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NOTICE OF INTENT TO SUBMIT CLAIM TO ARBITRATION PURSUANT TO CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT

JOHN R. ANDRE,

Investor,

v.

GOVERNMENT OF CANADA,

Party.

Pursuant to Articles 1116, 1117 and 1119 of the *North American Free Trade Agreement* ("NAFTA"), the disputing Investor, John Andre (hereinafter "Mr. Andre" or the "Investor"), hereby respectfully serves a Notice of Intent to Submit a Claim to Arbitration for breach by the Government of Canada (hereinafter "Canada"), through the actions of the provincial Government of the Northwest Territories ("NWT"), of its obligations under Chapter Eleven of NAFTA. The Investor also hereby requests Canada and the Government of the NWT to begin formal consultations and negotiations, as contemplated by NAFTA Article 1118, in an effort to amicably resolve this dispute.

I. TYPE OF CLAIM

1. Mr. Andre submits this Notice of Intent both under NAFTA Article 1116 as an investor on his own behalf, and under NAFTA Article 1117 on behalf of two investment enterprises that he owns or controls directly or indirectly; being Qaivvik, Ltd. and Caribou Pass Outfitters, Ltd.

II. DISPUTING INVESTOR

2. Questions II (a)/(d): The full name and address of the disputing Investor:

Investor: Mr. John R. Andre

Address: P.O. Box 520
1555 Skalkaho Highway
Hamilton, MT 59840

Telephone: 406-375-8400
Fax: 406-375-8401
Email: john@shoshonewilderness.com

The Canadian enterprises that are juridical persons of the Investor that the Investor owns or controls directly or indirectly are:

Qaivvik, Ltd. (A registered corporation in the Northwest Territories, Canada)
145 Rivet Crescent Drive
Yellowknife, NWT

Caribou Pass Outfitters, Ltd. (A registered corporation in the Northwest Territories, Canada)
5107 53rd Street
Yellowknife, NWT

The two Canadian enterprises are marketed jointly under the name "Courageous Lake Caribou Camps" and are jointly referred to herein as the "Courageous Lakes Caribou Camps". The rights of the Courageous Lake Caribou Camps have been directly affected by acts/measures for which Canada is internationally responsible.

3. Questions II (b)/(c): The disputing Investor is a national of the United States of America. Therefore, the Investor is an "Investor of a Party" as that term is defined in NAFTA Article 1139.

III. TYPES OF INVESTMENTS INVOLVED

4. The types of "investments", as that term is defined in NAFTA Article 1139, include:

(a) Enterprises - John R. Andre, the Investor, owns 100% of the issued and outstanding shares of:

(i) Qaivvik, Ltd. (A registered corporation in the Northwest Territories, Canada); and

(ii) Caribou Pass Outfitters, Ltd. (A registered corporation in the Northwest Territories, Canada).

Therefore, the Courageous Lake Caribou Camps are "investments of an investor of a Party", as that term is defined in NAFTA Article 1139;

(b) Equity securities of (a);

(e) an interest in the enterprises listed in (a) that entitles the Investor to share in income or profits of the enterprises;

(f) an interest in the enterprises listed in (a) that entitles the Investor to share in the assets of the enterprises;

(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes - specifically, big game tags referred to herein as "Caribou Quota Tags" and the assets of an outfitters business in the NWT relating to hunting caribou and hunting camps; and

(h) interests arising from the commitment of capital or other resources in the NWT to economic activity in such territory.

IV. LEGAL REPRESENTATIVE AND SERVICE OF DOCUMENTS

5. The legal representative is set out herein:

(a) Name of Legal Representative: Todgham Cherniak, Cyndee B.

(b) Address at which correspondence should be served:

c/o Lang Michener LLP
Brookfield Place
181 Bay Street, Suite 2500
P.O. Box 747
Toronto, ON M5J 2T7

Telephone: 416-307-4168
Fax: 416-304-3871
Email: cyndee@langmichener.ca

6. Correspondence should also be directed to the Investor:

Name: Andre, John R.

Address: P.O. Box 520
1555 Skalkaho Highway
Hamilton, MT 59840

Telephone: 406-375-8400
Fax: 406-375-8401
Email: john@shoshonewilderness.com

V. PROVISIONS ALLEGED TO HAVE BEEN BREACHED AND OTHER APPLICABLE PROVISIONS

7. The Investor alleges that the Government of Canada, through the actions of its constituent political subdivision, the Territorial Government of the Northwest Territories, for which it is internationally responsible, has breached the following obligations under Section A of Chapter Eleven of the NAFTA, including, but not limited to the following provisions:

Article 1102: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favourable 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 favourable than that it accords, in like circumstances, to investments of its own investment 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 favourable than the most favourable

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.

