

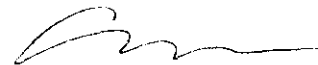
JUN 03 2002

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

Dear Legislative Secretary Brown:

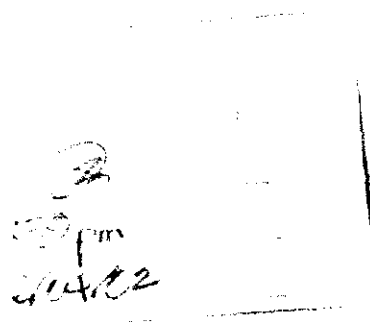
Enclosed please find Bill No. 248 (COR) "AN ACT TO APPROVE A LEASE FOR GAIN"  
which I have **signed** into law as **Public Law No. 26-98**.

Very truly yours,

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

Attachments: 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

  
2  
5:09 pm  
JUN 02

0812

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

**Bill No. 248 (COR)**

As amended.

Introduced by:

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

**AN ACT TO APPROVE A LEASE FOR GAIN.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*  
3 finds that Guam Animals in Need, Inc. ("GAIN"), a registered Guam  
4 corporation and tax-exempt charity, is an organization dedicated to the  
5 humane treatment of animals, and through its low-cost spay/neuter and  
6 adoption programs, is a significant instrument in reducing the number of  
7 stray cats and dogs on Guam.

8 *I Liheslaturan Guåhan* wishes to acknowledge and encourage the spirit of  
9 cooperation and public service exhibited by the Department of Public Health

1 and Social Services (“DPH&SS”) on the one hand, and the GAIN membership,  
2 on the other, in their efforts to resolve differences, settle litigation and provide  
3 a mutually supportive and uplifting environment for the benefit of the People  
4 and animals on Guam.

5 *I Liheslaturan Guåhan* also finds that rabies control is an essential public  
6 health concern to the government of Guam, and that an effective pet licensing  
7 program, including a rabies inoculation provision, can help foster public  
8 awareness and responsibility for pet ownership. *I Liheslaturan Guåhan* further  
9 finds that the present animal pound, the Yigo Animal Shelter, is antiquated  
10 and in need of repair, and that the construction of new and renovated shelter,  
11 adoption and veterinary clinic facilities by GAIN can provide a significant  
12 public benefit at *minimal* governmental expense.

13 **Section 2. (a) Lease.** The executed lease agreement (“Lease”) for  
14 the premises hereinafter described between DPH&SS as Lessor, and  
15 GAIN as Lessee, a copy of which is attached hereto, labeled as  
16 “**Attachment A**” and incorporated herein, is hereby approved, *subject* to  
17 the conditions set forth in Subsection (b) of this Section. The property  
18 covered by the Lease (premises) is described as follows:

19 “The portion of Lot Number 7054-2 bounded on the north  
20 by the existing chain-link fence and bounded on the east, south  
21 and west as designated by Department of Land Management  
22 Drawing Number 034-FY91, Document Number 449729,  
23 registered February 6, 1991, and a twenty foot (20’) easement  
24 along the west side of existing chain-link fence.”

1           **(b) Conditions.**       The approval of the Lease is subject to the  
2 following conditions, which conditions shall prevail over any provisions  
3 of the Lease to the contrary:

4           (i)    the Lessee shall remain a not-for-profit organization  
5 during the entire term of the Lease, and it shall comply with all  
6 laws governing not-for-profit organizations, and shall, on a yearly  
7 basis, submit to the Director of DPH&SS a copy of the annual  
8 report in the format normally required of not-for-profit  
9 organizations by the Department of Revenue and Taxation (Form  
10 990);

11          (ii)   the Lessee shall comply with all applicable laws and  
12 regulations and shall be subject to covenants and restrictions on  
13 land usage which are recorded at the Department of Land  
14 Management, and contained in local or Federal law at the time of  
15 the execution of the Lease;

16          (iii)  the Lessee shall *not* sell, assign or otherwise transfer its  
17 interest in the premises, *except* to another qualifying not-for-profit  
18 organization; Lessee may, *however*, sublease, encumber or  
19 mortgage its leasehold interest in a commercially reasonable  
20 manner, as provided by the terms of the Lease; *and*

21          (iv)  at the end of the term of the Lease or upon the earlier  
22 termination of the Lease, the Lessee will, at its expense, peaceably  
23 deliver up to the Lessor possession of the premises, together with  
24 all improvements constructed thereon, free of any encumbrances

1 or obligations; *provided*, however, that the Lessee may remove all  
2 furniture, fixtures, equipment and readily movable or portable  
3 structures from the premises.

4 **Section 3. Administrative Provisions.** As part of the mutual  
5 consideration exchanged between Lessee and DPH&SS, the parties have  
6 entered into a contract, dated March 19, 2001, the provisions of which are  
7 incorporated herein by reference. **Attachment A** / *Liheslaturan Guåhan* finds  
8 that the terms and conditions of said contract are just, reasonable and  
9 beneficial to the parties and to the People of Guam, and therefore properly  
10 form a basis for administrative provisions governing the relationship of the  
11 parties. Accordingly, to the extent consistent with governing law, the terms  
12 and conditions of the contract shall be incorporated into any administrative  
13 rules and regulations developed by DPH&SS, or any other appropriate  
14 government of Guam agency, for the governance of the relationships of the  
15 parties.

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

**ATTACHMENT A**  
**CONTRACT**

This contract is made and executed by and between the Government of Guam, acting through the Department of Public Health and Social Services (DPHSS), and Guam Animals In Need, Inc. (GAIN), a non-profit corporation;

This contract is intended to be executed in conjunction with a lease agreement, a copy of which is attached hereto and incorporated herein as Appendix A, between DPHSS and GAIN for the Yigo Animal Shelter;

**WITNESSETH THAT:**

WHEREAS, the DPHSS wishes to operate and maintain an animal shelter and to enforce the laws and regulations concerning animal care and animal control in conformance with Title 10, Guam Code Annotated, Chapter 34, Articles 1 and 2; and

WHEREAS, GAIN is a non-profit Guam corporation formed for the prevention of cruelty to animals, the education of the public concerning matters pertaining to animals and their welfare, the enforcement of existing laws pertaining to animals, and the establishment of an animal shelter; and

WHEREAS, GAIN and DPHSS have entered into a Memorandum of Understanding and Cooperative Agreement made and executed on February 17, 2000, regarding certain aspects of animal adoption and care at the Yigo Animal Shelter, and establishing working relationships for the management and joint use of such facility; and

WHEREAS, DPHSS is presently operating the Yigo Animal Shelter, hereinafter referred to as the Shelter, to provide animal care services required by 10 Guam Code Annotated, Chapter 34, Article 1; and

WHEREAS, GAIN is qualified, ready, willing, and able to operate such an animal shelter and undertake to provide the animal care services required by 10 Guam Code Annotated, Chapter 34, Article 1; and

WHEREAS, GAIN and the DPHSS share the long-term goals of reducing the number of stray animals, the enforcement of animal control laws, cruelty and neglect laws, and rabies control, as set forth in Title 10, GCA, Chapter 34, Articles 1 and 2; and

WHEREAS, DPHSS and GAIN have deemed it advisable and in the best interests of the citizens of Guam that DPHSS appoint and delegate to GAIN the management and control of the Yigo Shelter, and to administer the same as hereinafter expressly provided within the geographical limits of Guam and administer the laws set forth in Title 10, GCA, Chapter 34, Articles 1 and 2 as

they relate to animal care;

NOW THEREFORE, the DPHSS and GAIN, in consideration of the mutual promises hereinafter set forth, hereby agree as follows:

## I. RIGHT TO USE THE YIGO ANIMAL SHELTER

1. Facilities and Equipment. On the effective date of this contract, DPHSS does hereby delegate and transfer to GAIN all right to use and interest in the Yigo Animal Shelter for the term of this contract. GAIN shall take physical possession and control of the Shelter and use said property to carry out its functions and duties under this contract, as provided by 10 GCA, Chapter 34, Articles 1 and 2. On the date of delivery, DPHSS shall provide a written inventory of all personal property turned over to GAIN.

2. Temporary Suspension of Prior Agreement. In order to avoid conflicts, ambiguities, or misunderstandings which may arise out of the provisions of the parties' Memorandum of Understanding and Cooperative Agreement, February 17, 2000, and this Contract, the parties agree that the effect and operation of the February 17, 2000 agreement shall be temporarily suspended during any time period in which this Contract, including any modifications and extensions thereof, remains in effect. By this temporary suspension, DPHSS and GAIN do not intend to avoid, cancel, or create a novation that would have the effect of preventing or interfering with the reinstatement of the prior agreement of the parties, pursuant to paragraph 14 of this Contract, as provided herein.

## II. DUTIES AND OBLIGATIONS OF GAIN UNDER THIS CONTRACT

1. Animal Care. GAIN will maintain clean and humane housing for all animals impounded on order of DPHSS or surrendered by the public. GAIN will provide at its own cost and expense all the services incident to the impounding, care, shelter, feeding and disposal of all animals taken into its custody, including such veterinarian services and euthanasia services as may be required.

2. Disposal of Animal Carcasses. GAIN will dispose of all dead animal carcasses of the pets which have been euthanized at the Shelter, by delivering them to the Government of Guam sanitary landfill.

3. Telephone/Animal Control. GAIN will provide personnel to answer the Shelter/animal control telephones, 653-2474 and 653-6718, at least eight hours per day, on every day when the DPHSS Pet Control Unit is working. As part of its obligations under this contract, GAIN personnel will record all information received concerning animal control or animal pickup and promptly relay that information to the DPHSS Pet Control Unit so that it can efficiently perform its duties as required by Title 10, GCA, Chapter 34, Section 34115. Said information shall be relayed by fax to the Pet Control Unit, using forms approved by DPHSS.

4. Hours of Operation. GAIN will provide animal intake services for the DPHSS Pet Control Unit on the same days and for the same hours that the Pet Control Unit is on duty. GAIN will perform emergency intake services for the Pet Control Unit as required, outside of ordinary shelter operating hours.

In addition, GAIN will ensure the Shelter is open to the public on such days and during such hours that the public will have reasonable and convenient access to the shelter for conducting business.

5. Record Keeping. GAIN shall maintain a complete record of every animal admitted into the Yigo Shelter, and complete records concerning the disposition of every animal. Such records shall be made available to DPHSS at its request.

6. Adoption Program. GAIN may administer a pet adoption program, in accordance with the laws set forth in Title 10, GCA, Chapter 34:

a) GAIN shall ensure that all pets over the age of six (6) months will be sterilized before being released to the adopter, as provided by Section 34116(f), and that all pets over the age of three (3) months are vaccinated for rabies. To this end, GAIN may use Shelter facilities to provide spay/neuter, vaccination and other medical services;

b) GAIN shall collect all sterilization deposits paid by adopters, maintain accurate and complete records concerning the animals adopted, and refund deposits to adopters as the animals are sterilized, or returned.

7. Impound Fees. GAIN shall hold all impounded animals for such periods of time as directed by DPHSS, and shall collect the impoundment fees as provided by Title 10, GCA, Chapter 34, Section 34116(e) for pets reclaimed by their owners, and shall maintain accurate records of these payments.

8. Pet Licenses. DPHSS will issue GAIN blocks of pet license tags. GAIN shall ensure that every pet released from the shelter is licensed as required by Title 10, GCA, Chapter 34, Section 34102, and shall collect the license fee on behalf of DPHSS, and shall forward the original pet license application and rabies vaccination certificate to DPHSS on a bi-weekly basis.

### III. CONSIDERATION

In return for GAIN undertaking at its own cost all animal care services and programs currently being provided at the Yigo Animal Shelter, including telephone answering and information services for the DPHSS Pet Control Unit, DPHSS agrees that it will provide the following consideration:



1. Execute a long-term Lease of the Shelter to GAIN, attached hereto as Appendix A, and introduce before the Guam Legislature a Bill to approve this long term lease, a copy of which Bill is attached hereto as Appendix B.

2. Pay all costs of utilities to operate the Shelter, including power, water, dumpster fees, septic tank service, landfill disposal fees, and the cost of telephone lines 653-2474, 653-6717 and 653-6718, excluding the cost of long-distance telephone services, and the cost of utilities for any sublessee;

3. Subject to compliance with GovGuam procurement procedures, DPHSS will pay GAIN quarterly a management fee to be negotiated not less often than annually between GAIN and DPHSS, in an amount not less than the amount collected by GAIN for the preceding quarter pursuant to Section II, paragraphs 6, 7 and 8 of this Agreement.

#### IV. FACILITY UPKEEP AND IMPROVEMENTS

1. Cost of Shelter Maintenance. Because this contract is intended to be executed as part of the lease agreement between DPHSS and GAIN for the Shelter, as more fully set forth in Appendix A, GAIN agrees to be solely responsible for the cost of maintaining the shelter grounds, buildings and fence in a reasonably good and safe operating condition.

2. Alterations and Capital Improvements. GAIN may make alterations and/or improvements to the demised shelter premises, provided all such alterations and/or improvements are done in compliance with all applicable laws and regulations and further provided that DPHSS is furnished copies of all plans for such improvements and/or alterations. All alterations, and/or improvements built, constructed, or placed on the premises by GAIN, with the exception of fixtures removable without damage to the premises and removable personal property, shall, unless otherwise provided by written agreement between DPHSS and GAIN, become the property of DPHSS and remain on the premises at the expiration or termination of this Contract. When removing any fixtures or personal property, GAIN must restore the premises to the same condition as at the beginning of this Contract, ordinary wear and tear excepted.

#### V. GENERAL PROVISIONS

1. Audits. GAIN shall keep accurate financial records of all monies collected, received and expended by GAIN due to the performance of the animal care and animal control services specified in this contract, including expenditures for capital improvements at the shelter. All such records shall be subject to periodic audits by DPHSS.

2. Independent Contractor. In the performance of the services required under this contract, GAIN shall be an independent contractor with the authority and the responsibility to control and

direct the performance and details of the work and service required under this contract. Any work or services performed under this contract shall not constitute nor be construed as employment with the Government of Guam or DPHSS, and shall not entitle GAIN or GAIN's employees and agents to vacation, sick leave, retirement, worker's compensation, or other benefits afforded to employees of the Government of Guam or DPHSS.

3. Wages, Labor, and Other Laws. GAIN shall fully comply with all applicable federal and territorial laws and regulations relating to worker's compensation, payment of wages, withholding, safety, and equal employment opportunity.

4. Indemnification. GAIN shall indemnify and hold harmless the Government of Guam, DPHSS, its officers, employees and agents from all demands, claims, causes of action or judgments, and from and against any and all manner of suits, actions, or claims arising out of or resulting from any act or omission of GAIN, its officers, employees or agents occurring during the performance of their duties under this contract.

5. Insurance. Effective the start of each contract year, and for so long as such coverage is reasonably and commercially available, GAIN shall maintain and furnish DPHSS with proof of insurance policies for the following coverage:

a) General indemnity insurance insuring against injury to any person or property in a sum of not less than Three Hundred Thousand Dollars (\$300,000) for bodily injury to one person, One Million Dollars (\$1,000,000) for bodily injury to more than one person in any one accident, and Two Hundred Thousand Dollars (\$200,000) for property damage in one accident ;

b) Worker's compensation insurance to cover all of the employees working in any capacity to execute this contract;

c) Automobile liability insurance for any vehicles owned by GAIN, with minimum limits of not less than \$300,000 for bodily injuries or death per accident and not less than \$50,000 for damages to property;

d) The above automobile and general liability insurance coverage shall include endorsements to:

i) Name DPHSS as additional insured, but only with respect to operations of GAIN to be carried on pursuant to the terms of this contract;

ii) Notify DPHSS in writing of any cancellation of insurance policies, reduction, or changes in insurance coverage at least thirty (30) days prior to the effective date of such cancellation or change.

Any other insurance on the property or improvements shall be the responsibility of DPHSS.

GAIN shall be notified in writing of any cancellation of insurance policies, reduction, or changes in insurance coverage at least thirty (30) days prior to the effective date of such cancellation or change.

6. Subcontracts. GAIN may subcontract any part or all of the services to be performed under this contract without the prior written approval of DPHSS.

7. Waivers of Violations. It is expressly understood and agreed that no waiver granted by the DPHSS on account of any individual violation of any term, condition, or provision of this contract shall constitute or be construed in any manner as a waiver of the terms, conditions, provisions of, or of the right to enforce the same as to any other or further violation.

8. Inspection/Notice of Deficiencies. DPHSS shall have a general right to inspect, at any time and with reasonable prior notice, the personnel, equipment, supplies, records, services, and facilities to determine whether services are being provided by GAIN in accordance with the provisions of this contract. DPHSS shall notify GAIN in writing concerning any deficiencies, and give GAIN 30 days to correct the deficiencies or respond to the allegation of deficiencies, except in the case of sanitary violations which must be corrected within the time provided by Guam laws and regulations.

9. Termination on Default and Enforcement of this Contract. DPHSS or GAIN may, by giving thirty (30) calendar days written notice to the other, terminate this contract if the other party has failed to comply with the provisions of this contract or may, with appropriately reasonable notice under the particular circumstances, take any necessary action to enforce the provisions of this contract. If this contract is terminated because of DPHSS breach, GAIN shall be entitled to compensation for services satisfactorily performed up to the date of termination. If the contract is terminated because of GAIN's breach, GAIN will be entitled to compensation only for services performed prior to the date of breach. Within ninety (90) calendar days after the date of termination, GAIN shall submit reports for the final period of service and shall refund to the DPHSS any compensation paid in advance for services that will be provided due to the termination. The party claiming default and/or the right to self-help to enforce any provision of this Agreement shall, concurrently with service of notice of default on the opposing party, demand arbitration of the dispute pursuant to paragraph 11 of this Section. Pending resolution of the dispute by the arbitrator, any self-help enforcement action undertaken by either party shall be at the sole risk and responsibility of the party taking such action. For purposes of provisions of the Government Claims Act, the filing of opposition to an arbitration demand pursuant to this section shall be deemed to be a denial of relief requested in such notice, as if the same had been submitted pursuant to the ordinary provisions of 5 GCA § 6201.

11. Arbitration. Any disputes concerning the rights and obligations of the parties or the administration of this agreement will be arbitrated by such person as the Governor may designate, provided that such designee shall not be a present or former employee of DPHSS, or a present or former officer/director of GAIN. The arbitration hearing shall be informal and any

competent evidence shall be admissible. Formal rules of evidence shall not apply. Either party may, within ten days of the arbitration hearing, appeal to the Governor, who shall make a final and binding determination on the evidence and issues presented. Such appeal proceeding shall be conducted in such manner as the Governor may determine in his or her reasonable discretion, depending on the nature of the appeal and the issues presented, and judgment thereon may be entered and enforced in the Guam Superior Court in the same manner as any civil proceeding to which a GovGuam agency is a party. The parties agree to equally share the cost of such arbitrator, if any.

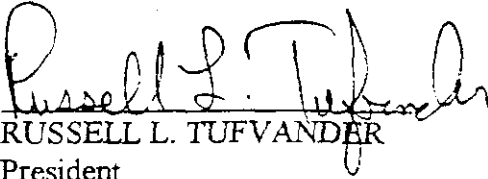
12. Contract to Take Effect. This contract between DPHSS and GAIN will take effect as soon as all necessary parties have signed and approved it, and DPHSS has turned over the Yigo Animal Shelter to GAIN.

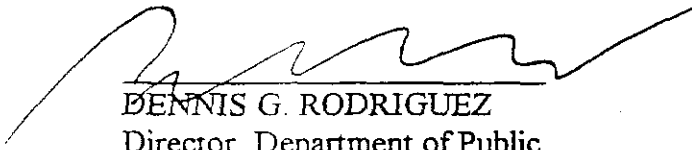
13. Term of Contract/Automatic Renewal. The term of this contract will be for three (3) years, commencing on the effective date as provided in paragraph 12 of this Section, and provided that neither party is in default hereunder, and shall automatically renew for successive equal periods upon the expiration of a preceding 3-year term, unless notice of termination is given on or before ninety (90) days prior to the expiration of the contract term. Such notice may be given by either party, for such reasonable case as may be stated therein. If challenged by the non-terminating party, the reasonableness of a party's termination shall be resolved by arbitration, pursuant to paragraph 11 of this Section.

14. Partial Surrender of Shelter Property Upon Termination or Conclusion of Contract; Reinstatement of Prior Agreement. If this Contract is terminated or not renewed, GAIN agrees pursuant to Section 21 of the Lease, attached hereto as Appendix A, to vacate the portion of the Shelter designated therein so that DPHSS can resume responsibility for care of Shelter dogs. GAIN agrees that regardless of any termination or non-renewal of this Contract, GAIN will continue care of Shelter cats.

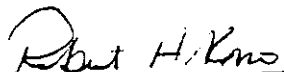
Upon termination of this Contract, the provisions of the February 17, 2000 Memorandum of Understanding and Cooperative Agreement existing between the parties shall be reinstated, observed, and honored in full, as if the same had remained continuously in force after the execution of said Memorandum of Understanding and Cooperative Agreement.

NOW, THEREFORE, be it resolved that this contract is signed this 19<sup>th</sup> day of March, 2001.

  
RUSSELL L. TUFVANDER  
President  
Guam Animals In Need, Inc.

  
DENNIS G. RODRIGUEZ  
Director, Department of Public  
Health and Social Services

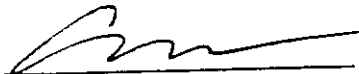
approved as to form & content:



JOHN TARANTINO  
Attorney General of Guam



ROBERT P. KUTZ  
Attorney  
Guam Animals In Need, Inc.



CARL T. C. GUTIERREZ  
Governor of Guam

APPENDIX A

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2001, by and between the GUAM DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES ("Lessor"), and GUAM ANIMALS IN NEED, INC., a non-profit corporation ("Lessee").

WHEREAS, Lessor owns or administers the land described herein below, and Lessor desires to lease such land to Lessee and Lessee desires to lease the same from Lessor; and

WHEREAS, the Lessor and the Lessee have entered into a contract wherein Lessee will assume the duties and responsibilities of animal care and impoundment as set forth in 10 Guam Code Annotated, Chapter 34, Article 1; and

WHEREAS, the Lessor and Lessee had previously entered into a Lease Agreement between them, made and executed as of February 17, 2000, which Lease Agreement included a portion of the property included herein;

NOW, THEREFORE, in consideration of the premises and the terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby cancel, nullify and avoid entirely the Lease Agreement entered into between them as of February 17, 2000, and instead enter into this Lease and agree as follows:

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

The portion of Lot 7054-2 bounded on the north by the existing chain-link fence and bounded on the east, south and west as designated by Land Management Drawing Number 034-FY91, Document Number 449729, registered February 6, 1991, known as the Yigo Animal Shelter, together

with a 20-foot easement along the west side of the existing chain-link fence.

