



[ L.S. ]

I Assent,

**James B. Carlisle,**  
*Governor-General*

9th December, 1997.

**ANTIGUA AND BARBUDA**

**1997, No. 14**

An Act to provide for the implementation of the Incentives specified in the Agreement between the Government of Antigua and Barbuda and the Asian Village Antigua Limited.

[ *29th January, 1998* ]

WHEREAS on the 18th of February, 1997 the Government and Asian Village (Antigua) Limited entered into an Agreement to develop Guiana Island and certain lands in the neighbourhood into a tourist resort, including the construction of hotels, a casino, golf courses, tennis courts and facilities for water sports; and

WHEREAS on the 4th of June, the House of Representatives ratified with amendments the said Agreement; and

WHEREAS in the view of the Government and Asian Village (Antigua) Limited the Project is a economically viable and that its implementation will bring immense economic benefits to the people of Antigua and Barbuda, especially in the creation of employment, the transfer of managerial and other skills to the people of Antigua and Barbuda;

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NOW, THEREFORE, IT IS —

ENACTED by the Parliament of Antigua and Barbuda as follows —

**Short title.** 1. This Act may be cited as the **Asian Village Resort (Incentives) Act, 1997.**

**Interpretation.** 2. In this Act, unless the context otherwise requires —

"the Agreement" means the Agreement dated the 18th of February, 1997 between the Government of Antigua and Barbuda and the Addendum to the Agreement signed on 4th June, 1997 between the Government of Antigua and Barbuda and Asian Village Antigua **Limited** and attached hereto as Schedule II;

"Court" means the High Court or a Judge thereof;

"Concessions" means the concessions granted by the Government of Antigua and Barbuda to the Enterprise in consideration of the Enterprise **executing** the project in accordance with the Agreement;

"Demised Property" has the meaning assigned to it in Article I of the Agreement;

"Enterprise" means Asian Village Antigua Limited, a company incorporated under the laws of the British Virgin Islands, and includes any company which may legally hold **all** or a **portion** of the rights to which Asian Village Antigua Limited is entitled pursuant to the Agreement and this Act;

"Project" means the development described in the Agreement to be executed by the Enterprise.

**Regulations to  
implement  
provisions of this  
Ad.**

3. (1) The Cabinet may make Regulations to give effect to the provisions of this Act.

(2) Without prejudice to the generality of sub-section (1), Regulations may be made **specifying** the steps which may be taken, and by whom they may be taken, to prevent a breach of any of the provisions of this Act and the Agreement.

(3) The Cabinet may, by Regulation, provide that the breach of any regulation made under this Act ~~shall~~ constitute an offence and may provide for penalties on summary conviction of a fine not exceeding five thousand dollars.

(4) ~~All~~ Regulations ~~made~~ under this section ~~shall~~ be laid before Parliament as soon as may be after they are made and if a resolution is passed by Parliament that the ~~same~~ Regulations be annulled, they ~~shall~~ henceforth be void, be without prejudice to the validity of anything previously done thereunder or to the making of new Regulations.

4. The Court may, upon the application of the Attorney General or the Enterprise, issue an injunction **restraining any** person from engaging in any operation in respect of which the Enterprise has been accorded ~~an~~ exclusive right or privilege under the provisions of the Agreement, this Act or any Regulations made thereunder:

Application for  
grant of injunctions.

Provided that any relief granted by way of injunction against the infringement of any such right or privilege shall cease to have effect on the **expiration** of the period in respect of which such right or privilege was **granted**.

5. Notwithstanding **anything** to the contrary contained in any law **for** the time being in **force** —

Exemption of  
expatriates,  
contractors and  
consultants from  
income and other  
taxes on their  
employment  
income.

(1) Expatriates employed by the Enterprise are hereby exempt from income tax on their employment income and ~~shall~~ enjoy free repatriation of not more than half of such employment income.

(2) **Foreign contractors, and consultants engaged by the Enterprise** are likewise hereby exempt from any and ~~all~~ taxes on income derived from the project during the Development Period.

(3) Foreign contractors and consultants working on the project ~~are~~ hereby exempt ~~from~~ withholding or other taxes from income so derived.

6. (1) Notwithstanding anything to the contrary contained in any law for the time being in force the Enterprise shall be entitled to **import machinery, equipment, fittings, building materials, motor vehicles, boats, aircraft, furniture, office equipment, and other mechanical or construction material** components for the project, **free from** duty, consumption tax, customs service ~~tax~~ and or surcharges of any ~~kind~~, but not including handling charges.

Exemption from  
import duty  
consumption tax,  
customs service tax.

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(2) The Enterprise shall not —

- (a) sell or dispose of any material which has been imported free of customs duties, taxes, surcharges or other impost; or
- (b) use such items for the purpose other than in connection with an operation authorised by the Agreement, without the prior approval of the Government and the payment of the appropriate customs duties and other charges imposed by law.

(3) Where the Enterprise disposes of; or uses any material brought into Antigua and Barbuda in contravention of subsection (1) the Enterprise shall pay to the Government any customs duties, consumption taxes, customs service and surcharges which would have been payable on such material if it had been imported in the condition in which it was at the time of such improper disposition or use.

Exemption of Enterprise from taxes on income and profits.

7. (1) **Notwithstanding** anything contrary contained in any law for the time being in force the Enterprise shall, for a period commencing on the 18th September, 1997 and terminating on the 17th September, 2012, be free of any and all taxes on its income or profits.

Provided that if the Enterprise shall not be in breach of any applicable law or in breach of any obligation under the Agreement, the period shall be extended to terminate on 17th September, 2022.

(2) There shall be calculated in accordance with sound accounting practices any operating loss which may exist at the expiration of the period ending 17th September, 2012 or 17th September 2022 as the case may be.

Provided that no such loss shall be carried forward beyond five years from the end of the fiscal period during which the loss has originated. The Enterprise may charge to an operating account costs incidental to the training of its local personnel and to the carrying out of any benefit or pension plan on behalf of its employees.

Exemption from taxes on dividends to shareholders etc.

8. (1) Any income of the Enterprise derived from operation of the Enterprise and distributed as dividends to its shareholders shall be exempt from income tax payable by such shareholders of the Enterprise out of the capital of the Enterprise, its earnings or its retained earnings.

(2) Where otherwise applicable on repatriation of profits, dividends and capital, and on payment of royalties, technical and management fees, interest, rentals or amenities, the Enterprise shall be entitled to free repatriation thereof and is hereby exempted from any withholding tax and any other taxes in connection therewith.

9. The Enterprise is hereby exempt from the provisions of section 3 of the Foreign Currency Levy Act.

Exemption from  
foreign currency

10. The Enterprise shall be granted exemption from the provisions of the Exchange Control Act to the extent required by the Eastern Caribbean Central Bank.

Exemption from  
Exchange Control  
Cap. 157.

11. Upon application by the Enterprise on behalf of an applicant permission shall be granted to such applicant under the Non-Citizens Land Holding Regulations Act Cap. 364, to own shares and property, to be directors and to vote at general meetings of the Enterprise.

Permission for non-nationals to own shares and property, be directors and to vote in general meetings.

12. Notwithstanding the provisions of any other law for the time being in force —

Granting of Casino licence and exemption from gaming taxes and casino operations.

(1) The Enterprise is hereby granted a casino licence for a minimum duration of fifty (50) years with effect from 18th February, 1997 at an annual licence fee of three hundred thousand Eastern Caribbean Dollars (EC \$300,000) for the operation of the casino during the period of the casino licence. The casino licence so granted shall be subject to review as regards the annual licence fee as prescribed under any law regulating casinos.

Provided that such prescribed fee shall not exceed six hundred thousand Eastern Caribbean Dollars (EC \$600,000) within the first twenty-five (25) years from the 18th September, 1997 and thereafter shall be at the level prescribed from time to time under any law regulating casinos.

(2) The Enterprise shall be exempted from any and all gaming taxes in respect of all casino operations pursuant to the casino licence granted by the provisions of subsection (1) for the duration of the licence period.

(3) Existing casino operators are hereby prohibited from combining their operations or business so as to achieve greater mass than that of the Enterprise and are each also hereby prohibited from moving their existing premises to within a six mile radius from the property and operations of the Enterprise. Neither are they permitted

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to move to any larger premises than they occupied on 18th February, 1997.

(4) No casino licences may be issued without consultation with casino operators in Antigua and Barbuda having been first notified by the Government in advance that such an application is pending and affording the casino operators the opportunity to make representations with respect to possible objections.

(5) Except with respect to the casino to be built by the Enterprise, there shall not be issued to any person any new licence for a casino which will have a floor area greater than two thousand square feet (2,000 sq. ft.).

