AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CROATIA AND THE GOVERNMENT OF THE REPUBLIC OF BULGARIA ON PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Croatia and the Government of the Republic of Bulgaria, hereinafter referred to as the "Contracting Parties":

Desiring to develop the economic co-operation between the two States;

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing the need to promote and protect foreign investments with the aim of fostering the economic prosperity of both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean any kind of assets invested by an investor of one Contracting Party in the territory of the other Contracting Party, and shall include in particular though not exclusively:

a) Movable and immovable property, as well as any other rights in rem;

b) Shares, stocks or other forms of participation in companies;

c) Claims to money as well as any other rights having economic value;

d) Copyrights and similar rights, rights in the field of industrial and intellectual property (such as: patents, licences, industrial design, trademarks and trade names), technical processes, know-how and goodwill;

e) Rights to engage in business activities carried out under any administrative act issued pursuant to law or by virtue of a contract concluded with a competent authority to search for, cultivate, extract or exploit natural resources.

Any change in the form of an investment, admitted in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made, does not effect its character as an investment. 2. The term "investor" shall mean:

a) A natural person who is a national of one of the Contracting Parties in accordance with its applicable legislation and who invests in the territory of the other Contracting Party;

b) Legal person which is incorporated or constituted under the law of one Contracting Party and has its seat, together with real economic activities, in the territory of that Contracting Party and who invests in the territory of the other Contracting Party;

3. The term "returns" shall mean profits, dividends, interests and other lawful income yielded by investments.

4. The term "territory" shall mean the state territory of the Republic of Croatia, on the one hand, and of the Republic of Bulgaria, on the other hand, including the territorial sea as well as the continental shelf and the exclusive economic zone, over which the respective Contracting Party exercises sovereign rights or jurisdiction in conformity with international law.

Article 2. Promotion and Admission of Investment

1. Each Contracting Party shall promote and protect in its territory investments of investors of the other Contracting Party and admit such investments in accordance with its legislation and accord them fair and equitable treatment and protection.

2. In case of reinvestment of returns from an investment, these reinvestment and their returns shall enjoy the same protection as the initial investments.

3. Each Contracting Party shall consider favourably and in accordance with its legislation questions concerning entry, stay, work and movement in its territory of nationals of the other Contracting Party who carry out activity connected with the investments as defined in the present Agreement and of their families forming part of their household.

Article 3. Protection and Treatment of Investments

1. Neither Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party, treatment less favourable than that accorded to investments of its own investors or to investments of any third State, whichever is more favourable.

2. Neither Contracting Party shall accord to investors of the other Contracting Party, as regards the activity concerning the maintenance, use and management of their investments in the territory of the former Contracting Party treatment less favourable than that accorded to its own investors or to investors of any third State, whichever is more favourable.

3. The provisions of Paragraph 1 and 2 of this Article shall not apply with regard to any privilege accorded to investors of a third State based on:

a) Participation in, or association with, existing or future economic or customs union, free trade area or other similar form of economic integration established by virtue of an international agreement, or

b) Agreements on avoidance of double taxation or other international agreement in the field of taxation.

4. Each Contracting Party reserves the right to make or maintain, in compliance with its legislation in force, exceptions from national treatment granted according to Paragraphs 1 and 2 of this Article.

5. If the domestic law of either Contracting Party, or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

Article 4. Expropriation and Compensation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation in the territory of the other Contracting Party except in the public interest, under due process of law on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, shall be made without delay and shall include interest at 12 months LIBOR quoted for the currency in which the investments have been made until the date of payment.

2. The payment of compensation shall be settled in the freely transferable and convertible currency and shall be paid without undue delay to the investor. A transfer shall be deemed to be made "without undue delay" if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and may not exceed three months.

Article 5. Losses

Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State. Resulting payments shall, whenever possible, be transferable without delay, in the convertible and freely transferable currency.

Article 6. Transfer

1. Each Contracting Party shall permit investors of the other Contracting Party, after the fulfilment of all tax and other

financial obligations in accordance with the law, the free transfer of:

a) Capital and additional amounts intended to maintain or increase the investment;

b) Returns from the investment;

c) Proceeds obtained from the total or partial liquidation of the investment;

d) The sums required for payment of the expenses which arise from the operation of the investment such as loan repayments and payments of patents, licence fees, royalties and commissions;

e) Compensation payable in accordance with Article 4 and 5;

f) The remuneration received by nationals of the other Contracting Party for work or services done in connection with investments made in its territory, in accordance with its legislation.

