



Office of the Governor of Guam

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Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

SECRETARY OF THE LEGISLATURE
ACKNOWLEDGEMENT RECEIPT
Rcv'd by: [Signature]
Print Name & Initial
Time: 12:33 Date: 8-19-05 11 AUG 2005

The Honorable Mark Forbes
Speaker
Twenty-Eighth Guam Legislature
Mina' Bente Ocho Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Office of the Speaker

MARK FORBES
Date: 8/12/05
Time: 12:45
Rec'd by: [Signature]
Print Name: [Signature]
28-05-0342

Dear Mr. Speaker:

Transmitted herewith is Bill No. 1 (1-S), "AN ACT TO APPROPRIATE FUNDS FROM THE GUAM TELEPHONE AUTHORITY PRIVATIZATION PROCEEDS FUND AND THE HEALTHY FUTURES FUND FOR THE GUAM MEMORIAL HOSPITAL AUTHORITY TO MEET GUAM MEMORIAL HOSPITAL AUTHORITY FUNDING SHORTFALLS" which I have signed into law on August 7, 2005 as Public Law 28-64.

I would like to thank I Mina' Bente Ocho Na Liheslaturan Guåhan for passing Bill No. 1 (1-S); especially Senator Mike Cruz for working closely with the Administration to draft the original legislation. This measure is truly a victory for the hospital and the people of Guam. Through dedicated perseverance, the Guam Memorial Hospital now has the means to procure the medication and supplies it needs to care for our community.

I appreciate your cooperation and commitment to ensure that our island's only civilian hospital receives the resources necessary to provide the healthcare services our community depends on.

We will continue to deal with the future funding needs and we remain committed to working with I Liheslaturan Guåhan to identify all possible funding sources.

Sinseru yan Magåhet,

[Signature of Felix P. Camacho]

FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Office of the Speaker

MARK FORBES
Date:
Time:
Rec'd by:
Print Name:

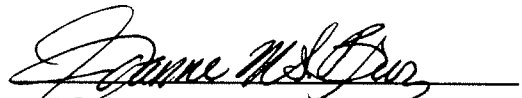
Attachment: copy attached of signed bill

cc: The Honorable Eddie Baza Calvo
Senator and Legislative Secretary

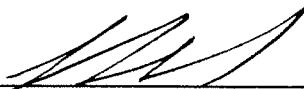
I MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN  
2005 (FIRST) Special Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Bill No. 1 (1-S), "AN ACT TO APPROPRIATE FUNDS FROM THE GUAM TELEPHONE AUTHORITY PRIVATIZATION PROCEEDS FUND AND THE HEALTHY FUTURES FUND FOR THE GUAM MEMORIAL HOSPITAL AUTHORITY TO MEET GUAM MEMORIAL HOSPITAL AUTHORITY FUNDING SHORTFALLS", was on the 6<sup>th</sup> day of August, 2005 duly and regularly passed.


  
JOANNE M.S. BROWN  
Acting Speaker

Attested:

  
Edward J.B. Calvo  
Senator and Secretary of the Legislature

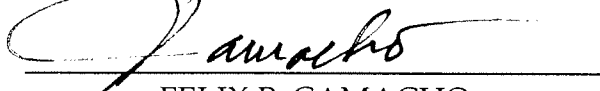
.....

This Act was received by *I Maga'lahen Guåhan* this 6 day of August, 2005,  
at 6:00 o'clock P.M.



Assistant Staff Officer  
*Maga'lahi's Office*

APPROVED:

  
FELIX P. CAMACHO  
*I Maga'lahen Guåhan*

Date: August 7, 2005

Public Law No. 28-64

MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN  
2005 (FIRST) Special Session

**Bill No. 1 (1-S)**

As amended in the  
Committee of the Whole.

Introduced by:

Committee on Calendar

*By request of I Maga'lahaen  
Guåhan in accordance with the  
Organic Act of Guam, as  
amended.*

AN ACT TO APPROPRIATE FUNDS FROM THE  
GUAM TELEPHONE AUTHORITY  
PRIVATIZATION PROCEEDS FUND AND THE  
HEALTHY FUTURES FUND FOR THE GUAM  
MEMORIAL HOSPITAL AUTHORITY TO MEET  
GUAM MEMORIAL HOSPITAL AUTHORITY  
FUNDING SHORTFALLS.

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

**Section 1. Emergency Appropriation for Medicines, Medical Supplies, Medical Equipment Maintenance Contracts for the Guam Memorial Hospital Authority.** The sum of Five Million Dollars (\$5,000,000) from the Guam Telephone Authority (GTA) Privatization Proceeds Fund and One Million Five Hundred Ninety-one Thousand Dollars (\$1,591,000) from the Healthy Futures Fund for a cumulative total amounting to Six Million Five Hundred Ninety-one Thousand Dollars (\$6,591,000) is appropriated to the Guam Memorial Hospital Authority (GMHA) to fund payments for

1 medicines, medical supplies, pharmaceuticals, medical equipment  
2 maintenance contracts, dietary items, dictation and other expenditures  
3 directly related to patient treatment and care for prior years and Fiscal Year  
4 2005. *I Maga'lahi*, any appropriate government official, and the Authorized  
5 Representative of the GTA Privatization Proceeds Fund, as appropriate, shall  
6 immediately transfer the funds appropriated herein from the Escrow accounts  
7 to the GTA Privatization Proceeds Fund and then directly to the Guam  
8 Memorial Hospital Authority Operations Account. Said funds shall *not* be  
9 subject to the allotment process through the Department of Administration or  
10 the Bureau of Budget and Management Research.

1 **Section 2.** The Administrator of the Guam Memorial Hospital  
2 Authority shall submit on a weekly basis to *I Liheslatura* reports as to  
3 expenditures on accounts payable and the source of those funds to GMHA,  
4 from the enactment of this Act until the end of Fiscal Year 2005 and shall post  
5 the reports on GMHA's website.

6 **Section 3.** *I Maga'lahi* shall inform the Secretary of the Interior that *no*  
7 *less* than fifty percent (50%) of all funds for FY 2006, which under current  
8 funding levels should result in *no less* than Seven Million Two Hundred Fifty  
9 Thousand Dollars (\$7,250,000) available to Guam, as reimbursement for the  
10 impact of the Compact of Free Association, shall be earmarked to Guam  
11 Memorial Hospital Authority for operational support.

12 **Section 4. Severability.** *If* any provision of this Law or its application  
13 to any person or circumstance is found to be invalid or contrary to law, such  
14 invalidity shall *not* affect other provisions or applications of this Law, which

can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.



Office of Vice-Speaker

**Joanne M. Salas Brown**

*I MINA' BENTE OCHO NA LIHESLATURAN GUAHAN*  
28<sup>TH</sup> GUAM LEGISLATURE

Chairwoman, Committee on Natural Resources, Utilities & Micronesian Affairs

155 Hesler Street, Hagatna GU 96910 · Tel: 472-3451 · Fax: 472-4090 · email: jmbrown@eccomm.com

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August 4, 2005

MEMORANDUM


TO: *I MINA BENTE OCHO LIHISLATURAN GUAHAN*

FROM: JOANNE M.S. BROWN,  
SPEAKER, ACTING

SUBJECT: CERTIFICATION OF EMERGENCY AND WAIVER OF PUBLIC  
HEARING

The Honorable Felix Camacho. *I Maga lahen Guahan*, PURSUANT TO Title 48 U.S.C. Section 1423(h), has, by letter dated August 3, 2005, called *I Liheslaturan Guahan* into Special Session to address a shortage in funding, medical supplies and equipment for the Guam Memorial Hospital Authority. *I Maga Lahi* attached to said letter a proposed bill for legislative consideration.

In response to said request, and pursuant to the power vested in me by Title 2 G.C.A. Section 2103, I hereby certify that an emergency exists regarding the public health and safety, and that the requirement of a public hearing on the proposed bill forwarded to *I Liheslaturan Guahan* by the Governor should be deemed waived.

  
Senator Joanne M.S. Brown  
Speaker, Acting



**MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN**  
TWENTY-EIGHTH GUAM LEGISLATURE  
155 Hessler Place, Hagåtña, Guam 96910

August 6, 2005

The Honorable Felix P. Camacho  
*I Maga'laken Guåhan*  
*Ufisinan I Maga'lahi*  
*Hagåtña, Guam 96910*

Dear *Maga'lahi* Camacho:

Transmitted herewith is Bill No. 1 (1-S) which was passed by *I Mina' Bente Ocho Na Liheslaturan Guåhan* on August 6, 2005.

Sincerely,

EDWARD J.B. CALVO  
Senator and Secretary of the Legislature

Enclosure (1)

6

# I MINA' BENTE OCHO NA LIHESLATURAN GUAHAN

2005 (FIRST) Special Session

Date: 8/06/05

## VOTING SHEET

Bill No. 1 (1-S)

Resolution No. \_\_\_\_\_

Question: \_\_\_\_\_

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M.S.	✓				
CALVO, Edward J.B.	✓				
CRUZ, Benjamin J.F.	✓				
CRUZ, Michael (Dr.)	✓				
FORBES, Mark					✓ EA
KASPERBAUER, Lawrence F.	✓				
KLITZKIE, Robert	✓				
LEON GUERRERO, Lourdes A.	✓				
LUJAN, Jesse A.					✓ EA
PALACIOS, Adolpho B.	✓				
RESPICIO, Rory J.	✓				
TENORIO, Ray	✓				
UNPINGCO, Antonio R.					✓ EA
WON PAT, Judith T.	✓				

TOTAL

12
0
0
0
3

CERTIFIED TRUE AND CORRECT:

  
 Clerk of the Legislature

\* 3 Passes = No vote  
EA = Excused Absence



# I MINA' BENTE OCHO NA LIHESLATURAN GUAHAN

2005 (FIRST) Regular Session

*Special*

Date:

*8-4-05*  
~~Thursday~~  
*Friday*  
*No Roll*

## SESSION ATTENDANCE ROLL CALL

<u>NAME</u>	<u>PRESENT</u>	<u>Out During Roll Call</u>	<u>Absent</u>	
AGUON, Frank B., Jr.	/			
BROWN, Joanne M.S.	/			
CALVO, Eddie J.B.	/			
CRUZ, Benjamin J.F,	/			
CRUZ, Mike (Dr.)	/			
FORBES, Mark				
KASPERBAUER, Lawrence F.	/			
KLITZKIE, Robert	/			
LEON GUERRERO, Lourdes A.	/			
LUJAN, Jesse A.				
PALACIOS, Adolpho B.	/			
RESPICIO, Rory J.	/			
TENORIO, Ray	/			
UNPINGCO, Antonio R.				
WON PAT, Judith T.	/			

