



OFFICE OF THE GOVERNOR
TERRITORY OF GUAM

P.L. 22-163

January 18, 1995

The Honorable Don Parkinson
Speaker, 23rd Guam Legislature
Agana, Guam

95 FEB - 1 PM 5:08

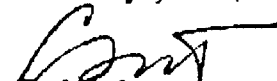
Dear Mr. Speaker,

The Gutierrez-Bordallo administration is totally committed to insuring that the best quality health care delivery services are available to the people of Guam. As stated in our Way Forward plan, we seek to improve existing health care services and we will spare no efforts to enhance them by encouraging and assisting cooperative efforts between the public and private sector providers. In this vein, I am signing Bill No. 1189 into law this date as Public Law 22-163.

This initiative will open the door to cooperative and joint efforts between the various public sectors of our community and the Doctors' Clinic, which plans to build a regional medical center to include ambulatory and inpatient care facilities, an imaging center, and a medical campus. The ambulatory and inpatient care will compliment the services available at the Guam Memorial Hospital and the imaging center will provide the latest in diagnostic technology. Most importantly, the medical campus will establish Guam as medical teaching center of the Pacific providing nurses, technologists, and other specialties in the health care area to Guam, as well as to our neighbors in the Pacific Basin. All combined, this center will establish Guam as a premier and complete medical center of the Pacific.

It is because of the importance of Section 1 of this measure that I sign it into law. However, I must inform you that Section 2 of the bill only authorized me to take action. Because the existing lease does not expire for another 15 years, I feel that there is adequate time to pursue a complete review of the matter.

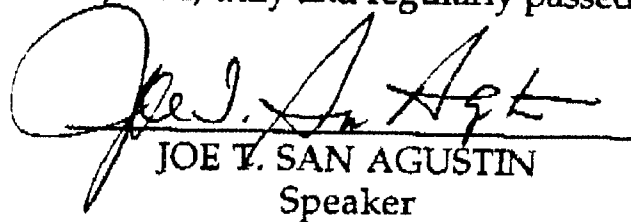
Sincerely yours,


Carl T.C. Gutierrez
Governor of Guam

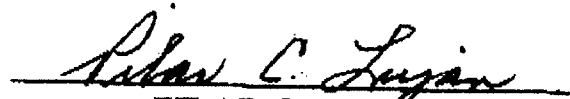
TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR


This is to certify that Bill No. 1189 (LS), "AN ACT TO AUTHORIZE THE GOVERNOR OF GUAM TO LEASE GOVERNMENT LAND TO THE DOCTORS' CLINIC, AND TO EXTEND THE TERM OF A LEASE IN AGAÑA," was on the 9th day of December, 1994, duly and regularly passed.


JOE T. SAN AGUSTIN
Speaker


Attested:


PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 29th day of December
1994, at 4:15 o'clock p.M.


Assistant Staff Officer
Governor's Office

APPROVED:


CARL T.C. GUTIERREZ
Governor of Guam

Date: 1-18-95 3:15pm

Public Law No. 22-163

ARTICLE III OF THE CONSTITUTION OF GUAM

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

Bill No. 1189

As amended by the principal author,
as substituted by the Committee on
Housing and Community Development,
and as further substituted on the floor.

Introduced by:

E. D. Reyes
T. S. Nelson
T. C. Ada
J. P. Aguon
E. P. Arriola
M. Z. Bordallo
H. D. Dierking
C. T. C. Gutierrez
P. C. Lujan
V. C. Pangelinan
D. Parkinson
J. T. San Agustin
F. E. Santos
D. L. G. Shimizu
J. G. Bamba
A. C. Blaz
D. F. Brooks
F. P. Camacho
M. D. A. Manibusan
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO AUTHORIZE THE GOVERNOR OF GUAM
TO LEASE GOVERNMENT LAND TO THE DOCTORS'
CLINIC, AND TO EXTEND THE TERM OF A LEASE IN
AGAÑA.

