

**INTERNATIONAL CENTRE FOR
SETTLEMENT OF INVESTMENT DISPUTES**

ADDITIONAL FACILITY

REQUEST FOR INSTITUTION OF ARBITRATION PROCEEDINGS

**SUBMITTED PURSUANT TO CHAPTER 11 OF THE
NORTH AMERICAN FREE TRADE AGREEMENT**

LION MEXICO CONSOLIDATED LP
Claimant

v.

UNITED MEXICAN STATES
Respondent

11 December 2015

REQUEST FOR INSTITUTION OF ARBITRATION PROCEEDINGS PURSUANT TO
CHAPTER 11 OF THE NORTH AMERICAN FREE TRADE AGREEMENT

1. Pursuant to Article 2 of the Arbitration (Additional Facility) Rules of the International Centre for the Settlement of Investment Disputes (hereafter the “**Rules**”) and Articles 1116 and 1120 of the North American Free Trade Agreement (“**NAFTA**”), Lion Mexico Consolidated LP¹ (hereafter “**LMC**” or “**Claimant**”) a *société en commandite* (limited partnership) constituted under the laws of the Province of Quebec, Canada, by and through its authorized representatives, hereby requests the institution of arbitration proceedings on its own behalf.

I. IDENTIFICATION OF THE PARTIES (ARTICLE 3(1)(A) OF THE RULES)

A. THE CLAIMANT

2. The Claimant is LMC, a partnership duly constituted under the laws of the Province of Quebec, Canada, and having number 3363885438 as *Numéro d'Entreprise du Québec* (NEQ).² Although LMC is a Canadian partnership, its main place of business and unified domicile for notifications is the following:

1717 McKinney Avenue, Suite 1900
Dallas, Texas
75202
United States of America
c/o Ms Onay Payne, Director
T: +1 212 883 2507
E: Onay.Payne@clarionpartners.com

3. LMC is represented in all matters regarding this arbitration by Mayer Brown LLP (**Exhibit C-006**). The contact details of Mayer Brown’s attorneys are as follows:

¹ It is worth noting that LMC is also identified in Quebec by its French name: Lion Mexico Consolidé S.E.C.

² Certificate of constitution and existence, **Exhibit C-001**.

Mr Robert J. Kriss
Mayer Brown LLP
71 S. Wacker Drive
Chicago, IL 60606
United States of America
T: +1 312 782 0600
E: rkriss@mayerbrown.com

Mr Dany Khayat
Mr Alejandro López Ortiz
Mr José J. Caicedo
Mayer Brown LLP
20 avenue Hoche
75008 Paris
France
T : +33 1 53 53 43 43
E: dkhayat@mayerbrown.com
alopezortiz@mayerbrown.com
jcaicedo@mayerbrown.com

B. THE RESPONDENT

4. The Respondent is the United Mexican States (hereafter “**Mexico**” or “**Respondent**”), a sovereign State party to NAFTA. For the purposes of this arbitration, Mexico's address is the following:

Oficialía de Partes
Dirección General de Inversión Extranjera
Secretaría de Economía
Avenida de los Insurgentes Sur 1940
Colonia La Florida
Mexico D.F. 01030
United Mexican States

To the Claimant's best knowledge, the division and officer of the Respondent who will be in charge of representing Mexico in this arbitration is:

Mr Carlos Véjar Borrego
Secretaría de Economía
Dirección General de Consultoría Jurídica de Comercio Internacional
Alfonso Reyes 30, Floor 17
Col. Hipódromo Condesa

Del. Cuauhtémoc, Mexico Federal District,
Mexico C.P. 06140
United Mexican States
T: +52 55 57 29 91 34
E: carlos.vejar@economia.gob.mx

II. RELEVANT PROVISIONS EMBODYING THE AGREEMENT OF THE PARTIES TO REFER THE DISPUTE TO ARBITRATION (ARTICLE 3(1)(B) OF THE RULES)

5. NAFTA provides, in its relevant parts, that:

“Article 1116: Claim by an Investor of a Party on Its Own Behalf

1. An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under:

(a) Section A or Article 1503(2) (State Enterprises), or

(b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

[...]

Article 1118: Settlement of a Claim through Consultation and Negotiation

The disputing parties should first attempt to settle a claim through consultation or negotiation.

Article 1119: Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

(a) the name and address of the disputing investor and, where a claim is made under Article 1117, the name and address of the enterprise;

(b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;

(c) the issues and the factual basis for the claim; and

(d) the relief sought and the approximate amount of damages claimed.

Article 1120: Submission of a Claim to Arbitration

1. Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;

(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

Article 1121: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim under Article 1116 to arbitration only if:

(a) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and

(b) the investor and, where the claim is for loss or damage to an interest in an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise:

(a) consent to arbitration in accordance with the procedures set out in this Agreement; and

(b) waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

3. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

4. Only where a disputing Party has deprived a disputing investor of control of an enterprise:

(a) a waiver from the enterprise under paragraph 1(b) or 2(b) shall not be required; and

(b) Annex 1120.1(b) shall not apply.

Article 1122: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.

2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties;

(b) Article II of the New York Convention for an agreement in writing; and

(c) Article I of the Inter-American Convention for an agreement.”

6. The present Request complies with the Procedural Requirements set forth in NAFTA as further evidenced below.

A. THE PARTIES' CONSENT TO ARBITRATION

7. LMC refers to Articles 1116, 1120, and 1122 of the NAFTA, as providing the basis for this submission to arbitration.
8. As required by NAFTA Article 1121, LMC consents to arbitration in accordance with the procedures set out in NAFTA by submitting herewith its NAFTA Article 1121 Consent to Arbitration and Waiver of Other Dispute Settlement Procedures.³
9. As further required by NAFTA Article 1121(3), LMC has included its consent and waiver in this Request for Institution of Arbitration Proceedings, a copy of which is being delivered to Respondent.
10. The Respondent's consent to arbitration proceedings under the ICSID AF Rules is contained in NAFTA Article 1122(1), which states that "*[e]ach Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.*" NAFTA Article 1122(2) provides further that "*[t]he consent given by*

³ Consent to Arbitration and Waiver of Other Dispute Settlement Procedures, **Exhibit C-002**.

paragraph one [of Article 1122] and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of . . . Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties ...".

B. LMC IS AN INVESTOR THAT HAS SUFFERED A LOSS OR DAMAGE BY REASON OF MEXICO'S BREACH OF NAFTA ARTICLES 1110 AND 1105

11. LMC is, as already explained, a *société en commandite* ("Limited partnership") constituted under the laws of the Province of Quebec and, therefore, qualifies as an "*enterprise of a Party*" and "*investor of a Party*" under NAFTA Articles 201⁴ and 1139.⁵
12. LMC has invested more than US\$1 billion in Mexican real estate projects in the past 10 years. LMC is registered under Registry No. 58-II-SII of the Mexican "*Registro de Fondos de Pensiones y Jubilaciones y Fondos de Inversión del Extranjero*" listing foreign residents whose income is generated in Mexico.⁶
13. The dispute submitted to arbitration concerns two of these real estate projects respectively in the States of Nayarit and Jalisco, in Mexico. As explained below (See §§34-35), LMC granted, in February, June and September 2007, loans to two Mexican companies for financing the purchase of three properties in Nayarit and Jalisco and the working capital necessary to develop them. Such loans were secured by mortgages on the properties purchased and to be developed by three Mexican companies, and were documented by promissory notes for the full amount of loans, as well as ordinary and default interest.
14. The three non-negotiable promissory notes (*pagarés*) in an amount totalling US\$32.8 million granted in 2007 by two Mexican companies (hereafter the "**Notes**"), and mortgages over three properties, two of them located in Guadalajara (Jalisco) and one in Bahia de Banderas (Nayarit), to which LMC was the beneficiary (hereafter the "**Mortgages**") constitute an investment pursuant to NAFTA Article 1139 (h) (interests arising from the commitment of capital or other resources in the

⁴ "[e]nterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association; enterprise of a Party means an enterprise constituted or organized under the law of a Party."

⁵ "[I]nvestor of a Party means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment."

⁶ Registro de Fondos de Pensiones y Jubilaciones y Fondos de Inversión del Extranjero (24 July 2014) **Exhibit C-007**.

territory of a Party to economic activity in such territory) and (g) (real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes).

15. As explained below (See §§39 *et seq.*), on 14 December 2012, LMC discovered that Mexico's authorities, in June 2012, cancelled LMC's Notes and Mortgages based upon a false loan restructuring agreement submitted by LMC's Mexican counterparties. Following such discovery, Mexican authorities have repeatedly denied LMC the opportunity to prove that the purported restructuring agreement is a forgery. The cancellation of the Notes and Mortgages amounts to an unlawful expropriation under NAFTA Article 1110. Despite multiple recourses attempted by LMC as from December 2012, Mexican authorities have repeatedly denied LMC the opportunity to demonstrate that the purported restructuring agreement is a forgery. The first instance in which a Mexican court denied LMC such opportunity was in July 2013. Such actions are in breach of the International Minimum Standard of Treatment provided by NAFTA Article 1105.
16. As a result of the cancellation of the Notes and Mortgages, LMC has suffered damages in excess of US\$200 million.⁷
17. Therefore, the requirements provided by NAFTA Article 1116 to submit a dispute to arbitration (status of investor, breach of an obligation under Section A of NAFTA Chapter 11 and damages) are fulfilled.

C. PREVIOUS SETTLEMENT ATTEMPTS AND NEGOTIATIONS

18. Article 1118 of NAFTA states that, before initiating arbitration proceedings, the disputing Parties should first attempt to settle a claim through consultation or negotiation.
19. LMC has attempted on several occasions to find an amicable solution with Mexico. On 29 May 2015, LMC and Mexico's Secretary of Economy, Mr Ildefonso Guajardo, met and, at his request, LMC prepared an executive summary of the situation it was facing.

⁷ The damages suffered by LMC correspond to, at least, the following:

Principal	32,805,479.00
Ordinary Interest	115,300,709.15
Default Interest	75,073,994.35
Principal/Interest/Default Interest	223,180,182.50

20. Following the filing of the Notice of Intent, LMC provided to Mr Ildefonso Guajardo a settlement proposal and met him again on 28 September 2015 to discuss the same. Lastly, on 16 October 2015, LMC and its Counsel met Mr Carlos Vejar Borrego, General Director of the *Dirección General de Consultoría Jurídica de Comercio Internacional*, and his team to discuss an amicable solution of the dispute.
21. Despite these various attempts, no settlement was reached between the Parties.

