

INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES

HONDURAS PRÓSPERA INC.
ST. JOHN'S BAY DEVELOPMENT COMPANY LLC
PRÓSPERA ARBITRATION CENTER LLC

Claimants

v.

THE REPUBLIC OF HONDURAS

Respondent

ICSID Case No. ARB/22/ ____

REQUEST FOR ARBITRATION

December 19, 2022

WHITE & CASE
Counsel for Claimants

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1. Honduras Próspera Inc. (“**Honduras Próspera**”) and its affiliates St. John’s Bay Development Company LLC (“**SJBDC**”) and Próspera Arbitration Center LLC (“**PAC**” and, jointly with Honduras Próspera and SJBDC, the “**Próspera Group**” or “**Claimants**”), each an enterprise of the United States of America, hereby request arbitration of an investment dispute with the Republic of Honduras (“**Honduras**” or “**Respondent**”) under the Dominican Republic-Central America-United States Free Trade Agreement (“**CAFTA-DR**”)¹ and the Agreement for Legal Stability and Investor Protection between Honduras Próspera and Honduras (the “**LSA**”).²
2. Claimants respectfully request that the Secretary-General of ICSID register this Request for Arbitration in accordance with Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the “**ICSID Convention**”) and Rules 1, 2, and 6(1) of the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (the “**Institution Rules**”). As required by Rule 2(1)(f) of the ICSID Institution Rules, Claimants have taken all necessary internal actions to authorize this Request for Arbitration.³

I. INTRODUCTION

3. This investment dispute arises from Honduras’s failure to honor its guarantees of legal stability.
4. Claimants believe that great prosperity is achievable and economic opportunities can flourish, including in developing countries, when individuals have the freedom to build

¹ See Dominican Republic-Central America-United States Free Trade Agreement, entered into on 5 Aug. 2004 (CL-2). The CAFTA-DR entered into force with respect to Honduras on 1 Apr. 2006. See Office of the United States Trade Representative, Executive Office of the President, Free Trade Agreements, Central American/Dominican Republic FTA (CAFTA/DR), <https://ustr.gov/issue-areas/industry-manufacturing/industrial-tariffs/free-trade-agreements#:~:text=The%20Dominican%20Republic%20Central%20America,2006%2C%20between%20the%20United%20States> (Ex. C-86).

² See Agreement for Legal Stability and Investor Protection entered into by and between Honduras Próspera and the Republic of Honduras, effective on 9 Mar. 2021 (CL-6), as amended on 18 Nov. 2021 (CL-7).

³ See Honduras Próspera’s Internal Authorization to Commence Arbitration, dated 15 Dec. 2022 (Ex. C-77); SJBDC’s Internal Authorization to Commence Arbitration, dated 15 Dec. 2022 (Ex. C-78); PAC’s Internal Authorization to Commence Arbitration, dated 15 Dec. 2022 (Ex. C-79).

and a stable government partner. The Próspera Group is comprised of entrepreneurs who invested in Honduras because they saw an opportunity to create an economic launchpad for growth and development in the country using an innovative form of special economic zone instituted by Honduras: the Employment and Economic Development Zones (“ZEDE”).

5. Honduras put in place a legal framework for the ZEDEs in 2013. ZEDEs are semi-autonomous zones authorized to establish their own policy and regulations while remaining subject to the Constitution of Honduras and the national government in matters relating to sovereignty, among other things. The legal framework for the ZEDEs was expressly enshrined in the Constitution of Honduras (the “**ZEDE Constitutional Provisions**”) as well as the Organic Law of the Economic Development and Employment Zones (the “**ZEDE Law**” or “**ZEDE Organic Law**” and, together with the ZEDE Constitutional Provisions, the “**ZEDE Legal Framework**”).⁴ Critically, Honduras guaranteed the legal stability of the ZEDE Legal Framework for fifty (50) years.
6. Honduras actively promoted the ZEDEs to attract foreign investment. At Honduras’s invitation, the Próspera Group partnered with Honduras to create ZEDE hubs on Roatán, the main island of the Bay Islands located north of Honduras, and in nearby La Ceiba, located on the north shore of Honduras in the Atlántida Department (“**Próspera ZEDE**”). The Próspera Group’s vision was (and remains) to make Próspera ZEDE a transformative platform that provides entrepreneurs with the resources and flexibility to prosper, including physical infrastructure, a legal structure including common law and familiar and flexible regulations, a bill of rights protecting people of all income levels, low taxation, and protections for the environment, all in accordance with international best practices and the ZEDE Legal Framework.
7. The Próspera Group has made significant investments and worked to make Próspera ZEDE a success for years. Thanks to these efforts, the Próspera Group succeeded in raising money for Próspera ZEDE even as the world was struck by the COVID-19 pandemic and

⁴ See ZEDE Constitutional Provisions, approved on 23 Jan. 2013 and ratified on 30 Jan. 2013. See Decree No. 236-2012, published on 24 Jan. 2013 (Ex. C-2); Decree No. 9-2013, published on 20 Mar. 2013 (Ex. C-3).

the global economy struggled to recover. Today, Próspera ZEDE has generated hundreds of construction, maintenance, and knowledge economy jobs, and construction is underway on affordable mixed-use tower buildings, remote work offices, and a light robotic manufacturing building, as well as the renovation of a luxury resort. The Próspera Group was on track to invest over half a billion US dollars in Honduras by 2025.

8. The year 2022, however, saw a new government come to power in Honduras and adopt a nakedly hostile attitude towards foreign investment in general and the ZEDEs in particular. Amidst a climate of political violence and chaos, the ZEDEs were branded criminal, investors in the ZEDE were threatened, and, following a carnivalesque session of the National Congress replete with singing, raised fists, jingoism and vitriol, Honduras repealed the ZEDE Legal Framework in April 2022.
9. In light of Honduras's guarantees of legal stability, the ZEDE Legal Framework remains in effect as to Próspera ZEDE notwithstanding its repeal. This was the legal obligation that Honduras freely assumed and on which the Próspera Group relied in making their investments. But neither the decree repealing the ZEDE Law nor the decree taking the first step toward repealing the ZEDE Constitutional Provisions (which, under Honduran constitutional law, must be confirmed in a second congressional session) address the fate of existing ZEDEs or Honduras's guarantees of fifty years legal stability for those who have already invested in ZEDEs. To the contrary, language in the preambles to both legal instruments signals an intent to abolish the existing ZEDEs and all investments therein, although this is unclear and not stated in the operative provisions of the decrees.
10. Faced with this lack of clarity as to whether Honduras would honor its legal stability guarantees toward existing investments in ZEDEs, the Próspera Group reiterated its commitment to the successful development of Próspera ZEDE and sought to obtain confirmation of its rights from Honduras. Honduras has failed to respond to the Próspera Group's requests and acknowledge its obligation to maintain the ZEDE Legal Framework in effect as to Próspera ZEDE. Instead, Honduran officials have made threatening statements and taken contradictory and investment-chilling positions. Notably, Honduras's Minister of Economy, who has professed to represent Honduras in this matter,

was simply unable to confirm the legal status of Próspera ZEDE in a meeting with Claimants' counsel. Honduras also has been interfering with the Próspera Group's operations.

11. Respondent's acts and omissions are in breach of its obligations under the CAFTA-DR, including, without limitation, Articles 10.4 (Most Favored Nation), 10.5 (Minimum Standard of Treatment), 10.7 (Expropriation), and 10.8 (Transfers). In addition, Respondent's apparent failure to maintain the ZEDE Legal Framework in effect as to Próspera ZEDE constitutes a breach of the Charter of Próspera ZEDE (an investment authorization as defined in the CAFTA-DR) and the LSA (an agreement between Honduras Próspera and Honduras and an investment agreement as defined in the CAFTA-DR). Claimants are entitled to compensation for the full value of their losses. Honduras's conduct has already resulted in significant harm to Claimants, including the loss of economic opportunity, as well as negative impacts on financing, operations and reputation. According to the valuation of an expert firm experienced in the quantification of damages in investment treaty arbitrations, if Honduras persists in its refusal to honor its legal stability guarantees and the remainder of Claimants' investment is destroyed, the total losses to the Próspera Group's investment over the course of the remaining period of the guaranteed legal stability will be at least several billion US dollars, and as high as US\$ 10.775 billion.
12. Claimants have made repeated and sustained efforts to avoid the necessity of filing this Request for Arbitration, including repeated proposals for constructive dialogue and ICSID mediation in an effort to find an amicable solution. Respondent refused and now it faces the risk of multi-billion dollar liability, which it could have avoided by simply respecting its 50 year legal stability guarantee. Indeed, Respondent can still mitigate liability: notwithstanding this Request for Arbitration, Claimants remain willing to seek an amicable solution. Provided that there are the necessary assurances, the Próspera Group remains willing to work with Honduras to continue their project of creating hubs of exponential growth and development, and attract world-class institutions and businesses to invest and start-up ventures to grow organically in Honduras with private capital that would otherwise be unavailable.

13. Alternatively, if no amicable solution is possible, Respondent has already consented to the use of international arbitration to resolve disputes such as these. The world will now be watching to see whether Respondent will respect its dispute resolution obligations or whether, having reneged on its legal stability obligations, Honduras will prove itself to be a rogue nation.

II. PARTIES TO THE ARBITRATION

A. CLAIMANTS

14. Claimant Honduras Próspera Inc. (f/k/a Honduras Próspera LLC and Sociedad para el Desarrollo Socioeconómico de Honduras, LLC) is a corporation constituted under the laws of the State of Delaware (“**Honduras Próspera**”). Honduras Próspera’s address in the United States is PMB 1093, 4301 50th Street NW, Suite 300, Washington DC 20016.
15. Claimant St. John’s Bay Development Company LLC (f/k/a Próspera Land SPV 1 LLC) is a limited liability company organized under the laws of the State of Delaware (“**SJBDC**”). SJBDC’s address in the United States is PMB 1154, 4301 50th Street NW, Suite 300, Washington DC 20016.
16. Claimant Próspera Arbitration Center LLC is a limited liability company organized under the laws of Texas (“**PAC**”). PAC’s address in the United States is 1999 Bryan St. Suite 900, Dallas, TX, USA 75201-3136.
17. As required by Rule 2(1)(f) of the Institution Rules, Claimants have taken all necessary internal action to authorize the commencement of this arbitration.⁵
18. Claimants are represented in this matter by White & Case LLP.⁶ Correspondence to Claimants should be addressed to:

⁵ See Honduras Próspera’s Internal Authorization to Commence Arbitration, dated 15 Dec. 2022 (Ex. C-77); SJBDC’s Internal Authorization to Commence Arbitration, dated 15 Dec. 2022 (Ex. C-78); PAC’s Internal Authorization to Commence Arbitration, dated 15 Dec. 2022 (Ex. C-79).

⁶ See Honduras Próspera’s Power of Attorney to White & Case LLP, dated 16 Dec. 2022 (Ex. C-82); SJBDC’s Power of Attorney to White & Case LLP, dated 15 Dec. 2022 (Ex. C-80); PAC’s Power of Attorney to White & Case LLP, dated 15 Dec. 2022 (Ex. C-81).

