AMERRA CAPITAL MANAGEMENT, LLC

AMERRA AGRI FUND, LP

AMERRA AGRI OPPORTUNITY FUND, LP

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, ON BEHALF OF THE JPMORGAN CHASE RETIREMENT PLAN

(Claimants)

v.

UNITED MEXICAN STATES

(Respondent)

CLAIMANTS' NOTICE OF ARBITRATION PURSUANT TO CHAPTER 14 OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, THE UNITED MEXICAN STATES, AND CANADA; CHAPTER 11 OF THE NORTH AMERICAN FREE TRADE AGREEMENT; AND UNDER THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

August 3, 2022

AMERRA Capital Management, LLC
[redacted]

Claimant, Legal Representative, and Investment Manager of the Claimants

SAI Derecho & Economía, S.C.
Beatriz Eugenia Leycegui Gardoqui
Itzel Ivón Martínez Hernández

Legal Representative and Counsel for Claimants AMERRA Capital Management, LLC; AMERRA Agri Fund, LP and AMERRA Agri Opportunity Fund, LP

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1. AMERRA Capital Management, LLC ("AMERRA"); AMERRA Agri Fund, LP ("Agri Fund"); AMERRA Agri Opportunity Fund, LP ("Agri Opportunity"); and JPMorgan Chase Bank, National Association, on behalf of the "JPMorgan Chase Retirement Plan" ("JPMC Plan"), a tax-qualified defined benefit retirement plan (collectively, the "Claimants" or "Disputing Investors");[1] hereby submit a claim to arbitration ("Notice of Arbitration") against the United Mexican States ("Mexico" or "Respondent") under the North American Free Trade Agreement ("NAFTA"), Chapter 11, Section B (Article 1120(1)(c)), and subject to the United Nations Commission on International Trade Law Arbitration Rules ("UNCITRAL Arbitration Rules").

2. On July 1, 2020, the Agreement between the United States of America, the United Mexican States, and Canada ("USMCA") entered into force. Pursuant to Annex 14-C (Legacy Investment Claims and Pending Claims), paragraphs 1, 3, and 6 of such Agreement; Section B of Chapter 11 (Investment) of NAFTA, continues to apply to claims relating to "legacy investments", this is, an "investment of an investor of another Party established or acquired between January 1, 1994, and the date of termination of NAFTA 1994, and in existence on the date of entry into force of the Agreement [USMCA]".

I. SUMMARY OF THE DISPUTE

3. Claimants submit this Notice of Arbitration, pursuant to NAFTA Article 1116 (Claim by an Investor of a Party on Its Own Behalf),[2] against measures that Mexico adopted,[3] in breach of its obligations under NAFTA Chapter 11, which destroyed Claimants' investment in Mexico. Throughout this arbitration Claimants will demonstrate that Mexico, through its judiciary, has repeatedly acted in an arbitrary, discriminatory, and unlawful manner, violating Claimants' due process rights in the most rank and fundamental way imaginable.

4. The Claimants granted a loan and credit to Mexican companies and secured them with two mortgages on prime real estate located in the State of Sinaloa. The latter constitute the Claimants' investment. Following the debtors' default in the payment of the loan and credit, the Claimants attempted to foreclose the mortgages through various actions, all of which were improperly denied by the Mexican state and federal courts in Sinaloa.

5. Each procedural attempt by the Claimants to hold the debtors liable was met with blatant disregard by such judicial authorities who denied the Claimants the right of access to justice. Instead of upholding the Claimants' right to be heard in court, these

[1] NAFTA Article 1139 (Definitions): "For purposes of this Chapter: […] **disputing investor** means an investor that makes a claim under Section B; […]". (*emphasis in original*) AMERRA, Agri Fund, Agri Opportunity and the JPMC Plan are the disputing investors.
[2] NAFTA Article 1116: "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), […]."
[3] NAFTA Article 1139: "For purposes of this Chapter: […] **disputing Party** means a Party against which a claim is made under Section B." (*emphasis in original*).

authorities actively obstructed and thwarted the Claimants' efforts to enforce their rights over their investment.

6. The state and federal courts in Sinaloa should have, among other things: (i) granted the Claimants effective access to a summary mortgage trial to foreclose on the mortgages; (ii) notified the Claimants of two labor proceedings that involved the unlawful auction of the mortgaged real estate before the Labor Board of the State of Sinaloa; (iii) recognized the mortgages of the Claimants for the total amount secured and the Claimants' degree of preference in a bankruptcy proceeding involving the debtors; (iv) allowed the Claimants to participate in the decision-making process inherent to the bankruptcy proceeding; (v) heard the Claimant's position in connection with the illegal drafting of a bankruptcy agreement; and (vi) respected the rights of the Claimants as mortgagees.

7. Instead, the Sinaloa state and federal courts: (i) unjustly delayed the commencement of the summary mortgage trial with respect to both mortgages; (ii) failed to notify the Claimants of the existence of the labor proceedings before the Labor Board of the State of Sinaloa; (iii) failed to recognize the Claimants as preferred creditors in the bankruptcy proceeding (which is a fundamental right of mortgagees); (iv) prevented the Claimants from participating in the decision-making process of the bankruptcy proceeding by diluting their participation in the latter; (v) deprived the Claimants of their right to be heard in the bankruptcy proceeding and failed to undertake all (or any) necessary actions to protect the Claimants' mortgage rights; (vi) recognized and enforced a fraudulent bankruptcy agreement; and (vii) stripped the Claimants of their mortgage rights by surrendering partial possession of the mortgaged real estate to other purported creditors of the debtors; all of which destroyed the investment of the Claimants.

8. The judicial authorities in Sinaloa acted in an arbitrary, discriminatory, and illegal manner; failed to provide the Claimants, as well as their investment in Mexico, with due protection under international law, and subjected them to a systematic lack of due process.

9. As a result, Mexico has adopted measures tantamount to expropriation without just compensation, which have irreparably destroyed the mortgages and has breached its obligation to treat the investment of the Claimants in accordance with international law, including fair and equitable treatment and full protection and security, thereby frustrating the Claimants' legitimate expectations with respect to their investment.

10. At the end of the day, Claimants were denied of their rights in such a way that no legal system that observes the rule of law would tolerate.