D. NOTICE AND TIME REQUIREMENTS

22. On 6 August 2015, LMC notified Mexico of its intention to refer this dispute to arbitration under NAFTA Chapter 11. A copy of the Notice of Intent stamped as received by Mexico on 11 August 2015 is attached to this submission.⁸
23. By delivering its Notice of Intent more than 90 days before the submission of this Request, the Claimant has satisfied the notice requirement provided by NAFTA Article 1119.
24. Article 1120 of NAFTA indicates that an investor of a Party may submit a claim to arbitration "provided that six months have elapsed since the events giving rise to a claim". LMC's claim arises from the cancellation of the Notes and Mortgages in 2012 and the Mexican authorities' decisions that denied LMC an opportunity to evidence the falsehood of the purported restructuring agreement and Mexico's failure to protect LMC from its Mexican counterparties. Accordingly, Claimant has satisfied the requirements of Article 1120.
25. Moreover, Article 1116 of NAFTA states that a claimant may not make a claim or make a claim on behalf of an enterprise "*if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.*" In the case at hand, the judicial decision ordering the cancellation of the Notes and Mortgages occurred in June 2012, and the actual cancellation of the Mortgages by Mexican real-estate Registry authorities occurred in September and October 2012. However, LMC only learned about it on 14 December 2012, because such cancellation was decided without LMC participating into the proceedings initiated by its Mexican counterparties where the Notes and Mortgages were cancelled based on a false restructuring agreement, and executed by the Registrar without LMC being aware of this. Therefore, less than three years have elapsed since LMC acquired knowledge of the alleged breaches.

⁸ Notice of Intent of 6 August 2015, **Exhibit C-005**.

E. WAIVER

26. Article 1121 of NAFTA requires that a claimant consent to the arbitration and waive (with limited exceptions) its right to "*initiate or continue proceedings before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116 ...*".
27. As explained in more detail below, LMC initiated foreclosure proceedings against three Mexican companies on April 2012 given the failure to reimburse three loans granted by LMC. Following the discovery on 14 December 2012 that the Director of the Public Property Registry of the City of Guadalajara and the Chief of the Office of the Public Property and Commercial Registry of Bucerias had cancelled the Mortgages by order of the 9th Commercial Judge of the First Judicial Party of the State of Jalisco dated 30 August 2012, LMC brought an Indirect Amparo claim on 19 December 2012 before the First Civil District Court of the State of Jalisco, against the Judge and the Secretary of the 9th Commercial Judge of the First Judicial Party of the State of Jalisco, for their failure to serve the claim of the Mexican counterparties to LMC, therefore, preventing LMC from defending itself in the proceedings. A series of appeals and actions followed before other Mexican courts. The foreclosure proceedings are also still pending given the impossibility to serve one out of the three Mexican companies to whom the three loans were granted.
28. LMC consents to arbitration in accordance with the procedures set out in NAFTA and, pursuant to the obligation provided by Article 1121 of NAFTA, hereby waives the pending proceedings mentioned in paragraph 27 above.
29. Article 1121(3) specifies that a claimant must provide a written statement consenting to arbitration and waiving its right to initiate or continue proceedings, as described above. Pursuant to Article 1121(3), LMC has executed a consent and waiver as required by this Article and has included the consent and waiver as **Exhibit C-002** to this submission, a copy of which will be delivered to the Government of Mexico.

III. DATE OF APPROVAL BY THE SECRETARY-GENERAL PURSUANT TO ARTICLE 4 OF THE RULES OF THE AGREEMENT OF THE PARTIES PROVIDING FOR ACCESS TO THE ADDITIONAL FACILITY (ARTICLE 3(1)(C) OF THE RULES)

30. Article 3(1)(c) of the Rules requires a Request for Institution of Arbitration Proceedings to "*indicate the date of approval by the Secretary-General pursuant to Article 4 of the AF Rules of the agreement of the parties providing for access to the Additional Facility.*" Article 4, in turn, states that the Secretary-General, once

satisfied that the Request for Institution of Arbitration Proceedings "*conforms in form and substance of the provisions of Article 3 of [the ICSID Additional Facility] Rules, . . . shall register the request in the Arbitration (Additional Facility) Register and on the same day dispatch to the parties a notice of registration.*"

31. As stated above, Mexico has already consented in writing to submit investment disputes with Canadian investors to the Additional Facility for binding arbitration, and LMC has consented to arbitration. The instant dispute arises directly out of an investment and is between Mexico, a State, and a national of another State, LMC. The dispute is not within the jurisdiction of the ICSID Convention because the State party to the dispute, Mexico, is not a Contracting State to the ICSID Convention. Therefore, Claimant respectfully requests that the Secretary-General approve access to the Additional Facility and issues a notice of registration under Art. 4(1) of the Additional Facility. Accordingly, the date of approval can only be provided once the Secretary-General registers this request.
32. For the avoidance of doubt, pursuant to Article 4(2)(b) of the Additional Facility Rules, the Claimant hereby gives its consent to the jurisdiction of the Centre under Article 25 of the ICSID Convention in the event that the jurisdictional requirements *ratione personae* of that Article shall have been met at the time when proceedings are instituted. For the avoidance of doubt as well, the same consent by Mexico for the purposes of Article 4(2)(b) is found at Article 1122 (1) and (2)(a) of NAFTA

IV. INFORMATION CONCERNING THE ISSUES IN DISPUTE AND AN INDICATION OF THE AMOUNT INVOLVED (ARTICLE 3(1)(D) OF THE RULES)

A. FACTUAL BACKGROUND OF THE DISPUTE

33. In 2006, Mr Héctor Cárdenas Curiel, a Mexican national, was presented as a developer to LMC to request funding for three real estate development projects,

one in Bahia de Banderas, Nayarit (the Nahui Project),⁹ and two in Guadalajara (the Américas skyscrapers)¹⁰.

34. After a series of interviews to assess the viability of the projects, LMC awarded, between February and September 2007, the three financings for more than US\$32 million to three Mexican companies controlled by Mr Cárdenas, namely:

- a. Loan agreement for US\$15,000,000 granted by LMC to INMOBILIARIA BAINS, S.A. de C.V. ("**Inmobiliaria Bains**"), with the participation of C&C INGENIERIA Y PROYECTOS S.A. DE C.V. ("**C&C Ingeniería**"), as joint and several obligor, on 28 February 2007 (hereafter the "**First Loan**").¹¹

Inmobiliaria Bains issued a non-negotiable promissory note in favour of LMC for US\$15,000,000, which provided that ordinary interests would accrue as from the date of signature every three months, in the same terms as those stipulated in the loan agreement.¹²

The First Loan was secured by a mortgage granted by Inmobiliaria Bains in favour of LMC over a property located in the Municipality of Bahia de Banderas on 2 April 2008.¹³ This mortgage was recorded at the Office of the Public Property and Commercial Registry of Bucerias, Nayarit, on 19 May 2008.¹⁴ This mortgage also secured the Second and Third loans described below.

⁹ Nau Resort Nahui was to be phase one of a 2,100-acre mixed-use community located on three miles of coastline on Banderas Bay, north of Puerto Vallarta. The timeshare property was to feature 168 two-bedroom units, with its initial phase scheduled for occupancy by early 2011. Two additional phases were initially slated for completion by late 2012. Plans also called for up to 450 private residences and a 100-room hotel.

¹⁰ The development planning of two skyscrapers (Américas I and Américas II) was underway at the time of the execution of the loans in a 15,000 m² piece of land in Avenida Américas y Calle Montevideo in Guadalajara.

¹¹ First Loan agreement for US\$15,000,000 granted by LMC to INMOBILIARIA BAINS, S.A. dated 28 February 2007, **Exhibit C-008**.

¹² Promissory note issued by INMOBILIARIA BAINS, S.A. in favour of LMC for US\$15,000,000 dated 28 February 2007, **Exhibit C-009**.

¹³ Protocol Mortgage No. 92.496 of 2 April 2008, recorded under Book 285, section II, A-13 of the Public Property and Commercial Registry of Bucerias, Nayarit on 19 May 2008, **Exhibit C-010**.

¹⁴ *Id.*

The maturity date of the First Loan (initially 28 August 2008) was modified until 30 September 2009 through four subsequent amendment agreements.¹⁵

- b. Loan agreement for US\$12,450,000 granted by LMC to C&C CAPITAL, SOCIEDAD ANONIMA DE CAPITAL VARIABLE ("C&C") on 13 June 2007 (hereafter the "**Second Loan**").¹⁶

C&C issued a non-negotiable promissory note in favour of LMC for US\$12,450,000 which provided that ordinary interest would accrue as from the date of signature every three months, under the same terms as those stipulated in the loan agreement.¹⁷

The Second Loan was secured by a mortgage granted by BANSI S.A. INSTITUCION DE BANCA MULTIPLE DIVISION FIDUCIARIA ("**Bansi**"), as trustee, as per the instruction of C&C as founder and beneficiary of the trust¹⁸, in favour of LMC, over a property located in Guadalajara and recorded under Sheet 117,850 of the Public Property Registry of the City of Guadalajara, Jalisco.¹⁹ The mortgage was recorded at that Public Property Registry on 23 November 2007.

The maturity date of the Second Loan (initially 13 September 2007) was modified until 30 September 2009 through seven subsequent amendment agreements.²⁰

- c. Loan agreement for US\$5,355,479 granted by LMC to C&C on 26 September 2007 (hereafter the "**Third Loan**").²¹

¹⁵ Four amendment agreements to the First Loan agreement (from 28 August 2008 to 7 July 2009), **Exhibit C-011**.

¹⁶ Second Loan agreement for US\$12,450,000 granted by LMC to C&C CAPITAL, SOCIEDAD ANONIMA DE CAPITAL VARIABLE dated 13 June 2007, **Exhibit C-012**.

¹⁷ Promissory note issued by C&C in favour of LMC for US\$12,450,000 dated 14 June 2007, **Exhibit C-013**.

¹⁸ The property under consideration was given in trust by C&C to Bansi. C&C was to keep possession of the property until C&C ordered Bansi to constitute a mortgage in favor of LMC to secure the loans granted by LMC to C&C.

¹⁹ Protocol Mortgage No. 7.820 of 13 June 2007 over a property located in Guadalajara, Jalisco, recorded under Sheet 117,850 of the Public Property Registry of the City of Guadalajara, Jalisco on 23 November 2007, **Exhibit C-014**.

