

Crna Gora
VLADA CRNE GORE
Broj: 08-137/3
Podgorica, 5. mart 2015. godine



CRNA GORA
SKUPŠTINA CRNE GORE

PRIMLJENO:	18. III	20. 15	GOD.
KLASIFIKACIONI BROJ:	00-72/15-2		
VEZA:			
EPK:	768 XXV		
SKLAČENICA:	PRILOGI		

PREDSJEDNIKU SKUPŠTINE CRNE GORE

PODGORICA

Vlada Crne Gore, na sjednici od 12. februara 2015. godine, utvrdila je **PREDLOG ODLUKE O DAVANJU U DUGOROČNI ZAKUP LOKALITETA OSTRVO LASTAVICA SA TVRĐAVOM „MAMULA“, OPŠTINA HERCEG NOVI**, prihvatila **PREDLOG UGOVORA O DUGOROČNOM ZAKUPU OSTRVA LASTAVICA SA TVRĐAVOM „MAMULA“ HERCEG NOVI** i usvojila **IZVJEŠTAJ O REZULTATIMA PREGOVORA PO OSNOVU TENDERA ZA DAVANJE U ZAKUP LOKALITETA OSTRVA LASTAVICA SA TVRĐAVOM „MAMULA“ SA PREDSTAVNICIMA KOMPANIJE ORASCOM DEVELOPMENT HOLDING AG, ŠVAJCARSKA**, koje vam u prilogu dostavljamo radi stavljanja u proceduru Skupštine Crne Gore.

Za predstavnike Vlade koji će učestvovati u radu Skupštine i njenih radnih tijela, prilikom razmatranja navedenih materijala, određeni su **Branimir Gvozdinović ministar održivog razvoja i turizma** i **Olivera Brajović, v.d. pomoćnika ministra**.

PREDSJEDNIK
Milo Đukanović, s.r.

PREDLOG

Na osnovu člana 39 Zakona o državnoj imovini („Službeni list CG“, br. 21/09 i 40/11), Skupština Crne Gore, na sjednici od.....2015. godine, donijela je

O D L U K U

O DAVANJU U DUGOROČNI ZAKUP LOKALITETA OSTRVO LASTAVICA SA TVRĐAVOM „MAMULA“, OPŠTINA HERCEG NOVI

1. Daje se u dugoročni zakup lokalitet ostrvo Lastavica sa tvrđavom „Mamula“, opština Herceg Novi, koja obuhvata katastarsku parcelu označenu kao - KO Radovanići, katastarska parcela-broj 3438, ukupne površine 31.848 m², u cilju izgradnje ekskluzivnog turističkog kompleksa otvorenog tipa.
2. Lokacija iz tačke 1 ove odluke daje se u dugoročni zakup na period od 49 godina.
3. Lokacija iz tačke 1 ove odluke daje se u zakup kompanije ORASCOM Development Holding AG, Švajcarska, kao izabranom ponuđaču na sprovedenom međunarodnom tenderu.
4. Prava i obaveze između Države Crne Gore - Vlade Crne Gore (Zakupodavac) i kompanije ORASCOM Development Holding AG, Švajcarska (Zakupac), po osnovu ovog zakupa utvrđuju se Ugovorom o davanju u dugoročni zakup lokaliteta ostrvo Lastavica sa tvrđavom „Mamula“, opština Herceg Novi, koji zaključuju Zakupodavac i Zakupac.
5. Ova odluka stupa na snagu osmog dana od dana objavljivanja u »Službenom listu Crne Gore«.

SKUPŠTINA CRNE GORE

Broj: _____
Podgorica: _____ 2015. godine

Predsjednik
Ranko Krivokapić

O B R A Z L O Ž E N J E

Pravni osnov za donošenje Odluke

Pravni osnov za donošenje Odluke o davanju u dugoročni zakup lokaliteta ostrvo Lastavica sa tvrđavom „Mamula“, opština Herceg Novi, sadržan je u stavu 3 člana 39 Zakona o državnoj imovini (»Službeni list Crne Gore«, broj 21/09 i 40/11), kojim je definisano da se dobra u svojini Crne Gore ili imovini opštine mogu ugovorom dati u zakup do 30 godina odlukom Vlade Crne Gore, odnosno nadležnog organa opštine i do 90 godina odlukom Skupštine Crne Gore, na predlog Vlade.

Razlozi za donošenje Odluke

U skladu sa Planom privatizacije za 2013. godinu pokrenute su aktivnosti na otpočinjanju procesa izdavanja u dugoročni zakup lokaliteta ostrvo Lastavica sa tvrđavom „Mamula“, opština Herceg Novi, kroz model privatno - javnog partnerstva.

