AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SAN MARINO AND THE GOVERNMENT OF THE REPUBLIC OF CUBA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of San Marino and the Government of the Republic of Cuba (hereinafter referred to as the Contracting Parties),

Economic cooperation between the two countries and in particular investment by investors of one Contracting Party in the territory of the other Contracting Party and recognizing that the signing of an Agreement for the Promotion and reciprocal protection of investments can encourage business initiatives that favor the prosperity of both countries;

Hereby agree as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" means any type of asset invested by a natural or legal person of one Contracting Party in the territory of the other Contracting Party, irrespective of the legal form chosen and the legal basis of reference in accordance with the laws And regulations of the Party in whose territory the investment has been made The term investment includes, but not limited to:

A) movable and immovable property, as well as any real right, including, as applicable to Sa investment, the real rights of guarantee on the property of third parties;

B) securities, shares, debentures, participation quotas and any other title, as well as state and public securities in general;

C) financial credits for sums of money or any other right for obligations or benefits, related to the investment, with economic value, as well as investment income, as defined in point 5 of this article;

D) copyright, trademarks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, management and clientele;

E) any economic right conferred by law or contract, as well as any license and concession issued in accordance with the provisions in force for the exercise of economic activity, including prospecting, cultivation and extraction of natural resources.

2. "Investor" means the natural or legal person of a Contracting Party who has made or makes an investment covered by the legislation in force in the territory of the other Contracting Party.

3. The term "personanatural"

A)) for the Republic of San Marino:

Any individual who is legally a citizen of that country or resides stably.

B) for the Republic of Cuba:

Any person who according to its laws, holds Cuban citizenship and has permanent residence in Cuba.

4. A "legal person" means any entity whose head office is in the territory of one of those countries and which is constituted under its legislation, with the reference to either of the Contracting Parties. Persons or capital, foundations, associations, regardless of whether or not they are limited liability.

3. "Revenues" means amounts collected or receivable from an investment, including, in particular, profits or installments of

profits, interest, capital income, dividends, royalties, compensation for technical assistance and services, and fees Including reinvested revenues and capital increases.

6-"territory" means the territory of each of the Contracting Parties,

The marine and submarine areas and the subsoil on which each Contracting Party exercises sovereign rights and jurisdiction in accordance with the rules of international law 6 7

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall, as far as possible, promote investments in its own territory by investors of the other Contracting Party and shall authorize them in accordance with its own legislation.

2. Each Contracting Party shall always ensure fair and equitable treatment of investments by investors of the other Contracting Party. Each Contracting Party shall ensure that the management, maintenance, enjoyment, processing, cessation and liquidation of investments made in its territory by investors of the other Party, as well as the companies and enterprises in which such investments have been made, shall not Are in any way affected by unjustified or discriminatory procedures.

Article 3. Most Favoured Nation Clause and National Treatment

1. Each of the Contracting Parties, in its own territory, shall grant the corresponding investments and revenues of. The investors of the other Contracting Party, treatment no less favorable than that which is reserved for the investments and corresponding revenues of the investors of third States.

2. Each Contracting Party shall, in its own territory, accord to investments and the corresponding revenues of investors of the other Contracting Party, in similar activities, a treatment and a legal regime no less favorable than those established at national level For the investments and the returns of its own investors.

3. Each Contracting Party shall regulate, in accordance with its own laws and regulations, the problems related to the entry, permanence, work and transfer of citizens of the other Contracting Party engaged in activities related to the investments provided for in this Agreement, As well as their families.

4. The provisions of! This Article shall not apply to advantages and privileges which a Contracting Party recognizes or recognizes to third countries as a result of its participation in customs or economic unions, common market associations, free trade area, regional or subregional agreements, economic or trade agreements Multilateral or bilateral agreements or under agreements

Taxation or to facilitate exchanges beyond its borders.

5. For the avoidance of doubt, it is hereby confirmed that the provisions of paragraphs 1 and 2 of this article only apply to investments made under the legal framework of foreign investment and include articles 1 to 12 of the Agreement itself.

Article 4. Compensation for Damages or Losses

1. Whenever investors of one of the Contracting Parties suffer losses in investments made by them in the territory of the other Contracting Party as a result of wars or other armed conflicts, states of emergency, revolts, insurrections or uprisings or other The Contracting Party in which the investment was made will offer the appropriate compensation. The corresponding payments shall be made without undue delay and shall be freely transferable.

