DETROIT INTERNATIONAL BRIDGE COMPANY,

Investor,

v.

THE GOVERNMENT OF CANADA,

Party.

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

Pursuant to Section 1119 of the North American Free Trade Agreement ("NAFTA"), the Detroit International Bridge Company hereby gives notice of intent to submit a claim to arbitration for Canada's breach of its obligations under NAFTA.

Detroit International Bridge Company is serving herewith a Notice of Arbitration and Statement of Claim, and requests that Canada waive the 90-day notice period under Article 1119; in the alternative, the Notice of Arbitration and Statement of Claim will be served again at the conclusion of the notice period.

I. NAME AND ADDRESS OF THE INVESTOR AND THE INVESTMENT

1. The investor's name and address is:

   Detroit International Bridge Company
   12225 Stephens Road
   Warren, Michigan 48089
   United States of America

Together with its predecessors in interest, Detroit International Bridge Company is referred to herein as "DIBC" or "Claimant."

2. The name and address of the enterprise or investment are:

The Canadian Transit Company
4285 Industrial Drive
Windsor, Ontario N9C 3R9
Canada

The Canadian Transit Company is referred to herein as "CTC."

3. The following are the agents, counsel and advocates for Claimant for purposes of this notice of intent:

Donald Francis Donovan
Carl Micarelli
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919 Third Avenue
New York, New York 10022
United States of America
Tel.: +1 212 909 6000
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All communications shall be served on Claimant through counsel.

II. THE PROVISIONS OF NAFTA WHICH HAVE BEEN BREACHED

4. The Government of Canada has breached its obligations under Section A of Chapter 11 of NAFTA, including, but not limited to, Articles 1102, 1103 and 1105 thereof. Those articles provide as follows:

> **Article 1102: National Treatment**
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> 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 1103: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party 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 investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

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).

III. FACTUAL BASIS FOR CLAIM.

A. Nature of the Claim.

5. This proceeding arises from a dispute between DIBC and Canada arising from DIBC's ongoing investment in the Ambassador Bridge, a privately owned international toll bridge that spans the U.S.-Canadian boundary between the cities of

Detroit, Michigan and Windsor, Ontario. Since the Ambassador Bridge was opened for service on November 11, 1929, DIBC has owned the bridge, including the associated toll-collection rights, in its entirety.[1] DIBC directly owns the relevant rights with respect to the U.S. side of the bridge, and DIBC's wholly owned subsidiary CTC owns the relevant rights with respect to the Canadian side of the bridge.

6. The Ambassador Bridge includes a bridge span, customs and toll plazas, approach roads, duty-free shops and other associated 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.

7. The Ambassador Bridge was designed, constructed, maintained and operated entirely with private funds of DIBC and its subsidiary CTC. In return for constructing and agreeing to own and operate the Ambassador Bridge, DIBC and CTC were granted a perpetual right to maintain the bridge and collect tolls from vehicles using the bridge. The bridge first opened for traffic in 1929, and from that time to the present day, DIBC has invested hundreds of millions of dollars in operating, maintaining and improving the Ambassador Bridge in reliance on these rights.

8. Canada, however, has arbitrarily and discriminatorily planned its road projects in a manner designed to undermine DIBC's investment by steering traffic away from the Ambassador Bridge and toward a planned new bridge (the "DRIC Bridge") located in the same traffic corridor as the Ambassador Bridge. The DRIC

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[1] The rights to construct, own and operate the United States half of the bridge were granted in 1921 to American Transit Company, which assigned those rights in 1927 to a company called Detroit International Bridge Company. That company, in turn, was merged into the present-day Detroit International Bridge Company (the Claimant in this proceeding) in 1973.

Bridge would be partly owned by Canada or its political subdivisions and would be financed, in whole or in part, by the Canadian government or by a sale of bonds to investors, who may include Canadian and third-country nationals.

9. As further set forth below, Canada has reneged on its commitments to upgrade the road to the Ambassador Bridge; has designed a new highway (the "DRIC Parkway") that will improve the road to within 3.4 kilometers (2.1 miles) of the foot of the Ambassador Bridge and then turn west to connect only to the new DRIC customs plaza and Bridge. Canada has taken deliberate steps to divert traffic from the Ambassador Bridge to the DRIC Bridge, all without any legitimate or nondiscriminatory justification.

