



ARC CONSULTING

SECOND EXPERT REPORT

Submitted to:

Jones Day

17 January 2020

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I. Introduction

ARC Consulting has prepared this report (“**Second Expert Report**”) for Jones Day and Shook, Hardy & Bacon (collectively, the “**Client**”), legal counsel for Mr. Oscar I. Rivera and Omega Engineering LLC (collectively, “**Claimants**”). In this Second Expert Report, we address certain issues raised in, as well as criticisms made of, our Real Estate Market Study dated 16 May 2019 (“**First Expert Report**”), by the Republic of Panama (“**Respondent**”) and its expert Justice Adán Arnulfo Arjona in his report (the “**Arjona Report**”) relating to Claimants’ transaction for the purchase of a parcel of land in Cañas, Tonosí (“**Finca 35659**”).¹ The co-authors of this Second Expert Report remain the same as in the First Expert Report: Messrs. Fidel Ponce and Arturo Chong. However, all substantive sections of this Second Expert Report have been prepared by Mr. Fidel Ponce. Mr. Arturo Chong contributed only to the formatting of the Report and concurs with its conclusions.

By way of further biographical information to supplement the material provided in the First Expert Report, Mr. Ponce has been a licensed real estate consultant since 2008. Before that, Mr. Ponce founded and operated an inbound travel agency in Panama City focusing on the key touristic regions in Panama, including the area of the Azuero Peninsula, which provided him with substantial information concerning the key geographic areas considered in this case (*i.e.*, Pedasi, Playa Venao and Cañas, all of which are located within the Azuero Peninsula). By virtue of that work, Mr. Ponce is familiar with the manner in which the Azuero Peninsula began its rapid development. The first asphalted road in the Azuero Peninsula was built in 2004, which meant quicker and better access to Azuero for both tourists as well as real estate investors. Since that road was inaugurated, the number of investors, real estate developers and travelers to the area has increased substantially. Mr. Ponce also personally lived in the Azuero Peninsula area from 2010 to 2013, during which time he managed the operations of a real estate development project funded by Capital International, a foreign private fund that has structured and funded more than USD 4 billion in various financial investment vehicles worldwide, including in Panama.

II. Executive Summary

This Second Expert Report provides further analysis and evaluation of the real estate market for the Azuero Peninsula in the Republic of Panama, examining both the unique challenges to foreign investors and the key attributes that make the Azuero region, and Finca 35659 in particular, attractive real estate for potential developers in Panama.

This report builds upon the comparable properties considered in our First Expert Report and affirms our earlier valuation of Finca 35659. In the preparation of this Second Expert Report, Mr. Ponce conducted interviews with local and foreign landowners of comparable properties who had sold or purchased land at the time. The data collected from those interviews has now been included in this valuation to supplement the comparable properties used in our

¹ Unless otherwise indicated, this Second Expert Report uses the same currencies and measurements as the First Expert Report. In this Report we have included information on appraisals and transactions conducted during 2009-2013. *See* Annex A.

First Expert Report. Aside from that addition, the methodology and the data used in this Report are the same as that used in the First Expert Report. Based on this data, we again conclude that our valuation of \$12.65 per square meter for Finca 35659 is consistent with the prices for comparable properties during 2010-2013.

This report also addresses Justice Arjona's and Mr. Pollitt's criticisms of the Promise of Purchase and Sale Agreement, which fail to account for the fact that without the release of the mortgage and finalization of the Finca 35659 transaction, it would have been impossible for both buyer and seller to execute a new deed of sale, notarize the signatures in the Agreement, and register the deed in the Public Registry, among other items. Ultimately, what Respondent and its experts contend are deficiencies in the Promise of Purchase and Sale Agreement are instead mere formalities that are by no means necessary when closing a real estate transaction in Panama. Further, their criticisms of the terms of the Promise of Purchase and Sale Agreement are misguided. In our opinion, nothing in the Promise of Purchase and Sale Agreement seems unreasonable.

III. Scope of the Report

This Second Expert Report will address certain comments and criticisms made by Respondent in its Reply on Preliminary Objections and Rejoinder on the Merits dated 18 November 2019 (“**Respondent’s Reply**”) and the Arjona Report to our valuation of Finca 35659 and Assessment of the Promise of Purchase and Sale Agreement of Finca 35659. In preparing this Report, we have reviewed various documents, which are listed in Annex A. To the extent that our Report does not address a specific point made by Panama in its Reply or in the Arjona Report, this does not mean that we are in agreement with Panama.

The following points will be addressed in this Report:

- The features of the Panamanian real estate market and its unique challenges to foreign investors, particularly with respect to the lack of readily available and centralized real estate data and the complexity in the types of buyers and their effect on land prices (Section IV).
- The desirable attributes of the Azuero Peninsula, and Finca 35659 in particular, that make the region attractive to potential investors (Section V).
- A valuation of Finca 35659 based on new data that reaffirms our original valuation of \$12.65 per square meter for the property (Section VI).
- How criticisms by Justice Arjona, Mr. Pollitt, and Respondent to our First Expert Report and the Finca 35659 transaction highlight their lack of knowledge of the Panamanian real estate market and erroneous focus on inapposite comparisons to the U.S. real estate market (Section VII).
- How critiques by Respondent and its experts of the Promise of Purchase and Sale Agreement in particular focus on mere formalities that are by no means necessary when closing a real estate transaction in Panama (Section VIII).

IV. Explanation of the Panamanian Real Estate Market and Its Unique Features

In order to understand the type of data an investor would have taken into account when considering acquiring property in Panama, as well as the valuation methodology used, at the time Mr. Rivera was looking for land in the Azuero Peninsula area, it is important to understand the Panamanian real estate market. The Panamanian real estate market presents unique challenges to foreign investors, in particular because of the lack of readily available and centralized real estate data as well as the complexity in relation to the different types of buyers and how this affects prices. In addition to the above, the real estate market in Panama also presents another layer of complexity due to the fact that, despite the country's small amount of territory, Panama has a large variety of cultures, weather, vegetation densities, and levels of infrastructure, resulting in different environments for potential development opportunities, as described below in Section V.

1. Unavailability of Centralized System Offering Actual Sales Data

In Panama, actual real estate transaction history is generally kept private. On many occasions, buyers and sellers (if this is agreed) tend to prepare a private purchase agreement with real figures. In conjunction with this, they may prepare a symbolic public agreement, which is used for public registry records. This symbolic agreement usually features a small increase in cadastral value, and thus it is not always an accurate representation of the property's market value. This is generally done if the transaction is not being financed by a bank (a bank will require registration of the real figures for financing) and if both parties agree to do so; the parties will *usually* pursue this option when a buyer is paying without financing from a bank. In Panama, based on our experience, many real estate transactions occur without bank financing.

Additionally, on many occasions, the Public Registry (or *Registro Público*) records contain inaccurate data, including misspelled owner records, multiple parcel (or *Finca*) numbers for one piece of land, unregistered land, and generally outdated information. As a result, the information found in the Public Registry does not necessarily match or reflect the actual price paid for a property—or even accurately reflect whether a particular parcel is actually available for sale or if its title is clean. The level of complexity is accentuated in the interior of the country, including in the Azuero Peninsula. This is because it is common for parcels of land in that region to not be guarded by either the owners or security personnel as would be the case in more heavily populated parts of the country, such as in Panama City. When a parcel of land is not constantly guarded or being watched, squatters can easily build single or multiple structures and settle on it. Once a squatter partially or fully settles on a property, the risk of parallel survey registration and processing arises. In most cases a surveyor is paid to draw a new partial or full polygon of an already registered property and a lawyer subsequently will file a claim for a new parcel or *finca* number (title) on the property. This can create severe problems that may or may not be reflected in the public records. Further, squatters then can sell or dispose of the property.²

Corruption and public registry dysfunction also explain why property registration information is considered to be sensitive and why most property owners opt to keep their documentation private. Property owners are oftentimes afraid that they will encounter

² Facebook group post showing squatted property for sale, undated (C-0879).

complications like bureaucracy and corruption, which usually takes years and high costs to resolve.

Further, unlike the U.S.' real estate market, the real estate market in Panama lacks an established and widely used centralized and regulated *Multiple Listing Service* giving Real Estate Brokers access to an official electronic database where they can review and compare real estate properties listed on the market. While there is a fairly new Multiple Listing Service that launched in 2013,³ its use is not mandatory and most brokers do not use it. And, at the time that Mr. Rivera was looking for properties, the site would have been in its infancy (if it existed at all back then). Instead, in Panama there are two or three websites that contain limited real estate information.⁴ This adds yet another level of complexity to understanding how real estate prices are listed in Panama, and makes it more complicated for an investor to find actual sales prices for properties in a particular area.

As a result, buyers in Panama generally rely on offer prices, word-of-mouth, and relationships with either real estate agents/brokers, other developers, or locals in the particular area of interest, rather than comparable data for sold properties as buyers in developed markets like the United States would often do.

