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31 December 2012

**For the Attention of the Secretary-General  
The Secretariat  
International Centre for the Settlement of Investment Disputes  
1818 H Street, N.W.  
MSN U3-301  
Washington D.C. 20433  
U.S.A**

**Via E-Mail: [ICSIDsecretariat@worldbank.org](mailto:ICSIDsecretariat@worldbank.org)**

**UNCITRAL Secretariat  
United Nations Commission on International Trade Law  
Vienna International Centre  
P.O. Box 500  
A-1400 Vienna, Austria**

**Via UPS**

**Ana Isabel Belfon  
Procurator General de la Nacion**

**Chief of International Trade Negotiations  
Ministry of Commerce and Industry  
Panama P.O. Box 0815-01119  
Panama, Republic of Panama**

**Via UPS**

**John M. Melle,  
Assistant U.S. Trade Representative for the Americas  
Office of the United States Trade Representative  
600 17th Street NW  
Washington, DC 20508**

**Via Fax 202 395 9675**

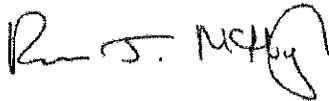
Dear Sir/Madam,

**RE: Notice of Dispute Under FTA/BIT: Retire in Chiriqui S.A, James Falgout, Barbara Falgout and Clarence Johnson ("Investors") v. The Republic of Panama**

Pursuant to Articles 10.15 and 10.16.2 of the Panama/U.S. Promotion Agreement and the associated articles of the Bilateral Investment Treaty between Panama and the US dated 27 October 1982, please find enclosed the Investors' formal notice of a dispute.

We look forward to hearing from you so that this matter may be resolved.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ronan McHugh". The signature is stylized and written in a cursive-like font.

Ronan McHugh  
Shareholder  
Bailey Law pc.

cc. The Investors

**JAMES FALGOUT, BARBARA FALGOUT, CLARENCE JOHNSON,  
AND RETIRE IN CHIRIQUI, SA**

**FORMAL NOTICE OF INTENT TO ARBITRATE**

**TO:**

**For the Attention of the Secretary-General  
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Panama, Republic of Panama**

**John M. Melle,  
Assistant U.S. Trade Representative for the Americas  
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600 17th Street NW  
Washington, DC 20508  
USA**

**Via Facsimile: 202 395 9675**

This document constitutes formal legal notice under Articles 10.15 and 10.16.2 of Chapter 10, Investment, of the United States-Panama Trade Promotion Agreement dated 28 June 2007 (approved by Panama on 11 July 2007 and by the United States on 21 October 2011),(hereinafter “the FTA”)<sup>1</sup>, that a dispute has arisen between the Republic of Panama and the following qualifying United States investors:

- Retire in Chiriqui, S.A.(“RIC”);
- James Falgout
- Barbara Falgout
- Clarence Johnson (Collectively, herein, “Investors”)

Each of the above is an “investor” within the definitions contained in Article 10.29 of Chapter 10 of the FTA (and Article I of the BIT) thereby qualifying for protections afforded under Article 10 of the same. Please note that this dispute arises out of and relates to the treatment accorded to the Investors by Panama in breach of its treaty obligations under the FTA and the BIT as well as Panama’s derogation from customary international law, which treatment has caused the Investors to suffer, and to continue to suffer, harm and damages, both material and moral damages.

#### **IV. Summary of Facts**

##### **(i) Panama Has Wrongfully Refused Title to And Allowed a Road to be Built Illegal upon Investors’ Property**

James Falgout, Barbara Falgout and Clarence Johnson are all United States citizens and nationals. RIC SA is a private corporation that was incorporated in Panama

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<sup>1</sup> The Investors are aware that Article 1.3.2 of the FTA provides that Article VII [the Article dealing with Disputes] of the Treaty between the United States and Panama Concerning the Treatment and Protection of Investments with its Annex and Agreed Minutes that was signed in Washington D.C. on 27 October 1982 (the “BIT”) were “suspended” on the entry into force of the FTA. However, to the extent that Article VII and the Protocol to it dated 1 June 2000 remain in effect the Investors make this Notice under the BIT and Article VII thereof and of the Protocol.

in 2005 by Investors, James Falgout, Barbara Falgout and Clarence Johnson and which is owned and controlled by the same. RIC was established by the Investors for the sole and specific purpose of purchasing, promoting, developing, designing and constructing the Investors' investment of Villas de Playa Tortuga, a coastal residential development in Panama.

