



GOVERNMENT OF PUERTO RICO  
Puerto Rico Tourism Company

OFFICE OF THE EXECUTIVE DIRECTOR

**Concession of Tax Exemption and Tax Credits** granted to **RINCÓN BLUE WATER, LLC** with Employer Identification No. **66-0856245** (the "Applicant"), **Concession Number 17 74-T-03**, pursuant to the provisions of Act No. 74 -2010, as amended (the "Act") and the Regulation No. 8185 promulgated on April 20, 2012 (the "Regulation"), and Resolution 2017-08 issued on July 25, 2017 (the "Resolution") by the Disbursement Authorization and Tax Concession Committee (the "Committee"), pursuant to the provisions of the Administrative Order OA-2017-01 issued on March 7, 2017 by the Fiscal Agency and Financial Advisory Authority of Puerto Rico (the "Order").

**CONCESSION**

**WHEREAS**, the Act empowers the Executive Director (the "Director") of the Puerto Rico Tourism Company (the "Tourism Company") to grant (i) investment tax credits under Section 5(a) of the Act and (ii) tax exemption from specified taxes to an Eligible Business, if the Applicant proves, to the satisfaction of the Director, that an Eligible Business as defined in the Act has been established, or will be established, and that such Eligible Business will be in the best interests of the Government of Puerto Rico;

**WHEREAS**, on August 31, 2016, the Applicant filed an application for a Concession under the provisions of Section 2(a)(1)(A) of the Act, in connection with the **development, ownership and operation** of a two hundred (200) rooms hotel, with casino, restaurants, gym, laundry, meeting room, parking spaces and other ancillary amenities, to be known as "**Rincón Blue Water Resort & Casino**", located at Ensenada Ward, Municipality of Rincón, Puerto Rico (the "Tourism Activity or "Exempt Business");

**WHEREAS**, Applicant's members (the "Investors") will be: (i) Lonnie J. Fuller with social security number xxx-xx-9117; Blue Water M&A, LLC with employer identification number 66-0836143; Melvin Bratton with social security number xxx-xx-9049 and David C. Norton, with social security number xxx-xx-4016; according to the information provided by the Applicant;

**WHEREAS**, on March 31, 2016 the Applicant entered an Option Agreement with CALRINCON, Corp., for the purchase of the Property;

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**WHEREAS**, on April 31, 2016 the Applicant entered an Operating Agreement with the Investors, for the operation of the Tourism Activity;

**WHEREAS**, the Director, after having examined the report of the Investment and Incentives Division of the Tourism Company, the endorsement of the Secretary of the Treasury Department (the "Secretary"), the Resolution of the Committee, the application for Concession of tax exemption and tax credits (the "Application"), and other documents relating to this case submitted by the Applicant, has determined that the Applicant will develop an Eligible Business within the meaning of the Act and that the same will be in the best interests of the Government of Puerto Rico;

**NOW, THEREFORE, BE IT DECREED**, that in accordance with the terms and conditions of this Concession, the Director grants to the Applicant: (i) investment tax credits under Section 5(a) of the Act and (ii) tax exemptions in accordance with the applicable provisions of the Act, for such tourist activities as defined in Section 2(a)(1)(A) of the Act and Section 2-1(A)(1) of the Regulation, in connection with the **development, ownership and operation** of the Tourism Activity; PROVIDED, that the operations of the Tourism Activity shall be carried out substantially as described in the Application and in accordance with the terms and conditions of the Act;

**BE IT FURTHER DECREED**, that pursuant to the Order, the Committee is required to evaluate the Application for Tax Credits and to those effects has issued the Resolution endorsing the same;

**BE IT FURTHER DECREED**, that Applicant qualifies as an **Eligible Business** under Section 2(cc) of the Act since it is not covered by a resolution or Concession of Tax Exemption under the Tourism Incentives Act of 1983 or the Puerto Rico Tourism Development Act of 1993;

**BE IT FURTHER DECREED**, that Applicant qualifies as a **New Business**, as such term is defined in Section 2(ff) of the Act, since it will use new facilities that have not been used in a tourism activity during the thirty-six (36) month period prior to the filing date of the Application;

**BE IT FURTHER DECREED**, that based on the statements made by Applicant, the calculation of the Tourism Activity's **Eligible Investment** and **Total Project Cost**, as defined in Sections 2(u)(1)<sup>1</sup> and 2(k) of the Act and Sections 2-8 and 5(c)-5 of the

<sup>1</sup> With the approval of Act 136 of August 5, 2016 and the Act 137 of August 6, 2016, the paragraphs of the Act were re-enumerated. There are discrepancies in the drafting and intention of both laws. Therefore, the Tourism Company will be working on the final inclusion of amendments to the Act and the corresponding paragraphs.

