $1.8M before any base rent is deducted (see Schedule 1a). During this period, PBDF remitted $3.4M in base rent to the Authority, which represents 23% of sales during this period.

9. Therefore, PBDF has already suffered a loss of $1.6M based on the base rent it has already remitted during the period 2020 to 2022.

10. During this same timeframe, the Authority was less impacted by the COVID-19 pandemic. It earned aggregate net income of US$13.2M, even after reporting bad debts related to duty-free store rent of US$7.8M (see Schedule 8a).

From 2023 Onwards

11. Through the first half of 2023, PBDF's sales have been around 71% of pre-pandemic levels. We estimate that assuming sales for 2023 achieve 75% of pre-pandemic levels, PBDF will earn pre-tax profit before base rent of around $4M (Schedule 1b).

12. The industry-wide average for businesses in NAICS 4453 (Beer, wine and liquor stores) is a pre-tax return on assets of 11.6% and a net income percentage of 6.6%. This can be viewed as a reasonable level of profit given PBDF's level of capital invested in the business.

13. We estimate that PBDF can afford to pay **$2.7M to $3.0M** in annual base rent in 2023 (equal to 17% to 19% of sales) in order to achieve these industry-average returns.

B. INTRODUCTION

Author's Details and Compliance with Professional Standards

14. This report has been prepared under the direction and supervision of Ephraim Stulberg, CPA, CA, CBV, CFF, a partner in the Toronto office of Matson, Driscoll & Damico Ltd. ("**MDD**"). A copy of his CV is appended to this report.

15. MDD is a global professional services firm practicing in the areas of economic loss quantification, business valuation and forensic accounting. It has 11 offices in Canada and 45 offices worldwide.

16. This report has been prepared in compliance with the Canadian Institute of Chartered Business Valuators ("**CICBV**") standards for the preparation of Expert Reports (Practice Standards 310 to 330).

Disclosure of Interests

17. We are not aware of any actual or potential conflict of interest that we may have in providing this report.

Declaration of Independence

18. We have been engaged as independent professional accountants to provide an expert report. The terms of our engagement are to act in an independent and objective manner. Neither our firm nor its principals have any financial interest in these proceedings. Our fees are based solely on the time expended and are not contingent upon the ultimate results or conclusions reached.

19. The author of this report has prepared it acting in an independent and objective manner.

C. BACKGROUND AND MANDATE

The Parties

20. PBDF is a corporation that has operated the duty-free store (the "**Store**") on the Canadian side of the Peace Bridge since 1986. It also operates a small duty-free store at the Hamilton International Airport.[3] PBDF has a December 31st fiscal year-end.

21. The Peace Bridge traverses the international border between the United States and Canada, linking the cities of Buffalo, New York and Fort Erie, Ontario.

22. PBDF leases its premises from the Buffalo and Fort Erie Public Bridge Authority (the "**Authority**").

The Store

23. Prior to the COVID-19 pandemic, the Store was open 24 hours per day, 365 days per year.

24. The Store's sales consisted mainly of alcoholic beverage (around 50% of total revenue), tobacco (20% of revenue), perfume/cosmetics (10%), food/confections (10%) and other miscellaneous products. It employed over 100 employees.[4]

The Lease

25. We understand that until November 2016, PBDF's lease with the Authority required it to pay base rent equal to 12% of gross revenue, plus various fees.

26. In March 2016, the Authority initiated a request for proposals to operate the Store.[5] The RFP contained various requirements, one of which being that base rent was to be at least $2.5M per year.[6]

27. We understand there were six bidders, including PBDF. PBDF was the successful bidder, and signed the Lease commencing November 1, 2016. Under the Lease, PBDF was required to pay Base Rent equal to the greater of:

    a) $4M per year; and

    b) A percentage of annual sales, consisting of:

[3] The results of both stores are reported on the financial statements of PBDF.

[4] Based on discussions with Jim Pearce

[5] RFP dated March 1, 2016

[6] RFP, Section III, para. B8

i. 20% of the first $20M in the year;

ii. 22% of all sales between $20M and $25M in the year; and,

iii. 24% of all sales in excess of $25M in the year.

28. As a condition of its bid, PBDF was also required to perform capital improvements to the Store. PBDF spent approximately $7M on leasehold improvements in 2018 and 2019. These were financed in part by a $4.5M loan from Royal Bank of Canada.

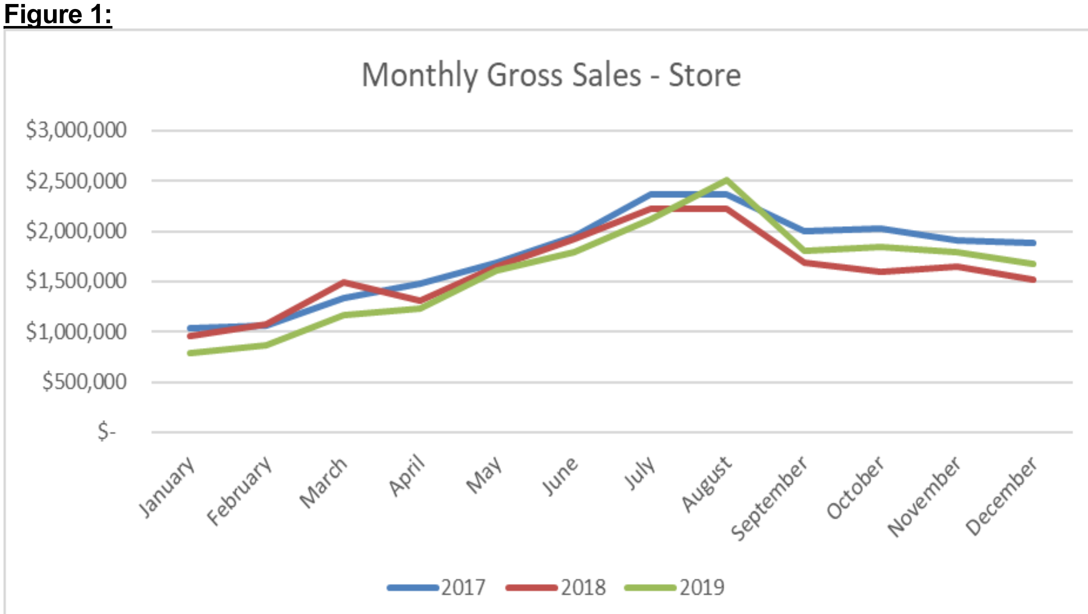
29. Section 18.07 of the Lease states that:

> **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.

PBDF – Pre-Pandemic Results

30. We have been provided with monthly sales data for the Store going back to the beginning of 2017. Figure 1 presents monthly gross sales for the period 2017 to 2019:[7]

Figure 1:



[7] See data at Schedule 5

31. Sales totalled $21.1M in 2017, and were somewhat lower in 2018 and 2019, with both years in the range of $19.2M.

32. We understand that the reason for the decline was due to temporary disruptions to the Store while it underwent renovations in the second half of 2018 and the first half of 2019. Sales were expected to return to normal levels in 2020, absent the pandemic.

33. Sales are seasonal, with higher volumes in the summertime and lower volumes during the winter months of January to March. This pattern was consistent from year to year.

The Authority – Pre-Pandemic Financial Results

34. We have summarized the financial results and position of the Authority at Schedules 8a and 8b.[8]

35. In 2019, the Authority generated US$30.9M in operating revenues against US$16.9M in operating expenses, for an operating profit of approximately US$14.0M (Schedule 8a). The main source of revenue was toll revenue of US$22.1M, mainly from commercial trucks.[9]

36. At the end of that year, the Authority held total assets of US$362M, against liabilities of US$122M, for a net equity position of US$240M (Schedule 8b).

Pandemic Restrictions

37. Following the outbreak of the COVID-19 pandemic in early 2020, US and Canadian governments imposed a series of travel restrictions. These are set out in detail in the factum of PBDF dated December 12, 2022 (Schedule 1), and included the following:

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

b) March 21st, 2020: Agreement to close U.S.-Canada border to non-essential travel border for 30 days. This agreement was subsequently extended several times to July 21st, 2020.

c) July 26th, 2020: U.S.-Canada border closure for non-essential travel extended until August 20th, 2020; This was extended several times until November 21st, 2020

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

[8] 2021 Annual Report, accessed at: https://www.peacebridge.com/docs/2021%20Annual%20Report.pdf

[9] Ibid, p. 16.

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

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

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

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

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

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

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

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

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

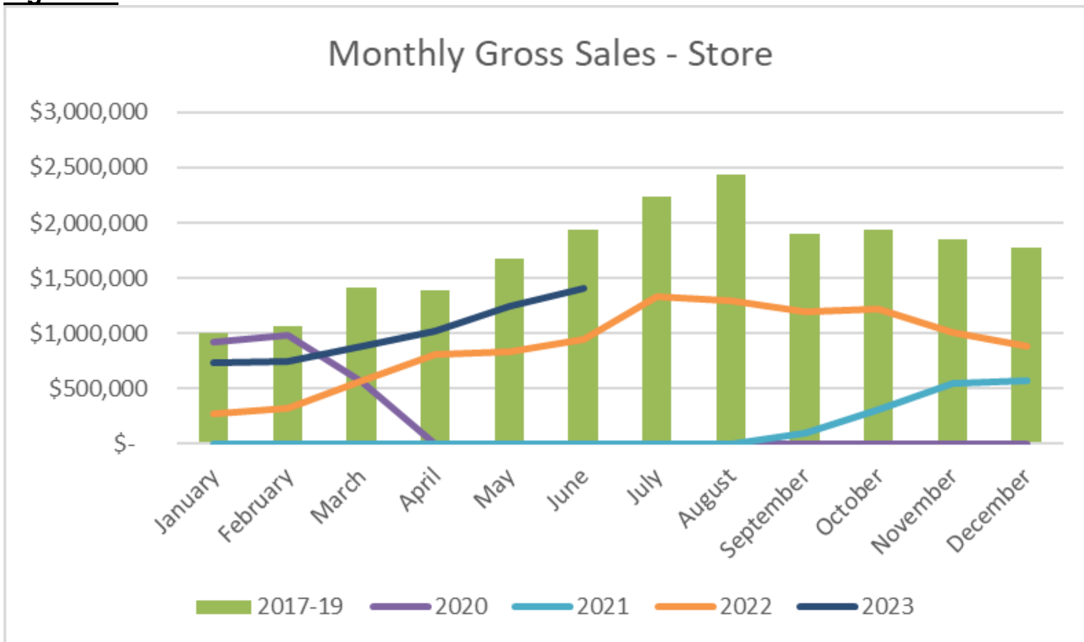
PBDF - Pandemic Results

38. The COVID-19 pandemic had a severe impact on PBDF's business. The Store closed in March 2020 following the declaration of a state of emergency, and did not reopen until September 2021.

39. Figure 2a on the following page presents a summary of PBDF's monthly revenues through June 2023. It shows that revenues in the first half of 2023 have continued to reach only 60% to 75% of their pre-pandemic levels:[10]

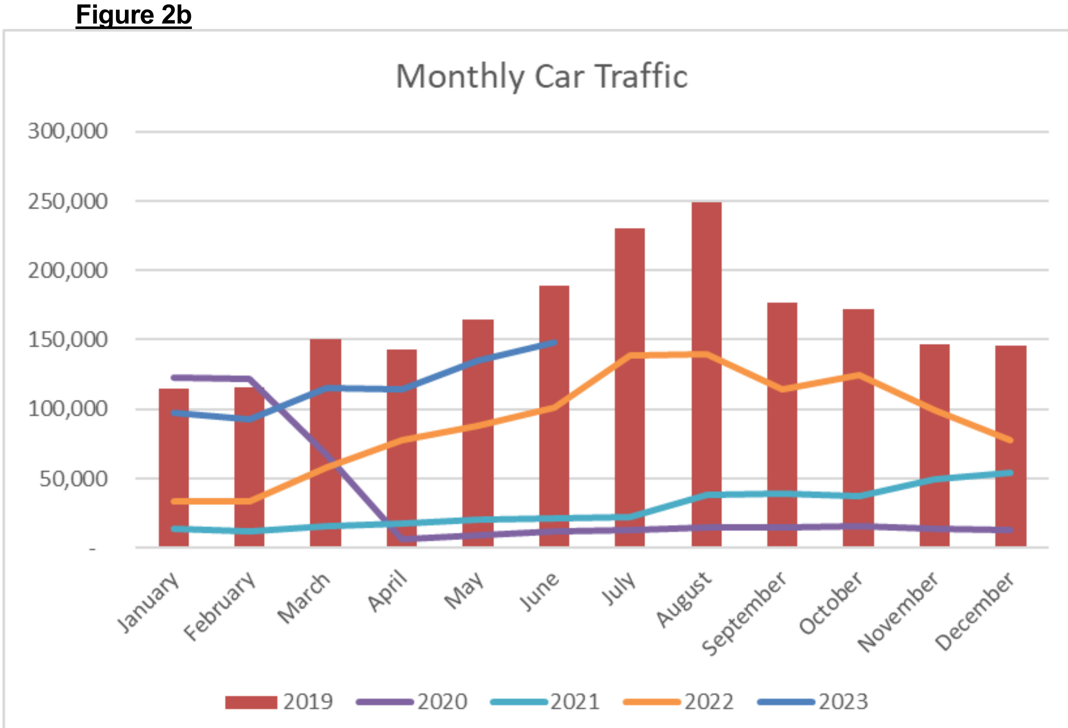
[10] See data at Schedule 5.

Figure 2a



40. Figure 2b presents a summary of eastbound car traffic data at the Peace Bridge, and shows a similar picture, with traffic volumes having returned to only 75% to 85% of pre-pandemic levels:

Figure 2b



41. As a result of the lower traffic and sales levels, PBDF reported net pre-tax losses totalling $10.2M over the three years from 2020 to 2022 (based on reported base rent of $4M per year).

42. In summary, PBDF's financial results were heavily impacted by the pandemic, and continue to be impacted (though to a lesser extent).

The Authority – Pandemic Results

43. In 2020 and 2021, the Authority reported a decrease in revenues, reporting US$24.5M in 2020 and US$26.3M in 2021 before rebounding to US$30M in 2022. Operating income was US$7.1M in 2020 and US$5.9M in 2021; it rose to US$10.9M in 2022 (Schedule 8a).

44. Thus, while the Authority has suffered a decline in income as a result of the pandemic, its revenues have continued to exceed its expenses each year. This is largely a function of the fact that its main source of income, tolls from commercial trucks, was relatively unimpacted by COVID-19 (as compared with passenger vehicle travel).

45. The above amounts are net of bad debts that the Authority has written off in respect of the PBDF lease and the duty-free store on the US side of the border: reported bad debts are US$2.5M in 2020, US$3.19M in 2021 and $2.1M in 2022.[11]

46. We understand that the US duty-free store has remained open during the pandemic and has been paying a percentage of its actual sales as rent.[12]

47. We note that other bridge authorities appear to have taken different approaches to the COVID-19 pandemic and their commercial tenants, decreasing lease rates by different levels. Thus, as set out at Schedule 9 to this report:

    a) The Niagara Falls Bridge Commission (which operates the Rainbow Bridge and the Queenston-Lewiston Bridge) reported a decline in rental income of 29% in fiscal 2020 and 18% in fiscal 2021. This decrease was sufficient to reduce annual net income from a pre-pandemic level of $3M to $5M into a loss of $3M in fiscal 2020 and $7M in fiscal 2021.

[11] Authority 2021 annual report, p. 11

[12] Authority 2021 annual report, p. 13

b) The Federal Bridge Corporation (which operates the Sault Ste Marie International Bridge, the Blue Water International Bridge, the Thousand Islands International Bridge and the Seaway International Bridge) reported a reduction in rental income of 71% in the fiscal year ended March 31, 2021, and a reduction of 60% in the fiscal year ended March 31, 2022.

The Dispute

48. We understand that PBDF and the Authority are in a dispute concerning the amount of rent that PBDF should pay for the period following the outbreak of COVID-19, as well as the amount of rent that PBDF can afford to pay going forward.

Mandate

49. You have asked us to provide financial analysis of PBDF's operations and its ability to pay rent during the following two periods:

a) From 2020 to 2022

b) In 2023 (and potentially onwards).

50. Our analysis is set out in Section D below.

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D. MDD DETAILED FINDINGS

Rent Level – 2020 to 2022

Overview of Financial Results

51. You have asked us to provide analysis of PBDF's ability to pay rent during the three-year period from 2020 to 2022.

52. We began by analysing the PBDF's financial results during that timeframe, prior to any payment of base rent.

53. As set out at Schedule 2a, PBDF reported a loss of $805,000 in 2020, a loss of $615,000 in 2021 and a profit of $3.2M in 2022, prior to any base rent being deducted. In aggregate, PBDF earned pre-base rent, pre-tax profit of $1.8M during this three-year period.

54. We have also been provided with a summary of rent paid by PBDF (see Schedule 3). During the three-year period 2020 to 2022, PBDF paid total base rent of $3.4M.

Financial Analysis

55. There is no standard or definitive metric that can be applied to determine what a reasonable level of rent would be for the period that was affected by COVID. Many businesses suffered losses as a result of COVID-19, although they were eligible for various government subsidies. We note that PBDF's eligibility for the CERS rent subsidies was limited, as the subsidy was capped at an amount far below PBDF's base rent level.[13]

56. The above notwithstanding, the following facts appear to us to be relevant:

    a) PBDF has already paid $3.4M in base rent for the period 2020 to 2022.

    b) PBDF's results were very negatively impacted by the pandemic. Based solely on the base rent PBDF has already paid, it will have suffered a pre-tax loss of $1.6M for the period 2020 to 2022, and the rent paid will already have been equal to 23% of revenue. This is higher than the 20% that PBDF used as its benchmark in submitting its bid in 2016.

57. We also note that at the end of 2019, PBDF had $5.5M in retained earnings. This represents the accumulated earnings of the business over time, which have been reinvested in various assets (e.g. inventory, leasehold improvements).

[13] https://www.bdo.ca/insights/government-introduces-the-new-canada-emergency-rent-subsidy-program

58. If it were determined that it would be appropriate for PBDF to suffer a loss of 50% of its retained earnings, then the total base rent PBDF would pay under that scenario would be $4.6M. Deducting the rent already paid, this would mean that PBDF would need to pay an additional $1.1M in base rent (Schedule 1a).

Analysis of Offers

59. You have provided us with two offers presented by the Authority and have asked us for our comments.

October 2021 Offer

60. The first offer was made in October 2021. It offered a 50% reduction in base rent up to that point, and then increasing levels of rent through October 2025.

61. We calculate that the offer would involve payment of $7.2M over the period January 2020 to December 2022 (Schedule 3).

62. If PBDF were to pay that amount of base rent, this would result in a pre-tax loss of $5.3M. This would wipe out almost all of the shareholders' equity of the business.

March 2023 Offer

63. The second offer was made in March 2023. It offered a 50% reduction in base rent up to October 2021, and then increasing levels of rent through October 2025.

64. We calculate that the offer would involve payment of $8.2M over the period January 2020 to December 2022 (Schedule 3).

65. If PBDF were to pay that amount of base rent, this would result in a pre-tax loss of $6.3M. This would wipe out all of the shareholders' equity of the business.

66. By comparison, the Authority has an excess of assets over liabilities of US$252M, even after recording bad debts of US$7.8M in respect of the duty-free leases from 2020 to 2022 (Schedule 8b).

Rent Level - 2023

67. We examined the industry-average **return on assets** and **net income margin** for other similar sized stores operating in PBDF's main business, which is the sale of alcohol.[14]

[14] We were not able to locate any aggregate industry data for duty-free stores, as we understand there are fewer than 40 of these in Canada and therefore aggregate data are not available. See: https://dutyfreecanada.com/#locations

68. We used these benchmarks in order to determine the amount of rent that PBDF is able to pay, based on its current level of sales and pre-tax profit (prior to paying rent).

Net Income Percentage

69. In 2018 and 2019, PBDF generated approximately $21M per year in annual sales. The minimum base rent of $4M represented approximately 19% of revenues.

70. While this is a relatively high level of rent relative to the overall industry (which averages rent closer to 3% of revenue), this is partly explained by the relatively high gross margins that PBDF is able to generate (in the range of 52%, as opposed to 29% for the industry as a whole).

71. According to data published by Statistics Canada, the average net income margin for NAICS 4453 (Beer, wine and liquor stores) was around **6.6%** in 2021.

Return on Assets

72. PBDF has approximately $11M in assets, consisting of cash, inventory, leasehold improvements and other assets.

73. According to data published by Statistics Canada, the average return on assets for NAICS 4453 (Beer, wine and liquor stores) was around **11.6%** in 2021.

Expected Results - 2023

74. In order to estimate a fair or appropriate lease rate for the period during which PBDF's business remains at below its pre-pandemic levels, it is first necessary to model the revenue and other expenses of PBDF's business.

75. At Schedule 2b, we have modeled a pro-forma profit and loss statement of PBDF based on the following:

    a) Assumed annual revenue equal to 75% of pre-pandemic levels

    - This is based on monthly sales levels during the first half of 2023, which were around 70% to 75% of pre-pandemic levels (see Schedule 2b).

    b) Gross margin of 52%

    - This is based on the gross margin of PBDF in 2022 (Schedule 7a).

    c) Payroll costs equal to 13% of revenue

    - This is based on the actual payroll cost in 2022.

d) All other costs equal to 2022 levels.

76. Based on the above, we calculate that PBDF will earn pre-tax, pre-rent income of approximately $4.0M (Schedule 2b). What this means is that if PBDF were to pay rent of $4.0M per year, it would break even, but would not earn any material level of profit.

77. We calculate that the amount of rent that would be payable in order to replicate either a) the net income margin or b) return on assets of the industry as a whole, as follows:

Table 1

Summary of Implied Rent Levels

	Industry Average	
	Return on Assets	**Net Income Percentage**
Target Metric	11.6%	6.6%
Total Assets	$ 11,217,817	$ 11,217,817
Projected Revenue	$ 15,988,385	$ 15,988,385
Pre-tax income (before rent)	$ 4,048,874	$ 4,048,874
Less: Rent	**2,747,607**	**2,993,640**
Net Income	$ 1,301,267	$ 1,055,233

78. As shown in Table 1 above, we estimate that with sales at 75% of pre-pandemic sales, PBDF can afford to pay **$2.7M to $3.0M** in annual base rent (equal to 17% to 19% of sales) in order to achieve industry-average returns and profitability.

79. Using the same approach, we also calculate that PBDF's sales would have to reach around $19.2M per year (while paying $4M in base rent) in order for it to achieve a net income margin of 6.6%; this would represent around 90% of pre-pandemic sales levels.

E. SCOPE, RESTRICTIONS AND ASSUMPTIONS

Scope of Review

80. In arriving at our findings, we have reviewed and considered the following documentation:

a) Motion Record of Landlord
b) Cross-Motion Record of PBDF
c) Endorsement and Order Appointing Monitor
d) Factum of PBDFI
e) Revised and Restated Factum of the Authority
f) Supplementary Motion Record of PBDF
g) Monthly Monitor Reports
h) Annual financial statements of PBDF
i) Buffalo and Fort Erie Public Bridge Authority - Annual Reports
j) Niagara Falls Bridge Commission - Annual Reports
k) Federal Bridge Corporation – Annual Reports
l) Monthly summaries of traffic and sales of PBDF
m) Summary of rent paid by PBDF
n) Offers presented by the Authority
o) Statistics Canada – SME Benchmarking Reports
p) Authority website

81. We have also had discussions and correspondence with Mr. Jim Pearce of PBDF.

Assumptions

82. The calculations in this report are based on assumptions listed throughout the report. Changes to any of these assumptions could impact the calculations contained herein. Our calculations assume that:

a) All financial information provided to us by PBDF is materially accurate.

Restrictions and Qualifications

83. This report, and our files related thereto, are not intended for general circulation or publication, and are not to be reproduced or shared for any purpose other than as outlined above (or as otherwise required by law or a relevant professional body). We will not assume any responsibility or liability for losses occasioned to you or any other party as a result of the circulation, publication, reproduction or use of this report contrary to the provisions in this paragraph.

84. Nothing contained in this report is to be construed as a legal opinion or interpretation.

85. The comments and conclusions expressed herein must be read within the context of the entire report. Selecting specific comments or conclusions outside of their context is not appropriate and may be misleading.

86. We reserve the right, but will be under no obligation, to review all findings included or referred to in this report and, if we consider it necessary, to revise our conclusions in light of any material information which becomes known to us subsequent to the date of this report.

Index of Schedules

Peace Bridge Duty Free Inc. (PBDF)

Analysis of Rents

SCHEDULE

Summary of Rent Scenarios - 2020 to 2022
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

	Sch	FYE December 31, 2020	2021	2022	Total	
1. Breakeven Analysis						
Pre-tax income/(loss) (before base rent)	2A	$ (805,401)	$ (615,906)	$ 3,228,719	$ 1,807,412	
Less: Base Rent to Pay					1,807,412	**A**
Pre-Tax Net Income/(Loss)					$ -	
Actual Base Rent Paid	4				$ 3,428,640	**B**
Unpaid Base Rent to Pay					**$ -**	**MAX(A-B,0)**
2. 20% of Revenue						
Pre-tax income/(loss) (before base rent)	2A	$ (805,401)	$ (615,906)	$ 3,228,719	$ 1,807,412	
Less: Base Rent to Pay - 20% of Revenue					2,928,039	**A**
Pre-Tax Net Income/(Loss)					$ (1,120,627)	
Actual Base Rent Paid	4				$ 3,428,640	**B**
Unpaid Base Rent to Pay					**$ -**	**MAX(A-B,0)**
3. Loss of 50% of Equity						
Pre-tax income/(loss) (before base rent)	2A	$ (805,401)	$ (615,906)	$ 3,228,719	$ 1,807,412	
Less: Base Rent to Pay to Result in Loss of 50% of Retained Earnings					4,560,289	**A**
Pre-Tax Net Income					(2,752,877)	
Actual Base Rent Paid	4				$ 3,428,640	**B**
Additional Rent to Pay					**$ 1,131,649**	**MAX(A-B,0)**

NOTES

Based on 20% of total sales for 2020 to 2022, as follows:	
Total sales (Sch 5)	$ 14,640,197
Base rent at 20%	$ 2,928,039
Based on half of book value of equity as of Dec 31/19, as follows:	
Book value of equity - Dec 31/19	**$ 5,505,753**
50% thereof	**$ 2,752,877**

Summary of Rents for 2023 - Based on Net Margin and Return on Assets

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

	Sch	Industry Average Return on Assets	Industry Average Net Income Percentage
Target Metric (Note 1)		11.6%	6.6%
Total Assets	7B	$ 11,217,817	$ 11,217,817
Projected Revenue	2B	$ 15,988,385	$ 15,988,385
Pre-tax income (before rent)	2B	$ 4,048,874	$ 4,048,874
Less: Base Rent		**2,747,607**	**2,993,640**
Pre-Tax Net Income		$ 1,301,267	$ 1,055,233

Note 1: Industry percentages are based on Statistics Canada - SME Benchmark Tool for NAICS 4453.

Summary of Actual Income of PBDF - 2020, 2021 and 2022 (Pre-Rent)
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Description	2020	2021	2022
	(Sch 7a)	(Sch 7a)	(Sch 7a)
Sales	$ 3,107,805	$ 1,897,214	$ 11,783,548
Cost of Sales	1,642,462	912,976	5,688,563
Gross Margin	1,465,343	984,238	6,094,985
Expenses			
Rent - Hamilton International Airport	56,084	20,027	59,864
Wages & Benefits	1,301,745	921,455	1,552,312
Insurance	292,868	186,103	194,703
Professional Fees	61,651	169,724	537,136
Commercial Taxes	50,268	68,715	68,437
Utilities	73,978	62,291	87,588
Marketing	54,117	53,670	55,675
Store Supplies	20,941	48,821	72,142
Maintenance	45,785	31,884	79,312
Automobile	4,835	3,905	8,450
Collection Fees	54,974	25,458	169,884
Computer Expense	24,405	20,673	42,392
Communications	17,175	17,249	27,434
Office	5,051	3,802	8,862
Travel and Promotion	14,827	1,784	13,905
Other Admin Expenses	37,640	37,871	67,657
Amortization	562,722	511,954	485,009
Total	2,679,066	2,185,386	3,530,762
Operating Income - Pre-rent	$ (1,213,723)	$ (1,201,148)	$ 2,564,223
Other Income			
Other Income	69,522	16,982	207,768
Government Subsidies	543,585	760,200	652,888
	613,107	777,182	860,656
Other Expenses			
Capital Lease & Lease Line of Credit Interes	204,785	191,940	196,160
	204,785	191,940	196,160
Net Income before tax	**$ (805,401)**	**$ (615,906)**	**$ 3,228,719**
	To Sch 1a	**To Sch 1a**	**To Sch 1a**

Estimated Income of PBDF - 2023
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Description	Amount (Sch 7a)	Notes
Sales	$ 15,988,385	Note 1
Cost of Sales	7,854,823	Note 2
Gross Margin	8,133,562	
Expenses		
Rent - Hamilton International Airport	59,864	Note 4
Wages & Benefits	2,106,238	Note 3
Insurance	194,703	Note 4
Professional Fees	537,136	Note 4
Commercial Taxes	68,437	Note 4
Utilities	87,588	Note 4
Marketing	55,675	Note 4
Store Supplies	72,142	Note 4
Maintenance	79,312	Note 4
Automobile	8,450	Note 4
Collection Fees	169,884	Note 4
Computer Expense	42,392	Note 4
Communications	27,434	Note 4
Office	8,862	Note 4
Travel and Promotion	13,905	Note 4
Other Admin Expenses	67,657	Note 4
Amortization	485,009	Note 4
Total	4,084,688	
Operating Income - Pre-rent	$ 4,048,874	

Note 1: Based on 60% of 2019 sales, as follows:

2019 Sales (Sch 7a)	$ 21,317,847	
Multiplied by 75%	**$ 15,988,385**	

Note 2: Cost of sales based on 2022

Note 3: Based on labour as % of sales in 2022, as follows:

2022 Sales (Sch 7a)	$ 11,783,548	**A**
2022 Labour (Sch 7a)	$ 1,552,312	**B**
Labour Percentage	13%	**B/A=C**
Projected Sales	$ 15,988,385	**D**
Projected Labour	**$ 2,106,238**	**CxD=E**

Note 4: Based on actuals for 2022

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

Date		Number of	Base Rent		Total Base
From	To	Months	Annual	Monthly	Rent in Pd.
		A	B	B/12=C	AxC=D
1. Offer Dated October 2021					
01-Jan-20	31-Mar-20	3	$ 4,000,000	$ 333,333	$ 1,000,000
01-Apr-20	31-Oct-21	19	2,000,000	166,667	3,166,667
01-Nov-21	31-Oct-22	12	2,500,000	208,333	2,500,000
01-Nov-22	31-Dec-22	2	3,000,000	250,000	500,000
Total Proposed Rent - Jan/20 to Dec/22					**$ 7,166,667**
01-Jan-23	31-Oct-23	10	3,000,000	250,000	2,500,000
01-Nov-23	31-Oct-24	12	3,500,000	291,667	3,500,000
01-Nov-24	31-Oct-25	12	4,000,000	333,333	4,000,000
2. Offer Dated March 2023					
01-Jan-20	31-Mar-20	3	$ 4,000,000	$ 333,333	$ 1,000,000
01-Apr-20	31-Oct-21	19	3,000,000	250,000	4,750,000
01-Nov-21	31-Oct-22	12	2,000,000	166,667	2,000,000
01-Nov-22	31-Dec-22	2	2,500,000	208,333	416,667
Total Proposed Rent - Jan/20 to Dec/22					**$ 8,166,667**
01-Jan-23	31-Oct-23	10	2,500,000	208,333	2,083,333
01-Nov-23	31-Oct-24	12	3,000,000	250,000	3,000,000
01-Nov-24	31-Oct-25	12	3,500,000	291,667	3,500,000
01-Nov-25	31-Oct-26	12	4,000,000	333,333	4,000,000

(green) Represents 50% of base rent
(blue) Represents 75% of base rent

Source: Offers presented by Authority

Summary of Rent Paid by PBDF
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

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

Summary of Rent Paid by PBDF
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Description	Amount Paid	Rent	CAM	Gov't Subsidies
CAM Dec 2021	10,812		10,812	
Rent - Oct	61,600	61,600		
CERS Period 14/21 Oct23/21	4,188			4,188
Rent - Nov	109,400	109,400		
Rent-Audit Report adjustment	587	587		
Rent - Dec 2021	113,600	113,600		
2022				
CAM Jan 2022	10,812		10,812	
CAM Feb 2022	10,812		10,812	
Rent-Jan2022	53,200	53,200		
CAM Mar2022	10,812		10,812	
Rent-Feb2022	63,400	63,400		
CAM Apr2022	10,812		10,812	
Rent-Mar2022	115,000	115,000		
THRP Rent PP25 Jan16-Feb12	16,412			16,412
CAM May2022	10,775		10,775	
Rent-April2022	160,400	160,400		
CAM Jun2022	10,775		10,775	
Rent-May2022	168,000	168,000		
CAM July2022	10,775		10,775	
Rent-Jun2022	188,400	188,400		
CAM Aug2022	10,775		10,775	
Rent-July2022	266,400	266,400		
CAM Sep2022	10,775		10,775	
Rent-Aug2022	259,000	259,000		
CAM Oct2022	10,775		10,775	
Rent-Sep2022	237,000	237,000		
CAM Nov2022	10,775		10,775	
Rent-Oct2022	243,000	243,000		
CAM Dec2022	10,775		10,775	
Rent-Nov2022	196,000	196,000		
Audit reconciliation	2,119	2,119		
Rent-Dec2022	172,000	172,000		
Total - 2020 to 2022		**$ 3,428,640**	$ 347,641	$ 564,986
		To Sch 1a		

Source: Summary of Rent Payments

Monthly Gross Sales - Peace Bridge Duty Free Store
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Month	2017	2018	2019	2020	2021	2022	2023
January	$ 1,039,046	$ 956,197	$ 786,454	$ 920,345	$ 147	$ 266,652	$ 731,846
February	1,063,573	1,072,855	865,987	977,455	87	317,739	746,452
March	1,336,602	1,490,462	1,170,012	553,247	102	574,900	889,019
April	1,476,219	1,311,689	1,225,273	-	63	803,466	1,016,288
May	1,692,693	1,646,796	1,609,629	-	117	839,157	1,249,446
June	1,952,544	1,928,287	1,787,096	-	138	942,743	1,401,866
July	2,363,915	2,222,873	2,112,130	-	117	1,332,856	
August	2,361,448	2,228,492	2,514,542	-	91	1,295,437	
September	2,003,123	1,688,790	1,808,864	-	97,691	1,189,993	
October	2,031,668	1,594,221	1,841,330	-	309,754	1,214,518	
November	1,906,906	1,650,001	1,789,858	186	545,927	1,004,773	
December	1,880,534	1,521,935	1,671,142	111	571,208	881,177	
Total	$ 21,108,271	$ 19,312,598	$ 19,182,317	$ 2,451,344	$ 1,525,442	$ 10,663,411	$ 6,034,916

As % of 2017-2019 (Excl. renovation period)							
January				99%	0%	27%	73%
February				98%	0%	30%	70%
March				42%	0%	41%	63%
April				0%	0%	58%	73%
May				0%	0%	50%	75%
June				0%	0%	49%	72%
July				0%	0%	60%	
August				0%	0%	53%	
September				0%	5%	62%	
October				0%	17%	63%	
November				0%	31%	54%	
December				0%	34%	50%	
Total	-	-	-	20%	7%	50%	71%

Period of renovations

Source: Exhibit FF to the Affidavit of Jim Pearce sworn Nov. 13/22
Summary of monthly sales and traffic count - Jan-Jun 2023

Monthly Car Traffic Statistics - Peace Bridge
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Month	2017	2018	2019	2020	2021	2022	2023
Volume							
January	127,857	131,293	114,306	123,186	13,393	33,958	97,569
February	123,090	125,661	115,595	121,355	12,148	33,448	92,331
March	143,223	166,680	150,707	67,111	15,766	57,787	115,598
April	150,020	142,730	143,282	6,545	17,422	77,616	114,718
May	160,985	172,250	164,405	8,718	20,674	88,446	135,379
June	184,617	196,380	188,736	11,559	21,332	101,401	148,245
July	244,254	244,804	230,244	12,742	22,522	138,852	
August	247,105	249,704	249,184	14,501	38,189	139,629	
September	190,180	179,114	176,774	14,777	39,614	114,411	
October	182,156	169,751	171,744	15,260	37,478	124,964	
November	158,464	147,854	147,129	13,431	49,587	99,166	
December	161,352	154,528	145,503	12,881	54,587	77,595	
Total	2,073,303	2,080,749	1,997,609	422,066	342,712	1,087,273	703,840
As % of 2017-2019							
January				99%	11%	27%	78%
February				100%	10%	28%	76%
March				44%	10%	38%	75%
April				5%	12%	53%	79%
May				5%	12%	53%	82%
June				6%	11%	53%	78%
July				5%	9%	58%	
August				6%	15%	56%	
September				8%	22%	63%	
October				9%	21%	72%	
November				9%	33%	66%	
December				8%	35%	50%	
Total	-	-	-	21%	17%	53%	78%

Source: Exhibit EE to the Affidavit of Jim Pearce sworn Nov. 13/22
Summary of monthly sales and traffic count - Jan-Jun 2023

Annual Income Statements - PBDF
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Description	Year Ended December 31, 2020	2021	2022
Sales	$ 3,107,805	$ 1,897,214	$ 11,783,548
Cost of Sales	1,642,462	912,976	5,688,563
Gross Margin	1,465,343	984,238	6,094,985
	47%	*52%*	*52%*
Expenses			
Rent - Buffalo and Fort Erie Public Bridge Auth.	4,000,000	4,000,000	4,000,000
Rent - Hamilton International Airport	56,084	20,027	59,864
Wages & Benefits	1,301,745	921,455	1,552,312
Insurance	292,868	186,103	194,703
Professional Fees	61,651	169,724	537,136
Commercial Taxes	50,268	68,715	68,437
Utilities	73,978	62,291	87,588
Marketing	54,117	53,670	55,675
Store Supplies	20,941	48,821	72,142
Maintenance	45,785	31,884	79,312
Automobile	4,835	3,905	8,450
Collection Fees	54,974	25,458	169,884
Computer Expense	24,405	20,673	42,392
Communications	17,175	17,249	27,434
Office	5,051	3,802	8,862
Travel and Promotion	14,827	1,784	13,905
Other Admin Expenses	37,640	37,871	67,657
Amortization	562,722	511,954	485,009
	6,679,066	6,185,386	7,530,761
Operating Income	(5,213,723)	(5,201,148)	(1,435,776)
	-167.8%	*-274.1%*	*-12.2%*
Other Income			
Other Income	69,522	16,982	207,768
Government Subsidies	543,585	760,200	652,888
	613,107	777,182	860,656
Other Expenses			
Capital Lease & Lease Line of Credit Interest	204,785	191,940	196,160
	204,785	191,940	196,160
Net Income before Income Taxes	(4,805,401)	(4,615,906)	(771,280)
Income Taxes (Recovery)			
Current	(1,136,291)	(865,474)	-
Future	(37,900)	(220,400)	(202,800)
	(1,174,191)	(1,085,874)	(202,800)
Net Income	$ (3,631,210)	$ (3,530,032)	$ (568,480)

Source: Income Statements for Peace Bridge Duty Free Inc.