(6) The casino licensed under subsection (1) shall be permitted to operate for three hundred and sixty-five (365) days a year, twenty four (24) hours a day.

(7) All winnings at the casino of the Enterprise are hereby exempt from any and all taxes, levies, dues, duties or any form of withholding tax and shall enjoy the right of free repatriation in respect of such winnings; provided that the casino operators have sufficient foreign currency reserves to meet such repatriation.

(8) The management of the casino operated by the Enterprise is hereby granted the sole discretion to determine what currency shall be in use in operating the casino, except that Eastern Caribbean dollars shall not be used in operating the casino.

(9) The management of the casino operated by the Enterprise are hereby permitted to establish minimum standards for entry in to the resort in general and the casino in particular and the management are hereby granted the freedom to enforce those standards and restrict the right of admission to any member or person not meeting those standards.

(10) The management of the casino of the Enterprise are hereby granted the freedom to set reasonable stakes in accordance with market demand.

(11) Subsections (3) to (6) shall be of no force and effect if within three (3) years from the 18th September, 1997 the Enterprise fails to substantially complete and commence operation of a casino in accordance with this Act.

Exemption from  
sales taxes, capital  
gains taxes etc.

13. (1) The Enterprise shall not sell or dispose of any goods or equipment imported free of any taxes and duties for the purposes of the project without the prior approval of the Cabinet.

(2) **The Enterprise** is hereby exempted from the provisions of any law **providing** for the payment of sales taxes **capital** gains taxes or **duties** on **goods** or equipment imported into **Antigua and Barbuda** for the construction and maintenance of the project.

14. The Enterprise is hereby exempted from the payment of development charges or tax of any **kind** as prescribed under provisions of the Non-Citizen Undeveloped Land Tax Act. **Exemption from** payment of development charges or taxes.

15. The **Enterprise** is hereby exempt from the payment of planning fees that may be prescribed under the provisions of **any** law or regulation in force. **Exemption from** the payment of planning or processing fee.

16. Notwithstanding the provisions of any law now in force the Enterprise shall not be liable for the payment of any and all taxes payable in respect of any compulsory acquisition of the demised **property**. **Exemption from** liability to pay taxes in respect to acquisition of land.

17. The Enterprise shall have **free** and unrestricted right to sell or transfer shares and any developed land within the group of Project Companies or its Financiers forming part of the Demised Property; provided that the Enterprise shall be exempted from any and all taxes **and stamp** duties that would otherwise apply in relation to such sale or transfer. **Freedom to sell or** transfer shares and interest in land of the demised **property**.

18. Notwithstanding any law to the contrary in force, the Commissioner of Inland Revenue shall levy and charge a stamp duty at the rate of three percentum (3%) of the transaction value of any sale, lease or conveyance of any developed part of the demised property to a **third party for one** transaction only. The Commissioner of Inland Revenue shall, for a period of **f i n** years from the transfer of the demised property to the Enterprise, levy and charge stamp duty at the rate of 3% on any subsequent sale, transfer or lease of any part of the developed property between third parties. **Remission of stamp** duty on sale, lease or conveyance of demised property.

19. Notwithstanding the provisions of any law for the time being in force the demised property within the Project shall be exempt from the requirements of Undeveloped Land Taxes of any **kind** provided the Enterprise shall have substantially completed a minimum of a five hundred (500) room hotel, a casino with a floor space of 2000 sq. ft. and **has** started development of its golf course within **thirty-six** (36) months from the 18th September, 1997. **Exemption from** undeveloped Land Taxes after substantial completion of 500 **room** hotel, casino and start of Gulf Course.

20. The Enterprise shall pay property **tax** at the same rate as that payable by other residents of Antigua and Barbuda for like property under any law in force but shall not at any time be required to pay any amount on any **specified** property in excess of One Hundred **Payment of property** tax at normal rate subject to ceiling of US \$100,000.00 per annum.

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Thousand United States Dollars (US \$100,000.00) per annum in property tax.

Exemption from import duties, taxes or levies for personal belongings and household effects of staff required to move to Antigua and Barbuda.

21. The employees of the Enterprise required to move to Antigua and Barbuda to take up positions within the Project are hereby exempted from the payment of import duties, taxes or levies for their personal belongings and household items.

Permission to operate a bonded warehouse.

22. (1) Except for the utilities supplied, the concessions herein granted to the Enterprise in respect of the project site shall hereby also apply to the warehousing site measuring one thousand square metres (1000 m<sup>2</sup>) within the precincts of the Deep Water Harbour in St. John's, situated fronting the road leading to the wharf area required to allow fast clearance of goods and equipment for the project; provided that the use of the warehousing facilities are not extended to warehousing of materials and goods not connected with the project.

Permission to operate a private hangar.

(2) Except for the utilities supplied, the concessions herein granted to the Enterprise in respect of the project site shall hereby also apply to the hangar site within the airport complex.

(3) The concessions referred to in this section include exemption from paying airport standing or parking charges within the precincts of the hangar site.

(4) The Enterprise shall be required to pay the appropriate taxes and duties should it use the concessions granted for purposes other than purposes connected with the project.

Customs (Duty Free) Shopping system  
Cap 127.

23. Notwithstanding anything to the contrary contained in any law for the time being in force, any and all retail duty free shops developed within the project shall be licensed under the Customs (Duty-Free) Shopping Act as duty-free shops within sixty (60) days of receipt of application submitted by the Enterprise; provided that the operators of such shops shall be regulated by laws governing Duty-Free Shops.

Licences to be granted for scheduled items.

24. Subject to the prior compliance with the requisite procedure prescribed under the applicable law or regulation governing the grant of any such permit or licence, the Enterprise shall be granted permits and licences for the enumerated items in Schedule I hereto.



25. Notwithstanding anything to the contrary contained in any law for the time being in force —

Right to distribute electrical power and water within the project.

(1) The Enterprise or its nominee is hereby permitted to exclusively distribute at its own expense, electrical power and water within the project from the substation or water storage facility as the case may be and the Enterprise shall be entitled to meter, levy and collect for its own account retail charges for such supply as the Enterprise shall in its sole discretion deem economically acceptable.

(2) The Enterprise shall on application be permitted to generate all or part of the electricity or potable desalted water requirements of the project.

(3) The Enterprise may be permitted at its own expense to extract water from underground, or by rainfall run off collection within the Project; provided such extraction of underground or rainfall run off is not in contravention of any Environmental laws of Antigua and Barbuda.

(4) The Enterprise is hereby exempted from the payment of any royalties or other payments howsoever for water extracted, desalted or collected within the project, for sand pumped from the seabed to build beaches for the project and for any item incidental thereto; provided that in the case of the extraction of sand the Enterprise shall obtain the approval of the Cabinet.

26. Save for the licence in respect of the casino, there shall be issued to the Enterprise or any applicable project company upon application and upon compliance with safety, health and other statutory requirements, one (1) global licence in respect of all permits and licences required for the construction and operation of the project.

Global Licence.

27. The Enterprise is hereby exempted from the provisions of section 32 of the Licensing (Intoxicating Liquor) Act.

Exemption from section 32 of the Licensing (Intoxicating Liquor) Act.

Cap 249.

28. The Enterprise may in the course of the development or operation of the Project, apply for a banking licence and the Minister may, upon the recommendation of The Eastern Caribbean Central Bank, grant the licence.

Application for Banking Licence.

Cap 40.

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Prohibition against building new polluting industries within 2 mile radius of project site.

29. (1) Notwithstanding anything to the contrary contained in any law for the time being in force, the planning authority shall not approve —

- (a) the building of any new polluting industries, including but not limited to any industry or structure which may cause any undesirable noise, smell, sight, discharge of gas or discharge into the sea.
- (b) the construction of any chimney so close to the project to allow any emissions blowing toward the Project site; and the chimney height shall be sized to prevent any dispersment of emissions to be concentrated at ground level on the Demised Property in strict compliance with world bank guidelines on emissions to the environment.

(2) This section shall not apply to any plant already in existence at the time of the coming into force of this Act.

Enterprise permitted to allow Demised Property to be mortgaged, charged, pledged or to assign rights or interest in the same.

30. Notwithstanding anything to the contrary contained in any law for the time being in force, the Enterprise is hereby permitted in respect of the Demised Property or any part thereof, to allow the Same to be mortgaged, charged, pledged or to assign rights or interests in the Demised Property or any part thereof to any banks or financial institutions, including such banks or financial institutions without a place of business in Antigua and Barbuda, provided such banks and financial institutions shall at all times maintain in Antigua and Barbuda an agent for service of process within Antigua and Barbuda.

Permission to operate incinerators and to dispose of refuse.

31. (1) The Enterprise shall, with the approval of the public health authorities —

- (a) operate such incinerator(s) as may be necessary;
- (b) establish its own refuse disposal site;

Provided that such incinerators or refuse disposal plants are not sited at points that may emit foul smell and gases to residents on the main land.