²⁰ Seven amendment agreements to the Second Loan (from 12 September 2007 to 7 July 2009), **Exhibit C-015**.

²¹ Third Loan agreement for US\$5,355,479 granted by LMC to C&C dated 26 September 2007, **Exhibit C-016**.

C&C issued a non-negotiable promissory note in favour of LMC for US\$5,355,479 which provided that ordinary interest would accrue as from the date of signature every three months, under the same terms as those stipulated in the loan agreement .²²

The Third Loan was also secured by a mortgage granted by Bansi, as trustee, as per the instruction of C&C as founder and beneficiary of the trust²³, in favour of LMC, over a property located in Guadalajara and recorded under Sheet 2,000,954 of the Public Property Registry of the City of Guadalajara, Jalisco. The mortgage was recorded at that Property Public Registry on the same date.²⁴

The maturity date of the Third Loan (initially 26 December 2007) was modified until 30 September 2009 through six subsequent amendment agreements.²⁵

35. In summary, as a consequence of these transactions, LMC had given three loans to Inmobiliaria Bains, C&C Ingeniería and C&C (the “**Debtors**”). The loans were for working capital associated with project development and in the case of the Nahui Project, a portion of it also was used to buy out interests of a previous partner. These three loans were not only secured by the Mortgages granted by two of the Debtors, namely Inmobiliaria Bains and C&C (via Bansi) over three properties, but also the Debtors' contractual obligation to pay was recorded in the Notes, issued by two of the Debtors (Inmobiliaria Bains and C&C), which were supposed to facilitate the enforcement of the loans in case of foreclosure.
36. The deadline for repayment of all three loans was not met by the Debtors and several extensions of time were requested by Mr Cárdenas. LMC met with Mr Cárdenas between 2010 and 2011 to attempt to find an amicable solution to the breach of the loan agreements.

²² Promissory note issued by C&C in favour of LMC for US\$5,355,479 dated 26 September 2007, **Exhibit C-017**.

²³ The property under consideration was given in trust by C&C to Bansi. C&C was to keep possession of the property until C&C ordered Bansi to constitute a mortgage in favor of LMC to secure the loans granted by LMC to C&C.

²⁴ Protocol Mortgage No. 7.895 over a property located in Guadalajara and recorded under Sheet 2,000,954 of the Public Property Registry of the City of Guadalajara, Jalisco dated 26 September 2007, **Exhibit C-018**.

²⁵ Six amendment agreements to the Third Loan (from 25 December 2007 to 7 July 2009), **Exhibit C-019**.

37. In early 2012, a default notice was, consequently, served by LMC to the Debtors on 17 February 2012 demanding immediate payment of the loaned amount with ordinary (18%) and default (25%) interest. In parallel, LMC continued to negotiate with Mr Cárdenas.
38. In view of the lack of payment, on 12 April 2012, LMC initiated foreclosure proceedings before the Mexican Courts for the enforcement of mortgages against the Debtors (the “**Foreclosure Proceedings**”). LMC's foreclosure claim was recorded in the Property Registry of Bucerias on 3 May 2012. However, the Foreclosure Proceedings suffered serious delay as a result of the Courts' inability to serve the claims on the Debtors, with the exception of C&C Ingeniería. By December 2012, the Foreclosure Proceedings had not yet been served on the two other Debtors, namely Inmobiliaria Bains and C&C.²⁶
39. At the time, LMC was worried about other possible foreclosure proceedings or even bankruptcy proceedings against Mr Cárdenas' companies, especially after LMC learned about the restructuring of a debt owed to a bank named Inbursa in connection with the Nahui Project. In that context, on 4 December 2012, LMC instructed, its local counsel to enquire whether other companies had filed lawsuits against Mr Cárdenas and the Debtors. Following such instructions, LMC's local counsel discovered, on 14 December 2012, based on information given by third parties, that a lawsuit had been filed against LMC and that the Mortgages had been cancelled respectively by the Director of the Public Property Registry of the City of Guadalajara and by the Chief of the Office of the Public Property and Commercial Registry of Bucerias, following the order of another Mexican Court, namely the 9th Commercial Judge of the First Judicial Party of the State of Jalisco.
40. Upon learning of the cancellation of the Mortgages, LMC filed a constitutional remedy claim, an Indirect Amparo, before the First Civil District Court of the State of Jalisco (the “**District Court**”). The Indirect Amparo was brought against the 9th Commercial Judge of the First Judicial Party of the State of Jalisco, its Secretary, the Directors of the Public Registries of Jalisco and Bucerias who cancelled the Mortgages. The government measures addressed in the Indirect Amparo were the failure to serve LMC, the Judge's order cancelling the Mortgages and the cancellation of the same by the Directors of the Registries previously mentioned. The constitutional rights invoked in the Indirect Amparo were the due process rights provided by Articles 14 to 16 of the Mexican Federal Constitution. LMC requested in the Indirect Amparo an order annulling the entire proceedings before the 9th Commercial Judge of the First Judicial Party of the State of Jalisco and depriving the cancellation of the Mortgages of any legal effect. In addition, LMC requested a provisional injunction ordering the authorities in charge of the relevant

²⁶ C&C was only served on 17 August 2015.

registries to refrain from recognizing any act (transfer, sale, assignment, etc.) altering, directly or indirectly, the ownership over the real estate object of the Mortgages.

41. In January 2013, the Public Registries of Jalisco and Bucerias filed their response and, on 10 January 2013, the 9th Commercial Judge of the First Judicial Party of the State of Jalisco submitted certified copies of the entire case file. According to such responses and case file, the following events had occurred prior to 14 December 2012, without LMC's knowledge:
 - a. On 16 March 2012, the Debtors had filed a lawsuit before the 9th Commercial Judge of the First Judicial Party of the State of Jalisco requesting the specific performance of alleged promises made by LMC in a forged document entitled "Terms for the Payment of the Loans" ("Términos para Pago de los Contratos de Crédito") (hereafter the "**Forged Document**"), namely to order LMC to cancel the Mortgages and return the Notes. Indeed, according to Mr Cárdenas and his companies, they supposedly received on 17 December 2011 the Forged Document signed by LMC's legal representative, Mr James Hendricks. In the Forged Document, LMC purportedly offered the cancellation of the Loans in exchange for shares in certain of the Debtors' companies. According to the Forged Document, LMC would cancel the Notes issued by the Debtors, as well as the Mortgages. The Forged Document designated for LMC's notifications an address in Guadalajara having no connection to LMC and nominated two individuals to receive service on behalf of LMC who also had no connection to LMC.²⁷ The Forged Document also indicated the local courts of Jalisco, Mexico, as the exclusive forum for any dispute arising from the interpretation, compliance or enforcement of all the documents (including the Loans, Notes and Mortgages) mentioned in the Forged Document.
 - b. On 4 April 2012, the lawsuit filed by the Debtors was served to one of the two persons designated in the Forged Document (i.e., José Isaac López Medina) a person unrelated to LMC who pretended to be entitled to receive communications to LMC in an address totally alien to LMC and which, moreover, was not even the address indicated in the Forged Document.
 - c. On 27 June 2012, the 9th Commercial Judge of the First Judicial Party of the State of Jalisco issued a Judgment which declared the Loans settled and ordered LMC to cancel the Mortgages and return the Notes as per

²⁷

Mr José Arechederra Tovar was not one of the two named individuals in the Forged Document.

the promises allegedly made to the Debtors under the Forged Document. Such Judgment was not served or notified to LMC.

- d. On 6 July 2012, Mr José Javier Arechederra Tovar, a local asset manager and advisor with a power of representation, supposedly presented himself to the clerk of the 9th Commercial Judge of the First Judicial Party of the State of Jalisco and requested certified copies of the entire case file. Such request was granted and the copies given the same day. However, such request was another fraudulent scheme perpetrated against LMC: Mr José Javier Arechederra Tovar never went to the office of the 9th Commercial Judge of the First Judicial Party of the State of Jalisco to request copies of the case file and could not have even done so as he was in a different place at the time. As will be explained below, this was an attempt to preempt any actions by LMC, by rendering them time barred even before it had discovered the existence of these proceedings.
 - e. On 16 August 2012, the Debtors, arguing that LMC had failed to voluntarily comply with the 27 June Judgment, requested the enforcement of the Judgment mentioned in the previous paragraph. Fourteen days later, on 30 August 2012, the 9th Commercial Judge of the First Judicial Party of the State of Jalisco ordered the cancellation of the Mortgages. On 6 September 2012, the Registry of Jalisco cancelled the two mortgages registered therein and, on 16 October 2012, the Registry of Bucerias cancelled the mortgage registered therein, notwithstanding the fact that the Foreclosure Proceedings had previously been registered in the Registry. On 4 October 2012, the 9th Commercial Judge of the First Judicial Party of the State of Jalisco also ordered Bansi (which was not a party to the proceedings) to take note of the fact that LMC's claims to money under the loan agreements and promissory notes described above ("créditos") had been terminated for all legal purposes.
42. LMC immediately objected, on 21 January 2013, to the authenticity and evidentiary value of the Forged Document and requested within the Indirect Amparo proceedings that the District Court address the issue of the authenticity of the Forged Document, which provided the false address and false agent for service of the complaint. To overcome an objection that LMC's Amparo action was stopped/time-barred based upon failure to assert it in a timely fashion, LMC also objected to the authenticity of Mr Arechederra Tovar's purported request for court papers from the files of the 9th Commercial Judge of the First Judicial Party of the State of Jalisco on 6 July 2012, and requested the production of expert evidence to show that it was not his signature in the purported request addressed to the District Court's clerk.