Annual Balance Sheets - PBDF
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Description	As at December 31, 2020	2021	2022
Current Assets			
Cash and Equivalents	$ 90,158	$ 1,770,372	$ 3,128,834
Misc. Receivables	734,128	270,396	515,266
Income Tax Receivable	1,262,120	865,474	-
Inventory	1,724,768	1,378,441	1,342,209
Prepaid Expenses	88,291	92,933	471,322
	3,899,465	4,377,616	5,457,631
Lease Security Deposit	50,000	50,000	50,000
Net Equipment and Leaseholds	6,248,270	5,736,316	5,294,386
Future Income Taxes	168,000	213,000	415,800
	$ 10,365,735	$ 10,376,932	**$ 11,217,817**
			To Sch 1b
Current Liabilities			
Bank Indebtedness	210,000	-	-
Accounts Payable	3,771,057	7,331,802	9,404,414
Income Taxes Payable	-	-	-
Lease Line of Credit	-	-	-
Current Portion of Capital Lease Obligation	4,473,735	3,839,619	3,176,372
Current Portion of Long-Term Debt	-	1,000,000	1,000,000
	8,454,792	12,171,421	13,580,786
Capital Lease Obligation	-	-	-
Future Income Taxes	175,400	-	-
	8,630,192	12,171,421	13,580,786
Shareholders' Equity			
Common Stock	21,000	21,000	21,000
Retained Earnings (Deficit) - Opening	**5,505,753**	1,714,543	(1,815,489)
Net Income	(3,631,210)	(3,530,032)	(568,480)
Dividends	(160,000)	-	-
Retained Earnings (Deficit) - Closing	1,714,543	(1,815,489)	(2,383,969)
	1,735,543	(1,794,489)	(2,362,969)
	$ 10,365,735	$ 10,376,932	$ 11,217,817
	To Sch 1a		

Includes accruals of unpaid rent

Source: Balance sheets for Peace Bridge Duty Free Inc.

Annual Income Statements - Buffalo and Fort Erie Public Bridge Authority
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

	FYE Dec 31			
	2019	2020	2021	2022
	(USD - thousands)			
Revenue				
Toll Revenues	$ 22,118	$ 16,910	$ 18,165	$ 23,133
Other Revenues (including rent)	8,813	7,662	8,123	6,517
	30,931	24,572	26,288	29,650
Operating Expenses				
Toll Collection and Traffic Control	2,211	1,643	1,386	1,531
Maintenance of Bridge, Buildings, Plazas and Equipment	4,694	3,761	3,918	3,817
Administration	3,117	3,437	3,509	4,085
Pension	673	283	(408)	(760)
Other Post-employment Benefits	(1,162)	(3,650)	(2,855)	(1,676)
Other Expenses	1,157	1,177	1,261	1,244
Bad Debt	-	2,500	3,192	2,068
Loss on Asset Disposals/Impairment	-	306	2,268	(26)
Depreciation	6,242	8,053	8,143	8,459
	16,932	17,510	20,414	18,742
Operating Income	13,999	7,062	5,874	10,908
Non-Operating Revenue/(Expenses)				
Net Increase (Decrease in Fair Value of Investments	3,216	1,450	(767)	(4,376)
Interest Income	109	84	34	3,406
Interest Expense	(3,570)	(3,476)	(3,381)	(3,281)
Grant Revenue	1,814	-	-	-
Currency Remeasurement	101	147	29	(558)
	1,670	(1,795)	(4,085)	(4,809)
Change in Net Position	$ 15,669	$ 5,267	$ 1,789	$ 6,099

Relates to rent receivable from duty-free stores

Source: Buffalo and Fort Erie Public Bridge Authority - Annual Reports

Annual Balance Sheets - Buffalo and Fort Erie Public Bridge Authority
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

	At December 31			
	2019	2020	2021	2022
	(USD - thousands)			
Assets				
Current Assets	$ 94,734	$ 79,607	$ 82,883	$ 86,588
Restricted Assets	19,678	19,374	17,104	17,408
Non-Current Lease Receivable	-	-	55,394	50,448
Net Pension Asset	3,582	7,390	9,405	10,804
Net OPEB Asset	-	-	604	2,771
Capital Assets (net)	239,199	249,913	244,755	239,698
Total Assets	357,193	356,284	410,145	407,717
Deferred Outflow of Resources	4,826	2,977	2,123	1,245
Total Assets and Deferred Outflow	$ 362,019	$ 359,261	$ 412,268	$ 408,962
Liabilities				
Current Liabilties	12,536	10,453	8,988	8,703
Noncurrent Liabilities	105,999	97,072	91,544	87,790
	118,535	107,525	100,532	96,493
Deferred Inflow of Resources	3,721	6,706	64,917	59,551
Net Position				
Net Investment in Capital Assets	131,766	147,659	148,000	146,659
Restricted	16,893	14,981	14,895	16,010
Unrestricted	91,104	82,390	83,924	90,250
	239,763	245,030	246,819	252,919
Total Liabilities, Deferred Inflows and Net Position	$ 362,019	$ 359,261	$ 412,268	$ 408,962

Source: Buffalo and Fort Erie Public Bridge Authority - Annual Reports

Other Bridge Authority - Rental Income
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

	FYE October 31					
	2017	2018	2019	2020	2021	2022
Niagara Falls Bridge Commission (Rainbow Bridge/Queenston-Lewiston Bridge)						
Rental Income	$ 10,792,171	$ 10,958,945	$ 11,042,799	$ 7,890,897	$ 9,049,150	$ 11,093,113
Other Income (Tolls, etc.)	22,068,557	24,923,986	25,259,802	22,400,122	16,464,187	23,303,494
Total	32,860,728	35,882,931	36,302,601	30,291,019	25,513,337	34,396,607
Total Expenses	29,264,717	31,092,183	33,366,204	32,916,036	32,523,847	31,443,620
Net income before tax	$ 3,596,011	$ 4,790,748	$ 2,936,397	$ (2,625,017)	$ (7,010,510)	$ 2,952,987
Westbound traffic - cars (Millions)	2.72	2.86	2.77	0.9	0.2	1.28
Reduction in rental income				29%	18%	0%
Reduction in net income				189%	339%	-1%
Reduction in auto traffic				68%	93%	54%

	FYE March 31					
	2017	2018	2019	2020	2021	2022
	(000s)	*(000s)*	*(000s)*	*(000s)*	*(000s)*	*(000s)*
Federal Bridge Corporation (Sault Ste Marie Intl. Bridge, Blue Water Intl. Bridge, Thousand Islands Intl. Bridge, Seaway Intl. Bridge)						
Rental Income	$ 4,370	$ 4,606	$ 4,910	$ 4,690	$ 1,378	$ 1,871
Other Income (Tolls, etc.)	39,535	38,025	37,873	38,416	25,862	29,756
Total	43,905	42,631	42,783	43,106	27,240	31,627
Total Expenses and other income	44,292	45,605	44,363	45,090	42,030	33,558
Net income before tax	$ (387)	$ (2,974)	$ (1,580)	$ (1,984)	$ (14,790)	$ (1,931)
Traffic						
Reduction in rental income					71%	60%
Reduction in net income					-645%	3%

Sources https://www.niagarafallsbridges.com/images/docs/2022_Annual_Review_-_low_res.pdf

MDD FORENSIC ACCOUNTANTS

Ephraim Stulberg

MBA, CPA, CA, CBV, CFF | Partner / Senior Vice President

Ephraim specializes in the areas of business valuation, economic loss quantification and investigative accounting. He has provided expert evidence in court and at arbitration. He has worked on matters across Canada, as well as the United States, Europe, South America, the Middle East and Asia.

Ephraim has prepared economic loss quantification reports involving intellectual property infringement, professional negligence, breach of contract, physical damage and personal injury. He has completed numerous assignments involving first-party and third-party insurance coverage.

Ephraim has provided business valuation reports in a variety of contexts, including contractual and shareholder disputes, post-acquisition disputes, expropriation, physical damage, matrimonial disputes, income tax reporting, corporate reorganizations, bankruptcy, as well as in the negotiated purchase and sale of companies or shares.

Ephraim has conducted financial investigations in the context of partnership and shareholder disputes, post-acquisition disputes, buyer-side due diligence and estate disputes, and has also investigated numerous employee thefts.

Ephraim has experience in a wide variety of industries, including oil and gas, mining, construction, power generation, computer software, franchising, manufacturing, real estate, media/communications, financial services, professional services and medical supplies/healthcare.

Ephraim is a frequent contributor to various financial and legal publications. He has published numerous pieces in *Lawyers Weekly, Lawyer's Daily* and *Law Times*, and has authored or co-authored numerous articles in peer reviewed journals, including the CICBV's *Journal of Business Valuation*, the American Bar Association's *Franchise Law Journal*, and the *Canadian Intellectual Property Review.* He received an award from the Ontario Bar Association in 2014 for one of his publications. He is a past member of the CICBV's Publications and Research Committee. He was named the CICBV's "Communicator of the Year" in 2019.

Ephraim has delivered presentations for the Intellectual Property Institute of Canada, the Toronto Intellectual Property Group, the Ontario Bar Association, the Canadian Franchise Association, the Canadian Defence Lawyers, the Ontario Expropriation Association, the CBV Institute, the American Institute of Certified Public Accountants, as well as to various individual law firms and corporations in Ontario, Nova Scotia, Saskatchewan and British Columbia.

Professional Qualifications

Chartered Professional Accountant / Chartered Accountant (CA/CPA)
Chartered Business Valuator (CBV)
Certified in Financial Forensics (CFF)

Academic Qualifications

HBA (with Distinction), University of Toronto
MA, University of Toronto
MBA (with Distinction), Schulich School of Business (York University)

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Form 53
Courts of Justice Act

ROYAL BANK OF CANADA

AND

PEACE BRIDGE DUTY FREE INC.

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Ephraim Stulberg. I live in the city of Toronto, in the province of Ontario.

2. I have been engaged by or on behalf of Peace Bridge Duty Free Inc. to provide evidence in relation to the above-noted court proceeding.

3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:

   (a) to provide opinion evidence that is fair, objective and non-partisan;
   (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
   (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Ephraim Stulberg

Signature

August 16, 2023

Date

This is Exhibit "B" referred to in the Affidavit of Ephraim Stulberg
sworn remotely this 26th day of September 2023.

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

Form 53
Courts of Justice Act

ROYAL BANK OF CANADA

AND

PEACE BRIDGE DUTY FREE INC.

ACKNOWLEDGMENT OF EXPERT'S DUTY

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   (a) to provide opinion evidence that is fair, objective and non-partisan;
   (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
   (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Ephraim Stulberg

Signature

August 16, 2023

Date

This is Exhibit "C" referred to in the Affidavit of Ephraim Stulberg
sworn remotely this 26th day of September 2023.

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

MDD FORENSIC ACCOUNTANTS

Ephraim Stulberg

MBA, CPA, CA, CBV, CFF | Partner / Senior Vice President

Ephraim specializes in the areas of business valuation, economic loss quantification and investigative accounting. He has provided expert evidence in court and at arbitration. He has worked on matters across Canada, as well as the United States, Europe, South America, the Middle East and Asia.

Ephraim has prepared economic loss quantification reports involving intellectual property infringement, professional negligence, breach of contract, physical damage and personal injury. He has completed numerous assignments involving first-party and third-party insurance coverage.

Ephraim has provided business valuation reports in a variety of contexts, including contractual and shareholder disputes, post-acquisition disputes, expropriation, physical damage, matrimonial disputes, income tax reporting, corporate reorganizations, bankruptcy, as well as in the negotiated purchase and sale of companies or shares.

Ephraim has conducted financial investigations in the context of partnership and shareholder disputes, post-acquisition disputes, buyer-side due diligence and estate disputes, and has also investigated numerous employee thefts.

Ephraim has experience in a wide variety of industries, including oil and gas, mining, construction, power generation, computer software, franchising, manufacturing, real estate, media/communications, financial services, professional services and medical supplies/healthcare.

Ephraim is a frequent contributor to various financial and legal publications. He has published numerous pieces in *Lawyers Weekly, Lawyer's Daily* and *Law Times*, and has authored or co-authored numerous articles in peer reviewed journals, including the CICBV's *Journal of Business Valuation*, the American Bar Association's *Franchise Law Journal*, and the *Canadian Intellectual Property Review.* He received an award from the Ontario Bar Association in 2014 for one of his publications. He is a past member of the CICBV's Publications and Research Committee. He was named the CICBV's "Communicator of the Year" in 2019.

Ephraim has delivered presentations for the Intellectual Property Institute of Canada, the Toronto Intellectual Property Group, the Ontario Bar Association, the Canadian Franchise Association, the Canadian Defence Lawyers, the Ontario Expropriation Association, the CBV Institute, the American Institute of Certified Public Accountants, as well as to various individual law firms and corporations in Ontario, Nova Scotia, Saskatchewan and British Columbia.

Professional Qualifications

Chartered Professional Accountant / Chartered Accountant (CA/CPA)
Chartered Business Valuator (CBV)
Certified in Financial Forensics (CFF)

Academic Qualifications

HBA (with Distinction), University of Toronto
MA, University of Toronto
MBA (with Distinction), Schulich School of Business (York University)

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

ROYAL BANK OF CANADA
Applicant

and

PEACE BRIDGE DUTY FREE INC.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

AFFIDAVIT OF EPHRAIM STULBERG

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Lawyers for the Respondent

TAB 21

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

ONTARIO

SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

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

AFFIDAVIT OF LISA HUTCHESON

I, **Lisa Hutcheson**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am Managing Partner of J.C. Williams Group, and have knowledge of the matters to which I hereinafter depose.

2. At the request of the Respondent, Peace Bridge Duty Free Inc., I prepared a Retail Expert Report. My analysis and opinions are set out in my Retail Expert Report dated August 16th, 2023.

3. Attached hereto and marked as **Exhibit "A"** is a true copy of the Retail Expert Report dated August 16th, 2023.

4. Attached hereto and marked as **Exhibit "B"** is a true copy of my signed Form 53 Acknowledgement of Expert's Duty.

5. Attached hereto and marked as **Exhibit "C"** is a true copy of my current curriculum vitae.

6. This affidavit is sworn in support of the Respondent's motion and for no improper purpose.

SWORN or *Affirmed* before me: *(select one):* ☐ in person OR ☒ by video conference by Lisa Hutcheson being located in the City of Toronto before me at the City of Toronto, in the Province of Ontario, on this 26th day of September 2023, in accordance with O.Reg 431/20, administering Oath or Declaration Remotely.

Brendan Jones
A Commissioner for Taking Affidavits

LISA HUTCHESON

This is Exhibit “A” referred to in the Affidavit of Lisa Hutcheson
sworn remotely this 26th day of September 2023.

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

J.C. WILLIAMS GROUP

Peace Bridge Duty Free Inc.
and
Buffalo and Fort Erie Public Bridge Authority
Lease Interpretation Dispute

Retail Expert Report

August 16, 2023
Prepared for: Blaney McMurtry LLP

J.C. Williams Group
1 Dundas Street W, Suite 2500
Toronto, ON M5G 1Z3
416.921.4181

August 16, 2023

Mr. John C. Wolf
Partner, Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Dear Mr. Wolf,

I am pleased to submit the following report in respect to the matter of the Peace Bridge Duty Free Inc. and Buffalo and Fort Erie Public Bridge Authority lease interpretation dispute.

Sincerely,

Lisa Hutcheson
Managing Partner, J.C. Williams Group

Cc: Brendan Jones, Partner, Blaney McMurtry LLP

Contents

1. Summary

Capitalized terms are as defined in this report or in the Lease.

Peace Bridge Duty Free Inc. (PBDF) is the Tenant located on the Ontario side of the Peace Bridge at the border between Fort Erie and Buffalo in accordance with a building lease agreement dated July 16, 2019 (Lease), with the Buffalo and Fort Erie Public Bridge Authority (the Landlord).

I have been asked to prepare a report with respect to an opinion relating to the Lease, including Base Rent issues. In addition, I have been asked to answer a specific set of questions. The following will provide a summary of answers further detailed in my report.

What is a range of the typical leasing rates in retail locations in the greater Niagara area?

- The base rent for retail properties in the Fort Erie trade area ranges from \$8-\$30 per square foot (ft^2).
    - Total rent including Taxes, Maintenance, and Insurance (TMI) is between \$12-\$42/ft^2.
- PBDF, by paying Base Rent, is paying:
    - \$153.85/ft^2 on the total space (26,000 ft^2)[1], or
    - Considering the Tim Hortons space is vacant, and associated adjacencies are unusable in their current layout/design, therefore the Base Rent per square foot could be an artificially lowered lease rate because of unusable or vacant space.

Having regard to Frontier Duty Free Association and other public databases, what is a range of typical gross sales-to-rent ratios in the Canadian Duty Free sector?

- A typical ratio for gross sales-to-rent ratio in the Canadian Duty Free sector is very difficult to quantify, as it is a small number of stores, their operations differ, and all land border duty frees in Canada are privately owned.
- The Sault Ste. Marie Duty Free operator currently pays 16% of total sales for their lease.
- Jim Pearce, General Manager and CFO of PBDF, who has ongoing discussions with other duty free operators, advised that in his understanding, the standard currently ranges from 10-16%.

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[1] \$4,000,000 (Base Rent/26,000 ft^2).

- Mr. Pearce's tenure in the industry spans over 30 years as an operator, and 15 years on the Frontier Duty Free Association board of directors.

- PBDF appears to be paying the highest gross sales-to-rent ratio in the Canadian Duty Free sector.
- The average Gross Sales-to-rent ratio in the Canadian retail sector ranges from 6-10%.
- The Lease provides for payment of rent in the range of 20-24% of gross sales and is more particularly set out in the Lease. This rental rate is more than double the current Canadian retail benchmark.
  - In 2022, PBDF (if it is still required to pay their Base Rent) will pay 36.96%[2] of Gross Sales. However, as they paid 20% of Gross Sales, their rent would effectively doubled if they paid Base Rent.
  - The gross margin on PBDF products average around 50%. Therefore, rent and the costs of goods sold would total 86.96% of revenue. In addition to rent and cost of goods sold, a retailer has other expenses including labour, benefits, cleaning and maintenance, insurance, marketing, debt service, etc. In my opinion, it would be impossible to operate a business even at break even under the condition of paying nearly 40% of gross sales in rent.

Having regard to Frontier Duty Free Association and other public data bases, what is a range of typical minimum rent payable in duty free locations in Canada?

- Ms. Barrett of the FDFA confirmed these metrics are not collected by the association. In my research, I located no statistical base rent available for comparison.

Duty Free reports that Capture Rates of traffic crossing international borders are lower than pre-pandemic levels. Please review the Capture Rate of PBDF and provide commentary on whether this trend is being realized at the PBDF.

- Capture Rate is the total number of motor vehicles visiting a duty free location, divided by the total number of motor vehicles crossing through the international border.
- There has been a drastic reduction both in traffic and the number of transactions since 2019, as well as a decrease in the Capture Rate:
  - The Capture Rate in 2019 was 10.12% and 7.65% in 2022. This is a total reduction of 24.36%.

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[2] $4,000,000 (Base Rent)/$10,823,633 (2022 gross sales).

Having regard to a review of historical gross sales and traffic volume trends, what is a reasonable range of expected outcomes for a replacement tenant secured through an RFP process? To the extent applicable, please consider tenant improvement allowance, fixturing period, free rent, key money, and minimum rent obligations and provide a range of Net Economic Return (NER) for the Landlord over the balance of the term of the remaining Lease.

- Net Economic Return (NER) is an accounting/real estate term that describes how much an investor can expect to make on an investment over a specified period.
- Duty free stores in Canada, according to Ms. Barrett, rarely change operators. In many cases, the stores are in the possession of families who have operated the store for decades.
- Due to their high level of regulations, if an operator was to vacate their store, the decision for a new operator would need to go through a public tender process.
    - In conversation with Mr. Pearce, the RFP process in 2016 for the PBDF location took four months as an incumbent.
    - In my experience with public tenders, four to twelve months is reasonable.
- In my opinion, the cost to secure a new tenant for PBDF ranges from $2.33 million to $3.89 million.

Compare the Net Economic Return (NER) to the current Duty Free operator and a new operator acquired through Request for Proposal (RFP).

- I have been instructed to analyze the remaining Lease term from January 1, 2024 – October 31, 2031.
    - In this case, the NER is referring to how much profit the Landlord can expect to make through the leasing of PBDF for the remainder of its current Lease term (October 31, 2031).

- NER to the Landlord from a continuation of the current tenancy after January 1, 2024 over the remainder of the Lease term:
    - Gross Revenue: $32,951,353
    - Total Capital and Operating Cost range: $0
    - NER: $32,951,353

The Landlord can expect to generate approximately $32,951,353 in lease revenue over the remainder of the current Lease should they retain the current Tenant.

- NER to the Landlord from a replacement tenancy through Request for Proposal (RFP) from and after January 1, 2024 over the remainder of the Tenant's Lease term:
    - Gross Revenue range: $13,824,000 to $29,751,353
    - Total Capital and Operating Cost range: $5,330,000 to $8,560,000
    - NER range: $11,460,667 to $25,858,019

> The Landlord can expect to generate rent of between $11,460,667 to $25,858,019 over the remainder of the current Lease should they need to source a new tenant through an RFP process.

Based on lease rates and costs incurred by the Landlord, replacing the current Tenant through the RFP process would generate rent of between $11,460,667 - $25,858,019 as compared to $32,951,353 with the current operator remaining at PBDF.

The current PBDF operator would generate between $7,093,333 - $21,460,686 (or 21.5% to 65.13%) more than if the Landlord were to replace the current operator.

Based on my analysis of the quantified NER, the Landlord is materially better off in terms of rent received retaining the current Tenant.

Qualifications

I, Lisa Hutcheson, am the Managing Partner at J.C. Williams Group (JCWG), a retail consulting firm based in Toronto founded in 1974.[3] I am a seasoned retail executive with a career spanning nearly 30 years. I have consulted on matters relating to developing retail strategy for retailers, shopping centres, and mixed-use property redevelopment, as well as retail market demand. I have testified as an Expert Witness and provided expert reports for numerous cases relating to retail operating practices.

I am a keynote speaker on retail best practices and am frequently quoted and sourced for media interviews regarding retail activity. I have co-authored two books published by the Retail Council of Canada. I am also an adjunct professor at Seneca College, teaching in the Fashion Business Management Program. In addition to my extensive retail background, I am an active member of the Canadian Research Group for the International Council of Shopping Centres (ICSC) and a founding board member of the Canadian Retail Educators Association (CREA).

For this report, I was supported by Graham Heuman, a JCWG research associate, to gather background information and references as directed and supervised by myself.[4]

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[3] See Appendix A for more information about JCWG.
[4] See Appendix B for Ms. Hutcheson and Mr, Heuman's full Curriculum Vitae.

2. Background

Peace Bridge Duty Free Inc. (PBDF) is the Tenant located on the Ontario side of the Peace Bridge at the border between Fort Erie and Buffalo in accordance with a building lease agreement dated July 16, 2019, with the Buffalo and Fort Erie Public Bridge Authority (the Landlord).

PBDF closed on March 21, 2020[5] in accordance with a government order. They were closed for 548 days and partially opened again on September 19, 2021[6]. The border, however, was closed for Americans entering Canada from March 21, 2020, until August 9th, 2021[7], (507 days) and for Canadians entering the US, was closed until November 8, 2021[8] (598 days). Upon reopening in 2021, the store began paying 20% of Gross Sales percentage rent to the Landlord, plus all additional rent. For clarity, the tenant continued to pay additional rent during the period of closure.

The Landlord is demanding payment of the shortfall of Base Rent and 20% of sales from the initial pandemic closure to present. I am advised by Blaney that the Landlord values its claim for arrears of Base Rent in the range of $10 million - $12 million. The Tenant and Landlord are engaged in litigation with a motion hearing currently scheduled for mid-September 2023.

3. Instructions and Factual Assumptions

I have been asked to prepare a report with respect to an opinion relating to the Lease, including Base Rent issues. In addition, I have been asked to answer the following questions.

- What is a range of the typical leasing rates in retail locations in the greater Niagara area?
- Having regard to Frontier Duty Free Association and other public databases, what is a range of typical gross sales-to-rent ratios in the Canadian Duty Free sector?
- Having regard to Frontier Duty Free Association and other public databases, what is a range of typical minimum rent payable in duty free locations in Canada?
- Duty Free reports that Capture Rates of traffic crossing international borders are lower than pre-pandemic levels. Please review the Capture Rate of PBDF and provide commentary on whether this trend is being realized at the PBDF.

[5] 2021-12-12 – Jim Pearce Affidavit.
[6] Ibid.
[7] Ibid.
[8] Ibid.

- Having regard to a review of historical gross sales and traffic volume trends, what is a reasonable range of expected outcomes for a replacement tenant secured through an RFP process? To the extent applicable, please consider Tenant Improvement allowance, fixturing period, free rent, key money, and minimum rent obligations and provide a range of Net Economic Return (NER) for the Landlord over the balance of the term of the remaining Lease.
- Compare Net Economic Return (NER) to the current Duty Free operator and a new operator acquired through Request for Proposal (RFP).

3.1 Factual Assumptions

I assume the following facts to be true for the purposes of this report:

- Peace Bridge Duty Free (PBDF) has been operating a duty free shop at the Peace Bridge site and as the Tenant of the Buffalo and Fort Erie Public Bridge Authority (PBA) since November 1986.[9]
- On March 21, 2020, all non-essential travel across the Canada-United States border was suspended indefinitely.[10]
- International travel was reinstated at land borders (though only for travellers fully vaccinated for COVID-19) on November 8, 2021.[11]
- Canada-United States land borders were closed as a result of government legislation in response to the COVID-19 pandemic for 598 days.
- The Landlord is requiring a payment of Base Rent accrued post-pandemic.
- The Tenant, in reliance on Section 18.07 of the Lease, has paid to the Landlord, in lieu of Base Rent, 20% of gross sales.
    - Blaney has advised me that no party disputes that Section 18.07 of the Lease was triggered by the COVID-19 pandemic and resulting border closures.
- The Tenant and Landlord are engaged in litigation with the next motion hearing currently scheduled for mid-September 2023.

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[9] Affidavit of Jim Pearce, December 2, 2022.
[10] https://www150.statcan.gc.ca/n1/pub/45-28-0001/2021001/article/00007-eng.htm.
[11] https://globalnews.ca/news/8346872/us-canada-border-reopens-rules/.

4. Documents Reviewed

I have reviewed the following documents as the basis for the findings and opinions in my report:

- PBDF Sales-Costs 2017 – January 2023, February 2023
- FDFA Presentation to PBA board, May 2022
- FDFA Presentation to PBA re: Land border duty free Peace Bridge, March 25, 2022
- PBDF – PBA Lease 2016, July 20, 2016
- Sault Ste. Marie Bridge Authority, May 13, 2021[12]
- Affidavit of Jim Pearce, December 12, 2021
- Affidavit of Jim Pearce, December 2, 2022
- Supplemental Affidavit of Jim Pearce, February 13, 2023
- Cross-Motion Record of PBDF, November 13, 2022
- Affidavit of Ben Mills, January 1, 2023
- Affidavit of Ron Rienas, September 7, 2022
- Exhibits to Ron Rienas Affidavit, September 7, 2022
- Responding Affidavit of Ron Rienas, November 26, 2022
- Affidavit of Ron Rienas, March 1, 2023

In addition to the documents reviewed:

- JCWG research associate Graham Heuman visited the Peace Bridge Duty Free store on May 19, 2023.
- I interviewed the Executive Director of the Frontier Duty Free Association (FDFA), Barbara Barrett on June 6, 2023.[13]
- I interviewed Greg O'Hara, President of Peace Bridge Duty Free Inc., on June 13, 2023.
- I interviewed Jim Pearce, General Manager and CFO of Peace Bridge Duty Free, on June 13, 2023, and June 23, 2023.
- Mr. Heuman conducted a random sampling of telephone calls to ten Duty Free operators for additional insights regarding overall sales and rent-to-sales ratios where available.

[12] Sault Ste. Marie Bridge Authority, *Draft* Minutes, May 13, 2021.
[13] Appendix C – Meeting Minutes with Barbara Barrett, Executive Director of FDFA, June 6, 2023.

5. Discussion

5.1 About Duty Free Stores

Duty free shops at international airports have been in existence since the 1960s followed by the expansion to land border locations in 1986. The Canada Border Services Agency (CBSA) licenses duty free operators, which sell goods free of certain duties and taxes normally levied on goods sold in Canada to travellers who are about to leave Canada.[14]

The CBSA oversees the licensing of duty free shops, primarily to ensure duty free goods are properly accounted for and exported. The CBSA also monitors duty free shops to ensure they comply with government requirements and maintains related regulations and policies.

While passengers of commercial vehicles also shop at these stores, the primary customers are leisure travellers, travelling by car and bus tours.

These stores are privately owned and rarely turnover. In the case of PBDF, it has had the same operator since November 1986.

5.2 Impact of COVID-19 on Cross-Border Travel

The COVID-19 pandemic, and associated government legislation, drastically decreased the number of visitors travelling internationally. On March 21, 2020, all non-essential travel across the Canada-United States border was suspended indefinitely.[15] International travel was eventually reinstated at land borders (though only for travellers fully vaccinated for COVID-19) on August 9, 2021[16] (for Americans coming to Canada), and November 8, 2021[17] (for Canadians entering the US). As such, Canada-United States land borders were closed as a result of government legislation in response to the COVID-19 pandemic from 507 days (Americans coming to Canada) to 598 days (Canadians entering the US) (72-85 weeks). During the periods of reopening, there were still quarantine requirements for travellers entering Canada. This was a deterrent for those wanting to travel, regardless of if they were legally allowed to or not.

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[14] Canada Border Services Agency website: https://www.cbsa-asfc.gc.ca/import/dfs-bht-eng.html.
[15] https://www150.statcan.gc.ca/n1/pub/45-28-0001/2021001/article/00007-eng.htm.
[16]https://www.canada.ca/en/border-services-agency/news/2021/08/travel-advisory-reminder--on-august-9th-new-public-health-measures-will-come-into-force-affecting-travel-to-canada.html
[17] https://globalnews.ca/news/8346872/us-canada-border-reopens-rules/.

As of the 2023 Victoria Day long weekend[18], cross-border leisure traffic remains down from pre-pandemic levels. Canadians crossing to the United States at land borders is down approximately 46%[19] overall, with Ontario specifically faring better than the national average, however, still trending down approximately 15-20%[20] compared to the Victoria Day long weekend in 2019.

With duty free shops intended only for customers who are about to leave Canada and goods purchased must be immediately exported, the closure of the Canada-United States land borders dramatically impacted these stores.

Moreover, government requirements, related regulations, and policies made it impossible for these stores to pivot operations to online shopping (ordering and paying online), curbside pick-up or delivery, similar to other retail operations. The reason for this is that duty free shoppers must be crossing an international border to be able to make a purchase. When the border was closed, even though customers could browse products online, they were not able to make a purchase.

PBDF does have online pre-ordering available through their website. This allows customers to view the store's inventory, and reserve products upon their arrival. However, this is much different than online shopping since there are no payments processed, and there is no ability for the customer to perform curbside-pickup or have the products delivered.

This distinction is important as the main convenience benefits of online shopping (payment processing, delivery/curbside pickup) are not possible as a result of duty free regulations.

5.3 Commercial (Retail) Tenant and Landlord Dynamics in Response to COVID-19

Commercial tenant and landlord relationships were tested during the COVID-19 pandemic. As a result of government legislation in response to the COVID-19 pandemic, businesses were required to close for various lengths and periods of time. As such, revenue across industries, especially retail, dropped significantly. Tenants with no revenues were unable to honour lease obligations and payments became unattainable.

[18] May 20-23, 2023.
[19] Appendix C – Meeting Minutes with Barbara Barrett, Executive Director of FDFA, June 6, 2023.
[20] Discussion with Barbara Barrett and discussions with other duty free stores.

In response to government legislation, there were various financial incentives given to both landlords and tenants to support and keep the businesses afloat. Though this served as an aid to retailers, in many cases, these supports were not sufficient. Therefore, commercial tenants and landlords were required to be collaborative to benefit both parties.
In most cases, landlords first offered retail tenants rent deferrals. These were mutually beneficial as they:

- Provided rent relief to the retailer,
- Maintained landlord balance sheets, and
- Ensured that landlords would receive payment for the rent in the future, so there was no lost revenue in the long-term.

In most cases, these deferrals were given with no interest to allow retailers the best opportunity to pay them back.

If deferrals were not sufficient, landlords would offer periods of rent abatement. These abatements were offered typically to keep tenants from abandoning their lease and vacating the property.

In other instances, or in conjunction with deferrals/abatements, many tenants renegotiated with landlords to begin paying percentage rent rather than a base rent. Since the periods of lockdowns were difficult to judge, this allowed for more consistency and proportionality in expenses.

Deferrals, abatements, and conversions to percentage rent all varied in timeframes. In some instances, there was support only during periods of closure. However, it was more common to see renegotiations and assistance during periods of ramp up or reduced occupancy in retail environments, as this would give the tenant/retailer the best opportunity for survival.

Landlords considered the costs and benefits of abatements versus re-tenanting, and many concluded that finding and fitting out a new tenant would cost significantly more than abating rent for the periods that the store was closed. Overall, vacancy and the costs of re-tenanting (leasing downtime, fixturing periods, free rent, etc.) combined with the lower rent expectations of replacement tenants was seen as worse than abatements for periods of closure. In many instances, there were material abatements/deferrals for several months and/or free rent periods given.

5.4 Duty Free Store Performance as a Result of COVID-19

Travel restrictions, especially for non-essential travellers, had a drastic effect on all duty free stores, including PBDF. The following examines the traffic decrease since the onset of COVID-19 pandemic regulations and the associated decrease in overall revenue.

Prior to the COVID-19 pandemic, 94.7% (as shown in table 2) of total duty free sales were attributed to leisure travel (cars and buses). During periods of the land border closure, only essential traffic was able to cross (in most cases, this meant commercial transport trucks). As such, comparisons pre and post border closures are more relevant for cars and buses as opposed to trucks since they attribute to the vast majority of PBDF sales.

