

**MEMORANDUM**

**Date:** March 07, 2023

**To:** John Burch, Guam Ancestral Lands Commission Exec. Director

**From:** Melanie Mendiola – CEO/ Administrator, Diego Mendiola - RPD Manager, Mary Camacho - RPD Supervisor and Tony Arriola - RPD Coordinator

**Subject:** GEDA Monthly Progress Report

*Håfa Adai!* The following is a progress report on GEDA’s efforts to manage Land Bank Trust properties as required by Section 1(i) of the MOU between GEDA and GALC Land Bank Trust:

➤ **Wettengel Junction : Northern Market, LLC (NM)**

Monthly Rent	Outstanding Balance
\$ 27,854.51	\$ 1,494,231.67

- Total Deferred, Undeferred and Interest due as of 10/31/2022 = \$1,466,377.16.
- Last payment received on 2/8/2023.
- Pending NM’s written proposal submission for outstanding payments due and solutions that will be provided to GALC Board commission for review and approval.

➤ **Apra Harbor Parcel No. 1 (Commissary Junction): KwikSpace**

Monthly Rent	Outstanding Balance
\$ 3,989.13	\$ 0

- Last payment received on 02/13/2023.

➤ **Apra Harbor Reservation F-12: Matson**

Monthly Rent	Outstanding Balance
\$ 27,733.00	\$ 0

- Last payment received on 02/28/2023.

➤ **Lot Apra Harbor Reservation F-12-R2: Trans Steel**

Monthly Rent	Outstanding Balance
\$ 500.00	\$ 9,400.00

- Last payment received on 01/30/2023 in the amount of \$600.00



➤ **Tanguisson Cable Landing Station, Dededo (Lot 10192): AT&T**

Monthly Rent	Outstanding Balance
\$ 22,939.42	\$ 0

- Last payment received on 02/03/2023.

➤ **Lot Apra Harbor Reservation F-12 Polaris Point: Smithbridge Guam**

Monthly Rent	Outstanding Balance
\$ 8,800.00	\$ 0

- Last payment received on 2/08/2023.

➤ **Lot 10155-1: Farmers Cooperative Association of Guam (FCAG)**

Annual Rent	Outstanding Balance
CY 2021	\$ 2,411.16

- Pending CY2022 Financial Statements to determine annual payment due for May 2023.
- FCAG sent a letter to GALC via email on 3/01/2023 stating CY2021 Annual payment plan as agreed upon by the GALC Board Commission on 02/08/2023.

Payment plan terms as follows:

- Remit 50% payment of \$2,411.16 by 03/01/2023. Payment was remitted.
- Payment of \$401.86 per month will be paid over a period of 6 months.

**TIYAN PROPERTIES**

➤ **Guam Environmental Protection Agency (GEPA)**

Monthly Rent	Outstanding Balance
\$ 8,000.00	\$ 256,000.00

- Last payment received on 9/27/2022 in the amount of \$8,000.00.
- On 02/06/2023, GEPA informed GEDA that they will be remitting payment of \$32,000.00 which covers 4 months of rent. Pending processing of payment.

➤ **DPHSS (WIC)**

Monthly Rent	Outstanding Balance
\$ 8,400.00	\$ 62,699.35

- Last payment received on 12/16/2022 in amount of \$16,800.
- DPHSS has indicated via email on 1/30/23, that they received certification of funds for FY2023 and is processing the amount of \$42,000 to be remitted soon.
- Pending submission of renewal of MOU between GALC and DPHSS (WIC), expiring 04/30/2023. As per Ms. Toledo, WIC Director's request, that they be given within a weeks' time for submittal due to pending DPHSS Director's approval and signature.

## OTHER ITEMS

### ➤ F-12 Polaris Mitigation Plan

- SBG and GEDA are collaboratively working with GEPA in providing assistance on the mitigation plan through their Brownfields Grant Program.

Should you have any questions, please contact us at 671-647-4332. *Si Yu'os Ma'ase'* for your continued support in generating revenues for the beneficiaries of the Trust.

*Senseramente,*  
  
**MELANIE MENDIOLA**  
CEO/ Administrator



GOVERNMENT OF GUAM  
DEPARTMENT OF LAND MANAGEMENT

921315

<b>OFFICE OF THE RECORDER</b>				
<b>RECORDING DATE:</b> <b>MAY 03, 2018</b>			921315	
			NO. PAGE: 8	
FILE TIME		FILING FEES		RECEIPT NO:
A.M.	P.M.	DE-OFFICIO		
Appointed Deputy Recorders for Ex-Officio Recorder			Signature of Recorder	
Lisa M. Quitano; Lisa P. Cruz, Jane T. Yamasaki; Victoria C. Torres; Amy T. Bautista; Joel Antenoracruz; May M. Castro			<i>Jane Yamasaki</i>	
MARK ( X ) TYPE OF INSTRUMENT RECORDED				
DEED		AFFIDAVIT		
MORTGAGE		RELEASE		
ASSIGNMENT		AMENDMENT		
ADDENDUM		ASSUMPTION		
DECREE		MAP		
ORDERS		JUDGEMENT		
POWER OF ATTORNEY		REVOCACTION		
AGREEMENT		TERMINATION		
MARK ( X ) TYPE OF INSTRUMENT RECORDED				
LEASE		CLAIMS		
CONTRACT		CANCELLATION		
CERTIFICATE		NOTICE		
DECLARATION		BILL OF SALE		
EASEMENT		WITHDRAWAL		
OTHERS:	<i>Memorandum of Understanding</i>			
ABSTRACT OF TITLE SUMMARY				
ABSTRACT BY:	DATE	NEW CERTIFICATE OF TITLE NO.	CANCELLED CERTIFICATE OF TITLE NO.	
COMMENTS				
DATA ENTRY INFORMATION SECTION				
PROPERTY LISTING NO.				
MUNICIPALITY:				
LOT NUMBER		UNIT OF MEASUREMENT		
BLOCK NUMBER		SQUARE METERS		
TRACT NUMBER		SQUARE FEET		
ESTATE NO.				
L.M. NO.				
SEPIA NO.				
DATA ENTRY BY:				
SCANNED BY:				

GOVERNMENT OF GUAM - Department of Land Management Office of the Recorder							
File for Record is Instrument Number	921315						
On the Year 20	18	Month	05	Day	03	Time	11:02
Recording Fee	De-Officio	Receipt No.					
Deputy Recorder	<i>Jane Yamasaki</i>						

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**Memorandum of Understanding**  
Between the  
Guam Ancestral Lands Commission  
And the  
Department of Public Health & Social Services  
(DPHS – WIC)

921315  
17-0438 *JK*

**MEMORANDUM OF UNDERSTANDING**

Between the

**RECEIVED**

**GUAM ANCESTRAL LANDS COMMISSION**

**DEC 01 2017**

*JK 8:00AM*

And the

**Bureau of Budget and  
Management Research**

**DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES**

This **MEMORANDUM OF UNDERSTANDING** is entered into on the date indicated below between the **GUAM ANCESTRAL LANDS COMMISSION (GALC)** whose address is P.O. Box 2950 Hagatna, Guam 96932, and the **DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES (DPHS-WIC) – GUAM SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)**, Government of Guam, who's address is 15-6100, Mariner Avenue, Tiyan, Guam 96913-1601.

**RECITALS**

**WHEREAS, DPHSS-WIC has been occupying and utilizing, from the GALC a portion of Lot No. 2276 consisting of building number 15-6100, including an adjacent all concrete utility building, parking lot and common area consisting of approximately +/-8000 sq. ft., Tiyan, Guam;** and

**WHEREAS, DPHSS-WIC wishes to enter into a Memorandum of Understanding (MOU) with the GALC for the continued use of this property;**

**WHEREAS, the GALC has entered into a MOU with the GUAM ECONOMIC DEVELOPMENT AUTHORITY (GEDA) to act as property manager on behalf of GALC;**

**NOW THEREFORE, it is agreed as follows:**

- I. **Authorization to use property; Description of property.** The GALC hereby authorizes the DPHSS-WIC to occupy and use, subject to all of the terms and conditions of this MOU, the following described real property (Property):

**RECEIVED**

*JK*

**DEC 11 2017**

*CFD1117-5905*

**Bureau of Budget and  
Management Research**

A portion of Lot No. 2276 consisting of building number 15-6100, including an adjacent all concrete utility building, parking lot, and common area consisting of approximately +/-200 sq. ft., Tiyon, Guam, as delineated in Exhibit "A" attached and made a part hereof.

- II. **Terms.** Except as otherwise provided herein, the term of this MOU shall be renewable annually for a period not to exceed five (5) years commencing upon the approval of the Governor.
- III. **Option to extend.** Upon mutual consent of the GALC, the DPHSS-WIC may extend the term of this MOU upon the same terms, covenants, and conditions as herein contained. In order to exercise said option to extend, the DPHSS-WIC shall deliver to the GALC written notice of its intent to extend the term no later than sixty (60) days before the end of the MOU.
- IV. **Limitation to described purpose.** The Property may be occupied and used by the DPHSS-WIC solely for the activities proposed by the DPHSS-WIC and continuing until this MOU is terminated as provided herein. In no event shall the DPHSS-WIC begin any required licensed activity without obtaining all requisite authorization and permits from the appropriate Government of Guam or Federal agency or authority.
- V. **Compensation.**
  1. The GALC and the DPHSS-WIC expressly acknowledge that compensation for this MOU shall be \$1.05 per square foot. The monthly compensation of \$8,400 is payable on the beginning term of the license as stated in Paragraph I and monthly thereafter. Compensation is inclusive of all common area structures within Exhibit A.
  2. Upon annual renewal of this MOU, the monthly compensation during the renewal annual term shall be equal to the fair market value of the Property. Determination of fair market value shall be based on a then current appraisal, or other reasonable method as acceptable by the GALC, of the Property paid for by the DPHSS-WIC.
  3. If the DPHSS-WIC exercises its option to extend the term of the MOU beyond the Termination Date, the monthly compensation during the extended term shall be equal to the fair market value, or other determined value as acceptable to the GALC, of the Property to be assessed during the annual renewal. Determination



of fair market value shall be based on a then current appraisal of the Property paid for by the DPHSS-WIC.

- VI. **Payments.** All payments due to GALC from DPHSS-WIC shall be made payable to the GALC and remitted to the GALC.
- VII. **Termination.** This MOU may be terminated by either party on ninety (90) days written notice prior to the Termination Date. Upon termination by written notice, the provisions of this MOU shall be terminated.
- VIII. **Utilities and maintenance.** Any and all utilities and maintenance of the Property described herein shall be borne and paid for by the DPHSS-WIC.
- IX. **No interest in real property.** The DPHSS-WIC expressly acknowledges and agrees that it does not and shall not claim at any time any interest or estate of any kind or extend whatsoever in the above described Property of the GALC by virtue of the rights granted under this MOU or occupancy or use granted herein.
- X. **Assignment of rights.** The rights of the DPHSS-WIC under this MOU are personal to the DPHSS-WIC and may not be transferred nor assigned to any other person, firm, corporation, or other entity.
- XI. **Indemnification of licensor.** In consideration of the privilege granted by this MOU, the DPHSS-WIC shall not claim any cost, claims, or damages arising in or on the Property described above regardless of the fault or negligence of the GALC while being used by the DPHSS-WIC and the DPHSS-WIC's officers, employees, members, guests, clients, or invitees, and the DPHSS-WIC shall indemnify the GALC from any and all costs, losses, claims, or damages of any kind or nature arising in connection with the use of the real property described above by the DPHSS-WIC and DPHSS-WIC's officers, employees, members, guests, clients, or invitees.
- XII. **No warranty.** The GALC does not warrant or represent that the Property described above is suitable for the purpose for which it is permitted to be used, nor that the DPHSS-WIC is specifically entitled to the issuance of any permits necessary to carry out any activity on said Property.
- XIII. **Entire Agreement.** This MOU shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this MOU shall not be binding upon either party except to the extent incorporated in this MOU.



