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 ROBERT REDDY

Submitted October 2, 2014

Introduction/Personal Background

1. My name is Robert Reddy. I am the same Robert Reddy 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 statement accurately reflects my knowledge and recollection of the facts described herein. This testimony was drafted in English, which is my native language and which is the language that I would be prepared to testify in, if necessary.

Knowledge of the Park boundaries

3. The Respondent states throughout Counter-Memorial that the Claimants should have been aware at the time they acquired their properties that at least portions of the Spence and Spence Co. properties were subject to expropriation, as provided by the law creating the Las Baulas Park.

4. Spence Co. is an experienced property developer with over thirty years of real estate development experience and involvement in more than fifty real estate development projects. Before making such a large investment in Costa Rica, which was a new market for us, I performed due diligence with respect to the properties that were to be purchased, which included lots not only on Playa Ventanas and Playa Grande, but also in other beachfront or beach view locations. These other properties are not involved in the claim. As part of our due diligence, we consulted with local attorneys to ensure that we would be able to develop the lots.

5. In 2004, when Spence Co. made its first investment in Playa Grande and Playa Ventanas, the properties were outside of the Park boundaries. The Park boundaries, as set out in the 1991 Decree would have included most of the Spence Co. properties. However, it was my understanding that the 1995 Law superseded the 1991 Decree and stated that the Park boundary was "seaward" from the mean high tide line. I knew that the 1995 Law provided for the expropriation of private properties within the Park. The 1995 Law also provided that those private properties would not become part of the Park until they were expropriated, and that owners of any expropriated properties would receive fair market value for any properties expropriated.

6. At paragraph 24 of the Respondent's Memorial, they state that "to identify the 125 meter strip of land, the 1995 Law makes reference to coordinates-located inland- that are used to determine the end point of an imaginary line that is drawn parallel to the coast (following the curve of the coastline)". The 1995 Law does not say "a 125 m strip of land" and to infer so is erroneous and misleading. The 1995 Law says a distance of 125 m from an imaginary line between two coordinates. This creates an area, which could in fact be in the water, land or both. It was not evident to us that the use of "seaward" was an obvious error. It was not a typographical error of a keystroke. It is an entirely different word that was intentionally added[1] following legislative discussions,[2] inserted, and subsequently approved by several hundred members of the Costa Rican legislature. We relied on the plain meaning of the law as it was written. The turtles do not nest on the private property being expropriated, and thus expropriation in our view, is not necessary to adequately protect the turtles' nesting grounds. It is also very difficult to identify the Park boundaries - Costa Rica itself has admitted that it has not adequately done so.[3]

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[1] Compare 1991 Decree, Article 1, C-1b with 1995 Law, Article 1, C-1e.

[2] See Exhibit C-1z.

[3] See paragraph 88 of the Respondent's Counter-Memorial.

7. At paragraph 25 of the Respondent's Counter-Memorial, they state that the "seaward" interpretation of the 1995 Law would result in encompassing no land at all, and thus language related to expropriating properties makes no sense. However, the 1995 Law says that it would cover Cerro el Morro, certain islands, and properties further south near Langosta. Cerro el Morro, which is a large ridge behind Playa Ventanas, was known to be privately owned. The 1995 Law made sense to me and did not seem to contain any error, as the Park boundaries included private land.

8. At paragraph 28 of the Respondent's Counter-Memorial, they state that several of the land registry drawings show that post-1995, but before the purchase of the properties, the properties were shown to be inside the Park. This is misleading. For the few properties where there is a reference to the Park, none of the registry drawings between 1995 and 2004 refer to the 1995 Park Law - only the 1991 Decree. This is consistent with my understanding of the law at the time that Spence Co. invested.

9. I was told that I could rely on the information in the National Registry with respect to any encumbrances on the properties. None of the Spence or Spence Co. properties had anything registered on title that stated that they were within the Park boundaries according to the 1995 Law at their time of purchase.