1

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

1 **Section 1. Governor authorized to negotiate a lease.** The Governor of
2 Guam is hereby authorized to negotiate to lease for up to fifty (50) years not
3 more than forty (40) acres of government of Guam land now owned or later
4 acquired to the Doctors' Clinic, for the purpose of constructing and operating
5 a Regional Medical Campus to include medical, training, and teaching
6 facilities to serve the people of Guam and the region. Such lease shall be
7 subject to statutory approval prior to execution. No development on such
8 land to be so leased shall be permitted until the lease has been approved as
9 required by law. Nothing in this Act shall obligate the Legislature to approve
10 any lease so negotiated by the Governor nor bind the Legislature to any terms
11 or conditions of any such proposed lease.

12 **Section 2. Extension of Agaña lease.** The Governor of Guam, on the
13 terms and conditions of this section, is authorized to extend the lease entered
14 into by the government of Guam on June 18, 1958, and recorded at the office
15 of the Recorder, Guam, under Instrument No. 34813 (the "Lease"). The Lease
16 covers Lot No. 1, Block No. 5, Agaña, containing an area of 6020.7 square
17 meters, as shown on that survey similarly recorded on April 22, 1949, under
18 Instrument No. 20083. On execution of the extension, the term of the Lease
19 shall be fifty (50) years from the date of the extension. The rent shall be
20 established at fair market value as determined by the average of two (2)
21 appraisals obtained by the parties to the Lease from real property appraisers
22 licensed to do business in Guam. The Lease may provide for periodic
23 escalation of the rent to reflect the fair market value at the time that the
24 escalation takes place. The property covered by the Lease may be used for
25 any legal purpose, subject to the zoning, building, and licensing laws of
26 Guam.

27

6,
12/9/94

Bill No. 1189

Resolution No. _____

(Date)

Question: _____

Senators	Aye	No	Declined to Vote	Required to vote	Excused from voting	ABSENT/OUT DURING ROLL CALL
Ada, Thomas C.	✓					
AGUON, John P.	✓					
ARRIOLA, Elizabeth P.	✓					
BAMBA, George J.	✓					
BLAZ, Anthony C.	✓					
BORDALLO, Madeleine Z.						✓
BROOKS, Doris F.	✓					
CAMACHO, Felix P.	✓					
DIERKING, Hermina D.	✓					
GUTIERREZ, Carl T. C.	✓					
LUJAN, Pilar C.	✓					
MANIBUSAN, M. D. A.	✓					
NELSON, Ted S.	✓					
PANGELINAN, Vicente C.			✓			
PARKINSON, Don			✓			
REYES, Edward D.	✓					
SAN AGUSTIN, Joe T.	✓					
SANTOS, Francis E.	✓					
SHIMIZU, David L. G.	✓					
TANAKA, Thomas V. C.	✓					
UNPINGCO, Antonio R.	✓					

TOTAL

18	2			1
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SENATOR DON PARKINSON
 424 W. O'Brien Drive - Julale Center 222
 AGANA, GUAM 96910
 22ND GUAM LEGISLATURE

MAJORITY LEADER and CHAIRPERSON, COMMITTEE ON ELECTRICAL POWER AND CONSUMER PROTECTION

December 19, 1994

Speaker Joe T. San Agustin
 Speaker, 22nd Guam Legislature
 Agana, Guam

RECEIVED
 OFFICE OF THE SPEAKER
 DATE: 12-19-94
 TIME: 8:16am
 RECD BY: San Agustin

Dear Speaker San Agustin:

As you know, bill 1189 passed the Legislature last week, but has not been transmitted to the Governor. Because of irregularities in the bill and its "passage", I am requesting that it not be transmitted to the Governor.

It appears the bill was illegally passed by the Guam Legislature, in violation of Section 2107 of title 2, Guam Code Annotated, a copy of which is attached. Section 2107 prohibits land leases or transfers from being considered by the legislature as riders to unrelated matters. Clearly, bill 1189 violates section 2 GCA 2107.

In addition to the procedural illegality of bill 1189, I am requesting this unusual action for two additional reasons. The first and most obvious reason is that extending the Bohn lease of Government of Guam land in Agana where the post office is sitting for another fifty years serves no conceivable public purpose. If Mr. Bohn wants to build an office building, that is commendable; however he should lease or purchase privately owned land just like any other developer. To give him government land for his building is unfair to all the other developers who have to go out into the private marketplace to purchase or lease land for their projects.

