

LEASE OF WATER DEPENDENT USE OF SUBMERGED LANDS

(P. L. 6-13)

This Lease Agreement made this _____ day of _____, 1995. Saipan, Northern Mariana Islands, by and between the Department of _____ Natural Resources ("DNR"), by and through its directors, Government of _____ the Northern Mariana Islands, its successors and assigns, hereinafter referred to as (the "Secretary"), and Marine Revitalization Corporation, a _____ non-profit corporation of Saipan, Northern Mariana Islands hereinafter referred to as (the "Lessee").

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PREAMBLE

- 1. Lessee wishes to lease submerged land in the outer harbor of Smiling Cove Marina, Carapn, Saipan, Northern Mariana Islands, located adjacent to part of American Memorial Park fastlands, southwest of Puerto Rico Dump, and northeast of the American Memorial in order to construct a seventy-six boat marina.
- 2. The granting of the lease will enhance tourism in the Commonwealth and business opportunities for local fishermen, create new water recreational facilities, and will not adversely affect the protection and preservation of the marine resources. The use of submerged lands for water-borne commerce and to benefit Commonwealth-wide interests is to be given priority in the management of submerged lands as mandated under 2 CMC subsection 1212.
- 3. The granting of the lease will provide employment opportunities for citizens of the Commonwealth both in the construction of the facility and in its operation and maintenance of the marina once complete.

Section 1. Grant of Premises

The Secretary hereby leases to Lessee the following described submerged lands in the Outer Cove of Smiling cove, north and east of the American Memorial Park, Saipan, Northern Mariana Islands:

Cadastral Plat — Outer Cover Marina (descriptions)

<u>N 56.141.890</u>	<u>N55,964.206</u>
E 51, 464.289	E 51,541. 099
N 77 07' 05" E	N 30 44' 13"

1	(23.380)	(38.00)
2	S 12 52' 55" E	N 59 15' 47" E
3	(167.657)	(204.517)
4	N 12 52 55" W	S 59 15' 47" W
5	(167.657)	(203.517)
6		
7	S 77 07' 05" W	S 30 44' 13" E
8	(23.380)	(38.00)
9	(3,920 sq. meters)	(7,734 sq meters)
10		
11		<u>N 55,119.471</u>
12		E 51,740.421
13	S 69 45' 40" W	S 69 45' 40"
14	(36.62)	(16.00)
15		
16	S 20 14' 20" E	S 20 14' 20" E
17	(41.752)	(13.195)
18		
19	N 69 45' 40"	S 52 04' 52" E
20		
21	N 20 14' 20" W	S 37 55' 08" W
22	(41.752)	(10.00)
23		
24	(1,624 sq. meters)	
25		
26		S 52 04' 52" E
27		(37.00)
28		
29		N 37 55' 08" E
30		(36.00)
31		
32		N 52 04' 52" W
33		(37.00)
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S 37 55' 08" W
(10.00)

N 52 04' 62: W
(96.403)

N 20 14' 20" W
(8.631)

(3,086 sq meters)

The above-described property contains an area of 16,394 square meters, more or less.

The coordinates above define an area that shall hereinafter be referred to as the "Premises"

(A.) Slip rental fees in Smiling Cove marina and Outer Cove Marina shall not be changed without prior approval of the Secretary and upon mutual agreement with the Lessee. Thirty (30) days notice shall be given before changes are implemented. Changes in slip rental fees shall be published at least twice in thirty (30) days in at least two Commonwealth newspapers.

(B.) the Secretary covenants to strictly enforce the rules and regulations of the local and federal agencies that prohibit bunkering and fueling of boats at the marina and in the waters of the Commonwealth of the Northern Mariana Islands, except at approved and designated marina fueling facilities.

(C.) The Secretary covenants to establish policy for the existing Smiling Cove Marina barring owners of commercial passenger and commercial fishing boats from renting slips within Smiling Cove marina. The Lessee, upon consultation with the Secretary and the National Parks Service, will establish overall rules and regulations governing the operation of the Premise within one hundred eighty (180) days after the execution of the Lease Agreement.

