

ARTICLE II

LESSEE'S COVENANTS

Lessee hereby covenants with Lessor as follows:

1. Payment of Rent. Lessee will pay said rent in lawful money of the United States of America at the times and in the manner provided herein, without any deduction and without any notice or demand, at the office of Lessor at Cabras Island, Guam.

2. Taxes and Assessments. Lessee will also pay or cause to be paid at least ten (10) days before same become delinquent, all taxes and assessments of every description to which said premises or any part thereof or improvements thereon are now or may during the term hereof be assessed or become liable, whether assessed to or payable by Lessor or Lessee; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments together with interest as shall become due and payable during said term.

3. Rates and Other Charges. Lessee will pay or cause to be laid directly before the same become delinquent all charges, duties, rates, and other outgoings of every description to which said premises or any part thereof or improvement thereon may during said term be assessed (unless caused by activities of Lessor) or become liable for including electricity, gas, refuse collection, telephone, sewage disposal, water, or any other utilities or services, whether assessed to or payable by Lessor or Lessee.

1 4. Improvements Required by Law. Except as set forth in
2 Article I above and Section 2 of Article III below, Lessee will at
3 its own expense during the whole of said term make, build,
4 maintain, and repair all fences, sewers, drains, roads, curbs,
5 sidewalks, and parking areas which may be required by law to be
6 made, built, maintained, and repaired upon or adjoining or in
7 connection with or for the use of said premises or any part thereof
8 (except to the extent such building, maintenance, or repair is made
9 necessary by the acts or omission of Lessor).

10 5. Observance of Laws. Lessee will at all times during said
11 term keep said premises in a safe, clean, and sanitary condition
12 and observe and comply with all laws, ordinances, rules, and
13 regulations now or hereafter made by any governmental authority for
14 the time being applicable to the premises. Without limitation,
15 Lessee shall on its part as to all of its activities on the
16 premises comply at all times with all Hazardous Materials Laws and
17 Lessee shall not knowingly permit or knowingly allow any sublessee
18 to violate or fail to observe or comply with any Hazardous
19 Materials Law. Each sublease granted or made by Lessee shall
20 specifically require each sublessee to observe and comply with all
21 Hazardous Materials Laws. If liability insurance with respect to
22 the risks caused by or related to hazardous materials becomes
23 available at reasonable rates and upon reasonable commercial terms
24 (the determination of reasonableness to be made in good faith by
25 Lessee and Lessor), then Lessee shall obtain and shall cause its

1 sublessees to obtain such insurance. In the event Lessor is able
2 to obtain liability insurance with respect to risks caused by or
3 related to hazardous materials and such insurance provides or can
4 provide coverage for additional assureds, then Lessor shall use its
5 reasonable best efforts to make such insurance available to Lessee
6 and any sublessee as additional assureds upon condition that
7 Lessee and sublessees bear and pay their fair and proportionate
8 share of the premium expenses therefore.

9 6. Inspection. Lessee will permit Lessor and its agents upon
10 not less than twenty-four (24) hours prior notice and at reasonable
11 times during said terms to enter said premises and examine the
12 state and condition thereof.

13 7. Use of Premises. The premises are to be developed by
14 Lessee and be used by Lessee for the purposes of the construction
15 and operation of a general industrial park, which park shall be
16 developed, constructed, managed, and operated by Lessee as provided
17 more fully in Section 12 of this Article II below. In connection
18 with said development and use, Lessee shall have the right from
19 time to time to subdivide and resubdivide the premises. Lessee
20 will use and allow the use of said premises for general industrial
21 uses (including without limitation warehousing, manufacturing,
22 processing, supplying, servicing, and similar such purposes), port
23 and main related commercial uses, office building, restaurant, food
24 service, recreation, and other related uses. Lessor has the
25 reasonable right to request a review and discussion of uses,

1 tenants (existing and proposed), and general operation of the
2 industrial area on an annual basis upon reasonable notice. Lessee
3 will not engage in unfair business practices. Lessee will not
4 allow waste or unlawful, improper, or offensive use of said
5 premises or any part thereof; provided, however, that in the course
6 of development of said premises as herein provided, Lessee may at
7 its own expense remove and dispose of any or all improvements
8 existing on said premises at the commencement of said term.

9 8. Prohibition Against Assignment. Lessee will not without
10 the prior written consent of Lessor, except as herein expressly
11 otherwise provided, assign or sell this Lease; provided, however,
12 that Lessor shall not withhold such consent unreasonably. Lessor
13 may condition its consent upon factors including the adequacy of
14 assignee's net worth and financial capability with respect to
15 operating a business park of similar size, the assignee's ex-
16 perience in developing and/or managing a business park of similar
17 size, and whether assignee has been convicted of any crimes which
18 would constitute moral turpitude under laws of the Territory of
19 Guam and the United States. Any assignment of this Lease (except
20 as may be provided in Sections 6 and 7 of Article III) will be
21 subject to a transfer fee equal to one percent (1%) of such
22 transfer price, which fee shall be paid to the Lessor upon receipt
23 by Lessee of any such transfer price. This fee will be separate
24 and in addition to rent to which the Lessor may be entitled. If
25 Lessee determines to sell or assign its interests under this Lease,

1 Lessee shall give Lessor a right of first refusal by notifying
2 Lessor of the terms upon which Lessee will be willing to sell or
3 assign. If Lessor within forty-five days after receipt of Lessee's
4 notice indicates in writing its agreement to purchase the Lease on
5 the terms stated in Lessee's notice, then Lessee shall sell and
6 convey its leasehold interests hereunder to Lessor on the terms
7 stated in the notice. If the Lessor does not indicate its
8 agreement within forty-five days, Lessee thereafter shall have the
9 right to sell or assign its leasehold interests to a third party on
10 the same terms stated in the notice. If Lessee does not sell and
11 assign its leasehold interest within two hundred seventy (270) days
12 thereafter, any further transaction shall be deemed a new
13 determination by Lessee to sell and assign its leasehold interest
14 and Lessee shall be required to re-notice Lessor. In the event
15 Lessee sells or assigns its leasehold interest to Lessor, no
16 percentage fee based on transfer price shall be payable by Lessee.
17 Lessor's right of first refusal shall not apply to any transfer to
18 a legal entity (whether a partnership, corporation, trust or like
19 entity) in which the majority interest is owned by the initial
20 named Lessee hereunder.

21 9. Expenses of Labor. Lessee will pay to Lessor, Lessor's
22 costs and expenses, including reasonable attorney's fees, incurred
23 by Lessor in enforcing any of the covenants herein contained, in
24 remedying any material breach by Lessee of said covenants, in
25 recovering possession of said premises or any part thereof, in

1 collecting any delinquent rent, taxes, or other charges hereunder
2 payable by Lessee, or in connection with any litigation (other than
3 condemnation proceedings) commenced by or against Lessee to which
4 Lessor shall without fault be made a party.

5 10. Liability Insurance. Lessee will at its own expense
6 effect and maintain or cause to be maintained at all times during
7 the term of this Lease commercial general liability insurance with
8 respect to said premises with a responsible insurance company
9 naming Lessor as an additional insured with minimum limits of at
10 least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for injury to
11 one person and TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) for
12 injury to more than one person in any one accident or occurrence
13 and also insurance of at least TWO MILLION AND NO/100 DOLLARS
14 (\$2,000,000.00) against claims for property damage, and will from
15 time to time upon receipt thereof deposit promptly with Lessor
16 current certificates of such insurance. At the final execution of
17 this Lease, Lessee must provide insurance deemed adequate by a risk
18 manager chosen by Lessor to cover all potential exposure of this
19 project. On a periodic basis, Lessee and Lessor shall review
20 insurance coverage to assure adequate insurance coverage is
21 provided during the term of this Lease.

