

MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN
2012 (SECOND) Regular Session

2012 JAN 31 AM 9:23
Muña

Bill No. 416.31 (cov)

Introduced by:

T. R Muña Barnes
J. T. Won Pat, Ed.D.
B.J.F. Cruz

AN ACT TO APPROVE AND RATIFY THE TRANSFER OF CERTAIN PROPERTY RELATIVE TO THE LADA ESTATES PROJECT BY THE GUAM HOUSING CORPORATION FOR THE PURPOSE OF DEVELOPING AFFORDABLE HOUSING FOR THE PEOPLE OF GUAM.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings.** *I Liheslaturan Guåhan* finds that
3 there is a continuing demand for affordable housing for Guam families and
4 that this demand has resulted in a critical shortage of affordable housing on
5 Guam. The Lada Estates Project, an endeavor started 23 years ago by the
6 Twentieth Guam Legislature with Public Law No. 20-225 (attached as
7 Exhibit D) and continued by this and past legislatures, is a project to develop
8 affordable housing that will help address this very important issue.

9 During these past two decades, the property constituting the Lada
10 Estates which had been transferred to the Guam Housing Corporation for the
11 purpose of developing affordable housing has been the subject of much
12 controversy and eventually a lawsuit involving Guam Housing Corporation,
13 the Government of Guam and Maeda Pacific Corporation (Superior Court of
14 Guam Civil Case No. CV0135-04). This lawsuit spanning eight years has
15 now finally been resolved and the settlement of the lawsuit which was

1 approved by the Superior Court of Guam on January 6, 2012 paves the way
2 for the realization of this long endeavor to provide affordable housing to the
3 people of Guam.

4 *I Liheslaturan Guåhan* also finds that since the enactment of Public
5 Law 20-225 (attached as Exhibit D) in 1991, Public Laws 24-81 (attached as
6 Exhibit E), 25-116 (attached as Exhibit F), and 30-172 (attached as Exhibit
7 G) have been enacted which amended or otherwise affected the Lada
8 Estates Project, that the terms and conditions of the Settlement Agreement
9 and the Grant Deed transferring the subject properties to Maeda Pacific
10 Corporation are consistent with Guam law and the letter and spirit of these
11 public laws in particular.

12 *I Liheslaturan Guåhan* further finds that the above referenced statutes
13 attached hereto as exhibits were authored to build affordable homes or bring
14 a responsible end to the legal action which has hindered a favorable outcome
15 for the people of Guam.

16 *I Liheslaturan Guåhan* further seeks to ensure that the eventual
17 owners of the affordable homes will be able to obtain clear, marketable and
18 insurable title, by approving and ratifying the transfer of the subject property
19 and accepting the Lada Estates Settlement Agreement (attached as Exhibit
20 A), Grant Deed with Continuing Conditions and Restrictions (herein referred
21 to as “Grant Deed” and attached hereto as Exhibit B), and Decision and
22 Order (attached as Exhibit C) by and between Guam Housing Corporation
23 and Maeda Pacific Corporation.

24 It is and has been the intent of *I Liheslaturan Guåhan* that the subject
25 property be used for the development of affordable housing for either rental
26 and/or first time home ownership in accordance with Public Law 20-225
27 (attached as Exhibit D), 24-81 (attached as Exhibit E), 25-116 (attached as

1 Exhibit F), and 30-172 (attached as Exhibit G). Since covenant number 1
2 under the Grant Deed states in part that “said houses shall be constructed and
3 sold in accordance with Guahan Law, within six (6) years from the date of
4 execution of the Deed. . .” and does not mention that the houses may also be
5 used for affordable rentals as provided by Public Law 30-172 (attached as
6 Exhibit G), it is hereby clarified that homes constructed on the subject
7 property shall be sold or rented in accordance with Guahan Law.

8 *I Liheslaturan Guåhan* finds that the Decision and Order (Exhibit C)
9 of the Superior Court of Guam on January 6, 2012 states:

10 *“It is noteworthy that these proceedings have called attention to the*
11 *possible problems that GHC may encounter in the performance of the*
12 *settlement agreement. The Government alleges that GHC cannot convey the*
13 *Lada Estates property to Maeda without legislative or procurement*
14 *approval.”*

15 *I Liheslaturan Guåhan* further finds that since there has been a
16 substantial delay between the date the Grant Deed was executed and the date
17 the settlement was approved by the Superior Court and the recording of the
18 Grant Deed and since it was necessary for this Grant Deed to be approved
19 and ratified by this legislature, the date from which to commence the
20 running of the six years to construct the affordable homes shall be the date
21 of the enactment of this public law.

22 **Section 2. Approval of Settlement.** Notwithstanding any provision
23 of law, the settlement by and between Guam Housing Corporation and
24 Maeda Pacific Corporation under the terms and conditions found in the
25 Settlement Agreement approved by the Superior Court of Guam on January
26 6, 2012, a copy of which is attached hereto as Exhibit A, are hereby
27 approved and ratified and shall be valid and binding obligations

1 enforceable in accordance with their respective terms, and there shall
2 be no power to terminate or declare null and void.

3 **Section 3. Transfer of Property.** Notwithstanding any provision of
4 law, the transfer of the following described parcels of real property by Guam
5 Housing Corporation to Maeda Pacific Corporation by Grant Deed recorded
6 at the Department of Land Management on January 10, 2012 under
7 Document No. 831095 is hereby approved and ratified;

8 (a) Lot No. 10120-14, containing an area of 32,455+ square
9 meters (8.020 acres), Dededo, Guam, as shown on Land
10 Management Drawing No. 14-91T395, Map Drawing No.
11 PRB90-138, recorded under Document No. 450102; and
12

13 (b) Lot No. 10120-16, containing an area of 154,395±
14 square meters (38.152 acres), Dededo, Guam, as shown on
15 Land Management Drawing No. 14-91T395, Map Drawing
16 No. PRB90-138, recorded under Document No. 450102.

17 **Section 4. Covenant to Build Affordable Homes.** Notwithstanding
18 any provision of law, homes constructed on the properties referenced in
19 Section 3 of this Act shall be sold or rented in accordance with Public Law
20 30-172 (attached as Exhibit G), within 6 years from the date of enactment.

21 **Section 5. Effective Date.** This Act shall be effective upon
22 enactment into law.
23

EXHIBIT “A”

Settlement Agreement

LADA ESTATES SETTLEMENT AGREEMENT

This Agreement is entered into by and between MAEDA PACIFIC CORPORATION, a Guam corporation, whose mailing address is Post Office Box 8110, Tamuning, Guam 96913 ("Maeda") and GUAM HOUSING CORPORATION, an autonomous instrumentality of the government of Guam ("GHC"), and is made with reference to the following:

RECITALS:

- A. On or about January 11, 1991, the government of Guam passed Public Law No. 20-225, which was later amended by Public Law No. 24-81 and Public Law No. 25-116.
- B. On or about June 24, 1991, GovGuam conveyed the following described parcels of property to GHC pursuant to Public Law No. 20-225 (collectively the "property"):
- Lot No. 10120-14, containing an area of 32,455± square meters (8.020 acres), Dedede, Guam, as shown on Land Management Drawing No. 14-91T395, Map Drawing No. PRB90-138, recorded under Document No. 450102; and
- Lot No. 10120-16, containing an area of 154,395± square meters (38.152 acres), Dedede, Guam, as shown on Land Management Drawing No. 14-91T395, Map Drawing No. PRB90-138, recorded under Document No. 450102.
- C. The intent of the legislation was to have a contractor build low-cost houses on the Project site for sale to lower income people in Guam.
- D. On or about August 6, 1997, Maeda entered into a written contract with GHC and GovGuam, which provided that Maeda would furnish the necessary materials and labor for the construction of the *Lada Estates Affordable Subdivision Improvement Project* on the property (the "Project"), which consisted of the on-site and off-site civil works, all for the agreed upon price of Ten Million Four Hundred Sixty Thousand Dollars (\$10,460,000.00), plus Change Order No. 1, of Ninety-Five Thousand Dollars (\$95,000.00), for a total of Ten Million Five Hundred Fifty-Five

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Thousand Dollars (\$10,555,000.00). The contract is described as Government Contract No. 630-5-1001-L-DED (the "Contract").

E. The project was divided into two phases:

Phase I consisted of construction of the off-site infrastructure at the agreed upon price of Two Million Nine Hundred Fifteen Thousand Dollars (\$2,915,000.00).

Phase II consisted of construction of the on-site infrastructure at the agreed upon price of Seven Million Six Hundred Forty Thousand Dollars (7,640,000.00).

F. Maeda completed all work under Phase I and Phase II of the Contract, the work has been accepted and Maeda therefore became immediately entitled to the full construction cost of Ten Million Five Hundred Fifty-Five Thousand Dollars (\$10,555,000.00), however, payment was not made to Maeda arising out of the completion of Phase I and Phase II work.

G. Accordingly, Maeda filed a lawsuit against GovGuam and GHC in the Superior Court of Guam, styled as Civil Case No. CV0135-04 (the "Lawsuit"), to recover those funds. That case remains pending.

H. As a result of the non-payment to Maeda and other problems with the development of the Project, the work has been stalled on the construction of the homes on the Project site. The Project site is deteriorating in value and has become an eyesore for GovGuam. Practically all the streetlight posts, electrical wirings and tubings and the like have been removed or destroyed by thieves or vandals, and the sewer line is being used as a dump site and the sidewalks and streets have been partially destroyed and are overgrown with weeds and it therefore behooves Maeda, and GHC to find a solution to this problem.

I. In order to resolve the differences between GHC and Maeda, the parties have been meeting in an effort to craft a solution to this predicament so that all parties can benefit, including the

People of Guam, by GHC conveying the property to Maeda and requiring Maeda to build the proposed houses on the Project site.

NOW, THEREFORE, in consideration of the foregoing, and of all the agreements of all the parties set forth herein, the parties agree as follows:

§1. *Conveyance of property.* GHC agrees to convey the subject property to Maeda via a Grant Deed and, in consideration thereof, Maeda agrees to give up its rights and claims to collect the monies due under the Construction Contract, including all penalties and interest assessed and at law, subject to the following conditions.

§2. *Conditions.* The Deed will contain the following conditions and restrictions:

2.1. An agreement by the Grantee (hereinafter "Maeda") that it will build and sell affordable houses on the property within six (6) years from the date of execution of the Deed by the respective parties, all in accordance and compliance with Public Law Nos. 20-225, 24-81 and 25-116, and 30-390, and all other applicable laws consistent herein. Upon determination that the constructed home is to be sold to a prospective homeowner as provided under the Affordable Homes Act herein, Maeda shall convey clear and marketable title to the subsequent owner therein.

