

**IN THE MATTER OF AN ARBITRATION UNDER THE DOMINICAN
REPUBLIC CENTRAL AMERICA FREE TRADE AGREEMENT AND THE
UNCITRAL RULES OF ARBITRATION (2010)**

**DAVID R. AVEN, SAMUEL D. AVEN, CAROLYN J. PARK, ERIC A. PARK,
JEFFREY S. SHIOLENO, DAVID A. JANNEY AND ROGER RAGUSO
(United States of America) (Claimants)**

v

THE REPUBLIC OF COSTA RICA (Respondent)

**FIRST WITNESS STATEMENT
OF DAVID RICHARD AVEN**

I, **DAVID RICHARD AVEN**, of Pennsylvania, U.S.A., SAY as follows:

1. I make this statement in support of the Claimants' Memorial in these proceedings.
2. The matters contained in this witness statement are true to the best of my knowledge, information and belief. The facts and circumstances contained in this statement are within my own knowledge or derived from information and documents provided to me by those reporting to me, in which case I refer to the corresponding source of information.
3. I confirm that the Claimants' lawyers, Vinson & Elkins RLLP, have assisted me in preparing this statement, but I also confirm that its contents set out my evidence to the Tribunal in these proceedings.

Background

4. I am a citizen of the United States of America. Although I am also a national of Italy, I have never lived there and have no personal, financial or business connection to that country.
5. I graduated from Baylor University, Texas, in 1964 with a degree in Business Administration.
6. While at college in Waco, Texas, I started investing in residential properties. In total, I bought around six “*fixer up*” homes, renovated them and then sold them for a profit. This helped me to pay my way through college and also to start investing in oil and gas limited partnerships. My roommate’s family at college was in the oil business and built the business school at Baylor. He introduced me to investing in oil and gas limited partnerships.
7. After I finished college, I never worked for anyone since I was making more money part time in college than most college graduates were making full time. I continued to be an entrepreneur and that led to investments in companies that did home building in Texas, California, Tennessee, New Jersey, Pennsylvania, and Florida. I was the director of National Oil and Gas Reserve, an oil and gas limited partnership that drilled for oil and gas in Texas. I also worked in nationwide aerial photography, nationwide direct mail, nationwide TV direct response and for a TV direct response marketing company. I owned copyright in the Alexander Scourby narration of the King James Bible, imported and distributed consumer products nationally, had a travel agency, worked in real estate development, worldwide marketing of downloadable digital products via Google Play Store, iTunes, Google Ad Words, the internet, email campaigns, internet marketing, press releases and affiliate/partner programs. I am also Director of Kindness Works International Foundation, a non-profit organization whose goal is to promote, encourage and reward acts of kindness worldwide.
8. I initially moved out to California where I formed an aerial photography company called Continental Aerial Graphics. I also continued buying “*fixer up*” homes and built new homes. In the early 1970s, I bought a farm near Knoxville, Tennessee. I subdivided the farm, sold off lots and built about five homes. I had also acquired properties in Pennsylvania, which I fixed up and sold and also built some homes.

9. In the late 1970s, I moved to Tampa, Florida where I set up a company that did TV direct response. We initially sold the products via TV directed response advertisements. I then formed a TV direct response marketing company to market other companies' products. One of the other Claimants in this arbitration, Jeff Shiolen, was in charge of placing national TV direct response commercials. During that time I continued to develop properties in Tampa, Florida and Mr. Shiolen worked with me on that project as well. I moved to California in 1986 and continued to work in national placement of TV spots. While in California, I bought some land in Hemet, California and I developed a residential property of ten homes. Some of these were new builds while others were renovations. I would say that from my college days until the late 1990s, I built and remodeled approximately 40 to 50 residential properties in the US.
10. In 1997, I moved to Fort Lauderdale where I started an import and national distribution business of consumer products via a company called Therm-A-Snap. Mr. Shiolen became the director of sales and marketing with the national grocery chains.

Background to the Las Olas Project

11. In the late 1980s I met Mr. Janney through a mutual acquaintance. Mr. Janney was an experienced real estate developer in Orlando, Florida at the time. We became good friends and were in regular contact. On a number of occasions, I went to his projects, including large residential projects in Orlando he was constructing in the late 1990s. I travelled with him to Tirana, Albania on a humanitarian mission in 1990 with a group of about seven businessmen. The communist government had just fallen and was bankrupt. I remember the streets had no cars and were being used for sidewalks. The purpose of the trip was to support the orphanages throughout the country through Mr. Janney's World Hope non-profit organization. That was a profound experience for me since, as we visited the orphanages, I witnessed babies actually starving to death because they did not have milk. The women who worked there tried to bring milk from their homes but they were overwhelmed since there were about 40 to 50 babies in each orphanage. We took action to have locally produced milk to be immediately made available to the orphanages. Mr. Janney also arranged to have dried milk flown in from the US on C-130 Air

Force planes to Aviano Air Force base in Italy and then transported down the coast to Tirana.

12. Later I also travelled with Mr. Janney to visit a huge school he built in Nairobi, Kenya in 2006. I was so impressed by Mr. Janney's humanitarian missions that later I formed Kindness Works International Foundation in 2004.
13. In the late 1990s, Mr. Janney was doing some humanitarian work in Costa Rica. He mentioned how the real estate market down there was booming and invited me to take a trip with him to check out Costa Rica as well as any development opportunities. At the time, I did not know much about Costa Rica but was very interested in exploring new places and new opportunities.
14. I believe I first went to Costa Rica with Mr. Janney in 2000. This was followed by additional trips since it was only a two-hour plus direct flight from Fort Lauderdale. Initially, I was just sightseeing and taking in the country but then I began to notice the buzz in the local real estate market. So Mr. Janney and I started talking to local real estate agents and began to explore real estate opportunities in the San José area as well as along the Central Pacific coast. One of these local agents had some listings on the Central Pacific coast not too far from San José. He took us to an area of Jaco Beach that had sandy beaches and lush vegetation.



15. We visited around six properties in the area. Most did not look very appealing to us since they were up in the hills. However, when the realtor took us to the

Esterillos Oeste site, we immediately recognized the fact that this was a special property. The property on sale was around 37 hectares. It was in an area of gently rolling hills and next to a beautiful beach, which was one of the top surfing sites in Costa Rica. What was also special about this place was that it was one of the only areas within 50 miles where you could build homes very near to the ocean. The other areas, both North and South of the property, were flat and wet and could not be built on. However, this was one of the very few properties between Jaco and Quepos that had gently rolling hills with nice views of the ocean and was very suitable for a development.

16. The property would also benefit from a new highway that was being built from San José to the Central Pacific coast. When completed, it would cut driving time in half and eliminate the dangerous route through the mountains. This road was opened in March of 2010 and after that you could get to the Central Pacific coast from San José in one hour 20 minutes. Naturally this made all the properties on the Central Pacific coast much more appealing and valuable.



17. As well as fronting the main highway, the property had public roads down all sides:



18. This was unusual for a property of this kind and had obvious benefits. First, it would enable easy access to any development on the property. Second, as the environmental permitting requirements are less stringent for properties fronting public roads in Costa Rica, it meant that the property could be developed more easily.
19. The property was on sale for approximately US\$ 1,647,000. To put this into perspective, in 2002 Mr. Janney and I had been looking at property in Fort Lauderdale, approximately 800 square meters on a canal, which was selling for US\$ 1,000,000. The property in Costa Rica was approximately 37 hectares (about 100 acres) and was selling for about the same price as the small lot in Fort Lauderdale. This property could be developed and was right on one of the nicest beaches within close reach of San José.

20. What made this even more attractive was that Costa Rica was a number one tourist destination for US and Canadian travelers and approximately 2 million people were visiting the country every year. On top of this, Costa Rica was in the Americas and was a favorite place for people to retire and build second homes since the US and Canada are very close to Costa Rica. Costa Rica was also perceived as a democratic country, with many expats living there and was considered a safe and secure place to live.
21. At this stage, Mr. Janney and I did not have specific plans as to how we would develop the property but given its location on a beautiful beach, it seemed obvious to us that even if we just held the land for a few years, we could still make a very decent return on our investment. It was a jewel of a property and would be attractive to developers.¹ The US market for holiday homes was already booming. Given that Costa Rica is only a short flight away from the southern United States we figured that there would be considerable future demand for properties in Costa Rica.
22. There was direct access to the beach from the property via a 2.2 hectare piece of land that was part of the maritime zone, owned by Costa Rica and administered by the local municipality. At the time, the seller of the property, Carlos Monge Rojas, had applied to the Municipality of Parrita for a 20 year renewable concession to operate a hotel/condo units and a beach club on that land, under the name of a Costa Rican corporation, La Canícula (the “**Concession**”).²
23. We recognized that there would be value in owning the Concession and in stipulating with the municipality that the purpose of the Concession was for hotel/condo units and a beach club for a contemplated mix-plan residential project on the land directly behind it. We therefore made it a condition of the sale contract with Mr. Monge that he obtain confirmation from the local municipality that the Concession had been granted in favor of La Canícula, which it subsequently was.³

¹ Exhibit C193, Aerial photographs of the Las Olas Site and Exhibits C59 and C60, Videos of the Las Olas site taken from www.lasolascr.com, February 11, 2010

² Exhibit C27 Option Agreement for the Purchase of Properties, February 6, 2002

³ Exhibit C28 Letter from Costa Rican Tourist Agency confirming grant of Concession, March 5, 2002

24. Mr. Monge also offered us full title to two small parcels of land he owned that were adjacent to the larger part that we had agreed to buy and fronted the main road, and therefore could be joined to form part of a larger property.
25. The full sale price for all three properties and the Concession was US\$ 1,647,000. This gave us full title to the main property and the two smaller adjacent plots, as well assigned us the beachfront Concession. We talked to people who had other developments in the area, such as Mr. Ramirez who was developing a property called "*Rancho Monterey*" about 10 minutes south of the property. Mr. Ramirez told me that he was selling some lots there, but many people told him they wanted to build homes on or near the beach. Mr. Janney and I also spoke to other people in the local real estate market in Jaco Beach. Nearly all of these conversations confirmed our feeling that the place to buy was definitely on the beach and it only reinforced our thinking that the Esterillos Oeste property was a very special property and would be a good investment.
26. The following map shows the location of the properties that, in total, encompassed approximately 37 hectares. Juan Carlos Esquivel, a Costa Rican attorney, handled the real estate transactions on our behalf. A full summary of the properties and the ownership structure is included with the Memorial. I would just mention that although we hold the Concession through a Costa Rican company, La Canícula, which is 51% owned by a Costa Rican national, this was done purely to satisfy local law requirements. At all times, I controlled La Canícula and everything to do with the Concession, on my behalf and on behalf of the other investors, all profits from the project attributable to La Canícula would go to the US investors.⁴

⁴ Exhibit C65 La Canícula Agreement, May 10, 2010

29. Although Mr Buscemi did own a share in the Las Olas project at the time we filed the Notice of Arbitration, he has since transferred his interest to me.⁵
30. The total sunk cost put into the project at the time it was shut down by the government was US\$ 7,735,391.20.⁶ As I will describe below, we sold lots worth US\$ 1,826,000, for which we received payment. All of these funds went straight back into the project – neither Mr. Janney, Roger Raguso, Jeff Shioleno or myself ever took any dividends or received any other form of compensation for all the work we put into the project, and none of the passive investors received any dividends or other return on their investment. Our intention was to run the operation as economically feasible as possible so we could keep it debt-free and take our compensation, once the project started to generate profits.
31. We also, through Mr. Janney’s introduction, received investment of \$900,000 from investors who purchased options in 2004 and 2005.⁷
32. The remaining expenditure was paid for out of my own personal resources. Therefore, the funds to pay for the project expenditure were as follows:

Source	Amount
Sam Aven	US\$ 700,000.00
Carol Aven	US\$ 200,000.00
David Janney	US\$ 250,000.00
Option holders	US\$ 894,630.38
Lot Sales	US\$ 1,826,000.00
My initial stake	US\$ 797,000.00
My subsequent payments	US\$ 4,067,760.82
Total	US\$ 8,735,391.20

33. I was the managing partner of the project. The other investors were largely passive investors since they were living in the US, with the exception of Mr.

⁵ Exhibit C168, Agreement between David Richard Aven and Giacomo Anthony Buscemi, August 4, 2014

⁶ See page 3 of the Profit & Loss Detail for Inversiones Cotsco C&T, which records total expenditure of US\$ 7,088,391.50 (Exhibit C29). To this must be added, however, the original purchase of the land for US\$ 1,647,000.

⁷ Exhibit C188, Dan Barricliiff Agreement and Exhibit C31, Earl Hanners Agreement, December 16, 2004

Janney, Mr. Raguso and Mr. Shioleno who were assisting me in the development.

34. Mr. Janney had extensive experience in large home-building developments as well as timeshares. Mr. Raguso was a general contractor having years of experience as a construction project manager of very large projects in the US. Once the construction got under way, Mr. Raguso was going to move to Costa Rica to supervise all of the construction of the development which would include the building of the homes, the infrastructure, the hotel/condo units and the smaller condo units, as well as managing the facility once the build was complete. So our goal and plan was that this was going to be an on-going effort and commitment.
35. Mr. Shioleno was helping with sales and marketing from the US by running ads in the local papers in the Tampa, FL and St Petersburg, FL markets and was sending us referrals from prospective purchasers. Once the project started, Mr. Shioleno was going to become more involved in the marketing efforts.
36. Despite wishing to be debt-free and self-funded, we recognized that it was prudent to be prepared and that there may come a time where we would find it necessary to have additional funding for the timeshare financing and mortgage financing. In July, 2006, therefore, we made an initial application for a construction loan from the Banco Centroamericano de Integración Económica, Costa Rica (“**BCIE**”),⁸ and paid the loan-processing fee of approximately US\$ 8,000.
37. In November, 2006, BCIE approved a loan/line of credit of US\$ 8,200,000 for construction,⁹ which at that time was our estimate of the cost of building the infrastructure for the project. In the end, we never drew down on that loan: we succeeded in paying all our expenses ourselves and then we began receiving payments for lot sales, which enabled us to use those funds to pay for the work on the project. The BCIE loan was, of course, arranged before the financial crisis. It may have been that we would have had to re-apply or re-negotiate any loan in the post-crisis situation. However, we had access to money if we needed it. We were confident we would have been able to do this if we had needed to: having had a US\$ 8,200,000 facility in place even though we never

⁸ Exhibit C37, BCIE Letter, July 7, 2006

⁹ Exhibit C38, BCIE Letter, November 6, 2006

used it demonstrates that we were astute and had the credit worthiness to ensure the project would have been developed according to our business model. In addition to the possibility of debt finance, we were always open to opportunities to partner with others to best leverage our position.

38. I am good friends with a real estate broker in Florida by the name of Milena Rios. I first met Ms. Rios in 1999 when she worked for me in my import business. I have helped her out in various ways and we became good friends as a result. She knew about my involvement in Costa Rica and the nature of the Las Olas project. In the summer of 2010 she told me she wanted to come to Costa Rica to visit the project and see what we were doing. Ms. Rios came to visit the property that summer and was impressed with what she saw. She told me she had a regular stream of people asking her about foreign property and that she would not hesitate to direct people towards Las Olas if it would fit their requirements.
39. In December of 2010, I received a letter from Ms. Rios referring to the possibility of using her real estate business to introduce potential purchasers to Las Olas.¹⁰ However, the letter also mentioned something even more interesting. Ms. Rios told me that she had contacts with a large European investment fund looking for real estate investments, specifically in the timeshare and mortgage business in resort projects. While our plan was to do this ourselves (and we had already given mortgages to purchasers of lots, for example), we planned to follow up on this opportunity had the project not been shut down. It is always valuable to keep your options open and develop alternative means of additional funding if needed. Partnering with a fund like this might have enabled us to roll out a full timeshare and mortgage program to our customers straight away, and have provided a good means of pushing that part of the project development forward quickly and at full capacity. However, the capital punishment that was exacted on the project by the government of Costa Rica precluded us from ever following up on this opportunity.