22 11. Liens. Lessee will not commit or suffer any act or
23 neglect whereby said premises or any improvement thereon or the
24 estate of Lessee therein shall at any time during said term become
25 subject to any attachment, judgment, lien, charge, or encumbrance

1 other than any authorized mortgages and subleases, current real
2 estate taxes and other similar liens incurred in the ordinary
3 course of business, and will indemnify and hold Lessor harmless
4 from any loss, cost, and expense including reasonable attorney's
5 fees with respect thereto. Without limitation of the foregoing,
6 Lessee shall not allow any mechanic's or materialmen's liens to be
7 placed upon the premises or any improvements thereon and if any
8 such mechanic's or materialmen's liens are so placed then Lessee
9 shall promptly cause such liens to be removed or to be bonded. The
10 provisions of this Section 11 shall not extend to any attachment,
11 judgment, lien, charge, or encumbrance made or suffered by any
12 subtenant so long as such attachment, judgment, lien, charge, or
13 encumbrance relates only to the subtenant's interest and does not
14 constitute a lien, charge, or encumbrance upon the interests of
15 Lessee or Lessor in the premises.

16 12. Development of Premises. In accordance with the master
17 plan of the Park to be approved by the Authority, the construction
18 of the Park will consist of a minimum of two (2) phases. The
19 Lessee will commence construction of the infrastructure within
20 twelve (12) months following completion of quarrying operations on
21 the site by Hawaiian Rock Products, necessary pipeline relocation
22 by the Authority, and issuance of all necessary government
23 approvals. The Lessee shall within twenty-four (24) months after
24 commencing construction of the infrastructure commence construction
25 of the first five hundred thousand (500,000) square feet of

1 buildings to accommodate existing Port requirements. Succeeding
2 phase(s) will be subject to market demand, to site availability, to
3 the approval process and to the master plan as approved by the
4 Authority, but the entire Park project shall be completed within
5 ten (10) years from the effective date of the Lease. Failure to
6 complete the succeeding phase(s) within the ten (10) years shall
7 result in the termination of the Lease as to the undeveloped
8 parcels, which parcels will revert to the Authority.

9 Lessee shall prepare at its sole expense and shall submit to
10 Lessor within ninety (90) days after the date of final execution of
11 this Lease, a proposed master plan for development of the premises.
12 Such master plan shall be subject to the approval of Lessor, which
13 approval Lessor covenants shall not be unreasonably withheld.
14 Lessor shall promptly review the master plan after submission and
15 shall approve or disapprove such plan within sixty (60) days after
16 the date of submission. In the event of disapproval, Lessor shall
17 specify with particularity what portions of master plan are
18 disapproved, and the reasons therefore. Unless Lessor shall
19 specifically disapprove in writing the master plan within the sixty
20 (60) day period or disapproves a portion of the master plan, those
21 portions which have not been disapproved shall be deemed approved.
22 After approval of the master plan by Lessor, Lessee shall proceed,
23 with reasonable diligence and in accordance with the master plan,
24 with complete construction and subdivision plans for the premises
25 prepared by the Lessee at the Lessee's cost, which construction and

1 subdivision plan shall be in compliance with the provisions of the
2 master plan. Final construction and subdivision plans shall be
3 subject to the approval of governmental authorities (such as the
4 Territorial Planning Commission, the Environmental Protection
5 Agency, Public Works, and similar such agencies) having
6 jurisdiction over construction and subdivision projects. Lessee
7 shall thereafter at its cost and in accordance with the master plan
8 (subject to the terms and conditions hereof) proceed with
9 construction and completion on the premises and subdivided portions
10 thereof of buildings and other improvements suitable for the
11 respective use thereof as shown on the master plan in accordance
12 with complete plans, specifications, and plot plans therefore
13 prepared by the Lessee. Lessee shall develop and subdivide said
14 premises and either improve or sublease lots thereof as provided in
15 the master plan within the periods set forth in the master plan,
16 except as set forth in Article I hereof, or pay or cause to be paid
17 all expenses whatsoever for or in connection with said development,
18 subdivision, and improvement; provided, however, that if any such
19 development, subdivision, or improvement shall be delayed by war,
20 typhoon, earthquake, or other acts of God or force majeure, fire,
21 or other similar disaster, or by general or industry-wide strike in
22 the Territory of Guam, governmental regulation or any other cause
23 beyond the control of the Lessee which without Lessee's fault
24 renders unobtainable any labor, materials, or equipment necessary
25 therefore, or by failure of Lessor or any third party including

1 without limitation any governmental authority, within a reasonable
2 time after request therefore and without fault of the Lessee to
3 approve or consent to any matter for which such approval or consent
4 is required by any provision hereof or which approval or consent is
5 required in or contemplated by the master plan, the time for
6 completion thereof shall be extended according to the duration and
7 nature of such delay. Lessee in the course of its planning,
8 design, construction, and operation of the premises shall not
9 materially vary from the provisions of the master plan as approved
10 by the Lessor; provided, however, Lessee may in its discretion vary
11 from the terms of the master plan (particularly, but without
12 limitation, to accommodate sublessees and users) if Lessee in good
13 faith determines variations are reasonably necessary so long as
14 such variations do not have any material deleterious economic
15 effect as to the rent to be paid by Lessee hereunder. The parties
16 may from time to time by mutual agreement formally amend or modify
17 the approved master plan. Lessee agrees to submit to Lessor with
18 or as part of Lessee's master plan a development schedule which
19 indicates (i) construction of infrastructure commencing within
20 twelve (12) months following completion of quarrying operations by
21 Hawaiian Rock and pipeline relocation in Area A (as such area is
22 shown on Lessee's master plan) in accordance with the provisions of
23 Section 5(a) of Article I hereof, and issuance of all necessary
24 government approvals; (ii) commencement of building construction of
25 the first five hundred thousand (500,000) square feet within

1 twenty-four (24) months after commencing construction of the
2 infrastructure. The timing of following phases will be dependent
3 upon market demand and to site availability, to the approval
4 process and to the master plan as approved by the Authority, but
5 the entire Park project shall be completed within ten (10) years
6 from the effective date of the Lease. Failure to complete the
7 succeeding phase(s) within the ten (10) years shall result in the
8 termination of the Lease as to the undeveloped parcels, which
9 parcels will revert to the Authority. Lessee acknowledges that
10 during Lessee's construction and development and during the
11 quarrying operations of Hawaiian Rock it will be necessary to
12 relocate certain improvements known as the United Seaman's Service
13 Club from its present location to an alternative location of
14 Lessee's property. Lessee shall coordinate such relocation with
15 Lessor and the United Seaman's Service shall pay the reasonable
16 costs of such relocation. Lessee shall obtain performance bonds
17 from contractors who will be responsible for constructing infra-
18 structure and will assign these performance bonds to the Lessor
19 upon written request prior to the commencement of construction.

20 13. Bond. Lessee will at all times maintain and furnish
21 to Lessor a bond or other security acceptable to the Lessor to
22 guarantee performance of all the Lessee's obligations under this
23 lease. This bond shall be in an amount equal to twice the rent
24 paid for the leased premises during the preceding year. During the
25 first year, the bond shall be in an amount equal to three times the

1 Base Rent for the first year. The bond will be replaced as
2 necessary to accommodate adjustments in the amount of rent payable.

3 In addition to the foregoing bond, a performance bond or
4 letter of credit in the amount of \$1.5 million or other security
5 acceptable to the Lessor will be furnished to the Lessor by the
6 Lessee for all property subject to this lease. This bond or letter
7 of credit shall be in a form and by an issuer acceptable to the
8 Lessor to ensure the performance of the construction required by
9 this lease in accordance with the master plan for development.
10 This bond shall be in addition to any other bond or bonds required
11 in this Lease.