2.2. The property shall be subject to covenants in the Deed that will require the homeowners to maintain and keep up their homes.

2.3. An agreement by the Grantee that if it does not fully comply with the conditions of the said Deed, that the property shall automatically revert to GHC six (6) years from the date of execution of the Deed.

2.4. The parties agree that the Grantee will be responsible for marketing the sale of the *Lada Estates* houses, either by doing it in-house, or by designating a real estate broker.

2.5. That there shall be no other extensions as a result of any modifications or change orders to the development and construction of the affordable homes beyond the six (6) year period.

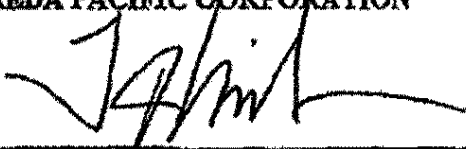
§3. *Approval by Court.* Upon the execution of this Agreement, the Agreement will be submitted to the Superior Court of Guam for approval and upon approval by the Court, the above-mentioned civil action shall be dismissed with prejudice against GHC and the parties shall sign the Mutual Release of claims, a copy of which is attached hereto. Maeda reserves the right to continue on with the lawsuit against only the government of Guam to collect the Two Million Nine Hundred Fifteen Thousand Dollars (\$2,915,000.00) for the off-site improvement.

§4. *Costs and attorneys' fees.* Upon execution and approval of this Agreement by the Court, each party shall bear their own costs, expenses and reasonable attorney fees in this action.

IN WITNESS WHEREOF, the parties have executed this Agreement in Hagåtña, Guam, on the dates set opposite their signatures.

MAEDA PACIFIC CORPORATION

Date: 10/11/10

By 
THOMAS J. NIELSEN, President

GUAM HOUSING CORPORATION

Date: 10/6/10

By 
JEREMY ROJAS, President

LJRes
PLDGS:MAEDA PACIFIC-LADA ESTATES:017D

EXHIBIT “B”

**Grant Deed with Continuing Conditions and
Restrictions**

Filing with the Registrar)
of Land Titles pursuant to)
the Land Title Registration)
Act requested by Grantor.)
After filing, deliver copies)
to the Grantee. The real)
property affected by this)
instrument is registered)
land, and the name of the)
last registered owner being)
the Grantor, and the)
number of the certificate)
of last registration being)
No. _____)

Island of Guam, Government of Guam
Department of Land Management

File for record is Instrument No. 831095
For the Year 12, Month 01, Day 10, Time 1:53
Recording Fee 35 Receipt No. 318171
Deputy Recorder Juan Yamanal

(Space above this line for Recorder's use only.)

GRANT DEED
WITH CONTINUING CONDITIONS AND RESTRICTIONS

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

Parties, consideration and grant

KNOW YE, that GUAM HOUSING CORPORATION, an instrumentality of the government of Guam, whose mailing address is Post Office Box 3457, Hagåtña, Guam 96932 (the "Grantor"), does hereby GRANT unto MAEDA PACIFIC CORPORATION, a Guam corporation, whose mailing address is Post Office Box 8110, Tamuning, Guam 96911 (the "Grantee"), and to Grantee's successors and assigns, forever, in fee simple, the following described parcels of property situated in the Municipality of Dededo, Guam (collectively the "Property"):

Description of Property

Lot No. 10120-14, containing an area of 32,455+ square meters (8.020 acres), Dededo, Guam, as shown on Land Management Drawing No. 14-91T395, Map Drawing No. PRB90-138, recorded under Document No. 450102; and

ORIGINAL

Lot No. 10120-16, containing an area of 154,395+ square meters (38.152 acres), Dededo, Guam, as shown on Land Management Drawing No. 14-91T395, Map Drawing No. PRB90-138, recorded under Document No. 450102.

Grant includes improvements, etc.

TOGETHER with the improvements, buildings, rights of way ("R/W"), easements, tenements, privileges and appurtenances belonging or in anyway pertaining to the Property, and the reversion or reversions, remainder or remainders, rents, issues and profits of the Property; and, also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law and in equity, of the Grantor, of, in and to the Property and every part and parcel thereof.

Covenants running with the land

It is understood and agreed that this conveyance is made and accepted, and the realty is granted, on and subject to the following covenants, conditions, restrictions, and reservations (in addition to any such covenants, conditions, restrictions, and reservations stated elsewhere in this document), which covenants, conditions, restrictions, and reservations shall apply to and run with the conveyed land; all successive future owners and occupants shall have the same right to invoke and enforce the covenants, conditions, restrictions, and reservations applicable to this conveyance as the original parties to this document.

1. ***Build houses.*** In consideration of conveying the within Property to Grantee, the Grantee agrees that it will build and offer for sale houses on the subject Property all in accordance with Public Law Nos. 20-225, 24-81, 25-116, and 30-390, and all other applicable laws consistent herein, and that all of said houses shall be constructed and sold in accordance with Guahan Law, within six (6) years from the date of execution of the Deed, hereof. Upon determination that the

constructed home is to be sold as provided under the Affordable Homes Laws, Maeda shall convey clear and marketable title to the subsequent owner or grantee therein.

2. ***Acceptance of Deed as acceptance of restrictions.*** The acceptance of this Deed by the Grantee shall constitute an acceptance of all the terms, conditions, limitations, restrictions, and uses to which the above-described Property conveyed by this Deed is made. Additionally, any subsequent lien or mortgage on the subject property shall be subject to those conditions, covenants, and restrictions as contained in this Deed, herein.

3. ***Reversion on breach – with notice by Grantor.*** It is further agreed by Grantee that each and all of the restrictions contained in this instrument shall, as between the parties to this instrument, their heirs, successors and assigns, be deemed to be and construed as express conditions subsequent, on each of which the conveyance is made. If Grantee shall neglect or fail to perform and to comply strictly with the several conditions and restrictions on Grantee's part, or any of them, Grantor and Grantor's successors and assigns, may at any time thereafter serve on Grantee a notice in writing specifying the particular or particulars in which default or breach thereof has been made and directing Grantee to remedy such default or breach. Should Grantee thereafter for a period of ninety (90) days fail fully and entirely to remedy such breach or default, then a notice in writing may be served on Grantee by Grantor, notifying Grantee that Grantor elects that the title to the whole of the conveyed premises (excluding subdivided lots that may have been sold to third parties) shall revert to Grantor; and thereupon the title to the whole of such premises shall immediately and without the necessity of any further action on the part of Grantor, revert to and revest in Grantor, and Grantee

shall lose and forfeit all of Grantee's rights, title and interest in and to the whole of the conveyed premises and to the improvements and fixtures thereon, and Grantor shall have the right of re-entry to the Property conveyed by this instrument.

4. *Reversion on breach - effect on mortgage.* No reversion or forfeiture shall render invalid or operate in any way against the lien of any mortgage made solely for the purpose of improving the property in compliance with Guahan Law and Public Law Nos. 20-225, 24-91, 25-116, and 30-390, and where the funds are actually used for that purpose given with respect to the conveyed property in good faith, and for value; and on any such reversion or forfeiture Grantor shall take title to the conveyed land subject to any such mortgage or deed of trust. Provided, however, that should any such mortgage or deed of trust be foreclosed, then the title acquired by such foreclosure, and the person or persons who thereby and thereafter become the owner or owners of the conveyed premises, shall be subject to and bound by all the restrictions contained in this instrument; and further provided, that Grantor may enforce any covenants, conditions, and restrictions by any other appropriate action at Grantor's sole option.

5. *Future deeds to contain restrictions.* Grantee agrees that all the covenants, conditions, and restrictions contained in this Deed herein below shall be inserted in full in all future deeds of the above-described Property conveyed by this Deed.

5.1. No noxious, illegal, or offensive use of property shall be carried on on any lot, nor shall anything be done thereon that may be, or become, an annoyance or nuisance to the neighborhood. No grantee or grantees, under any conveyance, nor purchasers, shall at any time

conduct or permit to be conducted on any residential lot any trade or business of any description, either commercial or noncommercial, religious or otherwise, including day schools, nurseries, or church schools, nor shall such premises be used for any other purpose whatsoever except for the purpose of providing a private single-family dwelling or residence.

5.2. No trash, garbage, ashes, or other refuse, junk, vehicles in disrepair, underbrush, or other unsightly growths or objects, shall be maintained or allowed on any lot. All fences and buildings shall be kept in a state of repair. All residences, garages, and accessory buildings shall be painted or stained, from time to time, so as to maintain a reasonable state of repair.

5.3. No animals, livestock, or poultry shall be raised, bred, or kept on any lot of the subdivision for commercial purposes.

5.4. All lines or wires for telephone, power, cable television, or otherwise shall be placed underground.

5.5. No outside toilet facilities shall be constructed or maintained on any portion of the above-described Property. Septic tanks, sewage disposal systems, and drinking water facilities shall conform to all requirements established by the Department of Public Health and Social Services in Guam.

Enforcement of restrictions

It is expressly understood and agreed that the several restrictive covenants contained in this instrument shall attach to and run with the land, and it shall be lawful not only for Grantor and Grantor's successors and assigns, but also for the owner or owners of any subdivided lots adjoining of

the Property granted by this instrument, deriving title from or through Grantor, to institute and prosecute any proceedings at law or in equity against the person or persons violating or threatening to violate such restrictive covenants and conditions.

Availability of water and power

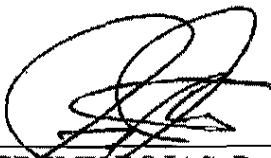
We, the Grantor and the Grantee, AGREE that water and electric power are available on the Property or within one hundred feet (100') thereof, and that the government of Guam is not responsible for water and power hookup thereto.

Execution

IN WITNESS WHEREOF, we, the Grantor and the Grantee, have executed this Grant Deed on the dates of notarization as set forth below.

GRANTOR:

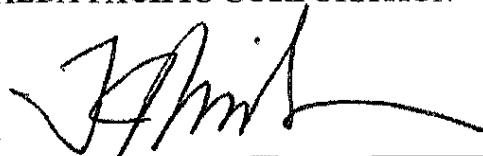
GUAM HOUSING CORPORATION

By 

JEREMY ROJAS, President

GRANTEE:

MAEDA PACIFIC CORPORATION

By 

THOMAS J. NIELSEN, President

///

GUAM, U.S.A.,)
(ss.:
City of Hagåtña.)

On this 6th day of Oct., 2010, before me, a notary public in and for Guam, personally appeared **JEREMY ROJAS**, known to me to be the President who executed the foregoing **GRANT DEED** on behalf of **GUAM HOUSING CORPORATION**, the instrumentality of the government of Guam herein named, and he acknowledged to me that such instrumentality executed the same.

WITNESS my hand and official seal.

