Appendix C.3

NOTICE OF INTENT

TO SUBMIT A CLAIM TO ARBITRATION

UNDER SECTION B OF CHAPTER 10 OF THE

DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES

FREE TRADE AGREEMENT

BRETT ELLIOTT BERKOWITZ, TREVOR B. BERKOWITZ, AARON C. BERKOWITZ AND GLEN GREMILLION

INVESTORS / CLAIMANTS

and

THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA

PARTY / RESPONDENT

Pursuant to Articles 10.16 and 10.17 of the Dominican Republic – Central America – United States Free Trade Agreement ("CAFTA"), the Claimants, Brett Elliott Berkowitz, Trevor B. Berkowitz, Aaron C. Berkowitz and Glen Gremillion, serve this Notice of Intent to Submit a Claim to Arbitration for breach of the Government of the Republic of Costa Rica's obligations under the CAFTA.

I. NAME AND ADDRESS OF THE DISPUTING INVESTORS

Brett Elliott Berkowitz
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Brasilito, Costa Rica

Trevor B. Berkowitz
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Glen Gremillion
6 Lattingtown Woods Ct.
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II. BREACH OF OBLIGATIONS

1. The Claimants allege that the Government of the Republic of Costa Rica has breached its obligations under Section A of Chapter 10 of the CAFTA, under the following provisions:

i) Article 10.3 – National Treatment;

ii) Article 10.4 – Most-Favored-Nation Treatment;

iii) Article 10.5 – Minimum Standard of Treatment; and

iv) Article 10.7 – Expropriation and Compensation.

2. The applicable provisions of the CAFTA are as follows:

Article 10.3: 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 in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the most favorable

treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

Article 10.4: 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 any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 10.5: Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. 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 that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

   (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

   (b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

Article 10.7: Expropriation and Compensation

1. No 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) on a non-discriminatory basis;
   (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and
   (d) in accordance with due process of law and Article 10.5.

2. Compensation 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.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:
   (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus
   (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

III. FACTUAL BASIS FOR THE CLAIM

3. If not resolved, this will be a claim about the Respondent's failure to provide prompt, adequate and effective compensation for its *de facto* and *de jure* takings of valuable residential real estate located on its Northwestern (Pacific) Coast of its territory. It is similarly about the Respondent's failure to provide the Claimants with access to any administrative or judicial means for the prompt review of its *de facto* expropriation of this prime beachfront land, thereby depriving the Claimants of a unique development opportunity, which had already come to fruition when the acts constituting such takings transpired.

The Investors and their Investments

4. The Claimants, Brett Elliott Berkowitz, Trevor B. Berkowitz, Aaron C. Berkowitz and Glen Gremillion, are nationals of the United States of America, each of who made investments in Playa Grande, which is located in the Canton of Santa Cruz, in the Province of Guanacaste, Costa Rica.

5. Each Claimant made his real estate investment by establishing ownership and control of single-purpose investment enterprises for each lot at issue. Reference to individual lots, below, will be made using its "*Folio Real*" number. Each Claimant made his investment with an expectation of gains to be made in exchange for the risk of committing capital and resources to the development of such real estate.

6. Trevor and Aaron Berkowitz each own 50% of the shares of Aceituno Mar Vista Estates, SA, a company established under the laws of Costa Rica. Aceituno Mar Vista Estates, SA is the sole, registered owner of a very large beachfront estate lot, identified as *Folio Real* No. 5-130538-000. The lot comprises a total of 7,444.45 m^2, 2,830.91 m^2 of which is located within a distance of 125 meters from the mean high tide mark of the Pacific Ocean. The acquisition was made on 22 September 2003.

7. Trevor and Aaron Berkowitz each own 50% of the shares of Nispero Mar Vista Estates, SA, a company established under the laws of Costa Rica. Nispero Mar Vista Estates, SA is the sole, registered owner of a very large beachfront estate lot, identified as *Folio Real* No. 5-130545-000. The lot comprises a total of 7,634.37 m^2, 3,167.42 m^2 of which is located within a distance of 125 meters from the mean high tide mark of the Pacific Ocean. The acquisition was made on 24 September 2003.

