



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

JUN 06 2002

The Honorable Joanne M. S. Brown  
Legislative Secretary  
I Mina'Bente Sais na Liheslaturan Guåhan  
Twenty-Sixth Guam Legislature  
Suite 200  
130 Aspinal Street  
Hagåtña, Guam 96910

Dear Legislative Secretary Brown:

Enclosed please find Substitute Bill No. 295 (COR) "AN ACT DISCONTINUING THE USE OF TIYAN PROPERTIES UNDER THE JURISDICTION OF GIAA AS OFFICE SPACE, TO REPEAL THE TIYAN TRUST, TO PREVENT GEDCA FROM PROCEEDING WITH THE RENTAL OR LEASING OF PROPERTIES, AND FOR OTHER PURPOSES" which was enacted into law without the signature of the Governor. This legislation is now designated as **Public Law No. 26-100**.

Very truly yours,

Carl T. C. Gutierrez  
I Maga'Lahen Guåhan  
Governor of Guam

Attachments: Memorandum from Phillip Tydingco, Esq.  
Legal Counsel for GIAA  
original bill for vetoed legislation or  
copy of bill for signed or overridden legislation  
and legislation enacted without signature

cc: The Honorable Antonio R. Unpingco  
Speaker

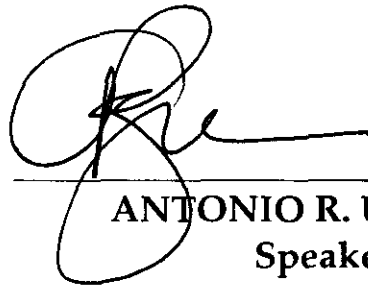
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Date	6/6/02

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MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN  
2002 (SECOND) Regular Session

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


This is to certify that Substitute Bill No. 295 (COR), "AN ACT DISCONTINUING THE USE OF TIYAN PROPERTIES UNDER THE JURISDICTION OF GIAA AS OFFICE SPACE, TO REPEAL THE TIYAN TRUST, TO PREVENT GEDCA FROM PROCEEDING WITH THE RENTAL OR LEASING OF PROPERTIES, AND FOR OTHER PURPOSES," was on the 21<sup>st</sup> day of May, 2002, duly and regularly passed.



---

ANTONIO R. UNPINGCO  
Speaker


Attested:



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Lawrence F. Kasperbauer  
Vice-Speaker/Acting Legislative Secretary

-----  
This Act was received by I Maga'lahaen Guåhan this 24<sup>th</sup> day of May, 2002,  
at 3:15 o'clock P.M.



---

Assistant Staff Officer  
Maga'lahaen's Office

APPROVED:

---

CARL T. C. GUTIERREZ  
I Maga'lahaen Guåhan

Date: June 6, 2002

Public Law No. 26-100

Became law without the signature of  
I Maga'lahaen Guåhan, the Governor  
of Guam

**MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN**  
**2002 (SECOND) Regular Session**

**Bill No. 295 (COR)**

As substituted by the Committee  
on Rules, Governmental Operations,  
Federal, Foreign and General Affairs, and as  
further substituted and amended on the Floor.

Introduced by:

Mark Forbes  
A. R. Unpingco  
V. C. Pangelinan  
L. A. Leon Guerrero  
J. F. Ada  
T. C. Ada  
F. B. Aguon, Jr.  
J. M.S. Brown  
E. B. Calvo  
F. P. Camacho  
M. C. Charfauros  
L. F. Kasperbauer  
K. S. Moylan  
A. L.G. Santos  
J. T. Won Pat

**AN ACT DISCONTINUING THE USE OF TIYAN  
PROPERTIES UNDER THE JURISDICTION OF  
GIAA AS OFFICE SPACE, TO REPEAL THE TIYAN  
TRUST, TO PREVENT GEDCA FROM  
PROCEEDING WITH THE RENTAL OR LEASING  
OF PROPERTIES, AND FOR OTHER PURPOSES.**

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

2           **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
3 finds that the Federal Aviation Administration ("FAA") is requiring that  
4 government agencies currently utilizing office space at Tiyan that is under the

1 jurisdiction, or "footprint," of the Antonio B. Won Pat Guam International  
2 Airport Authority ("GIAA") pay fair market value rent for such space  
3 beginning October 1, 2002. *I Liheslaturan Guåhan* finds that if indeed fair  
4 market rent must be paid by this date, it is a more desirable economic  
5 outcome that such rental occur in the private rental market, as a means of  
6 stimulating desperately needed economic activity, rather than simply be paid  
7 to another government of Guam instrumentality. Furthermore, *I Liheslaturan*  
8 *Guåhan* finds that continued government occupation of such properties  
9 retards their economic potential and inhibits the ability of the government to  
10 provide economic justice to original landowner families in the area.

11 *I Liheslaturan Guåhan* finds that the original landowners, and/or their  
12 heirs, of Tiyan are deeply concerned about the Tiyan Trust. The provisions of  
13 the Act have *not* been implemented, causing tremendous confusion.  
14 Landowners are concerned that under current conditions, any attempt by the  
15 Guam Economic Development and Commerce Authority ("GEDCA"), or  
16 other government entity, to develop Tiyan property will convey no specific, or  
17 even general benefit to the original landowners and to their descendants.  
18 Landowners and/or their heirs wish to explore alternative means of assuring  
19 justice. Thus, original landowners and/or their heirs have expressed a strong  
20 desire to repeal the provisions of the Tiyan Trust, and to place a moratorium  
21 on any specific GEDCA activities to lease, rent or otherwise convey to any  
22 third party any rights with respect to property at Tiyan, pending full  
23 participation by the original landowners and/or their heirs in assuring a more  
24 equitable system to deal with their legitimate grievances and requirements for  
25 compensation in more tangible form, and/or direct return to original

1 landowners and/or their heirs for economic development wherever this can  
2 be accomplished.

3 Subsequent to the introduction of this Act, its public hearing and  
4 placement on the legislative agenda, *I Liheslaturan Guåhan* has learned to its  
5 dismay that GEDCA has proceeded with the execution of an agreement with a  
6 Master Tenant, known as A-L Pacific, LLC, notwithstanding, if not despite,  
7 GEDCA's participation in the public hearing, its awareness of concerns raised  
8 by original landowner families and the existence of this measure.

9 Numerous citations exist, making it clear that any agency or department  
10 of the government of Guam, and GEDCA in particular, may *not* dispose or  
11 otherwise convey property that has been conveyed to it by the Federal  
12 government, without obtaining the approval of *I Liheslaturan Guåhan*.  
13 Furthermore, it is clear, pursuant to the instrument of conveyance between  
14 the Navy and GEDCA, that the property at Tiyan was conveyed to GEDCA in  
15 the capacity of an agent of the government of Guam. In this Act, *I Liheslaturan*  
16 *Guåhan* denies and withholds its approval of the lease that may have been  
17 entered into between GEDCA and A-L Pacific, LLC. Such lease is  
18 disapproved, pursuant to Guam law. It is the intention of *I Liheslaturan*  
19 *Guåhan* that this Master Tenant agreement, instrument or contract be  
20 *immediately* rendered a nullity.

21 **Section 2. Discontinuance of Tiyan Use.** Beginning on  
22 October 1, 2002, no government agency other than GIAA shall utilize space  
23 for office or other purposes on Tiyan properties under the jurisdiction of  
24 GIAA, *except* to the extent that such office space may be required by the

1 Customs and Quarantine Agency and the Department of Agriculture, both for  
2 activities associated with operations at GIAA.

3 Provisions shall be made in the 2003 Annual Budget Act to appropriate  
4 funds needed to accommodate rentals that may be required pursuant to this  
5 Act. Government agencies shall be relocated to facilities owned and operated  
6 by the government of Guam where such is feasible. The provisions of this  
7 Section of this Act also apply in the case of Tiyan properties under the  
8 jurisdiction of GEDCA, the Department of Parks and Recreation ("DPR"), or  
9 its successor, and the Guam Housing and Urban Renewal Authority  
10 ("GHURA").

11 **Section 3. Exceptions.** The laboratories operated by the Guam  
12 Environmental Protection Agency ("GEPA") are *exempt* from the provisions of  
13 § 2 of this Act, *except* that provisions for the payment of fair market rental for  
14 such laboratory facilities shall be included in the Annual Budget Act for Fiscal  
15 Year 2003, and provided further that GEPA shall submit to the Speaker of *I*  
16 *Liheslaturan Guåhan*, within sixty (60) days of the effective date of this Act, a  
17 report detailing GEPA's long-term plans for the relocation of such laboratory  
18 facilities. In the interim, GEPA shall also make provisions for the leasing of  
19 the lot for its laboratories from the original landowners and/or their heirs.

20 **Section 4. GIAA Taskforce and Return of Tiyan Land to Original**  
21 **Landowners.** A taskforce is hereby established to include the General  
22 Manager of GIAA, the Director of the Guam Ancestral Lands Commission  
23 ("GALC"), the Administrator of the Chamorro Land Trust Commission  
24 ("CLTC") and the Director of the Department of Land Management ("DLM"),

1 or their respective successor agencies, and one (1) representative  
2 landowner/heir for each parcel of land under the jurisdiction of GIAA.

3 The General Manager of GIAA shall call the first meeting of the  
4 taskforce within ten (10) working days of the effective date of this Act. At the  
5 first meeting the taskforce shall elect a chairperson. The taskforce shall  
6 identify the real needs of GIAA for properties under their jurisdiction, and  
7 find alternative means of compensation for the original owners of properties  
8 strictly needed for airport-related operations, either through leases with  
9 original landowners, outright purchases, or value-for-value land exchanges.

10 The General Manager of GIAA and the Chairperson of the taskforce  
11 shall present to the Speaker of *I Liheslaturan Guåhan*, within thirty (30) days of  
12 the effective date of this Act, a report that shall identify *specifically* what Tiyan  
13 properties under the control of GIAA are required for strictly airport-related  
14 operations, including those used by the Customs and Quarantine Agency and  
15 the Department of Agriculture. The report shall also identify those Tiyan  
16 properties GIAA originally planned to lease for other purposes *not* specifically  
17 associated with GIAA operations.

18 Those Tiyan properties GIAA originally planned to lease for other  
19 purposes *not* specifically associated with GIAA operations shall be deemed  
20 excess to the needs of GIAA, and shall be conveyed to GALC for return to  
21 original landowners, pursuant to the fast-track methodology detailed herein.

22 As a portion of the taskforce report to the Speaker of *I Liheslaturan*  
23 *Guåhan*, CLTC, DLM and GALC shall jointly present to the Speaker of *I*  
24 *Liheslaturan Guåhan*, within thirty (30) days of the effective date of this Act, a

1 report that shall identify suitable properties under the jurisdiction of the  
2 respective Commissions and outside of Tiyan that can be conveyed to original  
3 landowners in exchange for properties in Tiyan that cannot be otherwise  
4 returned to such landowners.

5 The Tiyan properties under the control of GEDCA, or its predecessor or  
6 successor; DPR, or its successor agency; and GHURA shall be *immediately*  
7 conveyed by deed to GALC *immediately* upon the effective date of this Act.  
8 GALC shall facilitate the process of transfer of deeds to DLM on a fast-track  
9 priority basis, to be completed within sixty (60) days of the effective date of  
10 this Act.

11 The Department of Land Management shall present to the Speaker of *I*  
12 *Liheslaturan Guåhan*, within sixty (60) days of the effective date of this Act, a  
13 report that details a land plat of the properties conveyed by GEDCA; DPR, or  
14 its successor agency; and GHURA. These lots shall be returned by deed to the  
15 original landowners, or their estates, within thirty (30) days of legislative  
16 approval of the land plat. Such land plat shall include proper easements,  
17 where needed, including those reserved by the U.S. Government, as defined  
18 by the quitclaim deed to GEDCA, DPR and GHURA, taking into  
19 consideration zoning ordinances and the present major established roads. All  
20 successive transferees shall assume the obligations imposed upon GEDCA (or  
21 its predecessor) by the quitclaim deeds by the U.S. Government, *specifically* to  
22 use the property for commercial and light industrial development, and other  
23 obligations.

24 Original landowners and/or their heirs of the lots provided for in this



1 Section shall have rights to enter the premises of their lots *immediately* after  
2 the effective date of this Act; *provided*, that the use of the premises for the  
3 Department of Education (“DOE”) and community sports and related  
4 activities will continue uninterrupted for a *maximum* of one hundred eighty  
5 (180) days. DPR, DLM and the CLTC shall submit a report to *I Liheslaturan*  
6 *Guåhan* within thirty (30) days of the enactment of this Act identifying  
7 alternative sites for the relocation of the current sports fields and gymnasium  
8 activities, and all best efforts shall be made to identify *alternate* facilities at the  
9 earliest possible time.

10 **Section 5. Repeal of Tiyan Trust.** Article 12 of Chapter 68,  
11 Division 2 of Title 21 of the Guam Code Annotated, relative to the Tiyan  
12 Trust, is hereby *repealed*.

13 **Section 6. Disapproval of Lease.** GEDCA shall *not* lease, rent or  
14 enter into any agreement for the lease, rent or property management of any  
15 properties within the area known as Tiyan, which formerly comprised Naval  
16 Air Station, Agaña (Brewer Field), and have been conveyed, through any  
17 mechanism, to GEDCA, or its predecessor, inclusive of any master-tenant  
18 agreement. GEDCA is directed to cease and desist all activities related to the  
19 implementation of such agreement, contract, memorandum of understanding  
20 or instrument.

21 **Section 7. *Liheslaturan Guåhan* Prior Approval.** Should GEDCA,  
22 contrary to the provisions of this Act, enter into any agreement, contract,  
23 memorandum of understanding or any other instrument with a property  
24 manager, master-tenant or any similar entity at any point *prior* to the effective

1 date of this Act, such agreement, contract, memorandum of understanding or  
2 instrument shall *require I Liheslaturan Guåhan's* approval, and in the absence of  
3 such is a nullity.

4 **Section 8. Creation of Original Landowners Fund.**

5 Notwithstanding any other provision of law, rules or regulation, GEDCA  
6 shall transfer the balance of the Landowner's Recovery Fund, as well as the  
7 balance of any monies deposited or designated for the Tiyan Trust to the  
8 Department of Land Management or its successor agency. Such funds shall  
9 be deposited into a separate, original landowners account to be called the  
10 "*Original Landowners Fund*" which is herein created, for the purpose of hiring  
11 or retaining attorneys *specifically* to represent original landowners and to  
12 protect the interest of the original landowners in lands under the control of  
13 government of Guam agencies and autonomous agencies, *specifically* inclusive  
14 of GEDCA.

LAW OFFICES OF  
**BROOKS LYNCH & TYDINGCO**

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DAVID RIVERA

May 31, 2002

VIA FACSIMILE: 472-7561

**MEMORANDUM**

TO: Ms. Mary Louise Wheeler, Esq.  
Legal Counsel to the Governor  
Office of the Governor

FROM: Mr. Phillip J. Tydingco, Esq.  
Legal Counsel  
Guam International Airport Authority (GIAA)

**SUBJECT: Bill 295 re: Government Agencies & Original Land Owners of Tiyan**

Dear Attorney Wheeler:

The Board of Directors and management of the Guam International Airport Authority ("Airport") only recently received Bill 295 (the one officially transmitted to the Governor of Guam) within the past two days. Due to the short time constraints, I was directed to transmit the Airport's recommendation and response regarding Bill 295 as soon as practical to your offices for consideration by the Honorable Carl T.C. Gutierrez, Governor of Guam.

The Airport and its Board, management, staff and employees empathize with the original landowners or heirs of Tiyan properties that were condemned by the U.S. Navy for defense purposes and subsequently released and transferred to the government of Guam and other agencies for public purposes which included the Airport. However, the Airport respectfully request that Governor Gutierrez veto Bill 295 for the following reasons. Or alternatively, have these same reasons or shortcomings of Bill 295 be made known to all concern.

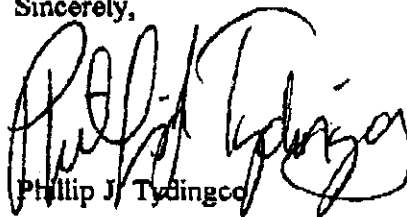
1. The Federal Aviation Administration ("FAA") reasonably granted the Airport and actually the government of Guam a two (2) year grace period from collecting and demanding fair market value rent for the use and lease of the Airport's Tiyan properties by the many government of Guam agencies located thereon. This was based in part on an agreement and understanding that the government of Guam would begin as soon as possible to include fair market value rent in these different agencies' budgets. This action by the Guam Legislature may not be perceived as being in good faith by the federal authorities.

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Fax #	472-3524				

2. Because the Airport is also required under both federal and local law to develop itself to be economically viable and generate its own revenues for its operations, Bill 295 forces the Airport into a conflict of interest by being both a member of, and the initial leader of a Task Force to return Tiyan land to its original landowners and to "find alternative means of compensation for the original land owners of properties strictly needed for airport-related operations through leases with original landowners, outright purchases, or value to value land exchange." See Section 4 of Bill 295.
3. The Airport additionally believes that the provision in Section 4 of Bill 295 which states that "those Tiyan properties GIAA originally planned to lease for other purposes *not* specifically associated with GIAA operations shall be deemed excess to the needs of GIAA, and shall be conveyed to GALC for return to original landowners, . . ." will result in the Airport violating the chief legal restrictions of its federal grant agreements and federal rules and regulations which prohibit revenue diversion. The Airport has this same restriction in its bond covenants. This may again be perceived as bad faith actions on the part of the government of Guam and affect the Airport's ability to obtain federal funding and assistance in the very near future.
4. The Airport is also alarmed that Bill 295 may cause the Airport and the government of Guam to violate certain obligations required under the public benefit transfer law, quit clam deed and other agreements entered into with the U.S. Navy with regard to the Tiyan properties.
5. Finally, Bill 295 unreasonably requires many different parties with divergent and competing, if not adversarial interests, including within the groups of heirs of original landowners, to come together and essentially develop a land-use plan for the Airport's properties which usurps the functions and duties of the Airport's management and its Board within deadlines and time lines that are also unreasonably short.

Therefore, based on the forgoing and on behalf of the Airport, we are requesting that Governor Gutierrez veto Bill 295.

Sincerely,



Phillip J. Tydingco

cc: GIAA Executive Manager  
GIAA Board Chairperson

MASTER GROUND LEASE

BETWEEN

GUAM ECONOMIC DEVELOPMENT AUTHORITY

AND

A-L PACIFIC, LLC

TIYAN

(THE FORMER NAVAL AIR STATION, AGANA)

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## MASTER GROUND LEASE

THIS MASTER GROUND LEASE ("**Lease**") is entered into as of May 1, 2002, by and between the GUAM ECONOMIC DEVELOPMENT AUTHORITY, a Guam public corporation ("**Landlord**") and A-L PACIFIC, LLC, a Delaware limited liability company ("**Tenant**") with reference to the facts set forth below.

### RECITALS

A. The United States of America ("**United States**"), acting through the Department of the Navy, conveyed to Landlord certain improved real property known as Tiyan ("**Tiyan Property**"), formerly Naval Air Station, Agana, pursuant to that certain quitclaim deed recorded on October 10, 2000 in the Office of the Recorder, Department of Land Management, Government of Guam, as Instrument No. 628091 ("**Quitclaim Deed**").

B. Landlord is entering into this lease in order to utilize the Tiyan Property in an effort to maximize income to the Tiyan Trust while at the same time enhancing and protecting the value of surrounding property, increasing economic opportunities in the area around the Tiyan Property, and improving the community's quality of life.

C. In furtherance of Landlord's goal, Landlord desires to have Tenant develop the Premises (as defined below) as a master planned mixed use development for occupancy by governmental agency tenants and by non-governmental commercial tenants for uses including, but not limited to, government, commercial office, medical, industrial, research and development, hotel and retail.

D. To further such development, Landlord desires to lease the Premises to Tenant on the terms and subject to the conditions of this Lease.

E. Tenant desires to Lease the Premises from Landlord on the terms and subject to the conditions of this Lease and desires to work with Landlord to assist Landlord in meeting its objectives for the Tiyan Property.

NOW, THEREFORE, in consideration of the covenants and agreements contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as set forth below.

### ARTICLE 1

#### PREMISES

1.1 Description of Premises. The "**Premises**" means the land described in **Exhibit A** attached hereto and any improvements thereon. Tenant shall have the right, subject to the provisions of **Section 1.5** hereof, to demolish any such improvements.

1.2 Demising of Premises. Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, on the terms and subject to the conditions of this Lease.

