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

ST. MARYS VCNA, LLC

Investor

v.

GOVERNMENT OF CANADA

Party

Pursuant to Articles 1116 and 1119 of the North American Free Trade Agreement (NAFTA), the Investor, **St. Marys VCNA, LLC**, hereby serves its Notice of Intent to Submit a Claim to Arbitration for breach by Canada of its obligations under the NAFTA.

A. OVERVIEW OF THE CLAIM

1. This is a case about governance gone very wrong. It involves basic unfairness and abuse of the land use planning and licensing approval process by self-interested political insiders who used unfair, non-transparent and secret regulatory procedures to circumvent the standard approval process and then prevent their victim from being able to obtain any meaningful independent review of outrageous governmental measures.

2. The victim of this unfair behavior was St. Marys Cement Inc. (Canada) ("SMC"), a Canadian Investment that is owned and controlled by St. Marys VCNA, LLC, a Delaware company, the Investor.

3. The Votorantim Cement North America Group of Companies, which include both the Investor and Investment, has almost 1200 employees in Canada and another 1700 in the United States. It is well-known that the Investment (and the Investor) is ultimately owned by a foreign entity and is part of the Votorantim Group of Brazil. The Investment, SMC, was founded in 1912 and has been in operation in Canada for nearly one hundred years. SMC owns a variety of US cement, aggregate and concrete supply companies with operations located in ten US states.

4. In June 2006, SMC took over an aggregate quarry permitting application already underway for lands it had acquired located at the 11th Concession Road East at Milburough Line in the City of Hamilton (the former Township of East Flamborough) (the "Quarry Site") with a view to commence quarrying for supply to the Southern Ontario market and other locations. The proposed SMC quarry would have employed approximately 110 full-time positions. The Quarry Site comprises 158 hectares, with quarrying operations on approximately 67 hectares, leaving over 60% of the total area undisturbed. The proposed SMC quarry contains dolostone rock of the Amabel formation which is recognized as one of the highest quality resources for crushed stone in Ontario.

5. A number of aggregate quarries operate in close proximity to the Quarry Site. The local Official Plan for the Quarry Site identified the area as containing significant mineral resources. The Official Plan had been approved by the Government of Ontario. The City of Hamilton zoning bylaws permitted a property owner in this location to seek an amendment of zoning from agricultural use to extractive industrial use.

6. The operation of the proposed SMC quarry would have been consistent with all relevant provincial policy statements and laws, such as the *Provincial Policy Statement*, *The Greenbelt Plan* and the *Clean Water Act, 2006*.

7. SMC followed the standard and proper rules to seek approval of its new quarry in Flamborough. In order to operate a quarry, SMC required the following:

    a. A License under the *Aggregates Resources Act*;
    b. A Permit to Take Water; and,
    c. Approval to change the use of the land from agricultural to extractive industrial use, and consideration of the Haul Route Study.

8. Applications for planning approvals for the Quarry Site were initiated in September 2004 by Lowndes Holdings Corp. SMC took over responsibility for the planning application in June 2006. As part of its proactive approach to consultation, SMC voluntarily held a series of local open houses and community meetings and provided citizens with detailed plans and access to technical experts on how it would deal with the development of a quarry in a sustainable manner. SMC encouraged open dialogue with the local agencies and hosted several tours of the Quarry Site.

9. A local organization, Friends of Rural Communities and the Environment ("FORCE"), was established with a specific mandate to "Stop the Quarry". Prominent political insiders of the governing Ontario Liberal Party were leaders of this opposition group. These included Mark Rudolph, the former Executive Assistant to Minister of the Environment Jim Bradley and Mr. Rudolph's partner, Jan Whitelaw, a former senior Environmental Policy Advisor to former Ontario Premier David Peterson. Ms. Whitelaw is also currently Chair of the Board of Directors of the Greenbelt Foundation and has been a director since its founding in June 2005. Mr. Rudolph and his partner, Ms. Whitelaw, live adjacent to the Quarry Site.

10. Rather than allow the quarry to be impartially assessed through the ordinary approval process, these prominent Liberal advisors were secretly able to convince Ministers of the governing Ontario Liberal Party and Premier's and Ministers' staff members to use unprecedented unilateral Ministerial powers targeting only lands owned by SMC and interfering with SMC's vested property rights. These measures were taken without any consultation, or any advance notice, to SMC.

11. The opponents of the quarry admitted to the existence of personal financial interests in stopping the quarry and the use of these extraordinary government powers conveyed financial benefit to the local opponents and loss to SMC. In a *Hamilton Spectator* newspaper article on October 21, 2009, Mr. Rudolph was quoted discussing the difficulty in raising funds to fight SMC's quarry application. The newspaper reported Mr. Rudolph as stating that:

> Knowing we'd need to raise $600,000 to $900,000 over eight to 10 years, we figured the average estate home in the area might be worth half a million dollars, and that it would drop by at least 10 per cent with the proposal in play.