Permission to build over water.

32. The Enterprise is hereby permitted to construct over water and to move boundaries as may be necessary to encompass construction and to suit the project requirements;

Provided that the Enterprise shall have regard to the Beach Control Act and the Beach Protection Act; and Cap 45 & 46

Provided also that the Enterprise shall obtain the prior approval of the Cabinet before any construction over water is carried out.

### **SCHEDULE I**

(1) Food and beverage, liquor, entertainment, hotel and casino licenses effective for three hundred and sixty-five (365) days a year and for twenty-four hours a day.

Licences for food and beverage, liquor entertainment, hotel and casino to be effective **365 days a year** and **24 hours a day**.

(2) **Public Service Vehicle licence** for any motor vehicles or boats owned or **imported** by the Enterprise for the transport of goods or guests travelling to and from the resort and on tours of Antigua and Barbuda; provided that such motor vehicles or boats are operated by a member of an existing licensed operator or association or other **recognised** person licensed to operate such applicable motor vehicles or ~~boats~~.

(3) Airways operators and landing permits for charter flights and or an airline, to allow for the transport of goods and passenger.

(4) Licences in respect of private retransmissions or distribution for television and radio transmission to owners, guests and staff within the Project, including satellite transmission and radio wave transmissions.

(5) **Radio communications** licenses for in-house communication and security services.

(6) Any and all licences necessary for the importation of goods equipment and other items for use or consumption on the resort during the development and for on-going operations of the project subject to compliance with any trade ban imposed **under** the CARICOM treaties.

(7) Any and all **contractors** and construction licences.

(8) Money changing licences.

(9) Equipment **hire/rental** licences.

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(10) Import licences for the import of motor vehicles or boats or aircraft which the Enterprise may deem necessary for the construction and ongoing operational needs of the project, including any and all vehicles required for operation throughout Antigua and Barbuda.

(11) Sewerage treatment and discharge licences.

(12) Licence to ~~import~~ cement or at the option of the Enterprise to negotiate with **local importers** to import on behalf of the Enterprise and/or to operate a cement import and **batching** plant and any and all associated mixers and transporters, provided that the Enterprise shall give local suppliers the opportunity to compete for the business.

(13) Air **transport** licence for the Enterprise or its nominee to operate a commercial helicopter ferry service.

(14) Landing rights for the Enterprise or its nominee for charter flights **from** international destinations.

(15) The granting of work permits **and/or** visas for expatriate subcontractors and construction workers and employees for the management and operation of the Project; provided ~~that~~ the Enterprise shall give **priority** of employment to suitably, qualified and experienced nationals of Antigua and Barbuda. In the event such suitably qualified local labour is found to be **unavailable** after advertising in the local **media**, any and all necessary permission is hereby granted to the Enterprise to employ expatriate labour and use foreign equipment.

(16) Grant the Enterprise, licences to build and operate a private school **and** an international hotel school within the project to which suitably **qualified nationals** of Antigua and Barbuda shall be entitled to enrol.





"Document" means any document or agreement and is deemed to include reference to such document or agreement as amended, novated, supplemented varied or replaced from time to time.

"document of title" has the meaning assigned to it under the laws of Antigua and Barbuda.

"*Force Majeure*" means the conditions specified in Article XIV.

"GAB" means The Government of Antigua and Barbuda.

"Motor Vehicles" means any and all forms of motorised vehicles, whether powered by internal combustion engines or otherwise, including but not limited to motor cars, buses, lorries, trucks, vans and motor cycles.

"Phase" means a section of the construction of the Project separately identified.

"Project" means the development of the variety of accommodations, tourist and residential developments and all other entertainment and infrastructure facilities on the Demised Property as the Company shall deem appropriate.

"Project Company" means any company incorporated by the Company, or nominated by the Company for the purpose of carrying out any development or purpose in respect of the Project, and the term "Project Companies" shall have the same applicable meaning in respect of more than one Project Company;

"Roy-Dan Lands" All the lands as described in Appendix 1, Schedule 2.

"Statutory Legislation" means any legislation for the time being in force and shall include any statutory modification or reenactment of or any legislation provision substituted for and all legislation and statutory instruments issued under such legislation or provision.

"Third Party" means any third party which is not related to the Company, any Project Company or any affiliate, subsidiary or parent of such Company, Project Company or shareholder of the same, including non-residents and non-citizens of Antigua and Barbuda,

"Time Period" means a time within which an act should be done or agreement reached or consent given and shall be deemed to be read as including any other period agreed between the Parties from time to time.

"Total Purchase Price" means the aggregate sum of Dollars fifteen million and five hundred thousand (EC\$15,500,000.00) inclusive of any and all stamp duties

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and taxes, if any, payable by the Company to GAB for the Demised Property in the manner provided for in Article 2.2 hereof.

"EC\$" and "Dollars" means the lawful currency of Antigua and Barbuda, being East Caribbean Dollars.

- 1.2** In this Agreement where the context so admits, words importing the masculine gender shall be deemed to include the feminine and neuter genders and words importing the singular number shall include the plural and vice versa and words applicable to natural persons include any body of persons, company, corporation, firm or partnership incorporated or unincorporated.
- 1.3** The following documents shall be deemed to form and be read and construed as part of this Agreement, and shall be mutually explanatory of one another:
- (i) this Agreement; and
  - (ii) the Appendices I to IV to this Agreement.

## ARTICLE II

### TRANSFER OF DEMISED PROPERTY AND GRANT OF CONCESSION

#### RIGHTS PRIVILEGES TO THE COMPANY

- 2.1** GAB hereby agrees —
- 2.1.1 to sell, transfer and lease (as the case may be) free from all encumbrances and with vacant possession and with the necessary **approvals/consents** by the relevant authority for the development of the Project in accordance with the Company's Development Plan; and
  - 2.1.2 to grant to the Company and Project Company the concessions, rights, privileges, licences and permits as set out in this Agreement;
- and the Company hereby agrees to purchase, lease and accept the transfer of the applicable interest in the Demised Property and the concessions, rights, privileges, licences and permits for the consideration referred to as the Total Purchase Price and subject to the terms and conditions hereinafter provided.
- 2.2** The Total Purchase Price shall be the sum of Dollars Fifteen Million and Five Hundred Thousand (EC\$15,500,000.00), which shall be inclusive of any and all stamp duties and taxes, if any, and shall be payable by the Company to GAB as follows —



- 2.2.1 on Completion the GAB shall transfer title or assign the leases to the Demised Property, as the **case** may be, to the Company or Project Company free from all present and future encumbrances whatsoever and with vacant possession and the Company shall pay to GAB the sum of Dollars Two Million and Seven Hundred Thousand (**EC\$2,700,000.00**) which shall be inclusive of any and all stamp duties and taxes, if any, payable on the total purchase and assignment or issue of leases of the Demised **Property;**
- 2.2.2 immediately upon the expiry of twenty four (24) months after the date of Completion, the Company shall pay to GAB the sum of Dollars Two Million and Seven Hundred Thousand (**EC\$2,700,000.00**);
- 2.2.3 immediately upon the expiry of thirty six (36) months after the date of Completion, the Company shall pay to GAB the sum of Dollars Two Million and Seven Hundred Thousand (**EC\$2,700,000.00**);
- 2.2.4 immediately upon the expiry of forty eight (48) months after the date of Completion, the Company shall pay to GAB the sum of Dollars Two Million and Seven Hundred Thousand (**EC\$2,700,000.00**);
- 2.2.5 immediately upon the expiry of sixty (60) months after the date of Completion, the Company shall pay to GAB the sum of Dollars Two Million and Seven Hundred Thousand (**EC\$2,700,000.00**); and
- 2.2.6 in the event that the Company exercises the Option pursuant to Article 2.3.5 below, the Company shall pay to GAB the sum of Dollars Two Million (**EC\$2,000,000.00**)

### **23 Roy-Dan Lands**

- 2.3.1 The GAB hereby agrees and undertakes to grant the Company a ninety-nine (99) year lease over the Roy-Dan Lands (the "First Lease"), and upon the expiry of the First Lease another lease for a period of fifty (50) years (the "**Second Lease**"). The annual peppercorn rental for the lease of the Roy-Dan Lands, shall be fixed at Dollars Ten Thousand (**EC\$10,000.00**) per annum for the duration of the **said First Lease and Second Lease**, including any extension thereof.
- 2.3.2 The lease to be granted by the GAB to the Company as specified in Article 2.3.1 above, shall commence from either:
- 2.3.2.1 the acquisition of the residue of the leasehold interest in the Roy-Dan Lands by the Company and the surrender thereof to the GAB; or



or amendment of the necessary legislation and provide the Company with official copies of such legislation.