4. For greater certainty, no Party may:

(a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares far directors or incorporators of corporations; or

(b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

Article 1103: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party treatment no less favourable 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 favourable 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 1104: Standard of Treatment

Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103.

Article 1105: Minimum Standard of Treatment

1. Each Party should 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).

July 31, 2001 Joint Clarification - Minimum Standard of Treatment in Accordance with International Law

1. Article 1105(1) prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of another Party.

2. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

3. A determination that there has been a breach of another provision of the NAFTA, or of a separate international agreement, does not establish that there has been a breach of Article 1105(1).

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.

[Note: Articles 1110.4-1110.8 have not been reproduced]

VI. FACTUAL BACKGROUND

A. INTRODUCTION

8. This claim arises out of the arbitrary, discriminatory and illegal treatment of the Investor under legislation enacted by the NWT expressly directed at the expropriation of the Investor's investments in the NWT, including Caribou Quota Tags, real property, intangible property and various vested rights and legal entitlements and the denial to the Investor due process and appropriate compensation. Canada is responsible to the actions of the NWT under NAFTA and applicable principles of international law.

B. THE INVESTOR AND THE INVESTMENT

9. The Investor, Mr. John R. Andre is a citizen of the United States of America.

10. In 1999, Mr. Andre purchased from Mr. Fred Webb and Mr. Mike Freeland 100% of the issued and outstanding shares of Qaivvik, Ltd. for a share purchase price of $695,000. Qaivvik, Ltd. is a company duly incorporated and registered in the NWT, whose

registered office is 145 Rivet Crescent Drive, Yellowknife, Northwest Territories. The Investor owns 100% of the issued and outstanding shares of Qaivvik, Ltd. At the time of the share acquisition, the most significant business asset of Qaivvik, Ltd. was 180 Caribou Quota Tags. The Investor intended at the time of the acquisition to operate an outfitters business and had a reasonable expectation to benefit economically and financially from the acquired business and assets. The Investor would not have purchased the shares of Qaivvik, Ltd. if the corporation did not own as an asset the exclusive rights to exploit for profit the 180 Caribou Quota Tags.

11. In 2003, the Investor purchased from Mr. Don Cadieux 100% of the issued and outstanding shares of Caribou Pass Outfitters, Ltd. for $650,000. Caribou Pass Outfitters, Ltd. is a company duly incorporated and registered in the NWT, whose registered office is 5107 53rd Street, Yellowknife, Northwest Territories. The Investor owns 100% of the issued and outstanding shares of Caribou Pass Outfitters, Ltd. At the time of the share acquisition the most significant business asset of Caribou Pass Outfitters, Ltd. was 180 Caribou Quota Tags. The Investor intended at the time of the acquisition to operate an outfitters business and had a reasonable expectation to benefit economically and financially from the acquired business and assets. The Investor would not have purchased the shares of Caribou Pass Outfitters, Ltd. if the corporation did not own as an asset the exclusive rights to exploit for profit the 180 Caribou Quota Tags.

12. As stated above, at the time of the 1999 and 2003 acquisitions, the most significant asset of both Qaivvik, Ltd. and Caribou Pass Outfitters, Ltd. was 180 Caribou Quota Tags per corporation, combined totalling 360 Caribou Quota Tags. The Investor allocated most of the value of the share purchase price to these intangible assets. The Investor required 360 Caribou Quota Tags (or more) in order to achieve economies of scale in organizing hunting packages for tourists/hunters who would travel from a location outside Canada to the Courageous Lake Caribou Camps in the NWT.

13. After the acquisitions in 1999 and 2003, substantial investments were made by the Investor in the businesses of the Courageous Lake Caribou Camps. The Investor, via injections of capital into the Courageous Lakes Caribou Camps, invested in the

construction of new buildings and upgraded existing buildings on land leased by the Courageous Lake Caribou Camps in the NWT. In addition, the Courageous Caribou Camps acquired capital assets and other equipment and chattels for use in the outfitting businesses in the NWT. The Investor invested over 2.5 million dollars between 1999 and 2007. This included, but is not limited to, the building of 32 new cabins, 2 – 2400 square foot lodge buildings, the complete renovation of 16 cabins, and the purchase of equipment, boats, motors, generators, water systems, etc. for all the above. Three of the four renovated camps are accessible only by floatplane, and the fourth is accessible only by a winter road. The cost of bringing in materials from outside Canada to the NWT was approximately $2.00 per pound.

