

English translation of the original German version for convenience only

**DRAFT
SPIN-OFF AND TAKEOVER AGREEMENT
("AGREEMENT")**

between

PORR AG
FN 34853 f
Absberggasse 47
A-1100 Wien

and

PIAG Immobilien AG
FN 397508 x
Absberggasse 47
A-1100 Wien

as follows:

DORDA BRUGGER JORDIS
Rechtsanwälte GmbH

INHALTSVERZEICHNIS

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Preamble

- (A) PORR AG ("**PORR**" or the "**transferring company**"), FN 34853 f is a stock corporation established under Austrian law with its business address at Absberggasse 47, A-1100 Vienna, registration court Commercial Court Vienna. The share capital of PORR amounts to EUR 29,095,000 and is divided into 14,547,500 no-par value ordinary bearer shares, each with a calculated notional amount of EUR 2 of the registered share capital (ISIN AT0000609607) ("**PORR Shares**"). The PORR Shares are admitted to trading on the Official Market of the Vienna Stock Exchange and trade in the Standard Market Continuous segment.
- (B) PIAG Immobilien AG ("**PIAG**" or the "**acquiring company**"), FN 397508 x f is a stock corporation established under Austrian law with its business address at Absberggasse 47, A-1100 Vienna, registration court Commercial Court Vienna. The share capital of PIAG amounts to EUR 70,000 and is divided into 70,000 no-par value ordinary bearer shares, each with a calculated notional amount of EUR 1 of the registered share capital ("**PIAG Shares**"). Pursuant to § 5(1) of PIAG's articles of association, the PIAG Shares are intended to be admitted to trading on a stock market in accordance with § 3 of the Stock Corporation Act. PORR holds all shares of PIAG and is, therefore, the sole shareholder of PIAG.
- (C) UBM Realitätenentwicklung Aktiengesellschaft ("**UBM**"), FN 100059 x, is a stock corporation established under Austrian law with its business address at Floridsdorfer Hauptstraße 1, A-1210 Vienna, registration court Commercial Court Vienna. The share capital of UBM amounts to EUR 18,000,000 and is divided into 6,000,000 no-par value ordinary bearer shares, each with a calculated notional amount of EUR 3 of the registered share capital (ISIN AT0000815402) ("**UBM Shares**"). The UBM Shares are admitted to trading on the Official Market of the Vienna Stock Exchange and trade in the Standard Market Auction segment.
- (D) STRAUSS & PARTNER Development GmbH ("**Strauss & Partner**"), FN 255167 x, is a limited liability company established under Austrian law with its business address at Laaer-Berg-Straße 43, A-1100 Vienna, registration court Commercial Court Vienna. The fully paid share capital amounts to EUR 535,000.
- (E) As of 30 June 2014, PORR held 2,479,836 UBM Shares corresponding to 41.33% of the total share capital and total voting rights ("**UBM Shareholding**").
- (F) *PORR* holds a share quota in *Strauss & Partner* which corresponds to a fully paid share capital of EUR 534,800 corresponding to 99.96% of the total share capital of *Strauss & Partner*. In the course of preparatory measures, certain non-core real estate and property project developments of *PORR* and its direct and indirect subsidiaries not already held by *Strauss & Partner* and its subsidiaries were transferred to *Strauss & Partner* and/or its subsidiaries.
- (G) *PORR*, as the transferring company, intends to spin-off the *UBM Shareholding* and a part of its share quota in *Strauss & Partner*, which corresponds to a fully paid share capital of EUR 213,800 and therefore 39,96% of the total share capital ("**S&P Share**"), by means of a spin-off in accordance with the Spin-off of Corporations Act ("**SpaltG**") (§§ 17 iVm 2 ff SpaltG) and applying Article VI of the Re-

structuring Tax Act ("**UmgrStG**") to *PIAG* as the acquiring company with effect as of 30 June 2014 ("**Spin-Off**").

