

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

IN THE PROCEEDING BETWEEN

**TRUE BLUE DEVELOPMENT LIMITED
TRUE BLUE SERVICES LIMITED
TRUE BLUE MANAGEMENT LIMITED
POLAR PALMS LLC, AND
CIRCLE PARK HOLDINGS LLC**

Claimants

v.

GRENADA

Respondent

(ICSID Case No. _____)

REQUEST FOR ARBITRATION

Date: June 17, 2021

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**On Behalf of Claimants True Blue
Development Limited, True Blue Services,
Limited, True Blue Management Limited,
Polar Palms LLC, and Circle Park
Holdings LLC**

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Pursuant to Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”), Claimants True Blue Development Limited (“True Blue Development”), True Blue Services Limited (“True Blue Services”), True Blue Management Limited (“True Blue Management”), Polar Palms LLC (“Polar Palms”), and Circle Park Holdings LLC (“Circle Park”) (collectively “Claimants”) hereby submit their request to the Secretary-General of the International Centre for Settlement of Investment Disputes (“ICSID”) to institute arbitration proceedings against the Respondent Grenada (“Respondent” or “Grenada”). The claims in this arbitration arise under the 1986 Treaty Between the United States and Grenada Concerning the Reciprocal Encouragement and Protection of Investment (the “Treaty” or the “BIT”).¹

I. INTRODUCTION

1. The Kimpton Kawana Bay Resort (the “Project” or the “Kimpton Kawana Bay”) is one of Grenada’s newest 5-star hotel resort projects now in the final stages of construction on Grand Anse Beach on the Caribbean Sea. In 2016, Grenada approved a proposal by True Blue Development for funding the Project under its Citizenship by Investment (“CBI”) Programme (the “CBI Programme”). The CBI Programme authorizes a prospective investor (“CBI Applicant”) to make a required investment in the Grenada economy by purchasing an interest in a condominium unit in the Project in order to obtain Grenadian citizenship.

2. The Project started as a refurbishment of one of Grenada’s grand old hotels with a budget of US\$52.5 million (the “2016 Approved Budget”). In 2017, True Blue Development proposed to expand the Project into a luxury condominium resort to be operated by Kimpton Hotels & Restaurant Group, LLC (“Kimpton Hotels”). On December 28, 2016, True Blue Development

¹ See Exhibit C-001, US-Grenada BIT.

entered into an agreement with Kimpton Hotels to operate the Kimpton Kawana Bay once construction is completed. On May 3, 2017, Grenada approved a US\$99,280,000 budget to fund the expanded Project through the CBI Programme (the “2017 Approved Budget”).

3. For the next four years, development progressed on the Project. True Blue Development was successful in attracting CBI Applicants whose applications were approved under the CBI Programme, and their payments were used for construction and other development costs of the Project. A recent photograph demonstrates the construction progress that has been made, with three of the four buildings substantially completed:



4. In August 2020, Grenada reaffirmed the 2017 Approved Budget of US\$99.28 million, ensuring the Project could continue using CBI Programme funds for development costs.

5. However, on December 11, 2020, Grenada abruptly and arbitrarily withdrew the reconfirmation of the Project’s 2017 Approved Budget. The withdrawal came, without notice or an opportunity to be heard, in a three-sentence letter with a vague accusation of “discrepancies.” The letter promised to “address pertinent issues subsequently.” The letter marked the beginning of

a surreptitious, multi-front effort by Grenada to squeeze the Project's finances into failure. The first affirmative step was limiting the budget to the 2016 Approved Budget of US\$52.5 million, a figure that applied to the earlier, smaller 2016 refurbishment project and an amount that had largely been spent already on development and construction of the expanded Project.

6. In March 2021, before True Blue Development was given any explanation of the so-called “discrepancies,” Grenada sought to impose an severe escrow requirement that would artificially limit the use of CBI funds—which are private, not government funds—to “construction costs” that make up only about 38 percent of the 2017 Approved Budget. Other categories of development expenses, such as marketing for CBI Applicants, furniture, fixtures and equipment (FF&E), and general and administrative expenses, would seemingly go unfunded. Grenada's unilateral limitation of CBI funds to construction costs is contrary to the Investment Agreement, 2017 Approved Budget, and the Grenada Citizenship by Investment Act No. 15 of 2013 (the “CBI Act”), which contain no such limitation.

7. Around March-April 2021, Grenada took the third step, halting approval of CBI applications for the Project—the Project's principal source of funding—thus starving the Project of critical capital needed to finish. Funding for the Project, which had been approved in 2017 and relied upon by Claimants for four years, was effectively cut off.

8. In a letter dated May 4, 2021 and received May 5, 2021, the Citizenship by Investment Committee (the “CBI Committee”) identified three questions about the Project's finances, which True Blue Development promptly answered in a letter on May 10, 2021. Grenada's principal objection—that True Blue Services is spending CBI funds while not part of the CBI program—is literally contrary to four years of documentation in the Finance Ministry's own files.

9. Without responding to True Blue Development's explanation, on May 21, 2021, Grenada's Prime Minister and Minister for Foreign Affairs announced an investigation of the so-called "discrepancies." Because of the now public accusations, CBI Applicants are fleeing the Project, some of whom began withdrawing their existing applications and others refusing to continue the application process. After another month of fruitless talks, marked by Government misstatements and evasions, Claimants decided they had no choice but to bring this arbitration.

10. Through its arbitrary and unlawful conduct, the Government of Grenada has destroyed a successful project and inflicted damages on Claimants. Claimants bring this arbitration to remedy Grenada's violations of the Treaty.

II. THE PARTIES AND RELATED PERSONS

11. Claimant True Blue Development is a real estate development corporation constituted under the laws of Grenada.² True Blue Development is the freehold purchaser of the land upon which the Project is located, the developer of the Kimpton Kawana Bay, and the company that received CBI approval as an "Approved Project" pursuant to the Citizenship by Investment Act. True Blue Development contracts with CBI Applicants for the sale of interests in condominium units and uses the CBI Applicant payments to develop and build the Project.

12. Claimant True Blue Services is a corporation constituted under the laws of Grenada.³ True Blue Services is the company that: (i) enters into all construction related contracts and incurs construction expenditure; and (ii) handles the Project-related contracts and expenditures including salaries, accounting fees, marketing costs, utilities and others (collectively, "Expenditures").

² C-030, Certificate of Incorporation for True Blue Development.

³ C-031, Certificate of Incorporation for True Blue Services.

13. The Project is structured such that True Blue Development is the company that receives the CBI and other invested funds, and True Blue Services incurs the Project costs. This corporate structure is common in real estate projects globally, as it protects the property-owning company from undue liability during the construction and development phase. Over the past four years, Grenada has repeatedly acknowledged the role of True Blue Services in the Project.⁴

14. Claimant True Blue Management is a corporation constituted under the laws of Grenada.⁵ True Blue Management will provide condominium management services to Kimpton Kawana Bay and will contract with CBI Applicants to provide rental management services to their condominium interests once construction is completed.

15. True Blue Canada Limited is incorporated in Ontario, Canada and handles the financial administration for the Project (collectively, True Blue Development, True Blue Management, True Blue Services, and True Blue Canada Limited are the “True Blue Group”).

16. Claimant True Blue Development, Claimant True Blue Services, Claimant True Blue Management, and True Blue Canada are wholly owned by Grenco Limited (“Grenco”), a corporation constituted under the laws of the British Virgin Islands with its registered office at Geneva Place, 2nd Floor, #333 Waterfront Drive, Road Town, Tortola, British Virgin Islands. The registered office of Grenco’s Grenadian subsidiaries (True Blue Development, True Blue Services, and True Blue Management) is Lucas Street, St. George’s, Grenada.

17. Claimant Polar Palms LLC, a Minnesota (United States) limited liability company, has its registered address at 2800 Niagara Lane N, Plymouth, MN 55447.⁶

⁴ See *infra* ¶ 93.

⁵ C-032, Certificate of Incorporation for True Blue Management.

⁶ C-033, Certificate of Organization for Polar Palms.

18. Claimant Circle Park Holdings LLC, a California (United States) limited liability company, has its registered address at 10618 W. Pico Blvd., Los Angeles, CA 90064.⁷

19. Claimants Polar Palms and Circle Park collectively own 57% of the Class A shares of Grenco, which are the voting shares that control Grenco and Claimants True Blue Development, True Blue Services, and True Blue Management. In accordance with Article VI(5) of the Treaty, True Blue Development, True Blue Services, and True Blue Management are investments of entities of the United States immediately before (if not earlier) the occurrence of the events giving rise to the dispute.⁸

20. Mr. Warren Newfield is the sole director of Grenada Nutmeg Corp., the Manager of Grenco. Mr. Newfield is a developer. Until May 20, 2021, Mr. Newfield served as a Grenadian Ambassador-At-Large and Consul General to Florida.

21. Claimants are represented in these proceedings by Baker & Hostetler LLP.⁹ All required notifications should be addressed to:

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⁷ C-034, Articles of Incorporation for Circle Park Holdings.

⁸ More information regarding Claimants' can be found in Section IV (Jurisdiction Under the Treaty and ICSID Convention).

⁹ Company resolutions from the Claimants that contain authorization for Baker & Hostetler LLP to represent the Claimants are exhibited as C-036 – C-041. These resolutions also demonstrate that Claimants have taken all necessary internal actions to authorize this Request for Arbitration.

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22. Respondent is the Government of Grenada by and through the Cabinet and Citizenship by Investment Committee (the “CBI Committee”). Section 3 of the CBI Act establishes the CBI Committee by act of the Minister of Citizenship (the “Minister”).¹⁰ Under the Act, the CBI Committee oversees the CBI Programme, which makes it possible for those who invest in Grenada’s economy or approved real estate developments to gain citizenship.

