



OFFICE OF THE EXECUTIVE DIRECTOR

EXTENSION OF CONCESSION of Tax Exemption in the case of **OLIMPO COURT, INC.**, with employer identification number 66-049066 (hereinafter referred to as the "Concessionaire"), **Concession No. 12-74-EXT-27(03-78-T-29(A-1))** (the "Extension of Concession"), pursuant to the provisions of Article 1 of Act No. 74 of July 10, 2010 (the "Act").

EXTENSION OF THE CONCESSION

WHEREAS, the Act empowers the Executive Director (the "Director") of the Puerto Rico Tourism Company (the "Tourism Company") to grant tax benefits to an Eligible Business, when it is proved to the satisfaction of the Director that the Concessionaire has established an Eligible Business as defined in the Act, and that the same shall continue to be in the best interests of the Government of Puerto Rico;

WHEREAS, on May 31, 2006 the Director, pursuant to the powers conferred upon by Act No. 78 of September 10, 1993, as amended (the "Act 78"), granted to the Concessionaire Concession No. 03-78-T-29(A-1) (the "Concession"), in connection with the **operation** of the hotel currently known as "**Hotel Olimpo Court**" and its parking lot (the "Tourism Activity" or "Hotel") located in Miramar Avenue number 603 and 604, in the Municipality of San Juan, Puerto Rico; PROVIDED, that the operations shall be carried out substantially as described in the Application of the Concession;

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WHEREAS, on November 18, 2010 the Concessionaire requested an extension of the Concession under the provisions of Section 4 of the Act, which establishes that all *Exempt Businesses*, as such term is defined in the Act and the Regulation No. 8185, approved on April 20th, 2012 (hereinafter referred to as the "Regulations"), may request an extension of the tax exemption period granted pursuant to the Concession for an additional ten (10) year period;

WHEREAS, the Director, after having examined the report of the Incentives and Investment Division of the Tourism Company, the report of the Secretary of the Treasury Department (the "Secretary" or the "Department"), the application for extension of tax exemption (the "Application for Extension"), and other documents relating to this case, has determined that the Concessionaire has proved that it will continue to operate 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 BY THE DIRECTOR, that in accordance with the terms and conditions of this Extension of Concession, the Concessionaire be, and it hereby is, granted the extension of tax exemptions in accordance with Section 4 of Act and other applicable terms of the Act, for such tourist activities as defined in Section 2-1(A) of the Regulations in connection with the **operation** of the "**Olimpo Court Hotel**", a forty five (45) room hotel and its parking lot in the Municipality of San Juan, Puerto Rico; PROVIDED, that the operations shall be

carried out substantially as described in the Application for Extension and in accordance with the terms and conditions of the Act;

BE IT FURTHER DECREED, that Concessionaire herein shall be entitled to an additional **ten (10) year tax exemption period** (the "Extended Tax Exemption Period"), which will be effective on the dates stated herein:

A. **Municipal and Commonwealth Taxes on Personal and Real Property**

Concessionaire'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. For these purposes, the extended tax exemption period shall commence on **January 1, 2012**;

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

The Concessionaire shall be **ninety percent (90%) exempt** from the payment of any license fees, excise taxes, and other municipal taxes levied by any ordinance of any municipality with regard to the Tourism Activity. For these purposes, the extended tax exemption period shall commence on **January 1, 2013**;

C. **Municipal Construction Excise Taxes**

Concessionaire and any of its contractors and subcontractors shall be **one hundred percent (100%) exempt** from the payment of any municipal construction excise tax levied by any ordinance of any municipality with regard to the Tourist Activity. For these purposes, the extended tax exemption period shall commence on **October 31, 2012**;

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

Concessionaire shall be **one hundred percent (100%) exempt** from the payment of taxes levied under Subtitle C of the Internal Revenue Code for a New Puerto Rico (the "2011 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 be applicable to goods or other property of such nature that would be considered includable as part of the inventory of the Eligible Business pursuant to Section 1031.01(a)(2)(B) of the 2011 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 extended tax exemption period shall commence on **November 30, 2012**;

Sales and Use Tax

Concessionaire 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 2011 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 be applicable to goods or other property of such nature that would be considered includable as part of the inventory of the Eligible Business pursuant to Section 1031.01(a)(2)(B) of the 2011 Code. In addition, articles, furniture, or merchandise that is not used directly in the operation of the Eligible Business shall not be exempt from sales and use taxes. For these purposes, the extended tax exemption period shall commence on **November 30, 2012;**

E. **Income Tax**

Ninety percent (90%) exempt from payment of income taxes on (i) income derived by Concessionaire 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; (ii) the dividends distributed by Concessionaire from earnings and profits attributable to "Tourism Development Income" ("TDI") to its shareholders; and (iii) any gain derived during the exemption period from the sale or exchange, including redemption and liquidation, of Concessionaire's stock or membership interest, and of substantially all or all of the assets used by Concessionaire in the Tourism Activity, provided all the rules contained in Section 3(a)(1) of the Act are met.

