UNDER THE UNCITRAL ARBITRATION RULES AND SECTION B OF CHAPTER 10 OF THE DOMINICAN REPUBLIC - CENTRAL AMERICA - UNITED STATES FREE TRADE AGREEMENT

CASE NO. UNCT/13/2

BETWEEN:

SPENCE INTERNATIONAL INVESTMENTS, LLC, BOB F. SPENCE, JOSEPH M. HOLSTEN, BRENDA K. COPHER, RONALD E. COPHER, BRETT E. BERKOWITZ, TREVOR B. BERKOWITZ, AARON C. BERKOWITZ AND GLEN GREMILLION

Investors/Claimants

AND:

THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA

Party/Respondent

SECOND WITNESS STATEMENT OF BRETT ELLIOT BERKOWITZ

Submitted October 2, 2014

1. My name is Brett Elliott Berkowitz. I am the same Brett Elliott Berkowitz who has already made one witness statement in these proceedings. I make this second witness statement to respond to specific points raised by the government of Costa Rica in its Counter-memorial on the Merits and Memorial on Jurisdiction.

2. This witness statement was prepared in collaboration with the attorneys for the Claimants in this proceeding, following several meetings and consultations with me. This witness statement accurately reflects my knowledge and recollection of the facts described herein. This testimony was drafted in English, which is my first language and the language in which I would be prepared to testify, if necessary.

The Park Boundaries

3. I have reviewed Mr. Rotney Piedra's witness statement dated June 19, 2014 ("Piedra's WS1"), which was submitted in support of Costa Rica's case in the arbitration. As set

out at page 1 of Piedra's WS1, Mr. Piedra has been the Administrator of the *Las Baulas* National Marine Park (the "Park") since June 1998. As set out at paragraph 4 of Piedra's WS1, Mr. Piedra's functions relate to the protection of wildlife in the protected area. I know Mr. Piedra personally and his descriptions of his functions are in accord with my understanding of his role. He is a park administrator whose job is and should be concerned with the protection of the Park.

4. I do not understand Mr. Piedra to have any role in law making or in determining the boundaries of the Park. Despite this, at paragraph 27 of his witness statement, Mr. Piedra has offered his interpretation of the 1995 Law and opines that "contrary to the arguments of Claimants, the 125-meter wide strip of land has not been expanded since its creation in 1991, and since then the size has always been the same."

5. In my view, Mr. Piedra is unqualified to make such a statement. However, I note that the view expressed in his witness statement that the Park includes a 125-meter wide strip of land is inconsistent with public statements that he made previously. For example, in 2005, as part of a documentary on the Leatherback turtle aired within Costa Rica, Mr. Piedra described the boundaries of the Park as follows:

> It is a marine park. When we talk about a marine park, we are referring to the more commonly known fifty-metre public area comprised of terrestrial park and mangrove swamps, and we have twelve nautical miles, so among the mammals that we might see most often are racoons, and mostly opossums.[1]

6. At paragraph 38 of Piedra's WS1, he states "[i]n that year [2003], the officials of MINAE, as well as the principal parties involved in protecting the Park, understood that the area of the park covered 125 meters landward from the high tide mark since 1991/1995." He goes on to state that the Legislative Bill to further expand the Park was presented by María Lourdes Ocampo. I note that the *Procuraduría*'s Letter to Congress Regarding the Legal Opinion on the 1995 Law[2], indicates that both Maria Lourdes Ocampo and Carlos Manuel Rodriguez had asked for interpretation of the 1995 Law, as they believed that the expression "aguas adentro" ("seaward") gave rise to confusion about the Park boundaries.

7. Further, at paragraph 35 of his witness statement, Mr. Piedra suggests that despite [his view] that the Park boundaries have always included 125 meters of land inland from the high tide mark, it was "some of the owners in the Playa Grande area" who alleged that the 125 meter strip should be considered to be offshore, instead of inland.

8. Mr. Piedra makes the preposterous inference that it is the Claimants in this action who deliberately tried to create confusion over the 125 meter strip of land. I had no role in the

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1 Exhibits C-0087 ("Parque Nacional Marino Baulas" from the series "Relatos del Viento: Una historia bien contada sobre los Parques Nacionales de Costa Rica" produced by the university television channel - UNED) and C-0088 (transcript of extract of video and translation into English) aired October 24, 2005.

