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FOUNDED 1866

December 23, 2015

Ms. Anneliese Fleckenstein
Secretary of the Tribunal
International Centre for Settlement
of Investment Disputes
1818 H St, N.W.
Washington, D.C. 20433

Re: *Spence International Investments, LLC et. al v. the Republic of Costa Rica (UNCT/13/2)*

Dear Ms. Fleckenstein,

We write in response to your letter of November 25, 2015 setting out questions from the Tribunal regarding certain properties at issue in these proceedings. We provide Respondent's responses to those questions below to the best of its knowledge. We note that these responses are based on documents available in the public record in Costa Rica. Respondent has not been privy to Claimants' business dealings, and thus, in some instances, Claimants are likely to be in a better position to answer the Tribunal's questions based on documents and information in their possession.

Question 1:

In respect of Lot V61 (subsequently sub-divided into Lots V61a, V61b and V61c), and having regard inter alia to the following: paragraph 38 of the Claimants' Notice of Arbitration, paragraph 23 of the First Witness Statement of Robert Reddy, and Claimants' Exhibits B.29 and B.30, why was the buyer of the lots unable to obtain building permits? More specifically, was an application, or were applications, for building permits made and refused? If refused, what was the reason for the refusal? If no application was made, why not?

Respondent's knowledge about why the buyer of Lots V61a, V61b, and V61c was allegedly unable to obtain building permits for the lots is limited to documents Claimants submitted on the record; therefore, Respondent believes that Claimants are in a better position to answer the Tribunal's questions.

From the documents on the record, Respondent understands that on February 4, 2005, a company owned indirectly by Claimant Spence International Investments, LLC ("Spence Co.") acquired Lot V61.¹ On February 6, 2006, that Spence Co. company (the "seller") sold Lot V61 to an unrelated company (the "buyer"). According to the sale and purchase agreement, the seller guaranteed to the buyer that the buyer would "be able to get a building permit" from all necessary authorities within two years from the date the

¹ See e.g., Robert Reddy First Witness Statement, April 25, 2014 ("Reddy First Witness Statement"), para. 23.

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contract was signed.² Respondent understands that two years later, the property reverted to the seller because no building permits had been obtained for Lot V61.³

There are no documents on the record that indicate whether the seller or the buyer applied for the building permits and if they did, when they applied, whether they were denied, and if they were denied, on what basis. Claimants should possess such documents because the buyer should have explained to the seller why was it unable to obtain the permits at the time that it sought to return the property to the seller in early 2008. As the seller is a Spence Co. company, Spence Co. should have all the information and documentation needed to respond to the Tribunal's questions.

Respondent has diligently searched for such documentation but has been unable to locate any relevant documents. In preparation for Respondent's Rejoinder on the Merits, officials from the Costa Rican Ministry of Foreign Trade (COMEX) visited the Municipality of Santa Cruz (the authority that processes building permits) and asked for documents about Claimants' properties. Unfortunately, they were unable to obtain any documents from the Municipality due to a recent earthquake that severely damaged the building holding potentially responsive documents. Upon receiving the Tribunal's questions of November 25, 2015, officials from COMEX once again contacted the Municipality, but the Municipality was unable to locate any documents related to an application for building permits for Lot V61.⁴

Question 2:

In respect of Lot C71, and having regard inter alia to the following: paragraph 35 of the Claimants' Notice of Arbitration, paragraph 20 of the First Witness Statement of Robert Reddy, and Claimants' Exhibits B.21, B.22, B.23 and B.25, what was the reason for the failure of the sale? What, if any, was the Claimant's legal interest in the property prior to its reversion to the Claimant on 10 December 2012?

Respondent's knowledge of the terms of the sale and later reversion of Lot C71 from a company indirectly owned by one of the Claimants to an unrelated party is limited to the documents Claimants submitted on the record. Thus, Respondent believes that Claimants are in a better position to address the Tribunal's questions about that transaction.

From the documents on the record, Respondent understands that on October 22, 2007, Mr. Gary Luciani (the "buyer"), an individual unrelated to Claimants, acquired the shares of a company indirectly owned by Claimant Spence Co. That company, in turn, owned the company (Building A Ruin, Ltda.) that owns Lot C71. The seller of the shares in the company that owned the company that owns Lot C71 was Costa Rica Investments, LLC ("CRI"). CRI was a company owned by Claimant Spence Co. To secure

² Sale of Lot V61 from Grande Beach Holdings to Wake Up Call Limitada, February 6, 2006, Section Five (c) [Appendix B.29].

³ See Assignment/Buy Back of Lot V61 from Wake Up Call Limitada to Grande Beach Holdings, March 31, 2008, Whereas Clauses 3, 5 [Appendix B.30].

⁴ See Letter from COMEX to Sidley Austin LLP, December 22, 2015 [Exhibit R-186].