Putem javnog tendera, ponuđeno je davanje u dugoročni zakup navedenog lokaliteta površine 31.848 m² u vlasništvu Crne Gore, na osnovu Odluke o planu privatizacije za 2013. godinu i Odluke Tenderske komisije za valorizaciju turističkih lokaliteta, nadležne za sprovođenje postupka izdavanje u dugoročni zakup ovog lokaliteta.

Namjera objavljivanja Tendera je bila da se obezbjedi adekvatan i sveobuhvatan razvoj ovog lokaliteta u ekskluzivni turistički kompleks otvorenog tipa, nivoa 5 zvjezdica, koji će nuditi niz aktivnosti za odmor i rekreaciju, na način koji je konceptualno, estetski, funkcionalno i ekološki uklopljen u postojeći ambijent, sa posebnim akcentom na kulturno istorijski karakter tvrđave „Mamula“ i njeno prirodno okruženje.

Tenderska komisija je objavila Javni poziv za davanje u dugoročni zakup ostrva Lastavica sa tvrđavom „Mamula“, Herceg Novi 06. decembra 2013. godine u dnevnom listu „Pobjeda“, međunarodnom glasilu Finacial Times, kao i na web portalima Savjeta za privatizaciju i kapitalne projekte, Ministarstva održivog razvoja i turizma i na posebnom web portalu: www.tourismprojects.me.

Nakon utrdivanja formalne ispravnosti dostavljenih ponuda na tender, Tenderska komisija je dostavila Savjetu Izvještaj o rezultatima međunarodnog Javnog tendera za davanje u dugoročni zakup lokaliteta ostrvo Lastavica sa tvrđavom „Mamula“, opština Herceg Novi.

Savjet za privatizaciju i kapitalne projekte je na sjednici održanoj 15. aprila 2014. godine usvojio Izvještaj Tenderske komisije o rezultatima tendera za izdavanje u dugoročni zakup lokaliteta ostrvo Lastavica sa tvrđavom „Mamula“, opština Herceg Novi i donio Odluku (Br. 01-129 od 15.04.2014.) o prihvatanju ponude Orascom Development Holding AG, Švajcarska, i zadužio Tendersku komisiju da pozove Ponuđača na pregovore.

Radni tim za pregovore je u periodu od 5. maja 2014. godine do 17. decembra 2014. godine održao više sastanaka na kojima su usaglašavani članovi Nacrta Ugovora o dugoročnom zakupu, kada je i postignut dogovor o svim ključnim pitanjima.

Tenderska komisija za valorizaciju turističkih lokaliteta je na sjednici održanoj 22. decembra 2014. godine usvojila Izvještaj o rezultatima tendera za davanje u dugoročni zakup lokaliteta ostrvo Lastavica sa tvrđavom „Mamula“, sa Predlogom Ugovora i Predlogom odluke o davanju u zakup na period od 49 godina lokaliteta ostrvo Lastavica sa tvrđavom „Mamula“ i zadužila Radni tim da dodatno aktuelizuje jasnije preciziranje članova koji se odnose na Dodatna prava (4.2 i 4.3), Infrastrukturu (12.1), Pravo na imovinu (21.2) i Stabilizaciona klauzula (37.4), što je i realizovano. Tenderska komisija se na elektronskoj sjednici održanoj 16. , 21. i 22. januara 2015. godine izjasnila da prihvata navedene članove, precizirane u skladu sa instrukcijama Komisije.

Savjet za privatizaciju i kapitalne projekte je na sjednici od 26. 01. 2015. godine usvojio Izvještaj o rezultatima pregovora po osnovu tendera za davanje u dugoročni zakup lokaliteta ostrvo Lastavica sa tvrđavom „Mamula“, sa Predlogom Ugovora i Odluke, te navedenu dokumentaciju uputio Vladi na usvajanje.

Vlada Crne Gore, na sjednici održanoj 12. februara godine, utvrdila je Predlog odluke o davanju u dugoročni zakup lokaliteta ostrvo Lastavica sa tvrđavom „Mamula“, opština Herceg Novi i istovremeno prihvatila Predlog Ugovora o davanju u dugoročni zakup lokaliteta ostrvo Lastavica sa tvrđavom „Mamula“, opština Herceg Novi.