- (H) As a consideration for the transfer of the *UBM Shareholding* and the *S&P Share*, the shareholders of *PORR* will receive newly issued *PIAG Shares* from share capital increase of *PIAG* in proportion to their shareholding in *PORR* in accordance with the terms of this *Agreement* (proportionate spin-off). Further to consummation of the *Spin-Off*, the shareholder structure of *PIAG* will correspond to the shareholder structure of *PORR* as the newly issued *PIAG Shares* from the share capital increase will economically represent a 100% shareholding of *PIAG*.
- (I) The newly issued *PIAG Shares* shall be admitted to trading on the Official Market of the Vienna Stock Exchange and, further to the *Spin-Off* and the issuance of the new *PIAG Shares* to the shareholders of *PORR* becoming effective, shall trade in the Standard Market Auction segment.
- (J) Since October 1990, *PORR* has issued aggregate 49,800 profit participation rights (ISIN AT0000609664) (the "**Profit Participation Rights**") with a total nominal value of EUR 398,400. The *Profit Participation Rights* are profit participation rights in accordance with § 174 Stock Corporation Act ("**AktG**") and are listed on the unregulated third market of the Vienna Stock Exchange in the "other securities" segment. On 24 July 2014, *PORR* made a public tender offer to all holders of *Profit Participation Rights* to purchase their *Profit Participation Rights* at an offer price of EUR 207.80 per *Profit Participation Right* ("**Repurchase Offer**"). The *Repurchase Offer* was accepted in relation to 47,889 *Profit Participation Rights* corresponding to 96.16% of all *Profit Participation Rights*.
- (K) *PIAG* acquires – in parallel but separate to the *Spin-Off* contemplated by this *Agreement* - additional *UBM Shares* and the remaining share quota in *Strauss & Partner* via separate purchase transactions.
- (L) The joint spin-off report of the management boards of *PORR* and *PIAG* sets out the commercial considerations for the *Spin-Off* contemplated by this *Agreement*.

1. Transferring and Acquiring Company (§ 2 (1)(1) SpaltG)

- 1.1 *PORR AG* is the transferring company. It has its seat in Vienna. *PORR* will continue to exist further to the *Spin-Off*. There will be no amendments to the current articles of association of *PORR* (attached hereto as Annex./1.1) due to the *Spin-Off*.
- 1.2 While there will be no amendments to the current articles of association of *PORR* due to the *Spin-Off*, the articles of association of *PORR* will be amended to reflect the termination of the *Profit Participation Rights*. Annex./1.2 hereto sets out the form of articles of association of *PORR* considering such amendments.
- 1.3 *PIAG Immobilien AG* is the acquiring company. It has its seat in Vienna. The consummation of the *Spin-Off* will result in amendments to the articles of association of *PIAG* and the form considering such amendments is set out in Annex./1.3 hereto.

2. Asset Transfer (§ 2 (1)(2) SpaltG)

- 2.1 *PORR* transfers the *Spin-off Assets* (as defined in article 10.1 of this *Agreement*) to *PIAG* by means of universal legal succession with all rights and obligations (§§ 17 together with 2 ff SpaltG) in consideration for new *PIAG Shares* issued in a share capital increase applying the benefits of Article VI UmgrStG ("**Spin-Off**"). *PORR* continues in existence.
- 2.2 *PIAG* accepts the transfer of the *Spin-off Assets* by means of a spin-off. The *Spin-off Assets* transfer to *PIAG* via universal legal succession upon the registration of the *Spin-Off* in the company register pursuant to § 14 (2) (1) SpaltG.
- 2.3 The *Spin-off Assets* have a positive market value both as of the *Spin-Of Record Date* and the date of this *Agreement*.

3. Exchange Ratio of the Shares and their Allocation Among the Shareholders (§ 2 (1)(3) SpaltG)

- 3.1 The shareholders of *PORR* receive as consideration for the transfer of the *Spin-off Assets* to *PIAG*, in proportion to their shareholding in *PORR*, for each *PORR Share* held one (1) new *PIAG Share* issued in the share capital increase of *PIAG*, with effect of registration of the *Spin-Off* in the company register.
- 3.2 *PIAG* increases its share capital and issues 14,547,500 new *PIAG Shares* in an ordinary share capital increase pursuant to clause 5 below.

4. No Decrease of the Share Capital (§ 2(1)(4) SpaltG)

- 4.1 The transfer of the *Spin-off Assets* to *PIAG* and the transfer of the newly issued *PIAG Shares* to the shareholders of *PORR* result in a loss of *PORR* and a decrease in book value corresponding to the amount of the book value of the *Spin-off Assets*. Such loss and decrease in book value is set off with *PORR*'s capital reserves which exceed the amount of such loss and decrease in book value. Net assets of *PORR* after the *Spin-Off* exceed the value of the share capital plus the restricted capital reserves of *PORR* (after the *Spin-Off*). A decrease of the share capital of *PORR* and corresponding specifications are thus not relevant for this *Agreement*.
- 4.2 In accordance with § 229(5) of the Unternehmensgesetzbuch ("**UGB**"), the amount by which the value of the *Spin-off Assets* transferred to *PIAG* exceeds the amount of the ordinary share capital increase of *PIAG* pursuant to clause 5 of this *Agreement* will be allocated to the restricted capital reserves of *PIAG* pursuant to § 229(2) (1) UGB.