All as indicated on the plot plan attached hereto as Exhibit "A" and incorporated herein by reference; TOGETHER WITH all and singular, tenements, rights, easements, privileges, improvements and appurtenances to the same belonging or appurtenant or held and enjoyed in connection therewith; and together also with the rights of ingress and egress as more fully described herein.

2. Term. The term of this Lease shall be for a period of thirty (30) years commencing on 2001 and expiring on 2030, subject to the provisions of Section 19 below. Thereafter, Lessee has the option to renew the Lease for additional extensions of 10 years per extension, for a maximum of 2 extensions, upon such terms and conditions as both parties may agree. In no extension of this Lease shall the rent be increased.

3. Rent During Term. The rent payable from Lessee to Lessor shall be the sum of One Dollar (\$1) per year, payable annually in advance to the Treasurer of Guam during each year of the term of this Lease. This rental amount has been in good faith determined by the parties to be the fair rental value of the Premises, taking into consideration the provisions of this Lease, including that Lessee is a not-for-profit organization and that the parties have executed an agreement by separate contract wherein Lessee has assumed all aspects of animal care at the Yigo Animal Shelter, which are presently required to be performed by Lessor pursuant to 10 GCA Chapter 34, Articles 1 and 2.

4. Quiet Enjoyment. Lessor shall put and keep Lessee in actual possession of the Premises at the beginning of and throughout the term of this Lease. Lessor covenants that Lessee, upon paying the rent required hereunder, shall lawfully, peacefully and quietly have, hold, use, occupy and enjoy the Premises including any appurtenant access roadway and/or parking area, without any suit, hindrance, eviction, ejection, molestation, interruption or disturbance whatsoever of or by Lessor or by any persons claiming by, from, under or against

Lessor.

5. Use.

(a) General. The Premises shall be used for the purpose of construction and operation of dog and cat kennels, and such other facilities related to animal care, quarantine, and control as GAIN may chose to construct and operate.

(b) Improvements. Except as otherwise provided herein, Lessee shall make at the sole cost and expense of Lessee, leasehold improvements in, to and about the Premises and any easement and/or access and adjoining areas used by Lessee, which improvements shall be suitable for their intended use, and constructed in accordance with all applicable Federal and Territorial statutes and regulations. Any kennels which Lessee constructs, repairs or rebuilds must be in conformance with the applicable parts of 10 Guam Code Annotated Ch.34, Art. 2 and 3, and applicable regulations, depending on their designated use.

(c) Ownership of Improvements. During the term of this Lease, title to any and all buildings or improvements situated or erected on the Premises and the building equipment, fixtures and other items installed thereon and any alterations or additions thereto shall remain in Lessee, and Lessee shall be the owner of the same. Upon expiration or termination of this Lease, all non-portable or readily moveable improvements remaining on the Premises shall become the property of Lessor.

6. Alterations, Construction and Replacements. Lessee may at any time and from time to time construct, or otherwise make new improvements on all or any part of the Premises, and may make any alterations, changes, replacements, improvements, and additions in and to the Premises, including the contour and grade thereof, and the additions, buildings and improvements constructed thereon, in accordance with applicable law.

7. Signage. Lessee shall have the right to erect and maintain appropriate signage indicating Lessee's facility, its hours of operation, and other pertinent information. Such signage



shall include one sign to be erected on the existing sign support framework of Lessor's sign on Route 1 (Marine Drive). All such signs must be in compliance with applicable Guam laws and regulations.

8. Assignment. Lessee shall not have the right to assign this Lease unless the prior written consent of Lessor shall first be obtained. In the event Lessee proposes to assign this Lease to any not-for-profit organization which is a successor in interest to Lessee, Lessor agrees it shall not withhold its consent to such assignment so long as the assignee shall commit to observe and perform the terms and conditions of this Lease, including without limitation the provisions as to use of the Premises. The limitations in this Section shall not prevent Lessee from subletting any part of the Premises for animal-related business or charitable purposes. Any sublease by Lessee shall provide that the sublessee will be responsible for the cost of all of its own utilities.

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

10. Payment of Utilities. Except as otherwise provided herein, or in any Contract, including any modifications, extensions, or renewal thereof, between DPHSS and GAIN, Lessee shall pay and be responsible for the installation of and all charges for electrical power and other utilities, including septic service, which services are installed and supplied to and on the Premises.

11. Maintenance. Lessee shall, at its own cost and expense, maintain all the improvements on the Premises in good repair and condition throughout the term of this Lease, reasonable wear and tear excepted. In the event of an impending storm or other natural disaster, Lessee shall take reasonable measures to ensure the safety of the Premises against such disaster(s). All damages to the Premises arising out of a natural disaster shall be the liability of the Lessee. In the event that the leased Premises sustain major damage, Lessor shall have the

right to access the Lessee's Premises to make damage assessments.

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

13. Leasehold Mortgages. Lessee may, at any time and from time to time during the term of this Lease, for the purpose of financing the cost of making any improvements on the Premises, encumber by mortgage or other security instrument or otherwise, Lessee's interest under this Lease and the leasehold estate hereby created. If Lessee shall encumber and/or mortgage this Lease or its interest in the Premises, then so long as any such leasehold encumbrance or mortgage shall remain unsatisfied of record, the following provisions shall apply:

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

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

(c) Remedy. Any leasehold mortgagee or secured party, in case Lessee shall be in default hereunder, shall, within the period herein provided, have the right to remedy such default, or cause the same to be remedied, and Lessor shall accept such performance by or at the instigation of such leasehold mortgagee or secured party as if the same had been performed by Lessee. For

the purposes hereof, no event of default shall be deemed to exist under this Lease in respect to the performance of work required to be performed, or of acts to be done, or of conditions to be remedied, if steps shall, in good faith, have been commenced within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity.

Anything herein contained to the contrary notwithstanding, upon the occurrence of an event of default, other than an event of default due to a default in the payment of money, Lessor shall take no action to effect the termination of this Lease if any leasehold mortgagee or secured party after notice from Lessor as herein provided, acts diligently and in a reasonable time (in all events not to exceed ninety (90) days thereafter to accomplish one of the following, either (i) to obtain possession of the Premises (including possession by receiver), or (ii) to institute, prosecute and complete foreclosure proceedings or otherwise acquire Lessee's interest under this Lease with diligence. Such mortgagee or secured party upon obtaining possession or acquiring Lessee's interest under this Lease shall be required promptly to cure all defaults then reasonably susceptible of being cured by such mortgagee or secured party; provided, however, that such mortgagee or secured party shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults have been cured.

(d) Foreclosure. Any leasehold mortgagee or secured party shall have the right at any time during the term of this Lease to realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by any applicable mortgage or security documents and to transfer, convey, or assign the title of Lessee to the leasehold estate created hereby to any purchaser at any foreclosure sale, and to acquire and succeed to the interest of Lessee hereunder by virtue of any such foreclosure sale. Such mortgagee or secured party, or its assignee or designee, or other purchaser in foreclosure proceedings may become the legal owner and holder of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure. During the time of any

foreclosure proceedings and at all times thereafter, lease rent must be paid as and when scheduled in accordance with the provisions of this Lease and the Premises may not be used for any purposes other than those provided for in this Lease.

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

(f) Estoppel Certificates. Lessor agrees, at any time and from time to time, at no cost or expense to Lessee, upon request of Lessee, to execute, acknowledge and deliver to Lessee for the benefit of Lessee or any actual or potential lender, creditor, investor or successor Lessee, within thirty (30) days of the request, a statement in writing certifying that this Lease is unmodified and in full force and effect and Lessee is not in default (or if modified, in full force and effect as modified and stating the modifications, or if there is any default stating such default), the dates to which rent or other sums have been paid in advance and setting forth such further information with respect to this Lease or the Premises as may be requested thereon, it being understood that

any such statement delivered pursuant hereto may be relied upon by Lessee or any actual mortgagee, beneficiary or other party.

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

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

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

modifications, or repairs which may be reasonably required by Lessee in order to place the remaining portion of the Premises not so condemned in a suitable condition for the continuance of Lessee's tenancy, or on account of any diminution in value of its leasehold estate hereunder.

All interested parties may independently file separate claims in the condemnation proceedings for the purpose of having the value of their respective claims determined.

15. Lessor's Rights on Default. This Lease is predicated upon the continuing conditions:

(a) if Lessee shall fail to pay the rent as stipulated in this Lease or any part thereof when the same becomes due and shall fail to do so within thirty (30) days after written notice of default from Lessor;

(b) if Lessee fails to, in any other respect faithfully observe and perform any other term, condition or covenant contained in this Lease, on its part to be observed or performed, and fails to cure said default within thirty (30) days after written notice thereof, or shall fail to commence to cure a default whose cure would require more than thirty (30) days;

(c) if Lessee shall become bankrupt or makes an assignment for the benefit of its creditors, or file any debtor proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Act seeking any readjustment, arrangement, postponement, composition or reduction of its debts, liabilities or obligations;

(d) if Lessee shall abandon the Premises; then and in any such event, Lessor may upon thirty (30) days written notice to Lessee, subject to the provisions herein contained, enter into and upon the Premises or any part thereof in the name of the whole and at Lessor's option: (i) cancel this Lease by giving written notice to Lessee and thereupon take possession of the Premises and all improvements thereon, and thereby become wholly vested with all right, title and interest of Lessee therein and may expel and remove Lessee from the Premises, without being guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, all without prejudice to any other remedy or right of action which Lessor may have for arrears for rent or for

any other preceding breach of this Lease on the part of Lessee, or (ii) Relet the Premises, for the remainder of the term thereof at the best rent it can obtain for the account of Lessee who shall make good any deficiency.

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

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

18. Access. The rights granted by Lessor to Lessee hereunder include free rights of ingress and egress to and from the Premises. Lessor shall have the right to change the location of the access to the Premises in connection with any development by Lessor of the parcel of property of which the Premises or the access/parking area form a part so long as Lessee's rights of ingress, egress, and parking are not impaired.

19. Approvals.

(a) Legislative Approval. Applicable law requires that this Lease be approved by the Guam Legislature. Lessor shall submit this Lease for legislative approval and the parties shall cooperate in using their best efforts in good faith to obtain such approval. The term of this Lease (notwithstanding any other provisions herein contained) shall not be deemed to have commenced until such date as legislative approval is obtained, and the expiration date of this Lease shall be a date thirty (30) years from the date of legislative approval.

(b) Rights of Entry. In the event the actual commencement date of the term of this Lease is, because of legislative approval as provided in Section 19(a) above or for any other reason, extended beyond the express date set forth in Section 2 above, then Lessee shall have the right prior to the commencement date, at Lessee's sole risk and Lessee's sole expense, to freely go and

enter upon the Premises and easements and adjacent areas for the purposes of making soil tests, surveys, examinations, clearing, grading, filling and such other purposes as Lessee may elect. Lessee may, during any such period prior to the commencement date of this Lease, place and maintain temporary structures on the Premises and may store equipment on the Premises, but all at the sole risk of Lessee.

20. Lessee to Remain a Not-For-Profit Organization. During the term of this Lease Lessee shall retain its legal structure as a not-for-profit corporation whose purpose is to promote the humane treatment of animals, as more fully set forth in its Articles of Incorporation and By-laws.

21. Effect of Termination of Animal Care Contract. It is the intent of the parties that Lessee lease a portion of the premises herein described, for the term provided in this lease, to be used by Lessee for providing animal care services pursuant to 10 GCA, Chapter 34, Articles 1 and 2, as more fully set forth in the Contract between DPHSS and GAIN dated the \_\_\_\_ day of \_\_\_\_\_, 2001. In the event that said Contract terminates, or is not renewed, Lessee agrees promptly to vacate the following portion of the Yigo Animal Shelter, so that Lessor can re-enter and resume its duties to provide care of shelter dogs:

The southerly "front" section of the Yigo Animal Shelter, including Dog Kennel Rows 1, 2, 3, 4, and that part of Row 5 dedicated to dog cages, and both office buildings, as further indicated in the drawing attached hereto as EXHIBIT 1 and incorporated herein.

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

23. Binding Effect. This Lease and the terms, covenants, and conditions herein shall extend to and be binding upon the respective legal representatives, successors and assigns of the



parties hereto, and to any other person or persons claiming to hold or to exercise any interest by, under or through any of the parties hereto.

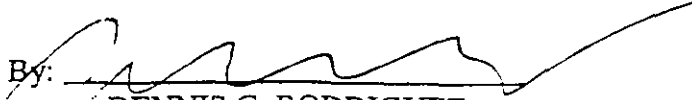
24. Notice. All notices to be given with respect to this Lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid and return receipt requested, to the party to be notified at such address as either party may from time to time designate in writing. Nothing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

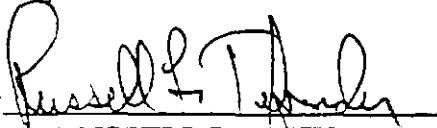
25. Entire Agreement. This Lease contains the entire agreement of the parties in respect to Lessee's tenancy, use and occupancy of the Premises, and no other agreement, statement, pertaining to the same shall be valid or of any force or effect. This Lease shall not be subject to modification except in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

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

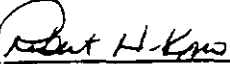
LESSOR: GUAM DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES


LESSEE: GUAM ANIMALS IN NEED, INC.


By:   
DENNIS G. RODRIGUEZ  
Director

By:   
RUSSELL L. TUFVANDER  
President

APPROVED AS TO FORM AND CONTENT:

  
JOHN TARANTINO  
Attorney General of Guam

  
ROBERT P. KUTZ  
Attorney  
Guam Animals In Need, Inc.

  
CARL T. C. GUTIERREZ  
Governor of Guam

Administration - Division of Accounts  
10640006  
MAR 28 2001  
By:   
Travel/Contracts

RECEIVED  
FEB 28 2001  
3:49 PM  
ATTORNEY GENERAL'S OFFICE

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# I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

2002 (SECOND) Regular Session

Date: 5/13/02

## VOTING SHEET

Bill No. 248 (COR)

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

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

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Joseph F. <span style="float: right;">/</span>	✓				
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 15 0 0 0 0

CERTIFIED TRUE AND CORRECT:

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

\* 3 Passes = No vote  
EA = Excused Absence

2nd      3rd  
4/23/02      1/20/02

MAR 1, 2002

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

Bill No. 248 (COR)

Introduced by: E.B. Calvo

**AN ACT TO APPROVE A LEASE FOR THE GUAM ANIMALS IN NEED FACILITY.**

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

2            **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guáhan*  
3 finds that Guam Animals in Need, Inc. (GAIN) a registered Guam corporation  
4 and tax-exempt charity, is an organization dedicated to the humane treatment  
5 of animals, and through its low-cost spay/neuter and adoption programs, is a  
6 significant instrument in reducing the number of stray cats and dogs on  
7 Guam. The Legislature wishes to acknowledge and encourage the spirit of  
8 cooperation and public service exhibited by the Department of Public Health  
9 and Social Services (hereafter "DPHSS") on the one hand, and the GAIN  
10 membership, on the other, in their efforts to resolve differences, settle  
11 litigation, and provide a mutually supportive and uplifting environment for  
12 the benefit of the people and animals of Guam.

13            The Legislature also finds that rabies control is an essential public  
14 health concern to the Government of Guam, and that an effective pet

1 licensing program including a rabies inoculation provision can help foster  
2 public awareness and responsibility for pet ownership. The Legislature  
3 further finds that the present animal pound, the Yigo Animal Shelter, is  
4 antiquated and in need of repair, and that the construction of new and  
5 renovated shelter, adoption, and veterinary clinic facilities by GAIN can  
6 provide a significant public benefit at minimal governmental expense.

7       **Section 2. (a) Lease.** The executed lease agreement (the Lease) for the  
8 premises hereinafter described between DPHSS as Lessor and Guam Animals  
9 in Need, Inc., as Lessee, a copy of which is attached hereto and incorporated  
10 herein, is hereby approved, subject to the conditions set forth in paragraph (b)  
11 of this section. The property covered by the Lease (the Premises) is described  
12 as follows:

13               The portion of Lot 7054-2 bounded on the north by the existing  
14 chain-link fence and bounded on the east, south and west as designated by  
15 Land Management Drawing Number 034-FY91, Document Number 449729,  
16 registered February 6, 1991, and a 20-foot easement along the west side of  
17 existing chain-link fence.

1           **(b) Conditions.** The approval of the Lease is subject to the following  
2 conditions, which conditions shall prevail over any provisions of the Lease  
3 to the contrary,

4           (i) The Lessee shall remain a not-for-profit organization during  
5 the entire term of the Lease, and it shall comply with all laws governing  
6 not-for-profit organizations and shall, on a yearly basis, submit to the  
7 Director of DPHSS a copy of the annual report in the format normally  
8 required of not-for-profit organizations by the Department of Revenue  
9 and Taxation (Form 990).

10          (ii) The Lessee shall comply with all applicable laws and  
11 regulations and shall be subject to covenants or restrictions on land  
12 usage which are recorded at the Department of Land Management, or  
13 contained in local or federal law at the time of the execution of the  
14 Lease.

15          (iii) The Lessee shall not sell, assign, or otherwise transfer its  
16 interest in the Premises, except to another qualifying not-for-profit  
17 organization. Lessee may, however, sublease, encumber or mortgage  
18 its leasehold interest in a commercially reasonable manner, as provided

1 by the terms of the Lease.

2 (iv) At the end of the term of the Lease or upon the earlier  
3 termination of the Lease, the Lessee will at its expense peaceably  
4 deliver up to the Lessor possession of the Premises, together with all  
5 improvements constructed thereon, free of any encumbrances or  
6 obligations; provided, however, that the Lessee may remove all  
7 furniture, fixtures, equipment and readily movable or portable  
8 structures from the Premises.

9 **Section 3. Administrative Provisions.** As part of the mutual  
10 consideration exchanged between the Lessee and DPHSS, the parties have  
11 entered into a Contract, dated March 19, 2001, the provisions of which are  
12 incorporated herein by reference. The Legislature finds that the terms and  
13 conditions of said Contract are just, reasonable, and beneficial to the parties  
14 and to the people of Guam, and therefore properly form a basis for  
15 administrative provisions governing the relationship of the parties.  
16 Accordingly, to the extent not inconsistent with governing law, the terms and  
17 conditions of the Contract shall be incorporated into any administrative rules

1 and regulations developed by the DPHSS (or any other appropriate  
2 Government of Guam agency), for the governance of the relationships of the  
3 parties.

4       **Section 4. Severability.** If any provisions of this Act or the application  
5 thereof to any person or circumstance are held invalid, such invalidity shall  
6 not affect the other provisions or applications of this Act which can be given  
7 effect without the invalid provisions or application, and to this end the  
8 provisions of this Act are severable.

9

10

11 (Space Above This Line for Registrar's Use)

## CONTRACT

This contract is made and executed by and between the Government of Guam, acting through the Department of Public Health and Social Services (DPHSS), and Guam Animals In Need, Inc. (GAIN), a non-profit corporation;

This contract is intended to be executed in conjunction with a lease agreement, a copy of which is attached hereto and incorporated herein as Appendix A, between DPHSS and GAIN for the Yigo Animal Shelter;

### WITNESSETH THAT:

WHEREAS, the DPHSS wishes to operate and maintain an animal shelter and to enforce the laws and regulations concerning animal care and animal control in conformance with Title 10, Guam Code Annotated, Chapter 34, Articles 1 and 2; and

WHEREAS, GAIN is a non-profit Guam corporation formed for the prevention of cruelty to animals, the education of the public concerning matters pertaining to animals and their welfare, the enforcement of existing laws pertaining to animals, and the establishment of an animal shelter; and

WHEREAS, GAIN and DPHSS have entered into a Memorandum of Understanding and Cooperative Agreement made and executed on February 17, 2000, regarding certain aspects of animal adoption and care at the Yigo Animal Shelter, and establishing working relationships for the management and joint use of such facility; and

WHEREAS, DPHSS is presently operating the Yigo Animal Shelter, hereinafter referred to as the Shelter, to provide animal care services required by 10 Guam Code Annotated, Chapter 34, Article 1; and

WHEREAS, GAIN is qualified, ready, willing, and able to operate such an animal shelter and undertake to provide the animal care services required by 10 Guam Code Annotated, Chapter 34, Article 1; and

WHEREAS, GAIN and the DPHSS share the long-term goals of reducing the number of stray animals, the enforcement of animal control laws, cruelty and neglect laws, and rabies control, as set forth in Title 10, GCA, Chapter 34, Articles 1 and 2; and

WHEREAS, DPHSS and GAIN have deemed it advisable and in the best interests of the citizens of Guam that DPHSS appoint and delegate to GAIN the management and control of the Yigo Shelter, and to administer the same as hereinafter expressly provided within the geographical limits of Guam and administer the laws set forth in Title 10, GCA, Chapter 34, Articles 1 and 2 as



they relate to animal care;

NOW THEREFORE, the DPHSS and GAIN, in consideration of the mutual promises hereinafter set forth, hereby agree as follows:

## I. RIGHT TO USE THE YIGO ANIMAL SHELTER

1. Facilities and Equipment. On the effective date of this contract, DPHSS does hereby delegate and transfer to GAIN all right to use and interest in the Yigo Animal Shelter for the term of this contract. GAIN shall take physical possession and control of the Shelter and use said property to carry out its functions and duties under this contract, as provided by 10 GCA, Chapter 34, Articles 1 and 2. On the date of delivery, DPHSS shall provide a written inventory of all personal property turned over to GAIN.

2. Temporary Suspension of Prior Agreement. In order to avoid conflicts, ambiguities, or misunderstandings which may arise out of the provisions of the parties' Memorandum of Understanding and Cooperative Agreement, February 17, 2000, and this Contract, the parties agree that the effect and operation of the February 17, 2000 agreement shall be temporarily suspended during any time period in which this Contract, including any modifications and extensions thereof, remains in effect. By this temporary suspension, DPHSS and GAIN do not intend to avoid, cancel, or create a novation that would have the effect of preventing or interfering with the reinstatement of the prior agreement of the parties, pursuant to paragraph 14 of this Contract, as provided herein.

