

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

ST. GEORGE'S RESORT ACT 2015

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WHEREAS the Developer intends to develop a luxury hotel and resort on Government land lying to the south side of St. Catherine's Point in the Parish of St. George's;

AND WHEREAS the Government of Bermuda seeks to enter into an agreement with the Developer in respect thereof;

AND WHEREAS it is expedient, in a special Act of the Legislature, to authorize the leasing of the land to the Developer and to facilitate the project by granting, subject to

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conditions, rights and concessions for the Developer to develop and deliver a tourism development on the land;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the St. George's Resort Act 2015.

Interpretation

2 In this Act, unless the context otherwise requires—

“Developer” means Hotelco Bermuda Holding Ltd., a local company incorporated under the laws of Bermuda on 17 July 2015;

“Development” means the development on the Property of the Resort;

“Hotel” means the luxury hotel to be developed and built by or on behalf of the Developer on the Property in accordance with the Master Development Agreement;

“lease” means a lease entered into by the Minister and the Developer under section 3;

“Master Development Agreement” means the agreement to be entered into between the Government and the Developer for the development of the Property;

“Minister”, when used otherwise than in Schedule 1, means the Minister responsible for public lands;

“Property” means all that land in the Parish of St. George's having an area of approximately 50.51 hectares (124.81 acres) shown outlined in red in Schedule 3 (Drawing No. 5642/021/13), the boundaries of which are more accurately shown on the definitive boundary plans listed in Schedule 4, which plans shall be available for inspection during office hours at the office of the Senior Land Surveyor with the Department of Land Surveys and Registration;

“Resort” means the Hotel, restaurant, beach club, golf course, tennis courts, fitness centre, spa, casino (if a casino licence is granted under the Casino Gaming Act 2014 in respect of the Resort), resort residences, staff housing and all other infrastructure and recreational facilities that are part of the resort operation.

Leasing of land, etc.

3 (1) Notwithstanding section 8 of the Public Lands Act 1984, section 120 of the Companies Act 1981 or any other Act, the Minister may lease the Property to the Developer for a term not exceeding 262 years.

(2) The Minister may grant to the Developer, for a term not exceeding 262 years, such easements over Government land as the Minister may think necessary or convenient—

- (a) so that access may be had by persons, animals and vehicles to the Property; and
 - (b) for the provision of utilities and infrastructure to the Property.
- (3) Any lease granted by the Minister under this Act shall be subject to the following rights of access—
 - (a) the public shall have, free of charge, reasonable access to any beach and foreshore on the Property; and
 - (b) public utility providers shall have reasonable access to the Property in order to maintain installations and equipment on the Property.
- (4) The Developer shall ensure that the golf course remains accessible to the public during such times and on such reasonable terms and conditions as shall be approved by the Minister.
- (5) Upon execution of the lease of the Property, the Government shall hold the Developer harmless, for the full duration of such lease, against any assertion by any other person of any right to occupy or use any part of the Property.

Planning permission in principle

- 4 (1) Subject to the following conditions, planning permission in principle is hereby granted for the Development—
- (a) all access roads and sidewalks shall be sited, designed and laid out in accordance with the requirements of the Department of Works and Engineering and in compliance with the provisions of paragraphs TPT.4, TPT.10 and TPT.11, Chapter 11 of the Bermuda Plan 2008 Planning Statement;
 - (b) all hard-surfaced roadways and junctions of access roads with the public road shall be designed and graded to drain, retain and dispose of all storm-water run-off within the curtilage of the Property and to avoid any storm-water run-off onto the public road or any neighbouring property;
 - (c) the method, design and specifications of the proposed methods of sewage disposal, the supply of water and the provision made for containing and disposing of storm-water run-off shall comply with the requirements of the Environmental Authority, Department of Environmental Protection and the Department of Health;
 - (d) all utility cables, conduits and pipelines, including cable television relay cables, shall be located in buildings or placed underground;
 - (e) an application for final planning permission shall be in compliance with the Bermuda Plan 2008 Planning Statement and, in particular, be accompanied by—
 - (i) a comprehensive landscaping plan prepared in accordance with paragraph LSG.4, Chapter 9 of the Bermuda Plan 2008 Planning