### ARTICLE III SCOPE OF THE PROJECT

3. It is the intention of the Company to develop the Demised Property as set out below —
- 3.1 resort accommodation of approximately 1,000 rooms;
  - 3.2 a casino;
  - 3.3 a golf course;
  - 3.4 retail shops;
  - 3.5 residential developments;
  - 3.6 other resort, commercial and hotel related projects and facilities;

and provided that there is sufficient demand, the Company proposes to substantially complete the Project within ten (10) years.

### ARTICLE IV THE COMPANY'S OBLIGATIONS

#### 4.1 The Company's Obligations

Subject to the Concessions to be granted to the Company as provided for in Article 8.2, the Company warrants to GAB as follows:

- 4.1.1 The Company shall ensure that all construction on the Project is carried out in a proper workmanlike manner and in compliance with the applicable laws and regulations of Antigua and Barbuda;
- 4.1.2 The Company shall, obtain all the finance, both debt and equity, necessary to design, construct, operate, manage and maintain the Project;
- 4.1.3 In the event that the GAB fails to build within six (6) months of the Company's requirement, the Company shall at the expense of the GAB, undertake the construction of a high standard dual carriage way bitumen road with curbing providing access from bitumen road closest to the boundary adjoining to the ruin of Hawes Mill, corresponding with the alignments as outlined in green on the plan as attached at Appendix III.



marked in blue on Appendix III for the purpose of distribution of electricity to the Project. The electricity consumed by the Company shall be metered at the boundary of the Demised Property and charged at the rate to be ascertained in the following manner:

- 4.1.5.1.1 the Company and GAB shall jointly appoint a consultant to assess the production cost of the Power ~~generated at~~ the Crabbs Power Station, **inclusive** of reasonable management, operation and administration costs of the production plant but not including any cost of **collection**, distribution or power losses; or
- 4.1.5.1.2 in the event that the Company and the GAB are unable to agree on the appointment of the consultant referred to in Article 4.1.5.1.1 above, the Company and the GAB shall each appoint a consultant and the two (2) consultants shall carry out their assessment and shall together agree on the said production cost as specified in Article 4.1.5.1.1; or
- 4.1.5.1.3 in the event that the two (2) consultants are unable to agree on the production cost as specified in Article 4.1.5.1.1, the two (2) consultants shall jointly appoint a third consultant to assess the two (2) consultants' reports on the production cost as specified in Article 4.1.5.1.1, which assessment shall be accepted by and be binding on the parties hereto.

The Company shall buy and the GAB shall cause the APUA to sell electrical power to the Company at ten percent (10%) above the production cost of the power generated ~~at~~ the Crabbs Power Station as determined pursuant to **either** Article 4.1.5.1.1, 4.1.5.1.2 or 4.1.5.1.3 as the case may be.

- 4.1.5.2 an underground water pipeline with a capacity of delivering an uninterrupted supply of 600,000 imperial gallons per day at 2.775 cubic **foot** per second directly from the desalination plant at Crabbs and any additional amount of water the Company may require from time to **time**, to the boundary of the Demised Remises as marked in yellow on the plan at Appendix III. The Company shall at its own cost and expense erect a water storage facility from which it shall distribute water. The GAB shall install a meter at the connection point and connect the supply line and shall meter and charge for the potable water at to be **ascertained** in the following manner:

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4.1.5.2.1 the Company and GAB shall jointly appoint a consultant to assess the production cost of the potable de salted water delivered to the meter at the Crabbs Power Station, inclusive of reasonable management, operation and administration costs of the production plant but not including any cost of collection, distribution or water losses in distribution; or

4.1.5.2.2 in the event that the Company and the GAB are unable to agree on the appointment of the consultant referred to in Article 4.1.5.2.1 above, the Company and the GAB shall each appoint a consultant and the two (2) consultants shall carry out their assessment and shall together agree on the said production cost as specified in Article 4.1.5.2.1; or

4.1.5.2.3 in the event that the two (2) consultants are unable to agree on the production cost as specified in Article 4.1.5.2.1, the two (2) Consultants shall jointly appoint a third consultant to assess the two (2) consultants' reports on the production cost as specified in Article 4.1.5.2.1, which assessment shall be accepted by and be binding on the parties hereto.

The Company shall buy and the GAB shall cause the APUA to sell potable de salted water to the Company at ten percent (10%) above the production cost of potable de salted water delivered to the meter at the Crabbs Power Station as determined pursuant to either Article 4.1.5.2.1, 4.1.5.2.2 or 4.1.5.2.3 as the case may be.

4.1.6 The consultant or consultants referred to above shall in their report provide a formula for which the electrical power and water cost shall be adjusted as a result of any fluctuations in the cost of fuel to the APUA as and when the APUA shall notify the Company that a review is necessary, provided that any such review shall not be retrospective.

4.1.7 The Company shall ensure the design for the Project is at least comparable with prevailing international standards.

## ARTICLE V

### DEFAULT ON THE PART OF THE GAB

- 5.1** In the event the GAB shall refuse or fail to promulgate **and/or** amend such laws of **Antigua and Barbuda** to ensure that the transfer of title of the Demised Property and/or to ensure that the concessions, rights, privileges, licences and permits **as** provided under this Agreement may be granted to the Company and Project Company or for the Company and Project Company to hold and enjoy the Demised Property, and such concessions, rights, privileges, licences and permits under the laws of Antigua and Barbuda, **as** a foreign owned company, by or before the 30th day of July 1997, then the Company may at its option —
- 5.1.1 grant a waiver of or forgive any concessions, rights, privileges, licences or permits which have not been obtained; or
- 5.1.2 grant the GAB an extension of time to obtain any concessions, rights, privileges, licences or permits which **have not** been obtained; or
- 5.1.3 repudiate this Agreement by giving the GAB notice in writing of its intention to terminate this Agreement and the GAB shall within fourteen (14) days or the expiry of or such extension of time as may be **given** to the GAB by the Company pursuant to Article 5.1.2 repay to the Company in United States Dollars on or before the date that the title deeds to the Demised Property are **returned**, such costs **as** may be incurred by the Company after the date of this Agreement in respect of the Project which shall include all the Purchase Price or any part thereof for the Demised Property incurred by the Company in respect of the Project, the preparation of the development plans and studies conducted for the development and wages and transportation costs incurred by the Company and interest on such unpaid sums at the rate of three percent (3%) per **annum** above the prevailing **prime** lending rate of the **Bank of Nova Scotia** in Antigua.
- 5.1.4 The Company will upon receipt of such damages as provided in Article 5.1.3 transfer to the GAB at the **GAB's** sole cost and **expenses**, including any **stamp** duty payable by the Company as **transferor**, the title to the Demised Property. Save that damages **shall** be limited as provided in Article 19.4 below.

## ARTICLE VI

### ISSUES PENDING COMPLETION

- 6.1** The GAB **recognises** the huge resources required to **be** employed by the Company in respect of the Project and agrees that immediately after the

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signing of this Agreement to appoint at its own cost such representatives for the purpose of resolving and acting on all issues necessary to give effect to this Agreement including the revision of such laws as may be necessary for this Agreement in accordance with the intent hereof.

## 6.2 Conditions Precedent

Completion shall be subject to the Company acquiring the freehold interest to the lands set out in Appendix I, Schedule 4, on or before the Completion.

## ARTICLE VII

### PROVISION OF DOCUMENTS

- 7.1 **The GAB** shall promptly provide the Company with all documents reasonably requested by the Company for the purposes of this Agreement.
- 7.2 The GAB will support and assist the Company, Project Company, architects, planners, contractors and other professional and technical advisers, in obtaining approvals (where such approvals are required) from the appropriate authorities for its building plans, designs, drawings, land-use proposals and other matters reasonably related to the construction and the development of the Project. The GAB shall ensure timely processing and approvals for such applications submitted by the Company or on its behalf.

## ARTICLE VIII

### GAB'S OBLIGATIONS

- 8.1 Without **limiting** any obligation that the GAB shall have whether under this Agreement or otherwise, the GAB shall —
- 8.1.1 grant freehold title or leases to the Demised Premises as the case may be, to **the Company**, with vacant possession and free from all present and future encumbrances whatsoever.
- 8.1.2 where the Company, Project Company or GAB encounters any law which may delay or impede the timely progress of the development of the Project, the GAB shall grant the Company or Project Company, as the case may be, such waivers and exemptions from any such law. Where the existing laws and regulations do not expressly empower the GAB to grant such waivers and exemptions, the GAB shall use its best endeavours to procure the amendment of existing laws or the promulgation of new laws to ensure that the timely progress of the development is not delayed or impeded.