2 Exhibit R-044.

writing and passing of the 1995 Law. I purchased my property with the clear understanding that it fell outside of the park boundaries defined by the 1995 Law.

9. While it was certainly my view and that of many other landowners in the area that the 125 meter strip should be considered to be offshore, that view was consistent with the clear wording of the 1995 Law (which Costa Rica now insists contains a mistake despite the contemporaneous legislative record to the contrary). It was also the position of the government itself and other government agencies at the time, including both the Municipality of Santa Cruz,[3] responsible for zoning and services in the area, and the IGN,[4] responsible for mapping in Costa Rica.

10. At paragraph 117 of the Respondent's Memorial, it states that "there is no doubt…that properties that lie within that Park's boundaries were subject to expropriation." Despite what the Respondent now says, it was not well known or public that the 1995 Law included even one square meter of my property. In fact, it was my understanding that the 1995 Law succeeded not only in protecting the nesting site of the turtles, but also spared the government from having to expropriate any private lands bordering the Park. The 1995 Law as written did not include any of my property. The later requests for "clarifications" to the conflict between the 1991 Decree and the 1995 Law were not publicized and were made some considerable time after I purchased my property. In any event, all of these "clarifications" and "confirmations" occurred well after I performed my due diligence and after I purchased my property. As such it would have been impossible for me to have known about them at the time that I made my purchase. I could not possibly have predicted that the interpretation of the 1995 Law would change after I purchased my property. The name of the Park includes directly in it the word "*marino*", which to me was a clear definition of a "marine" national park. It came as a complete shock to me to hear about the apparent "clarification" concluding that the term "*aguas adentro*" was later interpreted to be a typographical "error".

Due Diligence

11. I find the Respondent's allegations offensive that it was common knowledge that my property was part of the Park and that my investment was risky. It was an integral part of performing my due diligence to ensure that my property was not part of the Park. As discussed at paragraphs 8 to 13 of my first witness statement, I conducted significant due diligence before deciding to purchase the B lots. I retained local counsel prior to purchasing my property who made it clear to me that there was a distinction between the 1991 Executive Decree and the 1995 Law passed by Congress and that according to the 1995 Law, which took legal precedence over the 1991 Decree, the property I was looking to purchase was not within the boundaries of the Park.

3 See the Zoning Regulations for the Municipality of Santa Cruz published in La Gaceta No. 127, 3 July 2006, Exhibit C-1x at pp. 18 - 23.

4 See Exhibits C-57 and C-58.

12. At paragraph 28 of the Respondent's Memorial, they state that "several of the land registry cadastral plans that Claimants themselves have placed on the record show that post-1995 (before Claimants acquired the properties) their properties are inside the Park. This is true for Lots….B1, B3, B5, B6, B7 and B8." The land registry cadastral plans available to me at the time of purchase were the 2002 land registry cadastral plans.[5] The stamps on these plans make reference to the 1991 Decree, not the 1995 Park Law, which, as explained to me by local counsel, changed the boundaries created by the 1991 Decree. Reference to the 1995 Park Law, was not stamped onto any of the land cadastral plans until 2005, after I had purchased my lots.

13. At the time I purchased my property, there was no doubt surrounding the boundaries of the Park. Being familiar with the clear facts described above, I made the informed decision to purchase my property.

14. I planned to develop these lots and not to "flip" them, as alleged by the Respondent's expert, Mr. Kaczmarek. While I did sell three of my eight beach-front lots, I did so only in order to help pay down the debt which I owed on the property after my purchase.

15. Prior to making the decision to purchase my property in Playa Grande, I performed a good deal of due diligence on all of the various requirements which I would have to fulfill in order to be able to get a building permit to build my home and what I hoped would eventually be four additional homes on my five beachfront lots. I understood the requirements for obtaining construction permits and complied with those requirements. In addition, there had been many homes which had already been built on beachfront lots in the Playa Grande area. In 2003, in order to receive a construction permit, it was necessary to provide the Municipality with evidence of water availability, have IGN certification that the property was not inside the Park, and provide an environmental impact assessment. In short, a number of different government agencies needed to sign off on various components of the project before the Municipality would issue a building permit.