2. Characteristics of Buyers in the Azuero Peninsula

As mentioned in our First Expert Report,⁵ there are three types of buyer that can be found in the country's interior, including in the area of Azuero. The price that a buyer is likely to pay for a particular parcel of land is directly affected by the type of buyer that person is. These types of buyer can be seen in the Azuero Peninsula, namely:

Buyer 1: These types of buyer were the original cattle owners or locals that wanted land for agricultural use. Before 2004, and the construction of the new paved Azuero road, the main owners of land in the area were these cattle and agricultural farmers. Generally, these farmers acquired the land by going into publicly owned land and setting up their farms and homes for years. This practice of claiming nationally owned land was common and inexpensive. For that reason, a great number of property owners claimed large extensions of land that were in the dozens of hectares. This generation of land squatters was the first wave of formal owners in the Azuero and Cañas region. These types of buyer generally passed the land title to their children at very little to no cost. Moreover, in cases where farmers searched for a property sale, they would negotiate the sale among *farmers in hectares* and not *meters or feet* (one hectare is 10,000 mt²), generally leading to lower asking prices.

Buyer 2: These types of buyer could be defined as travelers into the area. After the establishment of asphalted road access in 2004, there was a new wave of adventurers, travelers,

³ ACOBIR, *Properties for rent and sale in Panama*, MLSACOBIR <https://mlsacobir.com/en/> dated 2013 (C-0880).

⁴ These websites are www.encuentra24.com, www.OLX.com.pa, and www.compreoalquile.com.

⁵ First Expert Report of Arturo Chong and Fidel Ponce dated 16 May 2019 (“**Real Estate Experts 1**”), at § 5.4.

and investors that would travel to the area for recreation, given the natural resources in the area, such as the weather, world-class surfing and fishing, nature reserves, etc. These travelers would spend time in the area and begin to interact and build relationships with the locals (the Buyer 1 – farmers). As a result, these types of buyer would find real estate market opportunities at attractive prices because they would know the area and usually the owners of the land. These types of buyer usually had the capacity to purchase land from a Buyer 1 at a low price with the intention of using the land for something other than farming. Since many of these buyers were tourists seeking recreational sports in the area, their intentions were either building a second home or a small lodging operation. In certain instances, if the traveler was a foreigner who did not speak Spanish well, the language barrier could mean a more expensive land deal. Buyer 1 landowners were usually inclined to raise the price if they were under the impression that a foreign buyer was willing to invest at a higher market price. The financial capacity of a Buyer 2 was usually in the scope of minor improvements, such as the construction of a small house, better road access towards the land, a new electricity connection, or simply purchasing land for the purpose of holding it as an investment. It is important to note that during this period of time, one popular foreign investor, Philippe Athanatiades, purchased over 30 properties for land holding and flipping purposes over the course of many years. He arrived in Azuero as a tourist and made land investments between Pedasi and Cañas. He is considered to be a key cause of the increase in land prices in the entire region.⁶

Buyer 3: These buyers are the larger scale developers. It took a couple of years after the delivery of the new Azuero road for developers to hear about this new destination from travelers (Buyer 2). Travelers who had purchased land at low prices from Buyer 1 (the original farming landowners) were now asking for larger amounts of money for their properties. They felt that the land was undervalued in comparison to other markets in which Buyer 3 developers were investing, such as Bocas del Toro and Santa Catalina. For instance, the same land in the Azuero region that was at some point purchased from Buyer 1 by Buyer 2 at an average of [REDACTED] per mt2 was now being marketed and sold for [REDACTED] per mt2.⁷ The reason for this was that the market was transforming rapidly because developers were able to sell finished products on this “cheap land” for an average of \$1,500-\$2,000 per mt2.⁸ Further, the usual final purchaser, Buyer 3, would feel more comfortable purchasing land from a Buyer 2 owner, who “spoke their language” from a financial and cultural perspective, than from Buyer 1.

As mentioned in our First Expert Report, JR Bocas, through Ms. Reyna, would be considered a Buyer 2, while Mr. Rivera would be considered a Buyer 3. Although Ms. Reyna is originally from a nearby town, she, as the representative of JR Bocas Investments Inc., fits the

⁶ Guardia, M, *Algo bueno está pasando en Pedasi*, ENEXCLUSIVA. <https://www.enexclusiva.com/11/2016/cultura-y-gastronomia/algo-bueno-esta-pasando-en-pedasi/> dated Nov. 2016 (C-0881); *Falleció Philippe Athanatiades una leyenda de Pedasi*, ELPEDASIENO <http://elpedasieno.com/fallecio-philippe-athanatiades-una-leyenda-de-pedasi/> dated 20 Sept. 2019 (C-0882).

⁷ This is proprietary information and, as such, confidential. However, Mr. Ponce has provided excerpts of the contracts for the purposes of drafting this expert report. In the event it becomes necessary, Mr. Ponce is willing to provide the redacted documents on an “attorneys-eyes-only” basis, so long as the information remains confidential and is only accessible to the Tribunal and outside counsel.

⁸ See Table 6.5, Project Listing of Real Estate Market Properties offered in the Azuero Region in the year 2010 (C-0883).

characteristics of a Buyer 2 (and not a Buyer 1) given her educational background and experience.

V. The Azuero Peninsula, and Finca 35659 in Particular, Present Unique Characteristics that Would be Attractive to Potential Developers

The Azuero Peninsula has some of the most unique and attractive attributes in the Panamanian real estate market, including a dry climate, road access, water access, and gentle topography with unobstructed ocean views, making the region attractive for investment and project development. And, in the case of Finca 35659, there are a great number of additional qualities that would make this land attractive for investment and project development, including the following:

- a) **Multiple Cultures:** While Panama has 7 indigenous tribes found throughout the Caribbean and Pacific coastlines, and highlands between both oceans, which speak various dialects, these indigenous tribes are not found in the Azuero Peninsula. Instead, the Azuero natives are mostly Spanish descendants and, as such, speak Spanish and are able to communicate with a higher level of formal education. The Azuero natives are mostly involved in commercial agriculture, cattle, and wood farming. Having local indigenous tribes near development sites often presents the risk of a potential clash of cultures for real estate developers, but this is not the case in Cañas, where one can access ocean view properties in a matter of minutes without any such issues. And, because Cañas is located far from any indigenous territory, it is easy for any potential investor to communicate with and relate to a very small group of local Spanish-speaking inhabitants.
- b) **Natural Resources:** One of the main attractions and reasons for virtually every development project in the Azuero region is the area's natural resources. The Pedasi projects are all in front of or in close proximity to attractive beaches and ports used for sport fishing, diving, or world-class surfing. The town of Cañas in particular is right in front of an uncrowded and long bay featuring a sandy beach. Further, Cañas has a natural port for accessing world-class surfing, sport fishing, and the Cañas turtle nesting reserve, making it one of the most attractive areas in the region.
- c) **Weather:** The southern Azuero Peninsula and Cañas are located at the furthest distance from both of Panama's coasts, creating a unique, dry climate. Also, rain and corrosion on the Caribbean side of Panama is stronger than on the Pacific coast and the Azuero Peninsula. Having less rain and corrosion allows developers to forecast costs with more certainty when it comes to ground movements and the use of tools or metal for construction. This results in less overhead in general construction costs. In Cañas, therefore, you can access ocean view properties without the high risk of construction damage from weather conditions found in other areas of Panama.

- d) **Vegetation:** While most of Panama is lush and tropical, the Azuero region, which includes Finca 35659, is the only location in the country with a small desert, called “the sarigua desert.” Having such dry conditions is beneficial for developers and is considered attractive for investment purposes. The reason is that deforested land is less expensive to prepare (*i.e.*, with respect to moving earth, leveling the topography of the land for construction purposes. etc.). It is also easier and more convenient for a developer to process and submit all permits and regulations for construction. Further, the environmental impact is minimal where the land has already been deforested and used for cattle, as is the case with Finca 35659. The surroundings of Finca 35659 are mostly denser in vegetation, creating potential issues with environmental regulations, but Finca 35659 itself is heavily deforested. Pictures 5.1 and 5.2, are aerial photographs of Finca 35659, showing how deforested it is in relation to surrounding parcels, which contain heavy vegetation.
- e) **Topography:** The topography in the area is a combination of rolling and steep hills. Finca 35659, however, consists of rolling hills with enough elevation to grant the property unobstructed ocean views. This topography makes Finca 35659 unique as the properties surrounding Finca 35659 are characterized by steep hills with either irregular or uneven topography or flat land prone to floods and without ocean views. Pictures 5.1 and 5.2 show the rolling hill topography of Finca 35659 in comparison with the surrounding areas.
- f) **Water Access:** Finca 35659 has multiple natural water sources. This, too, is an attractive and unique quality of the property. By way of comparison, a great number of properties in that region suffer from lack of water access during Panama’s dry season. In fact, there are only two main rivers between Pedasi and Cañas, the Cañas river being one of them and running right in front of Finca 35659. Pictures 5.1 and 5.2 show the Cañas River running in front of the property line.
- g) **Proximity to Asphalted Road:** Unlike most of the mountain range and sea view property opportunities outside Azuero, which are far from the main asphalted roads and thus require long drives to obtain ocean views, in Cañas, the asphalted road is minutes away from Finca 35659, as seen in Picture 7.1.
- h) **Privacy:** Finca 35659 is accessed through a dead-end road. For a developer, this is an important quality because having a project at the end of a dead-end road generates a feeling of privacy, exclusivity, and security, as a dead-end road is primarily used by residents. This was particularly desirable in this case, where an asphalted road was already very close to the property.
- i) **Neighbors:** It is generally true that the value of a property will appreciate when it is surrounded by other valuable properties. Finca 35659 was surrounded by multiple upcoming and existing residential projects, such as Cañas del Sol and

Azur. This appreciation is also due to the influence of foreign investors who own neighboring properties.