## II. DUTIES AND OBLIGATIONS OF GAIN UNDER THIS CONTRACT

1. Animal Care. GAIN will maintain clean and humane housing for all animals impounded on order of DPHSS or surrendered by the public. GAIN will provide at its own cost and expense all the services incident to the impounding, care, shelter, feeding and disposal of all animals taken into its custody, including such veterinarian services and euthanasia services as may be required.

2. Disposal of Animal Carcasses. GAIN will dispose of all dead animal carcasses of the pets which have been euthanized at the Shelter, by delivering them to the Government of Guam sanitary landfill.

3. Telephone/Animal Control. GAIN will provide personnel to answer the Shelter/animal control telephones, 653-2474 and 653-6718, at least eight hours per day, on every day when the DPHSS Pet Control Unit is working. As part of its obligations under this contract, GAIN personnel will record all information received concerning animal control or animal pickup and promptly relay that information to the DPHSS Pet Control Unit so that it can efficiently perform its duties as required by Title 10, GCA, Chapter 34, Section 34115. Said information shall be relayed by fax to the Pet Control Unit, using forms approved by DPHSS.

4. Hours of Operation. GAIN will provide animal intake services for the DPHSS Pet Control Unit on the same days and for the same hours that the Pet Control Unit is on duty. GAIN will perform emergency intake services for the Pet Control Unit as required, outside of ordinary shelter operating hours.

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In addition, GAIN will ensure the Shelter is open to the public on such days and during such hours that the public will have reasonable and convenient access to the shelter for conducting business.

5. Record Keeping. GAIN shall maintain a complete record of every animal admitted into the Yigo Shelter, and complete records concerning the disposition of every animal. Such records shall be made available to DPHSS at its request.

6. Adoption Program. GAIN may administer a pet adoption program, in accordance with the laws set forth in Title 10, GCA, Chapter 34:

a) GAIN shall ensure that all pets over the age of six (6) months will be sterilized before being released to the adopter, as provided by Section 34116(f), and that all pets over the age of three (3) months are vaccinated for rabies. To this end, GAIN may use Shelter facilities to provide spay/neuter, vaccination and other medical services;

b) GAIN shall collect all sterilization deposits paid by adopters, maintain accurate and complete records concerning the animals adopted, and refund deposits to adopters as the animals are sterilized, or returned.

7. Impound Fees. GAIN shall hold all impounded animals for such periods of time as directed by DPHSS, and shall collect the impoundment fees as provided by Title 10, GCA, Chapter 34, Section 34116(e) for pets reclaimed by their owners, and shall maintain accurate records of these payments.

8. Pet Licenses. DPHSS will issue GAIN blocks of pet license tags. GAIN shall ensure that every pet released from the shelter is licensed as required by Title 10, GCA, Chapter 34, Section 34102, and shall collect the license fee on behalf of DPHSS, and shall forward the original pet license application and rabies vaccination certificate to DPHSS on a bi-weekly basis.

### III. CONSIDERATION

In return for GAIN undertaking at its own cost all animal care services and programs currently being provided at the Yigo Animal Shelter, including telephone answering and information services for the DPHSS Pet Control Unit, DPHSS agrees that it will provide the following consideration:

1. Execute a long-term Lease of the Shelter to GAIN, attached hereto as Appendix A, and introduce before the Guam Legislature a Bill to approve this long term lease, a copy of which Bill is attached hereto as Appendix B.

~~2. Pay all costs of utilities to operate the Shelter, including power, water, dumpster fees, septic tank service, landfill disposal fees, and the cost of telephone lines 653-2474, 653-6717 and 653-6718, excluding the cost of long-distance telephone services, and the cost of utilities for any sublessee;~~

3. Subject to compliance with GovGuam procurement procedures, DPHSS will pay GAIN quarterly a management fee to be negotiated not less often than annually between GAIN and DPHSS, in an amount not less than the amount collected by GAIN for the preceding quarter pursuant to Section II, paragraphs 6, 7 and 8 of this Agreement.

#### IV. FACILITY UPKEEP AND IMPROVEMENTS

1. Cost of Shelter Maintenance. Because this contract is intended to be executed as part of the lease agreement between DPHSS and GAIN for the Shelter, as more fully set forth in Appendix A, GAIN agrees to be solely responsible for the cost of maintaining the shelter grounds, buildings and fence in a reasonably good and safe operating condition.

2. Alterations and Capital Improvements. GAIN may make alterations and/or improvements to the demised shelter premises, provided all such alterations and/or improvements are done in compliance with all applicable laws and regulations and further provided that DPHSS is furnished copies of all plans for such improvements and/or alterations. All alterations, and/or improvements built, constructed, or placed on the premises by GAIN, with the exception of fixtures removable without damage to the premises and removable personal property, shall, unless otherwise provided by written agreement between DPHSS and GAIN, become the property of DPHSS and remain on the premises at the expiration or termination of this Contract. When removing any fixtures or personal property, GAIN must restore the premises to the same condition as at the beginning of this Contract, ordinary wear and tear excepted.

#### V. GENERAL PROVISIONS

1. Audits. GAIN shall keep accurate financial records of all monies collected, received and expended by GAIN due to the performance of the animal care and animal control services specified in this contract, including expenditures for capital improvements at the shelter. All such records shall be subject to periodic audits by DPHSS.

2. Independent Contractor. In the performance of the services required under this contract, GAIN shall be an independent contractor with the authority and the responsibility to control and

direct the performance and details of the work and service required under this contract. Any work or services performed under this contract shall not constitute nor be construed as employment with the Government of Guam or DPHSS, and shall not entitle GAIN or GAIN's employees and agents to vacation, sick leave, retirement, worker's compensation, or other benefits afforded to employees of the Government of Guam or DPHSS.

3. Wages, Labor, and Other Laws. GAIN shall fully comply with all applicable federal and territorial laws and regulations relating to worker's compensation, payment of wages, withholding, safety, and equal employment opportunity.

4. Indemnification. GAIN shall indemnify and hold harmless the Government of Guam, DPHSS, its officers, employees and agents from all demands, claims, causes of action or judgments, and from and against any and all manner of suits, actions, or claims arising out of or resulting from any act or omission of GAIN, its officers, employees or agents occurring during the performance of their duties under this contract.

5. Insurance. Effective the start of each contract year, and for so long as such coverage is reasonably and commercially available, GAIN shall maintain and furnish DPHSS with proof of insurance policies for the following coverage:

a) General indemnity insurance insuring against injury to any person or property in a sum of not less than Three Hundred Thousand Dollars (\$300,000) for bodily injury to one person, One Million Dollars (\$1,000,000) for bodily injury to more than one person in any one accident, and Two Hundred Thousand Dollars (\$200,000) for property damage in one accident ;

b) Worker's compensation insurance to cover all of the employees working in any capacity to execute this contract;

c) Automobile liability insurance for any vehicles owned by GAIN, with minimum limits of not less than \$300,000 for bodily injuries or death per accident and not less than \$50,000 for damages to property;

d) The above automobile and general liability insurance coverage shall include endorsements to:

i) Name DPHSS as additional insured, but only with respect to operations of GAIN to be carried on pursuant to the terms of this contract;

ii) Notify DPHSS in writing of any cancellation of insurance policies, reduction, or changes in insurance coverage at least thirty (30) days prior to the effective date of such cancellation or change.

Any other insurance on the property or improvements shall be the responsibility of DPHSS.

GAIN shall be notified in writing of any cancellation of insurance policies, reduction, or changes in insurance coverage at least thirty (30) days prior to the effective date of such cancellation or change.

6. Subcontracts. GAIN may subcontract any part or all of the services to be performed under this contract without the prior written approval of DPHSS.

7. Waivers of Violations. It is expressly understood and agreed that no waiver granted by the DPHSS on account of any individual violation of any term, condition, or provision of this contract shall constitute or be construed in any manner as a waiver of the terms, conditions, provisions of, or of the right to enforce the same as to any other or further violation.

8. Inspection/Notice of Deficiencies. DPHSS shall have a general right to inspect, at any time and with reasonable prior notice, the personnel, equipment, supplies, records, services, and facilities to determine whether services are being provided by GAIN in accordance with the provisions of this contract. DPHSS shall notify GAIN in writing concerning any deficiencies, and give GAIN 30 days to correct the deficiencies or respond to the allegation of deficiencies, except in the case of sanitary violations which must be corrected within the time provided by Guam laws and regulations.

9. Termination on Default and Enforcement of this Contract. DPHSS or GAIN may, by giving thirty (30) calendar days written notice to the other, terminate this contract if the other party has failed to comply with the provisions of this contract or may, with appropriately reasonable notice under the particular circumstances, take any necessary action to enforce the provisions of this contract. If this contract is terminated because of DPHSS breach, GAIN shall be entitled to compensation for services satisfactorily performed up to the date of termination. If the contract is terminated because of GAIN's breach, GAIN will be entitled to compensation only for services performed prior to the date of breach. Within ninety (90) calendar days after the date of termination, GAIN shall submit reports for the final period of service and shall refund to the DPHSS any compensation paid in advance for services that will be provided due to the termination. The party claiming default and/or the right to self-help to enforce any provision of this Agreement shall, concurrently with service of notice of default on the opposing party, demand arbitration of the dispute pursuant to paragraph 11 of this Section. Pending resolution of the dispute by the arbitrator, any self-help enforcement action undertaken by either party shall be at the sole risk and responsibility of the party taking such action. For purposes of provisions of the Government Claims Act, the filing of opposition to an arbitration demand pursuant to this section shall be deemed to be a denial of relief requested in such notice, as if the same had been submitted pursuant to the ordinary provisions of 5 GCA § 6201.

11. Arbitration. Any disputes concerning the rights and obligations of the parties or the administration of this agreement will be arbitrated by such person as the Governor may designate, provided that such designee shall not be a present or former employee of DPHSS, or a present or former officer/director of GAIN. The arbitration hearing shall be informal and any

competent evidence shall be admissible. Formal rules of evidence shall not apply. Either party may, within ten days of the arbitration hearing, appeal to the Governor, who shall make a final and binding determination on the evidence and issues presented. Such appeal proceeding shall be conducted in such manner as the Governor may determine in his or her reasonable discretion, depending on the nature of the appeal and the issues presented, and judgment thereon may be entered and enforced in the Guam Superior Court in the same manner as any civil proceeding to which a GovGuam agency is a party. The parties agree to equally share the cost of such arbitrator, if any.

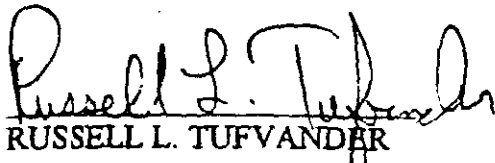
12. Contract to Take Effect. This contract between DPHSS and GAIN will take effect as soon as all necessary parties have signed and approved it, and DPHSS has turned over the Yigo Animal Shelter to GAIN.


13. Term of Contract/Automatic Renewal. The term of this contract will be for three (3) years, commencing on the effective date as provided in paragraph 12 of this Section, and provided that neither party is in default hereunder, and shall automatically renew for successive equal periods upon the expiration of a preceding 3-year term, unless notice of termination is given on or before ninety (90) days prior to the expiration of the contract term. Such notice may be given by either party, for such reasonable cause as may be stated therein. If challenged by the non-terminating party, the reasonableness of a party's termination shall be resolved by arbitration, pursuant to paragraph 11 of this Section.

14. Partial Surrender of Shelter Property Upon Termination or Conclusion of Contract; Reinstatement of Prior Agreement. If this Contract is terminated or not renewed, GAIN agrees pursuant to Section 21 of the Lease, attached hereto as Appendix A, to vacate the portion of the Shelter designated therein so that DPHSS can resume responsibility for care of Shelter dogs. GAIN agrees that regardless of any termination or non-renewal of this Contract, GAIN will continue care of Shelter cats.

Upon termination of this Contract, the provisions of the February 17, 2000 Memorandum of Understanding and Cooperative Agreement existing between the parties shall be reinstated, observed, and honored in full, as if the same had remained continuously in force after the execution of said Memorandum of Understanding and Cooperative Agreement.

NOW, THEREFORE, be it resolved that this contract is signed this 19<sup>th</sup> day of March, 2001.

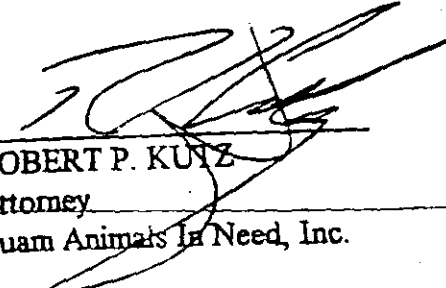
  
RUSSELL L. TUFVANDER  
President  
Guam Animals In Need, Inc.


  
DENNIS G. RODRIGUEZ  
Director, Department of Public  
Health and Social Services

Approved as to form & content:



JOHN TARANTINO  
Attorney General of Guam

  
ROBERT P. KUTZ  
Attorney  
Guam Animals In Need, Inc.

  
CARL T. C. GUTIERREZ  
Governor of Guam

APPENDIX A

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_

2001, by and between the GUAM DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES ("Lessor"), and GUAM ANIMALS IN NEED, INC., a non-profit corporation ("Lessee").

WHEREAS, Lessor owns or administers the land described herein below, and Lessor desires to lease such land to Lessee and Lessee desires to lease the same from Lessor; and

WHEREAS, the Lessor and the Lessee have entered into a contract wherein Lessee will assume the duties and responsibilities of animal care and impoundment as set forth in 10 Guam Code Annotated, Chapter 34, Article 1; and

WHEREAS, the Lessor and Lessee had previously entered into a Lease Agreement between them, made and executed as of February 17, 2000, which Lease Agreement included a portion of the property included herein;

NOW, THEREFORE, in consideration of the premises and the terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby cancel, nullify and avoid entirely the Lease Agreement entered into between them as of February 17, 2000, and instead enter into this Lease and agree as follows:

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

The portion of Lot 7054-2 bounded on the north by the existing chain-link fence and bounded on the east, south and west as designated by Land Management Drawing Number 034-FY91, Document Number 449729, registered February 6, 1991, known as the Yigo Animal Shelter, together



with a 20-foot easement along the west side of the existing chain-link fence.

All as indicated on the plot plan attached hereto as Exhibit "A" and incorporated herein by reference; TOGETHER WITH all and singular, tenements, rights, easements, privileges, improvements and appurtenances to the same belonging or appertaining or held and enjoyed in connection therewith; and together also with the rights of ingress and egress as more fully described herein.

2. Term. The term of this Lease shall be for a period of thirty (30) years commencing on 2001 and expiring on 2030, subject to the provisions of Section 19 below. Thereafter, Lessee has the option to renew the Lease for additional extensions of 10 years per extension, for a maximum of 2 extensions, upon such terms and conditions as both parties may agree. In no extension of this Lease shall the rent be increased.

3. Rent During Term. The rent payable from Lessee to Lessor shall be the sum of One Dollar (\$1) per year, payable annually in advance to the Treasurer of Guam during each year of the term of this Lease. This rental amount has been in good faith determined by the parties to be the fair rental value of the Premises, taking into consideration the provisions of this Lease, including that Lessee is a not-for-profit organization and that the parties have executed an agreement by separate contract wherein Lessee has assumed all aspects of animal care at the Yigo Animal Shelter, which are presently required to be performed by Lessor pursuant to 10 GCA Chapter 34, Articles 1 and 2.

4. Quiet Enjoyment. Lessor shall put and keep Lessee in actual possession of the Premises at the beginning of and throughout the term of this Lease. Lessor covenants that Lessee, upon paying the rent required hereunder, shall lawfully, peacefully and quietly have, hold, use, occupy and enjoy the Premises including any appurtenant access roadway and/or parking area, without any suit, hindrance, eviction, ejection, molestation, interruption or disturbance whatsoever of or by Lessor or by any persons claiming by, from, under or against

Lessor.

5. Use.

(a) General. The Premises shall be used for the purpose of construction and operation of ~~dog and cat kennels, and such other facilities related to animal care, quarantine, and control as~~  
GAIN may chose to construct and operate.

(b) Improvements. Except as otherwise provided herein, Lessee shall make at the sole cost and expense of Lessee, leasehold improvements in, to and about the Premises and any easement and/or access and adjoining areas used by Lessee, which improvements shall be suitable for their intended use, and constructed in accordance with all applicable Federal and Territorial statutes and regulations. Any kennels which Lessee constructs, repairs or rebuilds must be in conformance with the applicable parts of 10 Guam Code Annotated Ch.34, Art. 2 and 3, and applicable regulations, depending on their designated use.

(c) Ownership of Improvements. During the term of this Lease, title to any and all buildings or improvements situated or erected on the Premises and the building equipment, fixtures and other items installed thereon and any alterations or additions thereto shall remain in Lessee, and Lessee shall be the owner of the same. Upon expiration or termination of this Lease, all non-portable or readily moveable improvements remaining on the Premises shall become the property of Lessor.

6. Alterations, Construction and Replacements. Lessee may at any time and from time to time construct, or otherwise make new improvements on all or any part of the Premises, and may make any alterations, changes, replacements, improvements, and additions in and to the Premises, including the contour and grade thereof, and the additions, buildings and improvements constructed thereon, in accordance with applicable law.

7. Signage. Lessee shall have the right to erect and maintain appropriate signage indicating Lessee's facility, its hours of operation, and other pertinent information. Such signage

shall include one sign to be erected on the existing sign support framework of Lessor's sign on Route 1 (Marine Drive). All such signs must be in compliance with applicable Guam laws and regulations.

~~8. Assignment Lessee shall not have the right to assign this Lease unless the prior~~  
written consent of Lessor shall first be obtained. In the event Lessee proposes to assign this Lease to any not-for-profit organization which is a successor in interest to Lessee, Lessor agrees it shall not withhold its consent to such assignment so long as the assignee shall commit to observe and perform the terms and conditions of this Lease, including without limitation the provisions as to use of the Premises. The limitations in this Section shall not prevent Lessee from subletting any part of the Premises for animal-related business or charitable purposes. Any sublease by Lessee shall provide that the sublessee will be responsible for the cost of all of its own utilities.

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

10. Payment of Utilities. Except as otherwise provided herein, or in any Contract, including any modifications, extensions, or renewal thereof, between DPHSS and GAIN, Lessee shall pay and be responsible for the installation of and all charges for electrical power and other utilities, including septic service, which services are installed and supplied to and on the Premises.

11. Maintenance. Lessee shall, at its own cost and expense, maintain all the improvements on the Premises in good repair and condition throughout the term of this Lease, reasonable wear and tear excepted. In the event of an impending storm or other natural disaster, Lessee shall take reasonable measures to ensure the safety of the Premises against such disaster(s). All damages to the Premises arising out of a natural disaster shall be the liability of the Lessee. In the event that the leased Premises sustain major damage, Lessor shall have the

right to access the Lessee's Premises to make damage assessments.

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

13. Leasehold Mortgages. Lessee may, at any time and from time to time during the term of this Lease, for the purpose of financing the cost of making any improvements on the Premises, encumber by mortgage or other security instrument or otherwise, Lessee's interest under this Lease and the leasehold estate hereby created. If Lessee shall encumber and/or mortgage this Lease or its interest in the Premises, then so long as any such leasehold encumbrance or mortgage shall remain unsatisfied of record, the following provisions shall apply:

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

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

(c) Remedy. Any leasehold mortgagee or secured party, in case Lessee shall be in default hereunder, shall, within the period herein provided, have the right to remedy such default, or cause the same to be remedied, and Lessor shall accept such performance by or at the instigation of such leasehold mortgagee or secured party as if the same had been performed by Lessee. For

the purposes hereof, no event of default shall be deemed to exist under this Lease in respect to the performance of work required to be performed, or of acts to be done, or of conditions to be remedied, if steps shall, in good faith, have been commenced within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity.

Anything herein contained to the contrary notwithstanding, upon the occurrence of an event of default, other than an event of default due to a default in the payment of money, Lessor shall take no action to effect the termination of this Lease if any leasehold mortgagee or secured party after notice from Lessor as herein provided, acts diligently and in a reasonable time (in all events not to exceed ninety (90) days thereafter to accomplish one of the following, either (i) to obtain possession of the Premises (including possession by receiver), or (ii) to institute, prosecute and complete foreclosure proceedings or otherwise acquire Lessee's interest under this Lease with diligence. Such mortgagee or secured party upon obtaining possession or acquiring Lessee's interest under this Lease shall be required promptly to cure all defaults then reasonably susceptible of being cured by such mortgagee or secured party; provided, however, that such mortgagee or secured party shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults have been cured.

(d) Foreclosure. Any leasehold mortgagee or secured party shall have the right at any time during the term of this Lease to realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by any applicable mortgage or security documents and to transfer, convey, or assign the title of Lessee to the leasehold estate created hereby to any purchaser at any foreclosure sale, and to acquire and succeed to the interest of Lessee hereunder by virtue of any such foreclosure sale. Such mortgagee or secured party, or its assignee or designee, or other purchaser in foreclosure proceedings may become the legal owner and holder of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure. During the time of any

foreclosure proceedings and at all times thereafter, lease rent must be paid as and when scheduled in accordance with the provisions of this Lease and the Premises may not be used for any purposes other than those provided for in this Lease.

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

(f) Estoppel Certificates. Lessor agrees, at any time and from time to time, at no cost or expense to Lessee, upon request of Lessee, to execute, acknowledge and deliver to Lessee for the benefit of Lessee or any actual or potential lender, creditor, investor or successor Lessee, within thirty (30) days of the request, a statement in writing certifying that this Lease is unmodified and in full force and effect and Lessee is not in default (or if modified, in full force and effect as modified and stating the modifications, or if there is any default stating such default), the dates to which rent or other sums have been paid in advance and setting forth such further information with respect to this Lease or the Premises as may be requested thereon, it being understood that

any such statement delivered pursuant hereto may be relied upon by Lessee or any actual mortgagee, beneficiary or other party.

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

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

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

modifications, or repairs which may be reasonably required by Lessee in order to place the remaining portion of the Premises not so condemned in a suitable condition for the continuance of Lessee's tenancy, or on account of any diminution in value of its leasehold estate hereunder.

