

MODIFICATION OF PROVISIONS (MAYAGUANA ISLAND DEVELOPERS LIMITED) ACT, 2012

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No. 9 of 2012

MODIFICATION OF PROVISIONS (MAYAGUANA ISLAND DEVELOPERS LIMITED) ACT, 2012

**AN ACT TO MODIFY THE PROVISIONS OF CERTAIN FISCAL AND
OTHER STATUTE LAW IN THEIR APPLICATION TO A
DEVELOPMENT PROJECT IN MAYAGUANA IN KEEPING WITH AN
AGREEMENT EXECUTED BY THE GOVERNMENT OF THE
BAHAMAS IN RESPECT TO THAT PROJECT**

[Date of Assent - 5th April, 2012]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act may be cited as the Modification of Provisions (Mayaguana Island Developers Limited) Act, 2012.
- (2) This Act is deemed to have come into force on the 7th February, 2012.

2. Interpretation.

In this Act, unless the context otherwise requires—

“Agreement” means the Heads of Agreement dated the 7th day of March, 2006, and made between the Government of The Bahamas and the Mayaguana Island Developers Limited, as amended by the provisions of the Amended and Restated Heads of Agreement dated the 7th day of February, 2012 and made between the Government of The Bahamas and the Mayaguana Island Developers Limited;

“Commencement date” means the date set forth in the Agreement;

“Conservation Land” means land within the Development Area, the use of which will be limited to research, educational and recreational purposes and shall not be developed other than to include walking and riding, and accommodating bicycles, horses, mopeds and the like, trails, nature or interpretive centres, observation and

experience sites, save that the Developer may make incidental use of the land for utility corridors, to recharge wetlands or groundwater and for any other similar purposes for the Development;

“Developer” means the Mayaguana Island Developers Limited, a company incorporated with that name under the Laws of the Commonwealth of The Bahamas, which expression shall include its predecessors in interest, successors and assigns;

“Development” means those certain public and infrastructural improvements that are necessary for, and the touristic, residential and other projects on Mayaguana undertaken in accordance with the Agreement;

“Development Area” means all land on Mayaguana conveyed in fee simple to the Developer in accordance with the Agreement and such other land on Mayaguana owned from time to time by the Developer, all of which is deemed to be a Zone for the purposes of The Bahamas Investment Incentives Act or any Act passed in amendment thereof or substitution therefor;

“Development Partner” means Mayaguana Island Developers Limited and any other person or entity involved in the ownership of land or the construction, management or operation of any part of the Development;

“Hotels Encouragement Act” means the Hotels Encouragements Act as the same shall be amended or revised from time to time and includes any Act passed in amendment thereof or substitution therefor;

“Mayaguana Airport Project” means the improvements to the Mayaguana Airport runway and the airport terminal as set forth in the Agreement;

“Undeveloped Land” means any piece parcel or lot of land within the Development Area without any physical additions or alterations, not being additions, alterations or works, made or done by way of agriculture or horticulture and shall not be regarded as land assessable for the purposes of real property taxes, rates or levies until a commercial structure on any such piece parcel or lot thereon is open for business or any residential structure thereon which is substantially completed;

“Undevelopable Land” means any roadway, verge and non-income producing “buffer area,” wetland and other land within the Development Area not permitted or feasible to be built on.

3. Duration of exemptions for the Developer.

Notwithstanding anything contrary in the Stamp Act, the Tariff Act, the Excise

Act or any Acts passed in amendment thereof or substitution therefor with respect to duties or taxes payable in respect of goods imported into The Bahamas for a period of 20 years from the Commencement Date, all materials, equipment and construction plant that may be imported in The Bahamas, purchased or taken out of bond therein and used in the Development, including without limitation—

- (a) the construction, renovation, equipping, furnishing, completion or operation of—
 - (i) all hotels, lodges, condominiums, hotel or fractional interests and other residential units included within hotel pools that form a part of any hotel operation;
 - (ii) all nature centres, shops, restaurants, amenities and entertainment facilities and the like that are constructed or renovated within the Development Area; and
 - (iii) all buildings, utility services, airfields (including the Mayaguana Airport Project) marinas, docks, jetties, bridges and golf courses; and
- (b) dredging, reclaiming and filling operations, road building and other amenities, works and conveniences necessary or desirable in connection with the construction or improvement of the sites upon which any such hotel operations are, or are to be, located, or in support of the same wherever located,

shall be exempt from all customs and stamp duties for so long as the Hotels and Amenities, as specified in paragraphs (a) and (b), shall continue to be used and operated as or in connection with any hotel operation in the Development: Provided always that petroleum products shall be exempted from customs and stamp duties in connection with the construction and renovation of the Mayaguana Airport Project and the Hotels and Amenities only but not for the operations thereof.

4. Duration of exemptions for the Development Partner.

Notwithstanding anything to the contrary in the Stamp Act, the Tariff Act, the Excise Act or any Acts other than the Business Licence Act, with respect to duties or taxes, each Development Partner shall, for a period of 20 years from the Commencement Date be entitled to exemption from—

- (a) direct fiscal impositions upon or against earnings generated in respect of the Development; and
- (b) all direct taxation.

