

[REDACTED]

Claimant

-and-

The Government of Republic of KOREA

Respondent

**NOTICE OF INTENT TO SUBMIT CLAIM TO ARBITRATION UNDER KOREA
UNITED STATES FREE TRADE AGREEMENT CHAPTER ELEVEN**

[REDACTED]

[REDACTED]

<Statement Required by Article 11.16 of the Korea-United States Free Trade Agreement with respect to the Dispute between [REDACTED] and the Republic of Korea>

Pursuant to Article 11.16 (2) of "Korea United States Free Trade Agreement" (hereinafter referred to as "KORUS") and with a view to resolving this dispute amicably through the consultation and negotiations contemplated by KORUS Article 11.15, the disputing investor and claimant, [REDACTED] respectfully serves the respondent, the Government of the Republic of Korea with this Notice of Intent to Submit a Claim to Arbitration under Chapter Eleven of the KORUS.

I. Names and Address of Disputing Investor

1. [REDACTED] (hereinafter referred to as "[REDACTED]"), as a claimant, is an individual citizen of the United States of America. The claimant's current address is [REDACTED]
[REDACTED]
2. [REDACTED] submits this Notice of Intent to Submit a Claim to Arbitration as an investor on his own behalf.
3. The Claimant is represented by [REDACTED]
[REDACTED]
[REDACTED] Copies of all correspondence should be directed to the attention of [REDACTED]

<RELEVANT FACTS>

II. Invalidation of Determination of Urban or Gun Planning Facilities and Expropriation

4. [REDACTED] inherited land located at [REDACTED] in 1987 jointly and became its sole owner in 1997.
5. When [REDACTED] inherited the land, the land remained as a designated area to be developed into a park pursuant to the Ministry of Construction and Transportation Notice 1974-373 of 1974.
6. In 1984, the land was divided and re-addressed as [REDACTED] 10,623 square meters of land; [REDACTED] consisting of 684 square meters of land; [REDACTED] consisting of 192 square meters of land; and [REDACTED] consisting of approximately same square meters of land with [REDACTED] At that time, a street was built dividing the land.

7. In 1990, [REDACTED] was expropriated for building the Youth Center.
8. [REDACTED] became a U.S citizen in 2000.
9. In 1996, [REDACTED] developed a plan to build a golf practice lounge on his land and retained a professional golfer to evaluate the land and estimate costs.
10. To develop the plan, [REDACTED] met with Wonju City Government officials on multiple occasions but only received negative responses because of the legal restriction.
11. Despite the landowner's numerous appeals to lift the restrictions, the land was left without being developed into a park over forty (40) years.
12. In 2010 [REDACTED] submitted a petition to the Anti-Corruption, Civil rights Commission of Korea ("ACCC") to remove the restriction based on the fact that the land had been left without being developed into a park for an unreasonably long time by the government and therefore landowner's property rights were infringed.
13. On May 31, 2010, ACCC issued a recommendation that Wonju city should either compensate [REDACTED] for the property (other than [REDACTED]) or release the legal restriction on the property by May 31, 2014.
14. In 2013, [REDACTED] developed a plan to build a multiplex sporting facility on his land.
15. [REDACTED] however, did not further develop the plan because he relied on ACCC's decision and expected that Wonju City would follow ACCC's decision.
16. Wonju city did not follow the ACCC's decision of recommendation.
17. Pursuant to a decision of the Korean Constitutional Court, the National Land Planning and Utilization Act was amended such that the restriction on the property will be invalidated unless the restricted land is developed according to its original plan within twenty (20) years from the date on which determination of the planning facilities has been publicly announced. Under the amended Act, the due date for invalidation is July 1, 2020.
18. In 2016, Wonju City declared that it would build a park or a similar facility on the land owned by [REDACTED].
19. On February 6, 2017, Wonju-city requested the negotiation for the expropriation and compensation of [REDACTED]'s property by sending an official letter titled "Request for compensation negotiation on expropriated land for the construction of a park" to [REDACTED]
20. In the letter, Wonju city set a period from February 6, 2017, to March 10, 2017, for the negotiation period. However, the negotiation has failed.

21. On October 23, 2018, Wonju-city sent another request for negotiation.
22. In the letter, Wonju city set a period from October 29, 2018, to November 30, 2018, for the negotiation period. However, the negotiation failed.

