

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

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

**THIRD REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE COURT-APPOINTED MONITOR OF
PEACE BRIDGE DUTY FREE INC.**

January 3, 2023

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I. APPOINTMENT AND BACKGROUND

1. This third report (this “**third Report**”) is filed by msi Spergel inc. (“**Spergel**”) in its capacity as the Court-appointed monitor (in such capacity, the “**Monitor**”) of Peace Bridge Duty Free Inc. (the “**Debtor**”). Pursuant to section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43, as amended, Spergel was appointed as the Monitor, without security, of the Debtor by Order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 14, 2021 (the “**Appointment Order**”). The Appointment Order was made upon the application of the Debtor’s general secured creditor, Royal Bank of Canada (“**RBC**”). Attached as **Appendix “1”** to this Third Report is a copy of the Appointment Order.
2. The Debtor was formed on March 1, 2012 by way of amalgamation of a company by the same name (which was also previously known as Forte Erie Duty Free Shoppe Ltd. and Fort Erie Duty Free Shoppe Inc.) and Giving Gallery Inc.
3. The Debtor operates a duty-free shop located near the Peace Bridge. The Debtor leases its operating location from The Buffalo and Fort Erie Public Bridge Authority (the “**Landlord**”).
4. The Monitor retained Thornton Grout Finnigan LLP as its independent legal counsel.
5. RBC initially brought an application for an appointment of a receiver, without security, over all of the assets, undertakings and properties of the Debtor. Pursuant to the Endorsement of the Honourable Justice Pattillo dated December 14, 2021 (the “**December 14th Endorsement**”), the matter with respect to the appointment of a receiver was adjourned to January 17, 2022. Attached as **Appendix “2”** to this Third Report is a copy of the December 14th Endorsement.
6. On January 14, 2022, the Monitor filed its first report (the “**First Report**”) providing the Court with information with respect to the activities of the Monitor and the Company since the issuance of the Appointment Order. Attached as **Appendix “3”** to this Third Report is a copy of the First Report (without appendices).

7. On January 17, 2022, the Honourable Justice Pattillo granted an order (the **“Amended Appointment Order”**) amending the terms of the Appointment Order and ordering, amongst other things, that the relief sought by RBC with respect to the appointment of a receiver be and is adjourned until March 23, 2022 at noon, provided, however that the Debtor satisfies the following conditions at all times:
- a. the Debtor shall continually replenish its inventory to ensure that at no time does the total book value of its inventory go below \$1,175,000;
 - b. the Debtor shall ensure that at no time does the cash balance in the Debtor’s account administered by RBC go below \$850,000 (the **“Minimum Balance”**) and
 - c. the Debtor provides the Monitor and RBC the following information:
 - i. on a bi-weekly basis, an updated projected cash flow statement; and
 - ii. on a monthly basis, an income statement and balance sheet along with a variance analysis disclosing actual results to the projections with an explanation of any variance (collectively, the **“Additional Reporting”**).

Attached as **Appendix “4”** to this Third Report is a copy of the Amended Appointment Order.

8. On March 21, 2022, the Monitor filed its second report (the **“Second Report”**) providing the Court with information with respect to the activities of the Monitor and the Company since the First Report. Attached as **Appendix “5”** to this Third Report is a copy of the Second Report (without appendices).
9. On March 23, 2022, the Honourable Justice Penny granted an order (the **“March 23rd Order”**), among other things, adjourning the relief sought by RBC with respect to the appointment of a receiver to a date on or after June 23, 2022 to be set by the Court. Attached as **Appendix “6”** to this Third Report is a copy of the March 23rd Order.

10. The March 23rd Order also amended the terms of the Amended Appointment Order requiring the establishment of the Minimum Balance as follows:
 - a. the Debtor shall use the sum of \$850,000 in its account administered by RBC to purchase a Guaranteed Investment Certificate for a term of three months (“**GIC**”), which GIC shall be used as additional security by RBC subject to a Cash Collateral Agreement in a form satisfactory to RBC.

II. PURPOSE OF THIS THIRD REPORT AND DISCLAIMER

11. The purpose of this Third Report is to provide the Court with information pertaining to (i) the Monitor’s activities and general updates since the Second Report, and (ii) the Monitor’s comments regarding the potential impact of the Landlord’s request to lift the stay of proceedings on the other creditors of the Debtor.

Restrictions and Disclaimer

12. In preparing this Third Report, the Monitor has relied upon certain information provided to it by the Debtor’s management. The Monitor has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Monitor expresses no opinion or other form of assurance with respect to such information.
13. The cash flow forecast and projections in this Third Report relate to future events and are based on management’s assumptions, which may not remain valid throughout the period of the projections. Consequently, they cannot be relied upon to the same extent as information derived from the reviewed accounts for completed accounting periods. For these reasons, the Monitor expresses no opinion as how closely the actual cash flows achieved will correspond to the projection.
14. This Third Report does not take into account the future impact of COVID-19 on any projection or other assumptions presented by the Debtor to the Monitor. The potential for unknown ramifications on consumers, supply chains, commercial counterparties (both direct and indirect to the Debtor’s operations) and future

decisions that may need to be made as a result of the evolving COVID-19 situation means that the projections and other assumptions may be significantly impacted by COVID-19. The full impact of COVID-19, both on the Debtor's business and in general, is not capable of being qualitatively or quantitatively assessed at this time, and the Monitor has not endeavored to do so in this Third Report.