2. The transfers referred to in the preceding Paragraph shall be made without delay in freely convertible currency, at the exchange rate of the Central bank of the Contracting Party on the date of the transfer in the territory of the Contracting Party where the investment has ben made.

3. In accordance with the laws and regulations of either Contracting Party all transfers subject to this Article shall be treated not less favourably than that accorded to the transfers of investments made by an investor of any third State.

Article 7. Subrogation

If a Contracting Party or its designated agency makes payment to its own investors under a guarantee it has accorded in respect of an investments in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

a) The assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency, as well as,

b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investments.

2. The subrogation rights or claims shall not exceed the original rights or claims of the investors.

Article 8. Dispute between One Contracting Party and the Investor of the other Contracting Party

1. Disputes between an investor of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement, in relation to an investment of the former, shall, as far as possible, be settled by the disputing parties in an amicable way.

2. If such dispute cannot be settled within six months from the date either party requested amicable settlement, the investor concerned may submit the dispute to the competent court of the Contracting Party.

3. In case of dispute with regard to Articles 4, 5, 6 and 7 of this Agreement the investor concerned may choose, instead, to submit the dispute for settlement by arbitration to:

a) An ad hoc arbitral tribunal to be established under the Arbitral Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

b) The International Centre for Settlement of Investment Disputes, in the event that both of Contracting Parties become a party to the Convention of Investment Disputes between States and Nationals of other States done at Washington, March 18th 1965 (ICSID Convention).

4. The award shall be final and binding on both Parties to the dispute and enforced in accordance with the domestic law of the Contracting Party concerned.

5. In case of disputes concerning the interpretation and application of this Agreement the investor may submit it to its Contracting Party in order to be settled under the provisions of the Article 9.

Article 9. Disputes between the Contracting Parties

1. Disputes between Contracting Parties regarding the interpretation and application of the provisions of this Agreement shall be settled by consultation and negotiation through diplomatic channels.

2. If both Contracting Parties cannot reach an agreement within six months after the beginning of negotiations with regard to the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitration tribunal which shall be constituted on a ad hoc basis as follows:

Each Contracting Party shall appoint an arbitrator and these two arbitrators shall nominate a chairmen who shall be a national of the third State, which maintains diplomatic relations with both Contracting Parties. 3. If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

4. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases specified under paragraphs 3 and 4 Of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure. The tribunal shall reach its decisions by a majority of votes.

7. The decisions of the tribunal are final and binding for each Contracting Party.

8. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs of the chairman and remaining costs shall be borne in equal parts by the Contracting Parties.

The tribunal may, however, decide that a higher proportion of costs shall be borne by one of the Contracting Parties and this award shall be binding on both Contracting Parties.

Article 10. Consultations and Exchange of Information

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to consultations on the interpretation or application of this Agreement. Upon request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures or policies of other Contracting Party may have on investments covered by this Agreement.

Article 11. Entry Into Force

This Agreement shall take effect on the date of the last notification through diplomatic channels in which one Contracting Party notifies the other of the fulfilment of the requirements provided for by their respective national legislations for its entry into force.

Article 12. Duration and Termination

1. This Agreement shall be valid for a period of fifteen (15) years as from the date of its entry into force and shall be tacitly renewed for another fifteen (15) years after the expiry of this period unless either of the Contracting Parties notifies the other through diplomatic channels of its intention to terminate this Agreement giving at least one-year notice prior to the expiry of the first or any other period of fifteen (15) years.

2. In case this Agreement is terminated, the provisions of Articles 1 to 11 shall remain in force for a further period of fifteen (15) years with regard to investments made before the date of termination of this Agreement.

Done in....., on....., in two originals in Croatian, Bulgarian and English language, all texts being equally authentic.

In the case of the divergency of interpretation of this Agreement, English text will prevail.

For the Government of the Republic of Croatia

For the Government of the Republic of Bulgaria