








I Mina'trentai Siette Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	FISCAL NOTES	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
121-37 (COR)	Amanda L. Shelton Tina Rose Muña Barnes Jesse A. Lujan Roy A.B. Quinata Dwayne T.D. San Nicolas William A. Parkinson Joe S. San Agustin	AN ACT TO AUTHORIZE THE PORT AUTHORITY OF GUAM TO ENTER INTO A THIRTY (30) YEAR LEASE AGREEMENT WITH THE MARIANAS YACHT CLUB.	5/16/23 11:06 a.m.						Exhibit A

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 121-37 (COR)

Introduced by:

Amanda L. Shelton 
Tina Rose Muña Barnes 
Jesse A. Lujan 
Roy A.B. Quinata 
Dwayne D.T. San Nicolas 
William A. Parkinson 
Joe S. San Agustin 

**AN ACT TO AUTHORIZE THE PORT AUTHORITY OF
GUAM TO ENTER INTO A THIRTY (30) – YEAR LEASE
AGREEMENT WITH THE MARIANAS YACHT CLUB.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the Port Authority of Guam (PAG) requested the Legislative Committee on
4 Maritime Transportation to introduce legislation approving the adoption of a new
5 thirty (30)-year lease agreement between the agency and the Marianas Yacht Club.
6 According to the PAG, the Marianas Yacht Club is a nonprofit organization that has
7 historically promoted community interest and participation in the sport of sailing,
8 including by conducting Red Cross certified sailing instruction programs open to the
9 People of Guam with an emphasis on sailing instruction for Guam's youth,
10 supporting and managing major international yacht racing events, and hosting other
11 competitive sailing events.

12 *I Liheslatura* further finds that pursuant to P.L. 21-62 which was enacted on
13 November 14, 1991, the PAG was authorized to implement an initial thirty (30)-year
14 lease agreement with the Marianas Yacht Club. The lease agreement expired on

1 November 7, 2021, and the parties continued the lease agreement on a month-to-
2 month basis since that time.

3 It is, therefore, the intent of *I Liheslaturan Guåhan* to approve the PAG's
4 request to enter a new thirty (30)-year lease agreement with the Marianas Yacht
5 Club. The provisions of this Act ensure the PAG's compliance to the requirements
6 established pursuant to 12 GCA § 10105(i) and 21 GCA § 60112(a).

7
8 **Section 2. Thirty (30)-Year Lease Agreement Authorized.**

9 Notwithstanding any other provision of law, and in accordance with 12 GCA §
10 10105(i) and 21 GCA § 60112(a), the Port Authority of Guam is authorized to enter
11 into a lease agreement with the Marianas Yacht Club. The Port Authority of Guam
12 (Lessor) is authorized to lease to the Marianas Yacht Club (Lessee) the following
13 described parcel of land, situated in the Municipality of Piti, Territory of Guam: A
14 portion of Parcel number 1, L.M. Dwg. E4-82T693, Apra Harbor, included herein
15 as part of EXHIBIT "A", which portion contains an area of approximately 4,000
16 square meters. The lease agreement shall be authorized for a period not to exceed
17 thirty (30) years.

18
19 **Section 3. Waiver of Appraisal Requirement.** § 2107(b) of Chapter 2,
20 Title 2, Guam Code Annotated, requires two (2) appraisals for any transfer or lease
21 of public property before consideration by *I Liheslaturan Guåhan*. *I Liheslaturan*
22 *Guåhan* hereby waives this requirement.

23
24 **Section 4. Effective Date.** This Act shall be effective upon enactment.



PORT OF GUAM

ATURIDAT I PUETTON GUAHAN

Jose D. Leon Guerrero Commercial Port

1026 Cabras Highway, Suite 201, Piti, Guam 96925

Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445

Website: www.portguam.com

Bill No. 121-37 (COR) Exhibit A



Lourdes A. Leon Guerrero
Governor of Guam

Joshua F. Tenorio
Lieutenant Governor

Exhibit "A"

April 10, 2023

Honorable Amanda Shelton
Chairperson, Committee on Maritime Transportation
37th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Subject: Port Lease Agreement with Marianas Yacht Club

Dear Senator Shelton:

Buenas yan Hafa Adai! This letter is to respectfully inform you that the Port Board of Directors on April 6, 2023, accepted a new lease for a 30-year lease agreement reached between the Port Authority of Guam and the Marianas Yacht Club (MYC). This agreement requires approval by the Guam Legislature and the Governor of Guam.

Accompanying the new lease is Board Resolution No. 2021-03. The resolution affirms that it is in the best interest of the Port Authority to enter into a new lease with Marianas Yacht Club (MYC), for a term to be agreed on, but expected to exceed five (5) years. The Board further resolved to authorize Port management to petition for your approval to seek a legislative solution to approve a new lease between the Port Authority and MYC, since 12 GCA § 10105(i) and 21 GCA § 60112(a) require legislative approval for leases of government real property over five (5) years in duration.

By way of background, Marianas Yacht Club was incorporated as a not-for-profit organization on February 21, 1969, in response to a public call of interest for a sailing club that resulted in 114 founding members. Sailboats, sailing regattas, and sailing education subsequently burgeoned, and through the efforts of the Guam Economic Development Agency and Mobil Oil Guam, Inc., a location for the club in Apra Harbor was established on Mobil property on Cabras Island as a temporary site. In 1989, the Marianas Yacht Club relocated to its present site on Sasa Bay under a 30-year lease from the Port Authority of Guam, which established a roadway and utilities for the present clubhouse and storage for boating and racing equipment. The Marianas Yacht Club, through the Army Corps of Engineers, established a Small Boat Anchorage within Sasa Bay, maintains Sasa Bay navigational markers, and set moorings for use by members and visiting yachts.

On November 14, 1991, the Twenty-First Guam Legislature enacted Public Law 21-62, which approved the current lease between the Port Authority and MYC for a thirty (30) year term. The

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Subject: Port Lease Agreement with Marianas Yacht Club
April 10, 2023
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lease naturally expired on November 7, 2021, and the parties have continued the lease on a month-to-month holdover basis since that time. The MYC Commodore, at the time, Mr. Tim Armour, notified the Port of MYC's desire to enter into a new lease with the Port on the same property, Parcel Number 1, L.M. Dwg. E4-82T693, situated in the Municipality of Piti, Guam.

Currently, Marianas Yacht Club has over 1,350 continuing members, is a non-profit organization that has historically promoted community interest and participation in the sport of sailing, including by conducting Red Cross certified sailing instruction programs open to the people of Guam with an emphasis on sailing instruction for Guam's youth, supporting and managing major international yacht racing events, and hosting other competitive sailing events.

Port management has worked extensively with MYC to negotiate terms for a similar but new lease agreement between the Port and MYC. The notable changes made to the new lease agreement from the previous agreement, and agreed to by both parties, are as follows:

1. The footprint of the property being leased was adjusted to include additional dry land (but not shoreland) equivalent in area to offset the land washed away by ocean erosion, but the total area of the leased property remains the same approximately 4,000 square meters as was covered under the old lease;
2. A new preamble to the beginning of the agreement was written to update the history of the MYC and its contributions to Guam's sailing community;
3. Section 5, entitled "Use," was enhanced to better detail the types of uses MYC is permitted to make of the leased property, to include (1) the ability to license members of the public to temporarily use the property for recreational purposes, (2) the ability to fundraise for the purpose of obtaining grants; and (3) expressly prohibiting any commercial cargo activity;
4. Section 6, entitled "Alterations, Construction and Replacements," was amended to ensure the Port maintains adequate oversight over any proposed construction on the property;
5. Section 13, entitled "Condemnation," was slightly altered to clarify MYC's rights and obligations in the unlikely event of partial or total government condemnation of the property;
6. Section 16, entitled, "Attorney's Fees and Costs Incurred to Enforce Lease Provisions," was amended to clarify that the Port is not liable for MYC's attorney's fees, should MYC prevail in any litigation dispute;
7. Section 17, entitled "Compliance with Law," was amended to include language specifying that any failure to comply with all laws and regulations would be reasonable cause to terminate the lease;

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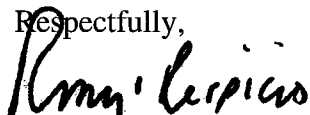
8. Section 19, entitled "Approvals," was updated to omit the U.S. Government as an approval authority, to declare the necessity of legislative approval of the lease, and to maintain the month-to-month basis of the existing lease until such time of legislature approves the new lease agreement; and
9. Section 20, entitled "Special Requirements," was modified to ensure: (1) that MYC perpetually maintains its non-profit status and shares its annual reports with the Port; (2) that MYC maintains a non-discriminatory inclusion policy toward the public; (3) that MYC's rules and regulations, especially those regarding public access, are subject to Port Board approval; and (4) that MYC periodically provide information to the Port regarding its continued compliance with its stated purpose, insurance requirements, non-profit status, Port Rules, and other lease obligations.

The above represents the significant changes made to the new lease agreement that differ slightly from the old lease agreement. Attached for your review are:

- 1) Board Resolution 2021-03 relative to petitioning the Governor of Guam for approval to seek legislative solution to enter into a new lease of certain real property by the Port Authority of Guam to the Marianas Yacht Club;
- 2) A copy of the new lease agreement between the parties; and
- 3) A copy of the old lease agreement between the Port and MYC.