- XIV. **Modification of agreement.** Any modification of this MOU or additional obligation shall be binding only if evidenced in writing and signed by each party or an authorized representative of each party.
- XV. **Governing law.** It is agreed that this MOU shall be governed by, constructed, and enforced in accordance with the laws of Guam.
- XVI. **No waiver.** This failure of either party to this MOU to insist upon the performance of any of the terms and conditions of this MOU, or the waiver of any breach of any of the terms and conditions of this MOU, shall not be construed as thereafter waiving any such terms and conditions, but the same continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- XVII. **Binding effect.** This MOU shall bind and inure to the benefit of any respective successors of the parties.
- XVIII. **Notices.** Any notice provided for or concerning this MOU shall be in writing and shall be deemed sufficiently given when sent by email, certified or registered mail to the respective address of each party as set forth at the beginning of this MOU.
- XIX. **Removal of improvements upon termination.** Upon termination, the DPHSS-WIC at the DPHSS-WIC sole expense shall remove all improvements constructed or erected on the Property described herein, unless the GALC approves for the improvements to remain on the Property.
- XX. **Public liability and property damage insurance.** The DPHSS-WIC will procure, at its own cost and expense and keep in force during said term for the mutual benefit of the GALC and the DPHSS-WIC, a policy of comprehensive liability insurance in such form and such insurance company as the GALC shall approve. Said policies or copies thereof must be deposited with the GALC and must cover the Property, including entrances to the Property and sidewalks and parking areas adjacent to the Property. The GALC may review the foregoing limits of coverage and require increases therein. Said policy or policies shall also contain a clause stating that the insurer will not cancel or change insurance coverage without first giving the GALC and the DPHSS-WIC thirty (30) days prior written notice of such change or cancellation.

XXI. **Pre-existing conditions and release of liability.** Parties recognize there may be known or unknown pre-existing conditions of the Property described herein, and agree to hold each other harmless from any liability arising out of such conditions.

XXII. **Superseding clause.** This MOU shall supersede all previous licenses and MOUs between the GALC and the DPHSS-WIC for the Property.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the dates shown below.

*[Signature]* - 12/7/17  
MICHAEL J.B. BORJA, Director, DLM  
*[Signature]* 15 NOV 2017  
ANTHONY J. ADA, Chairperson  
Guam Ancestral Lands Commission

*[Signature]*  
JAMES W. GILLAN, Director  
Department of Public Health and  
Social Services

Date: 15 NOV 20 17

Date: 11. 30. 17

*[Signature]*  
MARIA G. CRUZ, Secretary Treasurer  
Guam Ancestral Lands Commission

**RECEIVED**  
*[Signature]*  
DEC 01 2017  
Bureau of Budget and  
Management Research

Date: NOV. 15, 2017

**CERTIFIED FUNDS AVAILABLE:**

**APPROVED: CLEARED PER  
BBMR'S REVIEW**

*[Signature]*  
TOMMY C. TAITAGUE  
Administrative Services Officer  
Department of Public Health and  
Social Services

*[Signature]* 12/11/17  
LESTER CARLSON, JR.,  
Acting Director  
Bureau of Budget & Management  
Research

OFFICE OF THE GOVERNOR  
Date: NOV 29 2017

Date: DEC 12 2017


**RECEIVED**  
*[Signature]*  
DEC 11 2017  
Bureau of Budget and  
Management Research

SUBJECT TO AVAILABILITY OF LOCAL  
AND FEDERAL FUNDS


ACCOUNT NO:	1) 5101E181712PA101/233 ✓ 2) 5101E181712PA112/233 ✓ 3) 5100A181712GA001/233 ✓
AMOUNT:	1) \$42,000.00 ✓ 2) \$8,400.00 ✓ 3) \$50,400.00 ✓
VENDOR NO:	
DOCUMENT NO:	C18-1700-010

APPROVED AS TO LEGALITY AND FORM:

APPROVED

  
**ELIZABETH BARRETT ANDERSON**  
Attorney General of Guam

Date: 4/17/18  
DPHSS 17-0438

  
**EDWARD J. CALVO**  
Honorable Governor of Guam

Date: 4-30-18

\*Memorandum of Understanding (MOU) between Department of Public Health and Social Services (DPHSS) and the Guam Ancestral Lands Commission (GALC) for the lease of GALC's Tiyan Office in the amount of \$100,800 for FY 2018.



RECEIVED  
12-30-17   
OFFICE OF THE ATTORNEY GENERAL  
SOLICITORS DIVISION



**Farmers Cooperative Association of Guam**  
144 W. Santa Monica Ave. Suite 904  
Dededo, Guam 96929  
fcaguam@gmail.com

March 1, 2023

Buenas yan Hafa Adai Mr. Burch,

Thank you for the opportunity to address the Guam Ancestral Land Commission(GALC) on February 8<sup>th</sup> regarding the lease payment for CY2021. As discussed at the GALC board meeting, we agreed to pay half of the \$4,822.32 lease payment by March 1 totaling \$2,411.16. And the balance to be paid over six months at \$401.86 per month with the final payment in August 2023. The payment will be made to the Guam Economic Development Authority(GEDA) as we did for CY 2020. If this procedure has changed please advise otherwise we will proceed to make payment to the GEDA.

If you have any questions, please call me at 671-482-1753.

Senseramente,

  
Michael E.D. Aguon,

# Invoice



Zoom Video Communications Inc.  
55 Almaden Blvd, 6th Floor  
San Jose, CA 95113

Invoice Date: Feb 10, 2023  
Invoice #: INV188141249  
Payment Terms: Due Upon Receipt  
Due Date: Feb 10, 2023  
Account Number: 2601028462  
Currency: USD  
Account Information: Guam Ancestral Lands Commission

Sold To Address: P.O. Box 2950,  
Hagatna, Guam 96932  
Guam  
  
john.burch@galc.guam.gov

Purchase Order Number:

Customer VAT/Tax Number:

Bill To Address: P.O. Box 2950,  
Hagatna, Guam 96932  
Guam  
  
john.burch@galc.guam.gov

[Zoom W-9](#)

## Charge Details

CHARGE DESCRIPTION	SUBSCRIPTION PERIOD	SUBTOTAL	TAXES, FEES & SURCHARGES	TOTAL
Charge Name: Zoom One Pro Annual				
Quantity: 1 Unit Price: \$149.90	Feb 10, 2023-Feb 9, 2024	\$149.90	\$0.00	\$149.90
		Subtotal		\$149.90
		Total (Including Taxes, Fees & Surcharges)		\$149.90
		Invoice Balance		\$0.00

## Taxes, Fees & Surcharge Details

CHARGE NAME	TAX, FEE OR SURCHARGE NAME	JURISDICTION	CHARGE AMOUNT	TAX, FEE OR SURCHARGE AMOUNT
-------------	----------------------------	--------------	---------------	------------------------------

Total (Including Taxes, Fees & Surcharges) **\$0.00**

## Transactions

Invoice Total **\$149.90**

TRANSACTION DATE	TRANSACTION NUMBER	TRANSACTION TYPE	DESCRIPTION	APPLIED AMOUNT
Feb 10, 2023	P-218581552	Payment		<b>(\$149.90)</b>

Invoice Balance **\$0.00**

Need help understanding your invoice?

[CLICK HERE](#)

Standard Pro and Standard Biz are now called Zoom One Pro and Zoom One Business. Please note that your Services will remain the same and that this name change does not change the price of your current subscription.

***This plan includes products with monthly and/or yearly subscription periods. The subscription period for each plan, and the total charge, \$149.90 (plus applicable taxes and regulatory fees), per subscription period for that product are set out above in the Charge Details section. Unless you cancel, your subscription(s) will auto-renew each subscription period and each subscription period thereafter, at the price(s) listed above (plus any taxes and regulatory fees applicable at the time of renewal) and your payment method on file at [zoom.us/billing](https://zoom.us/billing) will be charged. You can cancel auto-renewal anytime, but you must cancel by the last day of your current subscription period to avoid being charged for the next subscription period. You will not be able to cancel your "base plan" (Zoom Meetings, Zoom Phone, or Zoom Rooms) without first canceling all other subscriptions in your plan. If you cancel, you will not receive a refund for the remainder of your then-current subscription period. You can cancel by navigating to [zoom.us/billing](https://zoom.us/billing) and clicking "Cancel Subscription," clicking through the prompts, and then clicking to confirm cancellation. Should Zoom change its pricing, it will provide you with notice, and you may be charged the new price for subsequent subscription.***



March 7, 2023

**VIA HAND DELIVERY**

Ms. Melanie Mendiola  
Chief Executive Officer/Administrator  
**GUAM ECONOMIC DEVELOPMENT AUTHORITY**  
590 South Marine Corps Drive  
Tamuning, Guam 96913

**RE: WETTENGEL JUNCTION ; PROPOSAL FOR ARREARS REPAYMENT  
AND RENT MODIFICATION**

Dear Ms. Mendiola,

This letter sets forth an update from Northern Market, LLC ("Northern Market") regarding its progress of the North Gate Marketplace (the "Marketplace") development at Wettengel Junction that it leases from the Guam Ancestral Lands Commission. Northern Market also proposes an arrears repayment and rent modification plan as explained more fully below, which will assist with the commencement of the infrastructure for the Marketplace and the construction of its first retail establishment.

**PHASE 1**

Northern Market has leasing commitments with the three major tenants for Phase 1 of the Marketplace.

**Community First Guam Federal Credit Union**

Community First will lease a pad consisting of approximately 4,400 square meters in a prime corner location of the development on which it will build its landmark northern branch. Community First will cover the cost of preparing its pad. Rental payments will commence the earlier of: (a) six months after Northern Market commences the pad infrastructure work; or (b) the month following Community First's construction of its building and improvements on the property (which may be done simultaneously with Northern Market's pad work).



Daiso

Daiso is a popular Japanese variety retailer with an international presence and mass appeal because of its offering of affordable household items, party supplies, stationery, snacks, gifts, toys, gardening tools, etc. Daiso's local franchisee will open one its first Guam locations in the Marketplace – occupying 10,000 square feet for a retail space and a distribution center. Rental payments will commence on the date of beneficial occupancy, i.e. when the building is capable of occupancy the tenant.

King's

This well-established local eatery will lease a 6,500 square foot pad to construct its newest restaurant to serve the residents, employees and visitors in the northern part of Guam. Rental payments will commence upon delivery of the pad to King's for the construction of its building.

**PHASE 2**

Phase 2 will involve the construction of one multi-tenant building (20,000 square feet) and two single-tenant pads. Applying a construction cost of \$175 per square foot, Northern Market estimates a construction cost of about \$5,000,000 to complete this phase. Phase 2 tenants for the multi-tenant segment include:

Pieology

Pieology will lease 2,000 square feet of space.

Ajisen

Ajisen will lease 2,500 square feet of space adjacent to Pieology.

Curry House Coco Ichibanya

This new restaurant to Guam will rent a 2,000 square foot space as well.

Tokyo Mart

S.P.E. (Guam), Inc. dba Tokyo Mart will lease 2,500 square feet of space.

Benii

NSK, Inc. dba Benii is a Japanese restaurant will lease 3,500 square feet.

Gourmet Guam

This popular local bakery will lease 2,500 square feet.