23. Kimpton Hotels, which is part of the InterContinental Hotels Group, is an internationally renowned resort operator which will operate the Kimpton Kawana Bay once development is completed. True Blue Management is expected to enter into subcontract relationships with Kimpton Hotels for condominium and rental management services.

III. STATEMENT OF FACTS

A. Kimpton Kawana Bay Resort

24. Located at the southern end of the Eastern Caribbean chain of islands known as the “Windward Islands,” Grenada is unspoiled and uncrowded yet refined and sophisticated. Grenada has an idyllic climate: located below the “hurricane belt,” Grenada offers year-round cool breezes and a median temperature of approximately 29 degrees Celsius (84 degrees Fahrenheit).

25. Kimpton Kawana Bay is designed to be one of the Caribbean’s leading hotels with luxury studios and suites overlooking the magnificent views of Grand Anse Beach (regarded by

¹⁰ See Exhibit C-002, 2013 Grenada Citizenship by Investment Act.

reputable publications as one of the world's best beaches). The Project is one of the few developments in Grenada selling title deeded property through the country's CBI Programme. All CBI Applicants in the Project are required to purchase an interest in one of the condominium units and participate in its mandatory rental management program that will be operated by Kimpton Hotels. The Project offers substantial employment opportunities for the people of Grenada and the opportunity to utilize local Grenadian goods, products, and services to stimulate Grenada's economy.

26. True Blue Development owns the land at the site and any improvements made there, except for the condominium units and interests appurtenant thereto conveyed to CBI Applicants in the buildings already declared to be for condominium use.¹¹ The Project consists of three (3) separate condominiums known as (1) the Culebra and Juara Condominium (each a separate building), (2) the Matura Condominium, and (3) the Kiawah Condominium. The Kimpton Kawana Bay will also include commercial units for hotel operations (front desk, housekeeping, spa, restaurant, back office, etc.), 1,400 square feet of meeting space, food and beverage facilities (including a three-meal restaurant and bar, rooftop bar, and a pool bar and restaurant), a fitness center and spa, a beachside pool, business center, dry cleaning and other common facilities and amenities typical of a 5-star resort development.

27. The condominiums are designed and intended to be operated as a unified resort property, with True Blue Management serving as the approved rental manager for the Project providing other management services for the condominiums. Kimpton Hotels has been engaged to provide hospitality and management services.

¹¹ See *infra* ¶ 42.

28. The Project has already won awards for best hotel architecture in Grenada and the Caribbean and for best new hotel construction and design in Grenada, as this rendering shows:



B. CBI Programme

29. The CBI Programme is established by the CBI Act and allows persons who make a qualifying investment in Grenada to gain Grenadian citizenship. Investors can secure Grenadian citizenship and its benefits, while the Government of Grenada stimulates economic growth and creates employment opportunities. Grenada is the only country in the Caribbean, and one of only two in the world, with a citizenship by investment program that has an E-2 Visa treaty with the United States. Grenadian citizens are thus eligible to invest in a business and live in the United States with their families. As a result, Grenada's CBI Programme has been highly valued by citizenship by investment investors.

30. Grenada offers two investment options under its CBI Programme.¹² An investor can make a donation to the National Transformation Fund of at least US\$150,000, which the

¹² See Exhibit C-035, CBI Programme Overview.

Government of Grenada can then use to finance various projects. Alternatively, an investor can invest in a local real estate development project approved by the Grenada Government. The investor must make a minimum qualifying investment (originally US\$350,000, since lowered to US\$220,000) and pay an additional fee to the Government of at least US\$50,000.¹³ The CBI Programme affords investors the ability to sell their investment after five years, and secondary purchasers of real estate can also qualify for citizenship. Currently, the Government lists eighteen real estate investment projects have been approved under the CBI Act.¹⁴ Under either option, the CBI Applicant must pay additional application, processing, and due diligence fees.

31. CBI Applicants are, for the most part, clients of residency, immigration, and citizenship agents (“Agents”) who earn commissions of up to 20 percent, or more, for introducing and guiding the CBI Applicants through the process.

32. CBI Applicants investing in the Project enter into an Escrow, Citizenship, and Condominium Interest Purchase and Sale Agreement with (i) True Blue Development, as seller, and (ii) an escrow agent that serves as escrow agent for the transactions and as local agent (“Local Agent”), a role that is defined in the CBI Act and authorized to act for the CBI Applicants. The CBI Applicant’s obligation to purchase the condominium interest is expressly conditioned upon the grant of a Citizenship Certificate, which signifies satisfaction of the CBI Programme requirements and is required to obtain a Grenadian passport. The CBI Applicant also pays any processing, application, and due diligence fees (for the Government) and a reservation fee (for the real estate) to the Local Agent. To facilitate submission of the CBI application, the Local Agent receives and pays a reservation fee (which in most cases is non-refundable) to the developer and

¹³ See Exhibit C-035, CBI Programme Costs and Fees.

¹⁴ See Exhibit C-035, CBI Programme List of Approved Projects.

then remits the other fees for processing to the Citizenship by Investment Unit (“CIU”), which administers the project for Grenada.

33. The Cabinet for the Government of Grenada, consisting of the council of ministers and headed by the Prime Minister, has ultimate control over the CBI Programme and final approval over any CBI Applicants. The CBI Committee, appointed by the Cabinet, is responsible for overseeing the processing of CBI applications. The day-to-day functions of the CBI Programme are run by the CIU. The CIU coordinates the due diligence, vetting, and carries out the processing of each application submitted by a CBI Applicant. The CBI Committee assesses each application and makes a recommendation to the minister responsible for citizenship matters and Cabinet.¹⁵ Upon the Cabinet’s decision, the CBI Applicant is issued a letter (through the Local Agent) detailing whether the application was approved, delayed for further processing, or rejected. If approved, the CBI Committee instructs the CBI Applicant to complete the purchase of the CBI Applicant’s real estate in the approved project.

34. The CBI Applicant must then demonstrate completion of the purchase and payment of the minimum investment amount (currently, US\$220,000). The CBI Applicant deposits the remainder of the purchase price and the Government contribution amount into the Local Agent’s escrow account. The Local Agent transfers that portion of the purchase price to True Blue Development’s escrow account (“Escrow Account”), where the funds are used for Project development expenses. The Local Agent also transfers the Government contribution to the Government.

¹⁵ See Exhibit C-046, Grenada CBI Programme Application Process, *available at* https://www.cbi.gov.gd/index.php?option=com_sppagebuilder&view=page&id=121&Itemid=282 (last accessed June 14, 2021).

35. Upon receiving proof of payment by the CBI Applicant to the Local Agent, the Grenadian Government issues the Citizenship Certificate, establishing that the CBI Applicant has received Grenadian citizenship.

C. Flamboyant Hotel Redevelopment

36. On March 23, 2016, True Blue Development agreed to purchase the Flamboyant Hotel and Villas after the prior owners had defaulted on their mortgage and the property was in receivership.

37. On May 23, 2016, the Government of Grenada granted Approved Project status under Section 11 of the CBI Act to what was then known as the Flamboyant Hotel Redevelopment Project (the “Flamboyant Project”). The Approved Project status gave True Blue Development the right to raise capital and solicit investors for the development of the Project. The status also meant that citizenship would be granted to all CBI Applicants investing in the Project who successfully apply for and qualify to become citizens of Grenada under the CBI Programme.

38. On August 18, 2016, True Blue Development and Grenada entered into an Investment Agreement (“Investment Agreement”) for redevelopment, construction, and operation of a new hotel and villas on the site of the Flamboyant Hotel located in Morne Rouge, St. George, Grenada.¹⁶ Under the Investment Agreement, Grenada agrees to:

- a. assist True Blue Development in obtaining the necessary licenses, subject to the requirement of the respective Grenadian agencies, for purposes of the Flamboyant Hotel Redevelopment; and
- b. provide any services to True Blue Development, either directly or indirectly, through the Grenada Industrial Development Corporation (“GIDC”) deemed necessary to complete the redevelopment.¹⁷

¹⁶ See Exhibit C-003, Investment Agreement between True Blue and Grenada dated August 18, 2016.

¹⁷ See Exhibit C-003, Investment Agreement at § 2.1.1.

True Blue Development made regular reports to the GIDC to report on the status of and any outstanding issues with the Project.

39. Under the Investment Agreement, True Blue Development agrees to:

- a. deposit the CBI funds in a local escrow account,
- b. submit quarterly escrow account reports,
- c. comply with the CBI Act and regulations, and
- d. submit to the Government of Grenada “any substantial or material change to the Development” for “consideration and prior written approval, such approval not to be unreasonably withheld.”¹⁸

40. Section 8.3 of the Investment Agreement provides that “[n]either party shall unreasonably withhold or delay prompt communications, advice, opinions, approval or information that has been requested by the other party.”¹⁹

41. True Blue Development agreed to complete the Flamboyant Project in three phases over 5.5 years—approximately December 2021—involving the purchase of the hotel; design, planning and complete interior and exterior renovation of existing hotel rooms; and construction. Grenada approved a budget of US\$52.5 million (“2016 Approved Budget”) subject only to unforeseen events having the consequence of restricting the availability of financing for the construction.²⁰

42. On November 17, 2016 True Blue Development purchased the freehold interest in the land from Grenada pursuant to the Restated Transaction Agreement dated September 6, 2016 (“Restated Transaction Agreement”).²¹

¹⁸ See Exhibit C-003, Investment Agreement at §§ 2.2.24 and 2.2.25.