Section 2. Purpose

1 The Premises shall be used for the construction of a pier or dock for the Lessee, the
2 placement of fill and shoreline protection at the boundary of the fastland and the submerged land
3 and the docking of vessels at said facility. The Outer Cove Mariana is a commercial harbor
4 facility. Vessels engaged in the commercial carriage of passengers or cargo and or for
5 commercial fishing in and about the waters of the Commonwealth and all private boats larger than
6 thirty-nine feet (39) may rent slips on the Premises. Vessels who purpose is solely for the private
7 use of its owner not for commercial purposes may rent slips on a space available basis and
8 provided that no slip space exists at Smiling Cove Marina.

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10 For the purposes of this Section and for this Lease Agreement " Commercial" is defined
11 as relating to or connected with trade and traffic or commerce in general.

12 Section 3. Term

13 The term of this lease shall be for twenty-five (25) years, unless sooner terminated
14 pursuant to applicable provisions of this lease. The leasehold term shall begin three (3) months
15 from the date of the approval of the Legislature.

16 Section 4. Rental

17 (A.) Basic Rent. After the termination of the Lease Agreement, Lessee agrees
18 to turn over to the Secretary title to all improvements on the Premises. In addition,
19 Lessee agrees to pay a minimum of seventy-five percentum (75%) bas on net annual
20 earnings of Lessee, including fuel sales, in annual earnings of Lessee, including fuel
21 sales, in annual installments on the day of each agreement year, beginning on the first
22 anniversary of the Lease Agreement , payable to the Treasury of the Commonwealth of
23 the Northern Mariana Islands, hereinafter the "Treasury". The remaining twenty-five
24 percentum (25%) shall be deposited in a Trust Fund (hereinafter the Fund) for the
25 purposes of future development of the marina and is immediate surrounding shoreline
26 and for the enhancement and improvement of the immediate fastland of the American

1 Memorial Park, and other facilities that pertains to the operation of the marina to the
2 extent that is possibly feasible. The said Fund shall be deposited to the Secretary of
3 Finance for safe-keeping. Marine Revitalization (MRC) may disburse said Funds for the
4 purposes stated above upon consultation and approval of the Secretary of DLNR and the
5 National Park Service. The generation of revenue is a public benefit under 2 CMC
6 subsection 1212. For the purpose of this Lease, "net earnings" is defined as any and all
7 money collected from the boat slip rental fees, sales of fuel, and any and all other
8 earnings generated from the operation of the marina after deducting all operation and
9 maintenance expensed including salaries, wages, utilities, loan payments, and the cost of
10 an environmental impact study conducted pursuant to Section 29 of this Lease
11 Agreement and all expenditures pertaining to the operation and maintenance of the
12 marina.

13 (B.) Public Improvements.

14 Construction: Lessee also covenants to construct the outer Cove marina within
15 one (1) year of the granting of the lease and the receipt of the necessary government
16 permits for development of the Premises.

17 (C.) Excused Delay of Performance:

18 Whenever under this Lease a time is stated within which or by which original
19 construction, repairs, reconstruction, or other performance by the Lessee shall be
20 commenced or completed, and a failure or delay in such performance is due in whole or
21 in part to accident, breakdown of machinery or facilities, strike, lockout, combination of
22 workmen, war, insurrection, riot, act of God, or the public enemy, or any contingency or
23 delay or failure or cause of any nature beyond the reasonable control of either party,
24 whether or not of the kind hereinbefore specified and whether or not any such
25 contingency is presently occurring or occurs in the future, and such failure, or delay does
26 not result from the fault or negligence of the Lessee, the period of delay so caused shall

1 be added to the period allowed herein for the completion of such work provided,
2 however, that Lessee shall notify the Secretary in writing within thirty (30) days after the
3 occurrence of any of the above events.

4 Section 5. Permanent Improvements

5 (A.) all improvements on the Premises, except removable personal property,
6 vessels, and equipment shall remain on the Premises after the termination of the Lease
7 Agreement and shall become the property of the Government of the Commonwealth of
8 the Northern Mariana Islands, unless agreed to otherwise by the government of the
9 Northern Mariana Islands. The term "removable personal property" as used in the
10 Section shall not include property which would be attached or affixed to the
11 improvements in such a way that it would become part of the improvements, regardless
12 of whether such property is in fact so placed in or on or affixed or attached to the
13 improvements in such a way as to legally retain the characteristics of personal property.

14 Section 6. Construction.

15 All improvements placed on the Premises shall be constructed in good, workmanlike
16 manner and in compliance with applicable local and federal laws, regulations, and ordinances. All
17 improvements on the Premises exposed to public view shall present an pleasant appearance. The
18 Lessee shall, at all times, during the term of the Lease Agreement and at the Lessee's sole cost and
19 expense, maintain the Premises and all improvements thereon in good order and repair and in a
20 neat, sanitary and attractive condition.