10. Spence and Spence Co. properties purchased titled beachfront properties. There was no notation in the registry that these properties were within the Park. The registry maps for the Spence lots: V30, V31, V32 and V33 had no stamps at all that referred to the Park.[4]

11. In addition, I have seen the beachfront property surveys of lots V38, V39, V40 and V46 and V47, which belong to the Cophers and Joe Holsten. These registry maps contain a stamp that specifically says that each of those beachfront properties is outside the Park boundaries.[5]

12. The registry map for lot V59 did have a stamp that referred to the Park and said that the property was within the Park.[6] That stamp was dated 1996, but that stamp referred only to the 1991 Decree and not the 1995 Law. That map also clearly indicates that the lot is "*para construir*" -- a building lot.

13. The registry map for lot V61 at the time of purchase also a stamp that said that it was outside the Park boundaries pursuant to the 1991 Decree.[7] The lot was subdivided after Spence Co. purchased it. When a lot is subdivided in Costa Rica, new registry maps are created. The post-subdivision registry maps bear stamps dated 2006. It is on these stamps (post-purchase) that it is indicated that the properties are within the Park according to both the 1991 Decree and the 1995 Law.[8]

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4 See the lot maps at Exhibits C-3a, C-4a, C-5a, and C-6a.

5 See the lot maps at Exhibits C-7a, C-8a, C-9a, C-10a, and C-11a.

6 See Exhibit C-12a at pp. 3-4.

7 See Exhibit C-99.

8 See Exhibits C-13a, C-14a, and C-15a.

14. The registry maps for lots A39 and A40 were very old (1980) and contained no reference to the Park.[9] If these lots were part of the Park, given the other notations on the registry maps in the area, I would have expected the National Registry to have a newer version of these registry drawings that referred to the Park. The situation is similar for lot C71.[10]

15. Lot C96 is a special case. The registry map dated 2003 for this lot contains two different stamps: one that mentions the Forest Law and another that refers to the National Park Service.[11] The National Park Service stamp states that the property is outside any national park. The other stamp refers to protected zones (but not the Park). My due diligence at the time revealed that in a previous development plan (of a previous owner), this lot was to be donated to the ICT. The previous development did not proceed as planned and the previous developer never completed the transfer. Before purchasing this lot, we investigated our potential liability as the successor developer and were advised that the property was titled private property and that any liability belonged to the previous developer. The registry map also identifies the lot as a building lot.

16. The registry maps for SPG1, SPG2 and SPG3, all dated 2003,[12] each bear a stamp stating that a percentage of the lot is within the Park pursuant to the 1991 Decree. There is no mention of the 1995 Law.

17. Further, none of the properties had been noticed for expropriation at the time of purchase. I understood that pursuant to both the 1991 Decree and the 1995 Law, the properties that were inside the Park would retain their private status until expropriated and that owners would continue to enjoy full exercise of their property rights, including the right to build on the land. I was aware at the time of purchase that the government could subsequently decide to expropriate any property in Costa Rica. The Expropriation Law provided protection to owners in that event, as the government was required to pay a fair price and set out an appraisal process for determining that amount. I understood that this process would result in fair market value being paid promptly for any land that might be expropriated. The Expropriation Law also set out what appeared to be an efficient process for the determination of fair value.

18. Spence Co. properly investigated and relied on the law as it existed at the time of the investment. It not only purchased the lots, it made further investments in order to develop and maintain the lots.

19. At paragraph 27 of the Respondent's Counter-Memorial, they state that the government consistently acted on the basis that Park included 125 m of beach and beachfront land. This is not true. The government acted as if the beach was part of the Park, but the government did not act on private beachfront properties. It is my understanding that, even if the Park extended 125 m inland, for the government to treat the private property

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[9] See Exhibits C-16a.

[10] See Exhibit C-19a.

[11] See Exhibit C-18a.

[12] See Exhibits C-20a, C-21a and C-22a.

as Park would likely be illegal until the owner was dispossessed of the property. The entrance to the Park is at the beach, and not 75 m back from the beach. Until very recently, all of the signage related to the Park was next to public access points to the beach.[13] Park rangers patrolled the beach, not the 75 m of beachfront land.