The below sections have been compiled to the best of my ability with data provided by Mr. Pearce of PBDF. The preferred and most accurate data to compare is a full calendar year. At the time of writing this report being the middle of 2023, year-over-year for the 2022 calendar year was compared. I have included the year-to-date data for 2023 in a separate section.

5.4.1 Overall Revenue Decrease

Overall revenue at all duty free stores as a result of government legislation in response to the COVID-19 pandemic has decreased. A survey conducted by the FDFA cited that the majority of duty free stores experienced sales decline of 80-90%.[21] PBDF similarly, realized a revenue decrease of -86.6% in 2020, -92.7% in 2021, and -47.4% in 2022.[22] Table 1 illustrates the pre-pandemic, during-pandemic, and post-pandemic revenue generated at PBDF.

Revenue	2017	2018	2019	2020	2021	2022
Cars	$19,146,089	$17,474,410	$17,511,028	$2,170,512	$1,362,004	$9,776,836
Buses	$1,469,256	$1,389,933	$1,230,691	$345,906	$2,137	$88,899
Trucks	$1,094,956	$1,095,804	$1,067,226	$26,501	$228,505	$957,898
Total	**$21,710,301**	**$19,960,147**	**$19,808,945**	**$2,542,919**	**$1,592,646**	**$10,823,633**
Percentage of Revenue						
Cars	88.19%	87.55%	88.40%	85.36%	85.52%	90.33%
Buses	6.77%	6.96%	6.21%	13.60%	0.13%	0.82%
Trucks	5.04%	5.49%	5.39%	1.04%	14.35%	8.85%

Table 1: PBDF Revenue, 2017-2022.

Table 2 highlights the change in distribution of revenue between cars, buses, and trucks, as well as total average decreases.

Metrics	Percentage of Car	Percentage of Bus	Percentage of Truck	Total Average (Car + Bus)
Average Percentage Change Pre to Post-Lockdown (2017 to 2019 – 2020 to 2022)	-1.11%	-27.00%	52.25%	-76.39%
Percentage Change 2020 over 2019	-3.44%	118.95%	-80.66%	-86.56%
Percentage Change 2021 over 2019	-3.26%	-97.84%	166.31%	-92.72%
Percentage Change 2022 over 2019	2.18%	-86.78%	64.27%	-47.36%

Table 2: PBDF Revenue Change, 2017-2022.

Overall revenue in 2022 remained down, realizing a -47.4% decline compared to 2019, the last full calendar year pre-pandemic lockdowns.

[21] PBA_presentation_March_2022_Distribution Mar 25, Page 7.
[22] Table 2 Total Average (car and bus).

5.4.2 Traffic Decrease

All vehicular traffic at PBDF decreased significantly because of government legislation in response to the COVID-19 pandemic. Table 3[23] illustrates the pre-pandemic, during-pandemic, and post-pandemic traffic at PBDF.

Traffic	2017	2018	2019	2020	2021	2022
Cars	2,073,303	2,080,749	1,997,609	361,674	342,712	1,100,634
Buses	11,791	10,690	10,350	1,910	413	3,315
Trucks	580,890	572,119	542,732	517,931	574,774	549,499
Total	**2,665,984**	**2,663,558**	**2,550,691**	**881,515**	**917,899**	**1,653,448**
Percentage of Traffic						
Cars	77.77%	78.12%	78.32%	41.03%	37.34%	66.57%
Buses	0.44%	0.40%	0.41%	0.22%	0.04%	0.20%
Trucks	21.79%	21.48%	21.28%	58.75%	62.62%	33.23%

Table 3: PBDF Traffic, 2017-2022.

Table 4 highlights the change in distribution of traffic between cars, buses, and trucks, as well as total average decreases for cars and buses.

Metrics	Percentage of Car	Percentage of Bus	Percentage of Truck	Total Average (Car + Bus)
Average Percentage Change Pre- to Post-Lockdown (2017 to 2019 – 2020 to 2022)	-91.81%	1623.97%	364.78%	-70.72%
Percentage Change 2020 over 2019	-47.61%	-46.60%	176.13%	-81.89%
Percentage Change 2021 over 2019	-52.33%	-88.91%	194.29%	-82.91%
Percentage Change 2022 over 2019	-15.00%	-50.59%	56.19%	-45.02%

Table 4: PBDF Traffic Change, 2017-2022.

Overall car and bus traffic had not recovered in 2022 and remained down -45.0% compared to 2019, the last full calendar year pre-pandemic lockdowns.

[23] I have relied on traffic data provided by Mr. Pearce. There are slight variances in traffic numbers between Mr. Pearce and the Peace Bridge Authority (PBA) website. These variances, according to Mr. Pearce, are likely a result of revisions from the PBA as PBDF uses the numbers as they are released. The difference does not change my opinion nor create any material difference in the traffic decreases.

5.4.3 Overall Transaction Decrease

Overall transactions at PBDF also decreased as a result of government legislation in response to the COVID-19 pandemic. Table 5 represents the pre-pandemic, during-pandemic, and post-pandemic traffic at PBDF. Both 2020 and 2021 were most significantly impacted, though 2022 is 50% below 2019 transactions.

Transactions	2017	2018	2019	2020	2021	2022
Cars	267,334	244,119	225,756	30,245	14,023	111,229
Buses	19,086	18,892	16,523	465	38	1,410
Trucks	24,802	21,139	15,823	3,824	2,596	13,919
Total	**311,222**	**284,150**	**258,102**	**34,534**	**16,657**	**126,558**
Percentage of Transactions						
Cars	85.90%	85.91%	87.47%	87.58%	84.19%	87.89%
Buses	6.13%	6.65%	6.40%	1.35%	0.23%	1.11%
Trucks	7.97%	7.44%	6.13%	11.07%	15.59%	11.00%

Table 5: PBDF Transactions, 2017-2022.

Table 6 shows the change in distribution of transactions between cars, buses, and trucks, as well as total average decreases. Trucks, as a percentage of sales had increased, while passenger vehicles are the primary customer.

Metrics	Percentage of Car	Percentage of Bus	Percentage of Truck	Total Average (Car + Bus)
Average Percentage Change Pre to Post-Lockdown (2017 to 2019 – 2020 to 2022)	0.15%	-85.98%	74.83%	-80.12%
Percentage Change 2020 over 2019	0.13%	-78.97%	80.62%	-87.32%
Percentage Change 2021 over 2019	-3.75%	-96.44%	154.22%	-94.20%
Percentage Change 2022 over 2019	0.48%	-82.60%	79.40%	-53.51%

Table 6: PBDF Transaction Change, 2017-2022.

Overall transactions in 2022 were down -53.5% compared to 2019, the last full calendar year pre-pandemic lockdowns. Tour buses realized the greatest impact also affecting total revenue.

5.4.4 2023 Year-to-Date (YTD) Traffic and Revenue Comparisons

As previously mentioned, year-over-year data is typically used as the metric of comparison. I have, however, obtained the 2023 YTD traffic and revenue and compared to revenue and traffic in 2019. Tables 7 and 8 show traffic and revenue by month for 2019 and 2023.

2023	Jan	Feb	Mar	Apr	May	Jun	Total
Traffic							
Cars	97,569	92,331	115,598	114,718	135,379	148,245	703,840
Buses	360	364	357	332	393	382	2,188
Trucks	44,379	41,550	47,655	43,279	48,096	46,543	271,502
Total	142,308	134,245	163,610	158,329	183,868	195,170	**977,530**
Revenue							
Total	$731,846	$746,452	$889,019	$1,016,288	$1,249,446	$1,401,866	**$6,034,916**

Table 7: PBDF Traffic and Revenue, YTD 2023.

2019	Jan	Feb	Mar	Apr	May	Jun	Total
Traffic							
Cars	114,306	115,595	150,707	143,282	164,405	188,736	877,031
Buses	611	610	723	659	752	826	4,181
Trucks	43,837	42,608	46,407	46,316	47,670	45,312	272,150
Total	158,754	158,813	197,837	190,257	212,827	234,874	**1,153,362**
Revenue							
Total	$821,602	$897,244	$1,213,657	$1,270,931	$1,668,230	$1,840,310	**$7,711,974**

Table 8: PBDF Traffic and Revenue, January – June 2019.

Table 9 (following page) highlights the change in traffic and revenue between cars, buses, and trucks, as well as total average decreases for cars and buses.

Metric	Percentage of Car	Percentage of Bus	Percentage of Truck	Total Average (Car + Bus)
Traffic Percent Change – January to June 2019 to January to June 2023	-19.75%	-47.67%	-0.24%	-19.88%

Table 9: PBDF Traffic Change, January to June 2019- January to June 2023.

Metric	Total Revenue Change
Revenue Percent Change – January to June 2019 to January to June 2023	-21.75%

Table 10: PBDF Revenue Change, January to June 2019- January to June 2023.

For the first half of 2023 (January – June 2023), revenue is down -21.8% YOY compared to 2019 (pre-pandemic). Total car and bus traffic, compared to 2019, is also down -19.9% YOY.

6. Questions Asked of Ms. Hutcheson

In my instructions for this assignment, I have been asked specifically to provide commentary and opinion to a set of questions. I will do so to the best of my ability given the sources and information available, as well as my understanding of the overall retail climate.

6.1 What is a range of the typical leasing rates in retail locations in the greater Niagara area?

In a review of current commercial leasing opportunities in Fort Erie conducted on June 22, 2023, the range for base rent in the immediate trade area is from \$8-\$30/ft^2. Total rent including Taxes, Maintenance, and Insurance (TMI) ranges between \$12-\$42/ft^2.[24]

PBDF, at 26,000 ft^2 is paying, as at June 2023, \$153.85/ft^2 Base Rent.[25] Therefore, PBDF is paying at minimum 3.7 times to 12.8 times the leasing rate for commercial retail units in Fort Erie.

The rate of \$153.85/ft^2 could also be an artificially lowered as a result of dormant space. PBDF has a large vacant space from the Tim Hortons departure, as well as an onsite warehouse and office space. Therefore, if we were to account for the actual retail space could be even higher.

6.2 Having regard to Frontier Duty Free Association and other public databases, what is a range of typical gross sales-to-rent ratios in the Canadian Duty Free sector?

Duty free stores are desirable for retail operators while there are very few opportunities with only 33 stores in Canada. The locations are limited by governments and have historically served as ideal shopping locations for customers crossing land borders. However, as duty free stores' operations were severely constrained during the COVID-19 pandemic because of government legislation, these operations became much less desirable. As with all other retail categories/stores, their value and desirability vary depending on their operating conditions.

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[24] See Appendix D for details of the trade area lease summary.

[25] Retail (14,000 ft^2), Food Court (2,000 ft^2), Warehouse (4,000 ft^2), and Second Floor Office (6,000 ft^2) = 26,000 ft^2 at \$4,000,000 per year = \$153.85/ft^2.

With that, many (if not all) of the leases of Canadian Duty Free stores were signed prior to the COVID-19 pandemic and therefore likely do not reflect the new realities of the sector, unless they have been renegotiated.

A typical ratio for gross sales-to-rent in the Canadian Duty Free sector is very difficult to quantify, as their operations differ. There are various factors to consider, such as:

- Who is the landlord?
  - Is the landlord a government or quasi-government body?
  - Does the operator own their land?
- When was the lease signed?
  - What were the economic/social/retail climates at the time of the lease signing?
- How long has the operator been in business?
  - Is this a second- or third-generation family business?
- Where is the store located?

Moreover, all of the Duty Free stores are privately owned companies with no requirement to share information related to their financial records with the public providing limited access to benchmarking. As such, and based on my discussion with Ms. Barrett, these metrics are not formally collected by the FDFA.

JCWG contacted ten Canadian Duty Free operators requesting such information. Though the operators were willing to speak with us and provide us with certain metrics related to overall tourism and traffic post-pandemic lockdowns, they were not willing to disclose their rent-to-sales ratios due to the highly proprietary nature of the metric requested.

In speaking with Jim Pearce General Manager and CFO of PBDF, these ratios vary greatly in their own industry. Mr. Pearce is well-versed within the Canadian Duty Free industry as an operator of 30 years and 15 years on the FDFA board of directors. The standard currently being achieved in Canada for gross sales-to-rent ratios, to his understanding, ranges from 10%-16%.[26]

The Sault Ste. Marie Bridge Authority publishes its annual reports and meeting minutes to the public and confirmed that the Canadian Duty Free operator at the site is currently paying 16% of total sales for their lease.

As per my discussions with Jim Pearce, and the absence of any statistical data to the contrary, PBDF appears to be paying the highest gross sales-to-rent ratio in the Canadian Duty Free sector.

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[26] JCWG interview with Jim Pearce, PBDF General Manager and CFO, June 13, 2023 and June 23, 2023.

When comparing to the average gross sales-to-rent ratio in the Canadian retail sector ranges from 6-10% the Base Rent obligations at PBDF of 157.3% in 2020[27], 251.2% in 2021[28], and 36.96%[29] in 2022 are 3.7x to 41.9x times higher as compared to the Canadian retail sector.

The Lease provides for payment of rent, before accounting for Base Rent, in the range of 20-24% of gross sales and is more particularly set out in the Lease. This rental rate more than double the current Canadian retail benchmark.

In 2022, PBDF (if required to pay Base Rent) owed 36.96%[30] of gross sales. However, they were paying 20% of sales in reliance of PBDF's interpretation of Section 18.07 of the Lease.[31]

At this rate of nearly 40%, it would be very difficult for any retail operator to make any profit/operate a business. Gross margins on PBDF products average around 50%. Therefore, just in rent and the costs of goods sold, would total 86.96% of revenue. In addition to rent and cost of goods sold, a retailer has other expenses including labour, benefits, cleaning and maintenance, insurance, marketing, debt service, etc. In my opinion, it would be impossible to operate a business even at break even under the condition of paying nearly 40% of gross sales in rent.

6.3 Having regard to Frontier Duty Free Association and other public databases, what is a range of typical minimum rent payable in duty free locations in Canada?

Duty free stores can be desirable for retail operators. As such, the base rents are higher than comparative lease rates in the surrounding trade areas. For this reason, in my opinion, it is most relevant to compare the Base Rent of the PBDF to other duty free stores in Canada as opposed to the local trade area, as it would be expected that Fort Erie, Ontario would have generally on average lower retail leasing rates as a ratio of gross sales compared to PBDF.

As with gross sales-to-rent ratios, these base rents vary significantly depending on the operating conditions of the store, as mentioned in Section 5.4.

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[27] $4,000,000/$2,542,919

[28] $4,000,000/$1,592,646

[29] $4,000,000/$10,823,633

[30] $4,000,000 (Base Rent)/$10,823,633 (2022 gross sales).

[31] Exhibit 1-PBDF Sales-Costs

Based on my discussion with Ms. Barrett, she confirmed these metrics are not collected by the FDFA. In my research, I located no statistical base rent available for comparison.

With the inability to compare the base rents of duty free locations, a secondary metric would be comparing to the trade area (Fort Erie, Ontario) as was performed above in section 6.1.

6.4 Duty Free reports that Capture Rates of traffic crossing international borders are lower than pre-pandemic levels. Please review the Capture Rate of PBDF and provide commentary on whether this trend is being realized at the PBDF.

Capture Rates are a universal conversion metric used across all retail industries. The metric is used to understand how many potential customers pass by a typical retailer would enter the store and make a purchase.

Capture Rate in the context of PBDF is the total number of motor vehicles visiting a duty free location, divided by the total number of motor vehicles crossing through the international border.

The Capture Rate at PBDF decreased in response to the COVID-19 pandemic lockdowns and government regulations. Table 7 shows the pre-pandemic, during-pandemic, and post-pandemic Capture Rate performance at PBDF.

Capture Rate	2017	2018	2019	2020	2021	2022
Cars	12.89%	11.73%	11.30%	8.36%	4.09%	10.11%
Buses	161.87%	176.73%	159.64%	24.35%	9.20%	42.53%
Trucks	4.27%	3.69%	2.92%	0.74%	0.45%	2.53%
Average	11.67%	10.67%	10.12%	3.92%	1.81%	7.65%

Table 7: PBDF Capture Rate, 2017-2022.

Capture Rate	
Percentage Change Pre- to Post-Lockdown	-58.76%
Percentage Change 2020 over 2019	-61.28%
Percentage Change 2021 over 2019	-82.07%
Percentage Change 2022 over 2019	-24.36%

Table 8: PBDF Capture Rate, 2017-2022.

As previously mentioned, there is limited benchmarking performed by Canadian Duty Free operators, especially those at land borders.

6.5 Having regard to a review of historical gross sales and traffic volume trends, what is a reasonable range of expected outcomes for a replacement tenant secured through an RFP process? To the extent applicable, please consider Tenant Improvement allowance, fixturing period, free rent, key money, and minimum rent obligations and provide a range of NER for the Landlord over the balance of the term of the remaining Lease.

The following section investigates the costs of re-tenanting commercial and retail units that are vacant. The standard costs to the Landlord for executing a new lease agreement include commission and leasing expenses, legal costs, costs of landlord work, Tenant Improvement allowances (TIs), a fixturing period, and a free rent period.

Further in this section, I explain the rental revenue that PBA can expect if they are to re-tenant the space, and with that, the Net Economic Return (NER) expectations that they would be likely to obtain should PBDF decide to vacate their duty free store location.

Frequency of Changes to Duty Free Store Operators

Duty free stores in Canada, according to my discussion with Ms. Barrett, rarely change operators. In many cases, the stores are in the possession of families who have operated the store for decades.

Due to their high level of regulations, if an operator were to vacate their store, the decision for a new operator would need to go through a public tender process. In the case of public tender for a duty free store, the facts are:

- Peace-Bridge Authority (PBA) controls the procurement process.
- There would be a need to attract a new and competent vendor as these stores are a unique undertaking.
  - It is unlikely that the location would be tenanted by a non-Canadian operator as it is a federal contract and a non-Canadian operator winning the bid would produce negative consumer sentiment and not be positive optics for the bridge authority.
  - There is likely a limited number of potential replacement operators. For examples, I was advised by Blaney that there were only 6 proponents that bid for the 2016 RFP. This would be exacerbated by the negative impact of COVID-19.
- Upon selection of an operator, there would then need to be a licensing process performed by CBSA to approve the operator to sell products export tax-free.

This process is lengthy and takes time. I understand that the previous RFP process with the current incumbent (PBDF) took four months. In my experience with public tenders, I would estimate the process would be at a minimum of four to six months up to a year. Then once a new operator is selected, there is the process of setting up a new store which can also takes several months.

PBDF Gross Sales Projections

According to Mr. Pearce, PBDF is projected to generate $18,000,000 in gross revenue in 2024 (the next full Lease year). In my opinion, a replacement operator could expect to generate anywhere from 80-100% of this 2024 projected revenue. The factors in this range include experience in the industry, the speed at which they can begin operating, and the terms of the Lease (which will be discussed throughout this section).

Tenant Improvement Allowance

Tenant Improvements (TIs) are a standard part of a commercial lease and include elements such as:

- Modifications or additions made to a property to make it suitable for the tenant's use.
    - This can include anything from minor changes like painting and carpeting to more significant and permanent modifications like moving walls, plumbing, or electrical systems.
- In my experience, the TI allowances can range anywhere between $10-$40/ft^2. The amount a tenant receives is based on multiple factors such as the market conditions, the newness of the space, the length of the lease, the type of space, and the tenant's financial capabilities.
- The landlord typically offers a period of base rent-free or at a discounted rate as TI. This, too, can offset some of the renovation expenses.

Note that the landlord's willingness to offer inducements may depend on factors such as their eagerness to fill the space, location and age, and the perceived value of the tenant.

These improvements are often paid by the landlord rather than the tenant to entice them to lease the space. For this duty free store, there would likely be a higher group of landlord expenses with car and bus traffic having not recovered as a result the COVID-19 pandemic.

In my opinion, a reasonable TI allowance for the PBDF location would range up to $40/ft^2. If the landlord can secure a replacement tenant that is satisfied with the current state of the PBDF store (including branding, fixtures, name, etc.), then there would be no TIs applicable to the lease. However, in order to entice a prospective tenant, the landlord may need to offer TIs as high as $40/ft^2 and or other incentives.

Fixturing Period

A fixturing period in a retail lease is the amount of time a business is designated to redesign and renovate the space to meet the needs of the new tenant. As is standard in the industry, a tenant would rarely pay rent during the fixturing period as they would not have commenced operations and therefore unable to generate any revenue during that time.

A standard fixturing period in a retail lease is in the range of 3-6 months. This incentivises the tenant to take the space without being worried about a loss of revenue while they renovate the space to fit their needs.

With standard fixturing, there are reviews of store design. The size of the store and the associated permitting requirements will inevitably extend the timeframe for fixturing (i.e., larger stores will take longer to build/renovate). Timing is also reliant on permit requirements and the speed at which they are processed and/or approved.

The current PBDF store is in a good state and condition with a recent renovation in 2018/2019. Typically, every ten years a retail store needs a refresh. As such, in my opinion, a reasonable fixturing period for a PBDF replacement tenant would be on the low end of the standard; around three months.

Key Money

Key Money is a fee paid to a manager, a landlord, or even a current tenant to secure a lease on a residential rental property. The term is sometimes used to refer to a security deposit. However, in some competitive rental markets, Key Money is simply a gratuity or a bribe.[32]

In my experience, Key Money is rarely added to commercial properties, as the perception of such payments is that they are unethical, and therefore even the mention of the possibility is frowned upon.

In instances where RFPs are issued by governmental or quasi-governmental bodies, the perception is worse as the scoring of proposals should not include what is essentially free money to the landlord.

In my opinion, Key Money would not be considered by both the Landlord and prospective tenant for the PBDF space. This would reflect poorly on the Landlord, and as such, would be unlikely to be included in an RFP for fear of perception of unethical business practices.

[32] https://www.investopedia.com/terms/k/keymoney.asp#:~:text=What%20Is%20Key%20Money%3F,a%20gratuity%20or%20a%20bribe

Free Rent Period

Landlords, in the interest of attracting tenants, will often offer free rent to tenants for a period of time while they are beginning the operation of the space. This is standard as it takes time for the retailer to get traction in the trade area and gain clientele.

Depending on the retail sector, these periods can range from multiple months to multiple years. This also depends on the desirability of the tenant through the landlord's eyes and the length of the lease.

In my opinion, it would be likely that a prospective duty free store tenant would be offered a free rent period while they got their operations in order upon opening the store. This period may be shorter, as the winner of the RFP would likely already have experience in the duty free sector.

As a new operator, it is expected to generate in the range of 80-100% of the current operators' 2024 projection. This equates to approximately $1,200,000 - $1,500,000 per month in gross sales. Therefore, in my opinion, a free rent period of three (3) months would be appropriate to entice the tenant and provide them with the best chance of success. This would ideally yield them the ability to generate $3,600,000 – $4,000,000 in revenue prior to paying their lease.

Rental Revenue Expectations

In my opinion, a new lease negotiation would certainly not yield the same Base Rent that the PBDF is paying currently. This is because:

- Traffic has drastically decreased at PBDF, especially non-truck traffic (leisure rather than commercial), with overall traffic decreasing:
  - 2020 over 2019: -65.44%
  - 2021 over 2019: -64.01%
  - 2022 over 2019: -35.18%
- COVID-19 shutdowns of non-essential land borders for 507-598 days[33] are still in recent memory (the fear of a lockdown for a new/same virus), and
- Canadian/American governments have proven that, if needed to contain the spread of disease, they will close land borders without any consideration of impact on duty free operations.
  - A new lease would likely contain a clause related to border closures. This clause would include an agreement on deferrals, reductions, abatements or conversion to percentage rent in the event of future closures.

[33] March 21, 2020 – August 9, 2021 (Americans able to enter Canada) and November 8, 2021 (Canadian able to enter US).

The rental revenue being generated by the PBDF Landlord is illustrated in Table 9.

	Total Revenue[34]	Base Rent	Percentage Rent	Total Rent Paid	Percentage of Total Revenue	Rental Rate Per Square Foot (ft^2)[35]
2017	$21,710,301	$4,000,000	$486,431	**$4,486,431**	20.66%	$172.56
2018	$19,960,147	$4,000,000	$0	**$4,000,000**	20.04%	$153.85
2019	$19,808,945	$4,000,000	$2,673	**$4,002,673**	20.21%	$153.95
2020	$2,542,919	$4,000,000	$0	**$4,000,000**	157.30%	$153.85
2021	$1,592,646	$4,000,000	$0	**$4,000,000**	251.15%	$153.85
2022	$10,823,633	$4,000,000	$0	**$4,000,000**	36.96%	$153.85

Table 9: Average rent payable by PBDF to Landlord.

On average, PBDF was paying $4,163,035 per year in rent prior to pandemic lockdowns, with $4,000,000/year being the Base Rent. When traffic was at normal levels, this would have been financially feasible (although very high). However, with the downturn in traffic as a result of the pandemic, this becomes impossible. As such, a logical decrease in Base Rent would be in line with the reduction in traffic, which as of 2022 was -35.2%. A reasonable base rent rate for PBDF would therefore be 64.8% of the pre-pandemic average: $4,000,000 x 64.8% = $2,592,800 per year average rental rate.

This rental rate is lower than previously, in accordance with the reduction in traffic. In the interest of satisfying both the Landlord and Tenant in this situation, this would likely be more heavily weighted towards percentage rent as opposed to base rent. Therefore, if the traffic increases in the future as people begin to travel more, the rent received by the Landlord would increase in accordance.

In my opinion, an annual base rent revenue for the Landlord of $2,592,800 (or $2,593,000 with rounding) would be more reflective of the current environment of PBDF as well as international travel but is still quite high. I believe that this would be in the middle of what the Landlord could realistically expect to generate: In my opinion, a realistic total lease generation for the PBDF Landlord would be:

[34] Not including revenues from foodservice.
[35] Total Rent Paid/26,000 ft^2.

- Low - $1,728,000 / year base rent
    - This lease rate would not only incentivise a new Tenant to take over the operations quickly but would be more in line with the lower end of duty free gross sales-to-rent ratios in Canada of 12%.
    - $14,400,000/year in revenue (80% of projected for 2024 by the current operator) x 12% of gross sales = $1,728,000.

- Medium - $2,592,000 / year base rent
    - This lease rate is feasible for an operator who is willing to go on the highest end of the average for Canadian Duty Free operators, 16% gross sales-to-rent ratio.
    - $16,200,000/year in revenue (90% of projected for 2024 by the current operator) x 16% of gross sales = $2,592,000.

- High - $3,600,000 / year base rent
    - This lease rate would be reflective of the current gross sales-to-rent ratio being achieved at PBDF prior to the pandemic. Traffic is expected to remain relatively consistent, though it is still down compared to pre-lockdowns. In my opinion, however, this would be a difficult rate to achieve since it is the highest of any other operator in the country.
    - $18,000,000/year in revenue (100% of projected for 2024 by the current operator) x 20% of gross sales = $3,600,000.

6.6 Compare Net Economic Return (NER) to the current Duty Free operator and a new operator acquired through Request for Proposal (RFP).

Net Economic Return (NER) is an accounting/real estate term that describes how much an investor can expect to make on an investment over a specified period of time. I have been instructed to analyze the remaining Lease term from January 1, 2024 – October 31, 2031.

In this case, the NER is referring to how much profit the Landlord can expect to make through the leasing of PBDF for the remainder of its current Lease term (October 31, 2031). Therefore, our calculation considers leasing revenue and costs of retaining a new tenant through RFP.

Table 10 illustrates a high-level break down of the NER that the PBA could expect if they were to seek a new operator for the PBDF, and that the operator could expect, for the remainder of the original Lease (October 31, 2031):

	Low	Medium	High	Retaining Current Tenant
Operator Sales Revenue	$128,049,639	$144,055,844	$160,062,049	$160,062,049
Base	$13,824,000	$20,736,000	$28,800,000	$32,000,000
Percentage Rent	$0	$684,974	$951,353	$951,353
Costs to Retain New Tenant (over remaining Lease)	-$2,333,333	-$2,876,667	-$3,893,333	$0
NER	**$11,490,667**	**$18,544,307**	**$25,858,019**	**$32,951,353**

Table 10: NER scenarios for Landlord and tenants through RFP process and current Tenant retention. A full breakdown can be found in Appendix E.

Based on rental rates and costs incurred by the Landlord, replacing the current Tenant through the RFP process would generate between $11,460,667 - $25,858,019 as compared to $32,951,353 through the current operator remaining at PBDF. The current PBDF operator would generate between $7,093,333 - $21,460,686 (or 21.5% to 65.13%) more than if the Landlord were to replace the current operator.

Based on my analysis of the quantified NER, the Landlord is materially better off in terms of rent received retaining the current Tenant.

2001

APPENDIX

Appendix A – About J.C. Williams Group

J. C. Williams Group – 1 Dundas Street W, Suite 2500, Toronto, ON M5G 1Z3

J.C. Williams Group (JCWG) is a global retail consulting firm based in Toronto. Founded in 1974 by John Williams, the firm transitioned to new leadership in 2019 with Ms. Hutcheson assuming the role of Managing Partner.

JCWG is the exclusive Canadian member of The Ebeltoft Group, a global alliance of retail consulting companies with members in more than 20 mature and emerging retail markets.

JCWG and our Ebeltoft Group partners conduct annual global research and trend studies in retail by combining global best practices with in-depth observations from local retail markets. These studies provide partner members, including JCWG with the latest insights, best practices, tools, and global developments.

Appendix B – Curriculum Vitae

Lisa Hutcheson, Managing Partner

Lisa Hutcheson is a seasoned retail executive with a career spanning thirty years. Ms. Hutcheson's expertise includes developing retail strategy for retailers, shopping centres, and mixed-use properties.

Ms. Hutcheson began her retail career in 1984 as a store manager and quickly progressed to hold senior leadership positions for two of Canada's largest specialty retailers.

In 2003, Ms. Hutcheson launched her own boutique consulting practice. Shortly afterwards, she joined JCWG. Ms. Hutcheson and her partner Patrick Watt acquired JCWG in 2019 and she assumed the role of Managing Partner.

During her consulting career, Ms. Hutcheson has been involved in hundreds retail and retail-related projects. A large part of JCWG's consultancy work includes work for shopping centres and developers with research, strategy, and best practice.

In addition to her extensive retail background, Ms. Hutcheson is a Founding Board Member of the Canadian Retail Educators Association as well as a member of the Canadian Research Group for ICSC.

Ms. Hutcheson has co-authored two books in the Retail 4G series of digital books published by the Retail Council of Canada: Retail Marketing and People. Ms. Hutcheson is also a keynote speaker on retail best practice and innovation and is frequently quoted and sourced for media interviews. A recent sampling specifically regarding Shopping Centres and real estate includes:

- Global News May 2020 – The New Reality: Future of Shopping Malls
- Global News April 2020 – Coronavirus: Creating new ways to stay in business
- Toronto Star May 2020 – What will Toronto's malls look like when they reopen?
- ICSC Guest Panelist – International Council of Shopping Centres "Canadian Year-Ahead Projections" – February 2022
- RCC Panelist - Retail Council of Canada STORE Conference "The Future of Shopping Centre and Real Estate" – May 2023

Ms. Hutcheson has testified as an Expert Witness and provided expert reports for numerous cases relating to shopping centre operating practices, including the following:

- Hillcrest Mall (Montez Hillcrest Inc. and Hillcrest Holdings Inc.) v. Hudson's Bay Company
- Les Promenades de L'Outaouais (Montez L'Outaouais Inc.) v. Hudson's Bay Company
- Les Galeries de la Capitale Holdings Inc. v. Hudson's Bay Company
- Carrefour Richelieu Realty Ltd. v. Hudson's Bay Company

Professional Experience

J. C. Williams Group (2004-Present)
Managing Partner/Senior Consultant
Retail Strategy/Operations/Human Resources

Lisa Hutcheson Consulting (2003-2019)
Retail Strategy/Operations/Human Resources

Comark Services (1997-2003)
Director of Stores/Personnel and Project Manager
Reitman's Canada (1996-1997)
Director of Sales and Operations

Cotton Ginny Limited (1984-1996)
Regional Manager, Eastern Canada

Education

- Ryerson University – Retail Management
- University of Toronto, Rotman School of Business
- Cornell University – Certificate in Project Leadership
- Certified Human Resources Leader (CHRL)
- Seneca College – Certificate in Adult Education and Training
- Certified Coaches Federation – Certified Coach Practitioner

Other

- Seneca College, Adjunct Professor, Faculty of Fashion Business Management
- Member of the Canadian Research Group for ICSC
- CREA (Canadian Retail Educators Association) founding Board member focused on the development of retail curriculum for Canadian post-secondary schools
- Board member for Canadian Heart & Stroke Foundation Mission Critical Special Council

Memberships and Associations

- Retail Council of Canada
- International Council of Shopping Centres (ICSC)
- Human Resources Professionals Association (HRPA)

Graham Heuman, Research and Insights Associate

Graham Heuman is a retail professional specializing in research, operations, and experiential retail. Mr. Heuman started his career in retail as a part-time sales associate in fashion retail. He quickly moved into the premium technology industry as a trainer for a telecommunications and computer retailer. He later began assisting the visual merchandiser with stores for all of Ontario, while also handling sales accounts for small-medium businesses.

Mr. Heuman graduated with a Bachelor of Commerce in Retail Management from the Ted Rogers School of Management at Ryerson University. He participated in numerous competitions, including Canadian Retail Educators Association (CREA) Charettes. The projects ranged from developing a retail strategy for Union Station in Toronto to tweaking store operations to be the top retailer in a competitive market.

In 2019, Mr. Heuman assisted with innovations research in Italy with the Ted Rogers School of Management. The team explored Rome, Florence, and Milan to learn about new innovations taking place in the Italian luxury industry. The scope of the project was to take these learnings and develop a set of best practices that could be applied to the luxury industry in Canada.

The same year, Mr. Heuman moved to France to study Luxury Business Management at SKEMA Business School in Sophia Antipolis. During this time, he worked on numerous projects under the guidance of a leading European luxury store interior architect on developing pricing strategies and service standards for luxury retail environments.

In 2021, he joined the JCWG team. Since starting, Mr. Heuman has been included in numerous projects. He has assisted on projects such as:

- Retail strategy and category mix
- Expert witness cases surrounding the retail industry
- Master planning around community space and retail businesses
- Retail demand analyses
- Market research and consumer analyses

Education

- RYERSON UNIVERSITY – Ted Rogers School of Management
  Bachelor of Commerce Degree, Majoring in Retail Management

Professional Experience

Jump Plus Stores ULC (July 2016 – 2021)
Floor Lead and Apple Product Professional

Zumiez (June 2015 – January 2017)
Second Assistant Manager

Appendix C – Meeting Minutes with Barbara Barrett, Executive Director of FDFA, June 6, 2023.

Attendance:
Barbara Barrett, FDFA
Lisa Hutcheson, JCWG
Graham Heuman, JCWG

Date: June 6, 2023

Re: Frontier Duty Free Association (FDFA) Discussion Minutes

- Background on Barbara Barrett and the FDFA.
    - Executive Director, started in August 2018.
    - Background in Public Affairs, moved into government relations about 10 years ago.
    - Based in Ottawa, focused on Advocacy goals, need to be able to meet in person with decision-makers on the Hill.
    - Before the pandemic there were 33 stores, now there are 32.
    - All stores are individually owned (unlike airports).
    - Stores can only export, and consumers cannot bring products back to Canada.
    - Licenses are distributed through Canada Border Services Agency (CBSA), highly regulated and audited on a regular basis.
    - Staff cannot purchase product unless they are travelling to the US.
        - Staff need to exit through the US and come back across when they are done their shift.

- Background on the COVID-19 pandemic border closures and their effect on duty free stores.
    - Did not see it coming in 2020 that they would shut the border (first time since 9/11).
        - Closed March 2020 for 20 months.
        - If consumers cannot cross the border, they cannot shop at duty free.
            - If travel was essential, they are able to visit the store.
    - Not all borders have commercial traffic, rely solely on recreational traffic.
        - Some stores remained open because they had commercial traffic. As such, some opted to stay open to help the truck drivers (duty free is often a planned stop) but were losing money by doing so.
        - If there was no commercial traffic, they would close. Stores kept staff on through wage subsidies, but staff were not coming in.

- Duty free stores are not allowed to do any online sales/curbside.
    - Stores had inventory reaching best-before date and asked for a one-time domestic sale instead of wasting the inventory (confectionary, alcohol, etc.)
        - CBSA said no as the customs act does not allow for it.
        - Could not donate it without paying duties/taxes but could not afford it.

- Can you share which stores closed completely, and the timing for each?
    -

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

- Is there anything specific you can share with us in regard to the revenue drop of the stores?
    - At best, stores were 95% down (if they were closed, 100%).