¹⁰ Exhibit C99, Letter from Milena Rios, December 19, 2010

Development of the Las Olas Project

40. After purchasing the property in 2002, Mr. Janney, Mr. Raguso and I started considering possible options for the development. Mr. Raguso visited Costa Rica in 2002 and I showed him the property and he also thought it was a spectacular site. He was living in Florida and was very familiar with the Florida beaches and he thought the beach in Esterillos was just superb. I told Mr. Raguso at the time that if we did go ahead with the development I wanted him to come on-board and be in charge of all construction and he agreed. At the time we were still in the very initial phase of discussion about the best course of action. We decided to hire a firm to conduct a complete marketing study as well as get some ideas on a development concept based upon current market conditions.
41. A real estate market and land planning study was commissioned in 2004. We hired Norton Consulting (“**Norton**”) based in Florida to conduct the marketing study. The person that was heading up that study was Rick Norton. We also engaged the services of EDSA, a globally renowned Fort Lauderdale, FL, land planner. They were tasked with doing a detailed marketing plan for the site and to come up with a development concept for the project. The person heading up that effort for EDSA was Marco Larrea. EDSA and Norton had worked together before so their two studies were presented in one overview. The Norton/EDSA study cost us about US\$ 150,000, which we considered money well spent since it would give us a good idea about options for a go-forward plan for the development. Representatives of the companies came down to Costa Rica and spent considerable time investigating the local market as well as studying the Las Olas site to come up with some land planning concepts.
42. Norton and EDSA provided us with their consolidated report¹¹ in September of 2004. The results were very promising. Norton examined the rapid growth in international visits to Costa Rica and identified a strong market for potential investors/buyers of second homes from North American, Costa Rican and international markets, particularly given the proximity of the property to the beach.

¹¹ Exhibit C30, Norton and EDSA Report, September, 2004

43. The conceptual design envisaged providing a variety of properties that would cater for several different types of customers. This was based upon current market conditions near the Las Olas site and on the Central Pacific coast more generally. They included:
- (a) Luxury beachfront villas (with an average sale price of between US\$ 672,000 and US\$ 994,500);
 - (b) Mid-range townhouses in a village (with an average sales price of US\$ 338,100); and
 - (c) Smaller villas (320 in total) with direct ocean views (with an average sales price of between US\$ 322,000 and US\$ 538,000).
44. These would be accompanied by a beach club, to which all the owners would have access.
45. The Norton Consulting/EDSA Report was a very helpful guide for us, which we thereafter used as the starting point for discussions on the project. It furthermore estimated gross sales for the Las Olas project would be US\$ 155,030,000 (One Hundred Fifty Five Million and Thirty Thousand US Dollars).
46. During these early stages, we explored plans to develop a vertically integrated project that would maximize the investors' return on their investment ("ROI"). The idea was simple. Once a customer bought a lot we wanted to immediately start creating a good customer relationship with that customer. First, it is not only the right thing to do but it is a good business thing to do. We realized that this customer would, in the future, be in need of other goods and services. Our plan was to create multiple different revenue streams from the project that would service our customers' every need. They would include:
- (a) Profits from the sale of the lots;
 - (b) Revenue from construction of the villas and the hotel/condo units;
 - (c) Revenue from the construction of condos and timeshares sales of condo units;
 - (d) Providing mortgages to home owners;

- (e) Providing timeshare financing to timeshare buyers;
- (f) Providing a rental sales program for home and condo owners that would involve renting out their unit when they were not there and splitting the income 60/40 (60% for the owner and 40% for the project). Whilst some units would be in the rental pool for longer periods of the year than others, overall we estimated that the units would have a 60% occupancy rate over the course of a year;
- (g) The rental of commercial space that would be built in and around the project;
- (h) Providing a facility management company for the entire project; and
- (i) Providing a real estate company to handle sales and re-sales of homes and condos.

The idea was that by offering these additional services to a customer, we would significantly increase and maximize our ROI. A summary of these plans was included in my March 2008 investor summary of the project and in subsequent reports I prepared for the investors on the project.¹²

47. We were influenced in our thinking by the Los Sueños project that began construction in 1997. That project is approximately a 20-minute drive from the Las Olas project. Los Sueños is a luxury development that features single-family lots, condominiums, a hotel, golf club, beach club, marina and village. Los Sueños is located on the water and has been a great success, in large part because it offers comprehensive services for all the properties, including building homes, providing mortgages, offering timeshare financing, managing rental properties for buyers when they are not there and leasing out commercial spaces, including restaurants. A summary of the Los Sueños project is included in the EDSA Report.¹³ I also included Los Sueños alongside other comparable resorts in the Las Olas Analysis Report I prepared in 2007.¹⁴ We were keen to use a similar strategy for Las Olas since it was also located on the water, but we had a much nicer and cleaner beach.

¹² Exhibit C46, Investor Summary of Las Olas Project, March 15, 2008; Exhibit C53, Las Olas announces SETENA permit, June 15, 2008; Exhibit C86, Las Olas Project Overview, September 14, 2010; Exhibit C98, Investor Report, December 12, 2010; Exhibit C149, Las Olas Report Injunction, January 15, 2012; Exhibit C156, Las Olas Update, July 7, 2012

¹³ Exhibit C30, Norton and EDSA Report, September, 2004

¹⁴ Exhibit C39, Las Olas Analysis Report, 2007

48. Based upon positive information that was contained in the 2004 Norton/EDSA marketing study, the success of the Los Sueños project and the boom in the real estate market in Costa Rica, in the fall of 2005 we decided to take the next step and started looking for an architect and engineering firm to come up with a master site plan¹⁵ and take the Las Olas project through the initial permitting process. After interviewing a number of firms we selected the firm of Mussio Madrigal to do the initial work of taking the project through the permitting phase and per the agreement we entered into with them.¹⁶
49. At the time of the 2004 marketing study, I was living in Fort Lauderdale, Florida, but was spending increasing amounts of time in Costa Rica. In doing so, I gradually developed a strong sense of what was going on in the country. I spoke to a number of expats who had moved to Costa Rica and became more convinced that we could have a successful development project. Both Mr. Janney and Mr. Raguso, who were experienced developers and builders, also believed that Las Olas was a perfect location for a mixed plan development.
50. One of the key reasons for our confidence in the success of the project was the fact that the site was located on a beautiful and pristine beach close to the capital, with a new highway being built that, once finished, would halve the journey time to and from the airport. The three most important things in the real estate business are location, location and location. In my long experience in real estate, I have come to understand that people want to be on or near the beach and for that they will pay a premium.
51. There is also a scarcity issue that made Las Olas very valuable. Only a tiny proportion of all the land in Costa Rica is on a buildable beach. For example, between Jaco Beach and Quepos, where Las Olas was located, most of the terrain right next to the beach is low and wet and not suitable for construction. In the Esterillos Oeste area, where the Las Olas project site is located, there are hills right next to the ocean. Consequently a community was already built up in that area that includes homes, condos, restaurants, hotels, hardware stores and other businesses. As can be seen from an aerial tour on our web site as I flew down the coast,¹⁷ all the land from Jaco to Quepos is flat, except right at Esterillos Oeste where there are hills right next to the ocean, which is why a

¹⁵ Exhibit C54, Master Site Plan, September 17, 2008

¹⁶ Exhibit C43, Mussio Madrigal Contract, April 25, 2007

¹⁷ Exhibit C193, Las Olas Aerial Photographs

community was built there. You will not see any other significant communities built up like the one at Esterillos Oeste since you cannot build on most of the land from Jaco Beach to Quepos. So having a 37 hectare (100 acre) project right on a buildable beautiful beach is something that is extremely hard to find. Adding to its appeal was the fact that there was already infrastructure in place, including electric, water and roads. The Las Olas project site sits right in the heart of the Esterillos Oeste community. Based on all of the above, a collective decision was made by the investors to proceed with the project.

52. In 2005, I moved to Costa Rica to live full-time so I could be hands-on with day-to-day operations on the ground. I settled in a place called Escazu, which is a suburb of San José.

Obtaining the permits for the Project

53. After obtaining the conceptual plans, there were several main steps that needed to be carried out as follows:
 - (a) Obtain all the necessary environmental permits for the project;
 - (b) Develop detailed designs for the project including the master site plan; and
 - (c) Obtain construction permits that were necessary before infrastructure construction could begin.
54. In the early stage of the project, I was well aware of the demands of the environmental permitting regime in Costa Rica. The country has developed a strong regime for the protection of the environment. As in every country, there are rules and procedures in place that you must follow step by step.
55. Although I was familiar with the rules and procedures for acquiring permits in the US, I was not familiar with the rules and procedures in Costa Rica, nor did I have experience in dealing with the various government bodies involved in permitting in Costa Rica. I did not speak Spanish, nor did I know the procedures in Costa Rica for acquiring the necessary permits, so it was necessary for me to engage the services of recognized and qualified Costa Rican professionals to take us through the permitting process. This would ensure that the project received all the correct permits and the work would be carried out in accordance with the rules and regulations that exist in Costa

Rica, in order to ensure a successful development. As I explain in further detail below, we relied on a number of different types of professionals with respect to the permitting process.

56. As in the US, the very first thing that had to be done was to acquire the project's environmental viability permit. I did find out rather quickly that the government agency that had been given the authority, by the government of Costa Rica to issue that permit, was the National Technical Environmental Secretariat ("SETENA"), a branch of the Ministry of the Environment. SETENA's specific task was to evaluate a development project and make a determination as to whether the land for the proposed development presented any problems for the environment. SETENA has a check list that they follow and once all the boxes are checked, then and only then will they issue their Environmental Viability permit. The government of Costa Rica has very strict procedures in place to ensure that a property seeking a real estate development permit is not in any environmentally protected or sensitive zones and does not contain a wetland, protected forest, bird sanctuary, turtle nesting area, or lakes or lagoons. If a property had any of the above, then SETENA would not issue an Environmental Viability permit.
57. The SETENA Environmental Viability permit for the main section of the project was issued on June 2, 2008.¹⁸ This cleared the project site of any potential environmental concerns and gave us the green light to work towards getting the construction permit. However, many more things would be required before the construction permit would be issued by the Municipality of Parrita. You had to register the master site plan with the registry, get the approval for the college of architects and pay them a fee, appoint an engineer for the project, put up a money guarantee as a condition of the SETENA Environmental Viability permit, appoint a recognized Environmental Regent for the project who would report to SETENA and confirm that the project is being developed according to the approved master site plan, get an insurance policy prior to the construction permit being issued by the municipality and pay a tax to the municipality for the construction permit. All of the above took time and a lot of money to accomplish.
58. In terms of creating the designs and obtaining the permits for the project, we divided up the project into four main sections as follows:

¹⁸ Exhibit C52, Environmental Viability for the Condominium Section, June 2, 2008

(a) Beach club on the Concession

The beach club was on the beachfront Concession and would have condos, a hotel, fitness center, swimming pool, restaurant, shops and direct access to the ocean. The beach club could be used by all residents at Las Olas.¹⁹

We decided that the beach club should be developed as part of phase two of the project. It would provide important facilities to the first residents of Las Olas and act as a draw to potential buyers of the homes and our condos. We initially referred to this part of the project as Hotel Colina del Mar but the name was later changed to Las Olas Luxury Beach Resort.



¹⁹ Exhibit C189, Beach Club Site Rendering and Exhibit C190, Beach Club Rendering Aerial View

(b) Easements and related lots

We established nine easements (the “**Easements**”) along the main road going into the Las Olas project and carved out areas for others along two other roads. Our intention was to create lots for individual houses that fronted directly onto the Easements.



(c) Commercial and Condo Areas

Three larger parcels were cut out of the property along the roads to allow for future condo parks (the “**Condo Parks**”). Five larger parcels were cut out of the condominium section for additional condo parks. The Condo Parks would be the last areas to be developed once the other phases had been completed. The area designated for the hotel was located on a 14,313 sq. meter parcel immediately behind the beach club concession and was earmarked to have approximately 114 rooms.



(d) Condominium Section

The remainder of the project site was reserved for the homes/condominiums, of which there would be 288 (the “**Condominium Section**”). This would be the main part of the Las Olas community.



59. There were going to be two entrances to the project site, one off the main road to the north and one off the main road on the west side of the property.
60. There would be five phases of development:
 - (a) Phase one would be the 72 lots coming off the Easements going into Las Olas;
 - (b) Phase two would be the beach club with the hotel/condo units on the Concession;
 - (c) Phase three would be the 288 lot home packages on the Condominium Section;
 - (d) Phase four would be the hotel on the lot across from the beach club Concession that formed part of the Commercial and Condo Areas; and
 - (e) Phase five would be the commercial/condo timeshares on the larger pieces of land that were carved out as Condo Parks.
61. The Condominium Section of the project was initially referred to as Villas la Canícula and was eventually rebranded as the Las Olas Beach Community. We simply referred to the project in the Condominium Section “*The Las Olas Project.*”
62. In the early stages there were many moving parts to the project. As mentioned above, we planned to develop the beach club in phase two of the project. Once

this was developed, it would provide a powerful draw for the rest of the project.

63. The first step we took with the beach club in 2005 was to commission architects to develop the site plan. This would set out a blueprint for the Concession, including the location of the structures and the supporting infrastructure, and could be submitted to SETENA as part of the application for the Environmental Viability permit, which was before construction permits would be issued.
64. In 2005/2006, we appointed the Costa Rican environmental consultancy DEPPAT to obtain the Environmental Viability for this part of the project. DEPPAT are a well-known company in Costa Rica. They were recommended to me by a contact of mine. Although I was not personally involved in the permit application process, I was kept informed by DEPPAT on their progress, during meetings and through phone calls.
65. On March 17, 2006, we received the SETENA Environmental Viability for the Concession.²⁰ Receipt of the SETENA Environmental Viability was only the first in a number of steps we were required to take before the requisite construction permits would be granted by the Municipality of Parrita. The construction permits would give us the authority to begin work per the master site plan that had been submitted to, and approved by, SETENA as part of the Environmental Viability permit.
66. One of the conditions of the SETENA Environmental Viability is that the project has an independent environmental agent (the “**Environmental Regent**”), who is licensed with the SETENA Consultants’ Registry. The Environmental Regent was required to visit the Concession project site every two months once work had commenced. This was to assess whether the work was being carried out in compliance with the Environmental Viability and to provide official reports on the project to SETENA. This was to ensure that SETENA was informed if anything was going on that was outside the parameters of the permit that had been issued. If the Environmental Regent misreports anything to SETENA, he or she is liable to have his or her permit revoked and could potentially even face criminal charges.

²⁰ Exhibit C36, Environmental Viability for the Concession, March 17, 2006

67. Another condition of the Environmental Viability for the Concession was that we pay an environmental guarantee to SETENA in the sum of US\$ 17,500, which we duly did in January of 2006 with certificate number 91120.²¹
68. Obtaining the relevant permits for construction to commence was a very time-consuming and expensive process. In around 2006, we interviewed a number of different teams and finally selected the firm of Mussio Madrigal, who had carried out the site plans and design (as well as some construction) for Costa Developers, who were big developers in Costa Rica. Mussio Madrigal had also obtained all the environmental and construction permits for Costa Developers' projects. They had a good reputation. I met Mauricio Mussio at a meeting in Esterillos Oeste, and was impressed by the extensive experience he and his firm had of taking projects from the beginning through the complex permitting regime in Costa Rica.

Meeting with Fernando Zumbado

69. At around this time, in 2005, I was introduced to Fernando Zumbado by a mutual friend. At that time, Oscar Arias was running for president and Mr. Zumbado was working to get him elected. After Mr. Arias won the election, Mr. Zumbado was appointed as Housing Minister for Costa Rica. Costa Rica has a good program for providing low-income housing to the poor. They would build a house for around US\$ 14,000 or US\$ 15,000 and then would have their government owned bank, Bambi Bank, provide a low interest loan to the buyer and this enables a poor family to own a home.
70. After Mr. Zumbado was appointed housing minister I contacted him and asked him for meeting. At the meeting I informed him about the project we were developing in Esterillos Oeste. Mr. Zumbado said he knew the area well and that in fact his son would often go there to surf. I made a suggestion to him: that we would provide some property either in or near the Las Olas site, donate it to the government and then the government could build some low-income housing in the area. I thought this would be something that would be good for the country, good for the area and good for the people. It would also be good for the project since it would provide affordable housing for workers that would be needed as the project was developed.

