

The undersigned:

1. The corporation under Sint Maarten laws **SIMPSON BAY RESORT, MANAGEMENT COMPANY B.V.**, established on St. Maarten, duly represented by Jairo G. Bloem hereinafter referred to as "SBRMC",

and

2. The association **WORKERS INSTITUTE FOR ORGANIZED LABOR**, established on St. Maarten, duly represented by two members of its executive board being its President Mr. Theophilis Thompson and its General Secretary Elva Blijden Richardson, herein after referred to as "Wifol"

And

3. The Public Entity **COUNTRY SINT MAARTEN**, established on St. Maarten, duly represented by its prime minister Mrs. Sarah A. Wescot-Williams, hereinafter referred to as "Government"

**WITNESSETH:**

- That the Court of First Instance in its ruling of February 8, 2011, ordered SBRMC to fully and timely observe the employer's obligations under the 'Collective Labor Agreement for the Line Personnel and Supervisors of Pelican Resort Club' and the 'Collective Labor Agreement for Middle Management and Administrative Personnel of Pelican Resort Club', more specifically to continue to pay the employees their wages;
- Parties will however consider, for solely the purpose of effectuating this temporarily agreement geared at making it possible to open the resort as soon as possible, the factual and stated financial possibilities for the parties involved to completely live to the stipulations of the verdict;
- That Government acknowledged that reopening of the resort would be of vital importance for many stakeholders and as such the entire Country St. Maarten;



- That Government therefore decided to take the lead and to participate in negotiations that should lead to the reopening of the resort and as such is acting in the best interest of the social economic well-being of St. Maarten;
- That parties therefore intend to reach a temporary understanding and arrangement pending the outcome of the Appeal Procedure and do not wish to derogate to any rights of any party involved, but that the purpose of the arrangement is to facilitate the continuance of the operation of the resort, pending the outcome of the appeal procedure;
- That all parties agreed with the aforementioned conditions.

**NOW, THEREFORE, IT IS MUTUALLY AGREED UPON AS FOLLOWS:**

**Article 1      Opening of the Resort**

- 1.1      SBRMC will open the resort within a period of ten days after the date of the signing of this agreement.

**Article 2      Return to work**

- 2.1      The 182 members of Wifol will return to work once the resort is opened, or earlier if SBRMC desires so.
- 2.1      The appeal verdict will not constitute a reason for closure of the resort. It is expressly understood that this statement cannot be interpreted as or construed as an acceptance by SBRMC that the verdict of February 8<sup>th</sup>, 2011, constituted a reason for the closure of the resort.

**Article 3      Legal representation**

- 3.1      The two members signing on behalf of the executive board of Wifol warrant that they are legally entitled to represent Wifol and all its individual members employed with the resort and to enter into this agreement on behalf of Wifol and all referenced individual members in accordance of the stipulations of its constitution.
- 3.2      Mr. Bloem warrants on behalf of SBRMC that he is legally entitled to represent SBRMC.

- 3.3 The Prime Minister signing on behalf of Government warrants that she is legally entitled to represent Government.

**Article 4 Termination of employees**

- 4.1 SBRMC will follow the procedures as stipulated by law and the CLA in the event SBRMC wishes to terminate the employment of any amount of employees.
- 4.2 Government will process such a request in accordance with the stipulation of the law and will strive to have a decision made within a period of no longer than three months, starting January 18<sup>th</sup>, 2011, when Management filed the request for termination on behalf of Pelican Resort Club Management Company N.V. (PRCMC). It is deemed that since PRCMC and SBRMC have been equated with each other as per the verdict dated February 8<sup>th</sup>, 2011, that the request of January 18<sup>th</sup>, 2011 is to be considered the request for termination of certain employees as per the arrangement described further hereunder. Management will as such indicate within 48 hours after having concluded this settlement agreement for which employees, within the range and scope of this agreement, it withdraws the dismissal request.
- 4.3 Wifol understands that SBRMC will be requesting permission to lay off a minimum of 37 and maximum of 50 persons.
- 4.4 Management will entertain any request from an employee voluntarily wishing to terminate his/her labor agreement based on mutual consent.
- 4.5 Article 5 does not apply to the group of persons who wish to terminate the labor agreement based on mutual consent, including persons referred to in article 21 of the CLA with the Line Employees and article 20 for the CLA for Middle Management & Administrative personnel.