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B. RESPONDENT

19. The Respondent in this arbitration is the Republic of Honduras, a sovereign State.
20. Annex 10-G to Chapter 10 of the CAFTA-DR provides that notices and other documents in disputes under Section B of Chapter 10 shall be served on Honduras by delivery to the following address:

Dirección General de Integración Económica y Política Comercial
Secretaría de Estado en los Despachos de Industria y Comercio
Boulevard José Cecilio del Valle
Edificio San José, antiguo edificio de Fenaduanah Tegucigalpa, Honduras

21. Since the entry into force of the CAFTA-DR, the General Directorate of Economic Integration and Trade Policy [*Dirección General de Integración Económica y Política Comercial*] has become part of the Ministry of Economy [*Secretaría de Desarrollo Económico*] and currently uses the following address:⁷

Dirección General de Integración Económica y Política Comercial
Secretaría de Estado en el Despacho de Desarrollo Económico
Centro Cívico Gubernamental
Torre 1, Piso 9
Boulevard Juan Pablo II
Tegucigalpa, Honduras
Tel.: +504 2242 8363
karla.perez@sde.gob.hn

22. Following Claimants' delivery of their notice of their intention to submit their claims to arbitration under Article 10.16(2) of the CAFTA-DR (“**Notice of Intent**”) to Honduras, Honduras's Minister of Economy, Mr. Pedro José Barquero Tercero, has stated to Claimants that he and the Attorney General of Honduras, Mr. Nelson Gerardo Molina Flores, are the representatives of the Republic of Honduras in connection with this dispute and requested that Claimants' counsel send communications accordingly. The addresses for Messrs. Barquero and Molina are as follows:

Secretaría de Estado en el Despacho de Desarrollo Económico
Centro Cívico Gubernamental
Torre 1, Pisos 8 y 9
Boulevard Juan Pablo II
Tegucigalpa, Honduras
Tel.: +504 2242 8342
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⁷ See Website of the General Directorate of Economic Integration and Trade Policy, <https://sde.gob.hn/integracion-economica-y-politica-comercial/> (Ex. C-87).

III. FACTUAL BACKGROUND

A. HONDURAS ESTABLISHES THE ZEDE LEGAL FRAMEWORK IN 2013 TO ATTRACT FOREIGN INVESTMENT AND GUARANTEES ITS LEGAL STABILITY FOR 50 YEARS

23. For years, Honduras has been plagued by poverty, political instability, insecurity, rampant violence, and corruption. It is one of the poorest and least developed countries in the Americas, with a Gross Domestic Product per capita lower than every country in the region except Nicaragua and Haiti.⁸ The 2022 edition of the Heritage Foundation’s Index of Economic Freedom reports that Honduras has “one of the world’s highest homicide rates,” and that “[g]angs and transnational criminal networks prey on communities, often in collusion with authorities.”⁹ The 2021 edition of Transparency International’s Corruption Perceptions Index—the most widely used ranking of public sector corruption in the world—gives Honduras a score of 23/100, ranking it the 157th worst country in the world (above only Haiti, Nicaragua, and Venezuela in the Western Hemisphere).¹⁰ This is a longstanding problem: a decade ago, Honduras was ranked 133rd in the index’s 2012 edition.¹¹ As a result, Honduras has struggled to attract foreign investment for years, while waves of emigrants have continued to leave the country seeking opportunities unavailable to them at home.
24. Faced with this difficulty to attract much-needed foreign investment to generate sources of business and employment necessary for economic development, about a decade ago Honduras opted for an innovative solution: semi-autonomous special economic zones. Such zones, which can take various forms, have proven to be successful catalysts for major development elsewhere in the world. Examples include Dubai’s International Financial Centre and Shenzhen, both semi-autonomous regimes within existing States that have

⁸ *GDP per capita, current prices, U.S. dollars per capita*, INTERNATIONAL MONETARY FUND (Oct. 2022), <https://www.imf.org/external/datamapper/NGDPDPC@WEQ/CMQ/SMQ/CBQ/NIC/HND> (Ex. C-69).

⁹ Heritage Foundation, *2022 Index of Economic Freedom, Honduras* (2022), <https://www.heritage.org/index/country/honduras> (Ex. C-88).

¹⁰ Transparency International, *Corruption Perception Index 2021* (2022) (Ex. C-89) p. 3.

¹¹ Transparency International, *Corruption Perception Index 2011* (2011) (Ex. C-1) p. 3.

generated exponential growth as a result of the adoption of pro-market policies and regulation.

25. In 2011, Honduras established a regime for a form of economic zone called the Special Development Regions (“**RED**” for the Spanish term *Región Especial de Desarrollo*) which were to be semi-autonomous and have governance separate from the central Government of Honduras. The RED initiative proved to be short lived, however, because the Supreme Court of Honduras found in 2012 that the REDs were unconstitutional.
26. In 2013, Honduras put in place the legal framework for a new special economic zone regime, the Employment and Economic Development Zones (known by the acronym “**ZEDE**” for the Spanish term *Zonas de Empleo y Desarrollo Económico*). This included (i) Articles 294, 303 and 329 of the Constitution (the “**ZEDE Constitutional Provisions**”), which authorize the establishment of semi-autonomous zones subject to special legal regimes,¹² and (ii) the Organic Law of the Economic Development and Employment Zones (the “**ZEDE Law**” or “**ZEDE Organic Law**”) and, together with the ZEDE Constitutional Provisions, the “**ZEDE Legal Framework**”), which establishes the ZEDE legal regime and its scope.¹³
27. The ZEDE Legal Framework enjoyed overwhelming political support. The ZEDE Constitutional Provisions and ZEDE Law were approved by the National Congress with votes of 110 to 13 and 102 to 26, respectively. On 5 August 2013, Honduras enacted Decree 153-2013, stating that ZEDes were a “State priority” and creating a State program that would promote the ZEDE regime to attract capital from foreign investors to build and develop ZEDes.¹⁴
28. The ZEDes are a form of semi-autonomous special economic zone authorized to establish their own policies and regulations while remaining subject to the Constitution of Honduras

¹² See Constitution of Honduras of 1982 with Amendments through 2013 (Ex. C-4); Decree No. 236-2012, published on 24 Jan. 2013 (Ex. C-2); Decree No. 9-2013, published on 20 Mar. 2013 (Ex. C-3).

¹³ See Decree No. 120-2013, published on 6 Sept. 2013 (Ex. C-6).

¹⁴ Decree No. 153-2013, published on 5 Aug. 2013 (Ex. C-5).

and the national government in matters relating to sovereignty, among other things. The ZEDE Legal Framework differs from the prior RED initiative in a number of ways, including, for example, that the ZEDEs are expressly subject to Honduran foreign policy.

29. Honduras elected to include two elements in the ZEDE Legal Framework that are critical to making the ZEDE a powerful framework for investment and protecting investor expectations: “high-degrees of autonomy”¹⁵ and “legal stability.”¹⁶ These elements are critical because they guarantee investors a degree of insulation from political risks, corruption, and other threats to the rule of law. This is particularly important in the context of long term investments in jurisdictions where abrupt ideological shifts can accompany changes in government, leaving investors exposed to a fickle and mercurial policy environment that may be fatal to the success of investment.
30. In particular, the ZEDE Constitutional Provisions specify that ZEDEs would enjoy “functional and administrative autonomy,” including all functions and powers of municipalities, and would be subject to special legal regimes and separate tribunals.¹⁷ Similarly, the ZEDE Law provides that ZEDEs are free to establish their own policies and legislation, subject to the Constitution of Honduras, international treaties entered into by the State, the ZEDE Law, and certain specific norms.¹⁸ Among other things, Honduras granted the ZEDEs autonomy over the management of their own economy and financial resources (*e.g.*, budgeting, taxation and spending),¹⁹ over trade, competition and the movement of goods (*e.g.*, imports and exports and the regulation of ports and airports),²⁰ as well as over education, health, social security, science, religion, work and the environment (*e.g.*, establishing public education, social security systems and labor

¹⁵ Decree No. 236-2012, published on 24 Jan. 2013 (Ex. C-2) Recital No. 3.

¹⁶ ZEDE Law (Ex. C-6) Art. 45.

¹⁷ Constitution of Honduras of 1982 with Amendments through 2013 (Ex. C-4) Art. 329.

¹⁸ ZEDE Law (Ex. C-6) Arts. 3, 8.

¹⁹ ZEDE Law (Ex. C-6) Arts. 4, 23.

²⁰ ZEDE Law (Ex. C-6) Art. 31.

regulations).²¹ At the same time, Honduras retained oversight and ultimate control over the ZEDEs. Pursuant to the ZEDE Law, the ZEDE governance structure is comprised of two national authorities: (i) the Committee for the Adoption of Best Practices (“**CAMP**”);²² and (ii) the Technical Secretary appointed by CAMP, who is “the highest executive officer [of the ZEDE] and its legal representative.”²³ Among other functions, CAMP decides the tax regime for each ZEDE from options set forth in the ZEDE Law (*i.e.*, income tax, value added tax, property tax, and/or a flat tax).²⁴

31. In addition, Honduras granted investors in ZEDEs robust legal stability guarantees and other protections important to long-term investments in a politically unstable country, including past the repeal of the ZEDE Legal Framework itself. Specifically, the ZEDE Law authorizes the Technical Secretary to enter into legal stability agreements with investors in ZEDEs,²⁵ and provides that, should the ZEDE Law be repealed, “it shall remain in effect for the term indicated in the legal stability clause or contract.”²⁶ The ZEDE Law further provides that “[t]he transition period may not be less than ten (10) years, during which time the rights of inhabitants and investors in the Zones of Economic Development and Employment (ZEDE) shall remain in effect.”²⁷ Moreover, the ZEDE Law provides for most-favored-nation (“**MFN**”) treatment, whereby natural and legal persons operating in ZEDEs are automatically entitled to any better treatment accorded by Honduras to nationals of another State pursuant to international trade agreements.²⁸

²¹ ZEDE Law (Ex. C-6) Arts. 1, 33.

²² ZEDE Law (Ex. C-6) Art. 11.

²³ ZEDE Law (Ex. C-6) Art. 12.

²⁴ ZEDE Law (Ex. C-6) Art. 29.

²⁵ ZEDE Law (Ex. C-6) Art. 12.2.

²⁶ ZEDE Law (Ex. C-6) Art. 45.

²⁷ ZEDE Law (Ex. C-6) Art. 45.

²⁸ ZEDE Law (Ex. C-6) Art. 32.

32. The ZEDE Legal Framework was challenged before the Supreme Court of Honduras, which upheld its constitutionality in May 2014,²⁹ after having received the submission from Honduras's National Prosecutor calling for the rejection of the constitutional challenge.³⁰
33. Honduras then designed and undertook a campaign to promote the ZEDE Legal Framework abroad and induce foreign investment in the ZEDEs. Shortly after the decision of the Supreme Court conforming the constitutionality of the regime, in June 2014, a delegation including representatives from the Honduran Executive, the National Congress, and Mayors of key regions travelled to Korea to invite foreign investment in the ZEDE regime.³¹ That same year, Honduras gave further legal stability guarantees in the Agreement between the Government of the State of Kuwait and the Government of the Republic of Honduras for the Encouragement and Reciprocal Protection of Investments (the "**Honduras-Kuwait BIT**"), which specifically guarantees investors that Articles 294, 303 and 329 of the Constitution of Honduras and the ZEDE Law, and all rights, conditions, procedures and protections either explicitly or implicitly included therein, "shall remain as guarantees ... for a timeframe of not less than fifty (50) years."³² Pursuant to the MFN provision in the ZEDE Law discussed above, the 50-year legal stability guarantee in the Honduras-Kuwait BIT was automatically extended to all investors in ZEDEs.³³
34. Honduras's Ministry of Economy retained international advisors from PricewaterhouseCoopers to design a mechanism that would combine the ZEDE Legal Framework with other economic development incentives so as to promote mass investment in ZEDEs, hosted the Inter-American Development Bank and delegations of potential

²⁹ Decision of the Supreme Court of Honduras, Case No. RI 0030-13, 26 May 2014 (Ex. C-8) p. 1.

³⁰ Decision of the Supreme Court of Honduras, Case No. RI 0030-13, 26 May 2014 (Ex. C-8) p. 2; *ZEDEs are legal, says the Prosecutor*, EL HERALDO (20 Apr. 2014), <https://www.elheraldo.hn/honduras/zede-son-legales-afirma-la-fiscalia-BKEH703507> (Ex. C-7).

³¹ Adriana Peralta, *Honduras: Supreme Court rejects constitutional challenge against ZEDEs*, PANAM POST (20 Jun. 2014), <https://panampost.com/adriana-peralta/2014/06/20/honduras-corte-suprema-rechaza-recurso-de-inconstitucionalidad-contra-zedes/> (Ex. C-9).