14. In addition, the Courageous Lakes Caribou Camps expended financial and human resources training guides and staff, and preparing marketing and promotional materials. Further, the Investor promoted the Courageous Lakes Caribou Camps outfitting business in the United States of America and developed a loyal/repeat market following. Furthermore, the Investor expended his own time developing a supply chain (e.g., relationships with pilots to take hunters to the Courageous Lake Caribou Camps during the limited hunting season).

15. Since the Investor is the sole shareholder of Qaivvik, Ltd. and Caribou Pass Outfitters, Ltd., the Investor is entitled to receive dividends from the companies and share in the income or profits of the companies. The Investor is also entitled to an indirect share in all of the assets of the enterprises, including real property interests, tangible and intangible property, goodwill, etc. acquired, purchased or developed in the expectation of or used for the purposes of economic benefit.

16. Given the success of the Courageous Lake Caribou Camps, the Investor directly and indirectly maintained interests arising from the commitment of capital and resources in the NWT.

17. Qaivvik, Ltd. and Caribou Pass Outfitters, Ltd. are outfitting companies that operate hunting camps in remote locations in the Barrens in the NWT. Hunting camps are located on Courageous Lake, Lac de Gras (East and West), and Jolly Lake. These camps

are all situated on aboriginal land, Department of Indian and Northern Affairs Land Lease Numbers: 76C/12-1, 76D/11-1, 76D/3-5, 76D/4-2.

18. These camps are all located in the area of Wek'heezhi, part of the Tllcho Land Claims Settlement in the NWT. As such, all wildlife decisions and management actions involve a co-management board, the Wek'heezhi Renewable Resources Board (WRRB), established by the Tlicho Lands Claim Agreement.

19. Qaivvik, Ltd. and Caribou Pass Outfitters, Ltd. are licensed outfitters who provide services for non-resident hunters who wish to hunt Barren ground caribou. Qaivvik, Ltd. and Caribou Pass Outfitters, Ltd. acquired the following licenses:

Type of License	**Qaivvik, Ltd.**	**Caribou Pass Outfitters Ltd.**
Tourism Operator License	NS-2007-021	NS-2007-020
Outfitter License	09436	09437
Taxidermist License	003284	003284

20. Qaivvik, Ltd. and Caribou Pass Outfitters, Ltd. have held the necessary licences issued by the Government of the NWT, in particular, the Ministry of Environment and Natural Resources ("ENR").

21. There are 10 licensed outfitters in Region R of the NWT, licensed to hunt Barren-ground caribou. Three are designated HTA (Hunter and Trapper Association) outfitters and referred to in the NWT Wildlife Act as a "local authority". These local authorities are based in the Tlicho villages of Gameti, Wekweti, and Dettah/Ndilo. HTA outfitters are local aboriginals.

22. There are seven designated non-HTA outfitters, including Qaivvik, Ltd. and Caribou Pass Outfitters, Ltd., in Region R of the NWT. A "non-HTA Outfitter" means a holder of an outfitter license, other than a local authority.

23. The Investor's outfitting business is involved in the scheduling, organizing, and offering of hunting packages related to caribou hunting trips in the Region R of the NWT. By law,

all non-resident Canadians and non-resident aliens must utilize the services of an outfitter to hunt caribou in the NWT. They must at all times be accompanied by a registered guide, who must be an employee of a licensed outfitter.

24. The hunting packages provided by the Courageous Lake Caribou camps include pickup at the hotel, licensing pickup at ENR, transfer to floatplane base, flights to camps, guide service (maximum of two hunters per guide), boat and ATV transportation, field care of trophies and game meat, transfer of hides, horns, capes, and meat to camp and back to Yellowknife, two full-time chefs in camp, all meals and lodging, a camp manager and assistant, and an expediter in Yellowknife.

25. All of the Investor's clients come to the Courageous Lake Caribou Camps to hunt Barren-ground caribou, and may engage in the incidental hunting of wolf and wolverine. They were also permitted to fish. Under the conditions of the Courageous Lake Caribou Camps' outfitting licenses and the *Wildlife Act*, the Courageous Lake Caribou Camps are not permitted to hunt any other big game species other than caribou, wolf, and wolverine. That being said, the Investor's clients purchase hunting packages of the Courageous Lake Caribou Camps in order to hunt caribou and would not purchase a hunting package if Caribou Quota Tags were not available. A Caribou Quota Tag entitles a client to kill one male Barren-ground caribou in the designed area of the NWT.

