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**AGREEMENT ON REALIZATION OF PROJECT ŠIBENIK**

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entered into

**Grad Šibenik**

and

**Dogus Marina Hoteli d.o.o.**

and

**NCP-Nautički centar Prgin-Remontno Brodogradilište Šibenik d.o.o.**

and

**Dogus Hoteli d.o.o.**

**30 January 2012**

**The City of Šibenik**, Šibenik, Trg Pavla Šubića I No. 2, represented by Mr. Ante Županović, the mayor of the City of Šibenik on one side (hereinafter referred to as the: "**City**")

and

**Dogus Marina Hoteli d.o.o.**, Šibenik, Obala Jerka Šižgorića 1, PIN (OIB): 55920360113 registered with the Commercial Court Registry in Zadar – Permanent Office in Šibenik under registry number (MBS) 100010327, represented by Mr Hüsnü Akhan and Mr Burak Baykan (hereinafter referred to as: the "**Partner**")

and

**NCP-Nautički centar Prgin-Remontno Brodogradilište Šibenik d.o.o.**, Šibenik, Obala Jerka Šižgorića 1, OIB: 23065093882, registered with the Commercial Court Registry in Zadar – Permanent Office in Šibenik under registry number (MBS) 080371329, represented by Mr. Goran Prgin, on the other side (hereinafter referred to as the: "**NCP Remontno Brodogradilište**")

and

**Dogus Hoteli d.o.o.**, Zagreb, Garićgradska 13, OIB: 91806328831 registered with the Commercial Court Registry in Zadar – Permanent Office in Šibenik under registry number (MBS) 080699924 represented by Mr Adem Durak i Mr Eryigit Umur (hereinafter referred to as: „**Dogus Hoteli**")

## **PREAMBLE; DEFINITIONS**

- 1.1. The Parties acknowledge that the reason they have entered into this Agreement is to implement the project for the construction and operation of the Tourist Resort and enjoy direct and indirect benefits arising out of this project in a way foreseen herein. This intention of the Parties will be realized by, among other things, putting of the Land at Partner's disposal, the preparation of the entire project documentation in accordance with the relevant urban conditions, provision of financing, construction, equipment, and operation of the Tourist Resort.

To avoid any doubt, the Parties agree that this Agreement is not a partnership agreement.

- 1.2. The Parties agree that NCP Remontno Brodogradilište was selected to be the City's private partner for the implementation of the Project pursuant to the Bidding Procedure and the City's decision dated 20 August 2007 (class: 302-01/07-01/1, reference number: 2182/01-01/1-07-4) which Project NCP Remontno Brodogradilište should perform through the Partner which was incorporated for that purpose. For the purpose of realization of Project, NCP Remontno Brodogradilište and the City entered into on 20 October 2007 the Agreement on realization of project Šibenik.
- 1.3. NCP Shipyard and the Parties agree that the Changed circumstances as defined in Article 18 of the Agreement on realization of project Šibenik as of 20 August 2007 have occurred, and that due to the Changed circumstances they have approached to sign this Agreement by which Agreement NCP Remontno Brodogradilište assigns to the Partner its entire contractual position from the Agreement on realization of project hotel Šibenik as of 20 August 2007 and the Partner accepts the assignment of Agreement on realization of project hotel Šibenik as of 20 August 2007 by which assignment the Partner shall become the holder of all rights and obligations of NCP Remontno Brodogradilište arising from the Agreement on realization of project hotel Šibenik as of 20 August 2007. By signing this Agreement the City gives its unconditional and irrevocable consent to the assignment of the Agreement on realization of project hotel Šibenik as of 20 October 2007 from NCP Remontno Brodogradilište to the Partner. By signing this amended Agreement, this Agreement completely replaces the Agreement on realization of project hotel Šibenik as of 20 August 2007 and the Partner, the City, Dogus Hoteli and NCP Remontno Brodogradilište hereby confirm that they have no any right, obligations or mutual outstanding or non-mature claim monetary or non-monetary, claim based on that agreement or in connection therewith or its transfer, except the consideration for Building Right for 2012.
- 1.4. NCP Remontno Brodogradilište, the City and the Partner hereby confirm that Schedule 1, Schedule 2, Schedule 4 and Schedule 5 to the Agreement on realization of project hotel Šibenik as of 20 August 2007 shall not apply as of the date of entering into this Agreement. The City and the Partner agree to harmonize the Schedule 1, Schedule 2, Schedule 4 and Schedule 5 of the Agreement on realization of project hotel Šibenik as of 20 August 2007 with the provisions of this Agreement in 30 days as of the date of entering into this Agreement in which event the Parties undertake to enter into annex to the Agreement.
- 1.5. The Parties agree they shall regulate all their relations by this Agreement and other accompanying agreements forming a whole with this Agreement and serving the achievement of the mutual objective described in Article 1.1. of this Agreement. The Parties agree that the termination of this

Agreement for any reason whatsoever shall be the reason for terminating all agreements related with it, unless explicitly determined otherwise herein. In the event of termination of this Agreement and any other agreements related with it, the relations between the Parties shall be regulated by each of the respective agreements.

- 1.6. The following words and expressions contained in this Agreement and all its Schedules which the Parties shall mutually determine in accordance with Article 1.3. hereof, shall have the meanings ascribed to them in this Article 1.4., unless the context of a provision determines otherwise.

<b><i>Dogus Marina Hoteli d.o.o.</i></b>	means a limited liability company incorporated for the purpose of development of Tourist Resort and accomplishment of Parties' (as defined below) mutual interest as defined herein;
<b><i>Stage</i></b>	means the stages of realization of Project as determined by this Agreement
<b><i>City</i></b>	means City of Šibenik which acts in this Agreement as the public bidder and which has carried out the Bidding procedure;
<b><i>Investment Plan</i></b>	means investment plan as set forth by the Schedule 2 hereof
<b><i>Building Right Consideration</i></b>	means consideration for Building right calculated in accordance with Schedule 2 of the Building Right Agreement
<b><i>Bidding Documentation</i></b>	means the Documents for bidding regarding the selection of a private partner for the implementation of the greenfield tourist project Hotel Šibenik;
<b><i>Bidding Procedure</i></b>	means bidding procedure for selection of private partner for realization of greenfield tourist project Hotel Šibenik;
<b><i>Partner</i></b>	means Dogus Marina Hoteli d.o.o., Šibenik, Obala Jerka Šižgorića 1, OIB: 55920360113; registered with the Commercial Court Registry in Zadar - Permanent Office in Šibenik;

<b><i>Business Plan</i></b>	means the business plan attached as Schedule 1 hereto, which includes Parties' activities aimed at the implementation of development of the Tourist Resort;
<b><i>Building right</i></b>	means building right established by the Building Right Agreement
<b><i>To Present</i></b>	means delivery of the documents in writing, which shall become the Schedule to the Agreement if applicable
<b><i>Schedules</i></b>	means all Schedules hereto, which the Parties shall harmonize in accordance with Article 1.3. hereof, which are designated as such in this Agreement. The Schedules form the integral part of this Agreement;
<b><i>Project</i></b>	means the project for construction and operation of the Tourist Resort Hotel Šibenik;
<b><i>Changed Circumstances</i></b>	has the meaning ascribed to it in Article 18 hereof;
<b><i>Business Day</i></b>	means any day other than Saturday and Sunday on which banks are open for business in Zagreb, Croatia and Istanbul, Turkey. Reference to a day other than a Business Day in this Agreement shall mean a calendar day
<b><i>Auditor</i></b>	has the meaning ascribed to it in Article 15.2.2 hereof;
<b><i>Sinergijske Solucije d.o.o.</i></b>	means društvo Sinergijske Solucije d.o.o. from Zagreb, a company in charge of carrying out the Partner selection process pursuant to the Consultancy Agreement for the Selection of Private Partners;
<b><i>Parties, Party</i></b>	means the City and the Partner together or either of them individually;
<b><i>Tourist Resort</i></b>	means the tourist resort as described in detail in Schedule 1 hereto;
<b><i>Agreement</i></b>	means this Agreement for the Implementation of the Hotel Šibenik Tourist Project including all its Schedules expressly specified herein;
<b><i>Building Right</i></b>	means the agreement that entirely corresponds to the

<b>Agreement</b>	agreement as set out in Schedule 3 of the Agreement on realization of project hotel Šibenik as of 20 August 2007, and which was signed at the same time as the Agreement on realization of project hotel Šibenik as of 20 August 2007;
<b>Consultancy Agreement for the Selection of Private Partners</b>	means the Consultancy Agreement for the Selection of Private Partners for projects within the investment tourist program of the City of Šibenik, entered into between Sinergijske Solucije. and the City of Šibenik on 4 July 2006;
<b>Study Design Agreement</b>	means the Consultancy Agreement for the design of the Feasibility Study regarding the investment tourist program of the City of Šibenik according to the public-private partnership model between the City of Šibenik and Sinergijske Solucije d.o.o. entered into on 4 July 2006;
<b>Variable Fee</b>	means net amount of the fee payable to the company Sinergijske Solucije d.o.o. pursuant to Article 7 of the Consultancy Agreement for Selection of Private Partners;
<b>Investment Amount</b>	means the cumulative amount of all investments during the Preparation Phase and the Building Phase of all Stages in the total amount of EUR 53,600,000.00 (fifty three million six hundred thousand euros), VAT excluded;
<b>Land</b>	means the land owned by the City, specified in Article 3.5. hereof, on which the Tourist Resort is to be developed, and on which the company Dogus Marina Hoteli d.o.o. shall acquire the Building Right;

- 1.7. The Parties agree to regulate their mutual relationship by this Agreement and the agreements related hereto.