12 14. Surrender. At the end of said term or upon termina-
13 tion of this Lease, Lessee will peaceably deliver up to Lessor
14 possession of the land hereby demised, together with all buildings
15 and other improvements upon or belonging to the same, by whomsoever
16 made, in good repair, order and condition, reasonable wear and tear
17 and damage by unavoidable casualty excepted.

18 15. Records and Reports of Operations.

19 (a) Reports. On or before the one hundred eightieth (180th)
20 day following the end of each calendar year on this Lease a written
21 statement certified by Lessee's general partner or chief financial
22 officer to be true and correct and showing in accurate detail the
23 amount of gross income from the subleasing and operating of the
24 premises during the preceding lease year and all applicable costs
25 and expenses relating to the development, operation, and subleasing

1 of the premises, shall be submitted by Lessee to Lessor. Lessee
2 will grant such written authority as may be necessary to allow
3 Lessor to verify the authenticity of any copy of any tax report or
4 return filed with the Government of Guam at any time or any other
5 report of gross income.

6 (b) Records. Lessee shall record all sublease and income and
7 expenses and other transactions involving the development,
8 subleasing, and operation of the premises, using a commonly ac-
9 cepted system. Said records and statements shall be kept and
10 maintained by the Lessee in accordance with generally accepted
11 accounting principles. Such records may be audited by Lessor as
12 provided herein. For the purposes of enabling Lessor to check the
13 accuracy of such statement, Lessee shall for the period of sixty
14 (60) months after submission to Lessor of such statement, keep safe
15 and intact all of Lessee's records, books, accounts, tax returns,
16 and other similar data which may reasonably bear upon or be
17 required to establish Lessee's gross income and any costs and
18 deductions therefrom as shown by any such statement, and shall upon
19 reasonable prior request for Lessor or its agents, deliver the same
20 to Lessor or its agents, for examination at any reasonable time
21 during said sixty (60) month period.

22 (c) Inspection. Lessor and its agents are hereby given the
23 right to inspect Lessee's books at all reasonable times in order to
24 ascertain the amount of gross income and costs and expenses arising
25 from or relating to the development, subleasing, and operation of

1 the Premises. Lessee agrees to keep proper and up-to-date books
2 and records at all times, showing income and costs and expenses;
3 said books and records, including any reports that Lessee may be
4 required to furnish to any governmental agency, shall at all
5 reasonable times be open to the inspection of the Lessor or its
6 agents. Lessee agrees to give its reasonable full assistance to
7 Lessor or its agents in the making of any inspection or examination
8 of any such books and records, and Lessor shall have the right to
9 make copies of all such records pertaining to gross receipts as
10 Lessor may desire.

11 (d) Audit. Lessor may, at any time, cause an audit of the
12 business of Lessee to be made by an accountant to be selected by
13 Lessor, and if such audit discloses that any statement of income
14 and/or expenses made by Lessee to Lessor understates the actual
15 income reported by any such audit by more than two percent (2%) or
16 overstates the actual costs and expenses by more than two percent
17 (2%), Lessee shall immediately pay the cost of any such audit as
18 well as any additional rent payable by Lessee to Lessor plus
19 interest on such additional rent amount calculated at a rate equal
20 to three percent (3%) per annum above prime rate until such
21 additional rent is paid in full; otherwise, the cost of such audit
22 shall be paid by Lessor. If Lessee is shown to have been
23 intentionally understating income for the purpose of defrauding
24 Lessor, then, at Lessor's option, Lessor may upon not less than
25 thirty (30) days prior written notice declare this Lease to be

1 terminated and the leased premises shall be surrendered as provided
2 in Article II, Section 13 hereof. Any such termination shall not
3 in any way impair or otherwise affect any sublease of any lot or
4 portion of said premises theretofore made by Lessee as herein
5 provided if the sublessee thereof or its successors or assigns or
6 mortgagees, upon notice of such termination, shall attorn and pay
7 directly to Lessor when due all rents thereafter becoming payable
8 under such sublease.

9 16. Dealings with Officials of the Government of Guam.

10 Lessee represents that it has had dealings with officials of
11 the Government of Guam with respect to the negotiations culminating
12 in the execution of this lease. Lessee understands that the people
13 of Guam require assurances that all negotiations between Lessee and
14 officials of the Government of Guam leading to the execution of
15 this lease have been conducted with the utmost fairness and with
16 the best interests of the people of Guam in mind. In order to make
17 these assurances, Lessee agrees that during the term of this lease,
18 whether or not it is the Lessee hereunder, it will participate in
19 no further business transactions, and in no other transactions in
20 which anything of any value is conveyed, with any officials of the
21 Government of Guam with whom Lessee or any of its agents or
22 employees have dealt with respect to the subject matter of this
23 lease.

24 17. Guaranties of Cabras Island Development Corporation.

25 Lessee represents that its sole general partner is a corporation

1 known as Cabras Island Development Corporation. In order to
2 facilitate the satisfaction of Lessee's obligations hereunder,
3 Lessee agrees that it will adequately capitalize its corporation
4 and the limited partnership to secure Lessee's obligations
5 hereunder. In addition, Lessee agrees not to assign or sell its
6 right, title, or interest, or any portion of its right, title or
7 interest in this Lease and the premises leased hereunder for a
8 period of five (5) years from the final execution of this Lease
9 Agreement. This limited prohibition against assignment for a
10 period of five (5) years includes the sale or transfer of more than
11 50% of the ownership in the corporation as general partner and the
12 limited partnership as Lessee. No principal of Cabras Island
13 Developers may remain such principal if convicted of a crime
14 involving moral turpitude.

15
16
17 ARTICLE III

18 MUTUAL COVENANTS

19 AND IT IS HEREBY MUTUALLY AGREED by and between the Lessor and
20 Lessee as follows:

21 1. Subleases. The Lessee may sublease portions of the Park
22 on an unrestricted basis, except as provided herein, so long as all
23 users of the Park confine their activities to Port-related
24 activities only. Local businesses owned at least fifty-one percent
25 (51%) by United States citizens or permanent resident aliens shall

1 be given priority by the Lessee in subleasing to businesses within
2 the Park. The board of directors of the Authority shall have the
3 right to review the Park's subleases, uses, tenants and general
4 activities on an annual basis to determine whether the requirements
5 of this subsection are being complied with. From time to time
6 during and after the development and subdivision of said premises
7 as herein provided, Lessee may sublease to sublessee any subdivided
8 lots and/or the Lessee's interest in the buildings thereon. Any
9 such subleases shall be prepared by Lessee and shall be
10 substantially in the same form as a form sublease approved by
11 Lessor (subject to appropriate changes by mutual agreement of the
12 parties hereto) and shall be subject to the provisions of this
13 lease. Provided that as to any sublease Lessee shall not grant or
14 agree to grant any exclusive rights to any single sublessee or
15 group of sublessees whereby any such sublessee may claim to
16 preclude or limit the rights of any other sublessee who is
17 conducting identical or similar businesses from subleasing space or
18 improvements within the park. In entering into subleases Lessee
19 shall provide equal access and availability of sublease parcels and
20 space without discrimination to all persons whose business purposes
21 are reasonably related to the Commercial Port, it being the intent
22 of parties that all qualified third parties whose businesses are
23 reasonably related to the Commercial Port shall, subject to the
24 construction priorities, have reasonable and equal or substantially
25 equal access to the park. Lessee shall, subject to the terms and

