UNDER THE UNCITRAL ARBITRATION RULES AND
SECTION B OF CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT

BETWEEN;

VITO G. GALLO

Investor

v.

GOVERNMENT OF CANADA ("Canada")

Party

NOTICE OF ARBITRATION

Pursuant to Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) and Articles 1117 and 1120 of the *North American Free Trade Agreement* (NAFTA), the Claimant initiates recourse to arbitration under the UNCITRAL Rules of Arbitration (Resolution 31/98 Adopted by the General Assembly on 15 December 1976).

A. DEMAND THAT THE DISPUTE BE REFERRED TO ARBITRATION

Pursuant to Article 1119, written notice of the Investor's intention to submit a claim to arbitration (the "Notice of Intent") was served on October 12th, 2006, at least ninety (90) days before this claim has been submitted.

Six (6) months have elapsed since the events giving rise to the Investor's claim have elapsed thus allowing the submission at this time this Notice of Application pursuant to NAFTA Article 1120(1).

Not more than three (3) years have elapsed from the date on which the Investor and the Enterprise first acquired, or should have acquired, knowledge of the Party's breach of the

obligations provided in Section A of NAFTA Chapter 11, as required by NAFTA Articles 1117(2).

Pursuant to Article 1120(1)(c) of the NAFTA, the Claimant hereby demands that the dispute between it and the Respondent be referred to arbitration under the UNCITRAL Rules of Arbitration.

B. NAMES AND ADDRESSES OF THE PARTIES

CLAIMANT/
INVESTOR: Vito G. Gallo

ENTERPRISE: 1532382 Ontario Inc.
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PARTY: GOVERNMENT OF CANADA
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C. REFERENCE TO THE ARBITRATION CLAUSE OR THE SEPARATE ARBITRATION AGREEMENT THAT IS INVOKED

The Claimant invokes Section B of Chapter 11 of the NAFTA, and specifically Articles 1117, 1120 and 1122 of the NAFTA as authority for the arbitration.

D. REFERENCE TO THE CONTRACT OUT OF OR IN RELATION TO WHICH THE DISPUTE ARSIES

The dispute is in relation to the Claimant's investment in Canada and the damages that have arisen out of the Government of Canada's breadth of its obligations under Chapter 11 of the NAFTA.

E. THE GENERAL NATURE OF THE CLAIM AND AN INDICATION OF THE AMOUNT INVOLVED

1. The Investor alleges that the Government of Canada has breached, and continues to breach, its obligations under Chapter 11 of the NAFTA, including, but not limited to:

   (i). Article 1105, The Minimum Standard of Treatment
   (ii).Article 1110, Expropriation and Compensation

2. The relevant portions of NAFTA are attached as "Appendix 'A'" hereto.

3. The Investor, Gallo, is an American citizen resident in Pennsylvania.

4. The Investment is 1532382 Ontario Inc, a company incorporated under the laws of the province of Ontario ("the Enterprise.")

5. Gallo owns and controls the Enterprise.

6. The Enterprise owns and controls the Adams Mine property, a former iron ore mine located in Northern Ontario about 10 kilometres south-east of the town of Kirkland Lake.

7. The Adams Mine property is an ideal site for landfill. It is a decommissioned, open-pit iron ore mine with excellent rail and road access. Until 1989 iron ore was being extracted from its three, deep open-pits by two mining companies.

8. The South Pit of the Adams Mine is 200 metres deep and is capable of receiving at least 1,341,600 tonnes of non-hazardous municipal, industrial and commercial waste each year. The South Pit alone has a total capacity of at least 21.9 million cubic meters, including waste and daily/ intermediate cover material but excluding final cover material.

9. The South Pit is designed to operate as a landfill using the hydraulic containment method. Under this method, when the waste reaches the site all metal, glass, plastic and wood are separated for recycling and resale. The remaining waste is then deposited in the South Pit.

10. Any leachate generated from the deposited waste drains to a containment basin and is then pumped to an environmentally approved leachate treatment plant. Unlike the mature landfills located in soil and clay conditions in Southern Ontario, the rock walls of the South Pit and the leachate treatment plant prevent leachate from seeping into adjacent lands.