1.3 Quiet Enjoyment. Subject to Section 1.5, Landlord covenants and agrees that, so long as Landlord has not terminated this Lease in accordance with the terms of this Lease due to an uncured Event of Default by Tenant after applicable notice and cure periods, Tenant shall and may peacefully and quietly have, hold and enjoy the Premises without interference throughout the Term (as defined below).

1.4 Access. Landlord agrees, for the benefit of Tenant, its subtenants and their respective agents, employees, contractors, invitees, patrons, guests, licensees and permittees, that at all times during the Term it will not restrict in any way access to or ingress and egress to, from, and through the Premises. To the extent that such access is blocked by any third party (including, without limitation, the United States of America or any agency or arm thereof), Landlord shall cooperate with Tenant so as to enable Tenant to regain unfettered access.

1.5 Pre-existing Tenants. Tenant acknowledges that prior to the date hereof, Landlord has leased improvements on the Premises to various tenants ("**Pre-existing Tenants**"). A list of the Pre-existing Tenants is attached hereto as **Exhibit H**. Tenant further acknowledges and agrees that Landlord has reserved the right to, and may continue to lease, such already leased improvements and any additional improvements on the Premises to tenants during the Term provided that: (i) such tenants have month-to-month (and not longer-term) leases; and (ii) such tenancies will not interfere with Tenant's timely development of the Premises in accordance with the Master Development Plan (as defined in Section 3.1). Landlord shall provide Tenant with prior written notice of any such proposed lease of additional improvements and shall deliver to Tenant at least thirty (30) days prior to the execution thereof a copy of the proposed lease so that Tenant may determine whether such lease will interfere with development of the Premises in accordance with the then-current Master Development Plan. If, in the reasonable discretion of Tenant, such lease will interfere with such development, Tenant shall so notify Landlord in writing and such lease shall not be entered into by Landlord and in the event of any Pre-existing Tenant, such lease shall be terminated within sixty (60) days of such notice to Landlord. Landlord shall be solely responsible for causing the Pre-existing Tenants and any additional tenants who enter into leases with Landlord pursuant to this Section 1.5 to vacate their premises within sixty (60) days after Landlord receives written notice from Tenant requesting such vacation.

## ARTICLE 2

### TERM OF LEASE

2.1 Initial Term. The initial term of this Lease (“**Initial Term**”) shall commence on May 1, 2002 (“**Effective Date**”) and shall continue thereafter until the date which is the fiftieth (50<sup>th</sup>) anniversary of the Effective Date, unless earlier terminated as specifically provided in this Lease.

2.2 Options to Extend Initial Term. Landlord hereby grants to Tenant four (4) options (each a “**10 Year Option**”) to extend the term of this Lease for up to four (4) additional consecutive terms of ten (10) years each (the “**10 Year Extensions**”), together with a single option exercisable only if all of the 10 Year Options have been exercised (the “**9 Year Option**”; together with the 10 Year Options, collectively, the “**Options**”) to extend the extended term of this Lease for a final term of nine (9) years the (“**9 Year Extension**”). The 9 Year Extension and the 10 Year Extensions are collectively, the “**Extensions**”. All Extensions shall be on the same terms and conditions as set forth in this Lease except as otherwise provided herein. Each of the Options shall be exercised only by notice delivered to Landlord not later than six (6) months before the expiration of the Initial Term or the expiration of the immediately preceding Extension, as the case may be. If Tenant fails to deliver to Landlord notice of the exercise of an Option, such Option, and any succeeding Option(s), shall lapse, and there shall be no further right to extend the term of this Lease. “**Term**” as used herein shall mean with the Initial Term as extended by any Extension that has been effected as set forth in this Section 2.2.

2.3 Termination. If at any time during the Term (i) a revised draft Master Development Plan (as hereinafter defined) which includes the then next phase of development of the Premises has not been agreed to by Landlord and Tenant within eighteen (18) months after the last New Improvements Ground Lease (as hereinafter defined) for the then-current phase has been executed, extended for the reasonable period of any recession, economic downturn or market conditions which make it unusually difficult to enter into such leases on terms which make economic sense, or if (ii) no New Improvement Ground Leases (as hereinafter defined) are executed for a period of five (5) years, then either party may terminate this Lease by providing notice to the other in accordance with the provisions of this Lease. In addition, either Landlord or Tenant may terminate this Lease by providing notice to the other Party in accordance with the provisions of this Lease if any of the following do not occur within three (3) years from the date hereof: (A) Landlord and any other required governmental or quasi-governmental entities fail to enact the entitlements required for development pursuant to the Master Development Plan (as hereinafter defined), (B) Tenant is unable to obtain the permits and financing required for the construction and installation of the infrastructure deemed necessary for the development contemplated by the Master Development Plan, (C) a solution to any funding or infrastructure completion issues described in Section 3.4 hereof cannot be agreed upon by Landlord and Tenant, (D) Landlord has not been successful in causing Guam governmental agencies or departments to enter into subleases for the portion of the Premises which is to be developed as the first phase under the Master Development Plan, or (E) the Premises is for any reason including, without limitation, reasons relating to Hazardous Materials (as hereinafter defined) not developable in Tenant’s reasonable judgment.

## ARTICLE 3

### LANDLORD'S OBLIGATIONS RE DEVELOPMENT OF PREMISES

3.1 Entitlements and Subdivision. Landlord has represented to Tenant that approval by Landlord of the Master Development Plan ("**Master Development Plan**") (a very preliminary draft of which is attached as **Exhibit B** hereto) is the only entitlement or subdivision approval (other than building permits) required in order for Tenant to develop the Premises in a manner consistent with the Master Development Plan.

3.2 Insurance. Not later than the commencement of the Initial Term, each party shall obtain the insurance required in **Exhibit C** attached hereto and shall, throughout the Term, continuously maintain all such insurance and comply with the insurance provisions set forth in said **Exhibit C**.

3.3 Adoption of Master Development Plan. Tenant shall be responsible at its own cost for preparing the Master Development Plan, which shall include a phase by phase schedule. Tenant shall deliver to Landlord a revised draft of the Master Development Plan within nine (9) months from the date hereof. Landlord shall have forty-five (45) calendar days after receipt to approve or disapprove the revised Master Development Plan. If the revised Master Development Plan is disapproved, then Landlord shall indicate in writing the specific reasons for such disapproval and the specific ways in which the Plan is not acceptable. Tenant shall, within forty-five (45) calendar days from receipt of Landlord's written comments, revise and redeliver the Master Development Plan until it is approved by Landlord. After the first submittal and comment period, Landlord and Tenant shall each have only fifteen (15) calendar days after each submittal and comment in which to, as to Landlord, approve or disapprove with specific comments the next revision of the Master Development Plan, and as to Tenant, prepare and resubmit the revised Master Development Plan. If Landlord does not indicate its disapproval of any submittal within the specified time period, then it shall be deemed approved by Landlord, including all zoning, subdivision and other entitlement approvals required to implement the Master Development Plan.

To the extent that Tenant desires to amend the Master Development Plan after it has been approved by Landlord, then Tenant shall submit any amendment to such Plan to Landlord for its approval, and the approval process shall follow the steps set forth in this Section for approval of the Master Development Plan. The term "**Master Development Plan**", as used in this Lease, shall mean the Master Development Plan as amended from time to time in accordance with the provisions of this Section 3.3.

3.4 Infrastructure Funding. Landlord shall use commercially reasonable efforts, at its sole cost and expense, to assist Tenant in its efforts to secure United States of America funding for the construction of infrastructure development needed to develop the Premises in the manner and on the timetable set forth in the Master Development Plan. In the event that (i) Tenant cannot secure funding needed to complete such infrastructure development, or (ii) the timely completion of required infrastructure is, in the reasonable determination of Tenant, unlikely to occur, then Landlord and Tenant shall confer to address the problem and agree on a solution which enables the infrastructure development to occur in a mutually satisfactory manner and on a

mutually satisfactory timetable. To the extent that some or all of the funding can be obtained from funding provided by the United States of America to Landlord and may be assigned to Tenant, then Landlord shall use commercially reasonable efforts to obtain all necessary approvals so that it can assign such funds to Tenant so that Tenant can perform the work so funded. If Landlord and Tenant cannot agree on such solution, Tenant and Landlord shall each have the right to terminate this Lease in accordance with Section 2.3.

3.5 Easements. Landlord acknowledges that, in connection with the design, development and operation of the Premises, various access easements, right-of-way easements, utility easements, reciprocal easements, licenses and similar interests and rights in the Premises (and/or adjacent property owned by Landlord) may be necessary or reasonably convenient. Landlord hereby agrees that it shall execute such documents and instruments, and take such other actions as are within Landlord's authority, as may be reasonably necessary to timely grant such rights and interests as may be requested by Tenant from time to time in connection with the development of the Premises.

3.6 Landlord's Marketing Obligations. Landlord shall use commercially reasonable efforts to secure subleases for the Premises with the government tenants listed on **Exhibit D** hereto, and shown as tenants for Phase I of the Master Development Plan, for the building parcels located on the Premises ("**Building Lots**") and contemplated for development in Phase I. Such subleases shall be on economic terms acceptable to Tenant in its sole and absolute discretion.

3.7 Tenant Performance. Tenant shall (subject to extension for force majeure and delays, if any, in Landlord's performance) meet the performance schedule attached as **Exhibit E** hereto during the first twenty-four (24) months of this Lease.

## ARTICLE 4

### USE OF THE PREMISES

4.1 Permitted Use. Tenant may use the Premises throughout the Term for any lawful purpose that is consistent with the Master Development Plan and any and all amendments or modifications thereof ("**Permitted Use**").

4.2 New Improvement Ground Leases. As part of Tenant's Permitted Use, Tenant shall have the right to enter into one or more new lease agreements in substantially the form of **Exhibit F** attached hereto (each a "**New Improvement Ground Lease**") for any one or more or all of the Building Lots together with the right in conjunction with a New Improvement Ground Lease to enter into one or more development management agreements in a form and substance acceptable to Tenant in its sole and absolute discretion (each a "**Development Management Agreement**"). Tenant may assign the right to enter into a New Improvement Ground Lease to any party in Tenant's sole discretion if such assignment would enhance Tenant's ability to obtain cost-effective financing. Upon execution of a New Improvement Ground Lease by Landlord and Tenant or its assignee, this Lease shall terminate with respect to that portion of the Premises described in and leased pursuant to the New Improvement Ground Lease. Thereafter, with respect to such portion of the Premises, (i) the leasehold relationship of Landlord and Tenant and

the parties' rights, duties and obligations as landlord and tenant shall be governed by the New Improvement Ground Lease and (ii) this Lease shall be null and void and of no further force of effect as to such portion of the Premises only. Notwithstanding anything herein to the contrary, no Building Lot may be developed unless a New Improvement Ground Lease has been executed with respect thereto.

4.3 Rent Under New Improvement Ground Leases. Within sixty (60) days after the date of this Agreement, Landlord and Tenant shall cause an appraisal to be performed of the Premises. To perform such appraisal, each Party shall designate an MAI Appraiser who shall appraise the Premises. The average of the two appraisals shall be deemed to be the value of the Premises. The appraisals shall designate the value for each parcel within the Premises currently or then intended for development (as to each parcel, its "**Baseline Appraisal**"). Prior to execution of a New Improvement Ground Lease for a specific parcel, the above-mentioned appraisal process shall be employed to appraise such parcel for its intended use pursuant to such New Improvement Ground Lease (a "**Development Appraisal**"). The annual Minimum Ground Rent under such New Improvement Ground Lease shall be an amount equal to seven and one-half percent (7½%) of the Development Appraisal. Provided, however, that Minimum Ground Rent shall only be paid out of rent actually collected by Tenant from subtenants. Landlord acknowledges and agrees that unless rent is actually collected for a given calendar quarter during the Term, Tenant shall have no rental obligation whatsoever for such calendar quarter. If rent is abated or reduced for a subtenant, then Minimum Ground Rent shall be proportionately abated or reduced. Tenant shall use commercially reasonable efforts to collect rent from subtenants and to replace non-paying subtenants (if any) with paying subtenants.

4.4 Future Phases. Once Phase I of the Master Development Plan has been substantially developed, Tenant shall submit to Landlord a proposal or proposals for additional phases of development of the Premises for Landlord's reasonable approval. Landlord shall have forty-five (45) calendar days after receipt of each such submission to approve or disapprove it, provided, however, that Landlord shall not disapprove a submission to the extent that it is consistent with the Master Development Plan and contemplates a market rate of rent. If a submission is disapproved, Landlord shall indicate with specificity the reasons for such disapproval, and Tenant shall resubmit it in accordance herewith until approved. Landlord's failure to disapprove a submission within such time period shall be deemed to be its approval.

## ARTICLE 5

### RENT

5.1 Rent. "**Rent**" hereunder shall be the sum of One Dollar (\$1.00) per year, paid in advance for the full Initial Term or Extension, as applicable, upon execution of this Lease or exercise of the corresponding Option, as appropriate. Rent to be paid under each New Improvement Ground Lease shall be at the rate set forth therein, which the Parties contemplate will be at a market rate.

5.2 No Other Rental Obligation. Tenant's only rental obligation under this Lease is payment of Rent.

## ARTICLE 6

### OPERATING EXPENSES

Throughout the Term, for all of the Premises which is not subject to a New Improvement Ground Lease, Landlord shall timely pay, before delinquency, all Operating Expenses. "Operating Expenses" means any and all of the types of costs and expenses paid, incurred or payable by Landlord as of the date hereof in operating, owning, maintaining, managing, administrating, insuring, repairing, replacing or restoring of the Premises while the Premises are subject to this Lease, including, without limitation, all taxes levied upon or relating to the Premises. Operating Expenses shall not include costs incurred by Tenant which are in addition to (rather than in lieu of) costs currently being incurred by Landlord for the Premises.

## ARTICLE 7

### MAINTENANCE AND REPAIRS

Throughout the Term, for all of the Premises which is not subject to a New Improvements Ground Lease, Landlord shall maintain, repair and keep the Premises in a condition substantially comparable to the condition of the Premises as of the date hereof and in compliance with all applicable laws at Landlord's sole cost and expense. Landlord's obligation hereunder shall be interpreted broadly, and shall include paying such expenses for all of the Premises and all infrastructure improvements therein. Without limiting Tenant's other rights and remedies under this Lease for any breach or default of Landlord, in the event Landlord breaches its maintenance and repair obligations hereunder, Tenant shall have all rights available under applicable law with respect thereto, including, to the extent not prohibited under applicable law, the right to make such repairs itself and charge Landlord therefor. In the event Tenant exercises such right of repair, all charges to Landlord with respect thereto shall accrue interest at the rate of ten percent (10%) per annum until all such charges (and accrued interest) have been paid in full. Neither the requirement of such interest, nor any collection thereof, shall be deemed Tenant's waiver of Landlord's breach for failure to timely pay amounts required of Landlord as and when due.

## ARTICLE 8

### COMPLIANCE WITH LAW

Landlord and Tenant shall each perform each and all of their obligations under this Lease in conformance with the terms of this Lease and at all times in compliance with all applicable governmental laws, regulations, codes, standards and requirements including, but not limited to, all building code requirements of the Government of Guam (collectively, "Laws").

## ARTICLE 9

### DEFAULT

9.1 Event of Default. Should Tenant be in default in the performance of any of its covenants or agreements contained in this Lease and should such default of performance continue for more than thirty (30) days (except as otherwise provided in Section 9.3, below) after written notice thereof from Landlord to Tenant specifying the particulars of such default or breach of performance, should Tenant at any time breach any representation or warranty of Tenant under this Lease, then Landlord may treat the occurrence of either of the foregoing events as a breach of this Lease ("**Event of Default**"), and in addition to any other rights or remedies of Landlord under this Lease, Landlord shall have the following rights:

9.1.1 The right to declare the Term ended and to reenter the Premises and take possession thereof;

9.1.2 The right without declaring this Lease ended to reenter the Premises;

9.1.3 The right, even though it may have reentered the Premises, to thereafter elect to terminate this Lease; or

9.1.4 Any other rights or remedies available to Landlord at law or in equity.

9.2 Reentry. If Landlord reenters the Premises under the provisions of Subsection 9.1.2 above, Landlord shall not be deemed to have terminated this Lease by any such reentry unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease. Tenant further covenants that the service by Landlord of any notice pursuant to the applicable unlawful detainer statutes and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease.



9.3 Extended Cure Period. Notwithstanding any other provisions of this Article 9, Landlord agrees that if the default complained of is of such a nature that the same cannot reasonably be cured within the thirty (30) day period described in Section 9.1 above, then such default shall be deemed to be cured if Tenant within such thirty (30) day period shall have commenced the curing thereof and shall continue thereafter to pursue such curing to completion within a reasonable period of time; provided, however, that as to the milestone actions set forth in the schedule to the Master Development Plan which are within the control of Tenant and which cannot be cured within a thirty (30) day period, such time for effecting a cure shall not exceed an additional period of six (6) months.

## ARTICLE 10

### DEFAULT BY LANDLORD

10.1 Landlord Default and Cure. Landlord shall be deemed to be in default under this Lease if: (a) Landlord fails to pay any amounts Landlord is required to pay pursuant to this Lease if such failure continues for a period of fifteen (15) days following the date first becoming due; and/or (b) if Landlord fails to perform any of its other obligations under this Lease within thirty (30) days after written notice by Tenant to Landlord specifying the nature of Landlord's default, provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion within a reasonable period of time; and/or (c) Landlord, at any time, breaches any representation or warranty of Landlord under this Lease. In the event of any such default by Landlord and/or any other event which, pursuant to the other terms of this Lease are stated to constitute a default by Landlord (with respect to such other events, the notice and cure period in this Section 10.1 shall not apply), Tenant shall have the right, exercisable at any time thereafter, to terminate this Lease (if but only if the breach by Landlord was material) and/or recover damages from Landlord and/or exercise any other rights or remedies available to Tenant at law or in equity with respect to such default by Landlord.

10.2 Tenant's Rights to Perform If Landlord Defaults. Tenant shall have the right to cure any default of Landlord which is not timely cured and to collect from Landlord all amounts spent or incurred in such cure with interest at the rate of ten percent (10%) per annum.

## ARTICLE 11

### DAMAGE TO OR DESTRUCTION OF THE PREMISES IMPROVEMENTS

Landlord and Tenant agree that in the event of damage to or destruction of any infrastructure improvements on the Premises including, without limitation, roads, power transmission lines and facilities, water and sewer lines and facilities, and other utility services, by earthquake, typhoon or any other cause, similar or dissimilar, insured or uninsured, Tenant may terminate this Lease if (i) insurance proceeds recovered in respect of any insured damage or destruction shall be insufficient to pay the entire cost of restoration, repair, replacement or rebuilding, and (ii) in the reasonable discretion of Tenant, the resulting damage is of such a degree as to materially interfere with Tenant's ability to develop the Premises in accordance with

the Master Development Plan and any and all amendments and modifications thereto. Tenant shall exercise its right to terminate within one (1) year from the date of the subject destruction otherwise Tenant's right to terminate this Lease as provided in this section shall have expired and shall be deemed as having been waived by Tenant.

## ARTICLE 12

### CONDEMNATION

12.1 Permanent Taking. If, at any time during the term of this Lease, there shall be a taking of the fee title to any portion of the Premises in condemnation proceedings or by any right of eminent domain, this Lease shall terminate on the date of such taking as to the portion so condemned.

12.2 Award. In the event of any such taking and termination of this Lease, the award or awards for such taking, less the costs of the determination and collection of the amount of the award or awards ("**Condemnation Proceeds**"), shall be distributed as follows:

12.2.1 Landlord shall first be entitled to receive and retain as its own property, and Tenant hereby assigns to Landlord, such portion of the Condemnation Proceeds as shall equal the fair market value of the Premises as encumbered by this Lease including any untaken portion of the Premises, exclusive of improvements that were not constructed at Landlord's sole cost and expense.

12.2.2 Tenant shall then be entitled to receive, and Landlord hereby assigns to Tenant, the balance of the Condemnation Proceeds, if any.

12.3 Temporary Taking. If, at any time during the Term, the whole or any part of the Premises, or of Tenant's leasehold estate under this Lease, shall be taken in condemnation proceedings or by any right of eminent domain for temporary use or occupancy (a "**temporary taking**") the foregoing provisions of this Article 12 shall not apply and, except only to the extent that Tenant or Landlord may be impaired or prevented from so doing as a result of the effect of such taking and/or pursuant to the order of the condemning authority, each Party shall perform and observe all of the other terms, covenants, conditions and obligations of this Lease upon the part of such Party to be performed and observed. In the event of any such temporary taking, Tenant shall be entitled to receive the entire amount of the Condemnation Proceeds made for such taking, whether paid by way of damages, rent or otherwise unless such period of temporary use or occupancy shall extend beyond the termination of this Lease, in which case the Condemnation Proceeds shall be apportioned between Landlord and Tenant as of the date of termination of this Lease.