)SEAL(

Victoria S. Quichocho-Rojas

VICTORIA S. QUICHOCHO-ROJAS
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: April 15, 2014
P.O. Box 23498 Barrigada, Guam 96921

GUAM, U.S.A.,)
(ss.:
City of Hagåtña.)

On this 17th day of OCTOBER, 2010, before me, a notary public in and for Guam, personally appeared **THOMAS J. NIELSEN**, known to me to be the President who executed the foregoing **GRANT DEED** on behalf of **MAEDA PACIFIC CORPORATION**, the Guam corporation herein named, and he acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

)SEAL(

Joyleen Sanchez

JOYLEEN SANCHEZ
NOTARY PUBLIC
IN AND FOR GUAM, U.S.A.
MY COMMISSION EXPIRES SEPT 13, 2014
P.O. BOX 7551 AGAT GUAM 96925

LJT:cs
PLD6S:MAEDA PACIFIC-LADA ESTATES:028B

EXHIBIT “C”

Decision and Order

Island of Guam, Government of Guam
Department of Land Management

File for record is Instrument No. 831094

For the Year 12, Month 01, Day 10, Time 1:50

Recording Fee 25 Receipt No. 31817

Deputy Recorder Juan Hernandez

DECISION AND ORDER
(CIVIL CASE NO. CV0135-04)

A. Teker

FILED
SUPERIOR COURT
OF GUAM

IN THE SUPERIOR COURT OF GUAM

2012 JAN -6 AM 10:55

1
2
3 MAEDA PACIFIC CORPORATION,)

4 Plaintiff,)

5 vs.)

6 GOVERNMENT OF GUAM and GUAM)

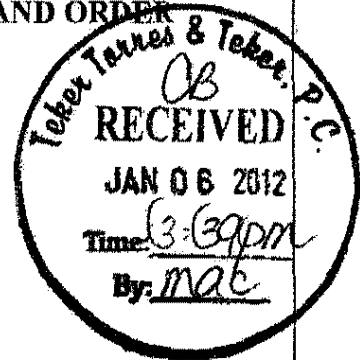
7 HOUSING CORPORATION,)

8 Defendants.)
9

CLERK OF COURT

CIVIL CASE NO. CV0135-04

DECISION AND ORDER



10
11 INTRODUCTION

12 This matter came before the Honorable Judge Michael J. Bordallo on September 28, 2011
13 by reassignment. The Plaintiff filed a motion to approve settlement and the parties stipulated to
14 submit the matter on the briefs and without oral argument on July 13, 2011. Attorney Lawrence
15 J. Teker represented the Plaintiff, Assistant Attorney General Philip D. Issac appeared on behalf
16 of Defendant Government of Guam, and Attorney Cynthia V. Ecube represented Defendant
17 Guam Housing Corporation. Having considered the parties' briefs and the applicable law, the
18 Court now issues the following Decision and Order granting Plaintiff's motion to approve
19 settlement.

20 BACKGROUND

21 In this public contract matter, Plaintiff Maeda Pacific Corporation ("Maeda") seeks
22 payment for infrastructure construction of the Lada Estates public housing project against
23 Defendants Government of Guam ("Government") and Guam Housing Corporation ("GHC"), an
24 autonomous agency of the Government.

25 In 1991, the Guam Legislature passed an act to develop and sell the Lada Estates as
26 affordable housing. See Guam Pub. L. No. 20-225. Pursuant to the act, the Governor transferred
27 approximately forty-six (46) acres of government land to the GHC by grant deed on June 24,
28 1991. *Id.* at 2 see also (Plaintiff's Reply Memorandum, Exhibit "1", Jul. 28, 2011.)

1 Maeda won the public bid to construct the Lada Estates' infrastructure and signed a
2 contract with the Defendants in August of 1997. (Declaration of Jose P. Morcilla Jr., "Exhibit
3 2", Mar. 5, 2004.) Maeda completed construction of the Lada Estates infrastructure pursuant to
4 the contract and obtained a certificate of substantial completion from the Department of Public
5 Works on July 24, 1998. *Id.* at "Exhibit 5". Thereafter, GHC could not find a contractor to build
6 the Lada Estates homes despite legislative attempts to revive the project. *See e.g.* Public Law
7 Nos. 24-81:14 and 25-116:5. The Lada Estates project was not finished and Maeda was not paid
8 for its performance of the infrastructure contract.

9 Maeda filed a government claim in 2002 and the present civil action in 2004. On March
10 8, 2011, the Court granted summary judgment of Maeda's claims against the Government for the
11 costs of off-site infrastructure construction. (Decision and Order, Mar. 8, 2011.) On March 21,
12 2011, Maeda and GHC filed the present motion to settle Maeda's remaining claim against GHC
13 for the costs of on-site infrastructure construction, alleged to be more than seven (7) million
14 dollars. The settlement proposes for GHC to convey the Lada Estates property to Maeda via
15 grant deed with a condition that Maeda build and sell affordable housing units within six (6)
16 years and pursuant to Public Law Nos. 20-225, 24-81, 25-116 and 30-390 under the penalty of
17 reverter to GHC. (Motion to Approve Settlement, Exhibit 1, Oct. 11, 2010.) The agreement was
18 executed with the understanding that it shall be submitted to the Superior Court for approval and
19 for dismissal with prejudice of the claim against GHC with the parties to bear their own costs
20 and fees. *Id.*

21 On July 20, 2011, the Government filed an opposition to the motion to approve
22 settlement for the following reasons: 1) the Court has no jurisdiction to approve this government
23 land transfer without legislative approval; and 2) the settlement is in violation of procurement
24 law insofar as it effectively awards the home construction contract to Maeda.

25 DISCUSSION

26 I. Standing

27 Standing is a threshold jurisdictional matter that must be addressed before the merits of a
28 dispute. *Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15, ¶¶ 17,

1 19. Although Guam law does not address the issue of standing to object to a settlement, “the
2 view of other courts is that a non-settling defendant, in general, lacks standing to object to a
3 partial settlement.” *Waller v. Financial Corp. of America*, 828 F.2d 579, 582 (9th Cir. 1987)
4 (citing *In re Viatron Computer Systems Corp. Litigation*, 614 F.2d 11, 14 (1st Cir. 1980); *In re*
5 *Beef Industry*, 607 F.2d 167, 172 (5th Cir. 1979)). This rule encourages the voluntary settlement
6 of lawsuits. *Id.* at 583.

7 In this case, Maeda built the Lada Estates infrastructure and filed claims against the
8 Government and GHC for payment. The claim against the Government for the off-site costs was
9 successful on summary judgment, and Maeda now seeks to settle its claim against GHC for the
10 on-site costs. The Government is a non-settling defendant who generally lacks standing to object
11 to the partial settlement between Maeda and GHC pursuant to the reasoning of the Federal
12 Circuit Courts of Appeal.

13 However, an exception is made to allow a non-settling defendant to object, “where it can
14 demonstrate that it will sustain some formal legal prejudice as a result of the settlement.”
15 *Waller*, 828 F.2d at 583 (citing *Quad/Graphics Inc. v. Fass*, 724 F.2d 1230, 1233 (7th Cir.
16 1983)). Under this exception, a party suffers plain legal prejudice and has standing to object to
17 any settlement that strips it of a legal claim or infringes upon a contractual right. *Id.* See also
18 *Agretti v. ANR Freight System, Inc.*, 982 F.2d 242, 247 (7th Cir. 1992). For example, Guam law
19 provides that a joint-tortfeasor may be prevented from entering a settlement agreement which
20 bars claims of contribution by non-settling parties. See 7 GCA §§ 24605 and 24606. A party
21 does not suffer plain legal prejudice and does not have standing to object to a settlement which
22 causes factual prejudice, such as the prospect of a second lawsuit. *Quad/Graphics*, 724 F.2d at
23 1233.

24 In this case, the Government opposes Maeda and GHC’s settlement based upon
25 assertions that Legislative approval or procurement procedures are necessary. The Government
26 does not allege that it suffers any legal prejudice by the settlement, and the settlement does not
27 strip the Government of a cause of action or infringe upon a contractual right of the Government
28 in this matter. The Government may suffer the prospect of a second lawsuit or proceeding

1 against the performance of the settlement, but this factual prejudice does not confer standing to
2 object to a settlement agreement. *See Quad/Graphics*, 724 F.2d at 1233. The Government does
3 not suffer plain legal prejudice and it does not have standing to object to the settlement as a non-
4 settling party. For this reason, the Court shall not consider the objections of the Government.

5 **II. Judicial Approval of Settlement**

6 Guam law does not exact a standard for settlement approval, and a court should not
7 ordinarily become involved in the settlement of a civil dispute between private parties. *See U.S.*
8 *v. City of Miami, Fla.*, 614 F.2d 1322, 1330 (8th Cir. 1980). Indeed, the Guam Housing
9 Corporation has the power, "to settle and adjust claims held...by other persons or parties against
10 [it]," without judicial approval. 12 GCA § 4104(k). However, where important public interests
11 are involved, judicial review may be appropriate. *See e.g. City of Miami*, 614 F.2d at 1330
12 (citing examples in federal law where judicial approval of settlement is required).

13 In this case, Maeda and GHC move the Court to review and approve their settlement
14 agreement. Assuming *arguendo* that the settlement between Maeda and GHC, as an autonomous
15 agency of the Government, involves important public interests, the Court shall address the merits
16 of the motion for approval.

17 Where a court is required to approve a settlement agreement, it must generally determine
18 whether the agreement is adequate, fair, reasonable or equitable. *See City of Miami*, 614 F.2d at
19 1330-1331. The judicial review of a settlement agreement is an exceptional situation, and "trial
20 judges have been told that absent fraud, collusion, or the like they should be hesitant to substitute
21 their judgment for that of experienced counsel." *Id. citing Cotton v. Hinton*, 559 F.2d 1326 (5th
22 Cir. 1977).

23 The parties do not raise allegations of fraud or collusion in this case, and the Court is
24 inclined to rely upon the allegations of experienced counsel that the agreement is adequate and in
25 the public interest. Viewing the proposed settlement agreement as a whole, it appears to provide
26 an adequate, fair and reasonable compromise. The settlement gives Maeda the Lada Estates to
27 develop and sell, releases GHC from its liability for the costs of on-site infrastructure, and
28 attempts to provide affordable housing pursuant to public law and within six (6) years under

1 penalty of reverter. The agreement is the result of an arms-length negotiation between
2 competent and experienced counsels, and it aims to resolve the underlying problem by
3 completing the Lada Estates affordable housing project. For all of these reasons, the motion to
4 approve settlement agreement shall be granted.