- j) Infrastructure:** The positive effects of the development of public / private infrastructure on tourism and land investment in the region are evident. The level of road connectivity in Panama outside Panama City was low until the mid-2000s. The Azuero Peninsula did not get an asphalted road until 2004. Furthermore, the most visited area in Azuero by tourists at the time (Playa Venao) did not get internet or cell phone reception until 2012. This, too, was an attractive development at the time. Conversely, other coastal areas of Panama still have not developed infrastructure for a regional airport, roads, internet, or phone access, meaning that the Azuero Peninsula is more likely to draw real estate investment than other coastal areas.

Picture 5.1 of Finca 35659 Showing Minimal Signs of Vegetation, Soft Elevation, and Soft Topography.



The following image, Picture 5.2, presents an overview of the area that captures the elements mentioned above: great topography, clean vegetation, water access, privacy, and natural resources.

Picture 5.2 Finca 35659 Aerial Photographic Report



VI. Valuation of Finca 35659

The methodology used for conducting the valuation of Finca 35659 is two-fold. *First*, we valued Finca 35659 by comparing the price per square meter agreed upon in the Promise of Purchase and Sale Agreement with the offer and actual sales prices in Cañas during the relevant time period. *Second*, we compared the price per square meter agreed in the Promise of Purchase and Sale Agreement with that of comparable properties in areas adjacent to Cañas that are similar in all respects (*i.e.*, natural resources, weather, proximity to the ocean, etc.), but that were at a further stage of development. The reason this type of two-fold valuation is important here is that a Buyer 3 (developer) would take into account not only the current market price of a particular property, like a non-developer Buyer 2 would, but would also consider the potential future profitability of the area as a whole. To assess the potential future profitability, a Buyer 3 would look at properties in nearby regions that have close enough characteristics, but that have

begun to develop, to determine whether the region (*i.e.*, Cañas) and the property (*i.e.*, Finca 35659) is likely to follow the overall development of the area. In this way, a Buyer 3 forecasts with reasonable certainty whether property values in the Cañas region would increase and what the price per square meter would likely be once the land is developed.

As such, the data used for conducting the valuation of Finca 35659 consists of an evaluation of comparable properties both in the Cañas area, and in the larger Azuero region. The data includes a mix of contemporaneous personal records collected from the time Mr. Ponce was involved in the real estate market while living in the Playa Venao region, including offer prices and property appraisals for comparable properties, as well as actual sale prices for properties sold in Cañas during the relevant time period, in addition to the data relied upon in the First Expert Report. Further, in his preparation of this Second Expert Report, Mr. Ponce conducted interviews with local and foreign landowners of comparable properties with similar valuable characteristics in the area, who had sold or purchased land at the same time as Mr. Rivera was looking to make his purchase. The data collected from those interviews has now been included in this valuation to supplement the comparable properties information used in our First Expert Report.

1. Valuation of Finca 35659 in Relation to Market Prices in the Cañas Region

In this section we perform a traditional market valuation of Finca 35659 by comparing the per square meter price agreed for Finca 35659 in the Promise of Purchase and Sale Agreement in early 2013 to comparable properties in Cañas during the relevant time. Due to the fact that properties with similar attractive attributes to Finca 35659, such as gentle topography, proximity to asphalted roads, ocean views, and electricity, had already largely been purchased and had started development by this time, this pool is small and there were not many comparable offerings available. Rather, the remaining land that had not been purchased was either far away from the main road or was protected beachfront land that could not be developed, and thus was not comparable. As such the number of comparable properties available to a buyer at that time is not extensive. For this reason, a buyer would look at properties in the area that may differ in size and year of sale, so long as they are similar enough regarding key features that are important to a developer such as, for example, gentle topography, low vegetation, accessibility to the ocean and ocean views, proximity to asphalted roads, and sources of electricity and water. Assisting in this valuation, a Buyer 3 entering the market would also rely on assistance from an expert, such as a real estate broker or a developer, to conclude the valuation.

As we highlighted in our First Expert Report, there were four comparable properties for which we had *offer* data from the time, namely Comparable A, Comparable B (*i.e.*, AZUR Panama), Comparable C (*i.e.*, Cañas del Sol), and Comparable D. For this Second Expert Report, we have added three additional properties with additional *actual sales* data from the period between 2009-2014, which are listed in Table 6.1. Based on an analysis of these properties, we conclude that the \$12.65 per square meter price agreed for Finca 35659 is within the range of market prices at the time, which was \$10 to \$15 per square meter. In reaching this

valuation, Mr. Ponce relied on data collected from real estate project sites in Cañas, interviews with residents of Cañas, and internet archives to corroborate real estate market data.⁹

a) Actual Sales Data from Properties in Cañas

During the time Mr. Ponce was living and working in the Azuero region, he invested time and resources in creating and fortifying relationships in the area. Those prior relationships assisted Mr. Ponce during a recent visit this year to perform interviews with people in the region for the purpose of collecting and corroborating data from the period 2009 to 2014, including in his obtaining three promise of purchase and sale agreements for properties located in Cañas approximately 2 km from Finca 35659.¹⁰ The following Table 6.1 summarizes this data.

Table 6.1 Shows Data from Three Land Transactions in Cañas from 2009 to 2014

Purchase of Land Transaction Breakdown			
Area / District	Total Area - Square Meters	Total Transactional Cost of the Land	Price per square meter
Cañas / Tonosi			
Cañas / Tonosi			
Cañas / Tonosi			

The properties listed in Table 6.1 are located in Cañas, within a very short distance from Finca 35659. In addition, all three properties were sold by a Buyer 2 and purchased by a Buyer 3. Buyer 2 purchased the properties at a low cost of [redacted] per square meter, made improvements such as ensuring road access, electric posts, and a water well, and then sold the properties at a much higher price during the period 2009-2014.¹¹ As this data shows, the price per square meter for comparable properties at the time was [redacted]. As such, the \$12.65 per square meter price agreed for Finca 35659 falls well within this range.

⁹ In particular, Mr. Ponce used data collected through <https://archive.org/web/> which shows the websites as they were at the particular moment in time.

¹⁰ Promise of Purchase and Sale Agreement dated approx. 2009-2014 (C-0920); Private Promise of Purchase and Sale Agreement dated approx. 2009-2014 (C-0921); Promise of Purchase and Sale Agreement dated 2009 (C-0922). This information is proprietary information and, as such, is confidential. However, Mr. Ponce has shared excerpts of the contracts for use in the drafting of the present expert report. In the event it becomes necessary, Mr. Ponce is willing to produce the redacted document on an “attorneys-eyes-only” basis, so long as the information remains confidential and is only accessible to the Tribunal and outside counsel.

¹¹ Based on information given in an interview Mr. Ponce conducted with the seller.

b) Property Offerings from 2012 to 2014

In our First Expert Report, we also analyzed real estate market offers for 2012 to 2014 in Cañas, which we designated as follows: Comparable A, Comparable B (*i.e.*, AZUR Panama), Comparable C (*i.e.*, Cañas del Sol), and Comparable D. As explained in our First Expert Report, the selling price per square meter range during this period in Cañas for ocean-view properties within the perimeter of the town, such as Finca 35659, was \$10 to \$15 per square meter.¹² All of these projects initially started as cattle farms, and they all boast proximity to the ocean and are close to an asphalted road. The following Table 6.2 shows the selling price per square meter in Cañas during 2012 to 2014.

Table 6.2 Cañas Real Estate Market Composition¹³

Cañas Real Estate Market Offer		
Comparable Property	Selling Price X SQM	Property total area
Comparable -A-	\$10	1 HAS
Comparable -B- AZUR Panama	\$15	1,000 sqm
Comparable -C- Cañas del Sol	\$12	5 HAS
Comparable -D-	\$10	1 HAS

Further, by way of example of what developers at the time were forecasting, namely that the area would develop and property values would appreciate, below is information on Comparable C (*i.e.*, Cañas del Sol) from the relevant time period. The following Picture 6.3 shows a screenshot example of the real estate market composition in the area of Cañas in the year 2011.

¹² Real Estate Experts 1 at 28.