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The exemption for TDI shall apply to TDI allocated to Concessionaire's members for every taxable year Concessionaire qualifies as a special partnership under Subchapter K of the 1994 Puerto Rico Internal Revenue Code (the "1994 Code"), Subchapter D of the 2011 Code, or is subject to taxation pursuant to the provisions of Chapter 7 of Subtitle A of the 2011 Code and to any distribution by Concessionaire's members that is a corporation or partnership that has not made an election under Subchapter K of the 1994 Code or Subchapter D of the 2011 Code, or is not subject to taxation pursuant to the provisions of Chapter 7 of Subtitle A of the 2011 Code to its partner or partners; any subsequent distribution of TDI by a partner or partners of such corporation or partnership shall be one hundred percent (100%) exempt from income tax under Subchapter K of the 1994 Code or Subchapter D of the 2011 Code. In the event Concessionaire does not qualify as a special partnership under Subchapter K of the 1994 Code or Subchapter D of the 2011 Code, or is not subject to taxation pursuant to the provisions of Chapter 7 of Subtitle A of the 2011 Code, during a taxable year, the exemption for TDI shall apply initially at Concessionaire's level.

The exemption provided in this Subsection E for a gain derived from the sale, exchange, or other disposition, including redemption or liquidation, of 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 disposition of membership interests by a *Developer*, as such term is defined in the Act, the Concessionaire's assets **must** continue to be used in Tourism Activities for a period of not less than twenty-four (24) months, as required by Section 3(a)(1)(C) of the Act.

The exemption provided in this Subsection E for a gain derived from a sale or exchange of substantially all of the assets of Concessionaire 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 Concessionaire's assets used in a Tourism Activity; (ii) all of the Concessionaire's assets 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.

Concessionaire shall have the option to elect that the TDI for a specific taxable year not be covered by the income tax exemption granted herein. To elect such option, Concessionaire shall file a notice to such effect with its income tax return for such taxable year, to be filed on or before the date provided by the 1994 Code or the 2011 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 Concessionaire is entitled to income tax exemption under this Concession. For these purposes, the extended tax exemption period shall commence on **October 31, 2012**;

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BE IT FURTHER DECREED, that the **tax exemptions granted hereunder shall expire** in accordance with the effective dates specified this Extension of Concession and the provisions of the Act, unless previously suspended or revoked pursuant to the provisions of the Act 74;

BE IT FURTHER DECREED, that the exemption with respect to income tax is subject to the condition that the Concessionaire shall invest no less than twenty percent (20%) of its net income derived from its Tourism Activities in the following five (5) categories (the "Investment Requirement"):

1. Promotion, publicity and marketing plan for its Tourism Activity, taking into consideration the particular circumstances and necessities of the Exempt Business;
2. Compliance with adequate standards of sanitation, protection and security for its guests and clientele;
3. A personnel training and re-training program;
4. A plan for investment in facilities for the physically disabled; and
5. A plan for the conservation, improvement, and maintenance of its facilities and environmental and aesthetic infrastructure;

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

BE IT FURTHER DECREED, that as an essential condition to the issuance and continuance of this Extension of the Concession, the Concessionaire of the Tourism Activity, must maintain a minimum aggregate **average annual employment requirement of six (6) direct employees** in the activities covered by this Concession in its localization (the "Employment Requirement"); PROVIDED that the Employment Requirement will be based on the monthly average employment generated;

BE IT FURTHER DECREED, that the Concessionaire, 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 the Concessionaire**, at which occurrence, or at the earliest date when such occurrence is contemplated, the Concessionaire is subject to one of the following alternatives:

1. If the reduction represents **less than ten percent (10%)** of the Employment Requirement, Concessionaire shall have no obligation to notify the Director of said reduction;
2. If the reduction represents **ten percent (10%) or more but less than twenty-five percent (25%)** of the Employment Requirement, Concessionaire shall file a sworn statement by certified mail with return receipt requested, or personally at the Office of the Director, notifying the Director, with copy to the Department of Labor and Human Resources of Puerto Rico and the Department, of said reduction of employees;
3. If the reduction represents **twenty-five percent (25%) or more** of the Employment Requirement, Concessionaire 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 such Sworn Statement is filed. Concessionaire must also file a copy of such Sworn Statement with the Puerto Rico Department of Labor and Human Resources and the Department. The Director shall issue a written determination regarding Concessionaire's compliance with the Employment Requirement within sixty (60) days of the date of receipt and acceptance of such Sworn Statement (the "Employment Requirement Determination"). When evaluating Concessionaire's compliance with the Employment Requirement, the Director shall take into consideration events that constitute reasonable grounds for a reduction of Concessionaire employment, including, but not limited to, strikes, war, severe weather conditions, actions undertaken by the government, or any other reasonable causes beyond the control of the Concessionaire. If the Concessionaire does not receive the Employment Requirement Determination from the Director within the aforementioned sixty (60) days period, the Concessionaire shall without further action or formality, be deemed to be in compliance with the Employment Requirement. The Director may, in lieu of the termination of the Extension of Concession in those cases in which the Director determines the Concessionaire 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 amount specified herein for the Employment Requirement; or

