

**In the Arbitration under the Rules of
the United Nations Commission on International Trade Law
and the United States – Peru Trade Promotion Agreement**

GRAMERCY FUNDS MANAGEMENT LLC,
AND
GRAMERCY PERU HOLDINGS LLC,

Claimants

— v. —

THE REPUBLIC OF PERU,

Respondent

WITNESS STATEMENT OF ROBERT S. KOENIGSBERGER

June 2, 2016

I, Robert S. Koenigsberger, hereby give the following statement intending that it be relied upon by the Tribunal in the above-referenced matter. I confirm that the facts and matters I describe below are within my own knowledge and are true to the best of my recollection.

I.

PERSONAL INFORMATION

1. I am a citizen of the United States and reside in Greenwich, CT, United States.
2. I make this statement in my capacity as Founder, Chief Investment Officer and Managing Partner of the Gramercy asset management business.
3. I founded the Gramercy asset management business in 1998. The Gramercy asset management business includes Gramercy Peru Holdings LLC (“GPH”), Gramercy Funds Management LLC (“GFM”), and its predecessors (collectively with GPH and GFM, “Gramercy”). GFM is the manager of GPH and the other Gramercy affiliated entities that maintain direct and indirect ownership in GPH.
4. I received a Bachelor’s Degree, with honors, in Latin American political science and history of Latin America with a minor in economics from the University of California, San Diego in 1987; an MBA in finance from The Wharton School of the University of Pennsylvania in 1993; and a Master of Arts in international studies with a concentration in Latin America from the University of Pennsylvania in 1993. My graduate and undergraduate theses considered the Historical Origins and Implications of the Latin American Debt Crisis.
5. I have almost 30 years of experience working on restructuring distressed sovereign debt in emerging markets. From 1987 to 1991, I served as Vice President at CR-P Associates Inc. (“CR-P Associates”), a financial advisory firm with offices in Central and South America that led sovereign debt

restructurings, debt buy-backs and debt-equity swap transactions in Latin America. At CR-P Associates, I worked directly under Carlos Rodriguez Pastor, the former Peruvian Finance Minister under President Fernando Belaúnde Terry. Prior to the Peruvian general election of 1990, CR-P Associates was asked to provide economic advisory services to Mario Vargas Llosa, the leader of the center-right *Frente Democrático* coalition, who advocated liberal economic reforms. When Mr. Vargas Llosa ultimately lost the election to Alberto Fujimori, President Fujimori's advisors requested CR-P Associates to provide advice to President Fujimori. Thereafter, we provided advice to the Fujimori administration on economic policy. During that time, Peru essentially reentered the capital markets and became a country with the willingness and the ability to pay outstanding debt.

6. After CR-P Associates and graduate school, I joined Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), as Vice President in 1993, and for three years, traded performing and distressed emerging markets debt securities in New York, London and Hong Kong. After Merrill Lynch, I joined Lehman Brothers Holdings Inc. ("Lehman") as Senior Vice President where I managed the bank's sovereign debt restructuring group from 1995 to 1998. While at Lehman, I made proprietary investments and purchased certain defaulted Peruvian bank loans. On behalf of Lehman, I also tendered defaulted loans into the Peruvian Brady Plan, an agreement made by international commercial banks to sharply reduce Peru's debt stock. As a result of the Brady Plan, I was able to witness Peru's consensual restructuring of defaulted debt as a first-hand participant. Further, in the late 1990s, I assisted with the securitization of restructured Peruvian Paris Club Debt that had been purchased from *Servizi Assicurativi del Commercio Estero* (SACE), the Italian export credit guarantee agency. Again, I had a good experience with Peru, as it always consensually restructured its defaulted debt and then performed on the restructured debt.
7. In 1998, I left Lehman to found Gramercy.

8. In this witness statement I address Gramercy's investment in Peruvian Land Reform Bonds ("Land Bonds" or "Bonds"). In particular, I briefly describe our business of investing in distressed emerging market assets; how we came to be interested in the Land Bonds and the expectations we had about Peru's treatment of them; our efforts to monetize the Land Bonds; and Peru's surprising actions that have effectively rendered the Land Bonds worthless.

II.