26. Clients of the Courageous Lake Caribou Camps are generally permitted to purchase one or two Caribou Quota Tags each per year from the Courageous Lake Caribou Camps.

27. The caribou hunting season runs from August 15 to November 1 of each year. For practical reasons (that is, the lakes start to freeze), hunting packages are scheduled from August 15 to October 1 of each year, which represents 6-7 hunting package periods for the clients of the Courageous Lake Caribou Camps. In other words, the Investor schedules 6-7 hunting trips during the hunting season and a number of clients/hunters pay the Courageous Lake Caribou Camps to participate in one of the 6 or 7 hunts. The Courageous Lake Caribou Camps do not schedule hunts outside caribou hunting season.

28. Notwithstanding the 2.5 month caribou hunting season, the booking of hunts for Barren ground caribou is a year-long venture and amounts to a 12-month expenditure of effort and human resources by each of the Courageous Lake Caribou Camps in anticipation of a truncated 1.5-month long season. On an annual basis, the Investor and the employees of the Courageous Lakes Caribou Camps expend financial resources to market the hunting packages outside Canada. Hunts are typically booked 1-2 years in advance.

29. Based on the number of Caribou Quota Tags granted to the Courageous Lake Caribou Camps (being 360 in 2003-2006), the Investor (indirectly via his businesses) marketed to hunters/clients and arranged for caribou hunting packages for their clients. The Investor sold caribou hunting packages to hunters from all over the world.

30. The Investor was able to market caribou hunting packages for 1 or 2 Caribou Quota Tags per hunter (priced accordingly) and could acquire additional Caribou Quota Tags from a pool beyond the 360 Caribou Quota Tags allocated to the Courageous Lake Caribou Camps. The number of caribou hunting packages sold by the Courageous Lakes Caribou Camps per year depended on a number of factors, including the number of Caribou Quota Tags used by any one hunter and the ability of the Investor to obtain additional Caribou Quota Tags through a pool system as contained in the Regulation.

31. In 2006, the Courageous Lake Caribou Camps utilized 420 Caribou Quota Tags (the 360 they owned, and acquired 60 additional Caribou Quota Tags made available through a pool of unused Caribou Quota Tags by other outfitters, for hunts not sold before May 15 of the relevant year.

32. Client capacity is regulated by the NWT, based on camp facilities. The capacity of the Courageous Lake Caribou Camps for six hunts in 2006 was 252 clients, with a 95-100% occupancy rate.

33. The number of paying clients in 2007-2009 were as follows:

Year	Number of Clients	Capacity Utilization
2007	131	52%
2008	125	50%
2009	106	42%

34. The rapid growth of the Investor's businesses, from 65 hunters in 1999 to 252 in 2006, and the Investor's bringing U.S. citizens and other non-residents of Canada to hunt in the NWT, created a political dynamic whereby the Investor was unwanted by several of the competing, local outfitting companies and local politicians. In the 2006 caribou hunting season, the Investor's Courageous Lakes Caribou Camps legally maintained a 65% market share.

C. DISCRIMINATORY ACTIVITIES UNDERLYING MEASURE

35. The Minister of Environment and employees of the ENR in the NWT have made negative statements publicly and in private about the Investor and his foreign clientele hunting caribou in the NWT. The Investor believes that he is being targeted as a non-resident of Canada and is being discriminated against on the basis of his U.S. nationality.

36. On or about July 2009, the former Minister of Industry, Tourism and Investment of the Government of the NWT, Mr. Brendan Bell, met with and informed the Investor that Minister Michael Miltenberger of the ENR wanted the Investor out of the NWT because the Investor is an American and the Investor's businesses in the NWT had grown too large.

37. On or about July 9, 2009, the Investor received an email from Minister Michael Miltenberger (which copied Bruno Croft, Jan Adamczewski, Ernie Campbell and Cate Sills) indicating that Minister Miltenberger knew that the Investor had spoken with Mr. Bell and he was watching the Investor's activities. Minister Miltenberger wrote "John has been talking to Brendan Bell, who called me to let me know, so let's add this to the list. Thx ...". The Investor perceived the email message to support his fears that Minister Miltenberger was targeting the Investor.

38. The Investor was informed and believes to be true that another outfitter with an American investor, Mr. Gary Jaeb, was also being targeted by Minister Miltenberger and ENR due to his lifestyle, which includes drinking alcohol.

39. In addition, the Investor was informed and believes to be true that local government officials wanted to take steps to expropriate the Investor's businesses and/or diminish the value of the Courageous Lakes Caribou Camps and then purchase the real property assets and other capital property at 90 percent discounted value.