2. Interested investors shall be accorded the same treatment as investors of the Contracting Party concerned and in any case shall be accorded treatment no less favorable than that accorded to investors of third countries.

I - Without prejudice to what is established in sections 1 and 2 of this article, investors of one of the Contracting Parties that are in one of the. The situations mentioned in section 1 suffer losses in the territory of the other Contracting Party as a result of.

To. Occupation of their property by public authorities and authorities, or

B destruction of their property by the public forces or by the authorities, caused by actions not combative or imposed by the necessity of the situation, will receive adequate compensation or restitution.

The corresponding income will be freely transferable.

Article 5. Nationalization and Expropriation

1. The investments of natural and legal persons of either Contracting Party shall not be nationalized, expropriated or subjected to measures whose a /

Effect is equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, unless it is for reasons of public utility or social interest, aimed at satisfying the internal needs of. That Contracting Party on a non-discriminatory basis and by prompt, adequate and effective compensation.

Such compensation shall correspond to the actual market value of the expropriated investment, Immediately prior to expropriation or before the expropriation itself is in the public domain, depending on whether one of the two cases occurs first, and will include interest accrued at the interest rate in effect at the time of payment, taking as teferenna LIBOR rate until the effective date of the payment, which will be made without delay, being effected effectively and freely transferable

2. If a Contracting Party nationalizes or expropriates the investment of a natural or legal person lawfully registered or constituted, as the case may be, in its territory 10, in accordance with the legislation in force, in which the other Contracting Party or any Its natural or juridical persons has quotas, shares, bonds or other securities or interests, it must guarantee that the indemnity is woven and transferred

Such compensation shall be determined on the basis of the recognized valuation principles, such as the effective market value of the shares, valued in the period immediately preceding the decision announced or made public of the nationalization or expropriation. The compensation shall include the rate Of interest in force at the time of payment taking as reference the LIBOR rate from the date of nationalization or expropriation

3. In e! In the event that the actual market value can not be checked, the compensation shall be determined on the basis of an equitable valuation of the constituent and distinctive elements of the undertaking as well as of the components and the results of the correlative activities Of the company The compensation will include interest accrued from the date of nationalization or expropriation up to the date of! Calculated by the LIBOR rate for 6 months or by the corresponding interest rate in effect.

4. In the event that an agreement is not reached between the investor and the Parle who made the expropriation, the investor is entitled to have the amount of such compensation reviewed in accordance with the legislation in force for each of the Contracting Parties.

5. Once the indemnity has been determined, it shall be paid immediately and its return to the country of origin shall be authorized in the freely convertible currency in which the investment was made or in any other that may be agreed by the Parties,

6. The provisions set out in Section 2 of this Article shall also apply to proceeds arising from an investment and, in the case of liquidation, to proceeds deriving therefrom

7. After expropriation, if any property acquired for this purpose has not received all or part of the intended destination, the expropriated and their successors in title are entitled to obtain the repurchase.

Article 6. Transfer of Earnings, Remuneration and other Amounts to the Country of Origin

1. Each of the Contracting Parties shall guarantee to the investors of the other Contracting Party, after the investors fulfill all their fiscal obligations, the transfer abroad of:

A. Capital and additional quotas of capital used for the maintenance and increase of investments,

B. Net proceeds, dividends, royalties, compensation for technical assistance and services, interest and any other income,

C. sums resulting from the total or partial payment of the liquidation in an investment:

D. Sums intended to repay loans related to an investment and the payment of corresponding interest;

E. Compensations and indemnities received by citizens of the other Contracting Party and who are faithful to work and services rendered in the execution of the investments made in the same territory, to the extent and in the conditions provided for by the Law and the national regulations in force.

Transfers shall be made without delay in the freely convertible currency in which the investment was made or in any other

currency agreed by the Parties.

Unless otherwise agreed by the Contracting Parties, transfers shall be effected at the official exchange rate applicable on the date of transfer in accordance with the legislation in force in respect of exchange control in the territory of each Contracting Party.

2. Taking into account Article 3 of this Agreement, the Contracting Parties undertake to give the transfers reflected in section 1 of this article the same treatment as is reserved for those relating to investments made by investors from third States, In case they are more favorable Ai

Article 7. Subrogation

In the event that one of the Contracting Parties or one of its institutions is granted an insurance guarantee against non-commercial risks to investments made by one of its investors in the territory of the other Contracting Party and has made payments on the basis of The guarantee granted, it will be considered subrogated by law in the same credit position of the insured investor. Payments to be made by the Contracting Party or its institution under this subrogation shall be subject to Articles 4, 5 and 6 of this Agreement.