We are respectfully requesting your introduction of a legislative bill to statutorily adopt this initiative through the legislative process. Should you have any questions or concerns, I am available at 671-477-5931, ext. 302/303. *Si Yu'os Ma'ase!*

Respectfully,



Rory J. Respicio
General Manager

Attachments

BOARD OF DIRECTORS

Francisco G. Santos, Chairman
Nathan T. Taimanglo, Vice Chairman
Isa Marie C. Koki, Board Secretary
Dorothy P. Harris, Member

**Resolution No. 2021-03**

**RELATIVE TO PETITIONING THE GOVERNOR OF GUAM FOR APPROVAL TO SEEK
 LEGISLATIVE SOLUTION TO ENTER INTO A NEW LEASE OF CERTAIN REAL PROPERTY BY
 THE PORT AUTHORITY OF GUAM TO THE MARIANAS YACHT CLUB**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PORT AUTHORITY OF GUAM:

WHEREAS, on November 14, 1991, the Twenty-First Guam Legislature enacted Public Law 21-62 ("PL 21-62"), which approved the current lease between the Port Authority of Guam ("PAG" or "the Port") and the Marianas Yacht Club ("MYC") for a thirty (30) year term, commencing on the date of legislative approval and expiring on November 7, 2021; and

WHEREAS, there being no provision in the current lease to allow for option renewals, the current lease agreement between MYC and PAG is therefore expected to expire on November 7, 2021; and

WHEREAS, the MYC, a non-profit organization and member of the PAG family for over fifty (50) years, through their Commodore, Mr. Tim Armour, has notified the Port of their desire to enter into a new lease with the Port on the same property, that is, Parcel Number 1, L.M. Dwg. E4-82T693, situated in the Municipality of Piti, Territory of Guam; and

WHEREAS, the Twenty-First Guam Legislature, through its enactment of PL 21-62, recognized the need for a central facility located at Apra Harbor, Guam, to be used for recreational boating, the conduct of sailing instruction open to the People of Guam with special emphasis on sailing instruction for Guam's youth, to provide a training facility for Guam's National Olympic Sailing Program, provide a facility for hosting of local and international yacht racing events and to promote community interest and participation in the sport of sailing, thereby enhancing the quality of life on Guam; and

WHEREAS, MYC, a not-for-profit organization, charged by the United States Yacht Racing Union and a member of the International Yacht Racing Union and of Guam's National Olympic Committee, has demonstrated its ability to promote community interest and participation in the sport of sailing, conduct programs of Red-Cross certified sailing instruction open to the People of Guam with special emphasis on sailing instruction for Guam's youth, support and manage major international yacht racing events, and that it is capable of providing support for Guam's National Olympic Sailing Program and hosting competitive sailing events in future South Pacific Games; and

WHEREAS, the Port intends to enter into a new lease agreement with the MYC, upon the expiration of the current lease, for a term to be agreed upon at a later date, but for a term greater than five (5) years; and

WHEREAS, when read together, 12 G.C.A. § 10105(i) and 21 GCA § 60112(a) requires specific legislative approval for lease terms exceeding five (5) years; and

WHEREAS, the Port Authority Board of Directors has determined that entering into a new lease with the MYC will serve the best interest of the Port and the People of Guam and therefore, recognizes the continued benefit of seeking a similar lease with the MYC in this instance, subject to the approval by the Legislature and the Governor of Guam through legislative solution;

THEREFORE, BE IT RESOLVED, that the Board of Directors, affirms that it is in the best interest of the Port and the Territory of Guam to enter into a new lease with the MYC, for a term to be agreed upon by both parties at a later date, but for a term greater than five (5) years; and be it further

RESOLVED, the Board of Directors authorizes management to petition the Governor of Guam for approval to seek a legislative solution to approve a new lease with the Port and the MYC upon the expiration of the current lease; and be it further

RESOLVED, the Chairman certify to, and the Secretary attest to, the adoption hereof and that a copy of this resolution be sent to the Governor of Guam and the Attorney General of Guam.

**PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF
 DIRECTORS THIS 25th DAY OF FEBRUARY, 2021.**


FRANCISCO G. SANTOS
CHAIRMAN, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM




ISA MARIE C. KOKI
SECRETARY, BOARD OF DIRECTORS
PORT AUTHORITY OF GUAM

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LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into on _____, 2023, by and between the **PORT AUTHORITY OF GUAM** (hereinafter referred to as "Lessor") and **THE MARIANAS YACHT CLUB**, a non-profit corporation (hereinafter referred to as "Lessee").

PREAMBLE

WHEREAS, Marianas Yacht Club was incorporated as a not-for-profit organization on February 21, 1969, in response to a public call of interest for a sailing club that resulted in 114 founding members, and

WHEREAS, Apra Harbor under Naval Operations restricted access to recreational use and sailing, and

WHEREAS, MYC newly elected officers worked with community and military leaders to open Apra Harbor for recreational use and sailing

WHEREAS, sail boats, sailing regattas and sailing education burgeoned, and through the efforts of the Guam Economic Development Agency and Mobil Oil Guam, Inc., a location for the club in Apra Harbor was established on Mobil property on Cabras Island as a temporary site, and

WHEREAS, by October 1969, a clubhouse, boat ramp, restrooms, and moorings were completed, and

WHEREAS, in 1989 Marianas Yacht Club relocated to its present site on Sasa Bay under a 30-year lease from the Port Authority of Guam, established a roadway and utilities for the present club house and storage for boating and racing equipment, and through the Army Corps of Engineers established a recognized Small Boat Anchorage within Sasa Bay, maintains Sasa Bay navigational markers, and set moorings for use of member and visiting yachts, and

WHEREAS, Marianas Yacht Club has provided annual sailing instruction to the public, established youth sailing camps, hosted Annual Challenge Day – Discover Sailing events for the community, provided the venue for two South Pacific Games sailing competitions, one Asia-Pacific Laser Championship, forty Guam-Japan Goodwill Regattas, two Three Sisters Regattas (Guam-Japan-Korea), two Auckland-Fukuoka Yacht Races, and multiple Nippon Ocean Racing Club Japan-to-Guam races, and

WHEREAS, Marianas Yacht Club has hosted visiting yachts from over 25 countries, and

WHEREAS, Marianas Yacht Club has provided a venue for Youth Triathlons, Boy Scouts, Island Girl Power, conservation and traditional sailing group educational events, Coast Guard Auxiliary meetings, Coast Guard events, Department of Agriculture Earth Day events and

WHEREAS, fundraising events have supported community scholarships for youth sailing education and equipment as well as Jose Rios Middle School music education, and

WHEREAS, the continuing membership numbers exceed 1,350, and

WHEREAS, the 30-year lease between the Marianas Yacht Club and the Port Authority of Guam has expired,

WITNESSETH

Lessor owns or administers the land described hereinbelow, and Lessor desires to lease such land to Lessee and Lessee desires to lease the same from Lessor.

Now, therefore, in consideration of the premises and the terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee enter into this Lease and agree as follows.

1. **PREMISES:** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the following described parcel of land, situated in the Municipality of Piti, territory of Guam (the "Premises"):

A portion of Parcel number 1, L.M. Dwg. E4-82T693, Apra Harbor, as shown in the drawing attached hereto marked as Exhibit A and incorporated by reference herein, which portion contains an area of approximately 4000 square meters.

TOGETHER WITH all and singular, the tenements, rights, easements, privileges, improvements and appurtenances to the same belonging or appertaining or held and enjoyed in connection therewith; and together also with all such rights, easements and privileges as Lessor may be entitled to grant in and to the shore area and surrounding waters adjacent to the Premises; and together also with the rights of ingress and egress as more fully described herein.

2. **Term.** The term of this Lease shall be for a period of thirty (30) years commencing on the date set forth above, subject to the provisions of Section 19, below.

3. Rent During Term. The rent payable from Lessee to Lessor shall be the sum of One Hundred Dollars (\$100) per year, payable annually in advance during each year the term of this Lease. This rental amount has been in good faith determined by the parties to be the fair rental value of the Premises, taking into consideration the provisions of this Lease, including without limitation that Lessee is a not-for-profit organization, that use of the Premises is generally limited as more fully provided in Section 5 below to boating and recreation and that the Premises are located in an area which has been reserved for open space and recreational uses. Provided however, should an appropriate agency of the United States federal having jurisdiction over the subject matter make a final and binding determination, pursuant to the provisions of Section 818(b)(2) of United States Public Law 96-418, that the fair rental value of the Premises exceeds the foregoing rental amount, then the rent payable hereunder shall be adjusted to such amount as shall have been determined by the federal government, pursuant to the provisions of Section 818 of Public Law 96-418, to be the fair rental value of the Premises as of the date of this Lease. Any such adjustment shall be made retroactive to the commencement date of this Lease. The parties recognize that Lessee is a not-for-profit organization with limited financial resources, and therefore in the event a mandatory rent adjustment is required to be made by reason of Section 818 of Public Law 96-418 and in the event Lessee in good faith determines it is unable to pay the adjusted rent, then the Lessee shall have the right, at Lessee's option, to be exercised within one (1) year from the date of a final and binding determination by the federal government that a rent adjustment is required, to either cancel this Lease without penalty or to reduce the area of the Premises by releasing from the Lease and returning to Lessor such portion of the Premises as Lessee may designate, subject to the approval of Lessor as to size and shape of the released portion (which approval lessor shall not unreasonably withhold). In the event of any mandatory rental adjustment is required by reason of

federal law, such rent adjustment shall not exceed in any event, the amount determined by the appropriate federal agency to be the fair rental value of the Premises as of the date of the execution of this Lease.

4. Quiet Enjoyment. Lessor shall put and keep Lessee in actual possession of the Premises at the beginning of and throughout the term of this Lease. Lessor covenants that Lessee, upon paying the rent required hereunder, shall lawfully, peacefully and quietly have, hold, use, occupy and enjoy the Premises without any suit, hindrance, eviction, ejection, molestation, interruption or disturbance whatsoever of or by Lessor or by any persons claiming by, from, under or against Lessor; subject to the terms of any deed of conveyance from the United States of America pursuant to which Lessor or its predecessor in interest may have acquired the property of which the Premises form a part. This Lease is in no way intended to prohibit or deter government of Guam officials and employees acting under color of authority from entering the Premises to perform a government-related function not otherwise prohibited by Guam statute, rule, or regulation.

5. Use.

(a) General. The Premises shall be used for the operation of a yacht club, sailing club, boating club, sailing and boating facilities, sailing and boating instruction, sailing and boating promotion, sailing and boating general support, including, but not limited to, traditional seafaring support and cruising mariners support, recreational and social activities, occasional food and beverage sales, related facilities, and the conduct of any and all activities, including educational, related or incidental thereto.