¹³ *Id.*

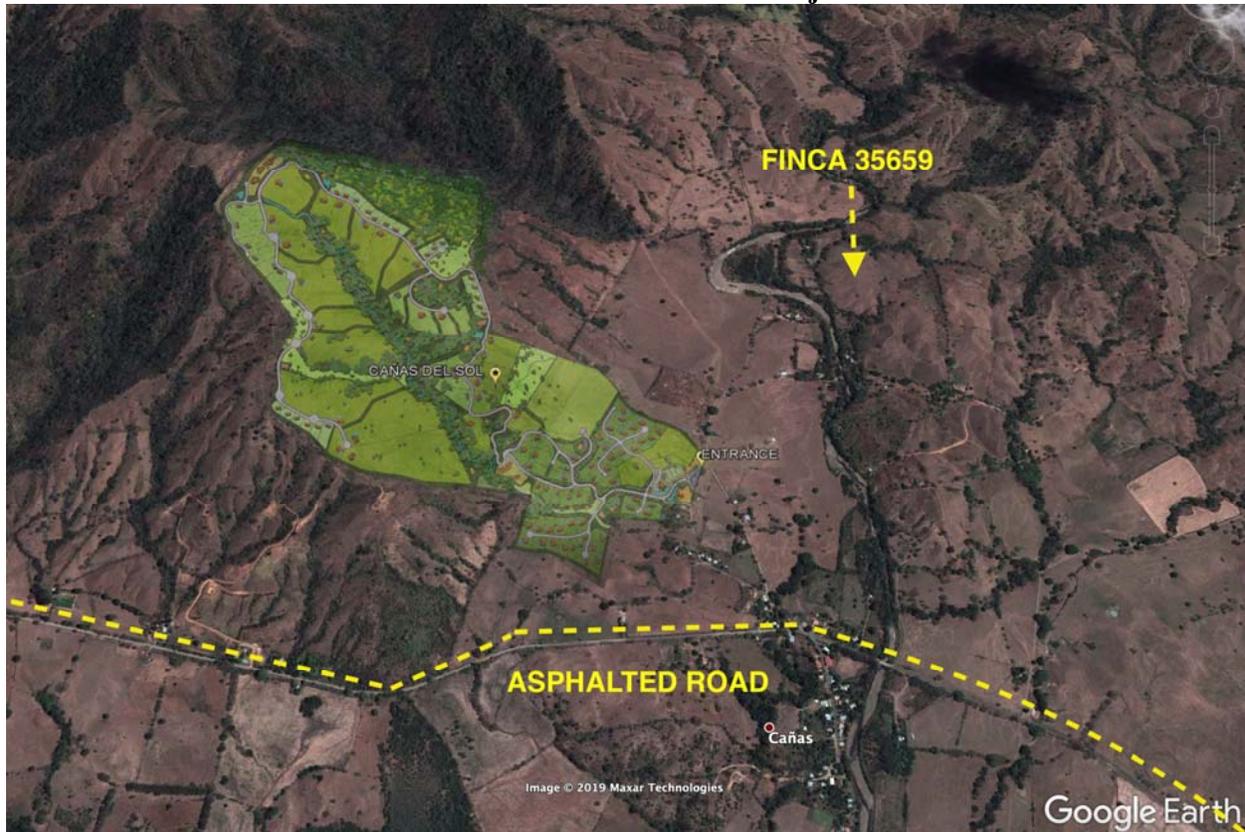
Picture 6.3 Screenshot Example of Cañas del Sol Project Website Presented in 2011¹⁴

As this Picture shows, the Cañas Del Sol Project website from 2011 speculates about a market increase in the Azuero Region. It forecasts that Cañas will be “the next destination” and confirms that developers had various projects in progress at the time. Furthermore, it shows that they expected land prices to increase from a then-current \$15-30 per square meter to more than \$90 per square meter of raw land. The Cañas Del Sol Project is located right in front of Finca 35659, approximately 700 meters away. This was the sentiment and mind-set of developers at that time (*i.e.*, that the area of Cañas would be the next area of development and, therefore, that prices would increase substantially in the following years).

¹⁴ Screenshot Example of Cañas del Sol Project Website Presented in 2011, available at <https://web.archive.org/web/20110128220318/http://canasdelso.com/> (C-0884).

Picture 6.4 below shows an aerial photograph of the area depicting the location of the Cañas Del Sol development and Finca 35659. As the picture shows, the properties are in very close proximity.

Picture 6.4 Relation of Cañas Del Sol Project with Finca 35659



* * *

In sum, the comparable properties used in our First Expert Report, now supplemented by the ones used in this Second Expert Report, show that the per square meter price range during 2009–2014 for comparable properties in Cañas was \$10 - \$15.¹⁵ The data used to reach this conclusion is similar to what an investor or buyer would have had available to it at the time. The per square meter price of \$12.65 agreed for Finca 35659 is well within that range. Based on information available at the time, a Buyer 3 would have concluded that the price for Finca 35659 was a reasonable price and within the market price range.

2. Valuation of the Potential Future Profitability of a Development in the Area

A Buyer 3 (developer) would not stop its analysis at valuing the land based on the current market price of comparable properties in Cañas itself. Instead, a Buyer 3 would take the

¹⁵ While the average range for offer prices was \$10 to \$15, the average range for actual sales prices was [REDACTED]. These numbers have been rounded to \$10 to \$15 for ease of reference.

additional step of evaluating the potential future profitability of the region as a whole to determine whether the Cañas area offered potential for future profitability.

To assess the area's potential future profitability, a Buyer 3 would look at properties in nearby regions that have similar characteristics, but which were at a more advanced stage in their development, to determine whether the region (*i.e.*, Cañas) and the property (*i.e.*, Finca 35659) could follow the overall development of the area. In doing so, a Buyer 3 would be able to forecast with reasonable certainty whether property values in the Cañas region would increase and what the price per square meter would likely be once the land had been developed.

a) Property Offerings Marketed in the Azuero Region During 2010-2014:

During these years, Mr. Ponce was a real estate consultant in the area of Azuero and analyzed a number of project offerings in the area. As a real estate consultant, Mr. Ponce collected data from nearby projects in excel spreadsheets, listing project names, land prices per meter, and the prices of finished construction per meter. This was done in order to understand the market at the time and to set prices for development projects. In addition, Mr. Ponce accumulated part of his data from Philippe Athanatiades, who, as mentioned above, was a pioneer of investments in the Azuero region and had the largest number of "For Sale" signs in the region during this time. Marketing road signs with actual offer prices per meter tended to create speculation and market shifting. The following Table 6.5 presents project listings in the Azuero region collected by Mr. Ponce during the year 2010 (including the price per square meter of raw land, price per square meter of developed products that include the price of construction, average size of the different properties offered at the time, the estimated number of units, and properties that offered the closest proximity to the coastline). The information in this table provided the raw data for the original comparable properties in our First Expert Report, but we have included this table as it also shows the sales prices for developed land.

Table 6.5 Project Listing of Real Estate Market Properties Offered in the Azuero Region in the Year 2010¹⁶

PROJECT NAME	TYPE	PRICE X MT2	PRICE X MT2	DISTANCE FROM PF	AVERAGE LOT SIZE	PRIVATE BEACH	ESTIMATED # OF UNITS	MONTHLY FEE
		Land	Construction					
ANDROMEDA	Beachfront	\$250	n/a	25 Min.	1300 mt2	no	300	N/A
	Oceanview	\$140	Starting \$1200		750 mt2			
COSTA PEDASI	Beachfront	\$250	n/a	25 Min.	1300 mt2	no	135	\$150
	Oceanview	\$120	Starting \$1200					\$150
AZUEROS	Oceanview small	\$280	\$2000+	20 Min.	3000mt2	no	100	\$400
	Oceanview large	\$200	\$2000+		10,000mt2			\$600
	Condo	N/A	\$2,500		N/A			N/A
PLAYA VENAO	Beach lot	\$70-80	na	3 Min.	600 mt2	no	300	N/A
PEDASI FORREST	Oceanview	\$100 AVERAGE	\$1600 (house)	N/A	3500 mt2	yes	400	N/A
			\$1800 (condo)					N/A

The table above shows a list of Buyer 3 sellers and the expected sales price per square meter for land inside gated communities during 2010 in projects near Finca 35659. The price ranges for these gated communities are higher because, while they were once cattle farms, they have been improved with internal roads, electricity, subdivided lots, drainage and sewage systems, security, and social areas for the community to gather, including a swimming pool. Further, homes have already been built for potential purchasers.

These are comparable properties because they were sold by Buyer 1 to Buyer 2 owners and then sold to Buyer 3 developers. They all also promote the same natural resources for recreational activities within the same area of the Azuero Peninsula, sharing and attracting a similar target market. Importantly, while none of these properties are in Cañas, during the period of 2010-2014, most of the area in and around the Azuero Peninsula was seen as a single “Azuero Region.” This is because most of the properties in the area were used for cattle and not for commercial real estate purposes. As such, in the eyes of Buyer 2 types (*i.e.*, travelers), Pedasi, Venao, and Cañas were all part of “Azuero.” This was reinforced by the way the Azuero Region was characterized on the Internet and in marketing efforts.

¹⁶ This table was a personal analysis done during 2010 to compare the projects’ promoted prices in order for Mr. Ponce to use for Capital International’s project valuation and strategy purposes. Since the developer was going to promote, sell, and compete in the area, Mr. Ponce developed this comparison. In doing so, Mr. Ponce visited the projects and had conversations with the developer, obtaining basic information that he compared with information from “For Sale” signs, the Internet, and conversations with the small community of expatriates in the region, allowing him to gather the cost of a raw lot and the price that would be charged if the developer built on the lot.

Eventually, as land started to sell and develop, the area started to divide itself into sub-regions and more niche information on each area became available. In particular, multiple international surf competitions (the World Surfing Games and Juegos Centro Americanos)¹⁷ held in Venao for three years from 2011-2013 brought international media and tourists to the area, generating a large amount of publicity and speculation in Venao and causing the Azuero Region to begin dividing itself into submarkets centered around Venao and subsequently Cañas. The opportunity for low-price real estate soon evaporated, though, as all the land that was worth investing in was quickly purchased and developed, leading to the higher prices we have seen in Venao and Cañas today.

These trends are apparent in the average sales prices in the region from 2012 to 2014. The following tables supplement the valuations from our First Expert Report for Mariabe, Pedasi, Destiladeros, El Ciruelo, and Playa Venao with new valuations for Andromeda, Costa Pedasi, Azueros, and additional Pedasi properties.

Table 6.6 shows the selling price of lots (raw land) inside gated communities in the projects of Andromeda, Costa Pedasi, and Azueros (note that Costa Pedasi is a project outside of the actual town of Pedasi and closer to the ocean and thus more valuable; as such, it is distinct from the Pedasi lots referenced in our First Expert Report). These were all inexpensive cattle farms that were improved for commercial purposes. These properties were fenced and gated, segregated into smaller lots, internal roads were created, electric posts and water connectivity were added to each lot, and then they were sold for the prices listed below.