### PHASE 3

Phase 3 will involve the development of more than the remaining half of the property after Phases 1 and 2, including infrastructure, are complete. Thus, Phase 3 construction should be more efficient to develop from a cost and construction perspective. Further, the spaces available for Lease in Phase 3 will be in demand at higher rental rates because of the value created by Phases 1 and 2. Northern Market has yet to decide the desired tenant mix for Phase 3 but it is preliminarily considering uses that complement the businesses within the Marketplace.

### ECONOMIC GROWTH THROUGH DEVELOPMENT

Upon completion, Phase 1 and Phase 2 of the Marketplace allow the opening of multiple, varied businesses to serve the island on this prime commercial property located at the newly constructed intersection that specifically serves the Guam Regional Medical Center hospital, adjacent medical offices, Camp Blaz, the new U.S. Marine Corps base, Okkodo High School and all the recent developments on and along Route 3. Northern Market has developed a site plan for its strategically located project optimize the leasable spaces for a variety of select tenants to meet the demands and needs of residents and visitors alike. This new commercial center will provide employment opportunities to hundreds of local residents from restaurants to retail.

### PHASE 1 CONSTRUCTION BUDGET AND LOAN

The project costs for Phase 1 are itemized below:

	COST
Land costs (escrow fees, recording fees, title policy, etc.)	\$25,000
Loan fees / interest reserve	\$245,032
Indirects	\$50,000
Site Improvements	\$1,900,000
Direct Construction	\$1,800,000
Tenant Improvements	\$129,968
<b>TOTAL</b>	<b>\$4,150,000</b>

As of the date hereof, Northern Market has received a financing commitment from Community First as follows, which Northern Market intends to use as follows:

Construction Costs for Phase 1	\$4,150,000
<u>Arrears under Ground Lease with GALC</u>	<u>\$150,000</u>
<b>TOTAL LOAN AMOUNT</b>	<b>\$4,300,000</b>

As the loan closing will require standard obligations such as an appraisal of the property and the preparation and execution of loan documents, Northern Market expects to close the loan within 90 days hereof and make the partial arrears payment to GALC immediately thereafter.

#### PROPOSAL FOR ARREARS PAYMENT AND RENT MODIFICATION

The Marketplace is a substantial development with the sizeable construction costs that Northern Market intends to manage with the phasing of the development and construction costs as set forth herein. As it prepares to mobilize and break ground on what promises to be a mutually beneficial and profitable commercial center for Northern Market and GALC, Northern Market seeks the support of GEDA and GALC regarding its lease obligations. In light of the foregoing, Northern Market proposes and requests GALC's approval of the following:

- a. Partial arrears payment by Northern Market to GALC in the amount of \$150,000 on or before June 30, 2023;
- b. Deferment of Northern Market's monthly rent during the construction period (estimated to be 18 months);
- c. Amortization of current arrears and deferred 18 months over the duration of the initial lease term (expiring December 1, 2063);
- d. Upon expiration of the rent deferment, modification of the rent to reflect the portion of the property used in Phase 1, which shall be adjusted upon the completion of Phase 2 to include the additional improved portion; and
- e. Second partial arrears payment by Northern Market to GALC upon securing financing for Phase 2.

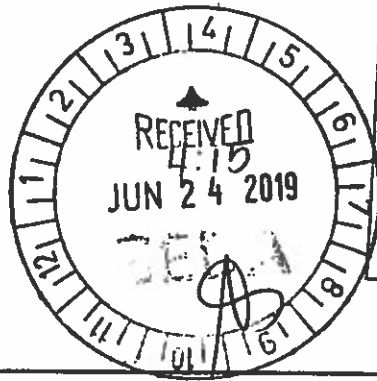
Thank you for your continuing support of this project and consideration of this request. Please do not hesitate to contact me if you have any questions or if you need any additional information.

SINCERELY,



JENNIFER A. CALVO

Its Duly Authorized Representative



GOVERNMENT OF GUAM - Department of Land Management  
Office of the Recorder

File for Record is instrument Number **936789**

On the Year 20 19 Month 6 Day 24 Time 4:17

Recording Fee DE-OFICIO Receipt No. \_\_\_\_\_

Deputy Recorder Joel Antenor Cruz

JOEL ANTENORCRUZ

**FIRST AMENDMENT TO LEASE AGREEMENT**

This First Amendment to Lease Agreement is entered to on this 24<sup>th</sup> day of June, 2019 by the **GUAM ANCESTRAL LAND COMMISSION**, Trustee for the GALC Land Bank Trust whose address is Post Office Box 2950, Hagatna, Guam 96932 ("Landlord") and the **NORTHERN MARKET, LLC**, a Guam limited liability company whose mailing address is 135 Chalan Santo Papa, Janet Commercial Building, Hagatna, Guam 96910 ("Tenant") and concerns that certain Lease Agreement entered into by the parties on December 20, 2013, for a portion of Lot Andersen Family Housing Annex No. 1 (Camp Edusa), (AJKL), also referred to as Wettengel Junction, in the Municipality of Dededo, Guam and recorded with the Department of Land Management on December 20, 2013 as instrument number 859723.

The parties desire to modify and amend the Lease Agreement and therefore agree as follows:

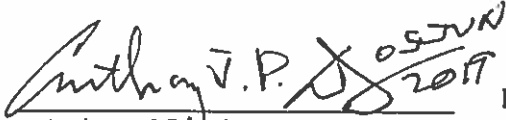
1. **ARTICLE 2. LEASE PREMISES:** Property description be changed to correct the property size:  
  
 Portion of Lot Andersen Family Housing Annex No. 1 (Camp Edusa), (AJKL) also referred to as Wettengel Junction, that certain real property situated in the Municipality of Dededo, consisting of an area 51,850 square meters as indicated on Exhibit "A" to this Lease.
  
2. **EXHIBIT A – FULL DESCRIPTION OF PREMISES:** Description to be changed to correct property size and lot number:  
  
 Portion of Lot Andersen Family Housing Annex No. 1 (Camp Edusa), (AJKL) also referred to as Wettengel Junction, that certain real property consisting of 51,850 square

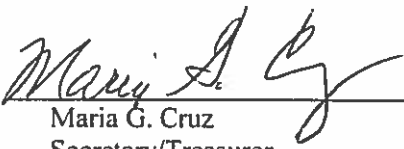
meters, situated in the Municipality of Dededo, including Lot 10155-3 (1,687 square meters, northern portion only) and Lot 10155-R7 (53,214 square meters, less that certain 3,051 square meters, identified as "license area" and excluded from the basic lot per Special Note "A" (2) resulting in a net are of 50,163 square meters) all as described by RLS Services, LLC in RETRACTMENT SURVEY MAP of Lot 10155-3 and Lot 10155-R7, L.M. Check No. 158FY2013, recorded with the Department of Land Management as instrument No. 858965 on December 2, 2013, which is incorporated by reference.

3. All other provisions of the Lease Agreement, including the monthly rent to be paid by Tenant, continue in full force and effect and are not modified or amended by this First Amendment.

**GUAM ANCESTRAL LANDS COMMISSION, as**

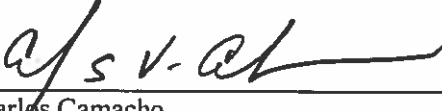
Trustee for the GALC Land Bank Trust

By:  05 JUN 2019  
Anthony J.P. Ada  
Chairman

By:   
Maria G. Cruz  
Secretary/Treasurer

Date: 05 JUN 2019 Date: JUNE 5, 2019

**NORTHERN MARKET, LLC.**

By:   
Carlos Camacho  
Duly Authorized Representative

Date: 6-24-19

# ACKNOWLEDGEMENT

GUAM, U.S.A.                    )  
  )    SS:  
CITY OF TAMUNING            )

ON THIS 5<sup>th</sup> day of JUNE, 2019, before me, a Notary Public in and for Guam, U.S.A., personally appeared ANTHONY J.P ADA, Chairman of the Board of Commissioners of the Guam Ancestral Lands Commission, known to me to be the person who executed the forgoing FIRST AMMENDMENT TO LEASE AGREEMENT, and acknowledged to me that she/he executed the same on behalf of the GUAM ANCESTRAL LANDS COMMISSION.

IN WITNESS WHEREOF, I have hereunto set my hands and affixed my official seal the day and year first above written.

  
\_\_\_\_\_  
NOTARY PUBLIC


**JOHN J. GUMATAOTAO**  
**NOTARY PUBLIC**  
In and for Guam, U.S.A.  
My Commission Expires: JULY 11, 2021  
P.O. Box 2950 Hagatna, Guam 96932

# ACKNOWLEDGEMENT

GUAM, U.S.A.                    )  
  )    SS:  
CITY OF TAMUNING            )

ON THIS 5<sup>th</sup> day of June, 2019, before me, a Notary Public in and for Guam, U.S.A., personally appeared MARIA G. CRUZ, Secretary/Treasurer of the Board of Commissioners of the Guam Ancestral Lands Commission, known to me to be the person who executed the forgoing FIRST AMMENDMENT TO LEASE AGREEMENT, and acknowledged to me that she/he executed the same on behalf of the GUAM ANCESTRAL LANDS COMMISSION.

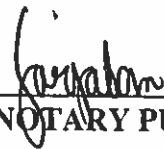
IN WITNESS WHEREOF, I have hereunto set my hands and affixed my official seal the day and year first above written.

  
\_\_\_\_\_  
NOTARY PUBLIC  
**TINAROSE T. JOCSON**  
**NOTARY PUBLIC**  
In and for Guam, U.S.A.  
My Commission Expires: SEPT. 12, 2021  
P.O. Box 2950 Hagatna, Guam 96932

GUAM, U.S.A.                    )  
  )    SS:  
CITY OF TAMUNING            )

ON THIS 24<sup>th</sup> day of JUNE, 2019, before me, a Notary Public in and for Guam, U.S.A., personally appeared **CARLOS CAMACHO**, the Duly Authorized Representative of **NORTHERN MARKET, LLC**, A Guam Limited Liability Company, known to me to be the person who executed the forgoing **FIRST AMMENDMENT TO LEASE AGREEMENT**, and acknowledged to me that she/he executed the same on behalf of the **NORTHERN MARKET, LLC**.

IN WITNESS WHEREOF, I have hereunto set my hands and affixed my official seal the day and year first above written.

  
\_\_\_\_\_  
NOTARY PUBLIC

**JONALYN ASHLEY E. UGABAN**  
**NOTARY PUBLIC**  
In and for Guam, U.S.A.  
My Commission Expires: **JUNE 13, 2020**  
155 E.T. Calvo Memorial Prkwy Ste 100 Tamuning, GU 96913





Island of Guam, Government of Guam  
Department of Land Management Officer of the Recorder

File for Record's Instrument No.

859723

On the Year 13 Month 12 Day 20 Time 3:18

DE-OFFICIO

Recording For

Receipt No.

Deputy Recorder

LEASE AGREEMENT

*Susa D. Mangar*

**ARTICLE 1. PARTIES.**

Section 1.01. **THIS LEASE AGREEMENT** (the "Lease") is entered into this 20<sup>th</sup> day of DECEMBER, 2013, by and between the **GUAM ANCESTRAL LANDS COMMISSION**, whose address is Post Office Box 2950, Hagatna, Guam 96932 ("Landlord"), and **NORTHERN MARKET, LLC**, a Guam limited liability company whose mailing address is 135 Chalan Santo Papa, Janet Commercial Building, Hagatna, Guam 96910 ("Tenant").

Section 1.02. **Property Manager.** Landlord has entered into a Memorandum of Understanding with the Guam Economic Development Authority ("GEDA") for the management of the Premises. Landlord represents and warrants and Tenant understands that GEDA is the authorized agent of Landlord with respect to this Lease and the Premises.

