

**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

**RESPONDING MOTION RECORD OF THE
RESPONDENT (Returnable December 9, 2022)**

Date: December 2, 2022	BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5 David T. Ullmann (LSO #42357I) Email: dullmann@blaney.com John Wolf (LSO #30165B) Email: jwolf@blaney.com Brendan Jones (LSO #56821F) Email: bjones@blaney.com Lawyers for the Respondent
To:	The Service List

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1	Reply Affidavit of Jim Pearce sworn December 2, 2022
A	Exhibit A - 2021-08-21 – Duty Free’s Proposal
B	Summary of Duty Free rent payments to November 2022
C	CCAA initial order template

TAB 1

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

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REPLY AFFIDAVIT OF JIM PEARCE

I, **Jim Pearce**, of the Town of Fort Erie, in the Province of Ontario, **AFFIRM AND SAY THAT:**

1. I am the general manager as well as an officer holding the position of Secretary/Treasurer of Peace Bridge Duty Free Inc. ("**Duty Free**"). As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and belief, and, in all such cases, believe it to be true.
2. I swore affidavits in relations to this matter on December 12th, 2021 and November 13th, 2022.

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

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

Overview

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Authority’s “generous rent abatement”

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

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

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

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

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

Duty Free did not “voluntarily” close its business

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

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

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

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

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

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

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

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

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

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

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

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

Duty Free provided the Authority with a plan, including projections

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

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

Request for financial information

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

Record breaking snow storm affected November 2022 sales

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

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

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

CCAA Template

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

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

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

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

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

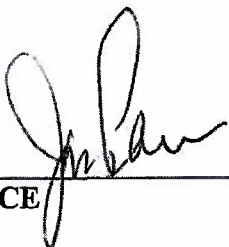
45. Since the Appointment Order, Duty Free has continued to pay Normal Rent in accordance with the same prices and normal payment practices in place and that were being accepted at that time of the Appointment Order.

SWORN (OR AFFIRMED) remotely)
 by way of video conference by Jim)
 Pearce stated as being located in the)
 Town of Fort Erie, in the Province of)
 Ontario, before Tyler Matthews stated as)
 being in the City of Toronto, in the)
 Province of Ontario on this 2nd)
 day of December, 2022, in accordance)
 with O.Reg. 431/20, Administering the)
 Oath or Declaration remotely.)
)
)



 A Commissioner for Taking Affidavits,
Tyler Matthews

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



JIM PEARCE

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



Commissioner for Taking Affidavits (or as may be)

Tyler Matthews (*Articling Student*)

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



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

A. Introduction

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

B. Current Situation

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

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

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

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

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

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

D. The Plan for Recovery

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

E. The proposal

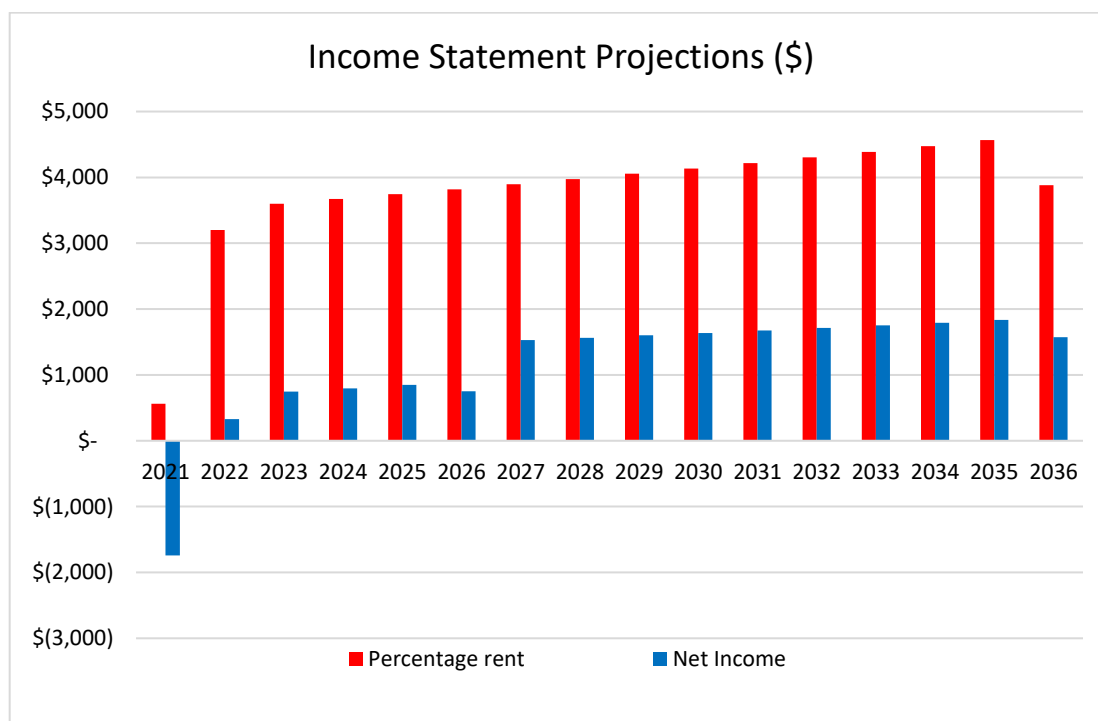
27. To provide a foundation for PBDF's re-opening and plan for recovery, PBDF makes the following proposal for PBA's consideration:

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

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

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

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



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

F. Financial Information and Projections

Peace Bridge Duty Free Inc.

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

Current Lease Cash Flow

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

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



Commissioner for Taking Affidavits (or as may be)

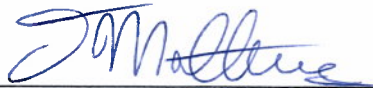
Tyler Matthews (*Articling Student*)

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

<u>2022</u>	<u>Gross Sales</u>	<u>Base Rent</u>	<u>Rent Paid</u>	<u>Date Paid</u>
Jan.	\$266,000	\$333,333.33	\$53,200	2/16/2022
Feb.	\$317,000	\$333,333.33	\$63,400	3/10/2022
Mar.	\$575,000	\$333,333.33	\$115,000	4/11/2022
April	\$802,000	\$333,333.33	\$160,400	5/19/2022
May	\$840,000	\$333,333.33	\$168,000	6/21/2022
June	\$942,000	\$333,333.33	\$188,400	7/8/2022
July	\$1,332,000	\$333,333.33	\$266,400	8/11/2022
Aug.	\$1,295,000	\$333,333.33	\$259,000	9/8/2022
Sept.	\$1,185,000	\$333,333.33	\$237,000	10/4/2022
Oct.	\$1,215,000	\$333,333.33	\$243,000	11/1/2022
Nov.	\$980,000	\$333,333.33	\$196,000	12/1/2022

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

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



Commissioner for Taking Affidavits (or as may be)

Tyler Matthews (*Articling Student*)

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

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEEKDAY, THE #
)	
JUSTICE)	DAY OF MONTH, 20YR

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF [APPLICANT'S NAME] (the "Applicant")

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of [NAME] sworn [DATE] and the Exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for [NAMES], no one appearing for [NAME]¹ although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of [MONITOR'S NAME] to act as the Monitor,

¹ Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated² so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. [THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system³ currently in place as described in the Affidavit of [NAME]

² If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

sworn [DATE] or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.]

6. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

³ This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed **[or resiliated]**⁴ in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, **[and to dispose of redundant or non-material assets not exceeding \$● in any one transaction or \$● in the aggregate]**⁵

⁴ The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.

⁵ Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.

- (b) **[terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate];** and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims **[or resiliates]** the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer **[or resiliation]** of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer **[or resiliation]** is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer **[or resiliation]**, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer **[or resiliation]**, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including [DATE – MAX. 30 DAYS], or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data

services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.⁶

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

⁶ This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,⁷ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")⁸ on the Property, which charge shall not exceed an aggregate amount of \$●, as security for the indemnity provided in paragraph [20] of this Order. The Directors' Charge shall have the priority set out in paragraphs [38] and [40] herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [20] of this Order.

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that [MONITOR'S NAME] is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with

⁷ The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.

⁸ Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the

Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a [TIME INTERVAL] basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$● [, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

30. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$●, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs [38] and [40] hereof.

DIP FINANCING

32. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from [DIP LENDER'S NAME] (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate

purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$● unless permitted by further Order of this Court.

33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed.

34. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs [38] and [40] hereof.

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ● days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the

Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

37. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows⁹:

First – Administration Charge (to the maximum amount of \$●);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum amount of \$●).

39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent

⁹ The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.

to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:


- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

44. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in [newspapers specified by the Court] a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

45. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<>’.

46. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

47. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

49. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

50. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative

in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

51. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

52. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.