12.4 Separate Award. If the order or decree in any condemnation or similar proceeding shall fail separately to state the amount to be awarded to Landlord and the amount to be awarded to Tenant under the foregoing provisions of this Article 12, and if Landlord and Tenant cannot agree thereon within sixty (60) days after the final award or awards shall have been fixed and determined, any such dispute shall be determined in accordance with the provisions of Section 20.12 hereof.

12.5 Assignment of Condemnation Proceeds. If Tenant shall assign any Condemnation Proceeds to which it shall be entitled under the provisions of this Article 12, Landlord shall recognize such assignment and shall consent to the payment of the Condemnation Proceeds to such assignee as its interest may appear.

12.6 Evidence. Tenant shall have the right to participate in any condemnation proceeding for the purpose of protecting its rights under this Lease, and in connection therewith, without limitation, introduce evidence independently of Landlord to establish the value of or damage to any property, rights or interests.

## ARTICLE 13

### ASSIGNMENT AND SUBLETTING

13.1 Subletting. Tenant has the right, throughout the Term, with the consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed, to, at any time, sublet the Premises or any Building Lots or any other portion of the Premises (and/or any improvements thereon in which Tenant holds an interest) to any subtenant provided that the term of any such sublease (including any options to extend the same) shall not have a term extending beyond the then remaining Term, and provided that the subtenant's proposed use of the subleased premises is lawful.

13.2 Assignment. In addition to Tenant's right to assign the right to enter into New Improvement Ground Leases and Development Management Agreements, as set forth in Section 4.2, Tenant shall have the right to assign its interests under this Lease (a) to an Affiliate without Landlord's prior written consent or (b) to a non-Affiliate assignee provided Tenant obtains Landlord's prior written consent with respect to such assignment to a non-Affiliate, which consent Landlord shall not unreasonably withhold, condition or delay so long as it is reasonable to believe that such proposed assignee is capable of developing the Premises in accordance with the then-current Master Development Plan. Provided that Tenant's assignee expressly assumes Tenant's obligations under this Lease in a written instrument signed by such assignee, Tenant's assignment of its interest under this Lease hereunder shall operate to release the assigning Tenant from its future duties, obligations and liabilities under this Lease.

13.3 Affiliate. "**Affiliate**" means any entity that, either directly or indirectly, controls, is controlled by, or is under common control with Tenant or with either of the members of Tenant or any Affiliate of any such member. For purposes of this Section 13.3, "**control**" means the direct or indirect ownership of more than twenty-five percent (25%) of the voting securities of an entity or possession of the right to vote more than twenty-five percent (25%) of the voting interest in the ordinary course of the entity's affairs. "**Affiliate**" also includes any parent or

affiliate or subsidiary of Tenant or either of its members, any entity into which Tenant or either of its members is merged or any entity which purchases or otherwise obtains all or substantially all of the assets or voting securities or rights of Tenant.

## ARTICLE 14

### REPRESENTATIONS AND WARRANTIES OF LANDLORD

Landlord represents and warrants as set forth below, which representations shall be true as of the date of this Lease and shall survive the Term of this Lease.

14.1 Title. Landlord is the sole fee title owner to the Premises, no other person or entity has any right or interest in the Premises and no other person or entity other than Tenant and parties acquiring rights from Tenant will have any rights to possession of the Premises during the Term. If Landlord is terminated as an entity, any successor-in-interest as fee owner of the Premises shall take title subject to this Lease.

14.2 Authority. The execution and delivery of this Lease has been duly authorized and approved by all requisite action and the consummation of the transactions contemplated hereby will be duly authorized and approved by all requisite action of Landlord, and no other authorizations or approvals will be necessary in order to enable Landlord to enter into or to comply with the terms of this Lease. This Lease, upon execution and delivery hereof by Landlord, will have been duly entered into by Landlord, and will constitute legal, valid and binding obligations of Landlord. Neither this Lease nor anything provided to be done under this Lease violates or shall violate any contract, document, understanding, agreement or instrument to which Landlord is a party or by which it is bound.

14.3 Compliance With Law. As of the date hereof, the Premises is in compliance with all applicable Laws. Landlord has complied with all provisions of the National Environmental Protection Act.

14.4 Hazardous Materials. There are no underground tanks on the Premises. As of the date hereof, the Premises is not in violation of any federal, territorial or local Laws, ordinances or regulations relating to the environmental conditions on, under or about the Premises including, but not limited to, soil and groundwater conditions, including, without limitation, the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq., the Federal Water Pollution Prevention and Control Act, 33 U.S.C. Sections 1251 et seq., the Oil Pollution Act of 1990, Pub. L. 101-380 , August 18, 1990, as said Laws may have been supplemented or amended through the date hereof and any other federal or local law, statute, rule, regulation or ordinance currently in effect, promulgated or adopted which regulates or proscribes the use, storage, disposal, presence, cleanup, transportation or release or threatened release into the environment of Hazardous Materials (collectively, "**Environmental Laws**"). Landlord warrants that as of the date hereof there are no Hazardous Materials or ordnances on the Premises other than groundwater contamination with trichloroethylene ("TCEs") which does not affect the portion of

the Premises to be developed in the first phase of development under the Master Development Plan, and that to the extent that there were or are Hazardous Materials or ordnances present, used on, treated, stored, released of disposed of on the Premises they have been or will be fully removed or remediated by the United States Navy ("USN") to industrial usage standards in accordance with all applicable Laws, ordinances or regulations and as required for the development and financing of the development contemplated in the Master Development Plan, pursuant to the U.S. Navy Plan for development of the Tiyan Property as set forth in the Quitclaim Deed. The TCEs referred to above are currently being removed by the USN using a pump and treat system. As used herein, the term "**Hazardous Materials**" means any hazardous chemical, hazardous or toxic substance, hazardous waste, hazardous material, contamination, pollution or similar term, giving those terms the broadest meaning as accorded by any Environmental Law and by statutes, regulations and court decisions in the jurisdiction in which the Property is located, as said Environmental Laws, statutes, regulations and court decisions have been supplemented or amended to date. Without limiting the generality of the foregoing, "**Hazardous Materials**" shall include (i) asbestos and asbestos containing materials; (ii) polychlorinated biphenyls; (iii) any substance the presence of which is prohibited by any applicable governmental requirements; (iv) any petroleum-based products which are deemed hazardous by any Environmental Law; (v) underground storage tanks which are deemed hazardous by any Environmental Law; and (vi) any other substance (including liquid, solid, semi-solid and gaseous substances and materials) which under any Environmental Law requires special handling, permitting by, or notification of any agency in its collection, storage, treatment, release, discharge, emission or disposal.

14.5 Quitclaim Deed. Landlord and the USN have each complied with and satisfied all requirements and obligations set forth in the Quitclaim Deed with respect to the Premises. There is nothing within the Quitclaim Deed which prevents, restricts or affects the ability to develop the Premises in accordance with the Master Development Plan.

## ARTICLE 15

### REPRESENTATIONS AND WARRANTIES OF TENANT

Tenant represents and warrants as set forth below, which representations shall be true as of the date of this Lease and shall survive the Term of this Lease.

15.1 Authority. The execution and delivery of this Lease has been duly authorized and approved by all requisite action and the consummation of the transactions contemplated hereby will be duly authorized and approved by all requisite action of Tenant, and no other authorizations or approvals will be necessary in order to enable Tenant to enter into or to comply with the terms of this Lease. This Lease, upon execution and delivery hereof by Tenant, will have been duly entered into by Tenant, and will constitute legal, valid and binding obligations of Tenant.

15.2 Hazardous Materials. Tenant shall not, treat, use, store, dispose, release, handle or otherwise manage Hazardous Materials on the Premises except (i) in accordance with applicable Environmental Laws in connection with any development, construction, operation, maintenance or repair of the Premises or (ii) in amounts allowed by applicable Environmental

Laws in connection with the operation of a Permitted Use. Tenant shall indemnify, protect, defend (with legal counsel acceptable to Landlord) and hold Landlord and Landlord's employees, members, directors, officers, agents and representatives harmless from and against any and all losses, claims, damages, costs and expenses of whatever nature relating to or arising out of a breach of Tenant's representations and warranties set forth in this Section 15.2, including, without limitation, all attorney's fees and costs incurred in connection therewith or incurred to enforce this indemnity. The covenants set forth in this Section 15.2 shall survive the termination of this Lease until such time as an action against Landlord is absolutely barred by the applicable statute of limitations.

## ARTICLE 16

### INDEMNIFICATION

Landlord agrees to and shall indemnify, protect, defend (with legal counsel acceptable to Tenant) and hold Tenant and Tenant's employees, members, directors, officers, Affiliates, subsidiaries, agents and representatives harmless from and against any and all losses, claims, demands, damages, costs and expenses of whatever nature relating to or arising out of a breach of Landlord's representations and warranties set forth in this Lease, including, without limitation, any claims relating to Hazardous Materials or ordnances, and any claims arising under, out of or pursuant to the Quitclaim Deed, including without limitation, all attorney's fees and costs incurred in connection therewith or incurred to enforce this indemnity. To the extent that Tenant gives notice to Landlord of any Hazardous Materials or ordnances or of any claim under the Quitclaim Deed, then Landlord shall, within two (2) business days assert all available claims against the USN pursuant to the Quitclaim Deed and shall thereafter diligently pursue enforcement of the USN's obligations under the Quitclaim Deed. The covenants contained in this Article 16 shall survive the termination of this Lease until such time as an action against Tenant is absolutely barred by the applicable statute of limitations.

## ARTICLE 17

### CERTIFICATES OF LANDLORD AND TENANT

Tenant and Landlord each agree, at any time and from time to time upon not less than thirty (30) days prior written notice in each instance, to execute and deliver a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the Lease is in full force and effect as modified and stating the modifications), and the dates to which the rent has been paid, and stating whether, to the actual knowledge of the Party executing the certificate, the other Party is in default in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease, and, if in default, specifying each such default, it being intended that any such statement delivered pursuant to this Article 17 may be relied upon by the other Party or any prospective purchaser of fee title to the Premises or any prospective mortgagee of the fee thereof.

ARTICLE 18

NOTICES

18.1 Generally. Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered personally, by facsimile (with a hard copy sent by recognized overnight courier service for next business day delivery), or by recognized overnight courier service for next business day delivery, addressed to the receiving party's address provided below:

If to Landlord:                      Guam Economic Development Authority  
Aturidad Inadilanton Ikunumiha Guahan  
ITC Building, Suite 511  
590 South Marine Drive  
Tamuning, Guam 96913  
Attn: Edward G. Untalan, Administrator  
Telephone: 647-4332  
Facsimile: 649-4146  
Email: [egu007@aol.com](mailto:egu007@aol.com)

with a copy to:                      Calvo and Clark, LLP  
655 South Marine Drive, Suite 202  
Tamuning, Guam 96913  
Attn: Arthur B. Clark  
Telephone: 646-9355  
Facsimile: 646-9403  
Email: [abc@calvoandclark.com](mailto:abc@calvoandclark.com)

If to Tenant:                          c/o Lowe Enterprises Commercial Group  
11777 San Vicente Blvd., Suite 900  
Los Angeles, CA 90049  
Attn: Richard G. Newman, Jr.  
Telephone: (310) 820-6661  
Facsimile: (310) 207-1132  
Email: [rnewman@loweenterprises.com](mailto:rnewman@loweenterprises.com)

with a copy to:                   Lowe Enterprises Commercial Group  
18401 Von Karman Ave., Suite 500  
Irvine, CA 02612  
Attn: Stan Wendzel  
Telephone: (949) 955-4323  
Facsimile: (949) 724-1444  
Email: [swendzel@loweenterprises.com](mailto:swendzel@loweenterprises.com)

and a copy to:                   AECOM Enterprises  
515 So. Flower St., Ninth Floor  
Los Angeles, CA 90017-2201  
Attn: Debra Lambeck, Esq.  
Telephone: (213) 593-8185  
Facsimile: (213) 593-8174  
Email: [Debra.Lambeck@DMJMHarris.com](mailto:Debra.Lambeck@DMJMHarris.com)

and a copy to:                   Lowe Enterprises Commercial Group  
11777 San Vicente Blvd., Suite 900  
Los Angeles, CA 90049  
Attn: Corporate Counsel  
Telephone: (310) 820-6661  
Facsimile: (310) 207-1132

and a copy to:                   Luce, Forward, Hamilton & Scripps LLP  
777 S. Figueroa, Suite 3600  
Los Angeles, CA 90017  
Attn: Timi A. Hallem, Esq.  
Telephone: (213) 892-4903  
Facsimile: (213) 892-7731  
Email: [thallem@luce.com](mailto:thallem@luce.com)

Delivery of any such notice or demand so made shall be deemed completed on the first business day following the day of actual delivery as shown by the addressee's registry or certification receipt. If any such notice or demand is made by nationally recognized overnight courier service as provided above, delivery shall be deemed complete on the second business day following the date timely deposited with such courier service for next business day delivery. If requested in writing by the holder of any leasehold mortgage (which request shall be made in the manner provided above as between the parties hereto and shall specify an address to which notices or demands shall be given or made) any such notice or demand shall also be given or made in the manner specified in this Article 18 and contemporaneously to such holder. Either party, and the holder of any leasehold mortgage who shall have made the request referred to above, may designate by notice in writing given in the manner specified above a new or other address to which such notice or demand shall thereafter be so given or made, and following such notice, such new address shall be the appropriate address for such party or leasehold mortgagee until changes again in accordance with the provisions hereof. No default, breach or Event of Default predicated on the giving of any notice to Tenant shall be effectuated, and no cure periods



based on the giving of such notice shall run, unless like notice shall have been given contemporaneously therewith to each holder of any leasehold mortgage who shall have made a request for notices and demands as provided above.

18.2 Notice Requirements re Hazardous Materials. Each party shall promptly notify the other party of any inquiry, test, investigation or enforcement proceeding by or against Landlord, Tenant, any subtenant or the Premises concerning the presence of any Hazardous Materials on the Premises or the improvements thereon in violation of any applicable Laws.

## ARTICLE 19

### CUMULATIVE REMEDIES - NO WAIVER - NO ORAL CHANGE

19.1 Cumulative Remedies. The specified remedies to which Landlord and Tenant may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Tenant or Landlord may be lawfully entitled in case of any breach or default by Landlord of any provision of this Lease. The failure of Tenant to insist in any one or more cases upon the strict performance of any of the covenants of this Lease or to exercise any option contained in this Lease shall not be construed as a waiver or a relinquishment for the future of such covenant or option. No waiver by Landlord or Tenant of any provision of this Lease shall be deemed to have been made unless expressly stated in a writing signed by the waiving party.

19.2 Writing Required. This Lease cannot be changed orally, but only by an agreement in writing signed by Landlord and Tenant.

## ARTICLE 20

### TERMINATION OF LEASE, SURRENDER OF IMPROVEMENTS

Upon termination of this Lease, Tenant shall surrender to Landlord the Premises, and all real property improvements at the Premises for which fee title therein is then vested in Tenant. All such improvements surrendered by Tenant shall be in reasonably good order and repair, reasonable wear and tear excepted, and also excepting as Tenant may have been prevented from maintaining in good order and repair by occupation of the Premises by any governmental entity who shall have taken temporary use of the improvements and shall then be in possession of the improvements, and also excepting casualty damage. Upon such termination, Tenant shall also deliver to Landlord all leases, lease files, plans, records, registrations and other papers and documents which are reasonably necessary for the proper operation and management of the Premises and improvements, to the extent that such documents and instruments are in Tenant's possession and do not constitute proprietary, confidential or privileged communications of Tenant.

## ARTICLE 21

### MISCELLANEOUS

21.1 Fair Meaning. In all cases the language in all parts of this Lease shall be construed simply, according to its fair meaning and not strictly for or against Landlord or Tenant irrespective as to which party may be considered the primary drafter of this Lease.

21.2 Headings. The Article and Section headings contained in this Lease are inserted solely for convenience and do not govern, limit or aid in the interpretation of this Lease.

21.3 Binding Effect. Subject to the other provisions of this Lease, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective successors and assigns, and wherever a reference in this Lease is made to either Landlord or Tenant, such reference shall be deemed to include, wherever applicable, also a reference to the successors and assigns of such party, as if in every case so expressed.

21.4 Memorandum. A Memorandum of Ground Lease (in the form attached hereto as **Exhibit G**) shall be executed by Landlord and Tenant and recorded in the Office of the Recorder, Department of Land Management, Government of Guam. In no event shall this Lease be recorded. Landlord may, without prior notice to Tenant, make a copy of the Lease available to the public as required by the Guam Open Government Act and any similar act or regulation governing Landlord.

21.5 Governing Law. This Lease shall be governed by and construed in accordance with the federal laws of the United States and/or the laws of the Government of Guam, as applicable. Jurisdiction shall lie with the United States District Court for the Territory of Guam.

21.6 Modifications; Amendments. This Lease constitutes the entire agreement between the parties relative to the subject matter of this Lease, and shall supersede any prior or contemporaneous agreement or understanding, if any, whether written or oral, pertaining to the subject matter hereof.

21.7 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

21.8 Attorneys' Fees. In the event of any litigation or arbitration between Landlord and Tenant with respect to the subject matter of this Lease, the unsuccessful party to such litigation or arbitration shall pay to the prevailing party all reasonable costs and expenses, including reasonably attorneys' fees, incurred therein by the successful party, all of which shall be included in and as a part of the judgment or award rendered in such litigation or arbitration.

21.9 Real Estate Brokers. Each of Landlord and Tenant represents and warrants to the other that it has not dealt with a real estate broker, agent or party who may be entitled to a commission or fee on account of this Lease. Each party shall indemnify the other and hold the other harmless from and against any loss, cost, liability and expense, including, but not limited

to, reasonable attorney's fees, which may be incurred by a party in the event that the foregoing representation and warranty by the other party proves to be incorrect.

21.10 Invalidity. If any term or provision of this Lease or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by applicable law.


21.11 Exhibits. All Exhibits referenced in the body of this Lease which are attached to this Lease, are incorporated herein by reference and made a part of this Lease.

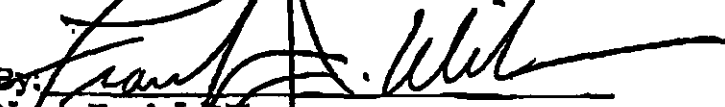
21.12 Waiver of Trial by Jury. Landlord and Tenant, to the extent they may legally do so, hereby expressly waive any right to trial by jury of any claim, demand, action, cause of action, or proceeding arising under or with respect to this Lease, or in any way connected with, or related to, or incidental to, the dealings of the Parties hereto with respect to this Lease or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and irrespective of whether sounding in contract, tort, or otherwise. To the extent they may legally do so, Landlord and Tenant hereby agree that any such claim, demand, action, cause of action, or proceeding shall be decided by a court trial in a federal court of the United States of America without a jury and that any Party hereto may file an original counterpart or a copy of this Section 21.12 with any court as written evidence of the consent of the other Party to waiver of its or their right to trial by jury.

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


Landlord:  
  
GUAM ECONOMIC DEVELOPMENT  
AUTHORITY, a Guam public corporation

Tenant:  
  
A-L PACIFIC, LLC,  
a Delaware limited liability company

By:   
Name: Christopher S. Murphy  
Title: Chairman of the Board of Directors

By:   
Name: Frank J. Wilson  
Title: PRESIDENT

Approved for execution by the Guam  
Economic Development Authority:

By:   
Name: Arthur B. Clark  
Calvo and Clark LLP



# MINA ' BENTE SAIS NA LIHESLATURAN GUÅHAN

Kumitehan Areklamento, Hinanao Gubetnamenton Hiniråt, Rifotma yan Rinueba,  
yan Asunton Fidiråt, Taotao Hiyong yan Hiniråt

*Senadot Mark Forbes, Gebilu  
Kabisiyon Mayuråt*

Speaker Antonio R. Unpingco  
I Mina' Bente Sais Na Liheslaturan Guåhan  
155 Hesler Street  
Hagåtña, Guam 96910

Dear Mr. Speaker:

The Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs, to which Bill No. 295, was referred, wishes to report its findings and recommendations **TO DO PASS BILL NO. 295, as amended:** "An act to discontinue the use of Tiyan properties under the jurisdiction of the Antonio B. WonPat Guam International Airport Authority as office space for government of Guam departments and agencies, with exceptions as provided, to repeal the Tiyan Trust pursuant to the expressed desires of the original landowners, and to prevent the Guam Economic Development and Commerce Authority from proceeding with the rental or leasing of properties under their jurisdiction at Tiyan".

