Pursuant to Article 18 of the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) and Articles 1116 and 1120 of the North American Free Trade Agreement (NAFTA), the Claimant hereby submits its Revised Amended Statement of Claim.

I. THE PARTIES The Claimant/Investor is:

MELVIN J. HOWARD, **CENTURION HEALTH CORPORATION & HOWARD FAMILY TRUST** [redacted]

The Respondent/Party is:

THE GOVERNMENT OF CANADA Office of the Deputy Attorney General of Canada Justice Building 284 Wellington Street Ottawa, ON K1A OH8

II. RELEVANT ENTITIES

A. The Government Of Canada:

1. The Canadian Government, formally Her Majesty's Government in Canada, is the federal government of Canada.

2. Canada is a constitutional monarchy. Thus, the Crown is "divided" into eleven legal jurisdictions, eleven "crowns" – one federal and ten provincial.

- The *Canada Health Act* (hereafter called the Act) received Royal Assent on April 1984. Through this Act, the federal government ensures that the provinces and territories meet certain requirements, such as free and universal access to insured health care. Accordingly, the Federal Government of Canada through the Act constitutes both a “state enterprise” and a “government monopoly” for purposes of NAFTA Articles 1502 and 1503. Canada, governments are the main source of funding for health care because they play a key role in the insurance market. Federal legislation, the Canada Health Act, has since 1984 explicitly articulated five basic principles standards for this publicly funded system: universality of publicly funded coverage, portability of coverage across the country, comprehensiveness of covered services, public administration of publicly-funded delivery, and uniform accessibility of health care services. The federal government’s power and influence over standard setting

and the enforcement of the principles of the Canada Health Act have traditionally been legal and financial (the legislated power to withhold federal funding from a province if the principles are not followed.

3. Canada's hospitals are nonprofit institutions, with global budgets established by provinces, the Canada Health Act does not prohibit private providers. Only a handful of provinces, including Saskatchewan, have passed legislation expressly forbidding for-profit hospitals and clinics.

4. Ontario's Community Care Access Centres (which provide the province's home care services) are not only required to establish competitive bidding mechanisms for the services they fund, they are also prevented from awarding all their contracts to the established nonprofit provider, ensuring that for-profit firms will be introduced. Nova Scotia, Prince Edward Island, New Brunswick and British Columbia have hired private firms to handle their billing. As part of its Monopoly in health care, the Government of Canada has established the five principals of health care and related infrastructure, which includes, but is not limited to:

    A. Universality: The health care insurance plan of a province must entitle 100% of the insured persons of the province to the health services provided for by the plan.
    B. Accessibility: The health care insurance plan of a province must provide for insured health services on uniform terms and conditions and on a basis that does not impede or preclude Neither directly or indirectly, whether by charges made to insured persons or otherwise Reasonable access to those services by insured persons. Equally important, those providing the services must receive Reasonable compensation.
    C. Public Administration: The health care insurance plan of a province must be administered and operated on a non-profit basis by a public authority appointed or designated by the government of the province.
    D. Comprehensiveness: The health care insurance plan of a province must insure all medically necessary health services provided by hospitals, medical practitioners or dentists, and, where the law of the province so permits, similar or additional services rendered by other health care practitioners.
    E. Portability: The health care insurance plan of a province must not impose any minimum period of residence in the province, or waiting period, in excess of three months before residents of the province are eligible for and entitled to insured health services; and b) must provide for the payment for the cost of insured health services. provided to insured.

B. Melvin J. Howard, Centurion Health Corporation & Howard Family Trust:

5. Melvin J. Howard is an American citizen.

6. Centurion Health Corporation and Regent Hills Health Centre Inc. each are investments of Melvin J. Howard, and The Howard Family Trust is the Trustee of the investor of the Party, of the United States of America, within the meaning of NAFTA Article 1139. The Canadian subsidiaries are investments of The Howard Group under NAFTA Article 1139.

7. Melvin J. Howard through the Howard Group and associates are involved in the investments of health care.

8. The federal government has considerable authority to enforce the requirements of the Canada Health Act. This includes the right to entirely withhold funding from provinces in breach of their obligations. Yet as the Auditor General points out, no penalty has ever been levied for noncompliance with the criteria of the Act. This leads to confusion for municipalities and Provinces to follow. In addition it sends mix messages from foreign investors looking to invest in health care facilities in Canada such as the Claimant Regent Hills project. The luke warm enforcement of the Canada Health Act has caused damages to the Investor's Canadian enterprises.