## DURATION AND PROJECT'S PHASES

### Article 2.

- 2.1 The Parties agree that the duration of the Project is 50 (fifty) years as of the date of entering into the Building Right Agreement and shall be carried out by the Partner in the following stages:
- a) Building of the hotel with 80 (eighty) rooms with 160 (one hundred sixty) beds (hereinafter referred to as: "**Stage A**"), with an appraised investment value up to EUR 20,000,000.00 (twenty million EUR) including related facilities such as commercial (shopping zone, internal and/or outdoor pool, restaurants (inside the building and/or dislocated) and others, with related infrastructure (access road arrangement, electrical power connection, connection to city sewer, horticultural fixing-up);
  - b) Realization of the pool and recreation complex ("lake") on the external part of the filled area of Kuline peninsula (hereinafter referred to as: "**Stage B**"), with an appraised investment value up to EUR 2,000,000.00 (two million EUR), including related recreation and hospitality services and related infrastructure;
  - c) Realization of the business-commercial zone located on the southwest part of the Land (hereinafter referred to as: "**Stage C**"), with an appraised investment value up to EUR 3,400,000.00 (three million four hundred thousand EUR);
  - d) Realization of the module of hotels with the purpose of increasing the accommodation capacity (with 50 (fifty) rooms with 100 (hundred) beds), or with the purpose of placing polyclinic dispensaries for rendering medical tourist services or a combination of these services (hereinafter referred to as: "**Stage D**"), with an appraised investment value up to EUR 5,800,000.00 (five million eight hundred thousand euros), including related services such as a beauty parlour, etc.;
  - e) Realization of the module of hotels with the purpose of increasing the accommodation capacity (with 70 (seventy) rooms, with 140 (one hundred forty) beds), or with the purpose of placing polyclinic dispensaries for rendering medical tourist services or a combination of these services (hereinafter referred to as: "**Stage E**"), with an appraised investment value up to EUR 7,500,000.00 (seven million five hundred thousand EUR), including the related services such as spa & wellness centre, etc.;
  - f) Realization of the business-commercial centre and/or medical tourism polyclinic centre with accommodation capacity within the polyclinics located on north-east part of the Land (hereinafter referred to as: "**Stage F**"), with an appraised investment value up to EUR 4,700,000.00 (four million seven hundred thousand EUR);
  - g) Realization of the sport-recreation zone (hereinafter referred to as: "**Stage G**") with an appraised investment value up to EUR 2,100,000.00

(two million one hundred thousand EUR), including related services such as one or more hospitality facilities, trim fitness club, etc.;

h) Realization of the dependent hotels and/or villas (hereinafter referred to as: "**Stage H**"), with an appraisal value of investment up to EUR 8.100.000,00 (eight million one hundred thousand EUR).

2.2 The Parties agree that the Partner is obligated to realize Project's Stage A. The Parties agree that the deadlines for realization of the Project's Stage A are defined in Article 2 of this Agreement.

2.3 The Parties agree that, depending on the market or business circumstances of the Partner, the Partner shall have the right to continue with the realization of one or more of the following stages: Stage B, Stage C, Stage D, Stage E, Stage F, Stage G and Stage H. The Parties agree to enter into an annex to the Agreement defining the activities and deadlines by which each stage should be performed, before each stage begins.

2.4 The Parties agree that each stage defined in Article 2.1. of this Agreement shall be carried out in three phases:

a) Preparation phase described in Article 3 of the Agreement (hereinafter referred to as: "**Preparation Phase**");

b) Building phase described in Article 5 of the Agreement (hereinafter referred to as: "**Building Phase**");

c) Operation phase which shall include operation of the facilities of each stage by the Partner or a third person (hereinafter referred to as the: "**Operation Phase**"). The Parties agree that the Operation Phase shall begin by completing the Building Phase of each Stage and shall last for 50 (fifty) years as of the date of signing the Building Right Agreement in accordance with Article 6 of this Agreement.

2.5 The Parties agree to determine the commencement and completion dates of each stage of the Project by a mutual protocol. The Parties agree that all disputes regarding the commencement completion dates shall be settled in accordance with Article 9.4.1. and 9.4.2. of this Agreement.

2.6 The financing of all Project activities contemplated herein shall be provided by the Partner in a manner set forth by the Agreement and the Investment Plan.

2.7 All activities related to the implementation of the Project shall be performed by the Partner unless otherwise set forth herein.



- 2.8 In the event of termination of the Agreement due to any reason, ownership of all facilities built over the Building Right and the equipment in the facilities built over the Building Right as well as of all equipment in the Tourist Resort shall be transferred to the City in accordance with Article 12.1 hereof.
- 2.9 In the event of inconsistency between Article 2 of the Agreement and Schedule 1 of the Agreement, Article 2 of this Agreement shall prevail.

## **STAGE A OF THE PROJECT**

### **Article 2.a**

- 2.a.1 The Parties agree that the realization of Stage A shall be commenced upon effectiveness of this Agreement and shall be carried out in three phases:

2.a.1 Preparation Phase of Stage A shall include all activities preceding the construction of Tourist Resort facilities (hereinafter referred to as the: "**Stage A Preparation Phase**"). Stage A Preparation Phase shall commence by entering into force of this Agreement and shall be completed at the latest 18 (eighteen) months as of that date. The Parties agree that Stage A Preparation Phase may only be completed upon obtaining all prescribed licences and resolutions required for the construction of all facilities of Stage A Preparation Phase. Stage A Preparation Phase shall, among others, include all activities set forth in Article 3 of this Agreement.

2.a.2 Building Phase of Stage A shall include performance of all activities for construction and equipment of the facilities and planning the landscape design in accordance with the project documentation required for construction of Tourist Resort which should be constructed by the Partner (hereinafter referred to as the: "**Stage A Building Phase**"). Stage A Building Phase shall be completed at the latest 48 (forty eight) months from completion of Stage A Preparation Phase. Stage A Building Phase shall include, among others, all activities set forth in the Article 5 of this Agreement.

2.a.3 Stage A Operation Phase shall be performed in accordance with Article 2.3 and 6 of this Agreement.

2.a.4 In the event that the Partner does not perform the obligations set forth in the Stage A Preparation Phase and/or Stage A Building Phase by the due date set forth in Article 2.1.1 and/or 2.1.2 without the Partner's fault, the Parties shall prolong the terms set forth in Article 2.1.1 and/or 2.1.2 to the extent sufficient for Partner to compensate the time lost in the performance of its obligation from Stage A Preparation Phase and Stage A Building Phase which has not been lost due to its fault.

2.a.2. The Parties agree to determine the commencement date and the completion date of each phase of Stage A by the mutual protocol

## **PREPARATION PHASE**

### **Article 3.**

3.1 The Project preparation phase, among others, shall include the following activities:

3.1.1. The registration of the Building Right in favor of the Partner;

3.1.2. Preparation of the design and design of the project documentation required for the implementation of the Project;

3.1.3. Presentation of the project documentation to the City;

3.1.4. Obtaining of all licenses required for the implementation of the Project.

### **Establishment of the company Dogus Marina Hoteli d.o.o.**

3.2 The Parties agree that the Partner is incorporated for the purpose of realization of the Project, shall perform only activities related to the realization of the Project, and fulfil its obligations in accordance with this Agreement.

### **Establishment of the Building Right in favour of the company Dogus Marina Hoteli d.o.o.**

3.3 The Parties agree that for the realization of the Project, the City has entered into the Building Right Agreement with the company NCP-Hoteli d.o.o. (later company name Dogus Marina Hoteli d.o.o., now Partner) simultaneously with entering into the Agreement on realization of the project hotel Šibenik as of 20 August 2007.

3.4 The Parties agree that the City shall register the Building Right over the Land in favour of Dogus Marina Hoteli d.o.o. free of any registered or non-registered encumbrances or third party rights, in the substance and scope required for the implementation of the Project.

3.5 The City warrants it is the owner of the Land described in this Article 3.5., and that no disputes or judicial or administrative proceedings with regard to the Land are conducted or are threaten that would prevent or restrict the Building Right to be registered in favor of the company Dogus Marina Hoteli d.o.o.

The Land concerned consists of the land plot in the cadastral municipality Šibenik:

- land plot. no. 3801/1, with a surface of 45,263 m<sup>2</sup>.

Land registry excerpt, copy of the cadastral plan and a list of land plots with the possession title document for the Land concerned are contained in Schedule 1 to the Building Right Agreement.

- 3.6 The Parties agree that the Partner has takeover the possession of the entire Land including the possession over the building where the archive is located (hereinafter referred to as: the “Archive Building”).

The City warrants that the due municipal charges and other similar fees arising from the use of the Land (if any) existing until the date the Partner takes over the possession of the Land shall be settled in full.

The City warrants that there are no claims or third parties rights with respect to the Land on the basis of the Act on Compensation for Property Seized during the Yugoslav Communist Reign.