21 Section 7 Sublease, Assignment, Transfer.

22 Other than boat slips ;and the sale of fuel, Lessee shall not sublease, assign, or transfer all
23 or any part of its interest on this Lease Agreement in or to the Premises or any portion thereof or
24 any improvement thereon without the express written approval of the Secretary.

25 Section 8. No Mining Permitted.

1 Lessee shall not be permitted to remove sand, coral, soil, or rock from the Premises for
2 the purpose of selling these material to any person.

3 Section 9. Compliance with the Law.

4 The Lessee shall not use the Premises for any purpose in violation of federal or
5 Commonwealth statute, or of any regulation or order of a governmental agency, as such statutes,
6 regulations, or orders now exist or any hereafter provide, concerning the use and safety of the
7 demised Premises.

8 Section 10. Indemnification.

9 Lessee shall, at all times prior to the termination of this lease and to the delivery to the
10 Secretary of possession of demised Premises and all improvements thereon, indemnify the
11 Secretary and the Commonwealth Government against all liability, loss, cost, damage, or expense
12 sustained by said parties, including attorney's fees and other expenses of litigation, arising prior to
13 the termination of the lease term and delivery to the Secretary of possession of the Premises:

14 (A) on account or through the use of the Premises or improvements of any part
15 thereof by Lessee or by any other person for any purpose inconsistent with the provisions
16 of this Lease.

17 (B) Arising out of, or directly or indirectly due to, any failure of Lessee in any
18 respect promptly and faithfully to satisfy his obligations under this Lease.

19 (C) Arising out of, or directly or indirectly due to, any accident or other
20 occurrence causing injury to any person or persons or property resulting from the use of
21 the Premises and improvements or any part thereof.

22 (D) For which the demise Premises and improvements or any part thereof or the Lessor
23 as owner thereof or interested therein may hereafter without fault by lessor become liable, and
24 especially, but not exclusively, any such liability, loss, cost, damage, or expense that may arise
25 under any statute or regulation. No such indemnification shall be required with respect to losses

1 or liabilities arising by reason of the affirmative negligence of the Secretary or Commonwealth
2 Government.

3 Section 11. Insurance

4 Lessee shall, from the effective date of this Lease Agreement , carry fire and damage
5 insurance with extended coverage endorsements, jointly in the names of the Lessee and the
6 Commonwealth Government covering the full insurable value of all permanent improvements on
7 the Premises, subject to appropriate co-insurance provisions. The Policy shall contain a clause
8 requiring that the Secretary be given thirty (30) days notice prior to any cancellation or
9 termination of the policy. A copy of such policy or policies or an acceptable certificate shall be
10 deposited with the Secretary within thirty (30) days of the same obtained by the Lessee. Lessee
11 agrees that if such insurance policies are not kept in force the Secretary may procure the necessary
12 insurance, pay the premium and such premium will be repaid by Lessee upon demand of the
13 Secretary. In the event of damage to any permanent improvement on the Premises, Lessee shall
14 reconstruct such improvement in compliance with applicable laws, ordinances, and regulations
15 and in accordance with the applicable provisions of this lease. Such reconstruction shall
16 commence within three (3) months after the damage occurs and shall be pursued diligently and
17 completed within one (1) year of the occurrence. In the event of damage to the extent of
18 seventy-five percent (75%) or more of the total value of all permanent improvements on the
19 Premises, Lessee for sixty (60) days shall have the option to agree to reconstruct the damaged
20 improvement(s). Should Lessee fail to notify the Secretary in writing of the exercise of its option
21 to reconstruct within sixty (60) of the occurrence of damage the Premises shall be cleared at
22 Lessee's expense. In the event Lessee shall elect not to rebuild damage improvements, all
23 insurance proceeds accruing as a result of the fire or damage, shall be for the sole benefit of and
24 made payable to the Treasury.

25 Section 12. Covenant Against Waste

1 Lessee shall not commit waste or the demised Premises Nor shall Lessee permit waste of
2 the Premises, except to the extent caused by natural causes or force majeure.