**ARTICLE 2. LEASED PREMISES.**

Section 2.01. **Premises.** Landlord leases to Tenant and Tenant hires from Landlord for the term, at the rental, and upon the conditions in this Lease that certain real property described as:

Portion of Lot Andersen Family Housing Annex No. 1 (Camp Edusa), (AJKL), also referred to as Wettengel Junction, that certain real property situated in the Municipality of Dededo, consisting of an area of 53,876 square meters as indicated on Exhibit "A" to this Lease.

Landlord agrees that if Tenant shall perform its agreements herein, Tenant shall at all times during the lease term have the peaceable and quiet enjoyment and possession of the Premises without hindrance by Landlord or anyone claiming by, through or under Landlord.

Section 2.02. **Survey of Premises.** Tenant has hired a registered land surveyor to conduct a survey of the Premises, to include the installation of survey boundary markers on the Premises. The survey was completed at Tenant's sole cost and expense and a copy of the final survey has been provided to Landlord. During the entire term of the Lease period, Tenant shall maintain in good condition and provide full access to all survey boundary markers on the Premises at Tenant's sole cost and expense.

**ARTICLE 3. LEASE TERM.**

Section 3.01. **Term.** The initial term of this Lease shall be for a period of fifty (50) years commencing on January 1, 2014, and expiring, unless sooner terminated, at midnight on December 31, 2063. Tenant shall have one (1) successive option to extend the term of the Lease for forty nine (49) years, commencing from the expiration date of the then-existing term. Tenant may exercise the foregoing option by written notice given to Landlord at least sixty (60) days prior to the expiration of the then-existing term. Tenant's failure to provide Landlord with said sixty (60) day notice shall result in the Lease terminating upon the expiration of the then-existing term. Tenant's tenancy during any option period shall be upon the same terms, covenants and conditions as provided in this Lease for the initial term, except for rent, which shall be adjusted in accordance with Section 4.01 herein.

Section 3.02. **Holding Over.** If Tenant shall remain in possession of the Premises after the expiration or termination of this Lease, such possession shall be on a month-to-month

tenancy upon the same terms and conditions of this Lease as existed immediately prior to the expiration or termination of the term, except, however, the duration of this Lease shall be on a month-to-month basis.

**ARTICLE 4. RENT; DEPOSIT.**

Section 4.01. **Rent Commencement and Lease-Up.** Payment of rent will commence twelve (12) months from the commencement date specified in Section 3.01 above to allow Tenant to design and construct the development. This twelve (12) month period may be extended to a maximum of six (6) additional months if Tenant submits reasonable and/or justifiable need. However, if at any time prior to the end of this twelve (12) months or during any extensions thereof Tenant begins generating any revenue through use of the Premises, appropriate rents defined in Article 10 below, will be paid to GEDA during any extension period beyond this initial twelve (12) month period on a prorated basis. Additionally, Tenant shall receive a lease-up discount of fifty percent (50%) of the base rent established in Section 4.02, below, during the second year of this lease.

Section 4.02. **Base Rent.** Subject to the limitations specified in Section 4.01 above, beginning on the first day of this Lease, Tenant agrees to pay to Landlord as rental for the Premises, payable monthly in advance on the first calendar day of each calendar month, without offset or deduction, the sum total of Fifty and Forty-Eight One Hundredth Cents (\$.5048) per square meter leased (as defined in Section 2.01) per month as base rent. Unless otherwise instructed by Landlord, payment of all rents shall be made directly to and in the name of GEDA. In the event of commencement or termination of this Lease at a time other than the beginning or end of a calendar month, the rent shall be prorated on a daily basis as of the date of

commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.

Section 4.03. **Rent Escalation.** Beginning on the first day of the sixth year after the start of payments of Base Rent as established above, and every **fifth (5<sup>th</sup>)** year subsequently, the Base Rent shall be adjusted and increased at an amount equal to ten percent (10%) over the previous five (5) year period.

Section 4.04. **Participation Rent.** Participation Rent is defined as a pre-defined percentage of the actual income from the business operations of Tenant made in, from, or through the Premises. The parties agree that such actual income shall include only income made in, from, or through the Premises defined as base rent paid to Tenant from Rentals, as defined in Section 10.01a, on or through the Premises.

Tenant shall pay to Landlord Participation Rent in the amount of two and one-half percent (2.5%) of the actual income made in, from, or through the Premises during each quarterly Participation Rent Period (defined below).

(a) **Accounting and Payment of Participation Rent.** Participation Rent shall be paid and accounted for in the following manner:

(1) **Quarterly Statement; Quarterly Payment.** Within thirty (30) days after each calendar quarter, Tenant shall furnish to Landlord a quarterly statement of actual income duly certified as true and correct by an executive officer of Tenant setting forth Tenant's actual income made in, from and through the Premises during the preceding Quarterly Participation Rent Period. Contemporaneous with the rendition of such quarterly statement, Tenant covenants to pay Landlord the Participation Rent covered by such quarterly statement.

(2) Annual Statement; Annual Adjustment. Within thirty (30) days after the expiration of each Lease Year, Tenant shall furnish to Landlord an annual statement of quarterly actual rent income duly certified as true and correct by an executive officer of Tenant setting forth Tenant's actual income made in, from and through the Premises during the entire preceding Lease Year. Contemporaneous with the rendition of such annual statement, Tenant covenants to pay Landlord a sum equivalent to the amount by which the aggregate quarterly Participation Rent due for each quarterly period taken exceeds the aggregate quarterly Participation Rent payments made by Tenant in the Lease Year. If, however, the aggregate amount of the quarterly Participation Rent made by Tenant during the Lease Year is greater than the aggregate quarterly Participation Rent due for such entire Lease Year and provided that Tenant is not otherwise in default hereunder, Landlord shall apply such excess to the next succeeding installments of quarterly rent due hereunder. If there be any such excess for the last Lease Year of the term of this Lease, the amount thereof will be refunded by Landlord to Tenant within one hundred twenty (120) days from the expiration of the term of this Lease provided that Tenant is not in default hereunder.

(3) Supporting Documents. Tenant shall also furnish to Landlord, throughout the term of this Lease, any documents reasonably requested by Landlord to support the quarterly and annual statements, including without limitation, true and correct copies of Tenant's monthly Guam Business Privilege Tax returns and Sublease Agreements.

(4) Landlord not Bound. The receipt by Landlord of any quarterly or annual statement of actual income for any Quarterly Participation Rent Period or Lease Year shall not bind Landlord as to the correctness of any such statement or payment unless supported

by a copy of Tenant's Guam Business Privilege Tax return or other tax return or an audited financial statement covering such Quarterly Participation Rent Period or Lease Year.

(b) "Lease Year" and "Quarterly Participation Rent Periods" defined.

(1) A Lease Year is a twelve month period commencing on the date the term of this Lease commences, and every twelve month period thereafter.

(2) Quarterly Participation Rent Periods are calendar quarters.

(c) Accounting by Tenant.

(1) Maintenance of Books and Records. Tenant shall at all times keep and maintain full and accurate books of accounts, cash receipts, records, and other pertinent data showing all of its actual income made in, through and from the Premises. Such books of accounts, cash receipts, records and other pertinent data shall be kept by Tenant for a period of at least two (2) years after the end of each Lease Year.

(2) Landlord's Right to Audit and Inspect Books and Records.

Landlord shall have the right at all reasonable times during business hours, through Landlord's duly authorized agent, attorney, or accountant, to inspect and make copies of Tenant's records, accounts, and books bearing on its actual income made in, through, and from the Premises (including, without limitation, copies of Guam Business Privilege Tax or use and excise tax returns furnished to any governmental authority), both at the Premises and at Tenant's central offices, or at any other office of Tenant at which such books, records, and accounts may be kept. In the event Tenant rents, subleases or sublicenses to any third party any warehouse, building, yard area, space or other improvement upon or within the Premises then the Tenant shall make part of any rental agreement, sublease or sublicense Landlord's right to audit and inspect subtenant's or sublicensee's books and records such that rights and obligations of this section

flow down to the renter, subtenant or sublicensee. All such information shall be held by Landlord, its agents, attorneys, and accountants in strictest confidence to the extent permitted by Guam law. Landlord shall pay all costs, fees and expenses associated with such audit and inspection; **provided, however**, that if Landlord, its agent, attorney or accountant determines an understatement of actual income for any Lease Year of ten percent (10%) or greater, and additional Participation Rent is due as a result thereof, then Tenant shall pay all reasonable costs, fees and expenses associated with such audit and inspection within twenty (20) days of written notification to Tenant. If, however, Tenant shall have understated its actual income by more than ten percent (10%) and such understatement is objectively proven to have been intended to defraud Landlord or, notwithstanding Tenant's intent, such understatement shall have occurred two (2) or more times during any twelve (12) month period, then Tenant shall be in default of this Lease, and Landlord shall have, in addition to all other available remedies, the right to immediately terminate this Lease for such default. If any audit shows that there is a deficiency in the payment of any Participation Rent, the deficiency shall be paid within twenty (20) days of written notification to Tenant with interest thereon at the rate of one percent (1.0%) per month shall be paid within seven (7) days of written notification to Tenant.

(3) Tenant's Failure To Maintain Auditable Books And Records. If Landlord, its agent, attorney or accountant determines in its reasonable opinion that Tenant's books and records are unauditable, then Tenant shall have the right to provide, at Tenant's cost, an audit performed by a third-party certified public accountant duly licensed by the Government of Guam. In the event that Tenant is unable to provide such audit then Landlord may, at its option, declare Tenant in default of this Lease.



Section 4.05. **Deposit.** Upon execution of this Lease, Tenant shall deposit with Landlord the sum one (1) month's rent as described in Section 4.01 as security for the faithful performance of all obligations of Tenant hereunder, including without limitation those relating to rent and repairs. This security deposit shall not constitute payment of the last month's rent hereunder. If, after two years from the execution of this lease, Tenant has constructed improvements on the leased property which exceed Ten Million Dollars in value, then the deposit shall be applied as paid rent. If Tenant has not constructed such improvements within the two year period then the deposit shall be earned and retained by Landlord as non-refundable.

#### **ARTICLE 5. UTILITIES AND TAXES.**

Section 5.01. **Utilities.** Tenant shall apply for under its name and pay for all water, gas, heat, light, power, sewer, telephone service, rubbish removal, and all other utility services of any kind and nature whatsoever, supplied to and used on the Premises.

Section 5.02. **Payment of Taxes by Tenant.** Provided that Landlord delivers adequate notice of any taxes payable, Tenant shall pay prior to delinquency all real property taxes levied or assessed upon the Premises during the term of the Lease. Tenant shall not be liable for the payment of pre-existing unpaid, delinquent, or escaped tax assessments for period prior to the start of the Lease term.

#### **ARTICLE 6. USE AND OCCUPANCY.**

Section 6.01. **Use.** Tenant shall use the Premises solely for the purposes of commercial development which may include, without limitation, restaurants, retails stores and outlets, offices, gas stations and shops and Tenant shall not use or permit the use of the Premises for any

other purpose without the prior written consent of Landlord, which consent shall be granted or denied in Landlord's reasonable discretion. The Premises shall be delivered to Tenant "AS IS", "WHERE IS," except as expressly set forth in this lease, it is understood and agreed that Landlord is not making and has not at any time made any warranties or representations of any kind or character, express or implied, with respect to the Premises, including, but not limited to, any warranties or representations as to use, habitability, merchantability, or fitness for a particular purpose.

Section 6.02. **Compliance with Law.** Tenant covenants and agrees that during the term of this Lease, Tenant shall promptly comply with all present and future laws, ordinances, orders, rules, regulations, and requirements of the Federal and local governments or any of their agencies, departments, bureaus, boards, commissions and officials thereof with respect to the Premises, the buildings and improvements that may be erected thereon, or the use or occupancy thereof, whether said compliance shall be ordered or directed to or against Landlord or Tenant or both, except that Tenant shall not be responsible for any violations of law existing prior to the commencement date of this Lease. This Lease is subject to all consents, approvals and permits required by law or governmental rule or regulation. It shall be Tenant's duty and responsibility to obtain any such required consents, approvals and permits.