16. At paragraphs 36 to 38 of Piedra's WS1, Mr. Piedra comments on paragraphs 9 to 13 of my first witness statement and in doing so misconstrues my statement. I confirm that Mr. Piedra was not present at the meeting with the then Environment Minister, Carlos Manuel Rodriguez Echandi, described at paragraphs 9 to 12 of my first witness statement.

17. With respect to the June 18, 2003 meeting where various government officials and representatives from NGOs gathered to discuss the preparation of a project to modify the Bill to Extend and Consolidate the National Marine Park Las Baulas de Guanacaste (*Proyecto de Ley de Ampliación y Consolidación del Parque Nacional Marino Las Baulas de Guanacaste*), at which Mr. Piedra was present, the point I was making at paragraph 13 of my first witness statement was that the minutes of that meeting were

5 Exhibits C-0023a; C-0024a; C-0025a; C-0026a; C-0027a; and C-0028a.

consistent with the position that the Minister communicated to me during my earlier meeting with him.

18. The minutes of the meeting prepared and signed by Minister Rodriguez, contain the following clear statements[6]:

    (a) "MINAE does not agree with the bill as it was submitted, particularly the proposal to expand the Las Baulas National Marine Park in Guanacaste."

    (b) "The conservation and protection efforts shall be focused on Playa Grande where we shall try to promote a low density development."

    (c) "Las Baulas National Marine Park in Guanacaste shall not be expanded to any area that has been previously declared an area of tourism interest."

    (d) "In the private areas declared as a National Park in 1991 and 1995, we would like to promote a voluntary conservation regime, instead of resorting to the respective expropriations."

19. The minutes confirm the Ministry of Energy and the Environment and Telecommunications' ("MINAE" in spanish) position at the time, which had been communicated to me directly by Minister Rodriguez: that the border of the Park was in fact at the limit of the 50 meter public zone, that the government was not going to pursue the expropriation of privately-held properties, that low density development in Playa Grande would be promoted, and that development was consistent with a voluntary conservation regime that would be the preferred alternative to expropriation.

20. At paragraph 77 of the Kaczmarek Report, he states that I should have known Mrs. Marion Unglaube was issued a Decree of Public Interest on her lot prior to purchasing my property. I met Mrs. Unglaube and her husband after I purchased my property. The context of the meeting was that I needed a reliable mason and was told that Mr. Unglaube knew of a good mason. I was given his phone number, so I gave him a call and asked where he lived. Shortly thereafter, I went to meet him and his wife at their home in Playa Grande. I had no way of knowing while I was performing my due diligence that they had been issued a notice of public interest on their property. As Mr. Kaczmarek points out, the Decree of Public Interest was not published in the Gazette until November 5, 2003, which was well-after I purchased my property.

My Plans for Development

21. It is clear from paragraph 51 of Mr. Piedra's witness statement that it is his view that "in order to ensure continuity of the nesting process, beaches are required that have no light or sound contamination, that have dunes where the incubation process can take place, as well as vegetation coverage behind the dunes which protects them and also allows the

6 Exhibit C-53.

beach to recede if necessary due to climate change. Beaches must also be exposed to as little human activity as possible."

22. He provides no support for these statements and such an absolute view is inconsistent with the views of other biologists who also study sea turtles, including Dr. Kirt Rusenko who has submitted a witness statement in this arbitration.

23. At paragraphs 54 and 55 of his witness statement, Mr. Piedra makes it sound as though the development in Playa Grande was just like the development in Tamarindo. This is untrue. From the time I first purchased my property, my intention was to develop in an environmentally responsible manner and to build low-density single family residential homes on very large estate-sized lots (about two acres each). Those plans were consistent with the zoning of the property when I purchased it in 2003.