5. Details of the Issue of Shares (§ 2(1)(5) SpaltG)

- 5.1 In order to facilitate the *Spin-Off*, *PIAG* will increase its share capital from EUR 14,547,500 by EUR 70,000 to EUR 14,617,500 through the issue of 14,547,500 new no par-value bearer shares. Such share capital increase of *PIAG* is effected by means of the transfer of the *Spin-off Assets* as a capital contribution. *PIAG* will issue the new *PIAG Shares* at the calculated notional amount of the share capital of EUR 1 per share without premium.
- 5.2 Erste Group Bank AG, FN 33209 m, Graben 21, 1010 Vienna, ("**Escrow Agent**") has been appointed as escrow agent according to § 17 (5) SpaltG together with

§ 225a (2) AktG. The *Escrow Agent's* scope of appointment is deliver the newly issued *PIAG Shares*, which will be represented by a global certificate deposited with Oesterreichische Kontrollbank Aktiengesellschaft ("**OeKB**"), via the clearing system of *OeKB* as central security depository and the relevant depository banks in accordance with the terms of this *Agreement* to the shareholders of *PORR*.

6. Effective Date for the Entitlement to Profit (§ 2(1)(6) SpaltG)

6.1 The *PIAG Shares*, which will be issued to the shareholders of *PORR*, entitle to a share in the profits of *PIAG* starting with the business year in which such new *PIAG Shares* are issued.

7. Spin-Off Record Date and Retro-Active Effect (§ 2(1)(7) SpaltG)

7.1 30 June 2014 has been set as the record date of the *Spin-Off* within the meaning of § 2(1)(7) SpaltG and § 33 (6) UmgrStG ("**Spin-Off Record Date**"). The *Spin-Off Record Date* corresponds to date as of which *PORR's* closing balance sheet has been made.

7.2 With effect of the end of the *Spin-Off Record Date* all actions in relation to the *Spin-off Assets* are deemed to have been effected on account of *PIAG*. All benefits and obligations in relation to the *Spin-off Assets* are on account of *PIAG* further the end of the *Spin-Off Record Date*.

7.3 In terms of civil law, pursuant to 14 (2)(1) SpaltG the transfer of the *Spin-off Assets* to *PIAG* by means of universal legal succession becomes effective upon the registration of the *Spin-Off* in the company register.

8. Special Rights and Provisions (§ 2 (1)(8) SpaltG)

8.1 No special rights or other rights within the meaning of § 2(1)(8) SpaltG are granted to the shareholders of *PORR* or any other person. In addition, no special provisions are intended for these persons.

8.2 Upon the *Spin-Off* becoming effective, the rights of the holders of *Profit Participation Rights* (ISIN AT0000609664) are terminated and the holders receive a compensation of EUR 207.80 per *Profit Participation Right*. *PORR* will, further to the registration of the *Spin-Off* in the company register, transfer the compensation to holders of the *Profit Participation Rights* via the clearing system of *OeKB*, which serves as the central depository for securities, and the depository banks of the holder of the *Profit Participation Rights* and will collect the global certificate representing the *Profit Participation Rights* from *OeKB*.

8.3 Bonds issued by *PORR* are not be affected by the *Spin-Off* and *PORR* will remain the debtor of such bonds.

9. Special Benefits (§ 2(1)(9) SpaltG)

9.1 The members of the management board and supervisory board of the *Spin-Off* as well as the statutory auditors, the auditor of the formation of the company and the *Spin-Off* auditors are not granted any benefits within the meaning of § 2(1)(9) SpaltG.

- 9.2 The following individuals serve on the corporate bodies of both *PORR* and *PIAG* and will continue to do so further to the *Spin-Off*:
- a) Karl-Heinz Strauss and Christian B. Maier are members of the management board of *PORR* and members of the management board of *PIAG*.
 - b) Susanne Weiss, Iris Ortner and Bernhard Vanas are members of the supervisory board of *PORR* and members of the supervisory board of *PIAG*.

