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**NOTICE OF INTENT
TO SUBMIT A CLAIM TO ARBITRATION
UNDER SECTION B OF CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT**

DETROIT INTERNATIONAL BRIDGE COMPANY

Investor

v.

GOVERNMENT OF CANADA

Party

Pursuant to the North American Free Trade Agreement ("NAFTA"), the Investor, **DETROIT INTERNATIONAL BRIDGE CO.**, delivers a Notice of Intent to Submit a Claim to Arbitration for breach of Canada's obligations under Chapter Eleven of the NAFTA.

A. NAME AND ADDRESS OF THE INVESTOR

Detroit International Bridge Company
P.O. Box 32666
Detroit, Michigan 48232

B. INVESTMENT

Canadian Transit Company
4285 Industrial Drive
Windsor, ON N9C 3R9

C. BREACH OF OBLIGATIONS

On April 25, 2007, Canada enacted the International Bridges and Tunnels Act ("IBTA"). The Investor takes the position that the IBTA does not apply to it or to its investments. The government of Canada however has recently taken the position that the IBTA applies to the Investor and its Investments. In the event that the IBTA is held applicable to the Investor or its Investments, the Government of Canada has breached its obligations under Section A of Chapter 11 of the NAFTA, including, but not limited to, the following provisions:

Article 1102 - National Treatment
Article 1105 - International Law Standards of Treatment
Article 1110 - Expropriation

The applicable provisions of the NAFTA include, but are not limited to the following:

Article 1102: National Treatment

1. *Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*
2. *Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*
3. *The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.*

Article 1105: Minimum Standard of Treatment

1. *Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.*
2. *Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.*
3. *Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).*

Article 1110: Expropriation and Compensation

1. *No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:*

- (a) *for a public purpose;*
 - (b) *on a non-discriminatory basis;*
 - (c) *in accordance with due process of law and Article 1105(1); and*
 - (d) *on payment of compensation in accordance with paragraphs 2 through 6.*
2. *Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.*
3. *Compensation shall be paid without delay and be fully realizable.*
4. *If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.*
5. *If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.*
6. *On payment, compensation shall be freely transferable as provided in Article 1109.*
7. *This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).*
8. *For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.*

D. FACTUAL BASIS OF THE CLAIM

1. The claim arises out of the arbitrary and unfair application of measures by the Government of Canada related to the Investor's ownership, management, conduct and control of the Ambassador Bridge that spans the international boundary between Canada and the United States, connecting the cities of Windsor, Ontario and Detroit, Michigan.
2. The Ambassador Bridge is an international toll bridge across the Detroit River and includes customs plazas, approach roads and other facilities on both sides of the border. The Ambassador Bridge is the busiest crossing between the United States and Canada facilitating more than 27% of annual trade between the two countries.¹ It was designed, constructed and operated by private owners since its inception.
3. Through legislative and regulatory measures, Canada has used or attempted to use its domestic law to unilaterally terminate, alter or interfere with the exercise of vested rights granted to the Investor and its investment in treaties and contracts entered into by Canada, legislation enacted by Canada and the United States, and agreements and judgements to which Canada is a party. Canada's measures are an unfair and discriminatory legislative regime targeted against the Investor and its investment.
4. Canada's measures, if they have the effect that Canada contends that they have, have unfairly and permanently harmed the management, operation and control exercised by the Investor over essential aspects of its investment including restricting the revenues that the

¹ US Department of Transportation, Federal Highway Administration, http://ops.fhwa.dot.gov/freight/freight_analysis/ambass_brdg/ambass_brdge_ovrw.htm, date accessed: January 21, 2010.

Investment can charge, restricting the Investor's ability to alienate its investment in Canada and constraining its ability to expand or manage its investment in its bridge and associated border-related activities. Such actions are arbitrary, unfair and discriminatory and constitute a substantial interference with the Investments contrary to the obligations contained in Section A of NAFTA Chapter Eleven.

5. Canada's legislative scheme is also administered in an arbitrary and discriminatory manner that favors the Investor's competitors and allows them to benefit and to abuse procedures to the detriment of the Investor and its Investments.