Regulation, respectively, **excludes** (i) any expense incurred before **June 16, 2016**, the date when the application was filed; (ii) any cost associated to non-tourism activities; (iii) the estimated cost for the time spent by the Developers or by any stockholder of the Exempt Business; (iv) expenditures for the acquisition of land, construction and habilitation of Condohotel under the Section 5(c)-5 of the Regulation; (v) the money used to acquire facilities which have been dedicated to a Tourism Activity in a way that could not be categorized as "incidental" at any time during the thirty-six (36) months prior to the filing of an application for a Concession under the Act, unless such facilities shall undergo a substantial renovation or expansion requiring an investment exceeding one hundred percent (100%) of the value of said property, which under no circumstances shall be considered in the computation of what constitutes the total estimated cost of the Tourism Activity and/or the eligible investment; and (vi) any money incurred **after** the date of completion of the Tourism Activity *except* for those to be use in expenditures related to periods after said completion date as provided in Section 2(k) of the Act Sections 2-8 and 5(c)-5 of the Regulation;

**BE IT FURTHER DECREED**, that based on the statements contained in the documents submitted with the Application for a Concession, the following determinations are made:

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1. The **total estimated eligible Tourism Activity cost**, for purposes of determining the tourism investment tax credit under the provisions of Section 5(a) of the Act, is \$150,000,000.00;
  2. The **eligible cash investment**, for purposes of determining the tourism investment tax credit under the provisions of Section 2(u)(1) of the Act, is \$150,000,000.00; provided that the Applicant represented that the total amount invested was contributed by the Applicant's Investors (the "Investors") in exchange of an equity interest obtained in an initial offering and, that such investment will be used to finance the Tourism Activity.
  3. Pursuant to Sections 5(d)(1) and 5(d)(3) of the Act, the **maximum amount of the tourism investment tax credit** (hereinafter referred to as "TITC's") available for distribution to the Investors is **\$15,000,000.00** which is equal to the lesser amount between:
    - a. \$15,000,000,.00 or the ten percent (10%) of the total estimated Tourism Activity cost as determined by the Director in paragraph 1 of this section; and
    - b. \$75,000,000.00 or the fifty percent (50%) of the eligible cash investment as determined by the Director in paragraph 2 of this section.

4. In accordance with Section 5(d)(3) of the Act, the amount of the **Tax Credits** to be allocated to Investors shall be notified in writing to the Director and the Secretary. **Said allocation shall be irrevocable and binding.** In meeting the notification requirements of Section 5(d)(3) of the Act, Applicant shall apply and follow the procedures established in Section 5(c)-5 of the Regulation.
5. Investors, **Lonnie J. Fuller; Blue Water M&A, LLC; Melvin Bratton and David C. Norton**, to whom a portion of the TITC's would be distributed, **are considered as Developers**, as such term is defined in Section 2(m) of the Act; provided that the Developer of the Tourist Activity is authorized to **sell and transfer the TITC's** to be distributed, **prior** to the total completion of the Tourism Activity, subject to all of the following conditions:
- a. The Developers of the Tourist Activity are authorized to sell and transfer the TITC's distributed to them, prior to the total completion of the Tourism Activity; PROVIDED, that as required in Section 5(e)-1 of Regulation, the Developers of the Tourism Activity has provided, for the benefit of the Secretary, a **Tax Credit Financial Guarantee Bond**, covering the total amount of the TITC's allocated to the Developers. The aforesaid guarantee shall remain in place until the Director certifies that the construction of the Tourist Activity has been completed, and that all the requirements stated in the Act, its Regulations and this Concession have been met. In order to obtain the Director's certification, Applicant shall provide an **agreed upon procedure ("AUP") report** from an independent certified public accountant acceptable to the Director, determining the use and investment incurred in the Tourist Activity. Such AUP report shall be prepared in form and substance approved by the Director, pursuant to Section 5(d)-4 of the Regulation.
6. Applicant shall comply with the annual report requirements of Section 5(e)(2) of the Act and Section 5(d)-3 of Regulation. Furthermore, if the Director determines that the eligible Tourism Activity cost exceed the amount established in this Concession, the exceeding amount shall constitute an income tax debt and have to be paid by the Developer in accordance to Section 5(e)(3) of the Act (the "Recapture Amount"). Such Recapture Amount could only be imposed upon the Developer, given that the provisions of Section 5(e)(3) of the Act does not apply to the person who acquired the TITC's from the Developer.

