February 16, 2001

NOTICE OF ARBITRATION
ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

16 FEB 01 AM

Dennis John Peyton, on behalf of the United States citizens listed below, files this notice pursuant to Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) and the provisions of Chapter 11 of the North American Free Trade Agreement (NAFTA) to advise that he wishes to institute arbitration proceedings against the Government of the United Mexican States on behalf of the below mentioned United States citizens.

A. Disputing Investors, Representative of Disputing Investors, and Respondent:

Billy Joe Adams, Juan Alarcon, Robert Alonzo, Andrews Robert, Sam Amato, Miguel Agustin Manuel Arias Ferreira, George Babcock, Juan Barajas, Maria Dolores Landin de Barr, Joseph Roger Barreto, Harold Ulrich Bartels, Robert Benson, Kenneth Bitting, Robert Lee Blanchard, Bluemn Dona & Ben, Boussala Marcel, William Brady, Frank Bruneau, Bruce Burton, Chavez Jabriola , Charlotte Clark, Ron Colman, Colon Nicholas, Alma Rosa Colunga, Harry Danziger, Troy Evert & Winifred Click, Donald Digby, Hort August Doerzapf, Edward Everett, Joseph Doss, Claudia Alceste Gago Dunning, Louis Farino, Jacob Jr. Felder, Thomas Fischer, Jan Flickinger, Francisco Flores, Jeffrey Furst, Jorge Garcia, John Garner, Gary Giannini, Arnold William Gieseler, Robert Barry Glickman, Edward Galindo, Phillip Garr, Henry Gonzalez, Grace Community Chapel, Raymond Graves, Carol & Anthony Grisanti, Irving Grouse, Terry Gruner, Donald Walter Hansen, William & Gertrude Hansen, Marlowe & Margaret Harms, Michael & Mary Heslin, Dorothy Jane Higgins, Hugh & Lois Hofmann, John Hook, Roger Hooker, Ronald Kenneth & Thea Hull, Merle David Janke, Robert Johnson, Waldren Jerome, Daniel William Kamp, Terrance Kiele, Stephen Michael & Barbara Kilroy, Cooky Kechart, Stephen & Mary Krase, Virginia Kiser, Michael Kramer, John Lawrence, Maurice Leon, David & Elizabeth Lewis, Juan Cesar Limon, Vincent Longoria Meraz, Richard Lucas, Julian Martinez, Peter Martinez, Alan Mayer, Kerry & Eleni Mayer, Robert & Barbara Macmillan, Raul & Eugenia Magaña, Peter McNulty, Frank Mitchell, Jose & Charlotte Martinez, Wayne & Shirley Moseley, Ron & Jacqueline Moseman, James Mullaneaux, Joseph Vincent & Joann K. Noyes, Alfred Noffsinger, Alfred Nordstrom, Isabel O'Donnell, Robert & Alice Olson, Heidi Osuna, Nestor Palma, Penin Light Metals, Del & Dee Peterson, Edward & Ona Phinney, Michael Piller, Roger Potash, Putnam Patricia, Anthony Quintero, Rafael Ramirez, Robert Riffenburgh, Phillip Roberts, Santiago & Gladys Rodriguez, Ino & Barbara Rojas, Victoria Ruiz, Albert Sackler, Lynne Marie Sana, Jerry & Patricia Sandoval, James & Sharon Sauer, Diana Lynn Scanlon, Bernadette Schmucker, Kenneth Wayne Schulz, Wesley Schulz, Claus & Dolores Sellier, Beverly Jean & Samuel Sharp, Richard Sinclair/Banning III, Vicent Sotomayor, Alyce Spar, Dayne William Stiles, Robert Szemanski, Kenneth Rusell & Shirley Taylor, Doris & Charlie Temple, Robert Willis & Maxene Thompson, Carl Salvatore Triola, Joseph Tully, Dirk Van Hilten, David Vazquez, Jesse Velazquez, Joseph Vittone, Richard Wallstrom, Denise Werner-Hansen, Richard Wesley, Daniel Wiley/Bonda, , William Young, Irving Yudin, Leigh & Sharon Zaremba

Representative of Claimant:
Dennis John Peyton
U.S. Mailing Address:
Dennis John Peyton PMB-110
2220 Otay Lakes Road Suit 502
East Lake, CA 91915 USA
Mexico Mailing Address:
Lic. Dennis John Peyton
German Gedovius #10489-404
Zona Del Rio
Tijuana, Baja California 22320

Respondent
Government of the United Mexican States
c/o Dirección General de Inversión Extranjera
Secretaria de Economia (formerly the Secretaria de Comercio y Fomento Industrial)
Avenida Insurgentes 1940
Col. La Florida
México, D.F. 01030

B. Provisions for Arbitration of the Dispute

(1) NAFTA – This dispute is subject to arbitration under the provisions of Chapter 11 of the NAFTA between the Government of Canada, the Government of the United Mexican States, and the Government of the United States of America, entered into force January 1, 1994.

a. Consent – Respondent, as a party to NAFTA, consents to arbitration under the terms of Article 1122 NAFTA. Article 1121.3 NAFTA requires that consent of the disputing party be in writing and be included in the submission of this claim to arbitration. At this time, Disputing Investors would like to establish their consent to arbitration in accordance with the procedures set out in NAFTA. As a result of this statement, Disputing Investors are in compliance with the consent terms of Article 1121.3 NAFTA.

b. Waiver – Article 1121.3 NAFTA requires a written waiver by the disputing party to be included in the submission of this claim to arbitration. At this time, Disputing Investors would like to establish, according to the terms of Article 1121.2(b) NAFTA, that they waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party. As a result of this statement, Disputing Investors are in compliance with the waiver terms of Article 1121.3 NAFTA.