Issues Related to Building Permits

20. Since our primary purpose was to develop the lots that we purchased, we confirmed that we would be able to legally build on the lots before we made our first investment. The requirements for a building permit have changed somewhat since 2004, but the primary requirements remain the same. From a developer's perspective, there is no point purchasing a property if the property is not registered as a legal building site, if there is no water available where the property is located or if the building site cannot pass an environmental impact assessment. These three items, along with other technical formalities and payments are required before the municipality will issue a building permit. In addition, today in Playa Grande, a specific hydrology study is required in order to ensure that the building site is not located in an area of extreme fragility - where the aquifer has an extreme risk of being contaminated.[14] That study was not necessary when we first bought our properties in Playa Grande.

21. As noted in my first witness statement, there were a number of active building projects in Playa Grande when we decided to invest. The Municipality issued a number of building permits up until 2008 in Playa Grande, including permits in each year 2002, 2003, 2004 and 2005 in Playa Ventanas and in 2004 in South Playa Grande within the 75 m strip that the Respondent says was always part of the Park.[15] In light of the various Constitutional Court decisions, all of these building permits are now under review.

Water in the Guanacaste Area

22. The Respondent alleges at paragraphs 54 to 61 of its Counter-Memorial that according to a May 2003 SENARA hydrology study of the Huacas-Tamarindo aquifer, there is no water available in Playa Grande for new development projects. They imply that the 2005 restriction on the drilling of new wells and the requirement for permits to use water from the aqueduct system meant that no development would have happened on the Spence or Spence Co. lots.

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[13] See Exhibit C-90, Photograph of Park Entrance Sign.

[14] See Exhibit C-91, 140821 Letter from the Municipality of Santa Cruz to D. Haragan setting out the requirements for a building permit.

[15] See Exhibit C-92, 140500 First Phase Action Plan Report from the Municipality of Santa Cruz to respond to the 2008 Constitutional Court decision prepared by William Arauz Bran, Exhibits C-93 and C-94 Letters from the Municipality of Santa Cruz to D. Haragan responding to inquiry regarding the number of building permits issued and Exhibit C-95 Aide Memoire prepared by Claimants to summarize location of building permits referred to in Exhibits C-92, C-93 and C-94 and their attachments.

23. I did not have knowledge of this study at the time the Spence Co. properties were purchased and it appears to be an internal government study. In any event, the information provided by the Respondent does not accurately reflect the situation.

24. The normal process for getting approval for a construction permit from the Municipality of Santa Cruz for a residential building lot requires a water availability letter. These are given to anyone within the water district (the existing aqueduct) who complies with a short list of prerequisites, such as the legal status of the entity owning the land, a current survey plan, and a diagram of the future construction for which the letter is being granted, including a water storage tank that is supposed to hold three days of water for the consumption of the construction.[16]

25. These water availability letters have been given out by the *Associaciones administradoras de acueductors* ("ASADA") in Playa Grade and Playa Ventanas without issue for years.

26. Once the construction has complied with the rest of the construction permit, the ASADA issues and installs a water meter and the property will have an account with the ASADA and receive a monthly bill based on consumption.

27. As a general comment, many of the properties in Playa Grande have permitted swimming pools. Although the requirements for swimming pools have changed over the years (pools must now be above-ground in order to be permitted), one would not expect to find swimming pools in an area of restricted water use.

28. The Respondent links the availability of water with the alleged vulnerability of the aquifer more generally. They state that according to the January 2009 SENARA study, development on the properties would have the potential to contaminate the aquifer with grey/black water. All of the Spence and Spence Co. properties had been purchased before the date of this report. The December 2008 Huacas-Tamarindo vulnerability map was also created after all of the Spence properties had been purchased. It was not possible to know of these studies before the investments were made.