- Typical gross sales-to-rent ratios for FDFA.
    - There is no formula, all rents/leases are different.
    - They do not share them with FDFA.
    - Some stores have CBSA as their landlord.
    - Depends on negotiations and whether they are willing to accept lower margins, etc.
    - Some of them own their land.

- Typical minimum rent payable for FDFA.
    - Not tracked and not shared with FDFA.

- Is "sales-per-vehicle" a conversion or a productivity metric for all DF stores? What is the average sales-per-vehicle for FDFA?
    - Not shared with FDFA.

- Can you provide a list of which FDFA members were open, and which were closed in March 2020, July 2020, September 2021, and February 2022?
    - Cannot share.

- Is there any data that speaks to the fact that customers were not in the stores that were open during periods of both non-essential and essential-only border crossing periods?
    - Essential (truck drivers) were the only travel allowed.
        - Most only purchased cigarettes and beer, if anything.

- **In your experience, how long does it take to find a replacement tenant for a duty free location? Is there typically a lot of demand from other operators to take over a vacant location?**
  - Stores rarely get turned over (in families for over 30 years in most cases).
  - When stores open would need to go out to tender, and then CBSA would need to approve a license to the operator that was chosen (long approval process)
    - Find/attract somebody, then lead proponent would have to be approved by CBSA.
  - Once in a while people reach out to ask FDFA that they want to own one. Typically, they have been in families since their inception, so not something people think of as an opportunity.

- **Are people visiting? Are they still considering as they were before?**
  - Surveyed FDFA members after Canadian long weekend and Memorial Day weekends (a key indicator of how the summer will look).
    - 46% down nationally compared to pre-pandemic.
    - It is clear that Ontario stores are recovering faster/better than other provinces. Ontario is 15-20% down compared to pre-pandemic.

- **Do American operators have a lower barrier to entry compared to Canada for duty free stores?**
  - Anecdotally, fewer regulations (special excise tax on tobacco, etc.), so possibly a lower barrier to entry.
    - The only exception is the Ambassador Bridge. It is owned by a private entity, and they own a store on both sides of the bridge.

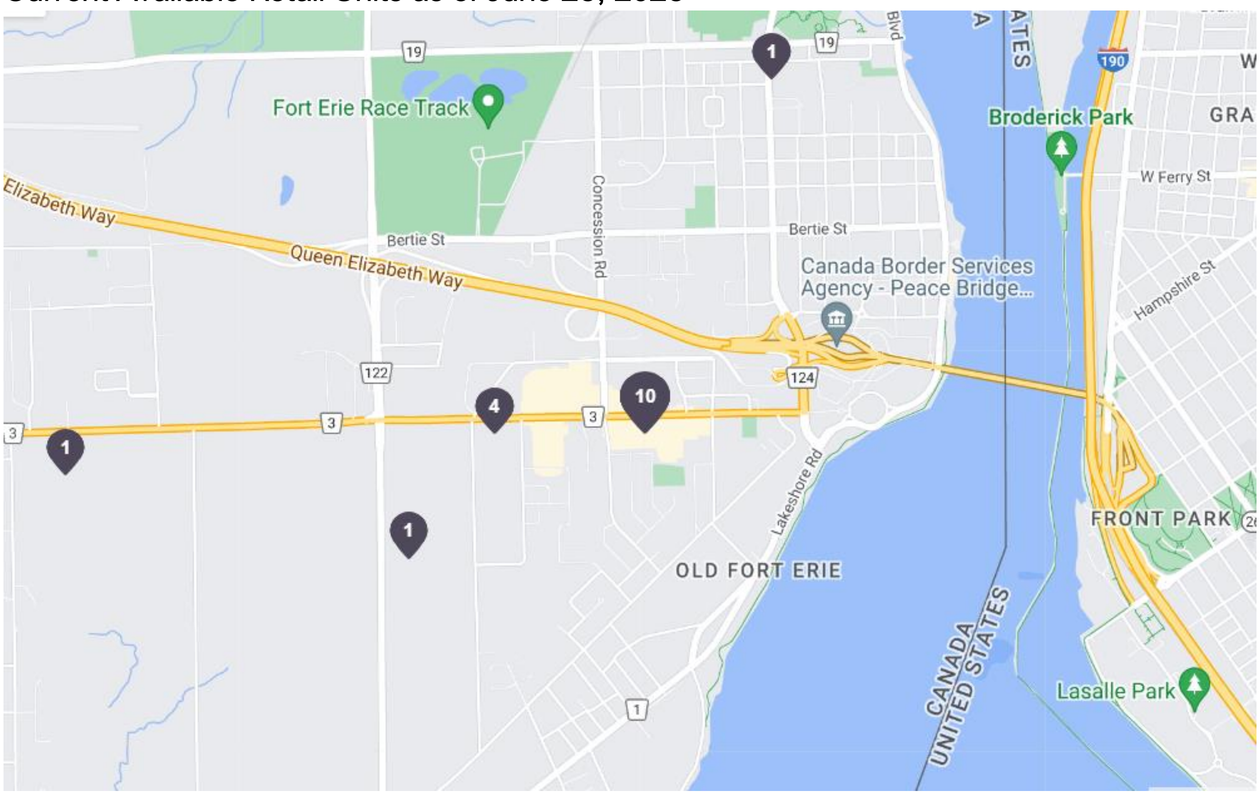
Appendix D – Current Market Conditions

JCWG conducted a trade area market sample to gain an understanding of the current leasing rates in Fort Erie.

The following image illustrates the current retail units for lease in the trade area. There are currently 17 retail units for lease.

The base lease rates range from \$8-30/ft^2 and \$12-42/ft^2 inclusive of taxes, maintenance and insurance (TMI). In some cases, the units have been on the market for a long time; one property has been listed 510 days.

Current Available Retail Units as of June 23, 2023



The following table provides further details regarding some of the properties reviewed.

	$12 /ft² 2350 square feet 192 days on the market 224 GARRISON Road Unit# 3 Fort Erie, Ontario
	$8 /ft² $9.21/ft² TMI 2620 square feet 510 days on the market 450 GARRISON Road Unit# 140 Fort Erie, Ontario L2A1N2
	$23 /ft² $12/ft² (estimated TMI) 1330 square feet 6 days on the market 315 GARRISON RD Fort Erie, Ontario
	$26 /ft² $12 /ft² (estimated TMI) 1286 square feet 58 days on the market 315 GARRISON RD Fort Erie, Ontario
	$30 /ft² $12 /ft² (estimated TMI) 1282 square feet 93 days on the market 315 GARRISON RD Fort Erie, Ontario
	$4,500 Monthly $898 monthly taxes 100,0000 square feet 102 days on the market 1127 GARRISON RD S Niagara Falls, Ontario
	$16/ft² $8.71 /ft² 18 days on the market 1215 square feet 1264 GARRISON RD Fort Erie

Appendix E – NER Breakdown

Potential Capital Costs and Other Expenses Associated with Re-tenanting	Low	Medium	High
Current Annual Rental Rate being Achieved	$4,000,000		
Tenant Inducements Allowance	$0	-$210,000	-$560,000
Fixturing Period	$0	-$333,333	-$1,000,000
Lost Revenue as a Result of Closure, and thereafter implementing RFP process	-$1,333,333	-$1,333,333	-$1,333,333
Free Rent Allowance	-$1,000,000	-$1,000,000	-$1,000,000
Total Capital Costs	**-$2,333,333**	**-$2,876,667**	**-$3,893,333**

Revenue	Low	Medium	High
Operator Sales Revenue	$14,400,000	$16,200,000	$18,000,000
Total Rent Revenue (Base + Percentage Rent)	$1,728,000	$2,592,000	$3,600,000

Low Scenario	2024	2025	2026	2027	2028	2029	2030	2031	Total
Operator Sales Revenue	$14,400,000	$14,832,000.00	$15,276,960.00	$15,735,268.80	$16,207,326.86	$16,693,546.67	$17,194,353.07	$17,710,183.66	$128,049,639
Minimum Basic Rent	$1,728,000	$1,728,000	$1,728,000	$1,728,000	$1,728,000	$1,728,000	$1,728,000	$1,728,000	$13,824,000
Percentage Rent	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0
Costs to Acquire New Tenant (over remaining lease)	-$259,259.3	-$259,259.3	-$259,259.3	-$259,259.3	-$259,259.3	-$259,259.3	-$259,259.3	-$259,259.3	-$2,333,333
Landlord Profit/Loss									**$11,490,667**

Medium Scenario	2024	2025	2026	2027	2028	2029	2030	2031	Total
Operator Sales Revenue	$16,200,000	$16,686,000.00	$17,186,580.00	$17,702,177.40	$18,233,242.72	$18,780,240.00	$19,343,647.20	$19,923,956.62	$144,055,844
Minimum Basic Rent	$2,592,000	$2,592,000	$2,592,000	$2,592,000	$2,592,000	$2,592,000	$2,592,000	$2,592,000	$20,736,000
Percentage Rent	$0.0	$0.0	$0.0	$0.0	$37,318.8	$124,838.4	$214,983.6	$307,833.1	$684,974
Costs to Retain New Tenant (over remaining lease)	-$319,629.6	-$319,629.6	-$319,629.6	-$319,629.6	-$319,629.6	-$319,629.6	-$319,629.6	-$319,629.6	-$2,876,667
Landlord Profit/Loss									**$18,544,307**

High Scenario	2024	2025	2026	2027	2028	2029	2030	2031	Total
Operator Sales Revenue	$18,000,000	$18,540,000.00	$19,096,200.00	$19,669,086.00	$20,259,158.58	$20,866,933.34	$21,492,941.34	$22,137,729.58	$160,062,049
Minimum Basic Rent	$3,600,000	$3,600,000	$3,600,000	$3,600,000	$3,600,000	$3,600,000	$3,600,000	$3,600,000	$28,800,000
Percentage Rent	$0.0	$0.0	$0.0	$0.0	$51,831.7	$173,386.7	$298,588.3	$427,545.9	$951,353
Costs to Retain New Tenant (over remaining lease)	-$432,592.6	-$432,592.6	-$432,592.6	-$432,592.6	-$432,592.6	-$432,592.6	-$432,592.6	-$432,592.6	-$3,893,333
Landlord Profit/Loss									**$25,858,019**

Retaining Current Tenant at More Reasonable Minimum Basic Rent Scenario	2024	2025	2026	2027	2028	2029	2030	2031	Total
Operator Sales Revenue	$18,000,000	$18,540,000.00	$19,096,200.00	$19,669,086.00	$20,259,158.58	$20,866,933.34	$21,492,941.34	$22,137,729.58	$160,062,049
Minimum Basic Rent	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$32,000,000
Percentage Rent	$0.0	$0.0	$0.0	$0.0	$51,831.7	$173,386.7	$298,588.3	$427,545.9	$951,353
Costs to Retain New Tenant (over remaining lease)	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0
Landlord Profit/Loss									**$32,951,353**

2013

This is Exhibit "B" referred to in the Affidavit of Lisa Hutcheson
sworn remotely this 26th day of September 2023.

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

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

ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

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

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Lisa Hutcheson. I live in the City of Toronto, in the Province of Ontario.

2. I have been engaged by or on behalf of Peace Bridge Duty Free Inc. to provide evidence in relation to the above-noted court proceeding.

3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:

   (a) to provide opinion evidence that is fair, objective and non-partisan;

   (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and

   (c) to provide such additional assistance as the Court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date 09/12/23

Signature

NOTE: This form must be attached to any expert report under subrules 53.03(1) or (2) and any opinion evidence provided by an expert witness on a motion or application.

This is Exhibit "C" referred to in the Affidavit of Lisa Hutcheson
sworn remotely this 26th day of September 2023.

Commissioner for Taking Affidavits (or as may be)

Brendan Jones

Appendix B – Curriculum Vitae

Lisa Hutcheson, Managing Partner

Lisa Hutcheson is a seasoned retail executive with a career spanning thirty years. Ms. Hutcheson's expertise includes developing retail strategy for retailers, shopping centres, and mixed-use properties.

Ms. Hutcheson began her retail career in 1984 as a store manager and quickly progressed to hold senior leadership positions for two of Canada's largest specialty retailers.

In 2003, Ms. Hutcheson launched her own boutique consulting practice. Shortly afterwards, she joined JCWG. Ms. Hutcheson and her partner Patrick Watt acquired JCWG in 2019 and she assumed the role of Managing Partner.

During her consulting career, Ms. Hutcheson has been involved in hundreds retail and retail-related projects. A large part of JCWG's consultancy work includes work for shopping centres and developers with research, strategy, and best practice.

In addition to her extensive retail background, Ms. Hutcheson is a Founding Board Member of the Canadian Retail Educators Association as well as a member of the Canadian Research Group for ICSC.

Ms. Hutcheson has co-authored two books in the Retail 4G series of digital books published by the Retail Council of Canada: Retail Marketing and People. Ms. Hutcheson is also a keynote speaker on retail best practice and innovation and is frequently quoted and sourced for media interviews. A recent sampling specifically regarding Shopping Centres and real estate includes:

- Global News May 2020 – The New Reality: Future of Shopping Malls
- Global News April 2020 – Coronavirus: Creating new ways to stay in business
- Toronto Star May 2020 – What will Toronto's malls look like when they reopen?
- ICSC Guest Panelist – International Council of Shopping Centres "Canadian Year-Ahead Projections" – February 2022
- RCC Panelist - Retail Council of Canada STORE Conference "The Future of Shopping Centre and Real Estate" – May 2023

Ms. Hutcheson has testified as an Expert Witness and provided expert reports for numerous cases relating to shopping centre operating practices, including the following:

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- Les Galeries de la Capitale Holdings Inc. v. Hudson's Bay Company
- Carrefour Richelieu Realty Ltd. v. Hudson's Bay Company

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Managing Partner/Senior Consultant
Retail Strategy/Operations/Human Resources

Lisa Hutcheson Consulting (2003-2019)
Retail Strategy/Operations/Human Resources

Comark Services (1997-2003)
Director of Stores/Personnel and Project Manager
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Director of Sales and Operations

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Regional Manager, Eastern Canada

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- University of Toronto, Rotman School of Business
- Cornell University – Certificate in Project Leadership
- Certified Human Resources Leader (CHRL)
- Seneca College – Certificate in Adult Education and Training
- Certified Coaches Federation – Certified Coach Practitioner

Other

- Seneca College, Adjunct Professor, Faculty of Fashion Business Management
- Member of the Canadian Research Group for ICSC
- CREA (Canadian Retail Educators Association) founding Board member focused on the development of retail curriculum for Canadian post-secondary schools
- Board member for Canadian Heart & Stroke Foundation Mission Critical Special Council

Memberships and Associations

- Retail Council of Canada
- International Council of Shopping Centres (ICSC)
- Human Resources Professionals Association (HRPA)

2018

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

ROYAL BANK OF CANADA
Applicant

and

PEACE BRIDGE DUTY FREE INC.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

AFFIDAVIT OF LISA HUTCHESON

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Email: bjones@blaney.com

Lawyers for the Respondent

TAB 22

Jim Pearce

Clarity Items

2.01 (ss) Tenant's Gross Sales - as an example, hotel reservations for Erie PA are a great marketing draw and currently we don't process but may be a possibility

- add Travel Services - "Ticket Sales and Travel Services" OK (i.e. resale to clerk / commission fee services other than does not include goods; merchandise)

(ii) to clarify so not to include non-sales or service items such as investment income, etc OK
- add "all other receipts and receivables from sales or services (including interest, installment and finance charges) from business conducted in or from the Lease Premises...

4.03 Percentage Rent OK
- for clarity, we just need wording to tie in the Monthly Payments to the Annual Reconciliation and the Example shown

- suggested - "the calculation of Accumulated YTD Percentage Rent exceeds the Accumulated YTD Monthly Base rent for the same period, then the Tenant will pay.....

Wordsmith agree to method.

will add something

Art 5 Financial Information - the traffic counts are extremely important to our marketing and decision-making
- add - continue to receive the daily bridge traffic counts - currently receive traffic counts from us - they want to make sure we agree to give them.

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

OK 5.06 Confidentiality
- add - "(other than the Landlord's directors, officers, employees or professional advisors who have a need to know such financial information, all of whom shall be obligated to keep such information confidential)"

RFP

Schedule "B" - is this for a map of the Leased Premises ? updated map. RFP proposal

NO Schedule "D" - in addition to our proposal add a copy of the RFP ? ask Graham. NO not referenced in the lease is there something specific here?

Schedule "E" - would like deleted - will have a proper legal document sent to PBA asap and any future changes we acknowledge we will get consent and are obligated to report OK
- concern is this shouldn't be part of the lease as others (outside parties) may seek or need access to the lease and this may become more public that we desire

Jim Pearce

(f) → with associated w/ issues arising from the leased premises.

Explanations

(f)0.04(f) → items that arise from the lease. Want to make sure its not 3rd parties b/c we are working on PBDF.

no unless specific

15.04 Roof Rights - add subject to the Tenant's right of quiet enjoyment fine w/it → 18.05 → ~~Roof Rights~~

→ this eliminates the premises for the roof licensee

section explicit must be standard

15.05 - Solar Panels - yes agree but delete second sentence?

remove limitation of liability

Business disruption due to bridge closure -

In the event there is a closure or shutdown of the bridge due to any cause that such bridge closure lasts longer than 24 hours, the rent payable by the tenant shall be abated. The rent abatement only applies to the extent that the loss caused by the bridge closure is not covered by the tenant's business interruption insurance. For the purpose of this provision the abatement in rent is to be calculated on the per diem rate of base rent payable during the period of closure (i.e. $4,000,000 / 365 days).

no

Owns the work & make sure risk is properly insured

this involves a third party

Not typical b/c there would be no loss b/c rent abatement

we do not want to get involved good to get after the coupons

Insurance should cover & up to due diligence cover a loss.

no

Agree not part of the lease but would like to have a letter indicating we agree to discuss the following:

- possible sharing the subsidizing of the rents payable by the Food Concessions

- insurance clauses - have the PBA's and PBDF's insurers review and propose the most efficient way to address the insurance related clauses

- in the event that during the Term and should it be necessary, that issues arise (something catastrophic) beyond the Tenant's control (including but not limited to vehicle traffic volume declines, bridge construction, changes in government regulations, etc.) that materially impact the Tenant's duty free sales, then the Landlord and the Tenant, both acting reasonably and in good faith, agree to discuss the lease (including but not limited to the rent terms, term, etc.).

no

we agreed to give access, lease premises we have 3 negotiations.

2021

updated to discussion

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

last 2 mo's

4mm / 12 x 2 per calendar yr

no Agree to discuss possible sharing the subsidizing of the rents payable by the Food Concessions

Insurance clauses - have the PBA's and PBDF's insurers review and propose the most efficient way to address the insurance related clauses

open to meeting

1.01 Basic Lease Terms - g) & 4.06 - L/C $500k - Delete $50K other sec. done

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

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

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

OK 9.02 (d) re: Signage - add underlined wording "without prior written approval of the Landlord <u>which will not be unreasonably withheld</u>" added done

~~12.02~~ (c) - delete reference to union affiliations done

12.11 ~~12.10~~ Signage and Advertising - add underlined wording "without, in each case, the prior written approval of the Landlord <u>which will not be unreasonably withheld</u>" done

Add the following clauses from the current lease

- 6.03 - Exclusive use or right of first refusal 3.05
- ~~16.01~~ - Landlord's covenants 18.05, 18.06
- ~~16.03~~ - Access 18.06

Add and review RFP items as amendments to the Lease added proposal

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

- use, from the current lease 1.01 Definitions (o) Tenant's Gross Sales updated

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

Article V - add a confidentiality clause 5.04

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

17.01 (a) Event of Default - add wording so a clerical error won't trigger default updated 5 days
- "the Tenant fails to pay any Rent, that is of material nature, within15 days after receiving written notice from the Landlord"

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

Business disruption due to bridge closure:
In the event there is a closure or shutdown of the bridge due to any cause that such bridge closure lasts longer than 24 hours, the rent payable by the tenant shall be abated. The rent abatement only applies to the extent that the loss caused by the bridge closure is not covered by the tenant's business interruption insurance. For the purpose of this provision the abatement in rent is to be calculated on the per diem rate of base rent payable during the period of closure (i.e. $4,000,000 / 365 days).

In the event that during the Term, there are issues that arise beyond the Tenant's control (including but not limited to vehicle traffic volume declines, bridge construction, changes in government regulations, etc.) that materially impact the Tenant's duty free sales, then the Landlord and the Tenant, both acting reasonably and in good faith agree to amend this lease (including but not limited to the rent terms, term, etc.) as appropriate in a fair and equitable manner. As a guideline, a material impact would be one in which duty free sales decline over a comparable three month period by 5% or more. 18.07

Clarity

TAB 23

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

PEACE BRIDGE DUTY FREE INC.

Respondent

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 JUSTICEACT, R.S.O. 1990, c. C.43, AS AMENDED

TIM CLUTTERBUCK RESPONSE TO UNDERTAKING

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Lawyers for Buffalo and Fort Erie Public Bridge Authority

UNDERTAKINGS AND REFUSALS

Undertakings Requested		Page	Answers
1.	To direct as to where the bylaws of the Authority can be found and if not found to produce them;	10	This request goes beyond the disclosure order by Her Honour. Her Honour directed disclosure of all non-privileged internal documents regarding: (a) Art 18.07 or its subject matter; and (b) requests made and responses given with respect to concessions to be provided or given under Art 18.07. However attached at **Tab 1** is a copy of the Authority's By-laws.
2.	To advise whether the amount of unrestricted cash has gone up or down since 2021 and if so by how much;- **UNDER ADVISEMENT**	13	This goes beyond the disclosure order by Her Honour. However, the Authority's audited financial statements are available on the Authority's website.
3.	To advise what documents were in the first brief that are not in the second brief and advise why they were removed; - **UNDER ADVISEMENT**	16	Mr. Clutterbuck has no personal knowledge of the documents that were in the first brief and the second brief.
4.	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 the Canadian side and on the American side – **UNDER ADVISEMENT**	24	This request goes beyond the disclosure order by Her Honour.
5.	To provide the documents that have resolutions that relate to the two Duty Free store leases**;**	26	There is no "ledger" or stand alone list of resolutions. The Minutes regarding: (a) Art 18.07 or its subject matter; and (b) requests made and responses given with respect to concessions to be provided or given under Art 18.07 have been provided except the Minutes for 20 November and 17 December 2020, which are attached as **Tabs 2 and 3**, which are being

Undertakings Requested		Page	Answers
			provided on the express understanding that no privilege is being waived as a result.
	To if there were brackets provided to staff with respect to what would be acceptable for the RFP process in 2016; **REFUSED**	27	Mr. Clutterbuck was not on the Board in 2016
6.	To advise whether the board gave any guidance, other than the RFP, as to what an acceptable lease would be; **UNDER ADVISEMENT**	29	No.
7.	To provide any copies of draft resolutions that staff brought to the board in relation to the two leases; **UNDER ADVISEMENT**	32	This request goes beyond the disclosure order by Her Honour. However, to the best of Mr. Clutterbuck's recollection there were no resolutions brought to the Board by Authority staff regarding: (a) Art 18.07 or its subject matter; and (b) requests made and responses given with respect to concessions to be provided or given under Art 18.07 that have not been produced, aside from the resolutions in the 20 November and 17 December 2020 Minutes, which are being produced subject to their being no waiver of privilege.
8.	To provide all reports and briefing notes that led to rent relief offers from the Authority to Duty Free; - **UNDER ADVISEMENT**	37	Assuming the undertaking does not relate to the First and Second Rent Deferrals, there are no Reports or formal briefing notes to the Board prior to January of 2022 that led to offers from the Authority. The only formal resolution by the Board approving a (counter-) proposal to PBDF during the relevant period was made on 25 October 2021 (attached as **Tab 4**). There was an e-mail sent to the Board on 15 October 2021 (attached as **Tab 5**) and another e-mail on 22 October 2021. Privilege is claimed over the 22 October 2021 e-mail because it includes legal

Undertakings Requested		Page	Answers
			advice with respect to the (counter-) proposal. Ms Costa's Memo dated 13 May 2021 (attached as **Tab 6**) was also provided to the Board and may be said to have led to the Board's decision in terms of the (counter-) proposal that was made on 25 October 2021. Report 869/20 (attached as **Tab 7**) led to the First Rent Deferral. Report 869/20 is redacted to remove financial information re the US duty free. There were other Reports that could be said to have led to the First Rent Deferral and/or the Second Rent Deferral over which the Authority claims privilege on the basis that they include legal advice—933/21, 938/21 and 953/21. In addition, the following e-mails were sent to the Board in connection with the request by PBDF for rent relief and may be considered to have led to the First and/or Second Rent Deferral: (a) 3 April 2020 (attached as **Tab 8**); and (b) 19 November 2020 (attached as **Tab 9**).
9.	To provide all the missing minutes and if redactions are in place advise as to what has been redacted and the basis for the redactions;	38	Without waiving any privilege that might exist, the Minutes from 20 November and 17 December 2020 are attached. The Authorities lawyers were present and provided advice to the Board at all other 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.
10.	To provide all the unredacted board minutes for the regular and executive board meetings from January 2020 to December 2021;- **UNDER ADVISEMENT**	40	This request goes beyond the disclosure order by Her Honour.

Undertakings Requested		Page	Answers
11.	To provide copies of the lease and agreements with the American Duty Free store; - **WILL ADVISE WHAT DETAILS CAN BE RELEASED, IF ANY**	45	This request goes beyond the disclosure order by Her Honour.
12.	To provide an unredacted copy of the American Duty Free store's rent agreement, if unable to provide, to advise why it is redacted	54	This request goes beyond the disclosure order by Her Honour.
13.	If available, to provide the agenda for each board meeting from January 2020 to December 2021	55	This request goes beyond the disclosure order by Her Honour.
14.	To provide notes taken by the executive assistant, or whoever was taking notes, for the board meetings during which the Peace Bridge Duty Free lease was discussed from January 2020 to December 2021; - **REFUSAL**	58	This request goes beyond the disclosure order by Her Honour. However, audio recordings are made for the purpose of preparing Minutes, but the recordings are destroyed once the Minutes are approved.
15.	To investigate and see if there's copies of any letters sent to politicians and the Canadian Government regarding COVID relief/support, advise if there are and if they can be produced;	62	This request goes beyond the disclosure order by Her Honour. However, the Authority wrote Federal Ministers on 30 June 2020, 26 July 2021 and 16 November 2021 concerning financial assistance for the Authority (see attached **Tab 10**).
16.	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; - **UNDER ADVISEMENT**	65	The Reports that were not disclosed were prepared by Mr. Rienas with the assistance of other Authority Officers. They were directed to the Board and relay to the Directors legal advice provided by the Authority's lawyers, including advice on the dispute between the Authority based on breach of the Lease by PBDF.

Undertakings Requested		Page	Answers
17.	To provide the unredacted version of the report at F2 and for the agenda date June 23rd, 2016;- **REFUSAL, WILL ADVISE WHAT WAS REDACTED AND WHY**	66	The redacted portions of the report at F2 (573/16): (a) identify the other parties that participated in the RFP; (b) the "scoring" of the various proposals; (c) the net present value of each proposal; and (d) a comparison of the annual financial benefit of the PBDF proposal as compared to the prior lease. None of the redacted information relates to: (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.
18.	To advise as to when discussion happened with a third party potential tenant, with who, particulars of the discussion, and if there was written communication then provide a copy of whatever written communication there was;- **WILL PROVIDE DATE, EVERYTHING ELSE UNDER ADVISEMENT**	71	This request goes beyond the disclosure order by Her Honour. However, Mr. Clutterbuck is advised by Mr. Rienas that in or about August of 2021 a party was approached and asked whether it would be able to step in to operate the duty free if PBDF was ultimately evicted.
19.	To look at the November 20th, 2020 board minutes to determine why the lease deferral agreement was revoked;	84	There is nothing in the Minutes from 20 November 2020 or the e-mail provided to the Board in connection with that meeting that indicates the Second Lease Deferral was "revoked". The Second Rent Deferral had not previously been approved by the Board. On 18 November 2020, PBDF was advised that the Second Rent Deferral would be put to the Board for approval (see attached **Tab 11**). On 20 November 2020, PBDF was advised that the Second Rent Deferral had been conditionally approved (see attached **Tab 12**).

Undertakings Requested		Page	Answers
20.	To provide copies of video board meetings held over the internet; - **REFUSAL, UNLESS ALREADY AVAILABLE TO THE PUBLIC**	87	This request goes beyond the disclosure order by Her Honour. However, audio recordings are made for the purpose of preparing Minutes, but the recordings are destroyed once the Minutes are approved.
21.	Advise if a lawyer representing the Authority was in attendance at the November 20th and December 17th, 2020 board meetings	87	The Minutes do not reflect that the Authority's lawyers were present on 20 November or 17 December 2020, although the resolutions passed at those Meetings as reflected in the Minutes were based on advice from the Authority's.
22.	The check meeting minutes and advise what led to the decision to revoke the rent deferral.	101	There is nothing in the Minutes from 20 November 2020 or the e-mail provided to the Board in connection with that meeting that indicates the Second Lease Deferral was "revoked". The Second Rent Deferral had not previously been approved by the Board. On 18 November 2020, PBDF was advised that the Second Rent Deferral would be put to the Board for approval (see attached **Tab 11**). On 20 November 2020, PBDF was advised that the Second Rent Deferral had been conditionally approved (see attached **Tab 12**). To the best of Mr. Clutterbuck's recollection, on 20 November 2020, the Board directed that Mr. Rienas convey to PBDF that the any approval of the Second Rent Deferral was conditional on "getting greater assurances as to receiving unpaid rent". PBDF had committed in the First

Undertakings Requested		Page	Answers
			Rent Deferral to begin to repay deferred rent and had not done so. To the best of Mr. Clutterbuck's recollection, on 17 December 2020, the Board resolved that the Authority demand a $1MM payment and directed that a rent repayment schedule and associated guarantees of full payment be developed with legal counsel based on the business decision that the Authority should not be financing PBDF.

Tim Clutterbuck Response to Undertaking

1. Authority By-laws
2. Minutes from Board Meeting on 20 November 2020
3. Minutes from Board Meeting on 17 December 2020
4. 25 October 2021 Minutes
5. 15 October 2021 E-mail
6. Memo dated 13 May 2021
7. Report 869/20 (Redacted)
8. 3 April 2020 E-mail
9. 19 November 2020 E-mail
10. Correspondence to Ministers re COVID Relief for Authority
11. 18 November 2020 E-mail to PBDF re Second Rent Deferral
12. 20 November 2020 E-mail to PBDF re Second Rent Deferral

TAB 1

BY-LAWS

Adopted: March 24, 1958
Revised: May 24, 1961
August 15, 1972
December 18, 1987
May 26, 1995
May 26, 2000
February 21, 2003
March 28, 2003
July 25, 2003
March 24, 2006

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
(the "Authority")

ARTICLE 1

Section 1 **Annual Meeting**

The Annual Meeting of the Board shall be held in February of each year at the office of the Authority in the City of Buffalo, New York or in the Town of Fort Erie, as determined by the Chairman of the Board, or at such other time and/or place as the Board may decide for the appointment of officers and such other business as may properly come before said meeting. Notice of the time, place and purpose of such meeting shall be served either personally, electronically (with confirmation which may be electronic), or by mail not less than five (5) nor more than forty (40) days before the meeting upon each member of the Board, and if mailed, such notice shall be directed to each member at the appropriate address as it appears on the records of the Secretary Treasurer.

Section 2 **Special Meetings**

Special Meetings of the Board shall be held whenever called by the Chairman or the Vice-Chairman upon due notice to each member of the board. The Chairman or Vice-Chairman shall also call a special meeting of the Board whenever requested to do so by any member of the Board. Notice of the time and place of such special meeting shall be given by the Secretary-Treasurer and shall be served upon each member of the

Board either personally, electronically (with confirmation which may be electronic), by mail, or by telephone. If served personally, electronically, or by telephone two (2) days' notice shall be sufficient. If served by mail, not less than three (3) days' notice shall be required. The purpose of any special meeting shall be stated in the notice.

Section 3 **Regular Meetings**

Regular Meetings of the Board shall be held monthly except as replaced by the Annual Meeting or at such other times and places as determined by the Board. Notice of the time and place of such Regular Meetings shall be given by the Secretary Treasurer and shall be served upon each member personally, electronically (with confirmation that may be electronic), or by mail not less than two (2) nor more than thirty (30) days before the meeting. The Board may dispense with a regular meeting or meetings when deemed appropriate. If expedient for Authority purposes, after appropriate notice, a meeting may be conducted using telecommunication and will be deemed as held at an office of the Authority.

Section 4 **Order of Business**

At the meetings of the Board, the order of business shall be drawn up in the Outline Agenda furnished to the members.

Section 5 **Quorum at Meetings**

A majority of the Board shall constitute a quorum for the transaction of any business, and the concurrence of a majority of the members of the Board shall be necessary to the validity of any action of the Board.

Majority = 6 members of a 10 member Board
= 5 members of a 9 member Board (i.e. vacancy)

Section 6 **Waiver of Notice**

Whenever under any provision of these By-Laws or of any general or special law; the Board is authorized to take any action at a meeting after notice to the members or after the lapse of a prescribed period of time, such action may be taken at a meeting without notice and without the lapse of any period of time, if the required notice and lapse of time be waived in writing or by telephone by a majority of the Board.

ARTICLE II

Section 1 **Officers**

The Board shall elect annually a Chairman and a Vice-Chairman, one from among the United States Members and one from among the Canadian Members. Both offices shall alternate annually between the United States and Canadian members and these officers shall serve for the term of one year. In the event of removal, resignation, death or expiration of their term of office as a member of the Board, their term of office shall expire and a successor shall be elected forthwith for the balance of the term. The Board shall appoint a Secretary-Treasurer and a General Manager. The Board shall appoint one person to serve in both such capacities.

Section 2 **Committees**

(a) Executive Committee

The Chairman shall appoint, with Board approval, an Executive Committee whose members shall consist of the Chairman, the Vice-Chairman and a member from the United States and a member from Canada. This Committee will perform such functions as may from time to time be authorized by and referred to it by the Board and will consider and make recommendations to the Board on any other matters that it may deem advisable so to do.

(b) Other Committees

The Chairman shall appoint, with Board approval, a Finance and Audit Committee, an Operations Capital Maintenance Committee, and a Capacity Expansion Committee.

The Finance and Audit Committee and the Operations Capital Maintenance Committee shall each consist of the Chairman, the Vice-Chairman and four Board Members. Two of the Board Members shall be from the United States and two of the Board Members shall be from Canada.

The Capacity Expansion Committee shall consist of the ten Members of the Board.

These Committees will perform such functions as authorized by the Board in approved Terms of Reference.

Procedures for the functioning of the Committees shall be set out in Board Procedures and approved by the Board as amended from time to time.

Other Standing or Special Committees will be nominated by the Chairman and approved by the Board at any time as they may become necessary for the proper operation of the Authority.

Duties of Officers

Section 3 **Chairman**

The Chairman shall preside at meetings of the Board and, subject to the approval of the Board, shall have general supervision with the Vice-Chairman of the affairs of the Authority.

Section 4 **Vice-Chairman**

The Vice-Chairman shall preside at meetings of the Board in the absence of the Chairman and, subject to the approval of the Board, shall have general supervision with the Chairman of the affairs of the Authority.

Section 5

The Chairman or the Vice-Chairman, or any member of the Board who may act as Chairman, may vote as a member but shall not be entitled to any additional vote as Chairman.

Section 6 **Secretary-Treasurer**

The Secretary-Treasurer shall keep the minutes of the meetings of the Board and Committees thereof; shall attend to the serving of notices of meetings of the Board; shall affix the seal of the Authority to all contracts and other documents when signed by the Chairman or the Vice-Chairman or other authorized officer designated by the Board; shall have charge of all records, books, papers and documents of the Board; and shall perform all the duties usually incidental to his office. He shall have the care and custody of all the funds and securities of the Authority and shall deposit the same in the name of the Authority in such banks or trust companies as the Board may designate from time to time; shall at all reasonable times exhibit the books and accounts to the Comptroller and the legally authorized representatives of the State of New York, and the Department of Finance of Canada and any legally authorized representatives of Canada and to any member of the Board upon application at the Office of the Authority during business hours; and shall perform such other duties as may be assigned to him from time to time by the Board. The Secretary-Treasurer shall also serve as the General Manager, having the responsibilities described below. Such person shall have both titles, "Secretary-Treasurer" and "General Manager."

Section 7 **General Manager**

The General Manager shall oversee all operations and activities of the Authority, subject to the authority of the Board and the Board approved Committees and shall perform such duties as may be assigned to the position by the Board or a Board approved Committee.