An additional important concern is Section 1 of Bill 1189, permitting the Governor to begin negotiations for a lease of Government land for use as a regional medical campus. This section is extremely important to improve medical care on Guam. It is an example of how the Government and the private sector can work together to improve peoples life on Guam. However, the inclusion by Senator Nelson of the Bohn lease rider on the bill could throw the legality of the negotiations on the Medical Campus into disarray because of the apparent violation of 2 GCA 2107. We cannot permit this to happen.

For these reasons, I propose that you not transmit bill 1189 to the Governor, and that either bill 1189 be taken back to 2nd reading to be corrected, or that a new, clean bill be introduced containing only Section 1 of Bill 1189, for passage at the first possible opportunity.

Sincerely,


 Senator Don Parkinson



Twenty-Second Guam Legislature

155 Hesler Street
Agaña, Guam USA 96910

Tel: (671) 472-3461

Fax: (671) 477-1715

December 20, 1994

LEGAL OFFICE
ACKNOWLEDGEMENT RECEIPT

Received By Trini
Time 1:15
Date Dec. 20

MEMORANDUM

TO: Honorable Edward D. Reyes, Chairman,
Committee on Housing & Community Development,

FROM: Andrew M. Gayle, Esq.
Legislative Counsel.

SUBJECT: Effect of adjournment on pending legislation of the Twenty-
Second Guam Legislature.

You have asked what happens to bills passed by the Legislature after it adjourns *sine die* (without setting a time for another meeting or session). §1423i of the Organic Act states in part:

"§1423i. **Approval of Bills.** Every bill passed by the legislature shall, before it becomes a law, be entered upon the journal and presented to the Governor. If he approves it, he shall sign it, but if not he shall, except as hereinafter provided, return it, with his objections, to the legislature within ten days (Sundays excepted) after it shall have been presented to him. If he does not return it within such period, it shall be a law in like manner as if he had signed it, unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the Governor


within thirty days after it shall have been presented to him; otherwise it shall not be a law....."(Emphasis added.)

The Governor has thirty days from the time a bill is presented to him to sign a bill into law once the Legislature adjourns *sine die* if the time limit on considering a bill has not yet expired, i.e., ten days (excluding Sunday) have not already elapsed before the *sine die* adjournment. If he does not sign the bill within thirty days, he pocket vetoes the bill.

Once a bill is pocket vetoed, the legislature cannot override it since it has already adjourned. The next Legislature must introduce a new bill, have public hearings and pass it on the floor for the Governor's signature for it to become a law.

I hope this has been helpful.

Very truly yours,


for ANDREW M. GAYLE

AMG:kcq



Twenty-Second Guam Legislature

155 Hesler Street
Agaña, Guam USA 96910

Tel: (671) 472-3461

Fax: (671) 477-1715

December 20, 1994

Handwritten notes:
12/20/94
1:15 PM

TO: Honorable Joe T. San Agustin, Speaker

FROM: Andrew M. Gayle, Esq.,
Legislative Counsel.

SUBJECT: §10.05 Reconsideration (Motion) of the Standing Rules.

Question presented:

Since the Legislature recessed and did not adjourn, on December 9, 1994 after Third Reading, can the Legislature, when it reconvenes, entertain a motion to reconsider one of the bills passed on Third Reading?

Opinion:

Yes.

Discussion:

On December 9, 1994 after voting on the Third Reading File and passing all the bills, the motion was made and carried to recess until December 27, 1994. According to **Mason's Manual** "The basic distinction between adjournment and a recess is that an adjournment terminates a meeting, while a recess is only an interruption or break in a meeting. After an adjournment a meeting begins with the procedure of opening a new meeting. After a recess the business of procedure of a meeting takes up at the point it was interrupted." (Section 214, **Mason's Manual of Legislative Procedure**)

§10.05 of the Standing Rules states:

"§10.05. Any member may on the **day** on which a vote has been taken on any question:

- (1) Make a motion to reconsider a vote on *that* legislative day; or

(2) Make a motion to reconsider a vote on the following legislative day.

Thirteen (13) affirmative votes shall be required to pass a motion to reconsider a vote on the same day the vote was taken *or* thirteen (13) on the following legislative day.

The reconsideration of the vote must be acted upon by the Legislature either on the legislative day upon which the vote was taken, or on the next legislative day. No vote may be reconsidered on the last day of the session.

After debate and discussion of the motion to reconsider, if the motion passes, the matter to be reconsidered shall be placed on the voting file for final action."