~~All interested parties may independently file separate claims in the condemnation proceedings for the purpose of having the value of their respective claims determined.~~

15. Lessor's Rights on Default. This Lease is predicated upon the continuing conditions:

(a) if Lessee shall fail to pay the rent as stipulated in this Lease or any part thereof when the same becomes due and shall fail to do so within thirty (30) days after written notice of default from Lessor;

(b) if Lessee fails to, in any other respect faithfully observe and perform any other term, condition or covenant contained in this Lease, on its part to be observed or performed, and fails to cure said default within thirty (30) days after written notice thereof, or shall fail to commence to cure a default whose cure would require more than thirty (30) days;

(c) if Lessee shall become bankrupt or makes an assignment for the benefit of its creditors, or file any debtor proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Act seeking any readjustment, arrangement, postponement, composition or reduction of its debts, liabilities or obligations;

(d) if Lessee shall abandon the Premises; then and in any such event, Lessor may upon thirty (30) days written notice to Lessee, subject to the provisions herein contained, enter into and upon the Premises or any part thereof in the name of the whole and at Lessor's option: (i) cancel this Lease by giving written notice to Lessee and thereupon take possession of the Premises and all improvements thereon, and thereby become wholly vested with all right, title and interest of Lessee therein and may expel and remove Lessee from the Premises, without being guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, all without prejudice to any other remedy or right of action which Lessor may have for arrears for rent or for



any other preceding breach of this Lease on the part of Lessee, or (ii) Relet the Premises, for the remainder of the term thereof at the best rent it can obtain for the account of Lessee who shall make good any deficiency.

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

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

18. Access. The rights granted by Lessor to Lessee hereunder include free rights of ingress and egress to and from the Premises. Lessor shall have the right to change the location of the access to the Premises in connection with any development by Lessor of the parcel of property of which the Premises or the access/parking area form a part so long as Lessee's rights of ingress, egress, and parking are not impaired.

19. Approvals.

(a) Legislative Approval. Applicable law requires that this Lease be approved by the Guam Legislature. Lessor shall submit this Lease for legislative approval and the parties shall cooperate in using their best efforts in good faith to obtain such approval. The term of this Lease (notwithstanding any other provisions herein contained) shall not be deemed to have commenced until such date as legislative approval is obtained, and the expiration date of this Lease shall be a date thirty (30) years from the date of legislative approval.

(b) Rights of Entry. In the event the actual commencement date of the term of this Lease is, because of legislative approval as provided in Section 19(a) above or for any other reason, extended beyond the express date set forth in Section 2 above, then Lessee shall have the right prior to the commencement date, at Lessee's sole risk and Lessee's sole expense, to freely go and

enter upon the Premises and easements and adjacent areas for the purposes of making soil tests, surveys, examinations, clearing, grading, filling and such other purposes as Lessee may elect. Lessee may, during any such period prior to the commencement date of this Lease, place and ~~maintain temporary structures on the Premises and may store equipment on the Premises, but all~~ at the sole risk of Lessee.

20. Lessee to Remain a Not-For-Profit Organization. During the term of this Lease Lessee shall retain its legal structure as a not-for-profit corporation whose purpose is to promote the humane treatment of animals, as more fully set forth in its Articles of Incorporation and By-laws.

21. Effect of Termination of Animal Care Contract. It is the intent of the parties that Lessee lease a portion of the premises herein described, for the term provided in this lease, to be used by Lessee for providing animal care services pursuant to 10 GCA, Chapter 34, Articles 1 and 2, as more fully set forth in the Contract between DPHSS and GAIN dated the \_\_\_\_ day of \_\_\_\_\_, 2001. In the event that said Contract terminates, or is not renewed, Lessee agrees promptly to vacate the following portion of the Yigo Animal Shelter, so that Lessor can re-enter and resume its duties to provide care of shelter dogs:

The southerly "front" section of the Yigo Animal Shelter, including Dog Kennel Rows 1, 2, 3, 4, and that part of Row 5 dedicated to dog cages, and both office buildings, as further indicated in the drawing attached hereto as EXHIBIT 1 and incorporated herein.

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

23. Binding Effect. This Lease and the terms, covenants, and conditions herein shall extend to and be binding upon the respective legal representatives, successors and assigns of the

parties hereto, and to any other person or persons claiming to hold or to exercise any interest by, under or through any of the parties hereto.

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

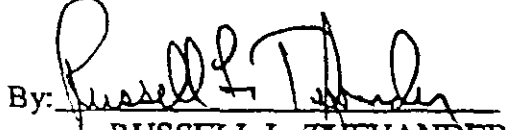
25. Entire Agreement. This Lease contains the entire agreement of the parties in respect to Lessee's tenancy, use and occupancy of the Premises, and no other agreement, statement, pertaining to the same shall be valid or of any force or effect. This Lease shall not be subject to modification except in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

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

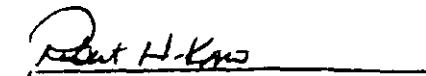
LESSOR: GUAM DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES


LESSEE: GUAM ANIMALS IN NEED, INC.


By:   
DENNIS G. RODRIGUEZ  
Director


By:   
RUSSELL L. TUFVANDER  
President

APPROVED AS TO FORM AND CONTENT:

  
JOHN TARANTINO  
Attorney General of Guam

  
ROBERT P. KUTZ  
Attorney  
Guam Animals In Need, Inc.

  
CARL T. C. GUTIERREZ  
Governor of Guam

Administration - Division of Accounts  
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ATTORNEY GENERAL'S OFFICE





# MINA WENTE SAIS NA LIHEWEN LATORAN GUAHAN

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

*Senadot Mark Forbes. Gebilu  
Kabisiyon Mayurát*

## WAIVER OF FISCAL NOTE

In accordance with §9105 Title 2 GCA, I hereby certify that prompt committee action on Bill 248 is necessary to the proper conduct of legislative business. Therefore, I am waiving requirement of a fiscal note on Bill 248.

MARK FORBES  
Chairman,  
Committee on Rules, General Governmental Operations,  
Reorganization and Reform, and Federal, Foreign  
and General Affairs

**NOTICE OF SALE UNDER MORTGAGE**  
 Notice is hereby given, that pursuant to § 2922 of the Civil Code of Guam as codified by 18 G.C.A. § 36113, paragraph (a) (ii) of the below described mortgage and the Notice of Sale recorded on February 6, 2001, as instrument No. 00975, that the mortgagor executed and delivered by JOSEFINA TANAKA "Mortgagor", to CUSTALIA INCORPORATED, as recorded on January 19, 1999, in the Department of Land Management, Government of Guam, under instrument No. 00099, which has been assigned to GUAM ECONOMIC DEVELOPMENT AUTHORITY "Mortgagee", pursuant to the Purchase and Assignment of Mortgage and Ancillary Note, dated December 7, 2001, and recorded on December 13, 2001, in the Office of the Recorder, Territory of Guam, under instrument No. 043620, will be FORECLOSED pursuant to a POWER OF SALE contained in the above Mortgage. The property described below will be sold WITHOUT WARRANTY BEING GIVEN, as hereafter described, to the highest bidder at public auction, at the following location, on February 22, 2002, at the hour of 10:00 p.m., to satisfy the amount due on such mortgage on the day of sale. Terms of sale are strictly cash or otherwise deemed acceptable by Seller. The premises that are described in such mortgage and that will be sold to satisfy the mortgage is as follows: Lot No. 21-45-BEM-R2, Municipality of Tanning, (Formerly of Dedded), Territory of Guam, Estate No. 66700 Subplot, as said lot is marked and described on Drawing Number 00057-22-18 (LA) Check Number 1788, as described in that Court Docket Survey Map of said Lot Number 21-45-BEM-R2, dated January 21, 1999, 3 thru Lot Number 21-45-BEM-R2, Probate Court Number 10185, dated September 12, 1988 and recorded September 16, 1988 at the Department of Land Management, Government of Guam, under instrument number 005860, Registered Land, and the Certificate of Ownership being JOSEFINA TANAKA, the Owner of Record being JOSEFINA TANAKA and the CERTIFICATE OF TITLE Registration Number being 90104. Area: 0.2225 square feet. Together with the buildings, improvements, rights, easements, privileges and appurtenances to the same belonging or pertaining or to hold and enjoyed herewith, including the mortgages, liens, claims, and interests thereof, all of the estate, right, title and interest of the Mortgagor, both at law and in equity, therein and thereto. The undersigned is the attorney for the lawful owner of such mortgage and the notes secured thereby. The Mortgagor has defaulted in the performance of the terms and conditions of the mortgage (as amended), and the principal sum due under the mortgage (as amended), and as secured by the mortgage (as amended), is four hundred ninety thousand two hundred forty five Dollars and 89/100 (\$490,245.89), together with accrued interest in the amount of Sixty Eight thousand Eight Hundred Thirty Two Dollars and 20/100 (\$68,842.20), fees and charges in the amount of Three thousand Seven Hundred and Three Dollars and 42/100 (\$3,703.42), plus per diem interest of One Hundred Thirty Two Dollars and 14/100 (\$132.00), owing to the date of payment or sale, plus reasonable attorney's fees and costs of sale. The undersigned reserves the right to withdraw this Notice, to reject any bid or to accept the highest bid, and to postpone the sale from time to time. Date: 1/25/02. LAW OFFICES OF BRONZE & TANG A Professional Corporation, BY: JACQUES G. BRONZE Attorney for Guam Economic Development Authority Guam.

City of Tanning  
 ON THIS 25th day of January, 2002, before me, a Notary Public, in and for Guam, personally appeared JACQUES G. BRONZE, of the Law Office of Bronze & Tang, known to me to be one of the attorneys for GUAM ECONOMIC DEVELOPMENT AUTHORITY, who has subscribed to the foregoing NOTICE OF SALE UNDER MORTGAGE, and acknowledged to me that he executed the same as his free and voluntary act and deed on behalf of said corporation for the uses and purposes therein set forth. IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year first above written.  
 NOTARY PUBLIC  
 In and for Guam, U.S.A.  
 My Commission Expires: Mar. 10, 2003  
 P.O. Box 26215 GMP, Guam 96921

**SECOND NOTICE OF SALE UNDER MORTGAGE**  
 Notice is hereby given, that pursuant to § 2922 of the Civil Code of Guam as codified by 18 G.C.A. § 36113, paragraph (a) (ii) of the below described mortgage and the Notice of Sale recorded on February 6, 2001, as instrument No. 00975, that the mortgagor executed and delivered by TOSSHO OKUHAMA and HIROKO OKUHAMA "Mortgagors", to THE ASAH BANK, LTD., as recorded on October 1, 1997, in the Department of Land Management, Government of Guam, under instrument No. 00099, which has been assigned to an office of MORGAN STANLEY CORPORATION, normally MSGA Inc., whose address is 825 South Marine Drive, Tanning, Guam 96911. "Mortgagee", pursuant to their ASSIGNMENT OF MORTGAGE AND PROMISSORY NOTES dated May 2, 2001, as recorded in the Department of Land Management, Government of Guam, under instrument No. 037544, will be FORECLOSED pursuant to a POWER OF SALE contained in the above Mortgage. The property described below will be sold WITHOUT WARRANTY OF ANY TITLE BEING GIVEN, to the highest bidder at public auction, at the following location, on February 22, 2002, at the hour of 3:00 p.m., to satisfy the amount due on such mortgage on the day of sale. Terms of sale are strictly cash or certified check or as otherwise deemed acceptable by Seller. The premises that are described in such mortgage and that will be sold to satisfy the mortgage is as follows: Lot No. 21-45-BEM-R2, Municipality of Tanning, (Formerly of Dedded), Territory of Guam, Estate No. 66700 Subplot, as said lot is marked and described on Drawing No. M-379-359 (BMS) (9772), recorded under instrument No. 110819, in the Department of Land Management, Government of Guam, under instrument number 005860, Registered Land, and the Certificate of Title Registration Number being 90104. Area: 899.8 square feet. Last Certificate of Title Number: 53385. Last Known Registered Owner: William J. O'Neil and Kim Th. O'Neil, Husband and Wife. Together with the buildings, improvements, liens, claims, and interests thereof, all of the estate, right, title and interest of the Mortgagors, both at law and in equity, therein and thereto. The undersigned is the attorney for the lawful owner of such mortgage and the notes secured thereby. The Mortgagors has defaulted in the performance of the terms and conditions of the mortgage (as amended), and the principal sum due under the mortgage (as amended), is One Million Five Hundred Forty Nine Thousand One Hundred Seventy and 00/100 (\$1,549,170.00), together with accrued interest in the amount of Three Hundred Ninety Six and 31/100 (\$392,386.31), fees and charges upon the unpaid principal therein in the amount of Twenty Nine Thousand Two Dollars and 36/100 (\$29,010.36), plus per diem interest owing to the date of payment or sale, plus reasonable attorney's fees and costs of sale. The undersigned reserves the right to withdraw this Notice, to reject any bid or to accept the highest bid, and to postpone the sale from time to time. Date: 1/25/02. LAW OFFICES OF BRONZE & TANG A Professional Corporation, BY: JACQUES G. BRONZE Attorney for MSGA Inc. Guam.

City of Tanning  
 ON THIS 25th day of January, 2002, before me, a Notary Public, in and for Guam, personally appeared JACQUES G. BRONZE, of the Law Office of Bronze & Tang, known to me to be one of the attorneys for MORGAN STANLEY CORPORATION, whose name is subscribed to the foregoing NOTICE OF SALE UNDER MORTGAGE, and acknowledged to me that he executed the same as his free and voluntary act and deed on behalf of said corporation for the uses and purposes therein set forth. IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year first above written.  
 NOTARY PUBLIC  
 In and for Guam, U.S.A.  
 My Commission Expires: Mar. 10, 2003  
 P.O. Box 26215 GMP, Guam 96921

**NOTICE OF SALE UNDER MORTGAGE**  
 Notice is hereby given, that pursuant to § 2922 of the Civil Code of Guam as codified by 18 G.C.A. § 36113, paragraph 7 (a) (ii) of the below described mortgage and the Notice of Sale recorded on August 8, 2001, as instrument No. 041962, that the mortgage executed and delivered by JOSEFINA C. TANAKA "Mortgagor", to GUAM ECONOMIC DEVELOPMENT AUTHORITY, "Mortgagee", dated January 15, 1997, and recorded on June 11, 1997, in the Office of the Recorder, Territory of Guam, under instrument No. 565305, will be FORECLOSED pursuant to a POWER OF SALE contained in the above Mortgage. The property described below will be sold WITHOUT WARRANTY BEING GIVEN, as hereafter described, to the highest bidder at public auction, at the following location, on February 27, 2002, at the hour of 3:00 p.m., to satisfy the amount due on such mortgage on the day of sale. Terms of sale are strictly cash or as otherwise deemed acceptable by Mortgagee. The premises that are described in such mortgage and that will be sold to satisfy the mortgage is as follows: Lot No. 21-45-BEM-R2 (Subdivision of Lot No. 21-45-BEM-R2, Municipality of Tanning, Guam, Estate No. 66700), situated, as described on survey map recorded in the Office of the Recorder, Guam, under instrument No. 403660, containing an area of 0.1552 square meters. Together with the buildings, improvements, liens, claims, and interests thereof, all of the estate, right, title and interest of the Mortgagor, both at law and in equity, therein and thereto. The undersigned is the attorney for the lawful owner of such mortgage and the notes secured thereby. The Mortgagor has defaulted in the performance of the terms and conditions of the mortgage (as amended), and the principal sum due under the mortgage (as amended), is One Million Five Hundred Forty Nine Thousand One Hundred Seventy and 00/100 (\$1,549,170.00), together with accrued interest in the amount of Three Hundred Ninety Six and 31/100 (\$392,386.31), fees and charges upon the unpaid principal therein in the amount of Twenty Nine Thousand Two Dollars and 36/100 (\$29,010.36), plus per diem interest owing to the date of payment or sale, plus reasonable attorney's fees and costs of sale. The undersigned reserves the right to withdraw this Notice, to reject any bid or to accept the highest bid, and to postpone the sale from time to time. Date: 1/25/02. LAW OFFICES OF BRONZE & TANG A Professional Corporation, BY: JACQUES G. BRONZE Attorney for Guam Economic Development Authority Guam.

City of Tanning  
 ON THIS 25th day of January, 2002, before me a Notary Public, in and for Guam, personally appeared JACQUES G. BRONZE, of the Law Office of Bronze & Tang, known to me to be one of the attorneys for GUAM ECONOMIC DEVELOPMENT AUTHORITY, whose name is subscribed to the foregoing NOTICE OF SALE UNDER MORTGAGE, and acknowledged to me that he executed the same as his free and voluntary act and deed on behalf of said corporation for the uses and purposes therein set forth. IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year first above written.  
 NOTARY PUBLIC  
 In and for Guam, U.S.A.  
 My Commission Expires: Mar. 10, 2003  
 P.O. Box 26215 GMP, Guam 96921

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IN THE SUPERIOR COURT OF GUAM

IN THE MATTER OF THE ESTATE OF CONSOLACION G. IGLESIAS, Decedent

PROBATE CASE NO. PR65-75

**NOTICE OF SALE UNDER POWER OF SALE IN MORTGAGE**  
 On January 16, 1994, SYLVIA M. FLORES and SYLVIA F. COCHRAN, gave to GUAM SAVINGS & LOAN ASSOCIATION, now known as BANRAPAC, LTD., a Promissory Note in the principal sum of \$650,000.00. Payment of said Note is secured by a Mortgage given by SYLVIA M. FLORES and SYLVIA F. COCHRAN to BANRAPAC, LTD., dated February 16, 1994, recorded in the Department of Land Management, Government of Guam, under Document Number 541506. Such Mortgage affects the following described real property: Lot Number 81, Block Number 5, Lot 1, Block 5, Tract 95, (Subdivision of Lot 1, Block 5, Tract 95, Municipality of Tanning, (Formerly of Dedded), Territory of Guam, Estate Number 12637 Subplot, as said lot is marked and designated on Drawing Number CC-79730F, as of LA Check Number 1789 (LA), dated April 7, 1991 and recorded November 19, 1991 at the Department of Land Management, Government of Guam, under instrument number 325046, Registered Land, with the last Registered Owner being Francis Alvin Cochran and Sylvia Flores Cochran. The Owner of Record being Sylvia Forns Cochran (a.k.a. Sylvia F. Cochran, and the last Certificate of Title Registration Number being 70136. Area: 651.73.

The Mortgagor has defaulted in the performance of the terms and conditions of the mortgage, and by reason of said default, BANRAPAC, LTD. issued and recorded Notice of Default and Acceleration of said indebtedness on September 7, 2001, under Document Number 045536. NOTICE IS HEREBY GIVEN, for BANRAPAC, LTD., will, on March 14, 2002 at 11:00 o'clock A.M. at the Office of the Mayor of Tanning, under power of sale contained in the Mortgage, will the above described parcel of real property at public auction to the highest bidder, to satisfy the obligations secured by said Mortgage. The sale shall be without warranty as to the title or interest to be conveyed or to the priority of the Mortgage. Where limitation of the foregoing the attorney or interested parties is directed to that same limitation shall exist between Francis A. Cochran and Sylvia F. Flores, and between Francis A. Cochran and Sylvia F. Flores, and between Francis A. Cochran and Sylvia F. Flores, and recorded November 19, 1991, under Document Number 325046, in the Department of Land Management of the Government of Guam, and further limited limitation of the foregoing, the court thereof captioned "Fores" cannot be a part of the right of interest, as well as in certain sections contained therein. The sale of or in whole or in part shall be conveyed without warranty or assessor concerning the validity, operation or effect of any of said provisions. The purchase price shall be payable by cash, certified check or cashier's check paid at the time and place of sale. Terms of sale as BANRAPAC, LTD. as of February 5, 2002 upon the Note and recorded by the said Mortgage the sum of \$576,965.26 for principal and \$78,344.16 for interest accrued as of February 5, 2002, at the rate provided by the Note, and late charges of \$4,251.58, for a total of \$659,560.54, which figure is exclusive of attorney's fees and costs. Interest will accrue on the Note until the date of sale. The rights is reserved to amend any and all bids and to cancel or postpone the sale time and place for sale of such property. Dated the 14th day of February, 2002.  
 ARROLD COWAN & ARROLD  
 P.O. Box X, Hagåtña, Guam 96922  
 Attorneys for BANRAPAC, LTD.  
 BY: /s/ MARK E. COWAN  
 Guam, U.S.A.  
 City of Hagåtña

On the 14th day of February, 2002, before me, a Notary Public, in and for Guam, U.S.A., personally appeared MARK E. COWAN, known to me to be the attorney for BANRAPAC, LTD., and the person whose name is subscribed to the foregoing NOTICE OF SALE UNDER POWER OF SALE IN MORTGAGE, and acknowledged to me that he executed the same as attorney and agent for BANRAPAC, LTD. IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year first above written.  
 NOTARY PUBLIC  
 In and for Guam, U.S.A.  
 My Commission Expires: June 18, 2003  
 259 March 9, 2002  
 P.O. Box 26215 GMP, Guam 96921

IN THE SUPERIOR COURT OF GUAM

HONG FEI BAI, Plaintiff,  
 vs.  
 HUORONG XU, Defendant.

DOMESTIC CASE NO. DM0639-01

SUMMONS

TO: HUORONG XU  
 TIANJIAN STREET  
 BAYKOUAN DISTRICT  
 YINGKOU CITY, LIAONING PROVINCE, CHINA

YOU ARE HEREBY summoned and required to serve upon: DOOLEY LANNIN ROBERTS & FOWLER LLP  
 Attorneys for Plaintiff  
 Suite 201 Ocean Pacific Plaza  
 1 865 South Marine Drive  
 Tanning, Guam 96913

an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RICHARD B. MARTINEZ  
 Acting Clerk  
 Superior Court of Guam  
 Dated: Sep. 17, 2001  
 By: Lorretto L.C. Anderson  
 Deputy Clerk

NOTICE OF HEARING ON REPORT OF EXECUTOR AND PETITION FOR FINAL DISTRIBUTION

THIS NOTICE IS REQUIRED BY LAW. YOU ARE NOT REQUIRED TO APPEAR IN COURT UNLESS YOU DESIRE.

1. NOTICE IS HEREBY GIVEN that DRUCKILLA UNTALAN, Administratrix of the Estate of Consolacion G. Iglesias has filed a Report of Executor and Petition for Final Distribution in the estate of the decedent named above, reference to which Petition is hereby made for further particulars.