c. Time-related Conditions – The following NAFTA Chapter 11 articles establish the terms and conditions for the initiation of the arbitration:

i. Article 1120.1 – More than six months have elapsed since the events giving rise to the claim. Disputing Investors will submit copies of the only orders of expropriation issued to them during the months of August, September, and October of 1999. While expropriation was completed on October 30th and 31st of 2000, said orders of expropriation served as the legal foundation for these expropriations since no other notices of any kind were ever served to the Disputing Investors prior to completing such expropriations. As a result, Disputing Investors are incompliance with article 1120.1 NAFTA, since more than "six months have elapsed since the events giving rise to a claim", that is, since October of 1999.

ii. Article 1119 – The Disputing Investors delivered written notice of their intention to arbitrate to Respondent on November 10, 2000 at the address designated by Respondent pursuant to Annex 1137.2 NAFTA. The date of this notice of arbitration is more than 90 days after November 11, 2000. Therefore, Disputing Investors are in compliance with this article.

iii. Article 1117.2 – The claim is not barred by lapse of time under the terms of Article 1116.2 NAFTA which provides: "An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage." Since the Disputing Investors first acquired knowledge of the order of expropriation during the months of August, September, and October of 1999, they are in compliance with this article.

d. Scope and coverage of nafta chapter eleven with regard to "investment" - Part Five, Chapter Eleven, of the NAFTA ("Chapter Eleven") states that its provisions are applicable to measures adopted by a Party relating to:

(1) investors of another party
(2) investments of investors of another party in the territory of the Party

Article 1139 of Chapter Eleven defines "investor of a party" as: "...a Party or state enterprise thereof, or a national or an enterprise of such party, that seeks to make, is making or has made an investment...".

In this context, a "national" refers to a citizen of one of the three Party countries, namely, the United States, Mexico, or Canada. Since all the individuals included in this claim are citizens of the United States, and, as set forth below, each of these individuals has made an "investment" in the territory of Mexico (another Party), each of these individuals is entitled to the protection of the provisions of Chapter Eleven. Such provisions include the right to submit a claim to arbitration against Mexico as a disputing investor.

Article 1139 of Chapter Eleven defines "investment" as: "(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of

economic benefit or other business purposes..."

The Disputing Investors in this claim together acquired the use of real property ("the Property") and subsequently made improvements in expectation of economic benefit. This Property was located in a five star international resort development ("the Resort Development") and listed in Interval International Resort Directory as follows:

> "A 20-minute drive south of Ensenada the resort enjoys a beachfront location, surrounded by the Pacific Ocean and Estero Lagoon. On-site amenities include an elegant restaurant and an informal coffee shop, swimming pools, tennis courts, fully-equipped exercise rooms, saunas and spas, putting greens, volleyball courts, and water sports equipment rentals."

None of the Disputing Investors made these acquisitions in order to use them as a primary residence; rather, vacation homes were built in expectation of generating income through vacation rentals. Give the amenities included at the Property, and the fact that the vacation homes would have been used by the disputing parties only a few weeks out of the year, the potential for income was likely.

Many of the disputing parties acquired several lots at the Property in expectation that they would be able to sell them at a later date when the Resort Development was fully developed. The nature of these real property acquisitions and improvements were speculative and with the expectation of economic benefit as part of an overall business investment.

Additionally, during the seven years prior to the expropriation of the Property by the Mexican Government, from 1993 through October of 2000, the Disputing Investors were forced to take charge of the business of managing the Resort Development where the Property was located as well as paying for infrastructure improvements and maintenance. This was due to the fact that the developer had abandoned the Resort Development and the Property in 1993. Following the abandonment of the developer, no attempts were ever made by the Mexican government to intervene and take control of the Resort Development. As such, the Disputing Investors had no other choice but to get into the business of running a five star international resort development or face the likelihood of loosing millions of dollars they had already invested in the Property, as well as the potential for generating income if indeed the Resort Development and the Property ceased to be operated properly. Some years later the potential for income from the Property did diminish almost completely due to legal problems regarding title which ultimately led to the expropriation of the Property by the Mexican Government.

(2) THE UNCITRAL ARBITRATION RULES – This dispute falls within the jurisdiction of the UNCITRAL Arbitration Rules, pursuant to Article 1 of said rules and Article 1120 NAFTA. This is a legal dispute arising directly out of an investment between investors who are US citizens, and the United Mexican States.

A. Article 3.3 of the UNCITRAL Arbitration Rules establishes: "The notice of arbitration shall include the following:

(a) A demand that the dispute be referred to arbitration;
(b) The names and addresses of the parties;
(c) A reference to the arbitration clause or the separate arbitration agreement that is invoked;
(d) A reference to the contract out of or in relation to which the dispute arises;
(e) The general nature of the claim and an indication of the amount involved, if any;
(f) The relief or remedy sought;
(g) A proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon."

All of the above items mentioned in Article 3.3 of the UNCITRAL Arbitration Rules are contained in this notice.

B. Article 3.4 of the UNCITRAL Arbitration Rules establishes: "The notice of arbitration may also include:

(a) the proposals for the appointments of a sole arbitrator and an appointing authority referred to in Article 6, paragraph I;
(b) The notification of the appointment of an arbitrator referred to in Article 7;
(c) The statement of claim referred to in Article 18."

The proposal for the appointment of an appointing authority mentioned in Article 3.4(a) of these Rules is contained officially in Articles 1124, 1125, and 1126 NAFTA. The items contained in Article 3.4 (b) and (c), mentioned above, are not contained in this notice of arbitration, and will be provided at a later time, according to the terms and conditions set forth in NAFTA, Chapter 11 and the UNCITRAL Arbitration Rules.