5 It is noteworthy that these proceedings have called attention to the possible problems that
6 GHC may encounter in the performance of the settlement agreement. The Government alleges
7 that GHC cannot convey the Lada Estates property to Maeda without legislative or procurement
8 approval. The Government does not allege that such approval cannot be obtained, and the Court
9 does not find that the settlement agreement is impossible to perform. However, Maeda and GHC
10 have been notified of the quality of their bargain and of the quality of the land title conveyance
11 which they intend to make.

12 ///

13 ///

14 ///

15 CONCLUSION

16 Based upon the foregoing, Plaintiff Maeda Pacific Corporation's Motion to Approve
17 Settlement is hereby GRANTED.

18 SO ORDERED this 6 day of January, 2012.

19
20 Original Signed By
21 HON. MICHAEL J. BORDALLO

22 HONORABLE MICHAEL J. BORDALLO
23 Judge, Superior Court of Guam

24 I do hereby certify that the foregoing
25 is a true and correct copy of the
26 original of this judgment of the
27 Court of the Superior Court of Guam
28 Head of Department, Guam

JAN 06 2012



EXHIBIT “D”

Public Law 20-225

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 44
Substituted by the Committee on
Housing and Community Development
and as further substituted by the
Committee on Rules.

Introduced by:

P. C. Lujan
T. S. Nelson
~~J. T. San Agustin~~
G. Mailloux
J. P. Aguon
E. P. Arriola
J. G. Bamba
M. Z. Bordallo
D. F. Brooks
H. D. Dierking
E. R. Duenas
E. M. Espaldon
C. T. C. Gutierrez
M. D. A. Manibusan
D. Parkinson
F. J. A. Quitugua
E. D. Reyes
M. C. Ruth
F. R. Santos
T. V. C. Tanaka
A. R. Unpingco

AN ACT AUTHORIZING THE GOVERNOR OF GUAM TO
TRANSFER CERTAIN PROPERTY IN DEDEDO TO THE
GUAM HOUSING CORPORATION TO DEVELOP
AFFORDABLE HOUSING FOR SALE TO FIRST TIME
HOMEOWNERS.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**
2 **Section 1. Legislative findings. The Legislature finds that there is a**
3 **critical shortage of affordable housing on Guam and further finds that**

1 significant savings can also be realized if the government of Guam uses its
2 negotiating leverage to build housing units at less than market prices on
3 government land for sale to low and middle income families. The
4 Legislature further finds that it is nearly impossible for most low or
5 middle income families on Guam to purchase homes at market prices.

6 Section 2. Authorization. The Governor of Guam is authorized to
7 transfer Lot No. 10120-14, consisting of eight (8) acres, and Lot No. 10120-
8 16, consisting of thirty-eight (38) acres, both of Dededo, to the Guam
9 Housing Corporation (the "Corporation") to develop affordable housing
10 units for sale to first time homeowners who are U. S. citizens or permanent
11 resident aliens and who have been domiciled in Guam for a five (5)
12 consecutive year period immediately preceding the date of sale of the unit.

13 Section 3. Registration. The conveyance of said lots shall take effect
14 upon completion of the land registration of Basic Lot No. 10120 by the
15 government of Guam.

16 Section 4. Definition of first time homeowners. "First time
17 homeowners" are defined as families (married persons or single persons
18 with dependents) who have not had any ownership interest in residential
19 real property within the three (3) year period immediately preceding the
20 date of sale of a unit developed under this Act. Divorced persons or
21 individuals having an ownership interest in the property of the parents do
22 qualify as first time homeowners; provided, that any interest in residential
23 real property is terminated prior to the purchase of a unit developed
24 under this Act.

25 Section 5. Allocation. The units shall be allocated to families on the
26 following basis: Thirty percent (30%) to families whose incomes are up to
27 one hundred percent (100%) of the median income for Guam established
28 by the U. S. Department of Housing and Urban Development ("HUD"); fifty
29 percent (50%) to families whose incomes are between one hundred percent
30 (100%) and one hundred thirty percent (130%) of such HUD-established
31 median income; and twenty percent (20%) to families whose incomes are
32 between one hundred thirty (130%) and one hundred fifty percent (150%)
33 of such HUD-established median income. The homes may be sold to
34 families in the next lower or higher category in the event that there are
35 insufficient qualified applicants in a given class.

1 Section 6. Prices. The units shall be sold at cost plus two percent
2 (2%), and Three Dollars (\$3) per square meter for the house lot, and for a
3 first time owner, no down payment shall be required. Costs shall include
4 but are not limited to all costs associated with the design, on-site
5 infrastructure, construction, financing, sale and project management of the
6 development. The two percent (2%) in excess of the costs shall be retained
7 by the Corporation for the payment of expenses it will incur during the
8 construction and monitoring of the project. The cost of off-site
9 infrastructure and off-site access roads shall be the responsibility of the
10 government of Guam. On-site infrastructure is defined as all infrastructure
11 improvements inside the lots described in Section 2 of this Act. The
12 proceeds from the sale of the lots shall be retained by the Corporation. Of
13 these proceeds, Two Hundred Thousand Dollars (\$200,000) shall be used to
14 prepare a comprehensive housing study on homeownership for Guam and
15 the balance shall be used for costs associated with future affordable
16 housing projects. The Corporation shall establish a fund for the proceeds of
17 the land sales that is separate from its other accounts and shall report to
18 the Legislature each year on the status of this fund.

19 Section 7. Equity to Corporation. The equity between the selling
20 price of each unit and the initial appraised value of each unit at the time of
21 sale shall remain the property of the Corporation for a period of not less
22 than twenty-five (25) years following the sale of the property. The
23 Corporation shall be given the right of first refusal on all homes sold by the
24 initial owners and subsequent owners who purchase a home constructed
25 under this Act from the Corporation in the event the homes are sold within
26 twenty-five (25) years of the date of purchase. The right of first refusal
27 price on sale of the home shall be the original selling price plus any equity
28 beyond the initial appraisal not to exceed five percent (5%) per year. In
29 the event the homes are purchased by the Corporation, they shall be sold
30 at cost to first time homeowners who shall be subject to the equity sharing
31 provisions of this section. The owners shall not mortgage or attach or
32 cause to attach any liens for equity which is not considered to be theirs
33 under this section. Homes purchased under the Corporation's right of first
34 refusal shall be sold at cost plus ten percent (10%). The Corporation shall
35 share in the equity on all homes sold that were acquired by the right of

EXHIBIT “E”

Public Law 24-81

**TWENTY- FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session**

Bill No. 149 (COR)

As substituted by the Committee on Finance
and Taxation and as amended on the Floor.

Introduced by:

Committee on Rules,
Government Reform and
Federal Affairs

by request of the Governor in
accordance with the Organic
Act of Guam.

Mark Forbes

A. C. Blaz

A. C. Lamorena, V

T. C. Ada

F. B. Aguon, Jr.

E. Barrett-Anderson

J. M.S. Brown

Felix P. Camacho

Francisco P. Camacho

M. C. Charfauros

E.J. Cruz

W. B.S.M. Flores

L. F. Kasperbauer

C. A. Leon Guerrero

L. Leon Guerrero

V. C. Pangelinan

J. C. Salas

A. L.G. Santos

F. E. Santos

A. R. Unpingco

J. Won Pat-Borja

**AN ACT TO AMEND §4101, §4104(a), §4104(m),
§4105, §4106 AND §4214, TO ADD A NEW §4103.5
AND §4106.1, AND ADD A NEW ARTICLE 6 TO**

**CHAPTER 4, ALL TO TITLE 12 OF THE GUAM
CODE ANNOTATED, AND TO APPROVE THE
TERMS AND CONDITIONS OF THE ISSUANCE
OF UP TO \$50,000,000 OF REVENUE BONDS OF
THE GUAM HOUSING CORPORATION, AND TO
AMEND §§ 4, 6, 7, 8, 10 AND 13 OF P. L. NO. 20-225,
RELATIVE TO THE LADA ESTATES AFFORDABLE
HOUSING PROJECT.**

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2 **Section 1. Legislative Finding.** Section 4103 of Title 12, Guam Code
3 Annotated, authorizes the Guam Housing Corporation ("GHC") to encourage
4 and engage in low and moderate income housing activities, including the
5 development and financing of homes. Amendments are needed for the
6 following purposes:

7 (a) to facilitate the issuance by GHC of its revenue bonds for the
8 purpose of financing mortgage loans for the purchase of homes by low
9 and moderate income residents of Guam;

10 (b) to provide GHC with perpetual succession and to permit
11 GHC to utilize amounts originally appropriated to the Foreclosure
12 Protection Fund of GHC to pay its mortgage insurance risk sharing
13 obligations; and

14 (c) to amend P. L. No. 20-225, to allow GHC to utilize a portion
15 of the proceeds of any bond issuance for the benefit of the Lada Estates
16 Affordable Housing Project.

17 Subsection (k) of §2103 of Title 12, Guam Code Annotated, provides that
18 agencies and instrumentalities of the government of Guam shall issue
19 obligations only by means of and through the agency of the Guam Economic
20 Development Authority ("GEDA"). This Subsection further provides that

1 GEDA shall not sell any obligation without the approval of the Guam
2 Legislature of the terms and conditions of the issuance of the obligations. The
3 Guam Legislature has been provided a proposed form of indenture, as
4 evidence by the attached "Exhibit A" made part of this Act, pursuant to which
5 GHC proposes to issue revenue bonds for the purchase of homes by low and
6 moderate income residents of Guam.

7 **Section 2. Recognizing that the GHC's Purpose is to Improve Housing**
8 **Supply and Affordability, as well as Housing Standards.** Section 4101 of
9 Title 12 of the Guam Code Annotated is hereby amended to read as follows:

10 "Section 4101. **Creation of Corporation: Name.** In order to
11 promote the general welfare of the inhabitants of the Territory of Guam
12 through the improvement of housing standards, housing supply and
13 housing affordability in Guam, there is created a body corporate to be
14 known as the Guam Housing Corporation, hereinafter referred to as the
15 "Housing Corporation." The Housing Corporation shall be deemed to
16 be exercising essential government functions and shall be subject to the
17 general direction of the Governor of Guam."

18 **Section 3. Addition of Definition of "Bonds."** A new §4103.5 is hereby
19 added to Title 12 of the Guam Code Annotated to read as follows:

20 "Section 4103.5. **Definition of 'Bonds.'** For purposes of this
21 Chapter the term 'bonds' shall mean any bonds, notes or other evidences
22 of indebtedness of the Housing Corporation issued pursuant to this
23 Chapter."

24 **Section 4. Providing for Perpetual Succession for the Guam Housing**
25 **Corporation.** Section 4104(a) of Title 12 of the Guam Code Annotated is
26 hereby amended to read as follows:

1 "(a) To have perpetual succession."