II. PARTIES TO THE DISPUTE

A. Claimants

a. Names and Contact Details

AMERRA Agri Fund, LP; AMERRA Agri Opportunity Fund, LP; JPMorgan Chase Bank, National Association, on behalf of the JPMorgan Chase Retirement Plan; and AMERRA Capital Management, LLC, acting on its own behalf and as Investment Manager and Representative of the former

Address

[redacted]

b. Legal Representatives and Service of Documents

Name[4]	**E-mail**	**Telephone**
[redacted]	[redacted]	[redacted]

Address
AMERRA Capital Management, LLC

[redacted]

Names[5]	**E-mails**	**Telephones**
Beatriz Eugenia Leycegui Gardoqui	blg@sai.com.mx	+52 55 5433 4268
Itzel Ivón Martínez Hernández	imh@sai.com.mx	+52 55 5985 6645

Address
SAI Derecho & Economía, S.C.
Monte Cáucaso No. 915, Int. 305
Colonia Lomas de Chapultepec, C.P. 11000
Demarcación Territorial Miguel Hidalgo
Mexico City, Mexico

[4] **Exhibit C-01** includes documents of AMERRA's authorization to represent the JPMC Plan and the powers of attorney granted to [redacted], Beatriz Leycegui Gardoqui and Itzel Martínez Hernández by AMERRA, Agri Fund and Agri Opportunity.
[5] See **Exhibit C-01** above.

B. Respondent

a. Names and Contact Details

UNITED MEXICAN STATES

Dirección General de Consultoría Jurídica de Comercio Internacional
Secretaría de Economía
Pachuca #189, Piso 19
Col. Condesa
Demarcación Territorial Cuauhtémoc
Ciudad de México
C.P. 06140

b. Legal Representative and Service of Documents

The place of delivery of notice and other documents under Section B of NAFTA Chapter 11 is:[6]

Orlando Pérez Gárate
Director-General of the Consultoría Jurídica de Comercio Internacional

Address
Pachuca #189, Piso 19
Col. Condesa
Demarcación Territorial Cuauhtémoc
Ciudad de México
C.P. 06140
Telephones: (55) 57 29 91 34 y 35
E-mail: orlando.perez@economia.gob.mx

III. DISPUTING INVESTORS AND INVESTMENT

11. Two of the Disputing Investors are limited partnerships (Agri Fund and Agri Opportunity); one is a limited liability company (AMERRA), and one is a trust (the JPMC Plan),[7] all of them organized and existing under the laws of the United States

[6] Internal Regulations of Mexico's Ministry of Economy, Article 48(IX): "The *Dirección General de Consultoría Jurídica de Comercio Internacional* has the following attributions: […] IX. To act as the office in charge of receiving notifications and other documents in dispute settlement proceedings initiated by foreign investors against Mexico in accordance with free trade agreements to which Mexico is a party, in investment matters." (Own translation)

[7] The JPMC Plan is a trust created and organized under the laws of the United States and serves as an employer-sponsored retirement plan for, among other conditions of eligibility, employees on the United States of America payroll of JP Morgan Chase Bank, N.A. and other related and affiliated entities. The Plan Document provides that "the construction, regulation, validity and effect of the

of America ("U.S."), domiciled within its territory.[8] Therefore, all Disputing Investors are enterprises of the U.S., and therefore investors of a Party, in accordance with the corresponding definitions in NAFTA Articles 1139 and 201.[9]

12. NAFTA Article 1139 defines investment as following:

> For purposes of this Chapter:
>
> […]
>
> **investment** means:
>
> […]
>
> (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; [...]. (*emphasis in original*)

13. The Claimants' investment constitutes intangible real estate and was acquired in the expectation and used for the purpose of an economic benefit.

14. The investment consists of two mortgages (hereinafter, the "Mortgages") constituted in favor of AMERRA, in its capacity as agent and investment manager of Agri Fund, Agri Opportunity and the JPMC Plan, by Compañía Azucarera de los Mochis, S.A. de C.V. ("CALMSA"), on two large and prime real estate properties (identified below as Lot 11 and Lot 16) located in the City of Los Mochis in the State of Sinaloa. The Mortgages secured the payment of (i) a loan granted by AMERRA, Agri Fund and Agri Opportunity to Agrícola Ohuira, S.A. de C.V. ("Ohuira"), as borrower, and secured by CALMSA, as mortgage guarantor (identified below as the "*Refaccionario* Loan"); and (ii) a credit granted by the Claimants to CALMSA and Ohuira jointly as co-borrowers, (identified below as the "AMERRA Credit" and collectively with the *Refaccionario* Loan,

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provisions of the Plan shall be determined in accordance with the laws of the State of New York except as superseded by ERISA (the Employee Retirement Income Security Act of 1974 of the United States of America". Furthermore, the Plan is considered a 401(a) plan, referring to the plan meeting the requirements of the Internal Revenue Code of the United States of America Section 401(a). In order to qualify under Section 401(a) of the Internal Revenue Code a trust must, among other requirements, be "created or organized in the United States [of America]". The Internal Revenue Service of the United States of America has determined favorably that the Plan qualifies as a 401(a) plan, because, among other requirements, it is created or organized in the United States of America. As a result, the Plan is an investor of the United States of America. See **Exhibit C-02**.

[8] **Exhibit C-03** contains documents evidencing the legal existence and nationality of AMERRA, Agri Fund and Agri Opportunity.

[9] NAFTA Article 1139: "For purposes of this Chapter: **enterprise** means an 'enterprise' as defined in Article 201 (Definitions of General Application), and a branch of an enterprise; [...] **enterprise of a Party** means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there; […] **investor 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; [...]." (*emphasis in original*).
NAFTA Article 201: "For the purposes of this Agreement, unless otherwise specified: […] **enterprise** 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; […]." (*emphasis in original*)

the "Loan and Credit"). The principal amount of the Loan and Credit exceeds [redacted] without interests and other expenses incurred to date. The principal and interest payment obligations of CALMSA and Ohuira under the Loan and Credit (collectively, CALMSA and Ohuira, the "Debtors") were documented, among others, in the respective loan and credit agreements, in promissory notes and in the Mortgages, which were used to secure the Loan and Credit. [10]

15. In light of the foregoing, the Mortgages are protected investments under NAFTA Article 1139(g).

16. The investments are "legacy investments" pursuant to paragraph 6(a) of USMCA Annex 14-C, as the Claimants acquired them during the time NAFTA was in force.

17. The transactions that originated the Claimants' investment are described in section V infra.

IV. AGREEMENT TO ARBITRATE

18. Mexico provided its general consent, with respect to "legacy investments", to submit claims to arbitration under Section B of NAFTA Chapter 11 when it signed and ratified the USMCA, which has been in force since July 1, 2020.[11] Such consent to arbitration is set forth in paragraph 1(a) of USMCA Annex 14-C,[12] and pursuant to paragraph 3 of the same Annex,[13] Mexico's consent will expire three years after the termination of NAFTA, *i.e.*, on June 30, 2023.