29. Again, in any event, even today neither the existence of the vulnerability map nor the 2009 SENARA study preclude development in Playa Grande. As a result of these studies (and the ensuing legal challenges to their application) and as discussed in my first witness statement, SENARA now requires owners to perform a piezometer study. The goal of such a study is to confirm to SENARA that the particular building lot does not pose an extreme risk to possible contamination of the aquifer. According to the Respondent's matrix, it is possible to build a home on a lot even if the risk is "high", as that risk can be mitigated through various techniques.[17]

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[16] Exhibit C-89. Letter from Dave Corredor, President of the Playa Grande ASADA explaining the process for obtaining water availability confirmation for new development.

[17] Exhibit R-47.

30. In August 2014, hydrologists performed such a study on a number of the Claimants' lots (beyond the 75 m Park area), including the SPG lots. The result of the study was that the lots are in an area of high risk, not extreme risk.[18] According to the Respondent's matrix, construction would be permitted on those lots.

Trees

31. Throughout the Respondent's Counter-Memorial and the Kaczmarek report, there are veiled allegations that the Claimants, including Spence and Spence Co., illegally removed vegetation from the properties. This is not the case. The Spence and Spence Co. properties bordered on a national park. This contributed to the uniqueness of these properties and made them more desirable. We had no intention of either reducing the value of properties or inviting ill will from those managing the Park by indiscriminately cutting down trees.

32. First, I should note that were no Mangrove trees on any of the Spence or Spence Co. properties involved in the claim.[19] These trees are typically found where the salt water mixes with fresh water, thus are closer to the estuary. There are strict environmental rules in Costa Rica regarding Mangroves. Spence and Spence Co. have always been respectful of these rules and not cut down any Mangroves.

33. Second, with respect to other species of trees, the only trees that have been cleared on the Spence properties were cleared in accordance with permits.[20] Other vegetation (low brush) was cleared, but no permit was required to clear brush.

34. Unlike the lots in south Playa Grande, the lots in Playa Ventanas did not have a tall green curtain in front of them. On the beach side of the properties at the north end of the beach (toward the mouth of the Ventanas estuary), the lots are more grassy and less treed than at the south end. This contributes to the higher value of the properties in Playa Ventanas, as there are fewer obstructions to views of the ocean. The properties were like this when they were purchased.

35. In addition, the few trees that were on the beach side of some of the lots did not significantly block the view of the ocean because the trees were deciduous and were bare branches in the dry season. The intention for the properties was to develop homes that were two storeys. These were permitted at the time and would afford ocean views over the trees.

What We Should Have Known?

36. The Respondent criticizes the Claimants' due diligence and says that the Claimants should have known that the property was protected as early as 1991.[21] I have already

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[18] See Exhibit C-86.

[19] Lot V30: C-0003d; Lot V31: C-0004d; Lot V33: C-0006d

[20] See Exhibits C-96 120224 SPG Burn Permit and C-97 070525 SPG Tree Permit.

discussed the 1991 Decree and the 1995 Law. With respect to the "interpretation" of the *Procuraduria* of 2004-2005, which the Kaczmarek Report inaccurately calls the "Attorney General Decree Establishing BNMP Boundaries 125m inland",[22] these interpretations were not publicly known at the time. I became aware of the Attorney General's report on or around January or February 2006. I had met with Jim Spotila, head of the Leatherback Trust, and he told me about it. I then asked my attorney to investigate. My attorney was able to confirm that there had been an interpretation issued that determined the boundaries of the Park to be inland. It was unclear what affect this interpretation had on the 1995 Law. I was advised that, if it resulted in a change in the law, the government would still need to go through the expropriation process, and that we would still be entitled to fair value for the property if and when the property was expropriated.

37. It is important to note that none of the owners live on any of these properties - there are no houses. Although you might learn that a particular person was your neighbour when meeting them at local restaurants or shops, there was no real community of owners. When we made our investment, we did not know that the Unglaubes' property had been noticed for expropriation. Had we known that the government had noticed someone's lot for expropriation, even if the purpose stated in relation to that notice was the creation of the Park, it still would not have meant that the properties we invested in were part of the Park. As discussed, the Park as created by the 1995 Law did include some private property and there was a process in place for consolidating that private property into the Park, which would have involved decrees of public interest being published.