2. A hearing of the Petition is set for the 1st day of March, 2002, at the hour of 9:00 a.m., of said date, at the courtroom of the Superior Court of Guam, Hagåtña, Guam.

Dated: February 1, 2002

RICHARD B. MARTINEZ  
 Acting Clerk, Superior Court of Guam  
 By: Cynthia C. Sablan  
 Deputy Clerk

**GENERAL ORDER**  
 No. 00-00014

The "Pacific Daily News", a newspaper of general circulation published in Hagåtña, Guam, is designated the official newspaper of the court. Unless otherwise provided by order, every notice required to be published shall be published in the "Pacific Daily News", District Court of Guam - Territory of Guam Filed Sept. 29, 2000

**Notice of Public Hearing**

Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs  
 Senator Mark Forbes, Chairman

10 A.M. Tuesday, February 26, 2002

The following Bills will be on the Agenda:

- \* Bill No. 75 Relative to appeals to the Civil Service Commission.
- \* Bill No. 109 An act to create the legal procedure to be used to obtain judicial review of decisions of administrative agencies.
- \* Bill No. 117 An act to require that voters in the Primary Election vote for only one party in all races on the Primary Ballot.
- \* Bill No. 218 Relative to the temporary relief & service credit of govGuam Student Financial Assistance Obligations for persons assigned to active duty in time of war or conflict.
- Bill No. 239 Relative to the Rate Payer Protection Act.
- Bill No. 248 Act to approve a lease for the G.A.I.N. Facility.
- Bill No. 264 Relative to Peace Officers entering private property.

Confirmation Hearings for the following individuals:  
 Pedro R. Martinez, to serve as a member of the Guam Telephone Authority Board of Directors.  
 Priscilla T. Tunçap, to serve as a member of the Civil Service Commission.  
 Richard J. Untalan, to serve as a member of the Civil Service Commission.

Hearing will take place in the Public Hearing Room, I Lihelastaran Guahan, Hagåtña, Guam  
 The Public is Invited to Participate  
 Individuals requiring special accommodations, auxiliary aids

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**GOVERNMENT MEETINGS**

**BOARD OF EXAMINERS FOR OPTOMETRY:** 8:30 a.m. Feb. 26, Health Professional Licensing Office, 1302 E. Sunset Blvd., Tyan. Agenda copies available at 1304 E. Sunset Blvd. Call 475-0251/2.

**COMMITTEE ON RULES, GENERAL GOVERNMENTAL OPERATIONS, REORGANIZATION & REFORM:** Public hearing on Bills 75, 109, 117, 218, 239, 24 and 264, 10 a.m. Feb. 26, 1 Liheslaturan Guahan public hearing room, Hagåtña. Confirmation hearing for Pedro R. Martinez to serve as a member of the GTA board of directors; Priscilla T. Tuncoap and Richard J. Untalan to serve as members of the Civil Service Commission. Call office of Sen. Mark Forbes, 472-3407/8.

**GOV GUAM RETIREMENT FUND BOARD OF TRUSTEES:** Executive session 5:30 p.m. Feb. 26, Retirement Fund conference room, Maite. Call 475-8919.

**GUAM MENTAL HEALTH PLANNING COUNCIL:** Noon Feb. 26, Department of Mental Health and Substance Abuse, room 209, Tamuning. For special accommodations, call 647-5407.

**GUAM PUBLIC LIBRARY SYSTEM:** 5:30 p.m. Feb. 26, Hagåtña Library conference room. For special accommodations, call 475-4753/5.

**SOUTHERN GUAM SOIL & WATER CONSERVATION DISTRICT:** 7 p.m. Feb. 26, UOG Experiment Station, Inarajan. All interested people are welcome.

**COMMITTEE ON EDUCATION:**

**ON THE NET**

▲ For the complete, searchable database of upcoming government meetings, visit [www.guampdn.com](http://www.guampdn.com)

Roundtable discussion 10 a.m. Feb. 27 in the committee chairman's office conference room, to discuss the pending visit of the Western Association of Schools and Colleges and other matters. For special accommodations, call Vice Speaker Larry Kasperbauer, 475-5437.

**COMMITTEE ON WAYS AND MEANS:** 9:30 a.m. Feb. 27, 1 Liheslaturan Guahan public hearing room, Hagåtña. Oversight hearing on financial status of the govern-

ment of Guam. For special accommodations, call office of Sen. Kaleo Moylan, 472-3342.

**CRIMINAL INJURIES COMPENSATION COMMISSION:** Noon to 1 p.m. Feb. 27, C&A Professional Building, 259 Martyr St., second floor, Hagåtña. For special accommodations, call Frank Honorario, 475-3360, ext. 201.

**GUAM BOARD OF MEDICAL EXAMINERS:** Special meeting noon Feb. 27, GMHA cafeteria's conference room. For special accommodations, call 475-0251/2.

**GUAM HOUSING AND URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS:** 5 p.m. Feb. 27, GHURA conference room. For special accommodations, call Michael Duenas, 477-9851/4 or TY/TDD

472-3701.

**GUAM POWER AUTHORITY BOARD OF DIRECTORS:** 6 p.m. Feb. 27, second floor, Harmon office. Everyone is invited. Call 647-9225.

**GUAM SYSTEM OF CARE COUNCIL:** 1 to 3 p.m. Feb. 27, Guam Marriott Resort, Tumon. Call 475-4625/9.

**GUAM WATERWORKS AUTHORITY BOARD OF DIRECTORS:** 5 p.m. Feb. 27, Building 1105, Central Ave., Tyan. For special accommodations, call 479-7823.

**GUAM ECONOMIC DEVELOPMENT AUTHORITY BOARD OF DIRECTORS:** 10 a.m. Feb. 28, Suite 511, fifth floor, ITC Building, Tamuning. For special accommodations, call Bernard Punzalan, 647-4332.

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175/65R14	\$49.00	\$96.00	195/75R14	\$47.50	\$ 92.00
185/60R14	\$51.00	\$100.00	205/70R14	\$50.00	\$ 98.00
195/60R14	\$55.00	\$108.00	205/60R15	\$59.95	\$118.00
			205/65R15	\$59.95	\$118.00
			215/65R15	\$64.95	\$128.00
			235/75R15	\$68.00	\$134.00
			31/1050R15	\$89.95	\$178.00
			265/70R15	\$112.00	
			265/70R16	\$109.00	

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# MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

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

*Senadot Mark Forbes, Gebilu  
Kabisiyon Mayurát*

Speaker Antonio R. Unpingco  
I Mina' Bente Sais Na Liheslaturan Guahan  
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. 248, was referred, wishes to report its findings and recommendations **TO DO PASS BILL NO. 248**: "An act to approve a lease for the Guam Animals In Need facility".

The voting record is as follows:

TO PASS

8

NOT TO PASS

0

ABSTAIN

0

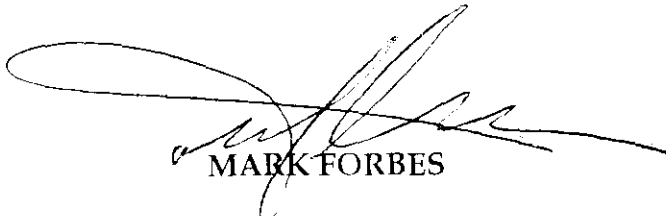
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TO REPORT OUT

0

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





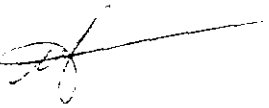
# MINA 'ENTE SAIS NA LIHESATURAN GUAHAN

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

*Senadot Mark Forbes, Gebilu  
Kabisiyon Mayurát*

## MEMORANDUM

**TO:** Committee Members

**FROM:** Chairman 

**SUBJECT:** Committee Report- BILL NO. 248: "An act to approve a lease for the Guam Animals In Need facility"

Transmitted herewith for your information and action is the report on Bill No. 248, 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. 248
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.


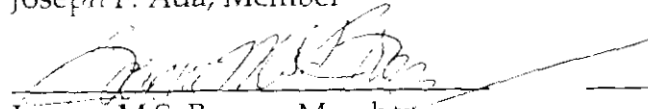
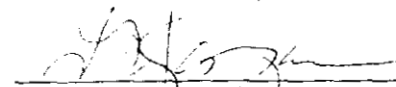
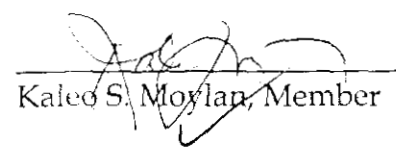
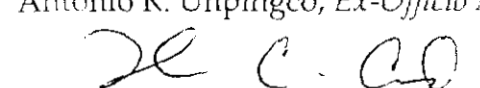
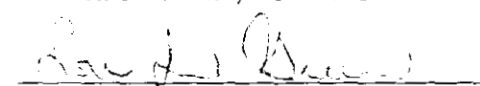
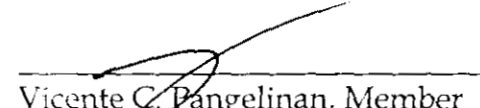
**MARK FORBES**

Attachments

Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal,  
Foreign and General Affairs  
I Mina' Bente Sais Na Liheslaturan Guåhan

Voting Record

BILL NO. 248: "An act to approve a lease for the Guam Animals In Need facility"

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>INACTIVE FILE</u>	<u>TO REPORT OUT</u>
 MARK FORBES, Chairman	✓				
Joseph F. Ada, Member					
 Joanne M.S. Brown, Member					
Eddie B. Calvo, Member					
Felix P. Camacho, Member					
 Lawrence F. Kasperbauer, Ph. D., Member	✓				
 Kaleo S. Moylan, Member	✓				
Antonio R. Unpingco, Ex-Officio Member	6				
 Thomas C. Ada, Member	✓				
 Lou A. Leon Guerrero, Member	✓				
 Vicente C. Pangelinan, Member	✓				

## I. OVERVIEW

The Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs held a public hearing at 10:00 a.m. on February 26, 2002 in the Public Hearing Room, I Liheslaturan Guahan. Public notice was given in the February 22 and February 26, 2002 editions of the Pacific Daily News.

Senators present at the public hearing were:

Senator Mark Forbes, Chairman  
Senator Joanne Brown, Member  
Senator Eddie Calvo, Member  
Senator Tom Ada, Member  
Senator Lou Leon Guerrero, Member  
Senator Ben Pangelinan, Member  
Senator Judith Won Pat, Member

## II. SUMMARY OF TESTIMONY

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

Karen V. Johnson, Guam Animals In Need (Oral)  
Nancy Petrucelly, Guam Animals In Need (Oral)  
Russ Tufvander, Guam Animals In Need (Written)

Karen V. Johnson, a member of Guam Animals In Need, testified before the Committee in favor of Bill No. 248. She discussed GAIN's plans for improving the facility, stating the intention to make it nice and clean for all animals that come in. She stated that there are organizations that have funds they can grant, but only if GAIN owns the building and land, or has a 30-year lease. She said that for \$1 a year, they will provide all animal care at the facility - care for it and dispose of it according to the laws - but the government would have to continue to pay for the utilities. In response to Senator Leon Guerrero's question of whether there is any guarantee that GAIN will continue to manage the facility, Johnson said that yes, GAIN's contract for animal care is for six years, but that it needs to be revisited when the contract expires. Senator Forbes asked whether GAIN can assign the management contract, and Johnson replied that they cannot.

Nancy Petrucelly, chairperson of the board of Guam Animals In Need, testified before the Committee in favor of Bill No. 248. She stated that GAIN is ready to make improvements to the facility, that they have construction funds set aside and contractors set aside.

Russ Tufvander, Guam Animals In Need, presented written testimony to the Committee in favor of Bill No. 248. Tufvander wrote of the changes GAIN has made since assuming the operation of the animal shelter last March, including opening the facility seven days a week, making repairs, and

landscaping to improve the appearance. But he said that because they do not own the facility or have a long-term lease, they cannot receive grants to improve the structure of the facility.

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

The Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs finds that Bill No. 248 can contribute to the improvement of the animal shelter by making available grants for structural improvement to the facility.

Accordingly, the Committee on Rules, General Governmental Operations, Reorganization and Reform, and Federal, Foreign and General Affairs, to which Bill No. 248 was referred does hereby submit its findings and recommendations to I Mina' Bente Sais Na Liheslaturan Guahan **TO DO PASS BILL NO. 248**: "An act to approve a lease for the Guam Animals In Need facility".

## Main Identity

---

**From:** "Russ & Janet Tufvander" <russell@kuentos.guam.net>  
**To:** "Bob Hartsock" <luthart@ite.net>  
**Sent:** Monday, February 25, 2002 10:13 PM  
**Subject:** Bill 248

### GUAM LEGISLATURE

This is to present written testimony on Bill No. 248. I am unable to present testimony in person, due to a conflict with a class I am teaching.

Guam Animals In Need, (GAIN) is currently running the shelter. This relieves the Government of Guam of over \$200,000 a year in expenses. (Number comes from the DPH Director's public estimate) Since GAIN assumed operation of the shelter last March, they have made a number of changes. The shelter is now open seven days a week to the public. We have done a number of repairs. Landscaping has made a real difference in the appearance.

At the same time, we are stymied in our efforts to make structural improvements to the facility. Until we have a long-term lease, we are unable to qualify for many of the grants that are currently available to nonprofit organizations. It goes without saying that construction grants are not available to organizations that do not have their own property or a long-term lease.

I ask you, as members of the Guam Legislature, to remember that GAIN is a local organization, and that its board is comprised of people who have chosen to make Guam their home. All of our efforts and all of our fundraising go directly to benefit the people of Guam. From the Family Dog Show to the spay/neuter clinics to supporting the roundups--our efforts go back to the community.

I ask that you approve the lease so that we can all move forward.

Russell Tufvander

GAIN

2-21-0188



GOVERNMENT OF GUAM



DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES  
(DIPATTAMENTON SALUT PUPBLEKO YAN SETBISION SUSIAT)

Post Office Box 2816, Hagåtña, Guam 96932  
123 Chalan Kareta, Route 10  
Mangilao, Guam 96923

Carl T.C. Guiterrez  
GOVERNOR

Dennis G. Rodriguez  
DIRECTOR

Madeleine Z. Bordallo  
LEUTENANT GOVERNOR

Joe R. San Agustin  
DEPUTY DIRECTOR

FEB 28 2001

RECEIVED

FEB 28 2001

RECEIVED

MEMORANDUM

TO: Governor  
Attorney General

ATTORNEY GENERAL'S OFFICE

FEB 28 2001  
10:33 AM  
ATTORNEY GENERAL'S OFFICE

FROM: Director, Department of Public Health and Social Services

SUBJECT: Contract Agreement

Hafa Adai! Submitted herewith is the Contract Agreement between the Department of Public Health and Social Services (DPHSS) and Guam Animals In Need, Inc. (GAIN), to provide services for the maintenance and operation of Yigo Animal Shelter for the period of six (6) years.

The intent of this Contract is for GAIN to take physical possession and control of Yigo Animal Shelter and use said property to carry out its functions and duties under this contract, as provided by 10 Guam Code Annotated, Chapter 34, Articles 1 and 2.

Should you have any questions, please contact Mr. Joe R. San Agustin, Deputy Director, Department of Public Health and Social Services at 735-7130, or Ms. Rosanna Y. Rabago, Acting Administrator, Division of Environmental Health at 735-7221.

Dangkolo Na Si Yu'os Ma'ase.

DENNIS G. RODRIGUEZ

RECEIVED  
MAR 21 2001  
GOVERNOR DPHSS-GA  
Director's Offices

RECEIVED  
MAR 13 2001  
GENERAL SERVICES



CONTRACT

This contract is made and executed by and between the Government of Guam, acting through the Department of Public Health and Social Services (DPHSS), and Guam Animals In Need, Inc. (GAIN), a non-profit corporation;

This contract is intended to be executed in conjunction with a lease agreement, a copy of which is attached hereto and incorporated herein as Appendix A, between DPHSS and GAIN for the Yigo Animal Shelter;

WITNESSETH THAT:

WHEREAS, the DPHSS wishes to operate and maintain an animal shelter and to enforce the laws and regulations concerning animal care and animal control in conformance with Title 10, Guam Code Annotated, Chapter 34, Articles 1 and 2; and

WHEREAS, GAIN is a non-profit Guam corporation formed for the prevention of cruelty to animals, the education of the public concerning matters pertaining to animals and their welfare, the enforcement of existing laws pertaining to animals, and the establishment of an animal shelter; and

WHEREAS, GAIN and DPHSS have entered into a Memorandum of Understanding and Cooperative Agreement made and executed on February 17, 2000, regarding certain aspects of animal adoption and care at the Yigo Animal Shelter, and establishing working relationships for the management and joint use of such facility; and

WHEREAS, DPHSS is presently operating the Yigo Animal Shelter, hereinafter referred to as the Shelter, to provide animal care services required by 10 Guam Code Annotated, Chapter 34, Article 1; and

WHEREAS, GAIN is qualified, ready, willing, and able to operate such an animal shelter and undertake to provide the animal care services required by 10 Guam Code Annotated, Chapter 34, Article 1; and

WHEREAS, GAIN and the DPHSS share the long-term goals of reducing the number of stray animals, the enforcement of animal control laws, cruelty and neglect laws, and rabies control, as set forth in Title 10, GCA, Chapter 34, Articles 1 and 2; and

WHEREAS, DPHSS and GAIN have deemed it advisable and in the best interests of the citizens of Guam that DPHSS appoint and delegate to GAIN the management and control of the Yigo Shelter, and to administer the same as hereinafter expressly provided within the geographical limits of Guam and administer the laws set forth in Title 10, GCA, Chapter 34, Articles 1 and 2 as

they relate to animal care;

NOW THEREFORE, the DPHSS and GAIN, in consideration of the mutual promises hereinafter set forth, hereby agree as follows:

## I. RIGHT TO USE THE YIGO ANIMAL SHELTER

1. Facilities and Equipment. On the effective date of this contract, DPHSS does hereby delegate and transfer to GAIN all right to use and interest in the Yigo Animal Shelter for the term of this contract. GAIN shall take physical possession and control of the Shelter and use said property to carry out its functions and duties under this contract, as provided by 10 GCA, Chapter 34, Articles 1 and 2. On the date of delivery, DPHSS shall provide a written inventory of all personal property turned over to GAIN.

2. Temporary Suspension of Prior Agreement. In order to avoid conflicts, ambiguities, or misunderstandings which may arise out of the provisions of the parties' Memorandum of Understanding and Cooperative Agreement, February 17, 2000, and this Contract, the parties agree that the effect and operation of the February 17, 2000 agreement shall be temporarily suspended during any time period in which this Contract, including any modifications and extensions thereof, remains in effect. By this temporary suspension, DPHSS and GAIN do not intend to avoid, cancel, or create a novation that would have the effect of preventing or interfering with the reinstatement of the prior agreement of the parties, pursuant to paragraph 14 of this Contract, as provided herein.

## II. DUTIES AND OBLIGATIONS OF GAIN UNDER THIS CONTRACT

1. Animal Care. GAIN will maintain clean and humane housing for all animals impounded on order of DPHSS or surrendered by the public. GAIN will provide at its own cost and expense all the services incident to the impounding, care, shelter, feeding and disposal of all animals taken into its custody, including such veterinarian services and euthanasia services as may be required.

2. Disposal of Animal Carcasses. GAIN will dispose of all dead animal carcasses of the pets which have been euthanized at the Shelter, by delivering them to the Government of Guam sanitary landfill.

3. Telephone/Animal Control. GAIN will provide personnel to answer the Shelter/animal control telephones, 653-2474 and 653-6718, at least eight hours per day, on every day when the DPHSS Pet Control Unit is working. As part of its obligations under this contract, GAIN personnel will record all information received concerning animal control or animal pickup and promptly relay that information to the DPHSS Pet Control Unit so that it can efficiently perform its duties as required by Title 10, GCA, Chapter 34, Section 34115. Said information shall be relayed by fax to the Pet Control Unit, using forms approved by DPHSS.



4. Hours of Operation. GAIN will provide animal intake services for the DPHSS Pet Control Unit on the same days and for the same hours that the Pet Control Unit is on duty. GAIN will perform emergency intake services for the Pet Control Unit as required, outside of ordinary shelter operating hours.

In addition, GAIN will ensure the Shelter is open to the public on such days and during such hours that the public will have reasonable and convenient access to the shelter for conducting business.

5. Record Keeping. GAIN shall maintain a complete record of every animal admitted into the Yigo Shelter, and complete records concerning the disposition of every animal. Such records shall be made available to DPHSS at its request.

6. Adoption Program. GAIN may administer a pet adoption program, in accordance with the laws set forth in Title 10, GCA, Chapter 34:

a) GAIN shall ensure that all pets over the age of six (6) months will be sterilized before being released to the adopter, as provided by Section 34116(f), and that all pets over the age of three (3) months are vaccinated for rabies. To this end, GAIN may use Shelter facilities to provide spay/neuter, vaccination and other medical services;

b) GAIN shall collect all sterilization deposits paid by adopters, maintain accurate and complete records concerning the animals adopted, and refund deposits to adopters as the animals are sterilized, or returned.

7. Impound Fees. GAIN shall hold all impounded animals for such periods of time as directed by DPHSS, and shall collect the impoundment fees as provided by Title 10, GCA, Chapter 34, Section 34116(e) for pets reclaimed by their owners, and shall maintain accurate records of these payments.

8. Pet Licenses. DPHSS will issue GAIN blocks of pet license tags. GAIN shall ensure that every pet released from the shelter is licensed as required by Title 10, GCA, Chapter 34, Section 34102, and shall collect the license fee on behalf of DPHSS, and shall forward the original pet license application and rabies vaccination certificate to DPHSS on a bi-weekly basis.

### III. CONSIDERATION

In return for GAIN undertaking at its own cost all animal care services and programs currently being provided at the Yigo Animal Shelter, including telephone answering and information services for the DPHSS Pet Control Unit, DPHSS agrees that it will provide the following consideration:

1. Execute a long-term Lease of the Shelter to GAIN, attached hereto as Appendix A, and introduce before the Guam Legislature a Bill to approve this long term lease, a copy of which Bill is attached hereto as Appendix B.