15. Parties using this Third Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
16. All references to dollars in this Third Report are in Canadian currency unless otherwise noted.

III. ACTIVITIES OF THE MONITOR

17. Since the Second Report, the Monitor undertook the following activities:
 - a. reviewed certain financial information provided by the Debtor;
 - b. reviewed and provided feedback with respect to the Additional Reporting;
 - c. carried out a monitoring program to monitor receipts and disbursements on a regular basis; and
 - d. communicated with RBC's counsel, the Landlord's counsel, the Debtor and the Debtor's counsel with respect to the proceedings.

IV. THE LANDLORD

18. The Monitor has continued to monitor the ongoing dispute between the Debtor and the Landlord and has continued to take no position in respect of the appropriate amount owing by the Debtor to the Landlord under its lease which is the subject of the Dispute.

V. ADDITIONAL REPORTING

19. In accordance with the Amended Appointment Order, the Debtor submitted the following to the Monitor:
 - a. on a bi-weekly basis, an updated projected cash flow statement; and

- b. on a monthly basis, an income statement and balance sheet along with a variance analysis disclosing actual results to the projections with an explanation of any variance.
20. A review of the financial statements as at November 30, 2022 prepared by the Debtor indicates, among other things, that:
- a. the Debtor generated sales of \$9,583,153 for the period from January 1, 2022 to November 30, 2022 as compared to the sales of \$3,107,805 for the period from January 1, 2020 to December 31, 2020 and sales of \$21,317,847 for the period from January 1, 2019 to December 31, 2019, respectively;
 - b. the Debtor collected \$387,108 with respect to rent subsidies and \$265,780 with respect to wage subsidies for the period from January 1, 2022 to November 30, 2022;
 - c. the Debtor paid \$1,916,631 towards rent during the period from January 1, 2022 to November 30, 2022
 - d. the Debtor generated a net profit of \$1,371,970;
 - e. the cash in the Debtor's bank account was \$2,051,488 as at November 30, 2022, subject to potential cash impairments noted in the financial statements; and
 - f. the inventory balance as at November 30, 2022 was \$1,233,684.
21. The Debtor prepared an updated cash flow forecast (the “**Updated Cash Flow Forecast**”) for the period from December 10, 2022 to January 7, 2023 (the “**Forecasted Period**”). The Updated Cash Flow Forecast indicates, among other things, that:
- a. the cash balance is forecasted to stay at or in excess of \$1,130,000 (net of the Minimum Balance) during the Forecasted Period;
 - b. the debtor is forecasting to generate \$975,000 in receipts (sales) during the Forecasted Period; and

- c. the Debtor is forecasted to pay \$210,000 to the Landlord on account of rent during the Forecasted Period.

VI. POTENTIAL IMPACT OF LIFTING OF STAY IN FAVOUR OF ONE CREDITOR

22. The Landlord has sought to lift the stay of proceedings against the Debtor in order to terminate its lease on the basis that the lease is in default in contravention of the Amended Appointment Order. The Debtor has disputed that it is in default of its obligations to the Landlord. The Monitor takes no position on the relief sought by the Landlord or the Debtor's defenses to same.
23. It is the Monitor's position that any lifting of the stay of proceedings should not be granted in favour of one creditor to the exclusion of other creditors. Allowing one creditor to enforce its rights and remedies while continuing to stay the rights and remedies of the Debtor's remaining creditors would create an unfairness and prejudice to those creditors remaining subject to the stay of proceedings. It is the Monitor's position that any lifting of the stay of proceedings to allow any enforcement of rights and remedies against the Debtor should be done in favour of all creditors.

ALL OF WHICH IS RESPECTFULL SUBMITTED.

Dated at Toronto this 3rd day of January, 2023

msi Spergel inc.,
solely in its capacity as Court-appointed Monitor
of Peace Bridge Duty Free Inc. and not in its
personal or corporate capacity

Per:



Mukul Manchanda, CPA, CIRP, LIT

APPENDIX “1”

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

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

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

**ORDER
(appointing Monitor)**

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

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

SERVICE

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

APPOINTMENT

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

3. THIS COURT ORDERS AND DECLARES that:

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

MONITOR'S POWERS

4. THIS COURT ORDERS that the Monitor is hereby empowered and authorized, but not obligated, to act at once and, without in any way limiting the generality of the foregoing, the Monitor is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Monitor considers it necessary or desirable:

- (a) to monitor the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to take physical inventories of the Property as may be necessary or desirable;
- (c) to monitor the business of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including without limitation those conferred by this Order;
- (e) to monitor receipts and disbursements of the Debtor;
- (f) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable; and
- (g) subject to the limitations in section 3 of this Order, to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Monitor.