2 **Section 5. Providing Authority for Guam Housing Corporation to**
3 **Obtain Financing for Certain Purposes.** Section 4104(m) of Title 12 of the
4 Guam Code Annotated is hereby amended to read as follows:

5 "(m) To borrow funds required to finance or refinance its revenue
6 producing projects or to finance or refinancing a home financing
7 program under §4602 by the issuance, from time to time, of bonds under
8 such terms and conditions as the Housing Corporation may prescribe,
9 and to pledge and assign specified revenues and other property of the
10 Housing Corporation to the repayment of such bonds."

11 **Section 6. Clarifying that Guam Housing Corporation Bonds are**
12 **Special Obligations of Guam Housing Corporation.** Section 4105 of Title 12
13 of the Guam Code Annotated is hereby amended to read as follows:

14 "**Section 4105. Bonds as Special Obligations.** Every Bond issued
15 by the Housing Corporation pursuant to this Chapter shall be a special
16 obligation of the Housing Corporation payable solely from the revenues
17 and other property specified in the indenture or resolution providing for
18 the issuance of such bond. Every bond shall recite that it is not public
19 indebtedness of the Territory of Guam as that term is used in §11 of the
20 Organic Act."

21 **Section 7. Providing for Various Terms and Conditions of the**
22 **Issuance of Bonds.** Section 4106 of Title 12 of the Guam Code Annotated is
23 hereby amended to read as follows:

24 "**Section 4106. Appointment of Trustee: Provision of Indenture**
25 **or Resolution.** (a) The Housing Corporation may appoint a bank or
26 trust company to act as trustee for the Board and the holders of the

1 bonds issued hereunder, and the Board may authorize the trustee to act
2 on behalf of the holders of the bonds, or a stated percentage thereof, and
3 to exercise and prosecute on behalf of the holders of the bonds such
4 rights and remedies as may be available to the holders.

5 (b) The indenture or resolution pursuant to which any bonds are
6 issued may provide for (i) the deposit of all revenues with the trustee
7 and for the holding thereof by the trustee in one or more separate funds
8 or accounts, and (ii) the transfer to such trustee of such portions of
9 revenues as are provided as security for the bonds and for the holding
10 thereof by such trustee in one (1) or more separate funds or accounts.
11 All money in each such fund or account shall be disbursed only as
12 provided in the indenture or resolution pursuant to which the bonds are
13 issued.

14 (c) Any indenture or resolution pursuant to which bonds of the
15 Housing Corporation are issued may provide for any or all of the
16 following:

17 (i) the payment of the principal and interest of the bonds
18 at one (1) or more places in the Territory or in the United States
19 and in any specified coin or currency of the United States;

20 (ii) the pledge and assignment of all or any portion of the
21 revenues or other property of the Housing Corporation, including,
22 without limitation, mortgage loans and mortgage-backed
23 securities, to secure the payment of the bonds, subject to existing
24 agreements with holders;

25 (iii) reserves or sinking funds in the hands of trustees,
26 paying agents and other depositories and the regulation and

1 disposition thereof;

2 (iv) limitations on the purpose to which the proceeds of
3 sale of bonds may be applied;

4 (v) limitations on the issuance of additional bonds, the
5 terms upon which additional bonds may be issued and secured
6 and the refunding of outstanding bonds;

7 (vi) the procedure, if any, by which the terms of any
8 contract with the holders of bonds may be amended or abrogated,
9 the amount of bonds the holders of which must consent thereto,
10 and the manner in which such consent may be given;

11 (vii) vesting in a trustee property, rights, powers and duties
12 in trust as the Housing Corporation determines;

13 (viii) the specification of the acts or omissions to act which
14 shall constitute a default in the obligations and duties of the
15 Housing Corporation to the holders of the bonds and providing
16 for the rights and remedies of the holders, and any limitations on
17 such rights and remedies, in the event of such default; and

18 (ix) any other matters of like or different character which in
19 any way affect the security or protection of the holders of the
20 bonds or the rights of the Housing Corporation.

21 (d) Bonds of the Housing Corporation issued pursuant to this
22 Chapter shall: (i) bear such date, (ii) mature at such times, (iii) bear
23 interest at such fixed or variable rates, (iv) be sold at public or private
24 sale at such prices above or below par, (v) be in such denominations, (vi)
25 be in such form, (vii) carry such registration privileges, (viii) be executed
26 in such manner and (ix) be subject to such terms of redemption as

1 provided in the indenture or resolution authorizing their issuance."

2 **Section 8. Establishing Validity of Pledge by Guam Housing**
3 **Corporation from Time Pledge is Made, Without Need for Further**
4 **Documentation.** A new §4106.1 is hereby added to Title 12 of the Guam Code
5 Annotated to read as follows:

6 "Section 4106.1. **Validity of Pledge.** Any pledge made by the
7 Housing Corporation shall be valid and binding from the time the
8 pledge is made. The revenues or other property pledged and thereafter
9 received by the Housing Corporation shall immediately be subject to
10 the lien of the pledge without any physical delivery thereof or further
11 act. The lien of any pledge shall be valid and binding against all parties
12 having claims of any kind in tort, contract, or otherwise against the
13 Housing Corporation, irrespective of whether such parties have notice
14 thereof. Neither the resolution, the indenture nor any other instrument
15 by which a pledge is created need be recorded."

16 **Section 9. Providing Authority for the Guam Housing Corporation to**
17 **Use the Foreclosure Protection Fund to Repay Bonds as well as to Pay Off**
18 **the First Mortgage on Foreclosure.** Section 4214 of Title 12 of the Guam Code
19 Annotated is hereby amended to read as follows:

20 "Section 4214. **Foreclosure Protection Fund.** There is hereby
21 created the Foreclosure Protection Fund (the 'Fund'). The Fund shall be
22 used by GHC to protect the interest of the Trust as the second mortgagee
23 and shall be used for the purpose of paying off the first mortgage on
24 foreclosure and may also be used to pay any obligation of the
25 Corporation pursuant to any risk sharing arrangement entered into
26 pursuant to §4602."

1 **Section 10. Addition to Home Financing Program to Guam Housing**
2 **Corporation.** A new Article 6 is hereby added to Chapter 4 of Title 12 of the
3 Guam Code Annotated to read as follows:

4 **"Article 6.**

5 **Home Financing Act.**

6 **Section 4601. Definitions.** As used in this Article:

7 **'Eligible mortgagors'** means persons and families eligible under
8 the criteria of §143 of the Internal Revenue Code of 1986 to receive
9 mortgage loans financed with the proceeds of bonds the interest on
10 which is excludable from gross income for Federal income tax purposes,
11 or if such section is no longer effective or is materially modified, such
12 criteria as may be established by the Board to further the purposes of
13 this Article.

14 **'Home'** means any single family detached home, townhouse,
15 condominium unit or two, three and four family dwelling that is to be
16 purchased or improved by an eligible mortgagor and that is located in
17 Guam.

18 **'Home mortgage'** means an interest-bearing loan that is made to
19 an eligible mortgagor, which finances the purchase or improvement of a
20 home, is secured by a mortgage, and has an original principal amount
21 not greater than the then current limit for mortgage loans for homes in
22 Guam under the United States Department of Housing and Urban
23 Development mortgage insurance programs authorized under §§203(b)
24 or 203(k) of the National Housing Act, or if such programs are no longer
25 in operation to insure new mortgages, such limit as may be established
26 by the Board to further the purposes of this Article.

1 **'Lending institution'** means any public or private entity or
2 governmental agency approved by the Housing Corporation and
3 authorized by law to make or participate in making residential loans in
4 Guam.

5 **'Mortgage'** means a mortgage, deed of trust or other security
6 instrument which shall constitute a lien on real property in fee simple or
7 on a leasehold under a lease having a remaining term of a duration
8 necessary to protect the interest of the mortgagee thereunder, as
9 determined by the Housing Corporation.

10 **'Mortgage-backed security'** means any security, whether
11 guaranteed or not, backed by one (1) or more home mortgages or pools
12 consisting of home mortgages.

13 **Section 4602. Authorization of Home Financing Program.** In
14 addition to the powers of the Housing Corporation set forth elsewhere,
15 in this Chapter, and notwithstanding any restrictions, requirements or
16 limitations set forth in Articles 1, 2, 3, 4 and 5 of this Chapter, the
17 Housing Corporation shall have the power to make, purchase, make
18 commitments to purchase, and take assignments from lending
19 institutions, of home mortgages and mortgage-backed securities, under
20 terms and conditions specified by the Housing Corporation. The
21 Housing Corporation may obtain or require mortgagors to obtain
22 mortgage insurance on home mortgages, and may enter into risk-sharing
23 agreements with the providers of the mortgage insurance upon terms
24 and conditions determined by the Housing Corporation. Any
25 obligations of the Housing Corporation to a mortgage insurer under a
26 risk-sharing agreement shall be payable only out of the assets of the

1 Housing Corporation that are not pledged to secure other obligations of
2 the Housing Corporation."

3 **Section 11. Approval of Terms and Conditions to Guam Housing**
4 **Corporation Bonds.** The Guam Legislature, pursuant to Subsection (k) of
5 §2103 of Title 12, Guam Code Annotated, approves the terms and conditions
6 of the issuance by Guam Housing Corporation of revenue bonds in one (1) or
7 more issues or series in an aggregate principal amount not to exceed Fifty
8 Million Dollars (\$50,000,000), with a final maturity not exceeding forty (40)
9 years and bearing interest at fixed or variable rates not exceeding nine percent
10 (9.0%) per annum if interest on such bonds is intended to be excludable from
11 gross income for Federal income tax purposes, and twelve percent (12.0%) per
12 annum of interest on such bonds if not intended to be excludable from gross
13 income for Federal income tax purposes. The bonds shall be issued in one (1)
14 or more issues or series, pursuant to §4104 of Title 12, Guam Code Annotated,
15 and one (1) or more indentures in substantially the form of the indenture
16 presented to this Legislature, as evidenced by the attached "Exhibit A" made
17 part of this Act.

18 **Section 12. Local Sale of Bonds.** Guam Housing Corporation and
19 Guam Economic Development Authority shall undertake their best efforts to
20 cause a portion of any bonds issued pursuant to this Act to be offered for sale
21 in Guam, as well as in other jurisdictions, if and to the extent that such offer
22 and any sales resulting from such offer do not increase the cost to the Guam
23 Housing Corporation or government of Guam of issuing and repaying such
24 bonds.