C. Proposal as to the Number of Arbitrators – Article 3.3 (g) of the UNCITRAL Arbitration Rules establishes that the disputing Party should make a proposal as to the number of arbitrators for the arbitration. At this time, in order to comply with this item, the Disputing Investors propose the use of one (1) arbitrator for these proceedings.

C. GENERAL NATURE OF THE CLAIM

1. The Claims and Issues in Dispute

This dispute involves claims for compensation and damages of U.S: $75 million, plus post-judgment interest, for measures tantamount to expropriation, and constituting a denial of justice in violation of the rules and principles of international law and NAFTA articles 1102, 1105, and 1110.

Key Facts and Chronology:

1. The Disputing Investors are United States citizens.

2. All the events of this claim took place between 1986 and October 31, 2000.

3. From June 1993 through October 31, 2000 the Disputing Investors were engaged in the management and maintenance of an international resort development known as "BAJA BEACH RESORT" (the "Resort Development").

4. The Disputing Investors made investments in resort housing and associated infrastructure improvements by entering into contracts to acquire property in said Resort Development and subsequently invested approximately $50 million dollars in improvements in the form of infrastructure and vacation homes.

5. The land where the Resort Development is located, earlier and later described as the "Property", is in the State of Baja California, Mexico, near the city of Ensenada, and is known as *"Punta Banda"*. Said Property, upon which the Disputing Investors made millions of dollars of improvements, was federally owned throughout all of the nearly ten-year period that the Disputing Investors maintained possession.

6. Said federal ownership was established through the authorization of an agrarian cooperative known as *"Ejido Coronel Esteban Cantu"* ("Cooperative Coronel"), commonly know in Mexico as an *"ejido"*, and by a Federal Agrarian Land Grant/Expropriation, which gave the Cooperative Coronel the right to use the Property. An *"ejido"* is an agrarian cooperative that is granted the rights to use federally owned lands that had been expropriated under the terms of the Mexican Constitution.

7. Such cooperatives are formed by the Mexican Federal Government granting authorization to form the cooperative, and by the Federal Government's expropriation of private property, by Presidential decree, for use by the cooperative ("Federal Land Grant"). Although the cooperative has the right to use the expropriated property, the Federal Government retains title to the property.

8. To avoid having to pay compensation to private land owners for such expropriations, the Mexican Constitution was amended on January 10, 1934 to totally eliminate any legal recourse to private landowners which otherwise would be available to them if their property was expropriated for any other use except federally approved cooperatives. Simply stated, once any private property was expropriated for use by a federally approved cooperative, the property owner affected by such expropriation did not "have any right nor any ordinary legal recourse... not even the right to constitutional injunctions for the protection of individual rights (*amparo*)."

9. These provisions were in force when the Disputing Investors invested in the Property and were relied on and used by the real estate developer, Cooperative Coronel and the Mexican Federal Government to induce the Disputing Investors into investing at the Property to further the goals of the Resort Development.

10. The Disputing Investors reasonably believed that the Federal Government owned the Property because they were given written statements from the Government stating as much; and, in accordance with the Mexican Constitution in force at that time, there was no legal recourse to revert expropriated private property back to the former owners. This made the potential for loss on investment made by the Disputing Investors virtually impossible.

11. Cooperative Coronel gained control and use of the Property by Presidential decree in 1973 and subsequently entered into contracts with the Mexican real estate developer, a Mexican Corporation known as "Grupo Koster, S.A. De C.V." (the "Developer"), in 1987 and 1988, which were duly authorized by the Government of Mexico, and permitted the establishment of the Resort Development where the Disputing Investors ultimately invested in the Property.

12. In April of 1988 the Developer, began to market the Property and sell lots and ten-year club memberships in a club owned by a nonprofit mutual benefit California, United States corporation, known as the "Baja Beach And Tennis Club" (the "Club") and a Cayman Islands B.W.I. corporation known as "Ceta, LTD.", both of which were controlled by the Developer. By April of 1993, the Developer had defaulted on its obligation to run and maintain the Resort Development and had abandoned it except for its only income-generating element: the hotel. All other legal obligations to provide services such as water, sewage, etc. were no longer being provided by the Developer or by the Mexican Government as is required under Mexican urban development laws. Faced with the possibility of having the Resort Development completely fail, due to lack of services, the Disputing Investors formed a partnership and subsequently a Homeowners' Association (the "Association") in Mexico and began to run and maintain the Development until October 31, 2000 when the Property was expropriated.

13. The Resort Development was specifically targeted by the Mexican Government to attract foreign investment to an area which otherwise lacked any substantial real estate improvements whatsoever. This was due the fact that federally approved cooperatives were generally lacking investment of any sort and the Mexican Government was unable to provide any capital at that time. This explains why the Mexican Government participated in the promotion of the Resort Development by providing written statements to calm any fears foreign Disputing Investors may have. There were no Mexican Disputing Investors in the project and the Resort Development was actively advertised in the United States, principally in California.

14. The Resort Development and the Property were marketed and sold as a package in that the Resort Development and the Property shared common infrastructure, such as water and sewage, as well as security and green areas. Both were also within the walls that surrounded all of the real estate that made up both the Resort Development and the Property, and as such formed an exclusive gated community.

15. Two contracts were entered into by and between the Disputing Investors and the Developer: 1. membership in the Club (the "Membership"); 2. a sales agreement for the acquisition of a lot upon which a vacation home was to constructed (the "Sales Agreement"). The purchase of a Membership was mandatory if a lot was also purchased.

16. Before entering into these contracts, the Disputing Investors were given written assurance by the Mexican federal government, specifically the Secretary of Agrarian Reform (SRA), that their investments were legal and safe due to (a) a Mexican Presidential decree which made the Property they intended to purchase fall under the control and ownership of the Mexican Federal Government through the SRA; and (b) the confirmation of this fact, as reflected in the registration of said land in the National Agrarian Registry.