In or about December of 2004, the Investors' representatives performed a feasibility and social economic study into the purchase and development of Panama state owned property which was occupied as Rights of Possession on the Pacific Coast of Baru, Chiriqui, Panama. The Investors' specific and express purpose of purchasing and developing property in Panama was to construct an upscale Pacific Coastal Resort Residential Community with condominiums, hotels, restaurants, lounge, pools, boat marina, and high end residential homes. This purpose was made known to Panama at the time of these studies.

The property that the Investors studied comprised approximately 41 hectares, which included 6 hectares 4812.13 m<sup>2</sup> of beachfront land property was administrated by the Panamanian state agencies of MEF Catastro and MIDA. Subsequent to the Investors' studies, in 2005 the Investors purchased 35 hectares comprising all but the 6 hectares 4812.13 m<sup>2</sup> of beachfront land from the Panama agency MIDA and received title for all of the land but the 6 hectares 4812.13 m<sup>2</sup> of beachfront land from MEF Catastro.

Later, in 2005 Investor Barbara Falgout applied for title for the 6 hectares 4812.13 m<sup>2</sup> of beachfront land administrated by MEF Catastro. All requirements to obtain title to this beachfront land from the State were successfully met by Barbara Falgout including all Municipal Public Edicts of 2005 that were placed in the office of the Puerto Armuelles

Corregidor of Police Luzmila Mongalo and Iris Vigil. There was no third party opposition to the titling of the land by Investor Barbara Falgout. Furthermore, no opposition to the titling of the land was made by MIVI, MOP, or the Municipality of Baru, specifically Mayor Franklin Valdes, Municipality Engineer Anel Miranda R., or the Corregidor of Police Luzmila Mongalo and Iris Vigil.

Despite this, and despite representations from Attorney Richard Lemus of MEF Catastro that title would be issued to the beachfront land for Investor, Panama, via its agency MEF Castastro, performed an intentionally improper survey inspection of the beachfront property that did not properly record the polygon of the property. The Investors witnessed and objected to this improper survey by MEF Catastro.

On or about 1 November 2006, MEF Castastro issued MEF Resolution 238 of the Director of Catastro y Bienes Patrimoniales Resolution 238 denied title to the beachfront property to Barbara Falgout on the basis that Investor Barbara Falgout was a foreigner and foreigners can not own land within 10 kilometers of the border of Panama. The nearest border mark, however, puts the property owned of Barbara Falgout approximately 13.8 kilometers from Costa Rica. At the end of 2009, the Investors had a survey on site done by TG, National Geographic Institute Tommy Guardia of Ministry of Public Work of the Republic of Panama (MOP), which established and certified that Barbara Falgout's investment property is outside of the 10 kilometers of the border zone. This certification is in the ANATI Titling file of the Barbara Falgout in Panama City. Despite this survey, the Investors' have still not to this day been given title to the beachfront land.

In 2007, despite MEF Catastro's Resolution No. 238, the Investors obtained legal approval to develop the remaining 35 hectares of property. The investors submitted to

the Panamanian agency, MIVIOT the first phase of development that they reviewed. MIVIOT approved the first phase of the Master Plan and Resort Designs for Villas de Playa Tortuga for construction in 2008, and RIC, S.A. in 2009 started construction work on the infrastructure and 4 villa style townhomes. The Investors incurred costs of USD \$4,481,753.11 in performing this works.

However, this work did not proceed because beginning in or around February 2010, an invasion of the property of the Investors' occurred under the protection of and involving the Mayor of Baru Municipality and its police. This invasion led to the construction of a road, illegally and improperly, condoned by the Municipal authorities, on the property that the Investors had purchased. The road began to be used then for the purposes of illegal narcotics transit. The Investors informed the relevant Panama authorities. Attempts by the Investors to reclaim there property were stopped by the police, and the police in fact issued threats of beatings and the arrest of the Investors. The Investors informed the relevant Panama agencies, including even the President of Panama, of this illegal invasion of their property, but no effective action was taken. For example, in February 2010 the Investors informed directly MEF Catastro Attorney Analucia Montenegro (now ANATI Catastro) and later to Carlos Dutari Director of Titling of Catastro ANATI who is now in charge of the titling of Barbara Falgout's property. Despite this, ANATI Catastro to date has failed, by way of acts of omission, to halt the continuing invasion of the Investors' property. Indeed, to the contrary, MOP (Ministerio de Obras Publicas)/MIVI or MIVIOT (Ministerio de Vivienda y Ordenamiento Territorial) and MEF (Ministerio de Economia y Finanzas)

Castastro/ANATI have attempted to legalize the illegal road but to do so without offering any compensation to the Investors.