11. The method of waste containment is known as "hydraulic containment" and the expert obtained studies supporting the proposed methodology and the proposed Adams Mine site were subjected to peer review and the results were uniformly positive.

12. One attractive feature of the Adams Mine site is the availability of transport of waste by rail. In 2000, the Ontario Northland Transportation Commission, the Canadian National Railway and the Enterprise's predecessor in title Notre Development Corporation ("Notre"), joined together to offer to the City of Toronto a complete rail solution. Toronto's waste would be compacted and then transferred to a railway site north of Toronto. The compacted waste would then be loaded onto specially designed railcars and hauled to the Adams Mine, then unloaded, separated and either sent for recycling or deposited into the South Pit. The option included added capacity, in the expectation that other GTA municipalities would also adopt the rail option.

Adams Mine Site Identified as a Potential Waste Site

13. In 1986, the Municipality of Metropolitan Toronto ("Toronto") determined that Toronto's Keele Valley municipal waste site located just north of the city had a limited lifespan. Toronto began searching for its next generation landfill.

14. The Enterprise's predecessor in title, Notre identified the Adams Mine as a leading replacement site for Toronto as early as 1986. Notre purchased the Adams Mine from the two mining companies in 1989 with the intention of developing it as an environmentally sound landfill site for the Greater Toronto Area ("GTA") after the Keele Valley site reached maximum capacity in the late 1990s.

The Environmental Approvals

15. Notre's proposal for the Adams Mine required that it obtain several major environmental approvals:

    a. approval under the Ontario Environmental Assessment Act ("EAA");

    b. approval of a waste disposal site under the Ontario Environmental Protection Act ("EPA").

    c. approval of a leachate treatment facility and storm water management facilities under the Ontario Water Resources Act ("OWRA"); and

d. approval to take water from the South Pit, a Permit to Take Water ("PTTW") under the OWRA.

16. Notre began by submitting an initial environmental assessment approval application in 1996 in relation to the South Pit.

17. In 1996, Notre discovered that the Crown leases of the lands surrounding the Adams Mine property granted to the mining companies ("the Borderlands") were about to expire and it began to explore the possibility of purchasing or leasing the Borderlands from the Crown in order to support the Adams Mine site.

18. In 1997, the Ontario Environmental Assessment Board ("EAB") approved the environmental assessment application after conducting a hearing at Kirkland Lake that lasted 17 days and involved 40 witnesses, including 20 experts.

19. In 1998, Notre received the required Certificate of Approval from the Ontario Ministry of the Environment ("MOE") to operate a landfill. The Certificate of Approval provided inter alia:

> *Service Area*
>
> 12. Wastes may be received at this Site only from within the Province of Ontario.
>
> *Maximum Fill Rate*
>
> 15 The maximum rate at which the Site can receive waste is 1,341,600 tonnes per year ...
>
> *Waste Placement in the South Pit*
>
> 34 The total waste disposal volume is 21.9 million cubic metres. This volume includes waste and daily/intermediate cover material and excludes final cover.

20. The fact that a province-wide license was obtained ensured that a substantial demand for the waste site existed, especially in connection with the rail transport alternatives that were superior to truck transporting options utilized elsewhere.

21. The Certificate of Approval had as one of its conditions that Notre purchase the Borderlands from the Crown.

Tailings Area

> 10. Prior to the receipt of waste for disposal at this Site, the Owner shall acquire legal access to the portions of the existing tailings area not currently controlled by the Owner (described in Schedule "A", Item 16, Tab 1) and required for the management and discharge of surface water and the treatment and discharge of drainage layer effluent, including constructed wetlands and a constructed channel to direct treated leachate to the tailings pond upgradient of Dam #6 and subsequently into the Miserna River via Moosehead Creek.

All Final Approvals Received

22. By the end of 2001, the Enterprise's predecessor in title had obtained all of the required governmental approvals for the Adams Mine site:

a. Approval of its project under the EAA, dated August 13, 1998;

b. Approval to operate a landfill site under the EPA, on the condition that Notre acquired the Borderlands from the Crown, Certificate of Approval No. A612007, dated April 23, 1999;

c. Permit to Take Water from the South Pit, PTTW No. 00-P-6040, dated October 18, 2000;

d. Approval to operate a leachate treatment facility and storm water facility under the OWRA, Approval No. 3250-4NMPDN, dated July 9, 2001.

