

*I Mina Trentai Kuattro Na Liheslaturan*  
**BILL STATUS**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
256-34 (LS)	Thomas C. Ada	AN ACT TO EXTEND THE LEASEHOLD ON LOT 10154-4, MUNICIPALITY OF DEDEDO AND YIGO TO MANHITA FARMS LLC FOR A PERIOD OF TWENTY-SIX (26) YEARS, AND TO PROVIDE FOR UP TO FIVE (5) RENEWAL OPTIONS OF TEN (10) YEARS EACH .	3/12/18 4:00 p.m.						

***I MINA' TRENTAI KUÁTTRO NA LIHESLATURAN GUÅHAN***  
**2018 (SECOND) Regular Session**

**Bill No. 256-34(LS)**

Introduced by:

Thomas C. Ada 

**AN ACT TO EXTEND THE LEASEHOLD ON LOT 10154-4, MUNICIPALITY OF *DEDEDO AND YIGO* TO *MANHITA FARMS LLC* FOR A PERIOD OF TWENTY-SIX (26) YEARS, AND TO PROVIDE FOR UP TO FIVE (5) RENEWAL OPTIONS OF TEN (10) YEARS EACH .**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
3 that throughout the last several decades, there has been major efforts by federal and  
4 local Departments of Agriculture, the University of Guam, and the Chamorro Land  
5 Trust Commission to develop Guam's agricultural industry. It is estimated that  
6 locally grown agricultural produce represent approximately ten percent (10%) of the  
7 fresh produce consumed in Guam. It is also asserted that local agricultural  
8 production can and should be increased. Locally produced agricultural products  
9 include fruits, vegetables, live-stock feed and eggs.

10 *I Liheslaturan* further finds that *Manhita Farms LLC*, a locally owned and  
11 operated agricultural business, recently purchased a leasehold estate (land) from the  
12 Guam Economic Development Authority (GEDA) that is comprised of  
13 approximately fifty (50) acres. GEDA had acquired the land from a foreclosure on a  
14 commercial loan. The purchase price paid by *Manhita Farms LLC* to GEDA covered  
15 the amount of the defaulted mortgage plus GEDA's expenses.

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1            *I Liheslatura* further finds that the land was initially sold to a private developer  
2 on April 30, 1991 by the Guam Department of Agriculture. Later that year, the lessee  
3 used the land to securitize a loan with GEDA, but was foreclosed upon in 1995. In  
4 May 2015, twenty (20) years later, the leasehold estate was purchased by *Manhita*  
5 *Farms, LLC*, but with only 24-years remaining on a 50-year term.

6            *I Liheslatura* finds that *Manhita Farms, LLC* plans to make substantial  
7 investments in developing Lot 10154-4 to its maximum agricultural potential. In  
8 addition to growing various fresh produce, farm production will include a modern  
9 egg production facility and other types of indoor produce production. Development  
10 plans however, will require extensive equity investment as well as financing. To  
11 achieve the best financing rates and terms, lending institutions typically require that  
12 leasehold estates pledged as security for loans, have a term that exceeds the term of  
13 financing by 10 or more years. Leasehold estates of this type give confidence to  
14 lenders that, in the event of foreclosure, they would be able to recover the amounts  
15 they are owed.

16            *I Liheslatura* intends to authorize the extension of the leasehold estate for an  
17 additional twenty-six (26) years, and provide for up to five (5) renewal options of  
18 ten (10) years per renewal options .

19            **Section 2. Extension of Leasehold.** *I Maga 'lahen Guåhan* is authorized to  
20 extend the leasehold agreement (Attachment A) on Lot 10154-4, Municipality of  
21 *Dededo and Yigo*, consisting of approximately fifty (50±) acres, for an additional  
22 period of twenty-six (26) years, ending on April 29, 2067, to *Manhita Farms, LLC*.  
23 The terms and conditions of the agreement, shall continue throughout term of the  
24 leasehold.

25            **Section 3. Renewal Options Authorized.** The agreement may be renewed  
26 for additional ten (10) year terms under mutually agreed terms and conditions.  
27 Renewal options shall be limited to a maximum of five (5) renewal options.

1           **Section 4. Subleasing Authorized.** *Manhita Farms, LLC shall be*  
2 authorized to sublease minor portions of Lot 10154-4 to agricultural related  
3 businesses who will similarly engage in agricultural activities. *Prior to the execution*  
4 of any sublease(s), the Chamorro Land Trust Commission, at a duly scheduled public  
5 meeting, *shall* review and approve the proposed sublease.