25 **Section 13. Clarifying the Definition of First Time Homeowners for**
26 **Purposes of Public Law No. 20-225.** Section 4 of P. L. No. 20-225 is hereby

1 amended to read as follows:

2 **"Section 4. Definition of First Time Homeowners.** 'First time
3 homeowners' are defined as persons who have not had any ownership
4 interest in residential real property within the three (3) year period
5 immediately preceding the date of application for purchase of a unit
6 developed under this Act. Divorced persons having an ownership
7 interest in a joint property or individuals having an ownership interest
8 in the property of the parents do qualify as first time homeowners;
9 provided, that any interest in residential real property is terminated
10 prior to the date of application for the purchase of a unit developed
11 under this Act."

12 **Section 14. Amendment to Section 6 of Public Law No. 20-225 to**
13 **permit Corporation to Pay for Off-site Infrastructure.** Section 6 of P. L. No.
14 20-225 is hereby amended to read as follows:

15 **"Section 6. Prices.** The unit shall be sold at cost plus two percent
16 (2%), and Three Dollars (\$3.00) per square meter for the house lot, and
17 for a first time owner, no down payment shall be required. Costs shall
18 include, but are not limited to, all costs associated with the design, on-
19 site infrastructure, off-site infrastructure, construction, financing, sale
20 and project management of the development. The two percent (2%) in
21 excess of the costs shall be retained by the Corporation for the payment
22 of expenses it will incur during the construction and monitoring of the
23 project. The proceeds from the sale of the lots shall be retained by the
24 Corporation. Of these proceeds, Two Hundred Thousand Dollars
25 (\$200,000.00) shall be used to prepare a comprehensive housing study on
26 homeownership for Guam and the balance shall be used for costs

1 associated with future affordable housing projects. The Corporation
2 shall establish a fund for the proceeds of the land sales that is separate
3 from its other accounts and shall report to the Guam Legislature each
4 year on the status of this fund."

5 **Section 15. Repealing and Re-enacting Section 7 of Public Law No. 20-**
6 **225 to Define a Second Mortgage for Equity in Favor of the Guam Housing**
7 **Corporation.** Section 7 of P. L. No. 20-225 is hereby repealed and re-enacted to
8 read as follows:

9 "Section 7. **Second Mortgage for Equity.** The difference between
10 (a) the initial selling price of each unit, and (b) the lesser of the initial
11 appraised value of each unit at the time of sale or the maximum
12 purchase price permitted under §143 of the Internal Revenue Code, if
13 applicable, shall be treated as a shared-appreciation second mortgage
14 loan from the Corporation to the purchaser. The term of the loan shall
15 be twenty-five (25) years, the loan shall be subject to prepayment at any
16 time by the borrower and at maturity the loan shall be forgiven in its
17 entirety. The Corporation's share of appreciation (contingent, deferred
18 interest) shall be a percentage less than or equal to one-half (1/2) of the
19 ratio of the loan principal amount to the initial purchase price. The
20 Corporation may also charge deferred interest at a fixed rate not greater
21 than five percent (5%) per annum.

22 The Corporation shall also have for twenty-five (25) years a right
23 to first refusal upon any sale of the unit by the borrower or upon any
24 first mortgage default for which a notice of public auction is given. For
25 the first four (4) years from the date of purchase of the unit by the
26 borrower, the option price shall be the lesser of (i) the fair market value

1 of the unit at the time of sale, or (ii) the initial appraised value increased
2 in proportion to the increase in the consumer price index for Guam for
3 the period from the date of initial purchase of the unit to the date of sale.

4 After the first four (4) years, the option price shall be the fair market
5 value of the unit to the date of sale.

6 Any units purchased by the Corporation shall, if possible, be
7 resold to the first time homeowners under agreements with the same
8 general terms as the agreements with the original purchasers.

9 Any money received by the Corporation from the payment of any
10 loan authorized by this Section shall be deposited to the fund created
11 under Section 6 of Public Law No. 20-225. Amounts in the fund are also
12 authorized to be used to pay the purchase price of units purchased by
13 the Corporation pursuant to the option to purchase described in this
14 Section."

15 **Section 16. Guam Housing Corporation to Exercise Option Under**
16 **Second Mortgage for Equity in the Event of a First Mortgage Default.**

17 Section 8 of P. L. No. 20-225 is hereby amended to read as follows:

18 "Section 8. Default. In the event of a first mortgage default, with
19 respect to a unit the Corporation may exercise its option under Section 7
20 of Public Law No. 20-225 to purchase the unit or may bid for the unit at
21 the public auction."

22 **Section 17. Application of §143 of Internal Revenue Code to Any**
23 **Transferee of Bond-Financed First Mortgage.** Section 10 of P. L. No. 20-225 is
24 hereby amended to read as follows:

25 "Section 10. Gifts. The homeowner may without consideration
26 transfer by means of a gift, the home purchased under this Act to any

1 member of the homeowner's immediate family. For purposes of this
2 Act, 'immediate family' is defined as the homeowner's spouse, parents,
3 and children by birth or by legal adoption. In cases of authorized family
4 transfer, the same restrictions that applied to the previous homeowner
5 apply to the new homeowner. The assumption by the transferee of any
6 bond-financed first mortgage shall be subject to the requirements of
7 Section 143 of the Internal Revenue Code."

8 **Section 18. Clarification that Mortgages Financed by Guam Housing**
9 **Corporation Bonds do Not Disqualify a Person from Government of Guam**
10 **Mortgage Subsidy Programs.** Section 13 of P.L. No. 20-225 is hereby
11 amended to read as follows:

12 "Section 13. **No Subsidy Mortgages.** Persons who purchase a
13 home under this Act are not eligible for government of Guam mortgage
14 subsidy programs. For this purpose, mortgages financed by qualified
15 mortgage bonds issued by the Corporation shall not be treated as
16 financed by a mortgage subsidy program."

EXHIBIT “F”

Public Law 25-116

MINA'BENTE SINGKO NA LIHESLATURAN GUÅHAN
2000 (SECOND) Regular Session

Bill No. 377 (COR)

As substituted by the Committee on
Housing, General Government Services
and Foreign Affairs.

Introduced by:

K. S. Moylan
J. C. Salas
A. C. Lamorena, V
A. R. Unpingco
V. C. Pangelinan
M. G. Camacho
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J. M.S. Brown
E. B. Calvo
Mark Forbes
L. F. Kasperbauer
C. A. Leon Guerrero
S. A. Sanchez, II

**AN ACT TO ADD ARTICLE 7 TO CHAPTER 4 OF
TITLE 12 OF THE GUAM CODE ANNOTATED;
AND TO ADD §§5.1, 7.1 AND 17, TO AMEND §6
AND TO REPEAL AND REENACT §12, ALL TO P.L.
NO. 20-225, RELATIVE TO ESTABLISHING A
LEASE-TO-OWN HOUSING PROGRAM FOR
QUALIFIED APPLICANTS AND FIRST TIME
HOMEBUYERS, AND TO CITE THE ACT AS "THE
LEASE-TO-OWN HOUSING PROGRAM ACT OF
2000".**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Title.** This Act shall be cited and referred to as "*The*
3 *Lease-to-Own Housing Program Act of 2000*".

4 **Section 2.** Article 7 is hereby *added* to Chapter 4 of Title 12 of the Guam
5 Code Annotated to read as follows:

6 **"ARTICLE 7.**

7 **LEASE-TO-OWN HOUSING PROGRAM.**

- 8 **Section 4701. Title.**
- 9 **Section 4702. Legislative Findings.**
- 10 **Section 4703. Legislative Policy.**
- 11 **Section 4704. Definitions.**
- 12 **Section 4705. Lease-to-Own Program; Establishment;**
13 **Authorization to Participate.**
- 14 **Section 4706. Authorization to Acquire Mortgage**
15 **Loans.**
- 16 **Section 4707. Lease-to-Own Contract.**
- 17 **Section 4708. Tenant-Purchaser Escrow Account.**
- 18 **Section 4709. Closing of Transfer of Title.**
- 19 **Section 4710. Rules, Regulations and Restrictions.**
- 20 **Section 4711. Severability.**

21
22 **Section 4701. Title.** This Article shall be known and shall
23 be cited as '*The Lease-to-Own Housing Program Act of 2000.*'

1 **Section 4702. Legislative Findings.** *I Liheslaturan Guåhan*
2 finds that in 1997, Guam Housing Corporation announced a bid for the
3 design, building and financing of infrastructure requirements for Lada
4 Estates. As a result, Maeda Pacific Corporation ('Maeda') the selected
5 bidder, was granted a contract to design, build and finance the project.
6 The Guam Housing Corporation and Maeda executed a contract in the
7 amount over Ten Million Dollars to fulfill the project's scope of work.

8 Furthermore, *I Liheslaturan Guåhan* finds that Maeda agreed to the
9 terms such that payment would be due from a developer who would
10 finance both the outstanding contract with Maeda and the development
11 of the units at Lada Estates. To date, Guam Housing Corporation has
12 entertained several bids, but is unable to secure any contract with a
13 developer. Also, *I Liheslaturan Guåhan* finds that the infrastructure
14 project was due and payable on or before November 1998.

15 *I Liheslaturan Guåhan* also finds that while there have been several
16 bid announcements, initiated by the Guam Housing Corporation, for
17 the construction of the Lada Estates project which have been advertised
18 in conformance with the procurement laws of Guam. Unfortunately, no
19 bidder has been able to meet the required terms of the contract due to
20 the provisions requiring substantial up front financial reimbursement to
21 Maeda. As a result of this hindrance, Maeda has agreed to renegotiate
22 some of the terms to allow for easier repayment criteria.

23 More importantly, *I Liheslaturan Guåhan* in discussions with the
24 Guam Housing Corporation and the mortgage community, identified
25 the key problems that adversely affected the eligibility of customers and

1 clients to participate in purchasing of not only the Lada Estates
2 residential project, but also various single family housing development
3 projects on Guam. Some of the problems are identified as:

4 (i) most prospective clients have high debt to income
5 ratios five (5) year short term debts;

6 (ii) most prospective clients are unable to meet the
7 required closing cost and down payment for their first-time home;
8 *and*

9 (iii) most prospective first-time homebuyers may need the
10 lease-to-own housing program so that they may utilize the lease
11 term to re-establish their credit and thus qualify for a typical
12 residential loan at the time of escrow closing of the purchase.

13 **Section 4703. Legislative Policy.** *I Liheslaturan Guåhan* in
14 its continuing effort to promote affordable housing programs for the
15 people finds that for many individuals and families the primary
16 obstacle to homeownership is their inability to save money for the initial
17 cost of buying a home, such as down payment and closing costs. To
18 effectuate additional housing programs, *I Liheslaturan Guåhan* in its
19 wisdom wishes to hereby establish a '*Lease-to-Own Housing Program*'.
20 Said Program shall afford opportunities for the private and government
21 sector to invest in affordable housing developments, particularly those
22 that offer lease to own provisions with options to exercise purchase
23 within three (3) to five (5) years. This would encourage public and
24 private collaboration in the search for the suitable financing mechanism
25 or mechanisms which could benefit the families who can afford to

1 purchase homes given financial assistance for closing costs and down
2 payment.