6. THIS COURT ORDERS that all Persons, including but not limited to Canada Border Services Agency and Canada Revenue Agency, shall be authorized to share information, with the Monitor, provided the Debtor shall be entitled to request and receive copies of all such information from the Monitor.

NO PROCEEDINGS AGAINST THE MONITOR

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH THE MONITOR

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

CONTINUATION OF SERVICES

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

CASL

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

LIMITATION ON THE MONITOR'S LIABILITY

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

MONITOR'S ACCOUNTS

14. THIS COURT ORDERS that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Monitor and counsel to the Monitor shall be entitled to and are hereby granted a charge (the "Monitor's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings limited to the amount of \$100,000, and that the Monitor's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

16. THIS COURT ORDERS that prior to the passing of its accounts, the Monitor shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Monitor or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

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

website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "Rules") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

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

GENERAL

19. THIS COURT ORDERS that exhibit N will be removed from the Affidavit of Jim Pearce as filed and the Debtor shall file a copy of that exhibit with the Court in a sealed envelope which shall be sealed until a further order of this court. Parties to the Service List in possession of that Exhibit as served shall treat it as sealed by this court, pending a further order of this court..

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

21. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as a trustee in bankruptcy of the Debtor.

22. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this

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

23. THIS COURT ORDERS that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

24. THIS COURT ORDERS that RBC shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of RBC's security or, if not so provided by RBC's security, then on a substantial indemnity basis to be paid by the Monitor from the Debtor's estate with such priority and at such time as this Court may determine.

25. THIS COURT ORDERS that any interested party, including without limitation the Debtor, may apply to this Court to vary or amend this Order or discharge the Monitor on not less than seven (7) days' notice to the Monitor, the Debtor, the Applicant and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

26. THIS COURT ORDERS that the application is otherwise adjourned to January 17, 2022 at 2 pm.



ROYAL BANK OF CANADA

- and -

PEACE BRIDGE DUTY FREE INC.

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER
(appointing Monitor)

AIRD & BERLIS LLP
Barristers and Solicitors
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Lawyers for Royal Bank of Canada

APPENDIX “2”

Court File Number: CV - 21 - 00673084 - 0001

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Royal Bank of Canada

Plaintiff(s)

AND

App.

Peace Bridge Duty Free Inc.

Defendant(s)

Resp.

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No:	Facsimile No:
S. Mitra & J. Newers - for RBC		
D. Wilman, A. Todorescu & A. Leigh - for Resp.		
P. Shea & C. Stanek - for the Bridge Authority		

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

☐ Adjourned to: _____

☐ Time Table approved (as follows): _____

On the consent of the parties, the matter is adjourned to January 17, 2022 at 2pm (1 hr.) before me. In the interim and as agreed by the parties, Msi Spengel is appointed as monitor of the Respondent, without security, pursuant to s. 101 of the Courts of Justice Act.

Exhibit N to the Respondent's affidavit contains confidential commercial information of the Respondent. I am satisfied it should be sealed based on the test in Sherman Estate.

Order signed by me.

Dec 14, 2021

Date

[Signature]

Judge's Signature

☐ Additional Pages _____

APPENDIX “3”

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

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

**FIRST REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE COURT-APPOINTED MONITOR OF
PEACE BRIDGE DUTY FREE INC.**

January 14, 2022

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1. The Appointment Order
2. December 14, 2021 Endorsement of the Honourable Justice Pattillo
3. Copy of the rent schedule received from the Landlord's counsel
4. The Draft Amended Appointment Order

CONFIDENTIAL APPENDICES

1. The Updated Cash Flow Forecast

I. APPOINTMENT AND BACKGROUND

1. This first report (this “**First Report**”) is filed by msi Spergel inc. (“**Spergel**”) in its capacity as the Court-appointed monitor (in such capacity, the “**Monitor**”) of Peace Bridge Duty Free Inc. (the “**Debtor**”). Pursuant to section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43, as amended (the “**CJA**”), Spergel was appointed as the Monitor, without security, of the Debtor by Order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 14, 2021 (the “**Appointment Order**”). The Appointment Order was made upon the application of the Debtor’s general secured creditor, Royal Bank of Canada (“**RBC**”). Attached as **Appendix “1”** to this First Report is a copy of the Appointment Order.
2. The Debtor was formed on March 1, 2012 by way of amalgamation of a company by the same name (which was also previously known as Forte Erie Duty Free Shoppe Ltd. and Fort Erie Duty Free Shoppe Inc.) and Giving Gallery Inc.
3. The Debtor operates a duty-free shop located near the Peace Bridge. The Debtor leases its operating location (the “**Premises**”) from The Buffalo and Fort Erie Public Bridge Authority (the “**Landlord**”).
4. The Monitor retained Thornton Grout Finnigan LLP (the “**Monitor’s Counsel**”) as its independent legal counsel.
5. RBC initially brought an application for an appointment of a receiver, without security, over all of the assets, undertakings and properties of the Debtor (the “**Property**”). Pursuant to the Endorsement of the Honourable Justice Pattillo dated December 14, 2021 (the “**Endorsement**”) the matter with respect to the appointment of a receiver was adjourned to January 17, 2022 (the “**Return Date**”). Attached as **Appendix “2”** to this First Report is a copy of the Endorsement. The Monitor understands that the Debtor intends to seek a further adjournment of the matter on the Return Date on certain terms that have been agreed to between RBC and the Debtor.