As a result of this situation, in 2011 the Investors met with the Governor of Chiriqui and requested the closure of an illegal road. In that meeting the Governor of Chiriqui asked her legal advisor, attorney Luis Lopez, if the Municipality of Baru and its Mayor had followed all proper legal procedures to open a road through the Investors' property. Luis Lopez told the Governor that no due process was applied to open the road, which was therefore illegal with the purpose of divide the property of the Investors and force the sale of at least that area to a third party. The Governor responded that this road was illegal and ordered the Major of Baru to collaborate and facilitate with the Investors to claim the property by rebuilding the 13 meters of fence via issuance of a Resolution No. 078 of June 22, 2011

The Mayor of Baru has refused to follow the directive of the Governor of Chiriqui in Resolution No. 78. To the contrary, in August of 2011 a mob with the direct help of the Mayor of Baru, his legal advisor Eduardo Caballero, the Mayor's office secretary Maria Piedad Checa, Municipality Engineer Anel Miranda R, the Corregidor of Police Luzmila Mongalo and Iris Vigil of Baru, Chiriqui, Panama attended and invaded the Investors' property for the express purpose of destroying the 13 meters of fencing erected by the Investors to protect their property, so as to keep the illegal road open without any consequences for their actions. In response, the Investors read to the acting municipality lawyer, Eduardo Caballero, the BIT and their rights thereunder, but they were ignored and laughed at by the state officials. This incident is recorded on video which has been provided to several Panamanian government agencies, including DINATRADEC MICI.

No action has been taken by any agency to assist or protect the Investors' rights. In fact, the fence erected by the Investors has been destroyed for the fourth time now without any protection of assistance from the public authorities of Panama.

In 2012 an inspection was conducted and implemented by the Panama Government agency, MIVIOT of David Chiriqui, Panama in accordance to the official letter from the Vice Minister of MIVIOT Eladio Ostia Pravia of Panama. The onsite inspection recognized the property rights of Investor Barbara Falgout as related to the MIVI inspections of 2005 and 2009 and Resolution 078 from the Governor of Chiriqui and the titling application map on file with ANATI. Three MIVIOT Architects, from the three sections of MIVIOT with jurisdiction in the case, signed off on this inspection. However, Architect Dalys de Guevara, of one of these three sections of MIVIOT that produced the note of inspections as to the rights of Investor Barbara Falgout has taken it upon herself to ignore and overrule her own department inspections of 2005, 2009 and 2012.

**(ii) Panama Has Harassed and Victimized Investors Such that they have Had Either to Flee Panama or Fear for their Safety**

As a consequence of Investors seeking to oppose the wrongful failure by Panamanian officials to provide proper title to the beachfront portion of their property, and seeking to ensure their land was not subject to invasion, illegal use and the construction of an illegal road on their property, the Investors have become subject to extreme harassment perpetrated by and with the consent of the state agencies of Panama. This has included the following:

- 31 March 2008 – Police and the Public Ministry of Puerto Armuelles conducted an illegal search on the Investors' property of RIC, S.A. apparently looking for an illegal weapon. No illegal weapon was found and there is no

such weapon held by the Investors and there is no cause to believe that one was ever present.