¹⁹ See Exhibit C-003, Investment Agreement at § 8.3.

²⁰ See Exhibit C-003, Investment Agreement at § 2.2.5.

²¹ See Exhibit C-004, Restated Transaction Agreement between True Blue Development and Grenada.

D. Change in the Scope of the Project

43. On December 28, 2016, True Blue Development secured a contract with Kimpton Hotels to operate the new Kimpton Kawana Bay.

44. After an in-depth review of the existing Flamboyant Hotel structures and input from Kimpton Hotels, True Blue Development decided to revamp and upgrade the Project plans. On February 9, 2017, True Blue Development asked Grenada for approval of a new expanded plan.²² The new plan required the demolition of most of the old Flamboyant Hotel and the construction of more hotel rooms and larger suites, which added substantial cost to the Project. True Blue Development also encountered additional unforeseen costs, including: (i) paying more than market price for the property's freehold interest from Grenada; (ii) purchasing an additional small parcel of land which was not part of the lands leased by the government to the Flamboyant Hotel; and (iii) paying severances for the then-existing Flamboyant Hotel employees.

45. As a result of the changes to the development plan, True Blue Development asked Grenada to increase the Project budget from US\$52.5 million to US\$99.28 million.

46. By letter of May 3, 2017, the CBI Committee confirmed that it had approved the adjustments to the Kimpton Kawana Bay Project and an increased budget of US\$99.28 million ("2017 Approved Budget").²³ True Blue Development proceeded to develop the Project based upon this budget for the next three-and-a-half years.

²² See Exhibit C-005, Letter from True Blue Development to CBI Committee dated February 9, 2017.

²³ See Exhibit C-006, Letter from the CBI Committee to True Blue Development dated May 3, 2017.

E. True Blue Development Adjusts to Grenada's Periodic Rules Changes

47. On October 6, 2017, Grenada sought to impose new general terms on the use of CBI funds in a CBI approved project by amending the Citizenship by Investment Regulations, Statutory Rules and Orders No. 28 of 2017 (“SRO 28”).²⁴ Over the next three years, the True Blue Group maintained a good relationship with the CBI Committee while adjusting to periodic changes the Government want to impose on the CBI Programme.

48. Among other requirements, SRO 28 provided: (1) a statutory requirement for a project escrow account with a licensed financial institution in Grenada for qualifying investment amounts; and (2) a new requirement for periodic reports on disbursements to the CBI Committee.²⁵ A key provision also required that all CBI funds be used for “development costs,” which later became a point of contention between True Blue Development and the CBI Committee.²⁶ However, SRO 28 was so vague and lacked implementation mechanisms, such as standard forms or guidelines, that the CBI Committee waited almost two years before seeking to implement the new requirements.

49. When enacted, SRO 28 did not have a material impact on the Kimpton Kawana Bay. True Blue Development already had an Escrow Account and was already making quarterly disbursement reports pursuant to the Investment Agreement. Because the “development cost” requirement in SRO 28 was consistent with the 2017 Approved Budget, construction and development continued at a steady pace.

²⁴ See Exhibit C-007, Statutory Rules and Orders No. 28 of 2017.

²⁵ See Exhibit C-007, SRO 28 at Sections 5 and 8.

²⁶ See Exhibit C-007, SRO 28 at Section 7.

50. In 2019, the Government of Grenada made an additional change to the CBI Programme when it published Citizenship by Investment (Amendment) Regulations, 2019, SRO No. 6 of 2019 (“SRO 6”) to attract additional CBI Applicants.²⁷ SRO 6 reduced the minimum investment amount for qualifying real estate investments by CBI Applicants (provided a developer who wanted to sell to CBI Applicants at the reduced price met certain conditions).²⁸ In effect, this gave a qualifying developer the option to reduce the required investment amount from the US\$350,000 investment threshold originally established under the CBI Act down to US\$220,000.

51. On March 19, 2019, True Blue Development was notified by Circular Note that it must first apply to and receive written approval from the CBI Committee to access the new lower price option.²⁹ On March 22, 2019, True Blue Development applied for this approval to the CBI Committee and submitted Project information based on the 2017 Approved Budget.³⁰ On March 29, 2019, the Government of Grenada once again changed the parameters set for approved projects by imposing further requirements under SRO 8 of 2019 (“SRO 8”), which repealed and replaced SRO 6 of 2019.³¹ To access the lower price point, the law imposed a new requirement that a project must show that the developer has invested at least 20 percent of the construction costs.³²

52. As part of the application process for the Project to offer the \$220,000 investment threshold, PKF International (True Blue Development’s internationally well-respected auditors) delivered a letter dated April 16, 2019 to the CBI Committee confirming that True Blue

²⁷ See Exhibit C-029, Statutory Rules and Orders No. 6 of 2019.

²⁸ See Exhibit C-029, SRO 6 at Section 2.

²⁹ See Exhibit C-042, CBI Unit’s Circular Notice of March 19, 2019.

³⁰ See Exhibits C-043, Letter from True Blue Development to the CBI Committee dated March 22, 2019; C-044, Letter from True Blue to CBI Committee dated March 22, 2019.

³¹ See Exhibit C-008, Statutory Rules and Orders No. 8 of 2019

³² See Exhibit C-008, SRO 8 at Section 4.

Development and True Blue Services had invested US\$12 million to the construction of the Project, an investment that had not been required when the Project was approved.³³

53. On April 23, 2019, the CBI Committee confirmed the Project met the requirements for the new US\$220,000 CBI price point.³⁴ Through this exercise, which necessarily involved the review of the Project's budget, the CBI Committee again confirmed the 2017 Approved Budget. True Blue Development continued construction and adjusted its sales program to the new CBI price.

F. Reaffirmation of the 2017 Approved Budget

54. Between March and June 2020, construction on the Project was forced to stop because of the Covid-19 pandemic.

55. In July 2020, the CIU asked for True Blue Development's assistance because the CBI Committee claimed that its internal files did not contain the Cabinet approval of the 2017 Approved Budget. True Blue Development resubmitted its application information and answered the CBI Committee's questions.

56. On August 17, 2020, the Grenada Cabinet reconfirmed the 2017 Approved Budget of US\$99.28 million at the new price of US\$220,000 per CBI application.³⁵ To this point, True Blue Development had adjusted to Grenada's changes to the CBI Programme and construction continued.

³³ See Exhibit C-047, Letter from PKF to the CEO of the CBI Unit dated April 16, 2019.

³⁴ See Exhibit C-009, Letter from the CEO of CBI Committee to True Blue Development dated April 23, 2019.

³⁵ See Exhibit C-010, Letter from the CBI Committee to True Blue Development dated August 17, 2020.

G. Prime Minister Mitchell Gives A Glowing Review of the Project

57. On September 1, 2020, Mr. Newfield wrote Mr. Percival Clouden, CIU CEO, confirming their earlier discussion about the impact of the Covid-19 pandemic on the Project.³⁶ Mr. Newfield provided a breakdown of the US\$46.47 million costs incurred by the Project up to that point (as was also shown at various stages in the quarterly reconciliation reports provided to the CBI Committee and Ministry of Finance from 2017 onward) and estimated that the unexpected additional pandemic costs would take the total budget to US\$105 million. At this time, Mr. Clouden said that a CBI Committee member was questioning the Project costs.

58. To demonstrate compliance with the 2017 Approved Budget, Mr. Newfield had PKF International confirm that all CBI funds had properly been used for the Project. PKF International, in a letter to the CBI Committee dated September 7, 2020, stated that True Blue Development's accounting for its expenditure of CBI funds were "present fairly, in all material respects."³⁷

59. On October 6, 2020, TVA Project and Cost Management Ltd., an experienced chartered architecture and quantity surveying (cost estimator) firm in Grenada, also submitted a letter at True Blue Development's request to the CBI Committee stating that the Project's costs "align with construction costs in Grenada" and that True Blue Development's "active project management. . . results in significant cost savings."³⁸

60. On October 7, 2020, Prime Minister Keith Mitchell and parliamentary representatives toured the Project, which by this time had two largely completed buildings, a third

³⁶ See Exhibit C-011, Letter from True Blue Development to the CEO of the CBI Committee dated September 1, 2020.

³⁷ See Exhibit C-012, Letter from PKF Accountants and Business Partners dated September 7, 2020.

³⁸ See Exhibit C-013, Letter from TVA Project and Cost Management Ltd. dated October 6, 2020.

substantially constructed, and the fourth in progress. Prime Minister Mitchell gave a glowing review of the construction at the site, and he said: “I certainly want to compliment Warren [Newfield] and his team for initiating the concept and even going further than in fact originally thought.” A video of Prime Minister Mitchell’s tour is available at <https://vimeo.com/467714674>.

61. The Project under the 2017 Approved Budget encompassed three phases. Phase 1 includes 21 studios in the Culebra Building and 20 studios in the Juara Building, all of which are either sold or reserved. Phase 2 in the Matura Building consists of 7 luxury suites that are sold out and 44 studios with limited remaining availability. Phase 3 is the Kiawah Building, which consists of 48 studios and 24 luxury suites that have limited remaining availability.

62. Photographs show how much has been completed. The Culebra Building is substantially completed:



63. So too is the Juara Building:



64. Construction on the Matura Building is practically complete despite delays caused by the Covid-19 pandemic:



65. The Kiawah Building is the final structure of the Project still in active construction:



66. Beyond construction, the Project development costs include (among other necessary costs) interior work, architecture, interior design, furniture, fixtures & equipment, landscaping, constructing amenities, furnishing, marketing, preparing for opening, and all the finishing touches needed to complete and open a five-star resort. Just like the remainder of the Project, these items require financing—all of which was included in the 2017 Approved Budget of \$99.28 million to come principally from CBI funds, per the Government’s repeated approvals.