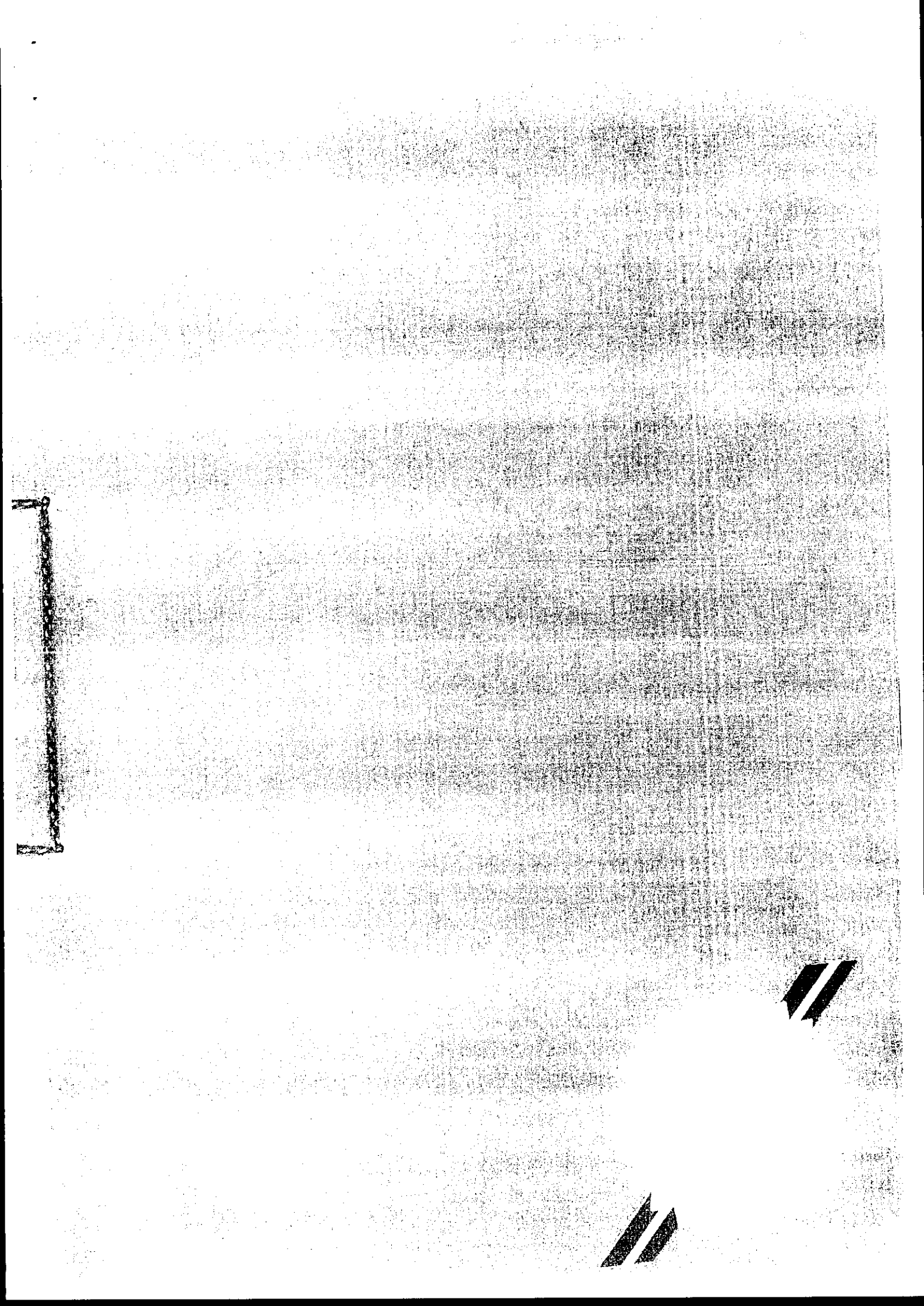
U skladu sa članom 39. Zakona o državnoj imovini, kojim je definisano da Skupština Crne Gore, na predlog Vlade donosi Odluku o dugoročnom zakupu, dostavljamo vam Predlog Odluke o davanju zemljišta u dugoročni zakup lokaliteta ostrvo Lastavica sa tvrđavom „Mamula“, opština Herceg Novi.



Crna Gora

MINISTARSTVO ODRŽIVOG RAZVOJA I TURIZMA

Naziv propisa	Odluka o davanju u dugoročni zakup lokaliteta ostrvo Lastavica sa tvrđavom „Mamula”	
Klasifikacija propisa po oblastima i podoblastima uređivanja	oblast	podoblast
	VII Svojinsko pravni odnosi	1. Svojinsko pravni odnosi
Klasifikacija po pregovaračkim poglavljima Evropske Unije	poglavlje	potpoglavlje
	4 . Slobodno kretanje kapitala	10.40 – Slobodno kretanje kapitala
Ključni termini - eurovork deskriptori	Dugoročni zakup ostrva Lastavica sa tvrđavom “Mamula”	



Crna Gora
VLADA CRNE GORE

Podgorica, 24. 02. 2015 god.

