

**NOTICE OF INTENT TO SUBMIT  
A CLAIM TO ARBITRATION  
UNDER CHAPTER ELEVEN OF  
THE NORTH AMERICAN FREE TRADE AGREEMENT**

**B-MEX, LLC, B-MEX II, LLC, PALMAS SOUTH, LLC,  
OAXACA INVESTMENTS, LLC, SANTA FE MEXICO INVESTMENTS, LLC,  
GORDON BURR, ERIN BURR, AND JOHN CONLEY**

*Investors*

v.

**UNITED MEXICAN STATES**

*Party*

In accordance with Article 1119 of the North American Free Trade Agreement (“NAFTA”), and with a view toward resolving this dispute amicably through consultation and negotiation, B-Mex, LLC, B-Mex II, LLC, Palmas South, LLC, Oaxaca Investments, LLC, Santa Fe Mexico Investments, LLC, Gordon Burr, Erin Burr, and John Conley (together, the “U.S. Investors”) provide the United Mexican States (“Mexico” or the “State”) with this written notice of their intention to submit a claim to arbitration under Chapter Eleven of the NAFTA, on their own behalf and on behalf of several enterprises.<sup>1</sup>

**I. IDENTIFICATION OF THE DISPUTING INVESTORS**

1. This Notice is submitted by the U.S. Investors. B-Mex, LLC, B-Mex II, LLC, Palmas South, LLC, Oaxaca Investments, LLC, and Santa Fe Mexico Investments, LLC are limited liability companies incorporated under the laws of the State of Colorado, United States of America. Gordon Burr, Erin Burr, and John Conley are nationals of the United States of America. Each of the U.S. Investors is an investor of a Party under Article 1139 of the NAFTA.

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<sup>1</sup> A courtesy Spanish translation of this Notice is forthcoming.

2. The address for B-Mex, LLC, B-Mex II, LLC, Palmas South, LLC, Oaxaca Investments, LLC, Gordon Burr, and Erin Burr is as follows:

5031 S. Ulster Street, Suite 470  
Denver, CO 80237  
U.S.A.

3. The address for Santa Fe Mexico Investments, LLC and John Conley is as follows:

5151 Olive Court  
Greenwood Village, CO 80121  
U.S.A.

4. White & Case LLP is counsel of record for the U.S. Investors in this matter. All communications submitted in relation to this notice should be sent to the attention of Andrea J. Menaker at White & Case LLP at 701 Thirteenth Street, NW, Washington, D.C. 20005.

5. Through their ownership interest in five Mexican companies (the “Mexican Enterprises”),<sup>2</sup> the U.S. Investors own and/or have invested in gaming facilities in the following cities in Mexico: (1) Naucalpan, State of Mexico; (2) Villahermosa, State of Tabasco; (3) Puebla, State of Puebla; (4) Mexico City, Federal District; and (5) Cuernavaca, State of Morelos (each a “Facility,” and together, the “Facilities”). In addition, the U.S. Investors are assisted in the management of their investment in the Facilities through their ownership interest in Mexican company Exciting Games, S. de R.L. de C.V. (“Exciting Games”).

6. Exciting Games has operated each Facility pursuant to permits issued by the State. Exciting Games initially operated the Facilities under a permit issued to Entretenimiento de México S.A. de C.V. (“EMex”), by agreement with EMex and as authorized by the *Secretaría de Gobernación* (“SEGOB”) in accordance with Mexican law. SEGOB thereafter acknowledged Exciting Games’s rights in EMex’s operating permit, including in a letter to Exciting Games dated 27 May 2009. Exciting Games subsequently applied for its own operating permit on 25

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<sup>2</sup> The Mexican Enterprises include Juegos de Video y Entretenimiento de México, S. de R.L. de C.V. (owner of the Naucalpan Facility); Juegos de Video y Entretenimiento del Sureste, S. de R.L. de C.V. (owner of the Villahermosa Facility); Juegos de Video y Entretenimiento del Centro, S. de R.L. de C.V. (owner of the Puebla Facility); Juegos de Video y Entretenimiento del D.F., S. de R.L. de C.V. (owner of the Mexico City Facility); and Juegos y Videos de México, S. de R.L. de C.V. (owner of the Cuernavaca Facility).

February 2011, which, after unwarranted and protracted delay, it finally received from SEGOB on 15 August 2012 (the “Exciting Games Permit”).

7. Each of the Facilities and Mexican Enterprises, as well as Exciting Games, constitutes an investment of an investor of a Party under Article 1139 of the NAFTA.

## **II. FACTUAL BASIS FOR THE CLAIM**

8. Counsel for the U.S. Investors wrote to the *Secretaría de Economía* and SEGOB on 16 January 2013 (the “16 January 2013 Letter”) to address the unlawful, arbitrary, and discriminatory measures that the Mexican State had taken against the U.S. Investors and their Facilities in Mexico. A copy of the 16 January 2013 Letter is attached hereto as Exhibit A and is incorporated herein in its entirety.