H. Grenada’s Government Turns Hostile and Withdraws the 2017 Approved Budget

67. By Fall 2020, development on the Project had adjusted to the various changes in the CBI Programme and was on a successful course. Despite this success, the near completion of the Project, and the Prime Minister’s commendatory statements, the CBI Committee suddenly turned hostile and began a concerted multi-step squeeze of the Project finances.

68. In a letter dated October 13, 2020, Mr. Newfield wrote to CIU CEO Clouden, responding to statements he had made during their earlier conversation about the Covid-19 pandemic.³⁹ Mr. Newfield objected to the suggestion that members of the CBI Committee were considering the withdrawal of the 2017 Approved Budget, stating that “we have been verbally informed that our Project budget must be adjusted downward to reduce the amount of capital we are authorised to raise through CBI sales by 20% of the *cost of construction*. We note that the relevant legislation does not prescribe such a prohibition, and more troubling is the fact that this prohibition does not appear to apply to other CBI developers in Grenada.”

69. Mr. Clouden’s reference to the “cost of construction” is significant; the 2017 Approved Budget provided for the cost of “development,” which is the specific authorization provided in the later enacted SRO 28. The cost of construction constitutes approximately 38 percent of the cost of Project development⁴⁰; thus, Mr. Clouden was suggesting an arbitrary and significant limitation to the CBI Programme and, particularly, the use of CBI Applicant funds. When True Blue Development had been invited to make a proposal for the Project in 2016, the CBI Programme requirements envisioned that the Project’s approved budget would be financed substantially from condominium unit sales to CBI Applicants. In his letter, Mr. Newfield left no doubt about the dire consequences, saying: “If the CBI Committee reneges on the authorisation to raise capital to cover our Project budget of US\$99,280,000, we will not be able to complete the Project.”

70. On November 26, 2020, Mr. Newfield submitted a letter to the CBI Committee formally requesting approval of the new Project budget of US\$110,720,000 because of the

³⁹ See Exhibit C-014, Letter from True Blue Development to the CEO of the CBI Committee dated October 13, 2020.

⁴⁰ See Exhibit C-026, Letter from True Blue Development to CBI Committee dated June 3, 2021.

COVID-19 pandemic.⁴¹ On December 7, 2020, Mr. Newfield wrote the Minister of Finance and the Foreign Minister expressing concern about the CBI Committee's suggestion that it would withdraw the Project's US\$99.28 million budget. "Without this confirmation it would be irrational for us to restart construction [after the Christmas break] without knowing we can raise the funds needed to complete the Project."⁴² The ministers did not respond.

71. In a letter dated December 11, 2020, CIU CEO Mr. Clouden summarily withdrew the August 2020 reconfirmation of the 2017 Approved Budget of US\$99.28 million in a three-sentence letter:

By letter dated August 17, 2020 notice was given to you *inter alia*, that the Government of Grenada granted Kawana Bay approval for expansion pursuant to section 11 of the Grenada Citizenship by Investment Act, 2013.

The said letter however contains discrepancies. As a result, we hereby **WITHDRAW** same.

We will issue correspondence to you that addresses pertinent issues subsequently.⁴³

72. The December 11, 2020 letter was Grenada's first step in a surreptitious plan to squeeze Project finances until the Project failed for a reason that Grenada has not disclosed to date. True Blue Development was unaware of this plan and relied upon the Government's prior approvals and complimentary statements to continue Project development. At that point, Mr. Clouden's letter left unclear whether only the August 2020 budget reaffirmation was withdrawn or the earlier May 2017 Approved Budget of US\$99.28 million.

⁴¹ See Exhibit C-015, Letter from True Blue Development to the CBI Committee dated November 26, 2020.

⁴² See Exhibit C-051, Letter from True Blue Development to Ministers Gregory Bowen and Oliver Joseph dated December 7, 2020.

⁴³ See Exhibit C-016, Letter from the CEO of the CBI Committee to True Blue Development dated December 11, 2020.

73. The undefined accusation of “discrepancies” left True Blue Development surprised and perplexed. The company had submitted quarterly expenditure reports showing the proper use of CBI funds for development costs since the inception of the Project and received no questions or objections from the CBI Committee. PKF International, a highly respect international auditing firm, had informed the CBI Committee that CBI funds were being properly used, and TVA Project and Cost Management Ltd. had endorsed the Project’s management.⁴⁴

74. Three weeks later, on December 30, 2020, Mr. Clouden informed Mr. Newfield that the CBI Committee was retaining a consultant, this time an engineer who “will be assigned to quantify and certify the cost of the expansion to your project from fifty-two million (\$52,000,000 USD) [i.e. the 2016 Approved Budget], to its present stage and the additional two million seven hundred thousand (\$2,700,000 USD), resulting from the impact of Covid-19 as indicated in your letter dated November 26, 2020.”⁴⁵ The vague “discrepancies” from the December 11 letter were not mentioned. However, the December 30 letter appeared to confirm that the CBI Committee was withdrawing the US\$99.28 million 2017 Approved Budget.

75. As a result of the uncertainty created by the CBI Committee, Mr. Newfield informed Mr. Clouden in a letter on January 7, 2021 that True Blue Development was forced to postpone construction of the final phase of the resort, the Kiawah Building.⁴⁶ Mr. Clouden assured True Blue Development that its queries and issues would be resolved with the CBI Committee and that Project development should continue. Based upon Mr. Clouden’s assurances—later proved illusory—that the CBI Committee would continue to process fully CBI applications, construction

⁴⁴ See *supra* ¶¶ 58-59.

⁴⁵ See Exhibit C-017, Letter from the CEO of the CBI Committee to True Blue Development dated December 30, 2020. The additional \$2.7 million were for construction overruns resulting from the Covid-19 pandemic.

⁴⁶ See Exhibit C-018, Letter from True Blue Development to the CBI Committee dated January 7, 2021.

on the Matura Building continued and True Blue Development continued to contract with CBI Applicants.

76. On February 13, 2021, Mr. Clouden resigned as the CEO of the CBI Committee.

77. Between January and March 2021, the CBI Committee did not clarify its claims of “discrepancies” and construction on the Matura Building continued. True Blue Development was later told that the engineer had found total hard construction costs would be US\$47 million, which was even higher than the hard construction costs in the 2017 Approved Budget. Despite its requests, True Blue Development was never given a copy of the engineer’s report.

78. Up to this point (in March 2021), the Government had still not provided any information about the so-called discrepancies it had supposedly identified.

I. The CBI Committee Seeks a Restrictive Escrow Agreement

79. Both the Investment Agreement of 2016 and the later SRO 28 require that True Blue Development maintain an escrow account to pay for costs of the development from CBI funds invested into the Project.⁴⁷ True Blue Development had complied with these requirements from the outset of the Project. For more than 18 months, True Blue Development and the CBI Committee had been negotiating a new escrow agreement to implement SRO 28. The initial attempt came through a CBI draft escrow agreement that was provided True Blue Development for review and comments in June 2019 and continued into the summer of 2020, but the parties could not reach agreement.

80. However, in March 2021, the tenor of the discussions changed when the CBI Committee sought to further its restriction on the use of CBI funds to squeeze the Project finances. The CBI Committee proposed an escrow agreement that would limit the use of CBI funds solely

⁴⁷ See Exhibit C-003, Investment Agreement at § 2.2.25; Exhibit C-007 at § 5 and 6.

to “construction costs,” rather than a broader category of “development costs” as provided for in the 2017 Approved Budget.⁴⁸ Limiting the escrow funds to “construction costs” would seriously limit the principal source of funding that True Blue Development had relied upon in proposing and implementing the Project.

81. The CBI Committee’s escrow proposal was contrary to the Investment Agreement and SRO 28 and made no sense. Under the CBI Programme, the CBI Applicants and True Blue Development enter into contracts for the construction and sale of interests in condominium units. The funds in the Escrow Account are provided by CBI Applicants as consideration for their investment; they belong to True Blue Development.⁴⁹ The CBI Committee’s proposal meant that True Blue Development could not use its own funds to satisfy its contractual requirements to the CBI Applicants. If the CBI Applicant funds could now be used only for construction, and not development costs, from where would the financing—which was the bedrock of the CBI Programme and the basis for True Blue Development’s Project financing—come? To where would the additional, unused CBI Applicant funds in the Escrow Account go? And for what purpose would the CBI Applicant funds be used for if they could not be used for the development of the Project? These questions have never been answered by Grenada.

82. Mr. Newfield responded in a March 15, 2021 email: “As we have had escrow accounts in place since inception of the project, and have consistently reported on the flow of funds through the escrow accounts, we believe that we are fully compliant with our obligations under the CBI legislation so far as it pertains to the escrow requirements.”⁵⁰

⁴⁸ See Exhibit C-019, Email from Warren Newfield to Chris de Allie dated March 15, 2021.

⁴⁹ See, e.g., C-048, Letter from the CBI Committee to Global Services Inc. dated May 31, 2021.

⁵⁰ See Exhibit C-019, Email from Warren Newfield to Chris de Allie dated March 15, 2021.

83. By letter dated April 30, 2021, True Blue Development had its auditors, PKF International, rebut the whispered accusations by other stakeholders in the CBI industry that Project funds were being misappropriated or used for an improper purpose. PKF International wrote the CBI Committee, in part:

We wish to confirm that we are the auditors for the Kawana Bay project, and specifically the group which includes local Grenada entities - True Blue Development Limited, *True Blue Services Limited* and True Blue Management Limited.