ARTICLE III

Section 1 **Contracts**

All deeds, contracts and obligations (except those specifically referred to in Article III Sections 2(a), (b) & (c) shall be signed in the name of the Authority by any one of the following:

Chairman, Vice Chairman, Secretary Treasurer, General Manager or Assistant Treasurer, and shall have the seal of the authority thereto affixed.

Section 2

(a) All notes, bonds and debentures obligating the Authority shall be signed in the name of the Authority by the Chairman, Vice Chairman or an Executive Committee Member and the Secretary Treasurer, General Manager or Assistant Treasurer and shall have the seal of the Authority thereto affixed.

(b) Any one of the following shall sign all cheques in payment of obligations of the Authority in an amount not exceeding ten thousand dollars ($10,000): Chairman, Vice Chairman, an Executive Committee Member, Secretary Treasurer, General Manager or Assistant Treasurer.

(c) Any two of the following shall sign all cheques in payment of obligations of the Authority in excess of ten thousand ($10,000): Chairman, Vice Chairman, an Executive Committee Member, Secretary Treasurer, General Manager or Assistant Treasurer.

(d) Notwithstanding the requirements set out in Article III Sections 1, 2(a), 2(b) and 2(c) the Board may at any time and from time to time direct the manner in which and the person or persons by whom any particular deed, contract, obligation, note, bond, debenture or cheque may be signed."

Section 3

Subject to Chapter 259 of the Laws of 1957 of the State of New York, the Secretary-Treasurer and other officers of the Board receiving monies shall execute an undertaking with such sureties as may be required for the safekeeping and lawful application of Authority monies.

In addition, a blanket crime policy shall be maintained in an amount not less than $50,000 to cover all other employees and agents of the Authority.

Section 4

All employees and agents of the Authority receiving any moneys which may come into their hands, shall execute and deliver to the Authority such documents and furnish to the Authority such information as may be necessary to enable the Authority to procure and maintain an undertaking or fidelity bond in such amount or amounts and with such sureties as may be required by the Authority.

Section 5 **Indemnification**

(a) The Authority shall indemnify and hold harmless every member of the Board and officer of the Authority and their respective heirs, estates successors and assigns who is or was a party, or is or was threatened to be made a party, to any action, suit, proceeding or investigation, whether civil, criminal or administrative, arising under or in connection with the activities of such person as a member of the Board or an officer of the Authority (any such person is hereinafter referred to as an "Indemnitee") from and against expenses (including attorneys' fees, judgments, fines and amounts paid in defense, settlement or judgment actually and necessarily incurred by the Indemnitee) in connection with such action, suit, proceeding or investigation, or any appeal therein or thereto, to the fullest extent permitted by applicable law, but excluding any liability resulting from the willful misconduct of such Indemnitee.

(b) An Indemnitee desirous of obtaining indemnification under this Section shall timely submit a demand therefore in writing (the "Demand") to the Authority. The Demand shall include a copy of any and all papers initiating the action, suit, proceeding or investigation and shall state (i) the nature of the action, suit, proceedings or investigation, (ii) that the Indemnitee desires indemnification from the Authority pursuant to this Section, (iii) an estimate of the cost of defending the Indemnitee, (iv) an estimate of the potential liability of the Authority and (v) such other facts and circumstances as the Indemnitee believes are necessary or appropriate.

(c) Expenses (including reasonable attorneys' fees and disbursements) incurred by Indemnitee in defending or participating in an action, suit, proceeding or investigation described in Subsection "(a)" of this section shall be paid by the Authority in advance of the final disposition of such action, suit, proceeding or investigation and within thirty (30) days after the Indemnitee's written request therefore and receipt by the Authority of an undertaking, by or on behalf of the Indemnitee, to repay (1) such amount if it shall ultimately be determined that such Indemnitee is not entitled to be indemnified by the Authority, or (2) the amount by which any advances made hereunder exceed either (A) the amounts for which the Indemnitee is entitled to be indemnified or (B) any amounts of indemnification allowed by a court of competent jurisdiction.

(d) Any demand for indemnification, request for advancement of expenses or notice of determination required or permitted to be given under this Section shall be deemed given upon personal delivery or three (3) days after depositing the same in the United States or Canadian mail, postage prepaid, if to the Authority, at its office in the United States or in Canada, or if to an Indemnitee, to the home or business address of such Indemnitee as reflected in the Authority's records.

(e) The provisions of this Section shall be severable and if any clause, sentence, paragraph, section or other part hereof shall be adjudged by any court of competent jurisdiction to be illegal, invalid or unenforceable, such judgment shall not affect, impair or invalidate the remainder hereof, which remainder shall continue in full force and effect.

ARTICLE IV

Section 1 **Addresses**

Each member of the Board, immediately upon his appointment, shall furnish the Secretary-Treasurer with his address to which all notices required or permitted by law or by these By-Laws may be served upon him by mail, personal service, or overnight delivery. Such addresses may be changed from time to time by notice in writing to the Secretary-Treasurer. Service of any notice by mail, personal service, or overnight delivery at the address so designated in writing shall be sufficient service thereof.

Section 2 **Offices**

The office or offices of the Authority shall be located at the Canadian Terminal of the Bridge in the Town of Fort Erie, Ontario, Canada and/or at the United States Terminal of the Peace Bridge in the City of Buffalo, Erie County, New York. In the event that the Authority does not have an executive office in both the United States and Canada, the Board may designate from time to time an agent for service of process in the city and country where the Authority has no executive office.

Section 3 **Seal**

The Seal of the Authority shall be in the form of a circle, shall bear the name "BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY" and be in the form impressed upon this page.

ARTICLE V

Section 1 **Amendments**

These By-Laws may be amended by Notice of Motion given at any previous meeting and by approval of at least 2/3 of the total Board.

TAB 2

CONFIDENTIAL

2042

CROSSING PATHS BUILDING FUTURES
THE PEACE BRIDGE

At the Regular Board Meeting
Executive Session
Via Zoom Video Conference
November 20, 2020

1. **CALL TO ORDER**
The Chairman called Executive Session to order at 9:02 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
K. Costa, Chief Financial Officer
T. Boyle, Chief Operating Officer
K. Kaiser, Executive Assistant

Others Present
F. Cirillo – NYS Department of Transportation

3. **CONFLICTS OF INTEREST**
None

4. **NEW BUSINESS**
a) Peace Bridge Duty Free Rent Deferral Agreement – Verbal
Moved by K. Manning
Seconded by T. Clutterbuck

"THAT the rent deferral agreement with Peace Bridge Duty Free be approved."
CARRIED

A discussion took place around the need to extend the deferral agreement executed in April due to the ongoing pandemic and continuing border restrictions.

5. **RETURN TO REGULAR SESSION**
Moved by P. Robson
Seconded by T. Masiello

"THAT the meeting return to regular session."

CARRIED

Ron Rienas,
General Manager

TAB 3

CONFIDENTIAL

2044

CROSSING PATHS BUILDING FUTURES
THE PEACE BRIDGE

At the Regular Board Meeting
Executive Session
Via Zoom Video Conference
December 17, 2020

1. **CALL TO ORDER**
The Chairman called Executive Session to order at 8:59 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
K. Costa, Chief Financial Officer
T. Boyle, Chief Operating Officer
K. Kaiser, Executive Assistant

3. **CONFLICTS OF INTEREST**
None

4. **NEW BUSINESS**
a) Adoption of Minutes
Moved by T. Masiello
Seconded by L. Holloway

"THAT the minutes of the Regular Board Meeting Executive Session held on November 20, 2020, be approved as presented."

CARRIED

b) Peace Bridge Duty Free
Moved by P. Robson
Seconded by I. Meharry

"THAT the Buffalo and Fort Erie Public Bridge Authority demand a partial rent payment from Peace Bridge Duty Free in the amount of $1 million by December 31, 2020.

THAT a rent repayment schedule and associated guarantees of full payment be developed with legal counsel."

CARRIED

5. **RETURN TO REGULAR SESSION**
Moved by P. Robson
Seconded by T. Masiello

"THAT the meeting return to regular session."

CARRIED

Ron Rienas,
General Manager

TAB 4

CONFIDENTIAL

CROSSING PATHS BUILDING FUTURES
THE PEACE BRIDGE

At the Special Board Meeting
Executive Session
October 25, 2021, via Zoom

1. **CALL TO ORDER**
   The Chairman called Executive Session to order at 3:05 PM.

2. **ROLL CALL**

Present	Absent
T. Clutterbuck, Chair	L. Holloway
K. Manning	T. Masiello
F. Cirillo	M. Russo *(with regrets)*
M. Neubauer	
J. Persico	
P. Robson	
D. Zimmerman	

Staff Present
R. Rienas, General Manager
T. Boyle, Chief Operating Officer
K. Kaiser, Executive Assistant

3. **CONFLICTS OF INTEREST**
   None

4. **EXECUTIVE SESSION**
   Moved by M. Neubauer
   Seconded by J. Persico

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

   CARRIED

5. **NEW BUSINESS**
   a) Peace Bridge Duty Free (Canada) Counter Proposal Discussion

   R. Rienas briefed the Board with respect to the current duty free operator's lease proposal and the Authority's counter proposal. The Board discussed in detail the questions by all members.

   Moved by D. Zimmerman
   Seconded by K. Manning

   "THAT the counter offer lease proposal entail the following:

   Future rent: (year begins November 1, 2021)
   - 2022 – Base rent of $ 2,500,000 or 20% of sales, whichever is greater
   - 2023 – Base rent of $ 3,000,000 or 20%, whichever is greater
   - 2024 – Base rent of $ 3,500,000 or 20%, whichever is greater
   - 2025 – Base rent of $ 4,000,000 or 20%, whichever is greater
   - Beyond 2025, existing lease applies

   Back rent:
   - 50% of back rent due upon execution of amendment.
   - Authority applies any HST credits to back rent

   Food service:
   - Food service tenant rents to be at market rates, approved by and payable to Authority."

   CARRIED

CONFIDENTIAL

6. ADJOURNMENT
Moved by K. Manning
Seconded by P. Robson

"THAT the meeting be adjourned at 3:50 PM."

CARRIED

Ron Rienas,
General Manager

TAB 5

Karen L. Costa

From:	Ron Rienas
Sent:	Friday, October 15, 2021 2:13 PM
To:	Debbie Zimmerman; Dominguez, MarieTherese (DOT); Frank Cirillo ; Jennifer Persico ; Ken Manning; Kimberlee A. Kaiser; Lew Holloway ; Margaret Neubauer; Mike Russo; Patrick Robson; Ron Rienas; Tim Clutterbuck ; Tony Masiello
Cc:	Karen L. Costa; Stanek, Chris
Subject:	Peace Bridge Duty Free (PBDF)
Attachments:	15-10-2021 Letter to PBA.pdf

Further to the Board discussion last week, attached is a copy of the PBDF proposal received today.

While it is an improvement over what has been previously proposed, it is not acceptable and requires a counter-offer from the Authority. For example; PBDF currently owes the Authority $6 million. They are offering the Authority $2 million to be repaid without interest over the next 20 years, meaning a payment of only $100,000/year

We will develop a counter-offer with Mr. Stanek for Board approval early next week, prior to submission to PBDF.

I will work with the Chairman to schedule a special Board meeting.

Wishing everyone a great weekend!

Ron Rienas
General Manager
Buffalo & Fort Erie Public Bridge Authority

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

PEACE BRIDGE DUTY FREE

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

October 15, 2021

Ron Reinas

General Manager

Buffalo & Fort Erie Public Bridge Authority

Ron,

Further to the discussion between our respective legal counsel, we are writing to make a without prejudice proposal to address the issue of back-rent, the rent going forward, term and food service.

Rent Going Forward:

PBDF proposes that Article 4.02 of the Lease be amended to provide that:

a) The Tenant covenants and agrees to pay to the Landlord from the amendment date, 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.

b) For the first year of the Lease, the Base Rent shall be $2,000,000. The Base Rent for the second year and each succeeding year of the Lease shall be no less than the aggregate of the Base Rent and the Percentage Rent payable by the Tenant to the Landlord for the immediately proceeding Rental Year. Once the Base Rent payable in any given year reaches $4,000,000, then the Base Rent in any subsequent year 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 immediate proceeding Rental Year.

c) Notwithstanding subsection (a), above, the Tenant shall pay percentage rent on a monthly basis for the first year of the Lease with such additional payments to be made on: a) June 30 so that the total rent paid as of June 30 equals $1,000,000; and b) October 31 so that the total rent paid as of October 31 equals $2,000,000.

Article 4.03 would remain unchanged in substance. However, the example calculation included in the Lease would be changed to reflect the amendment. This would be:

Year	Sales		Base Rent	Additional Percentage Rent	Total Rent
2022	16,000		2,000	1,200	3,200
2023	19,000		3,200	600	3,800
2024	20,000		3,800	200	4,000
2025	20,500		4,000	110	4,110
2026	21,000		4,000	220	4,220
2027	22,000		4,000	440	4,440
All amounts in 000's and CAN$					

This formulation would allow PBDF to best manage cashflow in the early part of 2022 and would also provide a clear path forward for a return to a base rent of $4,000,000.

The need to manage cashflow is prompted by two considerations. First, traffic levels in the early part of the year have historically been low as there is less travel and shopping in January and February. Second, our bank has suspended the lines of credit that were previously available to us, which creates an imperative to have a sufficient cash reserve to fund operations.

Back Rent and Extension of Lease Term:

PBDF proposes that it pay $2,000,000 in rent that has accrued (the "Back Rent") with any additional amounts being waived by the PBA. The Back Rent would be treated as a no-interest loan amortized over the term of the lease (as extended) and would be paid off in monthly installments commencing on January 15, 2023.

This proposal is also based on the notion that term of the Lease would be extended by five years from its current end-date of October 2031 to October 2036. The Extension Option (Article 1.01 (h)) would still be available.

Food Service:

In the past, PBDF has subleased space to a food service provider (most recently, it was a Tim Hortons franchise). PBDF paid rent to the PBA on the basis of the sales made by the food service provider. However, we have had difficulty in attracting a food service provider to our location at the current level of 20% rent.

We see value in having a food service provider on location as it does attract traffic. To attract and keep a food service provider in the location, the rent terms would have to be changed to reflect the fact that such providers are unable to sustain their operations with rent at the current 20% level.

As such, we propose that the PBDF be able to sublease space to a food service provider and that any rent payable be remitted to the PBA. We would be pleased to confer with PBA regarding rental rates and other such matters so that the PBA can be satisfied that the rent being offered is appropriate.

Concluding Comment:

We look forward to discussing this proposal with you further. On the basis of our discussions with other similarly situated duty free shops, we understand that this proposal may be similar to the approach that is generally being discussed across the industry.

Regards,

Gregory G. O'Hara

President and CEO

Peace Bridge Duty Free Inc

TAB 6

2055

CROSSING PATHS BUILDING FUTURES
THE PEACE BRIDGE

To: File

From: Karen Costa and Ron Rienas

Date: May 13, 2021

Subject: ***Meeting with PBDF***

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 annually.

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.

TAB 7

CONFIDENTIAL

Peace Bridge Authority

Report No. 869/20

Prepared for: Board of Directors
Agenda Date: April 24, 2020

SUBJECT Duty Free Rent Deferral Agreements due to Covid-19

RECOMMENDATION

That the rent deferral agreements negotiated with Peace Bridge Duty Free and Duty Free Americas be approved.

BACKGROUND

The Duty Free Stores are an important source of non-toll revenue to the Authority. Both stores are owned by the Authority but operated by concessionaires.

The Canadian store, Peace Bridge Duty Free (PBDF), 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).

The American store, Duty Free Americas (DFA), [redacted]

As Authority financials are in USD, the total Duty Free rent paid to the Authority in 2019 was $5,482,5979 (USD). By comparison, toll revenue in 2019 was $22,118,159 (USD).

Rent Analysis

As a result of Covid 19 and the restriction imposed allowing only essential cross-border traffic on March 20,2020, both stores have seen dramatic revenue declines. PBDF closed on March 21, 2020. DFA has remained open. Both stores have sought rental relief.

The lease agreements are structured differently. PBDF has a high base (minimum) rent with a higher threshold for additional % rent based on sales. DFA has a lower base rent and a lower threshold for additional % rent based on sales.

Neither lease has a force majeure clause. The Authority's position was that the rent obligations needed to be fulfilled, but the Authority would be flexible and negotiate rent deferral agreements.

PBDF

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 as proposed by PBDF. Here is the rent structure:

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%

In 2019, gross sales were slightly under $20,000,000 so only the base rent of $4,000,000 applied.

The negotiated rent deferral agreement (Appendix A) allows rent payments to be suspended and deferred to as late as July 31, 2020. That date could be May 31 or June 30 if the border restrictions are lifted during May or June. The unpaid rent will be repaid in 12 equal monthly installments with a 4% interest rate following reopening.

DFA

[redacted]

[redacted] [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

[redacted]

[redacted]

Summary

Both rent deferral agreements allow the Authority to receive the minimum rents required by the leases, albeit on a deferred basis.

PREPARED & SUBMITTED BY

Ron Rienas
General Manager

APPENDIX A

RENT DEFERRAL AGREEMENT

THIS AGREEMENT made the ____ day of April, 2020.

BETWEEN:

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
(the "**Landlord**")

AND

PEACE BRIDGE DUTY FREE INC.
(the "**Tenant**")

WHEREAS:

A. By a lease made July 28, 2016 between the Landlord and the Tenant, the Tenant leased from the Landlord certain premises (the "**Premises**") municipally known 1 Peace Bridge, Fort Erie, Ontario, for a term commencing November 1, 2016 and expiring October 31, 2031; and

B. Due to travel restrictions and economic hardships created across the world by the COVID-19 pandemic, the Tenant requests rent relief.

NOW THEREFORE THIS AGREEMENT WITNESSES in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt of sufficiency whereof is hereby acknowledged, the parties agree as follows:

1. INTERPRETATION

1.1 Expressions in Lease: Unless expressly provided to the contrary in this Agreement, all terms defined in the Lease shall have the same meaning in this Agreement.

1.2 Definitions and Interpretation: The Lease is amended by adding the following definitions thereto:

"**Amortization Period**" means the one year period commencing on the Restart Date.

"**Suspension Date**" means April 1, 2020.

"**Deferred Rent**" means the Base Rent otherwise payable by the Tenant pursuant to the Lease during the Rent Deferral Period but for the terms of this Agreement.

"**Rent Deferral Period**" means the period commencing on the Rent Suspension Date to and including the earlier of:

i. July 31, 2020; or

ii. the last day of the month following the date that the Tenant has fully reopened the Duty Free Shop for business after the restrictions on non-essential travel between Canada and the United States are lifted (for greater clarity, a partial reopening to accommodate essential travel does not constitute a full reopening).

"Required Conditions" means:

i. the Tenant pays all Additional Rent throughout the Rent Deferral Period, including without limitation, all Operating Costs and Property Taxes;

ii. the Tenant does not seek benefit or protection of any statute for the benefit of bankrupt or insolvent debtors, including without limitation, a proposal, assignment or arrangement with its creditors or the repudiation or disclaimer of the Lease;

iii. there has not been a Transfer (as defined in section 14.01 of this Lease); and

iv. the Tenant strictly complies with all of the terms of the Lease and there is no Event of Default; and

v. the Tenant strictly complies with all of the terms of this Agreement (including without limitation, the representations and warranties herein).

"Restart Date" means the day immediately following the last day of the Rent Deferral Period.

2. RENT DEFERRAL

2.1 **Tenant's Representations and Warranties:** The Tenant represents and warrants to the Landlord the following:

(a) the Tenant temporarily closed its business at the Premises on or about March 21, 2020 and will fully re-open for business at the Premises as soon the restrictions on non-essential travel between Canada and the United States of America are lifted; and

(b) the Tenant has and will continue to use its best efforts to take advantage of all government programs offering financial relief from the effects of the COVID-19 pandemic, including without limitation, any income tax deferral or reduction, rent assistance, employee wage and benefit subsidies and the like, with a view to ensuring that the Tenant is and remains a financially viable business, and shall keep the Landlord apprised of the Tenant's efforts in this regard.

2.2 **Rent Suspension and Deferral:** Provided the Required Conditions are met both throughout the Rent Deferral Period and the Amortization Period, then notwithstanding anything in this Lease to the contrary, the Tenant's obligation to pay the Deferred Rent during the Rent Deferral Period shall be suspended and deferred and shall not be payable until the Restart Date. The Tenant shall, however, be bound by all the other terms and conditions of this Lease during the Rent Suspension Period. For the purpose of clarity, it is understood and agreed that if any of the Required Conditions are not met, the Tenant's right to suspend and defer payment of Deferred Rent during the Rent Suspension Period shall be immediately forfeited and withdrawn retroactive to the Rent Suspension Date and the Deferred Rent that would otherwise have been payable during the Rent Suspension Period to the date of such forfeiture shall be immediately due and payable together with interest thereon at the rate set forth in the Lease for non-payment of Rent, calculated from the date each such installment of Deferred Rent would otherwise have been payable pursuant to Lease but for this Agreement. Except as expressly

suspended and deferred in accordance with this section, the Tenant shall continue to pay all Rent in accordance with the Lease.

2.3 Repayment of the Deferred Rent: Repayment of the Deferred Rent shall commence on the Restart Date. The aggregate amount of Deferred Rent together with interest thereon at the rate of 4% per annum shall be amortized over the Amortization Period and repaid by the Tenant in equal consecutive monthly instalments on the first day of each month from and including the Restart Date, without abatement or set-off, in the same manner as Rent. The Tenant covenants and agrees that if at any time, any of the Required Conditions are not met, the Landlord's agreement to amortize the repayment of the Deferred Rent shall be deemed to have been immediately withdrawn and the Tenant shall immediately pay to the Landlord the then outstanding unamortized balance of the Deferred Rent together with interest thereon at the rate of 4% per annum.

3. ACKNOWLEDGEMENT

3.1 Acknowledgement: The Tenant confirms that, as of the date hereof, (a) the Landlord is not in default under any obligation of the Landlord under the Lease and (b) there are no disputes or claims outstanding by the Tenant against the Landlord in respect of any past billings, rental recoveries or other matters pertaining to the Lease.

4. NO AGREEMENT

4.1 This Agreement shall be deemed not to have been executed and delivered by the Landlord until:

i. this Agreement has been duly executed by all the other parties hereto and the Landlord has received at least one executed original hereof; and

ii. the Landlord has received payment of the sum of $3,000 plus the applicable HST thereon, being the estimated legal fees incurred by the Landlord in relation to the request for rent-relief and the preparation of this Agreement.

Until the aforesaid deliverables have been received by the Landlord, the Landlord may, at its sole option, by written notice to the Tenant, withdraw any agreement in respect of rent-relief and this Agreement shall be null and void and of no further force or effect.

5. AGREEMENT PART OF LEASE

5.1 Agreement Part of Lease: This Agreement shall be read in conjunction with the Lease and shall form a part thereof and all provisions of the Lease insofar as applicable and except as amended by this Agreement shall continue in full force and effect and shall be binding upon and shall enure to the benefit of the parties, their successors and permitted assigns.

5.2 Further Assurances: Each party shall at any time and from time to time, upon the request of the other party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.

5.3 Counterparts: This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered to all of the parties shall be deemed to be and shall be read as a single agreement among the parties.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement with effect on the date first set out on the first page of this Agreement.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Per: ______________________________
Name: ■
Title: ■

c/s

Per: ______________________________
Name: ■
Title: ■

I/We have authority to bind the corporation

PEACE BRIDGE DUTY FREE INC.

Per: ______________________________
Name: ■
Title: ■

c/s

Per: ______________________________
Name: ■
Title: ■

I/We have authority to bind the corporation

[redacted]

018395.00017 Business 19616589v2

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[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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[redacted]

[redacted]

[redacted]

[redacted])
[redacted]
[redacted])

[redacted]

[redacted]

[redacted])
[redacted]
[redacted])

[redacted]

[redacted]

TAB 8

Karen L. Costa

From:	Ron Rienas
Sent:	Friday, April 03, 2020 6:44 PM
To:	Ken Manning; Tim Clutterbuck; Debbie Zimmerman; Tony Masiello; Patrick Robson; Isabel Meharry; Sam Gurney; Mike Russo; Lew Holloway; MarieTherese Dominguez; Frank Cirillo
Cc:	Karen L. Costa; Thomas A. Boyle; Kimberlee A. Kaiser
Subject:	Peace Bridge Duty Free (PBDF)
Attachments:	Peace Bridge Duty Free - PBA - Apr 3 2020.pdf; ATT00001.htm

Further to the Covid-19 update circulated today, attached is a letter from Peace Bridge Duty Free (Canada) received late this afternoon requesting a teleconference with the Board regarding its rent payment which was due on April 1, 2020. Mr. O'Hara requested that his letter be distributed to the Board.

There are some statements in the letter that require clarification.

- the store was closed on March 21 by PBDF with no consultation with the Authority

- the store could have remained open as it provides a service to truckers, an essential service. The Blue Water Bridge Duty Free remains open on that basis.

- our U.S. Duty Free store remains open

- I did discuss this with Mr O'Hara when he called me evening of March 26. He requested a full rent abatement for the month of April. I advised him I needed to review the lease with our legal counsel

- upon advise of legal counsel, Mr. O'Hara was advised by e-mail on April 1 that there was no provision in the lease for rent abatement or delay.

- As no rent was paid on April 1, a letter was sent to Mr. O'Hara yesterday reminding him that rent was due April 1.

- a canvassing of the other international bridges and tunnel revealed that no one has yet granted any form of rent relief.

- in consultation with our legal counsel this morning he advised as follows:

> *"Section 18.07 of the Lease is as set out below and this does provide that the landlord and the tenant should consult with the tenant on the impact that a change in Applicable Laws will have on the tenant. However, this Section does not excuse the Tenant from paying rent. If there is going to be a rent deferral or temporary reduction to the rent payment, this needs to be negotiated and agreed upon by the landlord.*
>
> *With the COVID 19 pandemic and associated government restrictions, certainly the landlord and the tenant should be having discussions about the impact that COVID-19 is having on the business at the duty free shop. These restrictions are anticipated to be temporary in nature and travel will eventually resume, but we do not know when that will be."*

It is understood that Covid-19 is an unprecedented event that is straining many landlord-tenant relationships. We anticipated having a discussion with PBDF upon receiving some form of rent reduction or deferral request. The rent payment was only due two days ago.

As the letter was addressed to the Board, my recommendation is to have Chairman Manning respond to PBDF.

Ron

Sent from my iPhone

PEACE BRIDGE
DUTY FREE

April 3, 2020

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

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

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

Board of Directors

Buffalo & Fort Erie Public Bridge Authority

Dear Directors:

We are writing to formally request a telephone conference meeting regarding the situation that has developed as a result of COVID-19 and the government measures that have been implemented on both sides of the border to address the situation.

This meeting is being requested on the basis that our operations have been deeply affected by the closure of the boarder to non-essential crossings. The closure of the borders to non-essential crossings has undermined our ability to generate revenue from the duty-free shop.

As a result of these measures and consistent with Government of Canada and Government of Ontario guidance, we closed the shop, effective March 21, 2020, so as to avoid the spread of COVID-19. We continue to have a staff member onsite to ensure that the building remains secure.

We request a meeting to discuss interim arrangements that can be put in place to address this unprecedented situation. We kindly request that this meeting occur as soon as possible so that we can have clarity, at least in the short-term, as to how we may best be able to address the fact that we have no ability to generate revenue from a business that is dependent upon the free flow of traffic across the border.

We have raised this issue with the Bridge Authority Senior Management but they have not responded to our request to explore how we might be able to address this unprecedented situation.

We kindly look forward to a call being scheduled as soon as possible. Please note that we have not paid the rent that was otherwise due pursuant to the lease on April 1, 2020. Until we can have a discussion to explore whether an interim solution can be put in place, we respectfully request that you not declare this non-payment a default so as to allow for a discussion to take place.

Also, we note that section 18.07 of the lease provides that where there is a change in Applicable Law that causes a material adverse effect on our business operations as the leased premises, the Bridge Authority is to consult with us to discuss the impact of such change to the lease. This provision was included in the lease because we all recognized that the lease and the viability of the duty free shop is entirely dependent on the manner in which the border is being regulated and

that any changes relating to crossings could have a material adverse effect on the duty free shop that may require adjustments to the lease.

Again, we look forward to hearing from you as soon as possible to schedule a telephone conference.

Regards,

Gregory G. O'Hara

President

PEACE BRIDGE
DUTY FREE

April 3, 2020

P.O. Box 339 Peace Bridge Plaza
Fort Erie, Ontario L2A 5N1 Canada
P.O. Box 572
Buffalo, New York USA 14213-0572
Telephone: (905) 871-5400
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Buffalo & Fort Erie Public Bridge Authority

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Also, we note that section 18.07 of the lease provides that where there is a change in Applicable Law that causes a material adverse effect on our business operations as the leased premises, the Bridge Authority is to consult with us to discuss the impact of such change to the lease. This provision was included in the lease because we all recognized that the lease and the viability of the duty free shop is entirely dependent on the manner in which the border is being regulated and

that any changes relating to crossings could have a material adverse effect on the duty free shop that may require adjustments to the lease.

Again, we look forward to hearing from you as soon as possible to schedule a telephone conference.

Regards,

Gregory G. O'Hara

President

TAB 9

Karen L. Costa

From:	Ron Rienas
Sent:	Thursday, November 19, 2020 4:25 PM
To:	Debbie Zimmerman; Dominguez, MarieTherese (DOT); Frank Cirillo ; Isabel Meharry; Jennifer Persico ; Ken Manning; Kimberlee A. Kaiser; Lew Holloway ; Mike Russo; Patrick Robson; Ron Rienas; Tim Clutterbuck ; Tony Masiello
Cc:	Karen L. Costa; Thomas A. Boyle
Subject:	Canadian Peace Bridge Duty Free - Covid 19
Attachments:	1078_001.pdf

The Board will recall that it approved a rent deferral agreement for the Peace Bridge Duty Free (PBDF) back on April 24, 2020 as the store was closed due to the Covid-19 border restrictions.

In summary, the Board approved deferring rent for the period from April 1 to July 31 and requiring payment of all deferred rent within one year of re-opening.

With the border restrictions remaining in force and likely to continue into 2021 and PBDF remaining closed, an amended deferral agreement has been agreed to by PBDF that keeps the same agreement in place but extends the rent deferral to March 31, 2021 (or earlier if the store re-opens) and allows for a two year payback after re-opening. A copy of the agreement is attached.

This item will be added to tomorrow's Board agenda in executive session with the following recommendation:

> *"That the rent deferral agreement with Peace Bridge Duty Free be approved"*

It is noted that should the deferral remain in place till March 31, 2021, PBDF will have been closed one year representing $4 million in deferred rent. While PBDF has assured that it is making arrangements with its banks to meet its financial obligations and may require a lease extension to amortize over a longer period of time there remains a great deal of uncertainty related to the pandemic, timing of border reopening, travel recovery, etc. Accordingly, in Report 909/20 "October Operating Statement & Balance Sheet", the Board will note that the Authority is recording a $2 million bad debt allowance to reserve for any potential collectability issues. Karen Costa, CFO, will speak to this issue when that report is considered.

Ron Rienas
General Manager
Buffalo & Fort Erie Public Bridge Authority

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

RENT DEFERRAL AGREEMENT

THIS AGREEMENT made the 20th day of November, 2020.

BETWEEN:

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
(the "Landlord")

AND

PEACE BRIDGE DUTY FREE INC.
(the "Tenant")

WHEREAS:

A. By a lease made July 28, 2016 between the Landlord and the Tenant, the Tenant leased from the Landlord certain premises (the "Premises") municipally known 1 Peace Bridge, Fort Erie, Ontario, for a term commencing November 1, 2016 and expiring October 31, 2031; and

B. Due to travel restrictions and economic hardships created across the world by the COVID-19 pandemic, the Tenant requests rent relief.

NOW THEREFORE THIS AGREEMENT WITNESSES in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt of sufficiency whereof is hereby acknowledged, the parties agree as follows:

1. INTERPRETATION

1.1 Expressions in Lease: Unless expressly provided to the contrary in this Agreement, all terms defined in the Lease shall have the same meaning in this Agreement.

1.2 Definitions and Interpretation: The Lease is amended by adding the following definitions thereto:

"Amortization Period" means the two year period commencing on the Restart Date.

"Suspension Date" means April 1, 2020.

"Deferred Rent" means the Base Rent otherwise payable by the Tenant pursuant to the Lease during the Rent Deferral Period but for the terms of this Agreement.

"Rent Deferral Period" means the period commencing on the Rent Suspension Date to and including the earlier of:

i. March 31, 2021; or

ii. the last day of the month following the date that the Tenant has fully reopened the Duty Free Shop for business after the restrictions on non-essential travel between Canada and the United States are lifted (for greater clarity, a partial reopening to accommodate essential travel does not constitute a full reopening).

"**Required Conditions**" means:

i. the Tenant pays all Additional Rent throughout the Rent Deferral Period, including without limitation, all Operating Costs and Property Taxes;

ii. the Tenant does not seek benefit or protection of any statute for the benefit of bankrupt or insolvent debtors, including without limitation, a proposal, assignment or arrangement with its creditors or the repudiation or disclaimer of the Lease;

iii. there has not been a Transfer (as defined in section 14.01 of this Lease); and

iv. the Tenant strictly complies with all of the terms of the Lease and there is no Event of Default; and

v. the Tenant strictly complies with all of the terms of this Agreement (including without limitation, the representations and warranties herein).

~~"Restart Date" means the day immediately following the last day of the Rent Deferral Period.~~

2. RENT DEFERRAL

2.1 **Tenant's Representations and Warranties:** The Tenant represents and warrants to the Landlord the following:

(a) the Tenant temporarily closed its business at the Premises on or about March 21, 2020 and will fully re-open for business at the Premises as soon the restrictions on non-essential travel between Canada and the United States of America are lifted; and

(b) the Tenant has and will continue to use its best efforts to take advantage of all government programs offering financial relief from the effects of the COVID-19 pandemic, including without limitation, any income tax deferral or reduction, rent assistance, employee wage and benefit subsidies and the like, with a view to ensuring that the Tenant is and remains a financially viable business, and shall keep the Landlord apprised of the Tenant's efforts in this regard.

2.2 Rent Suspension and Deferral: Provided the Required Conditions are met both throughout the Rent Deferral Period and the Amortization Period, then notwithstanding anything in this Lease to the contrary, the Tenant's obligation to pay the Deferred Rent during the Rent Deferral Period shall be suspended and deferred and shall not be payable until the Restart Date. The Tenant shall, however, be bound by all the other terms and conditions of this Lease during the Rent Suspension Period. For the purpose of clarity, it is understood and agreed that if any of the Required Conditions are not met, the Tenant's right to suspend and defer payment of Deferred Rent during the Rent Suspension Period shall be immediately forfeited and withdrawn retroactive to the Rent Suspension Date and the Deferred Rent that would otherwise have been payable during the Rent Suspension Period to the date of such forfeiture shall be immediately due and payable together with interest thereon at the rate set forth in the Lease for non-payment of Rent, calculated from the date each such installment of Deferred Rent would otherwise have been payable pursuant to Lease but for this Agreement. Except as expressly

suspended and deferred in accordance with this section, the Tenant shall continue to pay all Rent in accordance with the Lease.

2.3 Repayment of the Deferred Rent: Repayment of the Deferred Rent shall commence on the Restart Date. The aggregate amount of Deferred Rent together with interest thereon at the rate of 4% per annum shall be amortized over the Amortization Period and repaid by the Tenant in equal consecutive monthly instalments on the first day of each month from and including the Restart Date, without abatement or set-off, in the same manner as Rent. The Tenant covenants and agrees that if at any time, any of the Required Conditions are not met, the Landlord's agreement to amortize the repayment of the Deferred Rent shall be deemed to have been immediately withdrawn and the Tenant shall immediately pay to the Landlord the then outstanding unamortized balance of the Deferred Rent together with interest thereon at the rate of 4% per annum.

3. ACKNOWLEDGEMENT

3.1 Acknowledgement: The Tenant confirms that, as of the date hereof, (a) the Landlord is not in default under any obligation of the Landlord under the Lease and (b) there are no disputes or claims outstanding by the Tenant against the Landlord in respect of any past billings, rental recoveries or other matters pertaining to the Lease.

4. NO AGREEMENT

4.1 This Agreement shall be deemed not to have been executed and delivered by the Landlord until:

i. this Agreement has been duly executed by all the other parties hereto and the Landlord has received at least one executed original hereof; and

Until the aforesaid deliverables have been received by the Landlord, the Landlord may, at its sole option, by written notice to the Tenant, withdraw any agreement in respect of rent-relief and this Agreement shall be null and void and of no further force or effect.

5. AGREEMENT PART OF LEASE

5.1 Agreement Part of Lease: This Agreement shall be read in conjunction with the Lease and shall form a part thereof and all provisions of the Lease insofar as applicable and except as amended by this Agreement shall continue in full force and effect and shall be binding upon and shall enure to the benefit of the parties, their successors and permitted assigns.