38. It was not until 2005, in response to SETENA's refusal to review environmental impact assessments, that I began to try to coordinate some of the owners to speak with the government about the creation of a mixed use nature refuge. This was not a new idea. It had been proposed by MINAE in 2003 and it had the support of both President Arias and MINAE when we later returned to the idea.

39. Also around this time, mid-2006, the Municipality of Santa Cruz considered zoning regulations that applied to the 75 m strip.[23] I know now that those regulations were challenged, but I don't recall becoming aware of the court challenge to the Municipality's zoning regulations until after the decision was reached.

40. At paragraph 84 (Table 5) of the Kaczmarek Report, there is a timeline of the Claimants' purchases and the Respondent's actions. The Kaczmarek Report relies on the purchase dates used by FTI,[24] which generally correspond to the date of transfer as recorded in the National Registry. There is often a delay between the actual purchase date and the date of transfer noted in the National Registry. In some cases, this delay was many months.

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[21] Respondent's Memorial at pp. 9-18.

[22] See Kaczmarek Report, para. 84, Table 5.

[23] See Exhibit C-1zo published 2006 Zoning Regulations for the Municipality of Santa Cruz.

[24] See note 79 of the Kaczmarek Report.

The actual purchase dates were set out in my first witness statement. The result of using the transfer dates from the National Registry misrepresents the dates at which Spence Co. actually made its investments.

41. As a result, there are some dates that require clarification. The following lots were purchased earlier than their noted date in the timeline, however there was a delay in notation of their purchase in the registry:

(a) Lot C96: the Respondent notes the purchase date as August 2005. This lot was actually purchased in June 2005.[25]

(b) Lots A39 and A40: the Respondent notes the purchase date for these lots as September 2005. These lots were actually purchased in February 2005.[26]

(c) Lot C71: the Respondent notes the purchase date as October 2007. This lot was purchased by Spence Co. in February 2005.[27]

(d) Lot V59: the Respondent notes the purchase date as October 2007. This lot was purchased by Spence Co. in May 2007.[28]

42. We did make two purchases after the date of the Attorney General interpretation was issued. In December 2006, we purchased the three SPG lots. This purchase presented a huge opportunity, as the lots were large enough to allow for the creation of a beautiful, beachfront community of 44 lots. The SPG lots are approximately 500 m deep, with the first 75 m being beachfront in the now contested Park zone. Thus we expected we could develop the back 425 m right away and develop the beachfront 75 m when the legal issues surrounding the Park boundary sorted themselves out. In May of 2007, we also purchased lot V59. Again, we expected that we would be able to develop this lot in the medium term. In the event that at some point in the future our properties were noticed for expropriation, it was our understanding that we would receive fair market value for them at such time.

43. I had no reason to believe expropriation was probable. At the time of our purchase, the 1995 Law plainly said that the park is out to sea. Costa Rica had not acted on expropriating these properties in the several years since the passing of the 1995 Law, which we viewed as consistent with the understanding that the Park was out to sea. Additionally, the situation in Playa Grande had significantly changed from when the 1991 Decree and 1995 Law were issued. The turtle population had decreased by over 90% since the 1991 Decree was passed (despite little development). Real estate prices had climbed astronomically making expropriations very costly. Expropriation added no

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[25] Reddy WS1, para. 22.

[26] Reddy WS1, para. 21.

[27] Reddy WS1, para. 20. C71 was sold in October 2007 but ownership reverted to Spence Co. in December 2012.

[28] Reddy WS1, para. 24.

new nesting ground for the turtles. The turtles were dying at sea, and expropriating non-nesting ground land would not provide them any substantial benefit.