2. ~~Pay all costs of utilities to operate the Shelter, including power, water, dumpster fees, septic tank service, landfill disposal fees, and the cost of telephone lines 653-2474, 653-6717 and 653-6718, excluding the cost of long-distance telephone services, and the cost of utilities for any sublessee;~~

3. Subject to compliance with GovGuam procurement procedures, DPHSS will pay GAIN quarterly a management fee to be negotiated not less often than annually between GAIN and DPHSS, in an amount not less than the amount collected by GAIN for the preceding quarter pursuant to Section II, paragraphs 6, 7 and 8 of this Agreement.

#### IV. FACILITY UPKEEP AND IMPROVEMENTS

1. Cost of Shelter Maintenance. Because this contract is intended to be executed as part of the lease agreement between DPHSS and GAIN for the Shelter, as more fully set forth in Appendix A, GAIN agrees to be solely responsible for the cost of maintaining the shelter grounds, buildings and fence in a reasonably good and safe operating condition.

2. Alterations and Capital Improvements. GAIN may make alterations and/or improvements to the demised shelter premises, provided all such alterations and/or improvements are done in compliance with all applicable laws and regulations and further provided that DPHSS is furnished copies of all plans for such improvements and/or alterations. All alterations, and/or improvements built, constructed, or placed on the premises by GAIN, with the exception of fixtures removable without damage to the premises and removable personal property, shall, unless otherwise provided by written agreement between DPHSS and GAIN, become the property of DPHSS and remain on the premises at the expiration or termination of this Contract. When removing any fixtures or personal property, GAIN must restore the premises to the same condition as at the beginning of this Contract, ordinary wear and tear excepted.

#### V. GENERAL PROVISIONS

1. Audits. GAIN shall keep accurate financial records of all monies collected, received and expended by GAIN due to the performance of the animal care and animal control services specified in this contract, including expenditures for capital improvements at the shelter. All such records shall be subject to periodic audits by DPHSS.

2. Independent Contractor. In the performance of the services required under this contract, GAIN shall be an independent contractor with the authority and the responsibility to control and

direct the performance and details of the work and service required under this contract. Any work or services performed under this contract shall not constitute nor be construed as employment with the Government of Guam or DPHSS, and shall not entitle GAIN or GAIN's employees and agents to vacation, sick leave, retirement, worker's compensation, or other benefits afforded to employees of the Government of Guam or DPHSS.

3. Wages, Labor, and Other Laws. GAIN shall fully comply with all applicable federal and territorial laws and regulations relating to worker's compensation, payment of wages, withholding, safety, and equal employment opportunity.

4. Indemnification. GAIN shall indemnify and hold harmless the Government of Guam, DPHSS, its officers, employees and agents from all demands, claims, causes of action or judgments, and from and against any and all manner of suits, actions, or claims arising out of or resulting from any act or omission of GAIN, its officers, employees or agents occurring during the performance of their duties under this contract.

5. Insurance. Effective the start of each contract year, and for so long as such coverage is reasonably and commercially available, GAIN shall maintain and furnish DPHSS with proof of insurance policies for the following coverage:

a) General indemnity insurance insuring against injury to any person or property in a sum of not less than Three Hundred Thousand Dollars (\$300,000) for bodily injury to one person, One Million Dollars (\$1,000,000) for bodily injury to more than one person in any one accident, and Two Hundred Thousand Dollars (\$200,000) for property damage in one accident ;

b) Worker's compensation insurance to cover all of the employees working in any capacity to execute this contract;

c) Automobile liability insurance for any vehicles owned by GAIN, with minimum limits of not less than \$300,000 for bodily injuries or death per accident and not less than \$50,000 for damages to property;

d) The above automobile and general liability insurance coverage shall include endorsements to:

i) Name DPHSS as additional insured, but only with respect to operations of GAIN to be carried on pursuant to the terms of this contract;

ii) Notify DPHSS in writing of any cancellation of insurance policies, reduction, or changes in insurance coverage at least thirty (30) days prior to the effective date of such cancellation or change.

Any other insurance on the property or improvements shall be the responsibility of DPHSS.

GAIN shall be notified in writing of any cancellation of insurance policies, reduction, or changes in insurance coverage at least thirty (30) days prior to the effective date of such cancellation or change.

6. Subcontracts. GAIN may subcontract any part or all of the services to be performed under this contract without the prior written approval of DPHSS.

7. Waivers of Violations. It is expressly understood and agreed that no waiver granted by the DPHSS on account of any individual violation of any term, condition, or provision of this contract shall constitute or be construed in any manner as a waiver of the terms, conditions, provisions of, or of the right to enforce the same as to any other or further violation.

8. Inspection/Notice of Deficiencies. DPHSS shall have a general right to inspect, at any time and with reasonable prior notice, the personnel, equipment, supplies, records, services, and facilities to determine whether services are being provided by GAIN in accordance with the provisions of this contract. DPHSS shall notify GAIN in writing concerning any deficiencies, and give GAIN 30 days to correct the deficiencies or respond to the allegation of deficiencies, except in the case of sanitary violations which must be corrected within the time provided by Guam laws and regulations.

9. Termination on Default and Enforcement of this Contract. DPHSS or GAIN may, by giving thirty (30) calendar days written notice to the other, terminate this contract if the other party has failed to comply with the provisions of this contract or may, with appropriately reasonable notice under the particular circumstances, take any necessary action to enforce the provisions of this contract. If this contract is terminated because of DPHSS breach, GAIN shall be entitled to compensation for services satisfactorily performed up to the date of termination. If the contract is terminated because of GAIN's breach, GAIN will be entitled to compensation only for services performed prior to the date of breach. Within ninety (90) calendar days after the date of termination, GAIN shall submit reports for the final period of service and shall refund to the DPHSS any compensation paid in advance for services that will be provided due to the termination. The party claiming default and/or the right to self-help to enforce any provision of this Agreement shall, concurrently with service of notice of default on the opposing party, demand arbitration of the dispute pursuant to paragraph 11 of this Section. Pending resolution of the dispute by the arbitrator, any self-help enforcement action undertaken by either party shall be at the sole risk and responsibility of the party taking such action. For purposes of provisions of the Government Claims Act, the filing of opposition to an arbitration demand pursuant to this section shall be deemed to be a denial of relief requested in such notice, as if the same had been submitted pursuant to the ordinary provisions of 5 GCA § 6201.

11. Arbitration. Any disputes concerning the rights and obligations of the parties or the administration of this agreement will be arbitrated by such person as the Governor may designate, provided that such designee shall not be a present or former employee of DPHSS, or a present or former officer/director of GAIN. The arbitration hearing shall be informal and any

competent evidence shall be admissible. Formal rules of evidence shall not apply. Either party may, within ten days of the arbitration hearing, appeal to the Governor, who shall make a final and binding determination on the evidence and issues presented. Such appeal proceeding shall be conducted in such manner as the Governor may determine in his or her reasonable discretion, depending on the nature of the appeal and the issues presented, and judgment thereon may be entered and enforced in the Guam Superior Court in the same manner as any civil proceeding to which a GovGuam agency is a party. The parties agree to equally share the cost of such arbitrator, if any.

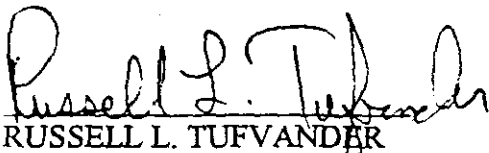
12. Contract to Take Effect. This contract between DPHSS and GAIN will take effect as soon as all necessary parties have signed and approved it, and DPHSS has turned over the Yigo Animal Shelter to GAIN.


13. Term of Contract/Automatic Renewal. The term of this contract will be for three (3) years, commencing on the effective date as provided in paragraph 12 of this Section, and provided that neither party is in default hereunder, and shall automatically renew for successive equal periods upon the expiration of a preceding 3-year term, unless notice of termination is given on or before ninety (90) days prior to the expiration of the contract term. Such notice may be given by either party, for such reasonable case as may be stated therein. If challenged by the non-terminating party, the reasonableness of a party's termination shall be resolved by arbitration, pursuant to paragraph 11 of this Section.

14. Partial Surrender of Shelter Property Upon Termination or Conclusion of Contract; Reinstatement of Prior Agreement. If this Contract is terminated or not renewed, GAIN agrees pursuant to Section 21 of the Lease, attached hereto as Appendix A, to vacate the portion of the Shelter designated therein so that DPHSS can resume responsibility for care of Shelter dogs. GAIN agrees that regardless of any termination or non-renewal of this Contract, GAIN will continue care of Shelter cats.

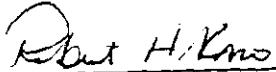
Upon termination of this Contract, the provisions of the February 17, 2000 Memorandum of Understanding and Cooperative Agreement existing between the parties shall be reinstated, observed, and honored in full, as if the same had remained continuously in force after the execution of said Memorandum of Understanding and Cooperative Agreement.

NOW, THEREFORE, be it resolved that this contract is signed this 19th day of March, 2001.

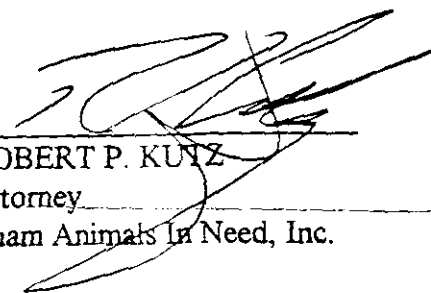
  
RUSSELL L. TUFVANDER  
President  
Guam Animals In Need, Inc.

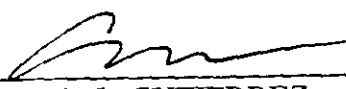
  
DENNIS G. RODRIGUEZ  
Director, Department of Public  
Health and Social Services

approved as to form & content:



JOHN TARANTINO  
Attorney General of Guam

  
ROBERT P. KUTZ  
Attorney  
Guam Animals In Need, Inc.

  
CARL T. C. GUTIERREZ  
Governor of Guam

APPENDIX A

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of this \_\_\_ day of \_\_\_\_\_,

2001, by and between the GUAM DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES ("Lessor"), and GUAM ANIMALS IN NEED, INC., a non-profit corporation ("Lessee").

WHEREAS, Lessor owns or administers the land described herein below, and Lessor desires to lease such land to Lessee and Lessee desires to lease the same from Lessor; and

WHEREAS, the Lessor and the Lessee have entered into a contract wherein Lessee will assume the duties and responsibilities of animal care and impoundment as set forth in 10 Guam Code Annotated, Chapter 34, Article 1; and

WHEREAS, the Lessor and Lessee had previously entered into a Lease Agreement between them, made and executed as of February 17, 2000, which Lease Agreement included a portion of the property included herein;

NOW, THEREFORE, in consideration of the premises and the terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby cancel, nullify and avoid entirely the Lease Agreement entered into between them as of February 17, 2000, and instead enter into this Lease and agree as follows:

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

The portion of Lot 7054-2 bounded on the north by the existing chain-link fence and bounded on the east, south and west as designated by Land Management Drawing Number 034-FY91, Document Number 449729, registered February 6, 1991, known as the Yigo Animal Shelter, together

with a 20-foot easement along the west side of the existing chain-link fence.

All as indicated on the plot plan attached hereto as Exhibit "A" and incorporated herein by reference; TOGETHER WITH all and singular, tenements, rights, easements, privileges, improvements and appurtenances to the same belonging or appurtenant or held and enjoyed in connection therewith; and together also with the rights of ingress and egress as more fully described herein.

2. Term. The term of this Lease shall be for a period of thirty (30) years commencing on 2001 and expiring on 2030, subject to the provisions of Section 19 below. Thereafter, Lessee has the option to renew the Lease for additional extensions of 10 years per extension, for a maximum of 2 extensions, upon such terms and conditions as both parties may agree. In no extension of this Lease shall the rent be increased.

3. Rent During Term. The rent payable from Lessee to Lessor shall be the sum of One Dollar (\$1) per year, payable annually in advance to the Treasurer of Guam during each year of the term of this Lease. This rental amount has been in good faith determined by the parties to be the fair rental value of the Premises, taking into consideration the provisions of this Lease, including that Lessee is a not-for-profit organization and that the parties have executed an agreement by separate contract wherein Lessee has assumed all aspects of animal care at the Yigo Animal Shelter, which are presently required to be performed by Lessor pursuant to 10 GCA Chapter 34, Articles 1 and 2.

4. Quiet Enjoyment. Lessor shall put and keep Lessee in actual possession of the Premises at the beginning of and throughout the term of this Lease. Lessor covenants that Lessee, upon paying the rent required hereunder, shall lawfully, peacefully and quietly have, hold, use, occupy and enjoy the Premises including any appurtenant access roadway and/or parking area, without any suit, hindrance, eviction, ejection, molestation, interruption or disturbance whatsoever of or by Lessor or by any persons claiming by, from, under or against



Lessor.

5. Use.

(a) General. The Premises shall be used for the purpose of construction and operation of dog and cat kennels, and such other facilities related to animal care, quarantine, and control as GAIN may chose to construct and operate.

(b) Improvements. Except as otherwise provided herein, Lessee shall make at the sole cost and expense of Lessee, leasehold improvements in, to and about the Premises and any easement and/or access and adjoining areas used by Lessee, which improvements shall be suitable for their intended use, and constructed in accordance with all applicable Federal and Territorial statutes and regulations. Any kennels which Lessee constructs, repairs or rebuilds must be in conformance with the applicable parts of 10 Guam Code Annotated Ch.34, Art. 2 and 3, and applicable regulations, depending on their designated use.

(c) Ownership of Improvements. During the term of this Lease, title to any and all buildings or improvements situated or erected on the Premises and the building equipment, fixtures and other items installed thereon and any alterations or additions thereto shall remain in Lessee, and Lessee shall be the owner of the same. Upon expiration or termination of this Lease, all non-portable or readily moveable improvements remaining on the Premises shall become the property of Lessor.

6. Alterations, Construction and Replacements. Lessee may at any time and from time to time construct, or otherwise make new improvements on all or any part of the Premises, and may make any alterations, changes, replacements, improvements, and additions in and to the Premises, including the contour and grade thereof, and the additions, buildings and improvements constructed thereon, in accordance with applicable law.

7. Signage. Lessee shall have the right to erect and maintain appropriate signage indicating Lessee's facility, its hours of operation, and other pertinent information. Such signage

shall include one sign to be erected on the existing sign support framework of Lessor's sign on Route 1 (Marine Drive). All such signs must be in compliance with applicable Guam laws and regulations.

8. Assignment. Lessee shall not have the right to assign this Lease unless the prior written consent of Lessor shall first be obtained. In the event Lessee proposes to assign this Lease to any not-for-profit organization which is a successor in interest to Lessee, Lessor agrees it shall not withhold its consent to such assignment so long as the assignee shall commit to observe and perform the terms and conditions of this Lease, including without limitation the provisions as to use of the Premises. The limitations in this Section shall not prevent Lessee from subletting any part of the Premises for animal-related business or charitable purposes. Any sublease by Lessee shall provide that the sublessee will be responsible for the cost of all of its own utilities.

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

10. Payment of Utilities. Except as otherwise provided herein, or in any Contract, including any modifications, extensions, or renewal thereof, between DPHSS and GAIN, Lessee shall pay and be responsible for the installation of and all charges for electrical power and other utilities, including septic service, which services are installed and supplied to and on the Premises.

11. Maintenance. Lessee shall, at its own cost and expense, maintain all the improvements on the Premises in good repair and condition throughout the term of this Lease, reasonable wear and tear excepted. In the event of an impending storm or other natural disaster, Lessee shall take reasonable measures to ensure the safety of the Premises against such disaster(s). All damages to the Premises arising out of a natural disaster shall be the liability of the Lessee. In the event that the leased Premises sustain major damage, Lessor shall have the

right to access the Lessee's Premises to make damage assessments.

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

13. Leasehold Mortgages. Lessee may, at any time and from time to time during the term of this Lease, for the purpose of financing the cost of making any improvements on the Premises, encumber by mortgage or other security instrument or otherwise, Lessee's interest under this Lease and the leasehold estate hereby created. If Lessee shall encumber and/or mortgage this Lease or its interest in the Premises, then so long as any such leasehold encumbrance or mortgage shall remain unsatisfied of record, the following provisions shall apply:

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

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

(c) Remedy. Any leasehold mortgagee or secured party, in case Lessee shall be in default hereunder, shall, within the period herein provided, have the right to remedy such default, or cause the same to be remedied, and Lessor shall accept such performance by or at the instigation of such leasehold mortgagee or secured party as if the same had been performed by Lessee. For

the purposes hereof, no event of default shall be deemed to exist under this Lease in respect to the performance of work required to be performed, or of acts to be done, or of conditions to be remedied, if steps shall, in good faith, have been commenced within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity.

Anything herein contained to the contrary notwithstanding, upon the occurrence of an event of default, other than an event of default due to a default in the payment of money, Lessor shall take no action to effect the termination of this Lease if any leasehold mortgagee or secured party after notice from Lessor as herein provided, acts diligently and in a reasonable time (in all events not to exceed ninety (90) days thereafter to accomplish one of the following, either (i) to obtain possession of the Premises (including possession by receiver), or (ii) to institute, prosecute and complete foreclosure proceedings or otherwise acquire Lessee's interest under this Lease with diligence. Such mortgagee or secured party upon obtaining possession or acquiring Lessee's interest under this Lease shall be required promptly to cure all defaults then reasonably susceptible of being cured by such mortgagee or secured party; provided, however, that such mortgagee or secured party shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults have been cured.

(d) Foreclosure. Any leasehold mortgagee or secured party shall have the right at any time during the term of this Lease to realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by any applicable mortgage or security documents and to transfer, convey, or assign the title of Lessee to the leasehold estate created hereby to any purchaser at any foreclosure sale, and to acquire and succeed to the interest of Lessee hereunder by virtue of any such foreclosure sale. Such mortgagee or secured party, or its assignee or designee, or other purchaser in foreclosure proceedings may become the legal owner and holder of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure. During the time of any

foreclosure proceedings and at all times thereafter, lease rent must be paid as and when scheduled in accordance with the provisions of this Lease and the Premises may not be used for any purposes other than those provided for in this Lease.

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

(f) Estoppel Certificates. Lessor agrees, at any time and from time to time, at no cost or expense to Lessee, upon request of Lessee, to execute, acknowledge and deliver to Lessee for the benefit of Lessee or any actual or potential lender, creditor, investor or successor Lessee, within thirty (30) days of the request, a statement in writing certifying that this Lease is unmodified and in full force and effect and Lessee is not in default (or if modified, in full force and effect as modified and stating the modifications, or if there is any default stating such default), the dates to which rent or other sums have been paid in advance and setting forth such further information with respect to this Lease or the Premises as may be requested thereon, it being understood that

any such statement delivered pursuant hereto may be relied upon by Lessee or any actual mortgagee, beneficiary or other party.

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

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

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

modifications, or repairs which may be reasonably required by Lessee in order to place the remaining portion of the Premises not so condemned in a suitable condition for the continuance of Lessee's tenancy, or on account of any diminution in value of its leasehold estate hereunder.

All interested parties may independently file separate claims in the condemnation proceedings for the purpose of having the value of their respective claims determined.

15. Lessor's Rights on Default. This Lease is predicated upon the continuing conditions:

(a) if Lessee shall fail to pay the rent as stipulated in this Lease or any part thereof when the same becomes due and shall fail to do so within thirty (30) days after written notice of default from Lessor:

(b) if Lessee fails to, in any other respect faithfully observe and perform any other term, condition or covenant contained in this Lease, on its part to be observed or performed, and fails to cure said default within thirty (30) days after written notice thereof, or shall fail to commence to cure a default whose cure would require more than thirty (30) days;

(c) if Lessee shall become bankrupt or makes an assignment for the benefit of its creditors, or file any debtor proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Act seeking any readjustment, arrangement, postponement, composition or reduction of its debts, liabilities or obligations;

(d) if Lessee shall abandon the Premises; then and in any such event, Lessor may upon thirty (30) days written notice to Lessee, subject to the provisions herein contained, enter into and upon the Premises or any part thereof in the name of the whole and at Lessor's option: (i) cancel this Lease by giving written notice to Lessee and thereupon take possession of the Premises and all improvements thereon, and thereby become wholly vested with all right, title and interest of Lessee therein and may expel and remove Lessee from the Premises, without being guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, all without prejudice to any other remedy or right of action which Lessor may have for arrears for rent or for

any other preceding breach of this Lease on the part of Lessee, or (ii) Relet the Premises, for the remainder of the term thereof at the best rent it can obtain for the account of Lessee who shall make good any deficiency.

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

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

18. Access. The rights granted by Lessor to Lessee hereunder include free rights of ingress and egress to and from the Premises. Lessor shall have the right to change the location of the access to the Premises in connection with any development by Lessor of the parcel of property of which the Premises or the access/parking area form a part so long as Lessee's rights of ingress, egress, and parking are not impaired.

19. Approvals.

(a) Legislative Approval. Applicable law requires that this Lease be approved by the Guam Legislature. Lessor shall submit this Lease for legislative approval and the parties shall cooperate in using their best efforts in good faith to obtain such approval. The term of this Lease (notwithstanding any other provisions herein contained) shall not be deemed to have commenced until such date as legislative approval is obtained, and the expiration date of this Lease shall be a date thirty (30) years from the date of legislative approval.

(b) Rights of Entry. In the event the actual commencement date of the term of this Lease is, because of legislative approval as provided in Section 19(a) above or for any other reason, extended beyond the express date set forth in Section 2 above, then Lessee shall have the right prior to the commencement date, at Lessee's sole risk and Lessee's sole expense, to freely go and



enter upon the Premises and easements and adjacent areas for the purposes of making soil tests, surveys, examinations, clearing, grading, filling and such other purposes as Lessee may elect. Lessee may, during any such period prior to the commencement date of this Lease, place and maintain temporary structures on the Premises and may store equipment on the Premises, but all at the sole risk of Lessee.

20. Lessee to Remain a Not-For-Profit Organization. During the term of this Lease Lessee shall retain its legal structure as a not-for-profit corporation whose purpose is to promote the humane treatment of animals, as more fully set forth in its Articles of Incorporation and By-laws.