1 provisions hereof, make a reasonable number of subdivided lots,
2 which shall be unimproved except for reasonable infrastructure,
3 available for subleases to third parties at then currently
4 commercially reasonable market rates and or commercially reasonable
5 terms and conditions for use and development by such third parties
6 in a manner consistent with and in accordance with the Master Plan
7 and this Lease. Provided, however, in all events, Lessee's
8 obligations to enter into any subleases (whether for space or
9 unimproved lots) and to make lots or space available shall be
10 subject to availability and to commercially reasonable standards of
11 financial capability, financial net worth and business capability
12 of the sublessee which standards may be imposed by Lessee in good
13 faith on a uniform basis. Lessee shall prepare at its cost and
14 submit to Lessor for Lessor's approval within ninety (90) days
15 after the date of execution of this Lease, the form or forms of
16 proposed sublease. Such proposed form or forms of sublease shall
17 be subject to the approval of Lessor, which approval Lessor
18 covenants shall not be unreasonably withheld. Lessor shall
19 promptly review the sublease after submission and shall approve or
20 disapprove such sublease within sixty (60) days after the date of
21 submission. In the event of disapproval, Lessor shall specify with
22 particularity what portions of the sublease are disapproved, and
23 the reasons therefore. Unless Lessor shall specifically disapprove
24 in writing the sublease within sixty (60) days after the date of
25 submission, the sublease form shall be deemed approved as

1 submitted. In the event Lessor, within such sixty (60) day period,
2 disapproves a portion of the sublease, those portions which have
3 not been disapproved shall be deemed approved. Every such sublease
4 shall reserve for the lot or building thereby demised net rent,
5 over and above all taxes, assessments, and other charges including
6 lot development charges thereunder payable by the sublessee, not
7 less than reasonable market value. Such subleases may in the
8 discretion of Lessee be granted in consideration, in whole or in
9 part, of prepaid rent or other prepaid charges, taking into con-
10 sideration the preset value of any such prepaid rent or prepaid
11 charges. In the event rent is prepaid for more than one (1) year,
12 Lessee shall prepay the base rent and percentage rent to Lessor;
13 the amount to be prepaid to the Lessor shall be the present value
14 (discounted at ten percent (10%)) of Lessee's projected income.
15 Every such sublease shall be valid and binding according to its
16 provisions for the full term thereof as a sublease from Lessee
17 during the continuance in effect of this Lease and as a lease
18 directl_y from Lessor after any termination of this Lease.

19 2. Additional Sublease Provisions. In addition to the
20 provisions which are elsewhere required to be contained in each
21 sublease granted by Lessee (including without limitation, the
22 provisions as to compliance with Hazardous Materials Laws, each
23 sublease granted or made by Lessee shall contain standard
24 provisions approved by Lessor (the "maintenance provisions") which
25 shall prohibit nuisance and waste and require each sublessee to

1 maintain the subleased premises in a reasonably clean and orderly
2 condition. Lessee shall use its best efforts to require sublessees
3 to observe and perform such maintenance provisions. In the event
4 Lessor believes in good faith that any sublessee is failing to
5 adequately observe and perform such maintenance provisions, then
6 Lessor may, upon notice to Lessee and to the sublessee in question,
7 require Lessee to commence proceedings to terminate the sublease in
8 question by reason of the claimed default of the sublessee. In the
9 event the sublessee or the Lessee disputes whether the sublessee is
10 in default for failure to observe or perform any maintenance
11 provision, then Lessor and Lessee and the sublessee shall submit
12 the issue of the claimed default of the sublessee to binding
13 arbitration. Each sublease shall contain provisions requiring each
14 sublessee to submit to binding arbitration any claimed default for
15 failure to observe or perform any maintenance obligation.

16 3. Dedication of Public Improvements. Upon completion of
17 the development and subdivision of said premises as herein
18 provided, the appropriate Government of Guam Utility Agency, at its
19 sole discretion, may consent to any requests of Lessee to dedicate
20 for public use the streets and improved rights of way thereof
21 (except such designated as private ways on the approved plans
22 therefore), provided, however that before any dedication is
23 accepted by the appropriate utility agency, said utility agency
24 shall inspect the improvements and shall require the Lessee to
25 correct any deficiencies or substandard work or product prior to

1 acceptance of the dedication, and any other improvements made for
2 public use on or for said premises and convey to the proper public
3 or private utility companies or governmental authorities any
4 easements necessary for their respective services thereof. In the
5 event the appropriate Government of Guam Utility Agency does not
6 accept the requested dedication, then the Lessee shall be solely
7 responsible for the continuing upkeep and maintenance of the
8 particular easement, right of way or utility.

9 4. Condemnation. In case at any time or times during said
10 term the premises or an part thereof shall be taken or condemned by
11 an authority having the power of eminent domain, then and in every
12 such case all estate and interest of Lessee in the premises so
13 taken or condemned shall at once cease and desist; provided,
14 however, that lessee, any mortgagee of Lessee's interest and any
15 sublessee shall be entitled to claim compensation and indemnity for
16 their respective interests in the land and any buildings or other
17 improvements erected on the demised land. All proceeds of such
18 condemnation shall be divided as follows:

19 (a) All compensation and damages for or on account of any
20 demised land shall be payable to Lessor, Lessee, any mortgagee of
21 Lessee's interest and any sublessee under any sublease thereof as
22 their respective interests appear as of the date of loss of pos-
23 session; and

24 (b) All compensation and damages for or on account of any
25 buildings or other improvements erected on the demised land during

1 said term shall be payable to Lessor, Lessee, any mortgagee of
2 Lessee's interest and any sublessee under any sublease thereof as
3 their respective interests appear as of the date of loss of
4 possession, Lessor's share to be determined by the ratio that the
5 expired term of such sublease, or this lease in the absence of such
6 sublease, bears to the whole term thereof.

7 In the event of a total taking, Lessee's obligation to pay
8 rent shall terminate as of the date of taking. In the event of a
9 partial taking of so much of the premises or improvements or both
10 that the remaining premises or improvements would not be
11 economically feasible or usable, then Lessee may elect to treat
12 such taking as a total taking and terminate this Lease as of the
13 date of such taking.

14 5. Defeasance. This Lease is upon the express condition
15 that if Lessee shall fail to pay said rent or any part thereof or
16 shall fail faithfully to observe or perform any of the other
17 covenants herein contained and on the part of Lessee to be observed
18 and performed and such default shall continue in the case of rent,
19 for thirty (30) days, or in the case of any other covenant for
20 ninety (90) days after written notice thereof given to Lessee, or
21 if Lessee then owing this Lease shall become bankrupt or make any
22 assignment for the benefit of creditors and abandon said premises,
23 or if this Lease or any estate or interest of Lessee hereunder
24 shall be sold under any attachment or execution, Lessor may in any
25 such case at once bring an action for the termination of this Lease

1 and for summary possession of said premises, without prejudice to
2 any other remedy or right of action which Lessor may have for
3 arrears of rent or for any preceding or other breach of contract;
4 provided, however, that the termination of this Lease or the
5 pursuit of any other remedy of Lessor for any default by Lessee
6 hereunder shall not in any way impair or otherwise affect any
7 sublease of any lot or portion of said premises theretofore made by
8 Lessee as herein provided if the sublessee thereof or its
9 successors or assigns or mortgagees, upon notice of such
10 termination, shall attorn and pay directly to Lessor when due all
11 rents thereafter becoming payable under such sublease.

12 6. Nonwaiver. Acceptance of rent by Lessor or its agents
13 shall not be deemed to be a waiver by Lessor of any breach by
14 Lessee of any covenants herein contained.