TOTAL

*12*

CERTIFIED TRUE AND CORRECT:

\_\_\_\_\_  
Clerk of the Legislature



Office of Vice-Speaker  
**Joanne M. Salas Brown**

*I MINA' BENTE OCHO NA LIHESLATURAN GUAHAN*  
28<sup>TH</sup> GUAM LEGISLATURE

Chairwoman, Committee on Natural Resources, Utilities & Micronesian Affairs

155 Hesler Street, Hagatna GU 96910 · Tel: 472-3451 · Fax: 472-4090 · email: jmbrown@eccomm.com

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August 4, 2005

MEMORANDUM


TO: *I MINA BENTE OCHO LIHISLATURAN GUAHAN*

FROM: JOANNE M.S. BROWN,  
SPEAKER, ACTING

SUBJECT: CERTIFICATION OF EMERGENCY AND WAIVER OF PUBLIC  
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Senator Joanne M.S. Brown  
Speaker, Acting

**Bill 366**

**EXHIBIT B**

Municipality	Village/Vicinity	Lot Number(s)*	Description
Agana	Agana	#1-1, Block # 30	Agana Host
			Agana Operator's Office
		28-REM Sinajana	Agana Heights Cell site
Agat	Agat	# 477-1	Agat RSC
			Agat Business Office
			Agat Containerized Office
Agat,Piti, Yona	Nimitz Hill	#98-2G	Mt. Alutom Cellular Site
Barrigada	Barrigada Heights	#9-1, Block D, Tract No. 9	Barrigada Heights Cell Site
Mangilao	Mangilao	#1109-2-1	Mangilao RSC
Dededo	Astumbo	#10129-3-New	Astumbo RSC
			Astumbo Cellular Site
	Dededo	#10063-New	Dededo Host
			Dededo Host Customer/cashier svc
			Northern District Engineering Department
	Dededo	#10063-Rem-Portion-2	Dededo Dist Motorpool (Parking Area)
Tamuning	Tamuning	#2139-New-2	Gibson RSC
		#5173-New-2-2-New	Tamuning LBJ RSC
Tumon	Upper Tumon	#5120-4New-R1New	Tumon Host
			Administration /Executive
			Central District
			Plant/Operator position @ 2nd floor.
			Administration Office
			Warehouse Supply Building 22
			Maintenance/Mechanic shop Bldg.
Merizo	Merizo	24	Merizo RSC

Municipality	Village/Vicinity	Lot Number(s)*	Description
Merizo	Pigua	# 527-1	Pigua Cell Site
Piti	Piti	5NEW-R1, BLOCK 2	Piti/Asan RSC
Yigo	Yigo	7004-6-1	Yigo RSC
Chalan Pago/Ordot	Ordot	#3319-2	Ordot RSC
Inarajan	Inarajan	# 381-3	Inarajan RSC
Malojloj	Malojloj	#360-2-2	Malojloj Cell Site

\* Lot numbers will be confirmed prior to closing and revised, if necessary, to reflect legal descriptions of demised properties in accordance with the Privatization Agreements.

## GROUND LEASE

THIS GROUND LEASE (the "Lease") made as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ (the "Effective Date") between THE GOVERNMENT OF GUAM, AND ITS AGENCIES, TRUSTS, DEPARTMENTS, AND INSTRUMENTALITIES, AND THE CHAMORRO LAND TRUST COMMISSION, ACTING BY AND THROUGH THE GUAM TELEPHONE AUTHORITY (hereinafter referred to as "Landlord") and TELEGUAM HOLDINGS, LLC, a Delaware limited liability company (hereinafter referred to as "Tenant") with respect to the following:

### RECITALS

*Whereas*, the Government of Guam and its autonomous agency, the Guam Telephone Authority, the Landlord, desire to privatize the latter; and

*Whereas*, Public Law 25-126 and the Plan of Action approved under such law mandate that the privatization of Landlord be the subject of a specially legislated Invitation for Bid or Request for Proposal process;

*Whereas*, Public Law 26-70 approved special rules and regulations (the "GTA Privatization Rules and Regulations") for the Guam Telephone Authority Privatization process;

*Whereas*, Rule 10 of the GTA Privatization Rules and Regulations, as amended, requires that the Government of Guam retain title to all land owned by the Government of Guam, or any agency, trust, department, or instrumentality thereof, or Landlord for on-going operations of a telephone authority and ancillary services but allows such land to be leased by a party acquiring Landlord's business;

*Whereas*, pursuant to the foregoing legislation, a Request for Proposal for Landlord's Privatization was issued which proposed that the successful offeror will purchase Landlord's assets except for Landlord's real property;

*Whereas*, the Request for Proposal proposed that the successful offeror will acquire the right to use on a long-term basis Landlord's assets via assignments, novation agreements, and a ground lease agreement;

*Whereas*, Tenant is the successful offeror on the solicitation to privatize Landlord and needs the use of Landlord's land and improvements thereon in order to provide telecommunications services;

Whereas, the improvements located on Landlord's real property are comprised of the improvements conveyed by deed of even date herewith (the "Deed") from Landlord to Tenant, which Deed is subject to this Lease;

Whereas, the Landlord shall, in addition to the conveyance set forth in the Deed, convey certain other property rights related to the Demised Premises (defined herein) to the Tenant pursuant to a bill of sale of even date herewith;

Whereas, during the term of this Lease, the Tenant shall own all Improvements conveyed by the Deed and any and all Improvements constructed by the Tenant;

NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

**ARTICLE 1:           *Definitions.***

In addition to those terms defined elsewhere in this Lease, the following terms have the meanings set forth below:

- (i)       **"Demised Premises"** shall mean all of those certain parcels of real property described in Exhibit A attached hereto and all easements, rights of way, and licenses thereto, but excluding all improvements located on the real property.
- (ii)      **"Improvements"** shall mean all buildings, structures, fixtures, additions, alterations to the buildings and structures now existing or hereafter constructed upon the Demised Premises during the term of the Lease, and any restoration, modification, or replacement thereof, situated or to be situated on the parcels of real property described in Exhibit A attached hereto, all of which Improvements shall be owned by the Tenant during the term of the Lease.

**ARTICLE 2:           *Demised Premises and Term.***

Landlord, in consideration of the rents hereinafter reserved and the terms, covenants, conditions, and agreements set forth in this Lease to be kept and performed by Tenant, does hereby grant, demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the Demised Premises, together with all appurtenances, rights, privileges and easements appertaining thereto;

Subject to all matters affecting title to the Demised Premises on the date hereof, such as, but not limited to, Rule 10 of the GTA Privatization Rules and Regulations, as approved by Public Law 26-70 and as repealed and reenacted by Public Law 27-63, whereby the Government of Guam retains title to the Demised Premises herein;

TO HAVE AND TO HOLD the Demised Premises unto Tenant, its permitted successors and assigns, upon and subject to all of the terms, covenants, conditions, conditional limitations, and agreements herein contained for a term of ten (10) years commencing on the date of this Lease and ending ten (10) years later (the "**Basic Term**"), or until said term is sooner terminated or extended pursuant to any of the conditional limitations or other provisions of this Lease.

Landlord represents and warrants that it has the right and authority to enter into this Lease and perform its obligations hereunder on behalf of the Government of Guam, its agencies, trusts, departments, and instrumentalities, and the Chamorro Land Trust Commission.

Landlord and Tenant acknowledge and agree that this Lease covers several sites which encompass the Demised Premises and from time to time, throughout the Lease, the defined term Demised Premises may refer to all of those certain parcels of real property described in Exhibit A attached hereto, collectively, or the Demised Premises may from time to time refer to each individual site individually. Notwithstanding anything contained in this Lease to the contrary, no termination provision contained herein shall apply to all of the Demised Premises other than the expiration of the term of the Lease. Any other such earlier termination provision shall apply on a site-by-site basis. Thus, if Landlord exercises its right to terminate as to a site within the Demised Premises, that site shall be removed from this Lease and rent shall be reduced accordingly.

This Lease is subject to easements, permits, rights-of-way or licenses subsequently granted, it being agreed that Landlord will not grant any outgrants, easements, permits, licenses, rights-of-way or other interests in the Demised Premises to any third party during the term of this Lease without Tenant's written approval if such grant would materially interfere with or impair Tenant's performance or rights to develop and operate the Demised Premises as anticipated by this Lease and the Asset Purchase Agreement (as defined herein).

**ARTICLE 3:       *Rental.***

Tenant hereby agrees to pay and Landlord hereby agrees to accept as rent hereunder the following:

- (i) During the Basic Term of this Lease, Tenant covenants and agrees to pay to Landlord, a fixed rent in lawful money of the United States, at an annual rate of \$1.00 per annum for each year of the Basic Term.
- (ii) Fixed rent shall be payable in a single annual installment in advance on the first day of each year during the term of this Lease at the office of the Landlord or such other place as the Landlord may designate, without any setoff or deduction whatsoever, the first installment to be paid on the delivery of this Lease, except that

in the event the Lease shall commence on a day other than the first day of a calendar year, the rental for the year shall be prorated.

**ARTICLE 4:**            *Options to Extend Lease.*

Tenant may elect to extend the term of this Lease for all or any part of the Demised Premises upon the terms, conditions, covenants, conditional limitations, and agreements herein contained in accordance with and subject to the following conditions:

- (i)     The first extension of the term of this Lease shall be for a period of twenty (20) years (hereinafter referred to as the “**First Option**”) commencing on the date immediately following the expiration of the Basic Term and expiring on the twentieth (20<sup>th</sup>) anniversary of the date of commencement of this First Option period. The second extension of the term of this Lease shall be for a period of twenty (20) years (hereinafter referred to as the “**Second Option**”) commencing on the date immediately following the expiration of the First Option period and expiring on the twentieth (20<sup>th</sup>) anniversary of the date of commencement of this Second Option period.
  