C. The Romanow Commission Mandate (The Romanow Commission)

9. ***The Commission on the Future of Health Care in Canada was a federal public inquiry created in April 2001 to review and make recommendations regarding Canada's public health care system. The Commission, headed by former Saskatchewan premier Roy Romanow, was created by the Chrétien Liberal government as part of the Prime Minister's pledge to address the long-term sustainability of public health care in Canada.The Commission concluded that Canada should spend $15 billion of federal money to expand and improve the public health care system in Canada. These recommendations have gone largely ignored. As has result the Provinces start experimenting with private delivery of health care services. With these experiments Canada has breached its trade agreements with NAFTA and GATT such as:***

a. Canada's delivery of health care services raise serious concerns of fairness and appropriateness for US investors and businessmen that want to enter Canada's health care market;

b. Canada's Provincial territories is not subject to any effective accountability mechanisms and lacks the necessary supervision to ensure that its actions are fully consistent with its NAFTA obligations;

c. Canada has resisted repeated calls from the Claimant to adopt a satisfactory accounting system that identifies actual costs and revenues of health care services and products and continues to carry out its non-competitive activities on the basis of cost accounting processes that lack transparency for contracting out medical services this is in addition to a transparent land re-zoning process for new private US health facilities;

d. Canada is an unfair competitor in ways detrimental to US private sector companies in the monopolized health care system in Canada;

e. Canada's allocation of hospital budgets constitutes a form of cross-subsidization;

f. Canada's ability to leverage a network built-up with public funds on the strength of a government granted monopoly gives it's Canadian competitors pricing advantages over US competitors that is seriously unfair;

g. Canada's municipalities have unfairly developed a mechanism to thwart development of US private surgical facilities. By either asking for permission from the Federal and Provincial governments which is not necessary. Or drawing out a lengthy process for rezoning application that is only set up to discourage US surgical providers. Since there is no set zoning for private surgical centres. The Investor is left at the mercy of anti-American advocates that do not want an American health care company to be constructed. This is a predatory practice that has led the Claimant to run continually over budget. While Canadian counter part flourishes under these conditions.

h. The competitive activities of Canada's private sector health care providers, based as they are on the foundation of a public monopoly and of the network it has built with public funds, are incompatible with basic principles of fairness in regards to NAFTA and GATT;

i. Canada should withdraw from all competition with the private sector in areas of activity outside its core public policy responsibilities for providing health care services.

10. Canada continues to ignore discriminatory conduct and practices by its municipalities and territories. We there by put the Government of Canada on notice that we are seeking remedy.

11. The Investor expected that Canada would act in good faith to supervise and correct the conduct that is now at issue in this arbitration in respect to conduct that has harmed the Investor, its enterprises and investments.

III. PROCEDURAL HISTORY OF DISPUTE AND JURISDICTION

12. Pursuant to Article 1119 of NAFTA, on July 16, 2008, the Investor served written notice of its intent to submit a claim to arbitration (the "Notice of Intent") on the Party which notice was, accordingly, more than ninety (90) days before the submission of this claim.

13. This Claim is made less than three years from the date the Investor first acquired or should have acquired knowledge of the breaches set out herein and knowledge that the Investor had incurred loss or damage. More than six months have elapsed since the events giving rise to this claim.

14. Consultations pursuant to Article 1118 of the NAFTA have not been held. But The Government of Canada extended an invitation and the Claimant has accepted it. The Claimant is now waiting a response back from the Government of Canada.

15. On January 22, 2009 the Government of Canada responded in a letter to the Investor asking which medical technology that was expropriated. Further how has Canada breached its obligation under NAFTA by not allowing the investor the same rights to build and operate our surgical facility? In response we have submitted this Revised Amended Statement of Claim.

IV. OVERVIEW - BREACHES OF NAFTA

16. By virtue of the facts set out herein, Canada has breached NAFTA Articles 1102, 1103, 1104, 1105 and NAFTA Articles 1502(3)(a) and 1503(2), all in a manner such that Investor is entitled to bring this Claim for compensation under Section B of Chapter 11 of NAFTA. More particularly, Canada has:

a. Breached its obligations under NAFTA Article 1102, directly and through Canada's municipalities and Provinces, by not providing the investor through clear guidance from the Government of Canada with the best treatment available to US competitors in the monopoly health care services market, and in particular, US surgical services. Since August 2004 till July 2008 the Investor has continued to run into road blocks to construct its surgical facility in British Columbia BC;

b. Breached its obligations under NAFTA Article 1103 by failing to accord the Investor and its enterprises of Canada most favored nation treatment by providing treatment to Canadian Investors that is better than the treatment provided to the Claimant;

c. Breached its obligations under NAFTA Article 1104 by failing to accord the Investor the better of national treatment or most favored nation treatment;

d. Breached its obligations under NAFTA Article 1105 by failing to accord the Investor and its enterprises treatment in accordance with international law including fair and equitable treatment and full protection and security; and

e. Breached its obligations under NAFTA Articles 1502(3)(a) and 1503(2) by failing to ensure that the Provinces of British Columbia, Alberta and their Regional Health Authorities not act in a manner inconsistent with Canada's obligations under the NAFTA under Section A of NAFTA Chapter 11.