Table 6.6 Andromeda, Costa Pedasi, and Azueros Real Estate Market Composition

Real Estate Market Offer 2012 - 2014		
Area / Region	Price X SQM Selling Price	Average size offered in SQM
Andromeda	\$120	750 SQM
Costa Pedasi	\$120	700 SQM
Azueros	\$200	12,000 SQM

¹⁷ Panama will host the VIII Central American Surf Games 2013, INTERNATIONAL SURFING ASSOCIATION, <https://www.isasurf.org/panama-sera-sede-de-los-viii-juegos-centroamericanos-de-surf-2013/> dated 12 Nov. 2013 (C-0933); A world-class beach break, Playa Venao offers the best junior surfers an ideal wave for showcasing their talents, INTERNATIONAL SURFING ASSOCIATION <https://www.isasurf.org/a-world-class-beach-break-playa-venao-offers-the-best-junior-surfers-an-ideal-wave-for-showcasing-their-talents/> dated 3 Apr. 2012 (C-0934); Panama will host the 2011 Billabong Isa World Surfing Games, INTERNATIONAL SURFING ASSOCIATION <https://www.isasurf.org/panama-will-host-the-2011-billabong-isa-world-surfing-games/> dated 14 Dec. 2010 (C-0935).

Next, we looked at the second wave of development projects in El Ciruelo and Venao. This second wave of developers positioned themselves in the aforementioned areas between 2008 and 2010, which is when they purchased the best larger parcels of land for development. They chose these locations because these two areas were the closest to the ocean from the asphalted road after Pedasí. The following Table 6.7 shows the average price per square meter in the areas of El Ciruelo and Venao from when these developers began to promote the land for sale, namely around 2012-2014.

Table 6.7 El Ciruelo and Venao Real Estate Market Composition

Real Estate Market Offer 2012 - 2014		
Area / Region	Range of Price X SQM Selling	Average size
El Ciruelo	\$12 - \$25	1 - 4 HAS
Venao	\$80	1,000 - 2,000 SQM

The price range for El Ciruelo is for raw land with ocean views. The Venao price reflects *subdivided parcels* inside an already existing project, explaining the higher price per square meter. As this data shows, developments in nearby regions were being offered at prices that presented an attractive margin for a developer that can purchase the raw land for a low price, such as Finca 35659 at \$12.65 per square meter.

b) Appraisals of Nearby Land Conducted During 2010-2013:

In addition to the offer prices listed above, in the course of his real estate work in the area, Mr. Ponce collected actual appraisals for comparable properties from 2010-2013.¹⁸ The following excerpts, denoted as Tables 6.8-6.10, show screenshots of real estate property appraisals from the relevant area and time.

¹⁸ This is proprietary information and, as such, is confidential. However, Mr. Ponce has shared excerpts of the appraisal document for the purposes of producing this expert report. In the event it becomes necessary, Mr. Ponce is willing to produce the full document on an “attorneys-eyes-only” basis, so long as the information remains confidential and is only accessible to the Tribunal and outside counsel.

Table 6.8 – Example # 1

Appraisal Example # 1			
Size SQM	Value Price (USD \$)/SQM	Location	Access
4,213 SQM	████████	Pedasi next to Gilles Saint Gilles Arq. Lots	Easy

Example # 1 shows a *subdivided parcel* near a residential project that has a total size of 4,213 square meters with a selling price set at ██████████ per square meter. The property is located near the project “Azueros,” near Pedasi and approximately 20 linear km from Finca 35659. The Azueros project, which the subdivided parcel is in close proximity to, consisted of large high-end homes with handcrafted wood and stone finishes located on rolling hills with ocean views. Notably, this property is located next to the project by famous architect Gilles Saint Gilles. His project “Azueros” is one of Panama’s most luxurious beach and ocean view communities.

Table 6.9 – Example # 2

Appraisal Example # 2			
Size SQM	Value Price (USD \$)/SQM	Location	Access
89,600.00	████████	Pedasi / Prince of Lichtenstein property within lienal coast proximity	Easy

Example # 2 shows *raw land* that has a total size of 89,600 square meters with a selling price set at ██████████ per square meter. The property is located 10 km from the town of Pedasi and approximately 20 linear km from Finca 35659. It is important to mention that the property is located next to the Prince of Liechtenstein’s property, who we consider to be a Buyer 2 type because he purchased what was formerly raw cattle land, made improvements, and never sold any parcels, instead employing the land for his personal use. His property includes a luxurious boutique house rental and his personal home. The boutique house rental attracts high-end customers through general marketing, resulting in potential investors for land in the area.

Table 6.10 – Example # 3

Appraisal Example # 3			
Size SQM	Value Price (USD \$)/SQM	Location	Access
1,400.00	████████	Los Destiladeros	Easy

Example # 3 shows a *subdivided parcel* that is inside a residential project and which has a total size of 1,400 square meters with a selling price set at [REDACTED] per square meter. This property, the “Azueros” project, is located in the area of Los Destiladeros and is approximately 20 km from Finca 35659 (note this is distinct from the “Destiladeros” property discussed in our First Expert Report). It is important to mention that the property is located in an area in which high-end project developments have taken place (such as Azueros Residences Luxury Homes and the famous Hotel Villa Romana). This could be one of the reasons for the higher value of the square meter price in this area.

Picture 6.11 below highlights the similarities among these properties, namely their proximity both to the ocean and to an asphalted road, which is designated by the yellow line. Notably, points where the road gets close to the ocean are locations where investors have purchased land and developed projects. Other valuable attributes attracting tourists and investment are demarcated, including world-class surf spots, sport fishing, and diving. Further, two protected parks near Venao and Cañas—Isla Cañas Park and Achiotines (circled in green)—have made it difficult for developers to purchase the very best land, pushing them towards Finca 35659 (they are unable to look further east because they would stray too far from the main asphalted road).

Other projects between Venao and Cañas, which we have not listed (either because their owners have not marketed or publicized their plans for the properties, or because they are inaccessible due to heavy security), include a large parcel on the west beach side of Venao owned by Alberto Vallarino, an experienced developer with major projects in the region. Further west of Venao, up to Cañas, another developer has been selling lots for vacation homes from the time Mr. Ponce lived in the area up until today, with a few homes already built on the land during the relevant period. These rapidly developing properties are thus in proximity to, and share the same valuable attributes as, Finca 35659 and explain why a Buyer 3 (developer) would have found Finca 35659 an attractive property with great potential for future profitability.

Picture 6.11 Showing Developments in Cañas and Neighboring Areas



VII. Responses to the Arjona Report and Respondent's Criticisms

Justice Arjona and Respondent make a series of comments about and criticisms of our First Expert Report, which we address below. As a preliminary matter, it is important to note that Mr. Ponce has had almost two decades of experience in both tourism and real estate in Panama and, in particular, in the Southern Azuero Peninsula, including Cañas, Pedasí, and Venao. Conversely, Justice Arjona, as a judge, lacks real estate market experience and thus focuses his criticisms on legal issues. To the extent that Justice Arjona's criticisms are not legal in nature, but instead relate to areas within Mr. Ponce's expertise, those are addressed below.

a. Using Offer vs. Sales Prices

Respondent contends that our use of offer prices and not the actual sales prices for three of our four original comparable properties renders them “entirely irrelevant for a valuation.”¹⁹ However, as explained above, in Panama actual real estate data is not readily available. As such, it is common that within commercial real estate brokerage practices, appraisals, Return On Investment (“ROI”) calculations, and/or marketed offer prices are used to educate both buyers and sellers in anticipation of a closing and to determine the reasonable price for the specific property. In addition, buyers and sellers can complement this price information by searching for property listings on the limited existing real estate websites, such as www.encuentra24.com, www.OLX.com.pa, and www.compreoalquile.com. Further, buyers and sellers rely on real estate brokers or a market expert to guide them with respect to pricing. Most of the data available relates to offer prices as most people will not disclose the actual price for which they sold or bought a property.

In our First Expert Report we relied on four properties in the area of Cañas with similar topographic characteristics as comparables for valuing Finca 35659 during the relevant period. This would have been the type of data used to determine the value of the property by an investor or developer at the time.

In any event, for this Second Expert Report, Mr. Ponce has contacted individuals from the Cañas area who bought or sold property during the relevant period and has been able to obtain three Promise of Purchase and Sale Agreements from late 2009.²⁰ These Agreements show



¹⁹ Respondent’s Reply on Preliminary Objections and Rejoinder on the Merits dated 18 Nov. 2019 (“**Resp. Reply**”), ¶ 54.

²⁰ This is proprietary information and, as such, is confidential. However, Mr. Ponce has shared excerpts of the contracts for the purposes of producing this expert report. In the event it becomes necessary, Mr. Ponce is willing to produce the redacted document on an “attorneys-eyes-only” basis, so long as the information remains confidential and is only accessible to the Tribunal and outside counsel. Because these documents contain private information that the parties have requested be kept confidential, personal information or information that could identify the exact lot of the property must be redacted.