43. On 5 July 2013, in the constitutional hearing, the District Court rejected LMC's request to address the authenticity of the Forged Document. The District Court stated that establishing such falsehood was not relevant to the outcome of the Amparo claim concerning whether LMC had been properly served or not. On the other hand, the District Court admitted LMC's request concerning the falsehood of the signature of Mr José Javier Arechederra Tovar and appointed a court expert.
44. The District Court decided that Mr Arechederra Tovar had not signed the request for certified copies on 6 July 2012 and, therefore, LMC's Amparo claim was not stopped/time-barred. However, in its judgment issued on 4 December 2013, the District Court rejected LMC's Amparo claim precisely on the basis that the claim had been correctly served on LMC and LMC had failed to appear and defend because the person who had been served was designated in the Forged Document as authorized to receive notifications on behalf of LMC.
45. On 19 December 2013, LMC filed an appeal (*Recurso de Revisión*) against this decision before the Second Civil Collegiate Tribunal of the Third Circuit (the “**Appeals Court**”). In such appeal LMC argued that its due process rights had been breached because the District Court had refused to address the authenticity of the Forged Document and allow LMC an opportunity to prove its falsehood. Since the 9th Commercial Judge of the First Judicial Party of the State of Jalisco had relied upon the purported service of the complaint on the individual named in the Forged Document in finding that LMC had been properly served, the authenticity of the Forged Document was the key issue in determining whether LMC had been properly served and, hence, whether its constitutional rights had been observed.
46. However, on 17 April 2015, the Appeals Court decided not to address LMC's due process arguments described above. Instead, asserting that Mexican Amparo courts had the obligation to investigate *sua sponte* situations affecting the admissibility of the claim, the Appeals Court referred to information that the Appeals Court claimed it had collected on its own initiative, that supposedly indicated that Mr Arechederra Tovar, on behalf of LMC, had previously - in August 2012 - initiated and later abandoned another Amparo action in respect of the proceedings before the 9th Commercial Judge of the First Judicial Party of the State of Jalisco (hereafter the “**False Amparo**”). If the earlier filed False Amparo action were authentic and had been abandoned, LMC’s claims would be dismissed with prejudice. However neither Mr Arechederra Tovar nor LMC had ever filed this previous False Amparo. Indeed, the District Court in the Amparo action previously determined that Mr Arechederra Tovar’s signature on the request for court papers dated 6 July 2012 had been forged.

47. Rather than addressing the merits of LMC's appeal, the Appeals Court ordered the District Court to first decide on the admissibility of the Indirect Amparo filed by LMC on 19 December 2012 by deciding on whether or not the False Amparo supposedly filed by LMC in August 2012 was authentic and had been abandoned, thereby precluding the subsequent Indirect Amparo action.
48. As soon as the proceedings before the District Court started on 30 April 2015, LMC filed an objection to the authenticity of the False Amparo supposedly submitted by Mr Arechederra Tovar in August 2012. Such request was admitted on 5 May 2015 by the District Court.
49. On 23 September 2015, the District Court decided what new evidence would be considered in determining the authenticity of the False Amparo. LMC requested that the District Court admit new documentary evidence and lay expert witness testimony to address the issue of the False Amparo. However, the District Court only admitted documentary evidence that was already on file during the previous Indirect Amparo Proceedings and new expert evidence. The District Court refused to admit the other evidence LMC offered, including the deposition of Mr Arechederra Tovar.
50. The District Court has not yet issued a ruling on the authenticity of the False Amparo.

B. BREACHES OF NAFTA CHAPTER 11 SECTION A

51. The Respondent's actions constitute a violation by Mexico of the NAFTA and international law. By unlawfully cancelling LMC's Notes and the Mortgages, Mexico has deprived LMC of its investment. Mexico furthermore breached its obligation to guarantee an adequate legal system to protect LMC's rights. These actions constitute a breach of Mexico's obligations under NAFTA Articles 1110 and 1105 and of international law.

1. LMC's claims to money, Notes and Mortgages were expropriated by Mexico

52. Under NAFTA Article 1110, Mexico is prohibited to "*directly or indirectly ... expropriate an investment of an investor of another Party in its territory or take a measure tantamount to . . . expropriation ..., except: (a) for a public purpose, (b) on a non-discriminatory basis, (c) in accordance with due process of law and Article 1105(1), and (d) on payment of compensation, in accordance with [its provisions].*"

53. Article 1110 expressly provides both for claims of direct expropriation involving a physical taking of property and for claims of indirect expropriation, namely measures that effect an expropriation or that have an effect tantamount to an expropriation. As explained in *Metalclad v. Mexico*, "*Expropriation includes not only open, deliberate or incidental takings of property, but also covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property even if not necessarily to the obvious benefit of the host State.*"²⁸ More generally, it is well settled under international law that expropriation occurs when a property owner is deprived of "*effective use, control, and benefits of property rights*".²⁹
54. In the case at hand, LMC held, until October 2012, a series of economic rights characterized by NAFTA Article 1139 as an investment.
55. As explained above, such rights were, however, annihilated by the judgments of the 9th Commercial Judge of the First Judicial Party of the State of Jalisco and their enforcement by the Registry authorities: LMC's claims to money vis-à-vis the Debtors were terminated;³⁰ the Mortgages were cancelled; the Notes were held to be unenforceable against the Debtors.
56. Such measures amount to an expropriation of LMC's investment: LMC was deprived of its title over the Notes and Mortgages, as well as their use and economic benefit.
57. It is worth noting that, as per NAFTA Article 1101, the obligations set forth in Section A of Chapter 11 apply to breaches resulting from measures adopted or maintained by a Party relating to investors of another Party and investments of investors of another Party in the territory of the Party. Article 201 of NAFTA defines a "measure" as "any law, regulation, procedure, requirement or practice." Moreover, it is well settled under international law that judicial decisions and their enforcement can amount to an expropriation.³¹

²⁸ *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, (Aug. 30, 2000), para.103.

²⁹ *Starrett Housing Corp. and Islamic Republic of Iran*, Award No. In. 32-24-1, 4 Iran-U.S. C.T.R. 122, 154 (1987)

³⁰ "*los créditos que dieron origen a las hipotecas constituidas [...] están a la fecha finiquitadas las obligaciones garantizadas para todos los efectos legales conducentes*"; ("translation") Order No. OF 4173/2012 dated 9 October 2012 from the 9th Commercial Judge.

³¹ *Sistem Muhendislik Sanayi Ve Ticaret A.S. v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/06/1, Award (Sept. 30, 2009); *Saipem S.p.A. v. The People's Republic of Bangladesh*, ICSID Case No.

58. The taking of LMC's investment is illegal and does not comply with the requirements set forth by NAFTA Article 1110. Notably, the cancellation of Mortgages and Notes was not decided in accordance with due process because LMC was never offered the possibility to participate in the proceeding where such measure was decided. No public purpose nor payment of compensation has taken place. Further, the cancellation of the Mortgages by the Registry of Bucerias was also done in an arbitrary and unlawful manner as described below. Moreover, LMC was not compensated for the cancellation of its rights.

2. LMC was not guaranteed fair and equitable treatment and full protection and security.

59. NAFTA Article 1105(1) requires each Party to "*accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.*" Claimant's investments should be treated in accordance with international law, which includes not only the standard of "*fair and equitable treatment*", but also the customary international law prohibition against arbitrary and discriminatory treatment, and be accorded "*full protection and security*".

60. Pursuant to the international minimum standard of treatment under Article 1105 of NAFTA, Mexico had the international obligation to refrain from acting in a manner that deprived LMC of substantive and procedural due process.

61. In the case at hand, Mexico failed to respect its obligation to provide fair and effective remedies consistent with NAFTA Chapter 11 to LMC. LMC exercised the available remedies under Mexican law within the time-limit set forth by NAFTA Article 1116(2). Despite litigating for almost 3 years, Mexican courts did not give LMC the opportunity to demonstrate that the Forged Document relied upon to annihilate its investment was false. Worse still, the Mexican courts rejected LMC's requests for relief based upon the provisions of the Forged Document whose authenticity they refused to consider arguing that such authenticity was not relevant and had nothing to do with the issue whether LMC had been properly served or not on 4 April 2012. With the expiration of the 3-year time limit to bring the expropriation claim under NAFTA Chapter 11 approaching, LMC has still not been granted the opportunity to demonstrate that it was never properly served in the proceedings leading to the annihilation of its investment.

ARB/05/07, Award, (June, 30 2009), para. 181; *Middle East Cement Shipping and Handling Co v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award para. §143; *Antoine Abou Lahoud and Leila Bounafeh-Abou Lahoud v. Democratic Republic of the Congo*, ICSID Case No. ARB/10/4, Award (Feb. 7, 2014), para. 513

62. Furthermore, the District Court's decision in the current Amparo proceedings to limit the evidence to be considered in determining the authenticity of the False Amparo is also a measure that deprived LMC of full and effective remedies and constitutes a violation of substantive and procedural due process.
63. Moreover, as mentioned above, the Foreclosure Proceedings were registered in the Bucerias Registry in May 2012 and, as a result, pursuant to the rules governing real estate registries, the Bucerias Registry authorities were prevented from cancelling the Mortgages in October 2012. Not only did these authorities disregard the priority of the filing of notice of the Foreclosure Proceedings but, they failed to inform the 9th Commercial Judge about the existence of such previous proceedings when they were served with the 9th Commercial Judge's order purporting to cancel the Mortgages.
64. There are no reasonable and legitimate explanations for the arbitrary actions taken by the Mexican courts and registries in these proceedings to the prejudice of a foreign investor and for the benefit of a Mexican citizen and his companies.

C. RELIEF AND AMOUNT OF DAMAGES

65. LMC seeks the following relief for the actions and breaches by Mexico described herein:
 - Damages of not less than US\$ 200 million, including loss of investment value, lost opportunities and lost profit;
 - Costs associated with these proceedings, including all professional fees and disbursements and the costs of the arbitration;
 - Pre-award and post-award compound interest at a rate to be fixed by the tribunal.

V. NECESSARY INTERNAL ACTIONS TO AUTHORIZE THE REQUEST (ARTICLE 3(1)(E))

66. As required by Article 3(1)(e) of the Rules, LMC has duly authorized the filing of this claim in accordance with its relevant internal procedures.³²

³² LMC's Authorization Letter, **Exhibit C-003**.

VI. NUMBER OF ARBITRATORS AND THE METHOD OF THEIR APPOINTMENT (ARTICLE 3(2) OF THE RULES) AND PLACE OF ARBITRATION

67. NAFTA Article 1123 states that "*unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third who shall be the presiding arbitrator, appointed by agreement of the disputing parties.*" Since the parties have not agreed otherwise concerning the appointment of arbitrators, this provision shall govern.
68. NAFTA Article 1130 provides that the place of arbitration shall be located in a State party to either the New York Convention of 1958 selected in accordance with the Rules. In the present case, the Claimant considers advisable that the place of arbitration be in a non-NAFTA country and proposes Paris (France) as the place of arbitration.

VII. REQUIRED COPIES, PAYMENT, AND POWER OF ATTORNEY

69. In accordance with Article 4 of the Additional Facility Administrative and Financial Rules as amended, this Request is accompanied by five additional signed copies and by a non-refundable fee of US\$ 25,000.³³ The undersigned counsel certifies that all copies included in the submission are based on original documents.