5.2 Further Assurances: Each party shall at any time and from time to time, upon the request of the other party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.

5.3 Counterparts: This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered to all of the parties shall be deemed to be and shall be read as a single agreement among the parties.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement with effect on the date first set out on the first page of this Agreement.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Per: ______________________
Name:
Title:

c/s

Per: ______________________
Name:
Title:

I/We have authority to bind the corporation

PEACE BRIDGE DUTY FREE INC.

Per: ______________________
Name: GREGORY G. O'HARA
Title: PRESIDENT

c/s

Per: ______________________
Name:
Title:

I/We have authority to bind the corporation

TAB 10

CROSSING PATHS BUILDING FUTURES
THE PEACE BRIDGE

NIAGARA FALLS BRIDGE COMMISSION

June 30, 2020

VIA EMAIL (marc.garneau@parl.gc.ca)
The Honourable Marc Garneau
Minister of Transport
House of Commons
Ottawa, ON K1A 0A6

VIA EMAIL (bill.morneau@canada.ca
The Honourable William Morneau
Minister of Finance
House of Commons
Ottawa, ON K1A 0A6

VIA EMAIL (ps.ministerofpublicsafety-ministredelasecuritepublique.sp@canada.ca)
The Honourable Bill Blair
Minister of Public Safety and Emergency Preparedness
269 Laurier Avenue West
Ottawa, ON K1A 0P5

VIA EMAIL (president@tbs-sct.gc.ca)
The Honourable Jean-Yves Duclos
President
Treasury Board of Canada Secretariat
8th Floor
90 Elgin Street
Ottawa, ON K1A 0R5

RE: INTERNATIONAL BRIDGES AND COVID-19 IMPACT

Dear Honourable Ministers and President of the Treasury Board:

The four Queen Elizabeth Way corridor international bridges in southern Ontario are the Peace Bridge operated by The Buffalo & Fort Erie Public Bridge Authority (PBA); the Rainbow Bridge, Whirlpool Bridge and Lewiston-Queenston Bridge operated by the Niagara Falls Bridge Commission (NFBC). Not only do the PBA and NFBC operate the bridges, we are also required to provide and maintain the Customs plazas and all Customs buildings for both Canada and the United States. In 2019, these bridges and plazas processed 9.6 million cars and 1.9 million commercial trucks, supporting the economies of both countries.

Both the PBA and NFBC are bi-national public entities with governing boards composed equally of Canadians and Americans, politically appointed. Both are legislatively mandated to operate on a self-sustaining basis, at arms-length from their respective governments. Both derive their revenue from vehicle tolls and rental income, including from Duty Free stores.

Due to the Covid-19 pandemic, the governments of Canada and the United States closed the border on March 21, 2020 to all but essential travel. Since that date, car traffic has declined by 95% and truck traffic has declined by 22%. The Canadian Duty Free stores have been closed and the U.S. Duty Free stores are seeing only a small fraction of their normal business. Both federal governments have deemed our bridges an essential service to maintain critical bi-national supply chains. Accordingly, we are required to keep the border crossings operating while the revenues required to do so have been decimated.

In the United States we are compensated for providing facilities for Customs and Border Protection (CBP) through a lease agreement. In 2020 the PBA will receive $2.4 million (USD) and the NFBC will receive $3.9 million (USD) from the U.S. government for providing and maintaining these Customs facilities. During the Covid-19 pandemic the lease payments have continued unabated by the U.S. Government. Requests for building modifications and enhanced janitorial services required for officer and public safety are reimbursed in addition to the monthly rent payments.

In Canada, under Section 6 of the Customs Act, we are required to provide and maintain all Canada Border Services Agency (CBSA) plazas and facilities free of charge to the Government of Canada. This includes building the facilities, paying all utilities, taxes, janitorial, maintenance, property management, insurance and depreciation. For the Peace Bridge this cost is approximately $3 million annually, not including depreciation. For the NFBC it amounts to $6 million annually. CBSA is currently reimbursing both organizations for additional janitorial services and building modifications to address Covid-19 concerns.

We are requesting that the Government of Canada compensate the PBA and NFBC for all the costs associated with providing services to the Government of Canada as defined by Section 6 of the Customs Act.

We know that Section 6 is not equally applied by the government at all of the international bridges along the Canada – U.S. border. For example, the Ogdensburg Bridge does not provide any Section 6 services because it chooses not to as a sole New York State Authority. The Seaway International Bridge also does not pay for any Section 6 services because it has a structural revenue issue as the majority of its users do not pay a toll and therefor the government of Canada picks up the costs.

The Federal Bridge Corporation Limited (FBCL) is the federal crown corporation responsible for the Canadian half of four international crossings between Canada and the U.S. While its bridges are subject to Section 6 (except for Seaway International), it receives federal government funding ($3.4 million in 2019) and could avail itself of additional relief funds through the normal federal budget process.

We understand how important the border is to Canada. Nowhere is that more evident than Canada's commitment to the Gordie Howe Bridge. When the bridge opens, the government of Canada will be required to make availability payments totaling more than $150 million annually for 30 years to the private sector partner and therefore Section 6 will not be applicable at that crossing.

We would respectfully request that during this unprecedented time of revenue loss and necessity for our Section 6 responsibilities to continue, the Government of Canada review our request for just compensation through the lens of simple fairness.

We thank you for your consideration.

Sincerely,

Kenneth Manning
Chairperson
Buffalo & Fort Erie Public Bridge Authority

Michael Goodale
Chairperson
Niagara Falls Bridge Commission

cc: Prime Minister Trudeau
Tony Baldinelli, MP
Chris Bittle, MP
Vance Badawey, MP
Jim Bradley, Niagara Regional Chair
Wayne Redekop, Fort Erie Mayor
Jim Diodati, Niagara Falls Mayor
Betty Disaro, Niagara-on-the-Lake Mayor

CROSSING PATHS BUILDING FUTURES
THE PEACE BRIDGE

NIAGARA FALLS BRIDGE COMMISSION

July 26, 2021

The Honourable Chrystia Freeland
Minister of Finance
House of Commons
Ottawa, ON K1A 0A6

The Honourable Omar Alghabra
Minister of Transport
House of Commons
Ottawa, ON K1A 0A6

RE: INTERNATIONAL BRIDGES AND COVID-19 IMPACT

Dear Minister Freeland and Minister Alghabra:

On June 30, 2020 we sent a letter (attached) to various Ministers seeking financial assistance during the Covid-19 pandemic. The issue was referred to Public Safety and Minister Blair responded on December 2, 2020 (attached). He deferred to Finance and Transport.

Minister Blair's letter incorrectly states we are requesting relief from our obligations under Section 6 of the Customs Act and that the Minister does not have the legal authority to do so as it is a legislative requirement of parliament under the Act. That is not what we requested. We will continue to fulfill our obligations. What we were requesting is that during this time of Covid and the border closure, that we be compensated for the associated costs. We did not suggest that these funds come from Public Safety. That is why we sent the letter to multiple Ministers with the expectation that we would get a Government of Canada response in keeping with what the government is doing for many sectors, including airports which have received almost a billion dollars in operational and capital assistance.

We recently learned that in the fall of 2020 the Federal Bridge Corporation Limited (FBCL) filed a corporate plan amendment that included government assistance in the amount of $37.8 million for the past and current fiscal year and that the total federal government contribution for the five year period 2020/21 - 2024/25 will be in excess of $50 million. That number is likely to increase dramatically as the Plan anticipated the border reopening April 1, 2021. The circumstances and impact of the pandemic are no different for the Peace Bridge Authority (PBA) or the Niagara Falls Bridge Commission (NFBC) than they are for the FBCL.

We also learned that the Detroit-Windsor Tunnel received $5 million under the joint federal-provincial Safe Restart Program as an entity owned by the City of Windsor. We are not eligible for that funding.

We do not begrudge anything that other border crossings are receiving. We support them. However, what is striking is that our critically important border crossings in the Niagara Region have received **no** assistance. The federal government restricted the border 16 months ago resulting in dramatic negative revenue impacts; yet the PBA and NFBC are being required to provide and pay for all federally demanded services at the border as if the border was operating normally.

We would respectfully request that you again consider our request for pandemic assistance.

Thank you for your attention to this matter.

Tim Clutterbuck
Chairperson
Buffalo and Fort Erie Public Bridge Authority

Kathleen L. Neville
Chairperson
Niagara Falls Bridge Commission

cc: Prime Minister Trudeau
Minister Blair
Treasury Board President Duclos
Vance Badawey MP
Chris Bittle MP
Tony Baldinelli MP
Jim Bradey Niagara Regional Chair
Wayne Redekop, Fort Erie Mayor
Jim Diodati, Niagara Falls Mayor
Betty Disaro, Niagara-on-the-Lake Mayor

CROSSING PATHS BUILDING FUTURES
THE PEACE BRIDGE

NIAGARA FALLS BRIDGE COMMISSION

November 16, 2021

The Honourable Omar Alghabra
Minister of Transport
House of Commons
Ottawa, ON K1A 0A6

RE: INTERNATIONAL BRIDGES AND COVID-19 IMPACT

Dear Minister Alghabra:

Congratulations on your reappointment as Minister of Transport! We look forward to continuing to work with you and your staff.

On July 26, 2021, we sent the attached letter to you and Minister Freeland as a follow up to our June 30, 2020 letter. On August 11, 2021, Minister Freeland responded via e-mail, stating:

> *"Since the issue you raise falls under the jurisdiction of my colleague and the Minister of Transport, the Honourable Omar Alghabra, you were correct in forwarding a copy of your correspondence to his office."*

We have not received a response from Transport Canada.

I am sure you can understand and appreciate our disappointment with the Government of Canada's lack of response to our requests, particularly in light of the following government actions:

- Granting in excess of $50 million over 5 years to the Federal Bridge Corporation Limited (FBCL) that operates four international crossings in the same environment as the Peace Bridge and the Niagara Falls Bridge Commission.

- The international Detroit-Windsor Tunnel receiving $5 million under the joint federal-provincial Safe Restart program.

- Airports receiving a billion dollars in operational and capital assistance.

- The Confederation Bridge linking Prince Edward Island and New Brunswick, a domestic bridge not subject to the international border closure and operated by a private entity, receiving $2.87 million.

In all of the above cases the federal government funding was to compensate for revenue shortfalls due to the Covid-19 pandemic. Our requests for the same reasonable assistance have gone unanswered.

Both of our organizations continue to provide exceptional service to CBSA and the travelling public, ensuring the critical movement of essential goods and personnel during this difficult time. The restrictions have, however, posed undue hardship on our organizations and our ability to meet our own financial obligations including meeting our debt service coverage requirements. In addition, our Duty Free tenants are also requesting millions in rent relief from us as their businesses have been decimated by the border closure.

Thank you for your attention to this matter and we look forward to your response.

Tim Clutterbuck
Chairperson
Buffalo and Fort Erie Public Bridge Authority

Kathleen L. Neville
Chairperson
Niagara Falls Bridge Commission

cc: Prime Minister Trudeau
Minister Freeland
Treasury Board President Fortier
Vance Badawey MP
Chris Bittle MP
Tony Baldinelli MP
Jim Bradley Niagara Regional Chair
Wayne Redekop, Fort Erie Mayor
Jim Diodati, Niagara Falls Mayor
Betty Disaro, Niagara-on-the-Lake Mayor

TAB 11

Shea, Patrick

From:	Ron Rienas
Sent:	November-18-20 5:06 PM
To:	Greg O'Hara
Cc:	Jim Pearce
Subject:	RE: Peace Bridge - Rent Deferral Agreement
Attachments:	Rent Deferral Agreement-EDC_LAW-2243121-v4.pdf

Greg, Jim,

Attached is the revised Rent Deferral Agreement as discussed, with a March 31, 2021 deferral date and removal of the legal expenses clause. Please sign and return as I need to also have the PBA board approve at its meeting on November 20.

Here is some info regarding the revised Canada Emergency Rent Subsidy (CERS)
https://www.reminetwork.com/articles/cers-draft-legislation-awaits-adoption/

Please forward the HST reimbursement to the PBA immediately.

Ron Rienas
General Manager
Buffalo & Fort Erie Public Bridge Authority

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

From: Greg O'Hara <gohara@dutyfree.ca>
Sent: Monday, November 16, 2020 12:23 PM
To: Ron Rienas <rr@peacebridge.com>
Cc: Jim Pearce <JimP@dutyfree.ca>
Subject: RE: Peace Bridge - Rent Deferral Agreement

From: Greg O'Hara
Sent: November-16-20 12:19 PM
Cc: Jim Pearce <jimp@dutyfree.ca>
Subject: FW: Peace Bridge - Rent Deferral Agreement

Ron,

There is no reason for concern, or to be threatening. As I'm sure you can imagine, we have a lot of balls in the air and are trying to respond to your original e-mail as completely as possible. I wasn't aware there was such urgency to complete this as it took you almost 3 months to provide the amended agreement. Your latest e-mail will also require thought, but we will endeavor to respond to everything by the end of the week.

One question. Why would the amended agreement have an expiry of December 31st (6 weeks away)? Why not extend this to at least March 31st (or sooner if the bridge is fully open).

In response to some of the items:

4. snowplowing - yes we've arranged with Stevensville Lawn just as in past years

5. insurance certificate - attached

6. HVAC - reaching out to PCL who just recently signed off on the renovations but as a fyi, note that the HVAC systems are new and were replaced as part of the renovations

2. washroom cleaning – we can discuss this.

3. Gov't programs - yes we're receiving assistance on programs where we may meet the criteria and note we are working with our bank, the government and consultants on this matter

4. HST - yes will remit to the PBA - note that HST has been remitted on the CAM (taxes & insurance) and would only be the HST on the base rent

Should we schedule a call this week to discuss some of theses points.

Greg

From: Ron Rienas <rr@peacebridge.com>
Sent: Friday, November 13, 2020 11:41 AM
To: Greg O'Hara
Cc: Jim Pearce
Subject: RE: Peace Bridge - Rent Deferral Agreement

Greg,

It has now been more than two weeks since I sent you the below e-mail. Your failure to respond is a significant concern.

Further to my below e-mail, please be advised of the following:

1. The Rent Deferral Agreement expired July 31, 2020. You have not responded to an amended deferral agreement meaning the original lease agreement entered into on July 28, 2016 applies.

2. Article 9.02 (a) of the lease agreement requires PBDF to operate 24 hours a day, seven days a week 365 days a year. There is no legal reason why the store cannot be open. Failure to do so is clearly a lease default .

3. Article 9.02 (l) requires PBDF to provide restrooms for travelers using the Peace Bridge, including persons who may not be patrons of the Duty Free store. Article 9.02 (e) requires PBDF to keep the premises clean and neat. The PBA has been providing the janitorial services for the restrooms and will cease doing so November 29 and require PBDF to provide those services. Failure to do so is a lease default.

4. With the winter season approaching Article 9.02 (f) requires PBDF to perform snow and ice clearing and removal and salting of sidewalks , driveways and parking facilities. Failure to do so is a lease default.

5. Section 11.02 requires PBDF to provide current certificates of insurance evidencing all coverages are in full force and effect at least 30 days prior to the expiry of the current term of insurance. Karen Costa earlier this week requested Jim Pearce to provide these immediately and that the certificates we have on file expired August 11, 2020. Failure to provide is a lease default.

6. Section 8.01 requires PBDF to provide on October 1 of each year, a certificate from a recognized and reputable HVAC contractor certifying that the HVAC system is in good working order. Failure to provide by November 27, 2020 will result in the PBA obtaining the certificate and doing any necessary work at PBDF's expense plus 15%.

Failure to respond by November 18, 2020 to this e-mail and my earlier e-mail of October 29, 2020 describing how you will address the issues raised in both e-mails will result in the PBA issuing a formal notice of default in the manner prescribed by Article 18.03.

Ron Rienas
General Manager
Buffalo & Fort Erie Public Bridge Authority

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From: Ron Rienas
Sent: Thursday, October 29, 2020 4:03 PM
To: Greg O'Hara <gohara@dutyfree.ca>
Cc: Jim Pearce <JimP@dutyfree.ca>
Subject: Peace Bridge - Rent Deferral Agreement

Greg,

~~As the period of the exiting rent deferral is past, we require a new agreement. It is attached. The amortization~~ period has been changed from one year to two years, and the rent deferral date has been extended to December 31, 2020.

A few issues:

1. As per the lease agreement, PBDF is required to be open 24/7. In April you argued that provincial Covid shutdown legislation required you to be closed. That has not been the case since May 11, 2020. While cross border car traffic is restricted to essential only, truck traffic is pretty well back to pre-pandemic levels. Our position is that the store could and should be open, at least partially. I would note that our Duty Free Americas store has remained open.

2. To provide a service to the commercial customers and to avoid unsanitary urination and defecation in the landscaped areas around the store, we requested that the washrooms be opened and PBA staff cleaned them (4X/day, ½ hr/time). As PBA staff is required for upcoming winter control operations we are requesting that PBDF assume these responsibilities. We note that there are PBDF employees present at the store daily and they could perform those functions.

3. The rent deferral agreement requires PBDF to provide information to us:

"the Tenant has and will continue to use its best efforts to take advantage of all government programs offering financial relief from the effects of the COVID-19 pandemic, including without limitation, any income tax deferral or reduction, rent assistance, employee wage and benefit subsidies and the like, with a view to ensuring that the Tenant is and remains a financially viable business, and **shall keep the Landlord apprised of the Tenant's efforts in this regard.**"

To date we have not received anything from PBDF. Please provide.

4. For the 2nd and 3rd quarter of 2020 we were required to submit HST payments to the federal government totaling $266,370.12 notwithstanding that PBDF has not paid us any rent for that period of time. The lease agreement requires PBDF to pay all sales taxes. Sales taxes are defined as including HST "...with respect to rent, this lease, the rental of space pursuant to this lease..." Please provide a cheque in that amount payable to the Buffalo & Fort Erie Public Bridge Authority.

Please return a signed copy of the deferral agreement and respond to the issues raised in this e-mail.

Thank you.

Ron Rienas
General Manager
Buffalo & Fort Erie Public Bridge Authority

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RENT DEFERRAL AGREEMENT

THIS AGREEMENT made the 20th day of November, 2020.

BETWEEN:

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
(the "Landlord")

AND

PEACE BRIDGE DUTY FREE INC.
(the "Tenant")

WHEREAS:

A. By a lease made July 28, 2016 between the Landlord and the Tenant, the Tenant leased from the Landlord certain premises (the "Premises") municipally known 1 Peace Bridge, Fort Erie, Ontario, ~~for a term commencing November 1, 2016 and expiring October 31, 2031; and~~

B. Due to travel restrictions and economic hardships created across the world by the COVID-19 pandemic, the Tenant requests rent relief.

NOW THEREFORE THIS AGREEMENT WITNESSES in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt of sufficiency whereof is hereby acknowledged, the parties agree as follows:

1. INTERPRETATION

1.1 Expressions in Lease: Unless expressly provided to the contrary in this Agreement, all terms defined in the Lease shall have the same meaning in this Agreement.

1.2 Definitions and Interpretation: The Lease is amended by adding the following definitions thereto:

"Amortization Period" means the two year period commencing on the Restart Date.

"Suspension Date" means April 1, 2020.

"Deferred Rent" means the Base Rent otherwise payable by the Tenant pursuant to the Lease during the Rent Deferral Period but for the terms of this Agreement.

"Rent Deferral Period" means the period commencing on the Rent Suspension Date to and including the earlier of:

i. December 31, 2020; or

ii. the last day of the month following the date that the Tenant has fully reopened the Duty Free Shop for business after the restrictions on non-essential travel between Canada and the United States are lifted (for greater clarity, a partial reopening to accommodate essential travel does not constitute a full reopening).

"Required Conditions" means:

i. the Tenant pays all Additional Rent throughout the Rent Deferral Period, including without limitation, all Operating Costs and Property Taxes;

ii. the Tenant does not seek benefit or protection of any statute for the benefit of bankrupt or insolvent debtors, including without limitation, a proposal, assignment or arrangement with its creditors or the repudiation or disclaimer of the Lease;

iii. there has not been a Transfer (as defined in section 14.01 of this Lease); and

iv. the Tenant strictly complies with all of the terms of the Lease and there is no Event of Default; and

v. the Tenant strictly complies with all of the terms of this Agreement (including without limitation, the representations and warranties herein).

~~"Restart Date" means the day immediately following the last day of the Rent Deferral Period.~~

2. RENT DEFERRAL

2.1 **Tenant's Representations and Warranties:** The Tenant represents and warrants to the Landlord the following:

(a) the Tenant temporarily closed its business at the Premises on or about March 21, 2020 and will fully re-open for business at the Premises as soon the restrictions on non-essential travel between Canada and the United States of America are lifted; and

(b) the Tenant has and will continue to use its best efforts to take advantage of all government programs offering financial relief from the effects of the COVID-19 pandemic, including without limitation, any income tax deferral or reduction, rent assistance, employee wage and benefit subsidies and the like, with a view to ensuring that the Tenant is and remains a financially viable business, and shall keep the Landlord apprised of the Tenant's efforts in this regard.

2.2 Rent Suspension and Deferral: Provided the Required Conditions are met both throughout the Rent Deferral Period and the Amortization Period, then notwithstanding anything in this Lease to the contrary, the Tenant's obligation to pay the Deferred Rent during the Rent Deferral Period shall be suspended and deferred and shall not be payable until the Restart Date. The Tenant shall, however, be bound by all the other terms and conditions of this Lease during the Rent Suspension Period. For the purpose of clarity, it is understood and agreed that if any of the Required Conditions are not met, the Tenant's right to suspend and defer payment of Deferred Rent during the Rent Suspension Period shall be immediately forfeited and withdrawn retroactive to the Rent Suspension Date and the Deferred Rent that would otherwise have been payable during the Rent Suspension Period to the date of such forfeiture shall be immediately due and payable together with interest thereon at the rate set forth in the Lease for non-payment of Rent, calculated from the date each such installment of Deferred Rent would otherwise have been payable pursuant to Lease but for this Agreement. Except as expressly

suspended and deferred in accordance with this section, the Tenant shall continue to pay all Rent in accordance with the Lease.

2.3 Repayment of the Deferred Rent: Repayment of the Deferred Rent shall commence on the Restart Date. The aggregate amount of Deferred Rent together with interest thereon at the rate of 4% per annum shall be amortized over the Amortization Period and repaid by the Tenant in equal consecutive monthly instalments on the first day of each month from and including the Restart Date, without abatement or set-off, in the same manner as Rent. The Tenant covenants and agrees that if at any time, any of the Required Conditions are not met, the Landlord's agreement to amortize the repayment of the Deferred Rent shall be deemed to have been immediately withdrawn and the Tenant shall immediately pay to the Landlord the then outstanding unamortized balance of the Deferred Rent together with interest thereon at the rate of 4% per annum.

3. ACKNOWLEDGEMENT

3.1 Acknowledgement: The Tenant confirms that, as of the date hereof, (a) the Landlord is not in default under any obligation of the Landlord under the Lease and (b) there are no disputes or claims outstanding by the Tenant against the Landlord in respect of any past billings, rental recoveries or other matters pertaining to the Lease.

4. NO AGREEMENT

4.1 This Agreement shall be deemed not to have been executed and delivered by the Landlord until:

i. this Agreement has been duly executed by all the other parties hereto and the Landlord has received at least one executed original hereof; and

ii. the Landlord has received payment of the sum of $3,000 plus the applicable HST thereon, being the estimated legal fees incurred by the Landlord in relation to the request for rent-relief and the preparation of this Agreement.

Until the aforesaid deliverables have been received by the Landlord, the Landlord may, at its sole option, by written notice to the Tenant, withdraw any agreement in respect of rent-relief and this Agreement shall be null and void and of no further force or effect.

5. AGREEMENT PART OF LEASE

5.1 Agreement Part of Lease: This Agreement shall be read in conjunction with the Lease and shall form a part thereof and all provisions of the Lease insofar as applicable and except as amended by this Agreement shall continue in full force and effect and shall be binding upon and shall enure to the benefit of the parties, their successors and permitted assigns.

5.2 Further Assurances: Each party shall at any time and from time to time, upon the request of the other party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.

5.3 Counterparts: This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered to all of the parties shall be deemed to be and shall be read as a single agreement among the parties.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement with effect on the date first set out on the first page of this Agreement.

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

Per: ______________________________
Name:
Title:

c/s

Per: ______________________________
Name:
Title:

I/We have authority to bind the corporation

PEACE BRIDGE DUTY FREE INC.

Per: ______________________________
Name:
Title:

c/s

Per: ______________________________
Name:
Title:

I/We have authority to bind the corporation

TAB 12

From: Ron Rienas
Sent: Friday, November 20, 2020 1:49 PM
To: Greg O'Hara <gohara@dutyfree.ca>
Cc: Jim Pearce <JimP@dutyfree.ca>
Subject: RE: Attached Image -Rent Deferral Agreement

Greg,

The Board has tentatively approved the rent deferral agreement conditional on getting greater assurances as to receiving unpaid rent. As you know, zero rent has been paid since April 1, 2020.

To that end the PBA is requesting the financial information requested in Articles 16.03 a) b) and c) of the lease. Please provide by no later than Tuesday November 25.

I would note that the financial statements required in Article 16.03 b) to be provided for 2019 were not provided by the end of March 2020.

I would also note that we have not yet received the HST reimbursement as promised in our discussion earlier this week.

Ron Rienas
General Manager
Buffalo & Fort Erie Public Bridge Authority

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

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

ROYAL BANK OF CANADA
Applicant

-and-

PEACE BRIDGE DUTY FREE INC.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

**UNDERTAKINGS AND REFUSALS
OF TIM CLUTTERBUCK**

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Lawyers for Buffalo and Fort Erie Public Bridge Authority

57080408\1

TAB 24

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

PEACE BRIDGE DUTY FREE INC.

Respondent

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 JUSTICEACT, R.S.O. 1990, c. C.43, AS AMENDED

EXAMINATION FOR DISCOVERY OF KAREN COSTA
(30 May 2023)

UNDERTAKINGS AND REFUSALS

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Lawyers for Buffalo and Fort Erie Public Bridge Authority

UNDERTAKINGS AND REFUSALS

Undertakings Requested		Page	Answer
1.	To provide a copy of the second place RFP proposal; **REFUSED**	12	This request goes beyond the disclosure order by Her Honour.
2.	To advise whether any other leases, including the US Duty Free store, contain a Section 18.07 clause; **REFUSED**	15	This request goes beyond the disclosure order by Her Honour. However, none of the other leases signed by the Authority contains Art 18.07.
	To produce Report 909/20	14	This request goes beyond the disclosure order by Her Honour. However, Report 909/20 is attached.
3.	To review and provide any notes of a meeting between Ms. Costa and Mr. Rienas on or about July 18th or 19th, 2016	36	Ms Costa has been unable to locate any notes from meetings that took place with Mr. Rienas on or about 18 or 19 July 2016.
4.	To provide the operating statement and balance sheets beginning in January 2020 until December 2021; **REFUSED**	76	This request goes beyond the disclosure order by Her Honour. However, the Authorities annual audited financials are available on the Authority's website.
5.	To advise what was redacted, and the reason for the redaction, in the January 19th, 2021 email from Ms. Costa to Mr. Rienas	125	The redacted portion is an e-mail from Mr. Rienas to the Authority's lawyers.

Karen Costa Response to Undertaking

1. Report 909/290

TAB 1

Peace Bridge Authority

Report No. 909/20

Prepared for: Board of Directors
Agenda Date: November 20, 2020

SUBJECT October Operating Statement & Balance Sheet

RECOMMENDATION

THAT this Report be received for information.

PURPOSE OF REPORT

The purpose of this report is to highlight and explain significant variances within the operating statement for the ten months ending October 31, 2020 and the balance sheet as of October 31, 2020 attached as Schedule A. All Budget numbers reflect the board approved budget from the October 1, 2020 meeting.

BACKGROUND

OPERATING STATEMENT

Summary

US $ in thousands

	Oct-20		YTD 2020		YTD 2019
	Actual	COVID Budget	Actual	COVID Budget	Actual
Toll Revenue	$1,479	$1,263	$14,250	$13,607	$18,474
Non-Toll Revenue	623	620	6,382	6,356	7,153
Total operating revenue	$2,102	$1,883	$20,632	$19,963	$25,627
Salaries, wages & employee benefits	437	496	851	1,192	4,322
Governmental payments	98	95	996	978	990
Depreciation	668	673	6,671	6,687	4,889
Repairs & maintenance	107	122	590	855	994
Bad debt	-	-	2,000	-	-
Gain/Loss on asset disposal	-	-	24	(9)	25
Other purchased services & supplies	206	261	2,367	2,561	1,984
Total operating expense	1,516	1,647	13,499	12,264	13,204
Non-Operating					
Investment income	61	43	986	884	2,760
Interest expense	(290)	(290)	(2,897)	(2,897)	(2,975)
Grant Reimbursements (NTCF)	-	-	-	-	526
Currency remeasurement	-	32	(94)	(63)	(1)
Excess of revenue over expenses	$ 357	$ 21	$ 5,128	$ 5,623	$ 12,733
Average exchange rate $1 U.S. =	1.32	1.40	1.36	1.40	1.33
Debt service coverage			2.57		3.49

Highlights

Toll Revenue Variance

Month to date, toll revenues are up approximately $215,000 compared to the COVID budget for October (toll revenue is down $478,000 compared to the original budget). October traffic volume is up 62% for cars and up 14% for trucks compared to the COVID budget (October traffic volume is down 90.5% for cars and up 4% for trucks compared to the original budget). This is due to the continued impacts of COVID 19 and the related non-essential travel restrictions between the US and Canada.

YTD toll revenue is up $644,000 compared to the COVID budget (up $77,000 for cars and up $567,000 for trucks/buses). YTD toll revenue is down $5,709,000 compared to the original 2020 budget. Traffic declines began around March 21 which was the date the non-essential travel border restrictions became effective. Auto traffic has been consistent over the past few months and truck traffic has returned to normal when compared to the initial declines experienced in late March and April.

Non-Toll Revenue

Exchange rates affect the variances of both expenses and revenues. The monthly average rates change each month resulting in negative variances for expenses and positive variances for revenues if the rate is lower than budget, and the opposite occurs when the average is higher than the budgeted rate. The revised budgeted rate for 2020 is 1.40. October's average monthly rate is 1.32 and the YTD rate is 1.35.

Duty Free revenue is reflected in the financial statements at the minimum rent amount due for both the US and Canadian duty free stores. However, rent deferral agreements have been executed for both stores, so while the revenue will be recorded, the amount will not be collected, thus a deferral of cash received. In the month of September 2020, a $2,000,000 USD bad debt allowance was recorded to reserve for any potential collectability issues related to deferred rent due to the ongoing COVID 19 border closures to non-essential travel.

Upon completion of the redecking project, new conduit leases were sent to all companies that have fiber crossing the bridge. Accruals for conduit revenue was stopped effective July 1. We are actively working to finalize the new lease agreements which will require past rent to be paid.

Operating Expenses

Salaries	The positive variance for the month and YTD reflects the actual vs. budget staffing levels and staffing mix. Staff reductions occurred in April and summer hiring was minimal. The Authority is continuing to hold at current staffing levels.
Pension Expense	Pension expense is determined annually utilizing the prescribed formula in GASB 68 and current year actuarial valuation information. The current year expense is offset by a portion of deferred pension inflows related to the difference between actual and projected earnings on pension plan investments. Monthly and YTD expense reflects the results of the final actuarial valuation for 2020.
OPEB	The positive variance YTD is due to posting the 2020 OPEB adjusting entries in the month of September. OPEB expense is determined annually utilizing the prescribed formula in GASB 75 and current year actuarial valuation information. The current year expense is offset by a portion of deferred OPEB inflows related to the difference between actual and projected earnings on OPEB investments and actual OPEB plan experience. Monthly and YTD expense reflects the results of the final actuarial valuation for 2020.
Repairs & Maintenance	The positive variance for the month and YTD is primarily due to costs associated with various operating projects being reduced, deferred or eliminated altogether. This is in an effort to mitigate the impact of revenue losses due to the border restrictions associated with COVID 19.

Legal

[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted] [redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted] [redacted]	[redacted]	[redacted]	

All Canadian Legal fees are recorded in USD

Utilities — The positive variance for the month and YTD is primarily due to lower consumption and pricing of Canadian utilities and US natural gas.

Consulting — The positive variance for the month and YTD is due to the timing of costs associated with general consulting and HR consulting.

Information Processing — The positive variance for the month and YTD is primarily due to the timing of budgeted costs for border wait times, offset by the timing of costs for firewall software and network and toll system maintenance.

Insurance — The positive variance for the month is due to a $25,000 holdback on the final payment to American Bridge to cover outstanding expenses related to tendered claims. YTD is due to lower than expected small insurance claims (lower traffic volumes) mitigated by the increase in premiums related to property and liability insurance policies (as previously reported to the Board).

Board Expenses — The positive variance for the month and YTD is primarily due to costs not spent for attendance at meetings and conferences.

Other purchased services & supplies — The positive variance for the month is primarily due to budgeted costs not spent for training costs and public relations and savings associated with payroll costs. The YTD positive variance also includes budgeted costs not spent for E-ZPass agency fees, community sponsorships and public relations.

Non-Operating Revenues & Expenses

Restricted/Unrestricted Investment Income — The positive variance YTD for restricted income is due to the reversal of the market value entry made at the end of last year for the recording of investment maturities, which is mitigated by actual investment yields. Revised budgeted investment yield is 1.00%.

M&T Investment Yield	0.88%
Benchmarks	
M&T Money market account	.10%
U.S. Treasury - 1 year	.12%

Currency Remeasurement — Currency remeasurement is directly affected by the foreign currency rates used to remeasure Canadian revenues and expenses to U.S. dollars. In March the Canadian dollar was weakened dramatically due to COVID 19. The past few months the Canadian dollar has shown some strength which is reflected in the statements. This is not a budgeted expense item.

BALANCE SHEET - Summary

US $ in thousands

	October 31, 2020	September 30, 2020
Unrestricted cash and investments	$ 79,071	$ 80,807
Restricted cash and investments	18,138	18,658
Property & equipment, net	249,565	247,107
Other assets	9,986	9,481
Deferred outflow of resources	3,123	3,209
Total assets and deferred outflow of resources	$ 359,883	$ 359,262
Current liabilities	$ 6,831	$ 6,710
Other liabilities	1,763	1,763
Debt	99,468	99,184
Deferred inflow of resources	6,928	7,069
Net position	244,893	244,536
Total liabilities & net position	$ 359,883	$ 359,262
Capital Improvement Funds	$ 81,861	$ 84,140

Highlights

Unrestricted cash	Decrease is due to draw of cash from capital improvement reserve for capital expenditures.
Restricted cash & investments	Decrease due to operating reserve requirements.
Property & equipment, net	See Capital Report.
Other assets	Increase due to GASB 68 adjustments based on the final actuarial valuation information, offset by the amortization of prepaid expenses. Also due to an increase in accounts receivable related to the duty free stores' rent deferrals.
Current liabilities	Increase due to actual and accrued costs associated with the bridge painting project. September reflected payments of retainage for the bridge redecking project.
Other liabilities	No changed from September due to the calculation and recording of the OPEB liability as a result of the GASB 75 accounting and actuarial valuation for all of 2020 posted in September 2020.
Debt	Increase due to the regular monthly accrual of interest on the Series 2014 Bonds to be paid on January 1, 2021 and the interest on the Series 2017 Construction Bonds to be paid on January 1, 2021.

PREPARED & SUBMITTED BY

Mark DeVreede
Controller

REVIEWED & CONCURRED BY

Karen L. Costa
Chief Financial Officer

Ron Rienas
General Manager

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

ROYAL BANK OF CANADA
Applicant

-and-

PEACE BRIDGE DUTY FREE INC.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

UNDERTAKINGS AND REFUSALS OF KAREN COSTA

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Lawyers for Buffalo and Fort Erie Public Bridge Authority

TAB 25

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416-593-1221
Blaney.com

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

September 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 question taken under advisement at Ben Mills' cross-examination on August 17th, 2023.

Under advisement (p.23, q. 56): to produce a copy of the email from Jim Pearce to Ben Mills forwarding Karen Costa's July 13th, 2016 email.

Answer: Mr. Pearce's email to Mr. Mills is subject to solicitor-client privilege. A redacted version of the email has been produced at tab 2 of PBDF's Document Brief and the version of the lease attached to that email is at tab 3 of PBDF's Document Brief.

We trust this is satisfactory.

Yours very truly,

BLANEY MCMURTRY LLP

Brendan Jones

BJ/gf

cc: David T. Ullmann and John C. Wolf

TAB 26

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

PEACE BRIDGE DUTY FREE INC.