24. At paragraphs 33 and 55, Mr. Piedra refers to a plan to develop a project to build 185 houses over 40 acres in Playa Grande and infers that this was my project. This was not in fact my plan for development. It is my understanding that the plan to build 185 houses on the property that I later purchased was submitted by the previous owner of the property. As noted by Mr. Piedra, a request for environmental viability for such a development was submitted, but approval was never received. As noted at paragraph 8 of my first witness statement, when I purchased the property, it was zoned for low density development with one home on each large agricultural lot, totalling 24 homes over 40 acres. Thus, for the eight lots involved in this claim, the plan was to construct eight environmentally sensitive homes, not hundreds. I considered this to be the highest and best use of these lots.

25. When I purchased my property in 2003, there were multiple steps involved in order to obtain a building permit in Playa Grande, including the following:

    (a) construction plans that conform to the zoning requirements;

    (b) an environmental impact assessment; and

    (c) evidence of water availability.

26. I was willing to develop my property in a way that eliminated impact on the turtle nesting beaches which directly bordered my property. As set out at paragraph 13 of my first witness statement, the construction plans for my own home to be built on lot B5 were for a two storey home, which was permitted under the zoning regulations at the time. The home was designed to minimize horizontal light emanations and potential contamination from the effluent from my home through the use of an individual sewage treatment plant. I also had voluntarily created a 15 meter setback away from my boundary line on the beach in order to further minimize potential illumination from my home. This would have maintained a green curtain of at least 50 meters between the beach and my home. The plans also included a high-tech individual sewage treatment plan for the property,

which eliminated the possibility of any grey or black waters contaminating the ground water in and around the location of my home.

27. In order to create access to my property, I applied to MINAE for a tree-cutting permit for the legal removal of 74 trees which we needed to remove in order to create viable access to all 24 individual lots (including lots not involved in this claim). The access was in the form of a 10 meter wide "T" shaped easement which traversed my property. The permit was issued by MINAE in June 2003.[7] I proceeded to execute upon the permit and took down most of the trees marked for removal. The trees which were permitted for removal were the species of Madera Negro, Guacimo, Chaperno and Naranjillo. These trees are all very common species to the coastal zone and none of these species are, or were, included in the list of endangered species by MINAE. I note that, contrary to what Mr. Kaczmarek states throughout his report dated July 16, 2014 ("Kaczmarek's Report"), there have never been any mangrove trees on any of portion of my property.[8]

28. At paragraph 34 of his witness statement, Mr. Piedra says that contrary to the wording of the permit, I "began activities inside the Park, within the 75-meter strip, due to which a complaint was filed with the Office of the Attorney General."

29. What Mr. Piedra fails to mention is that in the course of the proceedings to determine that complaint[9], the National Geographic Institute (IGN in Spanish) advised the President of the Administrative Environmental Tribunal that the lots at issue "are all outside of Las Baulas National Marine Park of Guanacaste." I will expand on this issue in the subsequent paragraphs.

30. The summer of 2003 was a particularly heavy rainy season with above-average rainfall coming in the months just subsequent to my executing on my legal permit to remove the 74 trees. During the course of a normal rainy season, there are always a number of trees on my property which either partially or completely fall over. This was the case that summer. In particular, there were three small trees: two Madera's and one Naranjillo, which all had a diameter of 15 to 30 cm at the base, which had either partially or completely fallen over from their own weight and the instability of the water-logged soil and were blocking one of the access gravel driveways to one of the beachfront lots. One of the trees in particular was leaning on such an angle that it posed a safety treat to any pedestrian or vehicle that would attempt to pass under it. As such, we had to remove the trees in order to unblock the existing access road and to ensure safety.

31. On August 25, 2003, Park Ranger Mr. Carlos Chang and his partner responded to an anonymous complaint filed for the "illegal removal of trees" in the protected area of the Park. They asked my farm workers to cease and desist from the work which I had ordered them to do because they thought the area was protected within the Park. Mr.

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7 Exhibit R-016.

8 Lot B1: Exhibit C-0023d; Lot B3: Exhibit C-0024d; Lot B5: Exhibit C-0025d; Lot B6: Exhibit C-0026d; Lot B7: Exhibit C-0027d; Lot B8: Exhibit C-0028d.

