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**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE UNCITRAL ARBITRATION RULES**

BETWEEN:

ST. MARYS VCNA, LLC

Claimant

AND

GOVERNMENT OF CANADA

Respondent

CONFIDENTIALITY ORDER

OCTOBER, 2012

ARBITRAL TRIBUNAL:

**Professor Michael Pryles (President)
Professor Richard Stewart
Professor Brigitte Stern**

1. For the purposes of this Confidentiality Order:

- (a) “disputing party” means, in the case of the Claimant, St. Marys VCNA, LLC.; and in the case of the Respondent, the Government of Canada (for the purposes of this Order defined to include the Government of Ontario, the City of Hamilton, the Regional Municipality of Halton, the Town of Milton, and Halton Region Conservation Authority), collectively the “disputing parties”;
- (b) “confidential information” means any information designated by a disputing party as confidential and which the Arbitral Tribunal accepts as confidential. A disputing party may designate as confidential, and protect from public disclosure, any information that may otherwise be released under the terms of this Confidentiality Order, on any of the following grounds:
 - (i) business confidentiality;
 - (ii) business confidentiality relating to a third party;
 - (iii) personal information (*i.e.*, information about an identifiable individual to be protected from disclosure on grounds of personal privacy); and
 - (iv) information that is deemed to be financial, commercial, scientific or technical information supplied by third parties that has been treated as confidential information by those third parties.
- (c) “business confidentiality” includes:
 - (i) trade secrets;
 - (ii) financial, commercial, scientific or technical information that is treated consistently in a confidential manner by the disputing party to which it relates, including pricing and costing information, marketing and strategic planning documents, market share data, or detailed accounting or financial records not otherwise disclosed in the public domain;
 - (iii) information the disclosure of which could result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, the disputing party to which it relates; and
 - (iv) information the disclosure of which could interfere with contractual or other negotiations of the disputing party to which it relates.

2. A disputing party may designate information as confidential by clearly labeling each page of a document that contains such information, “Confidential Information, Unauthorized Disclosure Prohibited” or some variation thereof, or by using equivalent measures with respect to information contained in material produced in electronic and similar media.

3. Confidential information shall not be disclosed to the public except in accordance with the terms of this Order or with the prior written consent of the disputing party that claimed confidentiality with respect to the information and, in the case of material from third parties, the owner of such confidential information.
4. Subject to the terms of this Confidentiality Order, including with respect to the redaction of confidential information, either disputing party shall be free to disclose to the public, including by posting on the internet, the following materials:

all pleadings and submissions of any disputing party or NAFTA Party, together with their appendices, and attached exhibits, including the notice of intent, notice of arbitration, statement of claim, statement of defence, memorials, affidavits, correspondence to the Tribunal, transcripts of hearings, and any awards, including procedural orders, rulings, preliminary and final awards, and other materials generated in this arbitration.


Material disclosed to the public pursuant to this paragraph shall not contain information designated by a disputing party as confidential.

5. Except as otherwise provided herein, when a disputing party files any pleading or submission with the Tribunal containing confidential information, it shall provide an electronic copy of that material with the confidential information redacted within thirty (30) days of production.
6. Within thirty (30) days of the release to the disputing parties of any transcripts, procedural orders, rulings or awards, each disputing party shall provide the other disputing party an electronic copy of the material with their confidential information redacted.
7. Failure to provide a redacted version of the materials in accordance with paragraphs 5 or 6 of this Confidentiality Order shall be deemed an acknowledgement that the materials contain no confidential information subject to redaction.
8. In case of disputes relating to a disputing party's designation(s) of confidential information, public disclosure shall be withheld until the dispute is determined by the tribunal in accordance with paragraph 12 of this Confidentiality Order.
9. A disputing party shall notify the other disputing party of its intention to disclose to the public any material filed or generated in the course of this proceeding. If notification is provided before the end of the 30 day time period referred to in paragraphs 5 or 6 of this Confidentiality Order, the notified party may confirm that the material contains no confidential information subject to redaction.
10. Notice pursuant to this Confidentiality Order shall be provided to a disputing party in accordance with the terms of *Procedural Order No. 1*.
11. Materials already exchanged by the disputing parties before the execution of this Confidentiality Order can be designated as confidential by notifying the other disputing party of such designation

within forty-five (45) days of the execution of this Confidentiality Order. A redacted version of the materials shall also be provided to the other party at that time.