23 February 2015

LONG -TERM LEASE AGREEMENT

RELATING TO

LASTAVICA ISLAND WITH FORTRESS "MAMULA" HERCEG NOVI

BETWEEN

THE LESSOR: GOVERNMENT OF MONTENEGRO

AND

ORASCOM DEVELOPMENT HOLDING AG

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of this Lease Agreement.

- 1.2. Definitions and interpretation set out in this CLAUSE 1 and CLAUSE 2 shall apply to this Lease Agreement.
- 1.3. All terms defined in this Lease Agreement shall have that same, defined meaning whenever used in any SCHEDULE or Transaction Document, unless otherwise defined in therein.
- 1.4. Except where otherwise indicated, reference to a clause, paragraph, SCHEDULE, or part of a SCHEDULE is a reference to a clause, paragraph, SCHEDULE, or part of a SCHEDULE of this Lease Agreement.
- 1.5. Headings of CLAUSES, SCHEDULES and paragraphs are for reference purposes only and shall not affect the interpretation of this Lease Agreement.
- 1.6. In the event of inconsistencies or contradictions of any provision of this Lease Agreement with provisions of its SCHEDULES or the Tender Documents, the provisions of the Lease Agreement shall prevail.
- 1.7. Whenever the terms "includes", "include", "including" or similar are used in this Lease Agreement, it shall be deemed that they are accompanied by the words "without limitation".
- 1.8. Reference to another document also includes a reference to any future amendments to that document, and any document replacing such original document that is referenced to.
- 1.9. Reference to the LESSOR includes a reference to the state authority that, in accordance with Applicable Laws of Montenegro, has the authorizations to exercise any rights to the LESSOR in respect of this Lease Agreement.
- 1.10. Reference to the LESSEE includes a reference to its legal successors in relation to this Lease Agreement.

2. DEFINITIONS

- 2.1. **Acceptable Bank:** any commercial bank that has at least BBB rating by the international rating agency Standard and Poor's or another bank acceptable to the LESSOR.
- 2.2. **Additional Land:** has the meaning assigned to it under CLAUSE 4.1.
- 2.3. **Affiliate:** means with respect to any person, any other person that, directly or indirectly, (a) owns or who has voting control over the first person, (b) is owned by the

first person, or such first person has voting control over such other person, or (c) is commonly owned or under common voting control with the first person or by the shareholders or ultimate beneficial owners of the first person. For the purposes of this definition the term "own" or "owned" means ownership of more than fifty percent (50%) of the equity interests or rights to distributions on account of equity of the Person in question and the term "voting control" means the power to direct the management or policies of a Person, whether through the ownership of voting securities or through the board of directors, by contract, or otherwise.

- 2.4. **Agreed Standard:** 5 star standard established in accordance with the Applicable Laws or international standards in respect from hotel classifications link to limitations of preservations of historical buildings, as determined by Rulebook on classification of hotels (*Pravilnik o vrstama, minimalno-tehničkim uslovima i kategorizaciji ugostiteljskih objekata*) published in the Official Gazette of Montenegro no. 63/11 and 47/12 ("**Rulebook**") on the understanding that there need to be certain exceptions for the hotel being a historical site and on the understanding that not all facilities usually required for such a classification may be provided within the Investment due to limitations imposed by the environment and status of the existing building (fortress) as immovable cultural monument.
- 2.5. **Annual Rent:** the Fixed Rent and the Variable Rent that the LESSEE is to pay to the LESSOR during the Lease Term as specified in CLAUSE 8 of this Lease Agreement.
- 2.6. **Applicable Laws:** (i) all local, national and/or international laws and conventions directly applicable in Montenegro, which are currently in force, as well as all amendments, extensions of application and/or adoption of new regulations replacing such regulations; (ii) rule, regulation, guideline, ordinance, or code administered or enforced by any State Authority that is binding on the LESSEE or in relation to the Location.
- 2.7. **Architect:** a highly rated professional with very good reputation, appointed by the LESSEE as the lead and responsible designer working on preparation of the Final Design and other Engineering Documents in accordance with the Law on Spatial Planning and Construction.
- 2.8. **Audit Date:** each March 31 after the Date of Commencement of Business Operations.
- 2.9. **Auditor:** Montenegrin branch of any of the following four companies: Deloitte Touche Tohmatsu, PricewaterhouseCoopers, Ernst & Young and KPMG, commissioned by the LESSEE.
- 2.10. **Best Efforts:** the efforts that could reasonably be expected from a reputed development company in performing its obligations under this Lease Agreement applying Best International Practices.