6           **Section 5. Lease Payments to Chamorro Land Trust Commission.** All  
7 lease payments from the lessee, *Manhita Farms, LLC*, shall be deposited into the  
8 Chamorro Land Trust Revenue Account Number 3669-57001, CLT-Sale of  
9 Government Land, throughout the term of the leasehold in a manner consistent with  
10 the terms and conditions of the leasehold estate (including the remaining due on the  
11 original leasehold estate).

12           **Section 6. Expiration or Termination of Lease.** Upon expiration or  
13 termination, for any reason whatsoever, of the leasehold, Lot 10154-4, Municipality  
14 of *Dededo and Yigo* shall revert to the *Lands Inventory of the Chamorro Land Trust*  
15 *Commission.*

16           **Section 7. Effective date.** This Act shall become effective upon enactment.

17           **Section 8. Severability.** If any provision of this law or its application to  
18 any person or circumstance is found to be invalid or contrary to law, such invalidity  
19 shall not affect other provisions or applications of this law that can be given effect  
20 without the invalid provisions or application, and to this end the provisions of this  
21 law are severable.

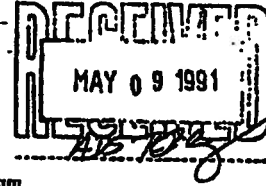
# EXHIBIT 1

91-011 0331

Agri. Form 4

COPY

DEPARTMENT OF AGRICULTURE  
GOVERNMENT OF GUAM



AGRICULTURAL LAND LEASE AGREEMENT

THIS LEASE, by and between the GOVERNMENT OF GUAM, hereafter referred to as the Lessor, and KU SAN AMERICA CORPORATION (Mr. Dae Sung Chung) (a U.S. Citizen and of legal age or a licensed Corporation/Partnership in agriculture) Address P.O. Box 23037, Guam Main Facility, Barrigada, GUAM 96921, hereafter referred to as the Lessee, is executed on the date hereof.

WITNESSETH:

WHEREAS, the Lessee desired to lease Government Real property land owned by the Lessor, for agricultural purposes in accordance with the provisions of Public Law 15-18 and its applicable Rules and Regulations pertaining thereto

NOW THEREFORE, the parties hereto agree as follows:

1. The Lessor leases unto the Lessee the following tract of land belonging to the Lessor:

Fifty (50) acres of Government Real Property in the Municipality of Dededo and Yigo, designated as Lot No. 10154-4 containing an area of 202,343 + square meters as shown on the Department of Land Management Drawing LM Check No. 176-FY86 and recorded at Department of Land Management under Document I4-86T269.

Power and water are available within 100 feet.

It is understood and agreed by and between the parties hereto that should at any future time it be judicially determined that the Government of Guam does not own all or any part of the above described land, said Government of Guam shall not be liable in damages, to the Lessee, to any extent other than for a proportionate amount of refund of any monies paid to the Government of Guam and for which said Lessee received no beneficial use of the land herein purportedly let.

2. The term of this lease shall be as follows:

(a) an initial period of ten (10) years from the date hereof at which time the Lessor shall evaluate the performance of

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**AGRICULTURAL LAND LEASE AGREEMENT**  
**Between the Government of Guam**  
**and KU SAN AMERICA CORPORATION**

the Lessee with respect to the provisions of this lease;

(b) if the evaluation as provided in subsection (a) above is unsatisfactory to the Lessor, at the option of the Lessor this agreement may be terminated or it may be extended for a period of not less than two (2) years but not more than five (5) years during which time Lessee shall correct the deficiencies noted by Lessor in his evaluation or this lease shall be terminated by Lessor. If this lease is terminated pursuant to this subsection, the real property described in this lease and all improvements thereon, including any and all structures and dwellings, shall become the property of the Lessor without compensation to the Lessee;

(c) if the evaluation as provided in subsection 2.(a) is satisfactory to the Lessor, this agreement may be renewable at the option of the Lessee for an additional ten (10) years term, subject to a maximum of fifty (50) years, upon giving written notice to the Lessor at least thirty (30) days prior to the expiration of each current term.

3. No rent shall be collected for the first five (5) years of operation under this lease; and thereafter, rent in the amount of \$2,969.75 per acre at the end of the sixth (6) year. The rent shall be paid according to the Rent Formula Derivation Schedule attached hereto and incorporated herein. It is understood and agreed by and between parties hereto that the term "investment", when used for the purpose of computing the amount of rent due, means investments that are capital in nature, i.e., land clearing, road construction, building, fences, irrigation and drainage systems, wells or reservoirs, utility installations, planting, maintaining, or preserving economical or ornamental trees, or other expenditures for purposes that may be permanently beneficial to the land herein leased, but does not include transitory or periodically recurring operating expenses.