9. The State’s pattern of unlawful actions against the U.S. Investors’ investments began in August 2011.<sup>3</sup> That month, Mexican State officials and agents repeatedly raided the Facilities, seized gaming equipment valued at nearly US\$ 1 million from the U.S. Investors’ Mexico City Facility, temporarily closed the Mexico City Facility, and seized funds from bank accounts belonging to the Mexican Enterprises and their officers.

10. The U.S. Investors incurred significant losses and were forced to pursue costly legal actions as a direct consequence of the State’s arbitrary and unlawful conduct. Although the Mexican courts ruled in favor of the U.S. Investors and the Facilities, the State nevertheless delayed implementation of the court orders and continued to interfere with the U.S. Investors’ operations in Mexico.

11. Since the 16 January 2013 Letter, the State has not only continued, but in fact has intensified, its unlawful, arbitrary, and discriminatory treatment of the U.S. Investors and their investments. Among other events, on 19 June 2013, the Mexico City Facility was once again closed without legitimate cause, this time by representatives of the *Secretaría de Protección Civil* (“SPC”), and was allowed to reopen only after the U.S. Investors sought further intervention from the Mexican courts. A court order directing the Facilities to be reopened was

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<sup>3</sup> In particular, the Mexican State’s actions began in the wake of the horrific arson attack on the Casino Royale in Monterrey, Mexico, which the authorities used as a pretext for many of the actions described above.

issued within days of the closure, but the State inexcusably delayed the reopening for nearly one month. During the intervening period, the U.S. Investors lost significant revenue as a direct consequence of the closure.

12. Most recently, on 24 April 2014, SEGOB and Mexican federal police closed all five of the U.S. Investors' Facilities for unexplained reasons. These closures were carried out despite a 4 October 2013 precautionary measures decision issued by the Hidalgo Second Regional Chamber of the Federal Court of Tax and Administrative Justice (the "Hidalgo Second Regional Chamber"), which enjoined the Government from impeding or otherwise hindering operation of the Facilities pending resolution of ongoing *amparo* proceedings initiated by EMex.<sup>4</sup>

13. To effect the closures, SEGOB personnel and armed federal police entered the Facilities and immediately blocked all entrances and exits. Customers eventually were permitted to leave the Facilities, but employees were restricted to their offices. Despite repeated requests, the employees were not permitted to contact attorneys. Nor was counsel for the affected enterprises permitted to enter the Facilities, witness the actions of the Government agents, or retrieve documents from the Facilities. Without regard for due process, SEGOB has repeatedly refused to provide a copy of the closure order to management or to explain the reason, if any, for its actions.

14. To date, all five Facilities remain closed. Despite multiple requests, SEGOB still has not provided a copy of a closure order to the U.S. Investors, their investments, or their attorneys. Moreover, other Facilities similarly situated that are owned or controlled by Mexican nationals remain open. Meanwhile, the U.S. Investors continue to suffer significant and mounting losses which, unless rectified, likely will force them to sell their investments. Even as the U.S. Investors have sought to mitigate their losses by exploring a possible sale of their investments, the State has interfered with and seemingly has prevented such transactions.

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<sup>4</sup> EMex initiated the *amparo* proceedings in late 2012 in an effort to challenge and invalidate the Exciting Games Permit. At present, the proceedings are pending, and an appeal filed by Exciting Games was referred last month to Mexico's Supreme Court of Justice. The U.S. Investors reserve the right to amend this Notice so as to include judicial measures as may be warranted following a final determination in the *amparo* proceedings.

### **III. BREACH OF OBLIGATIONS UNDER THE NAFTA**

15. Mexico, by and through the actions of its agencies and instrumentalities described above, has breached its obligations under Chapter Eleven of the NAFTA. The U.S. Investors have incurred significant and mounting losses as a consequence of those breaches.

16. Mexico's actions violate multiple provisions of the NAFTA, including:

- (1) Article 1102: National Treatment
- (2) Article 1103: Most-Favored-Nation Treatment
- (3) Article 1105: Minimum Standard of Treatment; and
- (4) Article 1110: Expropriation and Compensation.

### **IV. RELIEF REQUESTED**

17. As a result of Mexico's breaches, the U.S. Investors have suffered damages in the range of US\$ 100 million, and intend to seek this amount, subject to revision in light of advice obtained from a valuation expert, plus pre- and post-award interest, all costs and fees associated with the arbitration, and any such further relief as the Tribunal may deem appropriate, if consultations with Mexico concerning this dispute are unsuccessful.

18. The U.S. Investors reserve the right to amend this Notice and to include additional claims as may be warranted and permitted by the NAFTA.

Sincerely,



White & Case, LLP  
701 Thirteenth Street, N.W.  
Washington, DC 20005  
U.S.A.