8. Brett Berkowitz owns 100% of the shares of Pochote Mar Vista Estates, SA, a company established under the laws of Costa Rica. Pochote Mar Vista Estates, SA is the sole, registered owner of a very large beachfront estate lot, identified as *Folio Real* No. 5-130542-000. The lot comprises a total of 7,292.53 m^2, 2,878.98 m^2 of which is located within a distance of 125 meters from the mean high tide mark of the Pacific Ocean. The acquisition was made on 24 September 2003.

9. Brett Berkowitz owns 100% of the shares of Guacimo Mar Vista Estates, SA, a company established under the laws of Costa Rica. Guacimo Mar Vista Estates, SA is the sole, registered owner of a very large beachfront estate lot, identified as *Folio Real* No. 5-130540-000. The lot comprises a total of 7,117.53 m^2, 2,736.77 m^2 of which is located within a distance of 125 meters from the mean high tide mark of the Pacific Ocean. The acquisition was made on 22 September 2003.

10. Brett Berkowitz owns 100% of the shares of Saino Mar Vista Estates, SA, a company established under the laws of Costa Rica. Saino Mar Vista Estates, SA is the sole, registered owner of a very large beachfront estate lot, identified as *Folio Real* No. 5-130543-000. The lot comprises a total of 7,316.35 m^2, 2,773.95 m^2 of which is located within a distance of 125 meters from the mean high tide mark of the Pacific Ocean. The acquisition was made on 24 September 2003.

11. Glen Gremillion owns 100% of the shares of Vacation Rentals, SA, a company established under the laws of Costa Rica. Vacation Rentals, SA is the sole, registered owner of a very large beachfront estate lot, identified as *Folio Real* No. 5-130544-000. The lot comprises a total of 7,365.18 m^2, 3,012.20 m^2 of which is located within a distance of 125 meters from the mean high tide mark of the Pacific Ocean. The acquisition was made on 21 April 2004.

Background Information Regarding the Expropriations

12. On 9 July 1991, the Government of Costa Rica (hereinafter: "the Government") issued Executive Decree no. 20518-MIRENEM, which constituted a declaration of intent to establish a park, to be known as *Parque Nacional Marino Las Baulas* (hereinafter "the

Park"). The terms of the Decree indicated: (i) that the eastern boundary of the Park would be fixed at 125 meters inland from the mean high tide point along the shore of the Pacific Ocean; and (ii) that the Park would come into existence until all of the land encompassed within its planned boundaries had been lawfully acquired by the Government.[1]

13. On 10 July 1995, the Government enacted legislation providing for establishment of the Park, which came into force on 16 August 1995. Under this legislation (Ley No. 7524), the eastern boundary of the Park was fixed at 125 meters **west** (**i.e. seaward** or "***aguas adentro***") from the mean high tide point. This was the opposite direction from what would have been the boundary of the Park envisioned in the 1991 Decree. Legislators were also careful to add the word "Marino" (i.e. "marine") to the name of the park found in the 1991 decree. The Government was not prepared to maintain the boundary envisaged in the 1991 decree because it was not prepared to expend the funds necessary to expropriate all of the privately held land required. The inchoate Park's new boundary did not come about by accident. It was the result of a deliberate policy decision.

14. After its election in 2002, the Administration of President Pacheco adopted a new policy posture with respect to the Park's eastern boundary. Demonstrating its intention to extend the boundary inland 125 meters from the mean high tide point, the Government adopted Resolution No. 2238-2005-SETENA on 30 August 2005. With this Resolution, the Government purported to suspend environmental assessment proceedings for privately owned land located 125 meters inland (not seaward) from the mean high tide point. Such proceedings were required in order for one of the permits necessary to develop land to be issued.

15. Then, on 23 December 2005, the Attorney General issued a statement conveying his opinion about the Park's eastern boundary. The Government failed to issue a policy concerning how it intended to comply with Costa Rica's municipal expropriation law, or with its obligations under international law. In the same vein, the Government also failed to announce any legislative agenda for the amendment of Ley No. 7524, in order to realize the Government's policy aspirations. The Attorney General did not possess any authority to engage in the *de facto* amendment of the explicit terms of this legislation, so it was not possible for his opinion to change the words "*aguas adentro*" as found in the legislation.