Section 6.03. **Restrictions on Tenant's Use.** Tenant agrees, in using the Premises:

(a) Not to commit any waste or suffer any waste to be committed upon the Premises;

(b) Not to commit any public or private nuisance or any other act or thing which might or would disturb the quiet enjoyment of any occupant of nearby property;

(c) Not to burn refuse or other materials in or about the Premises, or permit any activity or activities that are reasonably expected to cause unreasonable annoyance to occupants of adjoining properties;

(d) Not to use or allow the use of the Premises or any portion thereof for the principal or primary purpose of generating, manufacturing, refining, producing or processing any hazardous wastes or hazardous substances (meaning such wastes or substances as would be deemed hazardous under any applicable Federal or Guam law or regulation).

(e) Except for contamination existing prior to the commencement date of this Lease or migrating on to the Premises from or through adjacent properties, not to permit or cause any condition to exist on the Premises that would constitute material contamination (meaning such contamination as would constitute a violation of Federal or Guam laws or regulations or pose a danger to public health which, were prosecution or a civil action instituted, would likely result in liability that would be material relative to the value of the Premises) or constitute a violation of any applicable environmental law, rule, regulation or order.

Section 6.04. **Hazardous Materials**. Except for contamination existing prior to the commencement date of this Lease or migrating on to the Premises from or through adjacent properties, Tenant shall not permit or cause any condition to exist on the Premises which would constitute material contamination (meaning such contamination as would constitute a violation of federal or Guam laws or regulations or pose a danger to public health which, were prosecution or a civil action instituted, would likely result in liability that would be material relative to the value of the Premises) or constitute a violation of any applicable law, rule, regulation or order.

(a) As used in this lease, the terms "hazardous material[s]" or "hazardous waste[s]" means any oil, flammable items, explosives, radioactive materials, hazardous or toxic

substances, material or waste or related materials including, without limitation, any substances that pose a hazard to the Premises or to persons on or about the Premises and any substances defined as or included in the definition of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "extremely hazardous waste," "restricted hazardous waste" or words of similar import, now or subsequently regulated under applicable federal or Guam laws or regulations ("Environmental Laws"), including without limitation, products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

(b) Tenant shall keep and maintain the Premises in compliance with, and shall not cause or permit the Premises to be in violation of any Environmental Laws. All Tenant's activities at the Premises shall be in accordance with all Environmental Laws. Additionally, Tenant shall obtain any and all necessary permits required as a result of Tenant's intended use of the Premises. Tenant's obligations and liabilities under this Section shall continue so long as Landlord bears any liability or responsibility under the Environmental Laws for any action that occurs on the Premises during the term of this Lease.

(c) Tenant shall immediately notify Landlord of, and upon Landlord's request shall provide Landlord with copies of, the following:

(1) Any correspondence, communication or notice, oral or written, to or from any governmental entity regarding the application of Environmental Laws to the Premises or Tenant's operations on the Premises including, without limitation, notices of violation, notices to comply and citations;

(2) Any reports filed pursuant to any Environmental Laws or self-reporting requirements;

(3) Any permits and permit applications; and

(4) Any change in Tenant's operations on the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under Environmental Laws.

(d) Tenant shall protect, indemnify and hold harmless Landlord and its directors, officers, employees, and agents, successors and assigns for, from and against any and all losses, damages, claims, costs, expenses, penalties and liabilities of any kind (including, without limitation, the cost of any investigation, remediation and cleanup, and attorneys' fees) which are attributable to Tenant's violation of this Section. This indemnity shall survive the expiration or termination of this Lease. Landlord shall protect, indemnify and hold harmless Tenant and its directors, officers, employees, affiliates and agents, successors and assigns for, from and against any and all losses, damages, claims, costs, expenses, penalties and liabilities of any kind (including, without limitation, the cost of any investigation, remediation and cleanup, and attorneys' fees) which are not attributable to Tenant's violation of this Section. This indemnity shall survive the expiration or termination of this Lease.

(e) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is necessary due to or in connection with Tenant's use or occupancy of the Premises, Tenant shall within **ten (10)** days after written demand for performance thereof by Landlord (or such shorter or longer period of time as may be required under any applicable Environmental Laws, order or agreement), commence to perform, or cause to be commenced and performed, and thereafter diligently prosecuted to completion, all such Remedial Work. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by Landlord. All costs

and expenses of such Remedial Work shall be paid by Tenant including, without limitation, the charges of such contractor(s), and the reasonable fees and costs of the attorneys for Landlord incurred in connection with monitoring or review of such Remedial Work.

(f) If after the **ten (10)** day period referenced in subsection (e) Tenant fails to commence to perform all such Remedial Work, Landlord may elect, at Landlord's sole discretion, to perform any Remedial Work. Landlord and Landlord's agents shall have the right to enter the Premises at all reasonable times to inspect, monitor and/or perform Remedial Work. All reasonable expenses incurred by Landlord in connection with performing Remedial Work are payable by Tenant, upon Landlord's demand, with interest thereon at the rate of eighteen percent (18%) per annum.

(g) Tenant's failure to abide by the terms of this subsection shall be restrainable by injunction.

Section 6.05. **Typhoon Readiness.** In the event the Governor declares Condition of Readiness (COR) 2, or its equivalent, Tenant shall, at its sole cost and expense, using its reasonable judgment, take precautions to secure or remove all items on the Premises, including but not limited to metal debris, to ensure that such items do not cause damage to other properties.

**ARTICLE 7. TENANT IMPROVEMENTS**

Section 7.01. **Notice of Commencement of Subsequent Improvements.** Before the commencement of any work of construction of any buildings, structures, or other improvements on the Premises, of any substantial repairs, alterations, additions, replacements or restoration in and about the Premises as herein provided, Tenant shall give to Landlord written notice thereof,

specifying the nature and location of the intended work and the expected date of commencement thereof for informational purposes only.

Section 7.02. **No Liability of Landlord.** The Landlord, by receiving plans and specifications, assumes no liability or responsibility therefor or for any defect in any structure constructed by Tenant or for any claims, losses, liabilities, injuries to property or persons (including, without limitation, death) resulting from Tenant's compliance with such plans or specifications or noncompliance therewith.

Section 7.03. **Tenant to Pay Alteration Cost.** Subject to the terms of this Lease, all installations, additions, or improvements, and alterations and changes initiated by Tenant at the Premises shall be made at the sole cost and expense of Tenant.

Section 7.04. **Tenant's Responsibilities.** All work done in connection with any alteration, modification, addition or improvement shall be done in a good and workman like manner and in compliance with all applicable building and zoning laws and with all other applicable laws, ordinances, rules and regulations. Tenant shall have procured and paid for all governmental permits and authorizations of any governmental department having jurisdiction over the Premises prior to commencement of any work. At all times when any alteration, modification, addition or improvement is in progress, Tenant shall, at Tenant's sole expense, cause to be maintained (i) workmen's compensation insurance in accordance with law covering all persons employed in connection with the alteration, modification, addition or improvement, (ii) general liability insurance for the mutual benefit of Landlord and Tenant expressly covering the additional hazards due to the alteration, modification, addition or improvement. Tenant covenants and agrees that it has no power to incur any indebtedness giving a right to any lien of any kind or character upon the right, title and interest of Landlord in and to the Premises.



Section 7.05 Alterations **Required by Law**. Any additions, alterations, or improvements in or to the Premises required by any governmental authority or any law, ordinance, or governmental regulation or because of the use to which the Premises are put by Tenant shall be made and paid for by Tenant.

Section 7.06. **Drainage**. In the event that the Premises are improved by Tenant, Tenant shall not drain or discharge any water, including but not limited to storm water run-off, from the Premises onto adjoining land. In such event, the Premises will be so graded and drained as to cause the discharge of all water into the established drainage system on the Premises, if any. Tenant, at its sole cost and expense, shall be responsible for the maintenance and upkeep of the drainage system on the Premises, if any. Tenant shall indemnify Landlord and its directors, officers, employees, and agents, and their respective successors and assigns for, from and against any and all losses, damages, claims, costs, expenses, penalties and liabilities of any kind (including, without limitation, the cost of any investigation, remediation and cleanup, and attorneys' fees) which, in Landlord's reasonable opinion, are attributable to the extent caused by Tenant's violation of this Section. This indemnity shall survive the expiration or termination of this Lease.

Section 7.07. **Signs**. Tenant may, at its expense, erect on the Premises reasonable signs and provide reasonable exterior lighting, but such signs and lighting shall be in good taste, shall comply with all applicable laws and regulations and shall be removed by Tenant at Tenant's expense upon termination of this Lease without injury or damage to the Premises.

Section 7.08. **Mechanic's Liens**. Tenant agrees to pay promptly for all labor done or materials furnished for any work of repair, maintenance, improvement, alteration or addition done by Tenant in connection with the Premises, and to keep and to hold the Premises free, clear

and harmless of and from all liens that could arise by reason of any such work. Landlord may, at any time and in accordance with applicable law, post notices of non-responsibility on the Premises and record verified copies of those notices in connection with all work of any kind upon the Premises. If any such lien shall at any time be filed against the Premises, Tenant shall either cause the same to be discharged of record within thirty (30) days after the date of filing the same or, if Tenant in good faith desires to contest the same, Tenant shall be privileged to do so but in such case Tenant hereby agrees to indemnify and hold Landlord and the Premises harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure upon said mechanic's lien, cause the same to be discharged and removed prior to the execution of such judgment. In the event that Tenant contests any lien, Landlord may temporarily increase Tenant's security deposit or otherwise require Tenant to post adequate security with Landlord sufficient to satisfy the lien. Nothing contained herein shall imply any consent or agreement on the part of Landlord to subject Landlord's interest in the real property, of which the Premises are a part, to liability under any mechanic's lien law.

Section 7.09. **Notice of Non-Responsibility**. Landlord may at any time and from time to time during any construction work in accordance with applicable laws, post notice(s) of non-responsibility on the Premises and record verified copies thereof in connection with any and all work or construction on the Premises.

Section 7.10. **Maintenance by Tenant**. Tenant agrees during the term hereof to keep and maintain the Premises in good order and repair, normal wear and tear excepted, and to keep the Premises in a clean and healthful condition according to applicable federal and local laws and regulations, all at Tenant's own expense. If the Premises are not kept in good order and repair and in a clean and healthful condition by Tenant, as provided in this Lease, after written notice

by Landlord and failure by Tenant to cure or commence cure within **fifteen (15)** days, Landlord, or its agents or employees, may enter the Premises without such entrance causing a termination of this Lease or constituting an interference with Tenant's possession of the Premises, and Landlord may enter the Premises and perform such obligation of Tenant. Tenant shall pay to Landlord, in addition to the rent required to be paid under this Lease, the full amount of Landlord's expense, including Landlord's attorney's reasonable attorney's fee up to **Five Thousand Dollars (\$5,000.00)**, in maintaining the Premises. If Landlord shall perform any of Tenant's obligations in accordance with the provisions of this section, Landlord shall not be liable to Tenant for any loss of revenue resulting from performance.

#### **ARTICLE 8. CONDEMNATION.**

Section 8.01. **Total Condemnation.** If during the term hereof there shall be a "total taking" by a public authority under the power of eminent domain, then the leasehold estate of Tenant in the Premises shall cease and terminate as of the date actual physical possession thereof shall be taken. "Total taking" is defined to be the taking of the entire Premises under the power or actual notice of eminent domain or a taking of so much of the Premises as to prevent or substantially impair the conduct of Tenant's business therein. "Actual notice" of eminent domain is defined as an unequivocal written statement from a condemning authority that condemnation will occur, and requesting or permitting Tenant to sell in lieu of condemnation. Landlord shall receive, and Tenant shall pay rent at a prorated amount up to the date of actual physical possession.