²¹ Exhibit C34, Environmental Guarantee Deposit Certificate, January 10, 2006

71. Mr. Zumbado and I made an appointment to visit the site and two weeks later we went there to tour the property. Mr. Zumbado spoke to many people in the community and they all knew him. He told me the people were very positive about the Las Olas development because they understood it would bring jobs and economic development to the community.
72. Both Mr. Zumbado and I were very positive about this mutually beneficial opportunity and recognized it was something that would benefit the local community and the development. Unfortunately before we could get this plan implemented, Mr. Zumbado was forced to resign as housing minister amidst a huge political scandal in 2008, when he was falsely criminally charged with misuse of public money. This was in all the news and Mr. Zumbado made it known that there was no truth to this false criminal charge and it was a fabricated scheme to prevent him from running for President at the end to Mr. Arias administration. He was later cleared at trial of any wrongdoing.
73. This was not the only time the other investors and I had offered to do something good for the local community. As mentioned below, in 2010 we also offered to complete the storm drains that the local municipality had been unable to finish because they had run out of funds. We also provided funding to improve the water supply to Las Olas, something that benefited the local community as well. We also provided money to upgrade the water infrastructure to the community.
74. We appointed Mussio Madrigal in April 2007 as our architect and engineering firm to take the project through the permitting process. They came down and looked at the property to determine the conditions as well as reviewed the “*Plano Regular*” for the area (which determined the density of buildings and the number of storeys of buildings that could be built), zoning documents and other land use restrictions on the project to determine the lot sizes and type of development that could be carried out on the site. Over the next few months, they developed the master site plan, which sub-divided all the lots and set out the infrastructure that was needed. This master site plan included:
 - (a) 288 lots on the Condominium Section;
 - (b) Separate areas for the Easements; and

- (c) Infrastructure comprising roads, storm sewers, electrification and public phone infrastructure to be provided by the Instituto Costarricense de Electricidad (ICE), public lighting and an anaerobic treatment plant to treat wastewater and sewerage.²²

75. I was not involved in the day-to-day work of Mussio Madrigal, but was kept in the loop on their progress through regular updates and meetings.

Water Resources

76. Mussio Madrigal was also involved in helping solve the issues the community had with the outdated water infrastructure.

77. It became clear early on in the project that there were insufficient water resources in and around the Las Olas site. Mr. Mussio discovered when speaking to neighbors that the water supply was frequently shut off in the community.

78. When we purchased the site in 2002, there were connections to the water mains, which was linked to a good supply of water from the municipality wells about three miles from Las Olas. The problem, however, was that there was insufficient water infrastructure. The water lines were old and leaky and there were no decent pumps. The existing water infrastructure could not support the demands of the Esterillos Oeste community. The water supply would often be interrupted and shut off so something had to be done to resolve this problem.

79. We initially spoke to the local municipality, as well as arranged meetings with the local community leaders to discuss the extent of the problem. Along with local developers, Cabo Caletas and Costa Developers, a solution was found whereby Las Olas, Cabo Caletas and Costa Developers would pay for a local engineering company to carry out a study to determine how to get a better water supply to the area. This study was done in 2007 and determined that the local municipality had good water wells approximately three miles away that could provide sufficient water to the project and the local community. However, new pumps and a bigger main line needed to be installed to bring that water to Esterillos Oeste. The Municipality of Parrita at that time did not have the financial resources to build such infrastructure. The three developers

²² Exhibit C54, Master Site Plan, September 17, 2008

offered to put up the money to upgrade the water infrastructure to the community, since it would benefit the community and our respective projects.

80. Each of the three developers agreed to contribute an amount of money based upon the size of their project and, in return, would get a certain amount of water lines allocated to their development. In May of 2007, we all entered into an agreement with the Association for the Management of Water and Sewage in Esterillos Oeste and agreed to pay approximately US\$ 127,000 for the extension of an aqueduct to Esterillos Oeste.²³ In return for providing finance for the aqueduct, Las Olas was given access to 150 water lines. Further, there were plans for additional upgrades.
81. The construction for the water infrastructure upgrades were carried out in 2008. The local water company oversaw the construction and obtained the permits for all the works for the upgraded infrastructure.
82. On May 24, 2007, we appointed Zurcher Architects to carry out the detailed design of the beach club.²⁴ We chose Zurcher because of their expertise in designing luxury resort-type properties. They proceeded to design the beach club area, which included a hotel, condo units, beach club, fitness center, spa and swimming pool.²⁵
83. After Zurcher completed their design, Mussio Madrigal obtained the construction permits for the beach club on the Concession in 2008.²⁶ They also did the master site plan for the Las Olas office that they designed and built on the corner of the Concession. After Mussio Madrigal completed the master site plan, they proceeded to arrange for the land to be sub-divided. This required significant legal and professional work.

Clearing of the land

84. The whole of the Las Olas site used to be part of an old cattle ranch. It was covered with pastureland and scattered trees, with some scrub brush that had built up over time. However, there were no forests on the land. This fact was confirmed in the SETENA Environmental Viability permits for the

²³ Exhibit C51, Agreement with Association for the Management of Water and Sewage, May 20, 2008

²⁴ Exhibit C44, Zurcher Architects Proposal, May 24, 2007

²⁵ Exhibit C189, Beach Club Site Rendering; Exhibit C190, Beach Club Rendering Aerial View

²⁶ Exhibit C40, Construction permits for the Concession

Condominium Section and the Concession, neither of which identified any forests. Indeed, I understand that SETENA would not have not have issued its Environmental Viability permit if the land had any forest. Mussio Madrigal and Esteban Bermúdez Rodríguez, our Environmental Regent for the Condominium Section, similarly did not consider forests to be present.

85. Further, out of an abundance of caution, at Mr. Bermúdez's suggestion, I hire Minor Arce Solano, a Costa Rican forestry engineering professional, to carry out a survey of the Las Olas site in September of 2010 to determine what trees could be cut and specifically what could not be cut, since we were working on the infrastructure construction and we also had a crew that was constantly working to maintain the land. At all times it was my intention to make sure we operated according to established law, just like I had done my entire life.
86. So Mr. Arce's study was to ensure that we knew which trees we could cut and which trees we could not cut without a permit. Mr. Arce visited the area where the Easements are located as well parts of the Condominium Section also. His conclusion was that there were no forests and that the area was pastureland, where shrub had grown.²⁷ His report stated that no permits would be needed to cut down the trees that were planted on a fence line. His report said any trees that were smaller than 15 centimeters in diameter could be cut, as well as any palm or fruit trees or any planted trees. For the trees that had grown in the pastureland, which would be classified as agro-forestry systems, no permit would be needed for cutting fewer than 10 trees. He also said that fallen trees could and should be cut and disposed of.
87. It was necessary to cut back the scrub brush, by cutting the grass and clearing the debris, as part of general site maintenance and in preparation for the works, as well as to make a good presentation of the property to potential buyers, when they visited Las Olas. Further, I was informed by Mr. Mussio and Mr. Arce that under Costa Rican law, there is a requirement that landowners must ensure that land is maintained and that scrub brush is kept clear. If they fail to do so for several years, restrictions may be placed on developing these areas.
88. In 2007, Mussio Madrigal had hired a team of four people to spend three weeks on the Las Olas land to clean the scrub brush. This involved the

²⁷ Exhibit C82, Minor Arce Solano's Forestry Report, September 2010

systematic clearing of the land. They started on the main road and worked their way to the front towards the ocean. Mussio Madrigal's team worked full time to carry out this task across the entire Condominium Section. The project site is very fertile so it was necessary to continuously work to keep the property from becoming overgrown. At no stage, however, did anyone working on the Las Olas site ever cut down trees for which a permit was required. The only types of trees we ever cut were Pochóte trees (*Bombacopsis quinatumr*), Poro (*Erythrinasp.*) and palm, for which no permit is required.

89. After Mussio Madrigal had developed the site plan for the Easement lots, which was part of their mandate and they also was working on the master site plan for the Condominium Section in 2007.
90. In the fourth quarter of 2007, Mussio Madrigal informed me that they had obtained the construction permits to build the office and also to build the first two Easements along the public road going into the Esterillos Oeste community. Mussio Madrigal contracted with a local contractor by the name Alberto "Beto" Mora, who lived in the community, to construct the two Easements and the work was supervised by Mr. Mussio. The following work was carried out:
 - (a) Roads were carved out for the two Easements that were the closest to the beach and pavers and culverts were installed;
 - (b) Water lines were run to each of the lots fronting those Easements; and
 - (c) Later electricity was installed for the first two Easements, for which we obtained a permit from the electric company, ICE, and the work was done by a licensed electrician.
 - (d) Mr. Mussio also designed and built the office that was located on the Las Olas site.
91. I was not involved in the day-to-day activities of Mussio Madrigal in putting together the application for the Environmental Viability permit for SETENA or, subsequently, the applications to other government departments to obtain the construction permits. Mussio Madrigal interfaced entirely with all of the various government agencies in acquiring the permits. I relied on their knowledge and experience in this area. However, Mr. Mussio provided me

with regular updates at least a couple of times per month, including as to the following:

- (a) In November of 2007, we submitted the application for the Environmental Viability to SETENA.
 - (b) On June 2, 2008, SETENA issued the Environmental Viability²⁸ for the Condominium Section.
92. I was delighted at the news of the acquisition of the SETENA Environmental Viability permit. This signified that SETENA had approved the plans for the Condominium Section and concluded that the project site did not have any environmental problems that could affect the development of the property, such as wetlands, forests, turtle nesting areas, bird sanctuaries, lakes or lagoons.
93. I immediately informed the other investors of this major milestone having been reached and had no reason to doubt the authority or validity of this permit.²⁹ Mussio Madrigal is a very experienced architect and engineering firm. They have done this for many companies, including Costa Developers with whom we were very familiar and so far as we were aware, they had never had any problems. They kept us informed at all times during the entire lengthy process and I am certain that all the required steps were taken and that they did everything by the book.
94. I remember that there were several conditions included in the Environmental Viability permit for the Condominium Section. First, we had to advance an environmental guarantee of US\$ 8,000, which we duly did on July 21, 2010 with certificate number 130816.³⁰ Second, we had to appoint an Environmental Regent to oversee the works and ensure everything was being done in compliance with the Environmental Viability. In around June or July of 2010, we appointed Mr. Esteban Bermúdez from DEPPAT, a Costa Rican environmental consultancy company, as Environmental Regent for the Condominium Section. Mr. Bermúdez was very experienced in this role as he

²⁸ Exhibit C52, Environmental Viability for the Condominium Section, June 2, 2008

²⁹ Exhibit C53, Las Olas announces SETENA Permit, June 15, 2008

³⁰ Exhibit C73, Environmental Guarantee Deposit Certificate for Condominium Section, July 20, 2010

had been in the business for a long time. I had no reason to doubt that he would not perform this diligently.

95. The Environmental Regent's obligation to visit the site and report to SETENA every two months only arose once the works had commenced. Mr. Bermúdez's first report to SETENA was therefore for the period June to July of 2010, after construction activity had commenced.³¹
96. At all times during this process we relied on Costa Rican professionals to navigate the permitting process and to ensure the project complied with all relevant laws and regulations along the way, which it did – something that is evidenced by the fact that all necessary permits were granted by SETENA and the municipality. At various times throughout the life of the project, we relied on the services of professional architects, engineers, attorneys, environmental consultants and others who made certain all work was being carried out in accordance with prevailing Costa Rican law. As it turned out, our trust in these professionals was well-founded.

The 2008 Financial Crisis and subsequent re-opening of the Project

97. In April of 2008, we opened a sales office in San José and entered a professional service contract with Johnny Podesta, who managed the office.³² Mr. Podesta had previously worked with Costa Developers in the same kind of position and was very successful. We also had a sales representative at our on-site office at Las Olas and Mr. Podesta managed that office as well.
98. There were four people involved in telemarketing in the San José office. They would call potential buyers to solicit their interest in a lot, get a reservation deposit and then invite them to Costa Rica to close the deal. Our offer to these buyers was such that if they closed the deal when they visited Costa Rica we would reimburse them for the cost of their trip. Mr. Podesta was able to get names, addresses and phone numbers of people to call in the US who were identified as people interested in real estate opportunities in Costa Rica, and our team would then call them up in an attempt to get a reservation deposit.
99. We also engaged the services of Andrea Cooper who had previously worked in sales and marketing for the Los Sueños project. She worked for us for about

³¹ Exhibit C68, DEPPAT SETENA update June – July 2010, June 2010

³² Exhibit C50, Johnny Podesta Contract, April 28, 2008

6 to 7 months prior to us engaging the services of Mr. Podesta. She similarly was engaged to do sales and marketing of the Las Olas project.

100. In addition to telemarketing, our sales strategy also involved the following other tasks:
 - (a) We mined customer referrals from the existing purchasers by offering rewards for referrals;
 - (b) We carried out email campaigns by purchasing qualified target email lists of potential real estate buyers and then doing regular mass email marketing to generate leads;
 - (c) We made brochures available at the sales office, through direct mails, email, and at the location of real estate agents' offices that market Caribbean and Central American properties;
 - (d) We made arrangements with local real estate brokers to sell lots and to be paid a commission for each sale; and
 - (e) We advertised the Las Olas project in vacation and retirement property sections of the local neighborhood newspapers, such as the Tampa Tribune, and posted on billboards in Costa Rica.
101. We started construction of the beach club in August of 2008. Mussio Madrigal was supervising the construction work, which was carried out by a contractor by the name of Luis Alberto Alfaro Vega. Construction started on four small *cabinas* that were located next to the swimming pool. However, construction was stopped due to the financial crisis in 2008.
102. At that time we closed the office in San José as well as the one in Esterillos Oeste. On the financing side we were in large part insulated from the subsequent credit squeeze as the project was self-funded by the investors and did not have any debt.
103. Because there was no debt on the project we were able to put the project on hold until the market came back. Anyone who had debt at that time lost their project since they were unable to service the debt.
104. In late 2009, we decided to re-start the Las Olas project. By that stage, it was possible to see signs of recovery in the US. I was down in Costa Rica full time and could also sense that things were stabilizing there too and that it was time to re-open the project.

105. In 2008 I had met Jovan Damjanac while he worked for another development company in Costa Rica. We were both from Pennsylvania. We got on well and stayed in contact. In around September of 2009, I asked Mr. Damjanac if he could help out on marketing the Las Olas property. He came over to my place in Escazu, where I had set up a small office, and he started making calls to potential buyers. Towards the end of 2009, he was already getting some good responses from his marketing efforts. As well as confirming to me that the market was once again picking up, Mr. Damjanac's results also encouraged me to ask whether he would be able to help full-time on the project.
106. In December of 2009, Mr. Damjanac accepted an offer to move down to Esterillos Oeste to work on the Las Olas Project. His role was principally to carry out sales and marketing at the onsite office. He would later also oversee the work of several employees who helped clean the land. Mr. Damjanac also acted as the general on-site representative of Las Olas and reported to me on progress almost daily.
107. On January 1, 2010 the project officially reopened, however the market had changed and we had to change with it. Prior to September of 2008, the local homes and condos were selling for US\$ 500,000 and lots were selling for US\$ 160,000. After we opened back up, the price adjusted to homes and condos selling for US\$ 250,000 and lots were selling for US \$80,000 to US \$90,000. So we made the necessary adjustments and rolled on.
108. We immediately started working on getting the remainder of the construction permits so we could start building the infrastructure. I would visit Mr. Damjanac at the Las Olas site every week and often time stayed down there for a couple of days at a time.
109. When the project resumed in January of 2010, the first task we undertook with respect to the Condominium Section was to apply for all the remaining permits to carry out the work. Unlike for the beach club, we did not need to re-apply for a new Environmental Viability for the Condominium Section as the lot sizes remained the same (so the blueprint remained unchanged), although we did reduce the price of the lots to reflect current market conditions. Sebastian Vargas, my Costa Rican attorney, assumed the role of obtaining all the construction and other permits from the various government departments, such as the local municipality, the Ministry of Public Works, AYA (the water

department), the Ministry of Health and the Ministry of Housing and Urban Development.

110. Because of the alteration in the design of the beach club, we needed to re-apply to SETENA for a new Environmental Viability permit to reflect the new scope of works. José Andres Castro, an architect from San José, had previously worked on a number of projects with the environmental supervisor, Daniel Loria Sims, who was from Avicennia. We appointed Mr. Castro to prepare a new design as well as the accompanying construction drawings that would be presented with the application for the new Environmental Viability permit we would need for the Concession. Mr. Sims, who worked with Mr. Castro, was responsible for acquiring the new Environmental Viability permit based upon the new plan that Mr. Castro was producing. Mr. Sims was successful in acquiring the new SETENA Environmental Viability for the Concession August of 2011.³³
111. Once the application for the new Environmental Viability for the Concession had been submitted, we appointed Mr. Sims, in June of 2010, as Environmental Regent for the Concession to ensure continuity of team. He replaced Mr. Bermúdez in this role, although Mr. Bermúdez stayed on as Environmental Regent for the Condominium Section of the project.
112. Mr. Sebastian Vargas assisted in obtaining the new Environmental Viability for the Concession from the legal side and at the same time assisted in getting the construction permits for the seven remaining Easements and for the Condominium Section. The Easement construction permits were acquired on July 16, 2010.³⁴
113. After we had received the construction permits for the Easements along the main road going into the community, we completed three of them, including the roads, electricity, water and culverts, before we received notice from the municipality of the shutdown in May of 2011.³⁵

Storm Drainage

³³ Exhibit C52, SETENA Environmental Viability for the Concession, August 23, 2011

³⁴ Exhibit C71, Construction Permits, July 2010

³⁵ Exhibit C125, MUNI shutdown notice, May 11, 2011

114. Also in July of 2010, we agreed to a request by the Municipality of Parrita to put in storm drains on two public roads running into Esterillos Oeste that were adjacent to the Condominium Section and the Concession. The agreement was that we would buy the storm drains, and the municipality would use its equipment to put them in and connect to the storm drains coming out of the Las Olas property. The storm drains were put along the internal roads to collect the rainwater that came off of the hills and the roads when it rained.