3 Section 13. Storage Of Fuel On Marina

4 Before commencing operation of the marina, Lessee shall submit emergency contingent
5 plans to the Secretary and the National Park Service for their approval. The plans shall include
6 procedures for cleaning up oil and gas spills, and for cleaning up raw sewage spills. The plan
7 shall also describe procedures for protecting and mitigating potential environmental damage
8 caused by typhoons and other acts of God. No fuel or lubricant shall be stored on any part of or
9 all of the pier. In order to fuel at the marina, a grounding line must be connected first to the
10 vessel, and then to the shore ground. In the event of an oil spill, all costs of the clean-up
11 shall be paid by the Lessee.

12 Section 14. Dumping Of Refuse

13 No rubbish, swill, garbage, or refuse of any kind shall be thrown in the water, washed
14 overboard or placed on the pier or at any location within the Premises. No garbage on board any
15 vessel shall be dumped into the ocean with the territorial waters of the Commonwealth. Lessee
16 shall place signs informing the premises' patrons that it is illegal to dump rubbish, swill, garage,
17 refuse, or sewage into territorial waters.

18 Lessee will collect all garbage, and trash within the Premises. Lessee shall provide
19 pumpout facilities for vessel holding tanks. All costs associated with those facilities, including
20 clean-up, in the event of oil spill or leak shall be exclusively borne by the Lessee. Lessee shall
21 notify the division of Environmental Quality in the event of the discovery of any spill slick,
22 sewage, or garbage found in the Premises.

23 Section 15. Covenant Against Maintenance Of A Nuisance

24 Lessee shall not, during the term hereof, maintain, commit, or permit the maintenance or
25 commission of any nuisance on the demised Premises.

26 Section 16. Inspection of Premises

1 The Secretary shall have free access to the demised Premises, including any structure that
2 may at any time be thereon, at all reasonable times for the purpose of examining or inspecting the
3 conditions thereof in order to exercise any right or power reserved to the Secretary under the
4 terms and provisions of this lease.

5 Section 17. Public Access

6 Lessee shall provide public access over the Premises for the public use and enjoyment of
7 the shoreline at its own expense and risk. Lessee may, with the approval of the Secretary,
8 restrict access to finger piers within the marina .

9 Section 18. Condemnation

10 The Secretary and Lessee covenant and agree that in the event the whole Premises hereby
11 leased shall be taken in condemnation proceedings or by any right of eminent domain, or
12 otherwise, for other public purposes, then and on the happening or any such event, the Secretary
13 or Lessee, may terminate this lease and the term hereby granted and all the rights of the Lessee
14 hereunder, and the rent shall be paid up to the date of such condemnation or termination of any
15 unearned rent paid in advance by the Lessee shall be refunded prorata. In the event any portion of
16 the property hereby leased is condemned or taken by right of eminent domain or otherwise for
17 other public purposes, in the Lessee's sole opinion, thereby rendering the leased property
18 unsuitable for the purposes of Lessee as stated in Section 2 above, then and on the happening of
19 such event Lessee may terminate this lease and the term hereby granted and all the rights of the
20 Lessee hereinunder and the rent shall be paid up to the date of such termination or condemnation
21 and any unearned rent paid in advance by the Lessee shall be refunded prorata. If Lessee does not
22 terminate this lease upon such an event, then the rental shall be reduced in proportion of the land
23 taken as such bears to the total area of the land leased.

24 Section 19. Abandonment Of Premises

25 Should the Lessee fail to make any use of the premises for the purposes set forth in this
26 agreement for a consecutive Period of one hundred and eighty (180) days without securing the

1 written consent or the Secretary, the Lessee shall be deemed to have abandoned the Premises.
2 The Secretary may not withhold his consent except for good cause. But if abandonment does
3 occur this Lease Agreement may, at the option of the Secretary, be terminated pursuant to the
4 provisions of Section 24 hereof.

5 Section 20. Bankruptcy

6 If Lessee shall at any time during the term of this Lease Agreement become insolvent, or
7 if proceedings in bankruptcy shall be instituted by or against the Lessee, or if the Lessee shall
8 make an assignment for the benefit of creditors, or if any execution or attachment shall issue
9 against the Lessee, whereupon the said demised Premises shall be taken or attempted to be taken,
10 or if a receiver or trustee shall be appointed for the Lessee's property, then and in each said case,
11 the Secretary may terminate this Lease Agreement pursuant to Section 24 hereof.

12 Section 21. Default.

13 Time is of the essence and Lessee shall automatically be in default of this lease if:

14 (A.) Lessee shall fail to pay any installment or rent hereby reserved and
15 such failure shall continue for thirty (30) days from and after the date written notice
16 specifying such failure is received by the Lessee.