16. The Government's 2005 change of heart appears to have been heavily influenced by the partly clandestine efforts of certain third parties, whose pecuniary interests would have been enhanced by a halt to any development in Playa Grande or Playa Ventanas. Those efforts were seemingly engaged immediately after entities controlled by Spence and Spence International Investments, LLC began to ready their lands for development. Most notably these efforts included the installation of an eight-kilometer paved road, at a cost of approximately $500,000.00 to Spence and Spence International Investments, LLC. Replacing what had been an often-impassable dirt trail, the highway these claimants constructed remains the only modern road connection between Playa Grande and Playa

[1] By its own terms, the decree stated that it would not come into force until after this condition had been satisfied.

Ventanas with the rest of Costa Rica – thereby vastly improving the accessibility, convenience and commercial value of lots in both Playa Grande and Playa Ventanas.

17. It was apparent to all interested parties, including the Claimants, that by the time President Pacheco's term ended in 2006, the legal *status quo ante* remained intact. Apart from a rocky seaside ridge, known as Cerro el Morro, which demarcates the northern tip of the Park, its eastern boundary was simply intended to extend inland. The non-legislative policy pronouncements of the Pacheco Administration would appear to have ended with the victory of the opposition National Liberation Party in the Parliamentary election of 5 February 2006 and the inauguration of President Arias on 8 May 2006.

18. It is not at all apparent, however, that the Government's policy on the Park's boundary, then or now, have been made in an objective and unbiased fashion. To the contrary, the public record today indicates that the Government's policies with respect to the Park have often been marred by conflicts of interest and the untoward pecuniary influence of third parties on official decision-making. Such machinations contravened fundamental precepts of fairness and transparency, to the Claimants' detriment.

19. In any event, at all times the Claimants relied upon the legislation in force when they made each of their investment decisions, none of which were in any way barred by the Government. This reliance not only included Ley No. 7524 (1995). It also included Ley 7495, *la Ley de Expropiaciones*, which was enacted on 3 May 1995 and came into force on 8 June 1995. The provisions of this law stated that – if the Government ever decided to expropriate lands such as those acquired by the Claimants between 2000 and 2007 – it would pay compensation to them on a like-for-like basis, ensuring that they would receive fair market value for surrendering their property rights in land declared of public interest.

20. Indeed Claimant Brett Berkowitz took specific steps to ensure that the Claimants would be entitled to develop all of the aforementioned lots in an environmentally sensitive and profitable manner. In 2003 he met personally with the Minister of the Environment and Energy ("MINAE"), and received assurances that he would definitely be permitted to develop this real estate, even though large portions fell within the boundary envisioned in 1991 Policy (but not included in the 1995 law).

21. In addition, the Claimants also relied upon that fact that the Government's own *Instituto Geográfico Nacional* (National Geographic Institute) had certified, on 24 June 2004 and 5 November 2004, that each of the lots at issue in this claim laid outside of the boundaries of the Park.

22. After receiving confirmation from Government officials, on 21 June 2004, that the park boundary fell to the west of the Claimants' lands, Berkowitz expended the capital and resources necessary to conduct an environmental assessment, which received the conditional approval of SETENA officials on 3 December 2004. Two days later, Berkowitz deposited his payment for the permit to be issued. Inexplicably the permit was never issued and, when contacted two months later, officials claimed that no such application existed in their records. Although Berkowitz informed officials that he had

kept copies of everything submitted, a permit was never issued and the land was never developed.

23. On 27 May 2008, the Constitutional Court issued a decision concerning lands owned by Marion and Reinhardt Unglaube, which effectively extended the eastern border of the Park inward 125 meters inland (not seaward) from the mean high tide point – without any amendment of Ley No. 7524.

24. The Court appeared to recognize the valuable property rights that would be affected by its decision – should its reasoning be applied to all other beachfront landholders in Playa Grande or Playa Ventanas. The Government was accordingly presented with a simple choice. Either the Costa Rican Ministry of the Environment and Energy ("MINAE") could either expropriate all private property rights in land located within the newly defined boundaries of the Park – in compliance with the terms of Ley 7495 – or it would have to allow the kind of environmentally sensitive development proposed by private landholders to proceed – by granting all permits or authorizations required.