15 7. Consent to Mortgage. Lessee may from time to time with
16 the consent of Lessor, whose consent cannot be unreasonably with-
17 held, assign and encumber this Lease in whole or in part and
18 Lessee's interest in any sublease by way of mortgage or other
19 security instrument to any bank, insurance company or other es-
20 tablished lending institution as mortgagee provided that Lessee
21 shall upon execution of such mortgage promptly deliver a true copy
22 thereof to Lessor. Lessor retains the right to consent to the
23 mortgage chosen by the Lessee, which consent shall not un-
24 reasonably be withheld. The mortgagee or its assigns may enforce
25 such mortgage and acquire title to the leasehold estate in any

1 lawful way, and pending foreclosure of such mortgage may take
2 possession of and rent said premises, and upon foreclosure thereof
3 may with further consent of Lessor sell and assign the leasehold
4 estate by assignment in which the assignee shall expressly assume
5 and agree to observe and perform all the covenants of Lessee herein
6 contained, and such assignee may make a purchase money mortgage of
7 this Lease to the assignor. The mortgagee or its assigns of such
8 mortgage shall be liable to perform the obligations herein imposed
9 on Lessee only during the period such person has possession or
10 ownership of the leasehold estate. Nothing contained in such
11 mortgage shall release or be deemed to relieve Lessee from the full
12 and faithful observance and performance of its covenants herein
13 contained or from any liability for the nonobservance or
14 nonperformance thereof, nor be deemed to constitute a waiver of any
15 rights of Lessor hereunder, and the terms, covenants, and
16 conditions of this Lease shall control in case of any conflict with
17 the provisions of such mortgage.

18 8. Protection of Mortgagee. During the continuance in effect
19 of any mortgage of this Lease, Lessor will not terminate this Lease
20 because of any default on the part of Lessee to observe or perform
21 any of the covenants or conditions herein contained if the
22 mortgagee or its assigns, within ninety (90) days after the date
23 that the Lessor shall have mailed to the mortgagee or its assigns
24 at the last known address thereof a written notice of Lessor's
25 intention to terminate this Lease for such cause, shall cure such

1 default, if the same can be cured by the payment of money, or, if
2 such is not the case, shall undertake in writing to thereafter pay
3 all rent and other charges as and when due under this Lease and to
4 perform all other covenants of this Lease capable of performance by
5 the mortgagee or its assigns until such time as this Lease shall be
6 sold upon foreclosure of such mortgage commenced promptly and
7 completed with due diligence. Any default (a) consisting of
8 Lessee's failure promptly to discharge any attachment, judgment,
9 lien, charge, or encumbrance against the premises junior in
10 priority to such mortgage or (b) which is otherwise not susceptible
11 to cure by mortgagee except upon obtaining possession of the
12 premises or foreclosure, shall be deemed to be duly cured if such
13 mortgage shall be foreclosed by appropriate action instituted
14 within said 90-day period and thereafter prosecuted in a diligent
15 and timely manner. Lessor agrees that simultaneously with mailing
16 or delivering any notice of default or breach under or with respect
17 to this Lease to Lessee, that it will mail or deliver a copy
18 thereof to the permitted mortgagee(s) of this Lease at their last
19 known address.

20 In the event of the bankruptcy of the Lessee, the Lessor
21 agrees to waive the sixty (60) day limitation period under § 365 of
22 the Bankruptcy Code for an initial extension period of thirty (30)
23 days and thereafter such other and further extension periods as are
24 reasonable and necessary for the mortgagee to perform the
25 undertakings agreed upon below, provided that all rent and other

1 charges due under the Lease are paid. In consideration of the
2 Lessor's agreement above and of the new lease provisions in favor
3 of the mortgagee contained below, the mortgagee shall undertake and
4 agree for the benefit of Lessor that if any time a bankruptcy
5 proceeding shall be commenced concerning the Lessee-mortgagor
6 and/or the leasehold estate that the mortgagee shall, within the
7 statutory time period or any extension thereof provided under § 365
8 of the Bankruptcy Code for the rejection or assumption of leases,
9 use its reasonable efforts to diligently and in good faith obtain
10 or cause the Lessee-mortgagor and/or Trustee in bankruptcy to
11 obtain either (i) an abandonment of the leasehold estate by the
12 bankruptcy court pursuant to § 554 of the Bankruptcy Code, as
13 amended; or (ii) an assumption of the Lease pursuant to § 365 of
14 the Bankruptcy Code, as amended.

15 In the event that, notwithstanding the mortgagee's compliance
16 with the above provisions of this paragraph 7, this Lease shall
17 terminate prior to the natural expiration of the term thereof as a
18 result of an actual or deemed rejection of the Lease under any
19 provision of the Bankruptcy Code (Title 11, United States Code) or
20 any successor law having similar effect, then, and in any such
21 event, the mortgagee (or the first mortgagee if more than one)
22 shall thereupon have the option to obtain a new lease ("New Lease")
23 of the Premises in accordance with and upon the following terms and
24 conditions:

25 (1) Upon the written request of the mortgagee delivered to

1 Lessor within sixty (60) days after the actual or deemed rejection
2 of the Lease as aforesaid, Lessor shall enter into a New Lease of
3 the premises with such mortgagee, or its designee, as provided in
4 clause (2) immediately below; provided, however, that if Lessor
5 receives no such written request within said sixty (60) day period
6 then all of mortgagee's rights to a New Lease hereunder shall
7 automatically terminate.

8 (2) Such New Lease shall be effective as of the date of
9 termination of this Lease and shall be for the remainder of the
10 term of this lease at the same rent and other charges herein
11 provided and otherwise upon the same agreements, terms, covenants,
12 and conditions contained herein. The New Lease issued hereunder
13 shall have the same relative priority in time and right as this
14 Lease and have the benefit of and vest in the mortgagee (or first
15 mortgagee if more than one) all of the same rights, title,
16 interest, powers, and privileges of the Lessee hereunder. The New
17 Lease shall, subject to the same agreement, terms, covenants, and
18 conditions contained herein, also demise to the mortgagee or its
19 designee all buildings, improvements, and appurtenances situated on
20 the premises, together with all equipment, fixtures, and machinery
21 therein. Concurrently with execution of the New Lease, Lessor
22 shall assign its interest in and to any then existing sublease
23 under which the tenant has attorned to and been recognized by
24 Lessor. During the period between termination of this Lease and
25 execution of the New Lease, Lessor shall not amend or modify the

1 subleases or take any action which will adversely affect the
2 premises or give rise to any liens against the premises.

3 (3) As a condition to and concurrently with delivery of such
4 New Lease, the lessee named therein shall pay any and all sums
5 which would at the time of the execution thereof be due under this
6 Lease but for the termination as aforesaid, and shall fully
7 otherwise remedy any existing defaults under this Lease susceptible
8 of cure by the mortgagee, or such designee, and shall pay to Lessor
9 all costs and expenses, including but not limited to any insurance
10 premiums paid or incurred by Lessor in order to maintain the
11 insurance coverage required under the terms of the Lease, and the
12 reasonable attorney's fees, court costs, and disbursements incurred
13 by Lessor by reason of the actual or deemed rejection of the Lease
14 and/or in connection with the preparation, execution, and delivery
15 of such New Lease. Any default which cannot be cured by such
16 lessee until it obtains possession shall be cured by the lessee
17 within a reasonable time after it obtains possession.

18 (4) The mortgagee, if it is the initial lessee under the New
19 Lease, may assign such New Lease and shall thereupon be released
20 from all liability for the performance or observance of the cove-
21 nants and conditions in such New Lease to be performed and observed
22 from and after the date of such assignment, provided that a
23 certified copy of such assignment be provided to Lessor. Lessor
24 shall have the right to consent to the proposed assignee under this
25 provision, which consent shall not unreasonably be withheld.