19. Pursuant to NAFTA Article 1122(1) (Consent to Arbitration), Mexico irrevocably granted its consent for the submission of a claim to arbitration under NAFTA Chapter 11, which entered into force for Mexico on January 1, 1994.[14]

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[10] **Exhibit C-04** contains copies of the deeds of the two Mortgages that constitute the investment of the Investors, as detailed in section III of this Notice of Arbitration.

[11] **Exhibit C-05** contains the relevant part of the *DECRETO Promulgatorio del Protocolo por el que se Sustituye el Tratado de Libre Comercio de América del Norte por el Tratado entre los Estados Unidos Mexicanos, los Estados Unidos de América y Canadá, hecho en Buenos Aires, el treinta de noviembre de dos mil dieciocho; del Protocolo Modificatorio al Tratado entre los Estados Unidos Mexicanos, los Estados Unidos de América y Canadá, hecho en la Ciudad de México el diez de diciembre de dos mil diecinueve; de seis acuerdos paralelos entre el Gobierno de los Estados Unidos Mexicanos y el Gobierno de los Estados Unidos de América, celebrados por intercambio de cartas fechadas en Buenos Aires, el treinta de noviembre de dos mil dieciocho, y de dos acuerdos paralelos entre el Gobierno de los Estados Unidos Mexicanos y el Gobierno de los Estados Unidos de América, celebrados en la Ciudad de México, el diez de diciembre de dos mil diecinueve*, as published in the Federal Official Gazette ("DOF", after its initials in Spanish) on June 29, 2020, and which states the dates of signature, ratification and entry into force of the USMCA.

[12] USMCA Annex 14-C, paragraph 1(a): "Each Party consents, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex alleging breach of an obligation under: (a) Section A of Chapter 11 (Investment) of NAFTA 1994; […]."

[13] USMCA Annex 14-C, paragraph 3: "A Party's consent under paragraph 1 shall expire three years after the termination of NAFTA 1994."

[14] **Exhibit C-06** contains the relevant part of the *DECRETO de promulgación del Tratado de Libre Comercio de América del Norte*, as published in the DOF on December 20, 1993, and which indicates the dates of signature, ratification, and entry into force of NAFTA.

20. Claimants hereby consent to arbitration in accordance with the procedures set out in NAFTA Chapter 11.[15]

21. NAFTA Article 1120 further provides that the investor may elect to submit its claim to arbitration under the ICSID Convention, the ICSID Additional Facility Rules, or the UNCITRAL Arbitration Rules, as modified by Section B of NAFTA Chapter 11. Pursuant to NAFTA Article 1120(1)(c), the Claimants accordingly submit their claim to arbitration under the UNCITRAL Arbitration Rules, as modified by Section B of NAFTA Chapter 11.

V. FACTUAL BASIS FOR THE CLAIM

22. The facts described in this next section provide an overview of numerous violations against the Claimants.

A. Investment in the Mexican Sugar Sector

23. In 2010, AMERRA met [redacted], both members of well-known and influential business and agricultural families in the State of Sinaloa. [redacted] were the shareholders of Agroindustria del Valle, which in turn controlled CALMSA and Ohuira. CALMSA owned the Ingenio Azucarero de Los Mochis, Sinaloa (the "Sugar Mill"), and Lots 11 and 16, where a portion of the Sugar Mill was constructed.

24. In November 2011, the Claimants invested in the Mexican sugar sector by taking on an existing loan granted to Ohuira and granting a new loan to CALMSA and Ohuira, both of which were secured by the Mortgages on Lots 11 and 16 that are described below.

a. The *Refaccionario* Loan

25. On November 18, 2010, Agrofinanzas, S.A. de C.V., SOFOL ("Agrofinanzas"), as lender, entered into a mortgage-secured fixed asset loan agreement with tranches in Mexican pesos and U.S. dollars with Ohuira, as borrower, and CALMSA, as joint and several obligor (the "Original Loan").

26. In addition, CALMSA constituted two mortgages in favor of Agrofinanzas to secure the obligations under the Original Loan on two of its premier wholly-owned properties identified as Lot 11 (with a surface area greater than 108,000 m2) ("Lot 11", and the mortgage on such lot, as amended, the ""Mortgage on Lot 11") and Lot 16 (with a surface area greater than 58,000 m2) ("Lot 16") where a portion of the Sugar Mill was built and that are located in the Colonia Centro of the City of Los Mochis.[16]

[15] See also, **Exhibits C-07, C-08, C-09 and C-10**, which include the consent to arbitration granted by AMERRA, Agri Fund, Agri Opportunity and the JPMC Plan, respectively.
[16] Located between the streets Gabriel Leyva, Centenario and Callejón Tres of the Colonia Centro, in Los Mochis, Municipality of Ahome, Sinaloa.

27. On November 15, 2011, Agrofinanzas assigned the portion of the Original Loan in U.S. dollars to AMERRA, as investment agent of Agri Fund and Agri Opportunity. On such date:

    a) Agrofinanzas, as assignor, AMERRA, as assignee, Ohuira, as debtor, and CALMSA, as guarantor, entered into an agreement for the partial assignment of the Original Loan including all rights, obligations, and accessories of the unpaid balance of the U.S. dollars portion of the Original Loan, with a principal amount of [redacted] and interest as of that date of [redacted] (the "*Refaccionario* Loan");

    b) Agrofinanzas, as assignor, AMERRA, as assignee, Ohuira, as debtor, and CALMSA, as guarantor, assigned to AMERRA, in its capacity as investment manager of Agri Fund and Agri Opportunity, the Mortgage on Lot 11 to secure the *Refaccionario* Loan. In addition, the mortgage was amended and extended by AMERRA and CALMSA to secure another credit facility granted by AMERRA, in its capacity as investment manager of the other Claimants, to CALMSA and Ohuira on that same date called the AMERRA Credit which is described below. As a result, AMERRA had a mortgage in the first place and level of priority on Lot 11 to secure the *Refaccionario* Loan and the AMERRA Credit;

    c) CALMSA and Ohuira signed eight promissory notes in favor of AMERRA, in its capacity as investment manager of Agri Fund and Agri Opportunity: four covering the principal amount and four covering the interest amount due up to such date, for a total of [redacted]; and

    d) Agrofinanzas released the mortgage constituted by CALMSA on Lot 16 to secure the Original Loan.

b. The AMERRA Credit

28. Also, on November 15, 2011, AMERRA, in its capacity as investment manager of the other Claimants, entered into a revolving credit agreement (different to the *Refaccionario* Loan) to lend CALMSA and Ohuira, the principal amount of up to [redacted] (the "AMERRA Credit"). Agroindustria del Valle and [redacted] acted as guarantors of this AMERRA Credit.