The City warrants that neither the Land nor any part thereof is cultural domain or cultural monument within the meaning of the Act on Protection and Preservation of Cultural Monuments.

The City undertakes not to offer and to register in favor of third party any substantive rights on the Land or any part thereof or encumber the land with third party rights until the registration of the Building Right and final hand over of the possession over the Land to the Partner.

The City warrants that the Land is not contaminated by any waste depositories, hazardous materials or compounds, which could result in the obligation of removal of such contamination by the Partner or affect the achievement of the mutual goal hereunder.

The City warrants it has obtained all necessary consents for disposal of the Land.

- 3.7 The Parties agree that the Partner shall pay to the City a Building Right Consideration in the amount to be calculated according to the Schedule 2 to the Building Right Agreement (hereinafter: Building Right Consideration).

### **Preparation of the design and design of the Project Documentation**

- 3.8 The Parties agree that the Partner shall begin to perform its obligations hereunder immediately after the execution of this Agreement, and begin to

prepare the design of and design the project documentation required for obtaining all licenses required for the implementation of the Project.

### **Obtaining the licences for the implementation of the Project**

- 3.9 The Parties agree that the Partner is required to ensure all conditions within its power to begin obtaining and to obtain all licenses required for the implementation of the Project immediately after signing of the Building Right Agreement.

## **OTHER CONDITIONS AND ACTIVITIES NECESSARY FOR THE PREPARATION OF THE PROJECT**

### **Article 4**

- 4.1 The City warrants that the future construction and operation of the Tourist Resort on the Land are in compliance with the requirements of the Physical Development Plan (Cro: Generalni urbanistički plan) of the City of Šibenik, and that the City shall do everything reasonably possible and within its power to ensure that physical development plans of higher order are in accordance with the conditions on the Land, given by the Physical Development Plan of the City of Šibenik.
- 4.2 The City shall undertake, within the scope of its competence for the entire term of this Agreement, everything reasonably and lawfully possible and in its power to facilitate and accelerate the adoption of the detailed development plan, and obtaining the construction and any other permits, licenses, resolutions and similar or any other administrative acts or business acts adopted by any City's administrative authorities within the scope of their competence, which would be required for the purpose of the implementation of the Project to the Partner or any third party in any way engaged in any way engaged in the implementation of the Project contemplated herein.
- 4.3 The City undertakes to secure the following infrastructure conditions for the Project realization by the end of the Construction Phase of each Stage as defined in Article 2 hereof:
- 4.3.1. Reconstruct the approach road to the Land, that is next to the north entry in the present barrack of Kuline;
- 4.3.2. Secure the appropriate water connection to the Land, that is next to the north entry in the present barrack of Kuline, in accordance with the requirements for the water supply defined in the Schedule 1 A) herein,

whereat the Partner will bear the costs of the connection pursuant to the price list applicable at the moment of the connection to the water supply network;

- 4.3.3. Secure the appropriate sewage connection to the Land, i.e. up to the north entry in the present barrack of Kuline, in accordance with the annual volume of waste waters defined in the Schedule 1 A) of this Agreement, whereat the Partner will bear the costs of the connection pursuant to the price list applicable at the moment of the connection to the water treatment network;
- 4.3.4. Within its competence, perform everything that is reasonably in its power to secure the electrical power supply to the Tourist resort, in accordance with the requirements for the electrical power defined in the Schedule 1 A) to this Agreement, whereat the Partner will bear the costs of the connection based on the price list applicable at the moment of the connection to the electrical power network.
- 4.4 The City undertakes to procure all consents of the competent authorities necessary to the City regarding the validity of this Agreement and agreements related therewith.

## **CONSTRUCTION PHASE**

### **Article 5.**

- 5.1 During the Tourist Resort Construction Phase, the Partner shall ensure, among others, the performance of the following activities:
  - 5.1.1. Ensure the realization of the financial construction for the construction of the Tourist Resort. The Investment Plan and the framework financial plan method are provided in Schedule 2 hereto. Notwithstanding the information in Schedule 2 hereto, the Parties agree that the Partner shall be free to select mode of financing the construction of the Tourist Resort the Partners considers to be the most favourable provided that this shall not diminish the dynamics and quality of implementation of Project.
  - 5.1.2. Selection of and contracting with subcontractors;
  - 5.1.3. Production of the execution design;
  - 5.1.4. Construction and equipment of the facilities in the Tourist Resort entirely in accordance with the projects presented to the City by the Partner in accordance with Article 1.1 and 3.1.3 of this Agreement;

- 5.1.5. Supervision and control of the construction and equipment of facilities in the Tourist Resort;
- 5.1.6. Obtaining the appropriate guarantees from the construction works contractors for proper and timely performance of the construction work.
- 5.2 The Parties agree that the Partner shall enter into separate agreements for the performance of the activities described in Article 5.1. hereof which shall be presented to the City, as well as any other activities not specified in Article 5.1. hereof, required for the achievement of the Project goals set forth by this Agreement.
- 5.3 The Parties agree that the principles provided in this Agreement shall be complied with during the preparation of all documents serving as basis for the construction of the Tourist Resort and especially the principle of good faith and the party equality
- 5.4 The Partner shall use its best efforts to engage legal entities with registered seats in the City of Šibenik, natural persons with place of residence in the City of Šibenik for the performance of activities in the Building Phase.

## **OPERATION PHASE**

### **Article 6.**

- 6.1. The Partner shall operate with the Tourist Resort whereby the Parties agree that the Partner shall be free to choose the mode of operating with the Tourist Resort which shall be deemed as the most useful for the Tourist Resort's development taking into account the terms and conditions set forth by the Business Plan attached hereto as Schedule 1.
- 6.2. In the event of subcontracting the operation of the Tourist Resort to a third party, the Partner shall ensure that the operation of the Tourist Resort is entrusted to a person having references and experience in operation of tourist resorts the characteristics and categorization of which correspond to the Tourist Resort, and being technically, professionally and financially capable of operating the Tourist Resort in accordance with this Agreement, and submit evidence thereof to the City.
- 6.3. The Parties agree that the residents of the City of Šibenik shall have priority status in the employment by the Partner or the Tourist Resort, under the same conditions and to the extent permitted by the law.

## COSTS OF STUDY DESIGN AND SELECTION OF THE PRIVATE PARTNER

### Article 7.

- 7.1. The Parties agree that the NCP Remontno Brodogradilište paid the net amount of HRK 100,000.00 (in words: one hundred thousand kuna net) to the account of the City of Šibenik as a refund of the monies paid by the City of Šibenik to Sinergijske Solucije d.o.o. in accordance with the Study Design Agreement. NCP Remontno Brodogradilište paid the amount specified in this Article to the account of the City of Šibenik within 15 (fifteen) days following the execution of the Agreement on realization of project hotel Šibenik as of 20 August 2007.
- 7.2. The Parties agree that the NCP Remontno Brodogradilište paid to Sinergijske Solucije d.o.o. the amount of the Variable Fee. The amount of the Variable Fee shall be calculated on the basis of the following formula:

$$V = \frac{10 - \log(I_B)}{50 \times \log(I_B) - 5} \times I_B$$

whereas:

- $V$  Amount of the Variable Fee (expressed in euros), which is subject to the charge of the appropriate amount of value added tax;
- $I_B$  Investment Amount (expressed in euros);
- $\log(I_B)$  Logarithm of number  $I_B$  with base 10.

According to the formula provided in this Article, the Variable Fee amounts to EUR 891,216.87 (eight hundred ninety one thousand two hundred and sixteen euros and eighty seven cents). The Variable Fee and the appropriate amount of value added tax should be paid in favor of the account held by the company Sinergijske Solucije d.o.o., pursuant to Article 7.3 hereof.

- 7.3. The amount defined in Article 7.2. hereof has been paid by NCP Remontno Brodogradilište to the company Sinergijske solucije d.o.o. in four installments in the following manner:
- 7.3.1. The amount of EUR 325,000.00 (three hundred twenty-five thousand euros) was paid by 24 August 2007, in kuna counter value pursuant to the middle exchange rate of Croatian National Bank at payment date, in favor

of the account held by the company Sinergijske solucije d.o.o., account number: 2360000-1101325701 opened at Zagrebačka banka, the purpose of payment to be indicated: "Variable Fee – Hotel Sibenik Project – installment 1 of 4".

- 7.3.2. The amount of EUR 220,000.00 (two hundred twenty thousand euros) was paid by 19 October 2007, in kuna counter value pursuant to middle exchange rate of Croatian National Bank at payment date, in favor of the account held by the company Sinergijske Solucije d.o.o., account number: 2360000-1101325701 opened at Zagrebačka banka, the purpose of payment to be indicated: "Variable Fee – Hotel Sibenik Project – installment 2 of 4".
- 7.3.3. The amount of EUR 275,000.00 (two hundred seventy-five thousand euros) was paid by 19 November 2007, in kuna counter value pursuant to middle exchange rate of Croatian National Bank at payment date, in favor of the account held by the company Sinergijske Solucije d.o.o., number: 2360000-1101325701 opened with Zagrebačka banka, the purpose of payment to be indicated: "Variable Fee – Hotel Sibenik Project – installment 3 of 4".
- 7.3.4. The amount of EUR 267,284.58 (two hundred sixty-seven thousand two-hundred eighty-four euros and fifty-eight eurocents) was paid by 19 December 2007, in kuna counter value pursuant to middle exchange rate of Croatian National Bank at payment date, in favor of the account held by the company Sinergijske Solucije d.o.o., number: 2360000-1101325701 opened with Zagrebačka banka, the purpose of payment to be indicated: "Variable Fee – Hotel Sibenik Project – installment 4 of 4".