- 2.11. **Best International Practices:** the exercise of that degree of professional skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled, qualified and experienced developer responsible for carrying out responsibilities and discharging operations of a type such as the obligations under this Lease Agreement and complying with those practices, methods, equipment, specifications and standards of management, safety and performance, (as the same may change from time to time), as are commonly used by professional organisations carrying out such tasks in connection with facilities of a type and size similar to the Development, which in the exercise of reasonable judgement and in light of the facts known at the time a decision was made, are considered economically and financially prudent, safe and professionally acceptable practices.
- 2.12. **Bid Bond:** unconditional and irrevocable bank guarantee payable at first call, issued by UBS and submitted by the LESSEE to the LESSOR together with the Bid and in accordance with the Public Invitation, including any extension thereof.
- 2.13. **Building Permit:** the building permits as defined in the Law on Spatial Planning and Construction to be issued by competent State Authority that are necessary to commence the Development.
- 2.14. **Business Books:** shall have the meaning in line with the Law on Accounting and Auditing.
- 2.15. **Business Operations:** activities of management and operation of the Resort and any other additional business activities that the LESSEE carries out at the Location in accordance with this Lease Agreement.
- 2.16. **Certificate of Completion of Works:** Certificate of Completion of Works: the occupancy permit (*upotrebna dozvola*) for the Resort or such other certificate as replaces the occupancy permit due to a change in change of Applicable Law.
- 2.17. **Closing:** handover of the Location to the LESSEE after all the Closing Conditions have been met in accordance with CLAUSE 7.
- 2.18. **Closing Conditions:** all conditions set out in CLAUSE 7.
- 2.19. **Closing Date:** date on which the Closing has occurred.
- 2.20. **Completion of Works:** shall have the meaning assigned to such term under CLAUSE 13.
- 2.21. **Works Completion Date:** date on which the Works are to be completed in accordance with CLAUSE 13.
- 2.22. **Constituent Documents:** with regard to the LESSEE, founding documents, contracts,

certificates, articles of incorporation and/or their equivalents, and other documents in accordance with which the LESSEE is operated and/or on the basis of which the LESSEE exists.

- 2.23. **Closing Protocol:** the document signed by the Parties on Closing in accordance with CLAUSE 7.
- 2.24. **Construction Program:** the program of the construction of the Resort submitted by the LESSEE as the part of the Bid.
- 2.25. **Date of Commencement of Business Operations:** the first day after opening the Resort to the public.
- 2.26. **Default Interest:** interest payable in respect of default in fulfilling monetary obligations at the rate determined in accordance with the Law on Rate of Default Interest.
- 2.27. **Development:** all Works, operations and activities that are in accordance with the Engineering Documents, the Building Permit and the Construction Program, in respect of design, engineering Works and construction of the Resort.
- 2.28. **Encumbrance:** any right, claim, easement, binding order, mortgage, pledge, note, unresolved request, encumbrance, option, the right to sell, the right to lease, , pre-emptive right, right of first offer or any other security or agreement to establish any of the foregoing in favour of any person other than the Parties.
- 2.29. **Engineering Documents:** conceptual design, preliminary design, and final design with details for the execution of Works in accordance with the Law on Spatial Planning and Construction, as required for the execution of the Works.
- 2.30. **Expert:** shall have the meaning assigned to such term under CLAUSE 42.
- 2.31. **Extension:** any extension of the Works Completion Date in accordance with this Lease Agreement.
- 2.32. **Financial Statements:** LESSEE's financial statements made in accordance with the Law on Accounting and Auditing and the Lease Agreement.
- 2.33. **Financial Year:** a financial year of the relevant company in accordance with the Applicable Laws.
- 2.34. **Foreign Company:** a Montenegrin branch or local limited liability company of the LESSEE incorporated for the purpose of the Project.
- 2.35. **Force Majeure:** shall have the meaning set out in Clause 42.