II. PURPOSE OF THIS FIRST REPORT AND DISCLAIMER

6. The purpose of this First Report is to advise the Court as to the developments that have occurred in these proceedings since the Monitor's appointment.

Restrictions and Disclaimer

7. In preparing this First Report, the Monitor has relied upon certain information provided to it by the Debtor's management. The Monitor has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Monitor expresses no opinion or other form of assurance with respect to such information.
8. The cash flow forecast and projections in this First Report relate to future events and are based on management's assumptions, which may not remain valid throughout the period of the projections. Consequently, they cannot be relied upon to the same extent as information derived from the reviewed accounts for completed accounting periods. For these reasons, the Monitor expresses no opinion as how closely the actual cash flows achieved will correspond to the projection.
9. This First Report does not take into account the future impact of COVID-19 on any projection or other assumptions presented by the Debtor to the Monitor. The potential for unknown ramifications on consumers, supply chains, commercial counterparties (both direct and indirect to the Debtor's operations) and future decisions that may need to be made as a result of the evolving COVID-19 situation means that the projections and other assumptions may be significantly impacted by COVID-19. The full impact of COVID-19, both on the Debtor's business and in general, is not capable of being qualitatively or quantitatively assessed at this time, and the Monitor has not endeavored to do so in this First Report.
10. Parties using this First Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.

11. All references to dollars in this First Report are in Canadian currency unless otherwise noted.

III. ACTIVITIES OF THE MONITOR

12. Immediately upon the appointment, the Monitor undertook the following activities:
- a. attended a meeting with the principals of the Debtor at the Premises and took a tour and photographs of the Premises;
 - b. reviewed certain financial information provided by the Debtor, including but not limited to:
 - i. audited financial statements as at December 31, 2020;
 - ii. an inventory listing as at December 19, 2021 including identification of goods received within 30 days of the date of the inventory listing;
 - iii. bank statements for the last twenty-four months;
 - iv. aged accounts payable listing as at December 19, 2021; and
 - v. information with respect to amounts outstanding, if any, to Canada Revenue Agency in relation to source deductions and sales tax.
 - c. developed and carried out a monitoring program to monitor receipts and disbursements on a go-forward basis;
 - d. communicated with RBC's counsel, the Landlord's counsel, the Debtor and the Debtor's counsel with respect to the proceedings; and
 - e. reviewed and provided feedback with respect to the Updated Cash Flow Forecast (as defined herein);

IV. THE LANDLORD

13. On January 6, 2022 the Monitor's Counsel sent an email to the counsel of the Landlord requesting: a) a statement of the amount of rent outstanding together with any interest and penalties; b) the amount of the current obligations and the rent currently being paid monthly by the Debtor; and c) the rate of interest related

to the arrears. A copy of the rent schedule received from the Landlord is attached to this First Report as **Appendix “3”**.

14. The Debtor continues to dispute the amounts claimed by the Landlord in respect of rental arrears and current rent owing. The Monitor has been advised by the Debtor that it has presented a proposal to the Landlord and is continuing to attempt to negotiate a resolution with the Landlord but has not been successful. The Monitor has not been party to those discussions and has not been provided with a copy of the proposal.

V. CASH FLOW FORECAST

15. The Debtor has prepared an updated cash flow forecast (the “**Updated Cash Flow Forecast**”) for the period from January 3, 2022 to March 19, 2022 (the “**Forecasted Period**”). A copy of the Updated Cash Flow Forecast is attached to this First Report as **Confidential Appendix “1”**. The Debtor is seeking a continuation of the sealing order in respect of the Updated Cash Flow Forecast as it contains commercially sensitive information, the release of which would be prejudicial to the Debtor and the stakeholders of the Debtor should this proceeding be terminated.
16. The Updated Cash Flow Forecast indicates, among other things, that:
 - a. the cash balance is forecasted to remain at or in excess of \$858,000 during the Forecasted Period;
 - b. the Debtor is forecasting to generate \$1,130,000 in receipts (sales) during the Forecasted Period;
 - c. the Debtor continues to be eligible for the rent and wage subsidy programs and during the Forecasted Period is forecasting to collect \$140,000 and \$205,000 from wage and rent subsidy programs, respectively;
 - d. the Debtor is forecasted to pay \$290,000 to the Landlord on account of rent during the Forecasted Period; and

- e. the book value of inventory is forecasted to remain at or in excess of \$1,178,000 during the Forecasted Period.