29. As a result of the disbursements under the AMERRA Credit to CALMSA and Ohuira, on January 31, 2012, CALMSA and Ohuira, as borrowers, and Agroindustria del Valle, [redacted], as joint and several unconditional guarantors (*avales*), issued three promissory notes to AMERRA, acting as investment manager of the other Claimants, in the amounts of [redacted].

c. Extension and Modification of the Mortgage on Lot 11, and Constitution of the Mortgage on Lot 16

30. As mentioned above, on November 15, 2011, the Mortgage on Lot 11 was assigned, amended, and expanded to secure the payment of the principal, interest and expenses of the *Refaccionario* Loan and the AMERRA Credit.

31. In addition to the Mortgage on Lot 11, on May 31, 2012, CALMSA constituted in favor of AMERRA, as investment manager of the other Claimants, a mortgage in first place and level of priority with respect to Lot 16, to secure the obligations (including the principal, interests, and expenses) of the *Refaccionario* Loan and the AMERRA Credit (the "Mortgage on Lot 16").

32. It should be noted that the parties agreed that the Mortgages comprised the land to Lots 11 and 16, and all assets within the land including, the Sugar Mill facilities.

33. The Mortgages were registered at the Public Registry of Property and Commerce of the Municipality of Ahome, State of Sinaloa ("Los Mochis Public Registry"). The Mortgage on Lot 11 was registered on January 11, 2012, and the Mortgage on Lot 16 on June 19, 2012.

B. CALMSA and Ohuira Breach the Credit Agreements

34. As of June 2013, CALMSA and Ohuira owed Claimants over [redacted]. On December 4, 2013, AMERRA formally required payment under the Loan and Credit from CALMSA, Ohuira, Agroindustria del Valle, and [redacted] before a notary public. The debtors defaulted, failed, and refused to pay amounts owed.

C. AMERRA's Efforts to Safeguard the Investment through the Mortgages Foreclosure

35. In 2015, the Claimants commenced several actions to enforce their rights under the Mortgages before the relevant Mexican courts.

a. The Summary Mortgage Trial

36. In September 2015, Claimants filed a summary claim to foreclose the Mortgages against CALMSA, Ohuira, and [redacted] before the Ahome Civil Court, with residence in Los Mochis, Sinaloa.

37. To this date, seven years have elapsed, and the Ahome Civil Court continues to improperly refuse to notify these co-defendants.

38. As a result of the foregoing, the Claimants have not been able to be heard before the court, nor have they been able to exercise their rights to foreclose on the Mortgages. There is absolutely no prospect that this claim will move forward any time soon.

b. The Courts' Arbitrary Actions in the Bankruptcy Proceeding

39. On December 5, 2016, the Judge of the Fifth District in the State of Sinaloa (a federal court), Juan Enrique Parada Seer (the "Judge"), admitted a bankruptcy request filed by LANRAM, S.A. de C.V. ("LANRAM") against CALMSA. LANRAM is a Mexican company, which was one of CALMSA's suppliers.

40. On August 1, 2018, the Judge recognized AMERRA, Agri Fund, Agri Opportunity and the JPMC Plan as "purported common creditors," failing to recognize their status as preferred creditors as a result of the Mortgages, which they unquestionably were.

41. Since then, the Claimants have been part of a bankruptcy proceeding that has been plagued by severe irregularities committed by the Judge, depriving the Claimants of basic procedural and due process rights, failing to recognize the Claimants as preferred creditors, and ultimately, preventing them from foreclosing on the Mortgages on Lots 11 and 16.

42. According to the Bankruptcy Law ("LCM", after its initials in Spanish), bankruptcy proceedings must have a conciliator appointed by the Federal Institute of Specialists in Bankruptcy Proceedings ("IFECOM", after its initials in Spanish),[17] to support the judge in bankruptcy matters, *inter alia*, by promoting the credit recognition process and supervising the administration of the company.

43. The conciliator appointed by the IFECOM for CALMSA's case, [redacted] (the "Conciliator"), only recognized a small amount [redacted] in favor of the Claimants, instead of the full amount they were entitled to, which represented over 49% of the total amount of the debts owed by CALMSA. As opposed to relying on all of the evidence that the Claimants submitted to prove the existence of the full credits, the Conciliator simply relied on CALMSA's blatantly self-interested and false statements that the financial statements of the company, where the credits were recorded, had "disappeared". The Judge improperly vetted, and ultimately approved, this irregular course of action by the Conciliator.

44. On October 25, 2018, the Claimants presented objections to the provisional list of credits prepared by the Conciliator. However, the Conciliator completely disregarded these objections, and the amount of evidentiary documentation provided. The Conciliator presented to the Judge a definitive list of credits in which, once again, it only recognized the Claimants [redacted]. The Conciliator argued that CALMSA did not make available to him the financial information that was requested; and therefore, he could not corroborate the "real situation" of the credits despite the evidence presented by the Claimants.

45. Given the illegality of the definitive list of credits exhibited by the Conciliator, the Claimants objected it before the Judge.

[17] IFECOM is an auxiliary body of the Federal Judiciary Council, which has technical and operational autonomy. Among its purposes is to authorize the registration of persons accredited to perform the functions of visitor, conciliator, or trustee in proceedings under the LCM.

46. Far from addressing the Claimants' objections, and correcting the errors and omissions made by the Conciliator, the Judge improperly and arbitrarily corroborated the Conciliator's definitive list of credits in his credits recognition ruling.

47. To justify his decision, the Judge resorted to unreasonable arguments, including, for example: (i) holding that, since there were irregularities in CALMSA's accounting and financial information, he was unable to confirm the existence of CALMSA's debt with the Claimants, despite all of the documents and information submitted by the Claimants that unequivocally proved the existence of the debts and that these were secured by the Mortgages, and (ii) abusively attempting to apply to the Claimants the Investment Funds Law, when the latter is not even a supplementary law to the LCM.