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payment for these shares, the parties agreed to put the shares of Building A Ruin into a trust.⁵ Mr. Luciani had five years in which to complete payment.⁶ In the end, Mr. Luciani was unable to pay the amount due and shares in Building A Ruin were returned to the seller.⁷

Respondent does not know whether the Spence Co.-affiliated seller claims to have maintained a legal interest in Lot C71 during the period in which shares of the company that owned Lot C71 were put in a trust. Respondent imagines that any rights were contractual rights relating to the Build A Ruin shares, not property rights to the land itself, and that such rights were in any event only contingent.

Question 3:

Please produce, or identify where in the documentary record there is produced, all the purchase records (including subsequent sale and reversion records) for each of the 26 Lots that are the subject of the claim, including as may be available in Claimants' records, from estate agents, from lawyers, and/or from public filing and other records.

Respondent understands the Tribunal's third question to request the production of all records related to the purchase of the properties at issue in this proceeding.

To be clear, Respondent understands that some of the properties at issue were acquired by individuals or companies through purchases of shares in companies that owned a particular lot or lots. Such acquisitions do not appear in Costa Rica's public records of land transactions, because the properties remain titled in the names of the companies even as the ownership of those companies changes hands. The public records reflect only transactions in which the properties themselves are purchased by Claimants or companies that they own.

Nevertheless, in responding to the Tribunal's request, Respondent has sought to identify all documents related to the purchase of the properties at issue, whether the documents involve the acquisition by Claimants of shares in a company that owns the property or involve the acquisition of the property itself by a company owned, directly or indirectly, by one of the Claimants. In the following subsections, Respondent describes the documents that it has been able to identify that are responsive to the Tribunal's request with respect to each lot.

Lot A39

According to Claimants' witness Mr. Reddy, on February 22, 2005, Caminata en Pleamar, S.A. (a company owned by Claimant Spence Co.) purchased Lot A39.⁸ Respondent has located in public records

⁵ See Transfer of Building A Ruin to Buyer, October 22, 2007, Guaranty Trust [Appendix B.22]; see also Foreclosure of Lot C71, December 7, 2012 [Appendix B.23].

⁶ See Transfer of Building A Ruin to Buyer, October 22, 2007, Membership Interest Purchase Agreement Section 1.2. and Promissory Note at (ii) [Appendix B.22].

⁷ See Foreclosure of Lot C71, December 7, 2012 [Appendix B.23].

⁸ See, e.g., Reddy First Witness Statement at para. 21.

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and hereby submits the corresponding sale and purchase agreement between the seller, MIWDE, S.A., and the buyer, Caminata en Pleamar, of Lot A39 dated February 22, 2005.⁹ The purchase price was US \$220,000.¹⁰

On August 17, 2005, the property was transferred to Grande Beach Holdings, Ltda. (a company also owned by Claimant Spence Co.) for the same price (US \$220,000).¹¹ Respondent also submits this contract.¹²

Lot A40

According to Claimants' witness Mr. Reddy, on February 22, 2005, Guanacaste Sea Gull, S.A. (a company owned by Claimant Spence Co.) purchased Lot A40.¹³ Respondent has located in public records and hereby submits the sale and purchase agreement between the seller, YARRUM, S.A., and the buyer, Guanacaste Sea Gull, of Lot A40 dated February 22, 2005.¹⁴ The purchase price was US \$220,000.¹⁵

On August 17, 2005, the property was transferred to Grande Beach Holdings (a company also owned by Claimant Spence Co.) for the same price (US \$220,000).¹⁶ Respondent also submits this contract.¹⁷

Lots B1, B3, B5, B6, B7, B8

According to Claimants' witness Mr. Brett Berkowitz, in "early 2003," he acquired a piece of property of more than 17 hectares.¹⁸ At the hearing, Mr. Berkowitz clarified that he initially purchased all of the B Lots (including Lots B1, B3, B5, B6, B7, and B8) through the company Rancho Ecológico Las Baulas, S.A., for which he was the general representative.¹⁹ A copy of that sales and purchase agreement was obtained from public records and is submitted herewith.²⁰ The agreement states that the properties were acquired for US \$80,000 each.²¹ This agreement also acknowledges that the property was partially

⁹ See Sale and Purchase Agreement, Lots A39 and A40, February 22, 2005 [Exhibit R-174].

¹⁰ See Sale and Purchase Agreement, Lots A39 and A40, February 22, 2005, Section Four [Exhibit R-174].

¹¹ See Sale and Purchase Agreement, Lots A39 and A40, August 17, 2005 [Exhibit R-175].

¹² See Sale and Purchase Agreement, Lots A39 and A40, August 17, 2005 [Exhibit R-175].

¹³ See, e.g., Reddy First Witness Statement at para. 21.

¹⁴ See Sale and Purchase Agreement, Lots A39 and A40, February 22, 2005 [Exhibit R-174].

¹⁵ See Sale and Purchase Agreement, Lots A39 and A40, February 22, 2005, Section Four [Exhibit R-174].