Statement, and in preparing the landscaping plan, particular attention shall be given to the screening of parking areas and to the design, materials, treatment and planting of the Property along the public roads;

- (ii) a full topographical survey for the Property;
- (iii) a Traffic Impact Assessment and Statement prepared in accordance with policy TPT.3, Chapter 11 of the Bermuda Plan 2008 Planning Statement and Traffic Impact Assessment and Statement Guidance Note (GN 108);
- (iv) an Environmental Impact Assessment and Statement prepared in accordance with policy ENV.5, Chapter 6 of the Bermuda Plan 2008 Planning Statement and Environmental Impact Assessment and Guidance Note (GN 106);
- (v) details of measures (including any decontamination measures) for the removal of waste that is to be removed from the Property during demolition, site excavation and preparation, in accordance with the requirements of the Department of Works and Engineering and the Department of Environmental Protection; and
- (vi) details of phasing for the development of the Property, together with full details of implementation of all infrastructure to accompany each phase.

(2) Planning permission granted under subsection (1) is deemed to be granted under the Development and Planning Act 1974 and is granted with the reservation for subsequent approval, by the Development Applications Board under that Act, of details of—

- (a) the scale, design, siting and layout of buildings, building heights, architectural detailing, external appearance and materials of any building, works or related infrastructure;
- (b) the design and layout of all access roads and parking areas (including rationale for parking provision); and
- (c) landscaping.

(3) In this section, “planning permission in principle” has the meaning assigned to it in section 23(8) of the Development and Planning Act 1974.

Planning permission to subdivide land

5 (1) Subject to subsection (2), planning permission is granted by this Act for the subdivision of the Property as shown on the plan in Schedule 5.

(2) The Developer shall submit, to the Development Applications Board for approval, an application for planning permission based on a final plan of subdivision.

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Permission to use National Park land

6 (1) Notwithstanding section 24 of the Bermuda National Parks Act 1986, the written approval referred to in that section, of the Minister responsible for parks, is hereby deemed to be duly given for the use and development, as part of the golf course, of the islet shown in Schedule 3 as being part of the Property ("the national park islet").

(2) Notwithstanding sections 15(4) of the Bermuda National Parks Act 1986, the written approval referred to in that section, of the Minister responsible for parks, is hereby deemed to be duly given for the use and development, as part of the golf course, of the national park islet.

(3) The Minister responsible for parks may impose such reasonable terms and conditions on the development and use of the national park islet as part of the golf course as he may consider necessary.

Protection of World Heritage Site (Historic Town of St. George and Related Fortifications)

7 (1) The development of the Property shall be compatible with the UNESCO World Heritage Site status of the Historic Town of St George and Related Fortifications.

(2) In particular—

- (a) the special historical character of the forts shall be retained and preserved;
- (b) only minimal change to the forts' distinctive materials, features, spaces and spatial relationships may be made;
- (c) any development must be compatible with historic materials, features, size, scale, proportion and massing to protect the integrity of the structures and their environment; and
- (d) the development scheme shall ensure that the forts are maintained and secured.

(3) The public shall have reasonable access to the forts.

(4) In this section "forts" means Fort Albert, Fort Victoria and Fort William (Gunpowder Tavern).

Routes to be used despite St. George's Traffic Ordinance 1967

8 (1) Notwithstanding articles 30 and 31 of the St. George's Traffic Ordinance 1967, commercial vehicles (as defined in the Ordinance) used in the development or servicing of the Property shall have reasonable access to and from the Town of St. George—

(a) using the route—

- (i) Government Hill Road via Slippery Hill, Kent Street, York Street and Wellington Street, to access the Town from the Property; and
- (ii) Wellington Street via York Street, Kent Street, Slippery Hill, and Government Hill Road, to access the Property from the Town; or

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(b) using any other alternative route, as may be necessary from time to time.