GRAMERCY'S BUSINESS OF INVESTING IN DISTRESSED EMERGING MARKET SOVEREIGN ASSETS

9. When I founded Gramercy in 1998, I aimed to create a leading asset management firm, specializing in corporate and sovereign distressed debt in emerging markets.
10. Through the hard work of talented professionals with whom I have been fortunate to work over the years, Gramercy has been a highly successful asset manager. We started with just US\$4 million, mainly from individual investors. Today we manage over US\$6 billion on behalf of a diverse group of clients comprised mostly of institutional investors, including pension funds, located in the United States.
11. While Gramercy's business has expanded, emerging market distressed sovereign debt continues to be one of our core areas of expertise. We have successfully worked with other investors and governments to resolve seemingly intractable situations to the mutual benefit of all stakeholders.
12. For example, Gramercy brought together bondholders and the Nicaraguan government to work out a consensual restructuring of that country's debt stemming from the expropriation of land in the 1970s. By organizing a critical mass of the bondholders, and presenting a reasonable plan to the government, we were able to find a solution that had eluded others. Additionally, in 2007 Gramercy participated in a consensual restructuring of Nicaraguan bank loans

which were executed in the late 1970s and early 1980s. Gramercy negotiated a tender offer with the Government of Nicaragua, which was accepted in November 2007. **CE-129**, Letter from Eric Lalo of Lazard Frères to Robert Lanava of Gramercy, November 21, 2007; **CE-130**, Nicaragua Announces Success of US\$1.4 Billion External Debt Cash Tender Offer, December 5, 2007; **CE-131**, Letter from Eric Lalo of Lazard Frères to The International Bank of Miami, December 20, 2007.

13. We had similar successes with other governments as well. For example, we facilitated Russia's 1999 restructuring of defaulted sovereign obligations, and we led the Argentina debt restructuring of 2010. In both instances, many observers thought the governments would never pay on those defaulted debt obligations. Gramercy nevertheless organized creditors and presented realistic solutions involving the issuance of new, market-tradable debt as payment for the defaulted debt.
14. In the case of Argentina, a handful of "holdout" bondholders refused to participate in either the 2005 exchange or the 2010 exchange and took an aggressive stance against Argentina. In 2013 and 2014 Gramercy publicly proposed a third exchange which became known as the "Gramercy Solution" in which the bondholders who participated in the first exchange of 2005 and the second exchange of 2010 would cede some value to the "holdout" bondholders, because, in our view, everyone would be better off financially. The holdout bondholders refused this offer and pressed aggressive litigation against Argentina. During the time the holdout bondholders were chasing Argentine assets and portraying Argentina as a country that does not pay its debts, Gramercy successfully organized an amicable settlement with Argentina of five investment arbitration awards in 2013.
15. In each of these examples, and many more, Gramercy worked to find some kind of common ground in sovereign debt restructurings—a "win-win" option—that benefitted all parties, the creditors as well as the debtor.

16. In my experience, sovereigns typically do not want to be in default on their obligations. They typically recognize that losing the trust of lenders and other investors is detrimental to the nation's economy and ultimately hurts the country's citizens. However, in certain instances, governments consider the problem to be insoluble: failure to pay has made the size of the debt grow; there may be a political price for striking a settlement; they wonder how they will get the funds to pay the bondholders; and they have no one with whom to negotiate a settlement because the group of bondholders is too fragmented and diverse. The fragmentation of the creditors is often a significant obstacle to settlement because it is infeasible to negotiate with thousands of creditors and not possible to negotiate with a smaller number if no creditor has a large enough position to make a credible offer of a global settlement.
17. Gramercy is capable of untangling that kind of situation. On the bondholder side, we can provide coherence. We directly invest in a material position in the distressed asset. That gives us a real stake in the issue and makes us a credible participant in the process. We also make contact with other bondholders. We typically aim to encourage bondholders to unite behind a realistic plan, which may require some compromises. If bondholders do not want to sell to us or actively participate in our efforts, we have no problem with them "freeriding" on whatever solution we devise because it is likely to produce a more comprehensive settlement with a higher participation rate. Transactions with higher participation rates are a "win-win" for obligors as well as creditors.
18. On the government side, we can provide pragmatic solutions, which may involve restructuring terms or proposals that the government had not considered or that would not be open to the government without widespread bondholder support. By reducing the fragmentation of the bondholder group, we also give the government a counterparty with whom to negotiate. Having a concrete proposal backed by a critical mass of creditors can be a powerful incentive for the debtor to settle. The debtor may also benefit from specific

incentives drafted into the terms of the proposal, and from the prospect of solving the default—which leads to improved borrowing terms and a perception of being a trustworthy debtor.

19. At Gramercy, we usually refer to this approach as a “pre-packaged restructuring” to reflect the fact that Gramercy submits an initial proposal to the government (*i.e.*, a reverse inquiry), does the legwork of bringing creditors together, designing a restructuring plan, getting a large majority of creditors to back the restructuring plan and then working with the government to implement that restructuring. This process minimizes the possibility of common excuses for not committing to an agreement such as the difficulty in organizing creditors, and the complexity of implementing any restructuring, among others. By helping to solve the most common obstacles cited by governments as reasons for not committing to a restructuring, we can open the door to a negotiated solution.

III.