- b. Approve a temporary reduction of the Employment Requirement when the circumstances merit such reduction, by negotiating any other reasonable conditions satisfactory both to the Concessionaire and the Government of Puerto Rico, if the Director determines that such negotiations further the purposes of Act 74;

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

BE IT FURTHER DECREED, that this Extension of Concession **shall not constitute an exemption from**:

- a) Workmen's compensation premiums as provided by law;
- b) Fees for motor vehicle licenses or plates;
- c) Taxes levied under Act No. 286 of April 6, 1946; and
- d) Room occupancy taxes levied pursuant to Act No. 272 of September 9, 2003, as amended (the "Room Tax Act");

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

BE IT FURTHER DECREED, that as an essential condition to the issuance and continuance of this Extension of Concession, Concessionaire 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, Concessionaire shall (i) deliver to the Municipal Revenue Collection Center ("CRIM", for its Spanish Acronym), 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 Concessionaire is the owner or is in possession of as of January 1 of each year, in accordance with 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 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 this exemption what property and what income the Concessionaire has used in, or derived from, the operations hereby declared tax exempt**, provided, that nothing contained herein shall deprive the Concessionaire of its right to administrative and judicial review of such determinations of the Secretary available by Constitution, Law or 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 Extension of Concession the costs, expenses, profits, and other accounts attributable to the operations of Concessionaire 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 Concessionaire, 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 Regulations. Nothing contained herein shall deprive Concessionaire 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 Concessionaire shall operate the Tourism Activity covered by this Extension of 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 Extension of Concession;

BE IT FURTHER DECREED, that as an essential condition to the continuance of this Extension of Concession, on or before **sixty (60) days after the issuance of this Extension**, Concessionaire **must comply with the Hotel identification** by placing the required signage, as provided in Section 7 of the Minimum Requirements Regulation of Hostelries an Puerto Rican

Inns (Paradores), complying with the regulations established by relevant the pertinent agencies or instrumentalities;

BE IT FURTHER DECREED, that as an essential condition to the continuance of this Extension of Concession, Concessionaire shall be required to comply with all relevant provisions of the Act, and all rules and regulations promulgated by the Secretary and the Director and approved by the Governor in accordance with the provisions of the Act, regardless of whether or not said provisions are specifically mentioned in this Extension of Concession, including periodic inspections of the Tourism Activity by authorized personnel of the Tourism Company;

BE IT FURTHER DECREED, that as an essential condition to the continuance of this Extension of Concession, Concessionaire shall be required to comply with a **minimum average of eighty five percent (85%)** in the evaluations that 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 Concessionaire's effort to comply with this condition;

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

BE IT FURTHER DECREED, that the continuance of this Extension of Concession shall be conditioned upon compliance with the **Code of Ethics for contractors, Suppliers of goods and services and Financial Incentives Concessionaires of the Executive Agencies of the Commonwealth of Puerto Rico** (Act No. 84 of June 18, 2002 and its regulations);

BE IT FURTHER DECREED, that as an essential condition to the continuance of this Extension of Concession, Concessionaire 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 (15 L.P.R.A. §82), 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 (15 L.P.R.A. §71 et seq.), as amended.

BE IT FURTHER DECREED, that as an essential condition to the continuance of the Extension of Concession, Concessionaire shall not install or operate any Electronic Video Game System, as such term is defined in Act No. 139 of June 5, 2004 (15 L.P.R.A. §198w).

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

BE IT FURTHER DECREED, that this Extension of Concession may be suspended or revoked pursuant to the provisions of Section 8 of the Act and Section 9(d)-8 of Regulation 8185,

if Concessionaire (i) does not comply with the provisions, requirements, and conditions of the Act, the Regulations, this Extension, and/or any other applicable law or regulation, and/or any other requirements determined by the Director; 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 Extension. This Extension of Concession may only be suspended or revoked after the Tourism Company has complied with all applicable legal requirements under Act No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Act, and the administrative procedures established in Section 9(d)-8 of the Regulations;

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

BE IT FURTHER DECREED that a certified copy of this Extension of Concession shall be forwarded to the Concessionaire, the Secretary, the Executive Director of the CRIM, and to the Mayor of the Municipality of San Juan, Puerto Rico.

In San Juan, Puerto Rico, this 24 day of August, 2012.


MARÍA A. MARCANO DE LÉON
ACTING EXECUTIVE DIRECTOR

Esta copia es fiel y exacta de la Concesión Original registrada con número indicado en la primera página, que obra en el expediente de la Compañía de Turismo de Puerto Rico, en virtud de la Ley de Desarrollo Turístico de Puerto Rico de 2010, según enmendada.

Y para entregar a Leda Cruz Muñoz Padilla
expido esta copia en San Juan, Puerto Rico, hoy

24 de agosto de 2012

José Luis Fajardo
Secretaria