¹⁶ See Sale and Purchase Agreement, Lots A39 and A40, August 17, 2005 [Exhibit R-175].

¹⁷ See Sale and Purchase Agreement, Lots A39 and A40, August 17, 2005 [Exhibit R-175].

¹⁸ See Brett Berkowitz First Witness Statement, April 25, 2014 ("Berkowitz First Witness Statement"), para. 7.

¹⁹ See Tr. Day 2, 354:7-355:4 (Berkowitz).

²⁰ See Sale and Purchase Agreement, Lots B1, B3, B5, B6, B7, B8, January 16, 2003 [Exhibit R-176].

²¹ See Sale and Purchase Agreement, Lots B5, B6, B7, B8, September 6, 2003 [Exhibit R-177].

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located inside the *Las Baulas* National Park and that it could be subject to expropriation.²² Mr. Berkowitz admitted at the hearing that he knew at the time of the purchase that the lots were subject to expropriation and that he did not have any claim against the seller if an expropriation were to occur.²³ Respondent notes that this is the document that it sought to introduce into the record at the hearing to show Mr. Berkowitz's knowledge that the B Lots at issue in this proceeding were located inside the Park and that they were subject to expropriation at the time Mr. Berkowitz purchased the property.²⁴

According to Mr. Berkowitz, on September 6, 2003, Rancho Ecológico Las Baulas transferred the B Lots to six different Costa Rican companies as follows:²⁵ (i) Lot B1 to Aceituno Mar Vista Estates, S.A. (a company owned by Claimants Trevor and Aaron Berkowitz);²⁶ (ii) Lot B3 to Guacimo Mar Vista Estates, S.A. (a company owned by Claimant Brett Berkowitz);²⁷ (iii) Lot B5 to Pochote Mar Vista Estates, S.A. (a company owned by Claimant Brett Berkowitz);²⁸ (iv) Lot B6 to Saino Mar Vista Estates, S.A. (a company owned by Claimant Brett Berkowitz);²⁹ (v) Lot B7 to Jocote Mar Vista Estates, S.A. (a company owned by Claimant Brett Berkowitz);³⁰ and (vi) Lot B8 to Nispero Mar Vista Estates, S.A. (a company owned by Claimants Trevor and Aaron Berkowitz).³¹ Each property was transferred for ¢500,000³² (equivalent to approximately US \$1,200 as of the date of the transaction). Subsequently, on March 3, 2004, Jocote Mar Vista Estates (owned by Claimant Brett Berkowitz) sold Lot B7 to Costa Rican company Vacation Rentals, S.A. (owned by Claimant Glen Gremillion) for US \$425,000.³³

Respondent has located in public records and hereby submits the September 6, 2003 sale and purchase agreement for Lots B5-B8 between Rancho Ecológico and Pochote Mar Vista Estates, Saino Mar Vista Estates, Jocote Mar Vista Estates, and Nispero Mar Vista Estates.³⁴

²² See Sale and Purchase Agreement, Lots B1, B3, B5, B6, B7, B8, January 16, 2003 [Exhibit R-176]. According to this Sale and Purchase Agreement (the "Contract"), "plots one to eight . . . are located within the Las Baulas marine national park, approximately 40 per cent [sic] in the case of plots one and two, and approximately 45 per cent [sic] in the case of plots three, four, five, six, seven and eight" (which correspond to Lots B1-B8). See *id.* at pp. 9-10. The Contract also provides that the buyer understands that the lots are adjacent to the Park and that as a result they may be expropriated. See *id.* at p. 10.

²³ See Tr. Day 2, 406:12-407:11, 407:16-21 (Berkowitz); see also Sale and Purchase Agreement, Lots B1, B3, B5, B6, B7, B8, January 16, 2003 [Exhibit R-176].

²⁴ See Tr. Day 2, 406:12-410:8 (Berkowitz).

²⁵ See Berkowitz First Witness Statement at para. 14.

²⁶ See Sale and Purchase Agreement, Lots B1, B3, September 6, 2003 [Exhibit C-54].

²⁷ See Sale and Purchase Agreement, Lots B1, B3, September 6, 2003 [Exhibit C-54].

²⁸ See Sale and Purchase Agreement, Lots B5, B6, B7, B8, September 6, 2003 [Exhibit R-177].

²⁹ See Sale and Purchase Agreement, Lots B5, B6, B7, B8, September 6, 2003 [Exhibit R-177].

³⁰ See Sale and Purchase Agreement, Lots B5, B6, B7, B8, September 6, 2003 [Exhibit R-177].

³¹ See Sale and Purchase Agreement, Lots B5, B6, B7, B8, September 6, 2003 [Exhibit R-177].

³² See Sale and Purchase Agreement, Lots B1, B3, September 6, 2003 [Exhibit C-54]; Sale and Purchase Agreement, Lots B5, B6, B7, B8, September 6, 2003 [Exhibit R-177].