³² Honduras-Kuwait BIT, ratified by Honduras on 12 Apr. 2014 and by Kuwait on 13 Jan. 2015 (CL-3) Art. 16. The Honduras-Kuwait BIT entered into force on 28 January 2016.

³³ ZEDE Law (Ex. C-6) Art. 32.

investors and international organizations, and held promotional events in Texas and Georgia, in the United States.³⁴ Before the United Nations, Honduras described the ZEDEs as “one of the best platforms in the world for investment and employment,” highlighting that it had guaranteed “legal, economic, administrative and political” autonomy, as well as “political stability and transparency based on treaties and international agreements”³⁵

35. Honduras’s efforts were successful. By October 2017, Honduras reportedly was meeting with companies from the United States as well as Canada, China, the Philippines, and Taiwan that had expressed interest in investing in ZEDEs. During an event hosted at the Presidential palace, Honduras announced seven territorial “clusters” identified as priority areas for the development of ZEDEs: Trujillo, Colón, Choluteca, Olancho, Santa Bárbara, Comayagua, Valle and the Bay Islands. Honduras also reported that it was reviewing projects entailing investment in excess of US\$ 2.8 billion and projected that ZEDEs could generate over 600,000 new jobs in Honduras within four years.³⁶
36. By this time, the ZEDE Legal Framework was firmly established. The Supreme Court had spoken and there were ongoing promotion efforts by the Honduran government through the Ministry of Economy.³⁷ The mainstream media and commentators from the academic community were also giving the ZEDEs plaudits.³⁸ It was only a matter of time until an investors would be enticed to use the system. The first to do so was Honduras Próspera.

³⁴ See, e.g., Ministry of Economy of Honduras, *Technical Report of Achievements 2014-2017* (Ex. C-18) pp. 21-22. The Ministry of Economy proposed to offer additional incentives to investors in ZEDEs, including the benefits offered by the “Con Chamba Vivis Mejor” program, which provided economic incentives to companies creating new jobs, consisting of a subsidy of half the minimum wage for each new worker. *Id.* p. 21; Ministry of Labor and Social Security of Honduras, *Review of the Presidential “Con Chamba Vivis Mejor”* (10 Jul. 2019) (Ex. C-28).

³⁵ See Speech of the President of Honduras to the UN General Assembly, 24 Sept. 2014 (Ex. C-10).

³⁶ Bustillo, Yoni, *Ten companies are interested in creating ZEDEs*, EL HERALDO (24 Oct. 2017), <https://www.pressreader.com/honduras/diario-el-heraldo/20171024/281547996137724> (Ex. C-15).

³⁷ *Government seeks support for ZEDEs in the country*, EL HERALDO (27 Jul. 2017), <https://www.elheraldo.hn/honduras/gobierno-busca-el-impulso-de-las-zede-en-el-pais-NMEH1093538> (Ex. C-13).

³⁸ Rodríguez, Dardo Justino, *ZEDEs, Honduras’s solution for employment and development*, ESTRATEGIA Y NEGOCIOS (20 Jan. 2015), <https://www.estrategiaynegocios.net/lasclavesdeldia/zede-la-solucion-de-honduras-al-empleo-y-desarrollo-JEEN789990> (Ex. C-11); Michael Castle-Miller, JD, and L. Grant Shubin, *Fostering Justice*

B. CLAIMANTS INVEST IN HONDURAS IN RELIANCE ON THE ZEDE LEGAL FRAMEWORK AND HONDURAS’S GUARANTEES OF LEGAL STABILITY, BUILDING OUT AN IMPRESSIVE PLATFORM FOR PROSPERITY

37. In the spring of 2016, CAMP invited Erick Brimen, a United States national of Venezuelan origin who had recently founded an investment fund focused on special jurisdictions, and his business partners to Tegucigalpa (Honduras’s capital), where CAMP presented a pitch on Honduras’s ZEDE program.³⁹ During the following six months, Mr. Brimen and his partners met with key officials in the Honduran Government and members of CAMP, and made additional visits to Tegucigalpa and the island of Roatán, the largest island in the Department of the Bay Islands, a group of three islands north of Honduras that Honduras had identified as a priority area for the development of ZEDEs.⁴⁰ In the fall of 2016, Mr. Brimen and his partners decided to invest and develop what would become the first ZEDE in Honduras.⁴¹
38. Between October 2016 and the fall of 2017, Mr. Brimen and his partners started laying the foundations for the establishment of a ZEDE.⁴² On 28 August 2017, they formed Honduras Próspera as a Delaware limited liability company,⁴³ and began acquiring parcels of land on Roatán.

and Stability: Rights Protection and National Sovereignty in the Honduran Zones for Employment and Economic Development, POLITAS CONSULTING & GLOBAL JUSTICE CENTER (September 2019) (Ex. C-30).

³⁹ See Brimen, Erick, et al., *Creating the First Honduran ZEDE: Lessons in Political Economy, Institutional Design, and Governance Systems*, JOURNAL OF SPECIAL JURISDICTIONS (7 May 2021) (Ex. C-36) p. 156.

⁴⁰ ZEDE Law (Ex. C-6) Art. 39; Ministry of Economy of Honduras, *Technical Report of Achievements 2014-2017* (Ex. C-18) pp. 21-22.

⁴¹ See Brimen, Erick, et al., *Creating the First Honduran ZEDE: Lessons in Political Economy, Institutional Design, and Governance Systems*, JOURNAL OF SPECIAL JURISDICTIONS (7 May 2021) (Ex. C-36) pp. 156-157.

⁴² See Brimen, Erick, et al., *Creating the First Honduran ZEDE: Lessons in Political Economy, Institutional Design, and Governance Systems*, JOURNAL OF SPECIAL JURISDICTIONS (7 May 2021) (Ex. C-36) p. 157.

⁴³ See Certificate of Formation of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, State of Delaware, Secretary of State, Division of Corporations, dated 28 Aug. 2017 (Ex. C-14); Limited Liability Company Operating Agreement of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, dated 30 Jun. 2018 (Ex. C-19). On 31 December 2018, the Board of Directors of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC changed the name of the entity to Honduras Próspera LLC. See Resolution of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, Written Consent of Board of Directors, dated 31 Dec. 2018 (Ex. C-23); Certificate of Amendment of the Name of Sociedad para el Desarrollo Socioeconómico

39. On 29 December 2017, Honduras Próspera submitted to CAMP a formal application to incorporate a ZEDE under the ZEDE Legal Framework (the “**ZEDE Application**”).⁴⁴ The ZEDE Application contained, among other things, a master plan for the development of Próspera ZEDE on Honduras Próspera’s land, projections for population growth and employment generation, Honduras Próspera’s proposed investment amounts, proof of financing capacity, and a proposed a legal structure and governance for Próspera ZEDE. CAMP certified the incorporation of Honduras Próspera’s land as the ZEDE Village of North Bay, which would later be renamed Próspera ZEDE (“**Próspera ZEDE**”).⁴⁵
40. On 21 August 2018, CAMP appointed a Technical Secretary for the ZEDE Village of North Bay,⁴⁶ who then, with CAMP’s approval, promulgated the Charter and Bylaws of the ZEDE Village of North Bay.⁴⁷
41. Between August 2018 and April 2019, Claimants received backing from local authorities, including, for example, the Mayors of Roatán and La Ceiba (a city on the north shore of Honduras close to Roatán where Próspera ZEDE was to expand), the Governor of the Department of Bay Islands, and the Congressman from La Ceiba all of whom wrote letters inviting the development of Próspera ZEDE and offering their full support.⁴⁸ The Próspera Group was also welcomed by the nearby Crawfish Rock community.⁴⁹

de Honduras, LLC, State of Delaware, Secretary of State, Division of Corporations, dated 17 Jul. 2019 (Ex. C-29).

⁴⁴ The ZEDE Application was printed on the letterhead of one of Honduras Próspera’s investors, but stated that Honduras Próspera was the entity proposing the creation of the ZEDE. *See* ZEDE Application, dated 29 Dec. 2017 (Ex. C-17) p. 7.

⁴⁵ Certificate of Registration and Incorporation of Land as ZEDE Village of North Bay, dated 29 Dec. 2017 (Ex. C-16); Brimen, Erick, et al., *Creating the First Honduran ZEDE: Lessons in Political Economy, Institutional Design, and Governance Systems*, JOURNAL OF SPECIAL JURISDICTIONS (7 May 2021) (Ex. C-36) p. 158.

⁴⁶ Appointment of Technical Secretary of ZEDE Village of North Bay, dated 21 Aug. 2018 (Ex. C-21).

⁴⁷ Charter and Bylaws of ZEDE Village of North Bay, dated 23 Aug. 2018 (CL-4).

⁴⁸ *See* Letter from the Mayor of La Ceiba to Erick Brimen, dated 14 Aug. 2018 (Ex. C-20); Letter from the Mayor of Roatán to Erick Brimen, dated 22 Mar. 2019 (Ex. C-24); Letter from the Governor of the Bay Islands to Erick Brimen, dated 1 Apr. 2019 (Ex. C-25); Letter from Congressman Bader Dip to Erick Brimen, dated 10 Oct. 2018 (Ex. C-22).

⁴⁹ Crawfish Rock Community Resolution, dated 29 Jun. 2019 (Ex. C-27).

42. On 13 September 2019, CAMP approved the amendment of the Charter and Bylaws of ZEDE Village of North Bay to, among other things, rename the ZEDE as “Próspera ZEDE.”⁵⁰ The Charter of Próspera ZEDE confirms that Honduras Próspera is the promoter and organizer of Próspera ZEDE, and provides that, as such, Honduras Próspera “is [] entitled to all rights and duties conferred under the [ZEDE Law].”⁵¹ The Charter further provides that Próspera ZEDE “possesses all the rights, privileges, and duties of a ZEDE in the Republic of Honduras and has its own legal personality with special regime zone status under the ZEDE Organic Law and Constitution of the Republic of Honduras Articles 294, 303, 329.”⁵²
43. In the following years, Honduras continued to promote and implement the ZEDE Legal Framework. Following the example of Próspera ZEDE, Honduras approved the creation of two more ZEDes (ZEDE Mariposa and ZEDE Morazán) in different regions of Honduras. Likewise, in June 2021, the Supreme Court of Honduras formally established the Special Jurisdiction of the ZEDes. As anticipated by the ZEDE Law, the Special Jurisdiction consists of specialized courts with exclusive jurisdiction over disputes in the ZEDes relating to criminal matters, child and adolescent matters, and certain contractual issues as to which arbitration has been waived (arbitration being the default dispute resolution mechanism for contractual disputes in the ZEDE under the ZEDE Legal Framework).⁵³
44. Honduras Próspera formed Claimant SJBDC as “Próspera Land SPV 1 LLC” in the State of Delaware on 11 June 2019 to develop and manage the Próspera Group’s properties in Próspera ZEDE and be responsible for all construction projects.⁵⁴

⁵⁰ Letter from CAMP to the Technical Secretary of Próspera ZEDE, dated 12 Sept. 2019 (Ex. C-31).

⁵¹ Charter of Próspera ZEDE, dated 12 Sept. 2019 (CL-5) Art. 1.02.

⁵² Charter of Próspera ZEDE, dated 12 Sept. 2019 (CL-5) Art. 11.02.

⁵³ Supreme Court of Honduras, Agreement No. CSJ-01-2021, dated 15 Jun. 2021 (Ex. C-37).

⁵⁴ Certificate of Formation of Próspera Land SPV 1 LLC, State of Delaware, Department of State, Division of Corporation, dated Oct. 2016 (Ex. C-12); Amended and Restated Operating Agreement for St. John’s Bay Development Company LLC, dated 10 Sept. 2021 (Ex. C-40).