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7. Pursuant to Section 5(e)(7) of the Act, the Secretary shall be notified, through a Sworn Statement, of the TITC's sale or transfer, in accordance with the procedures established in Sections 5(f)(1) and 5(e)-4 of Regulation.
8. The above referenced TITC's will be made **available** immediately **after Applicant** has complied with the requirements of Section 5(d)(3) of the Act and Sections 5(a)-4 and 5(c)-5 of Regulation, concerning cash contributions made in exchange for equity interest in Applicant, as specified in Section 2(u)(1) of the Act and Sections 2-18(a) and 2-14 of Regulation.
9. Any person (a "Purchaser") that purchases TITC's from an Investor may claim up to fifth percent (50%) of the Tax Credits so acquired as a credit against the Puerto Rico income tax imposed by the Internal Revenue Code in effect, on the Purchaser's taxable year that commences on or after the first day of Investor's First Taxable Year (the "Purchaser's First Taxable Year"), while the remaining fifth percent (50%) of the Tax Credits, as well as any Tax Credits not claimed by Purchaser in its' First Taxable Year, may be claimed by the Purchaser in any subsequent taxable year.
10. **If Applicant fails to comply with the provisions of the Act, this Concession or any Regulation regarding the use and investment of the funds,** this Concession shall be terminated by the Director and the investment tax credits allocated shall be deemed as tax credits taken in excess subject to recapture from the Developer, pursuant to Section 5(e)(3) of the Act and Section 5(d)-3 of Regulation;

**BE IT FURTHER DECREED,** that the tax exemption granted herein shall be applicable only to the **income and property derived or used in connection with the Tourist Activity carried out by the Concessionaire at its facilities,** and such other property specifically declared exempt by the Act.

**BE IT FURTHER DECREED,** that taking into consideration **August 31, 2016 as the date when the application was duly filed,** after it is approved by the Committee, the Applicant herein shall be entitled to a tax exemption period **of ten (10) years,** and that the effective dates of said exemption shall be the following:

- A. **Municipal and Government Taxes on Personal and Real Property**  
Applicant's property used in the operations of the Tourism Activity described above shall enjoy a **ninety percent (90%) exemption** from any municipal and state Government taxes on personal and real property with PIN

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Numbers 095-099-127-08-000. For these purposes, the tax exemption period shall commence on **January 1<sup>st</sup> of the calendar year in which the Tourism Activity begins operations;**

As provided in Section 5.02 of Act No. 83 of August 30, 1991, as amended, known as the "Municipal Property Tax Act of 1991(the "Act 83"), for exempted businesses under the Act 74-2010 whose property tax exemption period has not started as per the terms of its grant for real property and which submits an application for exemption under this Section of the Act 83 to the Municipal Revenue Collection Center ("CRIM", for its Spanish acronym), the portion of land in which the construction is being carried out or in which the equipment and machinery is installed or used for the term of the exemption provided in this Section shall also be deemed to be exempted from property taxes for no more than three (3) years from the date such machinery, material or equipment is available in Puerto Rico for its installation or use in a construction in progress.

**B. License Fees, Excise Taxes, and Other Municipal Taxes**

Applicant shall be **one hundred percent (100%) exempt** from the payment of any license fees, excise taxes, and other municipal taxes with regards to the Tourism Activity that are levied pursuant to any ordinance of any municipality. For these purposes, the tax exemption period shall commence on **January 1, 2017;**

**C. Municipal Construction Excise Taxes**

Applicant, as well as any of its contractors or subcontractors, shall be **one hundred percent (100%) exempt** from the payment of any municipal construction excise taxes with regards to the Tourism Activity that are levied pursuant to any ordinance of any municipality. For these purposes, the tax exemption period shall commence on **August 31, 2016;**

**D. Taxes on Articles of Use and Consumption  
Excise Taxes**

Applicant shall be **one hundred percent (100%) exempt** from the payment of taxes levied under Subtitle C and DDD of the Code with respect to articles that are acquired and used in the development, construction, or operation of the Tourism Activity.

