
A BILL

entitled

PARK HYATT (ST. GEORGE'S) RESORT ACT 2008

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WHEREAS it is expedient for the promotion of the public benefit and economic wellbeing of Bermuda to grant, in a special Act of the Legislature, all the rights, concessions, ownership, leases and permits necessary to develop and deliver the Park Hyatt (St. George's) Resort on land lying to the south side of St. Catherine's point in the Parish of St. George's;

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:

Short title

1 This Act may be cited as the Park Hyatt (St. George's) Resort Act 2008.

Interpretation

2 In this Act—

“arbitration” means arbitration under the Acquisition of Land Act 1970 by arbitrators appointed under section 10 of that Act;

“component” means a component of the Development listed in section 6(1);

“Developer” means Addax Holdings Ltd., a company incorporated under the laws of Bermuda on 25 March 2008;

“Development” means the development of the Park Hyatt (St. George's) Resort, consisting of a hotel, condominium units, fractional units, golf course, staff housing and infrastructure component (sewage treatment and water desalination plant) on their respective lease component areas shown in Schedule 3 (Drawing No. 5642/021/12), and includes the development of the beach, beach club, tennis courts, sun deck, reverse osmosis plant, boat launching and docking facilities, restaurants, shops, spa, fitness centre, infrastructure facilities and other facilities that are part of the resort operation;

“lease” means a lease entered into by the Minister and the Developer under section 5;

“land” includes land covered by water and any building erected on land and any estate, interest, right or easement in or over any land or building;

“Minister”, when used otherwise than in Schedule 1, means the Minister responsible for works and engineering and related matters;

"person interested" in relation to any land, means any person having any estate, interest, right or easement in or over that land;

"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 4 (Drawing No. 5642/021/13), the boundaries of which are more accurately shown on the definitive boundary plans listed in Schedule 2, which plans shall be available for inspection during office hours at the offices of the Ministry of Works and Engineering.

Service of documents

3 (1) Anything required to be served on a person under this Act may be served—

- (a) by delivering it to that person;
- (b) by leaving it at the proper address of that person; or
- (c) by sending it by prepaid registered post to the proper address of that person, in which event the notice shall be regarded as served when it first becomes available for collection.

(2) For the purposes of this section the proper address of any person shall, in the case of a body corporate, be the registered or principal office of that body and in any other case be the last known address of the person to be served.

Vesting of Property in Government

4 (1) On the coming into operation of this Act—

- (a) subject to subsection (8), any land included in the Property that, immediately before the coming into operation of this Act, is not owned in fee simple absolute by Her Majesty in right of the Government of Bermuda, shall vest in Her Majesty in right of the Government of Bermuda in fee simple absolute; and
- (b) subject to this section, every person having or claiming any right, title, estate, interest, use, trust, property, claim or demand whatsoever in, of, to or out of the Property shall be for ever barred of all such right, title, estate, interest, use, trust, property, claim or demand notwithstanding any Act, law, usage, matter or thing to the contrary.

(2) As soon as may be after the coming into operation of this Act, the Minister shall cause the Act to be published in two successive

publications of the Gazette, together with a notice requesting any person interested in any land included in the Property to notify the Minister in writing, within 21 days after the last such publication, of the person's estate and interest in the land and of the claim made by the person in respect of the land.

(3) If a person, within the 21 day period referred to in subsection (2), notifies the Minister of the person's estate or interest in the land and of the claim made by the person in respect of the land, the person may, before the expiration of 42 days after the last publication in the Gazette under subsection (2), agree with the Minister upon the amount of compensation to be paid by the Government for the estate or interest belonging to him or her, or which he or she has power to sell, or for any damage which may be sustained by him or her by reason of the execution of any works.

(4) If any person who notifies the Minister in accordance with subsection (3) fails to agree with the Minister, before the expiration of 42 days after the last publication in the Gazette under subsection (2), upon the amount of compensation to be paid by the Government for the estate or interest belonging to him or her, or which he or she has power to sell, or for any damage which may be sustained by him or her by reason of the execution of any works, the question of compensation shall be referred by the Minister to arbitration.

(5) Sections 10, 11, 12, 13, 14 and 15 of the Acquisition of Land Act 1970 shall apply to any question referred to arbitration, and the reference in section 14(4)(c) of that Act to "the notice to treat under section 5" shall be construed as a reference to the last notice published in the Gazette by the Minister under subsection (2) of this section.

(6) The Minister or any person making a claim under this section who is aggrieved by an award of the arbitrators under section 15 of the Acquisition of Land Act 1970 may, within 21 days of the date of the award, appeal to the Supreme Court on the ground that the amount of compensation awarded has been wrongly determined.