Article 8. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party in relation to investments shall, whenever possible, settle amicably between the parties in dispute.

. If a dispute can not be resolved within six months from the date it was submitted in writing, it may be presented at the election of the investor before

To the competent court of the Contracting Party in whose territory the investment was made;

B un arbitral u'ibunai ad - hec. Conformed according to the rules of the arbitration procedure of the United Nations Commission on International Trade Law (UNCTAD).

I. The Contracting Party involved in the dispute shall refrain during the arbitral proceedings or the execution of the award, to object to the fact that, Investor of the other Contracting Party has received compensation from the insurance for the damages or for its entirety.

4. Neither Contracting Party shall notify through official diplomatic channels the matters submitted to arbitration until the procedures are completed and the Contracting Party is prepared to abide by or comply with the award issued by the Arbitral Tribunal.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties relating to the interpretation and application of this Agreement shall, wherever possible, be settled by amicable diplomatic relations.

2. In the event that such disputes can not be settled within three months after the date on which one of the Contracting Parties has submitted the request in writing, they shall be submitted at the request of one of the Contracting Parties before an Arbitral Tribunal ad Hoc in accordance with the provisions of this Article

3. The Arbitral Tribunal shall be composed as follows: within two months of the date on which the request for arbitration is received, each Contracting Party shall designate a member of the Tribunal. These two members will then elect as President a citizen of a third State, having diplomatic relations with the countries of both Contracting Parties. The President shall be appointed within three months from the date of nomination of the two members mentioned above

4. If, within the terms established in section 3 of this article, nominations have not yet been made, each of the two Contracting Parties may, in the absence of other agreements, request the President of the International Court of Justice, Which has been carried out. In the event that the latter is a citizen of one of the Contracting Parties or if it is not possible for him to accept the position, the Vice-President of the Court shall be requested to make the nomination. In the event that the Vice-President is a citizen of one of the Contracting Parties or is unable to accept this position, it shall be extended to the member of the International Court of Justice, who is not a citizen of one of the Contracting Parties.

5. The Arbitral Tribunal shall decide by majority of votes and its decisions shall be binding. Each Contracting Party shall bear

the expenses of its own arbitrator and those of its own participation in the arbitral proceedings. The costs to the President and the expenses shall be borne by both parties in any measure.

The arbitrator shall establish its own rules of procedure and apply the substantive law of. The country receiving the investment.

The arbitral award is final and binding on the parties to the dispute.

Article 10. Relations between the Contracting Parties

The provisions of this article shall apply irrespective of whether diplomatic or consular relations exist between the Contracting Parties.

Article 11. Application of other Standards

1. In the case where an issue is regulated by this Agreement by another International Agreement of which both Contracting Parties are parties, or whenever general international law provides otherwise, more favorable conditions shall apply To the Contracting Parties and their investors in each case.

2. Where, by the choice of law, specific regulations, measures or contracts, one of the two Contracting Parties has taken a more favorable course of action under the Agreement, the most favorable treatment shall be accorded to them by the other Contracting Party aforementioned.

Article 12. Area of application

This Agreement shall apply to the investments of investors of each Contracting Party made in the territory of the other Contracting Party before its entry into force, on the condition that such investments are legally in force at that time, As it would apply to investments subsequently carried out in the field and under the protection of this Agreement, but does not apply to disputes that arose prior to its entry into force.

Article 13. Entry Into Force

This Agreement shall enter into force on the first day of the month following the date on which both Contracting Parties. That the corresponding constitutional procedures have been complied with.

Article 14. Term and Duration

1. This Agreement shall remain in force for 10 years and shall be automatically extended for equal successive periods, unless either Contracting Party notifies in writing to the other Contracting Party of its intention to denounce it, in which case it shall remain in force for a period of 12 Months from the date indicated.

2. In the case of investments made before the expiration date as stipulated in item 1 of this article, the provisions of articles 1 to 12 shall remain in force for another 10 years from the aforementioned date

In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement

DONE at Havana, on 1 February 2002, in two originals in the Italian and Spanish languages, both texts being equally authentic

For the Government of the Republic of San Marino

For the Government of the Republic of Cuba