The exemption conferred herein shall not apply to goods or other property of such nature that would be considered as part of the inventory of the Eligible Business pursuant to Section 1031.01(a)(2)(B) of the Code. In

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addition, articles, furniture, or merchandise that is not used directly in the operation of the Eligible Business shall not be exempt from excise taxes. For these purposes, the tax exemption period shall commence on **September 30, 2016**;

#### **Sales and Use Tax**

Applicant shall be **one hundred percent (100%) exempt** from the payment of sales and use taxes levied pursuant to Sections 4020.01 and 4020.02 of the Code, with respect to articles that are acquired and used in the development, construction, or operation of the Tourism Activity.

The exemption conferred herein shall not apply to goods or other property of such nature that would be considered as part of the inventory of the Eligible Business pursuant to Section 1031.01(a)(2)(B) of the Code. In addition, articles, furniture, or merchandise that is not used directly in the operation of the Eligible Business shall not be exempt from excise taxes. For these purposes, the tax exemption period shall commence on **September 30, 2016**;

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#### **E. Income Tax**

**Ninety percent (90%)** exempt from payment of income taxes on (i) income derived by Applicant from the Tourism Activity and the reinvestment thereof in other Tourism Activities, as specified in Sections 2(t) and 3(a)(1) of the Act and Sections 2-16 and 2-17 of the Regulation; (ii) the dividends distributed by Applicant from earnings and profits attributable to "Tourism Development Income" ("TDI") to its members; and (iii) any gain derived during the Exemption Period from the sale or exchange of the membership interest in Applicant (including a redemption or liquidation of said membership interest), that is attributable to the Tourism Activity, or of substantially all or all of the assets used by Applicant in the Tourism Activity, provided all the rules contained in Section 3(a)(1) of the Act are met.

The exemption for TDI shall apply to TDI allocated to Applicant's members for every taxable year Applicant qualifies as a special partnership under Subchapter D of Chapter 11 of Subtitle A of the Code, or is subject to taxation pursuant to the provisions of Chapter 7 of Subtitle A of the Code, and to any distribution by Applicant's members that is a corporation, limited liability company or partnership that has not made an election under Subchapter D of Chapter 11 of Subtitle A of the Code, or is not subject to taxation pursuant to the provisions of Chapter 7 of Subtitle A of the Code,

to its shareholder(s), member(s) or partner(s); any subsequent distribution of TDI by a shareholder(s), member(s) or partner(s) of such corporation, limited liability company or partnership shall be one hundred percent (100%) exempt from income tax under the Code. In the event Applicant, does not qualify as a special partnership under Subchapter D of Chapter 11 of Subtitle A of the Code, or is not subject to taxation pursuant to the provisions of Chapter 7 of Subtitle A of the Code, during a taxable year, the exemption for TDI shall apply initially at Applicant's level.

This exemption provided in this Subsection E for a gain derived from the sale, exchange, or other disposition, including redemption or liquidation, of stock or membership interests during the Exemption Period, is subject to the conditions contained in this Concession. Such exemption shall not apply to the extent that such gain is attributable to non-tourism activities. Upon the sale, exchange, or other disposal of stock or membership interest by a Developers, the assets of Applicant must continue to be used in Tourism Activities for a period of not less than twenty-four (24) months.

This exemption provided in this Subsection E for a gain derived from a sale or exchange of substantially all of the assets of Applicant used in the Tourism Activity, is subject to the condition that such assets continue to be used in Tourism Activities after the date of such sale for a period of not less than twenty-four (24) months, or any shorter period in which a genuine effort is made to conduct a Tourism Activity, as determined by the Director. This exemption shall not apply in the case of a sale of (i) less than substantially all of the assets of Applicant used in a Tourism Activity; (ii) all of the assets of Applicant used in the Tourism Activity, if the sale occurs after ten (10) years from the commencement of the income tax exemption period; and (iii) any assets not used in a Tourism Activity.