- April 2008 – Puerto Armuelles Police break into the house of the Investors located at Las Palmas, Puerto Armuelles looking for a supposed gangster that was verified as not there. The Police never provided a report of the incident as formally requested by the Investors.
- 20 August 2008 – The Mayor of Baru, Chiriqui announces on local radio his intent to arrest Investor, James Falgout and arrives at the Investors' property to do so. There is no legal basis for any such arrest and no arrest is made but intimidation was made by the Mayor.
- 2010- Attempts are made to plant narcotics on the Investors' property and are caught on video by the Investors. Despite the video and reports to the police no action is taken by the police to investigate the matter.
- 2010 – With the use of police force and abuse of power and intimidation, the Mayor of Baru invaded the property of Investor Barbara Falgout with the Corregidor of Police Luzmila Mongalo and Iris Vigil, Anel Miranda Municipality Engineer, and other officials of the Municipality, MIVIOT and ANATI Catastro. Verbal orders were then given to the community to establish a road and mark the illegal road placement with poles and sticks. The police take James Falgout under false charges and with no arrest warrant to the police station to intimidate him.
- 2010 – Police in Puerto Armuelles inform anti narcotics police purposely in bad faith that the Investors are engaged in narcotics trafficking, that was verified as wrongfully by the narcotics police.
- 2010 – All Corregidoras of the Police of Puerto Armuelles are informed by the Investors of the logistics and conduction of narcotics trafficking on the

illegal road on the private property of the Investors. No action is taken to stop the narcotics trafficking nor the invasion of property via the illegal road opened by them.

- 2010 – Four (4) attempts to kill the Investor James Falgout occur. All reported to the police and no action is taken.
- July 2011 - Attempted kidnapping of a family member of RIC, S.A. as an action of a transnational criminal group suggesting involvement of official's with an intent to blackmail to acquire the property holdings of the Investors. The matter is reported to the Public Ministry of Chiriqui and the Police in Puerto Armuelles but no action is taken.
- 2011 – Officials of the Municipality of Baru defame the Investors by informing persons who wish to conduct business with the Investors that the Investors are involved in money laundering and drug trafficking.
- September 2011- the Investors hold an emergency meeting with Tomas Duncan of DINATRADEC MICI in which Mr. Duncan informs the Investors that DINATRADEC MICI can not provide protection and security for the Investors if the police are involved.
- November 2011--The Investors announce the termination of the Villas de Playa Tortuga investment plan because of the information relayed by Tomas Duncan of DINATRADEC MICI that the Investors will not be protected by the police. The government of Panama agency offices in Panama City and David Chiriqui for the Investment Development are informed of the termination of the project of Villas de Playa Tortuga and these agencies are MIVIOT, MOP, ANAM, MINSA, ATTT, ANATI, Fireman Security Office DINASEPI, Municipality of Baru, Governor of Chiriqui, Judicial and Public Ministry Offices and others.
- 2011—Barbara Falgout and Clarence Johnson leave Panama.

- 13 March 2012 – At approximately 7:30 pm a large fire was started on the property of the Investors. The arsonists were watched by the Investors. The arson was reported immediately to the Corregidor of the Police of Puerto Armuelles and environmental agency ANAM. No action is taken.
- 15 May 2012 - Corregidor of the Police of Puerto Armuelles along with the police come to the Investors' property to arrest James Falgout for armed kidnapping and an armed hostage situation as reported by two third parties at Villas de Playa Tortuga. James Falgout is not there because he is in the City of David all day as certified by Corregidor of City of David and other official's proof. Knowing this, the Corregidor of the Police of Puerto Armuelles fails to arrest these two people for false statements, a crime in Panama. Instead the Corregidor of the Police of Puerto Armuelles allows these two people along with others to make more false accusations against James Falgout.
- May 2012 – Special DIJ Police Jorge Samudio conducts an armed search on the Investors' property looking for an illegal weapon ordered by the Public Ministry Official of Paso Canoas at DIJ Office of Paso Canoas, Baru, in a intent to bypass the jurisdiction of Public Ministry of Puerto Armuelles that was fully informed of the legal permits and part acting of harassment against the Investors. The Investors are not on the property at the time of the search and a legal shotgun was taken by the Special Police off the property of the Investors. During the search the Special Police had their automatics M16 weapons ready to fire. The Special Police failed to conduct a proper investigation that the weapon held by Investor James Falgout was a legal and properly registered weapon. The Public Ministry, DIJ of Puerto Armuelles, and the Corregidor of the Police of Puerto Armuelles have direct knowledge of the legal status of the weapon (Photos and Video show the Corregidor of the Police of Puerto Armuelles and the Police of Puerto Armuelles checking the legal weapon permit) of James Falgout but failed to inform the Special Police of this and according to the investigating Sergeant Jorge Samudio this information was purposely omitted. The Public Ministry, the DIJ of Puerto