- 8.1.3** ensure that the Demised Property will be approved for tourism, hotel, commercial, golf, holiday homes, recreational purposes and residential development.
- 8.1.4** ensure that the Company, any Project Company or its nominated subsidiary or affiliate as the case may be, will be entitled to charge, encumber, transfer, assign, sublet or part with possession of the title.
- 8.1.5** indemnify and keep indemnified, the Company and any Project Company, in respect of any claims damages or losses in respect of any claims or prior encumbrances whatsoever, affecting any or all of the Demised Property howsoever arising.
- 8.1.6** expeditiously update and maintain the present infrastructure to a good standard, including all access roads outlined in red on the attached map marked as Appendix III and keep the said roads repaired and in good road condition and free from potholes to support the Project.
- 8.1.7** The GAB shall at its own expense install the electrical and water meters referred to in Article **4.1.5**.
- 8.1.8** The Meters mentioned aforesaid are to be of a high standard and approved by the Company.
- 8.1.9** The GAB shall expeditiously and at its own cost, ensure the installation of underground fibre optic telephone cables to a point to be designated by the Company, or install a telephone microwave station within the Demised property, from Antigua's principle international exchange. Such cables or microwave station are to be for the exclusive use of the Project and shall be of sufficient capacity to meet the full requirements of the Project with additional capacity to meet any future requirements and any other specific infrastructure or services which may reasonably be required by the Company, including but not limited to arrival and departure lounges at the airport, immigration and customs facilities for the exclusive use of the guest of the resort. Provided where such facilities are for the exclusive use of **the guest** of the resort, **the costs** of such facilities will be borne by the Company.
- 8.1.10** upon reasonable notice from the Company, carry out other similar works with respect to electricity, water and telecommunication requirements **at** the Crabbs Peninsula site, at such time as the

Company requests to enable the Company to **develop** and operate the Project.

8.1.1.1 **provide** a hanger site within the airport complex, at a peppercorn rental of United States Dollars One Hundred (**US\$100.00**) per **annum**, inclusive of permits for hanger construction of sufficient size for the Company's or its affiliate's jet aircraft and any other VIP aircraft, with hard standing area, exempt from airport standing or airport parking charges.

8.3 The GAB shall grant the following incentives and concessions to the Company or any applicable Project Company for each Component Site of the Project:

8.2.1 The GAB **recognises** that tourists arriving in Antigua to stay at the Project need timely clearance to ensure maximum goodwill. In this respect, the GAB shall at its own expense, do all **things** necessary to ensure the timely clearance through **immigration** and customs of guests and visitors to the Project, including de **ating** special personnel to ensure the same.

8.2.2 Grant of sub-division of land to build **villas/condominiums** for sale to foreigners without restriction whatsoever to purchase' the **villas/condominiums**, and issue of freely transferable separate land titles as and when requested by the Company, provided that such purchasers are not persons previously banned or prohibited by the GAB, from owning any real property in Antigua and Barbuda. Provided that nationals of Antigua and Barbuda shall always be entitled to purchase such **villas/condominium**.

8.2.3 Grant the Company permission to build such facilities as the Company deems necessary including:

- (a) a heliport at the **airfield** and at the resort;
- (b) dedicated bus stands for not less than 3 buses at the air terminal and cruise ship wharf terminal exits, provided the bus stand are operated by local taxis and the Company shall enter into contracts with local operators to that effect; and
- (c) **security access** for not less than 3 nominated resort **vehicles** to the Company's hangar for VIP pick up.

- 8.2.4 Exemption from income Tax for expatriates employed by the Company and free repatriation of their employment income, and the GAB shall exempt from any and all taxes, all income derived from the Project by contractors and consultants during the Development Period. The GAB shall not require or cause to be required any withholding tax or other taxes from any and all parties working on the Project.
- 8.2.5 Exemption from duty, consumption tax and customs service tax and or surcharges howsoever on all imports of machinery, equipment, fittings, building materials, Motor Vehicles, boats, aircraft, furniture, office equipment and other mechanical or construction material components for Project. PROVIDED THAT any of the abovementioned Motor Vehicles, boats, aircraft, furniture, office equipment purchased by the Company **and/or** Project Company shall be deemed to be for the Project, notwithstanding that the same may be utilized outside the Project site.
- 8.2.6 Five (5) years tax free development period followed by a **tax** free holiday for a period of ten (10) years with a further extension for a period of ten (10) years. The Company shall be entitled to carry forward its losses for a period of five (5) years.
- 8.2.7 Concession for the repatriation of capital profits and dividends.
- 8.2.8 Free repatriation of and exemption from withholding tax and any other taxes, if applicable on repatriation of profits, dividends and capital, and on payment of royalties, technical and management fees, interest, rentals or annuities howsoever.
- 8.2.9 Exemption from the payment of foreign currency levy on the purchase or sale of any currencies howsoever.
- 8.2.10 Permission under the Non-Citizens Land Holding Regulations Act for Non-nationals to own shares and property, be directors and to vote in general meetings of the Company or Project Company.
- 8.2.11 Exemption from gaming taxes howsoever in respect of **all** casino operations for the duration of the licence period as set out in Article 9.1.1 **and/or** any further renewal.
- 8.2.12 Exemptions from all sales taxes, capital gains taxes or **duties** on goods or equipment for the construction, development and maintenance of the Project, provided **that** such is **not** for the ongoing operation of the Project.
- 8.2.13 Exemption from development charges or **tax** howsoever.

- 8.2.14 Exemption from planning or processing fees.
- 8.2.15 Exemption from any and all taxes payable in respect of any acquisition of the Demised Property or any part thereof, by the Company, its **affiliates** and subsidiaries and any Project Company.
- 8.2.16 Free and unrestricted right to sell or transfer shares in the Company and land within the **group of Project Companies** and/or its financiers howsoever, and **exemption** from any and all taxes and stamp duties applicable in relation to such sale or transfer.
- 8.2.17 Upon the sale or lease of any part of the Demised Property to any Third Party (either a resident or national of Antigua and Barbuda or otherwise), the **Company** or Project Company shall be exempt from any payment of any tax or duty on such transfer or lease, and **only** the **Third Party** shall be required to pay the tax and or duty, at a maximum rate of 3 % of the transaction value.
- 8.2.18 For a period of fifteen (15) years from the date of transfer of the Demised Property to the Company, any subsequent sale transfer or lease of any part of the Demised Property between Third Parties (either a resident or national of Antigua or otherwise) shall be subject to the taxes or duties applicable to such sale transfer or lease at a maximum rate of three percent (3 %) of the transaction value, payable by each of the vendor and the purchaser.
- 8.2.19 The Demised Property within the Project shall be exempt from the requirements of **Undeveloped Land** Taxes howsoever, provided that the Company has substantially completed a minimum of a two hundred and fifty (250) rooms hotel, a casino and has started development of its golf course within thirty-six (36) months.
- 8.2.20 Exemption for the Company and the Project Company and its financiers from duties, property or other taxes or assessments, withholding taxes howsoever for any profits, share transfers, mortgages, repayment of mortgage, dividends and interest payment etc. for a period of not less than **fifteen** (15) years from the date of transfer of the Demised Property to the Company.
- 8.2.21 **The Company** and Project Company shall pay property **tax** at the same rate as that payable by other residents of Antigua and Barbuda for like property, provided that at no time **shall** the Project Company

and Company be required to pay any amount in excess of United States Dollars One Hundred Thousand (US\$100,000.00) per annum in property tax.

- 8.2.22 The GAB shall grant to the Company and the Project Company incentive schemes for the training and employment of staff of the Company for the purposes of the Project as may be negotiated between the Company and the GAB from time to time and any and all existing grants and subsidies made available for tourism and development related projects by the GAB. Any future incentive schemes **initiated** by the GAB shall similarly be made available to the Company.
- 8.2.23 The GAB shall grant exemption from import, duties, taxes or levies whatsoever to the staff of the Company or Project Company for their personal belongings and household items should same be required to move to Antigua and Barbuda to take up positions within the Project.
- 8.2.24 The GAB shall lease to the Company One Thousand Square metres (1,000 m<sup>2</sup>) of land at a peppercorn rental of United States Dollars One Hundred (US\$100.00) per annum for a period of Ninety-nine (99) years commencing from the date of this Agreement, and this site shall be deemed to be part of the Project site and be entitled to the same concessions granted to the Project site except for the utilities supplied. This facility is required to allow fast clearance of goods and equipment. The GAB shall use its best endeavours to ensure that shipments by the Company or Project Companies are not unnecessarily delayed due to shipment clearance procedures. The facility land shall be situated fronting the road leading to the wharf area as more particularly outlined in Blue on the map attached as Appendix IV;

and will consider in good faith, any other concessions which the Company may require from time to time

### 8.3 Upgrading of Infrastructure

- 8.3.1 The Parties agree and **recognise** that there may be a lack of **certain** infrastructure to support the needs or additional demands as a result of the development of the Project and the GAB agrees in good faith and undertakes to **upgrade, improve** or construct, as the case may be, such **infrastructure** or additional infrastructure as may be reasonably identified by the Company as necessary to support the needs of the Project.
- 8.3.2 Upon **notification** in writing by the Company to the GAB of any infrastructure which is reasonably required to be constructed or

upgraded to meet the needs of the Project, the **GAB** shall complete the building or upgrading of such infrastructure according to a time frame to be agreed upon by the Parties, or within six (6) calendar months whichever shall be the sooner.