Respectfully submitted,



Mayer Brown LLP
11 December 2015

³³ Proof of payment of the fee prescribed by the Regulation 16 of the Administrative and Financial Regulation of the ICSID, **Exhibit C-004**.

REQUEST FOR INSTITUTION OF ARBITRATION PROCEEDINGS PURSUANT TO
CHAPTER 11 OF THE NORTH AMERICAN FREE TRADE AGREEMENT

1. Pursuant to Article 2 of the Arbitration (Additional Facility) Rules of the International Centre for the Settlement of Investment Disputes (hereafter the “**Rules**”) and Articles 1116 and 1120 of the North American Free Trade Agreement (“**NAFTA**”), Lion Mexico Consolidated LP¹ (hereafter “**LMC**” or “**Claimant**”) a *société en commandite* (limited partnership) constituted under the laws of the Province of Quebec, Canada, by and through its authorized representatives, hereby requests the institution of arbitration proceedings on its own behalf.

I. IDENTIFICATION OF THE PARTIES (ARTICLE 3(1)(A) OF THE RULES)

A. THE CLAIMANT

2. The Claimant is LMC, a partnership duly constituted under the laws of the Province of Quebec, Canada, and having number 3363885438 as *Numéro d'Entreprise du Québec* (NEQ).² Although LMC is a Canadian partnership, its main place of business and unified domicile for notifications is the following:

1717 McKinney Avenue, Suite 1900
Dallas, Texas
75202
United States of America
c/o Ms Onay Payne, Director
T: +1 212 883 2507
E: Onay.Payne@clarionpartners.com

3. LMC is represented in all matters regarding this arbitration by Mayer Brown LLP (**Exhibit C-006**). The contact details of Mayer Brown’s attorneys are as follows:

¹ It is worth noting that LMC is also identified in Quebec by its French name: Lion Mexico Consolidé S.E.C.

² Certificate of constitution and existence, **Exhibit C-001**.

Mr Robert J. Kriss
Mayer Brown LLP
71 S. Wacker Drive
Chicago, IL 60606
United States of America
T: +1 312 782 0600
E: rkris@mayerbrown.com

Mr Dany Khayat
Mr Alejandro López Ortiz
Mr José J. Caicedo
Mayer Brown LLP
20 avenue Hoche
75008 Paris
France
T : +33 1 53 53 43 43
E: dkhayat@mayerbrown.com
alopezortiz@mayerbrown.com
jcaicedo@mayerbrown.com

B. THE RESPONDENT

4. The Respondent is the United Mexican States (hereafter “**Mexico**” or “**Respondent**”), a sovereign State party to NAFTA. For the purposes of this arbitration, Mexico's address is the following:

Oficialía de Partes
Dirección General de Inversión Extranjera
Secretaría de Economía
Avenida de los Insurgentes Sur 1940
Colonia La Florida
Mexico D.F. 01030
United Mexican States

To the Claimant's best knowledge, the division and officer of the Respondent who will be in charge of representing Mexico in this arbitration is:

Mr Carlos Véjar Borrego
Secretaría de Economía
Dirección General de Consultoría Jurídica de Comercio Internacional
Alfonso Reyes 30, Floor 17
Col. Hipódromo Condesa

Del. Cuauhtémoc, Mexico Federal District,
Mexico C.P. 06140
United Mexican States
T: +52 55 57 29 91 34
E: carlos.vejar@economia.gob.mx

II. RELEVANT PROVISIONS EMBODYING THE AGREEMENT OF THE PARTIES TO REFER THE DISPUTE TO ARBITRATION (ARTICLE 3(1)(B) OF THE RULES)

5. NAFTA provides, in its relevant parts, that:

“Article 1116: Claim by an Investor of a Party on Its Own Behalf

1. An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under:

(a) Section A or Article 1503(2) (State Enterprises), or

(b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

[...]

Article 1118: Settlement of a Claim through Consultation and Negotiation

The disputing parties should first attempt to settle a claim through consultation or negotiation.

Article 1119: Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

- (a) the name and address of the disputing investor and, where a claim is made under Article 1117, the name and address of the enterprise;*
- (b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;*
- (c) the issues and the factual basis for the claim; and*
- (d) the relief sought and the approximate amount of damages claimed.*

Article 1120: Submission of a Claim to Arbitration

1. Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

- (a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;*
- (b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or*
- (c) the UNCITRAL Arbitration Rules.*

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

Article 1121: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim under Article 1116 to arbitration only if:

(a) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and

(b) the investor and, where the claim is for loss or damage to an interest in an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise:

(a) consent to arbitration in accordance with the procedures set out in this Agreement; and

(b) waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

3. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

4. Only where a disputing Party has deprived a disputing investor of control of an enterprise:

(a) a waiver from the enterprise under paragraph 1(b) or 2(b) shall not be required; and

(b) Annex 1120.1(b) shall not apply.

Article 1122: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.

2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties;

(b) Article II of the New York Convention for an agreement in writing; and

(c) Article I of the Inter-American Convention for an agreement.”

6. The present Request complies with the Procedural Requirements set forth in NAFTA as further evidenced below.

A. THE PARTIES' CONSENT TO ARBITRATION

7. LMC refers to Articles 1116, 1120, and 1122 of the NAFTA, as providing the basis for this submission to arbitration.
8. As required by NAFTA Article 1121, LMC consents to arbitration in accordance with the procedures set out in NAFTA by submitting herewith its NAFTA Article 1121 Consent to Arbitration and Waiver of Other Dispute Settlement Procedures.³
9. As further required by NAFTA Article 1121(3), LMC has included its consent and waiver in this Request for Institution of Arbitration Proceedings, a copy of which is being delivered to Respondent.
10. The Respondent's consent to arbitration proceedings under the ICSID AF Rules is contained in NAFTA Article 1122(1), which states that "*[e]ach Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.*" NAFTA Article 1122(2) provides further that "*[t]he consent given by*

³ Consent to Arbitration and Waiver of Other Dispute Settlement Procedures, **Exhibit C-002**.

paragraph one [of Article 1122] and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of . . . Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties ...".

B. LMC IS AN INVESTOR THAT HAS SUFFERED A LOSS OR DAMAGE BY REASON OF MEXICO'S BREACH OF NAFTA ARTICLES 1110 AND 1105

11. LMC is, as already explained, a *société en commandite* ("Limited partnership") constituted under the laws of the Province of Quebec and, therefore, qualifies as an "*enterprise of a Party*" and "*investor of a Party*" under NAFTA Articles 201⁴ and 1139.⁵
12. LMC has invested more than US\$1 billion in Mexican real estate projects in the past 10 years. LMC is registered under Registry No. 58-II-SII of the Mexican "*Registro de Fondos de Pensiones y Jubilaciones y Fondos de Inversión del Extranjero*" listing foreign residents whose income is generated in Mexico.⁶
13. The dispute submitted to arbitration concerns two of these real estate projects respectively in the States of Nayarit and Jalisco, in Mexico. As explained below (See §§34-35), LMC granted, in February, June and September 2007, loans to two Mexican companies for financing the purchase of three properties in Nayarit and Jalisco and the working capital necessary to develop them. Such loans were secured by mortgages on the properties purchased and to be developed by three Mexican companies, and were documented by promissory notes for the full amount of loans, as well as ordinary and default interest.
14. The three non-negotiable promissory notes (*pagarés*) in an amount totalling US\$32.8 million granted in 2007 by two Mexican companies (hereafter the "**Notes**"), and mortgages over three properties, two of them located in Guadalajara (Jalisco) and one in Bahia de Banderas (Nayarit), to which LMC was the beneficiary (hereafter the "**Mortgages**") constitute an investment pursuant to NAFTA Article 1139 (h) (interests arising from the commitment of capital or other resources in the

⁴ "*[e]nterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association; enterprise of a Party means an enterprise constituted or organized under the law of a Party.*"

⁵ "*[I]nvestor of a Party means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment.*"

⁶ Registro de Fondos de Pensiones y Jubilaciones y Fondos de Inversión del Extranjero (24 July 2014) **Exhibit C-007**.

territory of a Party to economic activity in such territory) and (g) (real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes).

15. As explained below (See §§39 *et seq.*), on 14 December 2012, LMC discovered that Mexico's authorities, in June 2012, cancelled LMC's Notes and Mortgages based upon a false loan restructuring agreement submitted by LMC's Mexican counterparties. Following such discovery, Mexican authorities have repeatedly denied LMC the opportunity to prove that the purported restructuring agreement is a forgery. The cancellation of the Notes and Mortgages amounts to an unlawful expropriation under NAFTA Article 1110. Despite multiple recourses attempted by LMC as from December 2012, Mexican authorities have repeatedly denied LMC the opportunity to demonstrate that the purported restructuring agreement is a forgery. The first instance in which a Mexican court denied LMC such opportunity was in July 2013. Such actions are in breach of the International Minimum Standard of Treatment provided by NAFTA Article 1105.
16. As a result of the cancellation of the Notes and Mortgages, LMC has suffered damages in excess of US\$200 million.⁷
17. Therefore, the requirements provided by NAFTA Article 1116 to submit a dispute to arbitration (status of investor, breach of an obligation under Section A of NAFTA Chapter 11 and damages) are fulfilled.

C. PREVIOUS SETTLEMENT ATTEMPTS AND NEGOTIATIONS

18. Article 1118 of NAFTA states that, before initiating arbitration proceedings, the disputing Parties should first attempt to settle a claim through consultation or negotiation.
19. LMC has attempted on several occasions to find an amicable solution with Mexico. On 29 May 2015, LMC and Mexico's Secretary of Economy, Mr Ildefonso Guajardo, met and, at his request, LMC prepared an executive summary of the situation it was facing.

⁷ The damages suffered by LMC correspond to, at least, the following:

Principal	32,805,479.00
Ordinary Interest	115,300,709.15
Default Interest	75,073,994.35
Principal/Interest/Default Interest	223,180,182.50

20. Following the filing of the Notice of Intent, LMC provided to Mr Ildefonso Guajardo a settlement proposal and met him again on 28 September 2015 to discuss the same. Lastly, on 16 October 2015, LMC and its Counsel met Mr Carlos Vejar Borrego, General Director of the *Dirección General de Consultoría Jurídica de Comercio Internacional*, and his team to discuss an amicable solution of the dispute.
21. Despite these various attempts, no settlement was reached between the Parties.