information was purposely omitted. The Public Ministry, the DIJ of Puerto Armuelles, and the Corregidor of the Police of Puerto Armuelles also have direct knowledge that the Investors have denounced narcotic trafficking in the very area in which the Special Police in plain clothes entered into the property. Having this knowledge of this conduct, the Investors take this as an attempt to draw the Investors into a fire fight that was designed to kill Investor James Falgout. The shotgun was taken by the Special Police overnight despite the fact that the shotgun was legal and that was verify it has not been shot in a very long time. Videos and photos were shown to the special police of the narcotics trafficking and that the safety that night was dependent on the legal weapon held by James Falgout. The next morning a reconnaissance was conducted and it was found a series of boots marks heading toward the area of occupation of the Investor James Falgout and his wife. The Investors take this as an attempt on their life.

- 18 July 2012- In an orchestrated event which directly involved the same two third persons mentioned above, the Corregidor of the Police of Puerto Armuelles, Police of Puerto Armuelles, Public Ministry of Baru, Chiriqui, Panama, and their Attorney Gustavo Javier Montilla, Investor James Falgout is placed under arrest by the Public Ministry Officer Yariela Rodriguez to force James Falgout to an unfair interrogatory designed to make him make a compromised statement without his attorney present to make a confession as to a supposed crime that the Public Ministry of Baru, Chiriqui. Panama has without any type of investigation or due process found the Investor James Falgout guilty of a counter lawsuit allowed by the Public Ministry for defamation charges never investigated when the Investors placed the initial lawsuit and these charges against James Falgout lack merit for jail. Threats were made by the Public Ministry Officer Yariela Rodriguez against Investor James Falgout that James Falgout would be detained in jail in another location if he did not accept the accusations. The police of Puerto Armuelles agreed that the actions against the Investor James Falgout are illegal and are an abuse conducted by Public Ministry Officer Yariela Rodriguez. When the lawyer of

James Falgout showed up and James Falgout stated that he had the right to not allow any interrogatory against him under Article 25 of the Constitution of Panama which is legitimate right, he is released and the Public Ministry of Baru conducts no investigation of the harassment against Investor James Falgout.

- August 2012 – The Governor of Chiriqui, with her legal department, are shown by the Investors video, photos, and testimony of the logistics of narcotics trafficking on the illegal road on the private property of the Investors. The Governor denies full protection and security to Investors' Investment expressly in Resolution 097.
- November 2012- the Investors are told in a meeting with the Panama State Agency, the Office of Defense of the People of Panama that the Mayor of Baru is very well protected within the hierarchy of the political infrastructure of Panama and because of this the Mayor does as he pleases without consequences as to the law. Within this same meeting it was stated by the Defense of the People that Panama does not respect their obligations under International Treaties or International Law.

#### **IV. Losses**

Panama's improper denial of the Investors title to the 6 hectares 4812.13 m2 of beachfront land and Panama's condoning of the illegal road through the Investors' property, together with the continuing State sanctioned harassment and victimization of the Investors has entirely destroyed Investors' investment involving the development of the Pacific Coastal Resort Community of Villas de Playa Tortuga. As a consequence, the Investors have been reduced to planting coconuts on their property. This was never the intent of plan for their investment

and even this is stymied and thwarted by arsons and the police's refusal to properly investigate the same.

### **III. Panama's Violations of the FTA and BIT and Customary International Law**

#### **1. Panama's violation of the guarantees provided under the BIT**

Such measures of Panama as the expropriation of the investment of the Investors in Panama, depriving the Investors of the value of their investment and entitlement to full payment and profit from its investment as well as the failure of Panama to pay adequate and prompt compensation related to the investments are unlawful measures attributable to Panama. By enforcing these unlawful measures, Panama violated several of its obligations under the FTA and BIT. The violations include, but are not limited to, the following:

- **Violation of the guarantees under Article 10.3 of the FTA (Article II of the BIT)** – Panama's duty to accord to the Investors investment treatment no less favorable than that accorded to investments of Panamanian investors and investments of investors of any third state or other U.S. investors. Article 10.4 of the FTA and Article II BIT incorporates the more favorable obligations of Panama contained in other investment treaties. These include but are not limited to:

- **Panama's duty to treat Investors' investment in accordance with international law.**

Article 10.3 of the FTA (Article II of the BIT) incorporates the duty of Panama to treat the Investors' investment in accordance with international law principles. The treatment of the Investors by Panama evidences a denial of justice by Panama against the Investors and their investment, in breach of obligations under public international law.