³³ See Sale and Purchase Agreement, Lot B7, March 3, 2004 [Exhibit C-55].

³⁴ See Sale and Purchase Agreement, Lots B5, B6, B7, B8, September 6, 2003 [Exhibit R-177].

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The September 6, 2003 sale and purchase agreement for Lots B1 and B3 between Rancho Ecológico and Aceituno Mar Vista Estates and Guacimo Mar Vista Estates and the March 3, 2004 agreement for the sale of Lot B7 from Mr. Berkowitz to Mr. Gremillion are already on the record as Exhibits C-54 and C-55, respectively.

Lot C71

According to Claimants' witness Mr. Reddy, on February 4, 2005, Claimant Spence Co. acquired Lot C71 when a company owned by Spence Co., Counting the Stars, S.A., purchased the property.³⁵ Claimants have already put on the record the agreement through which Counting the Stars acquired Lot C71 for US \$22,500.³⁶

On October 22, 2007, Lot C71 was sold by Counting the Stars to another Spence Co. entity, Building A Ruin, for US \$230,000.³⁷ As described in Question 2 above, Respondent understands that a party unrelated to Claimants, Mr. Gary Luciani, then entered into an agreement to purchase shares in the parent company of Building A Ruin. To secure payment for these shares, the parties agreed to put the shares of Building A Ruin into a trust.³⁸ Mr. Luciani had five years in which to complete payment.³⁹ In the end, Mr. Luciani was unable to pay the amount due and shares in Building A Ruin were returned to the seller.⁴⁰ Documents related to the above-described transactions are already on the record as Appendices B.21, B.22, B.23, and B.64.

Lot C96

According to Claimants' witness Mr. Reddy, on June 28, 2005, Claimant Spence Co. acquired Lot C96 through a company called Grande Beach Holdings (a company owned by Claimant Spence Co.).⁴¹ Respondent has located in public records and hereby submits the transfer agreement dated June 28, 2005 between the seller, Quinta Magnifica Gabby S.A., and the buyer, Grande Beach Holdings, of Lot C96 for US \$240,000.⁴²

Lots SPG1, SPG2, SPG3

According to Claimants' witness Mr. Reddy and documents that Claimants put on the record, Claimant Spence Co. acquired Lots SPG1, SPG2, and SPG3 in 2006 when a company that it owned, CRI,

³⁵ See, e.g., Reddy First Witness Statement at para. 20.

³⁶ See Playa Grande Properties Trust Agreement, February 4, 2005, Lot listed as No. 126, Section 1 [Appendix B.64].

³⁷ See Transfer of Lot C71 to Building a Ruin, October 26, 2007 [Appendix B.21].

³⁸ See Transfer of Building A Ruin to Buyer, October 22, 2007, Guaranty Trust [Appendix B.22]; see also Foreclosure of Lot C71, December 7, 2012 [Appendix B.23].

³⁹ See Transfer of Building A Ruin to Buyer, October 22, 2007, Membership Interest Purchase Agreement Section 1.2. and Promissory Note at (ii) [Appendix B.22].

⁴⁰ See Foreclosure of Lot C71, December 7, 2012 [Appendix B.23].

⁴¹ See, e.g., Reddy First Witness Statement at para. 22.

⁴² See Transfer Agreement for Lot C96, June 28, 2005 [Exhibit R-178].

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acquired shares in Sendaluz, S.A. (on April 18, 2006) and Field on the Beach, S.A. (on May 3, 2006), which in turn owned those properties.⁴³ Claimants have put on the record two documents related to these transactions which show the transfer of the shares in Sendaluz to CRI for a “nominal amount”⁴⁴ and the transfer of shares in Field on the Beach to CRI for “exactly ten thousand colones” (equivalent to approximately US \$19.00 as of the date of the transaction).⁴⁵

According to documents Claimants put on the record, Field on the Beach and Sendaluz sold Lots SPG1, SPG2, and SPG3 to The Truth About Heaven, Ltda.⁴⁶ Respondent has located in public records and hereby submits the sale and purchase agreement dated December 11, 2006 under which the SPG Lots were sold to The Truth About Heaven.⁴⁷ The purchase price for the SPG Lots were as follows: Lot SPG1 US \$695,437; Lot SPG2 US \$1,004,563; and Lot SPG3 US \$1,700,000.⁴⁸ Claimants have not put on the record nor has Respondent been able to locate documents that indicate whether The Truth About Heaven is owned, directly or indirectly, by Claimants.