(b) Licensing for Recreational and Fundraising Activities. The Lessee may temporarily license the use of portions of the Premises to members of the public without

written consent of the Lessor for non-commercial, recreational and social activities, local fundraising events, and the conduct of any and all activities related or incidental thereto, provided that said activities and events are related to the primary Lease purpose described in section 5(a), above.

(c) Grants and Fundraising Allowed. The Lessee, with written consent from the Lessor, may independently and under the name of Lessee apply for applicable grants and/or aid necessary for the continued operation and use provided in Section 5(a) above, and may hold fundraising events to support the conduct of any and all activities related or incidental thereto.

(d) Commercial Cargo Activity Prohibited. The Lessee shall not make entry, nor allow the entry of, any vessel to unload, load, import and/or export, the cargo or any part thereof of any vessel elsewhere than at the port of Apra Harbor, the Commercial Port of the Agana Boat Basin. Further, the Lessee shall not engage in any business or commercial activity without (i) prior written approval of, or (ii) the proper execution of an agreement with the Port Authority of Guam. Business or commercial activity shall include, but is not limited to, any soliciting, and distribution of advertisements or circulars, intended for private gain or private purpose.

6. Alterations, Construction and Replacements.

Lessee may at any time and from time to time, construct or otherwise make new improvements on all or any part of the Premises, make any alterations, changes, replacement, improvements, and additions in and to the Premises, including the contour and grade thereof, and the additions, buildings and improvements constructed thereon, at no cost to the Lessor. However, any and all requests for construction on the Premises shall be made in writing and approved by the Lessor. Notice to Lessor of proposed improvements for Lessor's approval shall include at a

minimum a full description and diagrams or plans of design, materials, services, and pricing of said improvement; a construction timeline and impact statement; and the identity of all contractors and subcontractors involved.

Lessee shall have the right, at any time and from time to time, to enter into utility and other agreements with third persons, including, without limitation, governmental entities, for the purpose of developing, improving and operating the premises.

During the term of this Lease, title to any and all buildings or improvements situated or erected on the Premises and the building equipment, fixtures and other items installed thereon and any alterations or additions thereto shall remain in Lessee, and Lessee shall be the owner of the same. Upon expiration of this Lease, all improvements remaining on the Premises shall become the property of Lessor. The parties acknowledge and agree that any construction, erection, or placement of any equipment, fixture, structure, or improvement shall in no way whatsoever confer an irrevocable license unto Lessee.

The parties understand that Lessee is leasing the Premises for the sole and exclusive purpose of operating a yacht club and related facilities, and that if, in Lessee's judgment, the Premises ever for any reason become not reasonably suitable therefor, then Lessee shall have the right to terminate this Lease with no further liability or obligation hereunder. In the event of such termination, all rents paid hereunder shall not be refunded to Lessee and shall be the property of Lessor; however, Lessee shall have no further obligation or liability under this Lease.

7. Assignment. Lessee shall not have the right to assign this Lease or to sublet the entirety or any part or portion of the Premises unless the prior written consent of Lessor shall first be obtained, which consent shall not unreasonably be withheld. In the event Lessee proposes to assign this Lease to any not-for-profit organization which is a successor in interest to Lessee, and

of which Lessee is materially and substantially a part (or of which the majority of the members of Lessee are a part) then Lessor agrees it shall not unreasonably withhold its consent to such assignment so long as the assignee shall commit to observe and perform the terms and conditions of this Lease, including without limitation the provisions as to use of the Premises. The limitations in this Section shall not prevent Lessee from allowing other sailing, boating or recreational groups to share use of the Premises or any improvements or facilities, nor prevent Lessee from contracting with third parties to provide services or concessions to or for the benefit of Lessee.

8. Real Property Taxes. Lessee shall pay any and all taxes and assessments against the Premises and all improvements thereon throughout the term of this Lease.

9. Payment of Utilities. Lessee shall pay and be responsible for the installation of and all charges for, water, power and other utilities installed and supplied to and on the Premises.

10. Maintenance. Lessee shall, at its own cost and expense, maintain all the improvements on the Premises in good repair and condition throughout the term of this Lease, reasonable wear and tear excepted.

11. Insurance. Throughout the term of this Lease, so long as such coverage is reasonably and commercially available, Lessee shall keep and maintain adequate premises liability insurance insuring against injury to any person or property in a sum of not less than Three Hundred Thousand Dollars (\$300,000) for bodily injury to one person in any one accident, One Million Dollars (\$1,000,000) for bodily injury to more than one person in any one accident, and Two Hundred Thousand Dollars (\$200,000) for property damage in one accident.

12. Leasehold mortgages. Lessee may, at any time and from time to time during the term of this Lease for the purpose of financing the cost of making any improvements on the Premises, and after adequate notice to Lessor, encumber by mortgage or other security instrument

or otherwise, Lessee's interest under this Lease and the leasehold estate hereby created. If Lessee shall encumber and/or mortgage this Lease or its interest in the Premises, then so long as any such leasehold encumbrance or mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Consent to Cancellation. There shall be no cancellation, surrender, amendment or modification of this Lease without the prior consent in writing of any leasehold mortgagee or secured party except in accordance with the terms hereof.

(b) Notice. Lessor shall, upon serving upon Lessee any notice of default as provided for herein, at the same time serve a copy of such notice upon any leasehold mortgagee or secured party, and any notice by Lessor to Lessee regarding default by Lessee shall not be deemed to have been effectively given unless a copy thereof has been served upon all existing leasehold mortgagees and secured parties.

(c) Remedy. Any leasehold mortgagee or secured party, in case Lessee shall be in default hereunder, shall, within the period herein provided, have the right to remedy such default, or cause the same to be remedied, and Lessor shall accept such performance by or at the instigation of such leasehold mortgagee or secured party as if the same had been performed by Lessee. For the purposes hereof, no event of default shall be deemed to exist under this Lease in respect to the performance of work required to be performed, or of acts to be done, or of conditions to be remedied, if steps shall, in good faith, have been commenced within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity. Anything herein contained to the contrary notwithstanding, upon the occurrence of an event of default, other than an event of default due to a default in the payment of money, Lessor shall take no action to affect the termination of this Lease if any leasehold mortgagee or secured party after

notice from Lessor as herein provided, acts diligently and in a reasonable time (in all events not to exceed ninety (90) days) thereafter to accomplish one of the following, either (i) to obtain possession of the Premises (including possession by receiver), or (ii) to institute, prosecute and complete foreclosure proceedings or otherwise acquire Lessee's interest under this Lease with diligence. Such mortgagee or secured party upon obtaining possession or acquiring Lessee's interest under this Lease shall be required promptly to cure all defaults then reasonably susceptible of being cured by such mortgagee or secured party; provided, however, that such mortgagee or secured party shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults have been cured.

(d) Foreclosure. Any leasehold mortgagee or secured party shall have the right at any time during the term of this Lease to realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by any applicable mortgage or security documents and to transfer, convey, or assign the title of Lessee to the leasehold estate created hereby to any purchaser at any foreclosure sale and to acquire and succeed to the interest of Lessee hereunder by virtue of any such foreclosure sale. Such mortgagee or secured party, or its assignee or designee, or other purchaser in foreclosure proceedings may become the legal owner and holder of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure. During the time of any foreclosure proceedings and at all times thereafter, lease rent must be paid as and when scheduled in accordance with the provisions of this Lease and the Premises may not be used for any purposes other than those provided for in this Lease. Any such transferee, successor, assignee, or other subsequent holder of the leasehold interest must conform to all provisions of this Lease as is

required of the Lessee described herein, including but not limited to section 5, above, and section 20, below.

(e) Mortgagee as Assignee. No such leasehold mortgagee or secured party shall be liable to Lessor as an assignee of this Lease unless and until such time as such mortgagee or secured party shall acquire the rights of Lessee hereunder through foreclosure or other appropriate proceedings, or as a result of any other action or remedy provided for by any applicable mortgage or security document, or which may otherwise be provided by law. If any leasehold mortgagee or secured party shall acquire title to Lessee's interest in this Lease, by foreclosure, assignment in lieu of foreclosure, assignment from a designee, or under a new lease as provided herein, such mortgagee or secured party may assign such interest or lease and shall thereupon be released from all liability and obligation for the performance or observance of the covenants and conditions of this Lease or such new lease after the date of such assignment, provided that the assignee shall have assumed this Lease or such new lease. Any leasehold mortgagee and any assignee of this Lease or any such new lease shall pay rent as and when due hereunder and shall not use or permit to be used the Premises for any purposes other those provided for in this Lease. Any such transferee, successor, assignee, or other subsequent holder of the leasehold interest must conform to all provisions of this Lease as is required of the Lessee described herein, including but not limited to section 5, above, and section 20, below.

(f) Estoppel Certificates. Lessor agrees, at any time and from time to time, at no cost or expense to Lessee, upon request of Lessee, to execute, acknowledge and deliver to Lessee for the benefit of Lessee or any actual or potential lender, creditor, investor or successor Lessee, within thirty (30) days of the request, a statement in writing certifying that this Lease is unmodified and in full force and effect and Lessee is not in default (or if modified, in full force

and effect as modified and stating the modifications, or if there is any default stating such default), the dates to which rent or other sums have been paid in advance and setting forth such further information with respect to this Lease or the Premises as may be requested thereon, it being understood that any such statement delivered pursuant hereto may be relied upon by Lessee or any actual mortgagee, beneficiary or other party.

13. Condemnation. In the event the entire Premises is taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, this Lease and all of the right, title and interest hereunder shall terminate and cease on the date title to the Premises so taken or transferred vests in the condemning authority.

In the event of the taking or transfer of only a portion of the Premises, if in Lessee's judgment the remaining Premises are unfit for use as a yacht club, Lessee may terminate this Lease and all right, title and interest thereunder shall cease on the date title of the Premises or the portion thereof so taken or transferred vests in the condemning authority. Otherwise, if Lessee elects to remain in possession of the Premises under this Lease, the rent payable hereunder shall be reduced in proportion to the area of the Premises taken.