²¹ *Id.*

²² *Id.*

²³ *Id.*

From this information it is evident that the price per square meter for Finca 35659 was \$12.65, well within the price range for these properties.

b. Backward-Looking Valuation

Respondent also criticizes our valuation of Finca 35659 by arguing that we are attempting to value the land six years after the transaction occurred, and that even under ideal circumstances, it is difficult to value land after so many years.²⁴ This is not correct. In order to value Finca 35659, we initially relied on the offer prices for these properties from 2012 to 2014. In this Second Expert Report we rely on the same offers made during 2012-2014, but have also added *actual sales prices and property appraisals* of comparable properties from 2009-2013.

From this information, it is evident that sales were taking place within the price range paid for Finca 35659 during this period.

c. Incorrect Use of Comparables

Respondent also criticizes our use of comparable properties, arguing that we look back at a very small number of properties and repeatedly focus on non-comparable tracts.²⁵ These criticisms are incorrect, and display Respondent's lack of understanding of the Panamanian real estate market and the region where Finca 35659 is located.

In our First Expert Report we focused on comparable properties that were in the same region, with sufficient proximity to the same natural resources, similar proximity to the ocean, similar dependence on the area of Pedasi for basic services (*e.g.*, groceries, health center, phone service, and banks), and with a similar target market (*i.e.*, Buyer 3s interested in developing the land for multiple residential projects or tourism) and marketing strategy. Those comparables are appropriate because they are the type of information a buyer at the time would have had in order to make his/her assessment of the value. We have supplemented our Second Expert Report with comparable information from actual sales and appraisals from the relevant time period.

In particular, our valuation methodology is two-fold. *First*, we value Finca 35659 by comparing the price per square meter agreed upon in the Promise of Purchase and Sale Agreement with offer and actual sales prices in Cañas during the relevant time period. *Second*, we compare the price per square meter agreed to in the Promise of Purchase and Sale Agreement with comparable properties in areas adjacent to Cañas that are very similar in all respects but that were at a further stage of development. This methodology mirrors the way in which a Buyer 3 (developer) would take into account not only the current market price of a particular property, but would also consider the potential future profitability of the area, looking at similar properties in neighboring regions that have begun to develop to determine whether the region (*i.e.*, Cañas) and the property (*i.e.*, Finca 35659) could follow the overall development of the area.

²⁴ Resp. Reply ¶ 51.

²⁵ *Id.* ¶ 53.

Therefore, for step 1 of the valuation (market price), we have looked at offer and actual sales prices for comparable properties located in Cañas during the relevant time period. For step 2 of the valuation (potential future profitability), we have looked at comparable properties in near-by areas that were at a more advanced stage of development to determine whether a Buyer 3 (developer) at the time would have considered Cañas to be an attractive area to invest. From a real estate investment perspective, this is how a Buyer 3 (developer) would have approached its analysis of the value of Finca 35659.

d. Unprecedented Increase in the Property’s Value

Respondent and its expert Justice Arjona also look at the difference between what the Public Registry states was the sales price paid by seller JR Bocas Investments for Finca 35659 in 2008 (\$ 30,000) and compare it with the price agreed by Punela Development Corp. in the Promise of Purchase and Sale Agreement in 2013 (\$ 1,000,000), and conclude that an increase of over 3,000% in 5 years is not credible.²⁶ This is incorrect, and shows Respondent and Justice Arjona’s lack of knowledge of the Panamanian real estate market.

As explained above, the information in the Public Registry is not a reliable indicator of the value of a property or even the actual price for which the property was sold. As such, looking at the difference in price between the Public Registry and the Agreement is simply wrong. Even if there is a notarized contract stating that the transaction was made for \$30,000, there may have been a separate private agreement between JR Bocas and the original owner with a substantial difference in the actual price paid. Moreover, it is not uncommon that a Buyer 1 does not have a bank account and therefore accepts payments in cash, leaving no trace of the possible transaction. Further, and as discussed, it was not uncommon to see large increases in price in a hot and emerging market. This was the case with the Azuero region during the 2004-2014 period. At the time, sales between Buyer 1, 2, and 3 types were taking place and there was a significant amount of speculation as well.

In the case of Finca 35659, the seemingly large increase in price could have taken place because the original owner (a Buyer 1) inherited the land at a very low cost and then sold it to a Buyer 2 for a particular amount. As explained above, the actual amount of the sale is not usually recorded in the Public Registry, but remains confidential between the parties. This could have been the case for Finca 35659. The original owner, who inherited the land (from a squatter)²⁷ sold for below \$1 x mt2 (cattle land prices as recorded in the Public Registry) or to JR Bocas (a Buyer 1 to Buyer 2 transaction). Assuming sufficient expertise on the part of Buyer 2, it is perfectly conceivable that it bought land cheap for under \$1 x mt2 from a Buyer 1 and later sold to a Buyer 3 for a good profit margin during the early days of an emerging real estate market. The profit margin will vary based on the factors mentioned above, such as marketing prices of other similar properties in the same region. Other factors include the quality of the seller’s

²⁶ Expert Report of Adan Arnulfo Arjona dated 13 Nov. 2019 (“Arjona”), ¶ 66; *see also* Resp. Reply ¶ 37.

²⁷ According to the Public Registry, the Buyer 1 acquired the property for \$48 in July 2007. *See* Tonosi Land Registration Information dated 31 Jan. 2013 (C-0202) at 1. While Mr. Ponce disagrees with the value shown in the Public Registry, given that just six months later it sold for \$30,000 (*see* Public Deed number 338 of 15 February 2008 (AA-0006)) this shows how unreliable the Public Registry is for determining market value.

network or client database (which in most cases consist of foreigners living in countries where the price per meter is substantially higher than the one offered in Azuero); the seller's ability to speak multiple languages (including that of the potential buyer) and to create a sense of trust, which is usually the case when the buyer and seller share the same nationality, culture, etc.; and the seller's skills in closing a real estate transaction.

The only determinant of market value, however, is what similar properties were selling for at the time, not a seemingly large increase in value as Justice Arjona states. Per the Promise of Purchase and Sale Agreement submitted, JR Bocas and Ms. Reyna decided to enter into an agreement within market prices at the time. That price was consistent with the way in which other real estate investors in this market at this time would have valued the property. Bear in mind that a developer buying land in that region for \$12.65 per square meter, as in the case of the Finca 35659 transaction, was at the time, and still remains today, perfectly feasible. During the 2010-2014 time period, finished homes in the area were selling for an average price of \$1,500 to \$2,000 per square meter.²⁸ Today, the marketed prices of finished homes inside private projects such as Venao Blue have increased to an average of \$2500 to \$3000 per mt2. Ultimately, the real value of a property in an emerging market such as the Azuero Peninsula depends on the capacity of a buyer to purchase land, successfully develop it, and then profit from it. There is nothing unusual about the price agreed in the Promise of Purchase and Sale Agreement.

e. Assumption of Electricity Service and/or Lack of Roads and Undesirability of the Property

Respondent also argues that we relied on post-valuation events that should not have been considered when valuing the land as of 2013, including the electrification of the property, which Respondent contends occurred as late as 2019.²⁹ However, a buyer of real estate property to use for development in Azuero typically would expect to get basic services such as water and electricity with the purchase. In the transaction under consideration in this arbitration, it appears based on the addenda to the Promise of Purchase and Sale Agreement (Meeting of the Minds Agreement)³⁰ that Mr. Rivera intended to obtain water and electricity services and, more importantly, that the seller acknowledged that those were conditions for the sale. Further, it is not unreasonable that a buyer would make such a request. As can be seen in the following Picture 7.1, the yellow dotted lines indicate where the electric grid was at the time of negotiations between JR Bocas and Punela. The red dotted line indicates the remaining length of electric grid (approx. 500 meters) needed to obtain electricity for Finca 35659. Installing 500 meters of electric grid could take six months, as such processes in the region take longer than expected based on bureaucracy and other factors. This is particularly the case when the installation is done by the Government (and for free) rather than by paying a private company, because the property owner must go through a tedious process involving the government. It was indeed reasonable for Mr. Rivera to have negotiated this into the Agreement so that he did not have to go through this process.

²⁸ See Table 6.5, Project Listing of Real Estate Market Properties Offered in the Azuero Region in the Year 2010 (C-0883).

²⁹ Resp. Reply ¶ 52.

³⁰ Extension to the Promise of Purchase-Sale Agreement for Tonosi Land dated 3 Sept. 2013 (C-0374).

Further, Respondent’s argument that Finca 35659 is accessible only by “deteriorated” roads is incorrect and shows a lack of knowledge of the area and the property.³¹ Cañas has had asphalted road access since 2004, and a gravel road that can be driven on by any car to Finca 35659. As can be seen in the following Picture 7.1, the asphalted road is only approximately 2.3 km from Finca 35659. Having such proximity to an asphalted road is of great value to many developers in the area, and would certainly have been of great value to Mr. Rivera.

Picture 7.1. Distance Between Finca 35659 and the Asphalted Road



VIII. Responses to Justice Arjona’s and Respondent’s Criticisms of the Purchase/Sale Promise Agreement

The arguments raised by Respondent and its experts, Justice Arjona and Mr. Pollitt, generally concern issues of Panamanian law. Because the co-authors of this Second Expert Report are real estate experts rather than lawyers, this Second Expert Report focuses on typical real estate practices rather than legal analysis.

a. Lack of a Deed of Sale and Public Registration

Justice Arjona and Respondent contend that it is suspicious that the Promise of Purchase and Sale Agreement does not contain certain protections that are allegedly usually observed to

³¹ Resp. Reply ¶ 51.

protect the interests of a promissory purchaser, including execution in the form of a public deed and subsequent registration in the Public Registry.³² However, entering into a deed of sale usually requires the final phase of the closing stage to take place, once the property is released from mortgages and past owners. Finca 35659 was not released from its mortgage as per the Promise of Purchase and Sale Agreement timeline, even though the buyer provided the two initial payments. Without the release of the mortgage, it would have been impossible to register a new Deed of Sale. Further, it is uncommon to register a promise of purchase and sale agreement in the form of a deed unless the buyer has a reason to distrust the seller. Usually, if a promise of purchase and sale is registered in the form of a public deed, it is because a real estate lawyer has suggested it.