- (ii)    The election to extend shall be exercised, if at all, at least (180) days prior to the end of the Basic Term or the First Option, as applicable, by written notice to Landlord, which notice shall be executed and acknowledged by Tenant in proper form for recording. Tenant’s exercise of the right to extend shall be irrevocable and binding upon both Landlord and Tenant. If the extension notice is not given timely, Tenant’s right of extension shall lapse and be of no further force and effect. During such extended term, all of the terms, conditions, covenants and agreements set forth in this Lease shall continue in full force and effect, except that the annual rent for the extended term shall be payable in the amounts and at the times set forth below. The rent for each year in each option period shall be the Option Rental Rate (as defined below). As a number of the real properties which comprise the Demised Premises are unique in terms of design, structure, and use, fair market value cannot be determined by mere resort to rent received for comparable properties. To determine fair market value, Landlord and Tenant will each select an arbitrator who is an independent, licensed real estate broker with more than 5 years’ experience specializing in commercial leasing, to determine the annual fair market value rent for each parcel of real property described in Exhibit A and still comprising a portion of the Demised Premises, which shall be equal to the annual rent (taking into account all escalations), at which, as of the commencement of the applicable option period, tenants are leasing



comparable space, taking into account, and deducting the value of, any improvements constructed by Tenant during the Basic Term and the First Option period, if applicable, and making other necessary adjustments arising from applicable differences between the Demised Premises and the comparable properties (the "**Option Rental Rate**"). Not later than one hundred fifty (150) days prior to the end of the Basic Term, or the First Option period, as applicable, Landlord and Tenant shall each appoint an arbitrator who shall be qualified as set forth above and give the other written notice of such appointment. Upon appointment, Landlord and Tenant shall each submit a sealed envelope to each arbitrator with their separate suggested Option Rental Rate, which suggested Option Rental Rate shall include a calculation of any annual escalations for the option period. If one party fails to timely appoint an arbitrator pursuant to the terms of this paragraph or to deliver such suggested Option Rental Rate, including any annual escalations, then the Option Rental Rate determination of the real estate broker appointed by the other party or such Option Rental Rate calculation shall be conclusive on both Landlord and Tenant. If the higher rate of the two submitted suggested Option Rental Rates does not exceed the lower rate by more than five percent (5%), then the two rates shall be added and then divided by two (thus splitting the difference and avoiding additional arbitration costs) with the resulting dollar amount becoming the Option Rental Rate, and a like calculation shall be made with respect to annual escalations, if any.

- (iii) If the Option Rental Rate is not determined pursuant to Subsection (ii) above, the two (2) arbitrators so appointed shall, not later than thirty (30) days after the submission of Landlord and Tenant's suggested Option Rental Rate, agree upon and appoint a third arbitrator who shall be a real estate broker (neither party or the arbitrators may consult with such arbitrator regarding the determination of the Option Rental Rate prior to such appointment) who otherwise shall be qualified under the same criteria set forth hereinabove for qualification of the initial two (2) arbitrators. The three (3) arbitrators shall, within thirty (30) days of the appointment of the third arbitrator, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Option Rental Rate, and shall notify Landlord and Tenant thereof. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's or Tenant's submitted Option Rental Rate for the Premises is closer to the actual Option Rental Rate for the Premises, taking into account the requirements of this Subsection (iii) regarding same. The decision of the majority of the arbitrators shall be binding upon Landlord and Tenant. If

either Landlord or Tenant fails to appoint an arbitrator within the time period set forth above, the unappointed arbitrator or arbitrators shall be appointed as quickly as possible by, and upon petition by either party to, any court of competent jurisdiction. The cost of arbitration shall be paid by Landlord and Tenant equally.

- (iv) If for any reason the final Option Rental Rate determination has not been completed prior to commencement of the applicable Option period, Tenant shall pay rent at the same rate as was being paid immediately prior to the commencement of such option period until such Option Rental Rate determination has been completed. Upon completion, Tenant shall commence paying the new Option Rental Rate as determined, and an appropriate payment or adjustment shall promptly be made by Landlord or Tenant, as the case may be, to reflect the difference between the rent paid at the rate for the prior period and the new Option Rental Rate for the applicable option period.

All references in this Lease to the "term" of this Lease, or to the "term" hereof, shall be deemed to include the Basic Term specified in Article 2 hereof (*Demised Premises and Term*) and the option period thereof elected pursuant to the provisions of this Article 4.

At the option of Landlord, the notice of election to extend the term of this Lease given in accordance with the provisions of this Article 4 shall have no effect, and the extension period shall not become effective, if Landlord has delivered to Tenant a written notice of Default under the terms of this Lease at the time the notice is given or immediately prior to the expiration date of the Lease, and neither Tenant, the Leasehold Mortgagee (if any), nor [\_\_\_\_\_] has cured, or taken steps to cure, such Default. To the extent that a Default exists, but not as to all of the parcels set forth in Exhibit A, Tenant shall have the right to extend the term of this Lease as to that portion of the Demised Premises not in Default, in accordance with the provisions of this Article 4.

A termination of this Lease pursuant to Article 18 (*Default; Termination*), or any other provision hereof, or pursuant to present or future law, for all of the property comprising the Demised Premises shall extinguish all extension periods theretofore selected and all rights of election of extension periods not theretofore exercised.

**ARTICLE 5:           *Mortgaging the Leasehold.***

A.     *No Consent Required to Encumber.*

Tenant shall have the right, without Landlord's consent, to hypothecate, encumber, assign or pledge Tenant's interest in this Lease or the Demised Premises (but

not the underlying fee interest) or the Improvements, from time to time by one or more leasehold mortgages or one or more leasehold deeds of trust (herein collectively referred to as "**Leasehold Mortgages**") upon such terms and conditions as are acceptable to Tenant; provided, however, that no such Leasehold Mortgages shall not be effective beyond the term of this Lease. The term "**Leasehold Mortgagee**" shall refer to the beneficiary(ies), from time to time, of the Leasehold Mortgages. The Leasehold Mortgages may be recorded in the Official Records of Guam, without Landlord's consent. A Leasehold Mortgagee shall include a Leasehold Mortgagee holding both a Leasehold Mortgage and a deed of trust in all or any other portion of the Demised Premises or the Improvements.

B. *Notice.*

Landlord agrees that if Tenant shall execute and record any Leasehold Mortgages as herein provided in this Article 5, and Tenant delivers notice to Landlord indicating (a) the identity of such Leasehold Mortgagee and (b) an address for notice to such Leasehold Mortgagee, Landlord shall deliver to any such Leasehold Mortgagee all notices required to be delivered to Tenant hereunder and will notify such Leasehold Mortgagee(s) by registered or certified mail of any Material Default or any other Default by Tenant under the provisions of this Lease. No such notice shall be valid or effective until and unless actually received by all Leasehold Mortgagees, but failure to deliver such notice shall not relieve Tenant of its obligations hereunder.

C. *Cure.*

This Lease shall not terminate or be terminated by Landlord if, within sixty (60) days after the later of (i) service of notice of Tenant's Default on all Leasehold Mortgagees or (ii) the end of such time period as Tenant may have been given by Landlord's to cure such Default, Leasehold Mortgagees shall have, at such Leasehold Mortgagee's option, either:

(i) Cured the Default if it can be cured by the payment or expenditure of money or by performance by a Leasehold Mortgagee or any receiver appointed in connection with any indebtedness owed by Tenant, which performance Landlord will accept as though performed by Tenant and Landlord will allow each Leasehold Mortgagee to enter the Premises, and improvements thereon, and to take all such actions as may be necessary to cure such Default (which may reasonably require more than sixty (60) days, and in such event the Leasehold Mortgagee shall be deemed to have cured such Default if within said sixty (60) days the Leasehold Mortgagee commences such cure, and diligently prosecutes the same to completion); or

(ii) If the Default cannot be so cured, caused the prompt initiation of foreclosure, whether by power of sale or otherwise, or other appropriate proceedings, including the appointment of a receiver, so long as a Leasehold Mortgagee shall thereafter prosecute such proceedings diligently to conclusion and performs and complies with all other covenants and conditions of this Lease requiring the payment or

expenditure of money by Tenant until the leasehold estate shall be released or reconveyed from the effect of the Leasehold Mortgage or until it shall be transferred or assigned pursuant to or in lieu of foreclosure, whether by power of sale or otherwise.

D. *Leasehold Mortgage Receiver.*

Landlord's consent shall not be required for the possession of the Demised Premises and Improvements by a Leasehold Mortgagee or by a receiver under a Leasehold Mortgage.

E. *Foreclosure.*

Landlord's consent shall not be required for Tenant's interest in this Lease to be transferred, assigned or sold to a Leasehold Mortgagee, or to any other third party, pursuant to a foreclosure sale under a Leasehold Mortgage, whether by power or sale or otherwise, or by assignment or deed in lieu of foreclosure (collectively, "**Foreclosure**").

No Leasehold Mortgagee shall be liable to perform the Tenant's obligations hereunder unless and until such Leasehold Mortgagee acquires the leasehold by Foreclosure. The Leasehold Mortgagee shall not be required to cure any Defaults of Tenant which occurred prior to Foreclosure under this Lease.

Landlord shall treat the Leasehold Mortgagee or the third party, and any successors thereto, which is assigned Tenant's interest hereunder at a Foreclosure, as the lessee hereunder after a Foreclosure.

Upon a Leasehold Mortgagee's or any other third party's acquisition of the leasehold by Foreclosure, this Lease shall continue in full force and effect.

F. *Assignment.*

After it acquires Tenant's interest in this Lease after a Foreclosure or otherwise, a Leasehold Mortgagee may transfer its interest in the Lease, subject to Landlord's consent, which consent shall not be unreasonably withheld, and such Leasehold Mortgagee shall not be liable for any obligations under this Lease accruing after its assignment of its interest in this Lease.