The Applicant shall have the option to elect that TDI for a specific taxable year not be covered by the income tax exemption granted herein. To elect such option, Applicant shall file a notice to such effect with its income tax return, or partnership information income tax return, as applicable, for such taxable year, to be filed on or before the date provided by the Code for the filing of such return, including any extension of time to file granted by the Secretary. Any taxable year elected not to be covered by the income tax exemption granted herein shall not be included for purposes of calculating the Exemption Period during which Applicant is entitled to income tax exemption under this Concession. For these purposes, the tax exemption

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period shall commence on **the date the Tourism Activity initiates operations**;

F. **Fuel Tax**

Applicant shall be entitled to an exemption of **one hundred (100%) percent** from the payment of the tax under Subtitle C, Sections 3020.07 and 3020.07(a) of the Code imposed on all petroleum products (excluding residual no. 6 or bunker C) and any other hydrocarbon mixture (including propane and natural gas) used as fuel by the Exempt Business in the generation of electricity or thermal energy used by the Exempt Business in connection with its tourism activities. For these purposes, the tax exemption period shall commence on **the date the Tourism Activity initiates operations**.

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**BE IT FURTHER DECREED**, that the Applicant may elect to postpone each one of the **dates of commencement of the various exemptions** hereby granted by filing a notice to this effect before the Director, the Secretary, the Committee, the Executive Director of the CRIM, the Commissioner of Municipal Affairs and the Municipal Treasurer of the Municipality where the Tourism Activity will take place. Said notices must be filed together with the Application during the thirty-six (36) months period calculated from the date provided for the commencement of the exemption on or before the filing date of any return (including extensions) of: (i) income tax; (ii) property tax; or (iii) license fee or municipal excise tax, and, in connection with excise taxes and municipal construction taxes, such notice may be filed at any time after the issuance of this Concession. The commencement of any exemption **may be postponed** for a period not greater than thirty-six (36) months following the date such exemption otherwise would have commenced;

**BE IT FURTHER DECREED**, that the **tax exemption hereby granted shall expire** according to the effective dates established in this Concession in accordance with the provisions of the Act, unless previously terminated or revoked in accordance with the applicable provisions of the Act and its Regulations;

**BE IT FURTHER DECREED**, that as an essential condition to the continuance of the tax exemptions provided in this Concession, Applicant must always comply to submit annually to the Director a request for Certification of Compliance with the Governing Principles (the "Certification") provided in Article 91, Section 1-A of the Act No. 187 of November 17, 2015 (the "Act 187"), pursuant to the provisions of the Article 91, Section 1 B of the Act 187. The Director will require to the Applicant information requested by Act 187 through a sworn statement, and **the Applicant will need to submit it within ten (10) days after the close of the taxable year of the Exempt Business**. If the Applicant does not submit the information requested, **the Director shall not issue the**

**Certification and the Agencies shall not recognize the exemptions under Act 74, until the Exempt Business complies with its responsibility.** The Secretary of the Department of Treasury, the Executive Director of the CRIM or any other official or governmental agency that relates to any of the benefits or incentives granted by the Act 74 is obliged to grant the benefit or incentive if the Concessionaire obtains the current compliance Certification, as provided in Section 1-B of the Act 187;

**BE IT FURTHER DECREED**, that the income tax exemption is conditioned to the Applicant's investment of no less than the twenty percent (20%) of its net income derived from its Tourism Activities in:

1. A promotion, publicity and marketing plan for its Tourism activities according to the particular circumstances and needs of the Eligible Business.
2. The compliance with adequate standards of sanitation and of protection and security to the clientele.
3. A training and re-training program of its personnel.
4. A reasonable percentage of facilities for physically disabled persons.
5. A conservation plan of improvements and maintenance of its plant and of the environmental and aesthetic infrastructure.

For the purpose of determining if the above referenced investment requirement is met, the Applicant's net income shall exclude those expenses paid or incurred on the aforesaid categories;

**BE IT FURTHER DECREED**, that this Concession may be terminated if the Applicant or Tourism Activity fails to **open to the public** on or before **July 31, 2020** or such longer period of time as may be allowed by the Director at the request of the Applicant;

**BE IT FURTHER DECREED**, that as an essential condition to the issuance and continuance of this Concession, the Applicant, individually or in conjunction with the Operator, must maintain an aggregate average annual **employment requirement** of a minimum of **one hundred fifteen (115) direct employees** in the activities covered by this Concession (the "Employment Requirement"); PROVIDED THAT, the Employment Requirement will be based on a calculation of the monthly average employment generated;

**BE IT FURTHER DECREED**, that the Applicant must always comply with the Employment Requirement of the preceding clause, except in cases of unforeseen circumstances, which may cause a **reduction of employment beyond the control of**

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**the Applicant**, at which occurrence or at the earliest date when such occurrence is contemplated, the Applicant is subject to one of the following alternatives:

1. If the reduction represents less than ten percent (10%) of the Employment Requirement, Applicant, shall have no obligation to notify the Director of such reduction;