17. In accordance with the Membership, it entitled the member the right to use "the sports and recreation center and related facilities to be completed on real property located in Punta Banda, Ensenada, Baja California, Mexico" for a period of ten years. It also stated "rights ensuing to members will be guaranteed to the Members through the establishment of a bank trust with BANCOMER, S.N.C. a Mexican Credit and Trust Institution." ("Bank Trust") This Bank Trust was never established.

18. The Sales Agreement legally identified the lots to be acquired by the disputing investor located at the Resort Development and with in the Property, as well as setting forth the authorizations from the municipal, state, and federal governments in Mexico to carry out the Resort Development and the sale of lots at the Property. This agreement also stated, "That for the purposes of a legal and administrative regulation, its representative is in the process of obtaining a trust that will last the same term of this contract. Mentioned trust will be contracted with BANCOMER, S.N.C., and the purposes also will be to issue individual certificates to each one of the individual acquirers of rights on mentioned lots." Again, this Bank Trust was never established.

19. In 1987 and 1988, several lawsuits (the "Lawsuits") were filed by Mexican landowners (the "Landowners") against the Mexican Government claiming that the Property should not have been included in the real estate that was expropriated by the Mexican Government in 1973 for use by Cooperative Coronel.

20. On June 23, 1995, judgments were rendered by the Federal District Court (the "Judgments"), known in Spanish as the *Tribunales Colegiados del Decimo Quinto Circuito,* in the Lawsuits granting relief to the Landowners, and ordering: a) the Property should not have been included within the real estate that was expropriated by Presidential decree to be used by Cooperative Coronel; and b) the survey used in the 1973 Presidential decree should be cancelled and thereby cease to include the Property.

21. The Disputing Investors were required by the Sales Agreement to "commence construction in a period not to exceed one year" from the execution of the Sales Agreement. Consequently, all the Disputing Investors had mostly completed construction by the middle of 1992. Over one hundred vacation homes were constructed on the Property between the years of 1988 and June 23, of 1995, the date on which the Judgment was rendered (the "Period of Litigation").

22. During the Period of Litigation, the Disputing Investors were never served notice, neither by the plaintiffs (the Landowners) nor by the defendants (the Mexican government), that any and all construction should be stopped at the Property.

23. During the Period of Litigation, which lasted nearly ten years, the Disputing Investors were never summoned nor served notice, neither by the plaintiffs (the Landowners) nor by the defendants (the Mexican government) involved in the Lawsuits, that, as third parties who could possibly be affected by the results of the Judgment, they should appear in the court proceedings for the Lawsuits to defend their interests in the Property.

24. The first enforcement proceedings for the Judgment were implemented on October 28, 1998, when a Mexican District Court judge ordered the Mexican Federal Government through the offices of SRA to give possession of the first portion of the real estate subject matter of the

Lawsuits to one of the Landowners. This was carried out on December 10, 1998. In that ruling, the judge stated that he was doing so in order to comply with the opinion issued by the Mexican Supreme Court, which stated that "to restore the violated guarantees the lands must be returned to the plaintiff (*Landowners*)". The judge stated that the judgment was delivering material possession to the unimproved lands and only the legal possession of the improved lands having buildings. No expropriations were carried out in these enforcement proceedings and the vacation homes in this first section of the Property were excluded from the expropriations, which subsequently resulted from the enforcement of the Judgment with regard to the rest of the Property.

25. In the second enforcement proceeding for the Judgment, which was carried out between February and August of 1999, the Mexican Supreme court ordered the District Court in Ensenada to carry out an inspection (the "Inspection") of the Property to determine whether there existed a "...tourist resort and houses occupied by third parties and the legal nature of these situations." All actions for enforcement were suspended at this point until the Mexican Supreme Court could rule on whether or not such enforcement was feasible when taking into consideration the results of the Inspection.

26. On August 24, 1999, the Inspection of the Property was completed by the District Court and sent to the Supreme Court. The Supreme Court handed down a judgment on whether or not such enforcement was feasible on October 23, 2000.

27. On August 24, 1999 notification of expropriation (the "Expropriation Orders"), to be implemented on October 8, 1999 and October 11, 1999, was served to some of the Disputing Investors. However, some Disputing Investors were also served on other days, during the months of August, September, and early October of 1999. The Expropriation Orders authorized the use of "public force" to carry out the expropriation of the Property. This notification was served prior to the Supreme Court's judgment regarding enforcement. This was the first attempt by Mexican authorities to advise the Disputing Investors of their intention to expropriate the Property, infrastructure improvements, and vacation homes constructed on the Property.

28. The Disputing Investors filed for injunctive relief in days leading up to the Expropriation Orders all of which were denied summarily by the Federal Courts in Mexico.

29. On October 8 and 11, 1999, representatives of the Mexican Federal government arrived at the Resort Development for the purposes of carrying out the Expropriation Orders. Such representatives were unable to carry out the Expropriation Orders because the Cooperative Cornel denied them access to the Resort Development and the Property.

30. In November of 1999 the Mexican Federal Government contacted representatives of the American Embassy in Mexico City in order to set up a meeting between representatives of the Mexican Federal Government and the lawyers of the Disputing Investors, and representatives of the American Embassy. (the "First Government Conciliation Meeting") This meeting took place on November 4, 1999 in Mexico City. In attendance was: Undersecretary Lic. Hector Garcia Quinones, the chief legal counsel of the SRA, attorney Gilberto Herschberger and his assistant, attorney Luis Gutierrez, and legal advisor attorney

Ana Ruth Lopez; American Embassy Consul Susan Abeyta and Embassy property specialist Laura Zepeda; and attorney Dennis John Peyton, as attorney for the Disputing Investors.