48. Furthermore, the Judge ignored the arguments and evidence presented by the Claimants, most notably, the documentation relating to the Mortgages and the summary mortgage trial, which should have been enough to rightfully recognize Claimants as preferred creditors, as a result of the Mortgages, worth over [redacted]. With this information at hand, the Judge was simply required to ask for evidence from the Debtors that the debts had been paid, since the law puts on debtors the burden to prove that payment has been made. It is difficult to imagine more improper and result-oriented judicial acts, but for the Claimants things only got worse.

49. The Judge's illegal ruling had serious repercussions for the Claimants. By recognizing them as common creditors (as opposed to the preferential credit they had) with an "undetermined" credit, the Judge deprived them of the percentage of representation that corresponded to them in the voting and decision-making process in the conciliatory stage of the bankruptcy proceeding. Therefore, on January 21, 2019, the Claimants filed an appeal against the credits recognition ruling. Due to improper delays by the Mexican courts, this appeal was not resolved until one year and a half later, on July 9, 2020 (see section E.c *infra*).

50. While the appeal against the credits recognition ruling was pending, on March 29, 2019, Claimants became aware that under the Conciliator's recommendation, appraisals of Lots 11 and 16 had been performed and presented to the Judge, seriously violating the requirements applicable for the conduction of appraisals.

51. On April 22, 2019, the Claimants challenged the Conciliator's recommendation to appraise Lots 11 and 16 by way of an administrative appeal, but the Judge rejected Claimants' appeal out of hand. Therefore, the value that was assigned to Lots 11 and 16 in the Conciliator's appraisals were the only ones considered by the Judge to determine their "real value". With this decision, the Judge violated Claimants' rights to due process and basic access to justice, by denying them their right to present their own appraisals.

52. On April 21, 2019, the Conciliator presented a bankruptcy creditors' agreement proposal that, once again, failed to recognize the Claimant's full credits. On May 14, 2019, Claimants objected to the text of the proposal, stating that, as creditors who jointly represented over 49% of CALMSA's credits, under no circumstances did they accept or consent to the agreement proposal exhibited.

53. Between April 22 and April 26, 2019, the Claimants became aware, however, only through documents in the case file, of additional illegal actions in the bankruptcy proceeding. This time, they learned that three new creditors of CALMSA: [redacted], and MOEVACO Consultores, S.A. de C.V. ("MOEVACO") had appeared before the court as additional creditors. On May 13, 2019, the Judge extemporaneously and illegally recognized them as creditors. In so doing, the Judge completely disregarded the LCM, which provides that the only recognized creditors are those who acquire such character, by virtue of the credits recognition ruling. That is, even though four months had passed after the Judge issued such ruling, he considered that it was convenient to "recognize" three more creditors, thus modifying a list that he himself had previously approved. In doing so, the Judge reduced the Claimants' percentage of representation for the voting and decision-making process in the conciliatory stage of the bankruptcy proceeding even more and destroyed the Claimants' rights as mortgagees under the Mortgages.

54. Despite the Claimants' objections of May 30, 2019, the Conciliator presented to the Judge a bankruptcy agreement apparently executed by the "majority" of the recognized creditors. On the same day, the Judge invited all creditors to provide comments.

55. On June 7, 2019, the Claimants challenged the bankruptcy agreement before the Judge, in response to the following irregularities and illegal actions by the Conciliator:

    a) He allowed [redacted] to sign the agreement on behalf of CALMSA, despite having knowledge that they had no legal power to do so;

    b) He significantly modified what was established in the Judge's credits recognition ruling, by "recognizing" new creditors;

    c) He approved a bankruptcy agreement that did not comply with the efficiency requirements mentioned in Article 157 of the LCM,18 as it was signed by less than 50% of the creditors recognized in the credits' recognition ruling;

    d) He failed to comply with his obligation to remedy the omissions and illegalities contained in the April 21, 2019 bankruptcy creditors' agreement proposal; these omissions and illegalities were raised by the Claimants in their objections of May 14, 2019, and

    e) He left the Claimants in a state of total defenselessness, as he exhibited a bankruptcy agreement that left Claimants' payment of their credits as "pending".

[18] LCM, Article 157: "To be efficient, the agreement must be signed by the Merchant and its Recognized Creditors representing more than fifty percent of the sum of:
I. The amount recognized to all common and subordinated Recognized Creditors, and
II. The amount recognized to those Recognized Creditors with a security interest or special privilege that sign the agreement." (Own translation)

D. The Flagrant Illegality of the Bankruptcy Proceeding and the Bankruptcy Agreement, Approved by the Judge

56. On June 28, 2019, the Judge issued a ruling that confirmed each and every single one of the Conciliator's arbitrary actions and omissions and also approved the improper bankruptcy agreement as presented by the Conciliator.

57. With the June 28, 2019 ruling the Judge also ordered the termination of the bankruptcy proceeding for those creditors who signed the agreement, instead of waiting for the resolution of all pending appeals as required by law.[19]

58. The Judge also ordered the cancellation of all registrations and/or annotations in the certificates of encumbrances over Lot 11, corresponding to those creditors who signed the bankruptcy agreement. This had the effect of cancelling the Mortgage on Lot 11 with respect to the portions illegally assigned to certain creditors in the bankruptcy agreement. The Judge ordered that the registrations be maintained only in a fraction of Lot 11 that was established as a reserve for all creditors with pending actions. Regarding the Mortgage on Lot 16, the Judge completely disregarded its existence and established Lot 16 as a reserve for all the challenges and appeals that were pending resolution.

E. The Claimants' Efforts to Stop the Enforcement of the Bankruptcy Agreement were Futile

59. On July 12, 2019, the Claimants filed an appeal to challenge the Judge's ruling that approved the bankruptcy agreement.

60. On July 16, 25 and 29, 2019, LANRAM, the Conciliator and CALMSA, respectively, requested the enforcement of the bankruptcy agreement, in order to receive possession of Lot 11 and other properties. Claimants challenged each of these requests since the Judge had the obligation to refrain from ordering the enforcement of the bankruptcy agreement until the Claimants' pending appeals were resolved. Any adjudication of Lot 11 would cause the Claimants an irreparable damage.

a. The Judge Ignored, Once More, Claimants' Rights by Ordering the Enforcement of the Bankruptcy Agreement

61. Notwithstanding that the Claimants' appeals were pending, on August 6, 2019, the Judge ordered the enforcement of the bankruptcy agreement. The Judge ordered that the possession of Lot 11 be surrendered to the alleged creditors on August 9, 2019. With this resolution the Judge denied Claimants' right to foreclose on the Mortgages, and with it the irreparable loss of their investment. The foregoing since, once the real estate has been adjudicated, the alleged creditors are able to transfer the property to *bona fide* third parties.