25. On 16 December 2008, the Constitutional Court issued another judgment concerning the Park's eastern boundary, which would unequivocally apply to all beachfront property holders in Playa Grande and Playa Ventanas. The boundary line set by these same judges remained unchanged, but the choice they had afforded to Government officials seven months earlier did not. Instead, the Court now ordered the immediate annulment of all environmental assessment approvals previously granted to any beachfront landholders now unambiguously stranded inside the redrawn boundaries of the Park. It further directed Costa Rica's National Environment Technical Secretariat (SETENA - Secretaría Técnica Nacional Ambiental) to immediately cease processing of any new assessments on those lands and it directed MINAE to proceed with the lawful expropriation of all such lands immediately.

26. Together, these two Court decisions constituted a final and binding prohibition on the development of all land lying within the eastern boundary of the park (i.e. all land situated within 125 meters of the mean high tide point). They also confirmed the Claimants' legitimate expectations that they would be entitled to like-for-like, fair market value compensation for the now-impending expropriation of their property rights. Not unexpectedly, in response to these two judgments the bottom fell out of the real estate market in Playa Grande and Playa Ventanas, never to recover.

27. In response to the Court's order of December 2008 – that MINAE must immediately proceed with the expropriation of all private land laying within the Park's new eastern boundary – the Government did little to nothing. To this date, only one of the Claimants' lots has actually made it to the end of Costa Rica's official expropriation process. The rest of the Claimants' lands not yet subjected to the process lie in a state of legal limbo. They cannot be developed – because the Court has irrevocably barred the grant of the necessary permits and approvals – and they cannot be sold for fair market value because they cannot be developed.

28. The effect of the current Government's apparent policy – of simply refusing to subject the vast majority of the Claimants' lots to official expropriation, while simultaneously refusing to grant the necessary permits for development to proceed – has been the *de facto* taking of their property rights in the affected beachfront lands. By means of interminable delay – contrary to the explicit instructions of its own Constitutional Court – the Government has managed to effectively expropriate the Claimants lands without having paid prompt, adequate or effective compensation to them for the losses occasioned thereby.

The Lethargic Municipal Expropriation Process

29. The expropriation process established under Ley 7495 involves an administrative phase and a judicial phase. The administrative phase involves official notification of the landholder, whom the Government presents with a determination of compensation for its surrender of all property rights in the land, the acquisition of which would have been declared to be in the public interest. The Government's determination of compensation is supposed to represent the fair market value of the rights to be surrendered, which should enable the expropriated person to acquire land of the same type and quality elsewhere. The legal phase commences when a landholder rejects the Government's initial determination of compensation. Within six months after such rejection, the Government is supposed to petition the court for a final determination of the compensation to be paid. The Court is supposed to render its decision immediately after receiving up to two additional appraisals, both of which are provided by persons appointed by the Court from a list prepared by the Government.

30. The Claimants' lots have been mired in the Government's expropriation process for nearly seven years. The Government declared a public interest in the direct taking of these lots at the end of 2005. Then in November 2006, the Government issued executive decrees expropriating the Claimants' lots, and in each case it offered an absurdly low amount of compensation of between $14.30 and $14.50 per square meter.

31. Despite all of the years that followed, and due in no account to any acts or omissions of the Claimants in seeking like-for-like, fair market compensation for their lands, only one of the Claimants' lots (re: *Folio Real* No. 5-130545-000) has yet to receive a judicial determination of compensation value. Thus far, the Government is only obliged to pay $\$347.77/m^2$, plus interest, and then only for the 40% of the lot that falls within a distance of 125 meters from the mean high tide mark of the Pacific Ocean.

32. To be clear, in none of these cases has the Government actually indicate its willingness to render compensation to the Claimants for the entire lot. Rather, officials have only deigned to dictate compensation for the portion of each lot lying within a distance of 125 meters from the mean high tide line east of the Pacific Ocean. In doing so the Government is attempting to avoid responsibility for dramatically diminishing the value of the entire parcel of land, simply by not designating the entirety of the lots as expropriated.