23. In May, 2002, the Enterprise purchased the Adams Mine site from Notre. In September, 2002, the transfer in ownership of the Adams Mine property was duly registered in the Temiskaming Land Registry Office.

Purchase of the Borderlands

24. On February 17th, 2003, the Ontario Ministry of Natural Resources offered to sell the Borderlands to the Enterprise after completing its supplementary environmental review and obtaining an independent property appraisal. The offer was immediately accepted. The said offer stated as follows:

> As outlined to you, our original offer to you for the lands was $96,000 plus GST and this offer included the trees situated on the lands. As discussed yesterday, due to concerns recently raised as a result of our supplemental environmental review we are prepared to (and you stated your agreement to) finalize the sale to you at this time for the appraised market value of the land only ($48,000.00) plus GST for a total price of $51,360.00. **Please note that this offer will be valid for a period of three months from the date of this letter**

25. On April 10th, the Enterprise delivered to the Ministry of Natural Resources a certified cheque, the covering letter stating:

> Referring to your letter dated February 17, 2003, we enclose herewith the following:
>
> 1) Application for Crown Land executed in triplicate
>
> 2) The Agreement executed in Triplicate
>
> 3) Our certified cheque for $51,360.00 (includes $3,360 GST)
>
> 4) A copy of the Company's Corporate Profile.
>
> Trusting the above is sufficient to complete the transaction if otherwise, please advise. Please return a copy of the finalized documentation for our files, when executed and registered.

26. At law and/or in equity, the Enterprise was now the owner in title of the Borderlands.

27. Contrary to the agreement, the Crown failed to transfer title to the Borderlands. As a result, the Enterprise commenced action against the Province of Ontario in the Superior Court of Justice of Ontario of the District of Algoma on October 9th, 2003 (Court File Number 22368/A3) seeking the following relief, inter alia:

> The [Enterprise] makes the following claims and requests the following orders as against the Defendant:
>
> a. An Interim Declaratory Order that the [Enterprise] is entitled to receive immediate transfer from the [Province of Ontario] of the ownership in fee simple of all the lands set out in Schedule "A", (the "Lands"), attached hereto;

b. A permanent Declaration that that the [Enterprise] is entitled to receive from the [Province of Ontario] an immediate transfer of the ownership in fee simple of all of the lands;

c. Damages for breach of an Agreement of Purchase and Sale entered into between the [Enterprise] and the [Province of Ontario] wherein the [Province] was to transfer the lands to the [Enterprise], damages being in the amount of $301,000,000.00;

d. Punitive and exemplary damages in the amount of $1,000,000.00;

e. Pre-judgment and post-judgment interest pursuant to the Courts of Justice Act and Rules of Practice in effect in Ontario

f. Such further and other relief as this Honourable Court deems appropriate in the circumstances.

28. On March 3rd, 2004, the Enterprise served a motion for Summary Judgment seeking, *inter alia*:

> Partial summary judgment in the form of a Declaratory Order that the [Enterprise] is entitled to receive immediate transfer from the [Province of Ontario] of the ownership in fee simple of all of the [Borderlands].

29. This motion was adjourned at the request of the Province of Ontario.

Permit to Take Water

30. The initial PTTW had expired on October 30th, 2001. Notre had applied for a new PTTW by letter dated January 4th, 2002. The Ministry of the Environment responded by letter dated January 15th, 2002 stating in part:

> The PTTW application requests a Permit to cover 12 months of water taking over a five year period and indicates that no date has yet been set for the commencement of dewatering activities. Further, we understand that no water was taken under PTTW 00-P-6040, which expired on October 30, 2001. Permits to Take Water are not issued to reserve water taking, regardless of the use, and cannot be maintained in the absence of a definite need for the taking.
>
> As you appear not to have an immediate or definite need for this Permit, I suggest that we retain your application on file and ask that you notify us within six months of the anticipated commencement of water taking. Providing that the details of this

> taking and the uses being made of the local environment remained unchanged from your original submission, which PTTW 00-P-6040 was based on, this new PTTW application will be able to be reviewed and the approval issued promptly.