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[19] LCM, Article 233: "If, at the time when the bankruptcy proceedings are to be terminated, there are credits pending recognition due to the judgment that recognized them being challenged, **the judge shall wait to declare the termination of the bankruptcy proceedings until the corresponding challenge is resolved**." (*emphasis added*) (Own translation)

b. Additional Efforts by Claimants to Rescue the Mortgages Are Again Frustrated by Judicial Arbitrariness and Severe Misconduct

62. With a view of protecting their investment from an unjust subdivision and distribution, the Claimants filed an *amparo* to challenge the August 6, 2019 resolution. The Judge of the Seventh District in the State of Sinaloa dismissed the *amparo* without addressing the merits of the case. Thus, on August 9, possession of Lot 11 was handed over to creditors, in accordance with the terms of the unlawful bankruptcy agreement.

63. Clearly, the CALMSA bankruptcy proceeding was plagued by arbitrariness and discriminatory and illegal actions, perpetrated by judicial authorities in the State of Sinaloa.

c. The Maladministration of the Mexican Judicial System at the Hands of the Twelfth Circuit of the Federal Judiciary in the State of Sinaloa

64. On July 9, 2020, the Second Unitary Tribunal issued its decision in the Claimants' credit recognition appeal. The Second Unitary Tribunal upheld the January 7, 2019 ruling and with it, it failed to recognize the Claimants a determined amount for their credits and the Mortgages.

65. The Second Unitary Tribunal simply recycled the Judge's unfounded arguments, validated his unlawful actions, and left the Claimants with, once again, an "undetermined" amount, on the grounds that, as the summary mortgage trial was still ongoing, it was necessary for the Claimants to first obtain a favorable judgement in order for their credits and Mortgages to be recognized in the bankruptcy proceeding. There is no provision in the LCM, nor any jurisprudence in Mexican law to support this reasoning.

66. Generally, in bankruptcy proceedings, creditors' rights are recognized based of the debtor company's accounting documents or other evidence, even if the creditor did not participate in the proceeding. Nevertheless, the Second Unitary Tribunal dismissed this and applied the absurd reasoning against the Claimants. Conversely, in the same decision, the Second Unitary Tribunal recognized determined amounts to creditors that did not meet the criterion of having a favorable judgment to support their request for credit recognition. In other words, the judicial authority used this illegal reasoning exclusively against the Claimants. This demonstrates the different and discriminatory treatment to which the Claimants were subjected, since the judicial authorities imposed unfounded requirements on them and placed them in unequal conditions *vis à vis* the other creditors.

67. Adding insult to the injury, on July 20, 2020, the Second Unitary Tribunal resolved Claimants' appeal that challenged the bankruptcy agreement approval by upholding the Judge's June 28,2019 ruling. The Second Unitary Tribunal completely ignored the wrongdoings committed by the Conciliator and the Judge during the bankruptcy proceeding, particularly, during the approval and enforcement of the agreement.

68. In a futile effort to protect their investment, the Claimants filed *amparo* lawsuits to challenge the two rulings of the Second Unitary Tribunal. The Claimants requested the judicial authorities hearing the *amparos* order that all the authorities involved in the bankruptcy proceeding refrain from taking any action aimed at enforcing any of the Second Unitary Tribunal rulings. The Claimants' *amparos* were admitted in August 2020 and ultimately sent to the Collegiate Tribunal in Civil Matters of the Twelfth Circuit (the "Collegiate Tribunal") for its resolution.

69. Given the Collegiate Tribunal's record of denying each of the Claimants' actions that have been submitted to it in the past, which includes previous *amparos*, complaints and *amparo* reviews, the Claimants had no expectation that the Collegiate Tribunal would resolve the *amparos* in accordance with the law.

70. Considering the manner in which the Sinaloa authorities "administered" the Claimants' case (*i.e.*, the unlawful approval of the bankruptcy agreement, the termination of the bankruptcy proceeding while appeals were pending, the division and adjudication of the Claimants' investment and the subsequent delivery of possession to other creditors), the Claimants are certain that: (i) the Collegiate Tribunal would have issued, again, unfavorable rulings with respect to the *amparos*, and (ii) any further attempt to resort to domestic remedies would have been equally futile.

71. There is no doubt that this claim concerns a case in which the judicial authorities in the State of Sinaloa systematically denied access to justice to the Claimants.

F. Labor and Criminal Actions

72. In April 2015, AMERRA became aware through a newspaper article of a pending labor proceeding brought by CALMSA's employees against CALMSA which involved Lot 16. AMERRA was never personally notified of the existence of this trial in its registered office, so it had no opportunity to participate in the trial, let alone assert its rights and those of the other Claimants before the Local Conciliation and Arbitration Board of the State of Sinaloa, based in Culiacán (the "Labor Board").

73. On April 27, 2015, AMERRA filed an indirect *amparo* lawsuit against the Labor Board's failure to notify AMERRA. After years of litigation, such *amparo* was denied on March 12, 2019, by the Head of the Fourth Court of District in Culiacan, Sinaloa. AMERRA then filed for appellate review before the Collegiate Tribunal for Labor Matters in Mazatlán, Sinaloa, on March 28, 2019. On October 17, 2019, this court confirmed the first instance ruling and, therefore, dismissed the action outright, without delving into the merits of the case. There is no additional recourse to which AMERRA may resort against this decision. Lot 16 was "labor adjudicated" to the workers on October 17, 2019.

74. In January 2016, AMERRA learned that a trial regarding the Collective Labor Agreement between Section XII of the Mexico's Sugar Industry Workers Union (the "Union") and CALMSA, in its capacity as employer, was underway, in which both parties sought to auction off the movable assets within the surface of Lot 11.

75. As it happened in the labor trial related to Lot 16, AMERRA was never notified about the existence of this second proceeding. AMERRA challenged this serious violation of

its due process rights and filed an indirect *amparo* lawsuit, in an attempt to stop the auction of the movable assets that by virtue of the Mortgage on Lot 11 corresponded to the Claimants. During the pendency of this *amparo*, AMERRA learned that the then-Chairman of the Labor Board, Fausto Rubén Ibarra Celis ("Chairman of the Labor Board"), had also acted in contravention of the law, by not notifying AMERRA of the resolution that ordered the auction.