5. Exemptions in respect of Transactions in the Agreement.

The following transactions in the Agreement shall be exempt from the payment of stamp duty under the Stamp Act or any Act passed in amendment thereof or

substitution therefor—

- (a) conveyances of the 5825 acres of land from the Mayaguana Island Developers Limited to the Government of The Bahamas;
- (b) conveyances of the 2912 acres of land from The Government of The Bahamas to Mayaguana Island Developers Limited;
- (c) conveyances, assurances or options from The Government of Bahamas to Mayaguana Island Developers Limited its subsidiaries or affiliates, of any other property or equity interests in property in Mayaguana the subject of the Agreement;
- (d) transfer of the shares of The Hotel Corporation of The Bahamas in Mayaguana Island Developers Limited to I Group Bahamas Limited;
- (e) the sale of the business in relation to the transfer of the shares in paragraph (d);
- (f) any other conveyances, assurances or assignments which would otherwise attract stamp duty arising out of or incidental to the dissolution of the joint venture between the Hotel Corporation of The Bahamas, I Group Bahamas Limited and Mayaguana Island Developers Limited;
- (g) conveyances assurances or assignments of property or equity interests in a property by or from the Developer to another entity in which the beneficial ownership of both the transferor or the transferee entity is the same, or conveyances assurances or assignments of property or equity interests in property from the Developer, or an entity owned by the Developer, to a Development Partner or an entity owned by a Development Partner, provided that such conveyances, assurances or assignments facilitate community ownership of common areas (whether by an association or other entity however called) including roadways utilities or amenities in the Development Area.

6. Concessions and exemptions for the Developer and the Development.

The Developer and the Development shall be entitled to all concessions and exemptions available under the Hotels Encouragement Act, for new hotels, including all other buildings, utility services, airfields, docks, jetties, bridges, reclaiming and filling operations, road building and other amenities, works and conveniences necessary or desirable in connection with the construction thereof and the improvement of the site upon which the same are constructed and notwithstanding that the same or any part thereof may have been previously constructed erected or completed in the Family Islands, including real property tax.

7. Duration of exemptions on imports of vehicles for the Development Partner.

Notwithstanding anything to the contrary in the Stamp, Tariff and Excise Acts or any Acts passed in amendment thereof or substitution therefor with respect to duties or taxes, each Development Partner shall be exempted from the payment of all customs duties for a period of 10 years from the Commencement Date, in respect of the import of hybrid and renewable energy based vehicles for use on Mayaguana.

8. Duration of exemptions for properties in the Development Area.

- (1) No real property taxes rates or levies shall be imposed charged or collected on or in respect of the following properties in the Development Area in perpetuity—
 - (a) Conservation Land; and
 - (b) Undevelopable Land.
- (2) Notwithstanding section 6, no real property taxes, rates or levies, shall be imposed charged or collected on or in respect of Undeveloped Land for a period of 20 years from the Commencement Date.

9. Entitlements of the Developer.

- (1) Notwithstanding anything to the contrary in any Act, the Developer shall—
 - (a) be entitled to construct and operate centralized and distributed power supply, gas supply, water supply, waste disposal and sewerage disposal systems and the like and the necessary distribution and collection systems in connection therewith within and to support the Development Area;
 - (b) be entitled to provide electricity, gas, water supply, waste disposal and sewerage disposal adequate to meet the needs of the Development to the extent the relevant public utility will not commit to finance, construct and provide the same at rates not in excess of those prevailing in comparable areas in The Bahamas on a schedule sufficient to meet the needs of the Development, or if the plans for the Development call for “alternative” and distributed systems for some or all of these purposes; and
 - (c) to the extent that the Developer provides any of the services set forth in paragraphs (a) and (b) within the Development Area, it shall be entitled to charge commercially, reasonable rates covering its recovery of and return on capital and its operating costs, and shall provide the Government with relevant financial data no less

frequently than annually demonstrating that such rates are commercially reasonable.

- (2) Nothing in subsection (1) shall derogate from the provisions of the Utilities Regulation and Competition Authority Act.

10. Developer to determine subdivision widths, specifications, surfacing and drainage standards.

Notwithstanding anything to the contrary in the Planning and Subdivision Act *No. 4 of 2010* except for roadways traversing public lands or any portions thereof, roads and utility corridors within the Development Area shall have the width, specifications, surfacing and drainage standards, including but not limited to narrow sand roads.

11. Entitlement of the Developer to Subdivision Approval.

Notwithstanding the provisions of the Planning and Subdivision Act *No. 4 of 2010* provided that—

- (a) the Developer has constructed roads, including narrow sand roads, consistent with the Developer's design concept, and supplied or distributed an alternative sourced electricity, water, sewerage disposal or other utility to the phased clusters of lots within the Development Area; or
- (b) the Developer has furnished the Minister responsible for Public Works with bond insurance or a bond in a sum fixed by the Minister made in the prescribed form and executed by the Minister or by one surety if the surety is a financial institution licensed in The Bahamas and approved by the Minister and has entered into an agreement with the Minister responsible for Public Works for the supply of electricity water telephone or other utilities for the phased cluster of lots,

the Developer shall be entitled to Subdivision Approval by whatever name called and all requisite Government approvals required to enable it to sell, agree to be sold, convey, agree to convey, demise or agree to be demised any lot in the Development Area.