9 Exhibit C-58.

Chang proceeded to file a denouncement against me on September 1, 2003 for the removal of the three trees.[10]

32. In addition, on May 31, 2004, Mr. Piedra filed a case in the Administrative Environmental Tribunal against me, Marion Unglaube and Jacques Fostroy for the contamination of roads, uprooting trees and leaving detritus on the strip of land found within 75 meters alleged to be part of the Park.[11]

33. In the course of these proceedings, Mr. Eduardo Madrigal Castro from the General Secretary of the National Environmental Technical Secretariat ("SETENA" in Spanish) wrote the President of the Administrative Environmental Tribunal on June 11, 2004, setting out specific information regarding my property. In particular he confirmed that although my property was located in the maritime zone, it was properly registered and was noted to stay 65 meters back from the high tide line (the 50 meter inalienable zone plus 15 meter voluntary setback), with elongated facades to prevent horizontal illumination, as well as other measures to mitigate the effects that light and noise have on the leather back turtle reproduction practices.[12]

34. Further, the IGN advised the President of the Administrative Environmental Tribunal that my properties (referred to in Mr. Piedra's complaint) "were located completely outside the Park."[13]

35. This was again confirmed on November 5, 2004.[14]

36. I understand that today the municipality of Santa Cruz requires a further step before it will issue a building permit: an assessment to determine whether the proposed construction is in compliance with the matrix of criteria for use of land related to the vulnerability to contamination of aquifers. In order to comply with this requirement, I had a piezometer study performed in order to assess the potential for contamination of the groundwater in and around my property. This is discussed further, below. I requested this study, in spite of the fact that it was not a requirement for a building permit when I was preparing my lots for development and at the time when I solicited the approval of SETENA to build my own home on Lot B5.

The Aquifer in the Guanacaste Area

37. At paragraph 56 of the Respondent's Memorial, the Respondent states that the National Service for Subterranean Waters of Costa Rica ("SENARA") performed a hydrological study in May 2003 of the Huacas-Tamarindo aquifer to determine the availability of

10 Exhibit C-0079.

11 Exhibit C-0081.

12 Exhibit C-0082.

13 See Exhibits C-57 and C-58.

14 Exhibit C-0083.

water in the Guanacaste area and that this study found the demand for water in the area to be greater than the aquifer could meet.

38. I did not know about the 2003 SENARA study at the time I purchased my property.

39. At the time I purchased my property, this study had no bearing on whether there was sufficient water for development.

40. At the time, and to this day, there was and continues to be ample water for the development of single family residences within the entire Playa Grande community. I sit on the Board of the Playa Grande *Associaciones administradoras de acueductors* ("ASADA") and we have not stopped granting water rights to qualified applicants from 2003 up to and inclusive of the present day. All of the water in Playa Grande comes from well water, which is supplied by the ASADA, and thus the ASADA has the authority to drill new wells. The 2005 prohibition on drilling new wells, which is related to the 2003 SENARA study, only restricts individuals from drilling new wells and requires them to seek permission from the ASADA.

41. Further, I have noticed that some of the property owners in Playa Grande have personal swimming pools which they use and maintain. If there were such an extreme deficit of water, as the Respondent claims, then the first thing to be prohibited would be the filling of the swimming pools.

42. During the period of time when I was soliciting a permit to build my own home on lot B5, I asked for and was granted a water availability letter from the *Associaciones* ASADA.[15] Based upon this approval, I proceeded to install 24 water meters, one for each lot on my property in order to run water to each and every lot. The approval letter asked me to make a contribution to expand and improve of the ASADA water infrastructure (by getting new pipes, storage tanks, pumps, etc.). This contribution is known as a "*tasa urbanistica*".

43. At paragraph 59 of the Respondent's Memorial, they state that another study was issued by SENARA in January 2009 to determine whether there was a risk of contamination of the existing water supply due to development in the area. The Respondent states that my property is located in an area of extreme vulnerability and that no development or construction is permitted.

44. It is important to note that all of my properties were purchased well before both the SENARA January 2009 report and the December 2008 Huacas-Tamarindo vulnerability map. Additionally, it is important to take note that the land upon which my property exists is several kilometres away from the actual aquifer which provides water to the greater Playa Grande Community. The ground water which the Respondent refers to as an "aquifer" which is located under my property is not in any way part of the aquifer which provides drinking water for the greater Playa Grande Community.