GRAMERCY’S INVESTMENT IN THE LAND BONDS

20. I first became interested in the Land Bonds in 2005, when an emerging markets boutique, Exotix, brought them to my attention as a potentially interesting investment opportunity for Gramercy.
21. The Land Bonds are physically certificated bonds that Peru issued following the enactment of the Land Reform Act in 1969. **CE-01**, Decree Law N° 17716, Land Reform Act, June 24, 1969, preamble, Arts. 1, 173-180. Peru had defaulted on the Bonds long before I learned about the Bonds. Additionally, the Land Bonds had been issued in an outdated and massively devalued currency, the *Soles de Oro*. According to a report by the Peruvian Congress, as of 2005, there were 2.521 billion *Soles de Oro* in Land Bonds remaining out of 13.285 billion *Soles de Oro* issued. **CE-12**, Opinion issued on Draft Laws N° 578/2001-CR, N° 7440/2002-CR, N° 8988/2003-CR, N°

10599/2003-CR, N° 11459/2004-CR, and N° 11971/2004-CR, p. 13. The face value of the Land Bonds as denominated in *Soles de Oro* was worthless even in 2005, as the conversion factor from *Soles de Oro* to *Soles* is one to one billion (1:1,000,000,000). **CE-06**, Central Reserve Bank of Peru, Table of Equivalencies, January 5, 2016. At that face value, the entire outstanding principal of the remaining Land Bonds, over 2.5 billion *Soles de Oro*, could be paid with one 10 *Soles* bank note. **CE-12**, Opinion issued on Draft Laws N° 578/2001-CR, N° 7440/2002-CR, N° 8988/2003-CR, N° 10599/2003-CR, N° 11459/2004-CR, and N° 11971/2004-CR, p. 14.

22. Yet, because of positive developments in Peru with regard to the resolution of outstanding debts, I thought the Land Bonds might be a good opportunity for Gramercy to act as a catalyst for a constructive solution to this selective default.
23. By late 2005, Peru's economy had been performing very well for several years. Starting in the 1990s, President Fujimori had implemented a series of reforms known as "Fuji-shock" that opened the Peruvian economy to foreign trade and investment and dramatically improved its performance. **CE-112**, *The Economist*, Survivor Toledo, June 9, 2005. In 2000, Peru had undergone a democratic change of President, from Alberto Fujimori to Alejandro Toledo. President Toledo—an economist with a PhD from Stanford University—maintained the macroeconomic policies that had turned Peru into a success under Fujimori, including the openness of the economy to foreign investment, the stabilization of monetary policy by the Central Bank, and the development of a market economy. **CE-112**, *The Economist*, Survivor Toledo, June 9, 2005; **CE-157**, *The Economist*, *The Risk of Throwing it All Away*, March 31, 2011.
24. As part of its efforts to attract foreign investment, Peru had successfully settled outstanding debt on multiple occasions. After normalizing with the IMF and the World Bank in 1993, President Fujimori implemented the Brady

debt restructuring—on which I personally worked—in 1995. **CE-80**, UPI, Peru agrees to Brady Debt Reduction Plan, October 27, 1995; **CE-81**, New York Times, Peru Reaches Debt Accord, October 30, 1995. More recently in 2005, Peru concluded the settlement of its obligations with the Paris Club. **CE-111**, CBonds, Peru Says Reaches a Debt Plan with Paris Club, May 30, 2005. Peru had also tapped capital markets in 2005 by issuing dollar-denominated sovereign bonds and then, on April 12, 2006, signed the United States-Peru Trade Promotion Agreement (“Treaty”), reassuring Gramercy that it would—given that ratification of the Treaty was expected to occur—enjoy the protection of the Treaty over its investment in the Land Bonds. **CE-08**, Prospectus Supplement to Prospectus dated January 19, 2005, filed January 31, 2005; **CE-09**, Prospectus Supplement to Prospectus dated January 19, 2005, filed July 15, 2005; **CE-10**, Prospectus Supplement to Prospectus dated January 19, 2005, filed December 14, 2005.

25. We observed these strides Peru had made, and we recognized that Peru was trying to present itself as a country that encouraged foreign investment and that actively promoted its fiscal responsibility and commitment to honor its debts.
26. While we were certainly encouraged by Peru’s creation of a favorable investment climate and responsible treatment of its other distressed sovereign debt, we wanted to understand the history and status of the Land Bonds in particular, and especially why Peru remained in default on these Land Bonds when it had taken such positive steps in honoring its other obligations.
27. Consequently, I instructed David Herzberg, an employee at Gramercy, to conduct due diligence to confirm that the Land Bonds were valid and had to be paid under Peruvian law, and to determine how they should be valued.
28. After conducting research and holding various meetings in Peru, Mr. Herzberg issued a memorandum on January 24, 2006. **CE-114**, Memorandum from

David Herzberg to Robert Koenigsberger, January 24, 2006. That memorandum summarized some of the most significant developments in Peru about the Land Bonds. Those developments included decisions by the country's highest courts that explained the legal framework governing the Land Bonds.