31. On July 4th, 2003, the Enterprise submitted an Application for a PTTW from October 30th, 2003 to October 30th, 2004. The Enterprise had a definite need for the taking, as it intended to commence operation as a waste disposal site as soon as the preparatory work could be completed. The accompanying expert report confirmed that the application remained unchanged, stating in part:

> Dewatering of the South Pit was previously approved under PTTW 00-P-6040, but did not proceed at that time. This reapplication demonstrates that the details of this taking, and the uses being made of the local environment, remain unchanged from the original submission. Specifically, dewatering will be accomplished within the 12 month period, at the same rate (0.3 m^3/sec) as previously approved. The discharge point will be the same (at the head of the tailings area), and the previous intensive monitoring program remains appropriate. The contingency plan, which entailed temporary pumping to the Central Pit remains viable. Certificate of Approval no 3250-4NMPDN for the discharge of water is still in force, and its corresponding monitoring plan will be followed as previously planned. There is time to install the necessary instrumentation prior to commencement of dewatering at the end of October.
>
> Please accept this letter in support of the application. It is our understanding that all the original supporting documentation is presently on file with the MOE....

32. On November 14, 2003, the Ministry of the Environment issued a Draft Permit to Take Water, Permit number 4121-5SCN9N.

33. In accordance with the MOE's requirement of January, 2002, the Enterprise submitted an expert opinion that there had been no substantial environmental changes. The Enterprise expected that the MOE would honour its agreement of January, 2002 to issue the PTTW promptly and also expected that the MNR would honour its agreement of April, 2003 to transfer the Borderlands to the Enterprise.

Interference by the New Government.

34. In October 2003, a new government was elected in Ontario. At the time of the election, the new Natural Resources Minister David Ramsay pledged to put the project "to bed once and for all" and that "we've got to kill that project."

35. Subject to paragraph 43 below, the various facts and steps taken by the new government in Ontario are unknown to the Investor and Enterprise who will seek full production and discovery during the course of the arbitration.

The Enactment of the Adams Mine Lake Act.

36. On April 5, 2004, the new government introduced and gave First Reading to Bill 49, "An Act to Prevent the Disposal of Waste at the Adams Mine Site" ("Bill 49"). On June 17th, 2004, Bill 49 was enacted and on the same day it received Royal Assent and was proclaimed in force.

37. Bill 49 cancelled all of the environmental approvals that had been obtained or were pending, Section 3(1) thereof stating:

> The following are revoked:
>
> 1. The approval dated August 13, 1998 that was issued to Notre Development Corporation under the Environmental Assessment Act, including any amendments made after that date.
>
> 2. Certificate of Approval No. A 612007, dated April 23, 1999, issued to Notre Development Corporation under Part V of the Environmental Protection Act, including any amendments made after that date.
>
> 3. Approval No. 3250-4NMPDN, dated July 9, 2001, issued to Notre Development Corporation under section 53 of the Ontario Water Resources Act, including any amendments made after that date.
>
> 4. Any permit that was issued under section 34 of the Ontario Water Resources Act before this Act comes into force in response to the application submitted by 1532382 Ontario Inc. for New Permit #4121-5SCN9N (00-P-6040) and described on the environmental

registry established under the Environmental Bill of Rights, 1993 as EBR Registry Number XA03E0019. 2004,

No permit for specified application

(2) No permit shall be issued under section 34 of the Ontario Water Resources Act after this Act comes into force in response to the application referred to in paragraph 4 of subsection (1).

38. Bill 49 also extinguished the agreement to purchase the Borderlands in Article 4 thereof:

4. (1) An agreement entered into by Notre Development Corporation or 1532382 Ontario Inc. after December 31, 1988 and before this Act comes into force is of no force or effect if the agreement is with the Crown in right of Ontario and is in respect of,

(a) the purchase or sale of the lands described in Schedule 1 or any part of those lands;

(b) the granting of letters patent for the lands described in Schedule 1 or any part of those lands; or

(c) any interest in, or any occupation or use of, the lands described in Schedule 1 or any part of those lands.