## **FINANCING OF THE PROJECT**

### **Article 8.**

- 8.1. The Parties agree that the Partner shall procure the financing of all activities necessary for the realization of the Project. The mode of Project financing is described in more details in the Investment Plan attached hereto as Schedule 2 of this Agreement.

The Parties agree that the Partner shall procure that part of the Project financing, as defined by this Agreement, shall be financed by the appropriate finance agreements with finance institutions. The Parties agree that the Partner shall have the right to use the Building Right as the security interest for Project financing".



The Parties agree that the Partner shall have no right and shall not create any pledge, encumbrance or rights over the Land in favour of third parties during the term of this Agreement and the agreements related to this Agreement.

The Parties agree that the Partner shall release the Building Right of all encumbrances and rights established in favour of third parties at its own cost at the latest by 1 January 2047 (unless the maintenance of any encumbrance is approved in writing by the City) and the Partner shall have the right to create possible new encumbrances and rights over the Building Right in favour of a third party only with the prior written consent of the City. In the event of change in legislation which makes this provision unenforceable, the Partner shall undertake all actions required to enable the City to take possession of the facilities and equipment erected on the Building Right, free of any third parties' encumbrances, requests and rights, should the Building Right cease. The Parties agree to register in the land registry the limitation of the Partner's right to create any pledge, encumbrance or third parties' rights over the Building Right after 1 January 2047 without prior written consent of the City.

In order to avoid any doubt, for the purpose of Project financing the City shall not undertake any monetary obligations, provide guarantees or any other security interest nor create any security interests or rights over the Land in favour of third parties. Furthermore, in transactions with third parties, the Partner shall explicitly exclude the possibility of third parties having any claim toward the City for the performance of the Partner's obligations in connection with the realization of the goals set forth herein.

The Partner shall present to the City all Project financing agreements entered into with the finance institutions and other creditors.

## **PERFORMANCE OF PARTNER'S OBLIGATIONS AND CITY'S RIGHT TO SUPERVISION**

### **Article 9.**

9.1. The Parties agree that the Partner shall be responsible for the performance of all activities pertaining to the implementation of each Project phase in accordance with this Agreement and agreements related with it, whereby the Partner shall especially ensure that the Tourist Resort is built, operated and maintained in accordance with the terms and conditions and standards prescribed by this Agreement and *lege artis* during the entire term of this Agreement.

The Parties agree that the Partner and its subcontractors shall act with due care and loyalty in accordance with the principle of conscientiousness and honesty in the performance of their obligations pertaining to the construction,

operation and maintenance of the Tourist Resort, so that at any moment all the Project implementation criteria determined by the Bidding Procedure and this Agreement are met, and shall at all times act in accordance with the goals and in the interest of the Project. Such obligation to act in the stated manner shall especially exist in all events where the Bidding Procedure or this Agreement do not define or do not define in detail respective obligations of the Partner or its subcontractors.

- 9.2. The Parties agree that the City shall be entitled to supervise the performance of the obligations of the Partner or its subcontractors during the term of this Agreement.

The Parties agree that any supervision or any conclusions or statements by the City in connection with its supervision of the performance of obligations of the Partner or its subcontractors hereunder shall not reduce or exclude the Partner's responsibility for the performance of its obligations hereunder, or create any obligations or liability of the City as a result of such conclusions or statements.

- 9.3. The Parties agree that the City shall supervise the fulfilment of the Partner's obligations twice a year, with a prior notice and in a manner which shall not obstruct the performance of the Partner's business activities. The city shall announce in writing supervision 7 (seven) days in advance, and the Partner shall enable the City to perform supervision within the next 14 (fourteen) days as of the date of the written announcement. The Partner shall permit the supervision of the Partner's fulfilment of the obligations whereby the Partner and its subcontractors shall provide the City with all information required for the supervision. As part of the City's right to perform supervision, the City has the right to conduct a survey among guests and the Partner's business partners in order to verify the compliance with the standards set forth herein.

Within its right to supervise, the City especially has the right to supervise conditions and maintenance of the facilities and equipment of the Tourist Resort and to control the adequacy of the short-term and long-term, regular and extraordinary maintenance of all facilities and equipment of the Tourist Resort, funds of the Partner which are used for financing of the facilities and equipment of the Tourist Resort, and the adequacy of the technical conditions and expert persons that will guarantee the maintenance in accordance with the rules of profession and conditions defined hereunder.

- 9.4. In the event the City establishes in accordance with the applicable regulations and rules of professions, based on the report of the expert engaged by the City for that purpose, that the maintenance of the facilities and equipment of the Tourist Resort is not in accordance with the maintenance standards

determined by this Agreement, regulations valid at a given time during the term of this Agreement, and the rules of profession, it shall warn the Partner of the necessity to undertake measures to remove the failures and damage incurred by inadequate maintenance, and ensure maintenance in accordance with the agreed standards. In the event when the City establishes that the maintenance of the facilities and equipment of the Tourist Resort is not in accordance with the maintenance standards determined by this Agreement, it shall be entitled to make its supervision several times a year, subject to previous announcement as stipulated by Article 9.3, until it has been convinced that the facilities and equipment of the Tourist Resort are maintained in accordance with the Agreement. The Parties agree that one of the basic criteria (but not the only criterion) for the assessment of adequacy of maintenance of the facilities and equipment of the Tourist Resort shall be the fulfillment of the criteria for the categorization of the Tourist Resort in accordance with this Agreement. To the extent the conditions for the categorization of the Tourist Resort do not cover all issues pertaining to the maintenance of the Tourist Resort and its every part in accordance with the maintenance standards determined by this Agreement, regulations valid at a given time during the term of the Agreement, and the rules of profession, the criteria applicable to every such case shall apply to such issues.

In the event the Partner questions such establishment by the City that the maintenance and the equipment of the Tourist Resort do not meet the criteria stipulated by this Agreement, the Parties shall undertake the following steps:

- 9.4.1. The City shall invite the Partner to have a meeting and try to resolve the dispute regarding the orderly maintenance of the Tourist Resort amicably;
- 9.4.2. In the event that the City and the Partner do not resolve the dispute on the orderly maintenance of the Tourist Resort within 20 (twenty) days as of the delivery of the notification to the Partner by the City, both the City and the Partner shall appoint one person each, who shall then jointly appoint a third person (hereinafter refer to as: the “**Mediators**”) all of whom shall act as objective Mediators and suggest the mode of dispute resolution. In the event that the two Mediators do not agree on the third Mediator, the third Mediator shall be appointed by the Secretor of the Mediator Centre of Croatian Chamber of Commerce in Zagreb. The Mediators must be appointed within 10 (ten) days as of the delivery of the notification to the Partner in accordance with Article 9.4.2.
- 9.4.3. The Mediators must help the parties to finally resolve the dispute in 90 days as of the date of City’s invitation for having a meeting regarding

resolution of the dispute on orderly maintenance of the Tourist resort delivered to the Partner determined in Article 9.4.2. hereof.

In the event that the Mediators do not help the Parties resolve the dispute amicably or the Partner does not act in accordance with the mutual Parties' agreement accomplished during the mediation, or in the event of unsuccessful mediation, the Partner does not act in accordance with the City's request and in the period of 100 (hundred) days as of the delivery of the City's notification on orderly maintenance of the Tourist resort to the Partner as set forth in Article 9.4.2. of this Agreement, the Partner does not remedy all consequences of inadequate maintenance and does not maintain the facilities and equipment of Tourism Resort in accordance with the applicable regulation at relevant time, provisions of this Agreement, technical specifications and lege artis, then the City shall collect the guarantee as set forth by Article 13.2. point c) of this Agreement and shall undertake measures to remedy all consequences of inadequate maintenance of the Tourist resort and appoint a third person to take over the maintenance of the Tourist resort until the Partner proves to the City that it is ready to continue maintenance of the Tourist resort in accordance with this Agreement. In the event the Partner continues maintaining the Tourist resort in accordance with this Agreement, the guarantee collected pursuant to Article 13.2. point c) of this Agreement shall be deposited on the City's bank account as the security interest for duly performing the Partner's obligation to maintain the Tourist resort in accordance with this Agreement and shall be returned (without interest and costs) to the Partner in 5 (five) days as of the date of termination of this Agreement under the term and condition that in the period as of the collection of the guarantee, the maintenance has been in accordance with this Agreement.

- 9.5. In the event the supervision shows that the Partner and its subcontractors duly perform their obligations, the supervision costs shall be borne by the City. If the supervision shows to the contrary, the documented costs shall be borne by the Partner.
- 9.6. In the event that, during the term of this Agreement, any Party requests changes to the Project implementation conditions, such changes shall only be possible with prior written agreement between the Parties, which the Parties shall negotiate in good faith, and which agreement shall be an schedule to this Agreement, but only provided it is possible, based on objective indicators, to prove that the proposed change will promote the implementation of the Project, enable a better quality of service to be provided in the Tourist Resort, or better and more efficient maintenance of the Tourist Resort. However, neither Party shall be obliged to accept the other Party's proposal for changing the conditions prescribed by this Agreement.

