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DR-CAFTA NOTICE OF INTENT

August 28, 2020

By email and follow-up delivery

Minister Orlando Solórzano
Ministro,
Ministerio de Fomento, Industria y Comercio
rvrc@dirC.p.lifj.re.tr

Dear Minister,

**Notice of Intent under the Free Trade Agreement between the
Dominican Republic, Central America, and the United States**

Under Articles 10.15 and 10.16 of the Dominican Republic-Central America-United States Free Trade Agreement (“DR-CAFTA” or the “Treaty”), to which both the United States and Nicaragua are Parties, and intending to resolve this dispute amicably through consultation and negotiation, Riverside Coffee, L.L.C. – a limited liability company organized under the laws of the State of Kansas, United States of America (“Investor” or “Riverside”) – respectfully submits to the Republic of Nicaragua this written notice of their intention to submit a claim to arbitration under Chapter 10 of the DR-CAFTA.

We act as legal counsel to Riverside. Under the DR-CAFTA, this notice was to be filed with the successor to the Dirección de Integración y Administración de Tratados at the Ministerio de Fomento, Industria y Comercio Accordingly, we have sent a copy of this notice to the designated the successor body, the Departamento de Solución de Controversias at the Ministerio de Fomento, Industria y Comercio.

THE INVESTOR AND THE INVESTMENT

The Investor, Riverside Coffee, L.L.C., is a limited liability company incorporated in the State of Kansas. It is located at 6538 S Sheridan Loop, Littleton, Colorado,. The Investor owns and controls an investment in the territory of the Republic of Nicaragua: Empresa Inagrosa S.A. (“Inagrosa”), a Nicaraguan company. Inagrosa is located at Inagrosa (Inversiones Agropecuarias, S.A.) Semaforos de Claro Villa Fontana 20 metros al norte Casa No. 304 Managua, Nicaragua. Inagrosa is a Nicaraguan-based investment owned and controlled by the Investor. Inagrosa, owns a 1,343-hectare plantation, Hacienda Santa Fé, located in La Naranja Community in the Municipality of San Rafael del Norte, Jinotega Department, Nicaragua.

Hacienda Santa Fé operated a Haas avocado plantation in Nicaragua. At Hacienda Santa Fé, Inagrosa cultivated and processed Haas avocados. Hacienda Santa Fé had 1,000 hectares of land

in development for Haas avocado cultivation and had a forest of well- over 35,000 hardwood trees. Hacienda Santa Fé had offices, production facilities, residences, and a nursery facility designed to increase production both at Hacienda Santa Fé and at local farms.

FACTUAL BASIS FOR THE CLAIM

The Investor has been deprived of its investments through a series of measures for which the Republic of Nicaragua has international responsibility. As a consequence of these measures, Inagrosa's operations at Hacienda Santa Fé have been destroyed. Nicaragua has prevented the Investment's management from obtaining access to Hacienda Santa Fé and have consequently destroyed its business and dilapidated its assets at Hacienda Santa Fé.

- 1) In April 2018, the Nicaraguan government commenced a campaign of oppression against democratic protests. The government used and collaborated with paramilitary forces to intimidate protestors and take land from non-supportive businesses.
 - 2) Inagrosa was not involved in the civil disturbance.
 - 3) On June 16, 2018, a paramilitary force consisting of more than three hundred armed paramilitaries invaded Hacienda Santa Fé. They occupied the upper area of Hacienda Santa Fé (also known as "Santa Fé *arriba*").
 - 4) The paramilitary leaders were sent by the Sandinista Government of Nicaragua and were occupying the Hacienda Santa Fé under the orders of Leonidas Centeno, Mayor of Jinotega. On June 16, 2018, the paramilitary leaders told the workers at Hacienda Santa Fé that Nicaraguan President Daniel Ortega had given the paramilitaries the lands as a reward for their role in the resistance against the anti-government protests.
 - 5) Hacienda Santa Fé management called the local police while the invasion was taking place, seeking immediate assistance to protect the property and the workers. However, local police Captain, William Herrera, told Santa Fé management to leave because the police had been informed that the paramilitaries intended to burn the Hacienda Santa Fé down. The police never came to the assistance of management.
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- 6) Following that call, Carlos Rondón, chief executive officer and general manager of Inagrosa, called Captain Herrera directly to demand an explanation for the lack of police assistance. Captain Herrera responded that he had orders not to remove the paramilitaries from Police Commissioner Marvin Castro, the Chief of Police for the Jinotega province.
 - 7) Later that day, members of the police arrived at Hacienda Santa Fé. The police told the Hacienda Santa Fe security guards that they were at Hacienda Santa Fé on the orders of Captain Herrera. The guards had to hand over their guns to the police immediately. The police officers present did not present any court order or basis of other lawful authority to enter Hacienda Santa Fé.
 - 8) Hacienda Santa Fé management made another call to Captain Herrera to inquire as to why the security guards guns had been confiscated. Captain Herrera replied that he was acting on the orders of Commissioner Marvin Castro.
 - 9) On July 16, 2018, another contingent led by paramilitaries entered the lower part of Hacienda Santa Fé (known as “Santa Fé abajo”). The paramilitaries told the Hacienda Santa Fé workers that they were sent to occupy Hacienda Santa Fé by Mayor Leonidas Centeno. The paramilitary leaders stated that Mayor Leonidas Centeno had also promised them that they could keep part of the lands.
 - 10) A paramilitary leader told the Hacienda Santa Fé workers that they no longer had any reasons to be at Hacienda Santa Fé because Carlos Rondón was not their boss anymore. Unless the workers joined the paramilitaries, they had to leave the Hacienda Santa Fé. He then announced that the Hacienda Santa Fé management were “dead men.”
 - 11) That same day, after fleeing the Hacienda Santa Fé in fear for his life, one of the employees encountered an employee of the Ministry of Agriculture and Forestry (known by its Spanish acronym “MAGFOR”), who told him that the government of Nicaragua was taking Hacienda Santa Fé to put pressure on the business sector.
 - 12) On July 24, 2018, a heavily-armed paramilitary leader entered Hacienda Santa Fé with about another forty armed persons. The heavily-armed paramilitary leader declared that the Government of Nicaragua had sent them to Hacienda Santa Fé.
 - 13) On July 26, 2018, the paramilitaries brutally assaulted Jaime Vivas, a senior Hacienda Santa Fé worker, for refusing to disclose the location of two cows thought to be at Hacienda Santa
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Fé. Since the paramilitaries were unable to locate the cows, they began to slaughter sheep owned by the Hacienda Santa Fé.