1 Ownership by or for the person of both the fee and leasehold
2 estates in the premises shall not effect the merger thereof,
3 without the prior written consent of any mortgagee of either such
4 estate to such merger. The name of any mortgagee may be added to
5 any loss payable endorsement of any insurance policies required to
6 be carried by Lessee. Lessor will make all insurance proceeds or
7 condemnation proceeds to which Lessee may otherwise be entitled
8 hereunder available jointly to Lessee and to any mortgagee, and
9 such proceeds may be applied as provided in any mortgage. If
10 Lessee fails to exercise any extension or renewal option provided
11 for in this Lease the Lessor shall send to the mortgagee written
12 notice thereof and such mortgagee, within ten (10) days after
13 receipt of such notice, may exercise any such option on behalf of
14 Lessee. There should be no cancellation, mutual termination,
15 surrender, or amendment of this Lease without the prior written
16 consent of any mortgagee. It is understood by both Lessor and
17 Lessee that certain modifications of this lease agreement may be
18 necessary from time to time to accommodate lenders and the parties
19 agree to make the changes if they are reasonable and do not
20 materially impair or materially adversely affect the basic rights
21 of Lessor hereunder.

22 9. Estoppel Certificate. Lessor shall promptly execute all
23 reasonable estoppel certificates as requested by, but not limited
24 to, Lessee's lenders, subtenants, and lenders of subtenants.

25 10. Indemnity.

1 (a) Indemnity by Lessee. Except for the acts or omis-
2 sions of Lessor and any person under Lessor and except as otherwise
3 may be provided herein, Lessee will indemnify and hold Lessor
4 harmless from and against all claims and demands for loss or
5 damage, including property damage, personal injury, and death,
6 arising out of or in connection with the use or occupancy of the
7 premises and appurtenances by Lessee or any other person under
8 Lessee, or any accident or fire on said premises or any nuisance
9 made or suffered thereon, or any failure by Lessee to keep said
10 premises and appurtenances in a safe condition and will reimburse
11 Lessor for all its costs and expenses including reasonable attor-
12 ney's fees incurred in connection with the defense of any such
13 claims, and will hold all goods, materials, furniture, fixtures,
14 equipment, machinery, and other property whatsoever on said
15 premises at the sole risk of Lessee and hold Lessor harmless from
16 any loss or damage thereto by any cause whatsoever except for the
17 acts or omissions of Lessor.

18 (b) Indemnity by Lessor. Except for the acts or omissions of
19 Lessee and any person under Lessee and except as otherwise provided
20 herein, Lessor will indemnify and hold Lessee and Lessee's
21 subtenants harmless from and against any claims and demands for
22 loss or damage, including property damage, personal injury, and
23 death, arising out of or in connection with any activities of
24 Lessor on the premises or arising out of or in connection with the
25 use and occupancy by Lessor or by any person under Lessor of those

1 areas of Cabras Island adjacent to or located near the premises, or
2 any accident or fire on said adjacent or nearby property or any
3 nuisance made or suffered thereon or any failure by Lessor to keep
4 said adjacent property and nearby property and appurtenances in a
5 safe condition and will reimburse Lessee for all its cost and
6 expenses including reasonable attorney's fees incurred in
7 connection with the defense of any such claims.

8 (c) No Limitation. The provisions for indemnity contained in
9 this § 8 of Article III shall not expressly or by implication be
10 held to limit any other specific indemnification provisions
11 contained elsewhere in this Lease, but the indemnification pro-
12 visions contained in this § 8 shall be interpreted so as to be
13 consistent with and supplemental to any specific indemnity pro-
14 visions contained elsewhere in this Lease.

15
16 ARTICLE IV

17 GENERAL PROVISIONS

18 1. Performance by Lessor. If Lessee shall fail to pay any
19 sum of money other than rent required to be paid by Lessee here-
20 under, or shall fail to perform any other act or affirmative
21 covenant to be performed by Lessee pursuant to the terms of this
22 Lease, and such failure shall continue for thirty (3) days after
23 written notice thereof to Lessee, then Lessor may, but shall not be
24 obligated to, perform any such affirmative covenants, or make any
25 such payment, as Lessee's agent, and the full amount of the cost

1 and expense entailed or of the payments so made, shall immediately
2 be owing by Lessee to Lessor, and Lessor shall have the right to
3 add the amount thereof, together with interest at the highest rate
4 allowed by law from the date of payment, to the rentals then due or
5 thereafter coming due hereunder. The option given in this
6 paragraph is for the sole protection of Lessor, and its existence
7 shall not release Lessee from the obligation to perform any of the
8 covenants herein provided to be by Lessee, or deprive Lessor of any
9 legal or equitable rights which it may have by reason of any such
10 default by Lessee.

11 2. Performance by Lessee. In accordance with the master plan
12 to be approved by the Lessor, the construction of the industrial
13 park will consist of a minimum of two (2) phases. The Lessee will
14 commence construction of the infrastructure within twelve (12)
15 months following the initial Release Date and upon the issuance of
16 all necessary government approvals. Lessee shall use reasonable
17 efforts to apply for all necessary approvals within the twelve (12)
18 month period following the initial Release Date. The Lessee shall
19 within twenty-four (24) months of the initial Release Date commence
20 construction of the first five hundred thousand (500,000) square
21 feet of buildings, subject to the requirements of the master plan,
22 to accommodate existing Lessor requirements and current demand for
23 warehousing. After the foregoing first phase, the succeeding
24 phases(s) will be subject to market demand, to site availability,
25 to the approval process, and to the master plan as approved by

1 Lessor, but the entire industrial park project shall be completed
2 within ten (10) years from commencement of construction of the
3 first five hundred thousand (500,000) square feet of buildings.
4 Failure to complete the succeeding phases(s) within the ten (10)
5 years shall result in the termination of the lease as to the
6 undeveloped parcels, which parcels will revert to Lessor. If the
7 performance by Lessee of any of its obligations or undertakings
8 under this agreement is interrupted or delayed by any occurrence
9 not occasioned by the conduct of either party to this agreement,
10 whether that occurrence is an act of God or public enemy, or
11 whether that occurrence is caused by war, riot, storm, earthquake,
12 or other natural forces, or by the acts of anyone not party to this
13 agreement, then the time limits of this Lease shall be extended for
14 whatever period of time after the occurrence is reasonably
15 necessary to remedy the effects of that occurrence. If Lessor shall
16 fail to pay any sum of money required to be paid by Lessor
17 hereunder, or shall fail to perform any other act or affirmative
18 covenant to be performed by Lessor pursuant to the terms of this
19 Lease, and such failure shall continue for thirty (30) days after
20 written notice thereof to Lessor, then Lessee may, but shall not be
21 obligated to, perform any such affirmative covenant, or make any
22 such payment, as Lessor's agent, and the full amount of the cost
23 and expense entailed, or of the payment so made, shall immediately
24 be owing by Lessor to Lessee, and Lessee shall have the right to
25 deduct the amount thereof, together with interest at the highest

1 rate allowed by law from the date of payment, from the rentals then
2 due or thereafter coming due hereunder. The option given in this
3 paragraph is for the sole protection of Lessee, and its existence
4 shall not release Lessor from the obligation to perform any of the
5 covenants provided to be performed by Lessor, or deprive Lessee of
6 any legal or equitable rights which it may have by reason of any
7 such default by Lessor.

8 3. Notices. Any notice or demand to be given to or served
9 upon either the Lessor or the Lessee in connection with this Lease
10 shall be in writing and shall be deemed to have been sufficiently
11 given or served for all purposes by being sent by certified mail,
12 postage prepaid, return receipt requested, addressed to such party
13 at its post office address specified above or at such other post
14 office address as such party may from time to time designate in
15 writing to the other party, or by being delivered personally to any
16 officer of such party within the Territory of Guam, and any such
17 notice or demand shall be deemed conclusively to have been given or
18 served on the date indicated on the return receipt or upon the date
19 of such personal delivery.

20 4. Article and Paragraph Headings. The article and paragraph
21 headings in this Lease are inserted only for convenience and
22 reference and shall in no way define, limit, or describe the scope
23 or intent of any provisions of this Lease.