(7) Any person interested in the land included in the Property may, within 42 days after the last publication in the Gazette of a notice under subsection (2), appeal to the Supreme Court on the grounds that—

- (a) the extent of the estate, interest or right in the land to be acquired has been wrongly determined; or
- (b) the taking of possession or acquisition of the property, estate, interest or right in the land is not in accordance with this Act or is otherwise unlawful.

(8) On an appeal under subsection (7), the Supreme Court may order that the land vests in a person other than Her Majesty in right of the Government of Bermuda.

(9) For the avoidance of doubt, any notice given under this section is not a statutory instrument and shall not be subject to the Statutory Instruments Act 1977.

Leasing of land, etc.

5 (1) Notwithstanding section 8 of the Department of Works and Engineering Act 1984 or any other Act, the Minister may lease to the Developer—

- (a) the condominium units component area of the Property, for a term not exceeding 262 years;
- (b) any of the other component areas of the Property referred to in section 6(1), for a term not exceeding 131 years, with an automatic renewal for a further 131 years; and
- (c) any remaining part of the Property, for a term not exceeding 131 years, with an automatic renewal for a further 131 years.

(2) The Minister may grant to the Developer, for a term not exceeding 131 years, with an automatic renewal for a further 131 years, such easements as the Minister may think necessary or convenient over land retained by the Government, being land adjacent to land leased by the Minister to the Developer under subsection (1), so that access may be had by persons, animals or vehicles to that land.

(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 a lease for any component area 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 that component area of the Property.

Planning permission in principle

6 (1) Planning permission in principle is hereby granted for the development on the relevant lease component areas set out in Schedule 3 of the following components—

- (a) a hotel;
- (b) condominium units;
- (c) fractional units;
- (d) a golf course;
- (e) staff housing; and
- (f) an infrastructure component (consisting of a sewage treatment plant and a water desalination plant).

(2) Planning permission in principle is hereby granted for the ancillary developments that are listed in the definition of “Development” as being included in the Development.

(3) Planning permission granted under subsection (1) or (2) 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 the exact location, construction drawings, design and specifications of the various components and the ancillary developments.

(4) 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

7 (1) Subject to subsection (2), planning permission of the draft plan of subdivision in Schedule 5 (Drawing No. 5642/021/14) is granted by this Act for the subdivision of the Property into the six lease component areas.

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

Fractional units designated as eligible condominium units

8 For the purposes of sections 89(3) and 92(3) of the Bermuda Immigration and Protection Act 1956, a maximum of 40 fractional units of tourist accommodation shall be deemed to be condominium units.

Permission to use National Park land

9 (1) Notwithstanding section 24 of the Bermuda National Parks Act 1986, the written approval referred to in that section, of the Minister responsible for the Department of Parks, is hereby deemed to be duly given for the use and development, as part of the golf course component of the Development, of the islet identified in Schedule 3 as 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 the Department of Parks, is hereby deemed to be duly given for the use and development, as part of the golf course component of the Development, of the islet identified in Schedule 3 as the "National Park Islet".

(3) The Minister responsible for the Department of Parks may impose such reasonable terms and conditions on the development and use of the islet as part of the golf course component as he or she may consider necessary.

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

10 (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's—

(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

(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

11 The Hotel Concessions set out in Schedule 1 are hereby approved.

CONSEQUENTIAL AMENDMENTS

Bermuda Immigration and Protection (Designation of Eligible Condominium Units) Regulations 2007

12 The Bermuda Immigration and Protection (Designation of Eligible Condominium Units) Regulations 2007 are amended by adding at the end of Part II of the Schedule to those regulations the following—

“Parish: St. George’s

Development: Park Hyatt (St. George’s) Resort

Number of Eligible Units: 180 (40 of which are fractional units that are deemed under section 8 of the Park Hyatt (St. George’s) Resort Act 2008 to be condominium units)”.

Golf Courses (Consolidation) Act 1998

13 The Golf Courses (Consolidation) Act 1998 is amended by repealing the definition “Golf Courses” in section 2 and replacing it with the following—

“Golf Courses” means the Port Royal Golf Course and the Ocean View Golf Course together with the buildings erected thereon and equipment, furniture and effects appurtenant thereto vested in the Bermuda Government under the Port Royal Golf Course Act 1970 and the Ocean View Golf Course Act 1985;”.