(2) It shall be the duty of a person driving a commercial vehicle on a route referred to in subsection (1), to travel at such reduced speed as will not cause damage to the road or surrounding structures.

Hotel concessions

9 The hotel concessions set out in Schedule 1 are hereby approved.

Commencement

10 This Act shall come into operation on such day as the Minister responsible for tourism may by Notice in the Gazette appoint.

SCHEDULE 1

(section 9)

HOTEL CONCESSIONS

Interpretation

1 In this Schedule, unless the context otherwise requires—

“Amenities” means the golf course, beach club facility, pier, tennis courts, fitness centre, spa, restaurant and casino (if a casino licence is granted under the Casino Gaming Act 2014 in respect of the Resort);

“component” means the Hotel, Amenities or resort residences;

“hotel licence” means a licence to operate a hotel granted under the Hotels (Licensing and Control) Act 1969;

“hotel management company” means a luxury hotel management company selected by the Developer to provide technical services to the Developer and manage the Hotel subject to the hotel licence;

“Minister” means the Minister responsible for tourism;

“opening date” means the date on which the Hotel, or other phase of the Development, is certified by the Minister to be complete;

“operational supplies” means the operational supplies listed in Schedule 2;

“phase” in respect of any component of the Development, means a portion of the Development as determined by the Minister;

“pre-opening date” means the date that the hotel management company takes possession of the Hotel to commence pre-opening activities;

“resort residence” means a residential unit, other than staff housing, constructed on the Property;

“substantial completion date”, in relation to a phase of the resort residences, means the stage in the progress of the construction of the resort residences when the works are sufficiently complete so that the Developer or hotel management company can occupy or use the resort residences for their intended use, which shall be the date on which the Developer shall have obtained a final certificate of use and occupancy from the Department of Planning in respect of those resort residences and all permits necessary under Bermuda laws to permit their occupation;

“voluntary rental programme” means a programme, approved by the Minister responsible for tourism, which shall be implemented by the Developer or the hotel management company (or both), whereby any person who has entered into a contract for the acquisition by way of a sublease of a resort residence may elect, on or before accepting such sublease, to enter into a written agreement with the Developer or the hotel management company (or both), as

the case may be, for the Developer or hotel management company (or both), as the case may be, to use the resort residence as tourist accommodation forming part of the Hotel inventory for at least six months each year;

Concessions

2 (1) Subject to subparagraph (2) and to paragraph 3, the Developer shall in respect of the Development be entitled to the following concessions—

- (a) for a period beginning with the execution of the Master Development Agreement and ending on the first anniversary of the opening date of the Hotel, full relief from customs duty otherwise payable on the importation of building materials, furnishings, fixtures, equipment and operational supplies necessary for building, furnishing, equipping and operating the Hotel and Amenities;
- (b) for a period beginning on the first anniversary of the opening date of the Hotel and ending on the tenth anniversary of that date, full relief from customs duty otherwise payable on the importation of all building materials to be used exclusively in the repair, maintenance, rebuilding, refurbishment or replacement of any part of the Resort from time to time;
- (c) for a period beginning with the commencement of the lease and ending on the tenth anniversary of the opening date of the Hotel, full relief from customs duty otherwise payable on the importation of building materials, furnishings, fixtures, equipment and operational supplies, not otherwise granted relief from customs import duty under paragraphs (a), (b), and (d);
- (d) in respect of each of the resort residence components, for the period beginning on the date of execution of the Master Development Agreement and ending on the first anniversary of the substantial completion date of each resort residence component, full relief from customs duty otherwise payable on the importation of building materials, furnishings, fixtures, equipment and operational supplies necessary for the building, furnishing, equipping and operating of such resort residence component;
- (e) full relief from customs duty otherwise payable on the importation of building materials, furnishings, fixtures, equipment and operational supplies imported to be used exclusively in the first cycle of refurbishment of the Resort provided such refurbishment is commenced prior to the seventh anniversary of the opening date of the Hotel;
- (f) full relief from customs duty otherwise payable on the importation of operational equipment imported for the sole purpose of permanently installing such equipment in the Hotel or some other part of the Resort, for a period of ten years beginning with the execution of the lease;
- (g) full relief from customs duty otherwise payable on the importation of plant, machinery and equipment which are imported to be used exclusively in the initial construction of the Resort, provided that all such plant, machinery and equipment is re-exported from Bermuda within two months of the

construction completion date of the Hotel and not sold, or otherwise disposed of, in Bermuda;