24 5. Neither Lessor nor Lessee Deemed Drafter. All provisions
25 of this Lease have been negotiated by Lessor and Lessee at "arm's

1 length" and with full representation of their respective legal
2 counsel and Lessor and Lessee agree that neither party shall be
3 deemed to be the drafter of this Lease and further than in the
4 event that this Lease is ever construed by a court of law, such
5 court shall not construe this Lease or any provisions of this Lease
6 against either party as the drafter of the Lease.

7 6. Successors and Assigns. All the terms, covenants, and
8 conditions of this Lease shall inure to the benefit of and be
9 binding upon the Lessor's successors and assigns and the Lessee's
10 successors and permitted assigns to the same extent as said terms,
11 covenants, and conditions inure to the benefit of and are binding
12 upon the Lessor and the Lessee, respectively. Subject to the
13 provisions of Article II § 8, this Lease may have multiple,
14 simultaneous successors on individual parcels and the parties agree
15 to sign necessary documents as requested by Lessee within fifteen
16 (15) days of Lessee's request to sever this Lease into multiple
17 leases; all the terms and conditions of any severed leases shall be
18 identical to the terms and provisions herein.

19 7. Consent. Where the consent or approval of the Lessor or
20 Lessee is required by any provision of this lease, all such ap-
21 provals or consents shall be in writing and shall not be un-
22 reasonably withheld or delayed.

23 8. Governing Law. This Lease shall be governed and con-
24 strued under the laws of the Territory of Guam.

25 9. Amendment. This Lease may only be amended in writing

1 executed by both Lessor and Lessee.

2 10. Nonwaiver. Waiver by either party of any breach by the
3 other shall not operate to extinguish the term, covenant, or con-
4 dition of any other term, covenant, or condition of this agreement.

5 11. Certifications Approvals and Signatures. Either party
6 shall, within ten (10) days after a request in writing from the
7 other, furnish a written statement, duly acknowledged, (i)
8 certifying that this Lease is unmodified and in full force and
9 effect (or if modified, stating the nature of such modification and
10 certifying that this Lease, as so modified, is in full force and
11 effect) and the date to which rent and any charges are paid in
12 advance, if any, and (ii) acknowledging that there are not, to the
13 certifying party's knowledge, any uncured defaults on the part of
14 either party hereunder or specifying such defaults, if any, as are
15 claimed to exist. Any such statement may be conclusively relied
16 upon by the receiving party or any third person. Any and all
17 certifications, approvals, amendments, changes or statements which
18 are provided for in this Lease to be signed or delivered or entered
19 into by either party shall, if by Lessor, be executed by Lessor's
20 General Manager or by any other representative who is specifically
21 authorized by Lessor's board of directors, and if by Lessee, be
22 executed by Lessee's managing general partner. All certifications
23 and documents so executed by either party shall be binding upon
24 such party.

25 12. Relationship of the Parties. It is understood the rental

1 arrangement set forth above is intended to create an economic
2 result essentially similar to the result which would be created of
3 Lessee and Lessor were parties to a joint venture. However, it is
4 further understood that the rental arrangement as set forth above
5 shall be deemed to be rent only and that the relationship between
6 Lessor and Lessee is that of landlord and tenant and not of joint
7 ventures and is not a relationship in the nature of partnership
8 insofar as the obligations and liabilities of Lessee and Lessor to
9 third parties is concerned.

10 13. Legislative Approval. It is required by applicable law
11 that this Lease be approved or confirmed by the Guam Legislature,
12 and the parties shall cooperate in submitting this Lease for
13 approval and in using their best efforts and good faith to obtain
14 such approval as promptly as reasonably possible. Since legisla-
15 tive approval is required then notwithstanding any other provisions
16 herein contained or in the master plan or other document to be
17 submitted pursuant hereto, at the option of Lessee the term of this
18 Lease shall not be deemed to have commenced until such date as
19 legislative approval is obtained. Lessee may at its option defer
20 any, all, or some of the performance required by it hereunder until
21 any necessary legislative approval is obtained. Provided, however,
22 that prior to the date legislative approval is obtained, Lessee
23 may, at its sole risk and sole expense, enter upon and make any
24 investigations and tests it may deem necessary or appropriate for
25 its contemplated development of the property and Lessee may, at its

1 option, submit master plan, sublease, and any other documents which
2 may be required hereunder for Lessor's approval. In the event
3 Lessee chooses to submit such documents, then the time periods
4 required for approval hereunder shall commence as of the date of
5 submission of such documents. In the event any required
6 legislative approval is not obtained within a reasonable period,
7 notwithstanding the efforts of the parties, then Lessee, in its
8 sole discretion and at its sole option, may upon not less than
9 ninety (90) days prior written notice to Lessor elect to cancel
10 this Lease without penalty.

11 14. Annual Certification. The Governor and the authority
12 shall annually certify to the Legislature that the Lease is
13 compliance with all applicable federal and territorial laws, rules
14 and regulations relating to the use of the Park, any changes to the
15 principals or shareholders of Cabras Island Developers, and that
16 none of the principals or shareholders of Cabras Island Developers
17 have been convicted of a crime involving moral turpitude.

18 15. Financial Review. The Governor shall retain a financial
19 consultant as soon as practicable after the effective date of this
20 Act to review the provisions of the Lease as set out in Exhibit B
21 to ensure that its financial terms and conditions are fair to the
22 Lessee and the Authority. Within sixty (60) days after the
23 effective date of this Act, the financial consultant shall advise
24 the Authority whether the Lease is satisfactory in its financial
25 terms and conditions. If it is not, then such consultant shall

1 submit to the Legislature, through the Authority, recommended
2 changes to the Lease. The Legislature may approve, disapprove or
3 further amend any such recommended amendments within forty-five
4 (45) days from the date of their filing with the Legislature. If
5 the Legislature fails to take action thereon within such period,
6 the Lease shall be deemed amended as recommended, and the Lease, as
7 so amended, shall be deemed in final form, which final form shall
8 be submitted to the Attorney General.

9 16. Attorney General's and Governor's Review. The Attorney
10 General shall thereafter have thirty (30) days to review the Lease
11 and approve it as to substance and form, after which the Lease
12 shall be submitted to the Governor, who shall have thirty (30) days
13 thereafter to execute it.

14 17. Lessee's Execution. The Lessee shall have thirty (30)
15 days after the Governor's execution of the Lease to also execute
16 it. The Lessee's failure to do so in such period shall make the
17 Lease void and of no further force or effect.

18 IN WITNESS WHEREOF the parties hereto have executed these
19 presents on the day and year first above written.

20 LESSOR:

21
22 PORT AUTHORITY OF GUAM
23

24
25
26 By: _____
27 PHILLIP J. FLORES
28 Chairman of the Board
29

30 and
31

By: _____
DAVID B. TYDINGCO
General Manager

APPROVED AS TO FORM:
LUJAN & SUKOLA
Legal Counsel for the
Port Authority of Guam

By: _____
ANITA A. SUKOLA

LESSEE

CABRAS ISLAND DEVELOPERS
By CABRAS ISLAND DEVELOPMENT
CORP., Its General Partner

By: _____

APPROVED:

By: _____
JOSEPH F. ADA
Governor of Guam

APPROVED AS TO FORM:

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By: ATTORNEY GENERAL OF GUAM

ATTEST:

By: FRANK F. BLAS
Lt. Governor of Guam

21.124

TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

Introduced

AUG 27 '91

Bill No. 475 (COR)

Introduced by:

J. P. Aguon *[Signature]*

AN ACT AUTHORIZING A LEASE BETWEEN THE PORT
AUTHORITY OF GUAM AND CABRAS ISLAND DEVELOPERS OF
THE CABRAS ISLAND INDUSTRIAL PARK.