4. The Department of Agriculture permits the Lessee to conduct

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the following agricultural activity or activities as yielding maximum use of the lease land:

A) Conduct all activities associated with farming, preserving, packaging merchandising, wholesale or rental sale locally, and exporting of such produce;

B) Engage in cooperative activities relative to agriculture with the approval of the Director of Agriculture through the Approving Committee of the Department of Agriculture;

NOTE: All building must be approved by the Department of Public Works and must meet all other government building code requirements regulated and enforced by various government agencies.

Any deletion or addition to the above agricultural activity or activities must have prior written consent from the Director of Agriculture, through the Approving Committee of the Department of Agriculture.

5. The Lessor reserves the right to cancel, at any time, this lease if the Lessee is not utilizing the leased land as stated on Section 4 of this lease, unless good cause of such failure can be shown. Further, the Lessor may terminate this lease, should the Lessee: Engage in the propagation of illegal crops as determined by law; cause substantial damage to the leased land or adjoining landowner's property; fail to pay rent when required; remove soil out of the leased land without written consent of the Director of Agriculture; fail to comply with Public Law 15-18 and the Rules and Regulations pertaining to Public Law 15-18. Provided further, that the termination or cancellation of this lease shall only be after a hearing thereon pursuant to the provisions of the Administrative Adjudication Act.

6. The Lessee may cancel this lease upon giving thirty (30) days written notice to the Lessor.

7. The Lessee shall obtain written approval from the Director of Agriculture, through the Approving Committee of the Department

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of Agriculture, on all improvements to be made on the leased land. Subject to the terms and conditions set forth in Section 2 of this lease, all improvements made on the leased land shall become the property of the Lessee. Upon expiration of this lease, all improvements shall become the property of the Lessor.

8. Subject to the terms and conditions set forth in Section 2 of this lease, if the Lessee terminates this lease prior to the fifty (50) years expiration date, then the Lessee may sell all improvements to the succeeding Lessee. The succeeding Lessee shall be bound to terms and conditions executed by the first Lessee at the outset of the initial fifty (50) year lease, including the expiration date hereto.

9. The Lessee shall not assign, sell, sublease, encumber, or hypothecate any rights derived from this lease except for a purchase money mortgage. The Lessee may obtain loan funds from an authorized private or government credit facility without the limitation of "purchase money mortgage for the improvement to the leased property." And that such financing may be secured by said property for collateral purposes. If such mortgage is obtained, then the transfer of the title of the lease is authorized to the mortgagee provided the lease property is continued to be used in accordance with the provisions of P.L. 15-18. Provided further, that the term of any mortgage may not extend beyond the maximum period which the Lessee may renew his/her lease.

10. The Lessee shall annually submit to the Department of Agriculture, in accordance with the prescribe form, a notarized financial report setting forth in detail the improvements on and the derived from the lease land. Further, the Lessee shall annually submit copies of income tax returns and profit and loss statements.

11. The Lessee shall maintain adequate records which shall be open for inspection by the Department of Agriculture at all reasonable hours. The Lessee shall permit entry on the leased premises



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by the Department of Agriculture's employees for inspection of agricultural activities.

12. It is further understood and agreed by and between the parties hereto that all officially adopted and promulgated rules, regulations, and policies of the Government of Guam, Department of Agriculture and the Guam Environmental Protection Agency, that may now be in effect or may hereafter be so adopted and promulgated are hereby, by reference, incorporated herein and made a part hereof; and the parties hereto, their heirs, and successors hereby promise and agree that they are to be subject hereto and bound thereby.

13. The Lessee will adhere to the following Rules and Regulations governing agricultural chemicals:

- a. Agricultural chemicals stored on-site shall be limited to the minimum amount necessary to meet the immediate needs of application. In no case should the amount stored exceed that necessary for a one (1) year supply.
- b. Storage of concentrated agricultural chemicals is restricted to the original containers or unbreakable corrosion proof containers properly marked as to contents and precautions listed on the original label. Storage of mixed or diluted agricultural chemicals is restricted to unbreakable corrosion resistant containers, properly marked.
- c. All storage, preparation, mixing and clean-up of agricultural chemicals must be conducted in a storm proof containment structure with an impervious, fully drained floor. The drainage must be directed into a sanitary sewer or a septic tank that also receives human or animal waste or into a unbreakable, corrosion-proof container that can be emptied into a suitable waste disposal facility.
- d. Written Quarterly Report on type, quantity, and use

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of agricultural chemicals must be made to the Department of Agriculture.