- 2.36. **Infrastructure:** shall mean electric transmission lines, telecommunication lines water supply facilities and sewage systems necessary for the Development and the Business Operations that are located outside the Locations.
- 2.37. **Insolvent:** a party that has been declared by final decision of a competent court to be unable to pay or that admits that it is permanently unable to settle its financial liabilities or that has permanently ceased payment of any of its liabilities.
- 2.38. **Insurance Policies:** insurance policies that the LESSEE is to conclude by a reputable insurance company approved by the LESSOR in advance in respect of the Location, Resort, Development and Business Operations for the purpose of securing against Risks.
- 2.39. **Investment:** an amount of fifteen million Euros (€15,000,000) to be calculated based on the entire amount invested (regardless whether equity or finance) in the Project until the Date of Commencement of Business Operations including any consultants fees, expenses acknowledged by USALI, VAT, working capital transferred to an account of the LESSEE for the Development and the Resort and amounts payable to third parties in relation to the Development and Resort.
- 2.40. **Investment Program:** means the investment program submitted to the LESSOR along with the Bid set out in SCHEDULE 5, as may be amended by the LESSEE in its sole discretion from time to time provided that the Investment is maintained.
- 2.41. **Law on Accounting and Auditing:** Law on Accounting and Auditing, Official Gazette of the Republic of Montenegro 69/05, as amended from time to time.
- 2.42. **Law on Maritime Domain:** The Law on Maritime Domain, as published in the Official Gazette of the Republic of Montenegro 14/92, as amended from time to time.
- 2.43. **Law on Rate of Default Interest:** the Law on Rate of Default Interest, as published in the Official Gazette of Montenegro 83/09, as amended from time to time.
- 2.44. **Law on Spatial Planning and Construction:** The Law on Spatial Planning and Construction, as published in the Official Gazette of Montenegro 51/08, as amended from time to time.
- 2.45. **Laws in the area of Environmental Protection:** any applicable law implementing or assisting in the implementation of protection of people, natural locations or the environment (including protection of air, surface waters, ground waters, soil surface and deep soil, endangered plant and animal species), energy saving, labour safety and safety in production process, processing, distribution, use, generation, handling, treatment, storage, disposal, transport, disposal of pollutants emitted, and the treatment of solid waste, industrial waste and hazardous substances or materials.

- 2.46. **Lease Extension:** any extension of the Lease Term for any delays caused by the LESSOR.
- 2.47. **Lease Term:** the period of forty nine (49) years as the duration of the lease of the Location, determined in accordance with CLAUSE 3.
- 2.48. **LESSEE:** Orascom Development Holding AG as replaced by any Third Party to which this Lease Agreement is assigned.
- 2.49. **Liabilities Related to Environmental Protection:** any costs, payments and other financial obligations and liabilities of any kind in accordance with the Laws in the area of Environmental Protection, in relation to the Location and/or in relation to the Development and/or Business Operations.
- 2.50. **Location Study:** means the State Location Study for "Sector 34".
- 2.51. **Maintenance Works:** Works on maintaining the Resort, carried out by the LESSEE during the Lease Term after the Completion of Works.
- 2.52. **Maritime Domain:** means the portion of the Resort outside the Location representing maritime domain and the aquatorium in the meaning of Article 2 of the Law on Maritime Domain, marked as such in the Location Study and further described and delineated in SCHEDULE 2.
- 2.53. **Material Adverse Effect:** any adverse material effect having a value of at least € 500,000 related to:
- (a) the financial conditions of the Lease Agreement or the Location;
 - (b) the ability of the LESSOR and/or LESSEE to execute their obligations in accordance with this Lease Agreement and/or any other Transaction Document;
or
 - (c) the ability of the LESSOR and/or LESSEE to exercise their rights in accordance with this Lease Agreement and/or any other Transaction Document.
- 2.54. **MONSTAT:** Statistical Office of Montenegro.
- 2.55. **Parties:** LESSOR and LESSEE together.
- 2.56. **Party:** LESSOR or LESSEE.
- 2.57. **Performance Bond:** unconditional and irrevocable bank guarantee payable at first call, in the form and substance of SCHEDULE 3, issued by an Acceptable Bank in favour of the LESSOR in the amount specified in CLAUSE 32.