VI. ADJOURNMENT

- 17. The Debtor intends to seek a further adjournment on the Return Date of the receivership application. To that end, the Monitor has been provided with a copy of a draft amended Appointment Order (the “**Draft Amended Appointment Order**”) agreed upon between RBC and the Debtor. The Draft Amended Appointment Order provides terms upon which RBC would agree to the adjournment and provides for, among other things,
 - a. additional powers to the Monitor including, but not limited to, the power:
 - i. to report to the Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property or the business of the Debtor and such other matters as may be relevant to the proceedings; and
 - ii. to monitor and report on the status of negotiations between the Debtor and the Landlord.
 - b. that the Debtor shall continually replenish its inventory to ensure that at no time the total book value of its inventory drops below \$1,175,000;
 - c. that the Debtor shall ensure that at no time does the cash balance in the Debtor’s account administered by RBC (the “**Account**”) go below \$850,000 (the “**Minimum Balance**”);
 - d. the Debtor provides the Monitor and RBC the following information:
 - i. on a bi-weekly basis, an updated projected cash flow statement; and
 - ii. on a monthly basis, an income statement and balance sheet along with a variance analysis disclosing actual results to the projections with an explanation of any variance.
 - e. that RBC be authorized to place a hold on the Account in the amount of the Minimum Balance.

18. A copy of the Draft Amended Appointment Order is attached to this First Report as **Appendix “4”**.
19. A copy of the Draft Amended Appointment Order was provided to counsel for the Landlord on January 13, 2022.

msi Spergel inc.,
solely in its capacity as Court-appointed Monitor
of Peace Bridge Duty Free Inc. and not in its
personal or corporate capacity

Per:

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

Mukul Manchanda, CPA, CIRP, LIT

APPENDIX “4”

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

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

THE HONOURABLE
JUSTICE PATTILLO

)
)
)

MONDAY, THE 17TH
DAY OF JANUARY, 2022

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

**AMENDED ORDER
(appointing Monitor)**

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

ON READING the affidavit of Christopher Schulze sworn December 2, 2021 and the exhibits thereto, and the affidavit of Jim Pearce sworn December 12, 2021 (the "**Pearce Affidavit**") and the exhibits thereto, and on hearing the submissions of counsel for RBC, the Debtor, the Buffalo and Fort Erie Public Bridge Authority (the "**Authority**") and such other counsel as were present, no one appearing for any other stakeholder although duly served as

appears from the affidavit of service of Eunice Baltkois sworn December 3, 2021, and on reading the consent of Spergel to act as the Monitor,

SERVICE

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

APPOINTMENT

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

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

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

MONITOR'S POWERS

4. **THIS COURT ORDERS** that the Monitor is hereby empowered and authorized, but not obligated, to act at once and, without in any way limiting the generality of the foregoing, the Monitor is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Monitor considers it necessary or desirable:

- (a) to monitor the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to take physical inventories of the Property as may be necessary or desirable;
- (c) to monitor the business of the Debtor;
- (d) to report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property or the business of the Debtor and such other matters as may be relevant to the proceedings herein;
- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including without limitation those conferred by this Order;
- (f) to monitor receipts and disbursements of the Debtor;
- (g) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;

- (h) to monitor and report on the status of negotiations between the Debtor and the Authority; and
- (i) subject to the limitations in section 3 of this Order, to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Monitor.

6. **THIS COURT ORDERS** that all Persons, including but not limited to Canada Border Services Agency and Canada Revenue Agency, shall be authorized to share information, with the Monitor, provided the Debtor shall be entitled to request and receive copies of all such information from the Monitor.

NO PROCEEDINGS AGAINST THE MONITOR

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Monitor or affecting the Property are hereby stayed and suspended except with the written consent of the Monitor or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE MONITOR

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

CONTINUATION OF SERVICES

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

CASL

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

LIMITATION ON THE MONITOR'S LIABILITY

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

MONITOR'S ACCOUNTS

14. **THIS COURT ORDERS** that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements by the Debtor upon presentation of such accounts to the Debtor, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Monitor and counsel to the Monitor shall also be entitled to and are hereby granted a charge (the "**Monitor's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings limited to the amount of \$100,000, and that the Monitor's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

16. **THIS COURT ORDERS** that prior to the passing of its accounts, the Monitor shall be at liberty to apply the monies received from the Debtor pursuant to paragraph 14 of this Order against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Monitor or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

17. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

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

GENERAL

19. **THIS COURT ORDERS** that exhibit N will be removed from the Pearce Affidavit as filed and the Debtor shall file a copy of that exhibit with the Court in a sealed envelope which shall be sealed until a further order of this Court. Parties to the Service List in possession of that exhibit as served shall treat it as sealed by this Court, pending a further order of this Court.

20. **THIS COURT ORDERS** that Confidential Appendix “1” to the First Report of the Monitor, dated January 14, 2022 shall be sealed and kept confidential pending further order of this Court.

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

22. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as a trustee in bankruptcy of the Debtor.