3 *I Liheslaturan Guåhan* wishes to encourage the participation of the
4 private sector working through the authority vested in the Guam
5 Housing Corporation through this Act. Furthermore, *I Liheslaturan*
6 *Guåhan* recognizes the opportunity for certain lending institutions and
7 lenders of capital to assist families in purchasing or building their first
8 home on their lot or purchasing homes available in the market. *I*
9 *Liheslaturan Guåhan* also wishes to recognize that the programs
10 contained herein are Community Reinvestment Act qualified, and in
11 conformance with various housing programs administered by the
12 Guam Housing Corporation, particularly those which can accommodate
13 the concept of 'lease-to-own' residential units of various sorts.

14 *I Liheslaturan Guåhan* also encourages the granting of any Guam
15 Economic Development Authority qualifying certificate benefits to the
16 developers involved in the Lada Estates project, as well as other similar
17 housing projects. In the case where a government entity is the
18 developer, such benefits may be passed on to the participating
19 contractors provided that such incentive would decrease the overall unit
20 cost of housing in the respective project.

21 **Section 4704. Definitions.** For purposes of this Act,
22 the following words and phrases are defined to mean:

23 (a) '*Affordable housing unit*' shall mean a single family
24 dwelling unit inclusive of land, built in accordance with the
25 Uniform Building Code and in consonance with the Guam zoning

1 and subdivision laws whose selling price meets the criteria set
2 forth in the Guam Economic Development Authority Rules and
3 Regulations pertaining to 'affordable housing' adopted pursuant
4 to Public Law Number 24-266.

5 (b) 'Corporation' shall mean the Guam Housing
6 Corporation created pursuant to §4101 of Title 12 of the Guam
7 Code Annotated.

8 (c) 'Residence' shall mean a single family home, a
9 condominium housing unit or a housing unit owned by a
10 cooperative housing cooperation.

11 (d) 'Seller' shall mean the party to the lease-to-own
12 contract who is the seller of the residence.

13 (e) 'Tenant-Purchaser' shall mean the prospective person
14 who is a party to the lease-to-own contract.

15 **Section 4705. Lease-to-Own Program; Establishment;**
16 **Authorization to Participate.** The Guam Housing
17 Corporation ('Corporation') is hereby authorized to participate in lease-
18 to-own programs described in this Act. The purpose of a lease-to-own
19 program is to provide mortgage financing for a residence occupied as a
20 primary residence by a prospective mortgagor pursuant to a lease-to-
21 own contract with the owner of such property. The lease-to-own
22 contract shall provide for the eventual purchase by the resident of the
23 residence and an interim lease of the residence *prior to* the closing of the
24 purchase thereof.

25 **Section 4706. Authorization to Acquire Mortgage Loans.**

1 The Corporation may contract to acquire and may acquire a mortgage
2 loan or loans made by a bank, or other financial institution, to a seller
3 who has entered a lease-to-own contract with an eligible Tenant-
4 Purchaser for the property which is the subject of and security for such
5 mortgage loan.

6 **Section 4707. Lease-to-Own Contract.** The
7 Corporation is empowered to purchase or build, as well as incur debt to
8 achieve same, residences which the Corporation would own and lease
9 under the Program established herein.

10 (a) The lease-to-own contract shall contain:

11 (1) a lease of the residence, or in the case of
12 cooperative housing units a sublease, for a term *not* to
13 exceed five (5) years;

14 (2) provision for a rental payment *not less than* the
15 sum of:

16 (i) an amount sufficient to pay the estimated
17 property taxes and insurance on the residence, or in
18 the case of a cooperative unit, the maintenance
19 charges;

20 (ii) the cost of routine maintenance of the
21 residence, *unless* the lease-to-own contract requires the
22 Tenant-Purchaser to perform such maintenance at his
23 own expense;

24 (iii) an amount sufficient to pay interest on the
25 mortgage loan held by the Corporation on the

1 residence, less the estimated earnings on the escrow
2 fund provided in §4708 of this Act which is allocable
3 to such mortgage held by the Corporation;

4 (iv) an amount to be held in escrow, referred to
5 as the 'Tenant-Purchaser escrow,' which, when
6 accumulated over the period of the lease-to-own
7 contract or no more than five (5) years, will amount to
8 a sum sufficient to pay the Tenant-Purchaser's
9 required down payment under the lease-to-own
10 contract, plus the estimated closing costs of purchase
11 which will be allocable to the Tenant-Purchaser,
12 including the seller's closing cost at the initial closing
13 of the mortgage to the seller; *and*

14 (v) in the case of a condominium unit,
15 common charges;

16 (3) provisions obligating the Tenant-Purchaser to
17 buy and the seller to sell the residence at the end of the lease
18 term, which shall *not* exceed five (5) years;

19 (i) if Tenant Purchaser seeks to utilize any
20 HUD grants for down payment and closing cost
21 assistance, then Tenant Purchaser shall exercise the
22 purchase option on or before three (3) years;

23 (4) a provision that the default by the Tenant-
24 Purchaser under the provision of the lease-to-own contract
25 shall result in the forfeiture to the seller of all amount in the

1 Tenant-Purchaser escrow; furthermore, the various escrow
2 funds funded under the Program should be residence
3 specific, such that a default or other failure of the tenant to
4 purchase the unit within the five (5) years allowed would
5 result in the escrow being forfeited to the successor Tenant-
6 Purchaser, *and not* the Corporation;

7 (5) a provision that the Tenant-Purchaser shall have
8 the option upon reasonable notice to the seller and the
9 Corporation to elect to close the purchase of the residence
10 *not* earlier than one (1) year from the date of execution of the
11 lease-to-own contract;

12 (6) a provision that the rent shall be adjusted under
13 the lease-to-own contract periodically to take account of
14 changes in taxes, insurance, escrow earning, mortgage
15 interest and other variables intended to be covered by the
16 tenant's rental payments; *and*

17 (7) a provision governing the consequences of
18 default by each of the parties.

19 (b) The provisions of this Act shall *not* apply to the
20 tenancy of the Tenant-Purchaser under the lease-to-own contract
21 from and after the purchase by the Corporation of the mortgage
22 loan on the residence so long as the Corporation holds the
23 mortgage loan. The Corporation shall *not* sell the mortgage loan
24 *prior to* the closing of the transfer of title to the Tenant-Purchaser

1 or default by the Tenant-Purchaser under the lease-to-own
2 contract.

3 (c) The Corporation shall adopt procedures to ensure that
4 the payments contemplated by §4707(a)(2) of this Section are in
5 fact applied to those purposes.

6 **Section 4708. Tenant-Purchaser Escrow Account.**

7 (a) The mortgage loan documents, with respect to a
8 mortgage loan(s) in effect *prior to* the Tenant-Purchaser's purchase
9 of their respective units, shall provide there shall be retained over
10 the Tenant-Purchaser's lease term an amount held as additional
11 security for such loan(s) called the Tenant-Purchaser Escrow
12 Account. The Tenant-Purchaser Escrow Account will receive a
13 predetermined portion of the Tenant-Purchaser's monthly rental
14 amount as provided for in §4707(a)(2)(iv) of this Act, such portion
15 to be determined at commencement of the Tenant-Purchaser's
16 lease. The total amount contributed to the Tenant-Purchaser
17 Escrow Account by the Tenant-Purchaser over the lease term
18 should *not* be less than ten percent (10%) of the Tenant-
19 Purchaser's anticipated purchase price. Such Tenant-Purchaser
20 Escrow Account shall be held by a Trustee for the benefit of the
21 Corporation and the first mortgagee(s). The Corporation will
22 approve such Trustee. At the time of the Tenant-Purchaser's
23 purchase of the respective unit, the Trustee shall release and
24 disperse the Tenant-Purchaser Escrow Account to the unit Seller
25 to meet the Tenant-Purchaser's down payment requirement.

1 The escrow amounts pertaining to various lease-to-own
2 loans may be commingled for investment purposes. Trustees shall
3 keep separate records showing the amount in each Tenant-
4 Purchaser Escrow Account. Investment earnings on the Tenant-
5 Purchaser Escrow Account shall accrue to the benefit of the
6 Tenant-Purchaser.

7 (b) The Trustee shall periodically advise both the
8 Corporation and the Seller as to the amount and earnings in each
9 Tenant-Purchaser Escrow Account.

10 (c) In the event a default by the Tenant-Purchaser occurs,
11 as provided for in §4707(a)(5), the Trustee shall release only that
12 portion of the respective Tenant-Purchaser Escrow Account that is
13 needed to meet the following funding requirements:

14 (i) any costs incurred by the Corporation related to
15 deferred maintenance of the Tenant-Purchaser's respective
16 housing unit;

17 (ii) any costs to the Corporation due to re-
18 advertising, administrative financial fees and other liabilities
19 that may be a result of the Tenant-Purchaser caused default;
20 and

21 (iii) all funds remaining in the unit specific Tenant-
22 Purchaser Escrow Account will be retained by the Trustee
23 for the benefit of the next prospective Tenant-Purchaser to
24 occupy the defaulted unit, as is intended by and provided
25 for in §4704(a)(5) of this Act.

1 **Section 4709. Closing of Transfer of Title. (a) Disbursement**
2 **of Escrow Account.** At the closing of the transfer of title to the
3 residence to the Tenant-Purchaser to the lease-to-own contract, the
4 Corporation shall disburse the escrow amount to or for the
5 account of the Tenant-Purchaser.

6 (b) **Insurance.** At such closing the Corporation may
7 require the Tenant-Purchaser to furnish private mortgage
8 insurance if such insurance is required in the case of other
9 mortgage loans under this Title. *If* such insurance is *not*
10 obtainable in the private market at the time of such closing, the
11 Corporation is authorized to issue such insurance.

12 **Section 4710. Rules, Regulations and Restrictions.** The
13 Corporation shall establish such requirements with regard to lease-to-
14 own contracts, lease-to-own residence, the qualifications of Tenant-
15 Purchaser and the Corporation's participation in any lease-to-own
16 program, as may be deemed appropriate by the Corporation to achieve
17 the objectives of this Act. The Corporation's requirements, including,
18 but not limited to income limit applicable to the Tenant-Purchaser and
19 the purchase price of the residence, must be satisfied at or before the
20 time the mortgage loan is purchased, and the Tenant-Purchaser must be
21 deemed qualified by the Corporation at that time.

22 **Section 4711. Severability.** *If* any provision of this Law or
23 its application to any person or circumstance is found to be invalid or
24 contrary to law, such invalidity shall *not* affect other provisions or
25 applications of this Law which can be given effect without the invalid

1 provisions or application, and to this end the provisions of this Law are
2 severable."