- (h) for a period beginning with the opening date of the Hotel and ending on the tenth anniversary of that date, full exemption from the employer's share of payroll tax otherwise payable in respect of all Resort employees;
- (i) from the date of the execution of the Master Development Agreement until the completion of construction of each component (as evidenced by the grant of a final certificate of use and occupancy from the Department of Planning for each such component), full exemption from the employer's share of payroll tax otherwise payable by the Developer or its wholly-owned subsidiary in respect of any person employed by the Developer or its wholly owned subsidiary for the construction of the Resort;
- (j) for a period beginning with the opening date of the Hotel and ending on the tenth anniversary of that date, the Developer shall be entitled to full exemption from the hotel occupancy tax otherwise payable in respect of the Hotel;
- (k) for a period beginning with the commencement of the lease and ending on the tenth anniversary of the opening date of the Hotel, full exemption from land tax otherwise payable in respect of the Hotel and its Amenities;
- (l) for a period beginning with the commencement of the relevant sublease of each resort residence component and ending on the tenth anniversary of completion of construction of the same (as evidenced by the grant of a final certificate of use and occupancy from the Department of Planning for each such component), full exemption from land tax otherwise payable in respect of each resort residence in that resort residence component; and
- (m) full exemption from the charge otherwise payable under regulation 6 of the Bermuda Immigration and Protection (Rental and Use) Regulations 2007 on the rental or use for profit of a resort residence, provided that such resort residence is placed in the voluntary rental programme.

(2) The concessions in paragraph (1) shall not be available to a resort residence—

- (a) unless the resort residence has been included in the Hotel's voluntary rental programme; and
- (b) after completion of construction of the resort residence, only in the periods during which it is available to the Hotel (in respect of the voluntary rental programme) to be rented out to paying guests.

(3) For the purposes of subparagraph (1)(h) and (i), the employer's share of payroll tax means that portion of payroll tax which the employer is not entitled to deduct from an employee's wages under section 19 of the Payroll Tax Act 1995.

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Terms and conditions

3 (1) To qualify for the exemption from hotel occupancy tax under paragraph 2(1)(j) the Developer must, for the relevant period—

- (a) show to the satisfaction of the Minister that sums equal to the amount of the exemption claimed have been expended by the Resort on local and international sales, advertising and marketing of the Resort;
- (b) comply with guidelines on the marketing of the Resort issued by the Minister; and
- (c) provide an annual audited statement of the Resort's marketing accounts showing the amounts expended on such marketing.

(2) To qualify for the exemption from hotel occupancy tax under paragraph 2(1)(j), the Developer must, for the relevant period—

- (a) show to the satisfaction of the Minister that entertainment has been provided at the Resort by Bermudian entertainers in accordance with guidelines issued by the Minister; and
- (b) provide an annual audited statement of accounts showing the amounts expended on the entertainment.

(3) To qualify for the exemption from payroll tax under paragraph 2(1)(h) and (i), the Developer must, for the relevant period—

- (a) comply with guidelines on the training and educational programmes for Bermudian employees issued by the Minister;
- (b) satisfy the Minister that appropriate training has been provided in accordance with the guidelines; and
- (c) provide an annual audited statement of accounts showing the amounts expended on such training.

(4) In this paragraph, "relevant period" means the period for which the exemption is claimed.

Application of Hotels Concession Act 2000

4 (1) Sections 5, 6, 7, 8 (as modified by subparagraph (2)), 9 and 10 of the Hotels Concession Act 2000 apply in relation to concessions granted under this Schedule as they apply to a hotel concession order under that Act.

(2) For the purposes of subparagraph (1), the Hotels Concession Act 2000 is modified in section 8(2) by replacing paragraph (a) with the following—

- "(a) he supplies to the Minister or the Collector any information which that person knows to be false or does not believe to be true; or".