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

24. **THIS COURT ORDERS** that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

25. **THIS COURT ORDERS** that RBC shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of RBC’s security or, if not so provided by RBC’s security, then on a substantial indemnity basis to be paid by the Debtor with such priority and at such time as this Court may determine.

26. **THIS COURT ORDERS** that the balance of the relief sought by RBC in this application be and is adjourned until March 23, 2022 at noon (one-hour hearing), provided, however that the Debtor satisfies the following conditions at all times:

- (a) the Debtor shall continually replenish its inventory to ensure that at no time does the total book value of its inventory go below \$1,175,000;
- (b) the Debtor shall ensure that at no time does the cash balance in the Debtor's account administered by RBC (the "**Account**") go below \$850,000 (the "**Minimum Balance**"); and
- (c) the Debtor provides the Monitor and RBC the following information:
 - (i) on a bi-weekly basis, an updated projected cash flow statement; and
 - (ii) on a monthly basis, an income statement and balance sheet along with a variance analysis disclosing actual results to the projections with an explanation of any variance.

27. **THIS COURT ORDERS** that RBC be and is hereby authorized to place a hold on the Account in the amount of the Minimum Balance.

28. **THIS COURT ORDERS** that any interested party, including, without limitation, RBC and the Debtor, may apply to this Court to vary or amend this Order or discharge the Monitor on not less than seven (7) days' notice to the Monitor, the Debtor, RBC and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ROYAL BANK OF CANADA

- and -

PEACE BRIDGE DUTY FREE INC.

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AMENDED ORDER
(appointing Monitor)

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Lawyers for Royal Bank of Canada

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47156399.2

47196914.2

APPENDIX “5”

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

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

**SECOND REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE COURT-APPOINTED MONITOR OF
PEACE BRIDGE DUTY FREE INC.**

March 21, 2022

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APPENDICES

1. The Appointment Order
2. December 14, 2021 Endorsement of the Honourable Justice Pattillo
3. First Report of the Monitor (without appendices)
4. The Amended Appointment Order
5. Fee Affidavit of Mukul Manchanda, sworn March 21, 2022
6. Fee Affidavit of Leanne Williams, sworn March 21, 2022
7. The Draft Amended Appointment Order

CONFIDENTIAL APPENDICES

1. The Updated Cash Flow Forecast

I. APPOINTMENT AND BACKGROUND

1. This second report (this “**Second Report**”) is filed by msi Spergel inc. (“**Spergel**”) in its capacity as the Court-appointed monitor (in such capacity, the “**Monitor**”) of Peace Bridge Duty Free Inc. (the “**Debtor**”). Pursuant to section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43, as amended (the “**CJA**”), Spergel was appointed as the Monitor, without security, of the Debtor by Order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 14, 2021 (the “**Appointment Order**”). The Appointment Order was made upon the application of the Debtor’s general secured creditor, Royal Bank of Canada (“**RBC**”). Attached as **Appendix “1”** to this Second Report is a copy of the Appointment Order.
2. The Debtor was formed on March 1, 2012 by way of amalgamation of a company by the same name (which was also previously known as Forte Erie Duty Free Shoppe Ltd. and Fort Erie Duty Free Shoppe Inc.) and Giving Gallery Inc.
3. The Debtor operates a duty-free shop located near the Peace Bridge. The Debtor leases its operating location (the “**Premises**”) from The Buffalo and Fort Erie Public Bridge Authority (the “**Landlord**”).
4. The Monitor retained Thornton Grout Finnigan LLP (the “**Monitor’s Counsel**”) as its independent legal counsel.
5. RBC initially brought an application for an appointment of a receiver, without security, over all of the assets, undertakings and properties of the Debtor (the “**Property**”). Pursuant to the Endorsement of the Honourable Justice Pattillo dated December 14, 2021 (the “**Endorsement**”) the matter with respect to the appointment of a receiver was adjourned to January 17, 2022. Attached as **Appendix “2”** to this Second Report is a copy of the Endorsement.
6. On January 14, 2022, the Monitor filed its first report (the “**First Report**”) providing the Court with information with respect to the activities of the Monitor and the Company since the issuance of the Appointment Order. Attached as **Appendix “3”** to this Second Report is a copy of the First Report (without appendices).

7. On January 17, 2022, the Honourable Justice Pattillo granted an order (the “**Amended Appointment Order**”) amending the terms of the Appointment Order and ordering, amongst other things, that the relief sought by RBC with respect to the appointment of a receiver be and is adjourned until March 23, 2022 at noon (the “**Return Date**”), provided, however that the Debtor satisfies the following conditions at all times:
- a. the Debtor shall continually replenish its inventory to ensure that at no time does the total book value of its inventory go below \$1,175,000;
 - b. the Debtor shall ensure that at no time does the cash balance in the Debtor’s account administered by RBC go below \$850,000 (the “**RBC Holdback**”); and
 - c. the Debtor provides the Monitor and RBC the following information:
 - i. on a bi-weekly basis, an updated projected cash flow statement; and
 - ii. on a monthly basis, an income statement and balance sheet along with a variance analysis disclosing actual results to the projections with an explanation of any variance (collectively, the “**Additional Reporting**”).