115. Since before we purchased the property, during heavy rains, water would run off the hills and flood the streets, in particular the public road running east to west that separated the Concession from the plot earmarked for the hotel (i.e. not bordering the Condominium Section). The Municipality of Parrita started putting in storm drains on a part of that public road. They got as far as the community soccer field that was south east of the Las Olas property. However, the municipality then ran out of money to finish the storm drains when there were still 450 meters of storm drains to put in. Most of that ran along the frontage of the Las Olas property. There was to be another storm drain running up the road that ran to the west of the hotel plot.
116. The municipality asked us to help them put in the storm drains and said if we would buy the storm drains, that they would provide the machinery and manpower to put them in. So we agreed to do that. It was also agreed that we would be able to connect the drainage we were installing in the Condominium Section to the storm drains that bordered the Las Olas project on the road to the west of the hotel plot, to drain the water coming of the hills. We therefore

ran the storm drains from the public road into the property (immediately north of the main entrance) where we connected the infrastructure to a natural drainage channel, which sat between the Easements and the Condominium Section. Installing the storm drainage involved digging a trench and installing and connecting large concrete pipes. Every 30 yards along a collector box would be built which would be used to clean the drains from time to time.

117. The work on the storm drains started in August of 2010 and continued for several months. We took photographs of the Municipality putting some of the storm drains in and posted them on YouTube for people to see and also posted them on our website.³⁶ We had made huge progress by the end of 2010 after opening the project back up coming out of the financial crisis. Mr. Damjanac was doing a great job as sales and marketing director and sold a number of lots and generated a lot of interest in Las Olas. We acquired the construction permits for the Easements and the Condominium Section during that year. We were also doing infrastructure work on storm drains, easements and the internal roads. We were in the process of getting new plans drawn up for the Concession that would respond to the new market conditions coming out of 2008. We were in the process of getting a new SETENA Environmental Viability for the Concession that was based on the new plans that were being drawn up. It was really much more than we expected and so we were very excited about the prospects for 2011 and had great momentum going into the New Year.
118. I had been in constant contact with Mr. Raguso, Mr. Janney and the other US investors and was keeping them updated about the great progress we were making in 2010. Mr. Raguso was finishing up with a project he was working on in New Mexico and was planning to come down during the first part of 2011 to act as construction supervisor. Meanwhile, Mr. Janney was planning to help out more on the marketing side in 2011 as well. He had significant experience in large development projects as well as timeshare experience. Things were moving quickly and both Mr. Janney and Mr. Raguso were poised to become much more involved in the Las Olas project going into 2011. We expected, based on the great progress we made in 2010, to continue that momentum and see much greater progress in 2011.

³⁶ Exhibit C187, Photographs of Municipality of Parrita working to install storm drains donated by Las Olas

119. In 2010 I had met a guy from California who was living in Costa Rica by the name of James Ramos. He was an architect who was trying to get some work in Costa Rica. I wanted to get some renderings done for the condos on the parcels of land we had designated for condominium parks, so I contracted with him to do some renderings for the condo park
120. These were the renderings that were done for phase five of the project.³⁷ We did not progress any further with those initial designs because of the eventual shutdown of the project by the Government in May of 2011³⁸ and the subsequent filing of criminal charges in in October of 2011 against me. This proved to be what I would call “capital punishment” on the Las Olas project and that punishment killed the project.
121. Between July of 2010 and March of 2011, Mr. Bermúdez made his required visits to the project site every two months as Environmental Regent for the Condominium Section. Each time he visited he would create reports that stated what he observed.³⁹ Those reports were then filed with SETENA as required by the conditions of the Environmental Viability permit. His specific task was to act as an inspector for SETENA to make sure that the works being done were within the parameters of the Environmental Viability permit that had been issued and were according to the master site plan that was approved. He was required to write detailed reports and submit them to SETENA after each visit. He would also provide us with a copy. All of his reports stated that the work was being carried out in accordance with the Environmental Viability permit as well as the construction permits. Nothing I ever saw, read or discussed with Mr. Bermúdez suggested anything other than that all work was being done within the parameters of the SETENA Environmental Viability and the construction permit.

³⁷ Exhibit C194, James Ramos Renderings

³⁸ Exhibit C125, MUNI shutdown notice, May 11, 2011

³⁹ Exhibit C68, DEPPAT SETENA update June-July 2010, June 2010; Exhibit C74, DEPPAT SETENA update August-September 2010, August 2010; Exhibit C87, DEPPAT SETENA update October-November 2010, October 2010; Exhibit C94, DEPPAT SETENA update December 2010-January 2011, December 2010; Exhibit C109, DEPPAT SETENA update February-March 2011, February 2011

122. In September of 2010, the municipality issued the construction permits for the remainder of the property,⁴⁰ something it would not have done but for the prior issue of the Environmental Viability permit.
123. We started to work on the infrastructure construction in late September or October of 2010. Our plan was to do the infrastructure work for the Condominium Section in three phases, each of which involved one third of the development, starting with the lots closest to the beach and then working back to the main road. Initially a lot of work went into putting in storm drains along the main roads and into the interior roads into the property.
124. One of the first things we did during the construction phase was the contouring of the roads according to the master site plan. This was necessary to ensure the roads were placed where they should be and this was supervised by an engineer, Manuel Calvo. Jovan shot a lot of videos of the work and they were posted on our website.
125. For these areas, as well as cutting the roads, we put in culverts, storm drains and a sub-base of gravel. Because we were planning on developing the Condominium Section in three stages at a rate of a third at a time, starting with the infrastructure that was closest to the beach road and working towards the back of the site. We were only able to carry out this work in the first section, as indicated below, before the government shut down.



⁴⁰ Exhibit C85, Construction permit for the Condominium Section, September 14, 2010

126. This work was carried out between September of 2010 and May of 2011, when we stopped all work on the Las Olas project due to a shutdown notice from the municipality claiming there were wetlands on the project site.⁴¹
127. I was not involved in the construction activities on a day-to-day basis but of course I was overseeing what was going on. We appointed an engineer named Roy Trigueros as a general contractor to oversee the works.⁴² He formally assumed responsibility for the works in October of 2010 and he would supervise the construction workers. Mr. Trigueros would keep Mr. Damjanac and me informed about the progress being made on the infrastructure work. I would also visit the site at least once a week.
128. We also had our own employee, Francisco Chico, who was cutting in roads with our backhoe. We had excavators working cutting in roads as well, as they are better suited for hilly areas to contour the embankments. Mr. Alfaro, a general contractor, was also working with a crew on putting in the storm drains and Easement roads.
129. Mr. Castro completed the full set of construction documents by the first part of 2011 and we acquired the revamped SETENA Environmental Viability permit for the Concession,⁴³ reflecting the redesign of the smaller units, in August of 2011. The new units on the Concession were approximately half the size and half the price of the Zurcher units and a more compact design, as illustrated below.

⁴¹ Exhibit C125, MUNI shutdown notice, May 11, 2011

⁴² Exhibit C84, Trigueros Appoinment, September 2, 2010

⁴³ Exhibit C138, Environmental Viability for the Concession, August 23, 2011



Bribery Attempts

130. In late August of 2010, Christian Bogantes, the director of the local office of the Ministry of the Environment (“MINAE”) in Quepos, visited the site to carry out an inspection. Mr. Bogantes came into the project office, where I was located and told us that there were some problems with the project regarding wetlands and trees. He was speaking Spanish but Mr. Damjanac was translating into English for me. I provided him with a copy of the SETENA Environmental Viability permits as well as copies of the construction permits that we had attached to the windows to show that everything was okay. In response, Mr. Bogantes said that he did not care about the permits and that the problems with the project could be solved if we contributed to the “*retirement or pension plan.*”
131. It was clear to me that he was trying to solicit a bribe. I knew this was illegal and wanted nothing to do with it and I told him that I could not pay a bribe because it was a crime in Costa Rica and the United States and I was not going to risk going to jail in either country. Mr. Bogantes left the office looking very upset.
132. Later, Mr. Damjanac told me that a couple weeks before, when he was with Mr. Bogantes on the project site and they were walking around the site looking at the work being done, Mr. Bogantes told him that we would have to donate some lots or some money to keep the project going. When Mr. Damjanac asked him what he was talking about, Mr. Bogantes replied “*you know what for.*”
133. I did not report the bribery attempt immediately afterwards, as I did not want to cause any problems for me or for the Las Olas project. However, when we started hearing rumors that wetlands existed on the Las Olas site, it seemed obvious to me that the rumors that were flying around were directly related to my refusal to pay a bribe.
134. This was not the first bribery attempt I had faced. In 2009, I had another experience with an attempted bribery by the Municipality of Parrita. I went there for a meeting that was presided over by the city manager named “Oviedo”. At that meeting he asked me to pay a bribe of US\$ 200,000. He said it was not all for him, he was just the front man and it would be distributed between ten other people. I told them that it was a crime to pay a bribe and

was told by the city manager that the way it worked was than “when it rained everyone got wet”. I later found out that this is a famous saying that is only used when bribes are asked for. I refused to pay the bribe.

135. I was naturally upset about this attempted bribery and called Mr. Zumbado and told him what had happened. We live near each other and he immediately came over to my place. Mr. Zumbado was upset about what happened and told me he would see what he could do. Later I learned that Mr Zumbado called the President’s brother, who had a high level position with the Government, and told him about what had happened but unfortunately nothing was done.
136. I later learned that this particular municipality had a lot of problems with corruption. One or two years after I was asked for a bribe, I was told that the same person that asked me for a bribe, “Oviedo” (I don’t remember his last name), was arrested for sending out purchases orders for building supplies from a local hardware store and was having them delivered to his home. The owner of the hardware store reported him to the police and he was arrested.
137. In the spring of 2015, it was widely published on Costa Rica TV that the former Mayor of Parrita and people in his administration, (2007 to 2010) were arrested for fabricating false expenses reports and presenting them to the Municipality for payment. The Municipality and sent out the checks and they were then cashed by the ex-Mayor and other people in the administration and they kept it. The TV news report stated that they were going to be arrested and charged with theft. This was the administration that was in office when I was asked to pay a bribe.

Problems with the Government Authorities

138. As explained above, everything was proceeding smoothly with the project until early 2011. By this point we had:
 - (a) Obtained the SETENA Environmental Viability permit⁴⁴ and construction permits for the Condominium Section and had started building the infrastructure;

⁴⁴ Exhibit C52, Environmental Viability for the Condominium Section, June 2, 2008

- (b) Obtained the construction permits for seven of the Easements and started building the infrastructure on those Easements;
 - (c) Applied for the revised SETENA Environmental Viability for the new scope of work for the beach club and were awaiting approval from SETENA. We received the revised SETENA Environmental Viability for the beach club in August of 2011.⁴⁵
 - (d) Obtained preliminary designs⁴⁶ for condos that were planned for the larger parcels.
 - (e) Done some initial work on the hotel that was slated for the 18,000 square meter lot across the street from the beach club Concession.
139. In around January of 2011, we started hearing rumors that MINAE was claiming there were wetlands on the project site. Although we had already heard unqualified rumors about there being wetlands on the project site, this came as a surprise to us given the fact that the project was fully permitted and we had a number of government reports and studies that were done from 2008 through 2010,⁴⁷ all of which stated there were no wetlands on the project site. We had engaged Costa Rican professionals to get all the necessary permits and they successfully and legally acquired them. Further, the reports by the Environmental Regent on the Condominium Section⁴⁸ continued to state that the works were being carried out in accordance with the SETENA Environmental Viability permit, as well as the construction permits and the master site plan.
140. My attorney, Mr. Vargas, and I visited the local MINAE office in San José as well as the SETENA office in early January of 2011. We wanted to see if anything had been filed with those agencies about a wetlands issue on the project site, but we were unable to find anything in the files that would indicate there was a problem with any of the land at the Las Olas site.

⁴⁵ Exhibit C138, Environmental Viability for the Concession, August 23, 2011

⁴⁶ Exhibit C194, James Ramos Renderings

⁴⁷ Exhibits C68, C74, C87, C94, C109, C120, C130, C136, C140, C147, C150, C151, & C153 DEPPAT SETENA updates from June-July 2010 through June-July 2012

⁴⁸ *Ibid.*

141. In the third week of January of 2011, Mr. Vargas contacted Luis Picado Cubillos, the then director of the MINAE office in Puriscal, and spoke to him and asked him if he heard of any problems with the project site. He said nothing about any problems either, so we thought that the rumors that we were hearing were unfounded.
142. I was aware of the study that had been done by SETENA in August of 2010,⁴⁹ as a result of a complaint that had been filed by Steve Bucelato, a local resident and neighbor of the Las Olas property. That study had also confirmed that there were no wetlands on the Las Olas site and Mr. Bucelato's complaint had been rejected for lack of evidence. I knew about that report because SETENA sent it to me in September of 2010, at the conclusion of its investigation, along with a September 1, 2010 resolution in which SETENA rejected Mr. Bucelato's wetland complaint in its entirety.⁵⁰
143. However, I was not aware of another study that was done in July of by MINAE, at about the same time the SETENA study was done. The MINAE study also said there were no problems with wetlands on the project site. We later determined that the MINAE study was being intentionally being withheld from us. We learned of this study from Mr. Esteban Bermudez, our environmental regent, when he saw a reference to this report in a Government letter. I was able to get a copy of this report in March of 2011. I also learned, when I gave my statement to the criminal prosecutor, that the above MINAE report was also withheld from him as well during his criminal investigation. Withholding of relevant evidence during a criminal investigation I think is called obstruction of justice.
144. At this stage, I will comment briefly on Mr. Bucelato's behavior and his limited involvement with Las Olas. Mr. Bucelato is a local a neighbor of the Las Olas project site. At the time we purchased the Las Olas property, I understand that Mr. Bucelato had also been interested in acquiring the project site. I believe he felt he had lost out to us and, as a result, I had heard that he was very bitter towards the Las Olas project. Over the years, as he walked by the project site he would make unfounded accusations about us and what we were doing, claiming that we were in breach of various laws and regulations. His behavior was very odd and at times he was aggressive. We tried to ignore

⁴⁹ Exhibit C79, Inspection Report by SETENA, August 19, 2010

⁵⁰ Exhibit C83, SETENA Resolution, September 1, 2010

and avoid him and were hoping he would go away. However, after we resumed work on the project in January of 2010, the frequency of his site visits intensified, as did his strange behavior and his defamatory remarks about the project and me.

145. I remember one time in late 2010 or early 2011, Mr. Bucelato came down to the project site claiming to have a document that he said had been forged and threatening to have our project shut down on that basis. At the time, we put this down to his absurd behavior and did not really pay any attention to what he was saying
146. Over the years, as I later found out, Mr. Bucelato had filed baseless complaints with numerous organizations, including MINAE, SETENA, the Defensoría de los Habitantes and a criminal complaint with the environmental prosecutor.⁵¹ In those complaints he alleged that the Las Olas project site contained wetlands that were protected by Costa Rican environmental laws. He further alleged that I had unlawfully ordered those wetlands to be filled and that I had forged a document. His complaints had no basis and one by one they were dismissed with the exception of the criminal complaint which he made to the prosecutor, in spite of a complete lack of evidence. Also, in spite of the fact that his false accusations of wetlands were also rejected by SETENA in their September 1, 2010 resolution, which confirmed there were no wetlands on the project site.
147. The about mentioned MINAE report that was done in July of 2010, was done by SINAC, the National System for Conservation Areas, had been prepared at around the same time as the August 19, 2010 SETENA report. SINAC, a branch of MINAE, is responsible for administering and determining Costa Rica's environmentally protected areas. In its report, dated July 16, 2010 and with reference ACOPAC-OSRAP371-10 (the "**July 2010 SINAC Report**"),⁵² SINAC, like SETENA, concluded that there were no wetlands on the project site. However, that report was never sent to us and we did not find out about it until March of 2011 when Mr. Bermúdez found a reference to that report in another MINAE letter, as I explain in more detail below.