It is understood and agreed by and between the parties that all compensation and damages awarded for the taking of all buildings and other improvements constructed, fixed, or placed by Lessee on the Premises or any portion thereof shall belong to and be the property of Lessee; provided, however, Lessor shall be entitled to receive an award and compensation from the condemning authority (not Lessee) for the value of its remainder interest in the Premises. Furthermore, Lessee shall be entitled to the award for and on account of any cost or loss Lessee may sustain in the removal of Lessee's fixtures, equipment and furnishings from the Premises, or

as a result of any alterations, modifications, or repairs which may be reasonably required by Lessee in order to place the remaining portion of the Premises not so condemned in a suitable condition for the continuance of Lessee's tenancy, or on account of any diminution in value of its leasehold estate hereunder. All interested parties may independently file separate claims in the condemnation proceedings for the purpose of having the value of their respective claims determined.

14. Lessor's Rights on Default. This Lease is dependent upon the continuing condition that (a) if Lessee shall fail to pay the rent as stipulated in this Lease or any part thereof when the same becomes due and shall fail to do so within thirty (30) days after written notice of default from Lessor; (b) if Lessee fails to, in any other respect faithfully observe and perform any other term, condition or covenant contained in this Lease, on its part to be observed or performed, and fails to cure said default within thirty (30) days after written notice thereof, or shall fail to commence to cure a default whose cure would require more than thirty (30) days; (c) if Lessee shall become bankrupt or makes an assignment for the benefit of its creditors, or file any debtor proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Act seeking any readjustment, arrangement, postponement, composition or reduction of its debts, liabilities or obligations; or (d) if Lessee shall abandon the Premises; then and in any such event, Lessor may upon thirty (30) days written notice to Lessee, subject to the provisions herein contained, enter into and upon the Premises or any part thereof in the name of the whole and at Lessor's option:

(i) Cancel this Lease by giving written notice to Lessee and thereupon take possession of the Premises and all improvements thereon - and thereby become wholly vested with all right, title and interest of Lessee therein and may expel and remove Lessee from the Premises, without being guilty of trespass or becoming liable for any loss or damage which may

be occasioned thereby, all without prejudice to any other remedy or right of action which Lessor may have for arrears for rent or for any other preceding breach of this Lease on the part of Lessee, or

(ii) Relet the Premises, for the remainder of the term thereof at the best rent it can obtain for the account of Lessee who shall make good any deficiency.

15. Partial Invalidity. If any term, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

16. Attorney's Fees and Costs Incurred to Enforce Lease Provisions. Pursuant to 5 GCA Section 6301(a), in all cases the Government of Guam and its agencies may not be held liable for prejudgment interest, nor for any punitive damages, nor for the attorneys' fees of a claimant. Therefore, in the event of any dispute arising out of this Agreement, it is hereby stipulated and agreed that the parties shall each bear their own costs and fees, including attorneys' fees.

17. Compliance with Law. Lessee shall, during the term of this Lease, as to the use, occupancy and improvement of the Premises comply with all material laws and regulations applicable the Premises. Reasonable cause for any violation of this provision by Lessee is sufficient cause for deeming Lessee's default, violation of Lease provisions, and/or material breach of the Lessee's obligations and duties under the Lease.

18. Access. The rights granted by Lessor to Lessee hereunder include free rights of ingress and egress to and from the Premises. Lessee's access between the Premises and the public highway shall continue to be through the existing unimproved roadway from the public highway to the Premises, as shown in the digital image attached hereto and made a part hereof as

Exhibit C. Lessee, at Lessee's sole cost and expense shall the right from time to time to clear, grade, fill and otherwise improve this existing unimproved roadway and to have any necessary public utilities located thereon or thereunder. If Lessor and Lessee agree in writing, Lessor shall have the reasonable right at the Lessor's convenience to relocate this existing roadway or otherwise change the location of the access to the Premises in connection with any development by Lessor of the parcel of property of which the Premises form a part so long as Lessee's rights of ingress and egress are not impaired.

19. Approvals.

(a) Legislative Approval. Pursuant to 5 GCA Section 6301(a), legislative approval is required for contracts or leases known to be in excess of five (5) years, inclusive of any extension, option or renew. Thus, if applicable law requires that this Lease be approved or confirmed by the Guam Legislature, Lessor shall submit this Lease for legislative approval and the parties shall cooperate in using their best efforts in good faith to obtain such approval. The term of this Lease (notwithstanding any other provisions herein contained) shall not be deemed to have commenced until such date as legislative approval, if any, is obtained. The expiration date of this Lease shall be a date thirty (30) years from the date of legislative approval.

(b) Rights of Entry. Lessee shall continue to have the right of access to and possession of the Premises on a month-to-month basis pending legislative approval of this Lease, if any.

20. Special Requirements.

(a) Lessee to Remain a Not-For-Profit Organization. During the entire term of this Lease, Lessee shall retain its legal structure as a not-for-profit organization and shall comply with all laws governing not-for-profit organizations, and shall on a yearly basis, submit to the

Lessor an audit annual report in the format normally required of not-for-profit organizations by the Department of Revenue and Taxation. See Paragraph 20(d).

(b) Membership and Fees. During the entire term of this Lease, Lessee shall keep membership open on a non-discriminatory basis to all members of the public. Lessee may not discriminate based upon race, age, gender, sex, national origin, language, ethnicity, or sexual orientation. Provided, however, that members may be required to pay non-discriminatory fees, assessments and dues, and adhere to such non-discriminatory rules and regulations as Lessee may adopt for the convenience of its members. Lessee may also adopt rules for safety or other bona fide purposes, and impose membership limitations based on the size of the Premises, safety, convenience, and capacity of the facilities.

(c) Public Access. During the term of the Lease, Lessee shall permit reasonable non-commercial pedestrian access by the public to the beach area within the Premises shown on Exhibit A (the beach area being defined as an area extending inward a distance on a horizontal plane of 10 meters from the mean high water mark), but Lessee may, as the party responsible for the Premises, regulate and condition such access upon compliance with such rules and regulations as Lessee may from time to time establish relating to safety, sanitary conditions, avoidance of nuisances, density, cleanliness, prior reservations or notice, pollution control, protection of property, environmental protection and compliance with Lessee's obligations under the Lease. Lessee may, subject to the granting of such permits as may be required by applicable law, develop the beach area and Premises and construct improvements thereon (such as, without limitation, boat launching ramps) and any public right of access to the beach area provided herein shall not extend to the use by the public of any of Lessee's improvements unless Lessee so consents. Members of the public having access to the beach area shall do so at their own risk, and in relation

thereto Lessee shall not be liable for injury to person or property except by reason of the direct negligence of Lessee. All rules and regulations established by the Lessee shall be subject to approval by the Board of Directors of the Port Authority of Guam and are not valid without prior Board approval.

(d) Lessee to Provide Audit Information. Lessee shall provide Lessor with such information as may be reasonably necessary for it to assure Lessor is faithfully complying with the provisions of this agreement, including but limited to proof of insurance and valid business license, and evidence of continued not-for-profit status, performance of primary Lease purpose, and compliance with the Special Requirements. Lessee is aware that Lessor is subject annually to its own examination by an independent auditor and that it is subject from time to time to examination by auditors employed by the Government of Guam, the Department of Interior, the Congress of the United States and other federal agencies. Lessee agrees to cooperate with such agencies by disclosing them to such date as they may reasonably require in connection with an examination of Lessor.

(e) Port Authority Oversight. The Board of Directors of the Port Authority of Guam shall exercise oversight of the activities of the Lessee to ensure that the terms, conditions and special requirements of this Lease Agreement are observed and performed by the Lessee. The Board of Directors of the Port Authority of Guam, may, in its sole discretion, designate a representative to act as an ex officio member of the Board of Directors of the Marianas Yacht Club for the purpose of coordinating Lessee's activities including, but not limited to, international yacht racing events, with the administration of the Port Authority. The Lessee shall, not less than ninety (90) days following the end of each calendar year of the leasehold term, submit a written report to the Board of Directors of the Port Authority of Guam outlining its compliance with the special

requirements of this Lease Agreement. The oversight authority provided by this paragraph shall include the responsibility for reviewing and approving the rules and regulations adopted by the Lessee in accordance with paragraph 20 (c), *supra*. In the event that the Board of Directors of the Port Authority of Guam determines that Lessee has defaulted in observance of performance of the special requirements contained in this Lease Agreement, Lessor's remedies shall be set forth in paragraph 14, of this Lease Agreement relating to Lessor's rights on default.

21. Interpretation. The language and all parts of this Lease shall be in all cases construed simply, according to its fair meaning, and not strictly for or against Lessor or Lessee. Captions in paragraph headings contained herein are for convenience and reference only, and shall not be deemed to limit or in any manner restrict the content of the paragraph to which they relate.

22. Binding Effect. This Lease and the terms, covenants, and conditions herein shall extend to and be binding upon the respective heirs, legal representatives, members, managers, employees, agents, officers, directors, parent entities, subsidiaries, beneficiaries, legal and personal representatives, trustees, transferees, foreclosure purchasers, successors, and assigns of the parties hereto, and to any other entity, person or persons claiming to hold or to exercise any interest by, under or through any of the parties hereto.

23. Notice. All notices to be given with respect to this Lease shall be in writing or by email. Each written notice shall be sent by registered or certified mail, postage prepaid and return receipt requested, to the party to be notified at such address as either party may from time to time designate in writing. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

24. Entire Agreement. This Lease contains the entire agreement of the parties in respect to Lessee's tenancy, use and occupancy of the Premises, and no other agreement, statement, pertaining to the same shall be valid or of any force or effect. This Lease shall not be subject to modification except in writing, signed by the parties hereto.

SIGNATURE APPROVALS APPEAR ON NEXT PAGE

IN WITNESS WHEREOF, the parties have executed this Lease Agreement on the day and year first above written.