29. *First*, Mr. Herzberg explained that, although the Government had defaulted on the Land Bonds for more than a decade, Peru's highest court, the Constitutional Tribunal, ruled in 2001 that "it is unconstitutional to treat land reform debt as nominal value claims" and consequently that the bondholders "have the right to go to court to demand the payment of their claims, adjusted for inflation, plus the interest mandated by law." *Id.*, pp. 1-2.
30. *Second*, he added that the Supreme Court of Peru had "clearly and explicitly" applied "the value principle as ordered by the [Constitutional Tribunal], using the consumer price index ("CPI") for inflation adjustment." *Id.*, p. 2.
31. *Third*, he explained that ADAEPRA (*Asociación de Agricultores Expropiados por la Reforma Agraria*), a local group of bondholders, was actively engaged in supporting the enactment of a bill by the Peruvian Congress to settle the Land Bonds and that, although not approved at the time, the proposed bill was moving forward. *Id.*, p. 3. This bill, which acknowledged Peru's obligation to pay the Land Bonds at current value, was in fact approved by the Peruvian Congress several months later, but was then vetoed by President Toledo. **CE-115**, Land Bonds Bill, March 27, 2006; **CE-116**, Alejandro Toledo, President of Peru, Presidential Veto, April 19, 2006.
32. Over the next several months, we continued to gather information and to study the situation, trying to further evaluate the legal terrain and to obtain a better sense of the political landscape. During this entire period, Mr. Herzberg and Gramercy's legal representatives met in Peru with dozens of bondholders and, eventually, transacted with hundreds of bondholders.

33. All of this research revealed that there was a clear legal rule: the Land Bonds were a valid obligation of the Peruvian State, and they had to be paid at current value, calculated using a Peruvian consumer price index, plus interest. Consequently, although the Land Bonds had been in default for a long time, the court rulings had unequivocally established that they had significant value.
34. Additionally, this seemed like a situation demanding a consensual solution. The Land Bonds were a debt that needed to be paid, but there was not yet any consensus about how that would actually happen. Some of the bondholders were organized into groups, but many others were scattered around the country, and many more were simply exhausted from waiting so long for payments that never materialized. The Government was legally required to pay the Land Bonds at current value, but had no plan regarding how to do so, since the Constitutional Tribunal in 2004 prevented the Government from imposing a mandatory exchange of the Land Bonds for new long-term bonds that bore no interest.
35. Based on everything I had learned, I believed that a catalyst like Gramercy could lead to a fair restructuring of the Land Bond debt, just as international organizations had done when they helped Peru to clean up defaults on its international obligations. So we decided to establish a position in the Land Bonds.
36. Because the Land Bonds are actual paper documents that were not registered in any exchange, to acquire Land Bonds, Gramercy or its representatives needed to meet with individual bondholder to discuss the terms of the transaction, sign a notarized contract, have the bondholder endorse each Land Bond to Gramercy, and take physical custody of every purchased Land Bond. To acquire the Land Bonds, Gramercy constituted GPH, under the laws of the State of Delaware, United States of America, on April 17, 2006.

37. From late 2006 into 2008, Gramercy, through GPH, bought over 9,700 Land Bonds from hundreds of individual bondholders. For the convenience of the Tribunal, I simply provide an inventory of the 9,773 Land Bonds that Gramercy owns, as well as one sample Bond. **CE-224**, Gramercy's Bond Inventory, March 22, 2016; **CE-120**, Bond No. 008615, November 28, 1972. Should the Tribunal find it helpful, we can make available copies of all the Land Bonds that Gramercy owns.
38. The Land Bonds were acquired after identifying bondholders, reaching out individually to each of the hundreds of bondholders who still had their Land Bonds, meeting with each of them in Peru to discuss the terms of the assignment of the Land Bonds, and then making sure the bondholder was in fact the legitimate titleholder to the Land Bonds. To my knowledge, Gramercy is the only legal entity that acquired Land Bonds as an investment.
39. At various times during the period when Gramercy acquired the Land Bonds, we presented bondholders with three alternatives: (i) sell the Land Bonds to Gramercy at a discount; (ii) contribute the Land Bonds to an investment vehicle in exchange for certificates that would provide value proportional to the size of any settlement with Peru *i.e.*, giving bondholders the option to fully benefit from a settlement; and (iii) hold on to their Land Bonds and "free ride" on Gramercy's efforts to settle the Land Bond debt, in exchange for their support of an eventual global settlement with the Government of Peru.
40. Since bondholders had already waited so long for payment—some had been waiting over three decades to be paid for land that the Government took from their families—many of the bondholders we met with wished to sell their Land Bonds to Gramercy instead of waiting longer to participate in a greater upside upon a comprehensive settlement.
41. After taking all of these steps, each bondholder endorsed the Land Bonds to GPH, signed a notarized contract and delivered the paper Land Bonds to

Gramercy or its representatives. After closing, the funds to purchase the Land Bonds were paid by Gramercy to bondholders via wire transfer such that money was made available in Peru to Gramercy's legal representatives who then tendered funds to bondholders. To this date, the Land Bonds are physically located in Peru.