21. Effect of Termination of Animal Care Contract. It is the intent of the parties that Lessee lease a portion of the premises herein described, for the term provided in this lease, to be used by Lessee for providing animal care services pursuant to 10 GCA, Chapter 34, Articles 1 and 2, as more fully set forth in the Contract between DPHSS and GAIN dated the \_\_\_\_ day of \_\_\_\_\_, 2001. In the event that said Contract terminates, or is not renewed, Lessee agrees promptly to vacate the following portion of the Yigo Animal Shelter, so that Lessor can re-enter and resume its duties to provide care of shelter dogs:

The southerly "front" section of the Yigo Animal Shelter, including Dog Kennel Rows 1, 2, 3, 4, and that part of Row 5 dedicated to dog cages, and both office buildings, as further indicated in the drawing attached hereto as EXHIBIT 1 and incorporated herein.

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

23. Binding Effect. This Lease and the terms, covenants, and conditions herein shall extend to and be binding upon the respective legal representatives, successors and assigns of the

parties hereto, and to any other person or persons claiming to hold or to exercise any interest by, under or through any of the parties hereto.

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

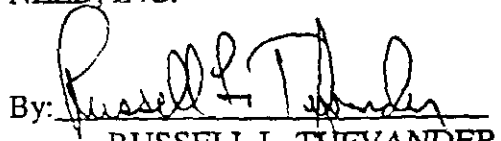
25. Entire Agreement. This Lease contains the entire agreement of the parties in respect to Lessee's tenancy, use and occupancy of the Premises, and no other agreement, statement, pertaining to the same shall be valid or of any force or effect. This Lease shall not be subject to modification except in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

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

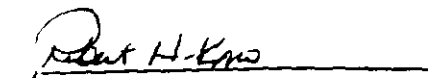
LESSOR: GUAM DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES


LESSEE: GUAM ANIMALS IN NEED, INC.

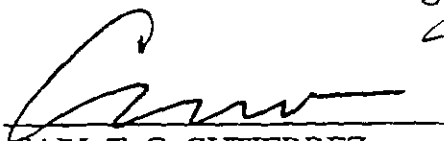
By:   
DENNIS G. RODRIGUEZ  
Director

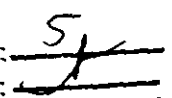
By:   
RUSSELL L. TUFVANDER  
President

APPROVED AS TO FORM AND CONTENT:

  
JOHN TARANTINO  
Attorney General of Guam

  
ROBERT P. KUTZ  
Attorney  
Guam Animals In Need, Inc.

  
CARL T. C. GUTIERREZ  
Governor of Guam

Administration - Division of Accounts  
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ATTORNEY GENERAL'S OFFICE

APPENDIX B

ACT TO APPROVE A LEASE FOR THE GUAM ANIMALS IN NEED FACILITY

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

**Section 1. Legislative findings and intent** The Legislature finds that Guam Animals in Need, Inc., (GAIN) a registered Guam corporation and tax-exempt charity, is an organization dedicated to the humane treatment of animals, and through its low-cost spay/neuter and adoption programs, is a significant instrument in reducing the number of stray cats and dogs on Guam. The Legislature wishes to acknowledge and encourage the spirit of cooperation and public service exhibited by the Department of Public Health and Social Services (hereafter "DPHSS") on the one hand, and the GAIN membership, on the other, in their efforts to resolve differences, settle litigation, and provide a mutually supportive and uplifting environment for the benefit of the people and animals of Guam.

The Legislature also finds that rabies control is an essential public health concern to the Government of Guam, and that an effective pet licensing program including a rabies inoculation provision can help foster public awareness and responsibility for pet ownership. The Legislature further finds that the present animal pound, the Yigo Animal Shelter, is antiquated and in need of repair, and that the construction of new and renovated shelter, adoption, and veterinary clinic facilities by GAIN can provide a significant public benefit at minimal governmental expense.

**Section 2. (a) Lease.** The executed lease agreement (the Lease) for the premises hereinafter described between DPHSS as Lessor and Guam Animals in Need, Inc., as Lessee, a copy of which is attached hereto and incorporated herein, is hereby approved, subject to the conditions set forth in paragraph (b) of this section. The property covered by the Lease (the

Premises) is described as follows:

The portion of Lot 7054-2 bounded on the north by the existing chain-link fence and bounded on the east, south and west as designated by Land Management Drawing Number 034-FY91, Document Number 449729, registered February 6, 1991, and a 20-foot easement along the west side of existing chain-link fence.

(c) **Conditions.** The approval of the Lease is subject to the following conditions, which conditions shall prevail over any provisions of the Lease to the contrary,

(a) The Lessee shall remain a not-for-profit organization during the entire term of the Lease, and it shall comply with all laws governing not-for-profit organizations and shall, on a yearly basis, submit to the Director of DPHSS a copy of the annual report in the format normally required of not-for-profit organizations by the Department of Revenue and Taxation (Form 990).

(b) The Lessee shall comply with all applicable laws and regulations and shall be subject to covenants or restrictions on land usage which are recorded at the Department of Land Management, or contained in local or federal law at the time of the execution of the Lease.

(c) The Lessee shall not sell, assign, or otherwise transfer its interest in the Premises, except to another qualifying not-for-profit organization. Lessee may, however, sublease, encumber or mortgage its leasehold interest in a commercially reasonable manner, as provided by the terms of the Lease.

(d) At the end of the term of the Lease or upon the earlier termination of the

Lease, the Lessee will at its expense peaceably deliver up to the Lessor possession of the Premises, together with all improvements constructed thereon, free of any encumbrances or obligations; provided, however, that the Lessee may remove all furniture, fixtures, equipment and readily movable or portable structures from the Premises.

**Section 3. Administrative Provisions.** As part of the mutual consideration exchanged between the Lessee and DPHSS, the parties have entered into a Contract, dated March 19, 2001, the provisions of which are incorporated herein by reference. The Legislature finds that the terms and conditions of said Contract are just, reasonable, and beneficial to the parties and to the people of Guam, and therefore properly form a basis for administrative provisions governing the relationship of the parties. Accordingly, to the extent not inconsistent with governing law, the terms and conditions of the Contract shall be incorporated into any administrative rules and regulations developed by the DPHSS (or any other appropriate Government of Guam agency), for the governance of the relationships of the parties.

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

**[LEASE WILL BE ATTACHED HERE]**

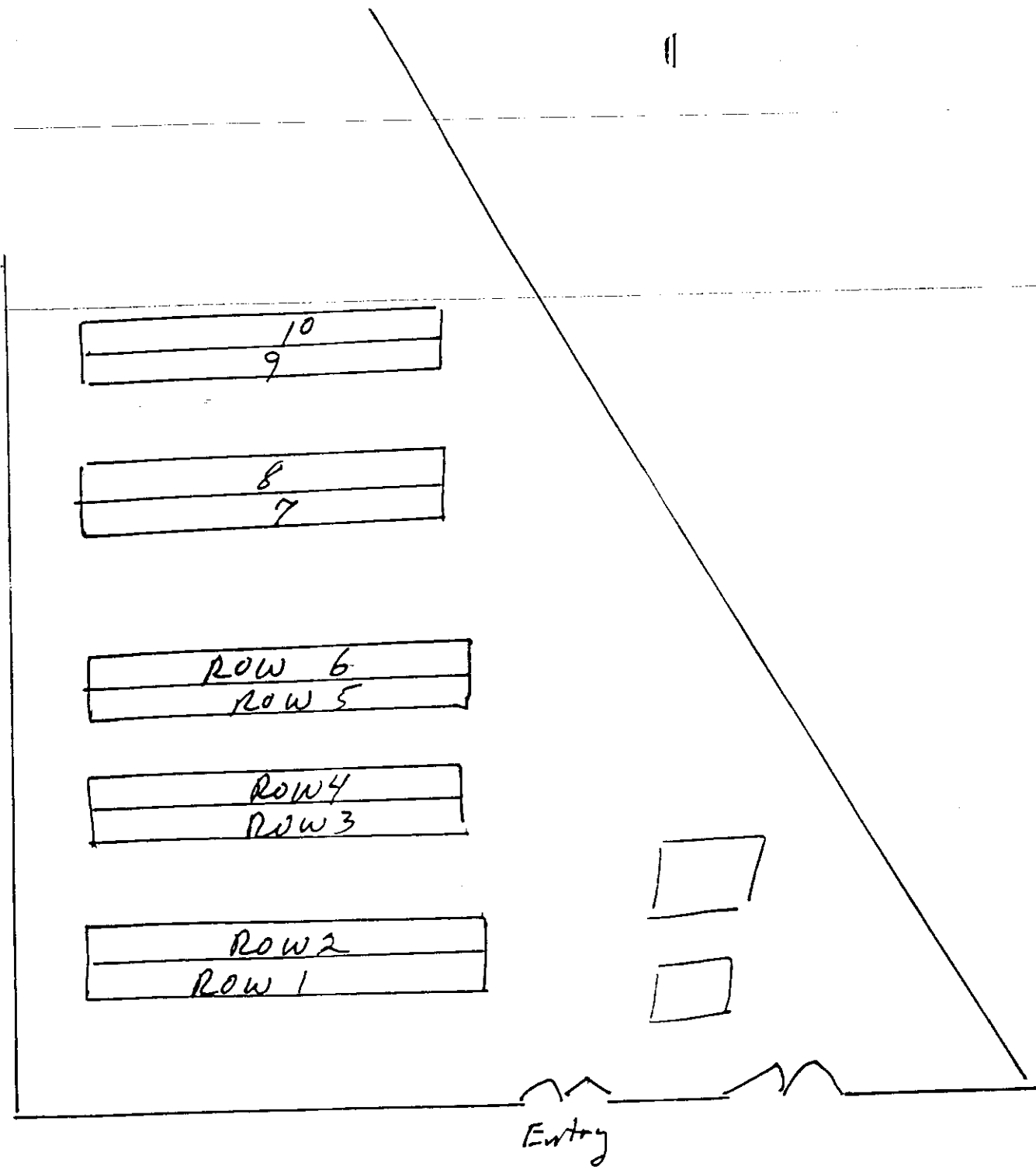


Exhibit 1

1 2002

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

Bill No. 248 (COR)

Introduced by: E.B. Calvo *ell*

AN ACT TO APPROVE A LEASE FOR THE GUAM  
ANIMALS IN NEED FACILITY.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan*  
3 finds that Guam Animals in Need, Inc. (GAIN) a registered Guam corporation  
4 and tax-exempt charity, is an organization dedicated to the humane treatment  
5 of animals, and through its low-cost spay/neuter and adoption programs, is a  
6 significant instrument in reducing the number of stray cats and dogs on  
7 Guam. The Legislature wishes to acknowledge and encourage the spirit of  
8 cooperation and public service exhibited by the Department of Public Health  
9 and Social Services (hereafter "DPHSS") on the one hand, and the GAIN  
10 membership, on the other, in their efforts to resolve differences, settle  
11 litigation, and provide a mutually supportive and uplifting environment for  
12 the benefit of the people and animals of Guam.

13 The Legislature also finds that rabies control is an essential public  
14 health concern to the Government of Guam, and that an effective pet

1 licensing program including a rabies inoculation provision can help foster  
2 public awareness and responsibility for pet ownership. The Legislature  
3 further finds that the present animal pound, the Yigo Animal Shelter, is  
4 antiquated and in need of repair, and that the construction of new and  
5 renovated shelter, adoption, and veterinary clinic facilities by GAIN can  
6 provide a significant public benefit at minimal governmental expense.

7       **Section 2. (a) Lease.** The executed lease agreement (the Lease) for the  
8 premises hereinafter described between DPHSS as Lessor and Guam Animals  
9 in Need, Inc., as Lessee, a copy of which is attached hereto and incorporated  
10 herein, is hereby approved, subject to the conditions set forth in paragraph (b)  
11 of this section. The property covered by the Lease (the Premises) is described  
12 as follows:

13               The portion of Lot 7054-2 bounded on the north by the existing  
14 chain-link fence and bounded on the east, south and west as designated by  
15 Land Management Drawing Number 034-FY91, Document Number 449729,  
16 registered February 6, 1991, and a 20-foot easement along the west side of  
17 existing chain-link fence.



1           **(b) Conditions.** The approval of the Lease is subject to the following  
2 conditions, which conditions shall prevail over any provisions of the Lease  
3 to the contrary,

4           (i) The Lessee shall remain a not-for-profit organization during  
5 the entire term of the Lease, and it shall comply with all laws governing  
6 not-for-profit organizations and shall, on a yearly basis, submit to the  
7 Director of DPHSS a copy of the annual report in the format normally  
8 required of not-for-profit organizations by the Department of Revenue  
9 and Taxation (Form 990).

10          (ii) The Lessee shall comply with all applicable laws and  
11 regulations and shall be subject to covenants or restrictions on land  
12 usage which are recorded at the Department of Land Management, or  
13 contained in local or federal law at the time of the execution of the  
14 Lease.

15          (iii) The Lessee shall not sell, assign, or otherwise transfer its  
16 interest in the Premises, except to another qualifying not-for-profit  
17 organization. Lessee may, however, sublease, encumber or mortgage  
18 its leasehold interest in a commercially reasonable manner, as provided

1 by the terms of the Lease.

2 (iv) At the end of the term of the Lease or upon the earlier  
3 termination of the Lease, the Lessee will at its expense peaceably  
4 deliver up to the Lessor possession of the Premises, together with all  
5 improvements constructed thereon, free of any encumbrances or  
6 obligations; provided, however, that the Lessee may remove all  
7 furniture, fixtures, equipment and readily movable or portable  
8 structures from the Premises.

9 **Section 3. Administrative Provisions.** As part of the mutual  
10 consideration exchanged between the Lessee and DPHSS, the parties have  
11 entered into a Contract, dated March 19, 2001, the provisions of which are  
12 incorporated herein by reference. The Legislature finds that the terms and  
13 conditions of said Contract are just, reasonable, and beneficial to the parties  
14 and to the people of Guam, and therefore properly form a basis for  
15 administrative provisions governing the relationship of the parties.  
16 Accordingly, to the extent not inconsistent with governing law, the terms and  
17 conditions of the Contract shall be incorporated into any administrative rules

1 and regulations developed by the DPHSS (or any other appropriate  
2 Government of Guam agency), for the governance of the relationships of the  
3 parties.

4 **Section 4. Severability.** If any provisions of this Act or the application  
5 thereof to any person or circumstance are held invalid, such invalidity shall  
6 not affect the other provisions or applications of this Act which can be given  
7 effect without the invalid provisions or application, and to this end the  
8 provisions of this Act are severable.

9

10

11 (Space Above This Line for Registrar's Use)

**CONTRACT**

This contract is made and executed by and between the Government of Guam, acting through the Department of Public Health and Social Services (DPHSS), and Guam Animals In Need, Inc. (GAIN), a non-profit corporation;

This contract is intended to be executed in conjunction with a lease agreement, a copy of which is attached hereto and incorporated herein as Appendix A, between DPHSS and GAIN for the Yigo Animal Shelter;

**WITNESSETH THAT:**

**WHEREAS, the DPHSS wishes to operate and maintain an animal shelter and to enforce the laws and regulations concerning animal care and animal control in conformance with Title 10, Guam Code Annotated, Chapter 34, Articles 1 and 2; and**

**WHEREAS, GAIN is a non-profit Guam corporation formed for the prevention of cruelty to animals, the education of the public concerning matters pertaining to animals and their welfare, the enforcement of existing laws pertaining to animals, and the establishment of an animal shelter, and**

**WHEREAS, GAIN and DPHSS have entered into a Memorandum of Understanding and Cooperative Agreement made and executed on February 17, 2000, regarding certain aspects of animal adoption and care at the Yigo Animal Shelter, and establishing working relationships for the management and joint use of such facility; and**

**WHEREAS, DPHSS is presently operating the Yigo Animal Shelter, hereinafter referred to as the Shelter, to provide animal care services required by 10 Guam Code Annotated, Chapter 34, Article 1; and**

**WHEREAS, GAIN is qualified, ready, willing, and able to operate such an animal shelter and undertake to provide the animal care services required by 10 Guam Code Annotated, Chapter 34, Article 1; and**

**WHEREAS, GAIN and the DPHSS share the long-term goals of reducing the number of stray animals, the enforcement of animal control laws, cruelty and neglect laws, and rabies control, as set forth in Title 10, GCA, Chapter 34, Articles 1 and 2; and**

**WHEREAS, DPHSS and GAIN have deemed it advisable and in the best interests of the citizens of Guam that DPHSS appoint and delegate to GAIN the management and control of the Yigo Shelter, and to administer the same as hereinafter expressly provided within the geographical limits of Guam and administer the laws set forth in Title 10, GCA, Chapter 34, Articles 1 and 2 as**

they relate to animal care;

NOW THEREFORE, the DPHSS and GAIN, in consideration of the mutual promises hereinafter set forth, hereby agree as follows:

## I. RIGHT TO USE THE YIGO ANIMAL SHELTER

1. Facilities and Equipment. On the effective date of this contract, DPHSS does hereby delegate and transfer to GAIN all right to use and interest in the Yigo Animal Shelter for the term of this contract. GAIN shall take physical possession and control of the Shelter and use said property to carry out its functions and duties under this contract, as provided by 10 GCA, Chapter 34, Articles 1 and 2. On the date of delivery, DPHSS shall provide a written inventory of all personal property turned over to GAIN.

2. Temporary Suspension of Prior Agreement. In order to avoid conflicts, ambiguities, or misunderstandings which may arise out of the provisions of the parties' Memorandum of Understanding and Cooperative Agreement, February 17, 2000, and this Contract, the parties agree that the effect and operation of the February 17, 2000 agreement shall be temporarily suspended during any time period in which this Contract, including any modifications and extensions thereof, remains in effect. By this temporary suspension, DPHSS and GAIN do not intend to avoid, cancel, or create a novation that would have the effect of preventing or interfering with the reinstatement of the prior agreement of the parties, pursuant to paragraph 14 of this Contract, as provided herein.

## II. DUTIES AND OBLIGATIONS OF GAIN UNDER THIS CONTRACT

1. Animal Care. GAIN will maintain clean and humane housing for all animals impounded on order of DPHSS or surrendered by the public. GAIN will provide at its own cost and expense all the services incident to the impounding, care, shelter, feeding and disposal of all animals taken into its custody, including such veterinarian services and euthanasia services as may be required.

2. Disposal of Animal Carcasses. GAIN will dispose of all dead animal carcasses of the pets which have been euthanized at the Shelter, by delivering them to the Government of Guam sanitary landfill.

3. Telephone/Animal Control. GAIN will provide personnel to answer the Shelter/animal control telephones, 653-2474 and 653-6718, at least eight hours per day, on every day when the DPHSS Pet Control Unit is working. As part of its obligations under this contract, GAIN personnel will record all information received concerning animal control or animal pickup and promptly relay that information to the DPHSS Pet Control Unit so that it can efficiently perform its duties as required by Title 10, GCA, Chapter 34, Section 34115. Said information shall be relayed by fax to the Pet Control Unit, using forms approved by DPHSS.

4. Hours of Operation. GAIN will provide animal intake services for the DPHSS Pet Control Unit on the same days and for the same hours that the Pet Control Unit is on duty. GAIN will perform emergency intake services for the Pet Control Unit as required, outside of ordinary shelter operating hours.

In addition, GAIN will ensure the Shelter is open to the public on such days and during such hours that the public will have reasonable and convenient access to the shelter for conducting business.

5. Record Keeping. GAIN shall maintain a complete record of every animal admitted into the Yigo Shelter, and complete records concerning the disposition of every animal. Such records shall be made available to DPHSS at its request.

6. Adoption Program. GAIN may administer a pet adoption program, in accordance with the laws set forth in Title 10, GCA, Chapter 34:

a) GAIN shall ensure that all pets over the age of six (6) months will be sterilized before being released to the adopter, as provided by Section 34116(f), and that all pets over the age of three (3) months are vaccinated for rabies. To this end, GAIN may use Shelter facilities to provide spay/neuter, vaccination and other medical services;

b) GAIN shall collect all sterilization deposits paid by adopters, maintain accurate and complete records concerning the animals adopted, and refund deposits to adopters as the animals are sterilized, or returned.

7. Impound Fees. GAIN shall hold all impounded animals for such periods of time as directed by DPHSS, and shall collect the impoundment fees as provided by Title 10, GCA, Chapter 34, Section 34116(e) for pets reclaimed by their owners, and shall maintain accurate records of these payments.

8. Pet Licenses. DPHSS will issue GAIN blocks of pet license tags. GAIN shall ensure that every pet released from the shelter is licensed as required by Title 10, GCA, Chapter 34, Section 34102, and shall collect the license fee on behalf of DPHSS, and shall forward the original pet license application and rabies vaccination certificate to DPHSS on a bi-weekly basis.

### III. CONSIDERATION

In return for GAIN undertaking at its own cost all animal care services and programs currently being provided at the Yigo Animal Shelter, including telephone answering and information services for the DPHSS Pet Control Unit, DPHSS agrees that it will provide the following consideration:

1. Execute a long-term Lease of the Shelter to GAIN, attached hereto as Appendix A, and introduce before the Guam Legislature a Bill to approve this long term lease, a copy of which Bill is attached hereto as Appendix B.

~~2. Pay all costs of utilities to operate the Shelter, including power, water, dumpster fees, septic tank service, landfill disposal fees, and the cost of telephone lines 653-2474, 653-6717 and 653-6718, excluding the cost of long-distance telephone services, and the cost of utilities for any sublessee;~~

3. Subject to compliance with GovGuam procurement procedures, DPHSS will pay GAIN quarterly a management fee to be negotiated not less often than annually between GAIN and DPHSS, in an amount not less than the amount collected by GAIN for the preceding quarter pursuant to Section II, paragraphs 6, 7 and 8 of this Agreement.

#### IV. FACILITY UPKEEP AND IMPROVEMENTS

1. Cost of Shelter Maintenance. Because this contract is intended to be executed as part of the lease agreement between DPHSS and GAIN for the Shelter, as more fully set forth in Appendix A, GAIN agrees to be solely responsible for the cost of maintaining the shelter grounds, buildings and fence in a reasonably good and safe operating condition.

2. Alterations and Capital Improvements. GAIN may make alterations and/or improvements to the demised shelter premises, provided all such alterations and/or improvements are done in compliance with all applicable laws and regulations and further provided that DPHSS is furnished copies of all plans for such improvements and/or alterations. All alterations, and/or improvements built, constructed, or placed on the premises by GAIN, with the exception of fixtures removable without damage to the premises and removable personal property, shall, unless otherwise provided by written agreement between DPHSS and GAIN, become the property of DPHSS and remain on the premises at the expiration or termination of this Contract. When removing any fixtures or personal property, GAIN must restore the premises to the same condition as at the beginning of this Contract, ordinary wear and tear excepted.