In the event of agreement on the change of the conditions prescribed by this Agreement, the Parties shall be required to indicate whether the proposed change affects: the deadlines for the completion of the respective Project phases; provision of services within the Tourist Resort; maintenance of the Tourist Resort facilities and equipment; creation of the Parties' mutual financial obligations. The agreement shall define deadlines and performance of the Parties' mutual obligations arising from the change to the conditions of this Agreement.

- 9.7. Deliberately omitted. For the avoidance of any doubt, the Parties agree that any change to the regulations making the conditions for the categorization of the Tourist Resort stricter, shall not represent changes to the conditions of the Project implementation or be treated as a change to the regulations described in Article 19 hereof, and the Partner shall not be obliged to secure meeting all the newly prescribed conditions to retain the categorization defined herein if the said would result in unduly and unfair costs. Furthermore, any potential lowering of the criteria for the categorization of the Tourist Resort shall not entitle the Partner to lower the criteria and standards of the performance of obligations existing at the execution of this Agreement. For the avoidance of any doubt, nothing in this Article 9.7 shall exclude the application of Article 1.7. hereof.

## **MAINTENANCE OF THE FACILITIES WITHIN THE TOURIST RESORT**

### **Article 10.**

- 10.1. The Partner shall procure that all facilities in the Tourist resort are maintained in accordance with the applicable regulations and *lege artis* during the validity of the Agreement so that the full maintenance and insurance of all facilities is procured, in order to, among other things, procure:
- 10.1.1. A permanently high standard of service in accordance with the specifications set forth in the Bidding Procedure and this Agreement and the regulations valid at a given time;
  - 10.1.2. Lifetime of the facilities and equipment in accordance with their technical specifications, and the actual possibilities of use normally exceeding the conditions prescribed by technical specifications;
  - 10.1.3. Timely replacement, reconstruction and modernization of the facilities and equipment in accordance with their technical specifications, rules of profession, criteria determined by this Agreement and all relevant regulations, which will secure that at all times the conditions of facilities and equipment are equal to the specifications of this Agreement.

The Partner shall ensure having elaborated plans for short-term and long-term, regular and extraordinary maintenance of all facilities and equipment of the Tourist Resort.

- 10.2. The Partner shall ensure that, for the entire term of the Agreement, and especially during the five years preceding the expiry of the Agreement term, it has funds intended exclusively for the maintenance and reconstruction of the facilities and equipment of the Tourist Resort, so that the agreed standard of the facilities and equipment and the service provided in the Tourist Resort can be maintained during the entire term of the Agreement.
- 10.3. The Partner shall ensure having adequate technical conditions and professional staff during the entire term of the Agreement, that will guarantee maintenance in accordance with the technical specifications, rules of trade, criteria determined by this Agreement and all relevant regulations.
- 10.4. The obligation of proper and conscientious maintenance of all facilities and equipment of the Tourist Resort at the level corresponding to the conditions of the Bidding Procedure and this Agreement exist at all times during this Agreement and shall especially exist in the period preceding the expiry of the term of the Agreement, provided that the Partner takes into account application of new technologies and development of business activities of the Partner and the Tourist Resort.

## **RELATIONSHIPS BETWEEN THE PARTIES**

### **Article 11.**

- 11.1. The Parties agree that the Partner shall be fully entitled to the profits, and shall bear the risk of loss, while the City shall be entitled to payment of the Building Right Consideration.
- 11.2. In order to avoid any doubt, the Parties agree that this Agreement shall not in any way be construed as the legal ground pursuant to which the City undertakes (under the agreement or law) any liability for the fulfilment of obligations which the Partner has towards third persons in relation to the Project. In the event that any third person sets any request in relation to the Project to the City, the Partner shall be liable to the City to defend the City against any third persons' requests and shall indemnify the City for all claims from third person unless the City knew it had no obligation to fulfil such an obligation.

- 11.3. The Parties agree that the purpose of the Project as well as the Project itself shall be realized through the Partner and the Partner shall harmonize its internal organisation acts and act in accordance with this Agreement.

The Parties agree that, in the event of any discrepancies between this Agreement and any other agreement pertaining to the implementation of the Project, the provisions of this Agreement shall prevail, and that the Parties shall conform their actions and take appropriate measures to amend and/or supplement the agreement in question in the manner that the purpose set forth by this Agreement is accomplished.

- 11.4. The Partner is authorized to carry out independently all activities for the purpose of realization of the Project, and is expected to present the City its activities timely but at the latest once every three months. The City shall carry out independently all activities for the fulfilment of which it is liable under this Agreement, and shall present the Partner of the same in writing timely but at the latest once every three months. Notwithstanding the foregoing, neither Party is authorized to undertake any financial obligation for which the other Party would be liable or encumber the assets of the other Party without a prior written consent of the other Party.

## **PARTIES' RIGHTS AS AT EXPIRY OF THE AGREEMENT**

### **Article 12.**

- 12.1. In the event of termination of the Agreement by its expiry, all facilities built on the Building Right and the equipment of the Tourist Resort shall be transferred to the City's ownership without compensation.

In the event of termination of the Agreement prior to the expiry of its term, all facilities built on the Building Right and the equipment of the Tourist Resort shall be transferred to the City's ownership in accordance with Articles 15 and 17 hereof.

- 12.2. Six months prior to expiry of this Agreement, the City shall notify the Partner whether it intends to take over the operation of the facilities built on the Building Right and the equipment of the Tourist Resort, or shall announce a new bidding procedure for the operation of the Tourist Resort, whereat the Partner shall have priority in the event its bid is equal to the other bidder's bid of in the public tender. The Partner shall notify the City no later than three months prior to expiry of the Agreement whether it intends to apply for the public tender for the operation of the Tourist Resort which the City intends to announce.



- 12.3. Besides the options given under Article 12.2 hereof, the City can decide to define its relationship with the Partner regarding the mutual rights and obligations in relation to the Tourist resort in other manner, which ever shall be suitable to the City at the relevant time.
- 12.4. The Parties agree that, at the handover, the facilities and equipment of the Tourist Resort must correspond to the normal condition of such facilities and equipment, taking into consideration the maintenance standards determined by this Agreement, regulations valid at a given time during the term of this Agreement, technical specifications and rules of profession.

## **PARTNER'S PERFORMANCE GUARANTEES PURSUANT TO THIS AGREEMENT**

### **Article 13.**

- 13.1. For the purpose of Partner's performance of the obligations hereunder, NCP Remontno Brodogradilište provided in favor of the company Sinergijske Solucije d.o.o., simultaneously with the execution of the Agreement on realization of project hotel Šibenik as of 20 August 2007, a first-demand unconditional bank guarantee, from the bank acceptable to the company Sinergijske solucije d.o.o., as follows:
- a) A first-demand, unconditional bank guarantee for the payment of the first installment of the Variable Fee to the company Sinergijske Solucije d.o.o., according to Article 7.3.1. hereof. This guarantee has been given to the City simultaneously with the execution of the Agreement on realization of project hotel Šibenik as of 20 August 2007 in a manner that NCP Remontno Brodogradilište gave to the City the bank guarantee in the amount of 325,000.00 euros (three hundred and twenty-five thousand euros) in HRK counter value pursuant to the middle exchange rate of Croatian National Bank at the date of issuance of the guarantee. The validity period for the bank guarantee mentioned in this Article was by and including 30 August 2007;
  - b) A first-demand, unconditional bank guarantee for the payment of the second installment of the Variable Fee to the company Sinergijske Solucije d.o.o., according to Article 7.3.2 hereof. This guarantee has been given to the City simultaneously with the execution of the Agreement on realization of project hotel Šibenik as of 20 August 2007 in a manner that NCP Remontno Brodogradilište gave to the City the bank guarantee in the amount of EUR 220,000.00 (two hundred twenty thousand euros) in HRK counter value pursuant to the middle exchange rate of Croatian National Bank at the date of issuance of the guarantee. The validity period for the



bank guarantee mentioned in this Article was by and including 29 October 2007; and

- c) A first-demand, unconditional bank guarantee for the payment of the third installment of the Variable Fee to the company Sinergijske Solucije d.o.o., according to Article 7.3.3 hereof. This guarantee has been given to the City simultaneously with the execution of the Agreement on realization of project hotel Šibenik as of 20 August 2007 in a manner that NCP Remontno Brodogradilište gave to the City the bank guarantee in the amount of EUR 275,000.00 (two hundred seventy-five thousand euros) in HRK counter value pursuant to the middle exchange rate of Croatian National Bank at the date of issuance of the guarantee. The validity period for the bank guarantee mentioned in this Article was by and including 29 November 2007; and
- d) A first-demand, unconditional bank guarantee for the payment of the fourth installment of the Variable Fee to the company Sinergijske Solucije d.o.o., according to Article 7.3.4 hereof. This guarantee has been given to the City simultaneously the execution of the Agreement on realization of project hotel Šibenik in a manner that the NCP Remontno Brodogradilište gave to the City the bank guarantee in the amount of EUR 267,284.58 (two hundred sixty-seven thousand two-hundred eighty-four euros and fifty-eight eurocents) in HRK counter value pursuant to the middle exchange rate of Croatian National Bank at the date of issuance of the guarantee. The validity period for the bank guarantee mentioned in this Article was by and including 27 December 2007.