12. Any mechanism that reduces SMC's effective legal remedies resulted in direct benefit to the politically advantaged local insiders. The opponents of the quarry had a vested personal financial interest in finding ways to reduce the need for legal intervention related to the proposal, as well as an interest in stopping SMC's proposed quarry in its entirety.

13. The Greenbelt Foundation emerged from the Provincial *Greenbelt Act* on February 24, 2005 and received $25 million from Premier McGuinty's government to support the Foundation's operational activities. Jan Whitelaw was appointed by the Ontario Liberal government as a director of the Greenbelt Foundation at the time of its founding.

14. The Greenbelt Foundation provided over $1.3 million in funding to Environmental Defence Canada: $600,000 on June 23, 2008 and another $750,000 a mere two days later. Environmental Defence Canada has directly funded more than $350,000 to FORCE since 2006, a group led in part by Ms. Whitelaw and Mr. Rudolph, to fight against the proposed quarry application.

15. At no time do the official Greenbelt Foundation Board minutes indicate that Director Jan Whitelaw disclosed the close existing relationship between FORCE and Environmental Defence Canada. Neither did Ms. Whitelaw at any time declare a conflict of interest, or recuse herself from the meetings discussing the use of provincially provided funds.

16. Politically connected Liberal Party insiders, opposed to the proposed quarry, used their links to government against SMC, while at the very same time, prior to the issuance of the Minister's Zoning Order ("MZO") the same government apparently continued to impartially assess the permit applications of the Investment on a purportedly technical basis.

17. The local riding where the Quarry Site is situated is Ancaster-Dundas-Flamborough-Westdale. The local MPP, Ted McMeekin, won this seat for the Liberal Party in 2007 by a razor thin 6.7% percent. Mr. McMeekin served as Minister of Government Services and also as Minister of Consumer Services in the current Ontario Liberal Government. At the time of the MZO, Mr. McMeekin had been demoted from the Cabinet but continued in the executive branch of government as the Parliamentary Assistant to the Minister of Training, Colleges and Universities. He continues in this position.

18. The MZO was issued on April 12, 2010 by then-Municipal Affairs and Housing Minister Jim Bradley. This was the same Jim Bradley who previously employed Mr. Rudolph when he was the Minister of the Environment. Other lands that exist in the local area were unaffected by the MZO. No notice was given to SMC of this action which had the effect of freezing the agricultural zoning of the Investment's Quarry Site. SMC commenced an application to revoke or amend the MZO to the Ontario Municipal Board in the belief that this unilateral action would be overturned by the Board.

19. The exercise of these extraordinary powers was also for the political gain of the governing Ontario Liberal Party, which sought to obtain the political support of the local quarry opponents in the next provincial election on October 6, 2011.

20. SMC was able to obtain numerous surprising documents under the *Freedom of Information Act*. One such document shows that on the eve of the MZO announcement, David Oved, the Press Secretary to Minister of Municipal Affairs and Housing Jim Bradley, counseled Ted McMeekin, to "trumpet your success" at the local level. He told Mr. McMeekin to do a multi-day celebration to get "the most media bang for our buck." He further suggested a victory party complete with "a giant cake, some music, etc."

21. Another document obtained was a private briefing note prepared on April 14, 2010 for the Minister of Municipal Affairs and Housing about his powers to use the MZO. These internal government documents indicated that the Minister could keep the MZO process secret and could even keep the decision of the MZO secret from the affected company for up to 30 days. The briefing note also discloses that the effect of an MZO did not prevent applications related to the quarry from being processed by the provincial or municipal governments.

22. The April 14, 2010 briefing note stated that the effect of an MZO was that:

- An MZO prevails over local zoning bylaws and controls the **use** of land (whether restricting or permitting uses).

- The MZO does not control **activities** carried on with respect to the land or stop the processing of other regulatory approvals.

23. Despite the fact that the MZO did not freeze the processing of permits while it was under appeal, local governments and the provincial Ministry of the Environment simply and unlawfully refused to continue processing necessary permit applications for SMC. The company's lawyers wrote to the relevant departments and ministry advising that such action was unlawful, but the various governmental bodies simply refused to carry out any service to SMC.

24. On April 20, 2011, the Minister of Municipal Affairs and Housing took another unilateral regulatory step that removed permanently SMC's right to obtain any independent binding review of the MZO. This was accomplished by the issuance of a Declaration of Provincial Interest by the Minister of Municipal Affairs and Housing. The Declaration of Provincial Interest was issued without consultation or prior notice of any kind to the company. Like the MZO, the Declaration only had impact on SMC and not to any other landowner in the same area.

25. The effect of the various measures has caused loss and damage to SMC and to the Investor's related business operations.