V. CANADA'S NAFTA OBLIGATIONS

❖ National Treatment

17. NAFTA Article 1102 requires Canada to accord to Investors of another NAFTA Party and to Investments of Investors of another NAFTA Party (such as the Investments of the Claimant) treatment as favorable as the best in-jurisdiction treatment with respect to, among other things, the establishment, acquisition, expansion, management, conduct and operation of investments in like circumstances to the investments of Canadian investors.

18. The Investor is in 'like circumstances' with Canada's private surgical facilities by virtue of the fact that they compete in the same market and for the same market share. Canada' surgical services and products are generally substitutable with the Investors services and products.

19. Canada has granted its Canadian private health care Services providers treatment from which they are able to compete in the monopoly surgical services, which treatment is not correspondingly made available to US surgical service providers. Canada's unusual structuring of the legal and accounting relationships between its Provincial and Regional Health Authorities and other entities of the Canadian government results in less favorable treatment to the Investor. The consequence of this structuring is that Canada's private health care providers is able to exploit, in the monopoly health care market where it directly competes, numerous advantages to which the Investor has no access. This treatment includes, but is not limited to:

    - Treatment accorded to Canada's private surgical facilities under agreements between Canada's Regional Health Authorities:

20. Canada has provided treatment more favorable than that provided to the Investor and its enterprises. The Investor has been denied access to the monopoly infrastructure and network, unlike Canadian private surgical health care facilities, which compete in the monopoly health care market.

21. Canada has acted inconsistently with Canada's obligations under NAFTA Article 1102 by not allowing the Investor similar access to Canada's monopoly infrastructure and network in health care that is provided to Canada's private surgical facilities monopoly business or alternately by failing to ensure, through accounting, regulatory and/or structural measures, that Canada does not employ the monopoly infrastructure and network on such terms and in such a way as to alter the conditions of competition in the monopoly health care market to the disadvantage of the Investor.

A. By reason of the benefits and privileges set out above, which are not correspondingly made available by Canada to the Investor and its enterprises, and the US Subsidiaries have suffered harm, loss and damage, including but not limited to competitive disadvantage, loss profit, reduced market share, and increased out of pocket expense. Canada has violated its obligation to accord national treatment pursuant to NAFTA Article 1102 to the Investor, and is therefore liable to pay compensation.

B. Canada's Obligations under Articles 1103 and 1104

22. Canada is obliged under NAFTA Article 1103 to provide the Investor and its enterprises with treatment no less favorable than treatment provided to Investors of any other Party. Specifically, Article 1103 reads:

> 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.

NAFTA Article 1104 provides as follows:

> 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.

23. Canada has entered into treaties with non-NAFTA Parties since ratifying the NAFTA, which provide better treatment to non-NAFTA Party Investors than to NAFTA Party Investors. The Investor and its enterprises are entitled to rely upon the benefit of those more favorable treaty obligations within this NAFTA claim.

24. Specific examples of international agreements where the Government of Canada has provided a better level of treatment to non-NAFTA Party investors include, but are not limited to, treaties entered into between the Government of Canada and the Governments of Barbados, Costa Rica, and Venezuela. Article II in each of these treaties, which came into effect after the NAFTA came into force January 1, 1994 provides treatment that is better than that provided under Section A of NAFTA Chapter 11. The Investor and its enterprises are entitled to the better treatment provided in these treaties.

25. The Investor and its enterprises have suffered harm resulting from Canada's breaches of Articles 1103 and 1104.

C. Treatment in Accordance With International Law under Article 1105.

26. Canada is obligated under NAFTA Article 1105 to accord the Investor and its enterprises treatment in accordance with international law, including fair and equitable treatment. Canada must ensure that the Investor and its Investments receive fair and equitable treatment, freedom from discrimination and full protection and security.

27. Canada has violated its Article 1105 obligation through its arbitrary, discriminatory and unfair treatment of the Investor and subsidiary.