The bank guarantees referred to in this Article 13.1 are provided in Schedule 4 hereof and are an integral part of this Agreement.

13.2. For the purpose of Partner's performance of the obligations hereunder, the Partner shall ensure the bank guarantees of the bank acceptable to the City, in favor of the City:

- a) The Partner shall provide a bank guarantee on first demand without objection for duly fulfilling the obligations of the Partner in the Preparation Phase. The bank guarantee shall be delivered to the City within 10 Business days as of the signing of this Agreement in a manner the bank guarantee in the amount of EUR 250,000.00 (two hundred fifty thousand euros) in HRK counter value pursuant to the middle exchange rate of the Croatian National Bank on the date of issuance of the bank guarantee for duly fulfilling the Partner's obligations under this Agreement in Preparation Phase of Stage A issued on behalf of the Partner shall be delivered to the City. The term of the bank guarantee

shall be 25 (twenty five) months as of the date of entering into force of this Agreement; and

- b) One or several first-demand, unconditional bank guarantees for Partner's duly performance of the obligations in the Construction Phase, which shall amount to no less than 5% of the value of the construction works agreed under the relevant agreement on construction of Tourist resort. The guarantee related to the relevant agreement for construction of Tourist resort shall be provided to the City within 30 days after the Partner has executed the related agreement for the construction of the Tourist Resort; and
- c) A first-demand, unconditional bank guarantee in the amount corresponding to the costs of six-month maintenance of the Tourist Resort in accordance with the provisions of this Agreement.

The cost of the six-months maintenance will be calculated according to the following formula:

$$M_5 = 0,01 \times I_B \times \frac{CPT_T}{CPI_B}$$

whereas:

- $M_5$  cost of six-months maintenance (in kunas);
- $I_B$  investment amount (in kunas);
- $CPT_T$  the value of the croatian consumer price index for the 44th (forty-fourth) year of the term of this agreement, as published by the republic of croatia central bureau of statistics;
- $CPI_B$  the value of the croatian consumer price index for the year 2006, as published by the republic of croatia central bureau of statistics

The guarantee concerned shall be submitted to the City no later than 30 day prior to expiry of the 45th (forty-fifth) year of the term of this Agreement and shall be chargeable within 8 months as of the date of its issuance. The Partner shall ensure that the relevant guarantee is prolonged for the period of the next six months, until the expiry of this Agreement and that the guarantee's term and conditions shall not be changed. The City shall be entitled to collect the respective guarantee prior to the expiry of this Agreement, in the event the City should establish, based on an expert's report, that the maintenance of the facilities and equipment of the Tourist Resort is not in compliance with the maintenance

standards determined by this Agreement, regulations valid at a given time during the term of the Agreement, and the rules of profession.

The Parties agree that the bank guarantee required under Article 13.2 shall not be collateralized by the Building Right.

The City shall ensure that the amount collected under the guarantee is used for the achievement of Project's goal as set forth by the Article 1.1 of this Agreement.

Parties agree that in case of any extension of the deadlines set for the fulfillment of the obligations for which the guaranties are issued in accordance with this Article, the terms of validity of the guarantees will be extended accordingly for the same number of days. If the term of validity of the relevant guarantee will not be extended in accordance with this Article, Sinergijske Solucije d.o.o. and/or the City are entitled to draw the guarantee in full before its expiry, and so obtained funds deposit on the deposit account and use them exclusively for the same purpose for which so drawn guarantee was issued.

The Parties agree that in the event that the guarantee defined in article 13.2 c) is collected, pursuant to the provisions hereof, Partner shall be obliged to provide a new guarantee, according to Article 13.2 c) hereof within the period of 8 (eight) days.

Apart from the bank guarantee described in Article 13.2 of the Agreement, the Partner shall simultaneously with the issuance of the bank guarantee provide the City with a debenture note or any similar security interest which secures the maintenance of the Tourist Resort for 4 (four) years and 6 (six) months, in an amount to be calculated based on the formula set forth in this Article 13.2. c). In case the debenture note is no longer accepted as a security instrument when the Partneris required to provide the debenture note, the Parties agree that the Partner shall provide another security interest in order to accomplish the purpose set forth in this provision

## **DEFAULT OF THE AGREEMENT**

### **Events of default of the Agreement**

#### **Article 14.**

14.1. The following events particularly represent default of the Agreement by the City:

14.1.1. breach of any City's warranty preventing or materially impeding the realization of the joint venture goals set forth by the Article 1.1 hereof;

14.1.2. the City's failure to do within its scope of competence everything lawfully possible to facilitate and accelerate the obtaining of permits, licenses, resolutions, administrative acts or business acts issued by the City's administrative authorities within the scope of their competencies, which would, for the purpose of implementing the Project, be required to the Partner, or any third party engaged in any manner in the implementation of the Project.

14.1.3. Adoption of regulations within the City's competence, which implies only and exclusively to the Partner, which will make impossible, make it much more difficult or increase to a great extent the cost of the project on the Partner's side;

14.1.4. Collection of bank guarantees defined in Article 13.2 hereof before having a meeting where the City and the Partner shall jointly discuss the circumstances and reasons due to which the City wishes to collect a guarantee. This Article does not cover the collection of the bank guarantee defined in Article 13.1 of this Agreement.

14.2. The following events particularly represent default of the Agreement by the Partner:

14.2.1. Partner's failure to comply with, or to ensure that any third party engaged by the Partner complies with all provisions hereof and Schedules hereto, specifying the conditions and standards of:

- a) Preparation and content of the project documentation required for the construction of the Tourist Resort; construction of the facilities and equipment of the Tourist Resort;
- b) Operation of the Tourist Resort and maintenance of its facilities and equipment;
- c) Financing of all activities for which the Partner is liable hereunder;

- d) Partner's failure to act, and ensure that any third party engaged by the Partner acts with due care and loyalty in accordance with the principles of conscientiousness and honesty in the performance of the obligations hereunder;
- 14.2.2. Breach of the City's right to supervision pursuant to this Agreement;
- 14.2.3. Breach of obligation with respect to the issuance and maintaining the bank guarantees in force set forth by this Agreement;
- 14.2.4. Inability to fully collect any bank guarantee pursuant to this Agreement for any reason whatsoever; actions and failures of the Partner or any third party preventing or impeding the collection of any bank guarantee set forth by this Agreement, except in the event of the default by the City;
- 14.2.5. Any other breach of Partner's obligations hereunder that would prevent or significantly impede completion of the Project, or repeatedly breach of any obligation of the its subcontractors, provided by this Agreement and agreements related therewith;
- 14.2.6. Failure of the Partner to ensure optimal occupancy of all capacities of the Tourist Resort and the duration of the season considering the market conditions existing at a given time, facilities of the Tourist Resort and all other circumstances affecting the capacity occupancy and the season duration;
- 14.2.7. Passing any decision on opening of the bankruptcy procedure over the Partner which is not suspended in three months as of its opening; initiation of any liquidation proceeding over the Partner or any other proceeding in the country of the Partner's registered office having, according to the applicable law, the same or similar effect as submission of proposal for initiation of a bankruptcy proceeding, opening of a bankruptcy proceeding or initiation of liquidation under the Croatian law;
- 14.2.8. Termination of performance of/withdrawal from activities in any phase of the Project, and especially termination of construction and equipment of the Tourist Resort, suspension of operation and provision of services of the Tourist Resort, and termination of its proper maintenance which are not the result of the City's default;
- 14.2.9. Default of any agreement entered into in connection herewith.

## **CONSEQUENCES OF BREACH OF AGREEMENT**

### **Article 15.**

15.1. The Party considering a default has occurred shall have the following rights:

- a) Notify the defaulting Party of the default; and
- b) Request that the agreement's default is terminated immediately; and
- c) Request that the consequences of the agreement's default are remedied within 30 days as of receiving the notice; and
- d) Request that the defaulting Party undertakes all necessary activities and submit evidence that it performs activities for the purpose of terminating the agreement's default and remedying the consequences of the default with due care; and
- e) In the event the consequences of the breach cannot be objectively remedied within 30 days, request from the defaulting Party to determine an appropriate period of time but no longer than 6 months during which it shall remedy all consequences of the agreement's default.

### **Consequences of breach of the agreement by the City**

15.2. In the event the City is liable for the breach of the agreement, and the breach of agreement is not terminated within the subsequent period for performance, the Partner shall be entitled to:

15.2.1. Independently carry out the action the City failed to fulfill while the amount of expenses and due interest incurred by the Partner shall be reimbursed to the Partner by the City.