Since the Legislature **recessed**, the legislative day continues until the session is **adjourned**. The next time the Legislature meets, it will still be the same legislative day as when the votes on Third Reading were taken. Thus, Bill No. 1189, about which a dispute has arisen can still be discussed if (i) it has **not** been transmitted to the Governor, and (ii) a motion to reconsider the vote on it passes. Transmittal of a bill takes place when the Speaker and Legislative Secretary both certify it—there is no time limit as to when it must be transmitted.

Conclusion:

Although Bill No. 1189 passed in Third Reading, it has not yet been transmitted to the Governor, the Legislature can be called back into session on December 27th and reconsider the vote on Bill No. 1189.

I hope this answers your question. Should you need further assistance, please call this office.

for 
ANDREW M. GAYLE

AMG/kcq



Twenty-Second Guam Legislature

155 Hesler Street
Agaña, Guam USA 96910

Tel: (671) 472-3461

Fax: (671) 477-1715

December 21, 1994

RECEIVED
OFFICE OF THE SPEAKER
DATE: 12/21/94
TIME: 3:15 PM
RECD BY: [Signature]

MEMORANDUM

TO: Honorable Joe T. San Agustin,
Speaker,

FROM: Andrew M. Gayle, Esq.,
Legislative Counsel.

SUBJECT: Judicial review of Guam statutes.

You have recently inquired as to whether a Guam court would set aside a Guam statute although it had been certified by you, as Speaker and the Legislative Secretary as the true and correct bill as passed by the Legislature, because it violated §2107 of Title 2, Guam Code Annotated.

Generally, laws are presumed to have been passed with deliberation. State ex rel Stearns County v. Klasen, 143 NW 984. The Legislature will be presumed to have done each act required by the constitution in the passage of a statute, when it does not affirmatively appear in the journal that it failed to do so. Re Drainage Dist. 26 Idaho 311, 143 P 299.

Rules controlling legislative procedure are usually formulated by legislative bodies themselves, and the observance of such rules is a matter that is entirely subject to legislative control and discretion, and is **not** subject to review by the courts. St. Louis & S. F. R. Co. v. Gill, 54 Ark 101, 15 SW 18, affd 156 US 649, 39 L Ed 567, 15 S Ct 484.

However, various state constitutions prescribe rules to be observed by their legislatures in the enactment of laws. Guam has no constitution apart

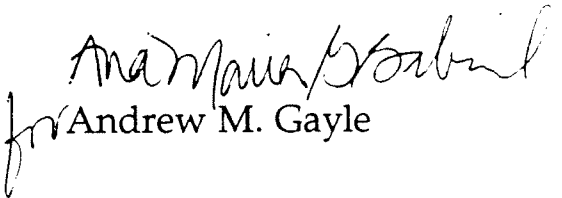
from the Organic Act which contains no provision equivalent to §2107. With respect to constitutional provisions on legislative procedures, most courts find that there must be compliance therewith **without** discretion on the part of the legislature. Bull v. King, 205 Minn 427, 286 NW 311. However, some courts have regarded certain of these constitutional provisions as merely directory in nature so that a failure to comply therewith does **not** render the enactment invalid. Adams v. Clark 36 Colo 65, 85 P 642.

Thus, in Guam, without a constitutional provision but only a local statute amendable at will by the Legislature, it is my belief that a Guam court would probably find the enactment of Bill No. 1189 even if in violation of §2107, not invalid. However, this is by no means conclusive and a court could easily go the other way and declare the statute void for failure to comply with §2107.

Accordingly, in my opinion, you would be well advised to withhold transmission of Bill No. 1189 to the Governor until the Legislature has had an opportunity to reconsider the bill, if it so chooses, because of the failure to comply with §2107.

I hope this answers your query, should you require further assistance, please call this office.

Very truly yours,


for Andrew M. Gayle



SENATOR JOE T. SAN AGUSTIN (D)
SPEAKER

Office of the Speaker
TWENTY-SECOND GUAM LEGISLATURE
155 Hesler St.
Agana, Guam U.S.A. 96910
Tel: (671) 477-8527/9120 • Fax: (671) 477-5570

December 22, 1994

Senator Don Parkinson
Majority Leader
22nd Guam Legislature
155 Hesler St.
Agana, Guam 96910

Dear Sen. Parkinson,

This in reference to the concerns your have raised relating to Bill 1189. At my request, the Legislative Counsel has provided me with two legal opinions each addressing the basic issues at hand. One deals with the legality of Bill 1189 given the provisions of §2107 and the other addresses the Speaker's and the Legislature's options in these circumstances.