33. Each of the Claimants' estate lots enjoyed access to public infrastructure on their eastern boundaries, including a road, but the Government has elected only to subject the western halves of each lot to expropriation. As a result, some disingenuous appraisers appointed by the State as part of the expropriation process have actually relied upon such lack of access as a factor in assigning a lower value to the portions being expropriated. If the Government had expropriated each lot in *toto*, access to public infrastructure would have meant a higher value for the whole lot in every case.

34. Even after the expropriations were declared, in each case the Claimants have been forced to continue paying taxes on lands they cannot put to any profitable use.

IV. LEGAL BASIS FOR THE CLAIM

35. With respect to *Folio Real* No. 5-130545-000, the grounds for the claim are Articles 10.7 and 10.4. Paragraph 1(c) of Article 10.7, which requires the Respondent to pay "adequate" compensation for expropriation, which paragraph 2(b) states shall be "equivalent to the fair market value of the expropriated investment immediately before the expropriation took place." The appraisal amount for Lot 5-130545-000 was much lower than its fair market value at the time of its expropriation.

36. The combined effect of Articles 10.3 and 10.4 requires the Respondent to accord to the Claimants and their investments treatment no less favorable than the better of which it has provided to its own nationals or to the investments of investors from third countries. The Government has failed to meet this standard. For example, pursuant to an ICSID award dated 16 May 2012, two German nationals, Marion and Reinhardt Unglaube, are receiving more favorable treatment than the Claimants because they are being paid more per square meter for their expropriated land and because payment of the monies owed to them has now been expedited.[2]

37. Also pursuant to Article 10.4, in respect of all of the lands at issue in this claim, the Claimants demand that the Respondent accord to them the same treatment it has promised to accord to the investors and investments of third countries under other bilateral investment treaties, including paragraphs (3) and (4) of Article V of the 1997 Costa Rica – Spain BIT, Article 5 of the 1997 Costa Rica – Argentina BIT, and Article 5 of the 2000 Costa Rica – Korea BIT.

38. In particular, Article 5 of the Costa Rica – Korea BIT provides, in relevant part:

> 3. Investors of one Contracting Party affected by expropriation shall have a right to prompt review, by a judicial or other independent authority of the other Contracting Party, of their case and of the valuation of their investments in accordance with the principles set out in this Article.

[2] The Claimants reserve the right to provide evidence of any other instances in which better treatment was provided to any other Playa Grande landholders, in terms of process fairness, efficiency or effectiveness, speed of payment or appraisal amount.

> 4. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under its laws and regulations, and in which investors of the other Contracting Party participate or own shares or debentures, the provisions of this Article shall be applied.

39. Also pursuant to Article 10.4, and in respect of all of the lands at issue in this claim, the Claimants demand that the Respondent accord to them the same treatment it has promised to accord to the investors and investments of third countries under paragraphs (2) and (3) of the 1999 Costa Rica – Taiwan BIT, the former of which provides:

> 2. The compensation shall amount to the fair price of the investment expropriated immediately before [the] expropriation or impending expropriation became public knowledge, whichever is earlier. It shall include interest from the date of dispossession of the expropriated property until the date of payment. Interest shall be based on the average deposit rate prevailing in the national banking system of the Party where the expropriation was made. Compensation shall be paid without delay, in convertible currency, and be effectively realizable and be freely transferable.

40. Further under Article 10.4, in respect of all of the lands at issue in this claim, the Claimants demand the benefits of Article 6 of the 1999 Costa Rica – Netherlands BIT and Ad Article VII of the Protocol to the 1998 Costa Rica – Paraguay BIT, which also concern the proper execution of the Respondent's obligation to pay prompt, adequate and effective compensation for the taking of investments.