10. Description and Attribution of Assets (§ 2(1)(10) SpaltG)

- 10.1 The object of the *Spin-Off* are the *UBM Shareholding* and *S&P Share*, including all rights and obligations related to those shares, as of the date of the *Spin-Off* becoming effective (registration in the company register) ("**Spin-off Assets**")
- 10.2 All other assets of *PORR* will remain with *PORR* and are not affected by the *Spin-Off* ("**Remaining Assets**"). The *Remaining Assets* in particular include the assets and obligations included in the *Spin-Off* balance sheet of *PORR*. All changes since 1 July 2014 are to be considered, in particular as evidenced in the accounts/books such as the schedule of fixed assets, lists of creditors and debtors. All assets, rights, legal relationships, liabilities and obligations not expressly mentioned in clause 10.1 of this *Agreement* are part of the *Remaining Assets* and shall remain with *PORR*.
- 10.3 For the avoidance of doubt, *PORR* will not transfer in the *Spin-Off* the 70,000 *PIAG Shares* already held. Such *PIAG Shares* will also not be distributed to the shareholders of *PORR* pursuant to clause 5 of this *Agreement*. *PORR* will transfer the existing 70,000 *PIAG Shares* to *PIAG* without consideration and subject to the condition precedent of the *Spin-Off* becoming effective so that the newly issued 14,547,500 *PIAG Shares* issued as consideration for the transfer of *Spin-off Assets* represent a 100% economic interest in *PIAG*.
- 10.4 *PIAG* will hold *PORR* fully harmless for any claims raised by creditors against *PORR* based on § 15 SpaltG for obligations and liability transferred pursuant to the terms of this *Agreement* in the *Spin-Off* to *PIAG*. *PORR* must inform *PIAG* of any such claims. The same applies in case creditors request *PORR* to provide security/collateral for obligations and liability transferred pursuant to the terms of this *Agreement* in the *Spin-Off* to *PIAG*.
- 10.5 *PORR* will hold *PIAG* fully harmless for any claims raised by creditors against *PIAG* based on § 15 SpaltG for obligations and liability remaining pursuant to the terms of this *Agreement* in the *Spin-Off* with *PORR*. *PIAG* must inform *PORR* of any such claims. The same applies in case creditors request *PIAG* to provide security/collateral for obligations and liability remaining pursuant to the terms of this *Agreement* in the *Spin-Off* with *PORR*.
- 10.6 As of the date of this *Agreement*, *PORR* (and direct / indirect subsidiaries of *PORR*) has receivables from financing granted to *PIAG* and *Strauss & Partner* (or direct / indirect subsidiaries of *Strauss & Partner*). *PORR* (and direct / indirect subsidiaries of *PORR*) also incurred liabilities for financial indebtedness of *Strauss & Partner* (or direct / indirect subsidiaries of *Strauss & Partner*). *PIAG* therefore undertakes with *PORR* (and the relevant direct / indirect subsidiaries of *PORR* as third party beneficiaries), as soon as reasonably possible, to:

- a) repay existing indebtedness of *Strauss & Partner* (and direct / indirect subsidiaries of *Strauss & Partner*) to *PORR* (and direct / indirect subsidiaries of *PORR*), if necessary, by obtaining financing from a third party; and
- b) support *PORR* (and its relevant direct / indirect subsidiaries) in obtaining a release from liabilities to third parties incurred for financial indebtedness (including leasing) of *Strauss & Partners* (and any direct / indirect subsidiary of *Strauss & Partner*)

11. Default Provision for Allocating Assets (§ 2(1)(11) SpaltG)

- 11.1 Assets which cannot be allocated to any of the parties involved in the *Spin-Off* remain with *PORR*.

12. Balance Sheets (§ 2(1)(12) SpaltG)

- 12.1 The *Spin-Off* is made based on the following balance sheets:
 - a) the closing balance sheet of *PORR* as of 30 June 2014 attached hereto as Annex 12.1.a) ("**Closing Balance Sheet**"),
 - b) the spin-off balance sheet (remaining assets) of *PORR* as of 1 July 2014 attached hereto as Annex 12.1.b) ("**Spin-Off Balance Sheet**"), as well as
 - c) the take-over balance sheet of *PIAG* as of 1 July 2014 attached hereto as Annex 12.1.c) (opening balance sheet) ("**PIAG Take-over Balance Sheet**").

13. Cash Compensation (§ 2 (1)(13) SpaltG)

- 13.1 There is no need for terms and provisions in respect of a cash compensation as the shareholders of *PORR* and *PIAG* have no claim to any cash compensation. There is no claim to a cash compensation because:
 - a) the *Spin-Off* is proportionate as the shareholders of *PORR* will be allotted the new *PIAG Shares* in proportion to their interest in *PORR*, and
 - b) the *Spin-Off* does not involve any change of legal form.

14. Taxes

- 14.1 Article VI UmgrStG and the advantages of such provisions thus apply to the *Spin-Off*. The application of the UmgrStG shall also serve as a guideline for the interpretation of this *Agreement*, which is to be interpreted in such way that in case of any unclear provisions of this *Agreement* or circumstances not expressly addressed herein such provisions and gaps are to be interpreted as to provide for the application of the UmgrStG.
- 14.2 The *Spin-off Assets* consist of the assets held by *PORR* as the transferring company already as of the *Spin-Off Record Date* and such assets qualify as privileged assets within the meaning of § 32(2) in combination with § 12(2)(3) UmgrStG (qualified share in a corporation).