G. *New Lease.*

In the event that this Lease is terminated for any reason prior to the end of the term of this Lease except by eminent domain, Landlord shall enter into a new lease with the Leasehold Mortgagee covering the Demised Premises and Improvements provided that the Leasehold Mortgagee (i) requests such new lease by written notice to Landlord within sixty (60) days after termination, and (ii) cures all prior Defaults of Tenant that are capable of being cured by the Leasehold Mortgagee. The new lease shall be for the remainder of the term of this Lease, effective at the date of such termination, at the rent and on the covenants, agreements, conditions, provisions, restrictions and

limitations contained in this Lease, except as set forth below. In connection with such new lease, Landlord shall assign to Leasehold Mortgagee or its nominee all of Landlord's interest in all existing subleases of all or any part of the Demised Premises and Improvements, and all attornments given by the subleases. In connection with any such new lease, Landlord shall, by grant deed, convey to Leasehold Mortgagee or its nominee title to the Improvements, if any, which became vested in Landlord as a result of termination of the Lease. If the holders of more than one Leasehold Mortgage shall make written request upon Landlord for a new lease in accordance with the provisions herein, the new lease shall be entered into pursuant to the request of the holder whose leasehold mortgage shall be recorded prior in time and thereupon the junior Leasehold Mortgage shall be deemed to be void and of no force or effect.

H. *Lease Modifications.*

Landlord shall cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any Leasehold Mortgagee or proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease. Landlord agrees to execute and deliver (and to acknowledge if necessary for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any material way affect the Lease term or rent under this Lease, subordinate the fee interest of Landlord in the real property underlying the Premises, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

I. *Amendments.*

This Lease shall not be modified, amended, canceled, or terminated with respect to all or any portion of the Demised Premises unless consented to by the Leasehold Mortgagees in writing.

**ARTICLE 6:** *Taxes, Assessments and Other Impositions.*

Tenant will, at Tenant's own cost and expense, bear, pay, and discharge prior to delinquency, all real estate taxes, if any, assessments, water rents and charges, duties, impositions, license and permit fees, charges for public utilities of any kind, payments and other charges of every kind and nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special (all of which are hereinafter sometimes collectively referred to as "**Impositions**"), which shall, pursuant to present or future law or otherwise, prior to or during the term hereby granted, have been or be levied, charged, assessed, or imposed upon, or grown or become due and payable out of or for, or become or have become a lien on the Demised Premises, and the Improvements, or the sidewalks, streets, or vaults adjacent thereto; it being the intention of the parties hereto that the rents reserved herein shall be received and enjoyed by Landlord as a net sum free from all of such Impositions.

Tenant shall pay all interest and penalties imposed upon the late payment of any Impositions which Tenant is obligated to pay hereunder. Impositions shall be apportioned between Tenant and Landlord as of the date of termination of the term of this Lease and shall be paid within thirty (30) days after such termination, but shall not be apportioned at the commencement of the term of this Lease.

Tenant may take the benefit of the provisions of any law or regulations permitting any assessment imposed upon the Demised Premises prior to the expiration of the term of this Lease to be paid in installments; provided, further, that the amount of all installments of any such assessment which are to become due and payable after the expiration of the term of this Lease shall be paid by Landlord when and as the same shall become due and payable.

If Tenant shall fail, for thirty (30) days after notice and demand given to Tenant, to pay any Imposition on or before the last day upon which the same may be paid without the imposition of interest or penalties for the late payment thereof, then Landlord may pay the same with all interest and penalties lawfully imposed upon the late payment thereof, and the amounts so paid by Landlord shall thereupon be and become immediately due and payable by Tenant to Landlord hereunder.

Tenant at Tenant's own cost and expense may, if it shall in good faith so desire, contest the validity or amount of any Imposition, in which event Tenant may defer the payment thereof for such period as such contest shall be actively prosecuted and shall be pending undetermined, so long as such proceedings and any appeals shall operate to legally prevent the collection of such payments and the sale of the Demised Premises to satisfy any lien arising out of the non-payment of the same.

Landlord shall execute and deliver to Tenant whatever documents may be necessary or proper to permit Tenant to so contest any such Imposition or which may be necessary to secure payment of any refund which may result from any such proceedings.

An official certificate or statement issued or given by a sovereign or municipal authority, or any agency thereof, or any public utility, showing the existence of any Imposition, or interest or penalties thereon, the payment of which is the obligation of Tenant as herein provided, shall be prima facie evidence for all purposes of this Lease of the existence, amount, and validity of such Imposition.

**ARTICLE 7:       *Repairs.***

Subject to the provisions of Articles 14 and 15 below, Tenant shall at all times during the term of this Lease, at Tenant's own costs and expense, keep the Demised Premises and the Improvements thereon, and all sidewalks and curbs adjoining the Demised Premises, and all appurtenances to the Demised Premises, in good order, condition, and repair and in such condition as may be required by law and by the terms of the insurance policies furnished pursuant to this Lease, whether or not such repair shall be interior or exterior, and whether or not such repair shall be of a structural nature, and

whether or not the same can be said to be within the present contemplation of the parties hereto.

**ARTICLE 8:**            *Compliance with Law.*

Tenant shall at all times during the term of the Lease, at Tenant's own cost and expense, perform and comply with all laws, rules, orders, ordinances, regulations, and requirements now or hereafter enacted or promulgated, of every governmental authority and municipality having jurisdiction over the Demised Premises, and of any agency thereof, relating to the Demised Premises, or the Improvements now or hereafter located thereon, or the facilities or equipment therein, or the streets, sidewalks, curbs, and gutters adjoining the Demised Premises, or the appurtenances to the Demised Premises, whether or not such laws, rules, orders, ordinances, regulations, or requirements so involved shall necessitate structural changes, improvements, interference with use and enjoyment of the Demised Premises, replacements, or repairs, extraordinary as well as ordinary, and Tenant shall so perform and comply, whether or not such laws, rules, orders, ordinances, regulations, or requirements shall now exist or shall hereafter be enacted or promulgated, and whether or not such laws, rules, orders, ordinances, regulations, or requirements can be said to be within the present contemplation of the parties hereto; provided, however, that notwithstanding anything contained in this Lease to the contrary, Tenant shall not be subject to any laws, rules, orders, ordinances, regulations, and requirements that increase Tenant's monetary liability under the Lease or adversely affect Tenant's rights under the Lease; provided, further however that Tenant shall be subject to laws, rules, orders, ordinances, regulations, and requirements generally applicable to all property in Guam and not specifically designed or targeted, directly or indirectly, to affect Tenant's rights hereunder.

Tenant shall have the right, provided it does so with due diligence and dispatch, to contest by appropriate legal proceedings, without cost or expense to Landlord, the validity of any law, rule, order, ordinance, regulation, or requirement of the nature hereinabove referred to in this Article 8. Tenant may postpone compliance with such law, rule, order, ordinance, regulation, or requirement until the final determination of such proceedings, only so long as such postponement of compliance will not subject Landlord to any criminal prosecution, or any other liability of any kind against the reversion of the Demised Premises or the Improvements thereon which may arise by reason of postponement or failure of compliance with such law, rule, order, ordinance, regulation, or requirement, and Tenant shall indemnify and hold Landlord harmless from the same. No provisions of this Lease shall be construed so as to permit Tenant to postpone compliance with such law, rule, order, ordinance, regulation, or requirement if any sovereign, municipal, or other governmental authority shall threaten to carry out any work to comply with the same or to foreclose or sell any lien affecting all or any part of the Demised Premises which shall have arisen by reason of such postponement or failure of compliance.

**ARTICLE 9:**            *Alterations.*

Tenant shall have the right, at Tenant's expense, from time to time during the term of this Lease, to make any alteration, addition, or modification to the Demised Premises or the Improvements thereon and to construct new Improvements on the Demised Premises; provided, however, that after said alterations, additions, modifications, or construction, the Demised Premises shall be for the same general use, and said alterations, additions, modifications or construction shall not materially reduce the market value of the Demised Premises or the Improvements thereon and to construct new Improvements on the Demised Premises.

Tenant may, in its sole and absolute discretion, remove, relocate or rebuild any building, structure or other improvement on the Demised Premises existing as of the Effective Date or at any time during the term of this Lease necessary to carry out the purposes of this Lease.

At any time and from time to time during the term of this Lease, Landlord agrees to, upon the written request of Tenant, join with Tenant in delivering such instruments as may be appropriate, necessary, required or desired by Tenant for the purpose of the application to any governmental authority for, or the obtaining of, building permits, approvals, consents, zoning changes, conditional uses, variances, or the like, in each instance for the purpose of providing adequate utility services to the Demised Premises or of permitting Tenant to construct any improvements on the Demised Premises.

All improvements constructed on the Demised Premises by Tenant at any time and from time to time during the term of this Lease shall be owned by Tenant during the term of this Lease. All improvements on the Demised Premises at the end of the term of this Lease shall, without any obligation on the part of Landlord to compensate Tenant therefor, become and remain Landlord's property free and clear of all claims to or against such improvements by Tenant or any third party, as set forth in Article 31 below.

**ARTICLE 10:**            *Use of Demised Premises.*

Tenant may use and occupy the Demised Premises and the Improvements thereon for any lawful purpose consistent with the operation of a business engaged in telecommunications and other communications or media services, including without limitation, modern local exchange and wireless telephone, broadband, wide digital and internet services and any other lawful purpose; provided, however, that the uses set forth in Exhibit C shall be prohibited. Tenant shall obtain all necessary licenses, permits or other certificates required by applicable laws and regulations for Tenant's use and operation of the Demised Premises and the Improvements thereon.

Tenant will not use or keep or allow the Demised Premises or any portion thereof or Improvements thereon or any appurtenances or fixtures thereto, to be used or occupied for any unlawful purpose or in violation of any certificate of occupancy, and will not suffer any act to be done or any condition to exist within the Demised Premises or any portion thereof or in any Improvements thereon, or permit any article to be



brought therein, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance in force with respect thereto.

At any time and from time to time during the term of this Lease, Landlord agrees to, upon the written request of Tenant, join with Tenant in delivering such instruments as may be appropriate, necessary, required or desired by Tenant for the purpose of granting or dedicating any easement, right of way or other property right to any public entity or service corporation. Landlord represents and warrants that the Demised Premises are not now affected by any covenants, restrictions, easement or agreements which prohibit the construction, operation, and maintenance upon the Premises of a telecommunications business. Landlord further represents and warrants that Tenant shall have as of the Effective Date, and throughout the term of this Lease, reasonable access to the Demised Premises.