According to documents Claimants put on the record, The Truth About Heaven was later merged into Grande Beach Holdings (a company owned by Claimant Spence Co.). Subsequently, on October 24, 2007, Grande Beach Holdings sold the SPG Lots to Keeping Track, Ltda. (another company owned by Spence Co.).⁴⁹ Respondent has located in public records and hereby submits the sale and purchase agreement under which the SPG Lots were sold from Grande Beach Holdings to Keeping Track.⁵⁰ The purchase prices listed for the SPG Lots were the same as on December 11, 2006 when the properties were sold to The Truth About Heaven.⁵¹

Lot V30

According to Claimants’ witness Mr. Spence, he purchased Lot V30 on September 30, 2003 through a company called My New Land of Costa Rica TRC, S.A. (owned by Claimant Mr. Spence in 2003).⁵² It is unclear whether Mr. Spence incorporated or acquired My New Land of Costa Rica before or after the company acquired Lot V30. Claimants have not put on the record and Respondent has not been able to find any documentation regarding Mr. Spence’s incorporation or acquisition of the shares of My New Land.

⁴³ See, e.g., Reddy First Witness Statement at para. 35; see also Transfer of shares from Sendaluz to CRI, April 18, 2006 [Appendix B.8]; Transfer of shares from Field on the Beach to CRI, May 3, 2006 [Appendix B.10].

⁴⁴ Transfer of shares from Sendaluz to CRI, April 18, 2006 [Appendix B.8].

⁴⁵ Transfer of shares from Field on the Beach to CRI, May 3, 2006 [Appendix B.10].

⁴⁶ See Ownership Structure for Spence Co. SPG Lots [Exhibit C-2d].

⁴⁷ See Sale and Purchase Agreement, Lots SPG1, SPG2, SPG3, December 11, 2006 [Exhibit R-183].

⁴⁸ See Sale and Purchase Agreement, Lots SPG1, SPG2, SPG3, December 11, 2006, Sections Three and Four [Exhibit R-183].

⁴⁹ See Ownership Structure for Spence Co. SPG Lots [Exhibit C-2d].

⁵⁰ See Sale and Purchase Agreement, Lots SPG1, SPG2, SPG3, October 24, 2007 [Exhibit R-179].

⁵¹ See Sale and Purchase Agreement, Lots SPG1, SPG2, SPG3, October 24, 2007, Section Three [Exhibit R-179].

⁵² See, e.g., Bob Spence Witness Statement, April 25, 2014 (“Spence Witness Statement”), para. 9.

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Respondent has located in public records and hereby submits the sale and purchase agreement for Lot V30 between the seller, La Ventana de las Tortugas, S.A., and the buyer, My New Land of Costa Rica, dated August 27, 2003.⁵³ The property was sold for US \$200,000.⁵⁴ According to Mr. Spence, the property is now owned by his company Windows of the Blue Sky Net, S.A., which acquired My New Land of Costa Rica in 2012.⁵⁵

Lot V31

According to Claimants' witness Mr. Spence, he purchased Lot V31 on September 30, 2003 through a company called Luxury Lands of Costa Rica QRZ, S.A. (owned by Claimant Mr. Spence in 2003).⁵⁶ It is unclear whether Mr. Spence incorporated or acquired Luxury Lands of Costa Rica before or after the company acquired Lot V31. Claimants have not put on the record nor has Respondent been able to find any documentation regarding Mr. Spence's incorporation or acquisition of the shares of Luxury Lands of Costa Rica.

Respondent has located in public records and hereby submits the sale and purchase agreement of Lot V31 between the seller, La Ventana de las Tortugas, and the buyer, Luxury Lands of Costa Rica, dated August 27, 2003.⁵⁷ The purchase price for the property was US \$200,000.⁵⁸ According to Mr. Spence, the property is now owned by his company Windows of the Blue Sky, which acquired Luxury Lands of Costa Rica in 2012.⁵⁹

Lot V32

According to Claimants' witness Mr. Spence, he purchased Lot V32 on August 20, 2003 through a company called The Purple Esmerald, CQR S.A. (owned by Claimant Mr. Spence in 2003).⁶⁰ It is unclear whether Mr. Spence incorporated or acquired The Purple Esmerald before or after the company acquired Lot V32. Claimants have not put on the record nor has Respondent been able to find any documentation regarding Mr. Spence's incorporation or acquisition of the shares of The Purple Esmerald.

Respondent has located in public records and hereby submits the sale and purchase agreement of Lot V32 between the seller, La Ventana de las Tortugas, and the buyer, The Purple Emerald.⁶¹ The purchase price for the property was US \$150,000.⁶² Respondent notes that the sale and purchase

⁵³ See Sale and Purchase Agreement, Lots V30, V31, V32, V33, August 27, 2003 [Exhibit R-180].

⁵⁴ See Sale and Purchase Agreement, Lots V30, V31, V32, V33, August 27, 2003, Section Two [Exhibit R-180].

⁵⁵ See, e.g., Spence Witness Statement at para. 13.

⁵⁶ See, e.g., Spence Witness Statement at para. 9.

⁵⁷ See Sale and Purchase Agreement, Lots V30, V31, V32, V33, August 27, 2003 [Exhibit R-180].

⁵⁸ See Sale and Purchase Agreement, Lots V30, V31, V32, V33, August 27, 2003, Section Two [Exhibit R-180].