45. Honduras Próspera and certain retired United States judges and legal experts formed Claimant PAC as a limited liability company in the State of Texas on 4 November 2019, to serve as the default arbitration service provider of Próspera ZEDE, with experienced international jurists, scholars, and litigators serving as arbitrators.⁵⁵ PAC’s members include, for instance, Arthur John Pelander III, former Justice of the Arizona Supreme Court, and John C. Gemmill, former Judge of the Arizona Court of Appeals.⁵⁶
46. On 28 November 2020, the Board of Directors and Members of Honduras Próspera voted to convert the company to a Delaware corporation “to maximize [its] access to capital as it expands and enhances its operations as promoter and organizer of Próspera ZEDE.”⁵⁷ Honduras Próspera was incorporated as a Delaware corporation on 1 December 2020.⁵⁸
47. In accordance with Articles 12(2) and 45 of the ZEDE Law (which, as described above, respectively, authorize the Technical Secretary of each ZEDE to subscribe legal stability agreements, and provide that in the event of repeal of the ZEDE Law investors will be accorded legal stability for the duration of their legal stability agreements and for a minimum of ten years), Honduras Próspera and Honduras (through the Technical Secretary for Próspera ZEDE at the time) entered into the Agreement for Legal Stability and Investor Protection, effective on 9 March 2021⁵⁹ and amended on 18 November 2021⁶⁰ (together, the “**LSA**”). Pursuant to the LSA, Honduras guaranteed Honduras Próspera and its “affiliates by majority ownership or control” (*i.e.*, SJBDC and PAC) legal stability of non-discrimination rights, treaty rights including, among other things, for the purposes of

⁵⁵ Certificate of Filing of PAC, Office of the Secretary of State, State of Texas, dated 4 Nov. 2019 (Ex. C-32); Limited Liability Company Operating Agreement of Próspera Arbitration Center LLC, dated 31 Dec. 2019 (Ex. C-33).

⁵⁶ Próspera Arbitration Center, *Our Roster of Arbiters*, available at <https://pac.hn/> (Ex. C-90).

⁵⁷ Effectuating Board and Member Action by Consent (Approval and Ratification of Conversion to Delaware Corporation), Honduras Próspera LLC, dated 28 Nov. 2020 (Ex. C-34).

⁵⁸ Certificate of Incorporation of Honduras Próspera, State of Delaware, Secretary of State, Division of Corporations, dated 1 Dec. 2020 (Ex. C-35).

⁵⁹ Agreement for Legal Stability and Investor Protection entered into by and between Honduras Próspera and the Republic of Honduras, dated 9 Mar. 2021 (“**Initial LSA**”) (CL-6).

⁶⁰ Amendment to Agreement for Legal Stability and Investor Protection entered into by and between Próspera and Honduras, dated 18 Nov. 2021 (“**Amendment to the LSA**”) (CL-7).

enforcing protections under the CAFTA-DR and the Honduras-Kuwait BIT, and the general stabilization of law and policy, which specifically includes the ZEDE Legal Framework, until the latter of 15 January 2064 or ten years after the last of any amendment, reformation, interpretation or repeal of all or any portion of the ZEDE Law.⁶¹

48. In reliance on the ZEDE Legal Framework and Honduras's guarantees of its long-term legal stability, Claimants have made significant investments in Honduras directly and through various enterprises in Honduras that Claimants own or control directly or indirectly, and thereby have made Próspera ZEDE a strong platform for economic development, already now and with exponential growth potential in the years ahead. Claimants' plan has been to begin by developing two prosperity hubs, the first on the Island of Roatán and the second in La Ceiba, with investments of approximately US\$ 595 million planned by 2025.
49. The Island of Roatán is strategically located close to the north coast of Honduras and easily accessible from the United States, and has an English-speaking population, a beautiful natural environment, and existing transportation infrastructure within miles of Próspera ZEDE's location on the island, including an international airport with excellent connections to the United States, a terminal for cruise ships, and a ferry connecting Roatán with the mainland. Próspera ZEDE's hub in Roatán focuses on attracting light manufacturing and high-skilled talent, specifically professionals in the tourism, education, medical innovation, and other knowledge industries. Claimants have planned to invest approximately US\$ 282.5 million to build the main units of the Roatán hub, including a village, residential, commercial, and industrial buildings, and infrastructure for a medical center and an aircraft maintenance center by 2023.
50. On mainland Honduras, La Ceiba is the second most important port in Honduras, and is both a short ferry from Roatán and easily accessible from the United States by sea. Próspera ZEDE's hub in La Ceiba focuses on a business and industrial park for manufacturing, supply chain, and related services. In La Ceiba, Claimants have planned

⁶¹ Initial LSA (Ex. C-6) Arts. 1.1-1.4.

to invest approximately US\$ 312 million by 2025 to construct banana and coffee processing plants, a modular construction factory, a marine services center, and a modernized airport.

51. Claimants set up Próspera ZEDE to have a number of profit centers, including, among other things: (i) the provision of Governance as a Service (“**GaaS**”) to ZEDE residents (including, for instance, e-Governance systems and associated registries of property, an innovation-friendly legal and regulatory environment, simplified tax rules, digital compliance services, international arbitration services, import and export capabilities, and a marketplace for third-party business services); and (ii) real estate investment and development in Próspera ZEDE, which allows for more profitable and efficient use of the land and, accordingly, significant appreciation. Such profit centers were premised on Honduras Próspera being the ZEDE’s promoter and developer and on the unique policy and regulatory autonomy provided for ZEDEs in the ZEDE Legal Framework. This being a long-term endeavor on a massive scale, with legal stability guaranteed at least until 2064, Próspera ZEDE was to be a highly profitable investment for Claimants.
52. Próspera ZEDE has an innovative regulatory environment, a minimum wage that is 10% to 25% higher than the national minimum wage, and conditions for Hondurans to start businesses much more easily than elsewhere in Honduras. Already, hundreds of construction, maintenance, and knowledge economy jobs have been created, nearly 100 businesses have been formed or registered to do business within Próspera ZEDE (including, for instance, Apolo Group, a real estate development company; Seshat Bank, a full-service commercial bank; Higher Ground Education, the world’s largest Montessori school operator; Relay Human Cloud, which provides remote staffing a related services; and Aerialoop, a drone delivery airline), and over 500 individuals have become (e)Residents. The Próspera Group has acquired or optioned rights to over 1000 acres for Próspera ZEDE on the island of Roatán and in La Ceiba, and is in the process of modernizing and renovating a luxury resort in Roatán, while modern affordable mixed-use tower buildings, remote work offices, and a light robotic manufacturing building are under construction. The Próspera Group has also incorporated subsidiary entities in Honduras, acquired contractual, intellectual property and other rights, and made other investments to

further the development of Próspera ZEDE, including beginning to develop the physical infrastructure necessary to host an international financial center, light manufacturing facilities, high-skill remote workspaces, infrastructure for medical tourism service, and advanced energy projects.

C. HONDURAS ABRUPTLY REPEALS THE ZEDE LEGAL FRAMEWORK IN 2022 AND FAILS TO ADDRESS THE CONSEQUENCES FOR EXISTING ZEDES, CAUSING DEVASTATING HARM TO CLAIMANTS' INVESTMENTS

53. During the Honduran general elections of 2021, presidential candidate Xiomara Castro – the wife of former President José Manuel Zelaya Rosales – successfully campaigned on a populist leftist platform that included opposition to ZEDEs. Promising to repeal the ZEDE Legal Framework “within 100 days of assuming the presidency,”⁶² Ms. Castro made a campaign visit to Roatán, where she declared Próspera ZEDE an “enemy of the people of Honduras and of Roatán.”⁶³
54. Ms. Castro won the election and became the President of Honduras amidst a highly chaotic political situation marked by a conflict among factions of the coalition that had supported Ms. Castro over who should serve as Speaker of the National Assembly. During the first session of the new legislature, violence broke out as supporters of competing factions assaulted one another on the floor of the National Assembly.⁶⁴ When two different legislators were elected to the role of Speaker simultaneously,⁶⁵ the National Congress

⁶² Umanzor, Daniel, *Xiomara Castro presents her Government Plan for the Refounding of Honduras 2022-2026*, NOTIBOMBA (5 Sept. 2021), <https://notibomba.com/xiomara-castro-presenta-su-plan-de-gobierno-para-la-refundacion-de-honduras-2022-2026/> (Ex. C-39).

⁶³ Xiomara Castro de Zelaya, TWITTER @XIOMARACASTROZ, (7 Aug. 2021), <https://twitter.com/xiomaracastroz/status/1424159651428438017?lang=es> (Ex. C-38); “*Zede Prospera is an enemy of the honduran people!*” the strong words of Xiomara Castro, LPH (5 Dec. 2021), <https://lph.news/nacionales/zede-prospera-es-un-enemigo-del-pueblo-hondureno-las-fuertes-palabras-de-xiomara-castro/> (Ex. C-41).

⁶⁴ *Xiomara Castro: screams, blows and scenes of chaos in the Honduran Congress after a division in the party of the president-elect*, BBC (21 Jan. 2022), <https://www.bbc.com/mundo/noticias-america-latina-60033238> (Ex. C-42).

⁶⁵ *The United States have called on Honduran politicians to resolve the crisis in Parliament with a “peaceful and constitutional dialogue,”* INFOBAE (29 Jan. 2022), <https://www.infobae.com/america/america-latina/2022/01/29/estados-unidos-into-a-los-politicos-hondurenos-a-que-resuelvan-la-crisis-en-el-parlamento-con-un-dialogo-pacifico-y-constitucional/> (Ex. C-50).

splintered into two separate assemblies: one meeting outside Tegucigalpa that had a quorum of members and one meeting in Tegucigalpa that did not have a quorum, but which was allied with Ms. Castro.

55. The chaos escalated. Some of the members of the National Assembly not favored by Ms. Castro had their houses shot at or received death threats that caused them and their families to flee Honduras and seek asylum in Costa Rica and Mexico.⁶⁶ In the days preceding her inauguration, Ms. Castro herself intervened, calling for the police to remove the barriers protecting the National Congress and her supporters to occupy the building in support of her preferred candidate.⁶⁷
56. Ms. Castro took office as President of Honduras on 27 January 2022. In the absence of a Speaker of the National Assembly, she was sworn in by a judge.⁶⁸ In her inaugural speech, she announced that her new government was submitting a bill to the National Congress to repeal the ZEDE Legal Framework.⁶⁹

⁶⁶ *Supporters of LIBRE occupy the house of Dr. Denis Chirinos and demand his resignation*, PROCESO DIGITAL (21 JAN, 2022), <https://proceso.hn/seguidores-de-libre-se-toman-casa-de-doctor-denis-chirinos-y-exigen-su-renuncia/> (Ex. C-49); *Shots fired and paint thrown at the house of former footballer and congressman Wilmer Cruz*, LA PRENSA (27 Jan. 2022), <https://www.laprensa.hn/deportes/wilmer-cruz-tirotean-manchan-casa-diputados-jorge-calix-libre-ME5273284> (Ex. C-46); Karen Sierra, *The families of “dissident members of Congress” of LIBRE party are outside of Honduras for security reasons, affirms Juan Ramon Flores*, TUNOTA, (31 Jan. 2022), <https://www.tunota.com/honduras-hoy/politica/familias-de-diputados-disidentes-de-libre-estan-fuera-de-honduras-por-seguridad-asegura-juan-ramon-flores> (Ex. C-51); *Exile, complaints and deadlock over the Speakership of the National Congress*, LA PRENSA (31 Jan. 2022), <https://www.laprensa.hn/honduras/crisis-congreso-nacional-honduras-dialogo-jorge-calix-luis-redondo-NF5351294> (Ex. C-52).

⁶⁷ *Xiomara Castro asks the National Police to lift the barriers that protect the National Congress*, PROCESO DIGITAL (22 Jan. 2022), <https://proceso.hn/xiomara-castro-pide-a-policia-nacional-levantar-vallas-que-resguardan-el-congreso-nacional/> (Ex. C-43); Ana de León, *Citizens “occupy” the Parliament of Honduras, embroiled in a political crisis*, SWISSINFO.CH (26 Jan. 2022), https://www.swissinfo.ch/spa/honduras-parlamento_los-ciudadanos--toman--el-parlamento-de-honduras-envuelto-en-crisis-pol%C3%ADtica/47295328 (Ex. C-45).