According to our audit and assessment of the accounting records for the latest period performed, April 30, 2020, regarding the project, we can confirm:

- All CBI proceeds received by the project has been spent on the development of the project property and assets⁵¹

84. Nearly five months since the accusation of “discrepancies,” the CBI Committee still had identified no “discrepancies” and the True Blue Group’s independent auditing firm had found none.

J. The CBI Committee Halts Applicant Approvals

85. In April 2020, after Foreign Affairs Minister Oliver Joseph (who is one of two members of the Cabinet CBI sub-committee) orally promised that the CBI Committee would approve the Project’s CBI Applications in the normal course of events. True Blue Development relied upon this representation to continue to contract with CBI Applicants and to recommence construction on the Kiawah Building. This promise was not honored.

86. On May 4, 2021 a representative of True Blue Development met with Prime Minister Keith Mitchell, who accused True Blue Development of stealing CBI funds and said that the Project had received sufficient funds already. The Prime Minister did not want to hear a response and indicated that he had already made his decision. The True Blue Development

⁵¹ See Exhibit C-020, Letter from PKF to the CBI Committee dated April 30, 2021.

representative asked for a written confirmation of the Prime Minister's position. The Prime Minister said that a letter had already been drafted and it would be delivered soon.

87. Immediately after this meeting, True Blue Development again sent the April 30, 2021 PKF letter to the Prime Minister's attention through his Press Secretary.

88. This third squeeze of the Project was confirmed in a meeting on May 5, 2021 with several members of the CBI Committee and Christopher De Allie, its Chairman, requested by True Blue Development to resolve the escrow and 2017 Approved Budget issues. The CBI Committee admitted that they had stopped making recommendations to the Cabinet for approval of CBI applications for the Project. At the time, 15 applications were ready for final recommendation but were halted by the CBI Committee. The CBI Committee refused to say when they made the decision to stop recommending approval of CBI applications for the Project.

89. For the first time and five months after the December 11, 2020 letter, CBI Committee members spoke to vague "discrepancies," all of which Mr. Newfield addressed during the meeting and in follow up written correspondence. At the May 5, 2021 meeting, Mr. De Allie proposed a temporary compromise on certain pending matters.

90. Mr. De Allie's proposal promptly fell through when he resigned as CBI Chairman within a week of the meeting, the second high-level resignation in less than three months.

K. Grenada Gives Pretextual Reasons for Squeezing the Project

91. In a letter to True Blue Development dated May 4, 2021 (but delivered after the May 5 meeting), the CBI Committee expressed their “alarm” regarding “varying financial anomalies,” identifying three items of concern.⁵² The May 5 meeting and this letter were the first time that the CBI Committee had made an attempt to explain any issues it had with Project expenditures.

- a. First, the CBI Committee complained about an approximately EC\$91 million (roughly US\$33.5 million) loan from True Blue Development to True Blue Services. The CBI Committee contended that True Blue Services “has no relationship with the CBI program in Grenada.”
- b. Second (and related to the first point), the CBI Committee stated that True Blue Development had listed only \$8.6 million in property, plant, and equipment as “non-current Assets,” which “suggests little or no development has taken place from the developers’ standpoint,” a position contrary to what their own eyes could tell them by simply looking at the Project.
- c. Third, the CBI Committee identified a US\$600,000 difference between the June 2020 declared value of Land and Building Acquisition (US\$6.1 million) versus the November 2020 value (US\$6.7 million).

92. Under any reasonable circumstances, the three so-called “anomalies” would not justify the fatal squeeze on Project finances, particularly when the state of construction shows such extensive progress and True Blue Development had a history of cooperation with the CBI Committee. True Blue Development replied in a letter dated May 10, 2021, which explained the three so-called “anomalies.”⁵³

⁵² See Exhibit C-021, Letter from the Deputy CEO of CBI Committee to True Blue dated May 4, 2021 (delivered May 5, 2021).

⁵³ See Exhibit C-022, Letter from True Blue Development to the CBI Committee dated May 10, 2021.

- a. On the role of True Blue Services, the letter states:

“True Blue Services Limited (“Services Co.”), a Grenada incorporated entity, is the company that (i) houses all construction related contracts and incur construction expenditure, and (ii) houses Project related contracts and Project expenditure including, salaries, legal fees, accounting fees, marketing costs, utilities, etc. (collectively, **“Expenditures”**)....This method of business practice is commonplace in real estate projects globally, *as it protects the property-owning company from undue liability during the construction and development phase.*

- b. On the issue of the amount spent on the Project to dates, the letter states:

To alleviate your concern about Development Co. funding Services Co. and the spend to date compared to the CBI proceeds, the Committee must read the two sets of financial statements dated April 30, 2020 in conjunction. *They show that an excess of XCD 124.8m (US\$45.2m) has been spent on the Project, . . .*

- c. On the issue of Land and Acquisition costs, the letter explained that the CBI Committee’s letter omitted various duties, taxes, property costs, severance payments, and legal fees identified in the June 2020 report, which accounted for the \$600,000 difference.

93. True Blue Development requested a response by May 19, 2021, but the CBI Committee did not respond.⁵⁴ The two later “discrepancies” quickly fell out of the discussion. Grenada’s assertion that True Blue Services has no relationship to the CBI program is inexplicable. For almost the entire length of the Project, True Blue Services had been submitting concession requests⁵⁵ to the Ministry of Finance for relief from import taxes and duties for materials imported for the Project and the Ministry has been approving them.⁵⁶ And PKF International referred to True Blue Services as one of the companies that was audited to ensure CBI funds were being

⁵⁴ See Exhibit C-022, Letter from True Blue Development dated May 10, 2021 at page 4.

⁵⁵ These concession requests were made pursuant to the Investment Agreement between True Blue Development Limited and Grenada. See C-003, Investment Agreement.

⁵⁶ A sampling of these requests and approvals from 2018 to 2021 are exhibited as C-045.

properly used.⁵⁷ Even a simple Google search would disclose True Blue Services role in the Project.⁵⁸ The so-called “discrepancies” were exposed as a pretext for an as yet undisclosed motive for destroying the Project.

94. On May 20, 2021, Mr. Newfield resigned his position as Grenada Ambassador-At-Large and Consul General to Florida because of the dispute relating to the Project. On May 21, 2021, Prime Minister Mitchell announced an investigation of the Project in a speech he delivered to Parliament.⁵⁹ That same day, Minister of Foreign Affairs Joseph also announced publicly an investigation into the Project. These statements undermined public confidence in the Project; CBI Agents and CBI Applicants began flooding True Blue Development with questions.

95. On May 25, 2021, after receiving no response from the CBI Committee, True Blue Development submitted a dispute resolution notice to the Ministry of Finance pursuant to the Investment Agreement. True Blue Development requested a meeting within 14 days in an attempt to resolve the dispute amicably.⁶⁰ The letter stated, in pertinent part:

The actions of the Cabinet and or the CBI Committee are causing irreparable harm to the Project. If they do not immediately resume processing of the Project’s CBI Applications and proceed in accordance with the Government-approved budget, the Project will likely fail and the monetary and other damages to True Blue Development Limited, CBI applicants and our investors caused by such failure will be substantial....

⁵⁷ See Exhibit C-047, Letter from PKF to the CEO of the CBI Unit dated April 16, 2019.

⁵⁸ See Exhibit C-049, Banko Design Portfolio Project Description – Kimpton Kawana Bay, *available at* <https://bankodesign.com/portfolio/kimpton-kawana-bay/> (last visited June 16, 2021); Exhibit C-050, True Blue Services Limited Supply Chain Intelligence and Sample Bill of Lading, *available at* <https://panjiva.com/True-Blue-Services-Ltd/73289356> (last visited June 16, 2021).

⁵⁹ The video is available here: <https://youtu.be/wJKXYuaDimY?t=6> (last visited June 14, 2021).

⁶⁰ See Exhibit C-023, Letter from True Blue Development to Grenada dated May 25, 2021.

96. The letter then highlighted the damage from the Government’s public statements, saying:

The harm to the Project has been further exacerbated by the recent press release issued by the Minister of Financial Affairs. In his public statements, he has baselessly impugned the financial integrity of the Project by vaguely referring to an “investigation” by an independent auditor and falsely suggesting that the Project may not have used CBI funds in accordance with statutory requirements. These inflammatory remarks will only further deter investors and CBI applicants and inflict more damage on the Project....

97. The letter concluded by describing the urgent risk to the Project:

We request that you give urgent consideration to our request for a meeting, as the Project’s viability is at serious risk. Without a prompt resolution of these matters, True Blue Development Limited and our U.S. investors will have no choice but to pursue our rights, including by instituting an arbitration under the Treaty Between the United States and Grenada Concerning the Reciprocal Encouragement and Protection of Investment (May 2, 1986).

98. In a letter dated May 28, 2021 (but not sent to True Blue Development until June 1), the CBI Committee noted its awareness of the Notice of Dispute and merely acknowledged the existence of True Blue Development’s May 10, 2021 reply letter without addressing the explanations.⁶¹ In a letter dated May 31, 2021, the Ministry of Finance acknowledged the Notice of Dispute and addressed generally the three sources of squeeze on Project finances.⁶²

- a. The letter noted that the CBI Committee had identified “several discrepancies in relation to the financial accounts, and the use of funds ascertained from applications.” The letter provided no further details but said it needed an audit “before considering the matter further.”
- b. The letter tied the withdrawal of the US\$99.28 million budget to “resolving the issue of ensuring that qualifying investment amounts from CBI applications are indeed being use for the intended purpose.”

⁶¹ See Exhibit C-024, Letter from the CBI Committee to True Blue Development dated May 28, 2021.