- e. Agricultural chemical containment facility and application operations must be open for inspection by the Department of Agriculture or Guam E.P.A. at reasonable hours.
- f. Any spills or problems with the storage or use of agricultural chemicals outside the containment structure must be reported to Guam E.P.A. as soon as possible. Major spills of concentrated pesticides (8 ounces or more) are to be reported to Guam E.P.A. immediately.
- g. All contained soil and cleaning materials from any spill of concentrated pesticide outside the containment structure must be removed, containerized and disposed of in accordance with instructions from Guam E.P.A.
- h. Noncompliance with these conditions can result in cancellation of the Agricultural Land Lease under terms of Public Law 15-18 and may result in prosecution under Guam E.P.A. Rules and Regulations.

14. The Lessee is required to maintain a current address and telephone number with the Lessor and any changes must be reported to the Lessor within thirty (30) days.

15. This Lease is executed as a representation of the entire agreement between the Lessee and the Lessor.

IN WITNESS WHEREOF, this lease is executed on the 30th  
day of APRIL, 19 91, by authority of Government  
of Guam Public Law 15-18.

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and KU SAN AMERICA CORPORATION**

2011  
2015/24

ATTESTED BY:

GOVERNMENT OF GUAM

[Signature]  
FRANK P. BLAS  
LIEUTENANT GOVERNOR OF GUAM

[Signature]  
JOSEPH F. ADA  
GOVERNOR OF GUAM  
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APPROVED AS TO FORM:

[Signature]  
ELIZABETH BARRETT-ANDERSON  
ATTORNEY GENERAL

[Signature]  
DAE SUNG CHUNG, President  
KU SAN AMERICA CORPORATION  
LESSEE

[Signature]  
ANTONIO S. QUITUGUA  
DIRECTOR OF AGRICULTURE

[Signature]  
JOHN T. LEE, Secretary  
Ku San American Corporation

RECEIVED  
MAR 1991  
GENERAL'S OFFICE

ACKNOWLEDGMENT

TERRITORY OF GUAM) ss

On this 9th day of May, 1991, before me THOMAS R. BLAS, a notary public in and for the Territory of Guam, personally appeared ANTONIO S. QUITUGUA, Director, Department of Agriculture, and also KU SAN AMERICA CORPORATION known to me to be the persons whose name is subscribed to the foregoing instrument, and they acknowledged to me that they executed the same.

[Signature]  
NOTARY PUBLIC

My Commission Expires: THOMAS R. BLAS  
NOTARY PUBLIC  
In and for the Territory of Guam  
My Commission expires: May 04, 1995

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and KU SAN AMERICA CORPORATION**

**INDIVIDUAL ACKNOWLEDGMENT**

TERRITORY OF GUAM ) ss  
On this 27th day of February, 19 91, before  
me Bernadita Lujan Garcia, a notary public in and for the  
territory of Guam, personally appeared DAE SUNG CHUNG  
known to me to be the person whose name is  
subscribed to the foregoing instrument, and he acknowledged to me  
that he executed the same.

*Bernadita Lujan Garcia*  
BERNADITA LUJAN GARCIA  
NOTARY PUBLIC

My commission expires: 4/14/91

**CORPORATION/PARTNERSHIP ACKNOWLEDGMENT**

TERRITORY OF GUAM ) ss  
On this 3rd day of April, 1991, before  
me Barbara J.V. Santos, a notary public in and for the  
territory of Guam, personally appeared Dae Sung Chung and John T. Lee  
known to me to be the President and Secretary  
of the corporation/partnership that executed the foregoing instrument,  
and he acknowledged to me that such corporation executed the same.

*Barbara J.V. Santos*  
NOTARY PUBLIC

My commission expires: 9-2-90



BARBARA J.V. SANTOS  
Notary Public in and for the  
Territory of Guam.  
My Commission Expires 9/2/90

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**AGRICULTURAL LAND LEASE AGREEMENT  
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**RENT FORMULA DERIVATION SCHEDULE**

The equation used in determining the factor of proportionality is defined as

(1)

$$K = \frac{R_{\max}}{I_{\max}}$$

where

$R_{\max}$  = Maximum allowable rent (6% of land market value).

$I_{\max}$  = Maximum investment without any rental.

$K$  = Factor of proportionality.