42. At the time Gramercy invested in the Land Bonds, it had the expectation that it would be able to go to court to seek judgment enforcing its rights under the Land Bonds. In fact, after investing, Gramercy became a party to hundreds of legal proceedings in Peru seeking judgments compelling payment on the Land Bonds that Gramercy had acquired.

IV.

GRAMERCY'S EFFORTS TO MONETIZE THE LAND BONDS

43. During the time it took to source the Land Bonds, Gramercy did not engage with the Government immediately to negotiate a settlement. The sourcing of the Land Bonds was a time-consuming effort, and when the financial crisis hit in 2008, Gramercy had to stop investing in the Land Bonds and concentrate on providing liquidity to our investors as markets panicked and many investors sought to sell off their positions in emerging markets. We also recognized that the financial crisis may have presented several challenges to Peru that would temporarily delay its ability to execute a consensual resolution at that time.
44. When the markets stabilized after the financial crisis, Gramercy turned its attention back to the Land Bonds and to initiate negotiations to settle the default. Gramercy learned that local bondholders were actively engaged with Congress to pass legislation implementing an exchange of Land Bonds for newly issued tradable bonds. This draft legislation was similar to the bill that was passed by Congress in 2006, but vetoed by President Toledo. **CE-115**, Land Bonds Bill, March 27, 2006; **CE-116**, Alejandro Toledo, President of

Peru, Presidential Veto, April 19, 2006; **CE-114**, Memorandum from David Herzberg to Robert Koenigsberger, January 24, 2006.

45. Gramercy, through its advisors, provided information and assistance during the legislative process, even submitting comments to the draft bill that had been proposed. The legislation advanced through the Agrarian Commission, which recommended on June 16, 2011 the approval of a debt swap, valuing Land Bonds under CPI. **CE-160**, Opinion of the Agrarian Commission of Congress on Draft Bills N^os 456/2006-CR, 3727/2008-CR and 3293/2008-CR, June 16, 2011, Art. 8. The Permanent Commission of Congress approved the bill in a first debate held on July 18, 2011, but President García threatened to veto the bill and it was never enacted. **CE-162**, Congress of Peru, Permanent Committee, Debate Transcript, July 18, 2011, p. 61; **CE-164**, La Republica, Alan García Observará Proyecto de Ley de Pago de Bonos de la Reforma Agraria, July 21, 2011.
46. In addition, in the second half of 2010, while the Peruvian Congress was considering legislation to settle the Land Bond debt, Gramercy approached UBS to design a solution for the Land Bond debt and pitch it to the Government.
47. UBS and Gramercy developed a proposal to exchange Land Bonds—valued using CPI plus compounded interest—for newly issued and freely negotiable sovereign bonds. **CE-152**, UBS, Presentation: Republic of Peru - Tender Offer and New Issue Proposal, August 11, 2010. To minimize the impact on Peru's budget, the newly issued bonds would have long maturities—50, 100 years or even to perpetuity—and interest rates around 6%. Gramercy was even willing to discuss a haircut as an incentive for the Government to settle the Land Bonds. *Id.* Unfortunately, then Minister of Economy and Finance, Mercedes Araoz Fernandez, stated that she had no interest at the time to discuss settlement of the Land Bonds. **CE-151**, The Wall Street Journal, Long Wait: Peru's Agricultural Bonds, July 7, 2010.

48. Two years later, after Congress failed to pass the debt exchange law, in October of 2012, Gramercy again reached out to the Government. At that time, Ollanta Humala had been President for one year. Governments do not usually engage in settlement discussions of defaulted debt as a matter of priority upon assuming office, so Gramercy thought it prudent to wait for the Humala Government to settle in office before reaching out with a proposal for payment of the Land Bonds.
49. Gramercy reached out through UBS, who approached then-Minister of Economy and Finance, Luis Miguel Castilla, to discuss the possibility of a settlement of the Land Bonds. In October 2012, Minister Castilla replied that the Government would wait for the Constitutional Tribunal to issue a decision on an application that had been filed by the Engineers' Bar Association to enforce the March 15, 2001 decision that declared the Land Bonds had to be paid at current value, before discussing any settlement of the Bonds. **CE-172**, Email from Gustavo Ferraro to Robert Koenigsberger and others, October 23, 2012.
50. In light of this feedback from Minister Castilla, Gramercy followed the proceedings before the Constitutional Tribunal, expecting that after the Constitutional Tribunal ordered the Government to pay the Land Bonds per its March 15, 2001 decision, the Government would be more amenable to discussing a restructuring of the Land Bonds with Gramercy.
51. We were confident that the Constitutional Tribunal would enforce its March 15, 2001 decision and order the Government to pay the Land Bonds using CPI. We understood that the application filed by the Engineers' Bar Association was uncontroversial, as it merely called on the Constitutional Tribunal to state the obvious: that the Government had to comply with the decisions of Peru's highest constitutional authority.