D. THE OFFENDING MEASURES

40. In or about 1980, two years before the caribou hunting industry began in the NWT, ENR of the NWT reported 354,000 Barren ground caribou in the NWT. In 2006, the Barren ground caribou population in the NWT was reported to be 1,188,000.

41. The availability of Caribou Quota Tags for hunting Barren ground caribou in the Wildlife Management Barren Ground Area RBCR-BC-01 is governed by the *Wildlife Act* and the *Big Game Hunting Regulation* R-019-92, and amendments thereto (hereinafter referred to as the "Regulation").

42. In (and prior to) 2006, the Regulation provided for a total of 1,260 Caribou Quota Tags, which was divided among the seven non-HTA outfitters. The Courageous Lake Caribou Camps were allocated 360 Caribou Quota Tags. The three aboriginal (HTA) outfitters were allocated 132 Caribou Quota Tags each. The Regulations did not require annual approvals or any actions to be taken by holders of Caribou Quota Tags on an annual basis in order to maintain their exclusive rights.

43. In June 2006, the non-HTA outfitters were informed that the Government of the NWT was considering options to reduce the number of Caribou Quota Tags that would be available per outfitter for the 2007 season. The Minister of ENR's first communication was that the Government of the NWT was going to withhold 96 of the Investor's 360 Caribou Quota Tags leaving the Investor with 264 Caribou Quota Tags for the 2007 hunting season. This proposal was soon discarded by ENR and more disadvantageous options to the Investor were pursued.

44. On December 15, 2006 the outfitting companies, including the Investor, received an e-mail from the Government of the NWT, indicating that they were going to propose to take away a greater number of the Investor's Caribou Quota Tags, per company and make available only 35 Caribou Quota Tags each, with a maximum harvest of 22 Caribou Quota Tags per company. The ENR indicated that the Investor would have an opportunity to make comments about the proposed expropriation at a WRRB meeting that was to occur in three days (on December 18, 2006). The December 18, 2006 WRRB meeting was to be the first WRRB meeting ever to be convened. Prior to the first WRRB meeting, the WRRB cancelled that meeting and called for a full public hearing to be held March 7, 2007.

45. On or about December 16, 2006, the Investor began reading the government's caribou research. The research contained data that 9 of the 10 outfitters had not observed any decline in caribou numbers. The one non-HTA outfitter that reported a decline in caribou numbers was Moise and Joyce Rabesca, owners of Camp Ekwo. The Rabescas indicated that they had experienced poor hunting in their area, being Humpy Lake and Little Forehead lakes. The Rabescas data is questionable The Rabescas had tried to buy Qaivvik, Ltd. in 1999 from then owners Fred Webb and Mike Freeland due to the fact that Qaivvik, Ltd.'s territory included larger lakes that were more favoured by Barren ground caribou. However, the Government of the NWT would not give the Rabescas the necessary financing to acquire the shares of Qaivvik, Ltd. After the Rabescas could not obtain government financing, Mr. Webb and Mr Freeland sold Qaivvik, Ltd. to the Investor.

46. On or about December 20, 2006, the Government of the NWT demanded to know how many hunts the Investor and the other outfitters had booked for the 2007 season as at that date. The outfitters responded that approximately 750 clients had already committed to participate in the 2007 caribou hunt.

47. On January 1, 2007, the Government of the NWT proposed an amendment to the *Game Hunting Regulations* and without justification proposed to take away permanently Caribou Quota Tags available to non-residents, or non-resident aliens, who have engaged

the services of outfitters (such as and including the Courageous Lakes Caribou Camps owned by the Investor). The proposed partial expropriation was 97 Caribou Quota Tags for the group of non-HTA outfitters to share on an unstated basis (that is, 1,260 Caribou Quota Tags per year reduced to 1,163 Caribou Quota Tags per year) (the "First Amendment"). The above number was based on the Caribou Quota Tags required to service the clients, not on any scientifically based caribou management action.

48. On or about the same time in January 2007, Mr. Fred Mandeville, Wildlife and Environment Manager, North Slate Region, NWT stated at a public meeting that he resented foreigners coming into the NWT and shooting caribou. The outfitters understood that there was a connection between this sentiment by a decision-maker in the Government of the NWT and the proposed First Amendment.

49. On or about January 4, 2007, the outfitters met with the Premier, Mr. Joe Handley. The Investor provided the Premier with data that the caribou numbers in the NWT had skyrocketed in recent years, going from 354,000 in 1980, to 1,188,000 in 2006. The source of this information was CARMA (Circum-Arctic Rangifer Monitoring and Assessment Network), which relies on Government of the NWT's numbers for its information. The Premier refused to look at any of the numbers, saying he was going to decide this issue based on politics and not the caribou numbers.