⁵¹ Exhibit C119, Bucelato complaint to MINAE, March 30, 2011; Exhibit C110, Criminal complaint by Steve Bucelato, February 2, 2011

⁵² Exhibit C72, July 2010 SINAC Report, July 16, 2010

148. On or around January 17, 2011, we received a letter from SETENA requesting an original copy of a MINAE document they had allegedly received on April 3, 2008.⁵³ However, we had no idea what document they were talking about. I began to suspect that this was the very same document that Mr Bucelato had been referring to when he came down to the site only a few weeks before.
149. On February 9, 2011, on my instruction, my attorney, Sebastian Vargas, wrote to SETENA and explained that we had no connection to that document and that it had not previously been requested by SETENA or required by any other institution, and that we could only assume it was part of an elaborate plan by Mr Bucelato to sabotage the project.⁵⁴
150. Then, on February 14, 2011, I received a letter from Mr. Picado requesting an injunction against the Las Olas project (the “**SINAC Notification**”).⁵⁵ The SINAC Notification called for a total shut down of the project due to there being wetlands on the project site. This came completely out of the blue. I was shocked by the contents of the notification, which made the following accusations (among others) against the project:
- (a) The Las Olas site contained water bodies classified as wetlands, which had been drained by the construction of a 450 meter sewer which ran into a mangrove swamp and filled;
 - (b) The Las Olas project included forests and that trees within this forest had been felled; and
 - (c) That there was a MINAE report that was allegedly forged by a person or persons unknown. We knew nothing about this alleged forged document until this point.
151. The notification mentioned that a demand for criminal prosecution had been filed with the Aguirre Prosecution against the Las Olas project on February 2, 2011.⁵⁶ It called for an injunction against any further elimination of vegetation, ground motion or the opening of new roads on the property until

⁵³ Exhibit C104 Letter from SETENA to David Aven, January 17, 2011

⁵⁴ Exhibit C111 Letter from David Aven to SETENA, February 9, 2011

⁵⁵ Exhibit C112, SINAC Notification, February 14, 2011

⁵⁶ Exhibit C110, Criminal complaint by Steve Bucelato, February 2, 2011

investigations had been made as to whether any protected areas had been invaded or damaged, or if wetlands had been filled.

152. I was totally perplexed by this, and very upset about, the arbitrary actions by the government of Costa Rica in light of the fact that the project was fully permitted and we were operating legally under the authority of the permits we had obtained from the relevant government authorities. As I have already explained, we had obtained the Environmental Viabilities from SETENA, which had originally confirmed that there were no protected areas (including wetlands or forests) on the project site. SINAC also confirmed the same with their letter in April of 2008.
153. The SINAC Notification appeared to be completely without basis and totally at odds with everything else I had seen. We had obtained all the necessary permits from the government and we were operating under the authority of those permits and in the process of putting in the infrastructure, per those permits. Then MINAE, the agency whose employee, Mr. Bogantes, solicited a bribe in August, 2010, did a one hundred and eighty degree turn and all of a sudden claimed there were wetlands on the project site, in spite of a SETENA Environmental Viability confirming there were no environmental problems on the project site and a number of studies between 2008 and 2010 concluding there were no wetlands.
154. I was totally shocked and dismayed by this turn of events. I could not understand the basis for SINAC's injunction request. By complying with all of the legal requirements for the project, both before it got off the ground by applying for the relevant permits, and during the life of the project by complying with all of the legal conditions attached to those permits, we had done nothing wrong. Between 2008 and 2011, the government authorities had conducted a number of studies, all of which determined there were no wetlands or environmental problems with the project site. None of their studies ever suggested that there was a wetland or forest on site. So I could not understand this sudden change. Either permits mean something or they do not. As a developer, you must be able to rely on lawfully obtained government development permits. You cannot operate on the basis that one day you have them and the next day you do not.
155. I was shocked by the contents of the notification, particularly given that we had spoken to Mr. Picado just a few weeks prior and he had not mentioned

anything about the rumors of wetlands. I could not understand why, if he did have concerns about the project, he did not say so at the time and offer us an opportunity to speak with him about his concerns so we could reason together before he committed capital punishment on the project

156. Upon receipt of the SINAC Notification, I immediately spoke to Mr. Vargas and Mr. Bermúdez. They assured me that we had obtained all the correct environmental permits for the project, which had concluded that there were no protected areas (including either wetlands or forests) at Las Olas. Mr. Bermúdez further confirmed that all the works had been carried out in accordance with the permits. We had never received any prior notification from any government agency that anything illegal was being carried out on the project site. We therefore had no reason to believe we had done anything wrong.
157. At this point, we were advised that the SINAC Notification, contained in the letter Mr. Picado sent out to me in February of 2011, was of no legal effect because SINAC did not have jurisdiction over construction permits or a development's operations. On the basis of that advice, we continued to work on the site, in accordance with all of the legally issued government permits.
158. Nonetheless, on February 23, 2011, in response to the SINAC Notification, Mr Vargas filed a motion for revocation⁵⁷ with SINAC on my and the other investors' behalf.
159. Around a week later, we received SINAC's February 25, 2011 response to that motion, given by Mr. Picado himself, which, unsurprisingly, dismissed the motion in its entirety.⁵⁸ Then, on March 9, 2011, Mr. Vargas filed a formal appeal on our behalf.⁵⁹

⁵⁷ Exhibit C113, Formal appeal against SINAC Notification, February 23, 2011

⁵⁸ Exhibit C114, Response from the state to motion for revocation, February 25, 2011

⁵⁹ Exhibit C115, Formal Appeal against SINAC Notification, March 9, 2011

July 2010 SINAC Report

160. We were obviously very concerned by the recent developments. My advisors and I started reviewing all of the correspondence with the government authorities in an attempt to understand what was actually going on. While Mr. Bermúdez was reviewing the SETENA file, he saw reference in a letter to the July 2010 SINAC Report which had not been provided to us.
161. During a conversation that I had with Mr. Bermúdez in his office on March 17, 2011, he showed me that letter which had been written by Mr. Bogantes to Hazel Diaz Melendez in August of 2010.⁶⁰ The letter referred to a SINAC Report that had been commissioned and that stated that there were no wetlands on the project site. Mr. Bermúdez told me we did not have that report in our files and that I needed to go down to the Quepos office to get a copy of it.
162. The next day I drove down to the MINAE office in Quepos with the letter. I spoke to the receptionist at the MINAE office and pointed out the report in the letter and asked for a copy of it. She got the file and was preparing to get me a copy of the July 2010 Report, since anyone is permitted to get copies of these reports. Shortly afterwards, Mr. Bogantes appeared at the office. He asked me what I wanted. I showed him the letter and told him I wanted to get a copy of the July 2010 Report. He told me that he did not have the report, but he was unaware at that point that the receptionist had already retrieved the file and put it on the desk which was one meter in front of me.
163. I got very upset by the fact that he was lying to me. I challenged him on his lie and told him that the file was right in front of me, that I was entitled to a copy of that report and that I wanted it immediately. At that point Mr. Bogantes got very anxious and nervous and called the main MINAE office in Puriscal and spoke to a MINAE attorney by the name of Laura Chavez about the problem and then handed me the phone. Ms. Chavez spoke very good English and she asked me what the problem was. I told her that I was in Quepos to pick up the report, but that Mr. Bogantes was refusing to give it to me and had lied to me saying he did not have the report. I told her the report was sitting in a folder right in front of me. I further stated that as a lawyer she must know that we were entitled to a copy of that report and I wanted it immediately. She asked to speak to Mr. Bogantes and so I passed the phone back to him. As he was

⁶⁰ Exhibit C80, Letter from SINAC to Hazel Diaz Melendez, August 27, 2010

speaking to Ms. Chavez, his expression became very shocked. He then got the report from the file, typed up a strange and unnecessary cover letter for the report and reluctantly gave it to me. It was obvious he was very upset about what had happened.

164. According to the July 2010 SINAC Report, there had been a MINAE/SINAC inspection of the Las Olas project site on July 8, 2010.⁶¹ The inspection was carried out by José Rolando Manfredi-Abarca, the top environmental wetlands expert for MINAE in Quepos, and Mr. Bogantes, the director of the MINAE Office in Quepos.
165. My lawyers told me that this was a report that should have been provided to us shortly after it was completed, just as SETENA had sent us a copy of its August 18, 2010 report when it was completed. But we had never received the SINAC Report and I can only assume that officials at MINAE had tried to bury it in an effort to keep us from seeing it, as it only served to confirm that there were no wetlands on the project site. Further, I could not understand the basis on which, in light of this report that confirmed that no wetlands existed on the Las Olas property, why Mr. Picado sent out his SINAC shut down notification to us only six months later. Surely Mr. Picado must have known about this July 2010 report since it was done by his agency and it was in the SINAC's files.
166. I was already suspicious about Mr. Bogantes' motives as a result of his attempt to solicit a bribe from us. At this point however, I became even more suspicious of him and MINAE and their intentions. Mr. Bogantes had inspected the property on behalf of MINAE in July of 2010 and produced a report that found no evidence of wetlands. He then solicited a bribe from me in August of 2010. After I refused to pay the bribe, on August 27, 2010 he sent a letter to Ms. Diaz highlighting problems with the Las Olas project and then, in February of 2011, SINAC issued an administrative injunction request against the project. Someone in MINAE then buried the July 2010 SINAC Report confirming there were no wetlands on the property in its office in Quepos and when I showed up eight months later to get a copy that report, Mr. Bogantes lied to me about its existence and tried to keep the Report from me.

⁶¹ Exhibit C72, July 2010 SINAC Report, July 16, 2010

167. I passed the July 2010 SINAC Report on to my advisers who were as shocked as I was about first, the authorities not having provided us with a copy of this important and relevant report, second, Mr. Bogantes lying to me in an attempt not to give it to me and third, Mr. Picado's February of 2011 SINAC Notification that directly contradicted his own agency's report, done just six months before.
168. The findings of the July 2010 SINAC Report were as follows:
- (a) Parts of the property, specifically an area with naturally regenerating trees and shrubs, had been grubbed and other vegetation had been burned. There was no mention of a forest on the property or that any protected trees had been cut without a permit;
 - (b) Two inspections were carried out in January and February of 2010 by MINAE officials, and the reports from these clearly state that the environment was not being affected;
 - (c) No evidence of wetlands was found at the property during the field inspections;
 - (d) There were no lakes or lagoons on the site; and
 - (e) On the basis of previous reports and the inspection visit, Mr. Manfredi concluded that there were no wetlands on the property.
169. As I later found out, this report was made as part of SINAC's investigations into the Las Olas project following an earlier complaint by Mr. Bucelato, in around April of 2009. Like the complaint Mr. Bucelato made that was investigated by SETENA in 2010, this complaint was rejected by the authorities on the basis of a lack of evidence. SETENA properly investigated the 2010 complaint and rejected it in their September 1, 2010 resolution numbered 2086-2010-SETENA,⁶² which was sent to us. SINAC went on to reject Mr. Bucelato's second complaint in their July 2010 SINAC Report (report number ACOPAC-OSRAP 371-2010),⁶³ but they never sent us a copy of that report and tried to keep their report from us. It was obvious to me that

⁶² Exhibit C83, SETENA Resolution, September 1, 2010

⁶³ Exhibit C72, July 2010 SINAC Report, July 16, 2010

SETENA was acting totally transparent, while MINAE was being duplicitous and deceptive.

Environmental Regent complains about system

170. In light of the recent developments, I asked Mr. Bermúdez if he would be able to set the record straight. On March 22, 2011, Mr. Bermúdez wrote to SINAC criticizing them and their findings of wetlands and protected forestry areas.⁶⁴ He, too, considered that SINAC's findings were neither in accordance with the earlier determinations of SINAC and SETENA, nor accurate from an environmental perspective. I understand that Mr. Bermúdez goes into detail in his statement about what he considered the shortcomings of SINAC's conclusions to be and his statement can speak for itself. However, to summarize, he stated in his March 22, 2011 letter that:

- (a) The environmental permits and previous government inspections concluded that there were no wetlands on the Condominium Section.
- (b) The only activity that had any effect on the sector where the alleged wetland was located was when, in around November 2010, pipes were laid to collect the water in the exit channel that drains the water toward the adjoining lot. He explained the purpose of this drainage, and re-stated that the depression where this piping was installed was not a wetland.
- (c) No trees had been cut for which a permit was required.

171. So far as I can recall, Mr. Bermúdez never received a response from SINAC.

SETENA April Resolution

172. On April 13, 2011, by resolution, SETENA requested the Municipality of Parrita to issue an injunction to suspend all works on the Condominium Section on the basis of a November 30, 2010 request from SINAC⁶⁵ (the "**SETENA's April Resolution**").⁶⁶ SINAC's request was premised on the fact that a document underlying SETENA's original decision to grant the Environmental Viability for the project was allegedly a forgery. At the time,

⁶⁴ Exhibit C118, DEPPAT letter to SINAC, March 22, 2011

⁶⁵ Exhibit C93, SINAC Letter to SETENA, November 30, 2010

⁶⁶ Exhibit C122, SETENA April 2011 Resolution 839 – 2011, April 13, 2011

we assumed this to be the allegedly forged document referred to in the SINAC February Notification that had also been the subject of SETENA's request of January 17, 2011.

173. On the same day, April 13, 2011, the Environmental Administrative Tribunal, or Tribunal Ambiental Administrativo (the "TAA") issued an injunction suspending the project works until a final decision could be made.⁶⁷ Although the TAA injunction was also dated April 13, 2011, we never received it either by fax or letter and it was not sent to our attorney. The TAA is not a criminal court, but a civil court with the power to shut projects down and that is exactly what it did with Las Olas.
174. In its April Resolution, SETENA stated that the reason for the injunction request was a letter sent on January 23, 2011,⁶⁸ by the Director of SINAC, Ms. Guiselle Méndez Vega, to SETENA, in which she stated that a SINAC report⁶⁹ (reference SINAC 67389RNV5-2008) had allegedly been submitted as part of Las Olas' application for the SETENA Environmental Viability permit for the Condominium Section but that it was not an official report. The clear implication was that Ms. Méndez had accused Las Olas of submitting a false document. This claim was completely untrue and, upon learning of it, we informed SETENA that we knew nothing about any such document, much less having submitted it as part of a request for an Environmental Viability assessment.
175. The document, which we had seen during our review of MINAE and SETENA's files in February of 2011, was on SINAC stationery. It had names and email addresses that would only have been known to people who worked in the SINAC office. We had never received a document of this nature from SINAC before so did not know and could not have known the details of the relevant SINAC employees in order to forge the document. Further, this document was not saying anything differently than all the other SETENA and MINAE documents were saying that there were no wetlands, so it was really quite unnecessary. I do not believe it was a forged document at all, which I proved to the prosecutor when I gave him my statement MINAE never reported it to the police, no criminal investigation was done by the prosecutor,

⁶⁷ Exhibit C121, TAA injunction, April 13, 2011

⁶⁸ Exhibit C105, Letter from SINAC to SETENA, January 23, 2011

⁶⁹ Exhibit C47, Allegedly forged SINAC Report, March 27, 2008

and there was never a judicial ruling stating that it was indeed a forged document. I believe that MINAE was using this false allegation as a red herring in an effort to shut down the project because I refused to pay a bribe.

176. On April 29, 2010, we objected to SETENA's April Resolution, on the basis that we knew nothing about the document in question and that, so far as we were aware, it was in fact not the document upon which SETENA had relied when it issued the Environmental Viability permit.⁷⁰ We had first come across this document when carrying out our review of the MINAE and SETENA files after we received the February 14, 2011 SINAC February Notification. The document was in those files along with all the other documents, all of which said the same thing - that there were no wetlands on the project site. We therefore had no reason to suspect it was anything other than a genuine document, because it was on MINAE and SETENA's files and said the same thing that all the other MINAE and SETENA reports were saying. Further, if it was indeed a forgery, as alleged, we could not understand why the finger was being pointed at us; the document contained contact details and other references that would only have been known to someone working for MINAE, certainly not us.

The Criminal Investigation

177. I first learned that the environmental prosecutor, Luis Martínez had initiated a criminal investigation against me, personally, in early 2011. I believe that the basis for the investigation was a third-party complaint filed by Mr. Bucelato.⁷¹ In or around March of 2011, shortly after I learned of the criminal investigation, Mr. Vargas attended a meeting on my behalf with the prosecutor, Mr. Martínez. Mr. Bermúdez, the Environmental Regent for the Condominium Section of the Las Olas site, was also present at the meeting. Later, I was told by Mr. Vargas that during that meeting, he and Mr. Bermúdez explained to Mr. Martínez that the project was fully permitted, having been issued the SETENA Environmental Viability permit, as well as construction permits, and therefore was in full compliance with Costa Rican law.