15 Exhibit C-0080.

45. In any event, it is my understanding that the owner of lot B4, Jeanina Facio, hired experts in May 2013 to perform a hydrogeological study to determine the environmental fragility of her property. The study places her property in the category of "high" fragility for contamination, but not "extreme", as previously indicated in the Huacas-Tamarindo vulnerability map.[16] Thus, even according to the matrix referred to by the Respondent, and applying the parameters of "high" fragility, the property is developable and not simply apt for "conservation". This lot is located between lots B3 and B5, which are both part of the claim in this arbitration.

46. Further, it is my understanding that another of my neighbours, Mr. Jacques Fostroy, who owns the property immediately north of the B lots, hired experts in July 2014 to perform a hydrogeological study of his property. The study also categorizes Mr. Fostroy's property as "high" vulnerability, and not "extreme", as previously indicated in the Huacas-Tamarindo vulnerability map.[17]

47. Further, in August 2014, a hydrological study was performed on my property. The study also categorizes my property as "high" vulnerability, and not "extreme".[18] Thus, even according to the matrix referred to by the Respondent, my property would qualify for development.

Compensation

48. At paragraphs 22 to 46 of Kaczmarek's Report, he suggests that the real estate market in Playa Grande was directly correlated with the US real estate market. Mr. Kaczmarek implies that most of the sales of second homes in Costa Rica were financed by taking out loans on primary residences in the US. This is not the case with respect to the typical buyers for the beachfront lots included in this claim. The prospective buyers for these properties that I met were wealthy and did not require financing for their property purchases in Costa Rica. As an example, Jeanina Facio is the wife a rather well-known Hollywood director who bought her lot as a gift to her. It is my understanding that it was their plan to build their dream estate home and bring down their other close Hollywood star friends who would possibly be interested in owning private beachfront property as well. I believed that had the market been allowed to mature, these two-acre estates could have been worth 4 to 6 million dollars if they were being sold to that type of clientele.

49. At paragraph 41 of the Kaczmarek Report, it states "[w]hen the market began to turn in 2007, buyers were caught holding properties they never intended to develop". To be clear, I intended to develop the land I purchased. As I mentioned in my first witness statement, I intended to develop the property into a low-density, highly exclusive beachfront and beachside residential housing community with ocean views from the ground story of the homes in the dry season and from the second story of the homes on a year-round basis. The properties had ocean views because the trees fronting the beach

16 Exhibit C-0084.

17 Exhibit C-0085.

18 Exhibit C-0086.

were deciduous and therefore it was possible to see through them during the dry season, which is much of the year in Costa Rica (December to April). The plans for the homes were to be two stories, which is the limit which was permitted at that time, and which would have afforded nice ocean views over the trees.

50. In addition, the B lots had direct access to the beach through gaps in the greenery. These access points had been used for many years by surfers to access the beach (by passing through the undeveloped B lots). The Respondent has not only indicated that it is expropriating the 75 meters of land closest to the beach, it also intends to cut off access to the beach from the B lots. My local counsel has informed me that once the expropriation is complete, the law in Costa Rica requires the fencing of the Park in order to control access to the Park and as a result, Costa Rica will be prohibited from granting an easement upon the Park property. Thus, the remainder parcels will be undersized non-conforming building lots, with neither ocean views nor direct access to the beach. The only beach access will be limited to a few public entrances, which would require one to drive approximately two and a half kilometers from the residual property to the nearest public access point. In my view, the Respondent has taken my entire investment by expropriating the 75 meters of land closest to the beach.

51. At paragraphs 107 and 108 of the Respondent's Memorial, they say that the delays in the expropriation process are my fault. They suggest that by filing judicial actions against the expropriations I wished to dispute, I have caused a delay in the process that they designed. At paragraph 25 of my first witness statement, I explained that we challenged the declaration of public interest of Lots B3, B5, B6 and B8 as we considered them to be illegal. As the Respondent notes, this was within my due process rights. This challenge was decided on March 22, 2006. It took the Respondent more than eight years after this challenge was decided in their favor to reach a final judgment in the court of first instance.