50. On or about January 8, 2007, the outfitters were told that the Government of the NWT was going to limit the number of Caribou Quota Tags they were going to issue for the 2007 caribou hunting season to a combined total of 750 Caribou Quota Tags (that is, 1,260 Caribou Quota Tags per year for non-HTA outfitters reduced to 750 Caribou Quota Tags for all outfitters (HTA outfitters and non-HTA outfitters) combined). Since there were 750 clients already booked, the HTA and non-HTA outfitters would have to share those booked clients. At the time of this proposal, the Investor was informed that the Courageous Lakes Caribou Camps would be allocated 205 Caribou Quota Tags for 2007 caribou hunting season and was informed that the Courageous Lake Caribou Camps would have to buy Caribou Quota Tags from its local competitors to service its current obligations to its booked clients. The allocation was to be based on the usage of Caribou

Quota Tags in the 2006 caribou hunting season decreased proportionately. This proposal was soon discarded by ENR and more disadvantageous options to the Investor were pursued.

51. On January 21, 2007, after being lobbied by several of the smaller outfitters, the Government of the NWT changed its proposal and decided to divide 750 Caribou Quota Tags equally among all the outfitters and, thereby, would grant only 75 Caribou Quota Tags per outfitter despite their existing vested rights to receive more Caribou Quota Tags. If any outfitter had commitments with clients, they would be required to buy Caribou Quota Tags from their competitors. Many of the local outfitters only used 75-100 Caribou Quota Tags (or less) per year. In other words, the Government of the NWT developed a strategy to minimize the negative effect on local outfitters and maximize the negative effects on the Investor. For Courageous Lake Caribou Camps, the failure to issue Caribou Quota Tags based on existing legal entitlements resulted in a business loss in 2007 of 59%. If one takes into account the pool of Caribou Quota Tags, the actual loss of business for the Investor was 64% in 2007.

52. The effect of the proposed regulatory taking on the Investor would be significant. The Investor understood that each of the Courageous Lake Caribou Camps would lose 145 Caribou Quota Tags each and that the maximum harvest would be even lower at 22 Caribou Quota Tags per company. The government never explained how the outfitting industry was supposed to deal with having a 35 Caribou Tag Quota, but a maximum harvest of 22. If the first 22 hunters were successful (assuming all one caribou hunts), the outfitters would have to refund the money paid by the last 13 hunters for their hunting packages.

53. At the WRRB hearing on March 7, 2007, the Investor and other non-HTA outfitters were informed that the Government of the NWT had already gone forward to the NWT Department of Justice, and the Government of the NWT planned to amend the *Wildlife Act* to reduce each outfitter's quota (both HTA and non-HTA) to 83 Caribou Quota Tags and, thereby, expropriate 194 Caribou Quota Tags from the Courageous Lake Caribou

Camps. As a result, the proposal was no longer being discussed at the WRRB meeting as decisions had been made.

54. On April 3, 2007, the Government of the NWT amended the Regulations and without justification took away Caribou Quota Tags previously allocated available to non-residents, or non-resident aliens, who engaged services of outfitters. The partial expropriation was 510 Caribou Quota Tags, which left a total of 750 Caribou Quota Tags to be split among all outfitters (HTA and non-HTA combined) (the "Second Amendment").

55. The Government of the NWT disproportionately took away Caribou Quota Tags from non-HTA outfitters in comparison to HTA outfitters. The non-HTA outfitters experienced a 64% expropriation of their Caribou Quota Tags (reduction from 180 to 83). HTA outfitters experienced a smaller expropriation of 37% because their 132 Caribou Quota Tags were reduced to 83 Caribou Quota Tags. One aboriginal (HTA) outfitter who had historically booked only a few hunters per year gave up his Caribou Quota Tags in 2007.

56. The Government of the NWT would not entertain discussions of compensation for the expropriation/regulatory taking.

57. In respect of the 2007 caribou hunting season, Qaivvik, Ltd. had 97 Caribou Quota Tags expropriated and was allocated 83 Caribou Quota Tags, down from its entitlement to 180 Caribou Quota Tags. In respect of the 2007 caribou hunting season Caribou Pass Outfitters, Ltd. had 97 Caribou Quota Tags expropriated and was allocated 83 Caribou Quota Tags, down from its entitlement to 180 Caribou Quota Tags. Each of the Courageous Lakes Caribou Camps were allocated 83 Caribou Quota Tags because 750 Caribou Quota Tags were allocated equally among the 9 remaining participating outfitters.