**ARTICLE 11:           *Mechanic's Liens.***

Tenant shall at all times indemnify Landlord against and hold it harmless with respect to any loss, cost, fee, charge, expense, lien, or liability of any nature occurring or accruing by virtue of any such work, labor, service, or material performed or furnished for or to Tenant. If any lien shall at any time be filed against the Demised Premises or the Improvements, Tenant shall cause the same to be discharged of record within sixty (60) days after the date of the filing of same, by either payment, deposit or bond.

**ARTICLE 12:           *Insurance.***

A. Tenant will at all times during the term of this Lease maintain insurance on the Demised Premises and the Improvements thereon of the following character:

- (i) General comprehensive public liability insurance (including coverage for elevators, if any, on the Property) against claims for bodily injury, death, or property damage occurring on, in, or about the Demised Premises, the Improvements thereon, and the adjoining streets, sidewalks, and passageways, such insurance to afford protection of not less than \$\_\_\_\_\_ with respect to bodily injury or death to all persons in any one accident, and not less than \$\_\_\_\_\_ with respect to property damage in any one occurrence, or such other amounts in excess of the amounts set forth above as Landlord shall reasonably request.
- (ii) Such other insurance as may be required by law.

B. Such insurance shall be written by companies of recognized financial standing which are well rated by a national rating agency and are legally qualified to issue such insurance in the territory of Guam, and such insurance shall name as the insured parties thereunder, Landlord, or its assigns, and Tenant, as their interests may appear. Such insurance may be obtained by Tenant by endorsement on its blanket insurance policies, provided that (i) such blanket policies satisfy the requirements specified herein and (ii) Landlord shall be furnished with the certificate of the insurer to the effect that (a) the amount of insurance allocable to the Demised Premises and the Improvements thereon is not less than the amount required by this Article and (b) the protection afforded Tenant and Landlord is not less than the protection which would have been afforded under a separate policy or policies relating only to the Demised Premises and the Improvements thereon. Landlord shall not be required to prosecute any claim against any insurer or to contest any settlement proposed by any insurer, provided that Tenant may, at its cost and expense, prosecute any such claim or contest any such settlement, and in such event Tenant may bring any such prosecution or contest in the name of Landlord, Tenant, or both, and Landlord shall cooperate with Tenant and will join therein at Tenant's written request upon receipt by Landlord of an indemnity from Tenant against all costs, liabilities, and expenses in connection with such cooperation, prosecution, or contest.

C. Tenant shall deliver to Landlord promptly after the execution and delivery of this Lease the original or duplicate policies or certificates of insurers satisfactory to Landlord evidencing all the insurance which is then required to be maintained by Tenant hereunder, and Tenant shall, within thirty (30) days prior to the expiration of any such insurance, deliver other original or duplicate policies or other certificates of the insurers evidencing the renewal of such insurance. Should Tenant fail to effect, maintain, or renew any insurance provided for herein, or to pay the premium therefor, or to deliver to Landlord any of such policies or certificates, Landlord, at its option, but without obligation so to do, may procure such insurance, and any sums expended by it to procure such insurance shall be additional rent hereunder and shall be repaid by Tenant within thirty (30) days following the date on which demand therefor shall be made by Landlord. Such insurance policy(ies) shall contain a provision that such policy(ies) shall not be canceled or reduced in scope without thirty (30) days prior written notice to Landlord.

**ARTICLE 13:**        *Casualty.*

- (i) If the Improvements on the Demised Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Tenant shall promptly notify Landlord of such destruction or damage. Tenant expressly waives the provisions of any present or future law relating to such damage or destruction and agrees that the provisions of this Lease shall control the rights of Landlord and Tenant.

- (ii) Should fire or other casualty damage or destroy in the entirety one or more of the parcels of property constituting the Demised Premises or the Improvements thereon, then the rent shall be reduced by the portion of the rent allocated to the damaged or destroyed parcels of land for as long as said parcels are unusable to Tenant.
- (iii) If a portion of one or more parcels of property constituting the Demised Premises or the Improvements thereon shall be destroyed or damaged by any fire or other casualty and this Lease is not terminated by mutual consent of the parties hereto, then this Lease shall continue in full force and effect; provided however, that Tenant may elect to terminate this Lease with respect to any particular parcel comprising a portion of the Demised Premises.

**ARTICLE 14:           *Indemnity.***

Tenant will indemnify and save harmless Landlord from and against any and all liability, loss, damages, expenses, costs of action, suits, interest, fines, penalties, claims, and judgments (to the extent that the same are not paid out of the proceeds of any policy of insurance furnished by Tenant to Landlord pursuant to Article 12) hereof arising from injury, or claim of injury, during the term of this Lease to person or property of any and every nature, and from any matter or thing, growing out of the occupation, possession, use, management, improvement, construction, alteration, repair, maintenance, or control of the Demised Premises, the Improvements now or hereafter located thereon, the facilities and equipment thereon, the streets, sidewalks, curbs, and gutters adjoining the Demised Premises, the appurtenances to the Demised Premises, or the privileges connected therewith, or arising out of Tenant's failure to perform, fully and promptly, or Tenant's postponement of compliance with, each and every term, covenant, condition, and agreement herein provided to be performed by Tenant (unless and to the extent that such claims arise or result from the gross negligence or willful misconduct of Landlord). Tenant, at Tenant's own cost and expense, will defend by counsel of Tenant's choosing any and all suits that may be brought and claims which may be made, against Landlord, or in which Landlord may be impleaded with others, whether Landlord shall be liable or not, upon any such above-mentioned liability, loss, damages, expenses, costs of action, suits, interest, fines, penalties, claims, and judgments and shall satisfy, pay, and discharge any and all judgments that may be recovered against Landlord in any such action or actions in which Landlord may be a party defendant, or that may be filed against the Demised Premises, or the Improvements thereon, or the appurtenances, or any interest therein, and in the event of the failure of Tenant to pay the sum or sums for which Tenant shall become liable as aforesaid, then Landlord may pay such sum or sums, with all interest and charges which may have accrued thereon, and the amount so paid by Landlord shall be payable by Tenant to Landlord upon demand.

**ARTICLE 15:           *Condemnation.***

In the event of any acquisition of all or any part of the Demised Premises and Improvements, or any interest therein by eminent domain, whether by condemnation proceeding or transfer in avoidance of an exercise of the power of eminent domain or otherwise during the term of this Lease, the rights and obligations of the parties with respect to such appropriation shall be as provided in this Article 15.

A. *Entire Condemnation.* If at any time during the term of this Lease, all or substantially all of the parcels set forth in Exhibit A comprising the Demised Premises, or all or substantially all of an individual parcel set forth in Exhibit A, shall be taken in the exercise of the power of eminent domain by any sovereign, municipality, or other authority, then this Lease shall terminate, as to the portion of the Demised Premises taken, on the date of vesting of title in such taking and any prepaid rent shall be apportioned as of said date. Substantially all of the Demised Premises and the Improvements thereon shall be deemed to have been taken, or all or substantially all of an individual parcel set forth in Exhibit A, if the remaining portion of the Demised Premises shall not be of sufficient size to permit Tenant to operate its business thereon in a manner similar to that prior to such taking.

B. Any award for such taking of all or substantially all of the Demised Premises shall be paid to the parties hereto in accordance with the following:

- (i) To Landlord, the amount of the award attributable to the Demised Premises, determined as if this Lease was not in effect at the time of such award, excluding therefrom the amount of the award attributable to the Improvements, and all other sums not directly attributable to the value of the Demised Premises.
- (ii) To Tenant, the entire award except that portion allotted to Landlord above, including but not limited to, the value of the Improvements plus any other amount assessed for Tenant.

C. *Partial Condemnation.* If less than all or substantially all of the parcels set forth in Exhibit A comprising the Demised Premises, or less than all or substantially all of an individual parcel set forth in Exhibit A, shall be taken in the exercise of the power of eminent domain by any sovereign, municipality, or other authority, then Tenant, at its option, may elect to continue this Lease in full force and effect or terminate this Lease as to the portion of the Demised Premises taken. If Tenant shall elect to maintain this Lease in full force and effect, the award for such partial condemnation shall be paid over to Tenant prorated to the value of the use of the property partially condemned, provided that any fair market value rent determinations required under this Lease shall be made as if the partial condemnation had never taken place; and Tenant shall proceed with reasonable diligence to carry out any necessary repair and restoration so that the remaining Improvements and appurtenances shall constitute a

complete structural unit or units which can be operated on an economically feasible basis under the provisions of this Lease. In the event Tenant elects to continue this Lease in full force and effect after a partial condemnation, there shall be no abatement in the rent Tenant is required to pay hereunder. Should Tenant elect to terminate this Lease upon a partial condemnation, Tenant shall provide Landlord with written notice of such election within thirty (30) days after the date of vesting of title for such taking. Tenant shall specify in such written notice the date on which this Lease shall terminate, which date shall be not less than 60 days nor more than 360 days after delivery of such notice to Landlord (the Termination Date). In the event Tenant terminates this Lease, as provided for in this subparagraph C, Landlord shall be entitled to the entire award for such partial taking.

D. *Temporary Taking.* If the temporary use of the whole or any part of the Demised Premises or the Improvements thereon or the appurtenances thereto shall be taken at any time during the term of this Lease in the exercise of the power of eminent domain by any sovereign, municipality, or other authority, the term of this Lease shall not be reduced or affected in any way, and Tenant shall continue to pay in full the rent, additional rent, and other sum or sums of money and charges herein reserved and provided to be paid by Tenant, and the entire award for such temporary taking shall be paid to Tenant. Tenant shall repair and restore any and all damage to the Demised Premises and the Improvements as soon as reasonably practicable after such temporary taking.

Notwithstanding anything in this Article to the contrary, neither the Government of Guam nor any of its agencies shall condemn the Demised Premises, or any portion thereof, for the primary purpose of terminating or defeating this Lease.

**ARTICLE 16:           *Assignment; Subletting.***

Tenant may assign this Lease or any interest herein at any time, or from time to time, at its discretion, so long as Tenant remains primarily liable for performance of all the obligations of Tenant hereunder. No assignment shall be valid unless and until the assignor and the assignee of this Lease shall have delivered to Landlord a fully executed counterpart of the instrument of assignment executed by assignor, assignee, and any other necessary party wherein Tenant has explicitly agreed to remain primarily liable for the performance of all such obligations. Any such assignment shall not be in violation of the terms of this Lease, the instruments executed pursuant to the privatization of Landlord, or applicable law.