Section 8.02. **Partial Condemnation.** If during the term hereof there shall be a partial taking of the Premises, this Lease shall terminate as to the portion of the Premises taken upon the

date which actual possession of the portion of the Premises is taken pursuant to eminent domain proceedings, but this Lease shall continue in full force and effect as to the remainder of the Premises, except that if the remaining Premises is no longer suitable for Tenant's intended use, as determined in Tenant's reasonable discretion, Tenant may terminate this Lease upon **fifteen (15)** days notice to Landlord. If Tenant does not terminate this Lease, the rental payable by Tenant for the balance of the term shall be abated in the ratio that the square footage of the Premises taken bears to the total area of the Premises at the time of such taking. "Partial taking" is defined to be the taking of only a portion of the Premises under the power of eminent domain which does not constitute a "total taking" as defined above in this Article.

Section 8.03. **Condemnation Award.** In the event of the termination of this Lease by reason of the total or partial taking of the Premises by eminent domain, then in any such condemnation proceedings, Landlord and Tenant shall each be free to make separate claims against the condemning or taking authority for the amount of any damage done to them, respectively, as a result of the condemning or taking.

Section 8.04. **Effect of Termination.** If this Lease is terminated, in whole or in part, pursuant to any of the provisions of this Article, all rentals and other charges payable by Tenant to Landlord hereunder and attributable to the Premises taken, shall be paid up to the date upon which actual physical possession shall be taken by the condemner, and the parties shall thereupon be released from all further liability in relation thereto.

**ARTICLE 9. INDEMNITY AND INSURANCE.**

Section 9.01.

(a) **No Liability of Landlord for Tenant's Acts.** Landlord shall not be liable at any time for any loss, damage, or injury to the property or person of any person whomsoever at any time occasioned by or arising out of any act or omission of the Tenant, or of anyone holding under Tenant or the occupancy or use of the Premises or any part thereof by or under the Tenant, or directly or indirectly from any state or condition of the Premises or any part during the term of this Lease, unless caused by Landlord's negligence or willful misconduct.

(b) **Indemnification of Landlord.** Notwithstanding anything to the contrary in this Lease and, irrespective of any insurance carried by Tenant for the benefit of Landlord, Tenant covenants and agrees that, from and after the commencement of the term of this Lease, Tenant shall indemnify and hold harmless Landlord from any and all claims, demands, expenses (including attorneys' fees and court costs) or damages for any personal injury or injuries, death(s), damages, or losses to any person(s) or property that may be suffered or sustained by Tenant or any of its agents, servants, employees, patrons, customers, invitees, visitors, licensees, departments, and concessionaires or by any other person or persons in, on or about the Premises or any part thereof, arising from any and all causes whatsoever, the act, or failure to act of Tenant or Tenant's agents, servants, employees, or contractors, except the misconduct or negligence of Landlord.

Section 9.02. **Tenant's Insurance.** Tenant shall carry and maintain, during the entire term hereof, at Tenant's sole cost and expense, the following types of insurance, in the amounts specified and in the form provided for in this section:

(a) **Public Liability and Property Damage.** Broad form comprehensive public liability insurance with limits of not less than **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) per person and ONE MILLION DOLLARS (\$1,000,000.00)** for each occurrence, insuring against any and all liability of the Tenant with respect to the Premises or arising out of the maintenance, use, or occupancy thereof, and property damage liability insurance with a limit of not less than **TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00)** for each accident, to cover the Premises, and all additions, alterations and improvements on the Premises and any roads or pathways therefrom to a public highway. In the event Tenant self-insures, Tenant waives the right to assert any claim deriving from a risk covered by the insurance, including but not limited to claims the amount of which fall within the deductible. That is, Tenant assumes the risk of all of loss, without recourse to Landlord, to the extent of Tenant's deductible. However, said self-insurance shall not be deemed to transfer or alter the allocations of risk set forth in Article 9 hereof.

(b) **Adjustment of Coverage.** In the event that Landlord shall at any time and from time to time deems, in Landlord's reasonable determination and consistent with then standard, prudent insurance practices, the limits of liability insurance as hereinabove provided to be insufficient, upon written notice to Tenant the parties shall promptly endeavor to agree on reasonable limits for such insurance coverage then to be carried, and such insurance shall thereafter be carried with the limits thus agreed on until further change pursuant to this Section. Should the parties be unable to agree upon the proper and reasonable limits for such liability insurance within **fifteen (15)** days of written notice from Landlord to Tenant, then Landlord may select any insurance company licensed to and engaged in business on the Territory of Guam (excluding the insurance company then carrying the liability insurance hereunder) to reasonably

determine the proper limits of liability insurance to be provided and maintained by Tenant hereunder taking into consideration Tenant's net worth, which Tenant shall disclose to Landlord within **ten (10)** days of receipt of a demand from Landlord, and actual use of the Premises. Said insurance company's determination on the proper and reasonable limits of liability insurance shall be binding upon both parties until such limits shall again be changed pursuant to this Section. Such limits may not be readjusted more often than once every **five (5)** years.

(c) **Deductible.** Such public liability policy or policies may provide for deductible not in excess of ONE THOUSAND AND 0/100 DOLLARS (\$1,000.00) irrespective of the number of persons, parties or entities involved.

(d) **Casualty Insurance.** Insurance against loss or damage by fire, typhoons, earthquake, tidal waves, high water, and such other risks as are now or hereafter included in a Standard Extended Coverage Endorsement in common use for commercial structures on Guam, including vandalism and malicious mischief, on all alterations, additions, buildings and improvements, which may from time to time be located on the Premises, to be procured if and when any such improvements are constructed on the Premises. Such insurance coverage shall be in an amount, as near as practicable, to the full replacement cost of the improvements and additions on the Premises, without deduction for depreciation. If at any time there is a dispute as to the amount of such required insurance, which cannot be resolved by agreement within ten days, Landlord may, not more often than once every **twenty-four (24)** months, request the carrier of the insurance then in force to determine the full insurable value of all improvements and additions on the Premises, and the resulting determination shall be conclusive between the parties for the purposes of this paragraph.

(e) **Waiver of Subrogation Rights.** Tenant shall procure an appropriate clause in, or an endorsement on, any policy of fire or extended coverage insurance covering the personal property, fixtures, and equipment located in or on the Premises, pursuant to which the insurance companies waive subrogation or consent to a waiver of right of recovery against Landlord, and Tenant does hereby agree that it shall not make any claim against or seek to recover from Landlord any loss or damage to its property or the property of others, resulting from fire or other hazards covered by such fire and extended coverage insurance.

(f) **Certificates of Insurance.** Tenant shall deposit with Landlord certificates of the insurance required hereunder within **ten (10)** days after the commencement of the term and thereafter within **fifteen (15)** days prior to the expiration of such policies. Such policies shall provide that the same shall not be changed or cancelled without at least **thirty (30)** days prior written notice to Landlord prior to the effective date of such change or cancellation. In the event that Tenant shall fail to deliver to Landlord certificates of such insurance, within **ten (10)** days after receipt of a request thereof, **Landlord** may at its option cause such insurance to be issued, and any bills for the premiums therefor paid by Landlord shall be immediately due from, and payable by Tenant to Landlord and the amount therefor shall be deemed to be, and paid as, additional rent.

(g) **Forms.** All insurance provided for in this Article may be in the form of a general coverage, floater policy or so-called blanket policies which may be furnished by Tenant, or a related corporation of Tenant or any related entity. The liability and casualty coverage set forth herein shall be issued by insurers of recognized responsibility, as may be reasonably approved by Landlord. Landlord will be named an additional insured on Tenant's public liability



insurance, and will designate Landlord as a loss payee under any property insurance policy, for Landlord's interest in any improvements that may be made to the Premises.

(h) **Failure to Comply Constitutes a Default.** Tenant's failure to effectuate any and all such insurance and renewal policies of insurance required as set out in this Article or to pay the premiums and renewal premiums on all such policies and insurance as they become due and payable, or to deliver all such certificates of insurance and renewals thereof or duplicate originals to Landlord within the time limits set out in this Article, shall constitute a material default by Tenant under the terms of this Lease.

#### **ARTICLE 10. SUBLEASING, MORTGAGE, AND ASSIGNMENT.**

Section 10.01. **DEFINITIONS.** For the purposes of this Lease the following terms shall have the following meanings:

(a) The terms "Rent" or "Rental" shall mean an agreement between the Tenant and a third party which allows the third party to use or occupy a warehouse, building, yard area or other improved part of the Premises (i) without the third party acquiring all the rights conveyed to the Tenant in this Lease Agreement, (ii) where the Tenant retains control of or supervision over the third party's use and occupancy of the Premises and (iii) the third party does not assume all of the Tenant's obligations under this Lease.

(b) The term "Sublease" shall mean an agreement between the Tenant and a third party (i) where a third party acquires the exclusive right to use, occupy and develop raw unimproved land; or (ii) the Tenant conveys to the third party all of the Tenant's rights under this

Lease Agreement for the possession of a warehouse, building, yard area or other improvement within the Premises and the third party assumes all of the Tenant's obligations under this Lease without the Tenant retaining control or supervision of the third party's use of the Premises

Section 10.02. **Mortgage**. Tenant may, from time to time, encumber by mortgage or otherwise Tenant's interest under this Lease in whole or in part upon written consent of Landlord, which consent by Landlord shall not be unreasonably withheld, conditioned or delayed. Said mortgage shall not exceed the term of this Lease. Said mortgage shall not extend to any Lender more rights than those rights conferred to Tenant under this Lease Agreement. Proceeds from any encumbrance under such mortgage shall be reinvested into the Premises for the protection, maintenance, repair, improvements, and costs of the Premises.

Section 10.03. **Estoppel Certificates**. Tenant, at any time and from time to time upon not less than ten (10) days' prior request by Landlord, shall execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), stating the dates to which the Fixed Rent and other charges have been paid in advance, if any, and confirming Tenant's acceptance of the Premises, the commencement of the Lease Term, the rent provided under the Lease, and the status of any defaults by Landlord, it being intended that any such statement delivered pursuant to this Paragraph may be relied upon by any prospective purchaser, mortgagee, or assignee of any mortgagee of the Building or the Property.

Section 10.04. **Notice to Lender**. In the event of a default under this Lease by Landlord, Tenant agrees to provide written notice, by registered mail, postage prepaid, of such breach to the holder of any deed of trust or mortgage encumbering the Building or the Property

simultaneously with the delivery of notice to Landlord, provided that Tenant previously has been notified in writing (by means of an estoppel certificate or Assignment of Rents and Leases or otherwise) of the name and address of such mortgagee or beneficiary. Notwithstanding anything in this Lease to the contrary, Tenant agrees that if Landlord does not cure such default within the time period specified therefor, such mortgagee or beneficiary shall have an additional thirty (30) days from and after expiration of Landlord's cure period during which to cure the default, provided that if such default is not curable within said thirty (30) day period, there shall be no default if lender is diligently pursuing the remedies to cure such default (including without limitation commencement of foreclosure proceedings, if necessary, to effect such cure).

Section 10.05. **Subleasing**. Tenant shall not sublease the Premises without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. The making of any such sublease shall not release Tenant from, or otherwise affect in any manner, any of Tenant's obligations hereunder. Such subleases shall not give the sub lessee more rights than those rights agreed to by Landlord under this Lease. Tenant's rental of portions of the Premises in the ordinary course of business, including the rental of any ground spaces, warehouse spaces or other improvements at the Premises shall not constitute subleasing requiring the consent of Landlord.