D. NOTICE AND TIME REQUIREMENTS

22. On 6 August 2015, LMC notified Mexico of its intention to refer this dispute to arbitration under NAFTA Chapter 11. A copy of the Notice of Intent stamped as received by Mexico on 11 August 2015 is attached to this submission.⁸
23. By delivering its Notice of Intent more than 90 days before the submission of this Request, the Claimant has satisfied the notice requirement provided by NAFTA Article 1119.
24. Article 1120 of NAFTA indicates that an investor of a Party may submit a claim to arbitration "provided that six months have elapsed since the events giving rise to a claim". LMC's claim arises from the cancellation of the Notes and Mortgages in 2012 and the Mexican authorities' decisions that denied LMC an opportunity to evidence the falsehood of the purported restructuring agreement and Mexico's failure to protect LMC from its Mexican counterparties. Accordingly, Claimant has satisfied the requirements of Article 1120.
25. Moreover, Article 1116 of NAFTA states that a claimant may not make a claim or make a claim on behalf of an enterprise "*if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.*" In the case at hand, the judicial decision ordering the cancellation of the Notes and Mortgages occurred in June 2012, and the actual cancellation of the Mortgages by Mexican real-estate Registry authorities occurred in September and October 2012. However, LMC only learned about it on 14 December 2012, because such cancellation was decided without LMC participating into the proceedings initiated by its Mexican counterparties where the Notes and Mortgages were cancelled based on a false restructuring agreement, and executed by the Registrar without LMC being aware of this. Therefore, less than three years have elapsed since LMC acquired knowledge of the alleged breaches.

⁸ Notice of Intent of 6 August 2015, **Exhibit C-005**.

E. WAIVER

26. Article 1121 of NAFTA requires that a claimant consent to the arbitration and waive (with limited exceptions) its right to *"initiate or continue proceedings before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116 ..."*.
27. As explained in more detail below, LMC initiated foreclosure proceedings against three Mexican companies on April 2012 given the failure to reimburse three loans granted by LMC. Following the discovery on 14 December 2012 that the Director of the Public Property Registry of the City of Guadalajara and the Chief of the Office of the Public Property and Commercial Registry of Bucerias had cancelled the Mortgages by order of the 9th Commercial Judge of the First Judicial Party of the State of Jalisco dated 30 August 2012, LMC brought an Indirect Amparo claim on 19 December 2012 before the First Civil District Court of the State of Jalisco, against the Judge and the Secretary of the 9th Commercial Judge of the First Judicial Party of the State of Jalisco, for their failure to serve the claim of the Mexican counterparties to LMC, therefore, preventing LMC from defending itself in the proceedings. A series of appeals and actions followed before other Mexican courts. The foreclosure proceedings are also still pending given the impossibility to serve one out of the three Mexican companies to whom the three loans were granted.
28. LMC consents to arbitration in accordance with the procedures set out in NAFTA and, pursuant to the obligation provided by Article 1121 of NAFTA, hereby waives the pending proceedings mentioned in paragraph 27 above.
29. Article 1121(3) specifies that a claimant must provide a written statement consenting to arbitration and waiving its right to initiate or continue proceedings, as described above. Pursuant to Article 1121(3), LMC has executed a consent and waiver as required by this Article and has included the consent and waiver as **Exhibit C-002** to this submission, a copy of which will be delivered to the Government of Mexico.

III. DATE OF APPROVAL BY THE SECRETARY-GENERAL PURSUANT TO ARTICLE 4 OF THE RULES OF THE AGREEMENT OF THE PARTIES PROVIDING FOR ACCESS TO THE ADDITIONAL FACILITY (ARTICLE 3(1)(C) OF THE RULES)

30. Article 3(1)(c) of the Rules requires a Request for Institution of Arbitration Proceedings to *"indicate the date of approval by the Secretary-General pursuant to Article 4 of the AF Rules of the agreement of the parties providing for access to the Additional Facility."* Article 4, in turn, states that the Secretary-General, once

satisfied that the Request for Institution of Arbitration Proceedings "*conforms in form and substance of the provisions of Article 3 of [the ICSID Additional Facility] Rules, . . . shall register the request in the Arbitration (Additional Facility) Register and on the same day dispatch to the parties a notice of registration.*"

31. As stated above, Mexico has already consented in writing to submit investment disputes with Canadian investors to the Additional Facility for binding arbitration, and LMC has consented to arbitration. The instant dispute arises directly out of an investment and is between Mexico, a State, and a national of another State, LMC. The dispute is not within the jurisdiction of the ICSID Convention because the State party to the dispute, Mexico, is not a Contracting State to the ICSID Convention. Therefore, Claimant respectfully requests that the Secretary-General approve access to the Additional Facility and issues a notice of registration under Art. 4(1) of the Additional Facility. Accordingly, the date of approval can only be provided once the Secretary-General registers this request.
32. For the avoidance of doubt, pursuant to Article 4(2)(b) of the Additional Facility Rules, the Claimant hereby gives its consent to the jurisdiction of the Centre under Article 25 of the ICSID Convention in the event that the jurisdictional requirements *ratione personae* of that Article shall have been met at the time when proceedings are instituted. For the avoidance of doubt as well, the same consent by Mexico for the purposes of Article 4(2)(b) is found at Article 1122 (1) and (2)(a) of NAFTA

IV. INFORMATION CONCERNING THE ISSUES IN DISPUTE AND AN INDICATION OF THE AMOUNT INVOLVED (ARTICLE 3(1)(D) OF THE RULES)

A. FACTUAL BACKGROUND OF THE DISPUTE

33. In 2006, Mr Héctor Cárdenas Curiel, a Mexican national, was presented as a developer to LMC to request funding for three real estate development projects,

one in Bahia de Banderas, Nayarit (the Nahui Project),⁹ and two in Guadalajara (the Américas skyscrapers)¹⁰.

34. After a series of interviews to assess the viability of the projects, LMC awarded, between February and September 2007, the three financings for more than US\$32 million to three Mexican companies controlled by Mr Cárdenas, namely:

- a. Loan agreement for US\$15,000,000 granted by LMC to INMOBILIARIA BAINS, S.A. de C.V. ("**Inmobiliaria Bains**"), with the participation of C&C INGENIERIA Y PROYECTOS S.A. DE C.V. ("**C&C Ingeniería**"), as joint and several obligor, on 28 February 2007 (hereafter the "**First Loan**").¹¹

Inmobiliaria Bains issued a non-negotiable promissory note in favour of LMC for US\$15,000,000, which provided that ordinary interests would accrue as from the date of signature every three months, in the same terms as those stipulated in the loan agreement.¹²

The First Loan was secured by a mortgage granted by Inmobiliaria Bains in favour of LMC over a property located in the Municipality of Bahia de Banderas on 2 April 2008.¹³ This mortgage was recorded at the Office of the Public Property and Commercial Registry of Bucerias, Nayarit, on 19 May 2008.¹⁴ This mortgage also secured the Second and Third loans described below.

⁹ Nau Resort Nahui was to be phase one of a 2,100-acre mixed-use community located on three miles of coastline on Banderas Bay, north of Puerto Vallarta. The timeshare property was to feature 168 two-bedroom units, with its initial phase scheduled for occupancy by early 2011. Two additional phases were initially slated for completion by late 2012. Plans also called for up to 450 private residences and a 100-room hotel.

¹⁰ The development planning of two skyscrapers (Américas I and Américas II) was underway at the time of the execution of the loans in a 15,000 m² piece of land in Avenida Américas y Calle Montevideo in Guadalajara.

¹¹ First Loan agreement for US\$15,000,000 granted by LMC to INMOBILIARIA BAINS, S.A. dated 28 February 2007, **Exhibit C-008**.

¹² Promissory note issued by INMOBILIARIA BAINS, S.A. in favour of LMC for US\$15,000,000 dated 28 February 2007, **Exhibit C-009**.

¹³ Protocol Mortgage No. 92.496 of 2 April 2008, recorded under Book 285, section II, A-13 of the Public Property and Commercial Registry of Bucerias, Nayarit on 19 May 2008, **Exhibit C-010**.

¹⁴ *Id.*

The maturity date of the First Loan (initially 28 August 2008) was modified until 30 September 2009 through four subsequent amendment agreements.¹⁵

- b. Loan agreement for US\$12,450,000 granted by LMC to C&C CAPITAL, SOCIEDAD ANONIMA DE CAPITAL VARIABLE ("C&C") on 13 June 2007 (hereafter the "**Second Loan**").¹⁶

C&C issued a non-negotiable promissory note in favour of LMC for US\$12,450,000 which provided that ordinary interest would accrue as from the date of signature every three months, under the same terms as those stipulated in the loan agreement.¹⁷

The Second Loan was secured by a mortgage granted by BANSI S.A. INSTITUCION DE BANCA MULTIPLE DIVISION FIDUCIARIA ("**Bansi**"), as trustee, as per the instruction of C&C as founder and beneficiary of the trust¹⁸, in favour of LMC, over a property located in Guadalajara and recorded under Sheet 117,850 of the Public Property Registry of the City of Guadalajara, Jalisco.¹⁹ The mortgage was recorded at that Public Property Registry on 23 November 2007.

The maturity date of the Second Loan (initially 13 September 2007) was modified until 30 September 2009 through seven subsequent amendment agreements.²⁰

- c. Loan agreement for US\$5,355,479 granted by LMC to C&C on 26 September 2007 (hereafter the "**Third Loan**").²¹

¹⁵ Four amendment agreements to the First Loan agreement (from 28 August 2008 to 7 July 2009), **Exhibit C-011**.

¹⁶ Second Loan agreement for US\$12,450,000 granted by LMC to C&C CAPITAL, SOCIEDAD ANONIMA DE CAPITAL VARIABLE dated 13 June 2007, **Exhibit C-012**.

¹⁷ Promissory note issued by C&C in favour of LMC for US\$12,450,000 dated 14 June 2007, **Exhibit C-013**.

¹⁸ The property under consideration was given in trust by C&C to Bansi. C&C was to keep possession of the property until C&C ordered Bansi to constitute a mortgage in favor of LMC to secure the loans granted by LMC to C&C.

¹⁹ Protocol Mortgage No. 7.820 of 13 June 2007 over a property located in Guadalajara, Jalisco, recorded under Sheet 117,850 of the Public Property Registry of the City of Guadalajara, Jalisco on 23 November 2007, **Exhibit C-014**.

²⁰ Seven amendment agreements to the Second Loan (from 12 September 2007 to 7 July 2009), **Exhibit C-015**.

²¹ Third Loan agreement for US\$5,355,479 granted by LMC to C&C dated 26 September 2007, **Exhibit C-016**.