1 LEGISLATIVE FINDINGS. The Legislature finds that there is a need
2 for the development of an industrial park near Guam's Commercial Port
3 facility. Warehousing space on Guam is in short supply because of the
4 spectacular and unanticipated growth of Guam's economy, with the
5 shortage of such space being particularly acute in the Port area, thereby
6 contributing substantially to the serious cargo-handling problems that
7 are presently causing such constriction in Port activity. The Legislature
8 notes that the Port Authority of Guam is required by its Master Plan to
9 relocate approximately 200,000 square feet of existing warehouse space
10 in order to regain the use of crucially needed wharf space for container
11 off-loading and handling. This need is critical since the annual tonnage
12 handled by the Port is expected to double by the year 2000 to 2,500,000
13 revenue tons per year. The Legislature also finds that construction
14 conditions at the proposed site for the planned industrial park are
15 formidable in that the site is virtually solid rock and all utilities and
16 access must be constructed to make the site suitable for industrial park
17 use. The Legislature therefore finds that in order to finance the
18 construction of this needed infrastructure and of the needed industrial
19 and warehouse buildings, it will be necessary to lease the entire area to

1 a private developer for design, construction and management. Such
2 privatization of the industrial park is a desirable alternative to the
3 government of Guam assuming the financial burden of completing the
4 project both because public funds will not be spent on the project and
5 because substantial taxes will be generated from the developer. A well
6 designed and maintained industrial park will be a valuable asset to the
7 people of Guam in terms of increased employment opportunities,
8 improved cargo handling, reduced container-type traffic on major
9 streets, improved appearance of the Port, and an improved environment
10 for Port-related business activities. Ownership of the park and all its
11 improvements will pass to the people of Guam at the end of the lease
12 term. The Legislature therefore recommends that the site be leased to a
13 private developer and that the developer be allowed to build and
14 manage the park in such a way as to reasonably recoup its investment.

15 **LEGISLATIVE INTENT.** The Legislature intends that the Cabras
16 industrial park be developed for Port-related activities and warehouses
17 only, and that the land and the facilities of the Park will belong and
18 continue to belong to the people of Guam; now, therefore,

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

20 **Section 1. Lease of Industrial Park.** With the written
21 approval of the Governor, the Port Authority of Guam (the "Authority")
22 shall lease the Authority's industrial park (the "Park") to Cabras Island
23 Developers (the "Lessee"), the legal description of the Park to be based
24 on a map (the "Map") certified and approved by the Chief of Cadastry
25 and the Chief of Planning duly recorded at the office of the Recorder,

1 Department of Land Management.

2 **Section 2. Description of Park.** The Map shall designate as
3 the Park the following described portions of Parcels 1, 2, 3 and 4, Cabras
4 Island, Municipality of Piti, (which parcels consist of portions of Basic
5 Lots Nos. 265, 266, and 268) containing an aggregate area of
6 approximately sixty-five (65) acres, as such parcels are shown on
7 NAUFAC Drawings Nos. 7063799 and 7063800, being Land Management
8 Drawing No. E4-82T158 consisting of two (2) sheets:

9 All of Parcel 1 except (i) the "cooling water channel" and all
10 property lying east and or north of the cooling channel, and (ii) Route No.
11 11A, a public highway right-of-way of a width of 100 feet, as said Route
12 11A is currently located within Parcel 1;

13 All of that portion of Parcel 2 lying to the south of Parcel 1,
14 consisting of that portion of Parcel 2 lying to the east of a straight line
15 drawn from the southwest corner of Parcel 1 to the northwest corner of
16 Parcel 4;

17 All of Parcel 3;

18 All of that portion of Parcel 4 lying to the south of the northwest
19 portion of Parcel 3, consisting of that portion of Parcel 4 lying to the
20 east of a straight line created by extending the westerly boundary of
21 Parcel 1 through Parcel 4 from a north to south direction.

22 **Section 3. Conditions to approval.** The approval of the
23 lease of the Park as directed in Section 1 of this Act (the "Lease") is
24 subject to the following conditions, which conditions shall prevail over
25 any provisions in the Lease to the contrary:

1 **(a) Subleases.** The Lessee may sublease portions of the Park
2 on an unrestricted basis so long as all users of the Park confine their
3 activities to Port-related activities only. Local businesses owned at
4 least fifty-one percent (51%) by United States citizens or resident aliens
5 shall be given priority by the Lessee in establishing businesses within
6 the Park. The board of directors of the Authority shall have the right to
7 review the Park's subleases, uses, tenants and general activities on an
8 annual basis to determine whether the requirements of this section are
9 being complied with.

10 **(b) Annual certification.** The Governor and the Authority shall
11 annually certify to the Legislature that the Lease is in compliance with
12 all applicable federal and territorial laws, rules and regulations relating
13 to the use of the Park.

14 **(c) Infrastructure.** The Lessee must construct infrastructure
15 at the Park costing no less than a minimum of \$28,000,000, including site
16 preparation, filling, grading, a sewer system, a storm drainage system, a
17 water distribution system, a power distribution system, roads, curbs and
18 gutters, street lighting, landscaping and associated facilities. The Lessee
19 shall prepare and submit to the Authority for its approval a proposed
20 master plan for the development of the Park, including a construction
21 and development schedule.

22 **(d) Term of Lease.** The term of the Lease or any extension
23 shall be for no more than a total period of fifty (50) years as mandated
24 by P. L. 15-6.

25 **(e) Phases of project.** In accordance with the master plan to

1 be approved by the Authority, the construction of the Park will consist of
2 a minimum of two (2) phases. The Lessee will commence construction of
3 the infrastructure within twelve (12) months following completion of
4 quarrying operations on the site by Hawaiian Rock Products, necessary
5 pipeline relocation by the Authority, and issuance of all necessary
6 government approvals. The Lessee shall within twenty-four (24) months
7 commence construction of the first five hundred thousand (500,000)
8 square feet of buildings to accommodate existing Port requirements and
9 current demand for warehousing. After the foregoing first phase, the
10 succeeding phase(s) will be subject to market demand, to site
11 availability, to the approval process and to the master plan as approved
12 by the Authority, but the entire Park project shall be completed within
13 ten (10) years from the effective date of the Lease. Failure to complete
14 the succeeding phase(s) within the ten (10) years shall result in the
15 termination of the Lease as to the undeveloped parcels, which parcels
16 will revert to the Port Authority of Guam.

17 (f) **Form of Lease.** The Attorney General of Guam is directed to
18 incorporate the conditions of this Act in a final version of the Lease in
19 such a manner as to facilitate its enforcement. The Governor shall hire a
20 financial consultant to review the provisions of the Lease to ensure that
21 its financial terms and conditions are beneficial to both the Lessee and
22 the Authority. The Attorney General shall have thirty (30) days from the
23 effective date of this Act to complete a final version of the Lease
24 incorporating all the conditions of this Act and to approve it as to
25 substance and form. Upon receipt of the Lease in the final form from the

1 Attorney General, the Governor shall have thirty (30) days thereafter in
2 which to execute it. The Lessee shall have thirty (30) days following the
3 Governor's execution of the final version of the Lease to also execute it,
4 and the Lessee's failure to do so in such period shall make the Lease void
5 and of no further force or effect.

6 (g) **Other parties.** Should the Lessee fail to comply with the
7 time of execution requirements of this Act, the Authority shall have the
8 right to negotiate with and enter into a lease with other private
9 developers; provided, (i) that the negotiations leading up to, and the
10 terms and conditions of, such lease are consistent with government of
11 Guam procurement procedures, and (ii) that such lease is subject to the
12 same terms and conditions as are provided in this Act.

13 **Section 4. Severability.** If any provision of this Act or the
14 application thereof to any person or circumstance is held invalid, such
15 invalidity shall not affect the other provisions or applications of this Act
16 which can be given effect without the invalid provision or application
17 and to this end the provisions of this Act are severable.