The Disputing Parties

The Investor

6. The Investor, Detroit International Bridge Company, ("DIBC") is a company established under the laws of the State of Michigan. DIBC is the owner and operator of the Ambassador Bridge, an international bridge that spans the Detroit River between Detroit, Michigan and Windsor, Ontario. DIBC is the successor to the American Transit Company, original owner of the U.S. half of the Ambassador Bridge, and currently owns the American half of the Ambassador Bridge. DIBC is thereby an enterprise of a NAFTA Party, as defined by NAFTA Article 201 and the enterprise owns investments in Canada.
7. The Investor was organized on June 20, 1921, under Act No. 84, Pub. Acts 1921 for the purpose of "constructing, owning and/or operating a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, [now Windsor], Province of Ontario, Canada."

8. DIBC owns a number of investments in Canada. These investments include the shares in Canadian Transit Company ("CTC"), a federal Canadian company created by a special act of Parliament. CTC owns that part of the Ambassador Bridge located within the territory of Canada. These assets constitute real and other property, tangible and intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes and interests arising from the commitment of capital in the territory of Canada to economic activity in such territory. As a result, DIBC is an investor of the United States of America with an investment within the territory of Canada in accordance with NAFTA Article 1139.

Canada

9. Canada is a Party to the NAFTA. The claim arises out of measures adopted and maintained by the federal government of Canada, namely the *International Bridges and Tunnels Act* and associated regulatory and other measures. This legislation received Royal Assent on February 1, 2007 and came into force on April 25, 2007.

The Investment

10. On January 11, 1909, the United States and Great Britain signed the *Boundary Waters Treaty Act* of 1909 ("*Boundary Waters Treaty*") to govern boundary water issues between the United States and Canada". The purpose of the *Boundary Waters Treaty* is to settle all questions:

pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereinafter arise, have resolved to conclude a treaty in furtherance of these ends.²

The United States Senate ratified the *Boundary Waters Treaty* on March 3, 1910, with a revision from the provisions that had been preliminarily approved between the High Contracting Parties on January 11, 1910, as an Imperial Treaty (a treaty made by the United Kingdom on behalf of Canada).

11. Canada had not yet achieved its independence in the area of foreign policy from Great Britain at the time that the *Boundary Waters Treaty* was enacted and did not achieve foreign policy independence until 1931. Great Britain accepted the US revision and ratified the *Boundary Waters Treaty* on March 31, 1910.
12. The U.S. ratified the *Boundary Waters Treaty* the next day on April 1, 1910. The ratifications by the government of the United States and that of Great Britain were exchanged in Washington on May 5, 1910.
13. Article XIII of the *Boundary Waters Treaty* provides that if the United States and Canada adopt concurrent or reciprocal legislation on a boundary issue, then the legislation forms a special agreement, just as if it were an agreement between the High Contracting Parties of the United States and Great Britain:

In all cases where special agreements between the High Contracting Parties hereto are referred to in the foregoing articles, such agreements are understood and intended to include not only mutual

² *Boundary Waters Treaty* (1909), Introduction.

agreement between the High Contracting Parties, but also any mutual arrangement between the United States and the Dominion of Canada expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of the Dominion.³

14. The United States and Canada both enacted reciprocal legislation to authorize the construction, ownership, and operation of the Ambassador Bridge and thereby formed a special agreement under the *Boundary Waters Treaty*.
15. As an Imperial Treaty, the *Boundary Waters Treaty* was governed by section 132 of the *Constitution Act, 1867*. Other laws of Canada and its provinces were subordinate to the *Boundary Waters Treaty* through its implementation by the Canadian Parliament on May 19, 1911. The legislation stated:

2. The laws of Canada and of the several provinces thereof are hereby amended and altered so as to permit, authorize and sanction the performance of the obligations undertaken by His Majesty in and under the said treaty; and so as to sanction, confer and impose the various rights, duties and disabilities intended by the said treaty to be conferred or imposed or to exist within Canada.⁴

16. Starting in 1921, Canada enacted legislation to grant to CTC, and subsequently thereby DIBC, its sovereign franchise to acquire land and water rights for bridge approaches and to construct, own and operate the Ambassador Bridge. Specifically, the Canadian Parliament created The Canadian Transit Company by a *Special Act of Parliament*. It was later amended in 1922 and 1927 (collectively referred to as the “*Special Act*”). The legislation granted to it the franchise to:

³ *Boundary Waters Treaty*, Article XIII. British Treaty Series No. 1910/23. Enacted in Canada by *An Act to the establishment and expenses of the International Joint Commission under the Waterways Treaty of January 11, 1909*. 1911 1 2 Geo. V., v. I-II, p. 245 annexed as schedule to Act (chap. 28).