12. Disputes related to a disputing party's designation of confidential information may be submitted to the Tribunal for determination.
13. Confidential information shall not be disclosed to any person, except in accordance with this Confidentiality Order or with the prior written consent of the disputing party that claimed confidentiality with respect to the information and, in the case of materials from third parties, the owner of such confidential information.
14. Except as otherwise provided in this Confidentiality Order, information and materials containing confidential information may be used only in these proceedings and may be disclosed only for such purposes to and among:
 - (a) Members of the Tribunal (and their assistants, if any) and officials of the administrative authority, to whom disclosure is reasonably considered by one or more Members of the Tribunal to be necessary;
 - (b) counsel to a disputing party (and their support staff) whose involvement in the preparation or conduct of these proceedings is reasonably considered by the disputing party to be necessary;
 - (c) officials or employees of the disputing parties to whom disclosure is reasonably considered by the disputing party to be necessary;
 - (d) independent experts or consultants retained or consulted by the disputing parties in connection with these proceedings to whom disclosure is reasonably considered by the disputing party to be necessary; or
 - (e) witnesses, who in good faith are reasonably expected by a disputing party to offer evidence in these proceedings.
15. All persons receiving material containing confidential information shall be bound by this Confidentiality Order. Each disputing party shall have the obligation of notifying all persons receiving such material of the obligations under this Confidentiality Order.
16. It shall be the responsibility of the disputing party wishing to disclose material containing confidential information to any person to ensure that such person executes a Confidentiality Undertaking in the form attached as Appendix A before gaining access to any such material. Each disputing party shall maintain copies of such Confidentiality Undertakings and shall make such copies available to the other disputing party upon order of the Arbitral Tribunal or upon the termination of this arbitration.
17. No disputing party shall file any confidential material covered by the terms of this Confidentiality Order in any Court without first bringing this Confidentiality Order to the attention of the Court and seeking directions concerning the filing of such material in a manner that protects its confidentiality.

- 18. All hearings shall be public. At the request of one of the disputing parties, the Tribunal shall hold *in camera* sessions to protect confidential information as defined in this Confidentiality Order.
- 19. Where sessions are held *in camera*, the Tribunal shall make appropriate orders respecting witness exclusion from the hearings.
- 20. The obligations created by this Confidentiality Order shall survive the termination of the arbitral proceedings.
- 21. This Confidentiality Order shall be effective and binding upon a disputing party upon the signature of the Confidentiality Order by the Tribunal.

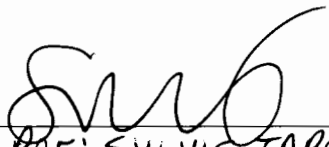


 Michael Pryles
 On behalf of the Tribunal

Dated: 24 Octob 2012

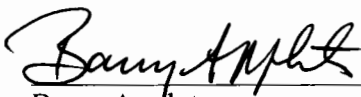
Signed by both disputing parties in acknowledgement of the obligation to abide by this Confidentiality Order:

Dated: OCT. 2, 2012



 POF: SYLVIE TABET
 The Government of Canada
 Trade Law Bureau (JLTB)
 Lester B. Pearson Building
 Tower C, Fifth Floor
 125 Sussex Drive
 Ottawa, ON K1A 0G2
 CANADA

Dated: Oct 1, 2012



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 CANADA

 For and on behalf of
 St. Marys VCNA, LLC

APPENDIX A

CONFIDENTIALITY UNDERTAKING

TO: The Government of Canada (and its legal counsel) and St. Marys VCNA, LLC. (and its legal counsel).

FROM: _____

1. IN CONSIDERATION of being provided with materials in connection with the arbitration between St. Marys VCNA, LLC. and the Government of Canada, over which claims for confidentiality have been advanced (“confidential information”), I hereby agree to maintain the confidentiality of such material. It shall not be copied or disclosed to any other person who has not signed a Confidentiality Undertaking nor shall the material so obtained be used by me for any purposes other than in connection with this proceeding.
2. I acknowledge that I am aware of the Confidentiality Order that has been agreed to by the disputing parties, a copy of which is attached to this Undertaking, and agree to be bound by it.
3. I will promptly return any confidential information received by me to the disputing party that provided me with such materials or the information recorded in those materials, at the conclusion of my involvement in these proceedings.
4. I acknowledge and agree that either of the disputing parties to this arbitration is entitled to relief to restrain breaches of this Confidentiality Order, to enforce the terms and provisions hereof in addition to any other remedy to which any disputing party to this arbitration may be entitled at law or in equity.
5. I agree to submit to the jurisdiction of the courts of the Province of Ontario (in the case of residents of Canada) or the Southern District of New York (in the case of residents of the United States of America) to resolve any disputes under the Confidentiality Order.

SIGNED, SEALED AND DELIVERED before a witness this ____ day of _____, 20__.

(Print Name)

(Print Witness Name)

(Signature)

(Witness Signature)