⁶⁸ It was later reported that the judge had been asked to recognize Ms. Castro’s preferred candidate as Speaker of the National Assembly, but had refused. *See Judge Karla Romero, who swore in president Xiomara explains why she alluded to a prohibition in the constitution*, PROCESO DIGITAL (28 Jan. 2022), <https://proceso.hn/jueza-karla-romero-que-juramento-a-presidenta-xiomara-explica-por-que-hizo-alusion-a-prohibicion-de-constitucion/> (Ex. C-48).

⁶⁹ Presidential Inauguration of 2022, *The President of the Republic, Xiomara Castro, sends a message to Honduras*, dated 27 Jan. 2022 (Ex. C-47) p. 4.

57. As this chaos unfolded, Claimants learned of the existence of a bill that purportedly repealed the ZEDE Legal Framework. On 25 January 2022, Honduras Próspera and SJBDC wrote to the National Congress asking that Honduras abandon its efforts, which would amount to an expropriation of their investments and liability for Honduras.⁷⁰ On 4 February, the press reported that the National Congress had approved a repeal decree that provided for the prosecution on charges of treason of Hondurans who had been involved with the ZEDE Legal Framework,⁷¹ but the decree was never published and thus did not become law.
58. In early February, the National Congress agreed to acknowledge Ms. Castro’s candidate as Speaker.⁷² Shortly thereafter, Ms. Castro announced the creation of the position of “Anti-ZEDE Commissioner” to lead efforts to repeal the ZEDE Legal Framework.⁷³
59. On 20 April 2022, the National Congress received the new Anti-ZEDE Commissioner – Mr. Fernando Garcia – with a standing ovation to hear his recommendation to repeal the ZEDE Legal Framework. The National Congress then discussed new bills to repeal the Constitutional ZEDE Provisions and the ZEDE Law in a debate focused on nationalist sentiment. Interventions referred to the Mayan Book “Popol Vuh” and the Honduran coat of arms as inspiration, amid impromptu singing of the national anthem while members of Congress raised their fists.

⁷⁰ Letter from Honduras Próspera and SJBDC to the National Congress of Honduras dated 25 Jan. 2022 (Ex. C-44).

⁷¹ Decree No. 3-2022, Index of Decrees of the National Congress of Honduras, Feb. 2022 (Ex. C-54) pp. 9-10; *see also Redondo’s National Congress annuls ZEDEs through a legislative decree*, EL HERALDO (4 Feb. 2022), <https://www.elheraldo.hn/honduras/congreso-nacional-luis-redondo-elimina-zedes-honduras-DAEH1511288> (Ex. C-55). In Honduras, treason is punishable by imprisonment for 15 to 20 years, among other sanctions. *See* Decree No. 130-2017, enacting the Criminal Code of Honduras, published on 10 May 2019 (Ex. C-26) Arts. 555, 562.

⁷² *Honduras political dispute resolved, paving way for president’s anti-corruption agenda*, REUTERS (7 Feb. 2022), <https://www.reuters.com/world/americas/honduras-political-dispute-resolved-paving-way-presidents-anti-corruption-agenda-2022-02-08/> (Ex. C-56).

⁷³ *Fernando Garcia has been appointed by the president of Honduras to fight against ZEDEs*, CRITERIO (1 Feb. 2022), <https://criterio.hn/fernando-garcia-designado-por-la-presidenta-de-honduras-para-luchar-contra-las-zede/> (Ex. C-53)

60. At the end of the session, the National Congress passed Decree No. 32-2022,⁷⁴ which began the process of amending the Constitution of Honduras to remove the Constitutional ZEDE Provisions. Specifically, Decree No. 32-2022 provides for the repeal of Decrees Nos. 236-2012 and 9-2013 which had introduced the Constitutional ZEDE Provisions, and states that any law, regulation, contract, concession or any other norm in favor of ZEDEs “shall not be legally valid.”⁷⁵ Because amendments to the Constitution require the vote of two thirds of the National Congress and a subsequent ratification in the following legislative session by the same quorum, excising the Constitutional ZEDE Provisions would require the National Congress to ratify Decree No. 32-2022 during the 2023 legislative session.⁷⁶
61. In the same session, the National Congress passed Decree No. 33-2022, which repeals the ZEDE Law with immediate effect, along with all other legislation, legal norms, dispositions or legal precepts derived from or relating to the Organic ZEDE Law.⁷⁷ President Castro signed Decree No. 33-2022 into law on 26 April 2022.⁷⁸
62. Although some legislators had raised concerns that repealing the ZEDE Legal Framework and eliminating the rights of existing ZEDEs could give rise to legal action against Honduras and hurt the Honduran economy, neither Decree No. 32-2022 nor Decree No. 33-2022 mentions Honduras’s legal stability commitments with respect to existing ZEDEs, establishes a transition regime, or otherwise offers a view on how the decrees would affect existing ZEDEs.⁷⁹

⁷⁴ Decree No. 32-2022, published on 21 Apr. 2022 (Ex. C-57).

⁷⁵ Decree No. 32-2022, published on 21 Apr. 2022 (Ex. C-57) Arts. 1-2.

⁷⁶ *See* Constitution of Honduras of 1982 with Amendments through 2013 (Ex. C-4) Art. 373.

⁷⁷ Decree No. 33-2022, published on 26 Apr. 2022 (Ex. C-60).

⁷⁸ Decree No. 33-2022, published on 26 Apr. 2022 (Ex. C-60).

⁷⁹ *See, generally*, Decree No. 32-2022, published on 21 Apr. 2022 (Ex. C-57); Decree No. 33-2022, published on 26 Apr. 2022 (Ex. C-60). Some of the Decrees’ recitals question the constitutionality of the ZEDE Legal Framework, but they too do not address Honduras’s guarantees of legal stability and the consequences of the repeal for existing ZEDEs and the investments therein, Decree No. 32-2022, published on 21 Apr. 2022 (Ex. C-57) Recitals No. 6-7; Decree No. 33-2022, published on 26 Apr. 2022 (Ex. C-60) Recitals Nos. 6-7.

63. Subsequently, Members of the National Congress and other Honduran officials have made various inconsistent, ambiguous, and investment-chilling public statements as to the implications of Honduras’s repeal of the ZEDE Legal Framework for the existing ZEDEs, and have made threats against investors in these ZEDEs. For example and without limitation:

- The Speaker of the National Congress stated that investors in ZEDEs are “not entrepreneurs, but criminals,” and that ZEDEs were “illegal companies” that had ceased to exist and were not entitled to rights as a consequence of the repeal of the ZEDE Law.⁸⁰ The Speaker later stated that “the ZEDEs have always been unconstitutional.”⁸¹
- The Secretary of State for the Office of the President announced that Honduras would establish a working group with investors in ZEDEs to explore a potential negotiated agreement that would allow investors to protect their investment within the new legal framework.⁸²
- The head of the Honduras Customs Administration Agency stated that ZEDEs would go through a transition period to become “Free Economic Zones” under a different legal framework that exists in Honduras.⁸³ This is not acceptable for Claimants who were guaranteed functional and administrative autonomy and the ZEDE Legal Framework, which is very different from the framework of the referenced “Free Economic Zones” (which are essentially tax havens without the critical features of the ZEDE Legal Framework described above that allow Claimants to develop and provide a unique platform for exponential economic growth).
- Honduras’s Tax Authority [*Servicio Administrativo de Rentas*] published a technical note on the tax implications of the ZEDE Legal Framework, which acknowledged that the legal stability guarantee in the Honduras-Kuwait BIT

⁸⁰ “They are not business people, they are criminals” states the speaker of the Congress of Honduras about the owners of ZEDEs, CRITERIO (22 Apr. 2022), <https://criterio.hn/no-son-empresarios-son-delincuentes-afirma-presidente-del-congreso-de-honduras-a-duenos-de-las-zede/> (Ex. C-58).

⁸¹ “The Zede cannot claim rights because they are illicit” Insists Luis Redondo, EL MUNDO (7 Nov. 2022), <https://elmundo.hn/las-zede-no-pueden-reclamar-derechos-porque-son-ilicidas-insiste-luis-redondo/> (Ex. C-72).

⁸² Government will seek consensus with entrepreneurs that already invested in ZEDEs, according to private secretary, PROCESO DIGITAL (23 Apr. 2022), <https://proceso.hn/gobierno-buscara-consenso-con-los-empresarios-que-ya-invirtieron-en-las-zedes-segun-secretario-privado/> (Ex. C-59).

⁸³ ZEDEs will be ruled by the law of free zones, CANAL 8 HONDURAS - YOUTUBE (11 Jun. 2022), <https://www.youtube.com/watch?v=kATMI-3RsaQ> (Ex. C-65).

applied to all investors in ZEDEs pursuant to the ZEDE law's most favored nation provision, and that therefore existing ZEDEs can remain in existence for fifty years.

- The Anti-ZEDE Commissioner stated that the ZEDE Legal Framework was null since its origin, and that companies established in the ZEDEs could choose to transition into another form of special economic zone existing under Honduran law.⁸⁴
- When asked directly by Claimants' counsel, the Minister of Economy, Mr. Pedro Barquero, refused to confirm the legal status of the existing ZEDEs, stating that he was unable to answer. This refusal is particularly noteworthy as the Minister confirmed that he is Honduras's representative in connection with this dispute (the Honduran agency listed for notices and communications under CAFTA-DR resides within his Ministry⁸⁵) and is purportedly in charge of dealing with the transition of existing ZEDEs to other regimes.⁸⁶ Mr. Barquero has elsewhere stated: "we have been clear that the Law was repealed, but even so the Law was illegal, because it violated the Constitution from its origin and national sovereignty."⁸⁷

64. In addition, Honduras has been indirectly interfering with the operation of Próspera ZEDE. For example and without limitation:

- Different officials of Honduras's Customs Administration Agency have taken inconsistent positions as to whether Próspera ZEDE enjoys legal stability, and have intermittently refused to recognize Próspera ZEDE's independent customs authority under the ZEDE Law and to maintain enough resources to allow for efficient custom clearance.
- Honduras's National Commission on Banks and Insurance appears to have taken steps to interfere with Claimants' capacity to transfer and receive funds both directly and through authorized intermediaries and financial institutions.
- The Regional Departmental Directorate of the Ministry of Governance, Justice and Decentralization [*Secretaría de Estado en los Despachos de Gobernación, Justicia*

⁸⁴ *Companies established in the ZEDE Can Adhere to Existing Special Regimes*, RADIO AMERICA (2 Oct. 2022), <https://www.radioamerica.hn/empresas-establecidas-en-las-zede-pueden-acogerse-a-regimenes-especiales-existent-dice-comisionado-presidencial/> (Ex. C-68).

⁸⁵ *See supra* § II.B.

⁸⁶ Mr. Barquero stated that there was an ongoing process to find solutions with the other ZEDEs. This was denied by one of the other ZEDEs, which reported that it had not heard from the Government in months and was totally unaware of the next steps in the process. *See* Ciudad Morazán, Press Release, dated 7 Nov. 2022, <https://www.morazan.city/wp-content/uploads/2022/11/Comunicado-de-Prensa-Ciudad-Morazan-2022-11-07.pdf> (Ex. C-71).

⁸⁷ *See Próspera ZEDE Prepares Claim for Millions Against Honduras*, BILATERALS.ORG (3 Nov. 2022), <https://www.bilaterals.org/?zede-prospera-prepara-millonaria> (Ex. C-70).

y *Decentralización*] issued a written opinion observing that the ZEDE Law has been repealed and that persons seeking to hold a public event in a ZEDE are subject to the same permitting requirements as apply in the rest of Honduras.