41. And also pursuant to Article 10.4, in respect of all of the lands at issue in this claim, the Claimants demand the benefits of Article 6 of the 1997 Costa Rica – Argentina BIT, which provides:

> 1. Cada Parte Contratante permitirá a los inversores de la otra Parte Contratante la transferencia irrestricta de las inversiones y ganancias, y en particular, aunque no exclusivamente de:
> ...
> (e) las indemnizaciones previstas en los artículos 5 y 6;
> ...
> (g) los gastos resultantes de la solución de controversias relativas a una inversión. Sin perjuicio de lo dispuesto en este artículo, las Partes Contratantes podrán tomar medidas al amparo de su legislación para evitar acciones fraudulentas, velar por el cumplimiento de obligaciones fiscales o recopilar información con fines estadísticos.
> 2. Las transferencias serán efectuadas sin demora, en moneda libremente convertible, al tipo de cambio vigente a la fecha de la transferencia, conforme con los procedimientos establecidos por la Parte Contratante en cuyo territorio se realizó la inversión, los cuales no podrán afectar la sustancia de los derechos previstos en este artículo.

> 3. Una transferencia se considerará realizada sin demora cuando se haya efectuado dentro del plazo normalmente necesario para el cumplimiento de las formalidades de transferencia. El plazo, que en ningún caso podrá exceder de dos meses, comenzará a correr en el momento de entrega de la correspondiente solicitud, debidamente presentada.

42. With respect to all of the Claimants' lands, it is apparent that the Respondent has utterly failed to provide the Claimants either with an effective right to the prompt review of the expropriation of their lands or with prompt payment for having engaged in these takings, as required under CAFTA Article10.7 and the various obligations undertaken by the Respondent towards the investors and investments of third countries, as noted in the preceding paragraphs.

43. This is particularly the case with respect to the eastern most portions of the Claimants' lots, each of which has been arbitrarily excluded from the official expropriation process – no doubt as a disingenuous, cost-saving expedient. As of 1 January 2009, the Government was compelled, under its CAFTA obligations, to provide prompt compensation for the each entire lot, which it has manifestly failed to do.

44. While the Government has seen fit to begin to putatively honor its obligations, its obligation – to provide prompt access to an institutional mechanism for determination of their expropriation claims or the prompt payment of adequate compensation – the pace has been nothing short of glacial.

45. Costa Rica's responsibility, for failing to observe any of the aforementioned CAFTA obligations vis-à-vis the Claimants, was engaged when the treaty came into force between it and the United States of America, on 1 January 2009. As per CAFTA Article 10.1(3), it was of this date that the facts described herein started applying to the Respondent's conduct under the CAFTA obligations set out above. As of this date, the Respondent became obligated: (1) to provide the Claimants with prompt access to a fair and effective municipal expropriation process; and (2) to provide the Claimants with prompt payment of adequate and effective compensation for its expropriation of their lands.

46. It has now been almost four years since the CAFTA came into force as between the parties. Every day since 1 January 2009, the Claimants have been faced with the same problem: they have land that they cannot develop or sell for a fair price and the Government is doing little to nothing about it – in spite of its international obligations to the contrary.

47. There is no definition of "prompt" that could extend long enough to cover the amount of time the Claimants have already been waiting to receive adequate and effective compensation for the deprivations they have suffered.

48. Finally, also as per Costa Rica's obligations under CAFTA Article 10.4,[3] the Claimants demand the same treatment accorded by Costa Rica to investors from Taiwan under Article II:3 of the 1999 Costa Rica – Taiwan BIT, which provides:

> Once a Contracting Party has admitted an investment in its territory, it shall provide, in accordance with its laws and regulations, all necessary permits related with such investment, as well as all authorizations required to perform the license and technical, commercial or administrative assistance contracts.[4]

49. In this regard, the Government's lackluster performance with respect to granting permits to affected beachfront landholders in Playa Grande (both at national and local levels) speaks for itself.

V. ISSUES

50. Since 1 January 2009, has the Government of Costa Rica failed to provide the Claimants with prompt, adequate and effective compensation, representing fair market value for their investments, for the Respondent's direct, *de jure* expropriation of the Claimants' land, pursuant to proceedings commenced under its own expropriation law?

51. Since 1 January 2009, has the Government of Costa Rica failed to provide the Claimants with prompt, adequate and effective compensation, representing fair market value for their investments, for the Respondent's indirect taking of the western-most portions of their lots, each of which was arbitrarily excluded from municipal expropriation proceedings?