Further, Parties to a real estate transaction in Panama can have their promise of purchase and sale agreement registered in the Public Registry if they so choose in order to reduce risks during the transaction and specifically to block the property from being sold to anyone else during the transaction. However, in typical real estate practice in Panama, a promise of purchase and sale agreement is not always registered in the Public Registry. Many parties to real estate transactions do not know about the process unless it is suggested by a lawyer. Even parties that are aware of the process do not always use it. In general, unless there is a reason to distrust the seller, or to suspect that a third party could have an action against the property, registration of a promise of purchase and sale agreement is typically not done.

b. Lack of Notarization

Justice Arjona and Respondent similarly argue that the transaction was suspect due to the purchaser's failure to have a notary public authenticate the signatures in the Promise of Purchase and Sale Agreement.³³ Based on Mr. Ponce's experience as a broker, however, the notarization process for a promise of purchase and sale agreement is not always necessary. Panamanian brokers do not consider that notarizing a promise of purchase and sale agreement gives any further validity to a real estate agreement in Panama. What is notarized in most cases is the final "purchase agreement." Here, the fact that the conditions to reach that stage of the transaction were not met could have been the reason why it was never done.

c. Lack of Permits

Respondent's expert, Mr. Pollitt, also contends that on 6 October 2015, the Office of Organized Crime sent requests to several governmental ministries requesting documentation on the Verdanza Residences and that investigators separately conducted an additional investigation into the land deal and allegedly found that "no process had been carried out for the approval of a project titled Verdanza Residences."³⁴ Mr. Pollitt continues that the investigators were allegedly unable to find any registered documentation for the development.³⁵ However, this allegation is illogical because permits cannot be granted without land title. In order to process permits for

³² *Id.* ¶ 43; Arjona ¶¶ 13-14, 40-45, 80.

³³ Resp. Reply ¶ 43; Arjona ¶¶ 13-14, 37-39, 80.

³⁴ Expert Report of Roy Pollitt dated 15 Nov. 2019 ("**Pollitt**"), at 9-10.

³⁵ *Id.* at 10.

construction on a piece of land, you must be formally authorized to do so. Since the land was never transferred to Mr. Rivera (through Punela), it would have been impossible for him to apply for any permits regarding Finca 35659.

Further, in Mr. Ponce's experience working with projects similar to Mr. Rivera's near Cañas, it is normal to have only conceptual data for properties capable of being developed. Indeed, potential buyers often develop informal plans, renderings, and informal calculations before even owning the land. And the plans provided by Mr. Rivera are in line with the types of developments that were present in the area. In any event, it is only possible to formalize and register all plans / permits *after* purchasing the land. Thus, finding formal plans and permits for the Finca in question is impossible because the transaction for Finca 35659 was never completed.

d. Lack of Survey and Topographical Study

Justice Arjona and Respondent also argue that a purchaser of land is likely to commission a land survey when considering a particularly large plot of land, but that no such survey was completed.³⁶ Justice Arjona and Respondent also contend that for plots of land with varying elevations, such as Finca 35659, one would expect the buyer to commission a topographical study to determine what portion of the plot is appropriate for construction.³⁷ This is incorrect, and it shows a lack of knowledge of the Panamanian real estate market and Panamanian real estate transactions in general.

Every titled property in Panama must have a registered survey in the National Land Administration (ANATI). This land survey for Finca 35659 shows the following information³⁸:

Survey Registration Number (7580082040003)

General Location: Los Santos, Tonosi, Cañas, Buena Vista

Size of the Land: 7ha 9017 m²

Coordinates: E-581629.62, N-824351.71

Adjacent Property Owners: Adelina Bonilla Vergara, Didimo Castellero Rodriguez, Jose de la Cruz Acosta Dominguez, Cañas River, Didimo Castellero Rodriguez, Jose de la Cruz Acosta Dominguez, Cañas River, Antonio Castillo Cedeno, Adelina Bonilla Vergara

The Cañas property in question, Finca 35659, has a registered survey that matches the on-field shape of the property. Reconfirming survey points and specific size is not a requirement when purchasing land. And, in practice, land is often purchased without hiring a surveyor. Technology now allows one to measure a piece of land with a variety of cellphone measuring apps, drone and satellite technology, and counting steps using the approximation of one meter per natural step. There is virtually no need to incur the cost of a professional surveyor.

³⁶ Resp. Reply ¶ 44; Arjona ¶ 65.

³⁷ Resp. Reply ¶ 44; Arjona ¶ 67.

³⁸ Tonosi Land Registration Information dated 31 Jan. 2013 (C-0202), at 1, 4-5.

e. Deposit

While Justice Arjona and Respondent state that the usual percentage of initial deposits is 10% to 15%,³⁹ Mr. Ponce's experience in the field indicates that this range can be as high as 20% to 30% of the purchase price. This is often the case for off-market property owners with the intention of motivating the sale of an "off the market asset," meaning those properties that are not being publicly offered for sale but which a buyer has an interest in purchasing. In addition, upon further review, it is evident that the initial deposit was \$250,000 and constituted 25% of the purchase price, *not* 50% as Justice Arjona suggests.⁴⁰ This is in line with the 20 to 30% range that Mr. Ponce has observed in the field. A second payment of \$250,000 was required to be paid *sixty days after* the first payment, during which time the seller was to have provided several items, including proof that the mortgage was paid and the minutes stating that Ms. Reyna had the authority to sell the land.⁴¹

f. Lack of Appraisal

Justice Arjona and Respondent also contend that it is "unusual" that no appraisal was performed, as it is allegedly common for purchasers to commission an appraisal before purchasing land in order to verify whether the purchase price fairly and accurately represents the value of the land.⁴² In practice, the use of an appraisal can be helpful to manage risk when the buyer and seller of a real estate transaction have doubts about each other's performance or where there are heated negotiations. In such cases a professional appraisal may help in breaking an impasse. However, an appraisal is not always necessary. A potential buyer can use his/her own knowledge of the market (or advice from a real estate professional), comparable property offerings viewed via multiple listing service websites, local asking prices via "for sale" signs, and personal viability calculations to make a final decision. In short, an appraisal is not always needed.

g. Errors in the Contract

Further, Justice Arjona and Respondent note several alleged errors in the Promise of Purchase and Sale Agreement, including an allegedly "notable" inconsistency where the text in one section indicates the sum of [REDACTED] while the numbers indicate [REDACTED].⁴³ Justice Arjona and Respondent also point to the fact that the Agreement, in its last paragraph, recites a month and year of execution (April 2013), but not the date of signature.⁴⁴ However, the fact that the Promise of Purchase and Sale Agreement under consideration has defects is not surprising. It is not uncommon to see defects in "standard agreements" or even public deeds provided by lawyers

³⁹ Resp. Reply ¶ 43; Arjona ¶¶ 16-17.

⁴⁰ Sale and Purchase Agreement between JR Bocas Investments, Inc. and Punela Development Corp. (C-0078) at 1.

⁴¹ *Id.*

⁴² Resp. Reply ¶ 44; Arjona ¶¶ 64, 66.

⁴³ Resp. Reply ¶ 43 n. 88; Arjona ¶ 52.

⁴⁴ Resp. Reply ¶ 43; Arjona ¶¶ 19-20, 61-63.

to the Public Registry for registration, as discussed above.⁴⁵ In most cases, standard agreements are supplied and then evolve throughout the negotiation process. During this evolution, changes are made and sometimes mistakes are made in the internal references and/or other data. If anyone was to visit the Public Registry offices, they would find that there is a good percentage of final deed information being corrected on a daily basis. This is a common problem for brokers, as in some cases these errors create doubts and roadblocks during the closing of a real estate transaction.

h. Irrevocable Promise of Payment Letter

Respondent states that our expert “opinion is based on an incorrect understanding of the facts” because, according to Respondent, we said in our First Expert Report that we “assume that the purchase agreement was accompanied by a bank letter of payment.”⁴⁶ This is completely incorrect. In our First Expert Report we included a list of what we consider points that are “*common* to include . . . within a ‘promise of purchase agreement’ in the Republic of Panama,” and among the nine points listed we included “guarantees of payment through a certified bank check and/or an irrevocable bank letter of payment.”⁴⁷ We further explained that “[t]he *final payment* is usually guaranteed by means of an irrevocable bank letter of payment or escrow service” and that “[b]efore final payment is issued, any contingencies in the promise of purchase agreement must be fulfilled or may be renegotiated.”⁴⁸ These comments were made in the context of the general practices one may find in promise of purchase and sale agreements in Panama. We then commented on the Promise Agreement stating that, having reviewed the Promise Agreement, “we can confirm that the format and structure of this agreement is similar to the common structure of a promise of purchase agreement in the Republic of Panama” because, among other things, the Promise Agreement included “the use of an irrevocable bank letter of payment.”⁴⁹ However, nowhere in our First Expert Report did we say that an irrevocable letter of payment was issued in this transaction, nor did we say that it is “*fundamental* to an enforceable contract,” as Respondent states.⁵⁰ Indeed doing so would have been opining on legal matters that are outside of our area of expertise.

i. Comments on the Addendum (or Meeting of the Minds Agreement)

Finally, Justice Arjona and Respondent contend that the fact that the “Meeting of the Minds” Agreement was never signed by an authorized representative of the buyer, Punela Development Corp., further evidences that the transaction was a sham.⁵¹ However, after reading the Addendum,⁵² it is evident to us that the transaction is a real transaction. The continued evaluation of common points such as electricity and water connectivity suggest that a buyer intended to make the most out of what he was paying for. Further willingness by the seller is shown when conditions are demanded for the closing of the transaction. Addenda are not always

⁴⁵ See *supra* § IV(1).