SCHEDULE 1

The lands described as:

Location CL 411-A, Boston Township, District of Timiskaming, containing 387.48 hectares;

Location CLM 104, McElroy Township, District of Timiskaming, containing 238.72 hectares;

Parts 1, 2, 3, 4, 5, 6, Plan 54R-2947, Boston Township, District of Timiskaming, containing 14.58 hectares;

Parts 1, 2, 3, Plan 54R-1694, Boston Township, District of Timiskaming, containing 18.76 hectares;

Location CL 936, Plan TER-670, Boston Township, District of Timiskaming, containing 33.46 hectares;

> Parts 1, 2, Plan 54R-1807, Boston Township, District of Timiskaming, containing 37.10 hectares;
>
> Parts 1, 2, 3, Plan 54R-1693, Boston Township, District of Timiskaming, containing 12.12 hectares;
>
> Parts 1, 2, Plan 54R-2322, Boston Township, District of Timiskaming, containing 18.69 hectares;
>
> Part 1, Plan 54R-1540, Boston Township, District of Timiskaming, containing 14.48 hectares;
>
> Location CL 1584, Part 1, Plan 54R-1511, Boston Township, District of Timiskaming, containing 16.06 hectares;
>
> Location CL 1221, CL 1222, Parts 1, 2, Plan 54R-1291, McElroy Township, District of Timiskaming, containing 34.02 hectares;
>
> Location CL 1220, Parts 1, 2, 3, 4, 5, 6, 7, Plan 54R-1292, McElroy Township, District of Timiskaming, containing 102.62 hectares;
>
> Parts 1, 2, 3, Plan 54R-1619, McElroy Township, District of Timiskaming, containing 43.28 hectares.

39. Bill 49 also extinguished the cause of action including, without limitation, the relief sought in the Statement of Claim that was issued on October 9th, 2003 in the circumstances described above:

> *Extinguishment of causes of action*
>
> 5. (1) Any cause of action that exists on the day this Act comes into force against the Crown in right of Ontario, a member or former member of the Executive Council, or an employee or agent or former employee or agent of the Crown in right of Ontario in respect of the Adams Mine site or the lands described in Schedule 1 is hereby extinguished.
>
> Same
>
> (2) No cause of action arises after this Act comes into force against a person referred to in subsection (1) in respect of the Adams Mine site or the lands described in Schedule 1 if the cause of action would arise, in whole or in part, from anything that occurred after December 31, 1988 and before this Act comes into force.

(3) Subsections (1) and (2) do not apply to a cause of action that arises from any aboriginal or treaty right that is recognized and affirmed by section 35 of the Constitution Act, 1982.

Enactment of this Act

(4) Subject to section 6, no cause of action arises against a person referred to in subsection (1), and no compensation is payable by a person referred to in subsection (1), as a direct or indirect result of the enactment of any provision of this Act.

Application

(5) Without limiting the generality of subsections (1), (2) and (4), those subsections apply to a cause of action in respect of any agreement, or in respect of any representation or other conduct, that is related to the Adams Mine site or the lands described in Schedule 1.

Same

(6) Without limiting the generality of subsections (1), (2) and (4), those subsections apply to a cause of action arising in contract, tort, restitution, trust, fiduciary obligations or otherwise.

Legal proceedings

(7) No action or other proceeding shall be commenced or continued by any person against a person referred to in subsection (1) in respect of a cause of action that is extinguished by subsection (1) or a cause of action that, pursuant to subsection (2) or (4), does not arise.

Same

(8) Without limiting the generality of subsection (7), that subsection applies to an action or other proceeding claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages, or any other remedy or relief.

Same

(9) Subsection (7) applies to actions and other proceedings commenced before or after this Act comes into force.

40. The statute declares that it does not constitute an expropriation, even though it constitutes an expropriation or conduct tantamount to expropriation at international law:

> 5(10) Nothing in this Act and nothing done or not done in accordance with this Act constitutes an expropriation or injurious affection for the purposes of the Expropriations Act or otherwise at law.