52. To Gramercy’s surprise, the Constitutional Tribunal issued an enforcement order on July 16, 2013 instructing the Ministry of Economy and Finance (“MEF”) to issue a Supreme Decree implementing a “dollarization” method to update the value of the Land Bonds. The Tribunal explained that dollarization was “appropriate” because “the other methods of assessment described [including CPI] would suppose serious impact on the Budget of the Republic, to the point of making impracticable the very payment of the debt.” **CE-17**, Constitutional Tribunal of Peru, Order, July 16, 2013, ¶ 25. The Constitutional Tribunal’s decision was surprising to me, as it was my understanding that, under Peruvian law and the March 15, 2001 decision, the value of the Land Bonds should be updated using CPI.
53. Furthermore, the Constitutional Tribunal’s premise—that payment of the Land Bonds using a CPI method would have a “serious impact” on Peru’s annual budget—has no support in the Tribunal’s decision and is simply inaccurate. That is the kind of point that we had been trying to bring to the Government’s attention, including through UBS. Attractive alternatives existed that would have permitted Peru to pay its debts fully without significant impact on the budget.
54. After the decision from the Constitutional Tribunal was issued, Gramercy expected that the MEF would at least formulate a dollarization method compensating bondholders at close to current value under CPI. I did not expect, nor did anyone at Gramercy, that the MEF would use the opportunity granted by the Constitutional Tribunal to enact a dollarization method that would completely destroy the value of the Land Bonds.
55. With this understanding, Gramercy sought to engage with the Government to offer assistance in the settlement of the Land Bond debt by means of a letter dated December 31, 2013, sent to the President of the Council of Ministers and the Minister of Economy and Finance. **CE-185**, Letter from Gramercy to President of the Council of Ministers and Minister of Economy and Finance,

December 31, 2013, pp. 2-3. In this letter, I summarized some of Gramercy's credentials and experience in debt restructurings similar to the Land Bond debt. I also described that Gramercy had acquired an estimated 15-20% of the outstanding Land Bonds. I acknowledged the "dilemma" that Peru faced, namely that "Peru cannot continue to ignore the Land Reform Bonds, but it has not yet identified the means to resolve the problem." *Id.* at 2. However, we considered that there was a fair solution to this apparent dilemma. I explained:

We believe that a combination of factors has now created a historic opportunity for Peru to resolve this situation once and for all, and to do so in a way that benefits all parties involved. In particular, Peru could propose a resolution in which current bondholders receive payment of fair compensation by means of new Peruvian bonds that are more secure and more liquid than the Land Reform Bonds. There are many options for the terms of the new bonds that could mitigate the impact of Peru's immediate budgetary priorities, including flexibility with regard to the maturity and the interest rate.

Such a solution (1) would allow bondholders who simply wish to receive the cash amount that has been denied [to] them so long, to obtain this amount from the buyers of the new bonds in the secondary market, instead of this money coming from Peru's budget; (2) it would offer existing holders or new ones who wish to invest in Peru's future more options to be able to do so; and (3) it would allow Peru to extend its real cash payments over time and continue to improve its reputation in international markets as a country that pays its debts and treats all creditors fairly.

It is obvious that, in order for such a global solution to work, the good will of all interested parties is required, including a "critical mass" of bondholders who are willing to commit to this solution. We would be pleased to have the opportunity to work with you to try to reach a global solution and explain to you the benefits that a solution of this nature could entail for those other interested parties.

Id.

56. Unfortunately, the Government never took up that offer to explore a potential solution like the one I had proposed. Instead, the following month, they issued the Supreme Decrees.

V.

PERU DESTROYED THE VALUE OF THE LAND BONDS

57. In January 2014, the MEF issued two Supreme Decrees supposedly implementing the Constitutional Tribunal's order of July 16, 2013. I received a copy of the Supreme Decrees and instructed Gramercy's employees to value the Land Bonds owned by Gramercy under the formulae set forth in the Supreme Decrees. **CE-37**, Supreme Decree N° 17-2014-EF; **CE-38**, Supreme Decree N° 19-2014-EF.
58. I was shocked when I learned that the Land Bonds owned by Gramercy under the Supreme Decrees were valued at an insignificant fraction of the value we thought the Bonds had, that is, of the CPI value. This was the first time I contemplated that the Government of Peru would actually renege on the Land Bond debt. Up until that moment, to my knowledge, no government official had publicly suggested not paying the Land Bonds at all, or paying them at such a trivial value so as to make the Land Bonds essentially worthless.
59. In addition, the Supreme Decrees set forth a priority for payment under which companies that purchased Land Bonds with "speculative ends" came last in priority. To my knowledge, Gramercy is the only legal entity that purchased the Land Bonds for what the Supreme Decree calls "speculative" purposes.
60. In light of this nullification of the value of our investment, I again wrote, on April 21, 2014, to the President of the Council of Ministers and the Minister of Economy and Finance asking for a meeting to discuss an amicable and mutually beneficial solution to the Land Bond debt, and explained that the Supreme Decrees "effectively amount[] to a total repudiation of Peru's payment obligations under the Land Reform Bonds." **CE-190**, Letter from