With respect to the legality of Bill 1189, the Legislative Counsel has found that the legality of Bill 1189 would likely be upheld in the courts. However, the Counsel notes that, "this is by no means conclusive and a court could easily go the other way and declare the statute void for failure to comply with §2107."

As to the issue of the disposition of the Bill 1189 itself, the Legislative Counsel notes, in a separate opinion, that there does exist the option for the bill to be reconsidered. This is due to the fact that the bill has not been transmitted and the Legislature is technically, not adjourned, but in recess. §10.05 of the Standing Rules provides for reconsideration of any vote on the same Legislative day in which the vote has been taken. When the Legislature reconvenes from recess on December 27 1994, this option will technically exist provided that Bill 1189 has not been transmitted. If the bill is transmitted, then this becomes a moot issue and any concerns regarding Bill 1189, would have to be addressed through other avenues.

As every member of this body is aware, it has long been the practice for measures approved by the Legislature to be transmitted with due dispatch. Such is the case with the other 21 bills which were passed at the same time as Bill 1189 and which are now awaiting the Governor's action. Indeed, members have often urged

Sen. Don Parkinson
December 22, 1994
Page 2

speedy transmittals for particular measures in which they were interested. Whether this occurs when the Legislature happens to be in recess or adjourned, has never been a material consideration.

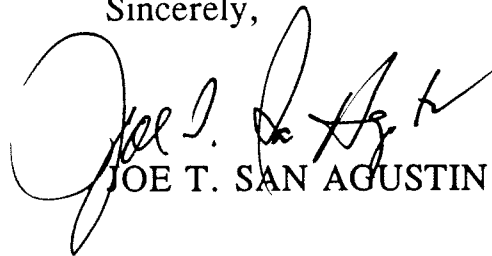
Although the timing of such transmittals is a matter of discretion, I am reluctant, as Speaker, to exercise such authority arbitrarily when the Legislature has already expressed its will on a particular measure. Indeed, utilization of such discretionary authority in this manner, may be construed as tantamount to frustrating or denying the will of the membership. I am sure you will agree with me that this would not well serve the interests of the institution.

In your letter of December 19, 1994, you have though raised a number of concerns which, although debatable, do have legitimate bearing in these circumstances. It is in light of such considerations, and out of regard for your position as Majority Leader, that I have decided to accede to your request to defer transmittal of Bill 1189. I believe it is appropriate to allow the membership the opportunity, in accordance with §10.05 of the Standing Rules, to reconsider their approval of Bill 1189. They will have this opportunity when the Legislature reconvenes on December 27, 1994.

Please note that §10.05 is very specific as to how the body may reconsider its vote in this matter. If the membership chooses not to do so before the Legislature next adjourns, then I will have no choice but to carry out the expressed will of the body and transmit the measure.

Thank you for bringing your concerns to my attention.

Sincerely,



JOE T. SAN AGUSTIN

cc: All Senators
All Media

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

Introduced

NOV 29 '94

Bill No. 1189(19)

Introduced by:

E.D. Reyes *R*

AN ACT TO AUTHORIZE THE GOVERNOR OF GUAM TO
LEASE A PORTION OF LOT NO. 3470, CHALAN PAGO, TO
THE DOCTORS' CLINIC.

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

1 **SECTION 1. Legislative statement.** The Doctors' Clinic, a joint venture of the
2 former Family Medical Clinic situated in Tamuning, Guam and Straub Clinic and
3 Hospital, Inc. of Honolulu, Hawaii, desires to build and operate a state-of-the-art medical
4 facility in Guam. The company expects to attract medical specialists not presently
5 residing or practicing in Guam, advancing the quality and delivery of health care
6 services. Planned also to be a teaching and training facility, the facility would offer
7 programs for local students in allied health fields, resident and visiting medical specialist
8 to conduct specialty consultation and diagnostic and therapeutic procedures, and would
9 provide physicians to serve as university affiliated preceptors for medical students,
10 residents, and fellows in various stages of training. The Legislature finds the company's
11 objectives are consistent with the health care needs and desires of the people of Guam.
12 The Doctors' Clinic needs forty (40) acres for its facility and the Legislature, in
13 furtherance of territorial health care goals, is willing to make available a portion of Lot
14 No. 5173-1-R2NEW, Tamuning for this purpose.