⁴ *An Act to the establishment and expenses of the International Joint Commission under the Waterways Treaty of January 11, 1909*. 1911 Geo. V., v. I - II, ch. 28, s. 2

construct, maintain, and operate a railway and general traffic bridge across the Detroit River from some convenient point, at or near Windsor in the province of Ontario, to the opposite side of the river in the state of Michigan...with all necessary approaches, terminal facilities, machinery and appurtenances required for the said bridge.⁵

17. The 1921 *Special Act* declared that "[t]he works and undertaking of the Company [CTC] are declared to be for the general advantage of Canada", such that CTC's rights are immune from challenge, prohibition, or modification by the provincial or municipal governments in Canada.⁶ By this Act, CTC was also granted the right to construct and own all necessary approaches for a bridge to exercise CTC's franchise:

- (d) and the Company shall construct as part of the said bridge a way for general traffic purposes for the passage of pedestrians, carriages, cars and vehicles propelled or drawn by any motive power, and may make by-laws, rules and regulations for the management, control and use of the said way;
- (e) and the Company may purchase, lease or otherwise acquire and hold lands for the bridge . . . terminal yards, accommodation works and facilities, and construction and erect and maintain buildings and other structures required for the convenient working of traffic to, from and over the said bridge.⁷

The 1921 *Special Act* made it clear that the right to build, own, maintain, and operate the bridge included in its definition all land and accessories that are need by CTC and the bridge:

⁵ *An Act to Incorporate The Canadian Transit Company*, 11-12 George V, ch. 57, s. 8(a) (May 3, 1921). (Hereafter "CTC Act, 1921").

⁶ *CTC Act, 1921*, 11-12 George V, ch. 57, s. 2 (May 3, 1921).

⁷ *CTC Act, 1921*, 11-12 George V, ch. 57, s. 8(d) and (e) (May 3, 1921).

Whenever in this Act the expression "the said bridge" occurs, it means the bridge, approaches, lands, works and facilities hereby authorized.⁸

18. Canada further conferred upon CTC the right to:

Expropriate and take an easement in, over, under or through any lands without the necessity of acquiring a title in fee simple thereto...⁹

Thus, the 1921 *Special Act* established that CTC was a federal undertaking for the benefit of Canada, and was so vital to the development of trade that CTC was granted not only the right of expropriation, but the right to expropriate the use of property without CTC having to acquire fee simple title.

19. The rights conferred upon CTC by the 1921 *Special Act* were, reaffirmed, and extended by subsequent legislation in 1922 and 1927.¹⁰

The Congress of the United States Granted the Approval to DIBC for the American Half of the Ambassador Bridge

20. Congress passed special legislation in 1921 that granted to the American Transit Company (the predecessor to DIBC) the franchise to "construct, maintain, and operate a bridge and approaches thereto across Detroit River at a point suitable to the interests of

⁸ *CTC Act, 1921*, 11-12 George V, ch. 57, s. 19 (May 3, 1921).

⁹ *CTC Act, 1921*, 11-12 George V, ch. 57, s. 8(f) (May 3, 1921).

¹⁰ 12-13 George V, ch. 56 (June 28, 1922) and 17 George V., ch. 81 (March 31, 1927).

navigation, within or near the city limits of Detroit, Wayne County, Michigan.”¹¹ The approval of Congress completed reciprocal legislation passed by the Canadian Parliament:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby granted to American Transit Company, its successors and assigns, to construct, maintain, and operate a bridge and approaches thereto across Detroit River at a point suitable to the interests of navigation, within or near the city limits of Detroit, Wayne County, Michigan, in accordance with the provisions of the Act entitled “An Act to regulate the construction of bridges over navigable waters” approved March 23, 1906.¹²

21. Congress placed no limitations upon the franchise right it granted to American Transit Company other than commencement date, completion date, prior approval of construction plans by the US Secretary of War, and the reciprocal approval by Canada:

before the construction of the said bridge shall be begun all proper and requisite authority therefor shall be obtained from the Government of the Dominion of Canada.¹³

22. The US Secretary of War approved the construction plans submitted by American Transit Company (now DIBC) on May 3, 1927. The commencement date and completion date for the bridge were extended several times and construction was finally commenced and completed in accordance with the dates given by Congress in 1926.