**Article 5 Payment plan for lay-off allowance as mentioned in article 18 CLA for Middle Management and article 19 of the CLA for Line employees**





- 5.1 In solely the event that no verdict is handed down by the Court of Appeal prior to the date a lay-off allowance may become due as a result of a granted permission for termination, Wifol agrees to grant SBRMC a payment plan for lay-off allowance.
- 5.2 This payment plan is as follows:
- a. payment of legal cessantia (as stated in the Cessantia Landsverordening) will be done within a month after termination of the employment agreement;
  - b. the difference between the legal cessantia and the lay-off allowance as stated in the CLA, will be paid within six months of the termination date.
- 5.3 The grant of this payment plan cannot be construed or interpreted as a waiver or relinquishing by Wifol of any right under the aforementioned CLA's, but is intended to solely cater to the financial difficulties that SBRMC states that it has, of which statement Wifol has taken notice.
- 5.4 It is also expressly understood by parties that SBRMC's consent to allow the aforementioned CLA's to prevail pending this temporarily transitional phase geared at opening the resort as soon as possible before the final outcome in the ongoing litigation, cannot be interpreted or construed as an acceptance by SBRMC that it ought to be bound to the CLA's and more in particular that it can sustain operating the resort in an economically viable manner, with referenced CLA's.
- 5.5 It is also understood by parties that the acceptance of the payment plan by Wifol does not form any acceptance of any relation between the current CLA and the financial difficulties that SBRMC states it has.

## **Article 6 Indemnification**

- 6.1 Government will indemnify the laid off workers against any claims resulting from any possible judgment of the Court of Appeal or Supreme Court, by which it would become evident that the workers have received monies not due to them by SBRMC. SBRMC must substantiate that it indeed made the payments of which it is possibly deemed by the Appeal Court or Supreme Court, that they were not indebted by SBRMC, to the laid off employees.

**Article 7      New CLA**

- 7.1      WIFOL agrees to enter into renegotiations for a new CLA considering the present economic, reality immediately after the verdict of the Court of Appeals, or earlier than that date if that would be the wish of the parties.
- 7.2      WIFOL and SBRMC will proceed to discuss possible areas of cooperation to ensure continuity and peace of the business operation at the Resort.

**Article 8      Speedy appeal process**

- 8.1      Party Wifol and party SBRMC will strive to speed up the appeals procedure in order to obtain a verdict of the Common Court and will to that extent also jointly request the Court of Appeals to allow them to litigate expeditiously. Therefore:
- a.      On the day of filing the statement of grievances at the Court, SBRMC will provide a copy of such statement and its annexes to the attorney of Wifol;
  - b.      Within a week after the delivery of the statement of grievances to the attorney of Wifol by the bailiff, Wifol will file its statement of defense to the Court and send a copy of such statement directly to the attorney of SBRMC;
  - c.      In case Wifol includes a so-called cross appeal, SBRMC will file its brief in the cross-appeal within one (1) week after the delivery cross-appeal by the bailiff and send a copy of such statement directly to the attorney of Wifol;
  - d.      Parties will subsequently file their written pleadings as soon as the court of appeals allows this and if allowed by the court of appeals, within a maximum of 2 weeks.

**Article 9      Payments**

- 9.1      SBRMC guarantees that the salaries of the members of Wifol will continue to be paid on time and completely throughout the course of the appeal proceedings.
- 9.2      SBRMC will sit down with the employees who claim that they have been affected by the deductions made from their salaries for loans, whilst, according to the employee(s), the deductions were not made payable to the Financial Institutions on time. Management and the employee(s) will look for solutions.

**Article 10      Transfer tax**

- 10.1    Government acknowledges that reopening of the resort is of vital importance for many stakeholders and as such the entire Country St. Maarten. Government acknowledges that by reopening the resort Management as such is acting in the best interest of many stakeholders and thereby seriously attributing to the social economical well being of St. Maarten.
- 10.2    Government understands the request for the tax extension and possible tax exception and Management's interests in obtaining a decision in this matter expeditiously. Government looks favorably on these requests and indicates that any decision taken to this respect must fit within the constraints of the relevant existing legislation.
- 10.3    Parties expressly agree that the articles 10.1 and 10.2 only apply between Government and SBRMC and that it is such has no bearings or implications for Wifol.

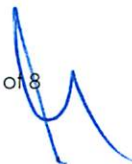
**Article 11      Temporary scope of agreement**

- 11.1    This agreement is intended to be a temporary understanding and arrangement pending the outcome of the Appeal Procedure and does not derogate to any rights of any party.
- 11.2    It furthermore cannot be constructed as an explicit or implicit waiver or relinquishing by any party of any right or as an acceptance by any party of any obligation other than those agreed to herein. It is a temporary arrangement to facilitate the continuance of the operation of the resort, pending the outcome of the appeals procedure

**Article 12      Governing law and jurisdiction**

This agreement shall be governed by and construed and enforced in accordance with the laws of Sint Maarten. Any controversy or claim arising out of, or relating to, this agreement, or the making, performance or interpretation thereof, shall be brought before the Court of First Instance of Sint Maarten.

Thus, agreed and drawn up in triplicate and signed on St. Maarten, this xx day of March, 2011.



Simpson Bay Resort Management Company B.V.

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Workers Institute of Organized Labor

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The Government of Sint Maarten

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Prime Minister