2. If the reduction represents ten percent (10%) or more but less than twenty-five percent (25%) of the Employment Requirement, Applicant, shall notify the Director, with copy to the Puerto Rico Department of Labor and Human Resources ("DLHR"), and the Department of the Treasury ("Treasury"), of said reduction of employees on a sworn statement sent by certified mail with return receipt requested, or in the alternative, should file said sworn statement personally at the Office of the Director with copy to the DLHR and Treasury or sent by certified mail return receipt requested;

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3. If the reduction represents twenty-five percent (25%) or more of the Employment Requirement, the Applicant, must file a Sworn Statement to the satisfaction and acceptance of the Director, which acceptance shall not be unreasonably withheld, requesting approval of the Director for such reduction and notifying the number of direct jobs generated by the Tourism Activity at the time the Sworn Statement is filed. Applicant must also file a copy of such Sworn Statement with DLHR and Treasury. The Director shall issue a written determination regarding Applicant's compliance with the Employment Requirement within sixty (60) days from the date of receipt and acceptance of such Sworn Statement (the "Employment Requirement Determination"). When evaluating Applicant's compliance with the Employment Requirement, the Director shall take into consideration events that constitute reasonable grounds for a reduction in Applicant's employment, including, but not limited to, strikes, war, action of a Government or the elements, or any other reasonable cause beyond the control of Applicant. If Applicant does not receive the Employment Requirement Determination from the Director within aforementioned sixty (60) day period, then Applicant shall without further action or formality, be deemed to be in compliance the Employment Requirement. The Director may, in lieu of terminating this Concession in those cases in which the Director determines that Applicant is not in compliance with the Employment Requirement:

- a) Reduce the rate of tax exemption according to a proportion of the amount of reduction in employments to the amounts specified herein for the Employment Requirement; or

- b) Approve a temporary reduction of the Employment Requirement when the circumstances merit such a reduction, by negotiating any other reasonable conditions satisfactory to both Applicant and the Government of Puerto Rico, if the Director determines that such negotiation furthers the purposes of the Act;

**BE IT FURTHER DECREED**, that this Concession may be terminated if Applicant does not submit to the satisfaction of the Director the following information and documentation:

1. **Within four (4) months after the acceptance of the Concession or such longer period of time as approved by the Director**, submit a duly signed copy of:
- a. Deed of Purchase and Sale;
2. **On or before the commencement date of the Tourism Activity**, submit a copy of:
- a. Certificate of public liability insurance by an agency certified by the Insurance Commissioner of Puerto Rico, including the Tourism Company as additional insured with a hold harmless endorsement;
3. **Within ninety (90) days after the commencement date of the Tourism Activity or such longer period of time as approved by the Director**, submit a copy of:
- a. OGPE Construction Permit;
  - b. Use Permit;
  - c. Certificate of Public Establishment issued by the Department of Health;
  - d. Municipal License;
  - e. Alcoholic Beverages License issued by the Treasury Department;
  - f. Certificate of Inspection from the Puerto Rico Fire Services;
  - g. Inventory of any real and personal property which will be used in the Tourism Activity;
  - h. Promotion, publicity and marketing plan;
  - i. Training and retraining plan for personnel; and
  - j. Conservation, improvements and maintenance plan for the physical facilities and for environmental and aesthetic infrastructure;
  - k. Client safety measures;
  - l. Facilities for the physically handicapped

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**BE IT FURTHER DECREED**, that the tax exemptions granted herein shall be applicable only to the **property used in connection with the Tourism Activity** stated above **and** to the **income** (as defined in the Act and in the corresponding provisions of the Regulation promulgated thereunder) **derived from the operation of the Tourism Activity** which gives rise to the exemption provided by this Concession, and such other property specifically declared exempt by the Act;

**BE IT FURTHER DECREED** that the **Concession shall not constitute an exemption from:**

- a) Workmen's compensation premiums required by law;
- b) Fees for motor vehicle licenses or plates;
- c) Taxes levied pursuant to Act Number 286 of April 6, 1946; and
- d) Room Occupancy Taxes pursuant to Act Number 272 of September 9, 2003, as amended (the "Room Tax Act");

**BE IT FURTHER DECREED**, that Applicant shall fully comply with its obligations under the Room Tax Act or any subsequent act regarding room occupancy taxes; **PROVIDED** that, in case of Applicant's noncompliance, **the Director may suspend or revoke the tax benefits granted herein for as long as necessary**, until Applicant complies with its obligations under the Room Tax Act;