10. Canada has taken these inequitable and discriminatory steps, designed to undermine the profitability of DIBC's investment in the Ambassador Bridge, in whole or in part because (a) Canada or its political subdivisions would have a proprietary interest in the DRIC Bridge, unlike the Ambassador Bridge, and (b) the DRIC Bridge, unlike the Ambassador Bridge, would not be wholly owned by United States investors.

11. In so doing, Canada has breached its obligations under NAFTA, including its obligations (a) to treat DIBC and its investment in a manner no less favorable than the treatment afforded to Canadian and third-country investors, and (b) to treat DIBC and its investment in a manner consistent with international law, including fair and equitable treatment and full protection and security.

12. For these reasons, as further set forth below, DIBC seeks a determination that Canada has breached its obligations under NAFTA and an award of damages and other appropriate relief.

B. The Rights Granted to DIBC and Its Investment.

13. In 1921, the United States Congress and the Canadian Parliament passed reciprocal legislation granting Detroit International Bridge Company ("DIBC") and The Canadian Transit Company ("CTC") a perpetual right to operate an international toll bridge between Detroit, Michigan and Sandwich (now part of Windsor), Ontario.[2]

14. DIBC and its subsidiary CTC, which DIBC acquired in 1927, accepted and relied upon these rights by raising private funds and constructing the Ambassador Bridge. The Ambassador Bridge opened for traffic on November 11, 1929. Over the years, DIBC has invested hundreds of millions of dollars in maintaining, operating and improving the international crossing in reliance on the rights that were granted to it.

C. Canada's Commitments to Improve Infrastructure at the Windsor Side of the Ambassador Bridge

15. Because it was constructed before the modern highway system was built, the Ambassador Bridge did not have direct freeway connections on either side of the border. Starting in 1999, Canada made a number of commitments towards improving infrastructure to establish an end-to-end solution to and from the highway systems in each country to and from the Ambassador Bridge in support of the Ambassador Bridge/Gateway project. These commitments were made against a backdrop of longstanding promises by Canada to guarantee DIBC's rights in the Ambassador Bridge.

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[2] The reciprocal Canadian and U.S. legislation and its amendments consist of the following acts: Act of Mar. 4, 1921, 66th Cong., ch. 167, 41 Stat. 1439 (U.S.); Act of May 3, 1921, 11-12 Geo. V ch. 57 (Can.); Act of June 28, 1922, 12-13 Geo. V ch. 56 (Can.); Act of April 17, 1924, 68th Cong., ch. 125, 43 Stat. 103 (U.S.); Act of Mar. 3, 1925, 68th Cong., ch. 448, 43 Stat. 1128 (U.S.); Act of May 13, 1926, 69th Cong., ch. 292, 44 Stat. 535 (U.S.); Act of Mar. 31, 1927, 17 Geo. V ch. 81 (Can.).

16. The United States has undertaken road improvements on the Detroit side of the bridge. Beginning in 1998, the U.S. Congress authorized and appropriated, and the United States spent, more than US$ 230 million for the "Ambassador Bridge/Gateway Project," a major road project to connect the Ambassador Bridge to the Interstate Highway System in the United States. The Ambassador Bridge/Gateway Project included accommodating a new span to the Ambassador Bridge.

17. In 1999, the Ontario Ministry of Transportation announced its support for an improved freeway connection between Ontario Highway 401 and the U.S. Interstate Highway System within the Windsor-Detroit area. The Ontario government along with the Cities of Windsor and Sarnia supported the funding request put forward by MDOT for the Ambassador Bridge/Gateway Project creating an end-to-end solution and stated that the proposed Ambassador Bridge/Gateway Project (including the direct connections and Ambassador Bridge New Span) "are of significant national importance to the Canadian side of the border."