58. In 2008, the Government of the NWT amended the Regulations and expropriated an additional number of Caribou Quota Tags from the Courageous Lake Caribou Camps. The number of Caribou Quota Tags available to non-residents, or non-resident aliens,

who engaged services of outfitters decreased from 83 to 75 tags per outfitter (the "Third Amendment"). Total quota of 750 for the industry remained the same, but one aboriginal (HTA) outfitter who gave up his Caribou Quota Tags in 2007 wanted to participate in 2008. As a result, each of the Courageous Lake Caribou Camps received 75 Caribou Quota Tags in 2008 and 2009 (750 divided by 9 equals 83 for 2007, 750 divided by 10 equals 75 for 2008 and 2009).

59. Effectively, each non-HTA outfitter were forced to give to the one HTA outfitter 8 Caribou Quota Tags and were not compensated therefor.

60. The disproportionate taking of non-HTA outfitters Caribou Quota Tags was more pronounced. The effective expropriation from HTA outfitters was 57 Caribou Quota Tags each and the effective expropriation from non-HTA outfitters was 105 Caribou Quota Tags each.

61. The Second Amendment and the Third Amendment are measures that are *uttra vires*. As a result of the April 3, 2007 and 2008 measures, the Investor's businesses could not sell the same number of caribou hunting packages as they could prior to the measures. The measures negatively affected the Investor's businesses. The Investor could not achieve economies of scale.

62. The expropriation of the Investor's Caribou Quote Tags used by the Courageous Lake Caribou Camps from 420 Caribou Quota Tags a year to 150 Caribou Quota Tags a year is a 65% government-mandated expropriation of the Investor's indirectly held property.

63. The Government of the NWT would not discuss compensation for the expropriation.

64. In November of 2009, the Government of the NWT and the Tlicho Government put forth a joint proposal to the WRRB, which proposed a further expropriation in the Caribou Quota Tags for Qaivvik, Ltd. and Caribou Pass Outfitters, Ltd. to zero (the "Fourth Amendment").

65. In December, 2009, the Minister closed all caribou hunting in the area encompassed by the Investor's camps. He did not, however, close all hunting on the traditional Bathurst

Caribou wintering grounds. Hunting for Bathurst Caribou remained open in the region around the Minister's political riding of Ft. Smith, and the area around Lutselke, which is currently negotiating a Land Claim Settlement.

66. A WRRB hearing was originally scheduled for January, 2010. That WRRB hearing was postponed until the week of March 22, 2010.

67. The Investor believes he will not be given any due process opportunity and the full expropriation of his Caribou Quota Tags is all but certain. Results are due in May of 2010.

68. The Government of the NWT has not discussed compensation with the Investor.

69. The Investor has been informed by ENR that the Courageous Lake Caribou Camps Tag Quota for 2010 will be zero and the deposit insurance program, designed by the Government of the NWT to return deposits of defunct outfitters will not be accessible by the Investor and/or the Courageous Lake Caribou Camps. It should be noted that the Government of the NWT has a Deposit Assurance Program, to protect non-resident sportsmen from losing their deposits, should an outfitter go out of business. It (the Government of the NWT) would have to return client deposits, should an outfitter go out of business. This would have cost the Government of the NWT approximately $1,000,000.

E. MISCELLANEOUS FACTS

70. On or about February 6, 2010, Federal Finance Minister, Jim Flaherty, held a G7 meeting in Iqaluit, Nunavut. One of the Canadian delicacies served at the closing dinner was caribou meat. This activity demonstrates that the Government of Canada does not consider caribou to be endangered.

71. On or about February 3, 2010 and February 4, 2010, MLA Kevin Menicoche and MLA David Krutko raised in the NWT legislative assembly questions concerning the Government of the NWT's legal authority to restrict hunting of Barren ground caribou on aboriginal lands.

72. In or about February 2010, the Government of the NWT filed a motion with the NWT Supreme Court asking the Court to rule on whether the Government of the NWT has legal authority under the *Northwest Territories Act* to regulate subsistence harvesting of Barren ground caribou of HTA hunters (aboriginal Canadians) on aboriginal lands. The NWT Supreme Court was scheduled to hear the motion on March 12, 2010 and deferred the matter until May 19, 2010.

73. As of the date of filing of this Notice of Intent not one scientifically reliable study has been provided by the Government of the NWT to justify the draconian measures of the Government of the NWT taking property away from the Investor.