44. We are in the development business and we had made a significant investment in Costa Rica. We expected that our projects in Costa Rica would take a number of years to develop. We were not concerned about having to wait for some reasonable period of time for the issues surrounding the beachfront properties to resolve themselves. We expected them to resolve themselves in a way that would work for both the interests of the Park and the local owners.

Expropriation Procedure

45. At paragraph 93 of the Respondent's Counter-Memorial, they state that for the lots in the administrative stage[29], the owner is not deprived of their property rights with respect to the land. I totally disagree. For the lots stranded at the administrative phase of the expropriation proceedings, the entire reason for making the investment has been frustrated. We have been prohibited from building on those lots. Our property rights have been taken. The lots have almost no value other than as residential property. We cannot sell them at fair market value unless they can be developed as residential properties. Thus the entire value of the properties have been stripped from us without compensation.

46. At paragraph 96 of the Respondent's Counter-Memorial, the Respondent says that the Claimants' properties currently in the judicial phase of the expropriation procedure[30] are all being taken in accordance with "SINAC's prioritized approach to expropriation". The fact that SINAC had a prioritized approach to expropriation is news to me. The report referred to by the Respondent was certainly not public knowledge. Also, the Respondent says that all of these lots are located in Playa Grande Sur, the area where there is the greatest concentration of nests. Lot A40 is included on this list and was one of the earliest properties to be expropriated. It is located in Playa Grande Norte. The Respondent has not noticed SPG3 for expropriation, even though it is in Playa Grande Sur, their stated top priority area for expropriation.

47. At paragraphs 219 to 220 of the Respondent's Counter Memorial, they state that the expropriation processes for lots V30, V31, V32, V33, V38, V39, V40, V46 and V47 were unilaterally "suspended". This was the first notification that either I, Bob Spence, the Cophers or Joe Holsten received that Costa Rica had suspended the expropriation process with respect to these lots. I was not aware that the Expropriation Law provided for any such unilateral suspension, or that such unilateral suspension is lawful. If so, I certainly would have expected to have received notice of this, and an opportunity to oppose the unilateral suspension of this process as it denies us timely compensation. Instead, we have been left to wonder why Costa Rica has taken no steps with respect to these lots since 2008.

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[29] Lots V30, V31, V32, V33, V38, V39, V40, V46, and V47

[30] Lots B1, B3, B5, B7, B8, SPG1, SPG2, and A40

48. At paragraph 220 of the Respondent's Memorial, Costa Rica assures the Claimants that "[t]he expropriation procedure will continue, and Claimants will be paid compensation plus interest." The commencement date for the computation of interest is the date of dispossession, which has yet to occur with these lots. By unilaterally suspending these proceedings, Costa Rica has saved itself from paying five years (and counting) worth of interest in the municipal system. I am shocked that Costa Rica would consider this course of action to be "consistent with its obligations under Article 10.5 of CAFTA", which I understand to assure investors of fair and equitable treatment.

Compensation

49. At paragraphs 22 - 46 of the Kaczmarek Report, it is suggested that the real estate market in Playa Grande was directly correlated with the US real estate market. As an actor in both the Costa Rica and US markets at the time, I can advise that this is not the case. In particular, 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. Although this may be true in general, it is not true with respect to the typical buyers for the beachfront lots included in this claim. In our experience, the prospective buyers for these properties were wealthy and at least half of them did not require financing for their property purchases in Costa Rica. As an example, the buyer of lot V61 paid the full $3.1 million purchase price without financing. This was also the case for the properties purchased by the individual Spence Claimants: Bob Spence, Ronnie Copher and Joe Holsten all purchased their properties without financing.

50. 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, all of the Spence Claimants intended to develop their land.[31] Spence Co. would not have invested in infrastructure projects such as roads or taken steps to obtain environmental assessments and permits if we had no intention to develop the properties. Most of the people who purchased properties from Spence Co. also planned to build on the lots that they purchased.