- Honduras's Tax Authority is not processing requests for tax identification numbers for entities incorporated in Próspera ZEDE, which affects their access to local banking.
- Honduras's Commercial Registry is not registering the minutes of Honduran corporations referencing transactions in Próspera ZEDE or with entities incorporated in Próspera ZEDE.
- Meanwhile, CAMP – Honduras's central authority for the oversight and regulation of ZEDEs – has continued to operate, charging Claimants regular fees,⁸⁸ sending them regulatory requests,⁸⁹ and approving the incorporation of more land into Próspera ZEDE.⁹⁰

65. Facing a situation of significant uncertainty as to whether Honduras would honor its legal stability guarantees in view of the silence on this issue in the Decrees repealing the ZEDE Legal Framework and the conflicting and ambiguous statements and conduct outlined above, Claimants repeatedly sought to clarify the implications of Decrees Nos. 32-2022 and 33-2022 for their investments in Próspera ZEDE. Claimants sent two letters to President Castro, copying various other officials, setting out Próspera Group's understanding and expectation that Honduras would respect its legal stability commitments and, correspondingly, that the ZEDE Legal Framework remained in full effect as to its investments in Próspera ZEDE, notwithstanding Decrees No. 32-2022 and 33-2022.⁹¹ No letter was ever received in response.

66. In light of Decrees Nos. 32-2022 and 33-2022 and Honduras's deafening silence and obstinate refusal to acknowledge its legal stability obligations, Claimants find themselves in a state of great uncertainty. Honduras expressly guaranteed the legal stability of the

⁸⁸ Non-Negotiable Warrant of Payment from Próspera ZEDE to the CAMP ZEDE Trusts, dated 22 Nov. 2022 (Ex. C-74).

⁸⁹ Communication SE-CAMP No. 004-2022 from CAMP to the Technical Secretary of Próspera ZEDE, dated 28 Nov. 2022 (Ex. C-75).

⁹⁰ Certificate of Registration and Incorporation of Real Property by CAMP, dated 21 Jun. 2022 (Ex. C-66).

⁹¹ Letter from Honduras Próspera to President Castro, dated 26 Apr. 2022 (Ex. C-61); Letter from Honduras Próspera to President Castro, dated 11 May 2022 (Ex. C-63).

ZEDE Legal Framework to existing ZEDEs, and, moreover, pursuant to well-established Honduran law principles, the rights granted under the ZEDE Legal Framework, including the critical guarantee of legal stability, constitute acquired rights for those who invested, and the ZEDE Legal Framework could only be repealed *ex nunc*. However, despite Honduras's prior guarantees that the ZEDE legal Framework would remain in full effect as to existing ZEDEs for a period of 50 years, the State now is signaling – but not formally decreeing or confirming – that the ZEDEs are at an end or possibly even that they somehow never existed.⁹² The Sword of Damocles hangs over Claimants, who are hesitant to continue developing Próspera ZEDE in the face of overt hostility and the threat of further anti-ZEDE measures by the Government, but likewise, given the lack of a formal statement of the State's position regarding its legal stability guarantees and the legal status of existing ZEDEs, hesitant to cease their efforts to develop the ZEDE and execute on their multiple plans and commitments for long-term investment and development, or to take yet another course.

67. Honduras's conduct in its rushed repeal of the ZEDE Legal Framework amidst chaos and controversy and subsequent vilification of investors is characteristic of Honduras's recent campaign against settled investment expectations across various sectors of the economy. Among other examples, Honduras recently has passed a new energy law instructing the “renegotiation” of contracts with power generation companies, allowing for the unilateral termination of agreements if consensus was not reached within 30 days, and declaring an “energy emergency” as a justification for the overhaul of the energy regulatory system.⁹³ Honduras's energy reform already has given rise to disputes with at least five foreign investors, with other disputes expected in other sectors.⁹⁴

⁹² See *supra* ¶¶ 63-64.

⁹³ *New law declares energy emergency, allows for the expropriation of power plants and eliminates trusts for 15 dams*, DINERO HN (2 May. 2022), <https://dinero.hn/con-nueva-ley-se-declara-emergencia-energetica-y-se-permite-expropiacion-de-plantas-generadoras-y-eliminar-fideicomiso-bancario-de-15-represas/> (Ex. C-62).

⁹⁴ Romero, Fátima, *A conflict between Honduras and renewable energy companies could end wrong*, BLOOMBERG LÍNEA (11 Nov. 2022), <https://www.bloomberglinea.com/2022/11/11/un-conflicto-entre-honduras-y-las-empresas-de-energia-renovable-puede-terminar-mal/> (Ex. C-73).

IV. HONDURAS’S ACTS AND OMISSIONS ARE IN BREACH OF ITS OBLIGATIONS UNDER THE CAFTA-DR, THE CHARTER OF PRÓSPERA ZEDE, AND THE LSA

68. Honduras has breached its obligations under the CAFTA-DR, the Charter of Próspera ZEDE, and the LSA. In light of the uncertainty perpetuated by Honduras and the State’s refusal to take a clear position, Claimants expects that Honduras will continue to breach diverse obligations. Accordingly, Claimants reserve their right to supplement the breaches set out in this Request for Arbitration (“**Request**”) to reflect the full extent of Honduras’s breaches.

A. HONDURAS HAS BREACHED SECTION A OF CHAPTER TEN OF THE CAFTA-DR

69. Honduras’s acts and omissions constitute grave violations of the CAFTA-DR, including, without limitation, the following obligations towards Claimants assumed by Honduras in the treaty.

70. *Most Favored Nation Treatment.* Article 10.4 of the CAFTA-DR provides that Honduras “shall accord to investors of another Party [and covered investments] treatment no less favorable than that it accords, in like circumstances, to investors [and investments in its territory of investors] of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.” Pursuant to the Honduras-Kuwait BIT, Honduras has guaranteed Kuwaiti investors and investments legal stability as to the ZEDE Legal Framework for fifty (50) years.⁹⁵ Honduras is obligated to accord Claimants and their investments the same legal stability as Kuwaiti investors and investments pursuant to Article 10.4 of the CAFTA-DR, and its failure to do so constitutes a violation of this provision.

71. *Minimum Standard of Treatment.* Article 10.5 of the CAFTA-DR provides that Honduras “shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.” Honduras has

⁹⁵ See *supra* n. 32; Kuwait BIT (CL-3) Art. 16.

breached Article 10.5 by failing to accord the investments of Claimants fair and equitable treatment. Honduras violated Claimants' legitimate expectations, including, among other things, their expectations of legal stability with respect to the ZEDE Legal Framework and their rights thereunder that were based on the specific guarantees by Honduras (e.g., pursuant to Articles 32 and 45 of the ZEDE Law, the Honduras-Kuwait BIT, and Article 1 of the LSA⁹⁶) as well as their expectation that Honduras would respect the well-established Honduran law doctrine of acquired rights with respect to the ZEDE Legal Framework. Honduras has also breached Article 10.5 by conduct that is grossly arbitrary, capricious, discriminatory, disorderly, inconsistent, unfair and unjust, and contrary to the requirements of due process and transparency, including, among other things, its irrational and haphazard repeal of the ZEDE Legal Framework, creation and maintenance of a hostile environment and state of uncertainty as to the status of existing ZEDEs, interference with Claimants' operations in Honduras, and threatening and defamatory statements about Claimants' and their related persons through the press.

72. *Expropriation.* Article 10.7 of the CAFTA-DR provides that “[n]o Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (“expropriation”), except: (a) for a public purpose; (b) in a non-discriminatory manner; (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and (d) in accordance with due process of law and Article 10.5.” Honduras is breaching Article 10.7 by substantially depriving Claimants of the value of their investments. Honduras’s conduct has already resulted in significant harm to Claimants, including the loss of economic opportunity, as well as negative impacts on financing, operations and reputation. Moreover, Honduras has created and is maintaining a state of uncertainty as to the implications of the repeal of the ZEDE Legal Framework for existing investments in Próspera ZEDE such that Claimants potentially may have lost or will lose their

⁹⁶ See *supra* ¶¶ 31-33, 47.

investments, including without limitation, their acquired rights under the ZEDE Legal Framework.⁹⁷

73. *Transfers.* Article 10.8 of the CAFTA-DR provides that Honduras “shall permit all transfers relating to a covered investment to be made freely and without delay in to and out of its territory.” Honduras has breached Article 10.8 by interfering with Claimants’ ability to freely transfer funds both directly and through authorized intermediaries and financial institutions.
74. As detailed below, Claimants are entitled to bring claims for each of Honduras’s breaches of its obligations under Section A of Chapter 10 pursuant to Article 10.16.1(a)(i)(A) of the CAFTA-DR. As the events are ongoing, these breaches are expected to continue and other further breaches may occur (*e.g.*, if Honduras provides more favorable treatment to Hondurans with investments in ZEDEs than it does to US investors, or takes further damaging legislative, regulatory, or executive action *vis-à-vis* Próspera ZEDE or Claimants’ assets, executives or personnel), all of which would give rise to additional claims, including, without limitation failure to accord national treatment and full protection and security.

B. HONDURAS HAS BREACHED THE CHARTER OF PRÓSPERA ZEDE

75. Honduras’s acts and omissions constitute violations of the terms of the Charter of Próspera ZEDE, pursuant to which the relevant Honduran investment authority authorized Honduras Próspera’s investment in Próspera ZEDE.
76. As set out above, the Charter of Próspera ZEDE provides that Honduras Próspera is entitled to all the rights and duties conferred under the ZEDE Law, and that Próspera ZEDE possesses all the rights, privileges and duties of a ZEDE and has its own legal personality

⁹⁷ Article 1.3 of the LSA provides that, “for purposes of applying, enforcing and interpreting the CAFTA-DR ... the following statement[] shall be regarded as presumptively established ... (c) [a]ny breach of [the LSA] is an unlawful expropriation of Honduras Próspera’s vested legal rights arising from investment authorizations and duly authorized investment agreements between Honduras Próspera and the Republic of Honduras,” and, as addressed below, Honduras has violated the LSA.

and status under the ZEDE Legal Framework.⁹⁸ Honduras has breached the Charter of Próspera ZEDE by reneging on its legal stability commitments to maintain the ZEDE Legal Framework in effect as to Honduras Próspera and Próspera ZEDE, including, among others, by denying Próspera ZEDE's legal existence and status as a ZEDE and failing to respect its corresponding rights and privileges under the ZEDE Legal Framework.

77. As detailed below, the Charter of Próspera ZEDE is an “investment authorization” under the CAFTA-DR and Honduras Próspera is entitled to bring claims for breaches of the Charter pursuant to Article 10.16.1(a)(i)(B) of the CAFTA-DR.

C. HONDURAS HAS BREACHED THE LSA

78. Honduras's acts and omissions constitute violations of the terms of the LSA, pursuant to which the relevant Honduran national authority agreed in writing that Honduras Próspera's investments in Honduras were entitled to legal stability.
79. As set out above, under Article 1.4 of the LSA, Honduras guaranteed legal stability of the ZEDE Legal Framework for Próspera ZEDE, Honduras Próspera, and its affiliates, until the latter of 15 January 2064 or ten years from the enactment of the repeal of the ZEDE Legal Framework.⁹⁹ Among other things, Honduras agreed that the ZEDE Legal Framework “and all rights, conditions, procedures and protections either explicit[ly] or implicit[ly] included therein respectively, shall remain as guarantees and shall be guaranteed by the Republic of Honduras as applied to Honduras Próspera, its agents, officers, board members, shareholders, and affiliates by majority ownership or control, and all other investors and lawful inhabitants of Próspera ZEDE.” Honduras has breached its obligations under the LSA, including, among others, by failing to accord legal stability and by seemingly applying the repeal of the ZEDE Legal Framework to Próspera ZEDE in violation of its express agreement to the contrary.

⁹⁸ See *supra*, ¶¶ 42, 76; Charter of Próspera ZEDE, dated 12 Sept. 2019 (CL-5) Art. 11.02.

⁹⁹ See *supra*, ¶ 47; Initial LSA (Ex. C-6) Arts. 1.1-1.4.

80. As detailed below, the LSA is an “investment agreement” under the CAFTA-DR and Honduras Próspera is entitled to bring claims for breaches of the LSA pursuant to Article 10.16.1(a)(i)(C) of the CAFTA-DR as well as Article 2.2 of the LSA.