76. By failing to notify AMERRA of this proceeding and the auction, the labor authorities prevented AMERRA from acting in its and the other Claimants' best interest. By the time AMERRA became aware of this proceeding it was too late, since it derived in the judicial auction, adjudication, and delivery of the possession of the movable assets in Lot 11 in favor of the Union, as follows:

    a) On August 26, 2015, the Union, and CALMSA, this through [redacted], presented before the Labor Board an apparent payment agreement ("payment agreement"), whereby CALMSA supposedly undertook to pay the Union an indemnity, no later than October 15, 2015.

    b) In this payment agreement, CALMSA consented to pay multi-million labor credits to a number of workers who in reality were either dead or had an unthinkable antiquity at the Sugar Mill. The Chairman of the Labor Board accepted the foregoing and recognized said labor credits. On August 26, 2015, both the Union and CALMSA ratified the payment agreement before the Labor Board.

    c) Upon request of the Union, on October 16, 2015, the Chairman of the Labor Board ordered the enforcement of the payment agreement and with it, the Lot 11 was declared seized.

    d) By an order dated October 19, 2015, the Chairman of the Labor Board mandated the Los Mochis Public Registry to register the seizure over Lot 11.

    e) Upon orders of the Charmain of the Labor Board, the first and second auction hearings were held, respectively, on December 18, 2015, and January 8, 2016. Only the Union appeared to these auctions.

    f) Due to the absence of bidders in the above-mentioned auctions, a third and final hearing was held on January 15, 2016, in which the Chairman of the Labor Board finally declared the auction closed and adjudicated the seized movable assets in favor of the Union. These assets were part of the Mortgage on Lot 11 and had great value. On the same date, the movable assets were physically delivered to the Union.

77. It should be noted that, over the course of 2022, there have been multiple irregularities surrounding the left-over surface of Lot 11, which continues to be used illegally as a means of payment in the bankruptcy proceeding.

78. Between April and May 2022, the Conciliator at the bankruptcy proceeding noticed that the Union was interfering with Lot 11, therefore, the Judge requested the Labor Board, the Union, and the Los Mochis Public Registry, to issue a report on the status

of Lot 11. The Labor Board sent a "report" of approximately five thousand pages to the Judge, in which it is noted, among others, that four fractions of Lot 11 had been notarized in favor of the Union. Remarkably, the four notarized fractions exactly correspond to the surface of Lot 11 that was established as a reserve for the creditors that have pending actions, such as the Claimants.

79. As a response to the flagrant bad faith and malice demonstrated by the Debtors throughout the numerous appeals related to CALMSA's bankruptcy proceeding, the Claimants decided to pursue the criminal action and filed two lawsuits before the Mexico City Attorney General: one for breach of trust and the other for fraudulent insolvency to the detriment of creditors. The cases before the Mexico City Attorney General remained at early stages of the criminal proceeding, until the filing of this Notice of Arbitration.

G. Conclusions

80. All the actions to which the Claimants resorted before the state and federal authorities in the State of Sinaloa were over before they started, and the probability that the Claimants will ever be able to foreclose the Mortgages on Lots 11 and 16 under the terms originally granted to them, are nil.

81. The summary mortgage trial, CALMSA's bankruptcy proceeding, the labor proceedings against CALMSA as an employer and all the actions described above were executed in a clearly partial manner by state and federal judicial authorities based in Sinaloa. These authorities, in particular the Judge, the Second Unitary Tribunal, the Collegiate Tribunal, and the Chairman of the Board, acted in an arbitrary, discriminatory, and illegal manner; failed to provide the Claimants, as well as their investment in Mexico, with due protection under international law, and subjected them to a systematic lack of due process.

82. The actions of the Mexican authorities have resulted in the Claimants:

a) Being unable to recover the amounts owed to them by CALMSA since 2011 by virtue of the Mortgages on Lots 11 and 16;

b) Losing virtually the total surface of Lot 11, which, with the Judge's consent, was illegally subdivided and assigned as a means of payment to purported creditors that signed the bankruptcy agreement, and creditors that, to date, continue to emerge extemporaneously to claim payment of credits owed by CALMSA;

c) Losing the movable assets within Lot 11, which were unduly adjudicated to the Union; and

d) Not having impartial and effective means of defense to enforce their rights against their Debtors.

VI. LEGAL INSTRUMENT IN RELATION TO WHICH THE CLAIM ARISES

83. This dispute arises from Mexico's breach of its obligations under NAFTA Chapter 11.

VII. NAFTA PROVISIONS THAT HAVE BEEN BREACHED

84. As indicated in section V (Factual Basis for the Claim), Mexico's arbitrary, discriminatory, and unlawful actions have deprived Claimants of their investment. Mexico has violated the Claimants' right to due process of law and access to justice in their attempt to exercise their rights under the Mortgages. As a result, Mexico has adopted measures tantamount to expropriation without just compensation which have irreparably destroyed the Mortgages and has breached its obligation to treat the investment of the Claimants in accordance with international law, including fair and equitable treatment and full protection and security, thereby frustrating the Claimants' legitimate expectations with respect to their investment.

85. Mexico's actions constitute a breach of NAFTA Chapter 11, Articles 1102, 1104, 1105 and 1110.

86. Article 1102 of Chapter 11 (National Treatment) states that:

> 1. Each Party shall **accord to Investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own Investors** with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
>
> 2. Each Party shall **accord to investments of Investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own Investors** with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments. (*emphasis added*)

87. Article 1104 (Standard of Treatment) provides as follows:

> 1. Each Party shall **accord to Investors and investments of Investors of another Party the better of the treatment** required by Articles 1102 and 1103. (*emphasis added*)

88. Article 1105 of Chapter 11 (Minimum Standard of Treatment) states that:

> 1. Each Party shall accord to investments of Investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security […].

89. Article 1110 of Chapter 11 (Expropriation and Compensation) states that:

> 1**. No Party may directly or indirectly nationalize or expropriate** an investment of an investor of another Party in its territory or take any measure tantamount to […] expropriation of such an investment, unless:
>
> (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 paragraphs 2 through 6.

> 2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation") and shall not reflect any change in value occurring because the intended expropriation had become known earlier. **Valuation criteria shall include going concern value, asset value including declared tax value of tangible property**, and other criteria, as appropriate, to determine fair market value.
>
> 3. **Compensation shall be paid without delay** and be fully realizable. (*emphasis added*)

VIII. CLAIMANTS MEET NAFTA REQUIREMENTS FOR SUBMITTING THEIR CLAIM TO ARBITRATION

90. Claimants meet all the requirements set forth in NAFTA Chapter 11 to submit the claim to arbitration.

A. Date on Which the Claimants First Acquired Knowledge of the Breach, Losses, and Damages

91. On August 6, 2019, the Claimants acquired knowledge that the Judge of the Fifth District in the State of Sinaloa issued the resolution whereby he ordered the enforcement of the bankruptcy agreement in CALMSA's bankruptcy proceeding, and established August 9, 2019 as the date for CALMSA to deliver possession of Lots 11 and 16 (which were mortgaged in favor of the Claimants through the Mortgages), to other alleged creditors, thus rendering the Mortgages null and void, and destroying their value to the detriment of the Claimants.