The voting record is as follows:

TO PASS	<u>7</u>
NOT TO PASS	<u>Ø</u>
ABSTAIN	<u>Ø</u>
TO PLACE IN INACTIVE FILE	<u>Ø</u>
TO REPORT OUT	<u>1</u>

Copies of the Committee Report and other pertinent documents are attached. Thank you and si Yu'os ma'ase for your attention to this matter.

  
MARK FORBES

Attachments




# MINA 'LENTE SAIS NA LIHESLATURAN GUAHAN

Kumitehan Areklamento, Hinanao Gubetnamenton Hinirát, Rifotma yan Rinueba,  
yan Asunton Fidirát, Taotao Hiyong yan Hinirát

*Senadot Mark Forbes, Gehilu  
Kabisiyon Mayurát*

## MEMORANDUM

**TO:** Committee Members

**FROM:** Chairman 

**SUBJECT:** Committee Report- BILL NO. 295, as amended: "An act to discontinue the use of Tiyan properties under the jurisdiction of the Antonio B. WonPat Guam International Airport Authority as office space for government of Guam departments and agencies, with exceptions as provided, to repeal the Tiyan Trust pursuant to the expressed desires of the original landowners, and to prevent the Guam Economic Development and Commerce Authority from proceeding with the rental or leasing of properties under their jurisdiction at Tiyan"

Transmitted herewith for your information and action is the report on Bill No. 295, as amended, from the Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs.

This memorandum is accompanied by the following:

1. Committee Voting Sheet
2. Committee Report
3. Bill No. 295, as amended
4. Public Hearing Sign-in Sheet
5. Fiscal Note/Fiscal Note Waiver
6. Notice of Public Hearing

Please take the appropriate action on the attached voting sheet. Your attention and cooperation in this matter is greatly appreciated.

Should you have any questions regarding the report or accompanying documents, please do not hesitate to contact me.

Thank you and si Yu'os ma'ase.

**MARK FORBES**

Attachments

**I MINA' BENTE SAIS NA LIHESLATURAN GUÅHAN**

**COMMITTEE ON RULES, GENERAL GOVERNMENTAL  
OPERATIONS, REORGANIZATION AND REFORM, AND  
FEDERAL, FOREIGN AND GENERAL AFFAIRS**

**SENATOR MARK FORBES, CHAIRMAN**

**COMMITTEE REPORT  
ON  
BILL NO. 295, as amended**

**"An act to discontinue the use of Tiyan properties under the jurisdiction of the Antonio B. WonPat Guam International Airport Authority as office space for government of Guam departments and agencies, with exceptions as provided, to repeal the Tiyan Trust pursuant to the expressed desires of the original landowners, and to prevent the Guam Economic Development and Commerce Authority from proceeding with the rental or leasing of properties under their jurisdiction at Tiyan"**

## **I. OVERVIEW**

The Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs held a public hearing at 7:00 p.m. on April 11, 2002 in the Public Hearing Room, I Liheslaturan Guahan. Public notice was given in the March 28 and April 11, 2002 editions of the Pacific Daily News.

Senators present at the public hearing were:

Senator Mark Forbes, Chairman  
Senator Tom Ada, Member  
Senator Ben Pangelinan, Member  
Senator Lou Leon Guerrero, Member

## **II. SUMMARY OF TESTIMONY**

Individuals appearing before the Committee to present oral and written testimony on the bill are as follows:

Ed Benavente, original landowner, Nasion Chamoru (oral)  
Chris Murphy, chairman, board of directors, Guam Economic Development Authority (oral & written)  
Ron Laguana, original landowner, Nasion Chamoru (oral)  
Marianne Rios, Guahan Landowners United (oral & written)  
David Munoz (oral & written)  
Frank Toves (oral)  
Anita Guerrero-Atalig (oral & written)  
Tony Artero, Realtor, Submariner-U.S. Navy Retired (oral & written)  
Benny Crawford (oral)  
Joe Pangelinan (oral)  
Midred D. Artero (oral & written)  
Albert J. Rios, Major, US Army Retired (written)  
Christina Munoz Pablo, an heir (written)  
Gerald P. Yingling, executive manager, A.B. Won Pat Guam International Airport Authority (written)

Ed Benavente, of the Nasion Chamoru and a landowner at Tiyan, testified before the Committee on Bill No. 295. Mr. Benavente said that the taking of the land is outrageous in the first place. He said that he is a claimant who is in the middle of the runway. He said that these governmental entities need to put themselves in the shoes of the landowners and be sympathetic. He said that the government of Guam should return the land and challenge the federal government. He said that the land shouldn't be leased to multinational corporations that will monopolize our island.

Chris Murphy, chairman of the board of directors of the Guam Economic Development Authority, read before the Committee from his written testimony (attached) on Bill No. 295. He said that GEDA has worked hard to provide another location for government office space, since the airport is requiring the agencies to pay fair market value, that allows accessibility to the public, co-location of government agencies, provides a market for commercial and industrial development, and maximizes the financial benefit of the Tiyan Trust. He said that GEDA is not prepared to develop a plan that identifies forms of compensation, other than the Tiyan Trust, for original landowners at Tiyan. In response from questions from Senator Forbes, Mr. Murphy said that GEDA doesn't have a problem

with participating in this planning process, however. Mr. Murphy also discussed GEDA's plans with the Tiyan Trust, including plans to lease the Tiyan land to a master developer in a multi-phase development plan.

Ron Laguana, original landowner, Nasion Chamoru, testified before the Committee on Bill No. 295. Mr. Laguana brought his family, which is quite large, before the Committee, and the family elders said that they want action before they die, and they are not getting any younger. He said they have been waiting for four years for the Tiyan Trust and nothing has happened. Now, they want something different: let us take care of the land.

Marianne Rios, representing Guahan Landowners United, testified before the Committee on Bill No. 295. Mrs. Rios read from her written testimony (attached), stating that she opposes the Tiyan Trust law, which is fatally flawed for a number of serious reasons. She discussed the history of the Tiyan Trust law, and its many problems. She recommended repealing the Tiyan Trust law, getting the opinion of the original landowners in Tiyan, returning the land not affected by the airport, and dealing with landowners whose properties are used by the airport through compensation, land exchanges, or lease payments from the airport. She said that senators should do the just thing, return all returnable lands directly to the landowners and let them develop their own land. In response to questions from Senator Forbes, Mrs. Rios said she would like landowner participation in the planning process with the government agencies – come up with a plan, present it to the landowners, and let them vote.

David Munoz, grandson of a displaced family, read from his written testimony (attached) before the Committee on Bill No. 295. Mr. Munoz spoke of the injustice of how their land was taken, and their need for their land because it is their way of survival and identity. He spoke of the years of frustration felt by his grandfather and his father, and the long struggle of their family, because the land was taken away. Mr. Munoz said that they need action, not lip service. He said they need to be treated with value and respect, and said: "Do not take away our chance to restore our dignity."

Frank Toves, former project manager for the Komitea Para Tiyan, testified before the Committee on Bill No. 295. Mr. Toves said that when he worked for the Komitea, he opposed the decision to move the GovGuam agencies to Tiyan. He said he supports Bill No. 295 – no agency should have moved to Tiyan.

Anita Guerrero-Atalig, read from her written testimony (attached) before the Committee on Bill No. 295. Mrs. Atalig discussed the history of her family's land and its condemnation. She spoke of the injustice of the land takings, stating that the Americans had no business condemning properties on Guam before we became U.S. citizens. She asked, why not gives us back our properties, so that these young people can live a better life, save their rental monies, and give their kids a better education. Undo the damage that was done so that we can move forward. She said that the Tiyan Trust law should be abolished.

Tony Artero, Realtor, Submariner-U.S. Navy Retired, read from his written testimony (attached) before the Committee on Bill No. 295. Mr. Artero said he doesn't own land at Tiyan, but is testifying because he disagrees with what the government has been doing to their inalienable rights, suppressing individual economic freedom. He discussed the sanctity of private property rights, the ruin brought about by the leaders of the government of Guam, and the fundamental problem of the denial of land ownership and thus productivity.



Benny Crawford, an heir of a Tiyan landowner, appeared before the Committee to testify on Bill No. 295. Mr. Crawford also spoke of the injustice of the takings of the lands, and expressed a desire to have the land returned.

Joe Pangelinan, an heir of a Tiyan landowner, appeared before the Committee to testify on Bill No. 295. Mr. Pangelinan asked why the property should go to GEDA, the FAA, and others. He asked who these people are, and refused to let them tell him what to do.

Midred D. Artero, an heir of a Tiyan landowner, appeared before the Committee to testify on Bill No. 295. Mrs. Artero also submitted written testimony (attached), discussing her strong opposition to the Tiyan Trust law. She said that GEDA should be immediately stopped from issuing any lease or contract, that the Tiyan Trust should be repealed, that all lands under GEDA should be returned to the landowners, and that landowners under the airport and Parks and Recreation should have compensation, land exchange, or lease by the airport.

Albert J. Rios, Major, US Army Retired, an heir of a Tiyan landowner, submitted written testimony (attached) to the Committee on Bill No. 295. He spoke of his family members waiting for justice, and of his parents and two siblings who passed away without seeing justice done. He said that the landowners should decide what to do with the property to fulfill their basic and inherent needs – the government should not make that decision for them. He asks for the immediate return of lands not affected by the airport, and the compensation of landowners whose land is affected by the airport.

Christina Munoz Pablo, an heir of a Tiyan landowner, submitted written testimony (attached) to the Committee on Bill No. 295. Mrs. Pablo spoke of the economic possibilities opened by having the landowners manage their land, instead of the government, opening up avenues for business entrepreneurs and revenue-generating activities.

Gerald P. Yingling, executive manager, A.B. Won Pat Guam International Airport Authority, submitted written testimony (attached) to the Committee on Bill No. 295. He said that GLAA supports the intent of the bill to move the GovGuam agencies from Tiyan, recommending a six-month “ease out” period for an orderly move.

### **III. FINDINGS AND RECOMMENDATION**

The Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs finds that Bill No. 295, as amended, is long overdue as the original landowners in Tiyan have been waiting for the return of their land for more than 50 years. GovGuam agencies occupying Tiyan does not make economic sense, and more importantly it is unjust to have these agencies sitting on land that rightfully belongs to the original landowners. Moreover, the Committee finds that the Tiyan Trust law should be repealed, as it is strongly opposed by the very people it is supposed to benefit – they would rather develop the land themselves than see a master developer make those decisions for them.

Accordingly, the Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs, to which Bill No. 295 was referred does hereby submit its findings and recommendations to I Mina' Bente Sais Na Liheslaturan Guahan **TO DO PASS BILL NO. 295, as amended:** “An act to discontinue the use of Tiyan properties under the jurisdiction of the Antonio B. WonPat Guam International Airport Authority as office space for government of Guam departments and agencies, with exceptions as provided, to repeal the Tiyan Trust pursuant to the expressed desires of the original landowners, and to prevent the Guam

Economic Development and Commerce Authority from proceeding with the rental or leasing of properties under their jurisdiction at Tiyan”.

The Honorable Senator Forbes  
Guam Legislature


April 18, 2002

Dear Senator Forbes,

Enclosed are a few more individual testimonies of members of our organization and I hope you can include them still in the reporting out of the bill, if it is to be reported out in a new version. These testimonies again will tell you about how landowners feel about the whole process of the trust bill, the GEDKA involvement of the development of the Tiyán land and other points like discrimination in some lands being returned and others to be determined over by Government of Guam Agencies. The time is NOW! Senator Forbes, to cut this "land cancer" out of the body of our community, by making just decisions. Don't let these bills and laws, the Tiyán Trust and Bill 295 and other bills that might in the future deal with this land, be used as a political football on the playing field of upcoming elections.

We would also appreciate a copy of any re-writes of the bill and a summary of your Committee's findings on the Public Meeting.. Please have a staff member call me at 477-1021 or Tony Artero at 477 - 1985, and we'll pick it up.

Thank you for hearing and accepting our testimony.

Sincerely,  
  
Marianne Rios, Spokesperson  
Guahan Landowners United, Inc.

## **Statement of Guahan Landowners United – Bill # 295**

**April 11, 2002**

Honorable Senators,

My name is Marianne Rios, I represent Guahan Landowners United, a community organization of concerned citizens who dedicate themselves to watching the progress of the land returns and other land issues. We are here tonight, to express our opposition to bill # 295, because it includes what seems to us to be the facilitation of the Tiyan Trust created by public law 24-214.

We believe, that the Tiyan trust law is fatally flawed,

- because of faulty process,
- because the deed was done in the dark
- because it seems to be a cop-out by our leaders,
- because it represents a shirking of responsibility of this government's duty to preserve the sanctity of private property rights,
- because it is a violation of already established Guam public law to return lands to the original owners
- because the Tiyan trust law is an incomplete piece of legislation, without substance and input from those affected most;
- because it was an abominable attempt of writing an important legal trust document,
- because its content is a slap in the original landowner's face by this government who undermines and mistrusts the landowner's intelligence,
- because it is a prejudiced way of establishing 3 different categories of landowners
- because it is an empty promise for distribution of "net gains" to the original landowners.

- Because it is counter-productive for the Government of Guam to be in the land-bank business at the expense of individual original landowners.

Having said all this, we will elaborate on the points we made above, but not necessarily in order.

First, we ask the question: Is bill #295 the backdoor to implement the fatally flawed Tiyan Trust? That is how we perceive it to be. Bill 295 is using the Tiyan Trust as a vehicle to pacify Tiyan landowners without first discussing the pros and cons of the trust, as evidenced by the Governor's cover letter when he signed the trust into law? Let us quote here the Governor's statement "This legislation needs the full review of all of the original landowners of the property known as "Tiyan". The committee report of bill # 383 does not show that these individuals were contacted or were invited to testify, or are in concurrence with this legislation as presently drafted. Until a full review of the legislation is concurred in with the original landowners, and until legal review of the legislation is undertaken so that the interest of the original landowners are protected, this legislation will not be put into effect."

There you have it, which comes first, the cart or the horse?

This bill is a salad of a bill. You are talking about Government rentals in GAA areas and exemptions of rentals in GEDCA areas of Tiyan.. Then you proceed for GEDCA to report to you specific provisions it shall make for the return of or compensation for the lands to original landowners and you name the choices: either through the Tiyan Trust, direct monetary compensation, land exchange, or alternative means. Then you are establishing a task force to detail a plan for the compensation for original landowners whose properties are under the jurisdiction of the GAA, again, we might point out, without the participation of the landowners affected. In our opinion, addressing the return of the Tiyan properties to the original landowners, should be a separate bill. The bill is so convoluted, we cannot agree to its passage.

In order to tell you why we come to this conclusion, allow us to go back to the original Trust law for a moment.

There were no significant inquiries conducted or advise sought by the writers of the trust bill from the majority or all of the Tiyan original landowners. There were only 2 other senators at the hearing for a short time, the rest of the hearing was conducted by the writer of the bill alone which leads us to believe that those who finally signed the bill signed it site unseen and testimony unheard. No special meetings to solicit landowners' input in the writing of the trust or whether landowners even wanted a trust, were advertised. Guahan Landowners is an established land organization, who has in the past been actively participating in land issues and should have been invited or notified by a phone call, when an important land legislation such as the Tiyan Trust is heard in Committee. Had we received a courtesy call from our lawmakers, we would have appeared to testify and would have vehemently objected to this trust as written. No legislative meetings were advertised to get landowners opinion prior to writing this bill. What kind of law writing is that, honorable senators, when you don't even seek the input of the very people who you are writing about, the families of the original owners of these parcels, whose economic well-being you are determining. We believe that this is a form of unilateral power writing, not people legislation!

We had a short meeting, several months prior to the writing of the trust bill, with Senator Forbes and Senator Lamorena. At that time we asked about the status of legislation on how the land in Tiyan will be returned to the landowners. We asked to be involved in the writing of any legislation pending or planned. We never heard anymore about it long after the trust legislation was past "in the still of the night". Legislative records show, that only 2 people testified, which shows that there was no attempt made by your illustrious body to "spread the news to the people". And of the two people who testified, one was misquoted in your summary as being for the trust, when the gist of her testimony was to do what is just. This is in contrast to previous hearings for other land-bills, where many more people have shown up to testify for land returns to the original landowners, because we were notified and were able to spread the news to landowners. The hearings were well advertised and statements were solicited by the senators who wrote the bill many weeks prior to the public hearings.

Bill 383, relative to establishing the Tiyan Trust, honorable Senators, is badly flawed. The Governor, in bad judgment, unfortunately signed the bill into public law 24-214, however, with emphatic conditions attached.

In addition to the Governor's reservations, we want to point out further flaws in the trust.

Not only is the trust badly written, the people who wrote it admit that, by affirming this defect in section 68999 under "Construction of Trust", thereby giving the full power of full interpretation of ambiguities to the Trustees:" The Trustees shall have full power to construe any provision of this article relating to their duties or decisions where the intentions of I Liheslaturan Guahan may appear uncertain or ambiguous." Hello? What do you think we is?

Additionally, they did not even check out the tax implications of the trust law and just simply state that if the trust must pay taxes, it would promptly dissolve. Then what? Nothing further mentioned. Hello?

Also, there is no indication as to whether the Airport income is included in figuring the "net gain", or if this government thinks that the land underneath it is a liability only to Tiyan landowners rather than to taxpayers of the entire island.

There is no scenario mentioned as to what is being paid from gross income in order to derive a net income figure.

There is no indication as to which properties are in the trust, now that we know that you seem to have established three ways of dealing with landowners

We think that this was "a deed done in the dark", and would like to go a step further than the Governor! We would like to strike this unfit law from our books, we would like to kill it, and we would like to shoot it dead - because it is so prejudiced, so unfair and so un-American.

We have been warned by one Legislator before and we now believe, that our worst enemy in this entire land return process is not the Federal Government. but our own Government of Guam. Our Administrators of

various departments of the Government, Legislators, and people in important high places are trying to find ways to pull one over on the unsuspecting original landowner, who was promised in previous Public Laws that all lands coming back from the Federal Government would be returned to him. As soon as these lands become available, our own government is now making up scenarios and provisions, picks and chooses, as to who should use them and how they should be used. Honorable senators, the most honorable way to determine the use of these lands made available by the Federal Government is unequivocally to return them all to the original landowners, without any exception. Deal with each lot separately.

The Legislature, in previous laws (23-141) has concluded that "the Government of Guam is neither the best nor most responsible guardian of lands. For surplus federal properties to best serve the community, they must be placed under progressive and responsible landowners and their heirs who possess the drive, the know-how, the motivation, and the capacity to develop these lands to their highest and best uses. It is the entrepreneurial spirit that will generate greater returns for the community as a whole, and not government or political brokerage."

The Trust law states, that the honorable senators, as they were about to pass it, found, that "the principle of returning to the original landowners those Guam properties taken for military defense purposes and then turned over to the government of Guam when defense needs no longer exist is fair and equitable and is supported by all branches of the Government of Guam." We hate to disagree with you, Senators, previous bills establishing the laws of returns to owners were not expounding "principles" they were saying, "this is going to be the law"! These lands shall be returned!"

So why can't we stick with the law! It's easier than pussyfooting around it to find loopholes to keep the land in the hands of the Government!! In the long run, as owners develop these properties, your following the law will fill empty Government of Guam coffers with taxes due. Government owned land does not earn any taxes, honorable senators. It is a losing proposition if Government wants to be in the real estate and the development business. Forget your dream of a Chinese financial influx, senators. Forget about GEDKA pushing to become developers. GEDKA should be in the business of providing opportunities and support for increasing private development and let the landowner do the building and



developing according to Zoning laws. It is the zoning laws the Government should watch, so it won't create another Harmon Industrial Park fiasco. Land Management can take care of that. What makes this Government think that GEDKA is the only entity that could make this a success? What can GEDKA do better than private initiative? Aren't you undermining the intelligence of our many Tiyan landowners, voters of this territory, who you seem to think, are intelligent enough to vote for you, and whose vote you are asking for today, but whom, at the same time, you want to shut out from creating economic opportunity for himself on his own land, just because you feel Government will do a better job? Government should better regulate building and zoning laws, senators, and if they do their job well, the landowner can do his job of developing better than any Government.