V. HONDURAS’S BREACHES HAVE ALREADY CAUSED SUBSTANTIAL DAMAGES TO CLAIMANTS AND, IF CONTINUED, WILL CAUSE THE DEMISE OF CLAIMANTS’ ZEDE VENTURE, CAUSING CLAIMANTS BILLIONS OF DOLLARS IN DAMAGES

81. Semi-autonomous special economic zones have a proven successful track record when given sufficient time and stability (*e.g.*, the Dubai International Financial Centre in the United Arab Emirates and Schenzhen in China, where a scarcely populated area grew exponentially with the adoption of special economic zone regimes). Likewise, Próspera ZEDE was to be an economic juggernaut for growth and development in Honduras. Such a massive long-term project required robust guarantees of legal stabilities for a significant period of time. Honduras repeatedly guaranteed that the ZEDE Legal Framework would remain in effect as to Próspera ZEDE for five decades, at a minimum. In reliance on these guarantees, Claimants raised and invested many millions of dollars, had concrete plans to raise and invest many more millions, and stood to make very substantial returns from their provision of GaaS and real estate investment and development over the course of at least half a century. Instead of allowing Claimants to realize their project and create significant growth and development for Honduras while reaping the returns of their investments, Honduras has chosen to renege on its legal stability guarantees and engage in grossly unfair and irrational conduct, causing substantial damages to Claimants.

82. Claimants are entitled to compensation for any and all losses that they have or will have suffered as a result of Honduras’s illegal conduct. Honduras’s conduct has already resulted in significant harm to Claimants, including the loss of economic opportunity, as well as negative impacts on financing, operations and reputation. Moreover, if it is Honduras’s position that Próspera ZEDE no longer validly exists, Claimants are entitled to compensation for the full value of their losses over the course of the remaining period of the legal stability of the ZEDE Legal Framework that Honduras guaranteed with respect to Claimants and Próspera ZEDE.

83. In this proceeding, Claimants will present a valuation of Claimants' losses prepared by an expert firm experienced in the quantification of damages in investment treaty arbitrations. Depending on how Honduras chooses to proceed, the amount of damages will be at least several billion US dollars, and as high as US\$ 10.775 billion if Claimants' entire investment is lost.

VI. HONDURAS HAS REFUSED TO ENGAGE IN CONSULTATIONS AND NEGOTIATIONS AND THE DISPUTE IS ONGOING

84. Article 10.15 of the CAFTA-DR provides that “[i]n the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures such as conciliation and mediation.” While the word “should” in the English version of the treaty may leave some doubt as to whether consultation and negotiation are mandatory or recommended, the word “*deben*” [must] in the equally authentic Spanish version makes clear that it is the former.¹⁰⁰

85. When the letters of Honduras Próspera to Honduras of 26 April and 11 May described above went unanswered,¹⁰¹ Claimants delivered on 3 June 2022 to Honduras a formal Request for Consultations and Negotiations under Article 10.15 of the CAFTA-DR.¹⁰² Claimants have not received a response to their letter.

86. In the absence of any consultations and negotiations with Honduras, on 16 September 2022 Claimants delivered a written notice of their intention to submit their claims to arbitration pursuant to Article 10.16(2) of the CAFTA-DR to Honduras's General Directorate for Economic Integration and Commercial Policy [*Dirección General de Integración*

¹⁰⁰ Pursuant to Article 33 of the Vienna Convention on the Law of Treaties, “[t]he terms of the treaty are presumed to have the same meaning in each authentic text.” See Vienna Convention on the Law of Treaties, 1155 U.N. Treaty Series, p. 331, done at Vienna on 23 May 1969, entered into force on 27 Jan. 1980 (CL-1) Art. 33.

¹⁰¹ See *supra* ¶ 65; Letter from Honduras Próspera to President Castro, dated 26 Apr. 2022 (Ex. C-61); Letter from Honduras Próspera to President Castro, dated 11 May 2022 (Ex. C-63).

¹⁰² Letter from Claimants to Honduras's Dirección General de Integración Económica y Política Comercial, dated 3 Jun. 2022 (Ex. C-64).

Económica y Política Comercial] with copies to the President and other officials.¹⁰³ The Directorate never sent a response to this notice (nor did any of the other addressees).

87. Claimants persisted in seeking a constructive dialogue with representatives of Honduras. Eventually, Claimants were able to establish informal channels of communication with the Minister of Economy and the Attorney General of Honduras. Despite Claimants' many efforts, however, it has been impossible to establish a formal process for good faith negotiations. Among other things, Honduras refused to acknowledge its legal stability guarantees and instead attempted to shift the burden of finding a solution to Claimants by demanding settlement proposals from Claimants. Honduras's lack of seriousness in this regard was manifest, particularly as it refused to agree that the proposals and any discussions would be without prejudice and confidential, even after Claimants' counsel sent a memorandum explaining the worldwide custom and practice of confidential and without prejudice negotiations and citing supporting sources, including the recommendation of the Secretary-General of ICSID herself that respondent States in ICSID arbitration adopt this practice in view of its advantages for them.
88. Seeking to break the impasse, Claimants also proposed to submit the dispute to mediation under the 2022 ICSID Mediation Rules. Yet again, Honduras never responded.
89. Notwithstanding the foregoing and the present submission of claims to arbitration, Claimants remain willing to conduct constructive discussions in good faith with Honduras, as Claimants strongly prefer working with Honduras to continue their project of creating hubs of exponential growth and development in the country, thereby creating opportunity and prosperity for both the citizens of Honduras and Claimants, over obtaining an award of billions of dollars from the State.

VII. JURISDICTION

90. Claimants meet all applicable jurisdictional requirements for bringing their claims to arbitration under the CAFTA-DR, the LSA, and the ICSID Convention. As explained

¹⁰³ Letter from Claimants to Honduras's Dirección General de Integración Económica y Política Comercial, dated 16 Sept. 2022 (Ex. C-67).

below, Claimants and Honduras have consented to ICSID arbitration under Section B of Chapter 10 of the CAFTA-DR, and Honduras Próspera and Honduras have additionally consented to ICSID arbitration in the LSA. Further, Claimants qualify as investors with covered investments under CAFTA-DR and nationals of a Contracting State under the ICSID Convention, and comply with all applicable requirements for the submission of a claim to arbitration under CAFTA-DR and the ICSID Convention.

A. THE PARTIES HAVE CONSENTED TO THE PRESENT ARBITRATION

1. Honduras's Consent to Arbitration

91. Honduras has consented in writing to the submission of claims under the CAFTA-DR and the LSA to ICSID arbitration.

92. Article 10.17 of the CAFTA-DR provides that “[e]ach Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement” and that this consent “shall satisfy the requirements of: (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) ... for written consent of the parties to the dispute.” Article 10.16(1)(a) of the CAFTA-DR specifies the claims that may be brought to arbitration under Section B of Chapter Ten as follows:

the claimant, on its own behalf, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement; and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach.

93. In the instant case, Claimants are submitting claims that Honduras has breached various obligations under Section A of Chapter 10. In addition, Honduras Próspera is submitting claims that Honduras has breached the Charter of Próspera ZEDE and the LSA, which

qualify, respectively, as an investment authorization and an investment agreement under CAFTA-DR.

94. The Charter of Próspera ZEDE constitutes an investment authorization as defined by Article 10.28 of the CAFTA-DR:

investment authorization means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of another Party.

95. As addressed above, the Charter of Próspera ZEDE is an authorization by CAMP, which is the relevant foreign investment authority for the purposes of ZEDEs, and authorizes Honduras Próspera to act as promoter and organizer of Próspera ZEDE in accordance with the ZEDE Law.

96. The LSA constitutes an investment agreement as defined by Article 10.28 of the CAFTA-DR:

investment agreement means a written agreement¹² that takes effect on or after the date of entry into force of this Agreement between a national authority¹³ of a Party and a covered investment or an investor of another Party that grants the covered investment or investor rights:

- (a) with respect to natural resources or other assets that a national authority controls; and
- (b) upon which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself.

¹² “Written agreement” refers to an agreement in writing, executed by both parties, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 10.22.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity or a decree, order, or judgment; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

¹³ For purposes of this definition, “national authority” means an authority at the central level of government.

97. As addressed above, the LSA is an agreement in writing to which Honduras Próspera and Honduras are parties. It was executed on behalf of Honduras by the Technical Secretary of Próspera ZEDE, who is the national authority empowered to conclude legal stability agreements on behalf of Honduras by Article 12(2) and 45 of the ZEDE Law.¹⁰⁴ The LSA took effect on 9 March 2021 and grants legal stability rights to Honduras Próspera and its investment, including, among things, as to the regulation of natural resources,¹⁰⁵ sea and air navigation,¹⁰⁶ the environment,¹⁰⁷ and ownership of property,¹⁰⁸ which qualify as “natural resources or other assets that a national authority controls.”
98. Honduras has also consented to arbitration with Honduras Próspera under Section 2.2 of the LSA, which provides that “[c]laims for monetary damages by the Parties arising under or in any way related to [the LSA] shall be arbitrated pursuant to the rules and procedures set forth by the International Centre for the Settlement of Investment Disputes (ICSID) as stated under the CAFTA-DR.”¹⁰⁹

¹⁰⁴ ZEDE Law (Ex. C-6) Art. 77 (“The Technical Secretary ... is the highest executive officer...His/her functions are: ... 2. Subscribe to legal stability agreements for matters deemed necessary”).

¹⁰⁵ ZEDE Law (Ex. C-6) Art. 3 (“The [ZEDEs] enjoy operational and administrative autonomy that includes the functions, powers and obligations that the Constitution of the Republic and the laws confer upon the municipalities”); Constitution of Honduras of 1982 with Amendments through 2013 (Ex. C-4) Art. 301 (“Taxes and contributions levied on income derived from investments made in the respective municipality, as well as the participation incumbent upon it for the exploitation or processing of the natural resources located in its municipal jurisdiction, shall be paid into the municipal treasury, except where reasons of national expediency require them to be used for other purposes.”).

¹⁰⁶ ZEDE Law (Ex. C-6) Art. 31 (“The free entry of air or sea vessels to the [ZEDEs] is guaranteed. The regulation of sea and air navigation, as well as the control of ports and airports in the jurisdiction of the ZEDE will be under its responsibility, and it may establish the fees that the ZEDE considers appropriate.”).

¹⁰⁷ ZEDE Law (Ex. C-6) Art. 37 (“The [ZEDE] must adopt policies aimed at protecting and preserving the environment”).

¹⁰⁸ ZEDE Law (Ex. C-6) Art. 6 (“Only the real estate included within [ZEDEs’] spatial area of competence will be subject to a special regime of inclusion therein.”).

¹⁰⁹ Initial LSA (CL-6) Arts. 2.2.

2. Claimants' Consents and Waiver

99. Claimants consent to ICSID arbitration by virtue of the submission of their claims to arbitration under Section B of Chapter Ten of the CAFTA-DR in the present Request submitted to ICSID.
100. Article 10.16.3 of the CAFTA-DR provides that:
- ... a claimant may submit a claim referred to in paragraph 1:
- (a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;
101. The United States (which is the Party of the claimant) and Honduras (the respondent) are both parties to the ICSID Convention.¹¹⁰
102. Article 10.16.4 of the CAFTA-DR provides that “[a] claim shall be submitted to arbitration under this Section when the claimant’s notice of request for arbitration referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General [of ICSID],” and Article 10.17.2 of the CAFTA-DR provides that “submission of a claim to arbitration under this Section shall satisfy the requirements of: (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) ... for written consent of the parties to the dispute.”
103. Honduras Próspera previously also consented to ICSID arbitration with Honduras under Section 2.2 of the LSA.¹¹¹
104. Articles 10.18.2 and 10.18.3 of the CAFTA-DR further provide as follows:

2. No claim may be submitted to arbitration under this Section unless:

¹¹⁰ See ICSID, Database of ICSID Member States (indicating that (i) Honduras signed the ICSID Convention on 28 May 1986 with the Convention entering into force for Honduras on 16 March 1989 and (ii) the United States signed the ICSID Convention on 27 Aug. 1965 with the Convention entering into force for the United States on 14 October 1966), available at <https://icsid.worldbank.org/about/member-states/database-of-member-states>.