LESSOR:

LESSEE:

PORT AUTHORITY OF GUAM

THE MARIANAS YACHT CLUB

DOROTHY P. HARRIS

Acting Chairperson, Board of Directors

CATHERINE DENIGHT GAYLE

Commodore

Its Duly Authorized Representative

and

RORY J. RESPICIO

General Manager

APPROVED AS TO FORM:

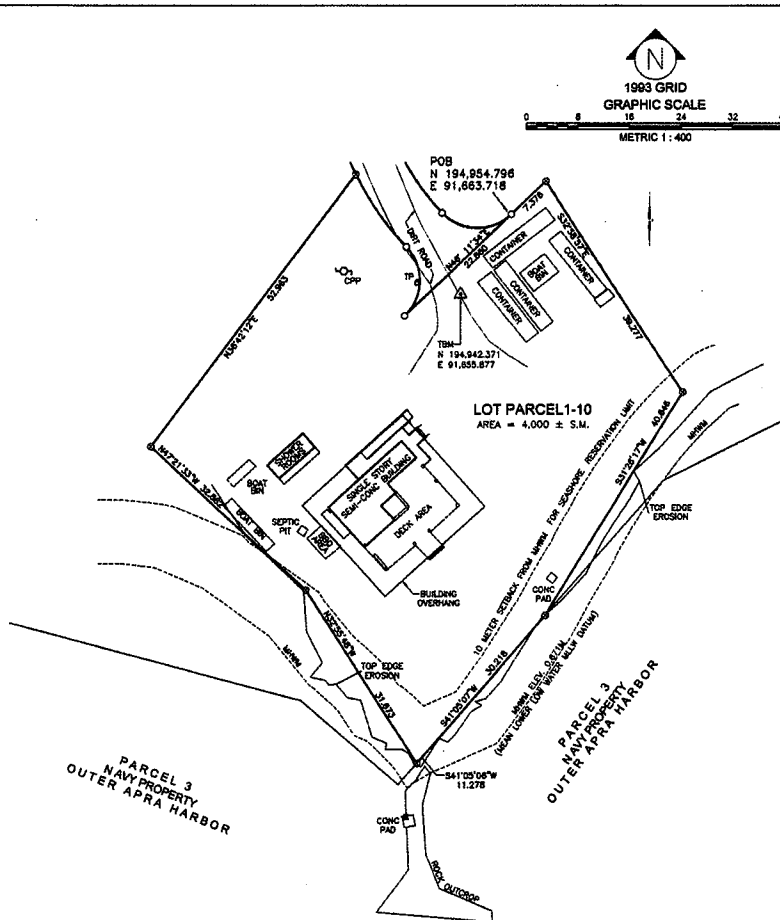
JAMES L. CANTO II

Port Staff Attorney

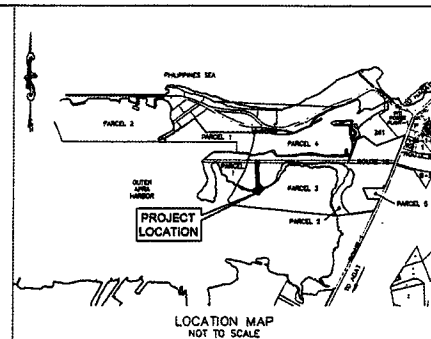
APPROVED:

HONORABLE LOURDES A. LEON GUERRERO

Governor of Guam



CURVE TABLE			
(A)	A: 84°07'19"	A:80°00'00"	A:17°10'58"
	R: 7.620	R:7.620	R:46.002
	L: 11.188	L:11.969	L:13.796
	CH: 10.210	CH:10.776	CH:13.744
	CHB: 54°8'12"28"W	CHB:N01°11'34"E	CHB:S35°12'57"E
(B)	A: 09°37'20"	A:40°19'54"	
	R: 249.535	R:46.002	
	L: 41.974	L:32.382	
	CH: 41.925	CH:31.717	
	CHB: S01°20'08"W	CHB:N23°38'29"W	
(C)	A:40°19'54"	A:09°37'20"	
	R:38.382	R:257.556	
	L:27.018	L:43.254	
	CH:26.463	CH:43.203	
	CHB:S23°38'29"E	CHB:N01°20'08"E	
(D)	A:90°00'00"	A: 95°52'41"	
	R: 7.620	R: 7.620	
	L:11.969	L: 12.751	
	CH:10.776	CH: 11.315	
	CHB:S88°48'28"E	CHB: N41°47'32"W	



REFERENCES:

1. PARCELING SURVEY MAP OF LOT PARCEL 1. PREPARED BY PLS NO. 63, DOCUMENT NO. 939191

NOTES:

- NOTES:
1. SURVEY WAS BASED ON THE 1983 GRID, THENCE TRANSFORMED INTO THE 1993 GRID. BASIS OF SURVEY CONTROL IS GGN U.S.O. EQUIVALENT TO 1993 GGN 2088 WITH COORDINATES OF N185,922.7401 E93,648.8838 AND ELEVATION 3.821.
 2. ALL DISTANCES AND DIMENSIONS SHOWN HEREON ARE IN METERS, UNLESS OTHERWISE NOTED.
 3. BEARINGS ARE 1993 GRID VALUES.

SYMBOLS:

- SYMBOLS:
- ☆ GUAM GEODETIC NETWORK (GGN) STATION
 - #4 REBAR WITH PLASTIC CAP MARKED PLS # 65, FOUND.
 - #4 REBAR WITH PLASTIC CAP MARKED PLS # 87, SET.
 - △ TBM - TEMPORARY BENCHMARK, 0" NAIL SET
 - MMHM - MEAN HIGH WATER MARK
 - ⊕ CPP - CONCRETE POWER POLE
 - WPP - WOOD POWER POLE
 - GW - GUY WIRE
 - TP - TELEPHONE PEDESTAL


CERTIFICATE OF SURVEYOR

I, CHRISTOPHER E. HILL, HEREBY CERTIFY THAT THIS SKETCH MAP WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION THAT IT IS BASED ON A FIELD SURVEY MADE IN JANUARY 31, 2023.



CHRISTOPHER E. HILL, PLS # 87

PARCELING SURVEY SKETCH MAP FOR LEASE PURPOSES
OF
LOT PARCEL 1-8 (MARIANAS YACHT CLUB)

L.S. 21		APRA HARBOR, MUNICIPALITY OF PITI		SEC. 1 & 2	
SURVEY DATA		DATE			
FIELD	KMP & CREW	1/2023			
DRAWN	CEH	1/2023			
CHECKED	CEH	1/2023			
		DWG. # DCAL-23-23-36		SHT. 1 OF 1	

TERRITORY OF GUAM, DEPARTMENT OF LAND MANAGEMENT
 OFFICE OF THE RECORDER
 INSTRUMENT NUMBER 521096

This instrument was filed for record on 21

Day of DEC, 19 94, at 103 A.M.
 and duly recorded on Book _____ at Page _____
 Recording Fee 13 Voucher No. 788937

John Centeno
Deputy Recorder

(Space Above This Line For Recorder's Use Only.)

94-1835

LEASE AGREEMENT

Preamble

Whereas, the GOVERNOR OF GUAM, the TWENTY-FIRST GUAM LEGISLATURE and the PORT AUTHORITY OF GUAM recognize the need for a central facility located at Apra Harbor, Guam, to be used for recreational boating, the conduct of sailing instruction open to the People of Guam with special emphasis on sailing instruction for Guam's youth, to provide a training facility for Guam's National Olympic Sailing Program, to provide a facility for the hosting of local and international yacht racing events and to promote community interest and participation in the sport of sailing, thereby enhancing the quality of life on Guam and

WHEREAS, the MARIANAS YACHT CLUB, a not-for-profit corporation, chartered by the United States Yacht Racing Union and a member of the International Yacht Racing Union and of Guam's National Olympic Committee, has demonstrated its ability to promote community interest and participation in the sport of sailing, conduct programs of Red-Cross certified sailing instruction open to the People of Guam with special

emphasis on sailing instruction for Guam's youth, support and manage major international yacht racing events, and that it is capable of providing support for Guam's National Olympic Sailing Program and hosting competitive sailing events in future South Pacific Games.

THIS LEASE AGREEMENT is made and entered into this 12th day of December, 1994, by and between the PORT AUTHORITY OF GUAM ("Lessor"), and the MARIANAS YACHT CLUB, a not-for-profit corporation ("Lessee").

Lessor owns or administers certain real property as is described in paragraph 1, *infra*, (the "Premises") and Lessor having leased the Premises to Lessee pursuant to a Lease Agreement entered into on the 29th day of December, 1988, and Lessor and Lessee now being desirous of entering into this Lease Agreement for the purpose of providing for periodic oversight by Lessor to insure that the terms, conditions and special requirements of this Lease Agreement are observed by Lessee, to permit enhanced public access to the Premises and to prohibit assignment of this Lease or the encumbrance of the Premises by lease hold mortgage or other security instrument.

NOW THEREFORE, in consideration of the Premises and the terms, covenants, conditions and special requirements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee enter into this lease agree as follows:

1. Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the following described parcel(s) of land, situated in the Municipality of Piti, Territory of Guam:

A portion of Parcel number 1, L.M. Dwg. E4-82T693, Apra Harbor, as shown in the drawing attached hereto marked as Exhibit A and incorporated by reference herein, which portion contains and area of approximately 4000 square meters.

TOGETHER WITH all and singular, the tenements, rights, easements, privileges, improvements and appurtenances to the same belonging or appertaining or held and enjoyed in connection therewith; and together also with all such right, easements and privileges as Lessor may be entitled to grant in and to the shore area and surrounding waters adjacent to the Premiss; and together also with the rights of ingress and egress as more fully described herein.

2. Term. The term of this Lese Agreement shall commence on execution of this Lease Agreement and shall expire thirty (30) years thereafter, subject to the provisions of paragraph 14, *infra*, setting forth Lessor's rights on default.

