I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

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

This is to certify that **Bill No. 200-31 (COR), "AN ACT TO APPROVE THE COMMERCIAL LEASE AGREEMENT BY AND BETWEEN THE DEPARTMENT OF LAND MANAGEMENT AND THE *MACHECHE* PLAZA DEVELOPMENT,"** was on the 19th day of September, 2011, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 20th day of Sept., 2011, at 4:10 o'clock P.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 200-31 (COR)
As amended by the Committee on Appropriation, Taxation, Public Debt, Banking, Insurance, Retirement, and Land.

Introduced by: v. c. pangelinan
T. C. Ada
V. Anthony Ada
F. F. Blas, Jr.
B. J.F. Cruz
Chris M. Dueñas
Judith P. Guthertz, DPA
Sam Mabini, Ph.D.
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
Dennis G. Rodriguez, Jr.
R. J. Respicio
M. Silva Taijeron
Aline A.Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO APPROVE THE COMMERCIAL LEASE AGREEMENT BY AND BETWEEN THE DEPARTMENT OF LAND MANAGEMENT AND THE *MACHECHE* PLAZA DEVELOPMENT.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Statement and Intent. §68901(a) of Chapter 68, Article 9 of Title 21, Guam Code Annotated, authorized the Department of Land Management, with the approval of *I Maga'lahi* (the Governor) after consultation with the *Dededo* Municipal Planning Council, to enter into commercial lease agreements for properties known as the *Dededo* Buffer Strip. These properties

have been leased to numerous business establishments and pursuant to law, commercial leases *cannot* extend more than ten (10) years.

In 2000, the *Macheche* Plaza Development entered into a commercial lease agreement with the Department of Land Management, government of Guam, with concurrence by the *Dededo* Municipal Planning Council, and has maintained a portion of the *Dededo* Buffer Strip, particularly identified as Lot 3-R1, Block 1, Tract 91. The lease agreement expired in 2010, and they have requested to enter into another ten (10) year lease with the Department of Land Management, government of Guam. The *Dededo* Municipal Planning Council has supported this request through the passage of Resolution No. 2010-06, dated October 11, 2010, stating that the *Macheche* Plaza Development has complied with the mandates of the lease agreement by the beautification and maintenance of the property.

Furthermore, §60112 of Article 1, Division 2 of Chapter 60, Title 21, Guam Code Annotated, as amended, mandated that any government-owned real property *shall not* be leased, sub-leased, exchanged or otherwise transferred without the prior approval by *I Liheslaturan Guåhan.* The *Dededo* Buffer Strip is considered government-owned property, and thereby pursuant to law any lease agreement *shall* be approved by *I Liheslaturan Guåhan.*

It is, therefore, the intent of *I Liheslaturan Guåhan* to authorize the Department of Land Management, government of Guam, to enter into a commercial lease agreement with *Macheche* Plaza Development for a portion of the *Dededo* Buffer Strip, particularly identified as Lot 3-R1, Block 1, Tract 91.

Section 2. Approval of Commercial Lease Agreement. Notwithstanding any other provision of law, *I Liheslaturan Guåhan* hereby approves the commercial lease agreement between the Department of Land Management, government of Guam, and the *Macheche* Plaza Development for a portion of the *Dededo* Buffer Strip, particularly identified as Lot 3-R1, Block 1,

Tract 91. The commercial lease agreement *shall* comply with the provisions of §68901(a), Chapter 68, Article 9 of Title 21, Guam Code Annotated, and *shall* contain substantially the terms and conditions as those contained in Attachment A, herein attached.

Section 3. Prohibited Use. The property *shall not* be used so as to make the property unusable upon the expiration of the lease term. This *shall* include, but *not* be limited to, such uses as ponding basins.

Section 4. Severability. *If* any provision of this Law or its application to any person or circumstances is found to be invalid or contrary to law, such invalidity shall *not* affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.

ATTACHMENT A

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

DEDEDO BUFFER STRIP
LEASE AGREEMENT

This agreement, made this _____ day of _____, 2011, by and between **DEPARTMENT OF LAND MANAGEMENT,** GOVERNMENT OF GUAM, **LESSOR,** whose address is P.O. Box 2950, Hagatna, Guam 96932, and **MACHECHE PLAZA DEVELOPMENT, LESSEE,** whose address is P. O. Box 691, Hagatna, Guam 96932; and

WHEREAS, Government of Guam is the owner of the "Dededo Buffer Strip", Municipality of Dededo, as identified on Land Management Drawing No. C4-58T399, recorded on the 5th day of August, 1960, under Document No. 39272; and

WHEREAS, the commercial lease of portions of the Dededo Buffer Strip has been authorized by Public Law 23-45, which is codified as 21 G.C.A., Subsection 68901, a portion of which was repealed and reenacted by Public Law 24-59; 24-237; and

WHEREAS, LESSEE is the owner of real property immediately adjacent to the Dededo Buffer Strip and has applied with LESSOR in accordance with applicable law to lease that portion of the Dededo Buffer Strip immediately adjacent to LESSEE'S real property (hereafter LEASED PREMISES); and

WHEREAS, the LEASED PREMISES is described as follows:

That portion of the Dededo Buffer Strip, immediately adjacent to Lot No. 3-R1, Block No. 1, Tract No. 91, Municipality of Dededo and having the same length as the common boundary shared with LESSEE's property, containing an area of 1,912 ± square meters, and

WHEREAS, LESSOR has consulted with the Dededo Municipal Planning Council on the terms and conditions of this LEASE AGREEMENT; and

WHEREAS, LESSEE has obtained approval of beautification plans for the LEASED PREMISES from the Department of Parks and Recreation in consultation with the Dededo Municipal Planning Council; and

WHEREAS, LESSEE has obtained two appraisals, within six months of the date of execution of this LEASE AGREEMENT, from Guam licensed appraisal companies, of the fair market value of the property to be leased, the average of which will be used in determining the annual lease fee for the LEASED PREMISES.

NOW, THEREFORE, in consideration of the terms and conditions set forth in this LEASE AGREEMENT, the PARTIES agree as follows:

1. The LEASED PREMISES shall be used by LESSEE only for the purposes of public parking, and beautification and landscaping.

2. The annual lease fee, which LESSEE SHALL PAY TO LESSOR, is TEN THOUSAND NINE HUNDRED FIFTY DOLLARS **($10,950.00)** which constitutes Six Percent (6%) of the fair market value of the LEASES PREMISES. This annual fee does not exceed Twenty Percent (20%) of the fair market value of the LEASED PREMISES as per the requirements of P.L. 24-59.

3. LESSOR shall immediately deposit all fees collected under this LEASE AGREEMENT into Department of Administration Account No. 5100C052880SE001 (the Dededo Municipal Planning Council Buffer Strip Account – 2/3 to the Dededo Municipal Planning Council and 1/3 to the Yigo Municipal Planning Council).

4. This LEASE AGREEMENT shall be effective and commence only upon date of execution by the Governor of Guam and shall end ten years following the effective date of this LEASE AREEMENT. In no event shall this LEASE AGREEMENT EXCEED a term of ten (10) years.

5. LESSEE shall provide its first annual lease payment directly to LESSOR at the time LESSEE executes this LEASE AGREEMENT. Thereafter, annual payments shall be made to LESSOR on or before the yearly anniversary of the execution of this LEASE AGREEMENT by the Governor.

6. Should LESSEE fail to meet the annual fee payment obligation, LESSEE shall be in default. Upon failure to cure the default within thirty (30) days after the due date of any payment, LESSOR may terminate the contract without notice and enter upon the premises to take possession thereof. In the event of default under this paragraph, LESSEE shall be liable for the unpaid annual lease fee plus interest as allowed by law.

7. Should LESSEE fail to begin construction of the approved improvements upon the LEASED PREMISES within three (3) months of the commencement of this LEASE AGREEMENT, LESSEE shall be in default and LESSOR may terminate this LEASE AGREEMENT without notice and enter upon the premises to take possession thereof.

In the event of default under this paragraph, the annual lease fee shall be kept by the LESSOR as liquidated damages.

8. LESSEE shall not sell, sublet, assign, or transfer in any way the LEASED PREMISES.

9. LESSEE shall indemnify, defend and hold LESSOR harmless against any claim for loss, liability or damage including claims for property demand by third persons for loss, personal injury or wrongful deaths arising out of any accident on the LEASED PREMISES or in any way related to the LEASED PREMISES.

10. LESSOR shall not be held responsible for, and LESSEE shall indemnify LESSOR against, any claim or suit for loss, liability, or damage on account of any personal injury or death arising out of any accident or incident occurring on the LEASED PREMISES caused by the acts or omissions of LESSEE or its officers, agents, servants or employees.

11. LESSEE shall be responsible for the provision of water and power to the LEASED PREMISES as needed. Water and power are available within 100 feet of the LEASED PREMISES.

12. Should LESSEE change ownership of its private commercial business activity, or sell its assets, this LEASE AGREEMENT shall immediately terminate and the new owner must reapply to lease this property from the Government of Guam.

UPON all the terms and conditions contained herein, LESSOR and LESSEE hereby agree:

LESSEE: _____ DATE: _____
GREGG KOSANKE, President
Macheche Plaza Development

LESSOR: _____ DATE: _____
ANISIA B. TERLAJE, Director
Department of Land Management

ACKNOWLEDGMENT

Tamuning, Guam) SS

On this _____ day of _____, 2011, before me, the undersigned notary, personally appeared ANISIA B. TERLAJE, Director, Department of Land Management (LESSOR), known to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

IN WITNESS WHEREOF, I have hereunto affixed my name and official seal Hagatna, Guam, the day and years first above written.

_____

ACKNOWLEDGMENT

Tamuning, Guam) SS

On this _____ day of _____, 2011, before me, the undersigned notary, personally appeared GREGG KOSANKE, Macheche Plaza Development (LESSEE), known to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

IN WITNESS WHEREOF, I have hereunto affixed my name and official seal in Hagatna, Guam, the day and years first above written.

_____

APPROVED AS TO LEGALITY
AND FORM:

_____
LEONARDO M. RAPADAS
Attorney General of Guam

Date: _____
APPROVED:

_____
EDWARD J.B. CALVO
Governor of Guam

Date: _____