⁷⁰ Exhibit C123, Appeal against SETENA April 2011 Resolution, April 29, 2011

⁷¹ Exhibit C110, Criminal complaint by Steve Bucelato, February 2, 2011

178. Despite the evidence that demonstrated our compliance with the applicable laws and regulations, the prosecutor decided to proceed with the criminal investigation by requesting a second meeting so that I could provide a statement. However, so far as I am aware from our review of SETENA's file in February of 2011, the prosecutor failed to involve SETENA in his investigation. I have seen no records in the SETENA file of correspondence either to or from the criminal prosecutor. I do not understand how the prosecutor could conduct a thorough investigation into the validity of an Environmental Viability permit issued by SETENA without involving SETENA.
179. In a subsequent meeting that my attorney, Mr. Ventura, and I had with Esau Chaves, the director of compliance at SETENA, on November 21, 2011, I specifically asked Mr. Chaves if he thought it was proper that I be criminally charged for violating environmental laws, when I was only operating under the authority of the permit that was issued by SETENA. Mr. Chaves asked me if I had signed the Environmental Viability permit. I said of course not, it was signed by SETENA. He then said there was no reason for me to be held responsible since it was a SETENA that was signed by SETENA and therefore SETENA was responsible for the permits that they issue. He also stated that the prosecutor's office needed to speak SETENA about their permit. However, he confirmed that SETENA was never was ever contacted by anyone from the prosecutor's office.
180. Mr. Chaves also confirmed to me and Mr. Ventura the procedure that was to be followed in the event a SETENA permit was challenged. Mr. Chaves related to us that in the event a SETENA permit is challenged, whoever challenged their permit was to contact SETENA and inform SETENA about the nature of the challenge to their Environmental Viability permit. At that point, SETENA would then become the lead investigative agency and they would then determine where the mistake was made. I also asked Mr. Chaves if Mr. Martínez or anyone else from the criminal prosecutor's office had contacted him to discuss the criminal investigation into the Las Olas project and me personally. Mr. Chaves told me no, a fact that was confirmed by looking at SETENA's file since we never saw any communication either to or from the criminal prosecutor.

181. My meeting with the criminal prosecutor took place on May 6, 2011 when I was called to give a statement and answer his questions. Before the May 6, 2011 meeting, my attorney advised me to exercise my right not to speak regarding the substance of the allegations, because it was a criminal matter. However, I rejected that advice because in my opinion I had nothing to hide and believed that this was just a misunderstanding that could be cleared up by speaking directly with the prosecutor and personally showing him all the permits and reports that would demonstrate there was no intent on my part to commit a crime. The project was fully permitted and in compliance with environmental regulations, Further, I did not want to appear that I had anything to hide by refusing to speak with the criminal prosecutor. As a result, I decided to make a statement and to present documentary evidence demonstrating that I had not committed any crime(s). The environmental prosecutor appeared somewhat surprised that I was willing to speak with him. I supposed because most people under a criminal investigation just followed the advice of their attorney and kept silent, because anything they say could be used against them. I want to add that nothing I said at that meeting was ever used against me.
182. I presented the permits that the project had received, as well as a number of reports that were conducted by government agencies that included MINAE and SETENA, all of which concluded that there were no wetlands or forests on the property. I also provided the letter MINAE had sent to SETENA identified as ACOPAC-OSRAP-00282-08 that stated there were no environmental problems with the property.⁷² I also talked about the forgery allegations, and showed the prosecutor why I believed the alleged forged document was not in fact a forgery at all. I also explained to the prosecutor that I had not been provided with a copy of the allegedly forged document at the time of the SETENA Environmental Viability decision and pointed out the contact details and references on the letter, which tended to suggest that the letter, if forged, could only have been created by someone working for the relevant agency. I also reminded the prosecutor that the allegedly forged report did not say anything different than all the other reports that concluded there were no wetlands on site.

⁷² Exhibit C48, Letter from MINAE to SETENA confirming no WPA, April 2, 2008

183. In response, the environmental prosecutor told me that he did not want to talk about the alleged forged document, as there was no way to prove that I had anything to do with that alleged forgery. Nonetheless, I pointed out to him a letter that Mr. Bogantes had sent to Ms. Diaz of the Defensoría de los Habitantes in August of 2010 in which he listed all the reports that MINAE had in their file regarding the alleged existence of wetlands on the Las Olas site.⁷³ The very first document listed in his letter, that was listed as one being in the MINAE file, was the alleged forged report. On that basis, I asked the prosecutor how it was possible that an allegedly forged MINAE report was in fact in the files of MINAE. In his letter, Mr. Bogantes specifically referenced the alleged forged document, which showed not only that MINAE was aware of it, but also that it was part of their records. I also told the prosecutor that if he believed that this was a forged document he should report it to the police and have them conduct a police investigation to determine who was responsible. Forgery, especially of a government document, is a serious crime and should be treated seriously.
184. During my declaration I also explained that Mr. Bogantes had tried to solicit a bribe from me in the latter part of August of 2010 in our office, when he came to the property to carry out another inspection. As I have already explained, after the inspection, Mr. Bogantes returned to the front office with Mr. Damjanac and told us that there were some problems with the project related to wetlands and trees. At this time the project was fully permitted and operating lawfully, and we explained this to him. Nonetheless, Mr. Bogantes stated that he did not care about the permits and that the problems with the project could be solved if we contributed to his “*retirement or pension plan.*” Again, I told him I would not do that since bribery is a crime in Costa Rica and the US and I was not going to risk going to jail in either country.
185. However, so far as I am aware, Mr. Martínez failed to investigate two crimes that I reported to him, both of which I considered to be serious. Instead, he forged ahead with his criminal investigation against me when it was clear by the evidence I presented to him that day, that there was no crime committed because we had all the legally issued government permits for the project but that did not deter him from forging ahead. That really shocked me and I started to believe there were other agendas at work.

⁷³ Exhibit C80, Letter from SINAC to Hazel Diaz Meléndez, August 27, 2010

186. At the meeting, I also showed Mr. Martínez a copy of the July 2010 SINAC Report as evidence that MINAE had concluded only 8 months earlier that there were no wetlands on the project site. I explained to him that the report had been withheld from us by MINAE and that we had only become aware of it as a result of our review of SETENA and MINAE's files in February of 2011. I then asked Mr Martínez if he had seen that report and he said no. I specifically asked him how he could conduct a criminal investigation when relevant documents were being withheld from him. He just gave me a blank look and did not say anything. I felt that the authorities were intentionally trying to withhold this document, simply because it ran contrary to the accusations being levelled at the project and me personally by both MINAE and the criminal prosecutor. Mr. Martínez was conducting a criminal investigation and withholding relevant evidence is, I believe, called obstruction of justice. But again, Mr. Martínez didn't seem to be bothered by that and just kept coming after me. Given that the SINAC Notification and the environmental prosecutor's investigations focused on the existence of wetlands, it was impossible for me to understand or explain how such an important report had not been provided to either us or the prosecutor.
187. At the end of giving my statement and answering all the prosecutor's question I thought that in light of the fact that I had provided all the permits, all the reports and other exculpatory evidence, it clearly showed that I had no intent to commit a crime. How could I have I committed a crime when I was just operating under the authority of legally issued government permits?
188. Another irregularity I noticed about the May 6, 2011 meeting with the prosecutor concerned the prosecutor's interpreter. I believed that a certified interpreter was required under law, since the criminal prosecutor spoke no English. However, the interpreter for the meeting was not a certified interpreter but rather he was a university student. I felt this was highly inappropriate, given that I was facing criminal charges, with the likelihood that my misinterpreted words could be held against me. There were a number of times when it appeared to me that the student did not understand what I was saying or was unable to translate it for the prosecutor to hear and properly understand.
189. At the end of the meeting, the prosecutor had the transcripts typed up in Spanish and provided them to me for my signature. The prosecutor did not

provide me with an English translation. Instead, the prosecutor told me to sign the Spanish statement. The prosecutor has a lot of power and part of that power is the ability to have me immediately put in handcuffs and sent to a prison to be held in preventative detention while he conducts his criminal investigation. I was afraid that if I refused to sign the statement I could very well have been arrested and put into preventative detention. As a result, I signed the transcript in Spanish, even though I did not know whether it accurately recorded my statement.

190. The prosecutor proceeded with his investigation by ordering two additional site studies and scheduling a site visit a few weeks after our meeting. The first of the two studies was conducted by the National Agricultural Technology Institute, or Instituto Nacional de Tecnología Agropecuaria (“**INTA**”), and the second was conducted by MINAE. INTA is a national agricultural research institute with expertise in soil and wetlands classifications and in fact teaches MINAE how to determine wetlands. The INTA report, which was issued on May 5, 2011, concluded that there were no wetlands on the Las Olas property.⁷⁴
191. The other agency that the criminal prosecutor chose to do the second study was MINAE. This was the same agency that had sought a bribe from me and that issued the SINAC Notification on February 14, 2011 which represented a one hundred and eighty degree turn on its 2008 confirmation that the project site was not in a protected area, its July of 2010 conclusion that there were no wetlands on the project site and at least three other reports all of which stated there were no wetlands on the project site. In my opinion, it should have been clear to the prosecutor that at this point MINAE was not an unbiased party and should have been excluded from having anything further to do in this matter. At the very least, the prosecutor should have asked MINAE to explain the discrepancies between its current findings and its July 2010 report.
192. It came as no surprise to me that when MINAE issued its May 16, 2011 report (with report number, ACOPAC-CP-081-11) it stated that there were wetlands on the project site, after all.⁷⁵ Its findings were directly contradicted, however,

⁷⁴ Exhibit C124, INTA Report, May 5, 2011

⁷⁵ Exhibit C126, SINAC Report, May 16, 2011

by the extensive report submitted by INTA on May 5, 2011, which concluded that there were no wetlands on site.⁷⁶

193. At this time, the prosecutor decided to conduct a site visit, which he did on May 19, 2011. During the environmental prosecutor's site visit, I pointed out to him that, with two contradictory reports now in his hands, it would be impossible for him to prove beyond a reasonable doubt that I had committed the crime he charged me with. In response, the prosecutor simply stated that he did not believe the INTA report, and left it at that.
194. During the prosecutor's site visit, we toured the entire property, including the areas of the alleged wetlands and the alleged forest. By this point, the environmental prosecutor had also alleged that Mr. Damjanac had illegally ordered the cutting of 400 trees that were protected by Costa Rican forestry laws. I asked the environmental prosecutor to show me any evidence that a forest had ever existed on the property or that 400 trees had recently been cut down. He was only able to point to a small stump from a small caliper tree. This particular tree had been lawfully removed by workers that were hired to clear brush. I explained this to the environmental prosecutor, stating that the tree was too small in diameter to be protected by Costa Rican forestry laws. In response, he stated, "*If you kill a small child, isn't that murder?*" This bizarre comment obviously gave me strong reason to doubt that my case was being handled by a competent official, much less in a rational and sensible manner.
195. On May 11, 2011, the Municipality of Parrita issued a shutdown notice requiring us to cease all work on the project.⁷⁷ Once I saw the shutdown notice, we stopped all work on the project.

⁷⁶ Exhibit C124, INTA Report, May 5, 2011

⁷⁷ Exhibit C125, MUNI Shutdown Notice, May 11, 2011

Criminal Charge

196. The environmental prosecutor formally filed criminal charges against me on October 21, 2011.⁷⁸ I did not get a copy of the charges until November of 2013. This was several months after I made my declaration and after the prosecutor conducted the subsequent site visit. The reason for the delay was that, on the advice of our attorneys, we attempted to negotiate with the government to resolve the case as a civil matter for a fine in the amount of US\$ 6,000, which was the number the government put forward as damages. Although we did not accept any liability for the charges that were being brought against us, we recognized the value in getting the matter dismissed so we could continue with the project. However, nothing ever came of our negotiations and we could not get the government to respond to our mitigation offer.
197. On the same day, the Criminal Court of Aguirre and Parrita issued an injunction ordering us to cease work on the project.⁷⁹ This was just two days before SETENA issued Resolution No. 2850-2011, in which it confirmed that the alleged forged document had nothing to do with the granting of the initial Environmental Viability in June of 2008 and, as a result, reinstated and reconfirmed the Environmental Viability for the project in a lengthy resolution.⁸⁰
198. I learned of the formal charges through Mr. Vargas. The facts alleged in the charging document are completely baseless. For example, the document alleges that I ordered the gradual filling of wetlands that were allegedly located in the western portion of the project site, beginning in 2009. However, the project was not even operational in 2009. In fact, it was completely shut down as a result of the financial crisis. There were no personnel on site during this period of time and there was absolutely nothing going on.
199. Additionally, the complaint included charges that Mr. Damjanac violated forestry laws. We commissioned a forestry report from INGEOFOR, a Costa Rican environmental consulting company, to analyze the findings of MINAE report ACOPAC-CP-129-2011-DEN,⁸¹ which claimed to have found a forest

⁷⁸ Exhibit C142, Criminal charges filed against David Aven and Jovan Damjanac, October 21, 2011

⁷⁹ Exhibit C146, Injunction issued by Criminal Court, November 30, 2011

⁸⁰ Exhibit C144, SETENA November 2011 Resolution (Resolution 2850-2011), November 15, 2011

⁸¹ Exhibit C141, SINAC Report to Prosecutor, October 3, 2011

on the property. In a report issued in December 2011, INGEOFOR determined that the MINAE report had no basis and they concluded that the Las Olas project did not contain a forest, but instead it consisted largely of a cattle pasture.⁸² For example, the report stated that the land had several Guarúmo trees, which are an indicator that cows have recently been in the area. Guarúmo trees grow rapidly in the presence of cows, as they are fertilized by cow dung. They also tend to fall down naturally because their roots are shallow. I am told that Guarúmo trees are not a protected species under Costa Rican forestry laws.

200. Whereas we commissioned a report from qualified forestry engineers to answer the false allegations against Mr. Damjanac, I do not think the prosecutor even hired a forestry engineer, or anyone with expertise in forestry. Mr Martínez did tell me – during the site visit - that he would be obtaining a forestry engineer report before filing his criminal charges, but that apparently never happened.

Preliminary Hearing

201. The preliminary hearing took place on June 19, 2012. I have been told that the purpose of the hearing was to determine whether the prosecutor had enough evidence to take the case to the next phase, which was a criminal trial. I attended the hearing with my criminal attorney, Nestor Morera. In addition, the environmental prosecutor and an attorney representing the government on the civil side of the case were present. The prosecutor went first and presented no evidence at the preliminary hearing. Instead, he spent two hours reading the accusation, word for word.
202. At that point, he had filed four criminal charges, three against me for (1) failing to follow a Government order, (2) being involved with an alleged forged document and (3) violating and draining a wetlands. One charge was filed against Mr. Damjanac for cutting a forest. Similar to my initial declaration with the prosecutor, I made a statement in which I presented all the relevant permits and reports demonstrating that (1) there were no wetlands or forests on the property and (2) there was no intent to commit a crime because the project was fully permitted. After I made this statement, the judge asked me if I would accept questions from the government attorneys. Although my

⁸² Exhibit C148, INGEOFOR Forestry Report, December 2011

attorney advised me that I had no duty to answer any of their questions at this preliminary hearing, I answered yes. The judge then asked the government attorneys whether they had any questions for me. The criminal prosecutor immediately said no. The other government attorney said maybe but asked if he could he think about it for a while. After a recess of twenty minutes, the government attorney asked one question which was related to the alleged forged document. He asked me if I thought it was a forged document. I said no and I showed him the letter from MINAE that said they had the document in their files. He did not ask any further questions.

203. After the preliminary hearing, two charges were dropped. The first was the forgery charge, and the second was a charge that I did not properly obey a government order.

204. My criminal attorney and I thought we had a very good hearing and proved, by the evidence we produced, that no crime had been committed. However, about a week later, the judge determined that the remaining charges related to wetlands and forestry violations should proceed to trial, despite all the exculpatory evidence we had presented at the preliminary hearing, clearly showing that no crime was committed. I was very disappointed by this outcome, as I was confident that we presented our case very well at the preliminary hearing, and that the prosecution had failed to respond to the evidence presented. At this point, however, I realized that the project for all intents and purposes was bankrupt and it could not survive being tied up in court for years.

Trial

205. The trial began on December 5, 2012. Our primary defense strategy was to demonstrate that we had received all of the requisite government permits and approvals, and that there was no evidence of the existence of wetlands or a forest on the property. We also had many government reports conducted by SETENA and MINAE that all stated that there were no wetlands. It seemed to me that the prosecution case was a total disaster. In my view, the witnesses Mr. Martínez called did not provide any evidence to demonstrate that Mr Damjanac and I were guilty of anything.