The bill states, that "in certain instances, when only a relatively small proportion of a particular piece of excess military property can be returned to the original landowners, it is unfair to the majority of such owners whose land cannot be given back that only one (1) small set of owners benefits from the return of the ancestral property." This is a ludicrous statement, since first of all, this has never been one property prior to the taking of the land, it was owned by over 100 individual landowners, all with their individual rights inherent in the property laws of the U.S. and the island of Guam. If you check with Land Management, over 100 claims have been filed against each one of these properties, not as a clan or a tribe of Chamorros, but as heirs to the estate of individual owners, which means that many might take their claim to the local court, holding up any development, other than their own. Secondly, in the course of the past 50 years, while many properties have come back from the Federal Government and many have been returned to their original owners, not all properties have come back and not all that came back were given back to the original landowners by the Government of Guam.

Let us ask the question then. Mr. R. got his property back in 1962 in Harmon Industrial park and Mr. E will get his property back in Harmon Cliff Line, right across Marine Drive, hopefully in a few months, in 2002. Does this mean Mr. R should not have gotten his property in 1962, it should have gone to GEDA to administrate, because all the other properties were not even planned to be given back yet by the Federal Government and. therefore. could not be given back to the landowners?

Well, let us be honest, there was some of the GEDA mentality already in 1962 present, since Government of Guam did not return all properties in Harmon Industrial Park in 1962 and, as far as we know, is still leasing many lots there to an off-island business man from Hawaii and others, for Government's profit. We just recently had a report on that in the daily media.

If the Government of Guam plans to use a lot that is to be returned by the Federal Government for public purposes, it should declare it theirs through eminent Domain and pay fair compensation and the case is closed, forever. The expense of a public Airport should not be charged only to the backs of a few unfortunate landowners whose land is tied up underneath it. A public airport or any other public building, is, by law, a cost to all taxpayers on the island. On the other hand, there is no guarantee that the airport will be where it is in 10 years, considering the safety of the people of our island and the growth of our economy. It makes much more sense to have an airport in another area, with an easy approach and take-off over water. If relocation would happen within 10 years, the owners would have to wait 40 years less than Mr. E. waited for Harmon Cliffline! Or they could opt out and the Government pays them a fair price for the land. Case closed. What happens to the land should the airport close and relocate. The deed, as we are told, is now with the Airport Authority. Does that mean the land could be sold by the airport? So is your statement in the law ".....Tiyan.....is such an instance since as long as the Guam International Air Terminal remains in its current location abutting Tiyan, most of the land cannot be returned to its owner", is, therefore, just a meaningless subtle promise, a carrot....and in other words, meaningless and totally untrue, if the Airport would be empowered to sell the land themselves? Hopefully, future administrations and future Legislators will start thinking "out of the box" on these issues before they write misleading laws.

Legislators, please don't hide behind the federally required "public purpose use only" for the various ways the Federal Government returns land to the Government of Guam, in the attempt to justify Government of Guam's necessity to keep ownership of returned lands. The Federal Government has been sued twice by landowners, and wants to be sure, it is not opening another pandora's box, inviting more litigation, by giving lands directly to the owners. That would defeat the validity of the previous court judgments. The Federal Government knows that the

judgments in both litigations weren't fair to the landowner, since no fair market price was paid, since there was no market on the island when the land was taken. In the second litigation we are all aware that a fast deal had to be struck in the backrooms of a hotel, in order to secure an aging legal representative's agreed upon % fee. But he does not want to admit to this publicly, so by returning the land to the local Government instead, the Federal Government washes its hands forever.

Our local Government, despite conflicting federal laws, has passed laws to return the land to the owners. Our question is, senators, are there instances you can cite us where the Government of Guam in the passed 50 year history of returning lands to original landowners despite the "public benefit" requirement attached to the federal laws, was penalized by the Federal Government because of this return to original landowners, or was sued by the Federal Government for the purpose of reverting said property back to the Federal Government? In other words, have the Feds ever taken a piece of land back through the courts because Government of Guam did not comply with the federal "public benefit use only"?

You have now decided that you have three categories of ways to return Tiyan land. The third, most shameful one, is the separate treatment of lots, the former Officer's housing by the cliff, with the lame excuse that it was not returned through BRAC process, which, in the eyes of our legislators, treats these lots not as part of Tiyan, as they outlined it in Section 68980 of the Trust, and, therefore, are separate from the trust and to be returned directly. These lots may have been returned under a different federal process, but do we care, when we write local laws, under what process they are returned? We all know the Officer's housing lots belong to the "particular piece" called Tiyan, as the trust law states. But the local law is being bent to give a few choice lots to a few choice landowners. Not that we disagree with the action. We think they should be getting their land back, just as we think, all the other lands not used by the airport should go directly back to the original landowners.

Finally we pose the question: if you don't throw this trust law out and insist on having GEDA develop the properties under its auspices, will you call in the national guard to keep original landowners from utilizing their land?

Here are our recommendations:

Repeal the Tiyan Trust Law.

Poll the Administrators of Tiyan properties (their families should seek consensus) and give the property owners the option as to the route they want to take, be it public trust, private trust, direct return, or whether they want to quitclaim it to the Government to Guam. This would satisfy each owner's right under the constitution to own, to use, or to transfer his property.

Return the lands not affected by the airport to those original landowners who desire them back.

Deal with the landowners whose properties are in public use by the airport or by Government of Guam through condemnation compensation, land exchanges, or lease payments from the airport and Government of Guam..

Zoning requirements established by Land Management will dictate the usage of the properties in Tiyan.

Lastly, we would like to quote the Daily News, Sat April 6, 02, from an interview with Mr. Moore from the Virgin Islands, who are working diligently on an Economics Recovery Plan.

Mr. Moore believes, as many on our island believe also, that strong businesses are important to any recovery effort. He says " The long-term solution for this territory, or for any economy, is strong private-sector growth, based upon a strong, high-quality education system." "Sad to say, Guam has not laid the groundwork for either. If that were not a fact, the idea of building a government land bank for GEDA to do our island's "business" development at the expense of denying its own citizens to benefit directly would have never occurred to Legislators dedicated to doing the just thing and Department of Defense Schools would not be a reality on this island today.

Honorable Senators, do the just thing, return all returnable lands directly to ~~the~~ landowners and let them develop their own land.

**FOR PUBLIC HEARINGS  
REGARDING BILLS PERTAINING TO  
NAS ONLY**

**PRIORITY OBJECTIVE:**

**RETURN OF NAS LAND TO ORIGINAL LAND OWNERS**

**REINFORCEMENTS**

**A NEW EMPHASIS**

**It is essential for the public to be informed of the possibilities and new avenues that will eventually take place when resources of private economics versus government economics conflict. Who is the real moneymaker? Who does provide and support the people? Do you pay taxes? Does our government pay taxes too?**

**It can be a relief to note that a large contingent of public and private economists, academicians and journalists consistently acknowledge the vital role of the private businesses in our total economy. These experts might agree on the fact that the government should do more to foster small business vitality and growth. If the government maintains these properties, will they pay taxes too? Would it be cost effective for the government? Will it generate revenue? These questions may be the answer to our economic salvation. There is possibility that original landowners may venture and become business entrepreneurs and will eventually have to share the wealth if return, trade or compensation is done. Taxes will have to be paid and revenue churns.**

**Current businesses are suffering today? It would be wise to note that businesses suffered before the base closures. Now is not the only time our economy has suffered, it has been suffering. Is it possible that generally we have become dependent on instant revenue and as a result, our government has a deficit.**

**How long do you think our government will survive on a deficit?**

**Would it be possible to determine if the government sector provides most of the economic growth? And if not, who does? Wouldn't it be obvious enough to see that our private sector is accountable for over**

**fifty (50) percent of our Island's output and most of the growth employment over the same period. Who has frozen hire? Who is still hiring?**

**To top all this off is the fact that most innovations over the last century have originated in the research departments of the business sector or by individual entrepreneurs. It may be an opinion or it may be fact that the business sector could possibly be the "Vital Majority", the money-maker.**

**These concerns are at large due to the fact that our economy has declined. This may be an opportunity for economic development. This is an opportunity for the people to welcome money making resources. It must never be forgotten that our political freedoms are directly linked to the survival of the entrepreneur as a vital force in our society.**

**I strongly suggest that our government reconsider lobbying efforts to compromise with landowners without their acknowledgements in general, for every land situation is different.**

**I am boggled by the fact that bills requesting to budget committees and sub committees to returned land dispositions in general, when our government has an existing agency that holds legal history and abides by law. Reduplicating research efforts? If approved, where will the money come from? Taxpayers? Is the Government really in a deficit?**

**We must create a new direction to condemn our Island's economic stagnation and compromise our desire for independence.**

**If revenue is the source of our island's disposition, then we must create avenues to invite revenue, give back what righteously belongs to the original landowners of NAS, and allow them the opportunity to open avenues and be an example to future landowner returns.**

**Christina Munoz Pablo  
An Heir**

**Statement of Albert J. Rios, heir apparent for Lot # 2169,  
Tijan, Guam**

**April 11, 2002**

Honorable Senators,

My name is Albert J. Rios, I represent myself and my brothers and sisters. Five of us are still alive and waiting for justice, my parents and two siblings have already passed on and will never see justice done. We are heirs to the estate of Jose and Antonia L.G Rios, landowners of Lot # 2169, of 20,000 square meters located within the northwest fenced area of what was formerly Brewer Field, NAS Agana. This property was purchased by my parents and has been with my parents since Pre-WW II, cultivated with coconuts, fruits, vegetables and livestock. It was our mainstay during the occupation of the island by the Japanese and remained so until we were forced out for military use.

Our parents have not received just compensation for its use as a military base during their lifetime and up to this period. My parents were hoping to get their property back some day after the war was over and did not claim this property through the land claim cases.

Now that it serves no military and emergency purpose for which it was acquired and is returned to the local government, we want this property returned to us as original landowners. We, as heirs, will decide what to do with the property to fulfill our basic and inherent needs. We do not need Government of Guam or GEDA to make that decision for us. Zoning law enforcements by Land Management are adequate for us to follow the trend of development in that area called Tijan.

We oppose Bill # 295, and its effort to facilitate the Tijan Trust created by public law 24-214.

We ask the following:

1. Return the lands not affected by the airport to those original landowners who desire them back immediately, not next year, not in two, five, or ten years! **NOW!**

2. Make the entire island pay for an airport and pay compensation to those whose lands are under the airstrip and under the airport facilities perhaps by assessing a special airport industrial use dividend (paid by Airport) and/or runway realty tax (paid by all taxpayers) or a combination thereof, and pay those landowners for rental of their properties out of these funds or via some other means you are able to identify.
3. Stop Government of Guam from reveling in a Federal freebie land dream and offer a value for value exchange to those original landowners who want land instead of money.
4. Government of Guam should pay for those lands it uses for public benefit, like the athletic fields and recreation facilities, etc., again from island-wide tax revenues. These facilities are a responsibility of the entire people of Guam and not just a few unfortunate original landowners. Best yet, return these lands also to the owners and build recreation facilities on other Government owned lands.

Honorable Senators, uphold righteousness and justice and follow the laws already passed locally on land returns to original owners. Return all excess lands acquired for military purposes directly to the landowners now before they might be disposed of by GEDKA or be used for political gains. Let the landowners develop their own property as rightful owners.



Albert J. Rios, Major, US Army Retired  
And five living, two deceased siblings  
22 grandchildren of Jose and Antonia L.G. Rios  
and numerous great grandchildren



# Public Hearing on Bill 295 (Occupied Land at Tiyan (former Naval Air Station) by GovGuam in 1995)

Testimony by Millie Artero  
April 11, 2002

Article 12 to Chapter 68 of Title 21 Guam Code Annotated (PL 24-214), also known as the Tiyan Trust Law, although not implemented and enforceable at this time, continues to perpetrate the injustices, which all the Tiyan landowners have suffered from the hands of the Federal Government, especially if bill 295 is meant to be the implementation tool. It rubs salt into the wounds of all those affected because now it is their own local government that is continuing to perpetrate this travesty of justice. Our own elected leaders through subterfuge are still trying to keep the rightful landowners from the full benefit of their property.

Moreover, this is done under the disgusting disguise of trying to help! those longsuffering landowners. These political leaders are hiding behind a whole litany of bureaucratic backtalk and procedures to keep their actual awful intent hidden from public view, and especially from the aggrieved landowners.

The central misguided premise of this bill is that a government bureaucrat will know best how to use land. The bill implies that they will also know best how to allocate the funds that are generated from the Tiyan properties. This is a false premise and should not be allowed to stand.

At the present time, some landowners will have their land returned to them. The government wants us to believe that it is mere

coincidence that some of the most politically well connected individuals and families are just by chance the primary beneficiary of this incredible luck, while others who are the less fortunate majority, and in many instances landless, will get nothing. But, this line of nonsense does not fool all of us. Most of us know that if the poor and less well connected would have been owners of those parcels to be returned to the original owners, under the current system, a return simply would not happen. We would then be faced with all kinds of arguments why an alternative solution is best and no choice land would be directly returned.

Secondly, all land must be returned including those being used for public uses. The plans at the moment exempts all land that is currently in use by the government of Guam from being returned to the original landowners. This has the effect of penalizing the individuals and families who are in fact contributing the most to the general welfare of the island. It is their land that stands under the airport runways and terminal, the roads and other government offices. It is absolutely absurd and ridiculous to give them nothing while others are returned their valuable land.

Here are my recommendations:

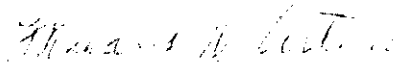
1. The Tiyan Trust must be repealed and GEDKA must be stopped immediately via legislative bill to exercise their right as an independent agency to dispose or sign any commercial contracts on any Tiyan lands.
2. All lands under GEDKA (GEDA) must be speedily returned to Government of Guam and ultimately directly returned to the landowners. Allocation of such land shall be based on the Government of Guam documentation of private ownership in the Court's Land Claims Cases.
3. Lands needed for airport operation should be negotiated with the landowners for them to receive either outright

compensation, land-exchange value for value, or to be leased to the airport.

4. Lands used by Gov Guam for Recreation and other public purposes should be either exchanged for other land, value for value, or outright compensation by the Government of Guam, or direct return, with Gov Guam looking for other areas to relocate.
  
5. The lands south of the runway, now under the airport and to be used for industrial airport development, should receive the same treatment as lands in number 2(two) above, return to Gov Guam and outright return to the landowners. The airport was a greedy Government entity during the Komitea Process and acquired more and more land at every meeting and Gov Guam fell for it. Another avenue for the landowners should be to receive fair market rental value for airport developed property.

Without implementing the above in a speedy way, there will be no justice and without justice there can never be peace.

Thank you.



Mildred D. Artero



Testimony of the Chairman, Board of Directors,  
Guam Economic Development Authority  
before the Committee on Rules, General Government Operations,  
Reorganization and Reform and Federal, Foreign and General Affairs

April 11, 2002

Hafa Adai Mr. Chairman and Members of the Committee:

My name is Chris Murphy, Chairman, Board of Directors, Guam Economic Development Authority and I am here to provide testimony regarding bill 295 (COR) which is an act to discontinue government office space use at the properties owned by the Antonio B. Won Pat Guam International Airport Authority and to require GEDA to submit a plan to the Legislature on the method of compensating original landowners at Tiyan.

Bill 295 documents precisely what GEDA intends to do with properties it holds in trust for original landowners. As a result of the GIAA's announcement that government agencies must pay fair market value for office space use beginning October 2002, GEDA has worked hard to provide another location for such use that allows accessibility to the public, co-location of government agencies, provides a market for commercial and industrial development and maximizes financial contributions to the beneficiaries of the Tiyan Trust. The major difference between what GEDA has been doing and Bill 295 is that Bill 295 requires GEDA to submit a plan which identifies other forms of compensation for original landowners including direct compensation, land exchange, Tiyan Trust participation or other means. GEDA is not equipped to develop this plan. Public Law 25-45 already requires the Guam Ancestral Lands Commission to perform these activities and we see no need to change this responsibility or the direction mandated by the Legislature under the Tiyan Trust Act.

Thank you for the opportunity to provide testimony.

CHRIS MURPHY



A. B. WON PAT

ATURIDAT PUETTON BATKON AIREN GUAHAN ENTENASIONAT  
GUAM INTERNATIONAL AIRPORT AUTHORITY

April 12, 2002

Testimony of Mr. Gerald P. Yingling  
Executive Manager  
A. B. Won Pat Guam International Airport Authority  
On Bill No. 295

I would like to thank Senator Mark Forbes and the members of the Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs for the opportunity to provide testimony today on Bill No. 295: **“AN ACT TO DISCONTINUE THE USE OF TIYAN PROPERTIES UNDER THE JURISDICTION OF THE ANTONIO B. WON PAT GUAM INTERNATIONAL AIRPORT AUTHORITY (GIAA) AS OFFICE SPACE FOR GOVERNMENT OF GUAM DEPARTMENTS AND AGENCIES, WITH EXCEPTIONS AS PROVIDED.”**

The A. B. Won Pat Guam International Airport Authority (GIAA) supports the intent of Bill No. 295. The act to discontinue the use of Tiyan properties for office space by GovGuam will not only serve the best interest of the island but for the government departments and agencies as well.

GIAA is well aware of the need for all government of Guam departments and agencies to obtain office space, especially in a centrally located area. However, these facilities were not meant to be used in that manner. Our records indicate the facilities contain lead-based paint and some asbestos containing materials. They do not meet the Uniform Building Code (UBC) nor are they in compliance with the Americans with Disabilities Act (ADA) requirements for accessibility for persons with disabilities. The maintenance and repair of these facilities in their present state will be too costly for any government of Guam department and agency. The self-sustaining obligation with the Federal Aviation Administration (FAA) prevents GIAA from continuing to provide funds to pay for these and any other costs incurred by these departments and agencies.

Therefore, GIAA supports the intent of Bill No. 295 and encourages this Committee to assist in the relocation of all government of Guam departments and agencies. Furthermore since this bill is late in coming, GIAA recommends that a six-month “ease out” period be granted to all government of Guam departments and agencies for an orderly move and to prevent as much disruption as possible to the clients of these various agencies.

In closing, I would like to thank the members of the Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs for the opportunity to provide testimony today in full support of Bill No. 295.

Thank You.

# Public Hearing In Guam on the Occupied Land at Tiyan (former Naval Air Station) by GovGuam in 1995 On the Government Created Tiyan Trust

*AND BILL 295*

Testimony by Tony Artero, REALTOR® / Submariner-U.S. Navy, (Ret.)

April 11, 2002

Before the Twenty-Fourth Guam Legislature, Guam Legislature *Temporary* Building,  
155 Hesler Street, Agana, GU 96910

Honorable Senators, Ladies and Gentlemen:

My name is Antonio Artero. I do not own land at Tiyan. I am here because I care and because I do not agree with what the governments, local and federal, have been doing and are doing to our inalienable rights. In my views, the government has been suppressing individual economic freedoms and has been reckless in its use of the land on Guam since WWII. We have finally arrived at the most unpleasant environmental conditions ever. After 60 years of economic suppression and government dependency, many people today are confused and unaware of what are considered sacred. The sanctity of private property is one.

*Under All is the Land.* Many Tiyan landowners had referred to the former NAS Agana as "Heir Strip" for a good reason. After the occupation of that very same land by GovGuam in 1995, those same landowners call Tiyan "Guam's occupied West Bank" for even a better reason.

Disputed land ownership, its rights thereto and its fruits thereof is bringing bloodshed and destruction worldwide. The way I see it, the authorities on Guam are pushing for bloodshed and destruction if greed, arrogance of power, and might made right continue to rule. This problem particularly under the U.S. flag is ludicrous. It's stupid! Even education is violated today and people are treated as imbeciles. This very government whose "leaders" took an oath to protect, defend, and promote our freedom, has been, since after WWII and still to this day, is mounting up assaults after assaults against our individual economic freedoms while giving outsiders preferential treatment plus tax rebate. Yet, together with their clones, they spout out "pride in our progress." What progress? Unless you call going to China to beg for money is progress.

The "leaders" of our Government of Guam have shown us that they and their friends are convinced that Guam can simply do nothing for itself. Besides, it's so much easier to use public funds to traveling around the world to beg for money while on the payroll. They have managed to reduce the so-called "global economy" under a free enterprise system down to global begging under disorder, economic suppression, and chaos.

It's not what we have, but it's what we do with what we have. This chronic economic uncertainty on Guam is by design of those in power. The conditions we face today are manifestations of a grave fundamental problem that has everything to do with the denial of land ownership thus productivity, but ignored for all the wrong reasons. The authorities want the

people to stay poor, afraid, and desperate so that they can be <sup>Easily</sup> controlled. Little did the authorities know they are tampering with a potential revolution. When an outbreak of uncontrollable civil disobedience occurs for either denial of economic freedom or bacteria in the drinking water, that control would pulverize. Obviously, might made right is neither the way nor the answer.