¹¹¹ Initial LSA (CL-6) Art. 2.2.

- (a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and
- (b) the notice of arbitration is accompanied,
 - (i) for claims submitted to arbitration under Article 10.16.1(a), by the claimants' written waiver [...] of any right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measures alleged to constitute a breach referred to in Article 10.16.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.16(a)) ... may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

105. Each Claimant attaches hereto the waiver required by these provisions.¹¹²

106. Claimants further confirm that they have not initiated before an administrative tribunal or court of Honduras, or any other binding dispute settlement procedure, any proceeding with respect to any measure alleged herein to constitute a breach of an obligation of Honduras under Section A of Chapter 10 of the CAFTA-DR, the Charter of Próspera ZEDE, or the LSA.

B. CLAIMANTS ARE QUALIFIED TO SUBMIT CLAIMS TO ARBITRATION PURSUANT TO ARTICLE 10.16.1(A) OF CAFTA-DR AND THE ICSID CONVENTION

107. Article 10.28 of the CAFTA-DR defines "claimant" as "an investor of a Party that is a party to an investment dispute with another Party" and in turn defines "investor of a Party" to include an "enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party[.]" Article 2.1 of the CAFTA-DR, which contains the treaty's general definitions, defines "enterprise of a Party" as "an enterprise

¹¹² Honduras Próspera's Waiver Pursuant to Article 10.18 of the CAFTA-DR, dated 19 Dec. 2022 (Ex. C-84); SJBDC's Waiver Pursuant to Article 10.18 of the CAFTA-DR, dated 19 Dec. 2022 (Ex. C-85); PAC's Waiver Pursuant to Article 10.18 of the CAFTA-DR, dated 15 Dec. 2022 (Ex. C-76).

constituted or organized under the law of a Party.” Article 10.28 further defines “investment” to include:

every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitments of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stocks, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans;
- ...
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights;
- (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges.

108. Article 25(1) of the ICSID Convention in turn provides that “[t]he jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State ... and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.” Article 25(2)(b) defines “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 ... arbitration.”

109. Claimants are “investors of a party” with protected “investments” as defined under the CAFTA-DR. Claimants are also “nationals of another Contracting State” with “investments” in Honduras under Article 25 of the ICSID Convention, and the present legal dispute arises directly out of those investments.

110. Claimant Honduras Próspera is a corporation incorporated in the State of Delaware, United States¹¹³ with investments in Honduras, and therefore qualifies as an “investor of party” under the CAFTA-DR. Honduras Próspera’s covered investments in Honduras include (i) direct and indirect ownership of rights/shares in enterprises incorporated under the laws of Honduras and of Próspera ZEDE, through which it operates the various branches of its business; (ii) contracts with affiliates and third-parties for the operation of Próspera ZEDE and for real estate development; (iii) intellectual property rights with respect to Próspera ZEDE; (iv) licenses, authorizations, permits and other rights conferred by Honduras under its domestic law, including authorizations to incorporate land as a ZEDE and the Charter of Próspera ZEDE; (v) assets located in Honduras, including real property; (vi) loans and other forms of debt instruments extended for the purposes of developing its business in Próspera ZEDE; and (vii) other intangible property rights, including without limitation, acquired rights under the ZEDE Legal Framework. The present dispute arises directly out of those investments.
111. Claimant SJBDC is a limited liability company organized under the laws of Delaware, United States¹¹⁴ with covered investments in Honduras, and therefore qualifies as an “investor of a party” under the CAFTA-DR. SJBDC’s covered investments in Honduras include (i) rights/shares in enterprises incorporated under the laws of Próspera ZEDE through which SJBDC operates part of its real estate business; (ii) contracts with related entities and third parties for the development of real estate projects in Honduras; (iii) licenses, authorizations, permits and other rights conferred under the laws of Honduras and of Próspera ZEDE for tis real estate projects; (iv) assets located in Honduras, including real property; (v) loans and other forms of debt instruments extended for the purposes of developing its business in Próspera ZEDE; and (vi) other intangible property rights,

¹¹³ See *supra* ¶¶ 14, 48; Certificate of Formation of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, State of Delaware, Secretary of State, Division of Corporations, dated 28 Aug. 2017 (Ex. C-14); Limited Liability Company Operating Agreement of Sociedad para el Desarrollo Socioeconómico de Honduras, LLC, dated 30 Jun. 2018 (Ex. C-19).

¹¹⁴ See *supra* ¶¶ 15, 44; Certificate of Formation of Próspera Land SPV 1 LLC, State of Delaware, Department of State, Division of Corporation, dated Oct. 2016 (Ex. C-12); Amended and Restated Operating Agreement for St. John’s Bay Development Company LLC, dated 10 Sept. 2021 (Ex. C-40).

including without limitation, acquired rights under the ZEDE Legal Framework. The present dispute arises directly out of those investments.

112. Claimant PAC is a limited liability company organized under the laws of Texas, United States¹¹⁵ with investments in Honduras, and therefore qualifies as an “investor of a party” under the CAFTA-DR. PAC’s covered investments in Honduras include (i) contracts with related entities and third parties necessary to provide dispute resolution services in Próspera ZEDE; (ii) licenses, authorizations, permits, and similar rights conferred under the laws of Honduras and/or of Próspera ZEDE to operate as an arbitration center; (iii) assets located in Honduras; and (iv) other intangible property rights, including without limitation, acquired rights under the ZEDE Legal Framework. The present dispute arises directly out of those investments.

C. CLAIMANTS HAVE COMPLIED WITH THE APPLICABLE NOTICE REQUIREMENTS AND THEIR CLAIMS ARE TIMELY

113. The CAFTA-DR establishes the following consultation and negotiation, temporal, and notice requirements for claims in Articles 10.15, 10.16.2, 10.16.3, and 10.18.1, respectively:

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures such as conciliation and mediation

At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration

Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim

No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article

¹¹⁵ See *supra* ¶¶ 16, 44; Certificate of Filing of PAC, Office of the Secretary of State, State of Texas, dated 4 Nov. 2019 (Ex. C-32); Limited Liability Company Operating Agreement of Próspera Arbitration Center LLC, dated 31 Dec. 2019 (Ex. C-33).

10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a) ... has incurred loss or damage.

114. Each of these temporal requirements is met in the instant case. As explained in Section III.C, the events giving rise to Claimants' claims arose more than six months but less than three years before this Request. In particular, as described above, Honduras enacted Decree No. 33-2022 abolishing the ZEDE Law in April 2022 and then failed to honor its legal stability guarantees vis-à-vis Claimants and their investments in Honduras.¹¹⁶ Claimants delivered a formal Request for Consultations and Negotiations under Article 10.15 of the CAFTA-DR to Honduras on 3 June 2022, to which they received no response,¹¹⁷ following which Claimants submitted a written Notice of Intent to Submit Claims to Arbitration Pursuant to Article 10.16 of the CAFTA-DR on 16 September 2022, to which they also received no response.¹¹⁸

VIII. PROCEDURAL MATTERS

A. CONSTITUTION OF THE ARBITRAL TRIBUNAL

115. Article 10.19.1 of the CAFTA-DR provides:

Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties

116. The parties have not otherwise agreed to the number or appointment of arbitrators.
117. Article 10.16.6 of the CAFTA-DR provides that “[t]he claimant shall provide with the notice of arbitration: (a) the name of the arbitrator that the claimant appoints.” Claimants hereby appoint Mr. David W. Rivkin to the Tribunal. All communications to Mr. Rivkin should be addressed to:

¹¹⁶ See *supra* ¶ 61; Decree No. 33-2022, published on 26 Apr. 2022 (Ex. C-60).

¹¹⁷ See *supra* ¶ 85; Letter from Claimants to Honduras's Dirección General de Integración Económica y Política Comercial, dated 3 Jun. 2022 (Ex. C-64).

¹¹⁸ See *supra* ¶ 86; Letter from Claimants to Honduras's Dirección General de Integración Económica y Política Comercial, dated 16 Sept. 2022 (Ex. C-67).

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118. Claimants confirm that, to their knowledge and belief, Mr. Rivkin is independent and impartial, and has the necessary availability.
119. Chapter 10 of the CAFTA-DR does not provide a timeline for Respondent to appoint an arbitrator to the tribunal. Claimants propose the following procedure:
- a) Honduras shall appoint an arbitrator within 30 days of the registration of this Request;
 - b) The two arbitrators so appointed shall, within 30 days of the appointment of Respondent's arbitrator and in consultation with the parties, jointly select a third arbitrator to serve as President of the Tribunal, provided that the Respondent-appointed co-arbitrator accepts his or her appointment within 15 calendar days of being appointed.
120. Claimants invite Honduras to respond to this proposal within 30 days of registration of this Request.

B. LANGUAGE OF ARBITRATION

121. Rule 7(1) of the ICSID Arbitration Rules provides that “[t]he parties may agree to use one or two procedural languages in the proceeding.” The Parties have not agreed on the procedural language(s) for the arbitration.
122. Rule 3(a)(ii) of the Institution Rules recommends that the request for arbitration “contain any procedural proposals or agreements reached by the parties, including with respect to: ... (ii) the procedural language(s).” Claimants propose that the language of the arbitration be English.

C. PLACE OF ARBITRATION

123. In accordance with Article 62 of the ICSID Convention, the place of the proceedings is the seat of ICSID, in Washington, DC.

D. INSTITUTIONAL REQUIREMENTS AND LODGING FEE

124. This Request and all supporting documentation, including proof of payment of the prescribed lodging fee, have been uploaded to ICSID's sharing platform and transmitted to the ICSID Secretariat by email.

IX. RELIEF REQUESTED

125. For the foregoing reasons, Claimants respectfully request at this time that the Tribunal:

a) FIND that Honduras has:

i) with respect to Honduras Próspera, SJBDC and PAC:

1. breached Chapter 10 of the CAFTA-DR, including by breaching its obligations:

a. to accord Claimants and their investments most-favored-nation treatment (Article 10.4);

b. to accord Claimants' investments treatment in accordance with customary international law (Article 10.5);

c. not to expropriate Claimants' investments except for a public purpose, in a non-discriminatory manner, on payment of prompt, adequate and effective compensation in accordance with Article 10.7(2)-(4), and in accordance with due process of law and Article 10.5 (Article 10.7); and

d. to permit all transfers relating to a covered investment to be made freely and without delay in to and out of Honduras (Article 10.8);

- ii) with the respect to Honduras Próspera:
 - 1. breached the Charter of Próspera ZEDE; and
 - 2. breached the LSA, including its legal stability provisions.

 - b) ORDER Honduras:
 - i) to compensate Claimants for their losses arising from Honduras's breaches of the CAFTA-DR, the Charter of Próspera ZEDE, and the LSA, as applicable to each Claimant and to the extent of their corresponding damages, in an amount to be established in this proceeding;
 - ii) to pay pre-award and post-award interest on any damages awarded to Claimants in this arbitration at a rate to be established in the course of the arbitration;
 - iii) to pay all the costs of this arbitration, including, without limitation, Claimants' legal costs, expert fees, and in-house costs, the fees and expenses of the Tribunal, and ICSID's costs;

 - c) AWARD any further or other relief that the tribunal considers just and appropriate.
126. Claimants reserve their rights to amend or modify their claims and requests for relief in this Request to the extent permitted under the applicable procedural rules, and to present further submissions, arguments, and evidence, including in light of further actions and inactions on the part of Honduras in violation of its obligations (including, without limitation, conduct constituting a failure to accord national treatment and full protection and security) and as more information becomes available through the disclosure of documents and witness statements.

Respectfully submitted,

WHITE & CASE LLP

A handwritten signature in black ink, appearing to read "Ank Santens", with a long horizontal line extending to the right.

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December 19, 2022