Attached as **Appendix “4”** to this Second Report is a copy of the Amended Appointment Order.

8. The Monitor understands that the Debtor intends to seek a further adjournment of the matter on the Return Date on certain terms that have been agreed to between RBC and the Debtor.

II. PURPOSE OF THIS SECOND REPORT AND DISCLAIMER

9. The purpose of this Second Report is to provide the Court with information pertaining to (i) the Monitor’s activities and general updates since the First Report, and (ii) the Monitor’s comments regarding the Updated Cash Flow Forecast (as defined herein); and to seek the approval of (a) the fees and disbursements of the Monitor and the Monitor’s Counsel for the period to and including January 31,

2022, and (b) the activities of the Monitor contained in the First Report and this Second Report.

Restrictions and Disclaimer

10. In preparing this Second Report, the Monitor has relied upon certain information provided to it by the Debtor's management. The Monitor has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Monitor expresses no opinion or other form of assurance with respect to such information.
11. The cash flow forecast and projections in this Second Report relate to future events and are based on management's assumptions, which may not remain valid throughout the period of the projections. Consequently, they cannot be relied upon to the same extent as information derived from the reviewed accounts for completed accounting periods. For these reasons, the Monitor expresses no opinion as how closely the actual cash flows achieved will correspond to the projection.
12. This Second Report does not take into account the future impact of COVID-19 on any projection or other assumptions presented by the Debtor to the Monitor. The potential for unknown ramifications on consumers, supply chains, commercial counterparties (both direct and indirect to the Debtor's operations) and future decisions that may need to be made as a result of the evolving COVID-19 situation means that the projections and other assumptions may be significantly impacted by COVID-19. The full impact of COVID-19, both on the Debtor's business and in general, is not capable of being qualitatively or quantitatively assessed at this time, and the Monitor has not endeavored to do so in this Second Report.
13. Parties using this Second Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.

14. All references to dollars in this Second Report are in Canadian currency unless otherwise noted.

III. ACTIVITIES OF THE MONITOR

15. Since the First Report, the Monitor undertook the following activities:
- a. reviewed certain financial information provided by the Debtor;
 - b. reviewed and provided feedback with respect to the Additional Reporting;
 - c. carried out a monitoring program to monitor receipts and disbursements on a regular basis;
 - d. communicated with RBC's counsel, the Landlord's counsel, the Debtor and the Debtor's counsel with respect to the proceedings; and
 - e. reviewed and provided feedback with respect to the Updated Cash Flow Forecast;

IV. THE LANDLORD

16. The Monitor has been advised by counsel for the Debtor that there have been no further direct discussions between the Debtor and the Landlord or its counsel. Monitor's Counsel has also been advised that neither the Debtor nor its counsel have received any communication from the Landlord or its counsel in respect of the Return Date.

V. CASH FLOW FORECAST

17. The Debtor has prepared an updated cash flow forecast (the "**Updated Cash Flow Forecast**") for the period from March 13, 2022 to June 25, 2022 (the "**Forecasted Period**"). A copy of the Updated Cash Flow Forecast is attached to this Second Report as **Confidential Appendix "1"**. The Debtor is seeking a continuation of the sealing order in respect of the Updated Cash Flow Forecast as it contains commercially sensitive information, the release of which would be prejudicial to the Debtor and the stakeholders of the Debtor should this proceeding be terminated.
18. The Updated Cash Flow Forecast indicates, among other things, that:

- a. The RBC Holdback will be converted to a Guaranteed Investment Certificate (“**GIC**”) assuming the order sought on the Return Date is granted by the Court;
- b. the cash balance is forecasted to remain at or in excess of \$389,000 (net of the RBC Holdback) during the Forecasted Period;
- c. the Debtor is forecasting to generate \$2,425,000 in receipts (sales) during the Forecasted Period;
- d. the Debtor continues to be eligible for the rent and wage subsidy programs and during the Forecasted Period is forecasting to collect \$187,000 and \$105,000 from wage and rent subsidy programs, respectively;
- e. the Debtor is forecasted to pay \$424,000 to the Landlord on account of rent during the Forecasted Period; and
- f. the book value of inventory is forecasted to remain at or in excess of \$1,236,000 during the forecasted period.