¹¹ Act of Mar. 4, 1921, Sess. III, ch. 167 (1921) and amendments in 1924, 1925 and 1926.

¹² Act of Mar. 4, 1921, Sess. III, ch. 167 (1921).

¹³ Act of Mar. 4, 1921, Sess. III, ch. 167 (1921).

23. By the reciprocal legislation, the United States and Canada granted to DIBC a perpetual franchise to construct the bridge across the Detroit River between land in or near Detroit to land in or near what is now Windsor, Ontario, Canada.

The Reciprocal Legislation is a Special Agreement Pursuant to the Boundary Waters Treaty

24. On April 1, 1927, American Transit Company filed an application to the International Joint Commission for permission to build the Ambassador Bridge "across the Detroit River between the vicinity of 21st Street, in the City of Detroit, State of Michigan, United States of America, and the vicinity of Huron Church Line Road, in the City of Sandwich [now Windsor], Province of Ontario, Dominion of Canada."

25. On April 6, 1927, the United States State Department advised DIBC by letter as follows:

It is the view of this Department that a special agreement of the kind defined by Article 13 of The *Boundary Water Treaty* Act of 1909 between the United States and Great Britain, authorizing the construction of the Bridge now exists as a result of the Parliament of Canada, and that in view of such agreement, under Article 3 of the Treaty, the said matter of the construction of the Bridge will not require the approval of the International Joint Commission.

26. That "special agreement" of reciprocal legislation (the "*Ambassador Bridge Treaty*") created the treaty rights of DIBC pursuant to the agreement of the High Contracting Parties to the *Boundary Waters Treaty* to own and operate the toll bridge franchise between the United States and Canada for a bridge across the Detroit River from Detroit to what is now Windsor, Ontario, Canada.

27. On August 17, 1927, the Department of External Affairs of Canada advised CTC that:

the effect of the structures upon International waters above the Bridge will not be measurable. It is not considered that the occasion arises under which by Article 3 of the *Boundary Waters Treaty* of 1909 approval of the International Joint Commission must be sought. The Canadian Government therefore does not consider it necessary to request a reference to the International Joint Commission.

28. Canada's *Special Act* of 1921, together with the 1921 *US Congressional Act*, also constitute a treaty. Canada is a party to the *Vienna Convention on the Law of Treaties* ("*Vienna Convention*") which defines a "treaty" as:

an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.¹⁴ (emphasis added)

29. The Ambassador Bridge was constructed pursuant to reciprocal legislation passed by the U.S. Congress and the Parliament of Canada in 1921. The reciprocal legislation formed a special agreement under the *Boundary Waters Treaty* and granted to DIBC vested rights, that include the right to construct a bridge span or spans necessary or helpful in exercising its franchise right to construct, own, and operate an international bridge across the Detroit River for the collection of toll revenues.
30. U.S. legislation granted the American Transit Company (the predecessor to DIBC) the right to "construct, maintain, and operate a bridge and approaches thereto across Detroit River at a point suitable to the interests of navigation, within or near the city limits of

¹⁴ *United Nations Convention on the Law of Treaties*, 1155 U.N.T.S. 331, Art. 2, ¶ 1(a) (May 23, 1969) (Done at Vienna and commonly referred to as the "*Vienna Convention*"). As is generally accepted, the *Vienna Convention* effectively codifies the customary international law of treaties.

Detroit, Wayne County, Michigan.”¹⁵ The approval of Congress completed reciprocal legislation passed by the Canadian Parliament.

31. The reciprocal legislation passed by the Canadian Parliament created The Canadian Transit Company by a *Special Act* of Parliament, and received Royal Assent on May 3, 1921 as amended in 1922 and 1927.
32. The reciprocal legislation creating the *Ambassador Bridge Treaty* was made pursuant to the *Boundary Waters Treaty*, which also created the International Joint Commission to reach decisions concerning boundary water issues between the United States and Canada. On April 6, 1927, the International Joint Commission held that the “concurrent and reciprocal legislation on the part of the Congress of the United States and the Parliament of the Dominion of Canada” created a “special agreement of the kind defined by Article XIII of The Boundaries Water Treaty of 1909”, and was therefore outside the jurisdiction of the International Joint Commission, as an agreement between two sovereigns dispositive of the issues addressed.¹⁶

Canada's Actions in Breach of its NAFTA Obligations

33. On February 1, 2007, in an attempt to use Canadian domestic legislation to deprive the Investor of rights created by the *Boundary Waters Treaty* and the *Ambassador Bridge Treaty*, Canada enacted the *International Bridges and Tunnels Act* ("IBTA"), which purported to give the Canadian government authority over the construction, operation,

¹⁵ Act of Mar. 4, 1921, Sess. III, Ch. 167 (1921) and amendments in 1924, 1925 and 1926.