3. Rent During Term. The rent payable from Lessee to Lessor shall be the sum of One Hundred Dollars (\$100.00) per year, payable annually in advance during each year of the term of this Lease Agreement. This rental amount has been in good faith determined by the parties to be the fair rental value of the Premises, taking into consideration the provisions of this Lease Agreement, including without limitation that the Lessee is a not-for-profit organization, that use of the Premises is generally limited as is more fully provided

in paragraph 5, *infra*, to boating and recreation and that the Premises are located in an area which has been reserved for open space and recreational uses. Provided, however, should an appropriate agency of the United States having jurisdiction over the subject matter make a final and binding determination, pursuant to the provisions of Section 818(b)(2) of Public Law 96-418, that the fair rental value of the Premises exceeds the foregoing rental amount, then the rent payable hereunder shall be adjusted to such amount as shall have been determined by said agency, pursuant to the provisions of Section 818 of Public Law 96-418, to be the fair rental value of the Premises as of the date of this Lease Agreement. The parties recognize that Lessee is a not-for-profit organization with limited financial resources, and therefore in the event a mandatory rent adjustment is required to be made by reason of Section 818 of Public Law 96-418 and in the event Lessee in good faith determines it is unable to pay the adjusted rent, then the Lessee shall have the right, at Lessee's option, to be exercise within one (1) year from the date of a final and binding determination by the federal government that a rent adjustment is required, to either cancel this Lease Agreement without penalty or to reduce the area of the Premises by releasing from the Lease Agreement and returning to Lessor such portion of the Premises as Lessee may designate, subject to the approval of Lessor as to size and shape of the released portion (which approval Lessor shall not unreasonably withhold). In the event any mandatory rental adjustment is required by reason of federal law, such rent adjustment shall not exceed in any event, the amount determined by the appropriate federal agency to

be the fair rental value of the Premises as of the date of the execution of this Lease Agreement.

4. Quiet Enjoyment. Lessor shall put and keep Lessee in actual possession of the Premises at the beginning and throughout the term of this Lease Agreement. Lessor covenants that Lessee, upon paying the rent required hereunder, shall lawfully, peacefully and quietly have, hold, use, occupy and enjoy the Premises without any suit, hindrance, eviction, ejection, molestation, interruption or disturbance whatsoever of or by Lessors or by any persons claiming by, from, under or against Lessor; subject to the terms of any deed of conveyance from the United States of America pursuant to which Lessor or its predecessor in interest may have acquired the property of which the Premises form a part. Pertinent provisions of the terms of the conveyance from the United States of America are set forth in Exhibit B hereto, which provisions are incorporated by reference herein, and this Lease Agreement is made subject to such provisions.

5. Use.

(a) General. The Premises shall be used for the purpose of construction and operation of a yacht club to provide a central facility for recreational boating and related social activities, to promote community interest and participation in the sport of sailing, the conduct of Red-Cross certified sailing instruction open to the People of Guam with special emphasis on sailing instruction for Guam's youth, to provide a training facility for Guam's National Olympic Sailing Program and to provide a facility for the hosting of local and

international yacht racing events, and the conduct of any and all activities related or incidental thereto.

(b) Required Improvements. Lessee shall, prior to the expiration of the first five (5) years of the term of this Lease Agreement, make at the sole cost and expense of Lessee, leasehold improvements in, to and about the Premises and any easement and/or access and adjoining areas used by Lessee, which improvements shall in total have a value of not less than One Hundred Thousand Dollars (\$100,000.00). As used herein, value shall mean fair market value or replacement cost or actual cost, whichever is greater. In the event Lessee shall fail or neglect to make such improvements prior to the expiration of the five (5) year period for herein then Lessor may, at Lessor's option and upon not less than sixty (60) day's prior written notice to Lessee, cancel this Lease Agreement.

6. Alterations, Construction and Replacements. Lessee's right to construct, make alterations or improvements shall be subject to prior review and approval of the Board of Directors of the Port Authority of Guam, which approval shall not be unreasonably withheld and Lessee shall be required to obtain such other approvals, permits and licenses from governmental entities as may be incidental and necessary thereto.

7. Title to Buildings and Improvements to Remain in Lessee and the Government of Guam During the Term; Reversion to Lessor on Expiration of Term. During the term of this Lease Agreement, title to any and all buildings or improvements situated or erected on the Premises and the building equipment, fixtures and other items installed thereon and any alterations or additions thereto shall remain in Lessee and in the Government of Guam

as their respective interests may appear and in accordance with their respective contributions to the construction of buildings and other improvements upon the Premises. Upon expiration of this Lease Agreement, all improvements remaining on the Premises shall become the property of the Lessor.

8. Assignment. Lessee shall not have the right to assign this Lease Agreement. This prohibition against assignment shall not prevent Lessee from allowing other sailing, boating or recreational groups to share in the use of the Premises nor shall it prevent Lessee from contracting with third parties to provide necessary goods and services for the benefit of the Lessee or the public.

9. Real Property Taxes. Lessee shall pay any and all taxes and assessments against the Premises and all improvements thereon throughout the term of this Lease Agreement. For the first year of the initial term of this Lease Agreement all taxes and assessments against the Premises shall be prorated between Lessor and Lessee as of the date hereof.

10. Payment of Utilities. Lessee shall pay and be responsible for the installation of and all charges for water, power and other utilities installed and supplied to and on the Premises.

11. Maintenance. Lessee shall, at its own cost and expense, maintain all the improvements on the Premises in good repair and condition throughout the term of this Lease Agreement, reasonable wear and tear excepted.

12. Duty of Lessee to Indemnify, Hold Harmless and Defend; Insurance.

(a) Duty of Lessee to Indemnify, Hold Harmless and Defend. Lessee shall indemnify, hold harmless and defend Lessor and the Government of Guam from any claim for personal injury or property damage that may arise out of the use of Premises during the term of this Lease Agreement. Lessee shall accept tender of defense on behalf of Lessee or the Government of Guam in the event of any claim for personal injury or property damage arising out of the use of the Premises during the term of this Lease Agreement and Lessor shall cooperate with Lessee in the defense of any such claim.

(b) Fire Insurance. Throughout the term of this Lease Agreement, so long as such coverage is reasonably and commercially available, Lessee shall keep and maintain a policy of fire insurance covering any insurable buildings and improvements placed upon the Premises in an amount equal to the fair market value of such buildings and improvements. Any policy of fire insurance so kept and maintained shall name Lessee and the Government of Guam as named insureds and loss payees in accordance with their respective interests in the insured buildings and improvements.

(c) Liability Insurance. Throughout the term of this Lease Agreement, so long as such coverage is reasonably and commercially available, Lessee shall keep and maintain a policy of liability insurance indemnifying Lessor, Lessee and the Government of Guam as named insureds against any claim for personal injury or property damage for which Lessor, Lessee or the Government of Guam may be found by a court of competent jurisdiction to be legally obligated to pay. Such liability insurance shall provide minimum

limits of liability insuring against injury to any person or property in the sum not less than Three Hundred Thousand Dollars (\$300,000.00) for bodily injury to one person, One Million Dollars (\$1,000,000.00) for bodily injury to more than one person in any one accident, and Two Hundred Thousand Dollars (\$200,000.00) for property damage in one accident. Lessee shall also, as part of the annual report required by paragraph 20(g) Port Authority Oversight of this Lease Agreement submit to Lessor a statement of the liability insurance kept and maintained by Lessee in accordance with the requirements of this subparagraph. Lessor may, not more frequently than every three (3) calendar years, commencing with the Calendar Year 1995, review the liability insurance kept and maintained by Lessee and may thereafter require a reasonable increase in the limits of liability provided by such liability insurance policy. Any increase in liability limits thus required shall be consistent with commercially acceptable practices prevalent within the Territory of Guam at the time of review and shall further be subject to the reasonable commercial availability of liability insurance providing increased limits of liability.

13. Condemnation. In the event the entire Premises is taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, this Lease Agreement and all of the right, title and interest hereunder shall terminate and cease on the date title as to the Premises so taken or transferred vests in the condemning authority.

In the event of the taking or transfer of only a portion of the Premises leaving the remainder in such location, or in such form, shape or reduced size as to be not effectively and practicably usable in the sole opinion of Lessee, at Lessee's sole option, this Lease Agreement and all right, title and interest thereunder shall cease on the date title of the Premises or the portion thereof so taken or transferred vests in the condemning authority.

In the event of such taking or transfer of only a portion of the Premises leaving the remainder in such location and in such form, shape or size as to be effectively and practicably usable in the sole opinion of Lessee, this Lease Agreement shall terminate and end as to the portion of the Premises so taken or transferred as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Premises not so taken or transferred. In such event the rent payable hereunder shall be reduced in proportion to the area of the Premises taken.

It is understood and agreed by and between the parties that all compensation and damages awarded for the taking of all buildings and other improvements whatsoever on the Premises or any portion thereof shall belong to and be the property of Lessee and the Government of Guam as their respective interests shall appear and in accordance with their respective contributions to the erection of buildings and improvements on the Premises, as taken; provided, however, Lessor shall be entitled to receive an award and compensation from the condemning authority (not Lessee) for the value of its remainder interest in the Premises. Furthermore, Lessee shall be entitled to the award for and on account of any cost or loss Lessee may sustain in the removal of Lessee's fixtures, equipment and

furnishings from the Premises, or as a result of any alterations, modifications or repairs which may be reasonably required by Lessee in order to place the remaining portion of the Premises not so condemned in a suitable condition for the continuance of Lessee's tenancy, or on account of any diminution in value of its leasehold estate hereunder. All interested parties may independently file separate claims in the condemnation proceedings for the purpose of having the value of their respective claims determined.