206. We advanced our defense by calling expert witnesses and by impeaching the testimony of the prosecution's witnesses. Our witnesses included Dr. Diogenes Cubero Fernandez, a wetlands specialist working for INTA. Dr.

Cubero testified that it was necessary to conduct a soil analysis in order to classify an area as wetlands. The prosecution disregarded the quality of the soil, and instead focused on other factors such as the mere existence of water. This was insufficient to prove the existence of wetlands and, as is clear from the analysis of Dr. Cubero (one of the country's leading experts in wetlands), the approach of the prosecution showed a fundamental misunderstanding of what is and what is not wetland; examining the soil quality in the relevant area simply cannot be ignored and is a key consideration. Further, Dr. Cubero, said in his report that it is not up to a developer to know what a wetland is, it is up to the appropriate government agency to make that determination.

207. Mr. Arce, a forestry engineer, testified regarding his multiple visits to the Las Olas site. Mr. Arce described his observations and his conclusion that the types of trees on the Las Olas site did not require a permit under Costa Rican forestry laws in order to be removed. He based this determination on numerous factors, including the diameters of the trees and the fact that they were not mature enough to fall within the scope of those trees protected by the relevant forestry laws.
208. Mr. Alberto Mora also testified in support of the defense. Mr. Mora is a politician and businessman who lives in the community where Las Olas is located. He testified that the property did not contain wetlands or forests. Instead, as indicated in the forestry report that we commissioned from INGEOFOR,⁸³ it was primarily farmland and had contained livestock. This may have been the reason for the Guarúmo trees, which are naturally fertilized by grazing livestock. The presence of livestock and Guarúmo trees helped demonstrate that the property had been a cattle pasture and not a forest. He also stated that his cousin built 90 homes right next to Las Olas and that was in the lowest part of the property.
209. In my view, the prosecution's case was not only severely damaged by the testimony of our witnesses but their own witnesses failed to prove any of the allegations. Mr. Bogantes testified that the project did contain wetlands. After making this statement, Judge Solis asked Mr. Bogantes about the July 2010 SINAC Report, which was based on an investigation conducted by Mr. Bogantes and another SINAC employee, Mr. Manfredi. The report included a

⁸³ *Id.*

determination that there were no wetlands on the property.⁸⁴ In fact, the Judge was so concerned about Mr. Bogantes's testimony that he read the entire July 2010 SINAC Report aloud and asked Mr. Bogantes to explain the direct contradiction between his testimony and the contents of that report. After a long pause, Mr. Bogantes said, I just drove Mr. Manfredi there. To me, this response was clearly disingenuous, as he had previously indicated otherwise. I immediately recalled how Mr. Bogantes had written to Ms. Diaz on August 27, 2010⁸⁵ confirming that he had, in fact, conducted the July 2010 inspection with Mr. Manfredi and that was pointed that out to the Judge and the prosecutor when I made a statement at the end of the trial. It appeared to me that this was a clear case of Mr. Bogantes committing perjury but nothing was done about that crime either.

210. Second, Mr. Bogantes testified that the reason for the contradictory reports was that because Mr. Manfredi was a biologist, he was not a "100% specialist" in the classification of wetlands. Mr. Bogantes claimed that was why MINAE had ordered a second report - to obtain a more exact determination. But the July 2010 SINAC Report made no mention of Mr. Manfredi's apparently insufficient qualifications, nor did Mr. Bogantes explain why Mr. Manfredi would have been handed a responsibility for which he was not qualified.
211. Third, Mr. Bogantes attempted to blame the 'no wetlands' finding of the July 2010 SINAC Report on the fact that the inspection took place in the summer, which is the rainy season in Costa Rica, which made no sense at all. Not only did he offer little explanation as to why wetlands cannot be identified in the summer, during the rainy season, but he also failed to explain why MINAE would issue an official report in which it made findings as to the non-existence of wetlands during a month in which such findings were allegedly unreliable. As far as I was concerned, each of Mr. Bogantes's attempts to explain his agency's contradictory findings, and his role in them, was unconvincing and seriously called his credibility and honest into question.
212. Mr. Bucelato also testified at the criminal trial. In his testimony he spoke at length about various exotic animals, including a jaguar that he said he had captured one night while trespassing onto the Las Olas property. He conceded that he did not know the definition of a wetland under Costa Rican law and he

⁸⁴ Exhibit C72, July 2010 SINAC Report, July 16, 2010

⁸⁵ Exhibit C80, Letter from SINAC to Hazel Diaz Melendez, August 27, 2010

did not know anything about the depth of the water on the site. Instead, he stated that he was speaking “*from the heart.*” In my opinion, Mr. Bucelato did not appear credible and it was clear that he had personal motivations for what he was saying.

213. The prosecution also called Monica Vargas Quesada to testify. Ms. Vargas was an employee of the Municipality who apparently received a complaint from neighbors of the Las Olas project in May of 2010, alleging the existence of wetlands on the project. It seemed to me that the prosecution was trying to offer Ms Vargas’s testimony to support the existence of wetlands. If so, the strategy failed because, while testifying, Ms Vargas stated that she never observed wetlands on the project site because she had never actually been there. In addition, she acknowledged how Mr. Manfredi and Mr. Bogantes had stated in the July, 2010 SINAC Report that there were no wetlands on the property. I think she also conceded that her department, the Department of Environmental Action, was not responsible for the classification of wetlands anyway. Ms. Vargas also admitted that she did not know me and could not say whether I had ever made any efforts to fill or drain a wetland.
214. At the close of the trial, it was clear to me that the prosecution’s case had not gone well at all. The prosecution’s witnesses had, at best, failed to support the prosecution’s version of events and, at worst, said some things that directly contradicted the cases against Mr. Damjanac and me.
215. The trial was scheduled to finish on January 16, 2013; so I assumed that all there was left to do was for the attorneys to make their closing statements. It was approximately 10:30 or 11:00 am and it was therefore obvious the prosecutor had enough time to stand up and make his closing statement. Instead he stood up and asked for a continuance of the trial, arguing that he did not think that the trial could be completed by 5 pm and claiming that he could not stay later because he had to be somewhere else the next day. Judge Solis immediately granted his request. Then, eight days later, the Judge informed us that he would be unable to resume the trial as planned on January 25, due to a medical procedure involving his left hand.
216. I am told that there is a provision in Costa Rican law that provides that if a trial is suspended for more than ten days, an entirely new trial must be held. Although the new trial is generally automatic, the parties can apparently agree to proceed with the ongoing trial despite the ten day rule. Mr. Damjanac and I

instructed our attorneys to tell the prosecutors that we were willing to continue with the existing trial so the parties could set up a time for the lawyers to make their final statements. The prosecutor would not agree, however, and so the judge ordered a new trial to begin at some future date

217. Mr. Morera has told me that this provision of the law has never been used under circumstances similar to my criminal trial. It was intended to protect defendants; it was not intended to provide the government with another opportunity to prosecute its case a second time, after the first trial went badly for the prosecutor. It is clear to me that the prosecutor was taking advantage of this provision to try to repair the damage he had caused to his own case at the first trial. Mr. Morera filed two appeals to the criminal court in which he requested that the trial proceed despite the ten-day rule, claiming that it was not we who caused the mistrial, it was the government, but those appeals were rejected.

Further investigations

218. As explained above, upon receiving the shutdown notice from the Municipality of Parrita⁸⁶ in May of 2011, we immediately stopped all work on the Las Olas project. The only thing we continued to do was to keep the land clean as a matter of upkeep.
219. Later, on November 15, 2011, SETENA reconfirmed the 2008 Environmental Viability permit. Unfortunately however, the damage had already been done by that point. At the very same time that SETENA officials were preparing to reconfirm our permit, the criminal prosecutor was filing his criminal charges against me for violating wetlands, which included an immediate court injunction to stop all work. This result was simply impossible for me to explain or understand. In my opinion, it exemplifies the dysfunction existing within and between the different Costa Rican government agencies. SETENA was following the correct path to reconfirm an Environmental Viability permit that should never have been questioned in the first place, while the prosecutor was pursuing another agenda that I think was obviously unfair on its face.
220. From the time the project was shut down in May of 2011 until formal criminal charges were filed against me in November of 2011, I was mainly involved in

⁸⁶ Exhibit C125, Muni Shutdown Notice, May 11, 2011

two different tasks: (1) trying to negotiate with the government a mitigation plan that would result in the criminal charges being dropped and (2) working with SETENA to provide them the various documents that would prove that the allegedly forged document was not the one they relied upon when they issued their June 2, 2008 Environmental Viability permit. Although we did submit a mitigation plan to the government, we were never able to get the government to even respond by rejecting, accepting or offering a counter proposal.

221. During this time, I had a number of meetings with SETENA and their attorneys and on December 7, 2012 I wrote to the head of compliance at SETENA, Mr. Chaves, to seek his assistance.⁸⁷ We did not file an appeal against the Municipality's shutdown because it appeared obvious to us that their action was in reaction to the SETENA April Resolution. Therefore, we focused on proving to SETENA that the information they received from MINAE was incorrect and we eventually succeeded in proving that to SETENA. After SETENA checked the files thoroughly and verified with MINAE that the April 2, 2008 MINAE letter to SETENA, in which MINAE confirmed the project was not within an environmentally protected area, was authentic; SETENA cleared the project and rescinded their April 2011 Resolution.

⁸⁷ Exhibit C157, Letter from David Aven to Esau Chaves, December 7, 2012

Following Up on our Criminal Complaint against Mr. Bogantes

222. Around this time I started to link together the sudden chain of events that had occurred in early 2011, which culminated in the criminal investigations and the shutdown notice from the Municipality of Parrita, and the unsuccessful bribery attempt by Mr. Bogantes in August of 2010.
223. Because the criminal prosecutor failed to conduct an investigation into the bribery attempt by Mr. Bogantes, after I made him aware of it on May 6, 2011, I decided to take matters into my own hands. On September 16, 2011, I filed a formal Criminal Complaint, against Mr. Bogantes with the Criminal Prosecutor's Office in Quepos.⁸⁸
224. After filing a complaint, I was never contacted nor did I hear anything else about it. Therefore, about a year later, in December of 2012, I went back to Quepos to check the Bogantes file to see what had been done. I had a copy of the complaint, which I showed to the administrator. I was informed that there was nothing in the file and nothing for me to see. I was never notified or contacted by anyone about this matter after that.
225. In July of 2015, my local attorney in Costa Rica, Mr. Ventura, visited the Prosecutor's Office in Quepos. He got the run-around too but, after persisting, managed to obtain a copy of the file.⁸⁹ The file stated that the investigations had been dismissed due to lack of evidence. There were several notes in that file, which I have since reviewed. The first stated that on November 4, 2011 I was asked to appear in the prosecutor's office in Quepos for an interview. I never received any such request. The second stated that the assistant prosecutor said that he had spoken to me and that I had said I was not interested in pursuing this matter. This is a complete lie. I was never contacted about this by anyone and I never made such a statement. At no stage did I ever withdraw my complaint. The third note stated that the prosecutor attempted to place a call to me. Again, I never received any such call. I know that the prosecutor knew my attorney and could have contacted him had he ever really wanted to communicate with me.

⁸⁸ Exhibit C139, Criminal Complaint against Christian Bogantes, September 16, 2011

⁸⁹ Exhibit C167, Criminal Prosecutor's File for Christian Bogantes, November 19, 2013

226. What I find most frustrating about the cumulative meaning of these notes is that: on the one hand the prosecutor's office claimed it could not contact me and yet, on the other hand, the prosecutor's office claimed he had spoken to me and that I had confirmed that I did not want to pursue the matter. They somehow managed to come up with two justifications for not investigating Mr. Bogantes's crimes that were both individually false and collectively contradictory.
227. This is a very serious situation. I filed a criminal complaint against a government employee for attempted bribery. The criminal prosecutor has a note on the file stating he spoke to me and that I told him I did not want to pursue this, which is simply not true. The prosecutor then uses that note to dismiss the complaint for lack of evidence. This behavior has only served to further arouse my suspicions about Mr. Bogantes's role in all of this and the prosecutor's motivations in pursuing a sham case against me. In fact, I sent a letter to the criminal prosecutor, Mr. Martínez, as well as the chief prosecutor and also the president of Costa Rica, President Solis, and made them all aware of this serious situation.⁹⁰

Threats and Assassination Attempt

228. After the trial, I received a series of anonymous threats from people telling me to leave Costa Rica. In January of 2012 I received a threatening call, in which an anonymous caller told me to get out of the country while I still could. I reported this to my criminal attorney, Mr. Morera.
229. In 2013, I started receiving a number of threatening emails.
230. On February 2, 2013, I received an email from "*Ruben Jimenez*" stating: "*Senior David Aven i here your debate didn't go well for you. Don't think the next one will be better. Some good advice is to go bac home were you come from while you still can. Bad things happen to greedy gringos who caus problemas all time here. go home now.*"⁹¹

⁹⁰ Exhibit C177, David Aven Letter regarding Bribery Attempt of Christian Bogantes, November 2, 2015

⁹¹ Exhibit C159, Threatening Email, February 2, 2013

231. In March of 2013, I received an email from the criminal court in Parrita in which the subject line stated “GRINGO.”⁹² I found it to be disturbingly coincidental that the term “gringo” was used in both the anonymous email threats as well as in an official email notification from the criminal court.
232. On April 15, 2013, I was the victim of an assassination attempt. I was with another US investor, Mr. Shiolen, and we had driven to the MINAE office in Puriscal to pick up some documents. We then drove down to Quepos to pick up some additional documents from the court. After leaving the courthouse, we visited the project site before returning to San José. While driving up a long hill between the Tárcoles River and Orintina, a motorcyclist passed our vehicle with two people on it and fired five gunshots into our car and then sped away. The shots shattered multiple windows and left bullet holes in the car. I would estimate that the bullets came within six inches of my head. This was a disturbing incident, which made me very concerned about my safety in Costa Rica.
233. I filed a police report in connection with the incident on April 15, 2013.⁹³ However, I never heard anything further from the police or any other government authorities regarding any investigation into the shooting. In July of 2015, my attorney, Mr. Ventura, managed to obtain a copy of the police file, which showed there was not much of an investigation.⁹⁴ We also have photographs that were taken of the rental car immediately after the incident showing the damage to the car.⁹⁵
234. On April 22, 2013, one week after the assassination attempt, I received another email from “R.Jimenez” stating “*You are getting message (GRINGO) GRINGO Aven, you very lucky, nex time not be so lucky. Get out Costa Rica and stop your law suits. This is last warning, wont get no more, cant hide, we know when you go and come, know you were in US for two weeks in March, know you have to try case again and will know when and where nex court*”

⁹² Exhibit C161, Email from Court with Gringos in subject line, March 5, 2013

⁹³ Exhibit C162, Police report of shooting, April 15, 2013

⁹⁴ *Id.*

⁹⁵ Exhibit C163, Photographs of damage to car, April 15, 2013

debate is. We may be watching you now. Are you getting message now (GRINGO) R. Jimenez."⁹⁶

235. Although I initially dismissed the threatening call and emails as a hoax, following the assassination attempt in April of 2013, I took these threats very seriously and my family was pleading with me to leave the country before I was killed and saying that the project was not worth dying over. We contacted the US Embassy and were told they could not protect me and they also told me to leave the country. Reluctantly, I decided it was too risky to stay and therefore I left to go back to the US in May of 2013, out of grave concern for my safety.
236. On July 22, 2013, after leaving Costa Rica and moving back to the US, I received another email from "Ruben" stating "*Gringo Aven Know you moved back to US. Don't come back and don't caus problemas for Costa Rica Government. You have choice, write off your loss or write off your life. We are watching you and can find you.*"⁹⁷ It is not clear whether this is the same person or persons who sent the April, 22 email.
237. Finally on September 30, 2013, I received an email from an email address of gohomenow@live.com stating "*You still not getting message GRINGO Aven, you lucky not long we know your moves your adres in CLIRWATER your novia just visit you. Stop all your bizness in Costa Rica or no more luck for you and your friends. Get the message Gringo!*"⁹⁸
238. I do not know anyone by the name of Ruben or R. Jimenez, nor do I have any clue who sent these emails to me. I attempted to investigate the origin of the IP address of the email to determine where it originated but Go Daddy, who was hosting my website, told me that unfortunately, did not keep this information.