SCHEDULE 2

(paragraph 1 of Schedule 1)

LIST OF OPERATIONAL SUPPLIES THAT QUALIFY FOR FULL RELIEF FROM
CUSTOMS IMPORT DUTY

Description of Goods	Customs Tariff Code
Air freshener refills	3307.490
Bath/Shower gel	3401.300
Bath salts	3307.300
Bin liners (plastic)	3923.210 and 3923.290
Body lotion	3304.990
Cotton balls	5601.210
Cotton buds	5601.210
Cup lids (plastic)	3923.500
Cups (plastic)	3924.100
Cups (paper)	4823.690
Coasters (paper)	4823.700
Envelopes (paper)	4817.100
Facial tissue	4803.000
Feminine care products	9619.009
Glass caps and bags (paper)	4823.909
Glass caps and bags (plastic)	3923.210 and 3923.290
Hair conditioner	3305.900
Hair shampoo	3305.100
Ice bucket bags (plastic)	3923.210 and 3923.290
Laundry bags (paper)	4819.300 and 4819.400
Laundry bags (plastic)	3923.210 and 3923.290
Matches/Matchbooks	3605.000
Mouthwash	3306.900
Pencils	9609.100
Pens (ball point)	9608.100
Pens (felt tipped)	9608.200
Pens (fountain)	9608.300
Pens (sets)	9608.500
Razors (disposable)	8212.100
Room service forms	4820.100
Sanitary napkin disposal bags	4819.300

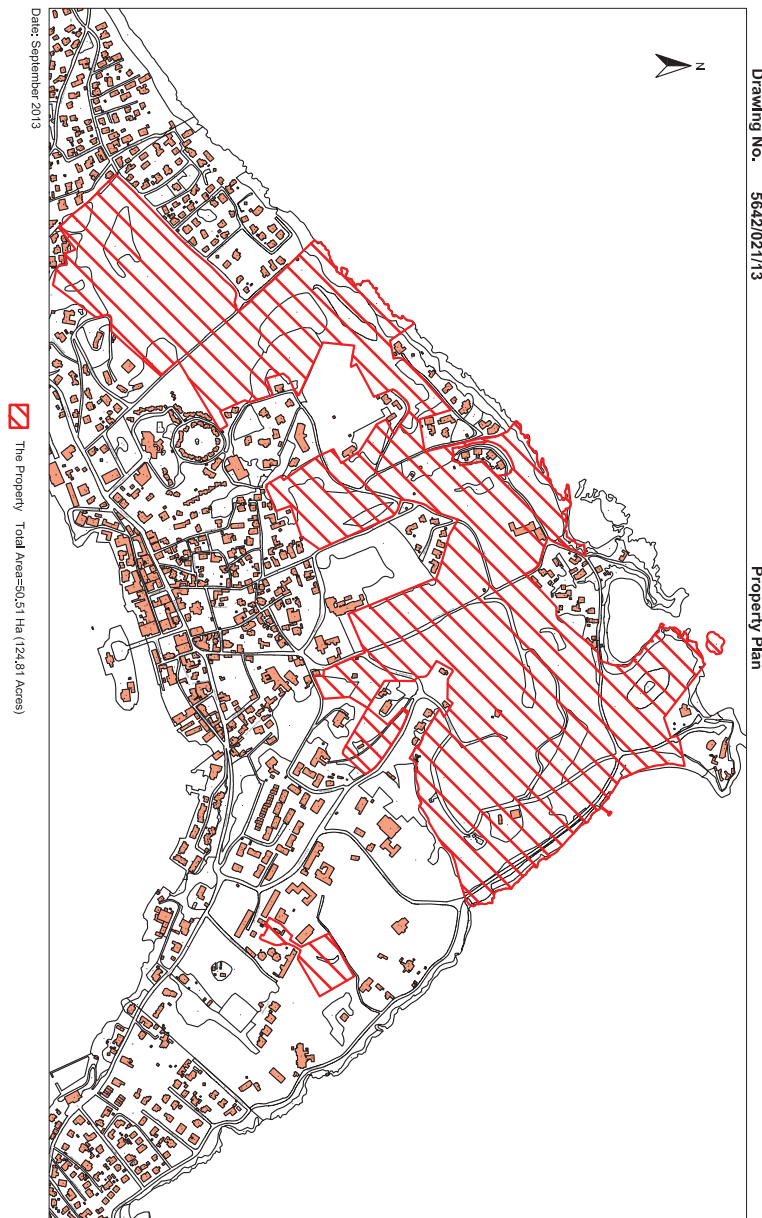
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Description of Goods	Customs Tariff Code
Sewing kits	9605.000
Shoe polish	3405.100
Soap (bar)	3401.110
Shower caps	6506.910
Toilet paper	4803.000
Toilet seat bands (paper)	4823.909
Tooth brushes	9603.210
Toothpaste	3306.100
Tray liners/bin liners (paper)	4823.909
Vanity kits (shower cap, sewing kit, nail file, cotton balls and cotton buds)	9605.000
Writing paper/note pads	4820.100