**BE IT FURTHER DECREED**, that as an essential condition to the continuance of this Concession, the **Applicant must identify the room occupancy tax separately from other items or charges listed on guests' bills**, as required under the Room Tax Act;

**BE IT FURTHER DECREED**, that as a condition to the continuance of the tax exemptions and benefits granted herein, the Applicant shall (i) deliver to the CRIM a complete list and correct evaluation of any personal or real property that has been declared tax exempt under the provisions of the Act, of which Applicant is the owner or is in possession of as of January 1 of each year, in accordance with the provisions of Article 3.15 of the Municipal Property Tax Act of 1991, as amended; (ii) file annually with the Secretary, pursuant to the Internal Revenue Code in effect, an income tax return with respect to the operations of its Tourism Activity; (iii) maintain and keep in Puerto Rico, separately, all the necessary books, records, and files pertaining to the Exempt Business, as such term is defined in Section 2(cc) of the Act, so that the accounting system clearly reflects the gross income, expenses, losses, and any other deductions relative to the operations of the Exempt Business; **PROVIDED**, that the income tax related to the Exempt Business shall be computed separately; (iv) keep such files, make such sworn statements, file such reports, and comply with the rules and regulations that may be prescribed by the Secretary for the proper fulfillment of the purposes of the Act and that

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the Secretary may prescribe in connection with the levying and collection of all kinds of taxes; (v) submit any documents or evidence that may be deemed pertinent to the tax exemptions or benefits, post any bonds, and allow periodic inspections or any other kind of inspections; (vi) file, in advance, the contracts, orders, or any other information related to the permits needed to acquire, transfer, sell, or introduce articles exempt from excise, use or consumption taxes; and (vii) comply with any other conditions that the Secretary may deem pertinent to impose with respect to the enjoyment of any tax exemptions or benefits under the Act, whenever such conditions are necessary to ensure proper compliance with the terms and purposes pursuant to which the tax exemptions or benefits are granted;

**BE IT FURTHER DECREED**, that the **Secretary shall determine for each taxable year covered by the exemptions granted hereunder what property and income Applicant has used in, or derived from the Exempt Business**; PROVIDED, that nothing contained herein shall deprive Applicant of its right to administrative and judicial review of determinations made by the Secretary, pursuant to applicable laws, rules, and regulation;

**BE IT FURTHER DECREED**, that the Secretary, in determining what property has been used in, and what income has been derived from, the Exempt Business, may review the books, receipts, accounts, and records of the Exempt Business in order to determine if all purchase prices, sales prices, rates of lease, overhead, and any other prices, rates, and cost allocations, are fixed on the basis of normal business operations and not for the purposes of (i) avoiding taxes ordinarily chargeable to activities not within the scope of the operations covered by the tax exemptions granted hereunder; or (ii) charging to the operations carried out in Puerto Rico under the terms of this Concession the costs, expenses, profits, and other accounts attributable to the operations of Applicant carried out outside of Puerto Rico; PROVIDED, that whenever the Secretary finds that such prices, rates, or cost allocations are made for purposes of extending the coverage of the tax exemptions granted hereunder beyond the scope of the Exempt Business, he shall make the adjustments that he may deem necessary in the calculation of the amount of taxes payable by Applicant, if any, and provide recommendations to the Director regarding other actions that may have to be taken under the provisions of the Act and the Regulation. Nothing contained herein shall deprive Applicant of its right to administrative and judicial review of determinations of the Secretary and the Director pursuant to applicable laws, rules, and regulations;

**BE IT FURTHER DECREED**, that the **Applicant shall operate the Tourism Activity covered by this Concession in good faith and in accordance with the principles of normal business operations**, and shall not willfully attribute to the operations and accounts of the Exempt Business activities carried out in Puerto Rico or

any other place which are not part of the Exempt Business covered by this Concession;

**BE IT FURTHER DECREED**, that as an essential condition to the continuance of this Concession, the Applicant shall be required to comply with all relevant provisions of the Act, and all rules and regulations promulgated by the Secretary and the Director in accordance with the provisions of the Act, regardless of whether or not said provisions are specifically mentioned in this Concession;

**BE IT FURTHER DECREED**, that the authorized personnel of the Tourism Company may perform periodic inspections of the Tourism Activity;