No acceptance by Landlord of any performance, rent, or additional rent herein provided to be done or paid by Tenant from any person, firm, or corporation other than Tenant, shall discharge Tenant (except to the extent of the performance and payments so accepted by Landlord) from liability to pay all of rent herein provided to be paid by Tenant or from liability to perform any of the terms, covenants, conditions, and agreements set forth in this Lease.

Tenant may sublet all or any part of the Demised Premises without Landlord's consent for purposes consistent with the terms of the Asset Purchase Agreement (as defined below). In the event of a termination of this Lease, each subtenant of space in the Demised Premises shall attorn to the owner of the reversion, unless the owner of the reversion shall, at the owner's option, elect to dispossess such subtenant or otherwise terminate the sublease held by such subtenant. Each subtenant who hereafter subleases space within the Demised Premises shall be deemed to have agreed to the provisions of this paragraph, but the absence of such a clause from any sublease shall not relieve the subtenant from the provisions of this subparagraph.

Tenant hereby assigns to Landlord the right, following any Default by Tenant hereunder, to collect from any or all subtenants all rents and other sums payable by them, and to apply the same to the payment of rent, and all other amounts payable by Tenant hereunder, and any balance shall be paid over to Tenant, but no exercise by Landlord of rights under this subparagraph shall be deemed a waiver by Landlord of any other rights hereunder or be deemed an acceptance by Landlord of such subtenant or an acquiescence by Landlord to the occupancy of any part of the Demised Premises by such subtenant or a release of Tenant from the performance of any of the obligations of Tenant hereunder.

**ARTICLE 17:            *Injunction.***

Landlord, at Landlord's option, in addition to any other rights reserved to Landlord, and notwithstanding the concurrent pendency of summary or other dispossession proceedings between Landlord and Tenant, shall have the right at all times during the term of this Lease to restrain by injunction any violation or attempted violation by Tenant of any of the terms, covenants, conditions, or agreements of this Lease, and to enforce by injunction any of the terms, covenants, conditions, and agreements hereof.

**ARTICLE 18:            *Default; Termination.***

A. The occurrence of any of the following shall constitute a "Material Default" of this Lease by Tenant:

- (i) Any failure by Tenant to pay the rental required to be paid by Tenant hereunder for the Demised Premises, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; or
- (ii) Any failure by Tenant to pay the Impositions required to be paid hereunder by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; or

- (iii) There shall be filed by or against Tenant in any court or other tribunal pursuant to any statute or other rule of law, either of the United States or of any State or of any other authority now or hereafter exercising jurisdiction, a petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Tenant's property, unless such petition be filed against Tenant and if in good faith Tenant shall promptly thereafter commence and diligently prosecute any and all proceedings appropriate to secure the dismissal of such petition, and such petition is dismissed within one hundred eighty (180) days or Tenant makes an assignment for the benefit of creditors; or
- (iv) Pursuant to any other Default (as defined below) of this Lease by Tenant, Landlord obtains a money judgment in excess of one hundred thousand dollars (\$100,000) against Tenant in a court of competent jurisdiction, and such judgment is not paid to Landlord within sixty (60) days after such judgment becomes final.

In the event of any such Material Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder, as to that portion of the Demised Premises in Material Default, by giving written notice of such intention to terminate in the manner specified in this section of the Lease; provided, however, that a Material Default as to one parcel comprising the Demised Premises will not impact this Lease as to the other parcels that comprise the Demised Premises. In the event that Landlord shall elect to so terminate this Lease, as to that portion of the Demised Premises in Material Default, then Landlord may recover from Tenant:

- (i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination for that portion of the Demised Premises; plus
- (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided for that portion of the Demised Premises; plus
- (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided for that portion of the Demised Premises; plus

- (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform his obligations under this Lease or which in the ordinary course of things would be likely to result therefrom for that portion of the Demised Premises; plus
- (v) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable Guam law.

As used in subparagraphs (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the rate of eight per cent (8%) per annum, or the highest rate permitted by law, whichever is lower, computed from the date such payment first became due hereunder. As used in subparagraph (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

The exercise of Landlord's remedies with respect to one parcel of the Demised Premises will not allow Landlord to exercise its remedies against the balance of the parcels that comprise the Demised Premises.

B. The occurrence of any default or breach of this Lease by Tenant, other than those set forth in subparagraph A above, shall be deemed not to be material hereunder, and Landlord shall not have the right to terminate this Lease for any such default. In the event of such a non-material default or breach of this Lease ("**Default**"), which Default continues for sixty (60) days after written notice thereof by Landlord to Tenant and Leasehold Mortgagee (provided that, if the nature of such Default is such that the same cannot be cured within such 60-day period, Tenant shall not be deemed to be in Default if Tenant shall within such period commence such cure and thereafter diligently pursue the same to completion), Landlord's sole remedy shall be damages, as determined by a court of competent jurisdiction.

C. In the event of the vacation or abandonment of the Demised Premises by Tenant, Landlord shall have the right to re-enter the Demised Premises and the Improvements thereon and take possession of them pursuant to legal proceeding or pursuant to any notice provided by law, then if Landlord does not elect to terminate this Lease for that portion of the Demised Premises, Landlord may, from time to time, without terminating this Lease, either recover all rental as it becomes due, or let or relet the Demised Premises, Improvements thereon or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable.

D. In the event that Landlord shall elect to so let or relet, then rentals received by Landlord from such letting or reletting shall be applied, first, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to



the payment of any cost of such letting or reletting; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rentals received from such letting or reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord immediately upon demand therefor by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such letting or reletting.

E. Upon a Default by Landlord hereunder, Tenant shall have all of the rights and remedies provided by law or equity.

F. Except as otherwise expressly provided herein, the rights and remedies given herein to Landlord and Tenant shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights reserved to Landlord or to Tenant under the provisions of this Lease or given to Landlord or to Tenant by law.

G. Landlord hereby agrees that upon a Default by Tenant hereunder, Landlord shall deliver written notice of such default to Tenant and the Leasehold Mortgagee to the extent set forth in Article 5 hereof.

**ARTICLE 19: *Landlord's Right to Cure Tenant's Defaults.***

Whenever and as often as Tenant shall fail or neglect to comply with and perform any term, covenant, condition, or agreement to be complied with or performed by Tenant hereunder, then, upon forty-five (45) days after written notice thereof by Landlord to Tenant and Leasehold Mortgagee (provided that, if the nature of such performance is such that the same cannot be cured within such 45-day period, Tenant shall not be deemed to be in Default if Tenant shall within such period commence such performance and thereafter diligently pursue the same to completion), Landlord at Landlord's option, in addition to all other remedies available to Landlord, may perform, or cause to be performed, such work, labor, services, acts, or things, and take such other steps, including entry onto the Demised Premises and the Improvements thereon, as Landlord may deem advisable, to comply with and perform any such term, covenant, condition, or agreement which is in default, in which event Tenant shall reimburse Landlord upon demand, and from time to time, for all costs and expenses suffered or incurred by Landlord in so complying with or performing such term, covenant, condition, or agreement. The commencement of any work or the taking of any other steps or performance of any other act by Landlord pursuant to the immediately preceding sentence shall not be deemed to obligate Landlord to complete the curing of any term, covenant, condition, or agreement which is in default.

**ARTICLE 20: *Landlord's Expenses.***

Tenant shall reimburse Landlord after thirty (30) days' written notice for all reasonable expenses, including attorneys' fees, incurred by Landlord in connection with the collection of any rent in default hereunder, or the termination of this Lease by reason of a Material Default of Tenant, or the enforcement of any other obligation of Tenant which is in default hereunder, or the protection of Landlord's rights hereunder, or any litigation or dispute in which Landlord becomes a party or otherwise becomes involved, without fault on its part, relating to the Demised Premises or Landlord's rights or obligations hereunder. If the leasehold interest of Tenant hereunder shall hereafter be held by more than one person, corporation, or other entity, and if litigation shall arise by reason of a dispute among such persons, corporation, or other entities, and if Landlord is made a party to such litigation without Landlord's consent, then Tenant shall reimburse Landlord thirty (30) days' written notice for all reasonable expenses, including attorneys' fees, incurred by Landlord in connection with any such litigation.

**ARTICLE 21:**            *Waiver of Trial by Jury.*

To the extent permitted by law, Landlord and Tenant hereby waive trial by jury in any litigation brought by either of the parties hereto against the other on any matter arising out of or in any way connected with this Lease or the Demised Premises or the Improvements thereon.

**ARTICLE 22:**            *Merger.*

In no event shall the leasehold interest, estate, or rights of Tenant hereunder, or of the holder of any mortgage upon this Lease, merge with any interest, estate, or rights of Landlord in or to the Demised Premises, it being understood that such leasehold interest, estate, and rights of Tenant hereunder, and of the holder of any mortgage upon this Lease, shall be deemed to be separate and distinct from Landlord's interest, estate, and rights in or to the Demised Premises, notwithstanding that any such interests, estates, or rights shall at any time or times be held by or vested in the same person, corporation, or other entity.

**ARTICLE 23:**            *Definition of Landlord.*

The term Landlord as used in this Lease shall at any given time mean the governmental entity or other entity or entities who are the owner or owners of the reversionary estate of Landlord or the Government of Guam in and to the Demised Premises. Landlord represents and warrants that this Lease is a valid and binding obligation, enforceable against Landlord accordance with its terms. In the event of any conveyance or other divestiture of title to the reversionary estate of Landlord in and to the Demised Premises, the grantor or the person or persons, corporation or corporations, or other entity or entities who are divested of title shall be entirely freed and relieved of all covenants and obligations thereafter accruing hereunder, and the grantee or the person or persons, corporation or corporations, or other entity or entities who otherwise succeeds or succeed to title shall be deemed to have assumed the covenants and obligations of Landlord thereafter accruing hereunder, and until the next conveyance or divestiture of

title, Tenant shall look solely to said grantee or successor for the observance and performance of the covenants and obligations of Landlord hereunder so assumed by said grantee or successor. Tenant agrees to attorn to any such grantee or successor.