⁵⁹ See, e.g., Spence Witness Statement at para. 13.

⁶⁰ See, e.g., Spence Witness Statement at para. 8.

⁶¹ See Sale and Purchase Agreement, Lots V30, V31, V32, V33, August 27, 2003 [Exhibit R-180].

⁶² See Sale and Purchase Agreement, Lots V30, V31, V32, V33, August 27, 2003, Section Two [Exhibit R-180].

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agreement for the sale between La Ventana de las Tortugas and The Purple Esmerald is dated August 27, 2003, seven days after Mr. Spence claims that he acquired the property. According to Mr. Spence, the property is now owned by his company Windows of the Blue Sky which acquired The Purple Emerald in 2012.⁶³

Lot V33

According to Claimants' witness Mr. Spence, he purchased Lot V33 on August 20, 2003 through a company called Windows of the Blue Sky (owned by Claimant Mr. Spence in 2003).⁶⁴ It is unclear whether Mr. Spence acquired Windows of the Blue Sky before or after the company acquired Lot V33.⁶⁵ Claimants have not put on the record nor has Respondent been able to find any documentation regarding Mr. Spence's acquisition of the shares of Windows of the Blue Sky.

Respondent has located in public records and hereby submits the sale and purchase agreement of Lot V33 between the seller, La Ventana de las Tortugas, S.A., and the buyer, Windows of the Blue Sky.⁶⁶ The purchase price of the property was US \$150,000.⁶⁷ Respondent notes that the sale and purchase agreement for the sale between La Ventana de las Tortugas and Windows of the Blue Sky is dated August 27, 2003, seven days after Mr. Spence claims that he acquired the property.

Lot V38

According to Claimants' witness Mr. Copher, he purchased Lot V38 in November 2004 by acquiring 100 percent of the shares of a Costa Rican company called Seize the Day, S.A.,⁶⁸ which acquired Lot V38 on November 11, 2004.

Respondent has located in public records and hereby submits the sale and purchase agreement for Lot V38 dated November 11, 2004 between the seller, Giora G. Andres MD Ltda., and the buyer, Seize the Day, for US \$350,000.⁶⁹

Claimants have not put on the record nor has Respondent been able to find any share purchase agreement regarding the "November 2004" sale of the shares of Seize the Day to Mr. Copher. Claimants have put on the record, however, share certificates showing the transfer of shares of Seize the Day from Mr. José Pablo Arce Pinar and Mr. Carlos Roberto Rivera Ruiz (sellers) to Mr. Copher (buyer) a year

⁶³ See, e.g., Spence Witness Statement at para. 13.

⁶⁴ See, e.g., Spence Witness Statement at para. 8.

⁶⁵ Claimants have put on the record, however, a document indicating that Windows of the Blue Sky was incorporated on June 17, 2003. Mr. Spence did not own shares of Windows of the Blue Sky at the time of its incorporation. See Windows of the Blue Sky Incorporation, June 17, 2003 [Appendix B.35].

⁶⁶ See Sale and Purchase Agreement, Lots V30, V31, V32, V33, August 27, 2003 [Exhibit R-180].

⁶⁷ See Sale and Purchase Agreement, Lots V30, V31, V32, V33, August 27, 2003, Section Two [Exhibit R-180].

⁶⁸ See, e.g., Ronald Copher Witness Statement, April 25, 2014 ("Copher Witness Statement"), para. 13.

⁶⁹ See Sale and Purchase Agreement, Lot V38, November 11, 2004 [Exhibit R-181].

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later, on August 31, 2005.⁷⁰ These share certificates indicate that they are transferred for “nominal worth.”⁷¹ Respondent notes that these transfers occurred one day *after* SETENA issued a resolution suspending environmental permit applications for properties located inside the Park, as discussed in greater detail in response to the Tribunal’s Question No. 5.⁷²

Lots V39 and V40

According to Claimants’ witness Mr. Copher, he and his wife acquired Lots V39 and V40 in September 2003 when they bought all of the shares in a company called Corporación Lacheaven de Ventana S.A. for US \$340,000.⁷³ Claimants have put on the record excerpts of the Lacheaven Registry Book which indicates that Mr. Copher and his wife, Brenda Copher, purchased all of the shares in the company for US \$340,000 on September 25, 2003.⁷⁴

Respondent has located in public records and hereby submits the prior sale and purchase agreement between the sellers of Lots V39 and V40, Inversiones Joma del Este S.A. and Jeca Marina S.A., and the buyer, Corporación Lacheaven de Ventana, dated May 29, 2000.⁷⁵ According to the sale and purchase agreement, the purchase price was ₡500,000 (equivalent to approximately US \$1,600 as of the date of the transaction).⁷⁶