Gramercy to the President of the Council of Ministers and Minister of Economy and Finance, April 21, 2014, p. 1. In that same letter, I explained the procedural shortcomings of the Supreme Decrees, including the requisite waiver of “any and all rights to enforcement with respect to the Land Reform Bonds through courts of law” as a condition precedent to submitting to a “complex, bureaucratic and uncertain administrative process.” *Id.* I also explained that:

Yet there is nothing that prevents the development now of a fair and efficient administrative process, one which could resolve the Land Reform Bonds situation amicably and in a way that pays the Bondholders substantially what they are due while enhancing Peru’s standing in the international community.

Accordingly, we respectfully reiterate our offer to meet with you to present ideas regarding such a solution. Our fervent desire remains to resolve this matter in a spirit of respect, friendship, cooperation and compromise. But there is no way that we can accept the paltry, delayed, and uncertain compensation that the Supreme Decree offers. We must therefore continue to reserve all of our rights, including those under Peruvian law, the U.S.-Peru Trade Promotion Agreement, and international law.

Id., p. 3.

61. The Ministry of Economy and Finance, by letter dated May 14, 2014, declined to meet with Gramercy and instead limited its response to stating that Gramercy should submit to the Supreme Decrees and the process for payment set forth therein. **CE-192**, Letter from the Ministry of Economy and Finance to Gramercy, May 14, 2014.
62. After the Supreme Decrees were issued, the Land Reform Bondholders Association (ABDA, in Spanish) sought to challenge the Supreme Decrees before the Constitutional Tribunal on the grounds that they did not fulfill the Tribunal’s mandate to pay current value, and instead offered an amount much closer to nominal value.

63. ABDA filed a petition before the Constitutional Tribunal to set aside the Supreme Decrees on March 16, 2015. **CE-199**, Land Reform Bondholders Association's Application before the Constitutional Tribunal, March 16, 2015. Gramercy supported that petition and openly endorsed it. We considered it was possible that the Government or people acting on its behalf had misled the Constitutional Tribunal about the budgetary impact of using CPI, and that once the true effect of the Supreme Decrees was brought to the Constitutional Tribunal's attention, it would have to strike them down.
64. ABDA's petition was supported by four expert reports: (i) a report from Ismael Benavides, a former Minister of Economy and Finance, and two other eminent Peruvian economists, who concluded that Peru could afford to pay the Land Bonds under CPI; (ii) a report from Deloitte that estimated the value of the expropriated land at more than US\$42 billion; (iii) a report by two Peruvian economists explaining in detail why the formula in the Supreme Decrees is mathematically and economically incorrect and produces absurd results; and (iv) a report from Dr. Alan Heston, a renowned expert in parity exchange rates, explaining one method to validly calculate such a rate for converting Peru's *Soles de Oro* to U.S. dollars. *Id.*, ¶¶ 81, 84, 129, 130, 132, 145-149, 151-163; **CE-199A**, Benavides et al., Expert Report, February 17, 2015; **CE-199B**, Deloitte, Expert Report, February 17, 2015; **CE-199C**, Alonso and Muñoz, Expert Report, February 2015; **CE-199D**, Heston, Expert Report, February 9, 2015.
65. Again, the Constitutional Tribunal surprised Gramercy and bondholders in general, by dismissing ABDA's petition without deciding on the merits. Less than three weeks after the petition was filed, and without receiving an official rebuttal from the Government, the Tribunal held that ABDA had not provided "any evidence of social representativeness" and ruled that, as a consequence, ABDA had no standing. **CE-40**, Constitutional Tribunal, Writ, April 7, 2015, ¶ 6. Justices Sardon de Taboada and Blume Fortini forcefully dissented, arguing that "it is clear that ... ABDA, which groups a large number of land

reform bondholders, has a legitimate interest in the present proceeding, which refers precisely to the payment of the [Lands Bonds].” **CE-40**, Constitutional Tribunal, Writ, April 7, 2015, Judge Blume Fortini’s Dissent, ¶ 8. The dissent went on to state that:

[ABDA’s position] is bolstered if one takes into consideration that said association has put forth factual and legal grounds which should not be overlooked and has provided expert reports in more than 1000 pages that should be analyzed carefully . . . and . . . not resort to weak arguments of a formalist nature and unconcerned with justice to simply declare the inadmissibility of the petition due to a supposed lack of standing.