- 2.58. **Period of Execution of Works:** the period from the Works Commencement Date to the Works Completion Date.
- 2.59. **Project:** means the Development and the Business Operations.
- 2.60. **Public Invitation:** shall have the meaning as defined in the Preamble.
- 2.61. **Related Parties:** in respect of the LESSEE, any legal or natural person who (A) has control over the LESSEE or (B) is controlled by the LESSEE or (C) is controlled by persons falling under the meaning set forth in subparagraphs (A) or (B) of this definition; for the purposes of this definition, "have control over" or "is controlled" means possession, direct or indirect (including family and marital relationships), authorizations to have a decisive influence on management or business policy of an entity (whether through ownership of securities, another member of the company, partnership or ownership interest, by establishing a complete or partial identity of individuals from the management, by contract or otherwise).
- 2.62. **Resort:** shall have the meaning ascribed to this term in the Preamble.
- 2.63. **Risks:** all risks reasonably insured in accordance with Best International Practices for a project of comparable qualifications as the Project, for the duration of the Development and Business Operations.
- 2.64. **Signing Date:** the date of signing this Lease Agreement by both Parties
- 2.65. **State Authority:** any national, local, municipal and/or any other administrative authority, board, committee, agency, legal or legislative body or their authorized representative lawfully exercising, or entitled to exercise, any administrative, executive, judicial, legislative, regulatory, licensing, competition, tax or other governmental or quasi-governmental authority.
- 2.66. **Supervisor:** shall have the meaning assign to it under CLAUSE 18.1.
- 2.67. **Tender Documents:** Public Invitation with accompanying documentation (Information Memorandum, Instructions to Bidders and draft Lease Agreement).
- 2.68. **Third Party or Third Person:** any natural or legal person other than the LESSEE and the LESSOR.
- 2.69. **VAT:** Value Added Tax.
- 2.70. **Works:** any works on the Development of the Resort, in accordance with this Lease Agreement, including the preparation of the terrain, construction of buildings and infrastructure, and renovation of buildings existing on the Resort, including all works in Maritime Domain.

271. **Works Commencement Date:** the date when the LESSEE shall start the Works, in accordance with CLAUSE 13.

272. **Year:** each period of twelve (12) months starting from the Closing Date.

PART II - SUBJECT OF THE LEASE

SUBJECT OF THE LEASE

1. Subject to the terms and conditions of this Lease Agreement the LESSOR hereby

- (a) grants the LESSEE a lease of the Location to implement the Development and conduct the Business Operations; and
- (b) grants the LESSEE the exclusive use over the Maritime Domain to implement the Development and conduct the Business Operations;

for a period of 49 years from the Closing Date plus any Lease Extensions.

2. In consideration for the rights granted under this Lease Agreement, the LESSEE shall pay the LESSOR the following:

- (a) the Annual Rent in accordance with this Lease Agreement; and
- (a) the Fee for use of the Maritime Domain within the Resort.

3. For avoidance of doubt, the LESSEE shall not acquire ownership right to the Location, including the fortress situated thereon, Maritime Domain, the Resort, or any part thereof, neither on the basis of this Lease Agreement, nor as a result of the Development and/or Business Operations.

4. For avoidance of any doubt, the LESSEE shall obtain and maintain ownership over all moveable properties installed or otherwise brought to the Location, notwithstanding such properties are in direct or indirect function of the Resort or otherwise serve the Resort.

ADDITIONAL RIGHTS

1. The Parties, by joint endeavours, shall within ninety (90) days as of execution of this Agreement identify additional land in state ownership on the mainland with direct access to a mooring area for purposes of use by the LESSEE for storage, shipment, parking, staff and guest transport, storage and transport of construction materials and other logistics functions ("Additional Land").

2. The LESSEE will endeavour to acquire correspondent right in rem of the long term lease to the Additional Land by way of a public tender procedure that will be started

by the LESSOR in due course in accordance with Applicable Law.

Should the LESSEE fail to acquire a right long term lease to the Additional Land by way of a public tender procedure initiated by the LESSOR, the LESSOR agrees to grant a non-exclusive right to use suitable Additional Land (other than the one failed to be acquired by the LESSEE) in accordance with the following principles: [...]

- (a) the LESSOR shall procure that such rights shall be maintained for the Lease Term;
- (b) the LESSEE acknowledges that third parties will have access to the Additional Land on the understanding that the LESSOR shall procure that such third parties will not prevent the LESSEE to use the Additional Land to the extent required for the Development and the Business Operations;
- (c) the LESSEE shall use the Additional Land solely in accordance with the provisions of this Lease Agreement;
- (d) the LESSOR may at any time, with prior notification and consultations with the LESSEE, change the location of the Additional Land, provided that such does not adversely affect the Development or the Business Operations; and
- (e) the LESSOR may, in consultation with LESSEE, change the route of any links or connections with the Location, and change the area in which any of these rights are used, in accordance with Applicable Laws, and provided that such change does not adversely affect the Development or the Business Operations.

PART III - PRE-CLOSING OBLIGATIONS AND CONDITIONS PRECEDENT

5. LESSEE'S PRE-CLOSING CLOSING OBLIGATIONS

5.1. Following signature of this Lease Agreement, the LESSEE shall deliver the following to the LESSOR:

- (a) within ninety (90) days from the Signing Date, duly notarized copies of the Constituent Documents of the LESSEE; and
- (b) within ninety (90) days from the Signing Date, a copy of the decision of the competent corporate body of the LESSEE, duly notarized and legalized, that contains a list of names of persons who are authorized to enter into and execute this Lease Agreement.