SCHEDULE 1 Hotel Concessions

Interpretation

1 In this Schedule—

“Minister” means the Minister responsible for tourism;

“opening date” means the date on which the hotel component is certified by the Minister to be complete;

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

Concessions

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

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- (a) for a period beginning with the execution of the leases and ending on the first anniversary of the opening date, or the completion of the condominium units, or the completion of the fractional units, whichever is the latest to occur, full relief from customs import duty otherwise payable on the importation of building materials, furnishings, fixtures and equipment necessary for the building, furnishing and equipping of the Development;
 - (b) for a period beginning with the execution of the leases and ending on the fifth anniversary of the opening date or the completion of the condominium units or the completion of the fractional units, whichever is the latest, full exemption from land tax otherwise payable in respect of the hotel, fractional units and condominium units;
 - (c) for a period beginning with the pre-opening date and ending on the fifth anniversary of the opening date or the completion of the condominium units or the completion of the fractional units, whichever is the latest, full exemption from hotel occupancy tax otherwise payable in respect of the hotel to an amount equal to the sums expended by the hotel and golf course on local and international sales, advertising and marketing of the hotel;
 - (d) for a period beginning with the pre-opening date and ending on the fifth anniversary of the opening date or the completion of the condominium units or the completion of the fractional units, whichever is the latest, full exemption from hotel occupancy tax otherwise payable in respect of the hotel to an amount equal to 50% of the sums expended by the Development on entertainment provided by Bermudian entertainers;
 - (e) for a period beginning with the pre-opening date and ending on the fifth anniversary of the opening date or the completion of the condominium units or the completion of the fractional units, whichever is the latest, of an amount equal to 100% of the sums expended by the hotel on training and educational programmes for Bermudian employees of the hotel, up to an amount not exceeding 90% of the employer's share of the payroll tax otherwise payable in respect of persons employed by the Development;
 - (f) a reduction of the land-holding charge otherwise payable under section 96(2) of the Bermuda Immigration and

Protection Act 1956 in respect of the first disposition of each fractional share from 18% of the value of the fractional share to 10% of the value of the fractional share;

- (g) full exemption from the land-holding charge otherwise payable under section 96(2) of the Bermuda Immigration and Protection Act 1956 in respect of the first disposition of a condominium unit, provided that such condominium unit is placed in a voluntary condominium rental programme in which the unit is rented out by the hotel, for at least 10 months of the year, to paying guests who are not ordinarily resident in Bermuda; and where a condominium unit is not placed in a voluntary condominium rental programme on first disposition or is placed in a voluntary condominium rental programme on first disposition and withdrawn within five years, the land holding charge will be 18% of the value of the condominium unit; and where the licence holder of a condominium unit has obtained relief under this paragraph and at any time after the expiration of five years, opts out of the voluntary condominium rental programme, then the licence holder shall pay a land holding charge of 10% of the original value of the condominium unit; and
- (h) 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 unit of accommodation, provided that such unit is placed in a voluntary rental programme in which the unit is rented out by the hotel, for at least 10 months of the year, to paying guests who are not ordinarily resident in Bermuda.

(2) For the purposes of subparagraph (1)(e), 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.

Terms and conditions

3 (1) To qualify for the exemption from hotel occupancy tax under paragraph 2(1)(c) 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 hotel and golf course on local and

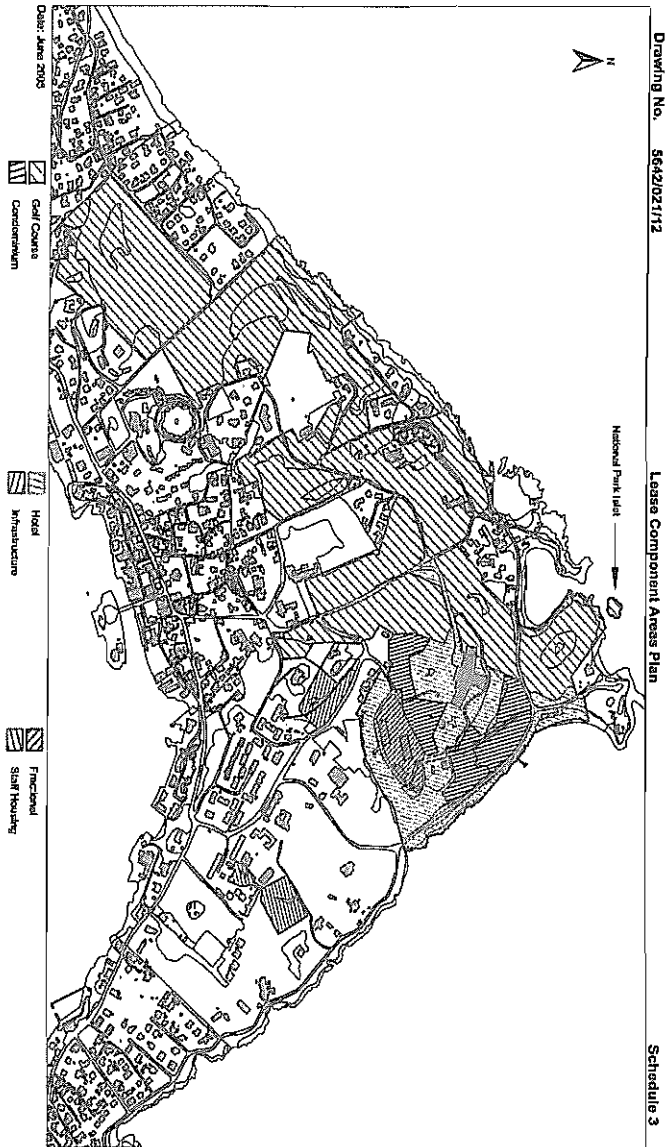
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- international sales, advertising and marketing of the hotel;
- (b) comply with guidelines on the marketing of the hotel issued by the Minister; and
 - (c) provide an annual audited statement of the hotel and golf course marketing accounts showing the amounts expended on such marketing.
- (2) To qualify for the exemption from hotel occupancy tax under paragraph 2(1)(d), the Developer must, for the relevant period—
- (a) show to the satisfaction of the Minister that entertainment has been provided at the hotel 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)(e), 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) Any concession granted under paragraph 2 shall cease to have effect immediately after 31 December 2018.
- (5) In this paragraph, "relevant period" means the period for which the exemption is claimed.