31. On November 9, 1999, American Embassy Consul Abeyta provided a written summary of the First Government Conciliation Meeting as follows:

> "... it is the *Reforma Agrarias'* (Mexican Government's) position that the interested parties must enter into good faith negotiations to seek a reasonable and just solution recognizing the legitimate rights of all concerned. *Reforma Agraria* proposes to engage the governor of Baja California, Lic. Gonzalez Alcocer, to promote and mediate negotiations. If Gonzalez Alcocer is willing, *Reforma Agrarias'* Secretary, Lic. Eduardo Robledo Rincon, will go to Baja California this week to discuss with the governor a concerted approach to negotiations. A team from *Reforma Agraria* will remain in Baja California to work with the governor to set up and attend the negotiations with the explicit authority to speak for the Federal Government. If Governor Gonzalez Alcocer declines, the Federal Government will consider alternative action. Garcia and Herschberger stressed the immediate imperative of starting negotiations. They stressed that a court would be unlikely to order the use of public force to carry out an eviction order as long as negotiations are underway."

32. After having met with the Landowners in September of 1999, as mentioned in a correspondence dated November 15, 1999, the Association renewed its efforts to reconcile with the Landowners in order to make a negotiated settlement. A proposal was made by the Disputing Investors to pay the Landowners a fair price for the lots that had been acquired by the Disputing Investors from the Developer. The Landowners never responded to this proposal. (the "First Proposal")

33. On December 13, 1999, the Mexican Federal Government formed a conciliation board and held the first of a series of meetings in the city of Ensenada, Baja California, headed by the Secretary of SRA, Eduardo Robledo Rincon, who met with state authorities in Ensenada, Baja California, including Governor, Lic. Alejandro Gonzalez Alcocer, to encourage a settlement of the ongoing land dispute at the Property. Representatives of the Cooperative Colonel, and the Landowners also attended the meeting. It was agreed that the Landowners and the Cooperative Colonel would meet with representatives of the State and Federal governments every two months to try to resolve the problems regarding the Landowners' rights to regain the title and the use the Property. The Disputing Investors were not allowed to participate in these meetings.

34. On December 23, 1999, by request of the Mexican Government, a second proposal was made by the Disputing Investors to pay the Landowners for the fair market value of the Property. This proposal was made in writing and delivered to all the Landowners and, at the request of the Mexican Government, a copy of the proposal was also delivered to the offices of the SRA. The Landowners never responded to this proposal. (the "Second Proposal")

35. By January of 2000, more and more criminal allegations were appearing in the press regarding the circumstances surrounding the manner in which the Cooperative Coronel and the Developer acquired the rights to the Development and the Property. On the basis of this

and other information, on February 25, 2000, the Association filed criminal charges against the responsible parties in the Mexican government and other individuals for their attempt of illegal dispossession, threats, abuse of authority, influence peddling, and other related offenses with the offices of the Mexican Federal District Attorney.

36. On March 18, 2000, a meeting was held at the request of the Mexican Government through the American Embassy in Mexico City, (the "Second Government Conciliation Meeting") in Ensenada, Baja California. This Second Government Conciliation Meeting was for the purpose of meeting with attorney Homero Garibay Sandoval who had been appointed by the Mexican Government to act as a federal mediator (the "Federal Mediator") in on going conciliation meetings between the Disputing Investors, the Landowners and the Cooperative Coronel.

37. As a consequence of the Second Government Conciliation Meeting, and at the request of the Federal Mediator, on March 28, 2000, another written proposal. (the "Third Proposal") was made and delivered to the Federal Mediator, and Mr. Gabriel Altamirano, an advisor to then President Zedillo, to allow them the opportunity to study the proposal and possible solutions. Mr. Altamirano (*Asesor De La Unidad De Perspectiva Y Proyectos Especiales De La Presidencia*) had contacted the American Embassy indicating that he had been appointed by the President to oversee the conciliation efforts.

38. The Mexican Government called a third conciliation meeting for July 19, 2000. ("Third Government Conciliation Meeting"). This meeting was held at the offices of the SRA and was organized by the Mexican Government through the American Embassy in Mexico City. The meeting was headed up by the Federal Mediator, and all of the Landowners were represented. Additionally, representatives of the American Embassy, officials from the American Consulate in Tijuana, Baja California, Dennis John Peyton, representing the Disputing Investors, and Carlos De Hoyos, representing other affected parties, were present at this Third Government Conciliation Meeting.

39. During the Third Government Conciliation Meeting, the Landowners started off by stating that they would not reconcile on any matter, and that they did not recognize the authority of the Federal Mediator. The Federal Mediator stated that the only settlement proposal that had been presented was from the Disputing Investors and that this fact should go on record. At this point, all attempts at trying to reach a negotiated settlement ceased.

40. October 23, 2000, the Mexican Supreme Court issued orders for expropriation and the enforcement of the Judgment. In support of its position, the court indicated in its conclusion that "the social interest depends on the immediate enforcement of the judgment, and, as such, they should not be delayed by excuses, lower court judgments, or claims by third parties that they have acquired property in good faith. For this reason, the restitution of the property to its legitimate owners should be carried out with all improvements and even when such property is in the possession of persons other than those who were parties to the litigation in question."

41. On October 30th and 31st of 2000, Mexican federal authorities physically removed the Disputing Investors from the Property and expropriated vacations homes and all

infrastructure improvements without serving the Disputing Investors notice nor any promise of compensation.

2. NAFTA Violations - Disputing Investors assert violations of NAFTA, Chapter 11, Section A, Articles 1102, 1105, and 1110 on the part of the Respondent.