Respondent

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 JUSTICEACT, R.S.O. 1990, c. C.43, AS AMENDED

EXAMINATION FOR DISCOVERY OF RON RIENAS
(30 May 2023)

UNDERTAKINGS AND REFUSALS

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Lawyers for Buffalo and Fort Erie Public Bridge Authority

UNDERTAKINGS AND REFUSALS

	Undertakings Requested	Answer
1.	To produce the documents received from PBDF that support the contention that PBDF did not pay the full amount that it received in CERS to the Authority.	See attached. The Authority also relies on: (a) Exhibit G to Mr. Pearce's Affidavit sworn on 2 December 2021; (b) Exhibit D to Mr. Pearce's Affidavit sworn on 13 November 2022; and (c) paragraph 25 of Mr. Pearce's Affidavit sworn on 13 February 2023. The Authority asserts that PBDF was required to pay over 100% of what it received from CERS. The Authority acknowledges that PBDF may have a different legal position.
2.	To provide written report or documents provided to the Board with respect to 17 December 2020 meeting.	There were no reports of documents prepared for the meeting.
3.	To inquire of Ms Costa to determine whether the amount reflected on Exhibit 1 ("Unpaid Rent for the Rent Default Period") is before or after the 20% reduction.	This is the rent before the 20% abatement.
4.	To advise how the base rent was calculated for 2020, 2021 and 2022 for the US tenant.	Base rent was calculated in accordance with the lease that was provided to PBDF.
5.	To check emails to see if he received a draft of the 19 July 2016 email from Ms. Costa before Ms. Costa sent it. **REFUSED**	Mr. Rienas searched his e-mail archives from July of 2016 and could not locate a draft of the 19 July 2016 e-mail.

6.	To provide minutes of the resolution to authorize staff to speak to the second-place RFP bidder about taking over the lease.	There was no resolution reflected in the Minutes. See the answers to Questions 252 and 253. Any legal advice provided to the Authority is privileged. As noted below, only one call took place in August of 2021 to determine the interest of the second-place bidder. There were no other communications.
7.	To advise if the conversation with the second-place RFP bidder was any other time than August 2021.	The conversation took place in August of 2021 as indicated.
8.	To provide particulars of rent paid by US tenant from April 2020 to May 2023. **REFUSED**	The information to be provided for the US tenant was addressed by the order made on 26 July 2023.
9.	To provide written communication with the second-place RFP bidder? **REFUSED**	None exists. There was a single telephone call and there are no notes from that call or written follow-up.
10.	To provide copies of the other responses to the RFP. **REFUSED**	A request for this same information was refused in in the communications prior to the attendance on 25-26 July 2023 and the issue was not pursued before Her Honour as part of the Motion brought by PBDF seeking disclosure.
11.	To provide a breakdown of traffic in terms of cars, busses, and commercials trucks for 2019-2023.	The available daily, monthly and yearly traffic statistics are available on the Authority's website under "Historical Traffic Statistics".

Remittances - Sep 30/21

	Period 6 /13 Feb14-Mar13	Period 7/14 Mar14-Apr10	Period 8/15 Apr11-May8	Period 9/16 May9-Jun5	Period 10/17 Jun6-Jul3	Period 11/18 Jul 4-31	Period 12/19 Aug 1-28
PBDF store max	75,000.00	75,000.00	75,000.00	75,000.00	75,000.00	75,000.00	75,000.00
CERS rate	65%	65%	65%	65%	65%	60%	40%
	48,750.00	48,750.00	48,750.00	48,750.00	48,750.00	45,000.00	30,000.00
Previously paid Add'l Rent Insurance&Taxes	(9,050.16)	(9,050.16)	(10,812.33)	(10,812.33)	(10,812.33)	(10,812.33)	(10,812.33)
Remitted to PBA	39,699.84	39,699.84	37,937.67	37,937.67	37,937.67	34,187.67	19,187.67
					153,512.85		53,375.34

PBA Report

Period Oct 25/20 - Nov 21/20

PBDF store	75,000.00
Hamilton Airport store	953.00
Total submitted	75,953.00
Subsidy rate	65%
Total subsidy	49,369.45

PBDF store allocation	75,000.00
Subsidy rate	65%
Total subsidy	48,750.00
Previously paid- re: Insurance&Taxes	(8,166.86)
Balance remitted Feb 2	**40,583.14**

PBA Remittance - Oct 18/21

	Period 13/20 Aug29-Sep25
PBDF store max	75,000.00
CERS rate	40%
	30,000.00
Previously paid Add'l Rent Insurance&Taxes	(10,812.33)
Remitted to PBA	19,187.67

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

ROYAL BANK OF CANADA
Applicant

-and-

PEACE BRIDGE DUTY FREE INC.
Respondent

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PROCEEDING COMMENCED AT
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Lawyers for Buffalo and Fort Erie Public Bridge Authority

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TAB 27

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and –

PEACE BRIDGE DUTY FREE INC.

Respondent

ANSWERS TO UNDERTAKINGS, UNDERADVISEMENTS, & REFUSALS FROM THE CROSS-EXAMINATION OF JIM PEARCE HELD AUGUST 31st, 2023

Undertakings

Undertakings Requested		Page	Q	Answer
1.	To produce unredacted copies of the documents at Tab 24 and 39 of PBDF's disclosures or explain why they are redacted.	9	29	Tab 24 – Redaction is an email with counsel, Ben Mills, dated July 29th, 2016. It is redacted for solicitor-client privilege and can be found at Tab 24 of PBDF's Disclosure Brief. Tab 39 – Redacted is an email with counsel, Ben Mills, dated April 22nd, 2020. It is redacted for solicitor-client privilege and can be found at Tab 39 of PBDF's Disclosure Brief.

2.	To advise if the board formally approved the submission of the response to the RFP and produce a copy of any resolution(s) approving the response,	18	85	There was no formal approval required.
3.	To make inquiries with respect to whether communications took place between Mr. O'Hara and the rest of the board concerning the proposal that PBDF made to the Authority in January, March and August of 2021, and produce copies of any written communications.	20	98	Records have been searched, but there are no records of communications to this effect.
4.	To determine who conducted the searches to locate e-mails or other communications between Mr. Pearce and Mr. O'Hara relating to article 18.07 and the request for concessions from the Authority under that section of the Lease.	29	136	Jim Pearce, Greg O'Hara and John Jenkins from Plexis assisted with searching emails.
5.	To advise when PBDF applied for BCAP	157	803	PBDF did not apply for BCAP. The BCAP loan criteria would not allow the funds to be used for existing debt.
6.	To advise what portion of the $427,000 HST return was paid to the Authority.	164	847	Of the $427,000 HST return, $390,000.00 was for HST on Base Rent. The funds were used for operations, including payments to the Authority.

7.	To make inquiries and advise as to what portion of the $1.2 million tax return was paid to the Authority.	165	857	PBDF continued to make monthly CAM payments to PBA. The funds were used for operations, including payments to the Authority.
8.	To make inquiries to determine if PBDF sent any evidence to RBC by 15 November 2021 in fulfillment of clause	217	1132	Two emails were sent to RBC on October 19, 2021 and November 15, 2021 with cashflow reports. No other communications have been identified as providing evidence of an agreement with the Landlord.
9.	To identify the government emergency mandated closures that required that PBDF close the duty free.	230	1189	The Ontario Closure of Places of Non-Essential Business regulations in conjunction with the Canada-US border closure to non-essential travellers. The letter from FDFA regarding Border Timelines sets out many of the restrictions. See **Tab 1**.
10.	To provide the reason the Hamilton duty free could legally remain open, while the Peace Bridge duty free could not legally remain open.	231	1195	PBDF was closed and there were no international (duty free) flights from March 25, 2020 until Nov 2021 (with exception of a few flights in Oct 2020 for agricultural workers returning home). A convenience store remained open for workers at the airport and for the minimal domestic flights.
11.	To make inquiries to determine if any inquiries were made of PBDF concerning how the rent shown as owed on Exhibit 8 was determined.	265	1360	Mr. Pearce is unable to locate any e-mails making that request.

Underadvisement

Undertakings Requested		Page	Q	Answer
1.	To provide redacted copies of those communications between PBDF and its auditors concerning rent showing to whom they were addressed	5	11	This is not required.
2.	To conduct a search to identify communications between PBDF and its auditors from 2020 and 2021 relating to the rent owed or payable by PBDF	8	23	This question was answered in Blaney's August 21st, 2023 letter.
3.	To deliver a copy of the resolution of the board approving the Lease.	18	85	There was no formal Resolution. Mr. O'Hara met with each of the Directors individually to discuss and get their approval for the final version of the RFP.
4.	To deliver a copy of the resolution of the board approving the proposal submitted by PBDF to the RFP	46	231	Mr. O'Hara met with each of the Directors individually to discuss and get their approval for the final version of the RFP. There was no formal Resolution.
5.	To inquire of Mr. Menchella if he is able to identify any communications with respect to the negotiation of article 18.07 or the subject of 18.07.	57	281	See attached at **Tab 2**.
6.	To inquire of Mr. Menchella whether he produced any documents or reports with respect to the lease.	58	285	He did not.

7.	To review the drafts of the lease that were sent back by PBDF determine whether any of those drafts after article 18.07 was introduced, including changes to article 18.07.	73	361	There do not appear to be changes to the text of 18.07.
8.	To produce the communications with the Frontier Duty Free Association with respect to traffic and sales trends.	109	541	PBDF has been unable to locate other communications beyond what has been produced to date.
9.	To advise when PBDF received $1 million HASCAP loan and how those funds were spent.	176	914	At urging of RBC, PBDF began HASCAP process in May 2021 and received $1 Million on October 18, 2021. RBC withdrew $625,000.00 on October 20, 2021 and $850,000 on January 20, 2022.
10.	To provide any communications with RBC prior to 15 November 2021 advising them as to where matters were at in the negotiation with PBDF and the Authority.	226	1174	PBDF is unable to locate any such written communications.
11.	To produce the documents relating to the insurance claim made by PBDF under its business interruption policy—the claim made by PBDF, the refusal, and the class action PBDF has joined to try to recover under the policy.	251	1291	Attached at **Tab 3**.

Refusals

	Undertakings Requested	Page	Q	Answer
1.	To provide PBDF's position as to whether Art 18.07 applies to generalized declines in traffic.	112	555	18.07 does not apply to generalized declines in traffic. It relates to the introduction or changes in Applicable Laws.

Date: September 28, 2023	**BLANEY MCMURTRY LLP** Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5 **David T. Ullmann** (LSO #42357I) Tel: (416) 596-4289 Email: dullmann@blaney.com **John Wolf** (LSO #30165B) Email: jwolf@blaney.com **Brendan Jones** (LSO #56821F) Email: bjones@blaney.com Lawyers for the Respondent

TAB 1

March 17, 2020: Ontario declares state of emergency

March 18, 2020: PM announced US-Canada agreement to close border to non essential travel across Canada-US border for 30 days

April 15, 2020: Enhanced federal border measures + quarantine plan + 14 day quarantine requirement. April 21: Land border travellers are asked to wear masks.

April 22, 2020: Extension of restriction on non-essential travel between Canada-US border until May 21, 2020

May 22, 2020: Canada-U.S. border closure to all but essential workers extended to June 21, 2020

May 27, 2020: Ontario government extends orders until June 9

June 16, 2020 - US-Canada border closure to all but essential workers extended until July 21, 2020 for non-essential travel

June 24, 2020: Ontario govt extends emergency orders until July 15

July 2020: ArriveCAN app was introduced for all border crossing into Canada

July 9, 2020: Ontario govt extends emergency orders until July 22

July 26, 2020 - US-Canada Border Closure extended until Aug 20, 2020

August 14, 2020 - Deputy PM announced that the US-Canada border closure agreement extended until September 21, 2020.

Aug 14, 2020: Ontario extends emergency order until Sept 22

Sept 18, 2020 - Canada-Us extended the border closure for all non essential travel until Oct. 21, 2020

Oct 19, 2020 - US-Canada border closure to non-essential travel extended to Nov. 21, 2020

Nov 2, 2020: Program launched to allow international travellers to leave quarantine provided they test negative upon arrival and retest 6 to 7 days after

Feb 2021 - Land travellers required to provide negative COVID test result from the US within 3 days/positive result within 14&90 days prior to arrival

US -Canada border closure remained in place until May 21, 2021 for non-essential travel

June 21, 2021 - Temporary travel restrictions for all US travellers extended, unless their travel is for non-discretionary reasons

Aug 9, 2021 - Canada permitted entry for fully vaccinated US travellers. PCR test required. US border remains closed.

Sept 7, 2021 - Fully vaccinated foreign nationals eligible to enter Canada for non-essential reasons

Oct 30, 2021 - travellers in Canada were required to be fully vaccinated in order to board planes, trains and non-essential passenger vessels. Negative molecular tests within 72 were accepted as alternatives until Nov 29, 2021.

November 30, 2021 - all travellers to Canada must have been fully vaccinated + negative COVID-19 molecular test results within 72 hours.

November 8, 2021 - US lifted restrictions at its land borders to permit travel for fully vaccinated travellers + negative PCR tests within 72 hours

Dec 2, 2021 - The federal government announced that Canadians travelling abroad for less than 72 hours won't have to show negative PCR COVID-19 test when re-entering Canada

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

Jan 15, 2022 - Announced groups who are currently exempt from entry requirements will only be allowed to enter the country if they are fully vaccinated; Announced that unvaccinated or partially vaccinated foreign national truck drivers, coming from the US by land, will not be allowed entry

January 22, 2022 - US allowed non-US individuals traveling via land ports or entry at US-Canada borders to be fully vaccinated and to show proof of vaccination for essential and non essential reasons.

Feb 28, 2022 - Fully vaccinated travellers arriving from any country will be randomly selected for arrival testing + accepting either a negative rapid antigen or PCR test from travellers as well as ArriveCAN

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

April 25, 2022 - Border measures eased -- no more rapid testing but ArriveCAN and double vaccination still required

Oct 1, 2022 - Covid-19 border measures ended including all requirements including vaccination and mandatory use of ArriveCAN

TAB 2

From: John Menchella <john@menchellagroup.com>
Sent: Tuesday, September 26, 2023 6:44 PM
To: Jim Pearce
Subject: FW: Meeting Notes

Hi Jim,

I was able to find this note you sent me related to 18.07.

John

From: Jim Pearce <jimp@dutyfree.ca>
Date: Wednesday, July 6, 2016 at 12:41 PM
To: John Menchella <john@menchellagroup.com>
Subject: Meeting Notes
Hi - our proposed clauses/discussion points are attached.

Address is 100 Queen St (SE corner of Central & Queen)

Jim

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

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

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

Article V - add a confidentiality clause

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

17.01 (a) Event of Default - add wording so a clerical error won't trigger default
- “the Tenant fails to pay any Rent, that is of material nature, within15 days after receiving written notice from the Landlord"

In the event that during the Term, there are issues that arise beyond the Tenant’s control (including but not limited to vehicle traffic volume declines, bridge construction, changes in government regulations, etc.) that materially impact the Tenant’s duty free sales, then the Landlord and the Tenant, both acting reasonably and in good faith, agree to amend this lease (including but not limited to the rent terms, term, etc.) as appropriate in a fair and equitable manner. As a guideline, a material impact would be one in which duty free sales decline over a comparable three month period by 5% or more.

Business disruption due to bridge closure:
In the event there is a closure or shutdown of the bridge due to any cause that such bridge closure lasts longer than 24 hours, the rent payable by the tenant shall be abated. The rent abatement only applies to the extent that the loss caused by the bridge closure is not covered by the tenant's business interruption insurance. For the purpose of this provision the abatement in rent is to be calculated on the per diem rate of base rent payable during the period of closure (i.e. $4,000,000 / 365 days).

4.02 Calculation of Future Base rent - change the fourth line to

"The Base rent for the second and each succeeding year of the Lease shall be the greater of: (i) the Base Rent of $4m; and (ii) 75% of the total rent payable by the Tenant to the Landlord for the immediately preceding year of the Lease."

Agree to discuss possible sharing the subsidizing of the rents payable by the Food Concessions

Insurance clauses - have the PBA's and PBDF's insurers review and propose the most efficient way to address the insurance related clauses

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

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

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

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

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

12.02 (c) - delete reference to union affiliations

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

Add the following clauses from the current lease

- 6.03 - Exclusive use or right of first refusal
- 16.01 - Landlord's covenants
- 16.03 - Access

Add and review RFP items as amendments to the Lease

TAB 3

PEACE BRIDGE
DUTY FREE

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

February 22, 2021

McAvoy, Belan & Campbell
350 King St.
Port Colborne, ON
L0S 1M0

Attn: Krista Burke

Dear Ms. Burke:

Given the March 18, 2020 closure of the adjacent Peace Bridge, by federal government order, we are hereby submitting a claim for loss of income under the Aviva Insurance Company's policy number 81398467, effective August 11, 2019 and August 11, 2020

Please confirm receipt of this letter and have the appropriate representative(s) of Aviva contact the undersigned.

Regards,

Jim Pearce
General Manager
Peace Bridge Duty Free Inc.
1 Peace Bridge Plaza
Fort Erie, ON
L2A 5N1
905-871-5400 x105

Duty free
Hors taxes

From: jason.t.carter@aviva.com <jason.t.carter@aviva.com>
Sent: Tuesday, March 2, 2021 9:16 AM
To: Jim Pearce
Cc: mbelan@mbcfinancial.ca
Subject: Letter concerning your claim

Reference # 34942147

Mr. Pearce,

Good morning.

As discussed, please see the attached letter in regards to your claim.

Sincerely,
Jason Carter
Aviva Insurance Company of Canada
10 Aviva Way,
Markham, Ontario L6G 0G1
Tel: 1 (902) 817-5513
Fax: 1 (866) 805-8585

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Please do not forward this message to any other party or distribute it in any manner without prior approval of the sender.
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this message to any other party or distribute it in any manner without prior approval of the sender. If you have received

2135

AVIVA

Aviva Canada Inc. Aviva Insurance Company of Canada Elite Insurance Company Scottish & York Insurance Co. Limited Traders General Insurance Company
10 Aviva Way Suite 100 Markham ON, L6G 0G1
Toll free phone: 1 (866) 692-8482 Toll free Fax: 1 (866) 805-8585

March 02, 2021

Peace Bridge Duty Free Inc.
1 Peace Bridge PO Box 339 PZ
Fort Erie, ON L2A 5N1

Mr. Jim Pearce

Name of Insured:	**Peace Bridge Duty Free Inc.**
Claim No.:	**34942147**
Date of Loss:	**March 21, 2020**
Date Claim Reported:	**Feb 23, 2021**

Thank you for notification of this claim, which has been logged under the claim number referenced above.

We have carefully considered your claim and the circumstances with respect to your cover. I would therefore like to provide you with clarity as to the coverage purchased under your property policy and the rationale for our claims decision. There are three key components of your property insurance protection that we have reviewed in respect of your claim:

1. Your property insurance policy covers risks of direct physical loss or damage to the insured property, subject to certain exclusions;

2. It includes cover for business interruption that results from the direct physical loss or damage to property caused by an insured peril; and

3. You also have an endorsement for negative publicity and restricted access coverage, which subject to other requirements in those clauses, may apply in limited circumstances in respect of an outbreak of a contagious or infectious disease at or within the applicable area of the insured premises which is required to be reported to the applicable Canadian government authorities.

As the Covid-19 virus itself does not constitute “direct physical loss or damage” to property, sections 1 and 2 above do not apply. Also, the negative publicity and restricted access coverages, described in section 3 do not provide cover for global pandemics such as COVID-19.

As a result, I am sorry to inform you that you are not covered for the interruption to your business caused by the Covid-19 pandemic under this policy. I understand that this is a disappointing outcome as it means that I am unable to take further action with respect to your claim.

I should also point out that the grounds of refusal set out in this letter are in addition to any other grounds for refusal upon which Aviva may wish to subsequently rely. Pursuant to the Insurance Act of Ontario, we are providing you with a Proof of Loss Form, a copy of which we have enclosed with this letter. Please note that should you wish to do so, you have

one year from March 18, 2020 to commence any action against Aviva.
Finally, I should point out that a number of proposed court class actions have been commenced against insurers, which proposed actions have been brought on behalf of certain proposed classes of claimants seeking business interruption payments. Nothing in this letter is in any way intended to limit any claim or rights you may have in respect of any such actions.

Yours sincerely,

Jason Carter

National Claims Professional
Phone: 902-817-5513
E-mail: jason.t.carter@aviva.com
Fax: 866-805-8585

cc: McAvoy, Belan and Campbell Insurance Ltd.

AMENDED THIS / MODIFIÉ CE January 26, 2021 PURSUANT TO / CONFORMÉMENT À
☑ RULE/LA RÈGLE 26.02 ("A")
☐ THE ORDER OF / L'ORDONNANCE DU
DATED / FAIT LE
M. Wallace
Registrar
REGISTRAR / GREFFIER
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE OF JUSTICE

Court File No. CV-20-00643386-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

NORDIK WINDOWS INC.

Plaintiff

- and -

AVIVA INSURANCE COMPANY OF CANADA, AVIVA GENERAL INSURANCE COMPANY, and AVIVA CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

THIRD FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

ISSUE DATE: July 26/2020

Issued by "E-Filed"
Local Registrar

Address of court office:

10th Floor
393 University Avenue
Toronto, Ontario
M5G 1E6

TO: AVIVA INSURANCE COMPANY OF CANADA/AVIVA GENERAL INSURANCE COMPANY OF CANADA/AVIVA CANADA INC.
Suite 100
10 Aviva Way
Markham, Ontario
L6G 0G1

CLAIM

1. The Plaintiff claims on its own behalf and on behalf of other members of the class as described below:

(a) an order, pursuant to the *Class Proceedings Act, 1992,* S.O. 1992, c. 6 ("*CPA*"), certifying this action as a class proceeding and appointing the Plaintiff as representative plaintiff for the class of Plaintiffs described at paragraph 4 (the "Class" or "Class Members");

(b) a declaration that a loss of business income suffered by a Class Member as a result of any of the following:

(i) the outbreak of COVID-19 within 25 km of their premises (or such other distance as may be specified in each Class Member's Policy); and/or

(ii) one or more orders of civil authorities restricting ingress or egress to the Class Members' premises, in whole or in part, resulting from the outbreak of COVID-19; and/or

(iii) the actual or suspected presence of COVID-19 at their premises or at contributing/neighbouring premises;

is a loss covered under business interruption insurance provided by the Defendants, whether Aviva Enterprise, Aviva Commercial or any other policy, including but not limited to the following:

(i) Business Income Actual Loss Insurance Form 912000-01, Form 912000-01, Form 921005-01, Form 402014-02, Form H-001803, Form H2;

(ii) such other policies as may contain "Negative Publicity" or "Restricted Access" coverage;

(iii) such other policies issued by the Defendants as may contain coverage for suspension of the insured's business caused by damage to the insured's or contributing/neighbouring premises; and/or

(iv) such other policies as may provide substantially similar coverage.

(c) indemnification for the Plaintiff's and Class Members' loss of business income and accountants' fees to quantify that loss, pursuant to and in accordance with the coverage and deductibles set out in Class Members' Policies (as defined below);

(d) a declaration that by denying coverage the Defendants breached their common law duty of care to the Plaintiff and Class Members in regards to providing business interruption insurance;

(e) an order that the Defendants compensate the Plaintiff and Class Members in accordance with the coverage and deductibles set out in their Policies;

(f) a declaration that any terms or conditions in the Policies purporting to limit or restrict the Plaintiff or Class Members from making or recovering on otherwise valid claims, including but not limited to restrictions on the basis of delay, failure to provide notice, failure to provide sufficient information, or other requirements not tied to the substantive grant of coverage, are of no force or effect;

(g) a declaration that any applicable limitation periods, whether policy-based or statute-based, including under the *Insurance Acts* of the each province and territory, are of no force or effect vis-à-vis the Plaintiff and Class Members, and/or are tolled pursuant to section 28 of the *CPA*;

(h) a declaration that the Defendants owed the Plaintiff and other Class Members a duty of care and good faith that required it to fairly evaluate coverage under the Policies issued to the Class Members;

(i) a declaration that the Defendants breached those duties of care and good faith to the Plaintiff and some or all of the Class Members by failing to fairly evaluate coverage under the Policies;

(j) an order directing the Defendants to preserve and disclose to the Plaintiff all records, in any form, relating to or arising out of: (i) claims made by the Class Members for lost business income and the Defendants' consideration of, review of, and response to such claims, and (ii) the Defendants' determination and/or decision at a corporate level that the Policies do not provide coverage for losses related to COVID-19;

(k) damages in the amount of $500,000,000, including loss of business income and accountants' fees, for breach of contract and the common law duty of care, or such other amount as may be determined to be owed to the Plaintiff and Class Members;

(l) punitive, aggravated, and/or exemplary damages in the amount of $30,000,000;

(m) payment of other sums due and owing pursuant to and in accordance with the coverage and deductibles set out in the Policies;

(n) relief from forfeiture pursuant to the *Insurance Act* R.S.O. 1990, c. 1.8 and/or the *Courts of Justice Act,* R.S.O. 1990, c. C.43, as amended, should the Plaintiff or Class Members be found to have had imperfect compliance with the terms of the Policies;

(o) pre-judgment interest pursuant to the provisions of the *Courts of Justice Act*, *supra*;

(p) the costs of this action with applicable Harmonized Sales Tax; and,

(q) such further and other relief as this Honourable Court may deem just.

PARTIES

2. The Plaintiff, Nordik Windows Inc., is a corporation duly incorporated pursuant to the laws of the Province of Ontario. At all material times, the Plaintiff

was carrying on business as a window and door manufacturer, seller and installer from its insured premises located at 104 Clement Street, RR 1, Vars, Ontario; 1706 Chemin Pink, Aylmer Quebec; and 303 Ramsay Concession 2A, Carleton Place, Ontario.

3. The Defendants, Aviva Insurance Company of Canada, Aviva General Insurance Company, and Aviva Canada Inc. ("Aviva"), are corporations duly incorporated pursuant to the laws of the Province of Ontario, carrying on business throughout Canada as a property and casualty insurer. At all material times, Aviva insured the Plaintiff and Class Members described herein for loss of business income as specified in the Policies.

THE CLASS

4. This action is brought by the Plaintiff pursuant to the *Class Proceedings Act, 1992,* S.O. 1992, c. 6, on behalf of the following Class:

> All persons, corporations, or other entities carrying on business in Canada who suffered a loss of business income as a result of any of the following:
>
> (i) the outbreak of COVID-19 within 25 km of their premises (or such other distance as may be specified in each Class Member's Policy); and/or
>
> (ii) one or more orders of civil authorities restricting ingress to or egress from the Class Members' premises, in whole or in part, resulting from the outbreak of COVID-19; and/or
>
> (iii) the actual or suspected presence of COVID-19 at their premises or at contributing / neighbouring premises;

and who purchased business interruption insurance from the Defendants, whether Aviva Enterprise, Aviva Commercial, or any other policy, including but not limited to the following: (collectively, the "Policies")

(i) Business Income Actual Loss Insurance Form 912000-01, Form 912000-01, Form 921005-01, Form 402014-02, Form H-001803, Form H2; and/or

(ii) such other policies as may contain "Negative Publicity" or "Restricted Access" coverage; and/or

(iii) such other policies issued by the Defendant as may contain coverage for suspension of the insured's business caused by damage to the insured's or contributing/neighbouring premises; and/or

(iv) such other policies as may provide substantially similar coverage.

(the "Class" or "Class Members")

THE POLICIES

5. The Policies under which the Plaintiff and Class Members are insured expressly provide coverage for actual loss of business income resulting from the necessary interruption of the business occurring during the policy period.

6. Specifically, the Plaintiff purchased an Aviva policy bearing policy number 81699054 (the "Policy"). The Policy includes Aviva's standard coverage for "Business Income Actual Loss Sustained Form 912000-01". Under this form, Aviva agreed to "indemnify the Insured for the actual loss of "business income" sustained by the Insured directly resulting from the necessary interruption of the "business" caused by "damage" occurring during the policy period."

7. The Policies specifically provide coverage for loss of business income resulting from or arising out of an outbreak of a contagious or infectious disease under the headings 'Negative Publicity Coverage' and/or 'Restricted Access Coverage', for example:

> **Negative Publicity Coverage:**
>
> III.C.2.a. This form is extended to insure the actual loss of "business income" sustained by the Insured as a direct result of any of the following circumstances:
>
> ...
>
> ii. an outbreak of a contagious or infectious disease within 25 kilometres of the "premises" that is required by law to be reported to government authorities.
>
> **Restricted Access coverage:**
>
> 4.a. This form insures the actual loss of "business income" sustained by the Insured caused by the interruption of the "business" at the "premises" when ingress to or egress from the "premises" is restricted in whole or in part:
>
> ...
>
> ii.(a) by order of civil authority resulting from any of the following occurrences:
>
> ...
>
> (2) an outbreak of a contagious or infectious disease that is required by law to be reported to government authorities.

- or -

> **Restricted Access**
>
> Coverage C of section I insures, subject to all its terms and provisions, for an amount not exceeding $500,000 in any one

policy year or any other amount shown on the "Declaration Page" for this extension, loss of business income sustained by the Insured, including the amount of any extra expenses necessarily incurred by the Insured to continue to resume operations as nearly normal as possible, while access to the "premises" is prohibited in whole or in part by order of civil authority or by advice of the Public Healthy Authority or similar authority, but only when such order or advice is given as a direct result of any or all of the following occurrences:

...

ii. the outbreak of a notifiable contagious or infectious disease;"

8. The Policies also provide coverage for interruption to the insured's business caused by damage to the insured's or to contributing/neighbouring property, for example:

Indemnity Agreement

The Insurer will indemnify the Insured for the actual loss of "business income" sustained by the Insured directly resulting from the necessary interruption of the "business" caused by "damage" occurring during the policy period.

...

Contingent Business Interruption

This form insures the actual loss of "business income" sustained by the Insured during the "indemnity period" resulting from the necessary interruption of the "business" occurring at the "premises" if the interruption is caused by direct physical loss or damage, directly caused by an insured peril, to property, except of the type that is Excluded Property, of a "contributing business" located within the "territorial limits" during the policy period.

Loss or damage to property of a "contributing business" will be deemed to be loss resulting from "damage" at the "premises".

9. Aviva owes duties of care and good faith to the Plaintiff and the Class Members arising out of and by virtue of its position as their insurer. These duties of care and good faith require Aviva to fairly evaluate any claims for coverage made by Class Members, and not to misrepresent to Class Members, or otherwise mislead Class Members regarding, the scope and application of coverage provided under the Policies.

COVID-19 OUTBREAKS

10. COVID-19 is a contagious and infectious disease caused by the SARS-CoV-2 novel coronavirus. COVID-19 causes illness in humans, the symptoms of which can include fever, cough, difficulty breathing, and which can lead to complications including pneumonia, kidney failure, and death. Provinces, territories, and municipalities across Canada experienced outbreaks of COVID-19 in or around March of 2020 (the "First Outbreaks"), and civil authorities imposed a variety of measures to respond to those outbreaks.

11. These measures include provincial governments ordering the closure of or restricted access to non-essential businesses, regulatory agencies imposing restrictions on or prohibiting the activities of regulated businesses and professionals, and municipalities placing restrictions on the operations of businesses and the public's access to them.

12. On March 17, 2020, the government of Ontario issued Order in Council 518/2020 (O. Reg 50/20), declaring a provincial emergency pursuant to the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, as

amended. The Order in Council stated that "the outbreak of a communicable disease namely COVID-19 coronavirus disease constitutes a danger of major proportions that could result in serious harm to persons".

13. In or around March of 2020, similar emergency declarations were made in the provinces and territories across Canada in response to the First Outbreaks (collectively, the "First Emergency Orders").

14. On or around March 23, 2020, the government of Ontario announced the mandatory closure of all non-essential workplaces due to the First Outbreaks, as defined in Ontario Regulation 82/20, which would take effect on or around March 24, 2020 at 11:59 p.m. Similar mandatory closure orders were made on or around this date in all of the provinces and territories of Canada.

15. On or around April 3, 2020, the government of Ontario announced an expanded list of businesses that were defined as non-essential workplaces and therefore were subject to the mandatory closure order. Similar expanded closure orders were made in every province and territory in Canada.

16. Pursuant to O. Reg 135/18 under the *Health Protection and Promotion Act*, R.S.O. 1990, c. H. 7, "Diseases caused by a novel coronavirus" are designated as reportable diseases by the provincial government.

17. As a result of COVID-19, further directives, orders and recommendations were issued over the course of the summer of 2020, by the Ministry of Health, the Chief Medical Officer of Health, and other civil authorities and/or public health authorities in Ontario and the other provinces and territories of Canada with

respect to the operation of businesses (collectively, and together with the orders referenced in paragraphs 14 and 15, the “First Lockdown Orders”).

18. As a result of the initial Outbreaks and/or the First Lockdown Orders, the Plaintiff's and Class Members' business premises had to close or restrict their operations, resulting in a loss of business income.

19. Beginning in or around late September 2020, Ontario experienced a second wave of COVID-19 outbreaks that began in major urban centres and subsequently across the entire province. Similar second wave outbreaks occurred in every province and territory in Canada over the course of September 2020 through January 2021 (collectively, the “Second Outbreaks”).

20. Over the course of October and November the Ontario government issued increasing restrictions on the operations of businesses in various regions. This culminated, on November 20, 2020, in the complete lockdown or significant restrictions on the operations of all businesses in Toronto and Peel Region. This was followed, on December 26, 2020, by similar province-wide restrictions, all pursuant to Ontario Regulation 82/20 as amended from time to time.

21. On January 12, 2021, the government of Ontario issued Regulation 7/21, declaring a second state of emergency for the whole of the province. The government also announced a “stay-at-home order” under Ontario Regulation 11/21, effective January 14, 2021, mandating that individuals may only leave their residences for essential purposes and imposing additional restrictions on business across the province.

22. In response to the Second Outbreaks, similar restrictions on businesses were imposed in other provinces and territories across Canada over the course of November and December 2020, and January 2021 (collectively, the "Second Lockdown Orders").

23. During the course of both the First and Second Outbreaks, the COVID-19 virus was actually or suspected to be present at each Class Member's premises, and/or at the premises of "contingent businesses", causing or requiring the partial or complete closure of those premises and/or the interruption of business operations at those premises.

CONTAGIOUS DISEASE COVERAGE APPLIES

24. The Plaintiff and Class Members purchased insurance from Aviva that included coverage under "Negative Publicity", "Restricted Access", and/or substantially similar coverage for loss of business income resulting from a contagious or infectious disease. The Plaintiff and Class Members were also insured for accountants' fees for producing particulars or details of their losses.

25. The Plaintiff and Class Members have suffered a loss of business income for which they are entitled to coverage under their Policies.

INDEMNITY AND/OR CONTINGENT BUSINESS INTERRUPTION COVERAGE APPLIES

26. The Plaintiff and Class Members purchased insurance from Aviva that included coverage for any suspension of business caused by damage to their premises or to contributing/neighbouring premises.

27. The actual or suspected presence of COVID-19 at the premises of the Class Members and/or at contributing/neighbouring premises constitutes "physical loss of or damage to" those premises within the meaning of the Policies. In addition or in the alternative, the restrictions placed on Class Members' access to their insured premises, and/or on access to the premises of "contributing businesses", by order of the government of Ontario and/or other civil authorities, as described above, constitutes "physical loss of" those premises within the meaning of the Policies.

28. The Plaintiff and Class Members have therefore suffered a loss of business income for which they are entitled to coverage under their Policies.

BREACH OF CONTRACT

29. The Plaintiff and Class Members contracted with Aviva for insurance coverage for loss of business income resulting from an outbreak of a contagious or infectious disease, and/or from the actual or suspected presence of a contagious or infectious disease at their premises or at contributing/neighbouring premises, as set out in the Policies.

30. On or around March 23, 2020, as a result of the mandatory closure of non-essential workplaces arising from the outbreak, and while its Policy was in full force and effect, the Plaintiff was required to close and/or restrict its business operations at all of its insured premises.

31. The Plaintiff and Class Members sustained a loss of business income as a result of one or more of the following:

(a) access to their insured premises was restricted in whole or in part by order of the government of Ontario and/or other civil authorities as described above; and/or

(b) the outbreak of COVID-19 within 25km of their premises (or such other distance as may be specified in each Class Member's Policy); and/or

(c) the actual or suspected presence of COVID-19 at their premises or at contributing/neighbouring premises.

32. The Plaintiff, as an insured under the Policy, made a claim to Aviva for loss of business income, in accordance with the Policy.

33. On or about June 1, 2020, Aviva wrongfully denied the Plaintiff insurance coverage for loss of business income, alleging that COVID-19 does not constitute an outbreak of a contagious or infectious disease and/or that the coverage does not apply to "global pandemics". Aviva wrongfully denied Class Members' claims for the same or similar reasons.