51. The prices for real estate in Playa Grande continued to rise into early 2008. In late 2008, the United States entered a severe recession, and the pool of prospective buyers dried up. In 2013 and 2014, the United States began recovering from the recession and buyers are returning to this market. Tropical beachfront properties on white sand, with great surfing are rare. These properties are expected to continue to appreciate as the market recovers.

52. At paragraph 109 of the Respondent's Memorial, they state that there has not been uncompensated expropriation. The Respondent has prohibited building on all of the lots included in this claim. Our property rights have been taken and we have not been paid. It is true that for three of the Spence Co. lots (of the 20 total lots owned by the Spence Claimants and included in this claim), some payment (although inadequate) has been

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[31] Spence WS1, para. 12 and Copher WS, paras. 10 - 13 (regarding the Copher lots) and paras. 17 - 18 (regarding the Copher/Holsten lots).

received. The administrative appraisal amounts for each of A40, SPG1 and SPG2 were both paid and received, although there was a delay between the notification that these funds had been paid into court by the state and the actual payment of these funds to Spence Co. At note 165 of the Counter-Memorial, the Respondent sets out a number of "payment" dates that appear to correspond to internal payments within the government and not the date that payment was made to Spence Co. for lots A40 and SPG2. Even if one uses the Respondent's dates, it took them six months to "deposit" the second principal payment (corresponding to the "difference" between the administrative appraisal and final judgment valuation) for A40 after the appeal judgment setting the final valuation for the property and for SPG2 18 months from the appeal judgment to the "deposit" of the second principal payment (again, the "difference"). The courts have ordered the Respondent to pay interest from the date of dispossession to the date of final judgment. These lengthy post-judgment delays, which have nothing to do with Spence Co., allow the Respondent to take advantage of its delay by not paying interest.

53. However, to date, the second principal amount (the "difference") has only been available for two of the Spence properties (as of the date of the Claimants' Memorial the state had paid out this amount for only one of Spence Co.'s lots):

(a) Lot A40, the payment of principal was deposited with the court as of January 2012[32] and was subsequently paid out in two tranches in February 2012 ("difference") and December 2012 (administrative appraisal); and

(b) Lot SPG2, the payment of principal was deposited with the court as of May 14, 2014[33], which is after the filing of my first witness statement in this action. The judge issued the payment resolution on June 10, 2014.[34] The funds (both the "difference" and the administrative appraisal) were paid out in July 2014.[35]

54. There has been no payment of interest on either of these properties. Spence Co. has requested interest payments on lots A40 (in January 2014) and SPG2 (in September 2014).[36]

55. There has been no second principal payment ("difference") for SPG1. The Respondent notes that the judicial proceedings were suspended in July 2013. Spence Co. considered the judgment valuation of approximately $94/m2 to be significantly below fair market value. We had commenced the appeal process, but had to abandon that appeal in order to

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[32] Respondent's Exhibit R-040 indicates that these funds were available on January 3, 2012, but the judge did not notify Spence Co that the funds were available until January 27, 2012. See C-16i .

[33] This is the date according to Respondent's Exhibit R-043. Spence Co. was notified that this amount had been deposited on June 20, 2014 when its representative received the fax from the court containing the notification dated June 10, 2014. See Exhibit C-21i.

[34] This resolution was not notified to Spence Co. until June 20, 2014. See C-21i.

[35] See Exhibit C-21i.

[36] See Exhibits C-16j (A40) and C-21j (SPG2).

comply with the waiver requirements under the CAFTA. Accordingly, there is no "final" judgment on which to collect.