- 8.3.3 In the event that the **GAB** is unwilling to carry out the necessary construction or upgrading of the applicable infrastructure inclusive of but not limited to **8.1.6, 8.1.7** and 8.1.9 or the Parties are unable to agree on a time frame for the upgrading or construction of the necessary infrastructure within thirty (30) days from the date of notice from the Company, the Company or Project Company shall without being obliged to, be entitled to undertake such construction or upgrading of the applicable infrastructure as the Company deems fit, for and on behalf of the **GAB**, at a budget to be agreed upon. In the event that the parties are unable to agree on the budget for the works, the Company shall tender out the said works to contractors which have been prequalified by the Company to carry out the said works and the Company shall not be entitled to pass on to the **GAB**, any cost of the construction over and above the lowest technically and commercially evaluated acceptable tender unless there are certified legitimate extra costs to the Initial contract price resulting from extra scope of work or unforeseen circumstances. The Company shall be entitled to reject any tender if the Company determines that any tender is incomplete or not in the format called for, or if the Company doubts that the tenderer is capable of completing the tender (as submitted) in a proper and workmanlike manner.
- 8.3.4 Any and all cost and expenses incurred by the Company or Project Company pursuant to **Article 8.3.3** above shall be payable by the **GAB** to the Company. In the event that the **GAB** does not immediately reimburse the Company for the costs as mentioned in Article 8.3.3, the Company shall be entitled to retain up to fifty percent (50%) of any taxes, duties, levies or fees (including hotel taxes or taxes relating to accommodation collected on behalf of **GAB**) in an escrow account to be utilised at the Company's discretion to meet obligations not met by **GAB** up to a maximum of United States Dollars five million (US\$5,000,000.00) or the equivalent in any other currency, at any one time. In addition to the costs above, the Company shall be entitled to interest on any and all unpaid sums at the rate of three percent (3%) per annum above the prevailing prime lending rate of the Bank of Nova Scotia in Antigua. Should the **GAB** be able to provide bank financing to the Company at a lower rate, the Company shall accept such finance at such low rate. The remaining fifty percent (50%) of such taxes duties levies or fees shall be paid to **GAB** as and when such taxes duties levies or fees become payable.

#### **8.4 Steering Committee.**

- 8.4.1 The Parties acknowledge and recognise the limited time frame within which the Project is intended to be developed and in

consideration of the Company undertaking the construction and funding of the Project, the GAB agrees to form a Steering Committee at no cost to the Company to minimise any delay in obtaining approvals and consents that may be required by the Project.

- 8.4.2 The Steering Committee shall be established within thirty (30) days from the execution of this Agreement and shall comprise members from each ministry or statutory body from which consents or approvals are necessary for the Project and personnel nominated by the Company.
- 8.4.3 The GAB shall empower the Steering Committee to take all reasonable steps necessary for the rapid and unimpeded progress of the development of the Project and ensure that the member from the applicable ministry or statutory body sitting on the Steering Committee take steps to ensure that the applicable ministry or statutory body provides the necessary consents or approval as expeditiously as possible.
- 8.4.4 The Parties shall ensure that the Steering Committee meet regularly and in any event not less than six (6) times a year and at any other time as the Company shall deem necessary, throughout the development of the Project.

## **8.5 Allocation of Funds to the Ministry of Tourism**

- 8.5.1 The GAB will give favourable consideration to appoint a nominee of the Company to sit on the committee responsible for the allocation of monies received by the Ministry of Tourism of Antigua and Barbuda for use in the promotion of Antigua and Barbuda, at no cost to the Company.
- 8.5.2 The GAB further agrees that it shall ensure that in any and all general promotion of tourism undertaken by the Ministry of Tourism, the resorts developed within the Demised Property will be included in any promotion of Antigua and Barbuda, at no cost to the Company and the Company shall have the option to participate in any special promotion at its costs on *apro-rata* basis.
- 8.5.3 In consideration of Article 8.5.2, the Company agrees that it shall ensure that Antigua will be promoted together with any and all promotions undertaken by the Company in respect of the resorts developed within the Demised Property, at no cost to the GAB.





- 9.1.8 permit the management of the casino to establish minimum standards for entry into the Demised Property in general and the casino in particular and permit the management to enforce those standards and restrict the right of admission to any member or person not meeting those standards;
- 9.1.9 grant the Company any other terms which the Company may reasonably request from time to time;
- 9.1.10 amend the applicable laws to permit the Management of the Casino to set reasonable table stakes in accordance with market demand;

PROVIDED THAT if the Company or Project Company fails to or is unable to substantially build a casino within three (3) years from the date of Completion, the abovementioned Articles 9.1.2 to 9.1.5 shall be null and void and of no effect whatsoever.

## **9.2 Other Permits and Licences**

In addition to and without limiting the generality of any foregoing Articles hereunder, the GAB shall grant the following additional permits and/or licences to the Company or any applicable Project Company:

- 9.2.1 Food and beverage, liquor, entertainment, hotel and casino licences effective for three hundred and sixty-five (365) days a year and for twenty-four (24) hours a day;
- 9.2.2 Public Service Vehicle licences to any Motor Vehicles or boats owned or imported by the Company or any Project Company, which may require the same, for the transport of goods or guest travelling to and from the resort and on tours of Antigua and Barbuda, provided that such Motor Vehicles or boats are operated by a member of an existing licensed operator or association or other recognised person licensed to operate such applicable motor vehicles or boats;
- 9.2.3 airways operators and landing permits for charter flights and or an airline, to allow the transport of goods and passengers;
- 9.2.4 licences in respect of private retransmissions or distribution for television and radio transmissions to owners, guest and staff within the Project, including satellite transmissions and radio wave transmissions;
- 9.2.5 radio communications licences for in-house communication and security services;

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- 9.2.6 any and all licences necessary for the importation of goods equipment and any other items for use or consumption on the resort during the development and for on-going operations subject to compliance with any trade ban imposed under the CARICOM treaties.
- 9.2.7 any and all contractors and construction licences;
- 9.2.8 money changing licences;
- 9.2.9 equipment hire/ rental licences;
- 9.2.10 import licences for the import of Motor Vehicles or boats or aircraft which the Company may deem necessary for the construction and ongoing operational needs of the Project, including any and all vehicles required for operation throughout Antigua and Barbuda;
- 9.2.11 sewerage treatment and discharge licences;
- 9.2.12 licence to import cement or at the option of the Company to negotiate with local importers to import the cement on behalf of the Company and/or to operate a cement import and batching plant and any and all associated mixers and transporters, provided that the Company shall give local suppliers the opportunity to compete for the business;
- 9.2.13 licence or permits to dredge sand from the bay adjacent to the Demised Properties for the Project and to create beaches for the Demised Property;
- 9.2.14 air transport licence for the Company or its nominee to operate a commercial helicopter ferry service;
- 9.2.15 landing rights for the Company or its nominee for charter flights from international destinations;
- 9.2.16 the granting of work permits and/or visas for expatriate sub-contractors and construction workers and employees for the management and operation of the Project. The Company recognises always that employment priority shall be accorded to suitably qualified and experienced nationals of Antigua and Barbuda, as the Company shall determine; however if the Company cannot find suitably qualified local labour after advertising in the local media, the Company and Project Company shall be at liberty to import and employ such forgoing labour as the Company and Project Company deem necessary and the GAB shall grant any and all necessary permission to employ expatriate labour and use foreign equipment;





to any purchasers of any property within the Demised Property including any successive or subsequent purchasers, whether or not such purchasers are resident in Antigua and Barbuda, or citizens of Antigua and Barbuda, or otherwise.

## ARTICLE X

### CONSTRUCTION

#### 10.1 Construction Timetable

Subject to Article 4.1.4, the Company shall use its best endeavours to construct a resort project of not less than two hundred and fifty (250) rooms, so as to be in a position to receive its first guest by Christmas 1998.