The U.S. Constitution specifically states “. . . we hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness . . .” now, therefore, it follows that the occurrence of the *blatant violation* of our Inalienable Property Rights after World War II, after having fought and won our freedom under the U.S. flag, constitute a horrible wrong for every American everywhere. This wrong must be righted now before it's too late.

The violation of property rights sets Guam and its people back several hundred years. It has caused a major humanitarian calamity. It attempted cultural cleansing and has collapsed sustainable economic growth in harmony with the environment as evident. The evidence of this wrongdoing is everywhere around us today. It has been exhibiting its ugly head over the years through numerous wake up calls, but our callous “leaders” chose to ignore those calls for obvious reasons – greed, arrogance of power, and indifference - all of which are adding more and more harm and continues to compound the already compounded problem due to the passage of time and many are confused.

This inverted government has caused a malignant cancer that grew in our body politic and undermines our efforts to design and develop a functioning and sustainable economic system. Public funds for foodstamps, housing, welfare, medical, and grants are encouraged and self-reliance discouraged and suppressed.

With government dependency as the cornerstone for governing the consent of the governed, and governing selectively, divine guidance is also ignored. Immorality and widespread corruption thrive. Basic government services harass and frustrate the people further.

Billions of U.S. tax dollars were wasted in “fixing” and circumventing the problem. Always the symptoms of the problem get addressed and not a penny spent toward addressing the *fundamental problem and righting the wrong*. I'm even willing to give up my Social Security including my military pension for a voice and for individual economic freedoms. In other words, give me liberty or give me death.

This inverted government system was made possible by the Organic Act and by the benevolent handouts of Uncle Sam, whereby the working class in the U.S. mainland and Guam serve the Government of Guam rather than for the government, at both levels, local and federal providing adequate basic services to its tax payers. After sixty years the result of this inverted government is the four generations of people living on Guam who have grown accustomed to and are very secured with handouts. But I don't fault those people who are constantly attached to handouts or surviving on other government favors. I fault the “leaders” who are without principles, ethics, and integrity. They have ruin many good people who want to be self-sufficient and they continued to push for greater and greater dependency, constantly humiliating the very same people who voted them into office.

And finally, to nail the coffin on Guam's Chamorro pride, the Chamorro Land Trust Act was enacted. The Act was the latest push for "Collective Equity as a Realistic Alternative to Justice", to keep the status quo of more government and for the government to compete more aggressively against its taxpayers. No one can satisfy GREED, not even God. We just have to stop being greedy. *which does not exist*

The song and prayer today that best describe everything Guam are:  
The Ugly Truth and the Our father who is in D.C. - attached

The reason Guam was self-sufficient then is because people were free to use their land. Without a Department of Agriculture, there were bountiful crop and farm livestock production for consumption and barter, which continued even during the Japanese occupation during WWII. In fact, despite being forced to feed the Japanese Army, no one died of starvation.

Guam's productivity since WWII has not, will not, and cannot match the productivity of the once self-sufficient Guam of pre-WWII. Everyone must understand that all the money in the world together with the most modern technology available will not magically cure the ills brought on by greed, arrogance of power, and might made right. We need to right the wrong now and must also implement a comprehensive land use plan. A plan incorporating aviation and ground transportation safety, conservation, proper storm drain systems, and development in harmony with the environment.

In spite of a larger military economy on Guam after WWII, add on the creation of the Department of Agriculture, throw in the Guam Economic Development and Commerce Authority, and the Guam Visitors Bureau to boost up tourism, all with the intent to bring money to Guam, they don't add up to a change for the better. Not by a long shot even with the help of the Bureau of Women's Affairs. In fact, the conditions on Guam have been going from bad to worse in virtually every aspect of our island community.

In closing, I stand as I have always stood, for private property rights, which has been a very lonely place. The guilty silence particularly of the Guam Board of REALTORS®, the Chamber of Commerce, and others are deafening. Nevertheless, I'm calling for all to stand up for private property rights. We need to and must restore and protect the sanctity of private property. After all, we do have a genuine opportunity, one honest chance to shape our sometimes-imperfect past, to start again, to step unshackled into this millennium and to look our future squarely and proudly in the face.

Thank you



Good evening honorable Senators, ladies and gentlemen. I want to thank Mr. Forbes for allowing this day for some of the Original Land Owners to be heard. First, let me introduce myself, my name is Anita guerrero-Atalig, oldest daughter of Pedro LG Guerrero & Concepcion Garrido Guerrero, familiar cabeza/chelengco & ma'nuk. I sit here today to appeal to you honorable Senators, to work with us, the heirs of the Original Landowners of Tiyan. I have been on island for 6 months now. Six years ago, I underwent an open heart surgery compounded with a triple by pass. According to my doctor, I was dead on the operating table and they had to revive me. The Lord gave me a second chance and for the last 6 years I have been searching and wondering what was I to do that I was given a second, there's has to be a mission. I become more involve with the Sons & Daughters of Guam Club in San Diego, I even chartered the Barrigada San Roke Group as a non profit organization with the State of California and now we enjoy celebrating San Roke fiesta in San Diego, but it seems that that was not it. Last October 31, after the 911 incident, I decided to leave my family in San Diego, it was only for 3 weeks just to explore and check what is happening to our properties. When I arrived, I felt very much at ease, relaxed and the heat did not bother me, after being gone for nearly 30 years. My mom and dad owns property in Tiyan, 8 hectares of it which was partially condemned by the US government and now is returned back to the government of Guam. The lot number is 2087 & 2087-1. We have the certificate of ownership that shows the property belongs to Pedro LG and Concepcion G. Guerrero. Lot #2087 is condemned by the US Government, but lot #2087-1 is not, but we were not able to enter into our properties because the condemned section is being operated by the military. My dad and his siblings also owns or inherited another condemned property from their parents, that is our grandparents, Juan Flores Guerrero and Ana Tello Leon Guerrero located in the heart of Marine Drive and guess who's standing on it. According to the Ancestral Land Claims Office, Lot 473 in Agana is where Governor Skinner is standing. Why I ask, and why were we not notified when this happened the government just deposited the money and is sitting at the Superior Court since 1994. My father purchased Tiyan back in 1948 at \$100 a hecter. He had 8 children and one on the way. So he purchased 8 hectares for each of us. Before the condemnation, my father's dream was to farm that property, he imported from the mainland, mallard ducks, lay corn (hen lays eggs) and white rabbits. When the US Government decided to condemned these properties, my father and at least 10 other owners took the US government to Court. This was the Civil Case No. 21-50 file in the District Court in August 1952. Of course we all know what the outcome of it, they were paid by the US government three thousand sum dollars but his lot is only partially condemned. He was not given access to his property because he is not a military and does not bear an ID to enter his property and there is no access from Tamuning via the cliff line.

My research during the last 6 months indicated that the original landowners are to be acknowledged, given consideration and notified. None of us have been notified, a printing in the PDN does not mean that you notified me. A return receipt requested with the legalize terminalogy addressed to my current address will mean that you have notified me. When I arrived on the island, I asked Mr. Borja to hold a town meeting with some of the landowners and there he showed us the map of Tiyan which is color coded. **Blue, White and Orange.** Blue which is the officers quarters are released, Orange section,

GEDA is to build commercial buildings for rental purposes and the net proceeds if any will be given to the shareholders which are the original landowners, and of course the **White section, the enlisted housing, wanna make a guess what's going to happen to that area.** I'll give you a hint, the airport is taking control of the land, either to rent or demolish the buildings and god knows what they're going to do next. Why was the airport included in this I asked. Under the FAA regulations, the airport cannot give us any money, that's why Mr Borja said the **White section is gone, nothing, ta'ja.** Which of you honorable Senators before us, is willing to undo this injustice being done to us? The Americans had no business condemning properties on Guam back before we became US citizens. They gave us citizenship to cover the injustices that was done to us. I read in the PDN around Feb or March it says that 23% of the people of Guam lives in poverty, I say to you that since the last 3 months that I have been on the island, there is more than 23% people living in poverty. Young generation under 50 years of age, couples are still living with mom/dad or are renting because they have no place to go, these are families living from payday to payday, and that honorable Senator is called poverty. Why not give us back our properties, so that these young people can live a better life, save their rental monies, send their kids to better education like private schools, or save money to send their kids to college. The future of Guam rests in your hands now, not tomorrow, or yesterday. Undo the damage that was done so that we can move forward. The government can make money from the original landowners, from taxation and we will take care of our properties. In the American Law, once you've set precedence to one, **you must do** the same to the others. In this case, the **Blue section is being released in Tiyan, So must the rest of the properties.** Give us back our lands, so that my father, and the rest of the original landowners can rest in peace after 50 years of unjust taken. Referring to Brac 93, this was prepared by Naval Facilities Engineering Command from probably Washington to close the base down. Brac 95 concurred with the relocation of Naval squadrons to CONUS BASES and closed NAS Officers Housing area. It also specified that :

1. 1400 acres are proposed for continued civilian airport operations and related industrial park development.
2. 260 acres are proposed as an Economic Development Zone to include Tiyan Free Trade Zone, Tiyan Commercial Plaza, the Guam Government and Civil Center and the Tiyan Airport Industrial Park.
3. 40 acres are proposed for the Tiyan Recreational Park, incorporating existing athletic facilities.
4. 2 acres are allocated to accommodate the continuum of care needs of Guam homeless population;

Then in 1998 <sup>6</sup> Glup 94 Reuse Planning Committee & GEDA for Naval properties was prepared (read/pg34)

*read sections of prepared by GEDA - money making opportunities for govt*

Let us be the judge of these properties, taking it from us to use the housing for the elites is discrimination, why is GEDA the judge of our properties, isn't it enough injustices done to us, some of these heirs are of 3rd or 4th generation level.

*established  
Tiyen Trust*

Then in 1998 Bill #383 was signed into law became Public Law 24-214 by Gov Gutierrez but on his cover letter on paragraph #5 (read)

Everything that I have read said to consider the Original Land Owners, we do not want a Tiyen Trust under the airport, if you read the fine print on FAA's regulation, it will be a cold day before we get a penny from them. Bust the Trust!!!

So I ask again, which one of you Senators is willing to sponsor a bill to help us get our properties back, we are willing to have the public continue to use the road as public road, and the airport to continue using the runways but we must all agree, that if Mr. Yingling wants to rent the offices at a fair market value, we want to charge him also at a fair market value for the use of the runways..

Thank you very much for your understanding.

## OUR LAND

Hafa Adai Para Hamgu:

I come before you to fight the injustice of how our land was taken away from us. We were excited from our land giving us no land in return. We need our land because it's our way of survival and identity. What land are we talking about? It's Lot # 2091, area of 105,000 sq meters that Government had denied the original landowners from their rights to live in dignity. My Family were told to look the other way because of national defense. I don't think we deserve this kind of liberty without justice. Why am I advocating this issue? The way our lands were taken is forced upon us and we need it to survive. The original land owners my Grandfather (Vicente C Munoz) and my late Father, Francisco C Munoz, tried so many times to speak, how beautiful their lands were and wanted to fight the discrimination bestowed upon him. Eyes were shut and ears were plugged as though his land, never belong to someone. It's a bad feeling to fight for freedom where you don't even have it in your own land.

My Grandfather and my Father had years of frustration of taking different path towards the Government asking and pleading to give them land because you took his away. Each time we pass he saw what use to be their land he would take a deep breath and wonder about his children and future. We need to restore our dignity! Who really deserve justice? The original landowners or the Government who forgot where the land had come from.

Throughout the years Chamoro people were only right when the government is right. It still hurts me to see injustice fade away and not resolve. Let me tell you how good the government took care of us when we had no rights to go back to our land. My Grandfather was given government land and we were aloud to stay their and was always subject for removal. It was suppose to be (homestead). We were denied to build any permanent structure. Where is the leaders to protect us? My Grandfather had to get junk materials from the military to build a little house for them. I did stay in that house until they died with no hope in their hearts. I had to leave Guam because the future looked dim and unsecured for our family. I ask myself, How can a man who was robbed from him wealth be ignored and made him look homeless when at the first place he had a huge land to trade off for more than a hundred houses. Our Family began to struggle because our most precious commodity was taken away. As know we are living in the age where it's hard to lie to the people. The Chamoro people are more

educated now, and we can tell if you are giving us the finger instead of our land. What we need now is "Action" not lip service. We are tired of that. When are we really going to stand up for the rights of the people so they can have hope in their homeland. My Grandfather had waited, My Father have waited and now their children are still waiting. We need to be treated with value and respect in order to give value and respect. I would like to give thanks to the Guam Land Owner United who cared and felt that something must be done to right the wrong. Do not take away our chance to restore our dignity.

Chamoro: " Nahi ham chansá para by fan lala gi tano mame talo...  
Give us a chance to live in our land again.

David Munoz  
The Grandson of a displaced family.

MASTER GROUND LEASE

BETWEEN

GUAM ECONOMIC DEVELOPMENT AUTHORITY

AND

A-L PACIFIC, LLC

TIYAN

(THE FORMER NAVAL AIR STATION, AGANA)

*B295  
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## MASTER GROUND LEASE

THIS MASTER GROUND LEASE ("**Lease**") is entered into as of May 1, 2002, by and between the GUAM ECONOMIC DEVELOPMENT AUTHORITY, a Guam public corporation ("**Landlord**") and A-L PACIFIC, LLC, a Delaware limited liability company ("**Tenant**") with reference to the facts set forth below.

### RECITALS

A. The United States of America ("**United States**"), acting through the Department of the Navy, conveyed to Landlord certain improved real property known as Tiyan ("**Tiyan Property**"), formerly Naval Air Station, Agana, pursuant to that certain quitclaim deed recorded on October 10, 2000 in the Office of the Recorder, Department of Land Management, Government of Guam, as Instrument No. 628091 ("**Quitclaim Deed**").

B. Landlord is entering into this lease in order to utilize the Tiyan Property in an effort to maximize income to the Tiyan Trust while at the same time enhancing and protecting the value of surrounding property, increasing economic opportunities in the area around the Tiyan Property, and improving the community's quality of life.

C. In furtherance of Landlord's goal, Landlord desires to have Tenant develop the Premises (as defined below) as a master planned mixed use development for occupancy by governmental agency tenants and by non-governmental commercial tenants for uses including, but not limited to, government, commercial office, medical, industrial, research and development, hotel and retail.

D. To further such development, Landlord desires to lease the Premises to Tenant on the terms and subject to the conditions of this Lease.

E. Tenant desires to Lease the Premises from Landlord on the terms and subject to the conditions of this Lease and desires to work with Landlord to assist Landlord in meeting its objectives for the Tiyan Property.

NOW, THEREFORE, in consideration of the covenants and agreements contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as set forth below.

### ARTICLE 1

#### PREMISES

1.1 Description of Premises. The "**Premises**" means the land described in **Exhibit A** attached hereto and any improvements thereon. Tenant shall have the right, subject to the provisions of **Section 1.5** hereof, to demolish any such improvements.

1.2 Demising of Premises. Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, on the terms and subject to the conditions of this Lease.

1.3 Quiet Enjoyment. Subject to Section 1.5, Landlord covenants and agrees that, so long as Landlord has not terminated this Lease in accordance with the terms of this Lease due to an uncured Event of Default by Tenant after applicable notice and cure periods, Tenant shall and may peacefully and quietly have, hold and enjoy the Premises without interference throughout the Term (as defined below).

1.4 Access. Landlord agrees, for the benefit of Tenant, its subtenants and their respective agents, employees, contractors, invitees, patrons, guests, licensees and permittees, that at all times during the Term it will not restrict in any way access to or ingress and egress to, from, and through the Premises. To the extent that such access is blocked by any third party (including, without limitation, the United States of America or any agency or arm thereof), Landlord shall cooperate with Tenant so as to enable Tenant to regain unfettered access.

1.5 Pre-existing Tenants. Tenant acknowledges that prior to the date hereof, Landlord has leased improvements on the Premises to various tenants ("**Pre-existing Tenants**"). A list of the Pre-existing Tenants is attached hereto as **Exhibit H**. Tenant further acknowledges and agrees that Landlord has reserved the right to, and may continue to lease, such already leased improvements and any additional improvements on the Premises to tenants during the Term provided that: (i) such tenants have month-to-month (and not longer-term) leases; and (ii) such tenancies will not interfere with Tenant's timely development of the Premises in accordance with the Master Development Plan (as defined in Section 3.1). Landlord shall provide Tenant with prior written notice of any such proposed lease of additional improvements and shall deliver to Tenant at least thirty (30) days prior to the execution thereof a copy of the proposed lease so that Tenant may determine whether such lease will interfere with development of the Premises in accordance with the then-current Master Development Plan. If, in the reasonable discretion of Tenant, such lease will interfere with such development, Tenant shall so notify Landlord in writing and such lease shall not be entered into by Landlord and in the event of any Pre-existing Tenant, such lease shall be terminated within sixty (60) days of such notice to Landlord. Landlord shall be solely responsible for causing the Pre-existing Tenants and any additional tenants who enter into leases with Landlord pursuant to this Section 1.5 to vacate their premises within sixty (60) days after Landlord receives written notice from Tenant requesting such vacation.

## ARTICLE 2

### TERM OF LEASE

2.1 Initial Term. The initial term of this Lease ("**Initial Term**") shall commence on May 1, 2002 ("**Effective Date**") and shall continue thereafter until the date which is the fiftieth (50<sup>th</sup>) anniversary of the Effective Date, unless earlier terminated as specifically provided in this Lease.

2.2 Options to Extend Initial Term. Landlord hereby grants to Tenant four (4) options (each a "**10 Year Option**") to extend the term of this Lease for up to four (4) additional consecutive terms of ten (10) years each (the "**10 Year Extensions**"), together with a single option exercisable only if all of the 10 Year Options have been exercised (the "**9 Year Option**"; together with the 10 Year Options, collectively, the "**Options**") to extend the extended term of this Lease for a final term of nine (9) years the ("**9 Year Extension**"). The 9 Year Extension and the 10 Year Extensions are collectively, the "**Extensions**". All Extensions shall be on the same terms and conditions as set forth in this Lease except as otherwise provided herein. Each of the Options shall be exercised only by notice delivered to Landlord not later than six (6) months before the expiration of the Initial Term or the expiration of the immediately preceding Extension, as the case may be. If Tenant fails to deliver to Landlord notice of the exercise of an Option, such Option, and any succeeding Option(s), shall lapse, and there shall be no further right to extend the term of this Lease. "**Term**" as used herein shall mean with the Initial Term as extended by any Extension that has been effected as set forth in this Section 2.2.

2.3 Termination. If at any time during the Term (i) a revised draft Master Development Plan (as hereinafter defined) which includes the then next phase of development of the Premises has not been agreed to by Landlord and Tenant within eighteen (18) months after the last New Improvements Ground Lease (as hereinafter defined) for the then-current phase has been executed, extended for the reasonable period of any recession, economic downturn or market conditions which make it unusually difficult to enter into such leases on terms which make economic sense, or if (ii) no New Improvement Ground Leases (as hereinafter defined) are executed for a period of five (5) years, then either party may terminate this Lease by providing notice to the other in accordance with the provisions of this Lease. In addition, either Landlord or Tenant may terminate this Lease by providing notice to the other Party in accordance with the provisions of this Lease if any of the following do not occur within three (3) years from the date hereof: (A) Landlord and any other required governmental or quasi-governmental entities fail to enact the entitlements required for development pursuant to the Master Development Plan (as hereinafter defined), (B) Tenant is unable to obtain the permits and financing required for the construction and installation of the infrastructure deemed necessary for the development contemplated by the Master Development Plan, (C) a solution to any funding or infrastructure completion issues described in Section 3.4 hereof cannot be agreed upon by Landlord and Tenant, (D) Landlord has not been successful in causing Guam governmental agencies or departments to enter into subleases for the portion of the Premises which is to be developed as the first phase under the Master Development Plan, or (E) the Premises is for any reason including, without limitation, reasons relating to Hazardous Materials (as hereinafter defined) not developable in Tenant's reasonable judgment.

## ARTICLE 3

### LANDLORD'S OBLIGATIONS RE DEVELOPMENT OF PREMISES

3.1 Entitlements and Subdivision. Landlord has represented to Tenant that approval by Landlord of the Master Development Plan ("**Master Development Plan**") (a very preliminary draft of which is attached as **Exhibit B** hereto) is the only entitlement or subdivision approval (other than building permits) required in order for Tenant to develop the Premises in a manner consistent with the Master Development Plan.