- **Panama's duty to provide fair and equitable treatment.**

Article 10.5 of the FTA (and Article II of the BIT) incorporates the duty of Panama to provide fair and equitable treatment to Investors' investment. The above described unlawful measures are evidence that Investors' investments have been treated in an unfair and inequitable way. The unlawful measures were based on contradictory, arbitrary and unreasonable actions by Panama.

- **Panama's duty not to discriminate.**

Article 10 of the FTA (And Article II of the BIT) incorporates the duty of Panama not to discriminate against Investors. Through its unlawful measures, Panama discriminated against and displayed bias to the detriment of Investors. In this regard, for example, Investors are aware of the Pacific Coastal Resort Residential Community located less than 30 kilometers from Investors' planned investment called La Barqueta, Las Olas, S.A. that is not registered as an approved project by MIVIOT.

• **Violation of the guarantees under Article 10.7 of the FTA (Article IV of the BIT)** – Panama's duty not to subject the Investors' investments directly or indirectly to expropriation or to measures having similar effects without a public purpose, without prompt adequate and effective compensation, without discrimination and in accordance with due process of law and the application of the principles of treatment contained in Articles 10.5 of the FTA and Article II of the BIT.

• **Violation of the guarantees under Article 10.5 of the FTA (Article II.2 of the BIT)** – Panama's duty to provide to the Investors' full protection and security and to provide the level of police protection required under customary international law.

The above-described unlawful measures deprived Investors of valuable assets including, but not limited to, access to its property and prevention of its intended use. These measures have also led to the confiscation of those assets in a discriminatory manner, in violation of due process of law and without compensation. Panama, having expropriated Investors investment, is therefore obligated to pay compensation in accordance with Article 10.7 of the FTA (Article III of the BIT). Moreover, the continuous harassment of the Investors by the Panamanian authorities, either by or with the knowledge of, the police, violated the Investors rights to full protection of the law under the BIT/FTA.

## **2. Panama's violation of guarantees under Customary International Law**

As foreign investors, Investors' benefit from the legal guarantees that exist under customary international law, which are independently binding on all states.

Panama's unlawful measures constituted violations of, among others, the following rights under international law and international customary law:

- (a) the guarantee against unlawful expropriation, which includes expropriation that is not accompanied by adequate effective and prompt compensation and expropriation undertaken without due process of law (and as provided for in Article 10.7 of the FTA treaty also);
- (b) the guarantee of a minimum standard of treatment, including fair and equitable treatment, and full protection and security for the investment;
- (c) the guarantee against discrimination; and
- (d) the guarantee against denial of justice.

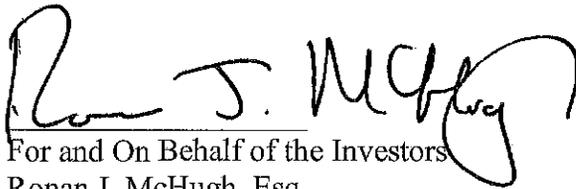
**IV. Damages**

As a result of Panama's above-outlined unlawful measures under the FTA, as well as its numerous breaches of customary international law, Investors' has suffered losses and damages in an amount to be fully quantified, but in any event, not less than USD \$98,483,753.11, exclusive of interest, a number of consequential damages and legal fees and costs.

**V. Settlement of The Dispute**

Panama is bound to fully compensate Investors for its breaches of the guarantees it provided under the FTA (or BIT) as well as under customary international law. The Investors are ready to commence arbitration and/or any other legal procedure to receive compensation of their damages. The Investors are also, however, willing to discuss, without prejudice and with full reservations, the form and amount of an amicable settlement as well as providing Panama with additional information and documentation as may be requested by Panama. Failing such an amicable settlement, Investor shall commence international legal procedures against Panama as provided for under the FTA (or BIT).

Respectfully Submitted,



For and On Behalf of the Investors

Ronan J. McHugh, Esq.

Attorney At Law

Shareholder

Bailey Law pc

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Dated: 31 December 2012