5.2. From the Signing Date of this Lease Agreement until and including the Closing Date, the LESSEE shall have the obligation to cooperate with the LESSOR in good faith to achieve completion of the Closing Conditions.

LESSOR'S PRE-CLOSING OBLIGATIONS

The LESSOR shall take all necessary steps and action to present this Lease Agreement to the Parliament of Montenegro for approval and ratification in accordance with the Law on State Assets (Official Gazette of Montenegro 21/09) and the Decree on Sale and Lease of the State Assets (Official Gazette of Montenegro 44/10).

From the Signing Date of this Lease Agreement until (and including) the Closing Date, the LESSOR shall have the obligation to:

- (a) preserve substantially intact the current condition of the Location;
- (b) inform the LESSEE of any possible Material Adverse Effect with regard to the Location, which the LESSOR is or should have been aware of;
- (c) protect the Location against any Encumbrance;
- (d) prevent any Third Party to acquire any rights in relation to the Location;
- (e) refrain from any acts or actions of disposal of the Location contrary to the provisions of this Lease Agreement;
- (f) co-operate with the LESSEE in good faith to achieve completion of the Closing Conditions;
- (g) finalize the inscription of the Location and the buildings thereon in the Land Registry; and
- (h) allow for unrestricted access to the Location by the LESSEE upon reasonable advance notice for the purpose of performing analysis, testing, survey or for other similar activities allowed under this Agreement. For avoidance of any doubt the LESSEE shall have no right to use and/or exploit the Location before the Closing.

CLOSING

Closing shall occur within seven (7) days from the day when each and all of the following Closing Conditions (except for the Closing Condition set out in CLAUSE 7.1. (c) which must be fulfilled within seven (7) days from the date on which all other Closing Conditions are fulfilled) have been and continue to be satisfied (or have been waived in writing as set out below):

- (a) the LESSEE having fulfilled all its pre-closing obligations set out in CLAUSE 5. of this Lease Agreement or this Closing Condition has been waived by the LESSOR;

- (b) the LESSOR having fulfilled all its pre-closing obligations set out in CLAUSE 6 of this Lease Agreement or this Closing Condition has been waived by the LESSEE;
- (c) against simultaneous release of the Bid Bond, a Performance Bond in the amount calculated in accordance with CLAUSE 32 has been delivered to the LESSOR within seven days after all Closing Conditions have been fulfilled, or this Closing Condition has been waived by the LESSOR;
- (d) the LESSEE has acquired the right over the Additional Land by way of award to LESSEE under CLAUSE 4.2 or as set out in CLAUSE 4.3; and
- (e) this Lease Agreement having been approved and ratified by the Parliament of Montenegro in accordance with the Law on State Assets (Official Gazette of Montenegro 21/09) and the Decree on Sale and Lease of the State Assets (Official Gazette of Montenegro 44/10).

On Closing, the Parties shall sign a Closing Protocol, prepared by Parties that confirms the fulfilment of Closing Conditions and handover of the Location to the LESSEE.

If the Closing Condition set out in CLAUSE 7.1 (a) is not fulfilled or waived within one hundred eighty (180) days from the Signing Date or if the Closing Condition set out in CLAUSE 7.1 (c) is not fulfilled within seven (7) days from the date on which all of the other Closing Conditions have been fulfilled, the LESSOR shall have the right to terminate this Lease Agreement with immediate effect by simple written notice.

If the Closing Conditions set out in CLAUSE 7.1 (b) and/or (e) are not fulfilled or waived within three hundred sixty (360) days from the Signing Date, the LESSEE shall have the right to terminate this Lease Agreement with immediate effect by simple written notice.

If the Closing Condition set out in CLAUSE 7.1 (d) is not fulfilled or waived by the LESSEE within one hundred eighty (180) days from the Signing Date, each Party shall have the right to terminate this Lease Agreement with immediate effect by simple written notice.

If this Lease Agreement is terminated in accordance with this CLAUSE 7 neither Party shall have rights or obligations toward the other Party with regard to this Lease Agreement. As an exception to the above, if the Lease Agreement is terminated by the LESSOR in accordance with CLAUSE 7.3, the LESSOR shall be entitled to draw down the Bid Bond while in all other cases of termination the Bid Bond shall be immediately returned to the LESSEE.