In the event the Partner wishes to fulfill independently the action which the City failed to perform, the City shall enable the Partner to perform is without interference, regardless of the time required for such performance, otherwise, the Partner may exercise any of the rights provided in Article 15.2.2. hereof; or

15.2.2. Request at its sole discretion from the City:

- 15.2.2.1. that the City pays to the Partner the amount invested in the Partner's share capital or the Partner's own share capital, and request the City to pay directly to financial institutions claims to the extend the financial institutions granted the loans required for performance of the activities within the Project to the Partner; or

- 15.2.2.2. that the City pays market value of the assets which service the Tourist Resort, or market value of the shares of the Partner, whereat this calculation shall take into account existence of encumbrances and/or debts related to the said assets or shares. Lost profit will not be taken into account in such calculation. The City shall pay directly to the financial institutions, the financial institutions' claims to the extend the financial institutions granted the loan required for performance of the activities within the Project to the Partner; and
- 15.2.2.3. that the City pays to the Partner, above the amount set forth by Article 15.2.2.1 hereof or the amount set forth by the Article 15.2.2.2. hereof, the amount of lost profit whereby the calculation of the lost profit shall take in account only the realized Stages.

The amounts referred to in the above paragraphs shall be calculated by certified and internationally acknowledged auditing company which performs business activity in Croatia, and which is experienced and has references in the similar type of assignments (hereinafter: Auditor). The Partner shall be authorized to propose a list of at least three Auditors, from which the City shall choose the Auditor who will be engaged to calculate the amounts referred to in the above provisions. The calculation of such nominated Auditor shall be final and binding for the Parties, except in the event of an obvious error or in the event the calculation is contrary to the mandatory Croatian rules or the rules of the profession.

Simultaneously with the payment of the amount determined by the Auditor, this Agreement and all related agreements shall be automatically terminated by virtue of law, in which event: neither Party shall have any claim toward the other Party on any grounds; all facilities built on the Building Right and the equipment in the facilities built on the Building Right as well as all other equipment of the Tourist Resort shall be transferred to the City's ownership and possession without compensation; Partner shall hand over to the City all possibly necessary release statements (in Croatian: "brisovno očitovanje"), or any other documents in the legally required form so that the transfer of the facilities constructed on the Building Right and the transfer of shares in the Partner free of any encumbrances, liens or third parties righty is registered with the competent registries.

In the event of such termination, the City has the right but not the obligation to request that the Partner transfers all shares in Partner to the City or any third party indicated by the City, in which event the Partner shall have no claims towards the third party- acquirer of shares.



The Parties agree that in the event that the City has the right pursuant to this Article, within maximum of 6 (six) months as of the date the City receives the written Partner's request for settlement of the amounts set forth by this Article, to find directly or by public tender the third person who shall pay instead of the City to the Partner the amount defined by this Article, after which the shareholders of the Partner's shall transfer its shares in Partner to the City or to third person who shall pay to the Partner instead of the City the amount set forth by this Agreement.

### **Consequences of default of the Agreement by the Partner**

15.3. In the event the Partner is liable for the breach of the agreement, and the breach is not terminated within the subsequent period for fulfillment, the City shall have the following rights:

15.3.1. Independently carry out the action the Partner failed to fulfill while the amount of expenses and due interest incurred by the City shall be reimbursed to the City by the Partner.

In the event the City wishes to fulfill independently the action which the Partner failed to perform, the Partner shall enable the City to perform it without interference, regardless of the time required for such performance, otherwise, the City may exercise any of the rights provided in Article 15.3.2. hereof; or

15.3.2. Request from the Partner that the City pays it:

15.3.2.1. the amount invested into the Partner's share capital or the Partner's own share capital decreased for the damage the City suffers due to the breach of the agreement by the Partner; and that the City pays directly to the financial institutions, the financial institutions' claims to the extend the financial institutions granted the loan required for performance of the activities within the Project, to the Partner.; or that the City shall undertake the debt towards the financial institutions to the extend the financial institutions granted the loans to the Partner exclusively for the performance of the activities within the Project with release of all securities provided by the Partner.

15.3.2.2. that the City pays to the Partner market value of the assets which serve the Tourist Resort or the market value of shares in the Partner decreased by the damage which the City suffers due to the Partner's breach of the agreement, whereat this calculation shall take into consideration the existence of encumbrances and/or debts related to the respective assets i.e. shares; however, lost profit shall not be taken into account



at the calculation of market value, while the City shall pay directly to financial institutions their claims to the extent the financial institutions granted the loan to the Partner required for performance of the activities within the Project or the City shall undertake the debt towards the financial institutions to the extent the financial institutions granted the loans to the Partner exclusively for the performance of the activities within the Project with release of all securities provided by the Partner,

15.3.2.3. Deliberately omitted.

For the avoidance of any doubt what represents the damage the City suffers due to Partner's breach, the Parties agree that the damage represents the amount by which the Partner is encumbered which is not used exclusively for the realization of Project provided that this amount is not already calculated in the calculation of the amount the City should pay to the financial institutions or calculation of the undertaking of debt in accordance with Articles 15.3.2.1. or 15.3.2.2.

The amounts referred to in the above paragraph shall be calculated by the Auditor in accordance with the provision 15.2.2 hereof.

Simultaneously with the payment of the amount determined by the Auditor, this Agreement and all related agreements shall be automatically terminated by virtue of law, in which event: neither Party shall have any claim toward the other Party on any grounds; all facilities built on the Building Right and the equipment in the facilities built on the Building Right as well as all other equipment of the Tourist Resort shall be transferred to the City's ownership and possession without compensation; Partner shall hand over to the City all possibly necessary release statements (in Croatian: "brisovno očitovanje"), or any other documents in the legally required form so that the transfer of the facilities constructed on the Building Right and the transfer of shares in the Partner free of any encumbrances, liens or third parties righty is registered with the competent registries.

In the event of such termination, the City has the right but not the obligation to request that the Partner's shareholders transfers all shares in Partner to the City or any third party indicated by the City, in which event the Partner's shareholder shall have no claims towards the third party-acquirer of shares.

The Parties agree that in the event set forth by this Article, the City has the right to find directly or at a public tender a third person who shall pay to the Partner instead of the City the amount defined by this Agreement, after which the shareholders of the Partner shall be liable to transfer their

shares in the Partner, City or third person which has paid the amount set forth in this Article.

- 15.4. The Parties agree that immediately upon the payment of the amount calculated by the Auditor pursuant to Article 15.2 or 15.3 hereof, the facilities built on the Building Right and the equipment in the facilities built on the Building Right, and all other equipment in the Tourist Resort shall be transferred to City's ownership and handed over into City's possession, i.e. the shareholders of the Partner shall transfer its shares in the Partner to the City or a third party designated by the City, without delay, immediately upon the payment of the amount determined by the Auditor; and that potential disputes regarding the amount calculated by the Audit shall not be the reason for delay of transfer of the facilities, equipment and shares and registration of share transfer in the commercial court registry and Partner's book of shares and issuance of release statement and other documents required for evidencing those transfers in the competent registries.
- 15.5. In the event of transfer of Partner's shares pursuant to this Article, the shares shall be transferred under the condition that the acquirer of Partner's shares shall not hold liable any of Partner's present and/or former management board members, shareholders of the Partner or present or former Partner's employees for operation of Partner's activities until the date of transfer and shall protect the shareholders of the Partner or Partner's present or former employees from any possible harmful consequences in the event of initiation of any administrative, misdemeanour, criminal and/or litigation proceedings initiated in relation to the Partner's business activities.

## **OTHER EVENTS OF NON-FULFILLMENT OF OBLIGATIONS HEREUNDER**

### **Article 16.**

- 16.1. In the event the Party fails to perform its obligations hereunder, the non-defaulting party shall be entitled, in the period before using its rights set forth by Article 15.2. and 15.3. hereof, to contractual penalty for the delay in performance of the obligations in the amount of EUR 10,000.00 (ten thousand euros) in kuna counter value pursuant to the middle exchange rate of Croatian National Bank on the payment date, for each event of delay in performance of other Party's obligations hereunder and for each starting month in which the defaulting Party delays with performing its obligation hereunder, i.e. for each month preceding to month in which the non-defaulting Party decided to perform the obligation hereunder on behalf of the defaulting Party, as it is set forth by the Articles 15.2 and 15.3 hereof.

In the event that non performance by a Party of its obligations hereunder results in prevention of timely performance of the obligations of the other Party which is in compliance with the Agreement, the period provided to the that other Party to perform its obligations shall be extended by the period for which such Party was prevented from timely performing its obligations. In addition to the extension of the period to perform, the Non-defaulting Party shall have the rights provided in Article 16.2. hereof.

## **FORCE MAJEURE**

### **Article 17.**

- 17.1. In the event of occurrence of force majeure, consisting of external and extraordinary circumstances, unforeseeable at the execution of the Agreement which have arisen after the execution of this Agreement and could not be prevented, eliminated or avoided whereby such circumstances may not be evidenced by the Croatian Chamber of Economy's confirmation or confirmation of similar institution, and the consequences of which is inability to perform an obligation, the Party affected by force majeure shall notify the other Party in writing within 15 days following the occurrence of circumstances comprising the force majeure, and shall describe the circumstances and explain why it considers such circumstance to be force majeure. The Party affected by force majeure shall be released of performance of its obligations hereunder and the consequences thereof during the duration of force majeure.
- 17.2. In the event of occurrence of force majeure, the Parties shall promptly meet to discuss the manner of resolving the occurred situation. In the event the Parties fail to agree on the mode of resolution of all issues relating to the occurrence of force majeure, and the force majeure continues for more than six consecutive months, the Party affected by force majeure shall be entitled to terminate this Agreement.