¹⁶ Letter dated April 9, 1927 from International Joint Commission to counsel to DIBC.

and ownership of international bridges -- the exact same subject of the *Boundary Waters Treaty* and the *Ambassador Bridge Treaty*. The *IBTA* purportedly came into force on April 25, 2007.¹⁷

34. DIBC and CTC have consistently taken the view that the *IBTA* is inapplicable to the Ambassador Bridge, which predates the *IBTA* and is exempted from new regulation by virtue of the *Ambassador Bridge Treaty*.
35. On November 18, 2009, the Government of Canada commenced litigation against DIBC and CTC in Ontario Superior Court, seeking a declaration whether or not the settlement of prior litigation prohibits the application of the *IBTA* to DIBC and CTC.
36. The actions of Canada constitute an abrogation of the rights of DIBC and CTC under the *Boundary Waters Treaty*, the *Ambassador Bridge Treaty*, and other treaties, statutes, judgements and legally binding agreements between Canada and DIBC or CTC.
37. Canadian domestic legislation cannot unilaterally abrogate the rights created under an international treaty or under international law. Moreover, regardless of the underlying source of DIBC's and CTC's rights, NAFTA obligates Canada to treat the Investor and the Investment in accordance with NAFTA Articles 1102, 1105, and 1110.
38. In particular, if the *IBTA* is interpreted and applied as Canada contends, Canada has interfered with the right of DIBC and CTC to manage, operate and renew its physical facilities as it sees fit to continue to facilitate international traffic and to earn toll revenues in derogation of DIBC's and CTC's rights under the *Ambassador Bridge Treaty* and other treaties, statutes, contracts, agreements and judgements.

¹⁷ *Canada Gazette*, Part II, 141 No. 9, page 667 (May 2007).

39. If the *IBTA* applies, the Ambassador Bridge, as a privately owned international bridge located in Canada would be affected based solely on its private ownership. All other major bridges covered by the legislation are owned by public authorities.
40. DIBC and CTC reserve the right to give notice of additional and further claims under Chapter 11 of NAFTA, including additional and further claims relating to Canada's treatment of the Ambassador Bridge.

E. ISSUES RAISED

41. This claim raises at least the following issues:
- A. Has the Government of Canada taken measures inconsistent with its obligations under Articles 1102, 1105 and 1110 of the NAFTA?
 - B. If the answer to A is yes, what is the quantum of compensation to be paid to the Investor as a result of the failure of the Government of Canada to comply with its obligations under Chapter 11 of the NAFTA?

F. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED

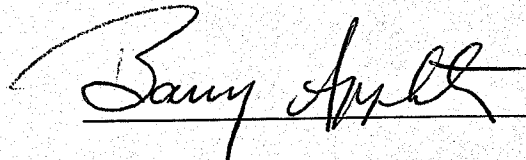
42. The Investor claims:

- a. Damages of not less than US\$1.5 Billion as compensation for the damages caused by or arising out of Canada's measures that are inconsistent with its obligations in Part A of Chapter 11 of the NAFTA;
- b. Costs associated with the proceedings, including all professional fees and disbursements;
- c. Fees and expenses incurred to oppose the effect of Canada's measures;
- d. Pre-award and post-award interest at a rate to be fixed by the Tribunal;
- e. Tax consequences of the award to maintain the integrity of the award; and
- f. Such further relief as counsel may advise and the Tribunal may deem appropriate.

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RECEIVED BY A TRUE COPY HERE OF
SIGNIFICATION DE CETTE COMÉDIE

Admitted the 25 day
Acceptée le 25 jour

of [Signature]
de [Signature]

for John H. Sims, Q.C.
pour Deputy Attorney General of Canada
Sous-procureur général du Canada