- 14.3 Pursuant to § 35 UmgrStG in combination with § 21(1), tax loss carry forwards not yet utilized that are objectively attributable to the *Remaining Assets* shall remain with *PORR* as the transferring company, including tax loss carry forwards attributable to assets no more in existence at *PORR*. Tax loss carry forwards not yet utilized that are objectively attributable to the *Spin-off Assets* transfer to *PIAG* as the acquiring company.
- 14.4 The *Spin-Off* will neither lead to a transfer of 100% of shares in a property owning company nor to result in *UBM* or *Strauss & Partner* having a sole shareholder. The parties involved in the *Spin-Off* therefore believe that the *Spin-Off* will not give rise to property transfer taxes.
- 14.5 The *Spin-Off* will not be subject to capital transfer tax as the *Spin-off Assets* have been held by *PORR* for more than two (2) years so that the exemption pursuant to § 38 (5) UmGrStG applies.
- 14.6 *PIAG* shall bear any transfer taxes nevertheless accruing (in particular, any capital transfer tax) as a result of the *Spin-Off* or this *Agreement*.
- 14.7 The *Spin-Off* will result in *Strauss & Partner* ceasing to be a member of the tax consolidation group (within the meaning of § 9 Corporate Income tax Act "**KStG**") with *PORR* as lead company with effect as of 1 January 2014 and of the VAT consolidation group of *PORR* (within the meaning of § 2(2)(2) Value Added Tax Act ("**UStG**") with effect from the first day of the month following the day of registration of the *Spin-Off* in the company register (UStR 2000, Rz 56). This similarly applies to all direct and indirect subsidiaries of *Strauss & Partner* that have been members of the tax consolidation group of *PORR* (within the meaning of § 9 KStG) up to, and including, 31 December 2013 or members of the VAT consolidation group (within the meaning of § 2 (2)(2) UStG) until the last day of the month in which the *Spin-Off* is registered in the company register.

15. Conditions Precedent and Right to Withdraw from the Agreement

- 15.1 As a condition precedent for this *Agreement* becoming effective, the following corporate bodies must approve this *Agreement*:
- a) the general shareholders' assembly of *PORR*; and
 - b) the general shareholders' assembly of *PIAG*.
- 15.2 If the *Spin-Off* is not registered in the company register by 25 December 2014, each of *PORR* and *PIAG* has the right to terminate and withdraw from this *Agreement*. This right lapses upon the registering of the *Spin-Off* in the company register.

16. General

- 16.1 *PORR* shall bear all costs related to the conclusion and implementation of this *Agreement* to the extent such costs are not expressly addressed in this *Agreement*. These costs include the general shareholders' assemblies, registering the *Spin-Off* with the company register, preparation of the joint spin-off report of management, audit of the *Remaining Assets* and the *Spin-off Assets*, audit of *PIAG's* share capital increase by way of a contribution in kind, the intended admis-

- sion of the newly issued *PIAG Shares* to trading on the Vienna Stock Exchange and related costs for advisors and banks.
- 16.2 Should a provision of this *Agreement* be illegal, invalid or unenforceable, such shall not affect the effectiveness and enforceability of all other provisions of this *Agreement*. The parties participating in the *Spin-Off* shall replace the ineffective or unenforceable provision with a new provision that matches as closely as possible the purpose and economic effect of the original provision. This applies correspondingly to any gaps in this *Agreement*.
- 16.3 No oral side agreements to this *Agreement* exist. Any changes or supplements to this *Agreement* must be in writing to the extent that applicable law does not require a notarial or other legal form.
- 16.4 The parties to this *Agreement* may request any number of copies of this *Agreement* at their own cost.
- 16.5 The attached annexes form an integrated part of this *Agreement*.

Annex Index

<i>Annex ./1.1</i>	<i>Articles of Association of PORR</i>
<i>Annex ./1.2</i>	<i>Articles of Association of PORR (adjusted for the Profit Participation Rights)</i>
<i>Annex ./1.3</i>	<i>Articles of Association of PIAG</i>
<i>Annex ./12.1.a)</i>	<i>Closing Balance Sheet</i>
<i>Annex ./12.1.b)</i>	<i>Spin-Off Balance Sheet</i>
<i>Annex ./12.1.c)</i>	<i>PIAG Take-over Balance Sheet</i>

Vienna, 24 September 2014

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