III. Administrative Procedures and Decision

23. On March 15, 2019, the Gangwon-do Local Land Expropriation Committee (hereinafter, referred to as “Local Land Committee”) rendered an opinion regarding the amount of compensation.
24. “Local Land Committee” decided that the amount of compensation for [REDACTED] to be 4,169,470,000 KRW based on two (2) appraisals.
25. In the same decision, the Local Land Committee declared that the beginning date of expropriation be April 18, 2019.
26. Although not satisfied, [REDACTED] received the compensation money on April 10, 2019, with “reservation of the right to appeal.”

<CLAIMS RAISED BY [REDACTED] PURSUANT TO KORUS>

27. In 2012, Korea-US Free Trade Agreement was ratified with chapter 11, Investment Dispute Mechanism called “Investor-State Dispute (“ISD”).”
28. As stated in the above factual background, Wonju-city Government, Gangwon-do Government and the Korean Government have violated their obligations to [REDACTED] a U.S. investor under the terms of KORUS.

IV. Investment

29. KORUS 11-24 Definition of investment, (h), includes other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.
30. [REDACTED]’s real estate property ownership constitutes investment prescribed in KORUS and under relevant arbitral decisions.

V. Consent

31. [REDACTED] was a United States citizen when KORUS was ratified and thus consent

requirement is satisfied under the KORUS, ARTICLE 11.17: CONSENT OF EACH PARTY TO ARBITRATION which states as follows:

1. *Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.*
2. *The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:*
 - (a) *Chapter II (Jurisdiction of the Centre) of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the parties to the dispute;*
 - and
 - (b) *Article II of the New York Convention for an "agreement in writing."*

VI. Expropriation

32. [REDACTED]'s property was expropriated in violation of KORUS, ARTICLE 11.6: EXPROPRIATION AND COMPENSATION which states as follows:

1. *Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (expropriation), except:*
 - (a) *for a public purpose;*
 - (b) *in a non-discriminatory manner;*
 - (c) *on payment of prompt, adequate, and effective compensation; and*
 - (d) *in accordance with due process of law and Article 11.5.1 through 11.5.3.*
2. *The compensation referred to in paragraph 1(c) shall:*
 - (a) *be paid without delay;*
 - (b) *be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);*
 - (c) *not reflect any change in value occurring because the intended expropriation had become known earlier; and*
 - (d) *be fully realizable and freely transferable.*

33. The Korean law for the purpose of this Notice is "National Land Planning and Utilization Act" and the "Act on Urban Parks, Green Areas, Etc."

34. The expropriation of [REDACTED]'s property was not done in a non-discriminatory manner and the compensation amount was determined arbitrarily. The expropriation of [REDACTED]'s property was not equivalent to the fair market value of the expropriated investment immediately before the expropriation took place. [REDACTED]'s property is located next to an apartment complex named "[REDACTED] Apartment." [REDACTED]

Apartment Complex will be redeveloped upon the permission made in 2017 and its fair market value is estimated to be seven (7) times higher than the compensation to ██████'s expropriated investment.

35. The expropriation of ██████'s property was not in accordance with due process because ACCC issued a recommendation that Wonju city should either compensate ██████ for the property (other than ██████) or release the legal restriction on the property by May 31, 2014, which was not followed by Wonju-city.

VII. Fair and Equitable Treatment

36. During the process of expropriation of ██████'s investment property, violation of the fair and equitable treatment standard prescribed in "KORUS Article 11.5. Minimum Standard of Treatment" has occurred. Wonju-city failed to comply with the recommendations of ACCC and further failed to provide a reliable plan to build a park on ██████'s property even after the elapse of four years of compliance period recommended by ACCC. Wonju-city's omission of the act results in failing to ensure a transparent and predictable framework for ██████'s investment.

VIII. Local Remedy Not Pursued

37. ██████ did not seek any local remedy after expropriation was finally declared and the amount of compensation was decided by Gangwon-do Local Land Expropriation Committee, choosing instead to submit this Notice thus satisfying the requirement prescribed in KORUS, ANNEX 11-E: SUBMISSION OF A CLAIM TO ARBITRATION.

IX. Relief Sought

38. As a result of these violations of KORUS, ██████ has suffered billions of Korean won in damages. ██████ reserves the right to elaborate and expand on these claims including but not limited to actual damages and restitution damages. If the consultations and negotiation are unsuccessful, ██████ will submit, in his own right, a notice of arbitration seeking compensation for the damages caused by or arising out of Wonju-city government, Gangwon-do and the Republic of Korea's measures that are inconsistent with their obligations contained in Chapter 11 of KORUS, along with interest and cost. ██████ estimates damages in an amount of not less than 15,000,000,000 KRW (approximately 12,820,000 USD).

S/S [REDACTED]

S/S [REDACTED]

Dated this 3rd Day of February 2020