**ARTICLE 24:           *Quiet Enjoyment.***

Landlord covenants that at all times during the term of this Lease, so long as Tenant is not in Material Default or Default hereunder with respect to any particular parcel comprising a portion of the Demised Premises, Tenant's quiet enjoyment of those portions of the Demised Premises not in Default or in Material Default shall not be disturbed by any act of Landlord, or of anyone acting by, through, or under Landlord, it being understood, however, that any person, corporation, or other entity who from time to time is Landlord hereunder shall be entirely relieved of this covenant under the circumstances set forth in Article 23 hereof (*Definition of Landlord*).

**ARTICLE 25:           *Present Condition of Premises.***

Tenant acknowledges and represents that Tenant is fully familiar with the Demised Premises, the Improvements thereon, the physical condition thereof, the sidewalks and structures adjoining the same, sub- surface conditions, and the present tenancies, uses, and non-uses thereof, and the items set forth in Exhibit A. Subject to the terms and conditions of the Asset Purchase Agreement, Tenant accepts the Demised Premises and Improvements thereon in the existing condition and state of repair in an "as-is," "where-is" condition, without recourse to Landlord, and with all faults, and, except as otherwise expressly set forth in this Lease, no representations, statements, omissions, or warranties, written or oral, express or implied in fact or by law, have been made by or on behalf of Landlord in respect of the Demised Premises or the Improvements thereon, the status of title thereof, the physical condition thereof, the zoning or other laws, regulations, rules and orders applicable thereto, any Impositions, or the use or uses that may be made of the Demised Premises or Improvements thereon, or any part thereof, that Tenant has relied on no such representations, omissions, statements, or warranties, and that Landlord shall in no event whatsoever be liable for any latent or patent defects in the Demised Premises of whatsoever nature.

**ARTICLE 26:           *Landlord's Right of Entry.***

Upon three (3) days' prior written notice to Tenant, Landlord and Landlord's authorized agents and employees shall have the right from time to time, at Landlord's option, to enter and pass through the Demised Premises and the Improvements thereon during business hours to examine the same and to show them to prospective purchasers, fee mortgagees, and others, but this shall not obligate Landlord to make any such entry or examination. The notice provided by Landlord shall specifically state which portion of the Demised Premises Landlord seeks entry onto. Tenant hereby reserves the right to have a representative present at the time of making any such inspection or interviews, but Tenant's failure to provide such representative shall not abrogate Landlord's right of entry. Landlord agrees to indemnify and hold Tenant

harmless from any and all injuries, losses, liens, claims, judgments, liabilities, costs, expenses or damages (including reasonable attorneys' fees and court costs) sustained by Tenant which result from or arise out of any such entry by Landlord, Landlord's authorized agents and employees pursuant to this Article. Landlord agrees to promptly repair any damage to the Demised Premises caused by Landlord, Landlord's authorized agents or employees.

**ARTICLE 27:           *Messages.***

Any notice, demand, election, payment, or other communication (hereafter in this Article 28 collectively referred to as Messages) which Landlord or Tenant shall desire or be required to give pursuant to the provisions of this Lease shall be sent by registered or certified mail, return receipt requested, and the giving of such Message shall be deemed complete on the third (3rd) business day after the same is deposited in a United States Post Office with postage charges prepaid, enclosed in a securely sealed envelope addressed to the person intended to be given such Message at the respective addresses set forth below or to such other address as such party may theretofore have designated by notice pursuant to this Article 27.

Landlord:

Tenant:

If, at any time, the leasehold interest of Tenant or the fee interest of Landlord shall be owned by more than one person, corporation, or other entity (hereafter in this paragraph collectively referred to as said Owners), then within ten (10) days after written demand by Landlord or Tenant, as the case may be, said Owners shall give to the other party hereto written notice, executed and acknowledged by all of said Owners, in form proper for recording, of the entity to whom shall be given, as agent for all of said Owners, all Messages thereafter given hereunder. Thereafter, until such designation is revoked by written notice given by all of said Owners to the other party hereto, any Message given to such agent shall be deemed to have been given to each and every one of said Owners at the same time that such Message is given to such agent. If said Owners shall fail so to designate in writing one such agent to whom all Messages are to be given, or if such designation shall be revoked as aforesaid, then any Message may be given to any one of said Owners as agent for all of said Owners, and such Message shall be deemed to have been given to each and every one of said Owners at the same time that such Message is given to any one of them.

**ARTICLE 28:           *Estoppel Certificates.***

Each party hereto agrees that at any time and from time to time during the term of this Lease, within ten (10) days after request by the other party hereto or by the Leasehold Mortgagee, it will execute, acknowledge, and deliver to the Leasehold Mortgagee or such other party or to any prospective purchaser, assignee, or any other

mortgagee designated by such other party, a certificate stating (a) that this Lease is unmodified and in force and effect as to the requested portion of the Demised Premises (or if there have been modifications, that this Lease is in force and effect as modified, and identifying the modification agreements); (b) the date to which rent has been paid; (c) whether or not there is any existing default by Tenant in the payment of any rent or other sum of money hereunder, and whether or not there is any other existing default by either party hereto with respect to which a notice of default has been served, and, if there is any such default, specifying the nature and extent thereof; (d) whether or not there are any set-offs, defenses, or counterclaims against enforcement of the obligations to be performed hereunder existing in favor of the party executing such certificate; and (e) any other information that a Leasehold Mortgagee reasonably requests.

**ARTICLE 29:           *Payments of Money; Interest.***

All amounts whatsoever which Tenant shall be obligated to pay to Landlord pursuant to this Lease shall be deemed rent, and in the event of the nonpayment by Tenant of any sum of money which Tenant from time to time shall be obligated to pay to Landlord under any provision of this Lease, Landlord shall have the same rights and remedies by reason of such nonpayment as if Tenant had failed to pay an installment of Rent under Article 3 hereof. In each instance when Tenant shall be obligated to make any payment of any sum of money to Landlord hereunder, interest shall accrue thereon and be payable hereunder at the rate calculated by adding three percentage points to the Prime Rate most recently published by The Wall Street Journal, or the highest rate permitted by law, whichever is lower, computed from the date such payment first became due hereunder.

**ARTICLE 30:           *Non-Waiver***

No waiver by Landlord of any breach by Tenant of any term, covenant, condition, or agreement herein and no failure by Landlord to exercise any right or remedy in respect of any breach hereunder, shall constitute a waiver or relinquishment for the future of any such term, covenant, condition, or agreement or of any subsequent breach of any such term, covenant, condition, or agreement, nor bar any right or remedy of Landlord in respect of any such subsequent breach, nor shall the receipt of any rent, or any portion thereof, by Landlord, operate as a waiver of the rights of Landlord to enforce the payment of any other rent then or thereafter in default, or to terminate this Lease, or to recover the Demised Premises, or to invoke any other appropriate remedy which Landlord may select as herein or by law provided.

**ARTICLE 31:           *Surrender.***

Tenant shall, on the last day of the term of this Lease or upon any termination of this Lease pursuant to Article 18 (*Default; Termination*) hereof, or upon any other termination of this Lease, well and truly surrender and deliver up that portion of the Demised Premises subject to the Lease termination, with the Improvements then located thereon into the possession and use of Landlord, without fraud or delay and in

good order, condition, and repair, free and clear of all lettings and occupancies, free and clear of all liens and encumbrances other than those existing on the date of this Lease and those, if any, created by Landlord, without any payment or allowance whatever by Landlord on account of or for any buildings and improvements erected or maintained on that portion of the Demised Premises subject to the Lease termination at the time of the surrender, or for the contents thereof or appurtenances thereto. Provided, however, that Tenant's Trade Fixtures, personal property, and other belongings of Tenant or of any subtenant or other occupant of space in the Demised Premises shall be and remain the property of Tenant, and Tenant shall have a reasonable time after the expiration of the term of this Lease to remove the same.

Upon such termination, Tenant shall surrender and convey all of the Improvements located on that portion of the Demised Premises subject to the Lease termination to Landlord, without compensation. In such event, Tenant shall quitclaim or cause to be quitclaimed to Landlord all right, title and interest in and to the Improvements. In the event that this Lease is terminated, and Tenant has no further obligations under this Lease, Tenant grants Landlord power of attorney to execute any quitclaim deed or other documents to clear title to the Improvements and related personal property.

**ARTICLE 32:           *Memorandum of Lease.***

Each of the parties hereto will, promptly upon request of the other, execute a memorandum of this Lease in the form attached hereto as Exhibit B, which form shall be suitable for recording in each municipality of Guam, setting forth the names of the parties hereto and the term of this Lease, identifying the Demised Premises, and also including such other clauses therein as either party may desire, except the amounts of Basic Rent payable hereunder.

**ARTICLE 33:           *No Partnership.***

Landlord shall not be deemed, in any way or for any purpose, to have become, by the execution of this Lease or any action taken under this Lease, a partner of Tenant, in Tenant's business or otherwise, or a member of any joint enterprise with Tenant.

**ARTICLE 34:           *No Oral Changes.***

This Lease may not be changed or modified orally, but only by an agreement in writing signed by the party against whom such change or modification is sought to be enforced.

**ARTICLE 35:           *Bind and Inure.***

The terms, covenants, conditions, and agreements of this Lease shall bind and inure to the benefit of the parties hereto and their respective successors and assigns,

subject, however, to the provisions of Article 16 (*Assignment; Subletting*), Article 23 (*Definition of Landlord*) hereof, and other applicable provisions of this Lease. Any waiver of rights by either party hereto shall be deemed to be a waiver of such rights not only by such party but shall be deemed to be a waiver of such rights for and on behalf of each and every successor and assignee of such party. The word Tenant as used herein shall in each instance be deemed to mean the person or persons, corporation or corporations, or other entity or entities who from time to time shall be primarily obligated under this Lease to perform the obligations of Tenant hereunder.

**ARTICLE 36:           *Obligation to Refrain From Discrimination.***

The parties hereto hereby covenant by and for themselves, their heirs, executors, administrators, and assigns, and all persons claiming under or through them that this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of sex, race, color, creed, national origin, or ancestry, in the leasing, subleasing, transferring, use, or enjoyment of the land herein leased, nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased.