18. In September 2002, after the U.S. federal government had begun appropriating funds for the Ambassador Bridge/Gateway Project, the Canadian Government and the Government of Ontario signed a Memorandum of Understanding (the"2002 MoU") in which they "jointly commit[ted]" to a five-year, C$ 300 million "investment in the Windsor Gateway." This Memorandum of Understanding established a Canada-Ontario Joint Management Committee to recommend specific targets for the investment funds, which were designated for "improvements to the existing border crossings and their approaches," including the Ambassador Bridge. Part I of the 2002 MoU, entitled "Canada's and Ontario's Commitment", stated that

> Canada and Ontario shall continue to work with the City of Windsor on immediate improvements to assist in the management of traffic on the Highway 3/Huron Church Road Corridor [*i.e.*, the road to the Ambassador Bridge]. This includes, but is not limited to the eight hundred and eighty thousand dollars ($880K) Investment announced on July 11, 2002 by Canada and Ontario.

19. The Canada-Ontario Joint Management Committee issued an Action Plan in November 2002. In it, the Committee proposed specific investments in "core infrastructure [that] would improve access to the existing crossings at the Ambassador Bridge and the Detroit-Windsor Truck Ferry" and recommended that the two governments "[w]ork with CTC/Ambassador Bridge ... to pursue the development of a dedicated truck route from Ojibway Parkway at EC Row Expressway to the Ambassador Bridge." The Committee also stated that "[t]he governments of Canada and Ontario would provide technical assistance and support to CTC in their pursuit of the proposed investments" and that "CTC would be encouraged to expand its Industrial Drive commercial vehicle customs plaza to accommodate primary and, possibly, secondary inspection." This initiative, the Committee concluded, "would provide a secure, efficient truck route to the border crossing" that "would accommodate both the needs of industries that rely on cross-border trade, as well as the local tourist and business operations within the City of Windsor and surrounding areas." The truck ferry improvements have been completed and the improved ferry service is scheduled to be operational in Spring 2010.

20. At a ceremony held on September 9, 2002, in response to the first anniversary of the terrorist attacks of September 11, 2001, U.S. President George W. Bush and Canadian Prime Minister Jean Chrétien met at the Ambassador Bridge to pledge their support in expanding connectivity to the Ambassador Bridge and to

maintain the Ambassador Bridge as the premier border crossing between the United States and Canada. In his address, U.S. President George W. Bush stated:

> This bridge right here is a symbol of the close and unique relationship -between our two nations. This single bridge carries more trade than any other border crossing on this continent. And that's saying a lot. This is a -- (applause) - this is an active bridge. Thanks to the North American Free Trade Agreement, more than 500,000 people, and over a billion dollars worth of goods cross the U.S.- Canadian border every day.

In his address, Canadian Prime Minister Jean Chrétien stated:

> I am delighted to be here with you, Mr. President, because it's a great occasion. A short distance from here is the Ambassador Bridge. It spans two great cities, Detroit and Windsor, two great peoples, and two great nations. More than a feat of architecture and construction, the bridge is a symbol of the most open bilateral relationship in the world, a relationship based on shared values of freedom and human dignity, a model to the world of civility and respect. (Applause). And, in the context of globalization, a guide to how nations can develop strong friendships while retaining distinct identities.

The U.S. President and Canadian Prime Minister released a joint press statement with the transcript of their speeches that included the following:

> A secure and efficient border is key to our economic security. We must continue our efforts to involve the private sector as we proceed with modernizing our shared border.

30. By May 2003, Transport Canada (the Canadian federal transportation agency) secured funding for transportation infrastructure projects including extending Highway 401, a major limited-access trunk road in Ontario, through Windsor to facilitate separate car and truck access to the Ambassador Bridge. This was communicated by Canadian Transportation Minister Collenette to the U.S. Secretary of Transportation during their meeting in Washington, D.C.

31. Later the same month, Canada and Ontario publicly announced the adoption of a nine-point "Windsor Gateway Action Plan" ("2003 Canada-Ontario Action Plan") based in substantial part on the recommendations of the Canada-Ontario Joint Management Committee. A May 27, 2003 news release, issued jointly by Infrastructure Canada and Transport Canada, announced that Canada and Ontario had agreed:

- to "[w]ork together with the City of Windsor and Town of LaSalle on improvements to Highway 3/Huron Church Road," the road to the Ambassador Bridge;
- to "[w]ork together with .... the Canadian Transit Company (Ambassador Bridge) ... in their efforts to build connections to the border crossing, concurrent with the Bi-National Planning Process"; and
- to "work together with partner agencies to accelerate the Bi-National Planning Process, and work with all proponents of new border crossing capacity, including the Canadian Transit Company (Ambassador Bridge) ... in the context of this process".