14. Lessor's Rights on Default. This Lease is upon the continuing condition that (a) if Lessee shall fail to pay the rent as stipulated in this Lease Agreement or any part thereof when the same becomes due and shall fail to do so within thirty (30) days after written notice of default from Lessor; (b) if Lessee fails to, in any other respect faithfully observe and perform any other term, condition or covenant contained in this Lease Agreement, on its part to be observed or performed, and fails to cure said default within thirty (30) days after written notice thereof, or shall fail to commence to cure a default whose cure would require more than thirty days; (c) if Lessee fails to faithfully observe and perform the special requirement set forth in paragraph 20(b) of this Lease Agreement on its part to be observed and performed, and fails to cure said default within thirty (30) days after written notice thereof, or if Lessee fails to faithfully observe and perform the special requirements set forth in paragraph 20(a), (c), (d), (e), (f) and (g) of this Lease Agreement on its part to be observed or performed, and fails to cure said default within sixty (60) days after written notice thereof, or fails to commence to cure any such default the cure of which would require more than sixty (60) days; (d) If Lessee shall become bankrupt or makes an

assignment of the benefit of its creditors, or file any debtor proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Act seeking any readjustment, arrangement, postponement, composition or reduction of its debts, liabilities or obligations; or (e) if Lessee shall abandon the Premises; then in any such event, Lessor may upon thirty (30) days written notice to Lessee, subject to the provisions herein contained, enter into and upon the Premises or any part thereof in the name of the whole and at Lessor's option:

(i) Cancel this Lease Agreement by giving written notice to Lessee and thereupon take possession of the Premises and all improvements thereon, and thereby become wholly vested with all right, title and interest of Lessee therein and may expel and remove Lessee from the Premises, without being guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, all without prejudice to any other remedy or right of action which Lessor may have for arrears for rent or for any other preceding breach of this Lease Agreement on the part of Lessee, or

(ii) Relet the Premises, for the remainder of the term thereof at the best rent it can obtain for the account of the Lessee who shall make good any deficiency.

15. Partial Invalidity. If any term, condition or provision of this Lease Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired in invalidated.

16. Attorney's Fees. Should either party commence any legal action or proceeding against the other based upon this Lease Agreement, or any provision hereof, including, without limitation, this provision, the prevailing party shall be entitled to an award of attorneys' fees.

17. Compliance with Law. Lessee shall, during the term of this Lease Agreement, as to the use, occupancy and improvement of the Premises comply with all material laws and regulations applicable to the Premises.

18. Access by Lessee. The rights granted by Lessor to Lessee hereunder include free rights of ingress and egress to and from the Premises. Lessee's initial access between the Premises and the public highway shall be by use of a presently existing unimproved roadway through the parcel of property of which the Premises form a part, as this existing roadway is shown on Exhibit A hereto. Lessee, at Lessee's sole cost and expense, shall have the right, subject to prior review and approval by the Board of Directors of the Port Authority of Guam, which approval shall not be unreasonably withheld, to from time to time clear, grade, fill and otherwise improve this existing unimproved roadway and to have any necessary public utilities located thereon. Lessor shall, in good faith, have the reasonable right at the Lessor's convenience from time to time to relocate this existing roadway or otherwise change the location of the access to the Premises in connection with any development by Lessor of the parcel of property of which the Premises form a part so long as Lessee's rights of ingress and egress are not impaired.

19. Approvals.

(a) **Federal Government.** The parties shall cooperate and promptly after execution of the Lease Agreement submit this Lease Agreement for any and all approvals which may be required from the U.S. Federal Government and its agencies and instrumentalities, including without limitation any approvals which may be required by reason of Section 818 of Public Law 96-418, as amended.

✓ (b) **Legislative Approval.** This Lease Agreement has received legislative approval, subject to the conditions set forth in Subsection (b) of Section 3 of Public Law 21-62 enacted November 14, 1991, which conditions are hereby incorporated into and made part of this Agreement. The term of this Lease Agreement (notwithstanding any other provisions herein contained) shall commence on the date of legislative approval, November 8, 1991, and the expiration date of this Lease Agreement shall be a date thirty (30) years from such date.

(c) **Rights of Entry.** In the event the actual commencement date of the term of this Lease Agreement is, because of legislative approval as provided in paragraph 19(b) *supra*, or for any other reason, extended beyond the express date set forth in paragraph 2 *supra*, then Lessee shall have the right prior to the commencement date, at Lessee's sole risk and Lessee's sole expense, to freely go and enter upon the Premises and easements and adjacent areas for the purposes of making soil tests, surveys, examinations, clearing, grading, filling and such other purposes as Lessee may elect. Lessee may, during any such period prior to the commencement date of this Lease Agreement, place and maintain temporary structures on the Premises and may store boats and equipment on the Premises, but all at the sole risk of Lessee.

20. Special Requirements.

(a) Lessee to Remain a Not-For-Profit Organization. During the term of this Lease Agreement, Lessee shall retain its legal structure as a not-for-profit corporation whose membership shall be open on a non-discriminatory basis to all members of the public, provided that membership may be subject to payment by members of non-discriminatory fees, assessments and dues and subject to observation by all members of such non-discriminatory rules and regulations as Lessee may adopt of the convenience and safety of its members and the public and for other bona fide purposes as are set forth in paragraph 5(b), *infra*.

(b) Public Access. During the term of this Lease Agreement, Lessee shall permit public access to the Premises. Lessee may, as the party responsible for the maintenance and protection of the Premises, regulate and condition such access upon compliance with rules and regulations as Lessee may from time to time establish relating to safety, protection of persons and property, sanitary conditions, prior reservations or notice, pollution control, environmental protection and compliance with Lessee's obligations under this Lease Agreement. Such rules and regulations shall be subject to the approval of the Board of Directors of the Port Authority of Guam as is set forth in subparagraph (e), *infra*.

(c) Sailing Instruction. Lessee shall, during the term of this Lease Agreement, maintain a program of Red-Cross certified sailing instruction open to the People of Guam with special emphasis on sailing instruction for Guam's youth, on the

payment of reasonable fees as may be from time to time be established by the Lessee. Programs of sailing instructions shall include a minimum of three (3) courses of instruction annually open to adult and junior sailors between the ages of twelve (12) to twenty-three (23) years.

(d) International Yacht Racing Events. Lessee shall, during the term of this Lease Agreement, provide support for international yacht racing events that are scheduled to call at Apra Harbor, Guam. Lessee's obligations shall include hosting of the annual Japan-Guam Goodwill Laser Regatta, the annual Japan-Guam Yacht Race and the quadrennial Auckland-Fukuoka Yacht Race. The Lessee's obligation to provide support facilities for these events shall be subject to the condition that the events be adequately sponsored by yachting organizations of the initiating countries (New Zealand and Japan). Lessee shall not be required to comply with this condition in the event of force majeure, including war or other occurrences beyond the control of Lessee.

(e) Olympic Sailing Program. Lessee shall, during the term of this Lease Agreement, make the Premises available for the training of Olympic sailors and for the storage of Olympic class boats and gear that may hereinafter be acquired. Lessee shall also provide training and logistical support through its Program and Recruitment for Olympic Athletes in Sailing (PROAS) to the extent practicable, subject to available funding.

(f) South Pacific Games. In the event that Guam is designated host country for the South Pacific Games during the term of this Lease Agreement, Lessee agrees to

provided support for the competitive sailing events held in connection with the South Pacific Games to the extent practicable, subject to available funding.

(g) Port Authority Oversight. The Board of Directors of the Port Authority of Guam shall exercise oversight of the activities of Lessee to insure that the terms, conditions and special requirements of this Lease Agreement are observed and performed by the Lessee. The Board of Directors of the Port Authority of Guam, may, in its sole discretion, designate a representative to act as an *ex officio* member of the Board of Directors of the Marianas Yacht Club for the purpose of coordinating Lessee's activities, including international yacht racing events, with the administration of the Port Authority. The Lessee shall, not less than ninety (90) days following the end of each calendar year of the leasehold term commencing with the end of Calendar Year 1992, submit a written report to the Board of Directors of the Port Authority of Guam outlining its compliance with the special requirements of this Lease Agreement. The oversight authority provided by this paragraph shall include the responsibility for reviewing and approving the rules and regulations adopted by the Lessee in accordance with paragraph 20(b), *supra*. In the event that the Board of Directors of the Port Authority of Guam determines that Lessee has defaulted in the observance or performance of the special requirements contained in this Lease Agreement, Lessor's remedies shall be as set forth in paragraph 14, if this Lease Agreement relating to Lessor's rights on default.

21. Interpretation. The language and all parts of this Lease Agreement shall be in all cases construed simply, according to its fair meaning, and not strictly for or against

Lessor. Captions in paragraph headings contained herein are for convenience and reference only, and shall not be deemed to limit or in any manner restrict the content of the paragraph to which they relate.

22. Binding Effect. This Lease Agreement and the terms, covenants, and conditions herein shall extend to and be binding upon the respective heirs, legal representative, successors and assigns of the parties hereto, and to any other person or persons claiming to hold or to exercise any interest by, under or through any of the parties hereto.

23. Notice. All notices to be given with respect to this Lease Agreement shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid and return receipt requested, to the party to be notified at such address as either party may from time to time designate in writing. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

24. Entire Agreement. This Lease Agreement contains the entire agreement of the parties in respect to Lessee's tenancy, use and occupancy of the Premises, and no other agreement, statement, pertaining to the same shall be valid or of any force or effect. This Lease Agreement shall not be subject to modification except in writing, signed by the parties hereto.

Lessee, its successors and assigns, hereby acknowledge and confirm that water and power are not immediately available on or within one hundred feet of said property. Lessee understands that it will have to pay for water and power hookup at its sole expense.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement on the
day and year first above written.

LESSOR:

LESSEE:

PORT AUTHORITY OF GUAM

THE MARIANAS YACHT CLUB

By: 

PHILIP J. FLORES
Chairman of the Board

and

By: 

PEDRO A. LEON GUERRERO
General Manager

By: 

GINGER S. PORTER
Its Duly Authorized
Representative

By: 

JOHN E. MOORE
Its Duly Authorized
Representative

APPROVED AS TO FORM:

LUJAN & SUKOLA, P.C.

OFFICE OF THE GOVERNOR
TERRITORY OF GUAM

By: 

ANITA SUKOLA
Attorneys for the Port
Authority of Guam

By: 

HONORABLE JOSEPH F. ADA
Governor, Territory of Guam

DEC 19 1994


APPROVED AS TO FORM:


DONALD L. PAILLETTE

Attorney General, Acting

RECEIVED

DEC 14 1994


ATTORNEY GENERAL'S OFFICE

TERRITORY OF GUAM)
(SS:
CITY OF AGANA)

On this ____ day of _____, 19____, before me a Notary Public in and for the Territory of Guam, personally appeared JOSEPH F. ADA, Governor of the Territory of Guam, known to me to be the person who executed the foregoing Lease Agreement, and acknowledged to me that he executed the same on his behalf of said territory.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.