Section 10.06. **Assignment - Landlord's Consent Required**. Tenant shall not assign this Lease in whole or in part, without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld. This prohibition against assigning shall be construed to include a prohibition against any assignment by operation of law. Should Tenant be a corporation, the transfer of more than fifty percent (50%) of the capital stock of Tenant shall constitute an assignment hereunder requiring the written consent of Landlord, except that

if Tenant is a publicly traded company, this shall not apply, provided that a merger or acquisition of **fifty-one percent (51%)** or more of the outstanding stock of such Tenant shall be an assignment that requires Landlord's consent. Notwithstanding anything to the contrary contained herein. Tenant shall, without Landlord's consent, have the right to publicly offer and sell its shares and to assign this Lease or sublet the Premises, or any portion thereof, to any or all of the following: (i) any successor of Tenant resulting from a merger, consolidation, transfer or sale by Tenant of the majority of the voting shares, partnership interests or other controlling interests in Tenant; (ii) any Affiliate as defined in Section 10.09 below; and (iii) any successor to Tenant due to the sale of substantially all of Tenant's assets.

Section 10.07. **Condition to Consent**. As a condition to its consent, Landlord shall require Tenant to pay all reasonable expenses, including reasonable attorneys' fees incurred by Landlord in connection with the assignment up to **Five Thousand Dollars (\$5,000.00)**, and Landlord may require Tenant's assignee to assume in writing the obligations of Tenant under this Lease.

Section 10.08. **No Waiver**. The consent by Landlord to any assignment, mortgage or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment, mortgage or subletting. If this Lease be assigned, or if the Premises or any part thereof be sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant, or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy, or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant, or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant.

Section 10.09. **Additional Rent if Sublet.** If during the term of this Lease, Tenant enters into a sublease as defined in Section 10.01 above, excluding renting of portions to commercial tenants, with an unaffiliated person or entity for the use of any part of the Premises, Tenant shall pay to Landlord, in addition to the rental rate set forth in Section 4.01 above and at the same time that rent is due hereunder, **fifteen percent (15%)** of Tenant's income from such subleases, to the extent actually collected by Tenant. "Affiliate" means any entity that, either directly or indirectly, controls, is controlled by, or is under common control with Tenant. For purposes of this Section "control" means the direct or indirect ownership of more than **fifty percent (50%)** of the voting securities of an entity or possession or the right to vote more than **fifty percent (50%)** of the voting interest in the ordinary course of the entity's affairs. "Affiliate" also includes any parent or affiliate or subsidiary of the Tenant.

Section 10.10. **Liability of Tenant.** Notwithstanding any assignment, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants, and conditions of this Lease, unless Landlord agrees to release Tenant from such obligations upon a full assignment of this Lease.

## **ARTICLE 11. DEFAULT AND REMEDIES.**

Section 11.01.

(a) **Termination for Tenant's Insolvency or Dissolution.** This Lease shall be deemed repudiated and breached by Tenant if, during the term of this Lease:

(1) A petition to have Tenant adjudicated bankrupt or a petition for reorganization or arrangement under any of the laws of the United States relating to bankruptcy be filed by Tenant, or be filed against Tenant, and if so filed against Tenant not be dismissed **within thirty (30)** days from the date of such filing;

(2) The assets of Tenant or the business conducted by Tenant on the Premises be assumed by any trustee or other person pursuant to any judicial proceedings;

(3) Tenant becomes insolvent or makes an assignment for the benefit of creditors;

(4) Tenant commits any act of bankruptcy; or

(5) Any corporate Tenant or assignee or successor in interest of Tenant commences proceedings for winding up.

(b) **Landlord's Right of Termination, Reentry, Damages.** Tenant expressly agrees that Landlord may, at its election, terminate this Lease in the event of the occurrence of any of the contingencies hereinabove described by giving not less than **thirty (30)** calendar days' written notice to Tenant and opportunity to cure, and when so terminated, Landlord may reenter the Premises, and the leasehold interest created by this Lease shall not be treated as an asset of Tenant's estate. It is further expressly understood and agreed that Landlord shall be entitled, upon such reentry, notwithstanding any other provisions of this Lease, to exercise such rights and remedies and to recover from Tenant as damages for loss resulting from such breach, and not as a penalty, such amounts as are specified in Section 11.03, unless any statute or rule or law governing the proceeding in which such damages are to be proved shall lawfully limit the amount of such claims capable of being so proved, in which case Landlord shall be entitled to recover as and for liquidated damages the maximum amount which may be held under any such statute or rule or law.

Section 11.02. **Default.** Landlord may, at its option and without limiting Landlord in the exercise of any other right or remedy he may have on account of a default or breach by Tenant, exercise the rights and remedies specified in Section 11.03 if:

(a) Tenant fails to make payment of rent or any other charge when due and such failure continues for **fifteen (15)** days after receipt of written notice of nonpayment;

(b) Tenant defaults in the performance of any other of its agreements, conditions, or covenants under this Lease, and if the nonperformance shall continue for a period of **thirty (30)** days after notice thereof by Landlord to Tenant, provided that if the default cannot be cured within **thirty (30)**, Tenant shall have such additional time as may be required, provided

that Tenant commences to cure within such **thirty (30)** days and thereafter diligently prosecutes the same to completion.

Section 11.03. **Remedies**. On any breach, default, or abandonment, Landlord may exercise any of the following rights after the periods of time stated in Section 11.02:

(a) Immediately reenter and remove all persons and property from the Premises, storing the personal property in a public warehouse or other secure facility at the cost of, for the account of, and at the risk of Tenant. In the event of any such reentry by Landlord, Landlord may make any repairs, additions, or improvements in, to or upon the Premises which may be necessary to restore the Premises to the condition it was in on the commencement of the term of this Lease. In such instance, this Lease will be terminated, and Landlord will be entitled otherwise to recover all damages, fees, and costs allowable under law or this Lease.

(b) Collect by suit or otherwise each installment of rent or other sum as it becomes due hereunder, or enforce, by suit or otherwise, any other term or provision hereof on the part of Tenant required to be kept or performed, it being specifically agreed that all unpaid installments of rent or other sums, inclusive of fees and costs, shall bear interest at **One Percent (1.0%) per month** from the due date thereof until paid.

(c) Terminate this Lease, in which event Tenant agrees to immediately surrender possession of the Premises, and to pay to Landlord, in addition to any other remedy Landlord may have, all damages Landlord may incur by reason of its defaults, including the reasonable cost of recovering the Premises.

Section 11.04. **Measure of Damages**. The damages Landlord may recover include the worth at the time of award of the amount by which the unpaid base rent for the balance of the



term after the time of award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided.

Section 11.05. **No Waiver of Default.** A party's failure to take advantage of any default or breach of covenant on the part of the other party shall not be, or be construed, as a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this Lease be construed to waive or to lessen the right of a party to insist upon the performance by the other party of any term, covenant, or condition hereof, or to exercise any rights given him on account of any such default. A waiver of a particular breach, or default, shall not be deemed to be a waiver of the same or any other subsequent breach or default. The acceptance of rent hereunder shall not be, or be construed to be, a waiver of any term, covenant, or condition of this Lease.

Section 11.06. **Remedies Cumulative.** The rights, powers, elections, and remedies of the Landlord contained in this Lease shall be construed as cumulative and no one of them is or shall be considered exclusive of the other or exclusive of any rights or remedies allowed by law, and the exercise of one or more rights, powers, elections, or remedies shall not impair Landlord's right to exercise any other, provided that in the exercise of multiple rights or remedies, Landlord does not receive more than Landlord bargained for in the execution of this Lease.

Section 11.07. **Landlord's Right to Cure Default.** If Tenant shall be in default in the performance of any covenant on its part to be performed under this Lease, for more than **thirty (30)** days after written notice of such default and Tenant has not commenced cure, then, without waving or releasing Tenant from the performance thereof, Landlord may, but shall not be obligated so to do, perform any such covenant and in exercising any such right pay necessary and incidental costs and expenses in connection therewith. All sums so paid by Landlord,

together with interest thereon at the rate of one percent (1.0%) per month, shall be deemed additional rent and shall be payable to Landlord on the next rent paying day.

Section 11.8. **Landlord's Default.** If Landlord fails to perform any of its obligations hereunder within **thirty (30)** days after written notice from Tenant specifying such failure (or such longer period of time as is necessary to cure such default so long as Landlord commences such cure within **thirty (30)** days and thereafter diligently pursues such cure to completion), Tenant shall have all remedies available to Tenant in equity or at law. In addition, without waiving or releasing Landlord from the performance thereof, Tenant may, but shall not be obligated to do so, perform any covenant required to be performed by Landlord, and in exercising any such right, pay necessary and incidental costs and expenses in connection therewith. All sums so paid by Tenant, together with interest thereon at the rate of **one percent (1.0%)** per month, shall be due and payable within **ten (10)** days after receipt by Landlord of written notice thereof.

## **ARTICLE 12. LANDLORD'S GENERAL PROTECTIVE PROVISIONS.**

Section 12.01. **Surrender at End of Term.** Tenant shall peaceably give up and surrender to Landlord the Premises and every part thereof, including all buildings and improvements thereon to Landlord at the termination of this Lease in as good a condition and repair as reasonable use and wear and tear thereof will permit.

Section 12.02. **Release of Landlord After Sale.** In the event of a sale or conveyance by the Landlord of the Premises or any part containing the Premises and assumption by Landlord's successor of Landlord's responsibilities under this Lease, provided that any security deposit paid by Tenant to Landlord is returned to Tenant or fully assigned to Landlord's successor in interest,

Landlord shall be released from any future liability upon any of the covenants or conditions, expressed or implied, in favor of Tenant, and in such event, the Tenant agrees to look solely to the responsibility of the successor in interest of the Landlord in and to this Lease.

Section 12.03. **Landlord's Right to Inspect.** Landlord or its agent or representative shall be entitled at all reasonable times upon **twenty-four (24) hours** prior written notice to Tenant, to go on the Premises for the purpose of inspecting the Premises, or for the purpose of inspecting the performance by Tenant of the terms and conditions of this Lease, or for the purpose of posting and keeping posted thereon notice of non-responsibility for any construction, alteration, or repair thereof, as required or permitted by any law or ordinance.

Section 12.04. **Removal of Personal Property.** Tenant may remove or cause to be removed all of Tenant's machinery, equipment and trade fixtures on the Premises; provided, Tenant shall, at its sole cost and expense, immediately repair any damage or injury to the Premises or any building or other improvement on the Premises caused by such removal. Any of said machinery, equipment or trade fixtures that are not removed from the Premises within thirty (30) days after the date of expiration or any termination of this Lease may be removed by Landlord and stored in a public warehouse or other secure location at Tenant's sole cost and expense. The provisions of this Section shall survive the expiration or termination of this Lease.

Section 12.05. **Landlord's Right to Improvements.** Upon expiration or sooner termination of this Lease, title to all buildings and other improvements on the leased property shall be vested in the Landlord without the payment of any consideration therefore. This provision shall survive the expiration or termination of the term of this Lease.

Section 12.06. **Tenant's Quitclaim.** Upon the expiration of the Lease term, or any sooner termination of this Lease, at Landlord's request, Tenant agrees to execute, acknowledge

and deliver to Landlord a proper and reasonable instrument in writing, releasing, and quitclaiming to Landlord all right, title and interest of Tenant in and to the Premises and all buildings and other improvements thereon.

Section 12.07. **Phase I Environmental Site Assessment**. Landlord has provided a Phase I Environmental Site Assessment which has been accepted by Tenant.