⁴⁶ Resp. Reply ¶ 48.

⁴⁷ Real Estate Experts 1 at 3 (emphasis added).

⁴⁸ *Id.* (emphasis added).

⁴⁹ *Id.* at 32.

⁵⁰ Resp. Reply ¶ 48 (emphasis added).

used for closing real estate transactions, but when a buyer and seller decide to enter into an addendum, this usually means that they truly intend to close the transaction. Here, although the buyer did not sign the Addendum, the seller did, indicating in my opinion that the parties wanted to amend the initial agreement, but that the buyer simply had not yet agreed to do so. Thus, we considered that a real transaction existed.

IX. Conclusion

The comments and criticisms of Justice Arjona, Mr. Pollitt, and Respondent of our First Expert Report, and the Finca 35659 transaction specifically, demonstrate a clear lack of knowledge of the Panamanian real estate market and are erroneously based on inapposite comparisons to the U.S. real estate market. The Panamanian real estate market presents unique challenges for foreign investors, particularly due to the lack of readily available and centralized real estate data and the complexity in the fact that there are different types of buyers and these differences have an effect on the prices they pay. These factors account for the alleged “irregularities” cited by Respondent and its experts.

The Azuero Peninsula, and Finca 35659 in particular, are home to some of the most unique and attractive attributes in the Panamanian real estate market, including a dry climate, road access, water access, and gentle topography with unobstructed ocean views, making the land highly desirable for investment and project development. These factors, in conjunction with the sale and purchase practices among the three types of buyer in the region and our analysis of comparable properties, including executed purchase agreements for comparable properties in Cañas from the relevant time period, demonstrate that a price of \$12.65 per square meter for Finca 35659 in 2013 was reasonable. Cattle farms just like Finca 35659 have been sold, improved, and resold for substantial capital gains, setting a pattern that many investors have continued to follow to this day. As such, the price agreed to at the time for Finca 35659 between JR Bocas and Punela was within the average market price range for Buyer 2 types selling to Buyer 3 types.

Further, Justice Arjona’s and Mr. Pollitt’s criticisms of the Promise of Purchase and Sale Agreement fail to account for the fact that without the release of the mortgage and finalization of the Finca 35659 transaction, it would have been impossible for either buyer or seller to execute a new deed of sale, register the deed with the Public Registry, and notarize the signatures in the Agreement. Further, it is actually uncommon to register a promise of purchase and sale agreement in the form of a deed unless the buyer has a reason to distrust the seller. The fact that the land was never transferred to Mr. Rivera also explains why Mr. Rivera would have been unable to apply for any permits regarding Finca 35659. Ultimately, what Respondent and its experts contend are deficiencies in the Promise of Purchase and Sale Agreement are instead mere formalities that are by no means necessary when closing a real estate transaction in Panama, which explains the absence of items like an appraisal and irrevocable promise of payment agreement. Finally, the terms of the Promise of Purchase and Sale Agreement are reasonable in our experience.

⁵¹ *Id.* ¶¶ 44, 49; Arjona ¶ 9(d).

⁵² Extension to the Purchase-Sale Agreement for Tonosi Land dated 3 Sept. 2013 (C-0374).

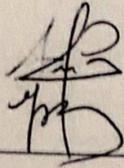
X. Declaration

We declare that:

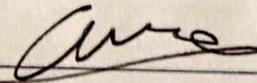
a. We understand that our duty in giving evidence in this arbitration is to assist the arbitral tribunal to decide the issues in respect of which expert evidence is adduced. We have complied with that duty. We may continue to comply with that duty upon further mutual agreement by the parties.

b. We confirm that this is our own, impartial, objective, unbiased opinion which has not been influenced by the pressures of the dispute resolution process or by any party to the arbitration.

c. We confirm that, at the time of providing this written opinion, we consider it to be complete and accurate and that it constitutes our true, professional opinion.



Mr. Fidel Ponce



Mr. Arturo Chong

ANNEX A – DOCUMENTS RELIED UPON

Exhibit No.	Date	Description
DOCUMENTS PREVIOUSLY EXHIBITED AND REVIEWED BY THE EXPERT		
--	2018-06-25	Claimants’ Memorial ¶¶ 91-98
--	2019-05-30	Claimants’ Counter-Memorial ¶¶ 235-236, 247-250
--	2019-11-18	Respondent’s Reply ¶¶ 35-54
--	2019-11-13	Expert Report of Adan Arnulfo Arjona
--	2019-11-15	Expert Report of Roy Pollitt
--	2018-06-25	First Witness Statement of Oscar Rivera ¶¶ 92-100
--	2019-05-27	Second Witness Statement of Oscar Rivera ¶¶ 10-13
--	2019-05-27	First Witness Statement of Frankie Lopez ¶¶ 86-94
C-0077-SPA resubmitted	2013-01-02	Public Registry of Punela Development Corp.
C-0078-SPA resubmitted	2013-04	Sale and Purchase Agreement between JR Bocas Investments, Inc. and Punela Development Corp.
C-0199-ENG	Undated	Drawing of Verdanza Residences
C-0200-ENG	Undated	Conceptual Layouts of Verdanza Residences
C-0201-ENG	Undated	Verdanza Residences Preliminary Financing Executive Summary with diagrams & charts
C-0202-SPA	2013-01-31	Tonosí Land Registration Information
C-0203-SPA	2015-07-07	Email from Ricardo Ceballos to Ana Graciela Medina
C-0374-SPA	2013-09-03	Extension to the Purchase-Sale Agreement for Tonosi Land
C-0557-SPA	2013-04-25	Email chain between Frankie Lopez, Oscar Rivera, and Ana Graciela Medina
C-0558-SPA	2013-05-01	Invoice from IGRA for Preparation of the Purchase of Finca, Contract No. 35659
AA-0006	2008-02-15	Public Deed number 338
R-0087	2015-07-22	Letter from Franklin Amaya Jovane to the Prosecutor Against Organized Crime regarding the addition of

Exhibit No.	Date	Description
		written evidence
R-0088	2015-11-20	Alexis Rodriguez, Legal Secretary of the Special Prosecutor's Office Against Organized Crime, Diligence Report
R-0089	2015-11-20	Alexis Rodriguez, Legal Secretary of the Special Prosecutor's Office Against Organized Crime, Diligence Report
R-0090	2015-11-23	Esperanza L. Montenegro, General Secretary of the Special Prosecutor's Office Against Organized Crime, Diligence Transcript of Inspection
NEW DOCUMENTS CITED IN THE REPORT		
C-0879-SPA	Undated	Facebook group post showing squatted property for sale
C-0880-ENG	2013	ACOBIR, <i>Properties for rent and sale in Panama</i> , MLSACOBIR https://mlsacobir.com/en/
C-0881-SPA	2016-11	Guardia, M, <i>Algo bueno está pasando en Pedasí</i> , ENEXCLUSIVA, https://www.enexclusiva.com/11/2016/cultura-y-gastronomia/algo-bueno-esta-pasando-en-pedasi/
C-0882-SPA	2019-09-20	<i>Falleció Philippe Athanatiades una leyenda de Pedasí</i> , ELPEDASIENO, http://elpedasieno.com/fallecio-philippe-athanatiades-una-leyenda-de-pedasi/
C-0883-ENG	2010	Project Listing of Real Estate Market Properties Offered in the Azuero Region in the Year 2010
C-0884-ENG	2011-01-28	Cañas del Sol Project Website Presented in 2011, https://web.archive.org/web/20110128220318/http://canasdelSol.com/
C-0920-ENG	Approx. 2009-2014	Promise of Purchase and Sale Agreement
C-0921-SPA	Approx. 2009-2014	Private Promise of Purchase and Sale Agreement
C-0922-SPA	2009	Promise of Purchase and Sale Agreement

Exhibit No.	Date	Description
C-0933-SPA	2013-11-12	<i>Panama will host the VIII Central American Surfing Games 2013</i> , INTERNATIONAL SURFING ASSOCIATION, https://www.isasurf.org/panama-sera-sede-de-los-viii-juegos-centroamericanos-de-surf-2013/
C-0934-ENG	2012-04-03	<i>A world-class beach break, Playa Venao offers the best junior surfers an ideal wave for showcasing their talents</i> , INTERNATIONAL SURFING ASSOCIATION https://www.isasurf.org/a-world-class-beach-break-playa-venao-offers-the-best-junior-surfers-an-ideal-wave-for-showcasing-their-talents/
C-0935-ENG	2010-12-14	<i>Panama will host the 2011 Billabong ISA World Surfing Games</i> , INTERNATIONAL SURFING ASSOCIATION https://www.isasurf.org/panama-will-host-the-2011-billabong-isa-world-surfing-games/