Article 1102: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 1105 – Minimum Standard of Treatment

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

Article 1110 – Expropriation and Compensation

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of a such an investment ("expropriation"), except:
    a. for a public purpose;
    b. on a non-discriminatory basis;
    c. in accordance with due process of law and Article 1105(1); and
    d. on payment of compensation in accordance with paragraphs 2 through 6.
2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
3. Compensation shall be paid without delay and be fully realizable.

A. National Treatment

During the Period of Litigation, which eventually resulted in the Expropriation Orders and the actual expropriation of the Property, the SRA never notified the Disputing Investors of Lawsuits, nor were they summoned or allowed to defend themselves in said Lawsuits as interested third parties. ("Failure to Notify") This never occurred, in spite of the fact that the SRA knew that millions of dollars in infrastructure were being invested in the Resort Development, and hundreds of vacation homes were being constructed on the Property while said litigation was being carried out During the Period of Litigation.

Due to this Failure to Notify, the Disputing Investors were not accorded treatment as favorable as that accorded Mexico's own investors with respect to the establishment,

acquisition, management, and general disposition of their investments in Baja California, Mexico, as is required under Article 1102 of NAFTA.

The preferential treatment that was accorded Mexico's own investors with respect to the establishment, acquisition, management, and general disposition of their investments in Baja California, Mexico was as follows:

1. Disputing Investors were given treatment less favorable in like circumstances than that given to Cooperative Coronel with respect to the disposition of investments

Because the Disputing Investors were not given the opportunity to participate in the Lawsuits while Cooperative Coronel was afforded such an opportunity, and given that both the Disputing Investors' and Cooperative Coronel's rights were limited to use of the Property by prior authorization of the Mexican Government, the Disputing Investors were accorded treatment less favorable than Cooperative Coronel with respect to disposition of investments at the Property.

The parties to the Lawsuits were: 1. Plaintiffs: the Landowners; 2. Defendant: The Mexican Government; and 3. Affected third party: Cooperative Coronel. Under the terms of Mexican law an affected third party refers to anyone who has a vested interest in the matter being litigated that is opposed to the interests of the Plaintiffs ("Affected Third Party"). Certainly under this definition, the Disputing Investors would be considered an Affected Third Party, considering what has transpired regarding the Property.

In essence, the Mexican Government expropriated the Property with millions of dollars of improvements in infrastructure and vacation homes, and subsequently gave it to the Landowners as a remedy for litigation caused and lost by the Mexican Government.

In the sense that the Disputing Investors wanted to keep the improvements and vacation homes under the terms of the law, such interests were diametrically opposed to the interests of the Plaintiff/Landowners who actively sought and eventually acquired such improvements and vacation homes.

This, in and of itself, should have been enough for the Mexican Government to act responsibility and have the Disputing Investors summoned to defend their interests during the Period of Litigation. Given that the Mexican Government was actively involved in the establishment and promotion of the Resort Development, it is unconscionable that no effort was made by them to mitigate the eventual loss suffered by the Disputing Investors by having the Disputing Investors summoned to defend their interest in the Property.

Taking into consideration the peculiar legal relationship that exist between the Mexican Government and agrarian cooperatives, with regard to the division of title and possession, the fact that the Mexican Government didn't alert the Disputing Investors about the possibility that they could loose their investments in the Property is even more questionable.

During the litigation of the Lawsuits, Cooperative Coronel was granted the status of an "affected third party" under the terms of Mexican law, and, as such, was allowed to participate in the Lawsuits to defend its right with regard to the Resort Development and the Property. Cooperative Coronel was not a Defendant in the Lawsuits because the subject matter of the Lawsuits was the real property title, and Cooperative Coronel didn't hold title to the Property. The Mexican Government held such title.

In exercising its right to possession, Cooperative Coronel solicited the authorization of the Mexican Government to enter into agreements by which they would surrender their rights to possession to third parties. The Mexican government granted such authorization and established constructive notice of the authorization by filing and registering the authorization and corresponding contracts with the National Agrarian Registry.

Cooperative Coronel did not own the real estate upon which the infrastructure for Resort Development and the vacation homes on the Property were constructed. In accordance with Article 27, sections X and XIV of the Mexican Constitution en force at the time, the Mexican Government expropriated and maintained title to such real estate by Presidential Decree for the specific purpose of allowing Cooperative Coronel to use it. It was for this reason that Cooperative Coronel was not named as the defendant in the Lawsuits.

Cooperative Coronel's right to the property was limited to the use of the land. Therefore, Cooperative Coronel's rights were dependant on title that was obtained by the Mexican Government's expropriation of private property, and the Mexican Government's right to title were justified due to the fact that the private property was being expropriated for the use of a cooperative. This category of property is known as social property under Mexican law. ("Social Property")

Social Property has played a key role in the redistribution of property in Mexico over the past seventy years given the limits that the Mexican Government has put on private property ownership. The concept and the use of Social Property resulted from the legal limits imposed, which did not allow private property owners to hold more than specific amounts of real estate. In cases where a private property owner had more real estate than was allowed under the law, Cooperatives had the right to petition the Mexican Government to expropriate the private property for its conversion to Social Property to be used by the cooperative.

Such is the case of Cooperative Coronel. They had the right to use the Property and would not loose that right unless they ceased to make use of the Property in some productive manner. In situations where the use of cooperative property is at all questionable under the terms of Mexican law, a cooperative is required to get authorization from the Mexican Government. Given that the Resort Development did not match what is usually considered as "agrarian" in nature, Cooperative Coronel prudently petitioned and was granted authorization from the Mexican Government to allow the Resort Development to go forward.