56. At paragraph 100 of (and throughout) the Respondent's Counter-Memorial, it implies that the delays in the expropriation process were Claimants' fault. Spence Co. defended its rights in the Costa Rican courts, as it was entitled to do. It did not consider the compensation offered to be fair. It participated in the process in the belief that doing so would result in fair compensation being paid to it, as was required under Costa Rican law. Spence Co. did not challenge the Respondent's decision to expropriate. It only wanted fair compensation for what was taken. Despite this, it took the Respondent almost seven years (Decree of Public Interest issued in March 2006 and principal paid in December 2012) to expropriate lot A40. It is on a similar schedule for SPG2 having issued the Decree of Public Interest in April 2007 and deposited the principal payment in May 2014. The Claimants are not responsible for the delays in Respondent's expropriation system. Furthermore, when comparing the initial administrative value to the final court awarded value, it is evident that the initial administrative value was grossly understated. It is Costa Rica's fault for grossly understating the fair market value. Any reasonable property owner receiving a gross understatement of fair market value would appeal the valuation, and that is what we did. Had we received a fair market value appraisal, we would not have objected to the administrative appraisal. Had we received a fair market value in the court of first instance, we would not have appealed. Costa Rica's system provides neither prompt nor adequate compensation.

57. At paragraph 218 of the Respondent's Counter Memorial, the Respondent states that it is "expropriating based on the coordinates of the Park as determined by the Park Law" and that it "is expropriating property located within the boundaries of the National Park , and nothing more." Spence Co.'s complaint, with respect to SPG1 and SPG2, is that the state has, in fact, expropriated less than what they say is within the boundaries of the Park.

58. The registry plans for SPG1 and SPG2 show that the property boundary is marked by the mojones on the west side.[37] Both of these lots are rectangular in shape. The beachfront of SPG1 is 40 meters. The beachfront of SPG2 is 60 meters. Since Costa Rica now claims that the first 75 meters of these lots is within the Park, one would have expected them to expropriate approximately 3,000 square meters (=40 m x 75 m) for SPG1 and 4,500 square meters (=60 m x 75 m) for SPG2. Instead, Costa Rica has expropriated 2,643 square meters for SPG1 and 3,956 square meters for SPG2 and based its valuation on these smaller lot values. The registry plans for the expropriated portions of these properties suggest that the property line does not start at the mojones on the west side.[38] As stated, the earlier plans show that the lots go to the mojones. Accordingly, Costa Rica has failed to expropriate the entirety of Spence Co's properties that are within the 75 meters of the Park. It has left an approximately 9 meter strip of Spence Co.'s land

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[37] Exhibit C-20a and C-21a.

[38] Exhibit C-98, expropriation lot maps for SPG1 and SPG2.

between the beach and what is now the Park. Spence Co. is entitled to compensation for the entire portion of its lots that are within the 75 meters.

59. For SPG1, the additional compensation due from Costa Rica for the 9 m strip is $271,320 (= $760 per square meter as appraised in the FTI Report x 357 meters).[39] For SPG2, the additional compensation due from Costa Rica for the 9 m strip is $301,920 (=$555 per square meter as appraised in the FTI Report x 544 m).[40]

Limitation issue

60. The Respondent argues that the Claimants' claims have expired under the Treaty because more than three years have elapsed since the alleged breaches by Costa Rica. The Claimants' fundamental claim is that Costa Rica has failed to pay it either prompt or adequate compensation for the expropriation of their properties. It is impossible to determine on the date of expropriation whether the state will pay promptly. It is also impossible to determine on the date of expropriation whether the payment made will be adequate. Until the amount to be paid is determined and the process unfolds, it would be impossible to know whether one had a claim or not.

61. This is certainly true for the Claimants. We did not have prior knowledge that we would not be paid prompt, adequate and effective compensation, and needed to give the government some reasonable time to complete its expropriation process in order to make a determination as to whether the payment would be adequate or prompt.

62. The final court judgments in Costa Rica that valued the three lots that proceeded to the judicial phase of the expropriation process were issued on July 21, 2011 (A40), February 26, 2013 (SPG1) and December 14, 2012 (SPG2). Before those dates, it was impossible to know whether Costa Rica would provide adequate compensation for those lots.

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

Signed: _____
Robert Reddy

Date: 10/1/14

[39] The court valued SPG1 at approximately $94 (CRC 248,836) per square meter. See Exhibit C-20g1.

[40] The court valued SPG2 at approximately $353 (CRC 176,353) per square meter. See Exhibit C-21h.