SCHEDULE 3

(section 2)

PROPERTY PLAN



SCHEDULE 4

(section 2)

DEFINITIVE BOUNDARY PLANS OF THE PROPERTY

Drawing No. 5642/021/01	Suffering Lane
Drawing No. 5642/021/02	Khyber Pass/Cemetery Hill
Drawing No. 5642/021/03	Bourne Drive
Drawing No. 5642/021/04	Park Gates
Drawing No. 5642/021/05	Naval Tanks, Anchorage Road
Drawing No. 5642/021/06	Preparatory School & Rectory
Drawing No. 5642/021/07	Coot Pond and Blackbeards
Drawing No. 5642/021/08	Government Hill Road, Victoria Road
Drawing No. 5642/021/09	Former Club Med Lease
Drawing No. 5642/021/10	BHC-Sapper Lane / Slippery Hill
Drawing No. 5642/021/11	Staff HQ at Redcoat Lane

SCHEDULE 5

(section 5)

SUBDIVISION PLAN

[Plan to follow]

ST. GEORGE'S RESORT BILL 2015

EXPLANATORY MEMORANDUM

This Bill would enable the granting of the rights, leases, concessions, permissions and approvals necessary to develop and deliver the St. George's Resort on land lying to the south side of St. Catherine's point in the Parish of St. George's.

Clause 1 is self-explanatory.

Clause 2 defines various expressions used in the Act.

Clause 3 enables the Minister responsible for public lands to lease to the Developer, for not more than 262 years, land forming part of the Property.

Clause 4 grants planning permission in principle for the Development.

Clause 5 grants planning permission for the subdivision of the Property as set out in Schedule 5, subject to the Developer submitting, to the Development Applications Board for approval, an application for planning permission based on a final plan of subdivision.

Clause 6 gives permission for an islet that forms part of a national park to be used as part of the golf course component of the Resort.

Clause 7 requires the development of the Property to be compatible with the UNESCO World Heritage Site status of the Historic Town of St George and Related Fortifications.

Clause 8 allows commercial vehicles used in the development and servicing of the Property to travel on certain routes that would otherwise be restricted by the St. George's Traffic Ordinance 1967, provided the vehicles are driven at speeds that will not cause damage to the roads or surrounding structures.

Clause 9 approves the hotel concessions set out in Schedule 1.

Clause 10 provides for the Minister responsible for tourism to bring the Act into operation on such day as he may by Notice in the Official Gazette appoint.

Schedule 1 sets out the hotel concessions given to the Developer.

Schedule 2 lists "operational supplies" referred to in paragraph 1 of Schedule 1 (which qualify for full relief from customs duty under certain of the concessions).

Schedule 3 is the Property Plan.

Schedule 4 sets out a list of the definitive boundary plans of the Property that can be inspected at the office of the Senior Land Surveyor with the Department of Land Surveys and Registration during office hours.

Schedule 5 is the Subdivision Plan.