⁶² See Exhibit C-025, Letter from Ministry of Finance to True Blue Development dated May 31, 2021.

- c. The letter further explained that “[a]pplications for this project have been processed as recently as 6th April 2021, which means there has in fact been no unusual delay in processing” and stated “[w]e assure you that the CBI applications for the Project will continue to be processed.”

99. In a meeting on June 2, 2021, the Permanent Secretary for the Ministry of Finance (who was the newly appointed CBI Committee Chair), the Attorney General, and other CBI and government representatives discussed with Mr. Newfield and his colleagues the three issues facing the Project.

- a. True Blue Development proposed that the Government audit the Project with an independent auditor while development and construction continued, stating that halting funding and construction during the months needed for an audit would be one means of destroying the Project.
- b. The withdrawal of the 2017 Approved Budget of US\$99.28 million and the insistence on an escrow limited to “construction costs” would be a second fatal blow because the US\$52.5 million 2016 Approved Budget had been largely spent.
- c. While the Attorney General claimed CBI applications were being “processed,” the Government officials would not commit to when any CBI applications would receive Cabinet approval to allow the Project to access CBI funds.

100. Contrary to the assertion made by the Permanent Secretary/CBI Chair, no CBI application had been approved in over two months. More than fifty applications are pending with the CBI office, at least 15 of which are being held by the CBI Committee for over six weeks without action. By all indication, the number of files being withheld from final recommendation for approval would have likely doubled by the date of this Request for Arbitration. The CBI Act provides for a final decision on an application within 60 days of submission, yet 37 of the applications have been in process more than 100 days, of which 29 are over 120 days, and 7 are over 200 days.⁶³

⁶³ See Exhibit C-026, Letter from True Blue Development to the Ministry of Finance dated June 3, 2021.

101. True Blue Development told the government officials that the failure to resolve any one of these three issues would be fatal to the Project by cutting off the financing that True Blue Development had relied upon since applying for and gaining “Approved Project” status in 2016.

102. At the meeting, Grenada insisted that the negotiation of the escrow agreement should take priority. Mr. Newfield promised to give comments to the Government’s latest escrow proposal by close of business the next day. The Government promised at the meeting to provide True Blue Development with answers by Thursday, June 10, 2021 to the following questions:

- a. Whether CBI applicant funds can be used in accordance with the 2017 Approved Budget or will be limited to construction costs?
- b. Whether the US\$99.28 million Approved Budget would be immediately reinstated or a decision on the budget would be postponed until after an audit of the vague “discrepancies” the Government of Grenada has yet to identify?
- c. Whether and when the 15 files stated by the then Chairman of the CBI Committee to be halted would proceed to final decision and the status of the other applications of the (then) total 53 pending applications?

103. As promised at the meeting, True Blue Development provided the Permanent Secretary/CBI Chair a letter the next day with its comments to the proposed escrow agreement, objecting to the limitation of use of CBI funds to “construction costs.” The June 3, 2021 Letter also stated:

We appreciated the opportunity to meet yesterday with you, the Attorney General and the other representatives of the Government of Grenada and the Citizenship by Investment Programme to discuss issues that have arisen since the Government’s letter of December 11, 2020.

During our meeting, we identified the three outstanding issues each of which risk the viability of the Kimpton Kawana Bay Project (the “Project”)....

During our meeting, you expressed the view that Government of Grenada wants this Project to go forward and succeed, a sentiment with which we concur. However, the Project has been put at risk for the past six months by government action that we hope can be promptly resolved. As we explained to you, applicants and their agents are well aware of this dispute. We have received a flood of inquiries, and already some applicants have withdrawn. If we cannot resolve this dispute promptly, we expect a flood of withdrawals will come soon. The concerns of the CBI applicants have been fueled by government statements implying wrongdoing by the developer. These implications have no basis and, for the sake of the continued viability of the Project, we request that the CBI Committee issues a statement confirming that the Project is in good standing and that CBI applications submitted by purchasers in the Project are being processed in the normal course. A flood of withdrawals will be the death knell for the Project and an unfortunate, self-inflicted setback for the CBI Programme.⁶⁴

104. On June 9, 2021, Prime Minister Mitchell gave a press conference where he attempted to explain why the Grenadian Government was now refusing to fund the Project any further.⁶⁵ During this press conference, he stated that the Project “was now wanting—asking for \$99 million for the construction, and of course, we said that’s no, we can’t agree to this.” Prime Minister Mitchell failed to mention that this budget request was made originally in February 2017, was approved in May 2017, was reconfirmed in August 2020, and that the budget was only withdrawn in December 2020. Prime Minister Mitchell also claimed that the “we found that monies for the CBI instead of going directly to construction were loaned to a company,” meaning True Blue Services, “which in our view goes against the fundamental rules of the parliamentary decisions.” The Prime Minister’s speech thus confirmed that Grenada’s public pretext for the Project’s destruction while continuing to mask his true motive.

⁶⁴ See Exhibit C-026, Letter from True Blue Development to the Ministry of Finance dated June 3, 2021.

⁶⁵ See Exhibit C-027, video clip from Prime Minister Mitchell’s Press Conference of June 9, 2021.

105. On June 10, 2021, the Government of Grenada gave a vague and unhelpful response to True Blue Development's letter of June 3, 2021.⁶⁶ Its response failed to address the withdrawal of the 2017 Approved Budget of \$99.28 million—the same amount the Prime Minister stated would not be approved just the day before. Instead, the letter argued that there was no difference between “construction” and “development costs” even though the Grenadian Government, in its most recent draft escrow agreements for the use of CBI funds, had sought to limit the use of CBI funds to construction costs.⁶⁷ The letter also stated that the Government of Grenada was allegedly processing CBI applications, but ignored that approximately two-thirds of the applications had been pending review for more than statutorily-mandated sixty (60) day review period.

106. As a result of the Grenadian Government's actions, the Project has been losing its CBI Applicants. Some CBI Applicants are withdrawing their existing applications in various states of progress through the CBI Programme. Other prospective applicants are refusing to commit to the Project because of the Government's actions. Regardless, the Project has already been negatively impacted and has incurred damages, but it cannot move forward without the CBI Applicant funds and based on a US\$52 million budget limited to construction costs. The Grenadian Government's actions are thwarting the Project after nearly five years, and just as it approaches completion.

107. Through the triple squeeze of withdrawing the 2017 Approved Budget, limiting use of CBI funds to construction costs, and withholding approval of CBI Applicants, Grenada has cut off funding for the Kimpton Kawana Bay. The so-called “discrepancies” and “anomalies” were readily explained and could be definitely resolved by reasonable people with an independent audit

⁶⁶ See Exhibit C-028, Letter from the Ministry of Finance to True Blue Development dated June 10, 2021.

⁶⁷ See Exhibit C-026, Letter from True Blue Development to the Ministry of Finance dated June 3, 2021.

that True Blue Development has proposed. Grenada's unlawful actions have inflicted damage on the True Blue Group, its U.S. investors, CBI Applicants, and the Grenadian economy. The Government has not been candid about its motive for the senseless destruction of a five-star resort Project that could continue to bring substantial benefits to the Grenadian economy. The Grenada Government has much it cannot explain.

IV. JURISDICTION UNDER THE TREATY AND ICSID CONVENTION

A. Jurisdiction Under the Treaty

108. Article VI of the Treaty provides for the resolution of investor-State disputes through international arbitration as follows:

1. For purposes of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Party and a national or company of the other Party; (b) the interpretation or application of any investment authorization granted by a Party's foreign investment authority to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

2. In the event of an investment dispute between a Party and a national or company of the other Party, the parties to the dispute shall initially seek to resolve the dispute by consultation and negotiation, which may include the use of non-binding, third-party procedures. If the dispute cannot be resolved through consultation and negotiation, the dispute shall be submitted for settlement in accordance with previously agreed, applicable dispute-settlement procedures. Any dispute-settlement procedures regarding expropriation and specified in the investment agreement shall remain binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws, and applicable international agreements regarding enforcement of arbitral awards.

3.(a) The national or company concerned may choose to consent in writing to the submission of the dispute to the International Centre for the Settlement of Investment Disputes ("Centre") or under the rules of the Additional Facility of the Centre ("Additional Facility"), for settlement by conciliation or binding arbitration, at any time after six months from the date upon which the dispute arose. Once the national or company concerned has so consented, either party to the dispute may institute proceedings before the Centre or the Additional Facility provided:

(i) the dispute has not been submitted by the national or company for resolution in accordance with any applicable previously agreed dispute settlement procedures; and

(ii) *the national or company concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Party that is a party to the dispute.*⁶⁸

109. As detailed below, all of the conditions for submission of the current dispute to binding arbitration are met.

i. “Presence of an “Investment Dispute”

110. The first condition for the submission of a dispute to arbitration under the Treaty is the existence of an “investment dispute.” Article VI(1) defines the term “investment dispute” to include *inter alia* “an alleged breach of any right conferred or created by this Treaty with respect to an investment.”⁶⁹ Claimants have an “investment dispute” with Grenada as outlined below in Section V for breaches of Articles II(2), II(1), and III(1) of the Treaty.

111. First, Claimants made an “investment” within the meaning of the Treaty. Under the Treaty, an “investment” is defined to include the following:

(b) “investment” means every kind of investment in the territory of one Party owned or controlled, directly or indirectly by nationals of companies of the other Party, such as equity, debt, and service and investment contracts; and includes:

(i) tangible and intangible property, including rights, such as mortgages, liens and pledges;

(ii) a company or shares of stock or other interests in a company or interests in the assets thereof;

(iii) a claim to money or a claim to performance having economic value, and associated with an investment;

(iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how, goodwill; and

⁶⁸ See Exhibit C-001, US-Grenada BIT at Article VI.