41. The amount of compensation under the Statute was unduly limited and in no manner compensated the Enterprise for its losses, stating, inter alia:

> *Compensation*
>
> 6. (1) The Crown in right of Ontario shall pay compensation to 1532382 Ontario Inc. and Notre Development Corporation in accordance with this section.
>
> *Amount*
>
> (2) Subject to subsection (3), the amount of the compensation payable to a corporation under subsection (1) shall be determined in accordance with the following formula:
>
> A + B + C
>
> where,
>
> A = the reasonable expenses incurred and paid by the corporation after December 31, 1988 and before April 5, 2004 for the purpose of using the Adams Mine site to dispose of waste,
>
> B = the lesser of,
>
> i. the reasonable expenses incurred by the corporation after December 31, 1988 and before April 5, 2004, but not paid before April 5, 2004, for the purpose of using the Adams Mine site to dispose of waste, and
>
> ii. $1,500,000, in the case of Notre Development Corporation, or $500,000, in the case of 1532382 Ontario Inc.,
>
> C = the reasonable expenses incurred by the corporation on or after April 5, 2004 for the purpose of using the Adams Mine site to

> dispose of waste, if the expenses are for legal fees and disbursements in respect of legal services provided on or after April 5, 2004 and before this Act comes into force.
>
> Same
>
> (3) The amount of the compensation payable to 1532382 Ontario Inc. under subsection (1) shall be the amount determined for that corporation under subsection (2), less the fair market value, on the day this Act comes into force, of the Adams Mine site.

42. The statute specifically states that no payment will be made for any loss of goodwill or possible loss of profits:

> *Loss of goodwill or possible profits*
>
> (8) For greater certainty, no compensation is payable under subsection (1) for any loss of goodwill or possible profits.

43. The Investor pleads that the Province of Ontario considered expropriation but determined to leave the Enterprise with the on-going liability for the property and to unduly limit the compensation payable to it. The Investor will seek full production relating to the decision to "kill the project."

44. The intent of Bill 49 was clear and beyond dispute: to shut down the Adams Mine property as a solid waste landfill site and to put the Enterprise out of business and leaving it with the on-going liability for the property. It specifically:

    a. Revoked each of the approvals that the Enterprise held to operate the Adams Mine Site as a waste disposal site;

    b. Terminated the application process for the issuance of the Permit To Take Water and cancelled the draft Permit to Take Water that had been issued in November 2003;

    c. Cancelled the binding agreement to sell the Borderlands to the Enterprise;

    d. Extinguished the Enterprise's causes of action that had been made in its Superior Court of Justice proceeding that had been commenced on October 9th, 2003;

    e. Extinguished all other causes of action that the Enterprise either had or would have in the future;

f. Restricted damages and/or compensation, limiting the costs that could be recovered and specifically limited recovery for future expenses and liabilities on the site and for any recovery on the basis of goodwill or loss of profits.

F THE POINTS AT ISSUE

Article 1105: Minimum Standard of Treatment

45. The NAFTA Article 1105 sets out the NAFTA's legal obligation for investment requiring that Canada treat the Investor and its investment in accordance with international law, including fair and equitable treatment and full protection and security.

46. The facts set forth in paragraph 44 above constitute violations of international law and NAFTA Article 1105.

47. In particular, the denial of access to the courts, particularly after an action was commenced in the Superior Court of Justice, constitutes a violation of international law and NAFTA Article 1105.

Article 1110: Expropriation

48. Under Article 1110 of the NAFTA, no Party may directly or indirectly expropriate an investment of an investor of another Party in its territory or take a measure tantamount to the expropriation of such investment except for a public purpose, on a non-discriminatory basis, in accordance with due process of law and and on payment of compensation.

49. The compensation paid "shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place," shall not reflect any change in value occurring because of the intended expropriation and valuation criteria must include going concern value, asset value and such other criteria as appropriate to determine fair market value.

50. The enactment by the Government of Ontario of Bill 49 is a legislative measure that amounts to the direct or indirect expropriation of the Adams Mine site. The

enactment by the Government of Ontario of Bill 49 is also a legislative measure that is "tantamount to expropriation" because, *inter alia,* its purpose and effect is to shut down the Adams Mine site and put the Enterprise out of business. It prevented the use of the mine as a landfill, but also effectively reduced the asset value to nil or a negative value because of the ongoing costs to maintain the property and liabilities arising as a result of the ownership of the Adams Mine site.