SCHEDULE 2
Definitive Boundary Plans

Drawing No. 5642/021/01	Suffering Lane
Drawing No. 5642/021/02	Khyber Pass/Cemetery Hill
Drawing No. 5642/021/03	Bourne Drive

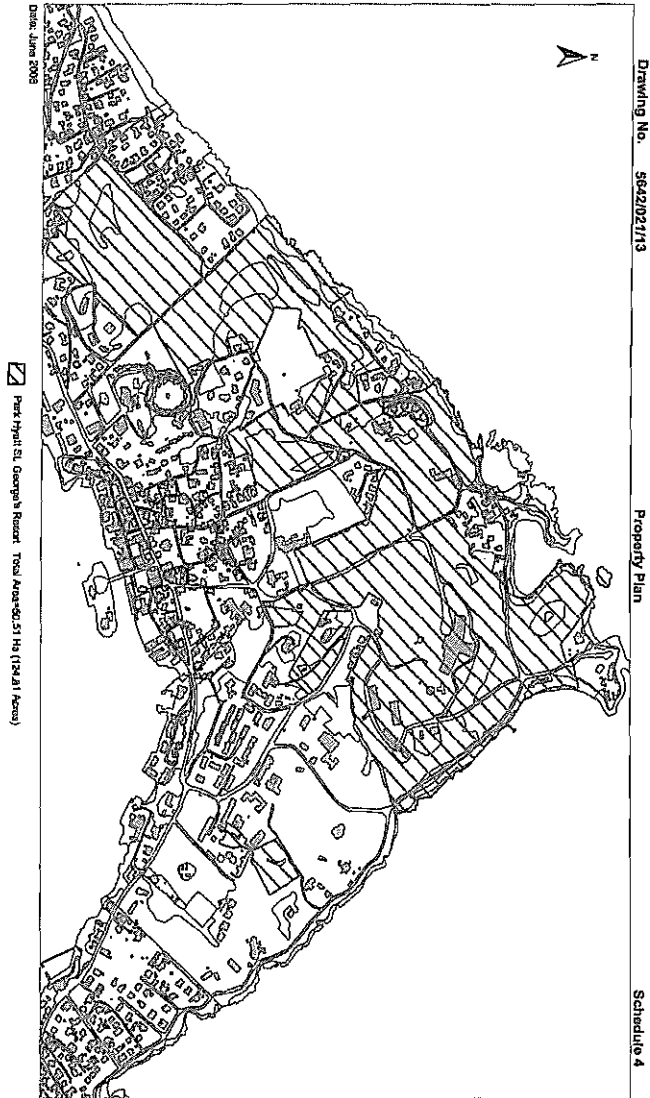
Drawing No. 5642/021/04	Park Gates
Drawing No. 5642/021/05	Naval Tanks, Anchorage Road
Drawing No. 5642/021/06	Preparatory School & Rectory
Drawing No. 5642/021/07	Coot Pond and Blackbeards
Drawing No. 5642/021/08	Government Hill Road, Victoria Road
Drawing No. 5642/021/09	Former Club Med Lease
Drawing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