Lots V46 and V47

According to Claimants’ witness Mr. Copher, he and Mr. Holsten acquired Lots V46 and V47 on February 8, 2006 through companies called Joeco Realty Investments, Ltda. (wholly owned by Mr. Copher) and Ronco Realty Investments, Ltda. (wholly owned by Mr. Holsten).⁷⁷ Respondent has located in public records and hereby submits the sale and purchase agreement for Lots V46 and V47 dated January 23, 2006 between the seller, Rancho Bellomar, S.A., and the buyers, Joeco Realty Investments and Ronco Realty Investments.⁷⁸ The purchase price of the lots was US \$275,000 each.⁷⁹

Lot V59

According to Claimants’ witness Mr. Reddy, Claimant Spence Co. acquired Lot V59 when it bought the shares of a company called Longboard Surf S.A., which presumably already owned Lot V59,

⁷⁰ See Seize the Day Share Certificate 1-A, p. 2 [Appendix B.50] and Seize the Day Share Certificate 2-A, p. 2 [Appendix B.51].

⁷¹ Seize the Day Share Certificate 1-A, p. 2 [Appendix B.50] and Seize the Day Share Certificate 2-A, p. 2 [Appendix B.51].

⁷² See Resolution No. 2238-2005-SETENA, August 30, 2005 [Exhibit C-1f].

⁷³ See, e.g., Copher Witness Statement at para. 9.

⁷⁴ See Excerpt of Lacheaven Registry Book at p. 8 [Appendix B.44].

⁷⁵ See Sale and Purchase Agreement, Lots V39 and V40, May 29, 2000 [Exhibit R-182].

⁷⁶ See Sale and Purchase Agreement, Lots V39 and V40, May 29, 2000, p. 3 [Exhibit R-182].

⁷⁷ See, e.g., Copher Witness Statement at para. 17.

⁷⁸ See Sale and Purchase Agreement, Lots V46 and V47, January 23, 2006 [Exhibit R-184].

⁷⁹ See Sale and Purchase Agreement, Lots V46 and V47, January 23, 2006, Section Two [Exhibit R-184].

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on May 11, 2007.⁸⁰ Claimants have not submitted any documentation with respect to this share acquisition, nor has Respondent been able to find any such documentation in the public records. Respondent has located in public records and hereby submits the prior sale and purchase agreement for Lot V59 between the sellers, Residencial Primero de Playa Ventana, S.A., Inversiones JW Colinas Cinco, S.A., and Residencial Tercero de Playa Ventanas, S.A., and the buyer, Longboard Surf, dated December 18, 2003.⁸¹ According to the sale and purchase agreement, the purchase price was US \$255,000.⁸²

On October 26, 2007, Longboard Surf sold Lot V59 to Forever Hold Your Peace, Ltda. (a company also owned by Spence Co.). The purchase price was US \$1,100,000.⁸³ On April 27, 2012, Forever Hold Your Peace merged all of its assets with Grande Beach Holdings (another company owned by Spence Co.).⁸⁴ Claimants have placed on the record documents concerning these 2007 and 2012 transactions in Appendices B.17 and B.13, respectively.

Lots V61 (a-c)

According to Claimants' witness Mr. Reddy, Claimant Spence Co. first acquired Lot V61 on February 4, 2005 when another company owned by Spence Co, Counting the Stars, purchased the property.⁸⁵ Respondent has located in public records and hereby submits the sale and purchase agreement for Lot V61 dated February 4, 2005 between the seller, Villas de Playa Grande, S.A. and the buyer, Counting the Stars.⁸⁶ The purchase price for the property was US \$800,000.⁸⁷

Counting the Stars was subsequently renamed Grande Beach Holdings. On February 6, 2006, Grande Beach Holdings sold Lot V61 to an unrelated company, Wake Up Call, Ltda. for US \$3,100,000.⁸⁸ For reasons discussed in response to Question No. 1, Lot V61 later reverted back to Grande Beach Holdings in March 2008.⁸⁹ Documents related to the sale from Grande Beach Holdings to Wake Up Call and the reversion back to Grande Beach Holdings are on the record as Appendices B.29 and B.30.

⁸⁰ See, e.g., Reddy First Witness Statement at para. 24.

⁸¹ See Sale and Purchase Agreement, Lot V59, December 18, 2003 [Exhibit R-187].

⁸² See Sale and Purchase Agreement, Lot V59, December 18, 2003, p. 3 [Exhibit R-187].

⁸³ See Reddy First Witness Statement at n. 23; see also Transfer Long Board Surf to Forever Hold Your Peace (V59), October 26, 2007 [Appendix B.17].

⁸⁴ See, e.g., Reddy First Witness Statement at n. 23; see also Notarial Certification Board Minutes Grande Beach Merger – Wake Up Call and Forever Hold Your Peace Ltda., April 27, 2012 [Appendix B.13].

⁸⁵ See, e.g., Reddy First Witness Statement at para. 23.

⁸⁶ See Sale and Purchase Agreement, Lot V61, February 4, 2005 [Exhibit R-185].

⁸⁷ See Sale and Purchase Agreement, Lot V61, February 4, 2005, Section Four [Exhibit R-185].