VII. ISSUES

74. However, the Investor has sought the opinions of world renown biologists, Dr. Rick Page and Mark Fraker, who have opined on February 22, 2010 that "... the Bathurst herd has not declined dramatically and the proposed management actions are not justified", and "The Draft Technical Support does to justify restrictions on hunting" caribou in the NWT.

75. The Investor will raise the following issues:

(a) Did the Government of the NWT undertake a measure that is an expropriation directly or indirectly, or tantamount to expropriation contrary to NAFTA Article 1110 with respect to the Courageous Lake Caribou Camp's valuable Caribou Quota Tags?

(b) Did the Government of the NWT effectively shut down the businesses owned by the Investor in the NWT or significantly diminish their value and the value of its assets when it undertook the measures in respect of the Caribou Quota Tags contrary to NAFTA Article 1110?

(c) Did the Government of the NWT undertake the action of expropriating the Courageous Lake Caribou Camps' valuable Caribou Quota Tags without

legal or constitutional authority to do so thereby acting contrary to law and, therefore, contrary to NAFTA Article 1105?

(d) Did the Government of the NWT knowingly and with intention disadvantage the businesses owned by the Investor in the NWT or significantly diminish their value or reduce their profit potential without according due process contrary to NAFTA Article 1105?

(e) Did the Government of the NWT fail to accord the Investor and the Courageous Lake Caribou Camps fair and equitable treatment contrary to NAFTA Article 1105?

(f) Are the measures (the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment) intended to create an environment where local officials and businesses can purchase the Investor's businesses at a fraction of their 2006 values contrary to NAFTA Articles 1110, 1102, 1103, 1104 and 1105?

(g) Did the Government of the NWT act in a discriminatory manner and fail to accord the Investor and its businesses in the NWT national treatment by disproportionately expropriating their Caribou Quota Tags in comparison to Canadian outfitters and aboriginal outfitters in Canada contrary to NAFTA Article 1103?

(h) Did the Government of the NWT act in a discriminatory manner and fail to accord the Investor and its businesses in the NWT most-favoured nation treatment or national treatment by disproportionately expropriating their Caribou Quota Tags on the basis that the Investor is a national of the United States contrary to NAFTA Articles 1102, 1103 and/or 1104?

(i) Did the Government of the NWT act in a discriminatory manner and fail to accord the Investor and its businesses in the NWT most favoured national treatment or national treatment by targeting its measures in respect of the Caribou Quota Tags, and the Investor's businesses in

particular, on the basis the Investor's clients consist of nationals of countries other than Canada contrary to NAFTA Articles 1102, 1103 or 1104?

76. The Investor will raise other issues during consultations and in the arbitration filings.

VIII. RELIEF AND AMOUNT OF DAMAGES

77. The Investor, on behalf on himself and Courageous Lake Caribou Camps will submit a claim for arbitration seeking:

(a) The Government of Canada, in conjunction with the Government of the NWT, reverse the expropriation of the Caribou Quota Tags and reinstate the 360 Caribou Quota Tags owned indirectly by the Investor via the Courageous Lake Caribou Camps;

(b) Alternatively, the Investor will seek compensation for the expropriation to be proven in these proceedings, currently estimated to be CDN$4,025,700 plus interest;

(c) Alternatively, the Investor will seek damages to be proven in these proceedings, currently estimated to be not less than CDN$4,025,700 for loss of investment (including real property, tangible personal property intangible property including goodwill, etc.;

(d) In addition, the Investor will seek consequential damages in the amount of $10,000 per potential client (hunter) that the Investor was not able to attract due to the expropriation of the Caribou Quota Tags (approximate loss of customers equals 152 per year for 3 years (2007, 2008 and 2009));

(e) In addition, the Investor will seek damages in the amount of $10,000 per potential client (hunt) that the Investor was not able to attract due to the expropriation of the Caribou Quota Tags after the date of filing of this

Notice of Intent based on the 360 Caribou Quota Tag entitlement in 2006 and earlier;

(f) In addition, the Investor will seek full costs associated with these arbitral proceedings, including professional fees and disbursements, as well as the fees of the arbitral Tribunal and any administering institution;

(g) In addition, the Investor will seek pre-award and post-award interest at a rate fixed by the arbitral panel;

(h) In addition, the Investor will seek payment of a sum of compensation equal to any tax consequences of the award, in order to maintain the award's integrity; and

(i) In addition, the Investor will seek such further relief that the arbitral panel will find appropriate in the circumstances.

March 19, 2010

Respectfully Submitted

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