3.2 Insurance. Not later than the commencement of the Initial Term, each party shall obtain the insurance required in **Exhibit C** attached hereto and shall, throughout the Term, continuously maintain all such insurance and comply with the insurance provisions set forth in said **Exhibit C**.

3.3 Adoption of Master Development Plan. Tenant shall be responsible at its own cost for preparing the Master Development Plan, which shall include a phase by phase schedule. Tenant shall deliver to Landlord a revised draft of the Master Development Plan within nine (9) months from the date hereof. Landlord shall have forty-five (45) calendar days after receipt to approve or disapprove the revised Master Development Plan. If the revised Master Development Plan is disapproved, then Landlord shall indicate in writing the specific reasons for such disapproval and the specific ways in which the Plan is not acceptable. Tenant shall, within forty-five (45) calendar days from receipt of Landlord's written comments, revise and redeliver the Master Development Plan until it is approved by Landlord. After the first submittal and comment period, Landlord and Tenant shall each have only fifteen (15) calendar days after each submittal and comment in which to, as to Landlord, approve or disapprove with specific comments the next revision of the Master Development Plan, and as to Tenant, prepare and resubmit the revised Master Development Plan. If Landlord does not indicate its disapproval of any submittal within the specified time period, then it shall be deemed approved by Landlord, including all zoning, subdivision and other entitlement approvals required to implement the Master Development Plan.

To the extent that Tenant desires to amend the Master Development Plan after it has been approved by Landlord, then Tenant shall submit any amendment to such Plan to Landlord for its approval, and the approval process shall follow the steps set forth in this Section for approval of the Master Development Plan. The term "**Master Development Plan**", as used in this Lease, shall mean the Master Development Plan as amended from time to time in accordance with the provisions of this Section 3.3.

3.4 Infrastructure Funding. Landlord shall use commercially reasonable efforts, at its sole cost and expense, to assist Tenant in its efforts to secure United States of America funding for the construction of infrastructure development needed to develop the Premises in the manner and on the timetable set forth in the Master Development Plan. In the event that (i) Tenant cannot secure funding needed to complete such infrastructure development, or (ii) the timely completion of required infrastructure is, in the reasonable determination of Tenant, unlikely to occur, then Landlord and Tenant shall confer to address the problem and agree on a solution which enables the infrastructure development to occur in a mutually satisfactory manner and on a

mutually satisfactory timetable. To the extent that some or all of the funding can be obtained from funding provided by the United States of America to Landlord and may be assigned to Tenant, then Landlord shall use commercially reasonable efforts to obtain all necessary approvals so that it can assign such funds to Tenant so that Tenant can perform the work so funded. If Landlord and Tenant cannot agree on such solution, Tenant and Landlord shall each have the right to terminate this Lease in accordance with Section 2.3.

3.5 Easements. Landlord acknowledges that, in connection with the design, development and operation of the Premises, various access easements, right-of-way easements, utility easements, reciprocal easements, licenses and similar interests and rights in the Premises (and/or adjacent property owned by Landlord) may be necessary or reasonably convenient. Landlord hereby agrees that it shall execute such documents and instruments, and take such other actions as are within Landlord's authority, as may be reasonably necessary to timely grant such rights and interests as may be requested by Tenant from time to time in connection with the development of the Premises.

3.6 Landlord's Marketing Obligations. Landlord shall use commercially reasonable efforts to secure subleases for the Premises with the government tenants listed on **Exhibit D** hereto, and shown as tenants for Phase I of the Master Development Plan, for the building parcels located on the Premises ("**Building Lots**") and contemplated for development in Phase I. Such subleases shall be on economic terms acceptable to Tenant in its sole and absolute discretion.

3.7 Tenant Performance. Tenant shall (subject to extension for force majeure and delays, if any, in Landlord's performance) meet the performance schedule attached as **Exhibit E** hereto during the first twenty-four (24) months of this Lease.

## ARTICLE 4

### USE OF THE PREMISES

4.1 Permitted Use. Tenant may use the Premises throughout the Term for any lawful purpose that is consistent with the Master Development Plan and any and all amendments or modifications thereof ("**Permitted Use**").

4.2 New Improvement Ground Leases. As part of Tenant's Permitted Use, Tenant shall have the right to enter into one or more new lease agreements in substantially the form of **Exhibit F** attached hereto (each a "**New Improvement Ground Lease**") for any one or more or all of the Building Lots together with the right in conjunction with a New Improvement Ground Lease to enter into one or more development management agreements in a form and substance acceptable to Tenant in its sole and absolute discretion (each a "**Development Management Agreement**"). Tenant may assign the right to enter into a New Improvement Ground Lease to any party in Tenant's sole discretion if such assignment would enhance Tenant's ability to obtain cost-effective financing. Upon execution of a New Improvement Ground Lease by Landlord and Tenant or its assignee, this Lease shall terminate with respect to that portion of the Premises described in and leased pursuant to the New Improvement Ground Lease. Thereafter, with respect to such portion of the Premises, (i) the leasehold relationship of Landlord and Tenant and

the parties' rights, duties and obligations as landlord and tenant shall be governed by the New Improvement Ground Lease and (ii) this Lease shall be null and void and of no further force of effect as to such portion of the Premises only. Notwithstanding anything herein to the contrary, no Building Lot may be developed unless a New Improvement Ground Lease has been executed with respect thereto.

4.3 Rent Under New Improvement Ground Leases. Within sixty (60) days after the date of this Agreement, Landlord and Tenant shall cause an appraisal to be performed of the Premises. To perform such appraisal, each Party shall designate an MAI Appraiser who shall appraise the Premises. The average of the two appraisals shall be deemed to be the value of the Premises. The appraisals shall designate the value for each parcel within the Premises currently or then intended for development (as to each parcel, its "**Baseline Appraisal**"). Prior to execution of a New Improvement Ground Lease for a specific parcel, the above-mentioned appraisal process shall be employed to appraise such parcel for its intended use pursuant to such New Improvement Ground Lease (a "**Development Appraisal**"). The annual Minimum Ground Rent under such New Improvement Ground Lease shall be an amount equal to seven and one-half percent (7½%) of the Development Appraisal. Provided, however, that Minimum Ground Rent shall only be paid out of rent actually collected by Tenant from subtenants. Landlord acknowledges and agrees that unless rent is actually collected for a given calendar quarter during the Term, Tenant shall have no rental obligation whatsoever for such calendar quarter. If rent is abated or reduced for a subtenant, then Minimum Ground Rent shall be proportionately abated or reduced. Tenant shall use commercially reasonable efforts to collect rent from subtenants and to replace non-paying subtenants (if any) with paying subtenants.

4.4 Future Phases. Once Phase I of the Master Development Plan has been substantially developed, Tenant shall submit to Landlord a proposal or proposals for additional phases of development of the Premises for Landlord's reasonable approval. Landlord shall have forty-five (45) calendar days after receipt of each such submission to approve or disapprove it, provided, however, that Landlord shall not disapprove a submission to the extent that it is consistent with the Master Development Plan and contemplates a market rate of rent. If a submission is disapproved, Landlord shall indicate with specificity the reasons for such disapproval, and Tenant shall resubmit it in accordance herewith until approved. Landlord's failure to disapprove a submission within such time period shall be deemed to be its approval.

## ARTICLE 5

### RENT

5.1 Rent. "**Rent**" hereunder shall be the sum of One Dollar (\$1.00) per year, paid in advance for the full Initial Term or Extension, as applicable, upon execution of this Lease or exercise of the corresponding Option, as appropriate. Rent to be paid under each New Improvement Ground Lease shall be at the rate set forth therein, which the Parties contemplate will be at a market rate.

5.2 No Other Rental Obligation. Tenant's only rental obligation under this Lease is payment of Rent.

## ARTICLE 6

### OPERATING EXPENSES

Throughout the Term, for all of the Premises which is not subject to a New Improvement Ground Lease, Landlord shall timely pay, before delinquency, all Operating Expenses. "Operating Expenses" means any and all of the types of costs and expenses paid, incurred or payable by Landlord as of the date hereof in operating, owning, maintaining, managing, administrating, insuring, repairing, replacing or restoring of the Premises while the Premises are subject to this Lease, including, without limitation, all taxes levied upon or relating to the Premises. Operating Expenses shall not include costs incurred by Tenant which are in addition to (rather than in lieu of) costs currently being incurred by Landlord for the Premises.

## ARTICLE 7

### MAINTENANCE AND REPAIRS

Throughout the Term, for all of the Premises which is not subject to a New Improvements Ground Lease, Landlord shall maintain, repair and keep the Premises in a condition substantially comparable to the condition of the Premises as of the date hereof and in compliance with all applicable laws at Landlord's sole cost and expense. Landlord's obligation hereunder shall be interpreted broadly, and shall include paying such expenses for all of the Premises and all infrastructure improvements therein. Without limiting Tenant's other rights and remedies under this Lease for any breach or default of Landlord, in the event Landlord breaches its maintenance and repair obligations hereunder, Tenant shall have all rights available under applicable law with respect thereto, including, to the extent not prohibited under applicable law, the right to make such repairs itself and charge Landlord therefor. In the event Tenant exercises such right of repair, all charges to Landlord with respect thereto shall accrue interest at the rate of ten percent (10%) per annum until all such charges (and accrued interest) have been paid in full. Neither the requirement of such interest, nor any collection thereof, shall be deemed Tenant's waiver of Landlord's breach for failure to timely pay amounts required of Landlord as and when due.

## ARTICLE 8

### COMPLIANCE WITH LAW

Landlord and Tenant shall each perform each and all of their obligations under this Lease in conformance with the terms of this Lease and at all times in compliance with all applicable governmental laws, regulations, codes, standards and requirements including, but not limited to, all building code requirements of the Government of Guam (collectively, "Laws").



## ARTICLE 9

### DEFAULT

9.1 Event of Default. Should Tenant be in default in the performance of any of its covenants or agreements contained in this Lease and should such default of performance continue for more than thirty (30) days (except as otherwise provided in Section 9.3, below) after written notice thereof from Landlord to Tenant specifying the particulars of such default or breach of performance, should Tenant at any time breach any representation or warranty of Tenant under this Lease, then Landlord may treat the occurrence of either of the foregoing events as a breach of this Lease (“**Event of Default**”), and in addition to any other rights or remedies of Landlord under this Lease, Landlord shall have the following rights:

9.1.1 The right to declare the Term ended and to reenter the Premises and take possession thereof;

9.1.2 The right without declaring this Lease ended to reenter the Premises;

9.1.3 The right, even though it may have reentered the Premises, to thereafter elect to terminate this Lease; or

9.1.4 Any other rights or remedies available to Landlord at law or in equity.

9.2 Reentry. If Landlord reenters the Premises under the provisions of Subsection 9.1.2 above, Landlord shall not be deemed to have terminated this Lease by any such reentry unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease. Tenant further covenants that the service by Landlord of any notice pursuant to the applicable unlawful detainer statutes and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease.

9.3 Extended Cure Period. Notwithstanding any other provisions of this Article 9, Landlord agrees that if the default complained of is of such a nature that the same cannot reasonably be cured within the thirty (30) day period described in Section 9.1 above, then such default shall be deemed to be cured if Tenant within such thirty (30) day period shall have commenced the curing thereof and shall continue thereafter to pursue such curing to completion within a reasonable period of time; provided, however, that as to the milestone actions set forth in the schedule to the Master Development Plan which are within the control of Tenant and which cannot be cured within a thirty (30) day period, such time for effecting a cure shall not exceed an additional period of six (6) months.

## ARTICLE 10

### DEFAULT BY LANDLORD

10.1 Landlord Default and Cure. Landlord shall be deemed to be in default under this Lease if: (a) Landlord fails to pay any amounts Landlord is required to pay pursuant to this Lease if such failure continues for a period of fifteen (15) days following the date first becoming due; and/or (b) if Landlord fails to perform any of its other obligations under this Lease within thirty (30) days after written notice by Tenant to Landlord specifying the nature of Landlord's default, provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion within a reasonable period of time; and/or (c) Landlord, at any time, breaches any representation or warranty of Landlord under this Lease. In the event of any such default by Landlord and/or any other event which, pursuant to the other terms of this Lease are stated to constitute a default by Landlord (with respect to such other events, the notice and cure period in this Section 10.1 shall not apply), Tenant shall have the right, exercisable at any time thereafter, to terminate this Lease (if but only if the breach by Landlord was material) and/or recover damages from Landlord and/or exercise any other rights or remedies available to Tenant at law or in equity with respect to such default by Landlord.

10.2 Tenant's Rights to Perform If Landlord Defaults. Tenant shall have the right to cure any default of Landlord which is not timely cured and to collect from Landlord all amounts spent or incurred in such cure with interest at the rate of ten percent (10%) per annum.

## ARTICLE 11

### DAMAGE TO OR DESTRUCTION OF THE PREMISES IMPROVEMENTS

Landlord and Tenant agree that in the event of damage to or destruction of any infrastructure improvements on the Premises including, without limitation, roads, power transmission lines and facilities, water and sewer lines and facilities, and other utility services, by earthquake, typhoon or any other cause, similar or dissimilar, insured or uninsured, Tenant may terminate this Lease if (i) insurance proceeds recovered in respect of any insured damage or destruction shall be insufficient to pay the entire cost of restoration, repair, replacement or rebuilding, and (ii) in the reasonable discretion of Tenant, the resulting damage is of such a degree as to materially interfere with Tenant's ability to develop the Premises in accordance with

the Master Development Plan and any and all amendments and modifications thereto. Tenant shall exercise its right to terminate within one (1) year from the date of the subject destruction otherwise Tenant's right to terminate this Lease as provided in this section shall have expired and shall be deemed as having been waived by Tenant.

## ARTICLE 12

### CONDEMNATION

12.1 Permanent Taking. If, at any time during the term of this Lease, there shall be a taking of the fee title to any portion of the Premises in condemnation proceedings or by any right of eminent domain, this Lease shall terminate on the date of such taking as to the portion so condemned.

12.2 Award. In the event of any such taking and termination of this Lease, the award or awards for such taking, less the costs of the determination and collection of the amount of the award or awards ("Condemnation Proceeds"), shall be distributed as follows:

12.2.1 Landlord shall first be entitled to receive and retain as its own property, and Tenant hereby assigns to Landlord, such portion of the Condemnation Proceeds as shall equal the fair market value of the Premises as encumbered by this Lease including any untaken portion of the Premises, exclusive of improvements that were not constructed at Landlord's sole cost and expense.

12.2.2 Tenant shall then be entitled to receive, and Landlord hereby assigns to Tenant, the balance of the Condemnation Proceeds, if any.

12.3 Temporary Taking. If, at any time during the Term, the whole or any part of the Premises, or of Tenant's leasehold estate under this Lease, shall be taken in condemnation proceedings or by any right of eminent domain for temporary use or occupancy (a "temporary taking") the foregoing provisions of this Article 12 shall not apply and, except only to the extent that Tenant or Landlord may be impaired or prevented from so doing as a result of the effect of such taking and/or pursuant to the order of the condemning authority, each Party shall perform and observe all of the other terms, covenants, conditions and obligations of this Lease upon the part of such Party to be performed and observed. In the event of any such temporary taking, Tenant shall be entitled to receive the entire amount of the Condemnation Proceeds made for such taking, whether paid by way of damages, rent or otherwise unless such period of temporary use or occupancy shall extend beyond the termination of this Lease, in which case the Condemnation Proceeds shall be apportioned between Landlord and Tenant as of the date of termination of this Lease.

12.4 Separate Award. If the order or decree in any condemnation or similar proceeding shall fail separately to state the amount to be awarded to Landlord and the amount to be awarded to Tenant under the foregoing provisions of this Article 12, and if Landlord and Tenant cannot agree thereon within sixty (60) days after the final award or awards shall have been fixed and determined, any such dispute shall be determined in accordance with the provisions of Section 20.12 hereof.

12.5 Assignment of Condemnation Proceeds. If Tenant shall assign any Condemnation Proceeds to which it shall be entitled under the provisions of this Article 12, Landlord shall recognize such assignment and shall consent to the payment of the Condemnation Proceeds to such assignee as its interest may appear.

12.6 Evidence. Tenant shall have the right to participate in any condemnation proceeding for the purpose of protecting its rights under this Lease, and in connection therewith, without limitation, introduce evidence independently of Landlord to establish the value of or damage to any property, rights or interests.

## ARTICLE 13

### ASSIGNMENT AND SUBLETTING

13.1 Subletting. Tenant has the right, throughout the Term, with the consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed, to, at any time, sublet the Premises or any Building Lots or any other portion of the Premises (and/or any improvements thereon in which Tenant holds an interest) to any subtenant provided that the term of any such sublease (including any options to extend the same) shall not have a term extending beyond the then remaining Term, and provided that the subtenant's proposed use of the subleased premises is lawful.

13.2 Assignment. In addition to Tenant's right to assign the right to enter into New Improvement Ground Leases and Development Management Agreements, as set forth in Section 4.2, Tenant shall have the right to assign its interests under this Lease (a) to an Affiliate without Landlord's prior written consent or (b) to a non-Affiliate assignee provided Tenant obtains Landlord's prior written consent with respect to such assignment to a non-Affiliate, which consent Landlord shall not unreasonably withhold, condition or delay so long as it is reasonable to believe that such proposed assignee is capable of developing the Premises in accordance with the then-current Master Development Plan. Provided that Tenant's assignee expressly assumes Tenant's obligations under this Lease in a written instrument signed by such assignee, Tenant's assignment of its interest under this Lease hereunder shall operate to release the assigning Tenant from its future duties, obligations and liabilities under this Lease.

13.3 Affiliate. "**Affiliate**" means any entity that, either directly or indirectly, controls, is controlled by, or is under common control with Tenant or with either of the members of Tenant or any Affiliate of any such member. For purposes of this Section 13.3, "**control**" means the direct or indirect ownership of more than twenty-five percent (25%) of the voting securities of an entity or possession of the right to vote more than twenty-five percent (25%) of the voting interest in the ordinary course of the entity's affairs. "**Affiliate**" also includes any parent or

affiliate or subsidiary of Tenant or either of its members, any entity into which Tenant or either of its members is merged or any entity which purchases or otherwise obtains all or substantially all of the assets or voting securities or rights of Tenant.

## ARTICLE 14

### REPRESENTATIONS AND WARRANTIES OF LANDLORD

Landlord represents and warrants as set forth below, which representations shall be true as of the date of this Lease and shall survive the Term of this Lease.

14.1 Title. Landlord is the sole fee title owner to the Premises, no other person or entity has any right or interest in the Premises and no other person or entity other than Tenant and parties acquiring rights from Tenant will have any rights to possession of the Premises during the Term. If Landlord is terminated as an entity, any successor-in-interest as fee owner of the Premises shall take title subject to this Lease.

14.2 Authority. The execution and delivery of this Lease has been duly authorized and approved by all requisite action and the consummation of the transactions contemplated hereby will be duly authorized and approved by all requisite action of Landlord, and no other authorizations or approvals will be necessary in order to enable Landlord to enter into or to comply with the terms of this Lease. This Lease, upon execution and delivery hereof by Landlord, will have been duly entered into by Landlord, and will constitute legal, valid and binding obligations of Landlord. Neither this Lease nor anything provided to be done under this Lease violates or shall violate any contract, document, understanding, agreement or instrument to which Landlord is a party or by which it is bound.

14.3 Compliance With Law. As of the date hereof, the Premises is in compliance with all applicable Laws. Landlord has complied with all provisions of the National Environmental Protection Act.