Id., ¶¶ 8-9.

66. After the Constitutional Tribunal rejected ABDA’s application, Gramercy continued in its efforts to engage in conversations with Peru to reach an amicable settlement of the Land Bonds. For example, on December 23, 2015, James P. Taylor of Gramercy sent a letter to Peru’s Ambassador to the United States, Luis Miguel Castilla, who had been Minister of Economy and Finance at the time the Supreme Decrees were issued and who I expected would understand the serious shortcomings of the Supreme Decrees from an economic and mathematical perspective. In the letter, Mr. Taylor included a table that illustrated how the MEF’s parity exchange rate is completely out of proportion to the official exchange rate, and the parity exchange rate extrapolated from World Bank Data, being at times more than 100 times larger than the official exchange rate. Mr. Taylor also provided a summary of criminal allegations that one of the dissents to the July 2013 Constitutional Tribunal order had been forged. **CE-216**, Letter from Gramercy to Dr. Luis Miguel Castilla, Ambassador of Peru to the United States, December 23, 2015.
67. Ambassador Luis Miguel Castilla replied by letter dated January 19, 2016. **CE-217**, Letter from Dr. Luis Miguel Castilla, Ambassador of Peru to the United States to Gramercy, January 19, 2016. He stated that Gramercy should

“participate in the procedure established by relevant Peruvian court rulings and attendant decrees,” which would entail accepting payment of less than 0.1% of Gramercy’s rightful claim. *Id.* Ambassador Castilla refused to meet with Gramercy and did not deny, rebut or even address the very troubling criminal allegations raised by Mr. Taylor.

68. Gramercy also made many other attempts to have substantive discussions with the Peruvian Government. We hoped to explain our objections to the Supreme Decrees and why we considered them to be so unfair, rebut inaccurate statements, and present constructive approaches that could finally and fairly resolve the longstanding Land Bond debt to everyone’s benefit. After much effort, a Gramercy employee met in New York in May 2015 with Minister of Economy and Finance Alonso Segura, and Gramercy representatives met in Washington, D.C. in December 2015 and again in March 2016 with Ambassador Castilla. However neither Minister Segura nor Ambassador Castilla demonstrated any willingness to discuss the substance of the matter, each time referring us to the Supreme Decrees and the 2013 Constitutional Tribunal order. Over the course of the almost three years since the Constitutional Tribunal order, and the two and a half years since the first Supreme Decree, despite Gramercy’s repeated efforts to engage with the Government in good faith discussions about the Land Bonds, we have been repeatedly rebuffed. *See, e.g.*, **CE-256**, Letter from James Taylor, Gramercy, to Dr. Luis Miguel Castilla, Ambassador of Peru to the United States, January 29, 2016; **CE-257**, Email from Gustavo Ferraro to Magalli Silva Velarde-Alvarez, Minister of Exterior Commerce and Tourism, February 12, 2016; **CE-258**, Email Exchange between Gustavo Ferraro and Magalli Silva Velarde-Alvarez, February 15, 2016.
69. After this refusal to even discuss the shortcomings of the Supreme Decrees, which are mathematically indisputable, Gramercy reluctantly filed, on February 1, 2016, its Notice of Intent to Initiate Arbitration under the Treaty (“NOI”). After filing the NOI, on March 1, 2016, Gramercy met with Javier

Roca Fabian, President of the Special Commission Representing the State in International Investment Disputes (*Comisión Especial que Representa al Estado en Controversias Internacionales de Inversión*), hopeful that Peru would finally be amenable to discuss a settlement with Gramercy. After exchanging correspondence and phone calls with Mr. Roca for more than three months, Peru still has refused to engage in meaningful discussions on the substance of Gramercy's claims.

70. Seeing the unwillingness of Peru to even agree to discuss Gramercy's claims, I realized that Gramercy needed to proceed with international legal action to protect its rights. I came to this realization with disappointment and regret. As I mentioned earlier, throughout my career, I have sought win-win solutions, not litigious ones. Having witnessed and even participated in earlier Peruvian initiatives to resolve challenging debt situations, and having admired Peru's economic success, I had hoped and expected that reason would ultimately prevail and that the Land Bond debt would be restructured through consensual negotiations. I still consider that to be the vastly superior alternative for everyone involved. Yet Peru's stonewalling and steadfast refusal to have any substantive discussions has left Gramercy no choice but to commence and vigorously pursue this arbitration and enforce its rights under the Treaty.

* * * *

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 2, 2016

Greenwich, CT, United States of America

A handwritten signature in black ink, consisting of several overlapping, sweeping strokes that form a cursive, somewhat abstract shape. The signature is positioned above a horizontal line.

Robert S. Koenigsberger