**ARTICLE 37:           *Force Majeure.***

The time within which either party hereto shall be required to perform any act under this Lease, other than the payment of money, shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure, or inability to secure materials or labor by reason of priority or similar regulation or order of any governmental or regulatory body, enemy action, civil disturbance, fire, unavoidable casualties, or any other cause beyond the reasonable control of either party hereto, excluding, however, the inability or failure of either party to obtain any financing which may be necessary to carry out its obligations. Notwithstanding the foregoing, unless the party entitled to such extension shall give notice to the other party hereto (plus concurrent notice by telephone or telegraph if such other party's telephone number is not readily available) of its claim to such extension within three (3) business days after the event giving rise to such claim shall have occurred, there shall be excluded in computing the number of days by which the time for performance of the act in question shall be extended, the number of days which shall have elapsed between the occurrence of such event and the actual giving of such notice.

**ARTICLE 38:           *Hazardous Material.***

The Tenant shall keep and maintain the Demised Premises in compliance with, and shall not cause or permit the Demised Premises to be in violation of, any federal, state, or local laws, ordinances or regulations relating to industrial hygiene or to

the environmental conditions (Hazardous Materials Laws) on, under, about, or affecting the Demised Premises. The Tenant shall not use, generate, manufacture, store, or dispose of on, under or about the Demised Premises or transport to or from the Demised Premises any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation any substances defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, or toxic substances under any applicable federal or state laws or regulations (collectively referred to hereinafter as Hazardous Materials).

The Tenant shall be solely responsible for, and shall indemnify and hold harmless the Landlord, its directors, officers, employees, agents, successors, and assigns from and against, any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the Demised Premises, as more particularly set forth in that certain Asset Purchase Agreement (the "**Asset Purchase Agreement**") dated \_\_\_\_\_, 2004 by and between Landlord and Tenant.

**ARTICLE 39:           *Governing Law***

This Lease shall be governed by and construed in accordance with the laws of Guam, without resort to its conflict of laws rules. Notwithstanding anything in this Lease to the contrary, including, without limitation, any provision herein which states that Tenant is subject to changes in any law, rule, order, ordinance, regulation, and requirement or to legislative or other action by governmental entities or agencies or to any agencies or subdivisions of the Government of Guam (collectively, the "**Government Control Provisions**"), such Government Control Provisions shall not apply to the terms and conditions of this Lease unless such Government Control Provisions apply generally to all property holders and are not specifically designed or targeted, to adversely affect or interfere with, directly or indirectly, the terms and conditions of this Lease or Tenant's rights hereunder.

**ARTICLE 40:           *Asset Purchase Agreement***

To the extent of any inconsistency or conflict, either direct or indirect, between the terms and conditions of this Lease, including, but not limited to Articles 14, 25, and 37, and the Asset Purchase Agreement, the terms and conditions of the Asset Purchase Agreement shall control. This Lease shall be subject in all respects to the terms and conditions of the Asset Purchase Agreement.

**ARTICLE 41:           *Approval by Applicable Authorities***

The terms of this Lease are subject to approval by the Guam Legislature, and other applicable authorities, and will be binding and enforceable only upon the approval thereof.



IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the day and year first above written.

LANDLORD:

THE GOVERNMENT OF GUAM, AND ITS AGENCIES, TRUSTS, DEPARTMENTS,  
AND INSTRUMENTALITIES, AND THE CHAMORRO LAND TRUST  
COMMISSION, ACTING BY AND THROUGH THE GUAM TELEPHONE  
AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

TELEGUAM HOLDINGS, LLC,  
a Delaware limited liability company

[SEAL]

Attest: \_\_\_\_\_  
(Secretary)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

**TO BE REVISED PRIOR TO CLOSING TO REFLECT LEGAL DESCRIPTIONS OF DEMISED PREMISES  
(AS OF AUGUST 17, 2004)**

<b>Municipality</b>	<b>Village/Vicinity</b>	<b>Lot Number(s)</b>	<b>Description</b>
Agana	Agana	#1-1, Block # 30	Agana Host
			Agana Operator's Office
Agat	Agat	# 477-1	Agat RSC
			Agat Business Office
			Agat Containerized Office
Agat,Piti, Yona	Nimitz Hill	#98-2G	Mt. Alutom Cellular Site
Barrigada	Barrigada Heights	#9-1, Block D, Tract No. 9	Barrigada Heights Cell Site
Mangilao	Mangilao	#1109-2-1	Mangilao RSC
Dededo	Astumbo	#10129-3-New	Astumbo RSC
			Astumbo Cellular Site
	Dededo	#10063-New	Dededo Host
			Dededo Host Customer/cashier svc
			Northern District Engineering Department
	Dededo	#10063-Rem-Portion-2	Dededo Dist Motorpool (Parking Area)
Tamuning	Tamuning	#2139-New-2	Gibson RSC
		#5173-New-2-2-New	Tamuning LBJ RSC
Tumon	Upper Tumon	#5120-4New-R1New	Tumon Host
			Administration /Executive
			Central District
			Plant/Operator position @ 2nd floor.
			Administration Office
			Warehouse Supply Building 22
			Maintenance/Mechanic shop Bldg.
Merizo	Merizo	24	Merizo RSC
Piti	Piti	5NEW-R1, BLOCK 2	Piti/Asan RSC
Yigo	Yigo	7004-6-1	Yigo RSC
Chalan Pago/Ordot	Ordot	#3319-2	Ordot RSC
Inarajan	Inarajan	# 381-3	Inarajan RSC
Malojloj	Malojloj	#360-2-2 and such other subdivision(s) of Lot #382-R1, the conveyance of which is/are necessary to demise the entire Malojloj cell site	Malojloj Cell Site - not using whole lot

**EXHIBIT B**

Recording requested by )  
\_\_\_\_\_) )  
After recordation, deliver )  
copies to: \_\_\_\_\_ )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
The real property affected )  
by this instrument is )  
registered land, the names(s) )  
of the last registered owner(s) )  
being \_\_\_\_\_, )  
and the number of the )  
certificate of last registration )  
being No. \_\_\_\_\_ )

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

**MEMORANDUM  
OF  
GROUND LEASE**

This MEMORANDUM OF GROUND LEASE (the "**Memorandum**") is made and entered into by and among THE GOVERNMENT OF GUAM, AND ITS AGENCIES, TRUSTS, DEPARTMENTS AND INSTRUMENTALITIES, AND THE CHAMORRO LAND TRUST COMMISSION, ACTING BY AND THROUGH THE GUAM TELEPHONE AUTHORITY (the "**Landlord**") and TELEGUAM HOLDINGS, LLC, a Delaware limited liability company (the "**Tenant**").

By a certain Ground Lease (the "**Lease**") dated the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ between the Landlord and Tenant, the Landlord has leased to Tenant the real property described as follows:

[INSERT SEPARATE DESCRIPTION OF EACH PROPERTY SUBJECT TO THE LEASE]

All provisions of the Lease are incorporated herein by reference.

The term of the Lease is ten (10) years commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 (“**Basic Term**”).

Tenant has an option to renew the Lease for an additional period of twenty (20) years (“**First Option**”) commencing on the date immediately following the expiration of the Basic Term and expiring on the twentieth (20<sup>th</sup>) anniversary of the date of commencement of the first Option Period at a rental rate to be determined in accordance with the terms of the Lease.

Tenant has a second option to renew the Lease for an additional period of twenty (20) years (“**Second Option**”) commencing on the date immediately following the expiration of the First Option period and expiring on the twentieth (20<sup>th</sup>) anniversary of the date of commencement of the Second Option period at a rental rate to be determined in accordance with the terms of the Lease.

This Memorandum Lease is subject to the terms, conditions, and provisions of that certain unrecorded instrument between the parties dated the \_\_\_ day of \_\_\_\_\_, 200\_\_. This Memorandum is prepared and recorded for the purpose of putting the public on notice of the Lease, and this Memorandum in no way modifies the terms and conditions of the Lease. In the event of any inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

EXECUTED on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

LANDLORD:

THE GOVERNMENT OF GUAM, AND ITS AGENCIES, TRUSTS, DEPARTMENTS,  
AND INSTRUMENTALITIES, AND THE CHAMORRO LAND TRUST  
COMMISSION, ACTING BY AND THROUGH THE GUAM TELEPHONE  
AUTHORITY.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

TELEGUAM HOLDINGS, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GUAM, U.S.A. )  
 ) ss.  
Municipality of Hagåtña )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me, a notary public  
in and for Guam, U.S.A., personally appeared

\_\_\_\_\_, known to me to be the person(s)

whose name(s) is/are subscribed to the foregoing Memorandum of Lease and  
acknowledged to me that he/she/they signed it voluntarily for its stated purpose as

\_\_\_\_\_ for the Government of Guam, and its Agencies, Trusts,  
Departments, and Instrumentalities, and the Chamorro Land Trust Commission, acting by  
and through the Guam Telephone Authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
official seal the day and year first above written.

)SEAL(

\_\_\_\_\_

GUAM, U.S.A. )  
Municipality of Hagåtña ) ss.  
 )

On this \_\_\_\_ day of \_\_\_\_\_, 2004, before me, a notary public  
in and for Guam, U.S.A., personally appeared

\_\_\_\_\_, known to me to be the person(s)  
whose name(s) is/are subscribed to the foregoing Memorandum of Lease and  
acknowledged to me that he/she/they signed it voluntarily for its stated purpose as  
\_\_\_\_\_ for Teleguam Holdings, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
official seal the day and year first above written.

)SEAL(

\_\_\_\_\_

EXHIBIT C

Prohibited Uses

The Lessee shall not:

- (i) permit unlicensed gambling on the Demised Premises;
- (ii) install or operate, or permit to be installed or operated, any device which is illegal;
- (iii) use or permit the Demised Premises to be used for any illegal or immoral business or purpose;
- (iv) allow activities that would constitute a nuisance under applicable law; or
- (v) sell or commercially store or dispense, or permit the sale or commercial storage or dispensing, of beer or other intoxicating liquors on the Demised Premises.



Schedule 6.10(d)  
Residential and Business Rates

<u>Service:</u>	<u>Rate (per month):</u>
Residence basic service	\$14.00
Business single line basic service	\$36.00
PBX and DID/DOD trunks	\$49.00
Public telephone line service (COCOT lines)	\$36.00

It being understood and agreed that nothing on this Schedule 6.10(d) shall be construed as imposing any limitation on the rates offered by Buyer for bundled services.

**EXHIBIT D**