⁶⁹ See Exhibit C-001, US-Grenada BIT at Article VI ¶ 1.

*(v) any right conferred by law or contract, and any licenses and permits pursuant to law.*⁷⁰

112. The Project qualifies as an “investment” as it is defined in the Treaty. Claimants’ investment includes but is not limited to: (i) the development of the Project; (ii) True Blue Development; (iii) the Project property on which the Kimpton Kawana Bay was being built; (iv) the Investment Agreement, the Restated Transaction Agreement, and any permits, licenses, and similar approvals granted to develop the Project; and (v) the shares owned by Polar Palms and Circle Park Holdings in Grenco (which is the holding company for the True Blue Group).

113. Secondly, as detailed below in Section V, Claimants have alleged several breaches of their rights under the Treaty, including without limitation Grenada’s breaches of its obligations in Articles II and III of the Treaty. Therefore, this dispute arises out of Grenada’s alleged breaches of its obligation under the Treaty with respect to Claimants’ investment, and Claimants are entitled to pursue their claims in an arbitration under the Treaty.

114. Third and pursuant to Article VI(3)(a) of the Treaty, Claimants have not brought this dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of Grenada. In addition, Claimants have not submitted for resolution the dispute in accordance with any applicable previously agreed dispute settlement procedures. Company resolutions confirming Claimants’ compliance with Article VI(3)(a) of the Treaty are exhibited as C-036 – C-041.

⁷⁰ See Exhibit C-001, US-Grenada BIT at ¶ 1(b) (emphasis added).

ii. Grenada is a Party to the Treaty

115. The Treaty was done at Washington on May 2, 1986, and entered into force on March 3, 1989 pursuant to the exchange of ratifications by all Parties in accordance with Article XII.⁷¹ Article XII further provides for the Treaty to remain in force for a period of ten years, and to continue to remain in force unless terminated in accordance with the provisions of the Treaty. The Treaty has never been terminated by either Party, and thus it continues to remain in force and is binding upon Grenada.

iii. Claimants are a “Company of the other Party” to the Treaty

116. Paragraph 1(a) of the Treaty defines a “company of a Party” in relevant part as “any kind of corporation, company, association, or other organization, legally constituted under the laws and regulations of a Party...whether or not organized for pecuniary gain, or privately or governmentally owned.”⁷² Further, Article VI of the Treaty provides:

*For the purposes of this Article, any company legally constituted under the applicable laws and regulations of either Party or a political subdivision thereof but that, immediately before the occurrence of the event giving rise to the dispute, was an investment of nationals or companies of the other Party, shall, in accordance with Article 25(2)(b) of the Convention, be treated as a national or company of such other Party.*⁷³

117. Claimants True Blue Development, True Blue Services, and True Blue Management are wholly owned by Grenco, which is majority owned and controlled by Claimants Polar Palms and Circle Park.

⁷¹ See Exhibit C-001, US-Grenada BIT.

⁷² See Exhibit C-001, US-Grenada BIT at ¶ 1(a).

⁷³ See Exhibit C-001, US-Grenada BIT at Article VI, ¶ 5 (emphasis added). Article 25(2)(b) of the ICSID Convention provides: “(b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.”

118. Both Claimant Polar Palms and Claimant Circle Park are U.S. limited liability companies.

119. Therefore, Claimants qualify as companies of the United States, the other contracting Party to the Treaty.

iv. Claimants and Grenada Have Consented to Arbitration of this Dispute

120. Both Claimants and Grenada have expressed their consent in writing to submit this dispute to arbitration.

121. Grenada expressed its consent to arbitrate in the Treaty itself. Article VI of the Treaty provides in relevant part as follows: “b) Each Party [i.e., Grenada and the United States] hereby consents to the submission of an investment dispute to the Centre for settlement by conciliation or binding arbitration, or, in the event the Centre is not available, to the submission of the dispute to ad hoc arbitration in accordance with the rules and procedures of the Centre.”⁷⁴

122. Claimants have consented to arbitration and have taken all necessary internal actions to authorize this Request for Arbitration. Company resolutions confirming it has done so are exhibited as C-036 – C-041.

123. Pursuant to Article VI(3)(a) of the Treaty, Claimants have not brought this dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of Grenada. In addition, Claimants have not submitted for resolution the dispute in accordance with any applicable previously agreed dispute settlement procedures. Claimants have also expressed their written consent to arbitrate through the filing of this Request and their choice of ICSID

⁷⁴ See Exhibit C-001, US-Grenada BIT at Article VI, ¶ 3(b).

arbitration pursuant to Article VI(3)(a) of the Treaty. Company resolutions confirming these statements are exhibited as C-036 – C-041.

v. More Than Six Months Have Elapsed Since the Dispute Arose

124. This dispute arose no later than December 11, 2020 (if not earlier), when the CBI Committee sent a letter to True Blue Development withdrawing approval for Project's budget. After doing so, Claimant True Blue Development actively pursued an amicable resolution of the dispute with Grenada, including exchanging correspondence and engaging in a meeting (in-person and video) on May 5, 2021. Grenada, however, has refused to remediate its breaches of the Treaty.

125. On June 2, 2021, representatives of Claimants held another meeting with representatives of Grenada to discuss an amicable resolution of Claimants' claims, but the parties were unable to settle their dispute.

126. Claimants are thus entitled to file this Request for Arbitration to hold Grenada responsible for its breaches of the Treaty and seek the relief that is their due.

B. ICSID Jurisdiction

127. Under Article 25 of the ICSID Convention, an investor-State dispute may be submitted to ICSID jurisdiction when the following five elements are met: (a) the dispute in question is a legal dispute, (b) the dispute arises directly out of an investment, (c) the State party is a Contracting State to the ICSID Convention, (d) the other party is a national or company of another Contracting State, and (e) the parties have consented to ICSID jurisdiction. These conditions are met in this case.

i. Claimants and Grenada Have a Legal Dispute

128. The matters at issue are "legal disputes" within the meaning of Article 25(1) of the ICSID Convention, as they concern Grenada's violations of Claimants' legal rights under the Treaty and international law.

ii. The Dispute Arises Directly Out of Claimants' Investment

129. The definition of “investment” contained in the Treaty has been met here.⁷⁵ This fact in and of itself should establish a finding of “investment” for purposes of Article 25 of the Convention.

130. The facts show that Claimants made a substantial investment into the development of the Project over a period of several years. This investment includes: (1) the exploration and purchase of the property, which then changed in scope from a redevelopment project to a complete revamp and restructuring of the master site plan; (2) the expansion of the Grenada economy through the CBI Programme, which was put into place to reward those who invest in Grenada; and (3) the Project itself, which was designed to be one of the world’s leading hotels and was to provide significant and lasting benefits to Grenada and the Grenadian economy (such as further opportunities for local employment and other local service providers and suppliers at the Project). These and other investments detailed above in Section V(A) are all the hallmarks of a foreign investment which the ICSID Convention was intended to cover and further merit the treatment of Claimants’ investment as a qualified “investment” within the meaning of Article 25 of the ICSID Convention.

⁷⁵ See, e.g., *supra* ¶¶ 111-112.

iii. Grenada is a Contracting State to the ICSID Convention

131. Article 25(1) of the Convention provides that the jurisdiction of the Centre shall extend to any legal dispute arising “between a Contracting State...and a national of another Contracting State.”⁷⁶ Grenada signed the ICSID Convention on May 24, 1991 and deposited its instrument of ratification on May 24, 1991. The ICSID Convention entered into force for Grenada on June 23, 1991. Thus, Grenada is a Contracting State to the ICSID Convention.

iv. Claimants are Nationals of Another Contracting State

132. Article 25(2)(b) of the ICSID Convention defines the term “national of another Contracting State” to include “any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.”⁷⁷

133. The United States is a Contracting Party to the ICSID Convention. The United States signed the ICSID Convention on August 27, 1965 and deposited its ratification on June 10, 1966. The ICSID Convention entered into force for the United States on October 14, 1966.

134. Claimants True Blue Development, True Blue Services, and True Blue Management are Grenadian companies that are controlled by Claimants Polar Palms and Circle Park Holdings, which are companies incorporated under the laws of the State of Minnesota and State of California, United States of America, respectively. Article VI(3) of the Treaty provides that “[f]or the purposes of this Article, any company legally constituted under the applicable laws and regulations of either Party or a political subdivision thereof but that, immediately before the

⁷⁶ See ICSID Convention at Article 25.

⁷⁷ See ICSID Convention at Article 25.

occurrence of the event giving rise to the dispute, was an investment of nationals or companies of the other Party, shall, in accordance with Article 25(2)(b) of the [ICSID] Convention, be treated as a national or company of such other Party.” Similar clauses in other treaties have been found previously sufficient to support the exercise of jurisdiction under Article 25(2)(b).⁷⁸ Therefore, the Treaty itself provides that Article 25(2)(b) of the ICSID Convention is satisfied here.