51. The enactment by the Government of Ontario of Bill 49 contravenes the requirements set out in:

    a. Article 1110(1)(a) by the facts set out in paragraph 44 above;

    b. Article 1110(1)(b) as it is a discriminatory measure that is targeted specifically at the Enterprise to deny the use of the Adams Mine site that had earlier been approved by the Government of Ontario;

    c. Article 1110(1)(c) as the legislative measure is not in accordance with either "due process of law" or the requirements of Article 1105(1). Bill 49 violates the requirements of "due process of law" by denying the Enterprise reasonable access to the courts and the right to fair notice and the right to be heard; by retroactively revoking pre-existing permissions and approvals properly granted by governmental authorities; by retroactively extinguishing all causes of action arising in whole or in part from "anything" that may have occurred up to 15 years before Bill 49 was even enacted; by failing to consider the fair market value of the Adams Mine site as a solid waste facility;

    d. Article 1110(1)(d) and the requirement set out in subparagraph (2) that the compensation payment be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place and "not reflect any change in value occurring because the intended expropriation had become known earlier". Under the provisions of Bill 49 the fair market value or possible profits generated by the Enterprise are completely ignored and legislated to be irrelevant.

    e. 1110(2) which requires that the criteria to determine the fair market value of the expropriated investment is to include the "going concern value, asset value ... and other criteria, as appropriate." Bill 49 specifically provides that "no compensation is

payable ... for any loss of goodwill or possible profits." It also limits the amount of future expenses that are recoverable.

52. Government of Ontario's declaration in Bill 49 that the expropriation was not an expropriation is an admission that it was an expropriation or conduct tantamount to expropriation.

53. In summary, Bill 49 breaches Canada's obligations under Section A of NAFTA Chapter 11, including but not limited to, Articles 1105 and 1110, and Canada is liable for damages.

G RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED

54. The Enterprise has incurred loss or damage as a result of Canada's breach of its NAFTA Chapter 11 obligations.

55. Canada must compensate the Enterprise under Article 1117 for the damages caused by its failure to act in a manner that is consistent with its NAFTA obligations.

56. The Investor claims damages on behalf of the Enterprise for the following:

a. Payment of $355,100,000.00 as compensation for the damages caused by, or arising out of, Canada's measures that are inconsistent with its obligations contained in Part A of Chapter 11 of the North American Free Trade Agreement;

b. Costs for which the Enterprise claims reimbursement and/or incurred by the Enterprise both before and after the expropriation;

c. Compensation for any on-going or future liabilities arising from the Adams Mine site including, without limitation, for remediation of the site;

d. Compensation related to management time in pursuing, securing and attempting to operate the site both before and after expropriation;

e. Loss of profits in operating the Enterprise;

f. Costs associated with the expropriation, these proceedings, including all professional fees and disbursements.

g. Pre-award and post-award compound interest at a rate to be fixed by the Tribunal.

h. Tax consequences of the award to maintain the integrity of the award.

i. Such further relief that counsel may advise and that this Tribunal may deem appropriate.

APPOINTMENT OF ARBITRATOR

57. The Investor nominates as arbitrator pursuant to Article 7 of the UNCITRAL Arbitration Rules.

Professor Jean-Gabriel Castel
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Date of Service: March 30th, 2007

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Solicitors for the Investor

SERVED UPON:

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APPENDIX "A"

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, nondiscriminatory 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.

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 nondiscriminatory 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 ad 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-discriminator measure of general application shall not be considered a measure tantamount to an expropriation of debt security or loan covered by this Chapter solely on the grounds that the measure imposes costs on the debtor that cause it to default on the debt.

Consent and Waiver Pursuant to Article 1121(2) of NAFTA by Vito G. Gallo and 1532382 Ontario Inc.

1. Consent to Arbitration. Vito G. Gallo and 1532382 Ontario Inc. hereby consent to the arbitration of their claim under Article 1117 of NAFTA in accordance with the procedures set out in NAFTA.

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2. Waiver. Vito G. Gallo and ~~153282~~ Ontario Inc. hereby waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1117 except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

Dated this 29th, day of March, 2007

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Witness

Vito G. Gallo

1532382 Ontario Inc. per

Brent Swanick, President. A.S.O