In the event that conditions for termination of this Agreement are created due to occurrence of force majeure, the City shall have the right:

- 17.2.1. that the City request from the Partner that the City pays to the Partner market value of the assets in the Tourist Resort, or market value of the shares in the Partner, whereat such calculation shall take into account existence of encumbrances and/or debts related to the respective assets or shares. Lost profit shall not be taken into account in such calculation. The City shall pay directly to the financial institutions the financial institutions' claims to the extend the financial institutions granted the loan required for performance of the activities within the Project to the Partner.

- 17.3. Regarding mutual rights and obligations of the Parties with regard to calculation and payment of the consideration and the consequences of the Agreement termination, the Article 15 hereof will be applied mutatis mutandis.

## **CHANGED CIRCUMSTANCES**

### **Article 18.**

- 18.1. In the event that extraordinary circumstances arise after the execution of this Agreement, which circumstances could not be foreseen, avoid or overcome at the time of its execution, and the performance of the obligations hereunder would thereby be excessively impeded for either Party or would cause it excessive loss, the Party affected by such extraordinary circumstances may request that certain provisions of the Agreement are justly amended (hereinafter: Changed Circumstances).
- 18.2. The Parties agree that the Party affected by Changed Circumstances shall notify the other Party within 15 days upon the occurrence of the Changed Circumstances, and shall describe the circumstance and explain why it considers this circumstance to be a Changed Circumstance.

In the event of occurrence of Changed Circumstances, the Parties shall meet without delay to discuss the mode of resolving the occurred situation. In the event the Parties fail to agree on the mode of resolving of all issues relating to the occurrence of the Changed Circumstances, each Party shall appoint an arbitrator, and they shall appoint another arbitrator who shall be president of the three arbitrators, provided that all arbitrators are judges either of a commercial court, the High Commercial Court or the Supreme Court (department for commercial law), who shall, pursuant to the Mitigation Act, propose a mode of just amendment to the Agreement. In the event the arbitrators provide a unanimous proposal for amendment to the Agreement (with no separate opinion of any of them), such proposal shall be binding for the Parties. In the event the arbitrators provide a proposal for amendment to the Agreement by the majority of votes, the Parties shall act as proposed by the arbitrators, provided that the dissatisfied Party shall be entitled to initiate a court proceeding due to the occurrence of changed circumstances. In the event the mitigation fails, each Party shall be entitled to initiate a court proceeding due to the occurrence of changed circumstances, in which case both Parties shall continue to perform the Agreement, until the final and binding court decision is passed.

## **AMENDMENTS TO THE REGULATIONS**

### **Article 19.**

- 19.1. The Partner and its subcontractors shall comply with all Croatian and other regulations valid at a given time and applicable to the Project for the entire term of the Agreement.
- 19.2. Amendments to the regulations include amendments to laws, bylaws and court practices.
- 19.3. The Parties agree that any amendments to the regulations equally applicable to all persons in Croatia shall not prejudice the rights and obligations of the Parties hereunder.
- 19.4. In the event of discriminatory amendments to the regulations, the Parties agree they shall promptly meet to agree on the mode of resolving the occurred situation immediately upon the notification of the Party affected by such discriminatory amendment to regulations, and shall act in accordance with Article 18.2 hereof.
- 19.5. An amendment to the regulations shall be deemed discriminatory if such amendment to the regulations applies:
  - 19.5.1. Exclusively to the Project or projects identical to the Project;
  - 19.5.2. Exclusively to the Partner or persons involved in projects identical to the Project.

## **ASSIGNMENT OF RIGHTS UNDER THE AGREEMENT, ASSIGNMENT OF THE AGREEMENT**

### **Article 20.**

- 20.1. Unless otherwise provided in this Agreement, the Parties agree that neither Party is authorized to assign any of its rights under this Agreement nor any agreement entered into in connection therewith without a prior written consent of the other Party.
- 20.2. The Parties agree that the limitation provided in Article 20.1 hereof shall not apply to events where the assignment of rights under this Agreement or any agreement related therewith is required for financing of the Project.
- 20.3. The Parties agree that the Agreement may be assigned prior to written consent of the other Party. The Parties agree that, in the event of assignment of this Agreement, the assignment of all other agreements

related therewith shall also be allowed, regardless of the parties to such agreements.

## **THE RELATION BETWEEN THIS AGREEMENT AND OTHER AGREEMENT ENTERED INTO IN CONNECTION THEREWITH; AMENDMENTS TO THE AGREEMENT; PUBLIC ANNOUNCEMENTS**

### **Article 21.**

- 21.1. The Parties agree that this Agreement represents the basis for the realization of the Project, and supersedes all other agreements entered into in connection therewith for the realization of the Project. If necessary, the Parties shall make appropriate amendments to the provision of agreements entered into in connection with this Agreement which are not in compliance therewith.
- 21.2. This Agreement represents the entire will of the Parties. Any amendments to this Agreement shall only be valid if made in writing. The provisions of the Civil Obligations Act regarding verbal arrangements where the Parties agreed on written form, shall not apply.
- 21.3. The Parties agree they shall appoint persons in charge of making and releasing public announcements in connection herewith. The Parties agree that neither the Parties nor the person in charge of making and releasing public announcements shall release any announcement or statement to the public in connection with the execution, performance or end of this Agreement unless both Parties have first received a copy thereof and approved it; such approval will not be refused without a proper and legitimate reason, provided the obligation of approving public announcements or statements shall not apply if a Party is required by law to issue the announcement statement.

## **RESOLUTION OF DISPUTES**

### **Article 22.**

- 22.1. In the event of dispute, the court in Šibenik shall be competent for resolving of the disputes.

## **COMMUNICATIONS**

### **Article 23.**

- 23.1. Notices pursuant to or in connection with this Agreement may be transmitted through registered mail, by courier or by fax to addresses specified herein:

For the City:

Grad Šibenik

Attn: the mayor

Address: 22000 Šibenik, Trg Pavla Šubića 1

Telefax: 022/431 099

For the Partner:

Dogus Marina Hoteli d.o.o.

Attn:Mr Burak Baykan

Address: 22000 Šibenik, Obala Jerka Šižgorića 1, p.p. 153

For NCP- Remontno Brodogradilište d.o.o.

Attn: Goran Prgin

Address: 22000 Šibenik, Obala Jerka Šižgorića 1

Telefax: 022 312 912

For Dogus Hoteli d.o.o.

Attn: Mr Adem Durak and Mr Erygit Umur

Address: 10000 Zagreb, Garićgradska 13

- 23.2. Notices, declarations, invitations and/or other communications pursuant to this Agreement shall be considered received on the following dates:

23.2.1 if delivered by registered mail: on the date indicated on receipt confirmation;

23.2.2 if delivered by courier: on the date of courier delivery to the recipient, and

23.2.3 if delivered by fax: on the date indicated on the fax transmission.

## **EXPENSES**

### **Article 24.**

24.1. The costs relating to the financing of the activities necessary for implementation of the Project as set forth by the Article 8.1. hereof shall be borne by the Partner.

## **AUTHORITIES FOR EXECUTION OF THE AGREEMENT**

### **Article 25.**

25.1. The Parties warrant they have obtained all necessary consents and approvals for the execution of this Agreement and that the respective Agreement has valid legal effects and is binding to each Party in accordance with the provisions thereof.

25.2. The City especially acknowledges it is entering into this Agreement acting in public-legal function, and that there are no limitations due to which the City would not be fully required to or capable of performing all its obligations assumed by this Agreement or agreements to be entered into in connection herewith.

25.3. This Agreement shall be signed in Croatian and English version in 4 (four) counterparts out of which each Party and each NCP Remontno Brodogradilište and Dogus Hoteli shall receive 1 (one) counterpart. In the event of discrepancy between the Croatian and English text of the agreement, the Croatian text shall prevail in the interpretation of the true will of the Parties.

### **Article 26.**

26.1. This Agreement contains the entire agreement of the parties and the Guarantors in relation to the realization of the Project and supersedes any prior agreement or understanding regarding its subject.

26.2. No modification of this Agreement shall become effective unless made in writing and signed by, or on behalf of, each of the Parties, NCP Remontno Brodogradilište and Dogus Hotel by their authorized representative.



26.3. This Agreement has been mutually drafted by the Parties, NCP Remontno Brodogradilište and Dogus Hotel and each provision hereof has been subject to subsequent mutual consultation, negotiation and agreement of the Parties. Each signatory-party to this Agreement confirms and agrees there shall be no construction against any signatory-party based on any presumption or rule requiring that it shall be construed against the party causing it, or any part of it, to be drafted.

\* \* \*

## EXECUTION PAGE

### **City of Šibenik**

Represented by:

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Name and surname: dr. Ante Županović  
Function: the major

### **Dogus Marina Hoteli d.o.o.**

Represented by:

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Name and surname: Mr. Burak Baykan  
Function: director

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Name and surname: Mr Hüsnü Akhan  
Function: director

### **NCP-Nautički centar Prgin – Remontno Brodogradilište Šibenik d.o.o.**

Represented by:

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Name and surname: Mr Goran Prgin  
Function: director

### **Dogus Hoteli d.o.o.**

Represented by:

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Name and surname: Mr Adem Durak  
Function: director

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Name and surname: Mr Eryigit Umur  
Function: director