Police escorted the paramilitaries into Hacienda Santa Fé

- 14) On August 4, 2018, a paramilitary leader was escorted into Hacienda Santa Fé by members of the Nicaraguan National Police in police patrol cars. Captain Herrera of the National Police was present to escort this paramilitary leader into the property.
- 15) Instead of protecting the lawful owners of the property against the unlawful occupiers, the police captain merely spoke to them. He did not order them to vacate the Hacienda Santa Fé. That same day, the paramilitary leader met with other unlawful occupiers who were assisting them in discussing the redistribution of the Hacienda Santa Fé. The discussions outlined the areas of the Hacienda Santa Fé land that would be granted to retired military officers and civilians, assigned in accordance with their ranks.
- 16) On August 6, 2018, Norma Herrera Blandón, the mayor of the Municipality of San Rafael del Norte, arrived at Hacienda Santa Fé. The mayor and another government official were escorted into Hacienda Santa Fé by police patrol cars with officers of the national police. At the time, approximately 400 occupiers gathered around Mayor Herrera Blandón to hear her speak. The mayor proposed that the city would provide new water, electricity, and housing infrastructure projects at Hacienda Santa Fé for the benefit of the illegal occupiers. Mayor Herrera Blandón said that the assembled paramilitaries only had to organize their proposed projects for the land to benefit from her assistance.
- 17) The paramilitary leadership was supportive of the mayor's proposed projects that would permit them to stay at Hacienda Santa Fé permanently. At no point in time did Mayor Herrera Blandón, or the members of the National Police, instruct the paramilitaries to end the unlawful occupation of the Hacienda Santa Fé or to leave.

Paramilitaries temporarily abandoned Hacienda Santa Fé

- 18) On August 10, 2018, Mr. Rondón, sent a letter to Captain Herrera complaining about the lack of police action. Mr. Rondón's letter outlined the failure to take timely action, which would have protected the property (including the Haas avocado trees) and the physical safety of the workers at Hacienda Santa Fé. Mr. Rondón never received a response to this letter.
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- 19) On August 11, 2018, Mayor Centeno and Commissioner Marvin Castro, gave an order to the occupiers to depart the Hacienda. The paramilitaries followed the orders of the Jinotega Mayor and the Commissioner. Approximately 550 occupiers began to evacuate Hacienda Santa Fé under the leadership of a paramilitary commander. As the paramilitaries left, they looted through the remains of Hacienda Santa Fé.
- 20) Management returned to Hacienda Santa Fé with attorney Carlos Alberto Monzón, and Captain Herrera to take an inventory of the damaged and stolen property.