INTERPOL Red Notice

239. After leaving Costa Rica, I maintained contact with Mr. Morera. He informed me that a new trial date had been set for early January of 2014. At this time I was recovering from a surgical procedure and was under a doctor's care and I was unable to attend the trial. In addition, I was still concerned for my safety

⁹⁶ Exhibit C164, Threatening Email, April 22, 2013

⁹⁷ Exhibit C165, Threatening Email, July 22, 2013.

⁹⁸ Exhibit C166, Threatening Email, September 30, 2013

in light of the assassination attempt, and given the outcome of the first trial, I had no confidence that I would receive a fair trial the second time around.

240. I informed the court of my medical condition, but rather than reschedule my trial, the court issued a warrant for my arrest in Costa Rica. Around this time I began hearing rumors that the court was also considering making a request that INTERPOL issue a Red Notice against me. As a result, I began checking the INTERPOL website to determine whether there was any record of a Red Notice against me. In late 2014, during a telephone conversation with my attorney regarding my case in general, they informed me that there was a record on the INTERPOL website of a Red Notice for David Aven. The website indicated that I was wanted by the Costa Rican government for prosecution or to serve a prison sentence. I was horrified by this.
241. My lawyers in Costa Rica have informed me that the penalties for the crimes that I was charged with included a fine of roughly US \$6,000 and a prison sentence of up to three years, but prison sentences for these types of crimes are extremely rare. The criminal court was therefore requesting an INTERPOL Red Notice and potential extradition from the US to stand trial a second time for a crime that, at worst, would likely only result in a fine of a few thousand dollars. . However, I had not been found guilty of any crime and never sentenced to serve a three year sentence. To anyone reading that Red Notice it gives the impression I am a wanted criminal.
242. My attorneys petitioned INTERPOL to seek the removal of the Red Notice against me, and also asked the attorneys representing Costa Rica in these proceedings to take steps to remove what was clearly an excessive and abusive Red Notice. On September 11, 2015, we learned from INTERPOL that the Red Notice had been removed from all of INTERPOL's databases and the Notice permanently deleted.⁹⁹ This was of course a relief, but the issuance of that Notice has had a profound effect on me and that effect is ongoing.
243. The criminal charges and the INTERPOL Red Notice have destroyed my freedom of movement and caused me unnecessary inconvenience, stress and difficulties conducting business. I have applied for things and have been turned down due to being in the INTERPOL database and other databases that pick up and record all INTERPOL Red Notices. The capricious and reckless

⁹⁹ Exhibit C173, Interpol Certificate, September 11, 2015

actions on the part of the government of Costa Rica have had far-reaching ramifications for my personal and business life. My ability to do business and to do normal things like obtain credit has also been affected. Even though the Red Notice is no longer in place, its existence has been captured by a number of databases such as World Check and, as a result, whenever I apply for a loan or mortgage from now on, I will have to explain it.

244. By way of example, after the Red Notice appeared on the INTERPOL website, it destroyed a very important and profitable business opportunity that could well have been worth tens of millions of dollars to me, all because of this criminal matter that hangs over my head. A company that I am associated with owns valuable rights to a very popular application for iPhone and android devices. I had an opportunity to form a partnership with Google and Facebook that would have resulted in millions of downloads of this application. The application is currently selling in the app stores for US \$19.99. Google and Facebook could have earned US\$ 4.00 on each sale and our company could have earned US\$ 12.00. Projections by Google indicated they could have sold 20 million downloads a year.¹⁰⁰ However, Google, in doing a background check, picked up that I was on an INTERPOL Red Notice and that precluded them from doing business with me. The mere fact that my name was improperly and abusively put into the INTERPOL database will forever haunt me for the rest of my life and has on-going ramifications. This is absolutely the most egregious form of retribution behavior that I have ever witnessed in my life. This will prevent me from doing any legitimate business anywhere the world with any big company.
245. In 2005, my brother and I bought a second investment in Costa Rica. This was an events facility in San José on about 6 hectares of land. We purchased it as a going concern for US\$ 450,000 from an airline company employee association.
246. When I left Costa Rica, we had to get rid of it sell it for half its value. Because I was unable to be there to manage the property it had to be disposed of in a distressed situation for US\$ 900,000 when the property had been appraised at US\$ 2 million.¹⁰¹

¹⁰⁰ Exhibit C171, Letter from Ohryn LLC to David Aven, January 11, 2015

¹⁰¹ Exhibit C137, LaGarita English Appraisal, August 2011

247. Additionally, this experience has impacted current and future business opportunities outside of Costa Rica. The fact that I have been charged with a crime is now a part of my permanent record. Although the charges are baseless and have not resulted in a criminal conviction, the mere fact that I was even charged is damaging to my reputation.
248. The Red Notice has just served to compound my situation. Costa Rica's actions in prosecuting me not once, but twice, have left little room for anything else in my life. My days are spent managing my situation and dealing with my lawyers' queries. The project is bankrupt as a result of Costa Rica's actions and my whole family is in financial straits. I am not able financially, or emotionally, to go after any new business opportunities and as a result of the severe reputational damage I have suffered, no viable opportunities come my way anymore.
249. Before the criminal prosecutor's complaint, I had never been charged with a crime of any kind anywhere in the world. The criminal investigation and trial have severely impacted me on a professional and personal level. I cannot return to Costa Rica to do business with an arrest warrant hanging over my head. There is a criminal court injunction, the TAA injunction and SINAC notification are still in place and the Municipality shutdown notice is still in force even though SETENA reconfirmed the Environmental Viability. Those things, combined with the improper criminal investigation and trial have made it impossible for me to receive any return on my investments in Costa Rica.
250. In addition, we now have an invasion of hundreds of criminal trespassers in Esterillos Oeste and on the Las Olas property specifically; as I will explain below and although we have filed notification after notification with the government to enforce the law and protect our property rights, the government has failed to act to evict the criminal trespassers and to enforce the law.

Sales of lots

251. I estimate that between 2007 and 2011, around 400-500 people visited the Las Olas project as a result of our marketing efforts. We made 30 sales totaling US\$ 1.8 million and it was represented roads and utilities would be put into the site per the master site plan.

252. While the project was in this early phase, our main concern was to sell plots of land in order to generate funds to continue the work on the project and to start building momentum. Generating sales on a development is very much a momentum game. A lot of people are understandably nervous about buying bare plots of land in a development that has not been started. They want to see tangible progress, like the infrastructure being completed and houses being constructed, before they will buy a lot. Other people are happier with getting in on the ground floor and getting a great lot for a great price. As the project develops, lots become more expensive because the demand increases as the risk decreases. It is really a snow-ball effect, with every little improvement contributing to increasing sales.
253. Right at the start, therefore, we needed to generate sales, but we only had bare land to sell. The first sales were achieved before the financial crisis, when prices were high. As I mentioned before, we attracted US\$ 900,000 of early investment from people who bought options over the condo units that were to be built in phase 4 of the project. Throughout 2007 and 2008 we also sold seven plots in the Condominium Section for prices ranging between US\$ 75,000 and US\$ 650,000. It was clear that even at this early stage of the project with no infrastructure in place, people were very interested in the project and willing to buy plots.

Mortgage financing

254. As I have previously mentioned, one of the revenue streams we intended to take advantage of was the opportunity to provide mortgage financing to purchasers of our properties. In fact, this was more than just a plan: even at this early stage of the project, we did indeed agree financing terms with three purchasers of plots.
255. On February 1, 2010, Glen Griffin agreed to purchase Lot 44 for a total price of US\$ 70,000.¹⁰² US\$ 59,500 was to be financed over a five year term at an interest rate of 5% per annum, providing total interest payments of US\$ 12,856.80 to the Las Olas project. This was set up under a formal mortgage program that was registered in the national register.¹⁰³ There were three types of mortgage scenarios for the project: (1) a mortgage to buy a lot, (2) a

¹⁰² Exhibit C176, Glen Griffin Mortgage Receipt, November 1, 2015

¹⁰³ Exhibit C62, Glen Griffin Mortgage Register, January 29, 2010

mortgage to buy a house after lot is purchased and (3) a mortgage on a lot/home package.

256. On April 4, 2008, Laurence DesPerino agreed to purchase Lot 154 (in the Condominium Section of the project) for a total price of US\$ 165,000.¹⁰⁴ US\$ 23,000 was to be paid up front, with a further US\$ 33,000 payable in the second year. The remaining US\$ 99,000 was to be repaid over three to five years, with interest at a rate of 7% per annum, providing total interest payments of US\$ 13,860 to the Las Olas project.
257. On November 18, 2011, Mark Spiegel and Donna Mendez signed a reservation agreement for Lots 139 and 140 (in the Condominium Section of the project) for a total price of US\$ 90,000.¹⁰⁵ The deposit amount was US\$ 5,000 and the remaining US\$ 85,000 would be financed at an interest rate of 6% over 10 years.
258. Our plan was to offer purchasers a mortgage if they wanted one. A number of purchasers were interested in this, and we also planned to offer it for people looking to finance their house building as well, and in fact this was to be the main focus of the mortgage business. Our plan was to offer the mortgages at the prevailing market interest rate.
259. The deals with DesPerino and Spiegel were not the traditional mortgages we were planning on doing further down the line. These were more like deferred payment plans. The Glen Griffin mortgage was much more like the ones we planned to do, and was registered in the national register, as I mentioned above. However, Glen was one of the first purchasers to commit to a lot when we re-opened after the financial crisis, and we were keen to get buyers on-board. We therefore agreed with him what would have been a low interest rate, and not one we would have planned on giving later on.

¹⁰⁴ Exhibit C49, Delespino Lot 154 Agreement, April 4, 2008

¹⁰⁵ Exhibit C145, Mark Spiegel Agreement Lots 139 and 140

Squatters

260. A recent, very troubling development that is occurring as I prepare this statement is the uncontrolled invasion of criminal trespassers at the Las Olas property and in the community of Esterillos Oeste. The first I heard about this was in the middle of September of 2015 when, I am told, the trespassers started to trespass on our property. We were notified that people were directing the squatters to our site in an attempt to establish squatters' rights.
261. Even though our project has been destroyed by the Costa Rican government's actions, we still own the land at Las Olas. And although the residual value of the land does not come close to the return we expected to achieve on our investment had the project not been shut down, it is still a valuable asset that we, as investors, must protect. Further, people in the local community are very upset by the squatters' criminal actions and we feel a sense of duty, as owners of the land, to do whatever we can to see the squatters evicted. As a result, we decided to take whatever action we could to ensure the squatters are evicted by the authorities. I therefore had my attorney, Mr. Ventura go down there to see what was going on and file an appropriate complaint with the municipality, which he did.¹⁰⁶
262. Nonetheless, every day things continued to get worse, as more and more people started showing up in the community and on the Las Olas property. In October of 2015, Mr. Ventura went down to the property again with our attorney George Burn and our Costa Rican counsel, Róger Guevara, and observed more people who had criminally trespassed onto the property.¹⁰⁷ More complaints were filed, but nothing was done to evict the criminal trespassers from the Las Olas site and to protect the property rights of the owners.¹⁰⁸ On October 24, 2015 a local resident, Beau Maisel, emailed me about what was going on in the community and pleaded for our help as owners of the site to resolve the situation.¹⁰⁹

¹⁰⁶ Exhibit C178, Notice of trespassers to Municipality of Parrita, November 2, 2015

¹⁰⁷ Exhibit C191, Photographs of squatters, October to November 2015

¹⁰⁸ Exhibit C175, Eviction notice Ministry of Security, October 27, 2015;

¹⁰⁹ Exhibit C174, Correspondence between David Aven and Beau Maisel, October 24, 2015.

263. More recently, Mr. Ventura filed a complaint with the Ministry of Security seeking their help to intercede with a police response.¹¹⁰ When he delivered the papers to the Ministry, he was told that it would take four months for them to take action. Mr. Ventura explained that was too long and this demanded an immediate response since there were crimes being committed against the people living in the community as well but nothing was done. Although there are official complaints that have been filed with the municipality, the police, the prosecutor's office and even a letter of complaint sent to the President of Costa Rica, nothing has been done to resolve the situation.¹¹¹
264. Based upon the Ministry of Security's response, I instructed Mr. Ventura to file a complaint with the constitutional court and explain that crimes are being committed, that the authorities have been notified, and they have either failed or refuse to enforce the law and protect people's rights. This complaint was filed on November 13, 2015.¹¹²
265. Unfortunately, on November 23, 2015, we received confirmation from the Constitutional Court that our complaint had been rejected on the basis that the issue is one for the Ministry of Security to resolve, something that in my opinion it is failing to do.¹¹³ If this is not a catch 22, then I do not know what is. As can be seen from a recent article in the AM Costa Rica and the Tico Times, the situation is now out of control.¹¹⁴

Conclusion

266. At every step of the way once the criminal investigation began, I was fully engaged in trying to get this cleared up. I freely gave my statement to the prosecutor, when called upon. I got up and presented evidence to the Judge at the preliminary hearing that showed him the same relevant documents that I showed to the prosecutor that showed I committed no crime. After I presented I agreed to answer question from the prosecutor, although when given an opportunity to question me, he had no questions. At the end of the trial, I was

¹¹⁰ Exhibit C180, Eviction notice Ministry of Security, November 11, 2015

¹¹¹ Exhibit C178, Notice of trespassers to Municipality of Parrita, November 2, 2015

¹¹² Exhibit C181 Writ of *Amparo* filed with Constitutional Court, November 13, 2015

¹¹³ Exhibit C183 Constitutional Court Rejection of Writ of *Amparo*, November, 23 2015

¹¹⁴ Exhibit C182, Tico Times, Esterillos Oeste - Squatter Invasion, Sex Assaults and Robbery on Costa Rica's Central Pacific Coast, November 20, 2015.

able to make a statement at the end and I got up and spoke for over an hour and presented documentary evidence, much like I did before. My attorney told me he never had a client that was so fully and willingly engaged in his trial.

267. As a result of all of the above, I have suffered serious emotional, reputational and financial damage.
268. The government's arbitrary actions in suspending the works on the Condominium Section and issuing injunction after injunction have crippled the project. Everyone recognized that Las Olas was a jewel of a property and we had an excellent business plan that would have maximized ROI for the investors. I have no doubt that we would have had a very successful project and a great ROI if the government had not cut us off at the knees.
269. We spent a lot of time and money ensuring that we had all of the legally required permits for the development. SINAC itself had confirmed that the project was not in an environmentally protected area and SETENA had inspected the project site and satisfied itself that there were no wetlands before issuing the Environmental Viability. For these government agencies to investigate the project for over two years off the back of baseless allegations made by a jealous neighbor and continually produce contradictory reports claiming that there are and are not wetlands on the project site is totally unfair and incomprehensible and demonstrates their incompetence. The government authorities could and should have concluded after the July 2010 SINAC Report that said there were no wetlands and that should have been an end to the matter.
270. Instead, the authorities have been more interested in pandering to the whims of Mr. Bogantes and Mr. Bucelato and their apparent vendetta against the project. Since SETENA's November 2011 Resolution reconfirming the validity of the Environmental Viability, the other authorities have still failed to cancel the injunctions and the prosecutor is intent on prosecuting me for violation of a wetland that SETENA has confirmed does not exist. It is obvious to me that the criminal justice system has wrongfully been used to punish me.
271. In addition, the prosecutor has totally failed to investigate either of the criminal complaints that were really crimes and instead filed criminal charges against me when he knew I had committed no crime. In spite of Mr. Bogantes's bribery attempt, the prosecutor did not investigate my complaint

against him and instead called him as a witness in the case against me. The prosecutor was forced to drop the forged document charge because even he knew there was no evidence to connect me to the alleged forged document. But he also knew there was no evidence to show I was guilty of violating a wetland in light of the fact that the project was fully permitted.

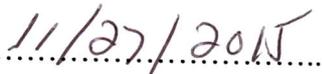
272. In spite of the prosecution's poor case against me, the prosecutor took advantage of a technical point in Costa Rican law to get a whole new trial. Then, to make matters worse, Costa Rica got an unnecessary and abusive INTERPOL Red Notice against me for not appearing at the second trial even though I had a legitimate medical reason for not attending. And by this time, I was understandably in fear of my life, having been the victim of a shooting in San José and received many threatening emails.

273. As a result of the criminal charges that have been filed against me, the abusive Red Notice and the illegal shutdown of the Las Olas project, my freedom of movement has been hampered, my human rights have been violated and the project is in a state of financial ruin. I am currently being treated for severe migraine headaches as well as post-traumatic stress disorder, both of which started after the prosecutor filed his unfounded complaint and there was an assassination attempt on my life. I have also suffered serious financial damage as outlined above.

I believe the facts stated in this WITNESS STATEMENT are true.

Signed..........

David Richard Aven

Dated..........