**BE IT FURTHER DECREED**, that as an essential condition to the continuance of this Concession, **the Applicant shall be required to comply with a minimum average of ninety percent (90%) in the initial evaluation.** In the subsequently evaluations the Applicant shall be required to comply with a minimum average of eighty five percent (85%), pursuant to the Regulation of Hostelries of Puerto Rico of the Tourism Company (the "Regulation of Minimum Requirements"). That's evaluations shall be made by the Tourism Quality Program of the Tourism Company, or any similar program created and implemented by the Tourism Company, and/or the periodical minimum allowed by the Director after determination of Applicant's effort to comply with this condition;

**BE IT FURTHER DECREED**, that the continuance of this Concession shall be conditioned upon the Applicant's continuous compliance throughout the duration of this Concession with the **Puerto Rico Environmental Quality Board** rules, regulations, and requirements that may be applicable to Applicant related to the control of water, air, ground, and any other types of environmental pollution;

**BE IT FURTHER DECREED**, that the continuance of this Concession shall be conditioned upon the Applicant's continuous compliance with the **Code of Ethics for Contractors, Suppliers of Goods and Services and Financial Incentives Applicants of the Executive Agencies of the Government of Puerto Rico** (Act No. 84, of June 18, 2002, as amended and its regulations);

**BE IT FURTHER DECREED**, that the continuance of this Concession shall be conditioned upon Applicant's filing, the Director and the Committee's approval, of any documentation the Director and the Committee so require;

**BE IT FURTHER DECREED**, that as an essential condition to the continuance of this Concession, Applicant **must** provide the statistical information requested by the Puerto Rico Tourism Company, **within ten (10) days** after the end of every month and assign a hotel employee to handle this task. **If the Applicant does not submit the information requested, the Director may suspend or revoke the tax benefits** for as

long as necessary, until the Exempt Business complies with its responsibility. The authority to request said information is recognized in Article 5(q) of Act No. 10 of June 18, 1970 known as "Puerto Rico Tourism Company Act". The information submitted by the Applicant concerning the operation of its business will be treated confidentially by the Puerto Rico Tourism Company. However, the aggregate statistical data obtained through the information provided by the different businesses endorsed by the Puerto Rico Tourism Company may be made public;

**BE IT FURTHER DECREED**, that as an essential condition to the continuance of the Concession, **the Applicant shall not introduce, manufacture, possess, use or operate vending or other machines that are used for games of chance or lotteries (slot machines)**, including, without limitation, those defined in Act No. 11 of August 22, 1933, as amended, unless said machine is located within the perimeter of a licensed gaming room (casino), as such term is defined in Act No. 221 of May 15, 1948, as amended;

**BE IT FURTHER DECREED**, that as an essential condition to the continuance of the Concession, **Applicant shall not install or operate any Electronic Video Game System**; as such term is defined in Act No. 139 of June 5, 2004;

**BE IT FURTHER DECREED**, that this Concession **may be suspended or revoked** pursuant to the provisions of Section 8 of the Act and Section 9(d)-7 of the Regulation, if Applicant (i) does not comply with the provisions, requirements, and conditions of the Act, the Regulation, the Order, this Concession, and/or any other applicable law or regulation, and/or any other requirements determined by the Director and/or the Committee; and/or (ii) has submitted false or fraudulent information or made any false or fraudulent representations in the Application pursuant to which the Tourism Company based its decision for the issuance of this Concession. This Concession may only be suspended or revoked after the Tourism Company has complied with all applicable legal requirements under Act No. 38 of June 30, 2017, known as the Uniform Administrative Procedure Act, and the administrative procedures established by the Tourism Company;

**BE IT FURTHER DECREED**, that this Concession may be terminated if Applicant fails to file before the Director, **within ninety (90) days after receipt of the same**, a duly notarized sworn statement wherein the Applicant **expresses its unconditional acceptance** of this Concession and all of the conditions and provisions which are an integral part hereof; PROVIDED, that this Concession shall upon its acceptance by Applicant constitute a contract between the Government of Puerto Rico and the Applicant; and

Exc



**BE IT FURTHER DECREED** that a certified copy of this Concession shall be forwarded to the Applicant, the Secretary, the Committee, the Executive Director of the CRIM, and to the Mayor of the Municipality of Rincón, Puerto Rico.

In San Juan, Puerto Rico, this 27 day of october 2017.



CARLA G. CAMPOS  
ACTING EXECUTIVE DIRECTOR