14.4 Hazardous Materials. There are no underground tanks on the Premises. As of the date hereof, the Premises is not in violation of any federal, territorial or local Laws, ordinances or regulations relating to the environmental conditions on, under or about the Premises including, but not limited to, soil and groundwater conditions, including, without limitation, the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq., the Federal Water Pollution Prevention and Control Act, 33 U.S.C. Sections 1251 et seq., the Oil Pollution Act of 1990, Pub. L. 101-380, August 18, 1990, as said Laws may have been supplemented or amended through the date hereof and any other federal or local law, statute, rule, regulation or ordinance currently in effect, promulgated or adopted which regulates or proscribes the use, storage, disposal, presence, cleanup, transportation or release or threatened release into the environment of Hazardous Materials (collectively, "**Environmental Laws**"). Landlord warrants that as of the date hereof there are no Hazardous Materials or ordinances on the Premises other than groundwater contamination with trichloroethylene ("**TCEs**") which does not affect the portion of

the Premises to be developed in the first phase of development under the Master Development Plan, and that to the extent that there were or are Hazardous Materials or ordnances present, used on, treated, stored, released or disposed of on the Premises they have been or will be fully removed or remediated by the United States Navy ("USN") to industrial usage standards in accordance with all applicable Laws, ordinances or regulations and as required for the development and financing of the development contemplated in the Master Development Plan, pursuant to the U.S. Navy Plan for development of the Tiyan Property as set forth in the Quitclaim Deed. The TCEs referred to above are currently being removed by the USN using a pump and treat system. As used herein, the term "**Hazardous Materials**" means any hazardous chemical, hazardous or toxic substance, hazardous waste, hazardous material, contamination, pollution or similar term, giving those terms the broadest meaning as accorded by any Environmental Law and by statutes, regulations and court decisions in the jurisdiction in which the Property is located, as said Environmental Laws, statutes, regulations and court decisions have been supplemented or amended to date. Without limiting the generality of the foregoing, "**Hazardous Materials**" shall include (i) asbestos and asbestos containing materials; (ii) polychlorinated biphenyls; (iii) any substance the presence of which is prohibited by any applicable governmental requirements; (iv) any petroleum-based products which are deemed hazardous by any Environmental Law; (v) underground storage tanks which are deemed hazardous by any Environmental Law; and (vi) any other substance (including liquid, solid, semi-solid and gaseous substances and materials) which under any Environmental Law requires special handling, permitting by, or notification of any agency in its collection, storage, treatment, release, discharge, emission or disposal.

14.5 Quitclaim Deed. Landlord and the USN have each complied with and satisfied all requirements and obligations set forth in the Quitclaim Deed with respect to the Premises. There is nothing within the Quitclaim Deed which prevents, restricts or affects the ability to develop the Premises in accordance with the Master Development Plan.

## ARTICLE 15

### REPRESENTATIONS AND WARRANTIES OF TENANT

Tenant represents and warrants as set forth below, which representations shall be true as of the date of this Lease and shall survive the Term of this Lease.

15.1 Authority. The execution and delivery of this Lease has been duly authorized and approved by all requisite action and the consummation of the transactions contemplated hereby will be duly authorized and approved by all requisite action of Tenant, and no other authorizations or approvals will be necessary in order to enable Tenant to enter into or to comply with the terms of this Lease. This Lease, upon execution and delivery hereof by Tenant, will have been duly entered into by Tenant, and will constitute legal, valid and binding obligations of Tenant.

15.2 Hazardous Materials. Tenant shall not, treat, use, store, dispose, release, handle or otherwise manage Hazardous Materials on the Premises except (i) in accordance with applicable Environmental Laws in connection with any development, construction, operation, maintenance or repair of the Premises or (ii) in amounts allowed by applicable Environmental

Laws in connection with the operation of a Permitted Use. Tenant shall indemnify, protect, defend (with legal counsel acceptable to Landlord) and hold Landlord and Landlord's employees, members, directors, officers, agents and representatives harmless from and against any and all losses, claims, damages, costs and expenses of whatever nature relating to or arising out of a breach of Tenant's representations and warranties set forth in this Section 15.2, including, without limitation, all attorney's fees and costs incurred in connection therewith or incurred to enforce this indemnity. The covenants set forth in this Section 15.2 shall survive the termination of this Lease until such time as an action against Landlord is absolutely barred by the applicable statute of limitations.

## ARTICLE 16

### INDEMNIFICATION

Landlord agrees to and shall indemnify, protect, defend (with legal counsel acceptable to Tenant) and hold Tenant and Tenant's employees, members, directors, officers, Affiliates, subsidiaries, agents and representatives harmless from and against any and all losses, claims, demands, damages, costs and expenses of whatever nature relating to or arising out of a breach of Landlord's representations and warranties set forth in this Lease, including, without limitation, any claims relating to Hazardous Materials or ordnances, and any claims arising under, out of or pursuant to the Quitclaim Deed, including without limitation, all attorney's fees and costs incurred in connection therewith or incurred to enforce this indemnity. To the extent that Tenant gives notice to Landlord of any Hazardous Materials or ordnances or of any claim under the Quitclaim Deed, then Landlord shall, within two (2) business days assert all available claims against the USN pursuant to the Quitclaim Deed and shall thereafter diligently pursue enforcement of the USN's obligations under the Quitclaim Deed. The covenants contained in this Article 16 shall survive the termination of this Lease until such time as an action against Tenant is absolutely barred by the applicable statute of limitations.

## ARTICLE 17

### CERTIFICATES OF LANDLORD AND TENANT

Tenant and Landlord each agree, at any time and from time to time upon not less than thirty (30) days prior written notice in each instance, to execute and deliver a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the Lease is in full force and effect as modified and stating the modifications), and the dates to which the rent has been paid, and stating whether, to the actual knowledge of the Party executing the certificate, the other Party is in default in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease, and, if in default, specifying each such default, it being intended that any such statement delivered pursuant to this Article 17 may be relied upon by the other Party or any prospective purchaser of fee title to the Premises or any prospective mortgagee of the fee thereof.

ARTICLE 18

NOTICES

18.1 Generally. Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered personally, by facsimile (with a hard copy sent by recognized overnight courier service for next business day delivery), or by recognized overnight courier service for next business day delivery, addressed to the receiving party's address provided below:

If to Landlord:                   Guam Economic Development Authority  
Aturidad Inadilanton Ikunumiha Guahan  
ITC Building, Suite 511  
590 South Marine Drive  
Tamuning, Guam 96913  
Attn: Edward G. Untalan, Administrator  
Telephone: 647-4332  
Facsimile: 649-4146  
Email: [egu007@aol.com](mailto:egu007@aol.com)

with a copy to:                   Calvo and Clark, LLP  
655 South Marine Drive, Suite 202  
Tamuning, Guam 96913  
Attn: Arthur B. Clark  
Telephone: 646-9355  
Facsimile: 646-9403  
Email: [abc@calvoandclark.com](mailto:abc@calvoandclark.com)

If to Tenant:                   c/o Lowe Enterprises Commercial Group  
11777 San Vicente Blvd., Suite 900  
Los Angeles, CA 90049  
Attn: Richard G. Newman, Jr.  
Telephone: (310) 820-6661  
Facsimile: (310) 207-1132  
Email: [rnewman@loweenterprises.com](mailto:rnewman@loweenterprises.com)



with a copy to:                   Lowe Enterprises Commercial Group  
18401 Von Karman Ave., Suite 500  
Irvine, CA 02612  
Attn: Stan Wendzel  
Telephone: (949) 955-4323  
Facsimile: (949) 724-1444  
Email: [swendzel@loweenterprises.com](mailto:swendzel@loweenterprises.com)

and a copy to:                   AECOM Enterprises  
515 So. Flower St., Ninth Floor  
Los Angeles, CA 90017-2201  
Attn: Debra Lambeck, Esq.  
Telephone: (213) 593-8185  
Facsimile: (213) 593-8174  
Email: [Debra.Lambeck@DMJMHarris.com](mailto:Debra.Lambeck@DMJMHarris.com)

and a copy to:                   Lowe Enterprises Commercial Group  
11777 San Vicente Blvd., Suite 900  
Los Angeles, CA 90049  
Attn: Corporate Counsel  
Telephone: (310) 820-6661  
Facsimile: (310) 207-1132

and a copy to:                   Luce, Forward, Hamilton & Scripps LLP  
777 S. Figueroa, Suite 3600  
Los Angeles, CA 90017  
Attn: Timi A. Hallem, Esq.  
Telephone: (213) 892-4903  
Facsimile: (213) 892-7731  
Email: [thallem@luce.com](mailto:thallem@luce.com)

Delivery of any such notice or demand so made shall be deemed completed on the first business day following the day of actual delivery as shown by the addressee's registry or certification receipt. If any such notice or demand is made by nationally recognized overnight courier service as provided above, delivery shall be deemed complete on the second business day following the date timely deposited with such courier service for next business day delivery. If requested in writing by the holder of any leasehold mortgage (which request shall be made in the manner provided above as between the parties hereto and shall specify an address to which notices or demands shall be given or made) any such notice or demand shall also be given or made in the manner specified in this Article 18 and contemporaneously to such holder. Either party, and the holder of any leasehold mortgage who shall have made the request referred to above, may designate by notice in writing given in the manner specified above a new or other address to which such notice or demand shall thereafter be so given or made, and following such notice, such new address shall be the appropriate address for such party or leasehold mortgagee until changes again in accordance with the provisions hereof. No default, breach or Event of Default predicated on the giving of any notice to Tenant shall be effectuated, and no cure periods

based on the giving of such notice shall run, unless like notice shall have been given contemporaneously therewith to each holder of any leasehold mortgage who shall have made a request for notices and demands as provided above.

18.2 Notice Requirements re Hazardous Materials. Each party shall promptly notify the other party of any inquiry, test, investigation or enforcement proceeding by or against Landlord, Tenant, any subtenant or the Premises concerning the presence of any Hazardous Materials on the Premises or the improvements thereon in violation of any applicable Laws.

## ARTICLE 19

### CUMULATIVE REMEDIES - NO WAIVER - NO ORAL CHANGE

19.1 Cumulative Remedies. The specified remedies to which Landlord and Tenant may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Tenant or Landlord may be lawfully entitled in case of any breach or default by Landlord of any provision of this Lease. The failure of Tenant to insist in any one or more cases upon the strict performance of any of the covenants of this Lease or to exercise any option contained in this Lease shall not be construed as a waiver or a relinquishment for the future of such covenant or option. No waiver by Landlord or Tenant of any provision of this Lease shall be deemed to have been made unless expressly stated in a writing signed by the waiving party.

19.2 Writing Required. This Lease cannot be changed orally, but only by an agreement in writing signed by Landlord and Tenant.

## ARTICLE 20

### TERMINATION OF LEASE, SURRENDER OF IMPROVEMENTS

Upon termination of this Lease, Tenant shall surrender to Landlord the Premises, and all real property improvements at the Premises for which fee title therein is then vested in Tenant. All such improvements surrendered by Tenant shall be in reasonably good order and repair, reasonable wear and tear excepted, and also excepting as Tenant may have been prevented from maintaining in good order and repair by occupation of the Premises by any governmental entity who shall have taken temporary use of the improvements and shall then be in possession of the improvements, and also excepting casualty damage. Upon such termination, Tenant shall also deliver to Landlord all leases, lease files, plans, records, registrations and other papers and documents which are reasonably necessary for the proper operation and management of the Premises and improvements, to the extent that such documents and instruments are in Tenant's possession and do not constitute proprietary, confidential or privileged communications of Tenant.

## ARTICLE 21

### MISCELLANEOUS

21.1 Fair Meaning. In all cases the language in all parts of this Lease shall be construed simply, according to its fair meaning and not strictly for or against Landlord or Tenant irrespective as to which party may be considered the primary drafter of this Lease.

21.2 Headings. The Article and Section headings contained in this Lease are inserted solely for convenience and do not govern, limit or aid in the interpretation of this Lease.

21.3 Binding Effect. Subject to the other provisions of this Lease, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective successors and assigns, and wherever a reference in this Lease is made to either Landlord or Tenant, such reference shall be deemed to include, wherever applicable, also a reference to the successors and assigns of such party, as if in every case so expressed.

21.4 Memorandum. A Memorandum of Ground Lease (in the form attached hereto as **Exhibit G**) shall be executed by Landlord and Tenant and recorded in the Office of the Recorder, Department of Land Management, Government of Guam. In no event shall this Lease be recorded. Landlord may, without prior notice to Tenant, make a copy of the Lease available to the public as required by the Guam Open Government Act and any similar act or regulation governing Landlord.

21.5 Governing Law. This Lease shall be governed by and construed in accordance with the federal laws of the United States and/or the laws of the Government of Guam, as applicable. Jurisdiction shall lie with the United States District Court for the Territory of Guam.

21.6 Modifications; Amendments. This Lease constitutes the entire agreement between the parties relative to the subject matter of this Lease, and shall supersede any prior or contemporaneous agreement or understanding, if any, whether written or oral, pertaining to the subject matter hereof.

21.7 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

21.8 Attorneys' Fees. In the event of any litigation or arbitration between Landlord and Tenant with respect to the subject matter of this Lease, the unsuccessful party to such litigation or arbitration shall pay to the prevailing party all reasonable costs and expenses, including reasonably attorneys' fees, incurred therein by the successful party, all of which shall be included in and as a part of the judgment or award rendered in such litigation or arbitration.

21.9 Real Estate Brokers. Each of Landlord and Tenant represents and warrants to the other that it has not dealt with a real estate broker, agent or party who may be entitled to a commission or fee on account of this Lease. Each party shall indemnify the other and hold the other harmless from and against any loss, cost, liability and expense, including, but not limited

to, reasonable attorney's fees, which may be incurred by a party in the event that the foregoing representation and warranty by the other party proves to be incorrect.

21.10 Invalidity. If any term or provision of this Lease or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by applicable law.

21.11 Exhibits. All Exhibits referenced in the body of this Lease which are attached to this Lease, are incorporated herein by reference and made a part of this Lease.

21.12 Waiver of Trial by Jury. Landlord and Tenant, to the extent they may legally do so, hereby expressly waive any right to trial by jury of any claim, demand, action, cause of action, or proceeding arising under or with respect to this Lease, or in any way connected with, or related to, or incidental to, the dealings of the Parties hereto with respect to this Lease or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and irrespective of whether sounding in contract, tort, or otherwise. To the extent they may legally do so, Landlord and Tenant hereby agree that any such claim, demand, action, cause of action, or proceeding shall be decided by a court trial in a federal court of the United States of America without a jury and that any Party hereto may file an original counterpart or a copy of this Section 21.12 with any court as written evidence of the consent of the other Party to waiver of its or their right to trial by jury.


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

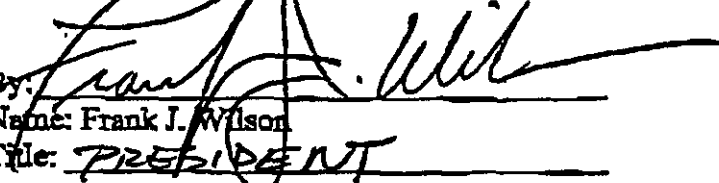
Landlord:

Tenant:

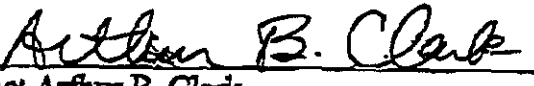
GUAM ECONOMIC DEVELOPMENT  
AUTHORITY, a Guam public corporation

A-L PACIFIC, LLC,  
a Delaware limited liability company

By:   
Name: Christopher S. Murphy  
Title: Chairman of the Board of Directors

By:   
Name: Frank J. Wilson  
Title: PRESIDENT

Approved for execution by the Guam  
Economic Development Authority:

By:   
Name: Arthur B. Clark  
Calvo and Clark LLP

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# I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

2002 (SECOND) Regular Session

Date: 5/21/02

## VOTING SHEET

5 Bill No. 295(COR)

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

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

20-100

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Joseph F.	✓				
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S.	✓				
CALVO, Eddie B.					✓
CAMACHO, Felix P.	✓				
CHARFAUROS, Mark C.					✓
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LEON GUERRERO, Lourdes A.	✓				
MOYLAN, Kaleo S.	✓				
PANGELINAN, Vicente C.	✓				
SANTOS, Angel L.G.	✓				
UNPINGCO, Antonio R.					✓
WON PAT, Judith T.					✓

TOTAL

4   0   0   0   4

CERTIFIED TRUE AND CORRECT:

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

\* 3 Passes = No vote  
EA = Excused Absence

MINA'BENTE SAIS NA LIHESLATURAN GUAHAN  
2002 (SECOND) Regular Session

Bill No. 295 (COR)

Introduced by:

Mark Forbes 

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AN ACT TO DISCONTINUE THE USE OF TIYAN PROPERTIES UNDER THE JURISDICTION OF THE ANTONIO B. WON PAT GUAM INTERNATIONAL AIRPORT AUTHORITY AS OFFICE SPACE FOR GOVERNMENT OF GUAM DEPARTMENTS AND AGENCIES, WITH EXCEPTIONS AS PROVIDED.

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

2           **Section 1. Intent.** *I Liheslaturan Guahan* finds that the Federal Aviation  
3 Authority (FAA) is requiring that government agenices currently utilizing  
4 office space at Tiyan that is under the jurisdiction or "footprint" of the  
5 Antonio B. Won Pat Guam International Airport Authority pay fair market  
6 value rent for such space beginning October 1, 2002. *I Liheslatura* finds that if  
7 indeed fair market rent must be paid by this date, it is a more desirable  
8 economic outcome that such rental occur in the private rental market, as a  
9 means of stimulating desperately needed economic activity, rather than

1 simply be paid to another government of Guam instrumentality.  
2 Furthermore, *I Liheslatura* finds that continued government occupation of such  
3 properties retards their economic potential and inhibits the ability of the  
4 government to provide economic justice to original landowner families in the  
5 area.

6 **Section 2. Discontinuance of Tiyan use.** Beginning October 1, 2002, no  
7 government agency other than the Antonio B. Won Pat Guam International  
8 Airport Authority shall utilize space for office or other purposes on Tiyan  
9 properties under the jurisdiction of the Antonio B. Won Pat Guam  
10 International Airport Authority. Provisions shall be made in the 2003 Annual  
11 Budget Act to provide for funds needed to accomodate rentals that may be  
12 required pursuant to this act. Government agencies shall be relocated to  
13 facilities owned and operated by the governmentof Guam where such is  
14 feasible.

15 **Section 3. Exceptions.** The provisions of this act do not apply in the  
16 case of Tiyan properties under the jurisdiction of the Guam Economic  
17 Development and Commerce Authority ("GEDCA") or other government of  
18 Guam instrumentalities, except that GEDCA shall present to the Speaker of *I*  
19 *Liheslatrura* within sixty (60) days a plan detailing GEDCA's proposed  
20 development or alternative use of such property, inclusive of what specific  
21 provisions GEDCA shall make for the return of such property to the original  
22 landowners, whether under the auspices of the Guam Ancestral Lands  
23 Commission or otherwise, or in lieu of such, what provisions shall be made  
24 for the compensation of original landowners, either through participation in

1 the Tiyan Trust, direct monetary compensation, land exchange, or alternative  
2 means. The laboratories operated by the Guam Environmental Protection  
3 Agency (GEPA) are exempt from the provisions of this act, except that  
4 provisions for the payment of fair market rental for such laboratory facilities  
5 shall be included in the Annual Budget Act for Fiscal Year 2003, and provided  
6 further that GEPA shall submit to the Speaker of *I Liheslaturan Guahan* within  
7 sixty (60) days of the effective date of this act a report detailing GEPA's long  
8 term plans for the relocation of such laboratory facilities. An agency of the  
9 government required to relocate under the provisions may seek similar  
10 exemption when it is clearly established that a significant financial investment  
11 has been made in the construction or the placement of sensitive, immobile  
12 equipment in a structure that would render relocation financially ruinous. A  
13 report detailing such must be submitted to the Speaker of *I Liheslaturan*  
14 *Guahan* within sixty (60) days of the effective date of this act. Should *I*  
15 *Liheslatura* concur, an amendment to this act may be passed by *I Liheslatura* in  
16 bill form.

17 **Section 4. Task Force established.** In light of the ongoing return of  
18 certain distinct parcels within the borders of the old NAS Agana to a few  
19 original landowners under the provisions of the later Base Ralignment and  
20 Closure (BRAC) process, a situation of inequity is emerging in which some  
21 landowners are receiving compensation for the taking of their properties  
22 while the majority are not, dependent entirely on when and how their  
23 particular parcel was returned to the government of Guam. A task force is  
24 hereby established to include the general manager of the Antonio B. Won Pat



1 Guam International Airport Authority (GIAA), the administrator of the Guam  
2 Economic Development and Commerce Authority, the director of the Guam  
3 Ancestral Lands Commission, the administrator of the Chamorro Land Trust  
4 Commission and the director of the Department of Land Management, or the  
5 respective successor agencies. This task force shall, within ninety (90) days of  
6 the effective date of this act, submit a report to the Speaker of *I Liheslaturan*  
7 *Guahan* detailing a plan for the compensation of original landowners whose  
8 claims are on those Tiyan properties under the jurisdiction of the Antonio B.  
9 Won Pat Guam International Airport Authority, whether such compensation  
10 be through land exchange, direct monetary compensation from the Federal  
11 Aviation Authority, participation in some form of trust or revenue-sharing  
12 arrangement, or any other alternatives the task force may recommend.

13