When all of these facts are taken into consideration, it is clear that the Mexican Government was fully aware that the Resort Development and the vacation homes on the Property were being constructed. Not only because of the special nature of Social Property and the fact that it is owned by the Mexican Government, but also because the excessive amount of administrative procedure and filings that had to be completed and authorized by Mexican Government to accomplish what Cooperative Coronel did in obtaining such authorization.

It can only be concluded that, given the preferential treatment given to Cooperative Coronel in allowing them to defend their interests regarding the property in proceedings of the Lawsuits, the Mexican Government intentionally tried to keep the Disputing Investors from being heard in these law suits.

2. Disputing Investors were given treatment less favorable in like circumstances than that was given to the Landowners with respect to the disposition of investments.

Due to the fact that (a) the Disputing Investors were not given the opportunity to participate in the Lawsuits while the Landowners were afforded such an opportunity, (b) both the Disputing Investors' and Landowners' rights were limited to the right to possession and the right to title respectively, both by equally valid claim as determined by authorization of the Mexican Government, and (c) the Disputing Investors claim to possession was ignored in preference to the rights of the Landowners without any consideration whatsoever, the Disputing Investors were accorded treatment less favorable than the Landowners with respect to disposition of investments at the Property.

The Disputing Investors gained possession of the Property and made improvements with the full consent and authorization of the Mexican Government.

The Landowners were restored title and possession to the Property with no regard taken by the Mexican authorities when the Property was expropriated to the rights of the Disputing Parties. This is clearly set forth in the October 23, 2000 ruling by the Mexican Supreme Court which stated: "the social interest depends on the immediate enforcement of the judgment, and, as such, they should not be delayed by excuses, lower court judgments, or claims by third parties that they have acquired property in good faith. ...the restitution of the property to its legitimate owners should be carried out with all improvements and even when such property is in the possession of persons other than those who were parties to the litigation in question."

The Mexican Supreme Court was fully aware that hundreds of Americans, including the Disputing Investors, had made substantial investments in the Property. They were also aware that by making this ruling the Disputing Investors would loose everything they had invested in the Property regardless of what rights they may have been entitled to. This decision was made for the "social interest" which is consistent with expropriation.

However, the fact that the "social interest", in this case, worked to the benefit and interest of the Landowners and not the general public, due to the fact that they are now in possession of the Property, this clearly demonstrates that the Disputing Investors were given treatment less favorable than the Landowners. The Landowners had a claim to title and were heard in court, whereas the Disputing Investors had a claim to possession and were denied even the right to be heard in court. Given the traditional division between possession of property and real title to property, the Disputing Investors at least should have been given the same opportunity to be heard in court like the Landowners. The Court's bias in favor of the rights of the Landowners and in complete disregard of the Disputing Investors is a clear violation of Article 1102 of NAFTA.

B. Minimum Standard of Treatment

Prior to investing, the Disputing Investors were given written assurance from the Mexican Government that their investment in the Property was safe. This was done through a letter to the developer from the SRA affirming "the absolute legality and legal safety" of building a home on the Property.

Moreover, the existence of a Presidential decree, still in force at the time that the Disputing Investors purchased the land, confirmed that the Property was owned by the Mexican Federal Government through a Federal Land Grant. The registration of the Property in the National Agrarian Registry (RAN), still in force at the time that the Disputing Investors acquired the Property, also confirms that the Property was Social Property and not private property. Both this Presidential decree and the registration in RAN confirm that, at the time that the Disputing Investors acquired the Property, the Federal Land Grant was valid and legally recognized and recorded with RAN, thereby establishing constructive notice to all interested third parties.

At no time prior to the expropriation notice received by the Disputing Investors in August, September, and early October of 1999 were the Disputing Investors ever notified directly or through any public filing in RAN that the status of the Property and/or their rights to acquisition had in any way changed.

However, the Judgment, handed down several years after the Disputing Investors made investments, authorizes the expropriation of the Property because the Federal Land Grant issued by the Presidential decree did not include the Property. As set forth in the preceding section, the Disputing Investors were never afforded the opportunity to participate in the litigation that resulted in said court decision, and under Mexican law, there exists no remedy or possible appeal against this decision.

The Disputing Investors were persuaded to invest in the Property by assurances from the Mexican Government through SRA officials, and by the existence of Federal Land Grant supported by a Presidential Decree duly filed at the national registry, RAN.

They also believed that Cooperative Coronel had the right to sell the Property after the completion of a privatization process. This was due the fact that the Mexican

Constitution was indeed amended in 1992 to allow all agrarian cooperatives the right to privatize the property they acquired through a Federal Land Grant.

As a result of the Mexican government's actions, the Disputing Investors were subject to unfair treatment, and their investments were unjustly left unprotected and subject to juridical insecurity unacceptable under international or Mexican law.

Given the fact that the Disputing Investors were neither notified of litigation, which has now resulted in the expropriation from the Property, nor allowed to defend themselves in such proceeding as interested third parties, there is no doubt that the Disputing Investors were not accorded the minimum standard of treatment as set forth in article 1105 of NAFTA. Both omissions demonstrate the fact that the Mexican government did not accord to the Disputing Investors treatment in accordance with international law, including fair and equitable treatment and full protection and security.

It is our contention that the Mexican Federal Government, through the offices of the SRA, willingly participated in illegal activities, which induced the Disputing Investors into making investments at the Property. This was done by:

1. illegally manipulating survey maps to include the Property in the Federal Land Grant;
2. authorizing such a survey to be filed and recorded at RAN in order to satisfy any third party investigations as to the Property's status;
3. subsequently providing written assurances issued by the Mexican Federal Government, used to induce the Disputing Investors into making investments which they would never have made otherwise, by affirming "the absolute legality and legal safety" of building a home on the Property; and,
4. intentionally not notifying the Disputing Investors of litigation, which they knew could result in the loss of their property.