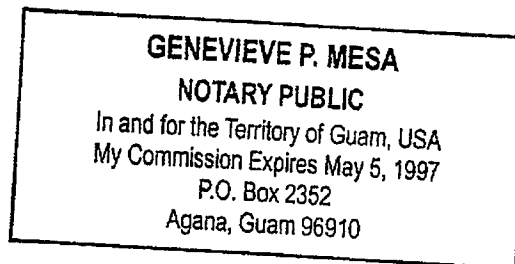
NOTARY PUBLIC

TERRITORY OF GUAM)
(SS:
CITY OF AGANA)

On this 12th day of December, 1994, before me a Notary Public in and for the Territory of Guam, personally appeared PHILIP J. FLORES, Chairman of the Board of the **PORT AUTHORITY OF GUAM**, known to me to be the person who executed the foregoing Lease Agreement, and acknowledged to me that he executed the same on his behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.

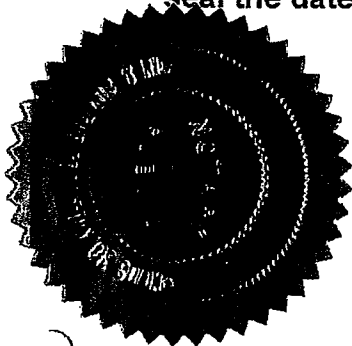
Genevieve P. Mesa
NOTARY PUBLIC



TERRITORY OF GUAM)
(ss:
CITY OF AGANA)

On this 12th day of December, 1994, before me a Notary Public in and for the Territory of Guam, personally appeared FRANCISCO S.N. REYES, Acting General Manager of the PORT AUTHORITY OF GUAM, known to me to be the person who executed the foregoing Lease Agreement, and acknowledged to me that he executed the same on his behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.

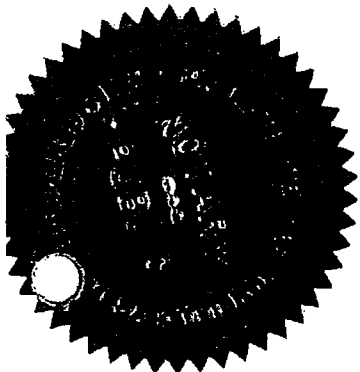


Barbara A. Beitz
NOTARY PUBLIC
BARBARA A. BEITZ
NOTARY PUBLIC
In and for the Territory of Guam U.S.A.
My Commission Expires: Aug. 13, 1997
1026 Cabras Hwy. Ste. 201 Piti, Gu. 96925

TERRITORY OF GUAM)
(ss:
CITY OF AGANA)

On this 12th day of December, 1994, before me a Notary Public in and for the Territory of Guam, personally appeared ANITA SUKOLA of LUJAN & SUKOLA, P.C., attorneys for the PORT AUTHORITY OF GUAM, known to me to be the person who executed the foregoing Lease Agreement, and acknowledged to me that she executed the same as attorneys of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.



Genevieve P. Mesa
NOTARY PUBLIC
GENEVIEVE P. MESA
NOTARY PUBLIC
In and for the Territory of Guam, USA
My Commission Expires May 5, 1997
P.O. Box 2352
Agana, Guam 96910

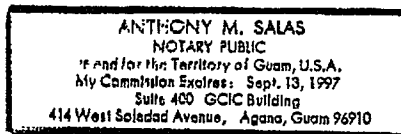
TERRITORY OF GUAM)
(ss:
CITY OF AGANA)

On this 26th day of August, 1994, before me a Notary Public in and for the Territory of Guam, personally appeared GINGER S. PORTER, the duly authorized representative of the MARIANAS YACHT CLUB, known to me to be the person who executed the foregoing Lease Agreement, and acknowledged to me that he executed the foregoing Lease Agreement on his behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.



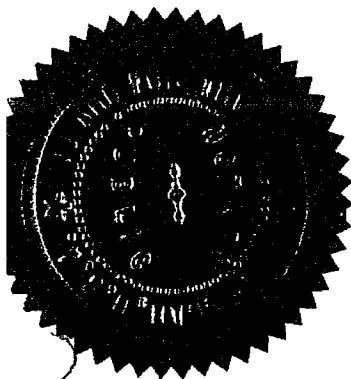
Anthony M. Salas
NOTARY PUBLIC



TERRITORY OF GUAM)
(ss:
CITY OF AGANA)

On this 26th day of August, 1994, before me a Notary Public in and for the Territory of Guam, personally appeared John F. Moore, the duly authorized representative of the MARIANAS YACHT CLUB, known to me to be the person who executed the foregoing Lease Agreement, and acknowledged to me that he executed the same on his behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.



DIR#JEM

Anthony M. Salas
NOTARY PUBLIC

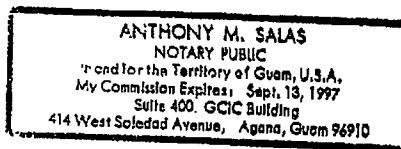
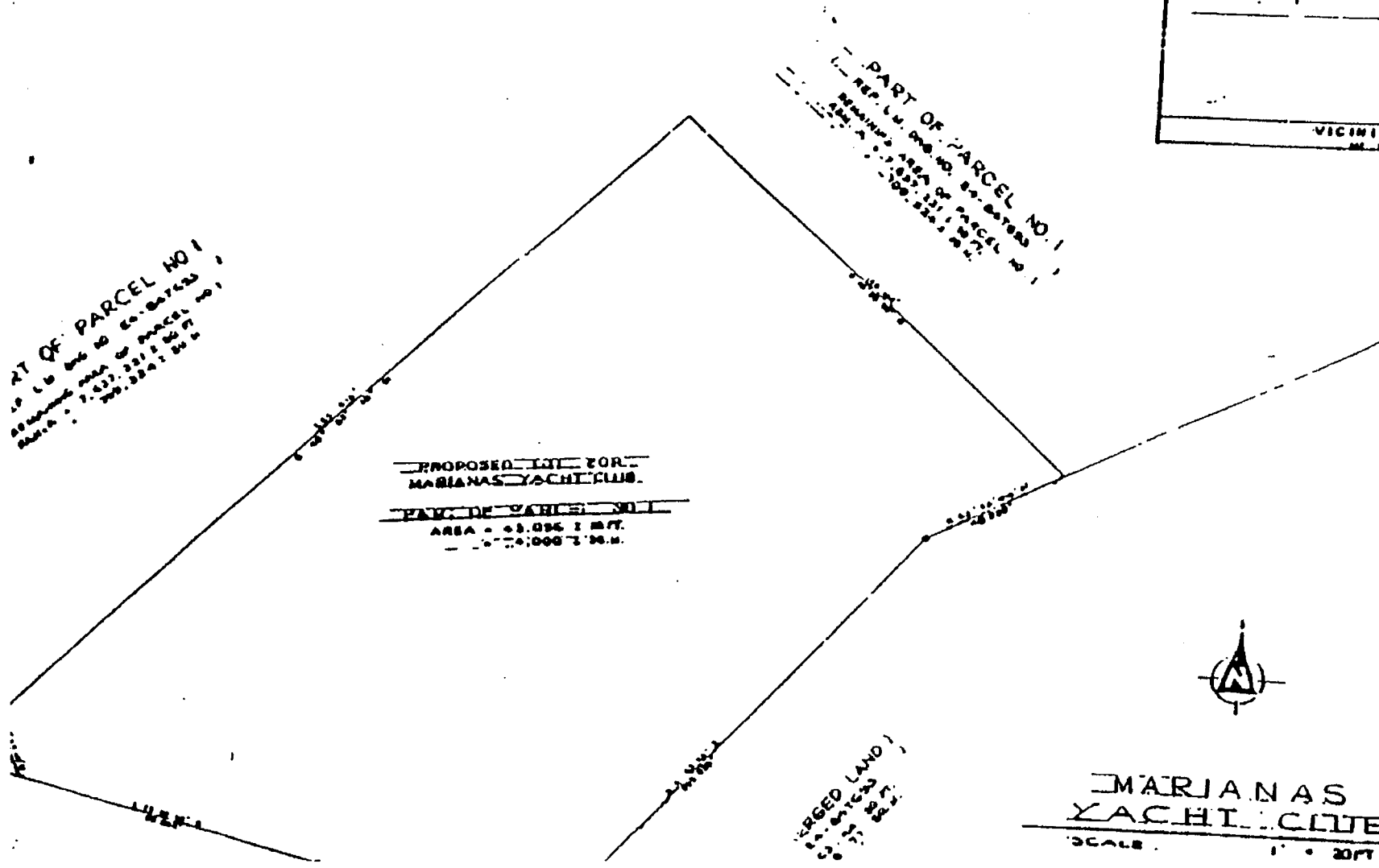
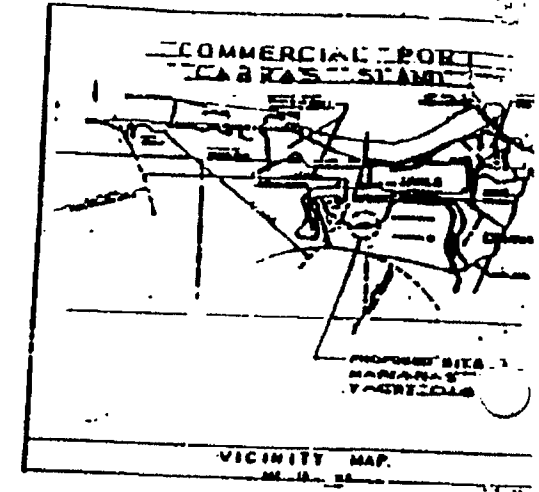


EXHIBIT A

BASIC LOT PARCEL NO 1
 AREA = 7,540,876 SQ. FT. (INC.)
 REMAINING AREA = 3,431,311 SQ. FT.
 BASIC PARCEL NO 2 (SUBMERGED LAND)
 AREA = 6,701,043 SQ. FT. (INC.)
 REMAINING AREA = 424,848 SQ. FT. (INC.)



MARIANAS
 YACHT CLUB
 SCALE 1" = 20 FT