⁸⁸ See Sale of Lot V61 from Grande Beach Holdings to Wake Up Call Limitada, February 6, 2006, Section Five (c) [Appendix B.29].

⁸⁹ See Assignment/Buy Back of Lot V61 from Wake Up Call Limitada to Grande Beach Holdings, March 31, 2008, Whereas Clauses 3, 5 [Appendix B.30].

Question 4:

In respect of Lot B1, Appendix 2 to the Claimants' Rejoinder (Procedural History of the Claimants' Lots) indicates an Appeal Judgment of 31 July 2013, referring to Respondent's Exhibit R-36. There is no reference to any Judgment in respect of this Lot. Additionally, the Exhibit refers to the suspension of judicial proceedings. The Parties are asked to clarify the position in respect of any judicial proceedings in respect of this Lot and to provide any relevant documentation.

Claimants' reference in Annex 2 of their Rejoinder on Jurisdiction to an Appeal Judgment dated July 31, 2013 for Lot B1 appears to be in error. The document referenced by Claimants is Exhibit R-036, which shows a July 31, 2013 request for suspension of judicial proceedings concerning Lot B1 submitted by Claimants to the Court.⁹⁰ Ms. Georgina Chaves, the Deputy Attorney at the Office of the Attorney General in Costa Rica, explained in her witness statement that on July 31, 2013 Claimants requested the suspension of judicial proceedings regarding Lot B1 in light of the current arbitral proceedings.⁹¹ Claimants' request for suspension was denied in 2015 and the proceedings are currently ongoing. No judgment has yet been entered, either in the first instance or on appeal, regarding Lot B1.

Question 5:

Having regard inter alia to paragraph 29 of the First Witness Statement of Robert Reddy, was there any prior public notification of the SETENA Suspension Decree (Resolution No. 2238-2005-SETENA) of 30 August 2005? If so, in what form and terms?

Claimants' witness Mr. Reddy alleges in his first witness statement that in 2005, SETENA started refusing to review environmental impact assessments for property located within 75 meters of the inalienable zone.⁹² Mr. Reddy appears to be referring to actions taken by SETENA in light of its Resolution No. 2238-2005 dated August 30, 2005 (the "2005 Resolution").⁹³ Respondent is not aware of any prior public notification of SETENA's 2005 Resolution; however, as Respondent explained in its Counter-Memorial on the Merits, the Resolution was issued to implement Supreme Court orders,⁹⁴ which were public decisions.

Specifically, SETENA issued the 2005 Resolution in order to implement orders issued by the Supreme Court in March and June 2005 to adopt all necessary measures to protect the environmentally endangered area of the *Las Baulas* National Park. On March 8, 2005, certain individuals presented a *recurso de amparo* against the Ministry of Environment ("MINAE") and SETENA challenging the fact

⁹⁰ See Lot B1 Request for Suspension of Judicial Proceedings, July 31, 2013 [Exhibit R-036].

⁹¹ See Georgina Chaves Witness Statement, December 22, 2014, para. 21 [RWE-010].

⁹² See Reddy First Witness Statement at para. 29.

⁹³ See Resolution No. 2238-2005-SETENA, August 30, 2005 [Exhibit C-1f].

⁹⁴ See Respondent's Memorial on Jurisdiction and Counter-Memorial on the Merits, July 15, 2014, para. 47; see also Supreme Court of Justice, Constitutional Chamber, File No. 05-002756-0007-CO, March 9, 2005 [Exhibit R-052] and Supreme Court of Justice, First Chamber, File No. 05-007357-0007-CO, Resolution No. 2005-08238, June 28, 2005 [Exhibit C-1u].

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that the government had not adopted the necessary steps to protect the Park area. On March 9, 2005, the Supreme Court, when admitting the case, issued a resolution ordering MINAE and SETENA to develop guidelines to protect the areas within the Park.⁹⁵

In parallel, a separate *amparo* proceeding with respect to *Las Baulas* National Park was ongoing before the Supreme Court in 2005. On June 28, 2005, the Supreme Court issued a judgment in that proceeding in which it restated the March 9, 2005 order to MINAE and SETENA to adopt the necessary measures to protect the Park area.⁹⁶

The March 9, 2005 resolution and the June 28, 2005 judgment were both made publicly available. Any individual or company with an interest in purchasing property in the Park, in the normal course of conducting due diligence, should and would have been aware of the Supreme Court's orders instructing SETENA to adopt measures that would protect the Park area.

If you have any questions related to this submission, please let us know.

Respectfully submitted,



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⁹⁵ See Supreme Court of Justice, Constitutional Chamber, File No. 05-002756-0007-CO, March 9, 2005, pp. 2-3 [Exhibit R-052].

⁹⁶ See Supreme Court of Justice, First Chamber, File No. 05-007357-0007-CO, Resolution No. 2005-08238, June 28, 2005 [Exhibit C-1u].