52. Since 1 January 2009, has the Government of Costa Rica failed to provide the Claimants with prompt review of either the *de facto* or the *de jure* expropriation of lands affected by the fixing of the boundaries of the Park in 2008, as well as prompt, good faith valuation of the lands so affected?

53. Since 1 January 2009, has the Government of Costa Rica failed to accord fair and equitable treatment to the Claimants or their investment enterprises, with respect to any

[3] Article 10.4 also applies to the application of other substantive provisions, such as the Article 10.5 obligation to accord fair and equitable treatment. Should a tribunal determine that the references to customary international law, or the customary international law minimum standard of treatment of aliens, found in Article 10.5 or Annex 10-B afford less favourable treatment to the Claimants than that which would be available under an autonomous fair and equitable treatment provision (such as Article 2(2) of the 1998 Costa Rica – Czech BIT), Article 10.4 requires the Government to afford the same treatment to the Claimants.

[4] It is clear that the Claimants have been prejudiced by the Government's failure to grant the necessary permits related to their investments in Playa Grande and Playa Ventanas. The Claimants have been led to believe that such permits can no longer be granted as a result of the Constitutional Court's decision of December 2008. Should the Government, as Respondent, claim that the Court's decision did not have the effect of foreclosing on any development of the Claimants' investments, they would demand compensation for the Governments' failure to issue the necessary permits to them since 1 January 2009.

of the ways in which Park policies have been formulated or implemented by officials who have exercised public authority in spite of their manifest conflicts of interest?

54. Has the Government of Costa Rica provided better treatment to investors from third countries, or to its own investors, in respect of any of the means described above?

VI. RELIEF SOUGHT AND DAMAGES CLAIMED

55. The Claimants will seek the following relief from an Arbitral Tribunal:

(a) A declaration that the Respondent has violated its obligations under the CAFTA, including obligations owed on the basis of most favored nation treatment under CAFTA Article 10.4;

(b) An order that the Respondent immediately pay to the Investor damages of not less than US$20 Million, as compensation for the losses caused by, or arising out of, the Government of Costa Rica's conduct, which is inconsistent with its obligations contained within Part A of CAFTA Chapter 10;

(c) All of the damages incurred in contesting the Respondent's conduct and all of the costs incurred in proceeding with this arbitration, including all legal and other professional fees and disbursements;

(d) Pre-award interest at a rate to be fixed on the basis of the average deposit rate prevailing in the national banking system of Costa Rica at all relevant times, but nonetheless paid out in US dollars;

(e) Post-award interest at a rate to be fixed on the basis of the average deposit rate prevailing on the date of the award, but nonetheless paid out in US dollars;

(f) Payment of a sum of compensation equal to any tax consequences of the award, if necessary in order to maintain the award's integrity;

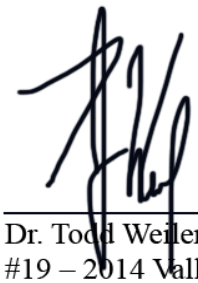
(g) An order that any damages or costs awarded to the Claimants shall be paid out to them, by means of wire transfer, in United States currency, to the foreign financial institutions of their choosing, without delay, and in no case later than two months from the date the award is recognized or otherwise becomes enforceable pursuant to the terms of CAFTA Article 10.26(6); and

(h) Such further relief as counsel may advise and that a tribunal may deem appropriate.

56. CAFTA Article 10.15 mandates that the parties "should initially seek to resolve [their] dispute through consultation and negotiation." Toward that end the Parties agreed to provide for a 90-day notice period before submission of a claim, under Article 10.16(2). The Claimants are prepared to honour these obligations in good faith and expect the Respondent to do the same.

9 October 2012

Counsel for the Claimants:



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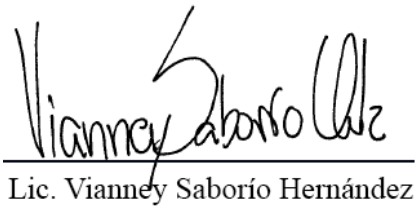

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