VI. FEES AND DISBURSEMENTS OF THE MONITOR

19. The Monitor and the Monitor’s Counsel have maintained detailed records of the professional time and costs incurred since the Appointment Order was granted on December 14, 2021. Pursuant to the Appointment Order, the Court granted the Monitor’s Charge (as defined in the Appointment Order) in the amount of \$100,000 to secure the fees and disbursements of the Monitor and the Monitor’s Counsel.
20. The total fees of the Monitor during the period to and including January 31, 2022 are set out in the affidavit of Mukul Manchanda (the “**Manchanda Affidavit**”), sworn March 21, 2022 in support hereof, a copy of which is attached hereto as **Appendix “5”**. As set out in the Monitor’s Fee Affidavit, the Monitor’s fees incurred to and including January 31, 2022 are \$31,020.70 (inclusive of taxes and disbursements).
21. The total legal fees incurred by the Monitor for services provided by the Monitor’s Counsel during the period to and including January 31, 2022 are set out in the

affidavit of Leanne Williams (the “**Williams Affidavit**”), sworn March 21, 2022, in support hereof, a copy of which is attached hereto as **Appendix “6”**. As set out in the Williams affidavit, the legal fees incurred up to and including January 31, 2022 are \$17,418.62 (inclusive of taxes and disbursements).

22. The Monitor is of the view that these accounts are reasonable in the circumstances and respectfully requests that the Court approve its fees and disbursements those of its legal counsel.

VII. ADJOURNMENT

23. The Debtor intends to seek a further adjournment on the Return Date of the receivership application. To that end, the Monitor has been provided with a copy of a draft order amending the Amended Appointment Order (the “**Draft Amended Appointment Order**”) agreed upon between RBC and the Debtor. The Draft Amended Appointment Order provides terms upon which RBC would agree to the adjournment and provides for, subject to the terms of the Amended Appointment Order,
- a. that the requirement of the RBC Holdback be deleted and replaced with the following:
- i. the Debtor shall use the RBC holdback to purchase a GIC for a term of three months, which GIC shall be used as additional security by RBC subject to a Cash Collateral agreement in a form satisfactory to RBC.
24. A copy of the Draft Amended Appointment Order is attached to this Second Report as **Appendix “7”**.
25. A copy of the Draft Amended Appointment Order was provided to counsel for the Landlord on March 21, 2022.

Dated at Toronto this 21st day of March, 2022

msi Spergel inc.,
solely in its capacity as Court-appointed Monitor
of Peace Bridge Duty Free Inc. and not in its
personal or corporate capacity

Per:

A handwritten signature in black ink, appearing to read 'Mukul', written in a cursive style.

Mukul Manchanda, CPA, CIRP, LIT

APPENDIX “6”

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

THE HONOURABLE MR.

)

WEDNESDAY, THE 23rd

JUSTICE PENNY

)

DAY OF MARCH, 2022

)

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

ORDER

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

ON READING the affidavit of Christopher Schulze sworn December 2, 2021 and the exhibits thereto, the affidavit of Jim Pearce sworn December 12, 2021 and the exhibits thereto and the Second Report of the Monitor dated March 21, 2022 and the appendices thereto (the "**Second Report**"), and on hearing the submissions of counsel for RBC, the Monitor, the Debtor, the Buffalo and Fort Erie Public Bridge Authority (the "**Authority**") and such other counsel as

were present, no one appearing for any other stakeholder although duly served as appears from the affidavit of service of Eunice Baltkois sworn December 3, 2021,

1. **THIS COURT ORDERS** that the balance of the relief sought by RBC in its application be and is hereby adjourned to a date on or after June 23, 2022 to be set by the Court, subject to the terms of the Amended Order (Appointing Monitor) of The Honourable Mr. Justice Pattillo dated January 17, 2022 (the “**Amended Order**”), which is further amended as follows:

(a) the requirement to establish a Minimum Balance (as defined at paragraph 26(b) of the Amended Order) be and is hereby deleted and replaced with the following:

(b) the Debtor shall use the sum of \$850,000 in its account administered by RBC to purchase a Guaranteed Investment Certificate for a term of three months (“**GIC**”), which GIC shall be used as additional security by RBC subject to a Cash Collateral Agreement in a form satisfactory to RBC.


2. **THIS COURT ORDERS** that paragraph 27 of the Amended Order be and is hereby deleted.

3. **THIS COURT ORDERS** that the First Report of the Monitor dated January 14, 2022, the Second Report and the activities, decisions, and conduct of the Monitor as set out therein are hereby authorized and approved.

4. **THIS COURT ORDERS** that the professional fees and disbursements of the Monitor for the period to January 31, 2022, in the amount of \$27,452.00 and Harmonized Sales Tax (“**HST**”) of \$3,568.76, for a total of \$31,020.76, as further set out in the Second Report and the Manchanda Affidavit, are hereby approved.

5. **THIS COURT ORDERS** that the professional fees and disbursements of Thornton Grout Finnigan LLP, counsel to the Monitor, for the period January 31, 2022, in the amount of \$15,410.00, plus disbursements in the amount of \$5.32, and HST of \$2,003.30, for a total of \$17,418.62, as further set out in the Second Report and the Williams Affidavit, are hereby approved.

6. **THIS COURT ORDERS** that the cash flow forecast appended to the Second Report be sealed, kept confidential and not form part of the public record, but rather be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice which sets out the title of these proceedings and a statement that the contents are subject to a sealing order.

 3.

ROYAL BANK OF CANADA

- and -

PEACE BRIDGE DUTY FREE INC.

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER

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