32. Canada appended to its press release a map showing the proposed truck-only road to the Ambassador Bridge that was incorporated into the 2003 Canada-Ontario Action Plan. The map showed that, as contemplated by the 2003 Canada-Ontario Action Plan, Highway 401 in Canada would be connected to the foot of the Ambassador Bridge.

D. Canada's Decision to Renege on Its Promise to Upgrade Access to the Ambassador Bridge and to Steer Traffic to the Planned DRIC Bridge Instead.

33. In reliance on Canada's promises, Phase One of the Ambassador Bridge/Gateway Project in the United States has progressed rapidly, at a cost to the United States taxpayer of at least US$ 230 million to date, and at a cost to DIBC of over US$ 250 million to date. DIBC has reasonably relied on the promises made by Canada by using tens of millions of dollars of its own funds to make improvements related to the Ambassador Bridge/Gateway Project, including a redevelopment of the customs plaza on the U.S. side of the bridge to accommodate direct connection of the Ambassador Bridge with the U.S. Interstate Highway System and the Michigan trunk line and improvements to road connections, lighting, power, drainage and other facilities associated with the Ambassador Bridge, in anticipation of similar developments on the Canadian side of the bridge.

34. However, Canada has failed to observe the clear commitments that it made with respect to extending Highway 401 to the Ambassador Bridge. On November 12, 2008, Canada admitted in writing that rather than being a temporary delay, this failure reflected a decision by Canada to renege on its commitments with respect to improving the management of traffic to the Ambassador Bridge.

35. The only reason Canada has reneged on its commitments to improve the connection of Highway 401 to the Ambassador Bridge is the desire of the Canadian federal government and the Province of Ontario to build their own entirely new bridge, known as the Detroit River International Crossing bridge (the "DRIC Bridge"). The DRIC Bridge is meant to take commercial and passenger traffic from the Ambassador Bridge and decrease the value of the Ambassador Bridge by diverting

its toll revenues. The Final Environmental Impact Statement submitted by the proponents of the DRIC Bridge estimated that up to 39% of passenger traffic and 75% of commercial traffic would be diverted from the Ambassador Bridge to the DRIC Bridge.

36. Unlike the Ambassador Bridge, which is wholly owned by DIBC, a privately owned U.S. company, Canada or its political subdivisions would own half of the new DRIC Bridge, with the other half belonging to public agencies in the United States. The new DRIC Bridge would be privately financed by a bond issue to investors, including Canadian and third-country investors as well as U.S. investors, reverting to full public ownership after the bond issue is paid off.

E. The DRIC Parkway

37. The planned DRIC Bridge location will have a direct connection to Highway 401 like the connection Canada promised but never built for the Ambassador Bridge. The new connection from Highway 401 to the DRIC Bridge, known as the DRIC Parkway, is designed to divert as much as 75% of the Ambassador Bridge's commercial truck traffic and 39% of its passenger traffic, in order to ensure that the DRIC Bridge succeeds at the Ambassador Bridge's expense.

38. Canada's reason for diverting traffic from the Ambassador Bridge to the DRIC Bridge is, in whole or in part, to favor the DRIC Bridge over the Ambassador Bridge. The planned location of the DRIC Bridge, in the area known as the Central Corridor, was intentionally chosen to divert traffic away from the Ambassador Bridge.

39. To attempt to justify its failure to follow through on its promise to build a highway connection to the Ambassador Bridge, Canada alleged that the promised

connection would cause disruption to communities in Windsor, Ontario. But then, despite these alleged objections, Canada proceeded with its plans to build the DRIC Parkway, located in the same Central Corridor—but to divert existing traffic to the planned DRIC Bridge site instead of the Ambassador Bridge.