34. In fact, Aviva adopted a company wide policy that the business interruption insurance Policies at issue in this action did not cover losses related to COVID-19. It has taken the position that all or substantially all claims under

such Policies will be denied, and has communicated that position to its brokers and its insureds, which has dissuaded Class Members from making claims for coverage. Aviva's policy of denying coverage to Class Members is contrary to the express language and plain meaning of the Policies, and constitutes a breach of contract. It is also a breach of Aviva's duty of utmost good faith to Class Members.

35. To date, Aviva continues to wrongfully withhold payment of insurance monies owing to the Plaintiff and Class Members pursuant to the provisions of the Policies.

36. The Plaintiff pleads that Aviva is contractually obligated to compensate the Plaintiff and Class Members for any loss or damages referred to in the Policy and that by failing to do so, Aviva has breached its contractual and good faith obligations owed to the Plaintiff and Class Members under the Policies.

37. The Plaintiff and Class Members paid premiums for insurance coverage for loss of business income with the understanding and expectation that Aviva would honour its contractual obligations in good faith. By refusing to honour its contractual obligations, Aviva has failed to deliver the peace of mind that the Plaintiff and Class Members relied upon when they paid for insurance.

NEGLIGENCE

38. At all material times, the Defendant had a special contractual relationship of proximity with the Plaintiff and Class Members. The Defendant was a supplier

of business interruption insurance and the Plaintiff and Class Members were consumers.

39. At all material times, the Defendant owed a duty of care to the Plaintiff and Class Members. The Defendant was required to act according to the standard of a reasonable and prudent insurer.

40. The Defendant is liable to the Plaintiff and Class Members in tort for negligence.

41. At all material times, the Defendant knew or ought to have known that failing in their duty of care to the Plaintiff and Class Members, for example in misrepresenting the business interruption insurance policy or in not providing the intended coverage for it to the Plaintiff and Class Members, would result in foreseeable losses to the Plaintiff and Class Members.

42. The Defendant caused losses to the Plaintiff and Class Members by breaching its duty of care with respect to business interruption insurance, for example in misrepresenting the business interruption insurance coverage and/or in not providing the intended coverage to the Plaintiff and Class Members.

BREACH OF DUTY OF GOOD FAITH

43. At all material times, Aviva owed its insureds, the Plaintiff and Class Members, a duty of utmost good faith. It was required to promptly and fairly evaluate their claims, and to assess coverage neutrally and objectively, without regard to its own pecuniary interests.

44. The Plaintiff pleads that Aviva breached this duty of good faith by disregarding the plain language of its own policies, misleading and/or making misrepresentations to the Plaintiff and Class Members regarding coverage, and by putting its own pecuniary interests ahead of the legitimate interests of its insureds.

45. Aviva's company wide policy that the business interruption Policies at issue in this action do not cover losses related to COVID-19 was in direct violation of its duty of utmost good faith. Aviva pre-emptively and improperly determined coverage for Class Members and communicated that position to its brokers and its insureds for the purpose of and/or which had the effect of dissuading Class Members from making claims for coverage. Aviva abdicated its duty of utmost good faith and its corresponding obligation to fairly and neutrally evaluate and assess its coverages. Aviva did so for its own pecuniary benefit.

46. Aviva has behaved with arrogance and high-handedness and has shown a callous disregard and complete lack of care for the Plaintiff and Class Members in that:

(a) Aviva adopted a policy of taking an adversarial and hostile approach to the Plaintiff and Class Members and their claims for loss of business income, treating them with suspicion and contempt from the outset of the claim;

(b) Aviva adopted a policy of pre-judging the Plaintiff's and Class Members' claim for loss of business income and failed to consider fully and fairly all relevant factors;

(c) Aviva adopted a policy of failing to furnish appropriate proof of loss forms and/or not thoroughly assessing the proof of loss forms received;

(d) Aviva adopted a policy of interpreting the provisions of the Policies in a vague and arbitrary manner and without any regard to a plain reading of the Policies; and

(e) Aviva has maintained its blanket denial of coverage notwithstanding the conclusion of the Supreme Court in the UK test case, which case Aviva has specifically and publicly endorsed, that coverage provisions substantially similar to those at issue in this action afford coverage for business interruption resulting from COVID-19.

47. The Plaintiff further pleads that Aviva's decision to deny insurance coverage is not in accordance with the terms of the Policies. The Plaintiff claims that Aviva's denial of coverage is a breach of Aviva's duty of good faith owed to the Plaintiff and Class Members and that this breach warrants an award of punitive, aggravated and/or exemplary damages.

STATUTORY BREACH

48. The Defendant owed duties to the Plaintiff and Class Members under the *Insurance Act*, R.S.O. 1990, c. I. 8, as amended, and all other provincial legislation as indicated below. The Defendant owed a duty to furnish proof of loss forms to the Plaintiff and Class Members and properly accept and review those forms when assessing their claims.

49. The Defendant's servants, employees and agents either did not furnish proof of loss forms, or provided them after a denial of coverage, or provided them

but did not allow them to be submitted and adequately reviewed. In doing so, they breached their statutory duties.

50. The Defendant's servants, employees and agents denied claims before furnishing, accepting and reviewing proof of loss forms. In doing so, they breached their statutory duties.

RELIEF FROM FOREITURE

51. To the extent the Plaintiff or any Class Member has imperfectly complied or failed to comply with any post-loss requirements of the Policies, including but not limited to providing the Defendants with notice of the loss and/or submitting a proof of loss, they should be granted relief from forfeiture. Such imperfect or non-compliance:

A. Was reasonable and excusable in light of, among other things, the Defendants' blanket and notorious denial of coverage under their Policies;

B. Concerned terms and conditions of the Policies with respect to the submission or proof of the loss that were not conditions precedent to coverage; and

C. Did not cause the Defendants any material prejudice.

DAMAGES

52. As a result of Aviva's conduct, the Plaintiff and Class Members have suffered and will continue to suffer damages, including loss of business income and accountants' fees for producing particulars or details of their losses.

53. The Plaintiff further pleads that Aviva's policy of denying coverage to which Class Members are entitled has caused financial hardship and has failed to deliver the peace of mind that the Plaintiff and Class Members relied upon when they paid for insurance. It is also a breach of Aviva's duty of utmost good faith to Class Members. Aviva's conduct warrants an award of punitive, aggravated and exemplary damages.

LEGISLATION AND JURISDICTION

54. The Plaintiff pleads and relies upon, amongst other statutes:

(a) the *Class Proceedings Act*, 1992, S.O., c.6, as amended;

(b) the *Courts of Justice Act, supra*;

(c) the *Health Protection and Promotion Act, supra*;

(d) the *Emergency Management and Civil Protection Act, supra*;

(e) the *Insurance Act*, supra;

(f) the *Insurance Act*, R.S.B.C. 2012, c. 1, as amended;

(g) the *Insurance Act*, R.S.A. 2000, c.I-3, as amended;

(h) *The Insurance Act*, S.S. 2015, c. I-9.11, as amended;

(i) *The Insurance Act*, C.C.S.M. c. 140, as amended;

(j) *Insurers Act*, C.Q.L.R. c A-32.1, as amended;

(k) *Insurance Act*, R.S.N.B. 1973, c. I-12, as amended;

(l) *Insurance Act*, R.S.N.S. 1989, c. 231, as amended;

(m) *Insurance Act*, R.S.P.E.I. 1988, c. I-4, as amended;

(n) *Insurance Act*, R.S.Y. 2002, c. 119, as amended;

(o) *Insurance Act*, R.S.N.W.T. 1988, c. I-4, as amended; and

(p) *Insurance Act*, R.S.N.W.T. (Nu) 1988, c. I-4, as amended.

55. The Plaintiff proposes that this action be tried at the City of Toronto, in the Province of Ontario.

DATE OF ISSUE: The 3rd day of July, 2020.

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NORDIK WINDOWS INC. - and - AVIVA INSURANCE COMPANY OF CANADA

Court File No. CV-20-00643386-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding under the *Class Proceedings Act, 1992*

Proceeding Commenced at Toronto

FRESH AS AMENDED STATEMENT OF CLAIM

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(903136 /spw)

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

ROYAL BANK OF CANADA and PEACE BRIDGE DUTY FREE INC.

Applicant Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ANSWERS TO UNDERTAKINGS, UNDERADVISEMENTS, & REFUSALS FROM THE CROSS-EXAMINATION OF JIM PEARCE HELD AUGUST 31st, 2023

BLANEY MCMURTRY LLP
Barristers & Solicitors
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Toronto, ON, M5C 3G5

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John Wolf (LSO #30165B)
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Lawyers for the Respondent

TAB 28

UNDERTAKINGS—CROSS-EXAMINATION OF LISA HUTCHESON
29 September 2023

Lisa Hutcheson

Undertakings Given

Undertakings		Page	Q	Answer
1.	To produce any typed notes from the meeting(s) with Jim Pearce.	5	15	Attached are the meeting minutes from a call with Jim Pearce held June 23rd, 2023
2.	To inquire of Mr. Heuman if he took notes from calls with duty free operators and, if he did, to produce those notes.	5	17	Attached are the notes of Mr. Heuman's calls to other duty free operators.
3.	To inquire of Mr. Heuman whether he took pictures when he visited the duty free on 19 May 2023 and, if so, to produce those pictures.	6	22 & 23	Attached is the photo Mr. Heuman's took at Duty Free.
5.	To inquire of Mr. Heuman whether he did any investigations to determine when the Sault Ste Marie operator entered their lease.	22	106	Attached are two annual reports and a set of meeting minutes with respect to the Sault Ste. Marie bridge authority.
6.	To inquire of Mr. Heuman to determine if he made any inquiries to determine if the Authority owns the land on which the operator has its store.	22	108	See above. There were no further inquiries.

TAB 29

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and –

PEACE BRIDGE DUTY FREE INC.

Respondent

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

BRIEF OF OFFERS OF PEACE BRIDGE DUTY FREE INC.
(Motion Returnable November 1st, 2023)

Date: November 2nd, 2023	**BLANEY MCMURTRY LLP** Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5 **David T. Ullmann (LSO #42357I)** Tel: (416) 596-4289 Email: dullmann@blaney.com **John Wolf (LSO #30165B)** Email: jwolf@blaney.com **Brendan Jones (LSO #56821F)** Email: bjones@blaney.com Lawyers for the Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and –

PEACE BRIDGE DUTY FREE INC.

Respondent

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

INDEX

TAB 1

PEACE BRIDGE
DUTY FREE

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

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

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

October 15, 2021

Ron Reinas

General Manager

Buffalo & Fort Erie Public Bridge Authority

Ron,

Further to the discussion between our respective legal counsel, we are writing to make a without prejudice proposal to address the issue of back-rent, the rent going forward, term and food service.

Rent Going Forward:

PBDF proposes that Article 4.02 of the Lease be amended to provide that:

a) The Tenant covenants and agrees to pay to the Landlord from the amendment date, 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.

b) For the first year of the Lease, the Base Rent shall be $2,000,000. The Base Rent for the second year and each succeeding year of the Lease shall be no less than the aggregate of the Base Rent and the Percentage Rent payable by the Tenant to the Landlord for the immediately proceeding Rental Year. Once the Base Rent payable in any given year reaches $4,000,000, then the Base Rent in any subsequent year 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 immediate proceeding Rental Year.

c) Notwithstanding subsection (a), above, the Tenant shall pay percentage rent on a monthly basis for the first year of the Lease with such additional payments to be made on: a) June 30 so that the total rent paid as of June 30 equals $1,000,000; and b) October 31 so that the total rent paid as of October 31 equals $2,000,000.

Article 4.03 would remain unchanged in substance. However, the example calculation included in the Lease would be changed to reflect the amendment. This would be:

Year	Sales		Base Rent	Additional Percentage Rent	Total Rent
2022	16,000		2,000	1,200	3,200
2023	19,000		3,200	600	3,800
2024	20,000		3,800	200	4,000
2025	20,500		4,000	110	4,110
2026	21,000		4,000	220	4,220
2027	22,000		4,000	440	4,440
All amounts in 000's and CAN$					

This formulation would allow PBDF to best manage cashflow in the early part of 2022 and would also provide a clear path forward for a return to a base rent of $4,000,000.

The need to manage cashflow is prompted by two considerations. First, traffic levels in the early part of the year have historically been low as there is less travel and shopping in January and February. Second, our bank has suspended the lines of credit that were previously available to us, which creates an imperative to have a sufficient cash reserve to fund operations.

Back Rent and Extension of Lease Term:

PBDF proposes that it pay $2,000,000 in rent that has accrued (the "Back Rent") with any additional amounts being waived by the PBA. The Back Rent would be treated as a no-interest loan amortized over the term of the lease (as extended) and would be paid off in monthly installments commencing on January 15, 2023.

This proposal is also based on the notion that term of the Lease would be extended by five years from its current end-date of October 2031 to October 2036. The Extension Option (Article 1.01 (h)) would still be available.

Food Service:

In the past, PBDF has subleased space to a food service provider (most recently, it was a Tim Hortons franchise). PBDF paid rent to the PBA on the basis of the sales made by the food service provider. However, we have had difficulty in attracting a food service provider to our location at the current level of 20% rent.

We see value in having a food service provider on location as it does attract traffic. To attract and keep a food service provider in the location, the rent terms would have to be changed to reflect the fact that such providers are unable to sustain their operations with rent at the current 20% level.

As such, we propose that the PBDF be able to sublease space to a food service provider and that any rent payable be remitted to the PBA. We would be pleased to confer with PBA regarding rental rates and other such matters so that the PBA can be satisfied that the rent being offered is appropriate.

Concluding Comment:

We look forward to discussing this proposal with you further. On the basis of our discussions with other similarly situated duty free shops, we understand that this proposal may be similar to the approach that is generally being discussed across the industry.

Regards,

Gregory G. O'Hara

President and CEO

Peace Bridge Duty Free Inc

TAB 2

GOWLING WLG

October 26, 2021

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

Via Email - gohara@dutyfree.ca

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

Dear Mr O'Hara:

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

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

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

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

Back rent:

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

Future rent: (year begins November 1, 2021)

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

Food service:

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

GOWLING WLG

Please advise if these terms are acceptable.

Sincerely,

Gowling WLG (Canada) LLP

Christopher M. Stanek

CMS:cc

c.c. Ben Mills
Conlin Bedard LLP

Bcc: Client

TAB 3

PEACE BRIDGE
DUTY FREE

November 16, 2021

Ron Reinas

General Manager

Buffalo & Fort Erie Public Bridge Authority

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

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

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

Ron,

We are writing further to our letter of October 15, 2021 and your responding letter of October 26, 2021.

We have reviewed the offer made by the Buffalo and Fort Erie Public Bridge Authority (**PBA**) as set out in your letter of October 26, 2021. We take this opportunity to make a counterproposal and to explain the basis for our position.

Food Services:

Peace Bridge Duty Free Inc. (**PBDF**) agrees that food service tenant rents are to be at market rates, approved by, and payable to, the PBA.

Future rent (year begins November 1, 2021):

PBDF agrees that any amendments to the Lease are effective from November 1, 2021.

Also, PBDF agrees with PBA's proposal to increase rent year-over-year at a set rate until 2025, at which point the existing Lease will apply.

For 2022, however, PBDF asks that monthly rent be payable on the basis of 20% of monthly revenues and that any shortfall between the accumulated payments and the minimum base rent of $2,500,000 be paid on November 10, 2021. This arrangement would assist with cash flow as traffic ramps up over the expected recovery period. To be clear, this arrangement would only apply to 2022.

The terms for base rent going forward would be as follows:

2022 – Base rent of $2,500,000 or 20% of sales, whichever is greater, with monthly payments of rent being calculated on the basis of 20% of sales and, to the extent that there is any shortfall, that any shortfall between the accumulated payments and the minimum base rent of $2,500,000 be paid on November 10, 2022.

2023 – Base rent of $3,000,000 or 20% of sales, whichever is greater

2024 – Base rent of $3,500,000 or 20% of sales, whichever is greater

2025 – Base rent of $4,000,000 or 20% of sales, whichever is greater

Beyond 2025, the existing Lease applies.

Back Rent and Extension of Lease Term:

PBDF is agreeable to paying back-rent of $2,000,000. The back-rent would be treated as a no-interest loan paid off in monthly installments commencing on November 15, 2022 and continuing to October 15, 2036.

This proposal is made with two provisos.

First, PBDF asks that the existing Lease be amended to provide that PBDF has 2 consecutive options to extend the lease by five years. This can be done by amending Article 1.01(h) to provide that there are "two options to extend the term for two additional periods of five years each" and by making consequential amendments to Article 3.6 to provide for the ability to exercise a second option to extend the lease for an additional five-year period.

Second, PBDF requests that PBA confirm that all other amounts owing as back-rent are waived, including those rents subject to the rent deferral agreement dated April 27, 2020.

To be clear, PBDF is in no position to make an upfront payment for any portion of the back rent. With our renovation loan, having burned through $3 million in capital, after taking on an additional $1 million in debt and with this proposed $2 million loan, the company will unlikely have surplus cash flow for years to come.

PBA's offer suggests that it may receive a rebate on amounts that it remitted to CRA as HST on rent. PBDF has paid HST on rent that would have otherwise been payable under the Lease. PBDF has also claimed a credit in its account with the CRA for having made such payment. As such, PBDF will have to pay to the CRA any amount that the CRA may remit back to PBA on account of overpayment of HST on rent. On that basis, we are not in agreement with the approach set out in PBA's offer and would prefer that amounts payable as taxes be handled as per the normal course of business.

Concluding Comment:

We look forward to discussing this proposal with you further.

Regards,

Gregory G. O'Hara

President and CEO

Peace Bridge Duty Free Inc

TAB 4

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dullmann@blaney.com

March 13, 2023

WITHOUT PREJUDICE

SENT BY EMAIL TO Patrick.Shea@gowlingwlg.com **and** Christopher.Stanek@gowlingwlg.com

Messers Patrick Shea and Christopher Stanek
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Suite 1600
Toronto, ON, M5X 1G5

Dear Messrs Shea and Stanek,

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL) – Motion returnable December 9, 2022

In accordance with the endorsement of Justice Kimmel please consider this correspondence to be our client's (the "**Tenant**" and/or "**Company**" and/or "**Duty Free**") formal without prejudice proposal with respect to the outstanding obligations and positions of the various parties, which has been the source of litigation to date.

Attached are confidential financial projections prepared by our client which projects operations, income and a balance sheet until 2025. The projections support the fairness of the proposal set out below. These projections can be shared with your client but are not to otherwise be circulated nor relied on in any other proceeding or part of these proceedings. These financial projections were prepared in accordance with past practices of our client and generally accepted accounting principles. They have not been vetted by the Monitor, although we have had discussions with the Monitor. If the validity of the projections becomes an important point of dispute we are prepared to submit them to the Monitor for further review and analysis.

Our client's settlement proposal is as follows. It divides the issues between the parties into three areas of dispute and provides positions in respect of all three. The areas of dispute are the Pre-filing Arrears (arrears which allegedly arose prior to when the litigation commenced), the Post-filing Arrears (arrears which allegedly arose between December 2021 up to the date of settlement of this dispute) and the Go Forward Lease (which addresses how rent will be charged after the dispute is settled). The settlement terms are mutually exclusive. The Landlord can accept any or all of them.

Pre filing Arrears: It is the Tenant's position that upon a correct interpretation of section 18.07 of the lease it will be found that no rent arrears are owing to the Landlord and in fact the Tenant is entitled to costs and damages as set out in our materials. While it is claimed that these damages could be greater than the entire amount of arrears which the Landlord claims are owing, we point out that it need not be in that large an amount for the Landlord to have to make payment to the Tenant. Indeed, when the court finds that, by operation of section 18.07 in fact no arrears are owing, any amount of damages found owing will have to paid to the Tenant out of pocket by the Landlord (rather than as a set off as you have previously suggested might be the case). There can be no set off if nothing is owing. As such, it is not appropriate for the Tenant to make an offer to settle as to do so it would have to speculate as to what the Landlord is prepared to pay to avoid these damages and mitigate this risk. Rather the Tenant recognizes that this issue will have to be settled either with the assistance of the mediator or by litigating this issue to a conclusion. As such, the Tenant is not prepared to abandon its litigation position until or unless there is a reasonable offer made to it by the Landlord at or before the mediation.

Post-Filing Arrears

It is the Tenant's position that no arrears of rent are owing for the post filing period. The Tenant diligently paid Normal Rent in accordance with the court order through this period without timely or effective objection from the Landlord. However, in the interest of resolving this matter, the Tenant is prepared to forgo its damages claims against the Landlord for the Post-Filing Period and it will waive its right to pursue its costs related to the Post-filing Arrears litigation in exchange for the Landlord confirming that no arrears are owing for this period.

Go Forward Lease

As has been demonstrated by sales performance since re-opening for business, and as reflected in the Tenant's projections the Duty Free business remains impacted by changed COVID traffic patterns. Attached are the Tenant's financial projections. The Tenant is not projecting a return to full sales until at the earliest beyond 2025. The rational behind these projections as noted above derives from the fact that while the pandemic has at present subsided, travel patterns and habits of customers have been materially changed as a result of the 3 year COVID pandemic. In addition recent past experience suggests that COVID issues return in severity from about November to March annually. Parties have simply sought other locations to vacation, cross the border, or purchase goods and it will take a period of time for those customers to return to shopping at the Duty Free. In addition, travellers who may have previously "browsed" without any express intention of purchasing liquor or cigarettes, frequently avoid visiting. Lastly, tour bus revenues have not returned to pre pandemic levels. This represents as much as 10% of the business of the Tenant. Of course, if our clients are overly conservative with respect to these projections, that only benefits the Landlord and the Tenant as the Landlord will gain in additional percentage rent.

The Tenant proposes an amendment of the lease effective as of the date of acceptance of settlement to reflect the ongoing uncertainty in sales and bridge traffic in a post COVID world. The amended lease will continue to contain section 18.07 or a similar provision satisfactory to the Tenant which makes clear the obligation of the Landlord to provide a rent abatement in the event of any future material event which impacts bridge traffic, or duty-free sales. Subject in all cases to the duty to abate rent in the event of a future crisis in accordance with that section of the lease, the minimum rent would be as follows. The basic rent for the balance of the lease term, in any given calendar year period will be:

1) The greater of $2,500,000 or 20% of sales.

2) Beginning 2024 basic rent will be the greater of i) $2.5 million, or ii) 20- 22% of sales as follows. Percentage rent will be in the amount of 20% for sales below $20 Million, Percentage rent on sales above $20 Million percentage rent will be 21%. On any sales above $25 Million percentage rent will be 22%.

The percentage rent will be paid monthly on the 15th day of the following month. Assuming the lease year will still run October to October, the Tenant will make an annual rental adjustment payment, if necessary, on or before November 15th each year in order to ensure that the total rent for the previous year will be at least equal to the $2,500,000 minimum rent.

We remind you that when your client issued the RFP in 2016 they suggested that the amount of minimum rent they were prepared to accept was $2.5 million. We believe this shows some recognition on the part of your clients that that is a realistic rent level to consider in this insistence.

The Tenant will, as soon as possible, sublet the food service space at market rates, approved by the Landlord, and all rent will be payable to the Landlord. It is hoped this will increase sales for the Tenant generally.

As per our previous proposals, the settlement requires that (Article 1.01 (h)) would be amended to provide for two consecutive 5 year options to the Tenants to extend the lease.

General Settlement Terms

Subject always to the above terms of settlement, any settlement would also require that the Landlord agrees to release the Tenant, its officers, directors and shareholders etc. in respect of any claims for the payment of minimum rent or legal costs or any other claims arising to the effective date of the settlement . The Tenant would releases the Landlord, its officers, directors and shareholders etc from damages for acting in bad faith or any other claims. No claims against any third parties, such as various levels of government are released or compromised.

Upon agreement the parties shall act in a commercially reasonable manner to draft an agreement to give effect to these basic term of any settlement. All parties acknowledge and agree that these terms shall be expanded upon to give effect to the terms of this agreement.

We are available to discuss this at your convenience.

Yours very truly,
Blaney McMurtry LLP

David T. Ullmann
DTU/ab

Encl.

c.c.: Mr. John Wolf and Mr. Brendan Jones (counsel to the Respondent) at jwolf@blaney.com and BJones@blaney.com

TAB 5

GOWLING WLG

21 March 2023

Sent by E-Mail *(dull11umn@blalley.com)*

E. Patrick Shea, LS!VI, CS Prof Corp
Direct 416-369"7399
patrick.shea@goWlinqwlq.com

David T. Ullmann
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2 Queen Street East, Suite 1500
Toronto, ON MSC 3G5

Dear Mr. Ullmann:

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

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

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

Claim Against the Authority

We do not see PBDF's asse1tion that it has a claim against the Authority as having any merit. It is not a factor that the Authority has considered in dctermini11g what accommodation(s} will be provided to PBDP.

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

Counter-Proposal

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

Back Rent

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

We have considered the tax-related issues related to the Authority abating any material portion of the outstanding rent. While the Authority is prepared to consider a further abatement of up to 50%1, it is not prepared to provide a rent abatement only to have PBDF's ability to repay the amounts owing eroded by taxes payable by PBDF. Any taxes payable by PBDF as a result of any abatement of rent will have to be paid using funds contributed to PBDF by the shareholders or other financing.
[**PBDF Position: Accepted with amount to be paid to be $2,851,500, being 50% of the rent arrears for the period up to Nov 2, 2021**]

GOWLING WLG

Rent for 2021-2025 (from I November)

The Lease will be amended as follows:

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

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

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

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

Food Service Tenant(s)

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

Sincerely,

GOWLING WLG (CANADA) LLP

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

55952047\1

TAB 6

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

David T. Ullmann
Partner
D: 416-596-4289 E: DUllmann@blaney.com

Without Prejudice Settlement Offer

August 22nd, 2023

Via Email patrick.shea@gowlingwlg.com and Christopher.Stanek@gowlingwlg.com

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)

As you are aware, our client has been considering its ability to pay in conjunction with making a follow up offer to attempt to resolve this matter since the Mediation. The passage of time has created greater certainty around projections for future Gross Sales as well as to financial accuracy in respect of Gross Sales going backwards. The passage of time in other words has assisted the Tenant in making a further and better settlement offer.

Attached is a copy of the further settlement offer which your client made just before the Mediation. As you may recall, our client had questions about quantifying the further PBA offer which have not been answered. Nonetheless, our client is proceeding on the basis of its understanding of the quantification of that offer in making this further offer.

We believe that there is common ground between the Landlord and Tenant that section 18.07 was added to the lease in order to address a situation like the one in which the parties found themselves when the Pandemic was declared and accompanying restrictions and government regulations came into force. However, clearly our clients disagree as to what the impact of that section was to be, and how it is to be applied.

Having considered the evidence produced to date our client is of the view that a court will conclude that the obligation of your client under section 18.07 was not merely to consult. As such, it is our client's belief that the court will ultimately decide that your client was obliged to act in a commercially reasonable and equal manner, which must necessarily take into account Gross sales and ability to pay. However, we readily concede that for both parties it is difficult to predict what the court will do from there.

Our clients have considered your offer from the mediation and compared that to the available resources and revenue streams and the eventual return to normal business operations. As you know, even these recent summer months have been no better than 20% below 2019 levels for sales as the impact on traffic and shopping patterns remain stubbornly and frustratingly lower than normal. Having said that the trend is towards a return to normalcy, simply it is taking far longer than anyone expected.

Having considered the foregoing, our clients are prepared to accept your clients offer, almost in its entirety. Attached you will find the marked-up version of the March offer, marked up to indicate where our clients agree and where they diverge. Our clients offer, which must be reduced to a proper settlement memo and will be subject to those terms and details, is as follows:

1. *PBDF agrees to pay 50% of Rent owed prior to Nov 1 2021. Our client calculates the rent owing as follows:*

Lease Year	Rent	Paid	Balance	Comments
Nov1/19-Oct31/20	$4,000	$1,667	$2,333	
Nov1/20-Oct31/21	$4,000	$630	$3,370	
		Total Balance Oct 31, 2021	**$5,703**	

Based on the above calculation, our client concludes that the total rent owing for that period (without accounting for the adjustment 18.07 would cause) would be approximately $5,703,000. As such, our client is offering to pay 50%, which would be $2,851,150, as further set out below.

2. For the period following November 1, 2021, PBDF is in agreement with the PBA proposal to amend the Lease as follows:

Lease year ending Oct31 2022 - Base rent of $2m or 20% of sales, whichever is greater.

Lease year ending Oct31 2023 - Base rent of $2.5m or 20% of sales, whichever is greater.

Lease year ending Oct31 2024 - Base rent of $3m or 20% of sales, whichever is greater.

Lease year ending Oct 31, 2025 – Base rent of $3.5 M or 20% of sales, whichever is greater.

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

Having regard to the above proposal, our client calculates that the rent payable for the period of November 1, 2021 to July 1, 2023, using the base rent amounts set out above, would have been $3,875,000. Over that period PBDF actually paid $4,020,000 inclusive of rent subsidies. Therefore, our client has overpaid the rent required under the proposal by $145,000.

3. *The PBDF would pay the $2,670,150 (being $2,815,150 minus $145,000) as follows. It will pay $1M cash to the PBA 60 days after execution of the settlement (the "**Payment Date**"). The PBDF will pay $1,000,000 to the PBA on the first anniversary of the Payment Date. The PBDF will pay the balance on the second anniversary of the Payment Date. Effectively, the PBA will receive the whole $2,815,150 in two years.*

4. Food Services - in conjunction with the Landlord, PBDF will commit best efforts to finding a provider with all subtenant rent payable to the Landlord.

5. *In exchange for the payments and other terms of the settlement, the PBA will:*

   a) Agree to settlement documentation that allows for the most tax effective characterization of the settlement payments; and

b) *Allow for the lease to be amended to add two additional 5 year options to extend the lease, which our client notes is identical to what was provided to the US Duty Free Store.*

6. The parties will exchange comprehensive releases of all claims (including for contribution and indemnity) of any kind (known or unknown) against the other in respect of any matters arising to date in a form to be agreed to between the parties acting reasonably, failing which as settled by the court.

We look forward to your position with respect to the above. We do not propose that the examinations be delayed pending the resolution of this settlement proposal.

This settlement offer is open for acceptance until it is revoked in writing by PBDF or 5 minutes after the commencement of the motion on September 19, 2023.

Yours very truly,
BLANEY MCMURTRY LLP

David T. Ullmann
DTU/ab

Encl.

cc: John C. Wolf and Brendan Jones

GOWLING WLG

21 March 2023

Sent by E-Mail *(dull11umn@blalley.com)*

E. Patrick Shea, LS!VI, CS Prof Corp
Direct 416-369"7399
patrick.shea@goWlinqwlq.com

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

Dear Mr. Ullmann:

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

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

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

Claim Against the Authority

We do not see PBDF's asse1tion that it has a claim against the Authority as having any merit. It is not a factor that the Authority has considered in dctermini11g what accommodation(s} will be provided to PBDP.

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

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

GOWLING WLG

Rent for 2021-2025 (from I November)

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-

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-

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-

- 2025 - Base rent of $4,000,000 or 20% of sales. whichever is greater.

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

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Sincerely,

GOWLING WLG (CANADA) LLP

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

55952047\1

TAB 7

TAB 7

2023-09-26 - Proposal to Tenant and Tab 8(b) Settlement Terms with PBDF 26 Sept 2023

Without Prejudice and Not Provided

TAB 8

TAB 8

2023-10-13 - Proposal to Landlord and Tab 9(b) - Settlement Terms with PBDF 26 Sept 2023 (blaney comments) v4

Without Prejudice and Not Provided

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

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

Applicant Respondent

Email address of recipient: See Service List

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

BRIEF OF OFFERS OF PEACE BRIDGE DUTY FREE INC.
(Motion Returnable November 1st, 2023)

BLANEY MCMURTRY LLP
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John Wolf (LSO #30165B)
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Brendan Jones (LSO #56821F)
Email: bjones@blaney.com

Lawyers for the Respondent

TAB 30

Court of Appeal File No.: COA-23-CV-1355

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

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and –

PEACE BRIDGE DUTY FREE INC.

Respondent
(Appellant)

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

APPELLANT'S CERTIFICATE

The appellant certifies that the following evidence is required for the Appeal, in the appellant's opinion:

1. Affidavit of Jim Pearce sworn December 12, 2021.

2. Affidavit of Ron Rienas, with exhibits, sworn September 7, 2022.

3. Affidavit of Jim Pearce sworn November 13, 2022.

4. Responding Affidavit of Ron Rienas sworn November 26, 2022.

5. Reply Affidavit of Jim Pearce, with exhibits, sworn December 2, 2022.

6. Affidavit of Ben Mills, with exhibits, sworn January 1, 2023.

7. Supplementary Affidavit of Jim Pearce, with exhibits, sworn February 13, 2023.

8. Affidavit of Ron Rienas, with exhibits, sworn March 1, 2023.

9. Affidavit of Ephraim Stulberg, with exhibits, sworn September 26, 2023.

10. Affidavit of Lisa Hutchinson with exhibits, sworn September 26, 2023.

11. Transcript of the Examination of Tim Clutterbuck, held on May 30, 2023.

12. Responses to Undertaking given from the Examination of Tim Clutterbuck, held on May 30, 2023.

13. Transcript of the Examination of Karen Costa, held on May 30, 2023, with exhibits.

14. Responses to Undertaking given from the Examination of Karen Costa, held on May 30, 2023.

15. Transcript of the Cross-Examination of Ron Rienas, held on August 23, 2023, with exhibits.

16. Responses to Undertaking given from the Cross-Examination of Ron Rienas, held on August 23, 2023.

17. Transcript of the Cross-Examination of Jim Pearce, held on August 31, 2023, with exhibits.

18. Responses to Undertaking given from the Cross-Examination of Jim Pearce, held on August 31, 2023.

19. Transcript of the Cross-Examination of Ben Mills, held on August 17, 2023 with exhibits.

20. Responses to Undertaking given from the Cross-Examination of Ben Mills, held on August 17, 2023.

21. Transcript of the Cross-Examination of Ephraim Stulberg, held on September 29, 2023 with exhibits.

22. Transcript of the Cross-Examination of Lisa Hutchinson, held on September 29, 2023.

23. Responses to Undertaking given from the Cross-Examination of Lisa Hutchinson, held on September 29, 2023.

24. Brief of Offers of Peace Bridge Duty Free Inc.

25. Buffalo and Fort Erie Public Bridge Authority (the Landlord) Disclosure Brief dated May 25, 2023, Tab H.

Date: December 27th, 2023

BLANEY MCMURTRY LLP
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Lawyers for the Respondent (Appellant)

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Lawyers for Buffalo and Fort Erie Public Bridge Authority (Respondent in the Appeal)

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Proposed Receiver

AND TO: **AIRD & BERLIS LLP**
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Sanj Mitra (LSO #37934U)
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Jeremy Nemers (LSO #66410Q)
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Lawyers for the Applicant

AND TO: **DEPARTMENT OF JUSTICE**
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Toronto, ON, M5H 1T1

Email: AGC-PGC.TORONTO-TAX-FISCAL@JUSTICE.GC.CA

Lawyers for the Minister of National Revenue

AND TO: **MINISTRY OF FINANCE**
Ministry of the Attorney General (Ontario)
Civil Law Division - Legal Services Branch
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Steven Groeneveld (LSO # 45420I)
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AND TO: **MINISTRY OF FINANCE**
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Tel.: 1 866 668-8297

Court of Appeal File No.: COA-23-CV-1355
Court File No. CV-21-00673084-00CL

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

Applicant Respondent (Appellant)

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jnemers@airdberlis.com
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steven.groeneveld@ontario.ca
insolvency.unit@ontario.ca

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at **Toronto**

APPELLANT'S CERTIFICATE RESPECTING EVIDENCE

BLANEY MCMURTRY LLP
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Toronto, ON, M5C 3G5

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Lawyers for the Respondent (Appellant)

TAB 31

Court of Appeal File No.: COA-23-CV-1355
Court File No. CV-21-00673084-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and –

PEACE BRIDGE DUTY FREE INC.

Respondent
(Appellant)

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

CERTIFICATE OF COMPLETENESS

I, Brendan Jones, counsel for the Appellant, Peace Bridge Duty Free Inc., certify that pursuant to Rule 61.10(1)(l) that the Appeal Book and Compendium in this appeal is complete and legible.

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Court of Appeal File No.: COA-23-CV-1355
Court File No. CV-21-00673084-00CL

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

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COURT OF APPEAL FOR ONTARIO

Proceeding commenced at **Toronto**

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COURT OF APPEAL FOR ONTARIO

Proceeding commenced at **Toronto**

NON-CONFIDENTIAL APPEAL BOOK AND COMPENDIUM

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