#### V. GENERAL PROVISIONS

1. Audits. GAIN shall keep accurate financial records of all monies collected, received and expended by GAIN due to the performance of the animal care and animal control services specified in this contract, including expenditures for capital improvements at the shelter. All such records shall be subject to periodic audits by DPHSS.

2. Independent Contractor. In the performance of the services required under this contract, GAIN shall be an independent contractor with the authority and the responsibility to control and

direct the performance and details of the work and service required under this contract. Any work or services performed under this contract shall not constitute nor be construed as employment with the Government of Guam or DPHSS, and shall not entitle GAIN or GAIN's employees and agents to vacation, sick leave, retirement, worker's compensation, or other benefits afforded to employees of the Government of Guam or DPHSS.

3. Wages, Labor, and Other Laws. GAIN shall fully comply with all applicable federal and territorial laws and regulations relating to worker's compensation, payment of wages, withholding, safety, and equal employment opportunity.

4. Indemnification. GAIN shall indemnify and hold harmless the Government of Guam, DPHSS, its officers, employees and agents from all demands, claims, causes of action or judgments, and from and against any and all manner of suits, actions, or claims arising out of or resulting from any act or omission of GAIN, its officers, employees or agents occurring during the performance of their duties under this contract.

5. Insurance. Effective the start of each contract year, and for so long as such coverage is reasonably and commercially available, GAIN shall maintain and furnish DPHSS with proof of insurance policies for the following coverage:

a) General indemnity insurance insuring against injury to any person or property in a sum of not less than Three Hundred Thousand Dollars (\$300,000) for bodily injury to one person, One Million Dollars (\$1,000,000) for bodily injury to more than one person in any one accident, and Two Hundred Thousand Dollars (\$200,000) for property damage in one accident ;

b) Worker's compensation insurance to cover all of the employees working in any capacity to execute this contract;

c) Automobile liability insurance for any vehicles owned by GAIN, with minimum limits of not less than \$300,000 for bodily injuries or death per accident and not less than \$50,000 for damages to property;

d) The above automobile and general liability insurance coverage shall include endorsements to:

i) Name DPHSS as additional insured, but only with respect to operations of GAIN to be carried on pursuant to the terms of this contract;

ii) Notify DPHSS in writing of any cancellation of insurance policies, reduction, or changes in insurance coverage at least thirty (30) days prior to the effective date of such cancellation or change.

Any other insurance on the property or improvements shall be the responsibility of DPHSS.



GAIN shall be notified in writing of any cancellation of insurance policies, reduction, or changes in insurance coverage at least thirty (30) days prior to the effective date of such cancellation or change.

6. Subcontracts. GAIN may subcontract any part or all of the services to be performed under this contract without the prior written approval of DPHSS.

7. Waivers of Violations. It is expressly understood and agreed that no waiver granted by the DPHSS on account of any individual violation of any term, condition, or provision of this contract shall constitute or be construed in any manner as a waiver of the terms, conditions, provisions of, or of the right to enforce the same as to any other or further violation.

8. Inspection/Notice of Deficiencies. DPHSS shall have a general right to inspect, at any time and with reasonable prior notice, the personnel, equipment, supplies, records, services, and facilities to determine whether services are being provided by GAIN in accordance with the provisions of this contract. DPHSS shall notify GAIN in writing concerning any deficiencies, and give GAIN 30 days to correct the deficiencies or respond to the allegation of deficiencies, except in the case of sanitary violations which must be corrected within the time provided by Guam laws and regulations.

9. Termination on Default and Enforcement of this Contract. DPHSS or GAIN may, by giving thirty (30) calendar days written notice to the other, terminate this contract if the other party has failed to comply with the provisions of this contract or may, with appropriately reasonable notice under the particular circumstances, take any necessary action to enforce the provisions of this contract. If this contract is terminated because of DPHSS breach, GAIN shall be entitled to compensation for services satisfactorily performed up to the date of termination. If the contract is terminated because of GAIN's breach, GAIN will be entitled to compensation only for services performed prior to the date of breach. Within ninety (90) calendar days after the date of termination, GAIN shall submit reports for the final period of service and shall refund to the DPHSS any compensation paid in advance for services that will be provided due to the termination. The party claiming default and/or the right to self-help to enforce any provision of this Agreement shall, concurrently with service of notice of default on the opposing party, demand arbitration of the dispute pursuant to paragraph 11 of this Section. Pending resolution of the dispute by the arbitrator, any self-help enforcement action undertaken by either party shall be at the sole risk and responsibility of the party taking such action. For purposes of provisions of the Government Claims Act, the filing of opposition to an arbitration demand pursuant to this section shall be deemed to be a denial of relief requested in such notice, as if the same had been submitted pursuant to the ordinary provisions of 5 GCA § 6201.

11. Arbitration. Any disputes concerning the rights and obligations of the parties or the administration of this agreement will be arbitrated by such person as the Governor may designate, provided that such designee shall not be a present or former employee of DPHSS, or a present or former officer/director of GAIN. The arbitration hearing shall be informal and any

competent evidence shall be admissible. Formal rules of evidence shall not apply. Either party may, within ten days of the arbitration hearing, appeal to the Governor, who shall make a final and binding determination on the evidence and issues presented. Such appeal proceeding shall be conducted in such manner as the Governor may determine in his or her reasonable discretion, depending on the nature of the appeal and the issues presented, and judgment thereon may be entered and enforced in the Guam Superior Court in the same manner as any civil proceeding to which a GovGuam agency is a party. The parties agree to equally share the cost of such arbitrator, if any.

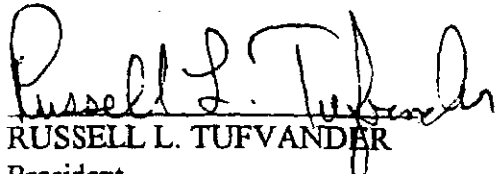
12. Contract to Take Effect. This contract between DPHSS and GAIN will take effect as soon as all necessary parties have signed and approved it, and DPHSS has turned over the Yigo Animal Shelter to GAIN.

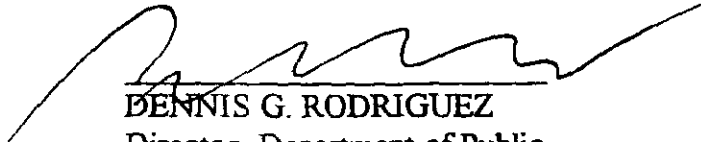
13. Term of Contract/Automatic Renewal. The term of this contract will be for three (3) years, commencing on the effective date as provided in paragraph 12 of this Section, and provided that neither party is in default hereunder, and shall automatically renew for successive equal periods upon the expiration of a preceding 3-year term, unless notice of termination is given on or before ninety (90) days prior to the expiration of the contract term. Such notice may be given by either party, for such reasonable case as may be stated therein. If challenged by the non-terminating party, the reasonableness of a party's termination shall be resolved by arbitration, pursuant to paragraph 11 of this Section.

14. Partial Surrender of Shelter Property Upon Termination or Conclusion of Contract; Reinstatement of Prior Agreement. If this Contract is terminated or not renewed, GAIN agrees pursuant to Section 21 of the Lease, attached hereto as Appendix A, to vacate the portion of the Shelter designated therein so that DPHSS can resume responsibility for care of Shelter dogs. GAIN agrees that regardless of any termination or non-renewal of this Contract, GAIN will continue care of Shelter cats.

Upon termination of this Contract, the provisions of the February 17, 2000 Memorandum of Understanding and Cooperative Agreement existing between the parties shall be reinstated, observed, and honored in full, as if the same had remained continuously in force after the execution of said Memorandum of Understanding and Cooperative Agreement.

NOW, THEREFORE, be it resolved that this contract is signed this 19th day of March, 2001.

  
RUSSELL L. TUFVANDER  
President  
Guam Animals In Need, Inc.

  
DENNIS G. RODRIGUEZ  
Director, Department of Public  
Health and Social Services

Approved as to form & content:

*Robert H. Kmo*

JOHN TARANTINO  
Attorney General of Guam

*[Signature]*  
ROBERT P. KUIZ  
Attorney  
Guam Animals In Need, Inc.

*[Signature]*  
CARL T. C. GUTIERREZ  
Governor of Guam

APPENDIX A

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_,

2001, by and between the GUAM DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES ("Lessor"), and GUAM ANIMALS IN NEED, INC., a non-profit corporation ("Lessee").

WHEREAS, Lessor owns or administers the land described herein below, and Lessor desires to lease such land to Lessee and Lessee desires to lease the same from Lessor; and

WHEREAS, the Lessor and the Lessee have entered into a contract wherein Lessee will assume the duties and responsibilities of animal care and impoundment as set forth in 10 Guam Code Annotated, Chapter 34, Article 1; and

WHEREAS, the Lessor and Lessee had previously entered into a Lease Agreement between them, made and executed as of February 17, 2000, which Lease Agreement included a portion of the property included herein;

NOW, THEREFORE, in consideration of the premises and the terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby cancel, nullify and avoid entirely the Lease Agreement entered into between them as of February 17, 2000, and instead enter into this Lease and agree as follows:

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

The portion of Lot 7054-2 bounded on the north by the existing chain-link fence and bounded on the east, south and west as designated by Land Management Drawing Number 034-FY91, Document Number 449729, registered February 6, 1991, known as the Yigo Animal Shelter, together

with a 20-foot easement along the west side of the existing chain-link fence. All as indicated on the plot plan attached hereto as Exhibit "A" and incorporated herein by reference; TOGETHER WITH all and singular, tenements, rights, easements, privileges, improvements and appurtenances to the same belonging or appurtenant or held and enjoyed in connection therewith; and together also with the rights of ingress and egress as more fully described herein.

2. Term. The term of this Lease shall be for a period of thirty (30) years commencing on 2001 and expiring on 2030, subject to the provisions of Section 19 below. Thereafter, Lessee has the option to renew the Lease for additional extensions of 10 years per extension, for a maximum of 2 extensions, upon such terms and conditions as both parties may agree. In no extension of this Lease shall the rent be increased.

3. Rent During Term. The rent payable from Lessee to Lessor shall be the sum of One Dollar (\$1) per year, payable annually in advance to the Treasurer of Guam during each year of the term of this Lease. This rental amount has been in good faith determined by the parties to be the fair rental value of the Premises, taking into consideration the provisions of this Lease, including that Lessee is a not-for-profit organization and that the parties have executed an agreement by separate contract wherein Lessee has assumed all aspects of animal care at the Yigo Animal Shelter, which are presently required to be performed by Lessor pursuant to 10 GCA Chapter 34, Articles 1 and 2.

4. Quiet Enjoyment. Lessor shall put and keep Lessee in actual possession of the Premises at the beginning of and throughout the term of this Lease. Lessor covenants that Lessee, upon paying the rent required hereunder, shall lawfully, peacefully and quietly have, hold, use, occupy and enjoy the Premises including any appurtenant access roadway and/or parking area, without any suit, hindrance, eviction, ejection, molestation, interruption or disturbance whatsoever of or by Lessor or by any persons claiming by, from, under or against

Lessor.

5. Use.

(a) General. The Premises shall be used for the purpose of construction and operation of ~~dog and cat kennels, and such other facilities related to animal care, quarantine, and control as~~  
GAIN may chose to construct and operate.

(b) Improvements. Except as otherwise provided herein, Lessee shall make at the sole cost and expense of Lessee, leasehold improvements in, to and about the Premises and any easement and/or access and adjoining areas used by Lessee, which improvements shall be suitable for their intended use, and constructed in accordance with all applicable Federal and Territorial statutes and regulations. Any kennels which Lessee constructs, repairs or rebuilds must be in conformance with the applicable parts of 10 Guam Code Annotated Ch.34, Art. 2 and 3, and applicable regulations, depending on their designated use.

(c) Ownership of Improvements. During the term of this Lease, title to any and all buildings or improvements situated or erected on the Premises and the building equipment, fixtures and other items installed thereon and any alterations or additions thereto shall remain in Lessee, and Lessee shall be the owner of the same. Upon expiration or termination of this Lease, all non-portable or readily moveable improvements remaining on the Premises shall become the property of Lessor.

6. Alterations, Construction and Replacements. Lessee may at any time and from time to time construct, or otherwise make new improvements on all or any part of the Premises, and may make any alterations, changes, replacements, improvements, and additions in and to the Premises, including the contour and grade thereof, and the additions, buildings and improvements constructed thereon, in accordance with applicable law.

7. Signage. Lessee shall have the right to erect and maintain appropriate signage indicating Lessee's facility, its hours of operation, and other pertinent information. Such signage

shall include one sign to be erected on the existing sign support framework of Lessor's sign on Route 1 (Marine Drive). All such signs must be in compliance with applicable Guam laws and regulations.

8. Assignment. ~~Lessee shall not have the right to assign this Lease unless the prior~~ written consent of Lessor shall first be obtained. In the event Lessee proposes to assign this Lease to any not-for-profit organization which is a successor in interest to Lessee, Lessor agrees it shall not withhold its consent to such assignment so long as the assignee shall commit to observe and perform the terms and conditions of this Lease, including without limitation the provisions as to use of the Premises. The limitations in this Section shall not prevent Lessee from subletting any part of the Premises for animal-related business or charitable purposes. Any sublease by Lessee shall provide that the sublessee will be responsible for the cost of all of its own utilities.

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

10. Payment of Utilities. Except as otherwise provided herein, or in any Contract, including any modifications, extensions, or renewal thereof, between DPHSS and GAIN, Lessee shall pay and be responsible for the installation of and all charges for electrical power and other utilities, including septic service, which services are installed and supplied to and on the Premises.

11. Maintenance. Lessee shall, at its own cost and expense, maintain all the improvements on the Premises in good repair and condition throughout the term of this Lease, reasonable wear and tear excepted. In the event of an impending storm or other natural disaster, Lessee shall take reasonable measures to ensure the safety of the Premises against such disaster(s). All damages to the Premises arising out of a natural disaster shall be the liability of the Lessee. In the event that the leased Premises sustain major damage, Lessor shall have the

right to access the Lessee's Premises to make damage assessments.

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

13. Leasehold Mortgages. Lessee may, at any time and from time to time during the term of this Lease, for the purpose of financing the cost of making any improvements on the Premises, encumber by mortgage or other security instrument or otherwise, Lessee's interest under this Lease and the leasehold estate hereby created. If Lessee shall encumber and/or mortgage this Lease or its interest in the Premises, then so long as any such leasehold encumbrance or mortgage shall remain unsatisfied of record, the following provisions shall apply:

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

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

(c) Remedy. Any leasehold mortgagee or secured party, in case Lessee shall be in default hereunder, shall, within the period herein provided, have the right to remedy such default, or cause the same to be remedied, and Lessor shall accept such performance by or at the instigation of such leasehold mortgagee or secured party as if the same had been performed by Lessee. For



the purposes hereof, no event of default shall be deemed to exist under this Lease in respect to the performance of work required to be performed, or of acts to be done, or of conditions to be remedied, if steps shall, in good faith, have been commenced within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity.

Anything herein contained to the contrary notwithstanding, upon the occurrence of an event of default, other than an event of default due to a default in the payment of money, Lessor shall take no action to effect the termination of this Lease if any leasehold mortgagee or secured party after notice from Lessor as herein provided, acts diligently and in a reasonable time (in all events not to exceed ninety (90) days thereafter to accomplish one of the following, either (i) to obtain possession of the Premises (including possession by receiver), or (ii) to institute, prosecute and complete foreclosure proceedings or otherwise acquire Lessee's interest under this Lease with diligence. Such mortgagee or secured party upon obtaining possession or acquiring Lessee's interest under this Lease shall be required promptly to cure all defaults then reasonably susceptible of being cured by such mortgagee or secured part; provided, however, that such mortgagee or secured party shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults have been cured.

(d) Foreclosure. Any leasehold mortgagee or secured party shall have the right at any time during the term of this Lease to realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by any applicable mortgage or security documents and to transfer, convey, or assign the title of Lessee to the leasehold estate created hereby to any purchaser at any foreclosure sale, and to acquire and succeed to the interest of Lessee hereunder by virtue of any such foreclosure sale. Such mortgagee or secured party, or its assignee or designee, or other purchaser in foreclosure proceedings may become the legal owner and holder of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure. During the time of any

foreclosure proceedings and at all times thereafter, lease rent must be paid as and when scheduled in accordance with the provisions of this Lease and the Premises may not be used for any purposes other than those provided for in this Lease.

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

(f) Estoppel Certificates. Lessor agrees, at any time and from time to time, at no cost or expense to Lessee, upon request of Lessee, to execute, acknowledge and deliver to Lessee for the benefit of Lessee or any actual or potential lender, creditor, investor or successor Lessee, within thirty (30) days of the request, a statement in writing certifying that this Lease is unmodified and in full force and effect and Lessee is not in default (or if modified, in full force and effect as modified and stating the modifications, or if there is any default stating such default), the dates to which rent or other sums have been paid in advance and setting forth such further information with respect to this Lease or the Premises as may be requested thereon, it being understood that

any such statement delivered pursuant hereto may be relied upon by Lessee or any actual mortgagee, beneficiary or other party.

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

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

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

modifications, or repairs which may be reasonably required by Lessee in order to place the remaining portion of the Premises not so condemned in a suitable condition for the continuance of Lessee's tenancy, or on account of any diminution in value of its leasehold estate hereunder.

~~All interested parties may independently file separate claims in the condemnation proceedings for the purpose of having the value of their respective claims determined.~~

15. Lessor's Rights on Default. This Lease is predicated upon the continuing conditions:

(a) if Lessee shall fail to pay the rent as stipulated in this Lease or any part thereof when the same becomes due and shall fail to do so within thirty (30) days after written notice of default from Lessor;

(b) if Lessee fails to, in any other respect faithfully observe and perform any other term, condition or covenant contained in this Lease, on its part to be observed or performed, and fails to cure said default within thirty (30) days after written notice thereof, or shall fail to commence to cure a default whose cure would require more than thirty (30) days;

(c) if Lessee shall become bankrupt or makes an assignment for the benefit of its creditors, or file any debtor proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Act seeking any readjustment, arrangement, postponement, composition or reduction of its debts, liabilities or obligations;

(d) if Lessee shall abandon the Premises; then and in any such event, Lessor may upon thirty (30) days written notice to Lessee, subject to the provisions herein contained, enter into and upon the Premises or any part thereof in the name of the whole and at Lessor's option: (i) cancel this Lease by giving written notice to Lessee and thereupon take possession of the Premises and all improvements thereon, and thereby become wholly vested with all right, title and interest of Lessee therein and may expel and remove Lessee from the Premises, without being guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, all without prejudice to any other remedy or right of action which Lessor may have for arrears for rent or for

any other preceding breach of this Lease on the part of Lessee, or (ii) Relet the Premises, for the remainder of the term thereof at the best rent it can obtain for the account of Lessee who shall make good any deficiency.

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

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

18. Access. The rights granted by Lessor to Lessee hereunder include free rights of ingress and egress to and from the Premises. Lessor shall have the right to change the location of the access to the Premises in connection with any development by Lessor of the parcel of property of which the Premises or the access/parking area form a part so long as Lessee's rights of ingress, egress, and parking are not impaired.

19. Approvals.

(a) Legislative Approval. Applicable law requires that this Lease be approved by the Guam Legislature. Lessor shall submit this Lease for legislative approval and the parties shall cooperate in using their best efforts in good faith to obtain such approval. The term of this Lease (notwithstanding any other provisions herein contained) shall not be deemed to have commenced until such date as legislative approval is obtained, and the expiration date of this Lease shall be a date thirty (30) years from the date of legislative approval.

(b) Rights of Entry. In the event the actual commencement date of the term of this Lease is, because of legislative approval as provided in Section 19(a) above or for any other reason, extended beyond the express date set forth in Section 2 above, then Lessee shall have the right prior to the commencement date, at Lessee's sole risk and Lessee's sole expense, to freely go and

enter upon the Premises and easements and adjacent areas for the purposes of making soil tests, surveys, examinations, clearing, grading, filling and such other purposes as Lessee may elect. Lessee may, during any such period prior to the commencement date of this Lease, place and maintain temporary structures on the Premises and may store equipment on the Premises, but all at the sole risk of Lessee.

20. Lessee to Remain a Not-For-Profit Organization. During the term of this Lease Lessee shall retain its legal structure as a not-for-profit corporation whose purpose is to promote the humane treatment of animals, as more fully set forth in its Articles of Incorporation and By-laws.

21. Effect of Termination of Animal Care Contract. It is the intent of the parties that Lessee lease a portion of the premises herein described, for the term provided in this lease, to be used by Lessee for providing animal care services pursuant to 10 GCA, Chapter 34, Articles 1 and 2, as more fully set forth in the Contract between DPHSS and GAIN dated the \_\_\_\_ day of \_\_\_\_\_, 2001. In the event that said Contract terminates, or is not renewed, Lessee agrees promptly to vacate the following portion of the Yigo Animal Shelter, so that Lessor can re-enter and resume its duties to provide care of shelter dogs:

The southerly "front" section of the Yigo Animal Shelter, including Dog Kennel Rows 1, 2, 3, 4, and that part of Row 5 dedicated to dog cages, and both office buildings, as further indicated in the drawing attached hereto as EXHIBIT 1 and incorporated herein.

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

23. Binding Effect. This Lease and the terms, covenants, and conditions herein shall extend to and be binding upon the respective legal representatives, successors and assigns of the

parties hereto, and to any other person or persons claiming to hold or to exercise any interest by, under or through any of the parties hereto.

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

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

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

LESSOR: GUAM DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES

LESSEE: GUAM ANIMALS IN NEED, INC.

By: 

DENNIS G. RODRIGUEZ  
Director

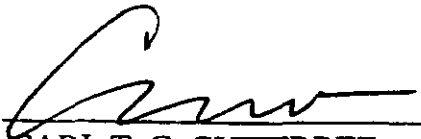
By: 

RUSSELL L. TUFVANDER  
President

APPROVED AS TO FORM AND CONTENT:

  
JOHN TARANTINO  
Attorney General of Guam

  
ROBERT P. KUTZ  
Attorney  
Guam Animals In Need, Inc.

  
CARL T. C. GUTIERREZ  
Governor of Guam

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FEB 28 2001  
3:49 PM  
ATTORNEY GENERAL'S OFFICE