52. At paragraph 109 of the Respondent's Memorial, they state that the "Claimants surprisingly allege that they have not yet received payment for the lots where there has been a final decision on the amount of compensation… For every lot where an Act of Dispossession has been issued [including B1, B3, B5, B6 and B8], Costa Rica has made the amount of the administrative appraisal available to the Claimants." This is not the case.

53. Contrary to what the Respondent alleges, my sons and I have not received any funds for the lots, except for lot B3.

54. With respect to lot B3, the final judgment was made on February 7, 2013.[19] On September 11, 2013, only the difference between the administrative appraisal and the

19 Exhibit C-0024g.

judgment was deposited in the court account.[20] On June 12, 2014 (after the date of my first witness statement), the court ordered that the difference could be withdrawn.[21]

55. The process of receiving these funds has been extremely difficult and frustrating. I understand that on June 16, 2014, my attorney called the court requesting that the money be paid out. He followed up again on June 18, 2014. On June 19, 2014, he went to the court to speak with Judge Oriana Vila Hilaron who informed him that it would take 24 hours. He followed-up again on June 23, 25, 26, 30; July 1, 2, 4, 8, 11, 14, 16, 17, 22, 24, 29; August 1, 4, 6, 8 and 11. My attorney informed me that he was told every time that the court Treasury was about to transfer the money, but that other work was getting priority. That is more than 20 trips to the court in order to receive a simple payment of funds that Costa Rica says has been available to me for years. The funds were finally credited to my account on August 13, 2014. It took 18 months from the date of judgment for me to receive the difference and I have still not been paid the amount for the administrative appraisal, or the interest accrued.

56. With respect to lots B1 and B5, there has still been no judgment.

57. With respect to lot B6, on July 30, 2014, I received the court judgment providing the valuation for lot B6[22], which the State took possession of on March 13, 2008 - more than six years ago. The judgment set the compensation for lot B6 at the amount of the first administrative appraisal, CRC 19,972,440 for 2773.95 m^2 or approximately \$14/m^2. The judge referred to a number of "facts" that were not at issue when I purchased the property. These include a finding that the property is inside the "zone of vulnerability", that in 2008 the Constitutional Court suspended the environmental assessments within the Park (then defined as including the first 75 m of my property), and that in 2008 the Constitutional Court annulled the Municipality's zoning plan that permitted development on the property. One of the factors taken into account by the judge in awarding such a low value was that the property being expropriated had no access to a public street. Of course, the property did have such access through the remnant parcel before it was expropriated. I consider both the reasoning of this judgment and the valuation of the court to be outrageous and nowhere near fair market value for the property. Because I have waived my rights to pursue any remedies related to the expropriations in the Costa Rican courts in order to commence this arbitration, I cannot appeal this judgment. It is for the Tribunal in this case to right this injustice.

58. While the final judgment for lot B6 was awarded recently, the compensation awarded in the final judgment is equal to that of the administrative appraisal, so there is no interest amount payable. Nonetheless, the court has yet to order that the difference be withdrawn.

59. With respect to lot B8, final judgment was received on July 30, 2013. The difference between the administrative appraisal and the final amount was deposited into the court

20 Exhibit R-041.

21 Exhibit C-0024i-1.

22 Exhibit C-0026g.

account on March 28, 2014. I am still waiting for the order to withdraw the difference. The delay has been caused by the Respondent disputing my request to withdraw the funds. A resolution on the issue was reached by the court on July 30, 2014.[23] However, it is my understanding that the Respondent is appealing the resolution.

60. The judgment for interest payment for lot B8 was made on July 31, 2014.[24]

61. It is my understanding that until recently, the court had one general account for all expropriations. While I understand that the court has recently changed their system and now has a separate account for each expropriation, as a result of the old system, the court has been unable to confirm whether the administrative appraisals have in fact been deposited in the court account for lots B1, B5, B6 and B8.

I confirm that the facts stated in this witness statement are true.

Signed: _____
Brett E. Berkowitz

Date: September 30, 2014

23 Exhibit C-0028i.

24 Exhibit C-0028i.