Considering the foregoing, it is clear that the investments of the Disputing Investors were not accorded treatment in accordance with international law, including fair and equitable treatment and full protection and security. To the contrary, either the Mexican Government actively participated in fraudulent activities to include the Property in the survey for the Federal Land Grant; or, at the very least, they were guilty of gross negligence, which has resulted in the loss of millions of dollars by the Disputing Investors who relied on false representations.

C. Expropriation and Compensation

Given the nature of Federal Land Grants, and the fact that most have resulted from the Mexican Federal Government's expropriation of private property, it is our contention that the Mexican Federal Government falsely claimed that, by Presidential decree, the Property was converted from private property to a federally owned property through a Federal Land Grant. This is tantamount to the expropriation of the Property, and, as such, the Mexican Federal Government made it virtually impossible for the Disputing Investors to reach any other conclusion, other than the Property was no longer private property.

From the date of the Presidential decree granting the Federal Land Grant, and its subsequent recordation with the RAN, the Property was no longer private property due to the fact that constructive notice was established by recording the corresponding title documents with the federal land registry. Therefore, when the Disputing Investors acquired their interest in the Property they did so, as required by law, with the consent of rightful owner of the Property, which was the Mexican Federal Government.

Even though years later, the Mexican Supreme Court determined that the Property should not have been included in the real estate which was claimed by Cooperative Coronel and sanctioned by a Presidential decree, the fact remains that, due to the constructive notice established by the Mexican Federal Government's recordation of the decree and the corresponding land surveys and title, the title to the Property was transferred to the Mexican Federal Government starting from the date of recordation, and remained that way until the Judgment was enforced by the Mexican Supreme Court and the Property was expropriated and given to the Landowners in October of 2000.

It is our contention that, since the Mexican Federal Government gained title to the Property through a Presidential decree, which is expropriation, and maintained such title publicly through constructive notice at the federal land registry throughout the years when the Disputing Investors acquired their interest in the Property, it is tantamount to expropriation for the Mexican Federal Government to now take the Property and deprive the Disputing Investors of their possessions.

In light of these facts, the Mexican Federal Government has violated article 1110 of NAFTA which states: "No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of a such an investment..." By definition of the Mexican Supreme Court, the force of the Federal Government was used for the social interest of Mexico. The Court's position is clearly set forth in its recent decision regarding the property in which the following was published: "the social interest depends on the immediate enforcement of the judgment, and, as such, they should not be delayed by excuses, lower court judgments, or claims by third parties that they have acquired property in good faith. For this reason, the restitution of the property to its legitimate owners should be carried out with all improvements and even when such property is in the possession of persons other than those who were parties to the litigation in question." Said decision caused actions which resulted in the expropriation of the possessions of the Disputing Investors by a measure tantamount to nationalization or expropriation.

The only exceptions to this provision in NAFTA, found in article 1110, also are not met by the Mexican Federal Government. Such exceptions are as follows:

> **A. That the expropriation be for public purpose.** In this case, the expropriation was carried out to the benefit of Mexican investors and not to the benefit of the public.

B. That the expropriation be carried out on a non-discriminatory basis. In this case, the expropriation was carried out in blatant discrimination of the Disputing Investors who have never been given equitable consideration by any Mexican governmental authority with regard to their rights to the Property, whereas the Mexican investors are receiving the benefits of the property being restored to their ownership.

C. That the expropriation be carried out in accordance with due process of law. In this case the Disputing Investors have never been given any opportunity to be heard in any Mexican court, which is in flagrant violation of their constitutional right to due process of law.

D. That the expropriation be carried out on payment of compensation.... No compensation has ever been offered or even determined by the Mexican Federal Government.

In summary, has the Government of Mexico taken measures inconsistent with its obligations under articles 1102, 1105, and 1110 of NAFTA.? If the answer to this question is yes, what is the compensation to be paid to the Disputing Investors as a result of the inconsistency of the Government of Mexico with its obligations arising under Chapter 11 of NAFTA?

D. Relief Sought and Damages Claimed

The Disputing Investors claim damages for the following:

1. Damages of not less than USD $75 million for the damages caused by the Mexican government's actions that were inconsistent with its obligations contained in Section A of Chapter 11 of NAFTA;
2. Costs associated with these proceedings, including all professional fees and disbursements;
3. Fees and expenses incurred with regard to legal actions taken in denseness of the Disputing Investors rights with regard to the Property before all criminal and judicial authorities in Mexico and the United States;
4. Pre-award and post-award interest at a rate to be fixed by the Tribunal;
5. Tax consequences of the award to maintain the integrity of the award;
6. Such further relief that counsel may advise and that this Tribunal may deem appropriate.

For the reasons stated above, Disputing Investors, by their undersigned representative, respectfully request the initiation of arbitration procedures under the UNCITRAL Rules, under the terms of articles 1115, 1116, 1120, 1121, and 1122 NAFTA.

Peyton, Connell y Asociados
German Gedovius #10489-404
Zona Del Rio

Tijuana, Baja California 22320
T. (66) 342970
F. (66) 342081
Lic. Dennis John Peyton
Counsel for the Disputing Investors

Dennis John Peyton

SERVED TO:
Secretaria de Economia (formerly the Secretaria de Comercio y Fomento Industrial)
Dirección General de Inversión Extranjero
Avenida Insurgentes 1940
Col. La Florida
01030 Mexico, D.F.

COPIES SENT TO:
U.S. Department of State
2201 C Street, N.W., Room 230
Office of International Claims and Investment Disputes
Attn: Mr. Bart Legum
Washington D.C. 20520