92. Therefore, the Claimants meet the timeframes set out in NAFTA Articles 1120(1)[20] and 1116(2),[21] as more than six months have elapsed since the events that give rise to the claim, and no more than three years have elapsed from the date on which the Claimants first acquired knowledge of Mexico's breaches to its NAFTA obligations, as well as the losses and damages suffered as a result of such violations.

B. More Than 90 Days Have Elapsed Since the Claimants Delivered Their Notice of Intent to Submit a Claim to Arbitration

93. Pursuant to NAFTA Article 1119 (Notice of Intent to Submit Claim to Arbitration), more than 90 days have elapsed since the Claimants delivered to Mexico their written notice

[20] NAFTA Article 1120(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 […]."

[21] NAFTA Article 1116(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."

of intent to submit a claim to arbitration ("Notice of Intent") on December 3, 2020.[22] Mexico confirmed receipt of the Notice of Intent on the same date.[23]

C. The Disputing Parties Attempted to Settle the Claim through Consultation

94. In accordance with NAFTA Article 1118 (Settlement of a Claim through Consultation and Negotiation), the Parties held a consultation meeting on February 26, 2021,[24] with a view to attempting to resolve the claim.

95. Although the Claimants participated in these consultations in good faith and with absolute willingness towards the Government of Mexico, the Disputing Parties were unable to settle this dispute. Therefore, the Claimants have no choice but to submit their claim to arbitration pursuant to NAFTA Article 1116.

D. Claimants Consent to Arbitration in accordance with the Procedures Set Out In NAFTA

96. NAFTA Article 1121(1)(a) provides that a disputing investor may submit a claim to arbitration under NAFTA Article 1116 "only if: […] the investor consents to arbitration in accordance with the procedures set out in this Agreement; […]."

97. In addition, NAFTA Article 1121(3) provides that the consent shall be "in writing, […] delivered to the disputing Party and […] be included in the submission of a claim to arbitration."

98. By virtue of the foregoing, the Claimants hereby consent to arbitration in accordance with the procedures set out in NAFTA. The Claimants' consent is further expressed in the documents attached as **Exhibits C-07, C-08, C-09 and C-10** to this Notice of Arbitration.

E. Claimants Waive Their Right to Initiate or Continue Any Administrative or Judicial Proceeding Under the Law of Either Party

99. NAFTA Article 1121(1)(b) provides that a disputing investor may submit a claim to arbitration under NAFTA Article 1116 only if:

> **[T]he 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

[22] **Exhibit C-11** contains evidence of the filing of the Notice of Intent on the aforementioned date and Mexico's confirmation of receipt.
[23] See **Exhibit C-11** above.
[24] **Exhibit C-12** includes the communications via e-mail between the Claimants and the Respondent, evidencing the celebration of the consultation.

> payment of damages, before an administrative tribunal or court under the law of the disputing Party. (*emphasis added*)

100. The waivers of the Claimants as set forth in NAFTA Article 1121(1)(b) *supra* are attached as **Exhibits C-07, C-08, C-09 and C-10** to this Notice of Arbitration. Evidence of the effectiveness of Claimants' waivers are attached hereto as **Exhibit C-13**.

IX. PROCEDURAL MATTERS

A. Language and Place of Arbitration

101. NAFTA Chapter 11 does not specify the language or place of arbitration of a dispute arising under that Chapter, when the claim is submitted to arbitration under the UNCITRAL Arbitration Rules.

102. Pursuant to Articles 3(1)(g) (Notice of Arbitration)[25] of the 1976 UNCITRAL Arbitration Rules, the Claimants propose English and Spanish as languages for this arbitration,

B. Place of Arbitration

103. In accordance with NAFTA Article 1130(b):

> Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with:
>
> […]
>
> (b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.

104. Article 16 (Place of Arbitration) of the 1976 UNCITRAL Arbitration Rules establishes that:

> Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.

105. Claimants propose to fix the place of arbitration in Washington, D.C.

C. Number of Arbitrators and Method of Appointment

106. NAFTA Article 1123 (Number of Arbitrators and Method of Appointment) specifies 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."

107. Accordingly, Claimants propose that the Tribunal be comprised by three arbitrators. Claimants will notify the arbitrator they wish to appoint under NAFTA Article 1123.

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[25] 1976 UNCITRAL Arbitration Rules, Article 3(1)(g): "The notice of arbitration shall include the following: […] (g) [a] **proposal as to the** number of arbitrators, **language** and place **of arbitration**, if the parties have not previously agreed thereon." (*emphasis added*)

X. RELIEF REQUESTED

108. For the above reasons, Claimants respectfully request that the Arbitral Tribunal:

a) Declares that Mexico breached its obligations under NAFTA Chapter 11 and international law;

b) Awards Claimants full restitution or the monetary equivalent of damages in an amount not less than [redacted] (to be further quantified in this proceeding), for the loss of the Mortgages resulting from Mexico's failure to comply with its obligations under NAFTA Chapter 11;

c) Awards Claimants full restitution or the monetary equivalent of damages in an amount not less than [redacted] (to be further quantified in this proceeding) for the costs incurred in the different proceedings before Mexican courts during which Mexico's treaty violations occurred, including professional fees and court costs;

d) Orders Mexico to pay all costs and expenses related to this arbitration, including all professional fees and arbitration costs;

e) Awards Claimants the interest incurred before and after the award; and

f) Grant any other and further relief that the Claimants or their representatives may determine or that the Arbitral Tribunal may deem appropriate.

109. The Claimants reserve their right to supplement, amend and modify this Notice of Arbitration as they consider appropriate and as permitted under NAFTA Chapter 11, including but not limited with respect to the relevant facts, legal provisions, and determination of damages, and to pursue any available remedies under NAFTA and international law. Nothing in this Notice of Arbitration can be interpreted as AMERRA, Agri Fund, Agri Opportunity and the JPMC Plan's waiver of any rights.

Respectfully submitted.

[*Signature sheet on the next page*]

3 August 2022

[redacted]

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