Return of the paramilitaries to Hacienda Santa Fé

- 21) On August 17, 2018 the paramilitaries returned to Hacienda Santa Fé and re-occupied the entire property. The paramilitaries expelled the security guards forcibly from Hacienda.
- 22) Management called Captain Herrera to inform him that the paramilitaries had returned to Hacienda Santa Fé; Captain Herrera's only response was that he would inform Jinotega Commissioner Marvin Castro.
- 23) The police did not provide any assistance in removing the unlawful occupiers.
- 24) Hacienda Santa Fé staff called Captain Herrera that same day to inform him of what the unlawful occupiers had done. Again, the police took no action.
- 25) This time the paramilitaries and their forces did not leave. They have remained in the occupation of the plantation since that day.
- 26) To obtain better access to lands at the Hacienda Santa Fé, the unlawful occupiers destroyed the existing fences that protected the avocado crops at the plantation. At this time, as the unlawful occupiers were passing through the avocado crops, the occupiers began to destroy avocado trees laden with fruit that was ready for harvest. In the summer of 2018, there were approximately 350,000 Haas avocado fruits ready for harvest.
- 27) Also, there was widespread destruction of nursery plants. This destruction included:
- a) over 10,000 Haas avocado trees that were being grafted in the nursery,
 - b) other plants in the nursery, including over 1200 Black Walnut tree saplings ready for transplantation,
 - c) also, the harvest of grains and tubers were destroyed.
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- 28) As a result of the illegal occupation by the paramilitaries and large scale destruction of the Hacienda Santa Fé property, Inagrosa lost the Haas avocado crop, its nursery to support the coming crop and then its entire plantation.
- 29) The paramilitary forces destroyed the unharvested 2018 Haas avocado crop. The paramilitaries laid waste through deliberate acts of destruction to many of the avocado trees or damages the avocado trees through reckless mishandling of them. This wanton destruction resulted in the loss of the following 2019 and 2020 Haas avocado crops.
- 30) The paramilitary force also destroyed valuable trees in the private forest, stole equipment, and robbed the investment's corporate files and equipment.
- 31) To this day, the paramilitaries continue illegally to occupy Hacienda Santa Fé. In addition to the deprivation of the land, the wrongdoers did the following:
- a) Took equipment and farm machinery;
 - b) Looted computers, records, and books of Hacienda Santa Fé.
 - c) Ruined the commercial use and harvest of the avocado trees;
 - d) Engaged in widespread deforestation and destruction of the private forests;
 - e) Redistributed lands at Hacienda Santa Fé to the paramilitaries and their supporters; and
 - f) Made ongoing credible threats of physical harm against the management of Hacienda Santa Fé.

TREATY BREACH

- 32) Nicaragua, and through its organs, agents, and instrumentalities, as described above, has breached its obligations under Chapter 10 of the DR-CAFTA. The legal and factual bases for these claims are described herein. The Investor and the Investment have incurred significant losses on account of those breaches.
- 33) The Investor claims breaches of Chapter 10 of the Treaty, including but not limited to, the following sub-provisions of the DR-CAFTA:
- (i) Article 10.3 – National Treatment
 - (ii) Article 10.4 - M.F.N. Treatment
 - (iii) Article 10.5 – Minimum Standard of Treatment
 - (iv) Article 10.7 – Expropriation and Compensation
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RELIEF REQUESTED

34) As a consequence of Nicaragua's breach:

- (i) the business operations of Hacienda Santa Fé have been destroyed, resulting in loss to the Investment and the Investor.
- (ii) the agricultural production at the Hacienda Santa Fé has been destroyed.
- (iii) hardwood trees have been illegally harvested, and forests have been destroyed.
- (iv) industrial equipment has been looted; and
- (v) threats of grievous bodily injury have been made to the management of the Hacienda Santa Fé.

35) The Investor has suffered losses estimated at no less than US\$580 million arising from the seizure of the Investments and the subsequent looting and destruction of Hacienda Santa Fé's facilities.

36) If the matter proceeds to arbitration, the Investor will seek the following relief:

- a. **Damages of not less than US\$545 million** as compensation for the economic loss, harm, and damage arising from Nicaragua's breach of its obligations in Section A of CAFTA Chapter Ten.
 - b. **Moral damages of U.S. \$45 million** arising from the improper actions of Nicaragua against the Investor and the Investments.
 - c. **Costs of these proceedings**, including all professional fees and disbursements plus interest.
 - d. **Tax costs** triggered by the governmental actions, fees, and expenses incurred to mitigate the effect of the unlawful measures taken by Nicaragua.
 - e. **Pre-award and post-award interest** on all amounts at a rate to be fixed by the Tribunal; and
 - f. **Such further relief as counsel may advise**, and the Tribunal may deem appropriate.
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- 37) In good faith and the spirit of cooperation, the Investor invites Nicaragua to engage in discussions and negotiations to achieve an amicable resolution of the dispute noticed herein. Please direct all correspondence on this matter to the attention of Appleton & Associates International Lawyers L.P.
- 38) If such consultations with Nicaragua are unsuccessful, the Investor intends to submit a claim for arbitration under the Treaty, seeking damages for the harm and in the amounts described above, plus interest, costs, and any such further relief as the Tribunal may deem appropriate.

Sincerely,



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cc:

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