28. On September 13, 2003 The Investor through its Canadian subsidiary was to create it's own Diagnostic Imaging Facilities and Preventative Health Centres around the Ultrafast EBT Scanner technology. Through its wholly owned subsidiary Holy Cross Heart and Health Center Ltd., the Diagnostic Imaging Clinic was to be situated in a leased premise in Calgary, Alberta. The specific location is at the Holy Cross Hospital Centre, 2310-2 Street SW. Through the actions of the Government of Canada the Investor was denied its right to do business in Canada. Canada has breached NAFTA Article 1110 through its general conduct it allowed the expropriation of the Investor's health care technology. In so doing Canada failed to treat the investment in accordance with international law.

    - By the actions of the Canadian Government and its complicit behavior and ambivalent actions in regards to the enforcement of the Canada Health Act. Lead towards the Investor's medically technology to be shipped back to the US for a major loss. The Canadian Government through the media and other government outlets. Had sated that if the EBT center was allowed to be erected and operated that the Government would penalize the Province for breach of the Canada Health Act. At this time no action has never taken place. This constitutes an expropriation or a measure tantamount to expropriation under NAFTA. In so much as international law is concerned this occurs when a state does not take property outright but applies measures that have the same effect.

29. The Investor asserts that the facts pleaded with respect to Canada's breach of NAFTA Article 1102 constitutes a breach of the international law standard of treatment, including fair and equitable treatment, under NAFTA Article 1105. Such claims are so incorporated into this part of the Investor's Claim to the extent that they do not assert an independent breach of anti-competitive conduct per se.

30. The Investor and its enterprises have suffered harm, loss and damage, including but not limited to competitive disadvantage, loss profit, reduced market share, and increased out of pocket expense both for its medical technology and its proposed surgical facility. Canada has violated its obligations under NAFTA and is liable to pay compensation.

D. Canada's Obligations under Chapter 15

(i) NAFTA Article 1502(3)(a) and 1503(2) Obligations

31. Under NAFTA Article 1502(3)(a) Canada is obliged to ensure that its municipalities and regional health authorities acts in a manner that is not inconsistent with Canada's obligations under NAFTA whenever Canada exercises any governmental authority that Canada has delegated to its entities.

32. Under NAFTA Article 1503(2), Canada is obliged to ensure through regulatory control or other supervision that Canada regional health authorities acts in a manner that is not inconsistent with Canada's obligations under Chapter 11 of NAFTA whenever Canada exercises any delegated governmental authority.

33. The Investor has suffered damage resulting from Canada's failure to meet its NAFTA obligations under Articles 1502(3)(a) and 1503(2).

34. To the extent that the factual allegations made by the Investor with respect to Section A of NAFTA Chapter 11 also contribute to breaches of fair and equitable treatment under international law standard of treatment under NAFTA Article 1105, they are so incorporated into this part of the Investor's Claim. Such Claims are so incorporated into this part of the Investor's Claim to the extent that they do not assert an independent breach of anti-competitive conduct per se.

(ii) Breaches of Articles 1502(3)(a) and 1503(2)

- Canada has failed to supervise or exercise control over its health care system and regional health authorities to ensure it has not acted in a manner inconsistent with Canada's obligations under Section A of NAFTA Chapter 11. These NAFTA inconsistencies include the violation of:

a. NAFTA Articles 1102, 1103 and 1104 by providing better treatment to Investors and Investments that are parties to other trade and investment treaties that Canada has entered into after the NAFTA came into force; and NAFTA Article 1105 through arbitrary and unfair conduct such as the unfair and discriminatory treatment of the Investor.

VI. POINTS IN ISSUE

35. Has Canada taken measures inconsistent with its obligations under Section A of NAFTA Chapter 11 and Chapter 15, including but not limited to Articles 1102, 1103, 1104, 1105, 1502(3)(a) and 1503(2).

VII. RELIEF SOUGHT AND DAMAGES CLAIMED

1. A sum not less than **U.S. $160,000,000.00 One Hundred Sixty Million United States Dollars** in compensation for the damages caused by Canada's failure to accord the Investor the minimum standard of treatment and in expropriating of its medical technology. These measures are inconsistent with its obligations contained in Part A of Chapter 11 and Chapter 15 of NAFTA;

2. Costs associated with these proceedings, including all professional fees and disbursements;

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

4. Such further relief that counsel may advise and that the Tribunal may deem appropriate.

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

Losses Suffered As A Result Of Breach

1. Loss of value of its investments in Canada
2. Loss of business opportunities
3. Fees and expenses of $ 4,700,000.00 Four Million Seven Hundred Thousand this excludes the purchase of one Electron Beam Tomography (EBT) Scanner.
4. Loss of Goodwill
5. Loss of Profits

DATE SUBMITTED: FEBRUARY 2, 2009.

HOWARD CAPITAL MANAGEMENT LP

/s/

Melvin J. Howard Management of the Investor and Enterprises

SERVED ON: Office of the Deputy Attorney General

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