C&C issued a non-negotiable promissory note in favour of LMC for US\$5,355,479 which provided that ordinary interest would accrue as from the date of signature every three months, under the same terms as those stipulated in the loan agreement.²²

The Third Loan was also secured by a mortgage granted by Bansi, as trustee, as per the instruction of C&C as founder and beneficiary of the trust²³, in favour of LMC, over a property located in Guadalajara and recorded under Sheet 2,000,954 of the Public Property Registry of the City of Guadalajara, Jalisco. The mortgage was recorded at that Property Public Registry on the same date.²⁴

The maturity date of the Third Loan (initially 26 December 2007) was modified until 30 September 2009 through six subsequent amendment agreements.²⁵

35. In summary, as a consequence of these transactions, LMC had given three loans to Inmobiliaria Bains, C&C Ingeniería and C&C (the “**Debtors**”). The loans were for working capital associated with project development and in the case of the Nahui Project, a portion of it also was used to buy out interests of a previous partner. These three loans were not only secured by the Mortgages granted by two of the Debtors, namely Inmobiliaria Bains and C&C (via Bansi) over three properties, but also the Debtors' contractual obligation to pay was recorded in the Notes, issued by two of the Debtors (Inmobiliaria Bains and C&C), which were supposed to facilitate the enforcement of the loans in case of foreclosure.
36. The deadline for repayment of all three loans was not met by the Debtors and several extensions of time were requested by Mr Cárdenas. LMC met with Mr Cárdenas between 2010 and 2011 to attempt to find an amicable solution to the breach of the loan agreements.

²² Promissory note issued by C&C in favour of LMC for US\$5,355,479 dated 26 September 2007, **Exhibit C-017**.

²³ The property under consideration was given in trust by C&C to Bansi. C&C was to keep possession of the property until C&C ordered Bansi to constitute a mortgage in favor of LMC to secure the loans granted by LMC to C&C.

²⁴ Protocol Mortgage No. 7.895 over a property located in Guadalajara and recorded under Sheet 2,000,954 of the Public Property Registry of the City of Guadalajara, Jalisco dated 26 September 2007, **Exhibit C-018**.

²⁵ Six amendment agreements to the Third Loan (from 25 December 2007 to 7 July 2009), **Exhibit C-019**.

37. In early 2012, a default notice was, consequently, served by LMC to the Debtors on 17 February 2012 demanding immediate payment of the loaned amount with ordinary (18%) and default (25%) interest. In parallel, LMC continued to negotiate with Mr Cárdenas.
38. In view of the lack of payment, on 12 April 2012, LMC initiated foreclosure proceedings before the Mexican Courts for the enforcement of mortgages against the Debtors (the “**Foreclosure Proceedings**”). LMC's foreclosure claim was recorded in the Property Registry of Bucerias on 3 May 2012. However, the Foreclosure Proceedings suffered serious delay as a result of the Courts' inability to serve the claims on the Debtors, with the exception of C&C Ingeniería. By December 2012, the Foreclosure Proceedings had not yet been served on the two other Debtors, namely Inmobiliaria Bains and C&C.²⁶
39. At the time, LMC was worried about other possible foreclosure proceedings or even bankruptcy proceedings against Mr Cárdenas' companies, especially after LMC learned about the restructuring of a debt owed to a bank named Inbursa in connection with the Nahui Project. In that context, on 4 December 2012, LMC instructed, its local counsel to enquire whether other companies had filed lawsuits against Mr Cárdenas and the Debtors. Following such instructions, LMC's local counsel discovered, on 14 December 2012, based on information given by third parties, that a lawsuit had been filed against LMC and that the Mortgages had been cancelled respectively by the Director of the Public Property Registry of the City of Guadalajara and by the Chief of the Office of the Public Property and Commercial Registry of Bucerias, following the order of another Mexican Court, namely the 9th Commercial Judge of the First Judicial Party of the State of Jalisco.
40. Upon learning of the cancellation of the Mortgages, LMC filed a constitutional remedy claim, an Indirect Amparo, before the First Civil District Court of the State of Jalisco (the “**District Court**”). The Indirect Amparo was brought against the 9th Commercial Judge of the First Judicial Party of the State of Jalisco, its Secretary, the Directors of the Public Registries of Jalisco and Bucerias who cancelled the Mortgages. The government measures addressed in the Indirect Amparo were the failure to serve LMC, the Judge's order cancelling the Mortgages and the cancellation of the same by the Directors of the Registries previously mentioned. The constitutional rights invoked in the Indirect Amparo were the due process rights provided by Articles 14 to 16 of the Mexican Federal Constitution. LMC requested in the Indirect Amparo an order annulling the entire proceedings before the 9th Commercial Judge of the First Judicial Party of the State of Jalisco and depriving the cancellation of the Mortgages of any legal effect. In addition, LMC requested a provisional injunction ordering the authorities in charge of the relevant

²⁶

C&C was only served on 17 August 2015.

registries to refrain from recognizing any act (transfer, sale, assignment, etc.) altering, directly or indirectly, the ownership over the real estate object of the Mortgages.

41. In January 2013, the Public Registries of Jalisco and Bucerias filed their response and, on 10 January 2013, the 9th Commercial Judge of the First Judicial Party of the State of Jalisco submitted certified copies of the entire case file. According to such responses and case file, the following events had occurred prior to 14 December 2012, without LMC's knowledge:
 - a. On 16 March 2012, the Debtors had filed a lawsuit before the 9th Commercial Judge of the First Judicial Party of the State of Jalisco requesting the specific performance of alleged promises made by LMC in a forged document entitled "Terms for the Payment of the Loans" ("Términos para Pago de los Contratos de Crédito") (hereafter the "**Forged Document**"), namely to order LMC to cancel the Mortgages and return the Notes. Indeed, according to Mr Cárdenas and his companies, they supposedly received on 17 December 2011 the Forged Document signed by LMC's legal representative, Mr James Hendricks. In the Forged Document, LMC purportedly offered the cancellation of the Loans in exchange for shares in certain of the Debtors' companies. According to the Forged Document, LMC would cancel the Notes issued by the Debtors, as well as the Mortgages. The Forged Document designated for LMC's notifications an address in Guadalajara having no connection to LMC and nominated two individuals to receive service on behalf of LMC who also had no connection to LMC.²⁷ The Forged Document also indicated the local courts of Jalisco, Mexico, as the exclusive forum for any dispute arising from the interpretation, compliance or enforcement of all the documents (including the Loans, Notes and Mortgages) mentioned in the Forged Document.
 - b. On 4 April 2012, the lawsuit filed by the Debtors was served to one of the two persons designated in the Forged Document (i.e., José Isaac López Medina) a person unrelated to LMC who pretended to be entitled to receive communications to LMC in an address totally alien to LMC and which, moreover, was not even the address indicated in the Forged Document.
 - c. On 27 June 2012, the 9th Commercial Judge of the First Judicial Party of the State of Jalisco issued a Judgment which declared the Loans settled and ordered LMC to cancel the Mortgages and return the Notes as per

²⁷

Mr José Arechederra Tovar was not one of the two named individuals in the Forged Document.

the promises allegedly made to the Debtors under the Forged Document. Such Judgment was not served or notified to LMC.

- d. On 6 July 2012, Mr José Javier Arechederra Tovar, a local asset manager and advisor with a power of representation, supposedly presented himself to the clerk of the 9th Commercial Judge of the First Judicial Party of the State of Jalisco and requested certified copies of the entire case file. Such request was granted and the copies given the same day. However, such request was another fraudulent scheme perpetrated against LMC: Mr José Javier Arechederra Tovar never went to the office of the 9th Commercial Judge of the First Judicial Party of the State of Jalisco to request copies of the case file and could not have even done so as he was in a different place at the time. As will be explained below, this was an attempt to preempt any actions by LMC, by rendering them time barred even before it had discovered the existence of these proceedings.
 - e. On 16 August 2012, the Debtors, arguing that LMC had failed to voluntarily comply with the 27 June Judgment, requested the enforcement of the Judgment mentioned in the previous paragraph. Fourteen days later, on 30 August 2012, the 9th Commercial Judge of the First Judicial Party of the State of Jalisco ordered the cancellation of the Mortgages. On 6 September 2012, the Registry of Jalisco cancelled the two mortgages registered therein and, on 16 October 2012, the Registry of Bucerias cancelled the mortgage registered therein, notwithstanding the fact that the Foreclosure Proceedings had previously been registered in the Registry. On 4 October 2012, the 9th Commercial Judge of the First Judicial Party of the State of Jalisco also ordered Bansi (which was not a party to the proceedings) to take note of the fact that LMC's claims to money under the loan agreements and promissory notes described above ("créditos") had been terminated for all legal purposes.
42. LMC immediately objected, on 21 January 2013, to the authenticity and evidentiary value of the Forged Document and requested within the Indirect Amparo proceedings that the District Court address the issue of the authenticity of the Forged Document, which provided the false address and false agent for service of the complaint. To overcome an objection that LMC's Amparo action was stopped/time-barred based upon failure to assert it in a timely fashion, LMC also objected to the authenticity of Mr Arechederra Tovar's purported request for court papers from the files of the 9th Commercial Judge of the First Judicial Party of the State of Jalisco on 6 July 2012, and requested the production of expert evidence to show that it was not his signature in the purported request addressed to the District Court's clerk.