Assigning the following values for the first category of land assessment such that

$$R_{\max} = \$ 2,969.75$$

$$I_{\max} = \$25,000.00$$

Then equation (1) becomes

$$K = \frac{\$ 2,969.75}{\$25,000.00} = 0.0011$$

Since the factor of proportionality is known, then the equation for determining the rental which complies with Public Law 15-18 as

(2)

$$R_{i,n} = (R_{\max}) i - K_i (I_n)$$

where

$I$  = Amount of investment.

$n$  = Subscript designating the schedule number.

$i$  = Subscript denoting the land assessment category.

# EXHIBIT 2

## CONSENT TO ASSIGNMENT OF LEASE

This Consent to Assignment of Lease is given by the Department of Agriculture to the Guam Economic Development and Commerce Authority ("GEDCA") with reference to the following property:

Fifty acres of Government Real Property in the Municipality of Dededo and Yigo, designated as Lot No. 10154-4 containing an area of 202,343 +/- square meters as shown on the Department of Land Management Drawing LM Check No. 176-FY86 and recorded at Department of Land Management under Document I4-86T269.

Whereas, on April 30, 1991, Ku San America Corporation ("Ku San") executed an agricultural land lease agreement (the "Lease") with the Government of Guam and the Department of Agriculture for the Property; and

Whereas, the Lease was made pursuant to the terms of P.L. 15-18.

Whereas, in order to aid Ku San with its agricultural venture, GEDCA made a loan to Ku San. That loan was secured by a leasehold mortgage on the Property; and

Whereas, due to the default of Ku San, GEDCA foreclosed on the leasehold mortgage and GEDCA acquired a leasehold interest in the Property via mortgagee's deed; and

Whereas, the Lease is still in force and effect; and

Whereas, Public Law 15-18 permits the Director of the Department of Agriculture to consent to an assignment of an agricultural land lease where said assignment relates to a purchase money mortgage for improvements to the leased property; and

**ORIGINAL**  
Therefore, GEDCA would now like to assign the Lease to a third party who will utilize the Property for the purposes set forth in the Lease.


**CONSENT**

The Department of Agriculture hereby consents to GEDCA's assignment of the Lease, provided that the assignee agrees in writing to assume all of the obligations and liabilities of lessee under the Lease.

The Department of Agriculture hereby acknowledges and agrees that upon assignment by GEDCA of the Lease, GEDCA shall be released of all future liability upon any of the covenants and conditions contained in the Lease and the Department of Agriculture shall only look to the assignee for satisfaction of the covenants and conditions under the Lease.

In Witness Whereof, the Director of the Department of Agriculture has caused this Consent to Assignment of Lease to be executed as of the \_\_\_\_ day of October, 2007.

**GUAM ECONOMIC DEVELOPMENT AND COMMERCE AUTHORITY**

By:   
Anthony C. Blaz  
Acting Administrator

10-19-07  
Date

**DEPARTMENT OF AGRICULTURE**

By:   
Paul Basaler  
Director

11-27-07  
Date

# EXHIBIT 3

## FORMULA

Fair Market Value (FMV): \$1,000,000.00  
 Maximum Investment Per Acre: \$25,000.00  
 Factor of Proportionality:  $\frac{\$60,000.00 (R_{max})}{25,000.00 (I_{max})} = 2.4$   
 Allowable Rent: 6 %  
 Rmax: \$60,000.00  
 Total Investment: \$ \_\_\_\_\_  
 Rental Due: \$ \_\_\_\_\_  
 Previous Balance: \$ \_\_\_\_\_  
 Total of Rental: \$ \_\_\_\_\_

## COMPUTATION

$R_{1,n} = \frac{(R_{max}) \cdot I}{K_1 \cdot (I_n)}$   
 (Rental Due)      \$60,000.00 (acreage)      K<sub>1</sub>      (Creditable Improvements)

$\frac{\$1,000,000.00 (I_n)}{\text{Creditable Improvement}} \div \frac{50 (1)}{\text{No. of Acres}} = \$20,000.00$

$\$20,000.00 \times 2.4 (K_1) = \$48,000.00$

$\$48,000.00 - \$60,000.00 (R_{max}) = \$12,000.00$   
 Rental Fee Per Acre, Per Year

$\$12,000.00 \times 50 (1) = \$600,000.00 (R_{1,n})$       No. of Year(s) \_\_\_\_\_  
 Rental Fee Amount (Rental Fee Due)

**REMARKS:** This is to affirm that based on the Dept. of Agriculture rental computation formula above, Manhita Farms' investment of \$1,000,000.00 or more will result in \$0 rent due to the Dept. of Agriculture.

  
 John A. Rios  
 Administrator

5/29/15  
 Date