**SCHEDULE 3
Lease Component Areas Plan**



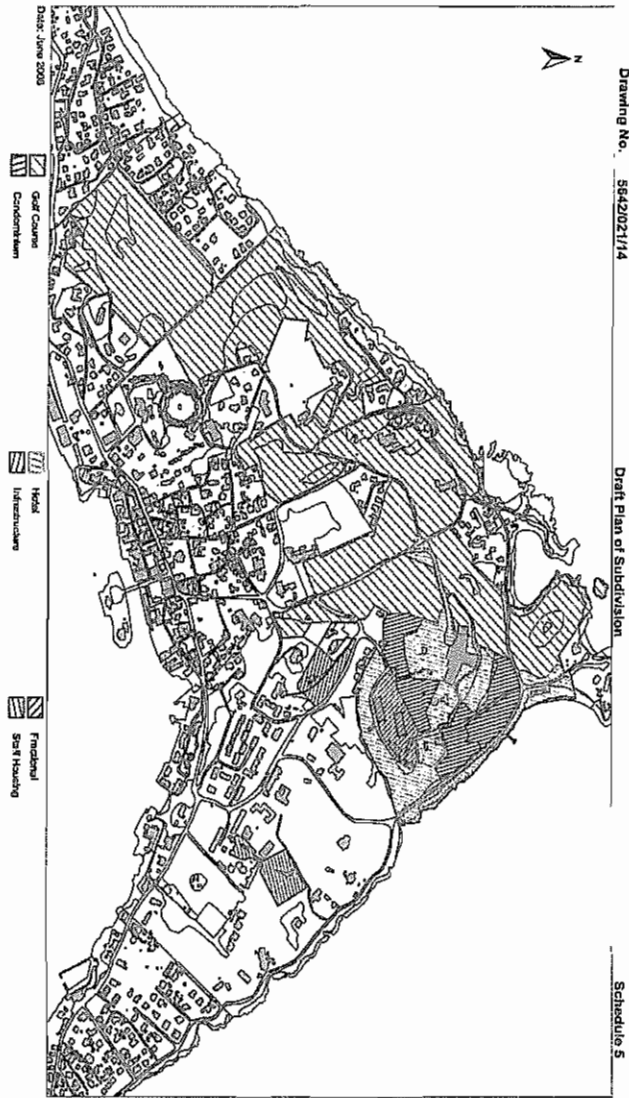
The original of this Drawing shall be available for inspection during office hours at the offices of the Ministry of Works and Engineering.

**SCHEDULE 4
Property Plan**



The original of this Drawing shall be available for inspection during office hours at the offices of the Ministry of Works and Engineering.

SCHEDULE 5
Draft Plan of Subdivision



The original of this Drawing shall be available for inspection during office hours at the offices of the Ministry of Works and Engineering.

PARK HYATT (ST. GEORGE'S) RESORT ACT 2008

EXPLANATORY MEMORANDUM

The Bill would enable the granting of the rights, leases, concessions, permissions and approvals necessary to develop and deliver the Park Hyatt (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 sets out the short title of the Act.

Clause 2 defines various terms used in the Act.

Clause 3 provides for the manner of service of documents under the Act.

Clause 4 provides for the vesting of the Property in the Government on the coming into operation of the Act. It also provides for compensation to be paid in respect of any land that is acquired by the vesting. Provision is also made for appeals to the Supreme Court.

Clause 5 enables the Minister responsible for works and engineering and related matters to lease to the Developer, for not more than 232 years, land forming part of the Property.

Clause 6 grants planning permission in principle to develop a hotel, condominium units, fractional units, a golf course, staff housing and an infrastructure component, on each of the respective lease component areas.

Clause 7 approves the Draft Plan of Subdivision in Schedule 5.

Clause 8 deems 40 fractional units, which are part of the Development, to be condominium units for the purposes of sections 89(3) and 92(3) of the Bermuda Immigration and Protection Act 1956.

Clause 9 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 10 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 11 approves the hotel concessions set out in Schedule 1.

Clause 12 amends the Schedule to the Bermuda Immigration and Protection (Designation of Eligible Condominium Units) Regulations 2007 by listing 140 condominium units and 40 fractional units as eligible units.

Clause 13 amends the definition of "Golf Courses" in the Golf Courses (Consolidation) Act 1998, removing St. George's Golf Course from the application of that Act.

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

Schedule 2 sets out a list of the definitive boundary plans of the Property that can be inspected at the offices of the Ministry of Works and Engineering during office hours.

Schedule 3 is the Lease Component Areas Plan.

Schedule 4 is the Property Plan.

Schedule 5 is the Draft Plan of Subdivision.