40. The new DRIC Bridge is designed for a location approximately 2.6 kilometers from the foot of the Ambassador Bridge on the Canadian side. Approximately nine kilometers of the planned twelve kilometers of the DRIC Parkway will follow the exact same route that would have been used for a direct connection to the Ambassador Bridge. The DRIC Parkway would only need to be extended another approximately three kilometers to reach the plaza of the Ambassador Bridge.

41. Like the first nine kilometers, these last three kilometers to the Ambassador Bridge would be sited along the Highway 3/Huron Church Road corridor, which is already heavily traveled by cars and trucks bound for the Ambassador Bridge. The City of Windsor has designated Huron Church Road as a high-capacity vehicular corridor, recognizing its importance as a gateway to Canada because it is the access road to the Ambassador Bridge, and has adopted design guidelines for the road similar to international crossings in other U.S.-Canada border cities. But instead of continuing the DRIC Parkway down its expected path along that corridor to the Ambassador Bridge, Canada is planning to divert the new highway, impacting a natural area and species-at-risk, to the DRIC Bridge site.

42. Canada's claims of community disruption, as a reason for the planned site of the DRIC Parkway, are thus clearly a pretext to attempt to justify discrimination against the Ambassador Bridge and in favor of the DRIC Bridge, for the purpose of

diverting toll revenues away from DIBC's investment and toward Canada's own competing project.

F. Interference with Traffic on Huron Church Road

43. The City of Windsor, Ontario ("Windsor") has worked with the Canadian federal and Ontario provincial governments to promote the DRIC Bridge and take traffic away from the Ambassador Bridge. Huron Church Road is designated by the City of Windsor as a high capacity Vehicular Corridor playing an important role as a gateway to Canada being the access road to the Ambassador Bridge.

44. Huron Church Road, the existing approach road to the Ambassador Bridge, had previously been a limited access route to the Ambassador Bridge. Windsor destroyed the limited access route intentionally by granting unlimited curb cuts and driveway connections to Huron Church Road.

45. In addition, Windsor has installed seventeen unnecessary traffic lights along Huron Church Road to further discourage traffic from using the Ambassador Bridge.

46. On January 21, 2005, the City of Windsor presented its report on border crossing issues to the public. A key focus of the report was to reduce the number of commercial vehicles using the Ambassador Bridge.

47. The reason that Windsor has taken and is taking these steps to discourage traffic from using the Ambassador Bridge is to encourage the use of its own competing toll crossing, the Detroit-Windsor Tunnel, for the time being, and ultimately to encourage use of Canada's planned DRIC Bridge.

IV. ISSUES RAISED.

48. This arbitration arises from the decisions by Canada, the Province of Ontario, and the City of Windsor (a) to locate the DRIC Parkway so as to bypass the

Ambassador Bridge and steer traffic to the planned DRIC Bridge, and (b) to take traffic measures with respect to Huron Church Road to divert traffic away from the Ambassador Bridge and toward the Detroit-Windsor Tunnel and the planned DRIC Bridge.

49. The points raised by this arbitration are (a) whether those measures are inconsistent with Canada's obligations under Chapter 11 of NAFTA, including national treatment under Article 1102 and the minimum standard of treatment under Article 1105; and (b) if so, what is the appropriate amount of damages.

50. DIBC reserves the right to bring additional and further claims under Chapter 11 of NAFTA.

V. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES REQUESTED.

51. As a result of the measures taken by the Government of Canada described above, the Claimants intend to request an award in their favor,

(a) Finding that Canada has breached its obligations under NAFTA;

(b) Directing Canada to pay damages in an amount to be proved at the hearing but which the Claimant presently estimates to be in excess of US$3.5 billion;

(c) Directing Canada to pay interest to the Claimant on the sums awarded;

(d) Directing Canada to pay the Claimant's costs associated with this proceeding, including professional fees and disbursements;

(e) Directing Canada to pay all amounts awarded to the Claimant in U.S. dollars in the United States, without any deduction, withholding or setoff for taxes or expenses, and to pay Claimant's taxes on all sums awarded; and

(f) Ordering such other and further relief as the Tribunal deems appropriate in the circumstances.

New York, March 23, 2010

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