135. Claimants True Blue Development, True Blue Services, and True Blue Management were thus considered an investment of nationals or companies of the United States immediately before (if not earlier) than the events giving rise to this dispute. Claimants True Blue Development, True Blue Services, and True Blue Management are thus nationals of the United States within the meaning of Article 25(2)(b). Consequently, True Blue Development, True Blue Services, and True Blue Management are “national[s]” of the United States and “national[s] of another Contracting State” within the meaning of Article 25 of the ICSID Convention.

v. Claimants and Grenada Have Both Consented to ICSID Jurisdiction

136. Finally, both Claimants and Grenada have expressed their consent to ICSID jurisdiction. Pursuant to company resolutions exhibited at C-036 – C-041, Claimants have consented to binding arbitration under the ICSID Convention. As noted above, Grenada and the United States expressed their consent to arbitrate in the Treaty itself, and Grenada and the United States are both Contracting States to the ICSID Convention.⁷⁹

⁷⁸ *Wena Hotels Limited v. Arab Republic of Egypt* (ICSID Case No. ARB/98/4), Summary Minutes of the Session of the Tribunal held in Paris on May 25, 1999 [Decision on Jurisdiction] ¶¶ 38-52; *Pan American Energy LLC and BP Argentina Exploration Company v. Argentine Republic and BP America Production Company, Pan American Sur SRL, Pan American Fueguina, SRL and Pan American Continental SRL v. Argentine Republic* (ICSID Case Nos. ARB/03/13 & ARB/04/8), Decision on Preliminary Objections ¶ 213 (finding that Argentina-U.S. BIT, which included provision in Article VII(8) identical to Article VI(3) here, met the requires of Article 25(2)(b) of the ICSID Convention).

⁷⁹ Article VI of the Treaty provides in relevant part as follows: “b) Each Party hereby consents to the submission of an investment dispute to the Centre for settlement by conciliation or binding arbitration, or,

V. CLAIMS AGAINST GRENADA

137. Based upon the facts stated above, Grenada breached several of its obligations to Claimants under the Treaty. Claimants also set forth their claims for damages resulting from these breaches. All of the claims are summarized below and are asserted without prejudice to further claims which may be developed at a later stage of these proceedings.

A. Grenada Violated Article II(2) of the Treaty

138. Article II(2) of the Treaty provides:

*Investments shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. Each Party shall observe any obligation it may have entered into with regard to investments.*⁸⁰

Grenada has, in several respects, failed to ensure that Claimants' investments were treated in accordance with this provision.⁸¹

139. Tribunals often describe the fair and equitable treatment standard as encompassing a basket of investor protections that can be classified in the following subgroupings of standards, including: (i) whether the host State breached the investor's reasonable and legitimate expectations when the investments were made; (ii) whether the State failed to provide a stable and predictable legal and business framework; (iii) whether the State acted arbitrarily or unreasonably; (iv) whether the disputed measures were disproportionate; (v) whether the State's conduct was discriminatory; (vi) whether the State's conduct was transparent; and (vii) whether the State acted in good faith.

in the event the Center is not available, to the submission of the dispute to ad hoc arbitration in accordance with the rules and procedures of the Center."

⁸⁰ See Exhibit C-001 at Article II, ¶ 2.

⁸¹ See also *infra* ¶ 149 (detailing fair and equitable treatment provision in Grenada-United Kingdom treaty).

140. In addition, this provision of the Treaty mentions specifically that arbitrary and discriminatory measures are prohibited.

141. The provision of the Treaty also includes an umbrella clause that makes obligations between the parties actionable under the Treaty. As explained further above, the Government of Grenada entered into multiple obligations with Claimant True Blue Development that were not honored, including (but not limited to): (1) unreasonably withholding approval to substantial and material changes to the Project, such as changes to the budget; (2) withholding prompt information regarding the Project requested by True Blue Development and failing to approve or reject promptly CBI applications submitted by investors relating to the Project; and (3) provide services, whether directly through the Government of Grenada or indirectly through the GIDC, to help establish the Project.

142. As detailed above, the CBI Committee approved the Project with a budget totaling US\$99,280,000. Thereafter, the Project commenced and development has been ongoing for years. Grenada, however, arbitrarily withdrew the Project's Approved Budget on December 11, 2020 and thus starved the Project of CBI funds.

143. The Project was paid for using escrow accounts, funds from which the Project could draw down for all of its development expenses. But after the Project commenced and development was ongoing for years, Grenada arbitrarily restricted use of the escrow funds to a narrow category of construction costs. These actions started in 2019 and continued to 2020, when the Government of Grenada had draft escrow agreements restricting the use of funds for the Project. In March 2021, the CBI Committee sought to further its use of the escrow requirement to squeeze on Project finances. The CBI Committee proposed an escrow requirement limiting funds to just construction costs.

144. The CBI Committee, while continuing to accept applications and application fees, has suspended full consideration of applications submitted by CBI Applicants who have or will invest in the Project. Doing so starves the Project of funds it needs to complete the development.

145. These actions, individually and/or collectively, are in violation of Article II(2) of the Treaty.

B. Grenada Violated Article II(1) Of The Treaty

146. Article II(1) of the Treaty contains a promise by Grenada to accord to investors such as Claimants treatment which is no less favorable than that accorded by the Government to Grenadian nationals or other investors of third States. This obligation provides:

Each Party shall permit and treat investment, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investment or associated activities of its own nationals or companies, or of nationals or companies of any third country, whichever is the most favorable, subject to the right of each Party to make or maintain exceptions falling within one of the sectors or matters listed in the Annex to this Treaty. Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of all such laws and regulations of which it is aware concerning the sectors or matters listed in the Annex. Moreover, each Party agrees to notify the other of any future exception with respect to the sectors or matters listed in the Annex, and to limit such exceptions to a minimum. Any future exception by either Party shall not apply to investment existing in that sector or matter at the time the exception becomes effective. The treatment accorded pursuant to any exceptions shall not be less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country, except with respect to ownership of real property. Rights to engage in mining on the public domain shall be dependent on reciprocity.⁸²

147. The Government has taken actions against the Project. These actions include: (1) withdrawing approval of the existing 2017 Approved Budget; (2) restricting escrow funds to a narrow class of construction costs; and (3) suspending full consideration of applications submitted by CBI Applicants who have or will invest in the Project.

⁸² See Exhibit C-001 at Article II, ¶ 1.

148. Other investors in like situations, whether foreign or domestic, have been given more favorable treatment than Claimants. For example, Grenada has eighteen approved development projects. Grenada continues to administer fully the CBI applications of other development projects, some of which have not entered into escrow agreements that limit CBI funding to hard construction costs.

149. Claimants are entitled to the best treatment given to any other investor, which Grenada is not providing to Claimants. Therefore, Grenada has breached its obligations under Article II(1) of the Treaty.

150. In addition to these rights, Claimants are entitled to the best treatment offered to any other investor under Grenada's other investment treaty, its 1988 treaty with the United Kingdom (otherwise known as the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Grenada for the Promotion and Protection of Investments, entered into force on February 25, 1988). For example, that treaty provides that "[i]nvestments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party." Claimants are entitled to protection under this treaty to the extent it provides additional protections against Grenada's actions (as discussed elsewhere in this Request for Arbitration including, but not limited to, *supra* ¶¶ 137-144).

C. Grenada Violated Article III(1) of the Treaty

151. Article III(1) of the Treaty provides:

*1. Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II (2). Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known; include interest at a commercially reasonable rate from the date of expropriation; be paid without delay; be fully realizable; and be freely transferable at the prevailing market rate of exchange on the date of expropriation.*⁸³

152. Grenada has violated this provision in many ways, including, but not limited to the following: (1) withdrawing approval of the existing Project budget; (2) restricting escrow funds to a narrow class of construction costs; and (3) suspending full consideration of applications submitted by CBI Applicants who have or will invest in the Project.

153. Grenada has not satisfied the requirements in Article III(1) for a lawful expropriation.

154. Article VI(2) of the Treaty provides that "[a]ny dispute-settlement procedures regarding expropriation and specified in the investment agreement shall remain binding and shall be enforceable in accordance with the terms of the investment agreement, relevant provisions of domestic laws, and applicable international agreements regarding enforcement of arbitral awards." No such dispute-settlement procedures regarding expropriation are specified in the Investment Agreement, Restated Transaction Agreement, or any other agreement between Claimants and Grenada.

⁸³ See Exhibit C-001, US-Grenada BIT at Article III, ¶¶ 1-2.

155. Through these actions, Grenada has indirectly but effectively expropriated Claimants' investment in violation of Article III(1) of the Treaty.

VI. TERMS OF THE ARBITRATION AGREEMENT

A. Number of Arbitrations and Method of Appointment

156. Article VII of the Treaty specifies that the tribunal shall consist of three arbitrators, with one appointed by Claimant, one appointed by Respondent, and that the two arbitrators shall select a third arbitrator as Chairman, who is a National of a third State. Each Party shall appoint an arbitrator within two months of receipt of the request for arbitration.

B. Place of Arbitration

157. Pursuant to Article 62 of the ICSID Convention, Claimant desires that the arbitration proceedings be held in Washington, D.C.

C. Language

158. Pursuant to Rule 22(1) of the ICSID Rules of Procedure for Arbitration Proceedings, Claimants select English as the procedural language for the arbitration.

VII. REQUEST FOR RELIEF

159. On the basis of the foregoing, Claimants respectfully request an award from the Tribunal containing the following relief:

- a. To declare a violation of the Treaty, including Article II(2), Article II(1), and Article III(1);
- b. An award of damages in an amount to be proven in these proceedings in compensation, including for the direct losses, lost profits, repayments to CBI Applicants, and consequential damages caused by Grenada's violations of the Treaty;
- c. Entry of a declaratory judgment that the agreements with Grenada are terminated and, with it, all of Claimants' obligations and duties owed thereunder;

- d. Allocation and award to Claimants of their full costs associated with these proceedings, including all professional fees and disbursements, as well as the fees and expenses of the Tribunal and ICSID arbitration costs;
- e. Award to Claimants of pre- and post-award interest at a rate to be fixed by the Tribunal; and
- f. Such further relief as counsel may advise or the Tribunal may deem just and appropriate.

June 17, 2021

Respectfully submitted,



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Attached: Exhibit List