43. On 5 July 2013, in the constitutional hearing, the District Court rejected LMC's request to address the authenticity of the Forged Document. The District Court stated that establishing such falsehood was not relevant to the outcome of the Amparo claim concerning whether LMC had been properly served or not. On the other hand, the District Court admitted LMC's request concerning the falsehood of the signature of Mr José Javier Arechederra Tovar and appointed a court expert.
44. The District Court decided that Mr Arechederra Tovar had not signed the request for certified copies on 6 July 2012 and, therefore, LMC's Amparo claim was not stopped/time-barred. However, in its judgment issued on 4 December 2013, the District Court rejected LMC's Amparo claim precisely on the basis that the claim had been correctly served on LMC and LMC had failed to appear and defend because the person who had been served was designated in the Forged Document as authorized to receive notifications on behalf of LMC.
45. On 19 December 2013, LMC filed an appeal (*Recurso de Revisión*) against this decision before the Second Civil Collegiate Tribunal of the Third Circuit (the “**Appeals Court**”). In such appeal LMC argued that its due process rights had been breached because the District Court had refused to address the authenticity of the Forged Document and allow LMC an opportunity to prove its falsehood. Since the 9th Commercial Judge of the First Judicial Party of the State of Jalisco had relied upon the purported service of the complaint on the individual named in the Forged Document in finding that LMC had been properly served, the authenticity of the Forged Document was the key issue in determining whether LMC had been properly served and, hence, whether its constitutional rights had been observed.
46. However, on 17 April 2015, the Appeals Court decided not to address LMC's due process arguments described above. Instead, asserting that Mexican Amparo courts had the obligation to investigate *sua sponte* situations affecting the admissibility of the claim, the Appeals Court referred to information that the Appeals Court claimed it had collected on its own initiative, that supposedly indicated that Mr Arechederra Tovar, on behalf of LMC, had previously - in August 2012 - initiated and later abandoned another Amparo action in respect of the proceedings before the 9th Commercial Judge of the First Judicial Party of the State of Jalisco (hereafter the “**False Amparo**”). If the earlier filed False Amparo action were authentic and had been abandoned, LMC’s claims would be dismissed with prejudice. However neither Mr Arechederra Tovar nor LMC had ever filed this previous False Amparo. Indeed, the District Court in the Amparo action previously determined that Mr Arechederra Tovar’s signature on the request for court papers dated 6 July 2012 had been forged.

47. Rather than addressing the merits of LMC's appeal, the Appeals Court ordered the District Court to first decide on the admissibility of the Indirect Amparo filed by LMC on 19 December 2012 by deciding on whether or not the False Amparo supposedly filed by LMC in August 2012 was authentic and had been abandoned, thereby precluding the subsequent Indirect Amparo action.
48. As soon as the proceedings before the District Court started on 30 April 2015, LMC filed an objection to the authenticity of the False Amparo supposedly submitted by Mr Arechederra Tovar in August 2012. Such request was admitted on 5 May 2015 by the District Court.
49. On 23 September 2015, the District Court decided what new evidence would be considered in determining the authenticity of the False Amparo. LMC requested that the District Court admit new documentary evidence and lay expert witness testimony to address the issue of the False Amparo. However, the District Court only admitted documentary evidence that was already on file during the previous Indirect Amparo Proceedings and new expert evidence. The District Court refused to admit the other evidence LMC offered, including the deposition of Mr Arechederra Tovar.
50. The District Court has not yet issued a ruling on the authenticity of the False Amparo.

B. BREACHES OF NAFTA CHAPTER 11 SECTION A

51. The Respondent's actions constitute a violation by Mexico of the NAFTA and international law. By unlawfully cancelling LMC's Notes and the Mortgages, Mexico has deprived LMC of its investment. Mexico furthermore breached its obligation to guarantee an adequate legal system to protect LMC's rights. These actions constitute a breach of Mexico's obligations under NAFTA Articles 1110 and 1105 and of international law.

1. LMC's claims to money, Notes and Mortgages were expropriated by Mexico

52. Under NAFTA Article 1110, Mexico is prohibited to "*directly or indirectly ... expropriate an investment of an investor of another Party in its territory or take a measure tantamount to . . . expropriation ..., except: (a) for a public purpose, (b) on a non-discriminatory basis, (c) in accordance with due process of law and Article 1105(1), and (d) on payment of compensation, in accordance with [its provisions].*"

53. Article 1110 expressly provides both for claims of direct expropriation involving a physical taking of property and for claims of indirect expropriation, namely measures that effect an expropriation or that have an effect tantamount to an expropriation. As explained in *Metalclad v. Mexico*, "*Expropriation includes not only open, deliberate or incidental takings of property, but also covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property even if not necessarily to the obvious benefit of the host State.*"²⁸ More generally, it is well settled under international law that expropriation occurs when a property owner is deprived of "*effective use, control, and benefits of property rights*".²⁹
54. In the case at hand, LMC held, until October 2012, a series of economic rights characterized by NAFTA Article 1139 as an investment.
55. As explained above, such rights were, however, annihilated by the judgments of the 9th Commercial Judge of the First Judicial Party of the State of Jalisco and their enforcement by the Registry authorities: LMC's claims to money vis-à-vis the Debtors were terminated;³⁰ the Mortgages were cancelled; the Notes were held to be unenforceable against the Debtors.
56. Such measures amount to an expropriation of LMC's investment: LMC was deprived of its title over the Notes and Mortgages, as well as their use and economic benefit.
57. It is worth noting that, as per NAFTA Article 1101, the obligations set forth in Section A of Chapter 11 apply to breaches resulting from measures adopted or maintained by a Party relating to investors of another Party and investments of investors of another Party in the territory of the Party. Article 201 of NAFTA defines a "measure" as "any law, regulation, procedure, requirement or practice." Moreover, it is well settled under international law that judicial decisions and their enforcement can amount to an expropriation.³¹

²⁸ *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, (Aug. 30, 2000), para.103.

²⁹ *Starrett Housing Corp. and Islamic Republic of Iran*, Award No. In. 32-24-1, 4 Iran-U.S. C.T.R. 122, 154 (1987)

³⁰ "los créditos que dieron origen a las hipotecas constituidas [...] están a la fecha finiquitadas las obligaciones garantizadas para todos los efectos legales conducentes"; ("translation") Order No. OF 4173/2012 dated 9 October 2012 from the 9th Commercial Judge.

³¹ *Sistem Muhendislik Sanayi Ve Ticaret A.S. v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/06/1, Award (Sept. 30, 2009); *Saipem S.p.A. v. The People's Republic of Bangladesh*, ICSID Case No.

58. The taking of LMC's investment is illegal and does not comply with the requirements set forth by NAFTA Article 1110. Notably, the cancellation of Mortgages and Notes was not decided in accordance with due process because LMC was never offered the possibility to participate in the proceeding where such measure was decided. No public purpose nor payment of compensation has taken place. Further, the cancellation of the Mortgages by the Registry of Bucerias was also done in an arbitrary and unlawful manner as described below. Moreover, LMC was not compensated for the cancellation of its rights.

2. LMC was not guaranteed fair and equitable treatment and full protection and security.

59. NAFTA Article 1105(1) requires each Party to "*accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.*" Claimant's investments should be treated in accordance with international law, which includes not only the standard of "*fair and equitable treatment*", but also the customary international law prohibition against arbitrary and discriminatory treatment, and be accorded "*full protection and security*".

60. Pursuant to the international minimum standard of treatment under Article 1105 of NAFTA, Mexico had the international obligation to refrain from acting in a manner that deprived LMC of substantive and procedural due process.

61. In the case at hand, Mexico failed to respect its obligation to provide fair and effective remedies consistent with NAFTA Chapter 11 to LMC. LMC exercised the available remedies under Mexican law within the time-limit set forth by NAFTA Article 1116(2). Despite litigating for almost 3 years, Mexican courts did not give LMC the opportunity to demonstrate that the Forged Document relied upon to annihilate its investment was false. Worse still, the Mexican courts rejected LMC's requests for relief based upon the provisions of the Forged Document whose authenticity they refused to consider arguing that such authenticity was not relevant and had nothing to do with the issue whether LMC had been properly served or not on 4 April 2012. With the expiration of the 3-year time limit to bring the expropriation claim under NAFTA Chapter 11 approaching, LMC has still not been granted the opportunity to demonstrate that it was never properly served in the proceedings leading to the annihilation of its investment.

ARB/05/07, Award, (June, 30 2009), para. 181; *Middle East Cement Shipping and Handling Co v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award para. §143; *Antoine Abou Lahoud and Leila Bounafteh-Abou Lahoud v. Democratic Republic of the Congo*, ICSID Case No. ARB/10/4, Award (Feb. 7, 2014), para. 513

62. Furthermore, the District Court's decision in the current Amparo proceedings to limit the evidence to be considered in determining the authenticity of the False Amparo is also a measure that deprived LMC of full and effective remedies and constitutes a violation of substantive and procedural due process.
63. Moreover, as mentioned above, the Foreclosure Proceedings were registered in the Bucerias Registry in May 2012 and, as a result, pursuant to the rules governing real estate registries, the Bucerias Registry authorities were prevented from cancelling the Mortgages in October 2012. Not only did these authorities disregard the priority of the filing of notice of the Foreclosure Proceedings but, they failed to inform the 9th Commercial Judge about the existence of such previous proceedings when they were served with the 9th Commercial Judge's order purporting to cancel the Mortgages.
64. There are no reasonable and legitimate explanations for the arbitrary actions taken by the Mexican courts and registries in these proceedings to the prejudice of a foreign investor and for the benefit of a Mexican citizen and his companies.

C. RELIEF AND AMOUNT OF DAMAGES

65. LMC seeks the following relief for the actions and breaches by Mexico described herein:
 - Damages of not less than US\$ 200 million, including loss of investment value, lost opportunities and lost profit;
 - Costs associated with these proceedings, including all professional fees and disbursements and the costs of the arbitration;
 - Pre-award and post-award compound interest at a rate to be fixed by the tribunal.

V. NECESSARY INTERNAL ACTIONS TO AUTHORIZE THE REQUEST (ARTICLE 3(1)(E))

66. As required by Article 3(1)(e) of the Rules, LMC has duly authorized the filing of this claim in accordance with its relevant internal procedures.³²

³² LMC's Authorization Letter, **Exhibit C-003**.

VI. NUMBER OF ARBITRATORS AND THE METHOD OF THEIR APPOINTMENT (ARTICLE 3(2) OF THE RULES) AND PLACE OF ARBITRATION

67. NAFTA Article 1123 states that "*unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third who shall be the presiding arbitrator, appointed by agreement of the disputing parties.*" Since the parties have not agreed otherwise concerning the appointment of arbitrators, this provision shall govern.
68. NAFTA Article 1130 provides that the place of arbitration shall be located in a State party to either the New York Convention of 1958 selected in accordance with the Rules. In the present case, the Claimant considers advisable that the place of arbitration be in a non-NAFTA country and proposes Paris (France) as the place of arbitration.

VII. REQUIRED COPIES, PAYMENT, AND POWER OF ATTORNEY

69. In accordance with Article 4 of the Additional Facility Administrative and Financial Rules as amended, this Request is accompanied by five additional signed copies and by a non-refundable fee of US\$ 25,000.³³ The undersigned counsel certifies that all copies included in the submission are based on original documents.

Respectfully submitted,



Mayer Brown LLP
11 December 2015

³³ Proof of payment of the fee prescribed by the Regulation 16 of the Administrative and Financial Regulation of the ICSID, **Exhibit C-004**.