3 **Section 3. Legislative Statement.** *I Liheslaturan Guåhan* finds that
4 Public Law Number 20-225, as amended by Public Law Number 24-81,
5 created an affordable housing program to be developed by the Guam
6 Housing Corporation ("Corporation") on Lot Numbers 10120-14 and 10120-16
7 in the municipality of Dededo, Guam. Furthermore, the property has been
8 conveyed to the Corporation and the Corporation has issued a request for
9 proposals for development of three hundred ninety-nine (399) residential
10 units, and is currently negotiating with qualified offers to design, finance and
11 construct the affordable housing units. Also, the Corporation has caused the
12 necessary infrastructure to be developed.

13 More importantly, the Corporation has requested *I Liheslaturan Guåhan*
14 to amend certain provisions of Public Law Number 20-225 in order to
15 facilitate the financing, design and construction of the units in order to render
16 the entire project viable. Moreover, *I Liheslaturan Guåhan* finds that the certain
17 amendments to Public Law Number 20-225 are necessary in order to comply
18 with Guam Law and allow the Corporation to fully develop and market the
19 affordable housing units.

20 **Section 4.** Section 5.1 is hereby *added* to Public Law Number 20-225 to
21 read as follows:

22 "Section 5.1. In the event that there are insufficient qualified
23 applicants of all classes ready, willing and able to purchase all of the
24 homes and lots upon their completion, the Corporation is authorized to
25 lease unsold homes and lots to qualified purchasers with or without

1 provisions to such leases providing for options or obligations to
2 purchase the homes and lots, and to assign the proceeds of such leases
3 to finance payment of the initial design, finance and construction of the
4 homes. In the event that the Corporation is unable to locate a sufficient
5 number of qualified purchasers to purchase or lease the homes and lots
6 as provided herein, the Corporation is authorized to lease the homes
7 and lots for terms *not* in excess of one (1) year, which lease shall be
8 renewable annually at the option of the Corporation. The proceeds of
9 the sales of such homes and lots, and the leases of such homes and lots,
10 may be assigned by the Corporation to the developer chosen by the
11 Corporation to the design, finance and construct the housing units in
12 order to finance payment of the initial design, finance and construction
13 of the homes and infrastructure improvements. As soon as qualified
14 purchasers become available, the homes and lots shall then be sold to
15 such qualified purchasers as provided in this Act.”

16 **Section 5.** Section 6 of Public Law Number 20-225, as amended by
17 Public Law Number 24-81, is hereby further *amended* to read as follows:

18 **"Section 6. Prices.** The unit shall be sold at cost plus two
19 percent (2%), and Three Dollars (\$3.00) per square meter for the house
20 lot, and for a first time owner, no down payment shall be required.
21 Costs shall include, but are not limited to, all costs associated with the
22 design, on-site infrastructure, construction, financing, sale and project
23 management of the development. The two percent (2%) in excess of the
24 costs shall be retained by the Corporation for the payment of expenses it
25 will incur during the construction and monitoring of the project. The

1 proceeds from the sale of the lots shall be retained by the Corporation.
2 The costs of off-site infrastructure and off-site access roads shall be the
3 responsibility of the government of Guam. On-site infrastructure is
4 defined as all infrastructure improvements inside the lots described in
5 §2 of this Act. The proceeds from the sale of the lots shall be retained by
6 the Corporation. Of these proceeds, Two Hundred Thousand Dollars
7 (\$200,000.00) shall be used to prepare a comprehensive housing study
8 on homeownership for Guam and the balance shall be used for costs
9 associated with future affordable housing projects. The Corporation
10 shall establish a fund for the proceeds of the land sales that is separate
11 from its other accounts and shall report to *I Liheslaturan Guahan* each
12 year on the status of this fund.”

13 **Section 6.** Section 7.1 is hereby *added* to §7 of Public Law Number 20-
14 225, as further amended by Public Law Number 24-81, to read as follows:

15 **“Section 7.1. Equity Interest Recapture.** The difference
16 between the selling price of each unit and the initial appraised value of
17 each unit at the time of the sale is considered equity and shall be
18 available to the purchaser for down payment assistance and closing
19 costs. This equity shall *not* be used for debt consolidation. Participating
20 banks and financial institutions are encouraged to access this equity for
21 the purposes stated herein. *If* a homeowner uses any portion of this
22 equity for any purpose listed herein, and the homeowner decides to sell
23 the home before five (5) years have transpired from the date of original
24 purchase, then the homeowner shall be obligated to pay to Guam

1 Housing Corporation five percent (5%) interest per year on the amount
2 of equity used.

3 Guam Housing Corporation shall insert a provision in the
4 warranty deed for the property title 'Equity Interest Recapture Clause'.
5 The purpose of this provision is to establish a vehicle to recapture five
6 percent (5%) interest per year on the equity used by the homeowners in
7 the event the homeowners decide to resell the property in the first five
8 (5) years. This interest must be paid to the Corporation at the close of
9 escrow. *If the homeowner sells the home after five (5) years, then the*
10 *recapture clause shall have expired and the homeowner shall not be*
11 *required to pay the interest."*

12 **Section 7.** Section 12 of Public Law Number 20-225 is hereby *repealed*
13 *and reenacted* to read as follows:

14 **"Section 12. Zoning.** Upon conveyance of the
15 property described in §2 of this Act to the Corporation, such property
16 shall thereupon be zoned as a 'Multi-residential (R2)'. Any variance
17 required from Subdivision laws of Guam which would allow the Guam
18 Housing Corporation to maximize the marketability of the housing
19 units and lots of the Lada Estate Project is hereby granted so long as the
20 waiving or granting of such variance does *not* cause or result in danger
21 to the health, safety or livelihood of the residents of Lada and the
22 general public, and that such variance would *not* result in economic loss
23 to the Guam Housing Corporation and the homeowners of Lada
24 Estates".

1 **Section 8.** Section 17 is hereby *added* to Public Law Number 20-225 to
2 read as follows:

3 **“Section 17. Exemption.** Sales of homes of
4 lots to qualified purchasers pursuant to this Act are hereby exempt from
5 the provisions of §60112 of Article 1 of Title 21 of the Guam Code
6 Annotated and §2107 of Chapter 2 of Title 2 of the Guam Code
7 Annotated. For purposes of this Act, the Lada Estates Project shall be
8 exempted from the provisions of Public Law Number 18-15.”

9 **Section 9. Severability.** *If* any provision of this Law or its
10 application to any person or circumstance is found to be invalid or contrary to
11 law, such invalidity shall *not* affect other provisions or applications of this
12 Law which can be given effect without the invalid provisions or application,
13 and to this end the provisions of this Law are severable.

EXHIBIT “G”

Public Law 30-172

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

Bill No. 390-30 (COR)

As amended on the Floor.

Introduced by:

T. R. Muña Barnes
Judith T. Won Pat, Ed.D.
T. C. Ada
V. Anthony Ada
F. B. Aguon Jr.
F. F. Blas, Jr.
E. J.B. Calvo
B. J.F. Cruz
J. V. Espaldon
Judith P. Guthertz, DPA
Adolpho B. Palacios, Sr.
v. c. pangelinan
R. J. Respicio
Telo Taitague
Ray Tenorio

**AN ACT TO *AMEND* SUBSECTION (d) OF SECTION 38,
CHAPTER VI OF PUBLIC LAW 29-113, RELATIVE TO
THE *LADA* ESTATES PROJECT AND ENSURING
ACCESS TO AFFORDABLE HOUSING FOR THE
PEOPLE OF GUAM.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings.** *I Liheslaturan Guåhan* finds that the
3 demand for affordable housing for Guam families is rising exponentially each
4 month as the military expansion and concurrent increase in economic activities
5 progress. The shortage of affordable housing for Guam families and residents

1 requires immediate action to facilitate access to equitable homeownership
2 programs.

3 *I Liheslaturan Guåhan* also finds that legislation providing access to, and
4 existing laws governing, the “*Lada Estates Affordable Housing Project*”, as
5 enacted by P.L. 20-225 and further amended by P.L. 24-81, P.L. 25-116, and by
6 Section 38 of P.L. 29-113, need to be amended further in order to facilitate and
7 make more feasible the participation by local developers in creating more
8 affordable-homes stock for Guam’s working families and access to
9 homeownership programs.

10 **Section 2.** Subsection (d) of Section 38 of Chapter VI of Public Law 29-
11 113, is hereby *amended* to read as follows:

12 “(d) A new Section 6.1 is hereby *added* to P.L. 20-225 to read as
13 follows:

14 “Section 6.1. **Prices for Rental Development.** The Property
15 *shall* be sold to a private, non-profit organization for the same price as
16 reflected in Section 6 of P.L. 20-225, as amended. Rental developments
17 *shall* be developed for families whose income *do not* exceed up to one
18 hundred fifty percent (150%) of the median income for Guam households as
19 established by the U.S. Department of Housing and Urban Development
20 (HUD). When the property is sold to a private, non-profit organization to
21 develop affordable rental development the transfer of sale *shall* have a deed
22 restriction to ensure the following:

23 (a) In the event the private, non-profit organization sells the
24 Property after the rental period, the Property *shall only* be sold to a
25 first time homeowner. First time homeowner, as it relates to this Act,
26 *shall* be an eligible buyer as stated on Section 5 of P.L. 20-225, as
27 amended by Section 38 of P.L. 29-113.

1 (b) In the event the private, non-profit organization sells the
2 Property after the rental period, the Property *shall only* be sold to a
3 first time homeowner at the same value the private, non-profit
4 organization purchased the Property and as stipulated on Section 6 of
5 P.L. 20-225, as amended.

6 (c) When the private, non-profit organization sells the house
7 and lot after the rental period it will recover any cost of the vertical
8 construction, rehabilitation cost, administrative fee, and the allowable
9 developer fee allowed by HUD. The developer fee can be *only*
10 applied to the cost of the vertical unit and *not* the land. As stated in
11 Subsection (b) of this legislation, the land will be sold to the first-time
12 homeowner with the same value the private, non-profit organization
13 bought the property as stated in Section 6 of P.L. 20-225.

14 (d) The private, non-profit organization purchaser of the
15 “Lada Estates Affordable Housing Project” *shall* assume all current
16 and future liabilities associated with all claims and liens filed against
17 the property including property taxes.

18 (e) The Guam Housing Corporation *shall* have the first right
19 of refusal to all mortgages for property sold by the private, non-profit
20 organization purchaser, pursuant to Section 6 of Public Law 20-225.”

21 **Section 3. Superceding.** *If* any provisions of any laws of Guam conflict
22 with any Sections of this Law, then the provisions of this Law *shall* supersede any
23 such provisions.