#### 10.2 Temporary work and diversions

The GAB shall use its best endeavour to ensure that all relevant agencies of the GAB will issue all necessary permits for buildings and civil works, including any temporary structures and roads, and in the case of electrical power supply lines or water mains or pipelines necessary for the Project, the GAB shall provide such rights of way over on or under such land or other property as may be required for the construction of the same, free of charge to the Company.

#### 10.3 GAB Undertakings

The GAB shall:

- 10.3.1 permit the Company or its nominee to operate such incinerator(s) as may be necessary;
- 10.3.2 permit the Company or its nominee to establish its own refuse disposal site at a suitable location within the Project.
- 10.3.3 permit the Company or Project Company to construct over water and move the boundary as may be necessary encompass such construction and to suit the Project requirements;
- 10.3.4 permit high density usage of the site; and



## 12.2 Tax Free Zone

In addition to any and all concessions granted by the GAB to the Company and for the Demised Property, the GAB undertakes that any and all retail shopping precincts to be developed within the Project shall be zoned as a tax and duty free zone. Such approval shall be granted by the GAB within sixty (60) days from the application by the Company.

## INSURANCE

### 13. Insurance

The Company will at all times effect and maintain or cause to be effected and maintained adequate insurance coverage which shall comply with the laws of Antigua and Barbuda. Insurance coverage shall include public liability insurance and Workmen's Compensation.

## ARTICLE XIV

### *FORCE MAJEURE*

#### 14. *Force Majeure*

14.1 Any failure of the Company to comply with any of the terms, conditions and provisions of this Agreement shall not be grounds for termination or give rise to any claim for damages or otherwise insofar as such failure arises from *Force Majeure*. The Company shall take all reasonable measures to remedy such failure and comply with the terms of this Agreement with the minimum of delay.

#### 14.2 *Force Majeure defined*

The expression "*Force Majeure*" shall include —

- 14.2.1 war, hostilities (whether war be declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection, military or usurped power, civil war, terrorism;
- 14.2.2 ionising radiation or contamination by radioactivity from any nuclear waste, from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof;
- 14.2.3 pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;





English and delivered by registered mail, **courier** or by hand, with receipt acknowledged or delivery **confirmed**, to the address of the recipient shown below or to such other address as the recipient may have notified the sender and shall be deemed to be duly given or made:

**16.1.1** when delivered to the recipient at such address:

(i) if for the GAB to:

Tel:

Telefax:

(ii) if for the Company to:

Tel:

Telefax:

## **ARTICLE XVII MISCELLANEOUS**

### **17.1 Indemnity**

The Company shall indemnify the GAB for any action or proceedings taken against the GAB by any third party arising from any wrongful **act/acts** done by the Company in respect of the implementation of the Project.

### **17.2 Declaration against Waiver**

The condonation by either party of any breach or breaches by the other party of any stipulation and conditions contained in this Agreement shall in no way prejudice or affect or be construed as a waiver of the rights, powers and remedies of the party not in breach under this Agreement in respect of any other breach or breaches as aforesaid.

### **17.3 Law**

This Agreement shall be interpreted and construed in accordance with the laws of England.



the date of the receipt of a written notice from either (i) GAB or (ii) the Company (as the case may be), directing the defaulting party to remedy the default, either (i) GAB or (ii) the Company (as the case may be), shall be entitled to terminate this Agreement in writing to the defaulting party.

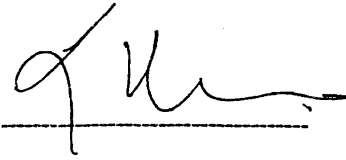
**19.2** Upon receipt of a notice referred to in Article 19.1, the parties shall meet to endeavour to resolve their differences.

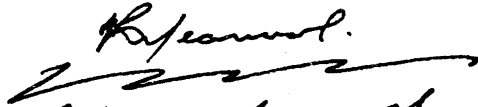
**19.3** Upon the termination of this Agreement as provided in Article 19.1, all further obligations of the parties hereunder shall cease but without prejudice to rights already accrued to the parties.

**19.4** Any damages claimed by either party shall be limited in every instance, to actual damages suffered by the respective party up to and including the date of the breach and shall not include consequential or foreseeable damages.


IN WITNESS WHEREOF the parties have executed this Agreement on the day and in the year first mentioned.

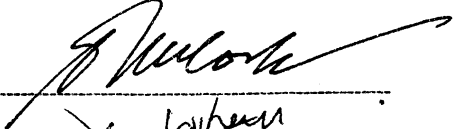
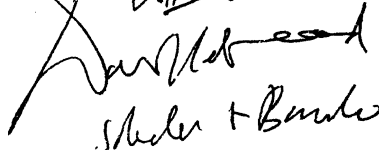
SIGNED, SEALED AND DELIVERED  
by and on behalf of the Government of  
Antigua by the HONOURABLE LESTER  
B. BIRD, Prime Minister of Antigua and  
Barbuda this 18th day of February 1997, in  
the presence of :

  
\_\_\_\_\_

  
Attorney General

SIGNED, SEALED AND DELIVERED  
by and on behalf of ASIAN VILLAGE  
ANTIGUA LIMITED by LIM SAY  
CHONG Director of ASIAN VILLAGE  
ANTIGUA LIMITED on this 18th day of  
February 1997 in the presence of:

  
\_\_\_\_\_

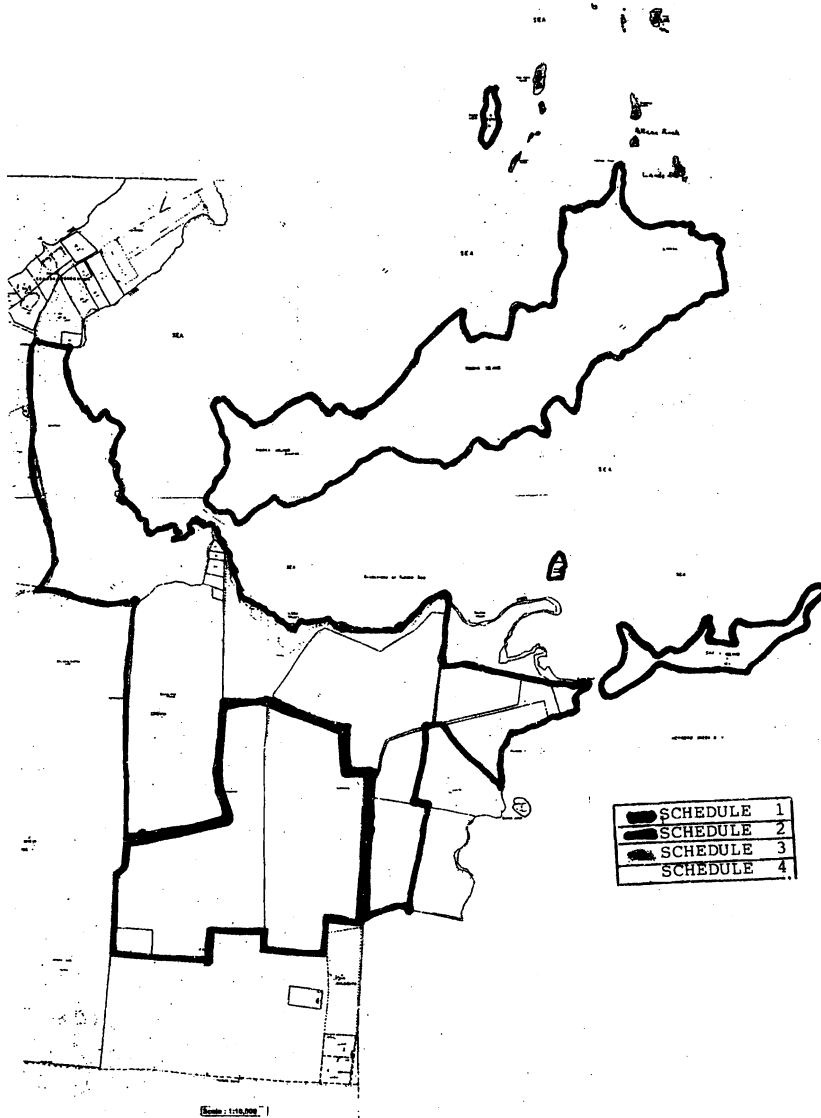
  
Witness  
  
Sheldon + Bunker

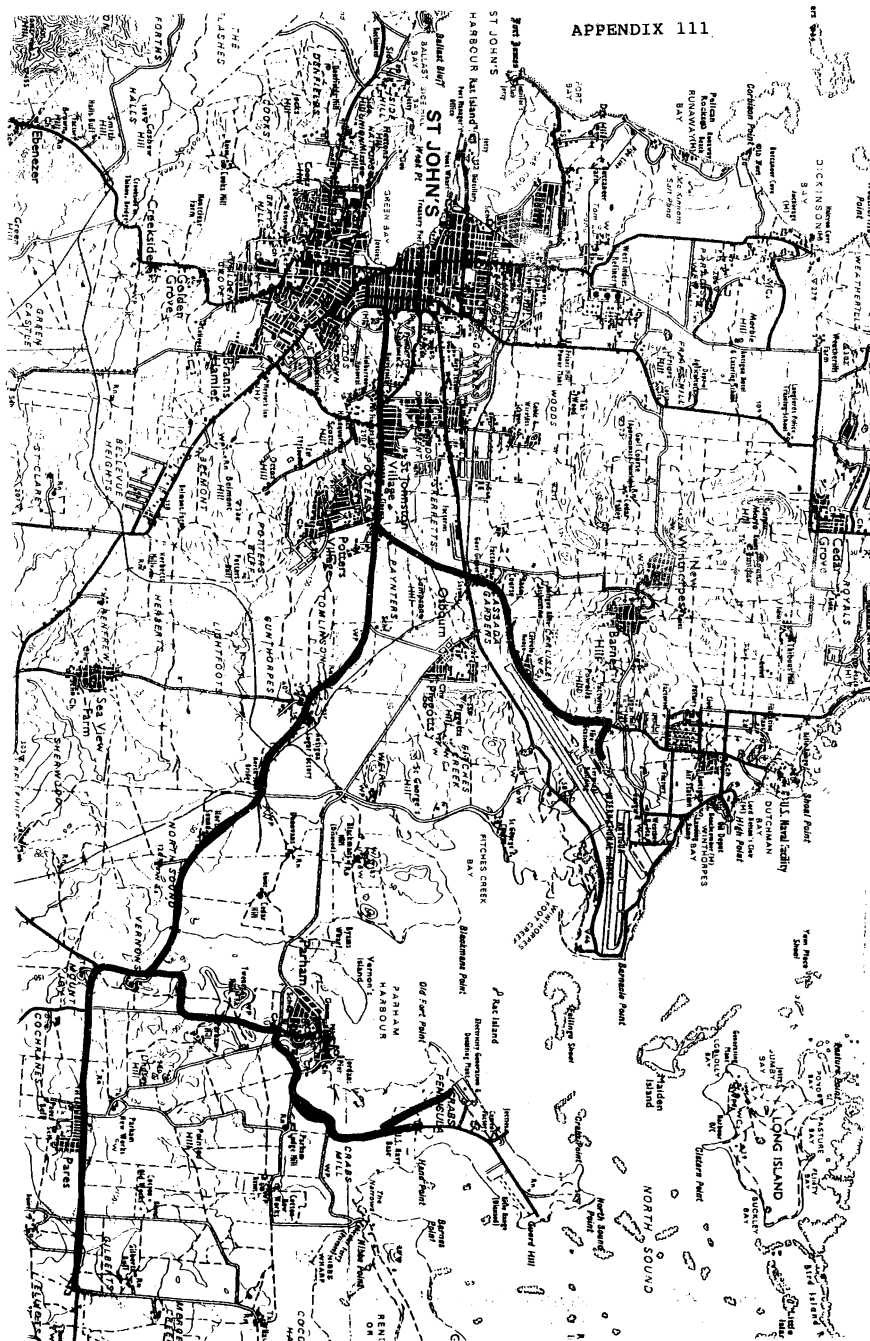


**SCHEDULE 4 (Article 6.2)**

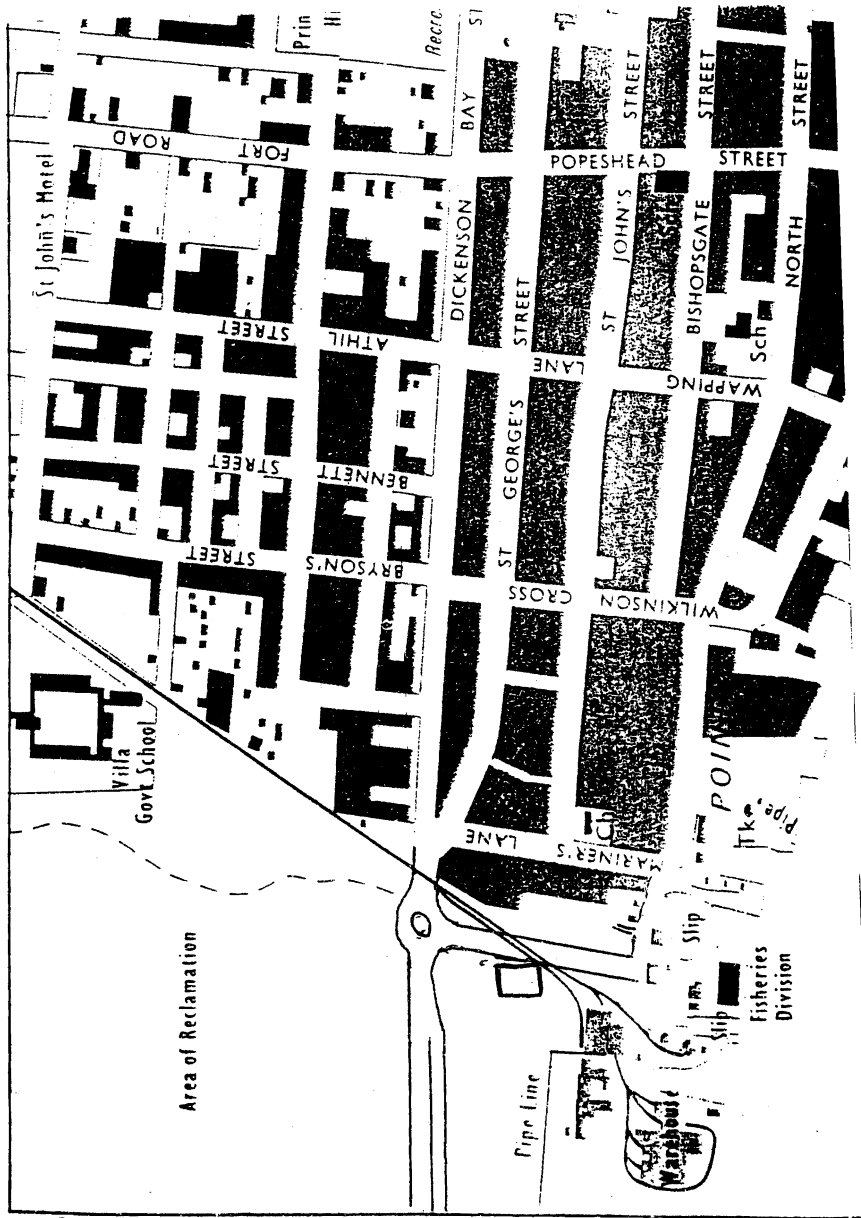
**JEFF HADEDS LAND**

All the lands known as Jeff Haded's land as marked in Yellow on the map attached as Appendix II.





APPENDIX IV







**defined** in Clause 3.1, the Company shall notify the **GAB** in writing of such **determination. Upon notification to the** GAB, and without affecting any other **term or obligation** of either party under this **Agreement**, the **Company** shall thereafter have no further obligation to **complete** the Master Plan.

- 3.3. At any time after the Development ~~Period~~, the Company may upon notifying the GAB, **further** develop any part of the Master Plan not previously completed. All **terms** and conditions under **this Agreement** shall apply *mutatis mutandis* to any further development referred to in this Clause 3.3.

## 2 ARTICLE IX

~~Delete~~ Clause 9.2.13

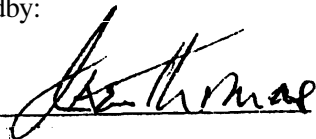
Except as specifically amended herein, the Agreement remains in full force and effect.

**Government** of Antigua and Barbuda  
by **Hon. Lester B. Bird, Prim Minister**



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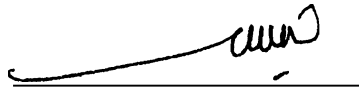
Witnessed by:



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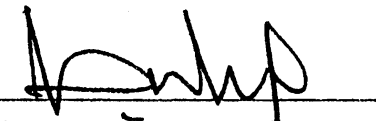
**James A. E. Thomas, Ambassador**

Asian Village Antigua **Limited**  
by **Lim Say Chong, Director**



---

Witnessed by:



---

TEM YONE FAH

ANTIGUA  
AND  
BARBUDA

50 *The Asian Village Resort (Incentives)  
Act, 1997.*

No. 14 of 1997.

Passed the House of Representatives this  
6th day of October, 1997.

Passed the Senate this 20th day of  
October, 1997.

**M. Percival,**  
*president.*

**B. Harris,**  
*Speaker.*

**S. Walker,**  
*Clerk of the House of Representatives.*

**S. Walker,**  
*Clerk of the Senate.*

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