26. These losses include the substantial deprivation of its interest in the Quarry Site, including consequential losses arising therefrom and arising from the interference with its establishment, acquisition, expansion, management, conduct, operation or sale of its investment. The Investor and Investment have suffered loss arising from governmental unfair and arbitrary actions as well as from the lack of the most basic procedural fairness protections to follow the rule of law. In addition, the Investment has suffered loss and damage arising from Canada's failure to comply with its NAFTA Chapter 11 obligations. The measures which have resulted in this damage are related to the effect of:

    a. The Declaration of Provincial Interest made by the Minister of Municipal Affairs and Housing on April 20, 2011;

    b. The arbitrary, unfair and vexatious refusal of the Ontario Ministry of the Environment to issue a Permit to Take Water to allow the Investor to commence the second phase of pumping tests that the Ministry considers necessary, in complete disregard of the rule of law and due process; and

c. The arbitrary refusal of the City of Hamilton as well as the governments of Halton and Milton, as well as other government agencies, to proceed with review of the Investment's *Planning Act* applications, in disregard of the rule of law and due process.

B. NAMES AND ADDRESSES OF THE PARTIES

The Investor

27. The Investor, **St. Marys VCNA, LLC**, is incorporated in the State of Delaware in the United States of America. It owns and controls a variety of cement and building related investments in Canada and in ten American states.

The Investment maintains its registered office at:

2711 Centerville Road, Suite 400
Wilmington, Delaware 19808

The Investment has an office in Henderson, Nevada located at:

871 Coronado Center Drive, Suite 200-236
Henderson, Nevada 89052

The Respondent

28. The Respondent is the **Government of Canada ("Canada")** represented through:

Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, ONK1A 0H8
Canada

C. BREACH OF OBLIGATIONS

29. The Investor claims that Canada has violated at least the following provisions of Section A of NAFTA Chapter 11:

Article 1102 – National Treatment
Article 1103 – Most Favored Nation Treatment
Article 1105 – International Law Standards of Treatment
Article 1110 – Expropriation

These breaches have resulted in damage to the Investor.

30. The Applicable provisions of the NAFTA are set out in Annex I to this Notice. The applicable provisions of the NAFTA include, but are not limited to, NAFTA Chapters 1, 2 and 11.

D. ISSUES RAISED

31. Has Canada taken measures inconsistent with its obligations under Section A of the NAFTA, including Articles 1102, 1103, 1105 and 1110 of Chapter 11 of the NAFTA? If so, then what amount of compensation is to be paid to the Investor as a result of Canada's failure to comply with its obligations under the NAFTA?

E. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED

32. The Investor respectfully claims:

a. Damages of not less than US$275 million in compensation for the loss, harm, injury, loss of reputation and damage caused by or resulting from Canada's breach of its obligations under Part A of Chapter 11 of the NAFTA;

b. Costs of these proceedings, including all professional fees and disbursements;

c. Fees and expenses incurred to mitigate the effect of the measures;

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

e. Such further relief as counsel may advise and the Tribunal may deem appropriate.

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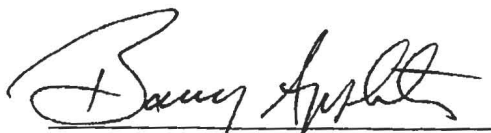

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Counsel for the Investor

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Annex 1- Applicable NAFTA Provisions

The applicable provisions of the NAFTA include Chapters 1, 2, and 11, and include, but are not limited to the following:

Chapter One: Objectives

Article 102: Objectives

1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment and transparency, are to:

a) eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties;

b) promote conditions of fair competition in the free trade area;

c) increase substantially investment opportunities in the territories of the Parties;

d) provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;

e) create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and

f) establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement.

2. The Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law.

Article 105: Extent of Obligations

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance, except as otherwise provided in this Agreement, by state and provincial governments.

Chapter Two: General Definitions

Article 201: Definitions of General Application

1. For purposes of this Agreement, unless otherwise specified:

Commission means the Free Trade Commission established under Article 2001(1) (The Free Trade Commission);

Customs Valuation Code means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, including its interpretative notes;

days means calendar days, including weekends and holidays;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

enterprise of a Party means an enterprise constituted or organized under the law of a Party;

existing means in effect on the date of entry into force of this Agreement;

Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures;

goods of a Party means domestic products as these are understood in the General Agreement on Tariffs and Trade or such goods as the Parties may agree, and includes originating goods of that Party;

Harmonized System (HS) means the Harmonized Commodity Description and Coding System, and its legal notes, and rules as adopted and implemented by the Parties in their respective tariff laws;

measure includes any law, regulation, procedure, requirement or practice;

national means a natural person who is a citizen or permanent resident of a Party and any other natural person referred to in Annex 201.1;

originating means qualifying under the rules of origin set out in Chapter Four (Rules of Origin);

person means a natural person or an enterprise;

person of a Party means a national, or an enterprise of a Party;

Secretariat means the Secretariat established under Article 2002(1) (The Secretariat);

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party; and

territory means for a Party the territory of that Party as set out in Annex 201.1.

2. *For purposes of this Agreement, unless otherwise specified, a reference to a state or province includes local governments of that state or province.*

Chapter Eleven: Investment

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 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).

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.*