17 (B.) Lessee shall breach any term, provision, or covenant of this lease, or
18 the National Park Service Memorandum of Understanding (MOU) other than the
19 payment of rent, taxes, or other charges, and fails to commence the removal or curing of
20 such breach within thirty (30) days from and after the date written notice specifying each
21 failure is received by Lessee.

22 (C.) Lessee shall become insolvent or adjudicated bankrupt.

23 (D.) Lessee abandons the Premises as provided in Section 19.

24 Section 22. Remedies.

25 Upon the occurrence of any event of default specified in Section 21, the Secretary may
26 terminate this lease and may, upon fifteen (15) days' written notice, enter in, into and upon

1 Premises and take possession of all improvements, and evict Lessee without liability of trespass.

2 The remedies herein shall not prejudice the Secretary's other rights and remedies at law or equity.

3 Section 23. Waiver of Breach.

4 Waiver by the Secretary of any breach of any term, covenant or condition herein
5 contained shall not be deemed to be a waiver of any subsequent breach of the same or any other
6 term, covenant or condition herein contained. The acceptance of rent by the Secretary shall not be
7 deemed to be a waiver of any by ;the terms or conditions including the remedies of the Secretary
8 hereof. No covenant herein shall be deemed to be waived by the Secretary unless such waiver be
9 in writing by the Secretary.

10 Section 24. Expense of Enforcement.

11 If action be brought by the Secretary for rent or any other sums of money due under this
12 Lease Agreement, or if any action be brought by either the Secretary or the Lessee to enforce
13 performance of any of the covenants and or conditions of this lease Agreement, the losing and
14 defaulting party shall pay a reasonable attorney's fee to be fixed by the Court as a part of the costs
15 in any such action.

16 Section 25. Covenant of Quiet Enjoyment

17 The Secretary covenants that the Lessee, upon paying of the rent required herein and
18 upon fulfilling all the conditions and agreements required of the Lessee, shall and may lawfully,
19 peacefully and quietly have, and hold, use, occupy, and enjoy the premises during the term agreed
20 upon without hindrance, eviction, ejection, molestation, or interruption whatsoever of or by the
21 Commonwealth, or by any other person lawful claiming by, from, under or against the
22 Commonwealth.

23 Section 26. "Hold Over" Clause

24 If the Lessee shall remain in possession after the expiration of the term of this Lease
25 Agreement or the extension thereof, the Lessee shall be the tenant on a month-to-month basis and

1 there shall be no automatic renewal of this Lease Agreement. The only manner of renewal shall
2 be provided for in 21 CMC, subsection 1223.

3 Section 27. Typhoon Condition II.

4 In the event that the Governor of the Commonwealth declares Typhoon Condition II for
5 the island of Saipan, the Lessee shall employ reasonable measures to protect the Premises from
6 the storm.

7 Section 28. Concealed Archaeological Resources.

8 If the Lessee encounters concealed archaeological resources on the leasehold Premises,
9 all necessary steps will be taken to protect them and notify the Historic Preservation Office
10 immediately. Thereafter no work will be permitted until clearance from the Historic Preservation
11 Office is obtained.

12 Section 29. Monitoring the Effects on Environment

13 On a date five (5) years after the commencement of the lease term, and every five (5)
14 years thereafter, the Lessor shall complete a study of current, sediment activity, wave pattern and
15 sand movement characteristics of the premises utilizing standard methodology with statistical
16 analysis of data and citations to relevant scientific literature. All costs of preparing such a study
17 shall be borne exclusively by the lessee.

18 Section 30. Public Auditor

19 This Lease Agreement is subject to Public Law No. 1-8, Chapter 6, Section 6. The
20 Lessee shall provide all information and reports, and allow audit, inspection, and access to its
21 books, records, and accounts relating to this Lease Agreement to the Public Auditor of the
22 Commonwealth of the Northern Mariana Islands Nothing in this Section shall be constructed so
23 as to authorize the Public Auditor to obtain information privileged by law.

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1 IN WITNESS WHEREOF, the parties have hereunto set their repective hands, the date and year first above
2 written.

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DEPARTMENT OF LANDS AND NATURAL RESOURCES

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MARINE REVITALIZATION CORPORATION

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APPROVED AS TO FORM AND LEGAL CAPACITY

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