15 At the same time, the Legislature is aware of the people of Guam's scrutiny of
16 proposed uses of public lands. This adverse reaction is due in part to land-intensive
17 development projects such as hotels, condominiums, golf courses and other visitor
18 amenities which over-burdened the island's infrastructure and superstructure, causing

1 hardship on people who know Guam as their homeland. The Legislature finds this
2 growing reluctance to make public lands available for private ventures a strong indicator
3 for careful investment in projects which directly benefit the people of Guam. Such an
4 investment is the proposed medical facility.

5 In fact, this joint venture is already underway with Straub physicians periodically
6 coming to Guam providing diagnostic, treatment, and follow-up services. Judging by the
7 reaction of affected patients and their families who no longer have to make personal
8 sacrifices financially and travel off-island, the provision of health care services has
9 improved tremendously. The people of Guam can only look forward to better care when
10 they will be afforded a modern medical treatment and training facility. Also, the
11 Legislature desires to provide financial incentives to The Doctors' Clinic in order to
12 maintain the viability of the enterprise in providing state-of-the-art services.

13 Recognizing the need to upgrade and consolidate health care facilities to improve
14 future provision of health care in the territory, the government of Guam, in Public 22-18,
15 set aside land for health facilities. That property is Lot No. 3470, Chalan Pago,
16 containing 117.94 acres. It is the Legislature's intent that the government of Guam now
17 facilitate use of that property by leasing a portion of said Lot to The Doctors' Clinic.

18 **SECTION 2. Governor authorized to lease.** The Governor of Guam is hereby
19 authorized to lease for fifty (50) years not more than forty (40) acres of Lot No. 3470,
20 Chalan Pago to The Doctors' Clinic, a Guam corporation, for the purpose of constructing
21 and operating a medical, teaching and training facility to serve the people of Guam and
22 the world.

23 **SECTION 3. Appraisals, survey, mapping and registration.** The Doctors'
24 Clinic shall have the property to be leased herein appraised by two independent
25 appraisers licensed to do business in Guam. The average of the two appraisals shall be
26 utilized as the value for the basis of the lease authorized herein. The Doctors' Clinic
27 shall have the property to be leased herein surveyed, mapped and registered. All costs

1 for appraisals, survey, mapping and registration shall be for the account of The Doctors'
2 Clinic.

3 **SECTION 4. Terms and conditions.** The land lease authorized herein shall be
4 governed by the following terms and conditions:

5 a. the initial lease rate shall be five percent (5%) of the average fair market
6 value of the property as established in Section 3 above, with a five percent (5%)
7 escalation every ten (10) years;

8 b. rent shall begin after the first five (5) years of operation;

9 c. The Doctors' Clinic shall be eligible for the Qualifying Certificate
10 program of the Guam Economic Development Authority;

11 d. the parties agree that there shall be no transfer or conveyance, in any
12 manner or form, of the land leased herein;

13 e. the parties agree to incorporate in the lease document and applicable
14 deeds reversion clauses to the effect that any conveyance or transfer of the leased
15 land or change in use of the medical facility, or any part thereof, will nullify the
16 lease and the leased land and improvements shall be reverted to the government of
17 Guam;

18 f. nothing contained herein shall be construed to prevent or prohibit The
19 Doctors' Clinic from improving or having improved the property or building,
20 erecting or constructing structures approved in accordance with building and
21 zoning code of Guam;

22 g. the parties agree to ensure that any improvement(s) on the leased portion
23 of the property functions as a state-of-the-art medical clinic and related services;

24 h. at least fifty-one percent (51%) controlling interest in The Doctors' Clinic
25 shall be maintained by Guam residents;

26 I. The Doctors' Clinic, for the purpose of funding the project, may use the
27 leased land for equity financing upon review and consent of the government of
28 Guam;

1 j. the parties agree to incorporate in the lease authorized herein all other
2 usual provisions and conditions; and

3 j. the parties agree that all other legal tenants on said property shall not be
4 evicted.