Section 12.08. **Hold Harmless**. By acceptance of this instrument, Tenant expressly acknowledges that the Premises was part of military activity during and after World War II and, as such, portions of the Premises herein leased may have been subject to contamination or hazards by the introduction of unexploded and dangerous ordnance, either below or upon the surface of thereof, some of which may remain below or on the Premises in an unexploded condition. By acceptance of this instrument and as further consideration for this Lease, Tenant covenants and agrees for itself, its successors and assigns, to assume all risks of personal injuries and property caused by possible contamination of or hazards on the Premises by unexploded ordnance, arising out of maintenance, occupation or use of the Premises by Tenant; and further covenants and agrees to indemnify and save harmless Landlord, its officers, agents and employees against any and all liability, claims, causes of action, or suits arising out of or resulting from the contaminated or hazardous condition of the Premises other than liability for remediation of any such contamination or hazards. Tenant must immediately notify Landlord if any ordnance or any suspected area of contamination or hazard, for which Tenant is not the responsible party, is encountered at the Premises.

**ARTICLE 13. GENERAL PROVISIONS.**

Section 13.01 **Conditions and Covenants.** All of the provisions of this Lease shall be deemed as running with the land, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

Section 13.02. **No Waiver of Breach.** No failure by either Landlord or Tenant to insist upon the strict performance by the other of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

Section 13.03. **Time of Essence.** Time is of the essence of this Lease, and of each provision.

Section 13.04. **Successors in Interest.** Each and all of the covenants, conditions, and restrictions in this Lease shall inure to the benefit of and shall be binding upon the successors in interest of Landlord and, subject to the restrictions of Article 10, the authorized encumbrances, assignees, transferees, subtenants, licensees, and other successors in interest of Tenant.

Section 13.05. **Entire Agreement.** This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement, or promise made by any party, or to any employee, officer, or agent of any party, which is not contained in this Lease shall be binding or valid.

Section 13.06. **Partial Invalidity.** If any term, covenant, 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 and shall be given effect and construed to effectuate the original intent of the parties to this Lease.

Section 13.07. **Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, and neither the method of computation of rent nor any other provisions contained in this Lease nor any acts of the parties shall be deemed to create any relationship between Landlord and Tenant, other than the relationship of Landlord and Tenant.

Section 13.08. **Interpretation and Definitions.** The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not strictly for or against Landlord or Tenant. Captions of articles, sections, and paragraphs of this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Lease.

Section 13.09. **Attorney's Fees.** Should either party commence any legal action or proceeding against the other based on this Lease, the prevailing party shall be entitled to an award of attorney's fees but only to the extent permitted by the Government Claims Act.

Section 13.10. **Interest.** Any sum accruing to Landlord or Tenant under the provisions of this Lease that is not be paid when due shall bear interest at the rate of one percent (1.0%) per

month from the date written notice specifying such nonpayment is served on the defaulting party, until paid.

Section 13.11. **Modification**. This Lease is not subject to modification except in writing. As condition to Landlord's consent to any modification of this Lease requested by Tenant, Landlord shall require Tenant to pay all reasonable actual expenses, including reasonable attorney's fees and recordation fees, but in no event more than **Five Thousand Dollars (\$5,000.00)** incurred by Landlord in connection with the modification of this Lease.

Section 13.12. **Delivery of Rent and Notices - Method and Time**. All rents or other sums, notices, demands, or requests from one party to another may be personally delivered or sent by U.S. Postal Service, postage prepaid, or by delivery by a nationally recognized courier service that provides acknowledgement of receipt, to the addresses stated in this section, and shall be deemed to have been given at the time of personal delivery or at the end of the **fourth (4<sup>th</sup>)** full day following the date of mailing. Payment of rent and other amounts may be made by electronic means, including ACH or wire transfer and made to the Guam Economic Development Authority at the address indicated below.

All notices, demands, or requests from Tenant to Landlord shall be given to Landlord at:

**GUAM ANCESTRAL LANDS COMMISSION,**  
whose address is  
Post Office Box 2950, Hagatna, Guam 96932

With a copy to:

**GUAM ECONOMIC DEVELOPMENT AUTHORITY,**  
whose address is  
590 S. Marine Corps. Dr.  
Suite 511 GITC Building  
Tamuning, Guam 96913

All notices, demands, or requests from Landlord to Tenant shall be given to Tenant at:

**NORTHERN MARKET, LLC**  
135 Chalan Santo Papa  
Hagatna, Guam 96910

Each party shall have the right, from time to time, to designate a different address by notice given in conformity with this section.

Section 13.13. **Applicable Law**. This Lease shall be governed by and construed in accordance with the laws of Guam. Any litigation between the parties arising out of this Lease Agreement shall be filed in the Superior Court of Guam and Tenant agrees it will not contest or challenge jurisdiction.

Section 13.14. **Easements, Agreements or Encumbrances**. The parties shall be bound by all existing easements, agreements and encumbrances of record as of the effective date of this Lease, including, but not limited to the reservations, limitations, reversions, restrictions, covenants that run with the land, conditions and exceptions as expressed and set out in that Quitclaim Deed by and between the United States of America as Grantor and the Government of Guam as Grantee, recorded on October 29, 2002 under Department of Land Management Instrument No. 664865 and that Quitclaim Deed by and between the Government of Guam as Grantor and the Guam Ancestral Lands Commission as Grantee, recorded (Date) under Department of Land Management Instrument No. (Number), and Landlord shall not be liable to Tenant for any damages resulting from any action taken by a holder of an interest pursuant to the rights of that holder thereunder. Tenant reserves the right to receive and review these Deeds.



Section 13.15. **Participation in Annual Business Survey.** Tenant shall respond to the annual business survey conducted by GEDA within **thirty (30)** days of receipt of said survey from GEDA.

#### **ARTICLE 14. MISCELLANEOUS PROVISIONS**

Section 14.01. **Prohibition of Gratuities and Kickbacks.** Tenant represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in §11206 (Gratuities and Kickbacks) of the Guam Procurement Regulations.

Section 14.02. **Prohibition of Contingent Fees.** Tenant represents that it has not retained a person to solicit or secure a territorial contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

Section 14.03. **Ethical Standards.** Tenant represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

Section 14.03. **Prohibition of Employment of Sex Offenders.** Tenant warrants that (1) no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same


elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

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

**GUAM ANCESTRAL LANDS COMMISSION**

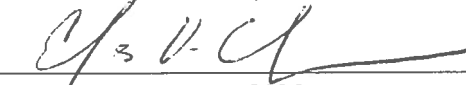
By:   
ANITA F. ORLINO  
Its Chairwoman

Date: Dec. 20, 2013

By:   
MARIA G. CRUZ  
Its Secretary

Date: 12/20/13

**NORTHERN MARKET, LLC**

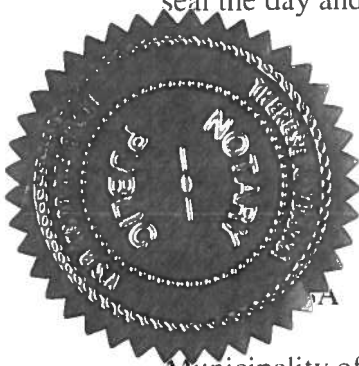
By:   
CARLOS CAMACHO  
Its Duly Authorized Representative

Date: 12/20/13

GUAM, USA )  
 ) ss  
Municipality of \_\_\_\_\_ )

On this 20<sup>th</sup> day of DECEMBER, 2013, before me, a notary public in and for Guam, personally appeared ANITA F. ORLINO, Chairwoman of the GUAM ANCESTRAL LANDS COMMISSION, known to me to be the person who executed the foregoing LEASE AGREEMENT, and acknowledged to me that she executed the same on behalf of the GUAM ANCESTRAL LANDS COMMISSION.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



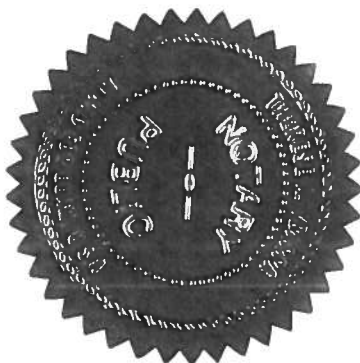
*Therese A. Ybarra*  
NOTARY PUBLIC

**THERESE A. YBARRA**  
**NOTARY PUBLIC**  
In and for Guam, U.S.A.  
My Commission Expires: December 03, 2016  
ITC Bldg. Suite 511, 680 South Marine Corps Dr.  
Tamuning, Guam 96913

)  
 ) ss  
Municipality of \_\_\_\_\_ )

On this 20<sup>th</sup> day of DECEMBER, 2013, before me, a notary public in and for Guam, personally appeared MARIA G. CRUZ, Secretary of the GUAM ANCESTRAL LANDS COMMISSION, known to me to be the person who executed the foregoing LEASE AGREEMENT, and acknowledged to me that she executed the same on behalf of the GUAM ANCESTRAL LANDS COMMISSION.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



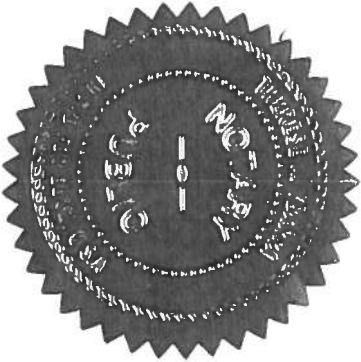
*Therese A. Ybarra*  
NOTARY PUBLIC

**THERESE A. YBARRA**  
**NOTARY PUBLIC**  
In and for Guam, U.S.A.  
My Commission Expires: December 03, 2016  
ITC Bldg. Suite 511, 680 South Marine Corps Dr.  
Tamuning, Guam 96913

GUAM, USA )  
 ) SS  
Municipality of \_\_\_\_\_ )

On this 20<sup>th</sup> day of DECEMBER, 2013, before me, a notary public in and for Guam, personally appeared **CARLOS CAMACHO**, the Duly Authorized Representative of **NORTHERN MARKET, LLC**, a Guam corporation, known to me to be the person who executed the foregoing **LEASE AGREEMENT**, and acknowledged to me that he executed the same on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



*Therese A. Ybarra*  
\_\_\_\_\_  
NOTARY PUBLIC

**THERESE A. YBARRA**  
**NOTARY PUBLIC**  
In and for Guam, U.S.A.  
My Commission Expires: December 03, 2016  
ITC Bldg. Suite 511, 660 South Marine Corps Dr.  
Tamuning, Guam 96913

## **EXHIBIT A – FULL DESCRIPTION OF PREMISES**

Portion of Lot Andersen Family Housing Annex No. 1 (Camp Edusa), (AJKL), also referred to as Wettengel Junction, that certain real property consisting of 53,876 SM situated in the Municipality of Dededo including Lot 10153-3 (3,713 SM) and Lot 10155-R7 (53,214 SM less that certain 3,051 SM identified as the “license area” and excluded from the basic lot per Special Note “A” (2) resulting in a net area of 50,163 SM) all as described by RLS Services, LLC in RETRACEMENT SURVEY MAP Drawing Number 158 FY 2013, recorded with the Department of Land Management as Instrument No. 858965 on December 2, 2013, which is incorporated by reference.

## Price Quotations

Regular Servicing for Official Vehicle #6959

Service to be provided:

Oil Change – Synthetic Motor Oil

Oil Filter Change

Tire Rotation

Vehicle Health Check

Top Off Fluids

AK Service	Pacific Tyre	One Stop	Geno's
139.82	93.92	104.95	202.88
All of the above.	Just Oil and Filter Change. Tire Rotation, Health Check, and Top Off Fluids not offered.	Without Fluids Top Off. Cost is based on amount of fluids used.	Oil and Filter Change with disposable fee. Tire Rotation, Health Check and Top Off Fluids not offered.