

NINTH NOTHERN MARIANAS COMMONWEALTH LEGISLATURE

H. B. NO. 9-311, S. D. 1

THIRD REGULAR SESSION

AN ACT

To approve the submerged land lease agreement between the Marine Revitalization Corporation, Saipan, and the Commonwealth Government of the Northern Mariana Islands via the Department of Lands and Natural Resources pursuant to Public Law 6-13 as amended; and for other purposes.

BE IT ENACTED BY THE NINTH NORTHERN MARIANAS COMMWEALTH LEGISLATURE:

Section 1. Short Title. This Act shall be known as the “Marine Revitilization Corporation Submerged Land Lease Act of 1995.”

Section 2. Findings. The Legislature finds that under the provisions of the Submerged Land Act (Public Law 6-13, as amended), the Legislature has exclusive right to approve, disapprove, or modify the provisions of any development lease or water dependent use of submerged lands and that all leases shall be approved by law.

The Legislature finds that Public Law 6-13, as amended, requires the Secretary (hereafter, “Secretary”) of the Department of Lands and Natural Resources (hereafter, “DLNR”) to submit all leases, licenses, and permits for the use of Commonwealth Submeregded Lands to the Legislature for approval.

The Legislature further finds that the Notice of the Public Hearing has been widely publicized in accordance with the requirements of applicable law. Public hearing on this lease was held on November 29, 1994, and detailed testimony was submitted by affected governmental agencies. The public sentiment expressed in the hearing was generally in favor of the project with some modifications to the lease, and the Legislature has incorporated appropriate changes herein.

Section 3. Purpose. The purpose of this Act is to approve the Submerged Lands Lease Agreement (hereafter “The Lease”) executed between the Marine Revitalization Corporation, Saipan, and the Commonwealth Government of the Northern Mariana Islands via the Department of Lands and Natural Resources.

Section 4. Authority to Lease Submerged Lands and Provisions Therein. On behalf of the Commonwealth Government of the Northern Mariana Islands, the Secretary may execute a submerged lands lease agreement in substantially the form attached hereto and specifically containing the following provisions:

(a) Premises Leased:

Submerged lands in the Outer Cove of Smiling Cove, north and east of American Memorial Park, Saipan, Northern Mariana Islands:

Cadastral Plat - Outer Cove Marina (description)

<u>N 56, 141.890</u> E 51, 464.289	<u>N 55, 964.206</u> E 51, 541.099
N 77 07'05" E (23.380)	N 30 44'13" E (38.00)
S 12 52'55" E (167.657)	N 59 15'47" E (203.517)
N 12 52'55" W (167.657)	S 59 15'47" W (203, 517)
S 77 07'05" W (23.380)	S 30 44'13" E (38.00)
(3,920 sq. meters)	(7,734 sq. meters)
	<u>N 56, 119.471</u> E 51, 740.421
S 69 45'40" W (36.62)	S 69 45'40" W (16.00)
S 20 14'20" E (41.752)	S 20 14'20" E (13.195)
N 69 45'40" E (39.62)	S 52 04'52" E (100.967)
N 20 14'20" W (41.752)	S 37 55'08" W (10.00)
(1,624 square meters)	S 52 04'52" E (37.00)
	N 37 55'08" E (36.00)

N 52 04'52" W
(37.00)

S 37 55'08" W
(10.00)

N 52 04'62" W
(96.403)

N 20 14'20" W
(8.631)

The above-described property contains an area of 16, 394 square meters, more or less. The formal Cadastral Plat of such area is attached to The Lease as Exhibit A.

(b) Lessor : Commonwealth Government of the Northern Mariana Islands

(c) Lessee : Marine Revitalization Corporation
P.O. Box 1808, Saipan, MP 96950

(d) Conditions:

(1) The Secretary of Lands and Natural Resources or his designees shall have the right to make reasonable inspection of the designated submerged land area at any reasonable time in order to assess compliance with the Lease and applicable Rules, Regulations, and law.

(2) As required by Section 404 of the Public Law 3-91, the Lessee shall provide the Public Auditor and DNLR of the Commonwealth of the Northern Mariana Islands with access to, and the right to examine and copy, any records, data, or documents relevant to this lease until three (3) years have passed.

(3) The Lease is for a term of fifteen (15) years.

(4) Other conditions, as set forth in the Lease.

Section 5. Approval of Lease. The Lease, entitled, "Lease of Water Dependent Use of Submerged Lands," between Marine Revitalization Corporation, Saipan, and the Commonwealth Government of the Northern Mariana Islands is hereby approved in substantially the form attached hereto ("Submerged Lands Lease Agreement"). This approval is as to the Lease Agreement only, in compliance with 2 CMC § 1223, and does not relieve Mariana Revitalization Corporation, Saipan of any duties under provisions of other applicable law, federal or local, with respect to the subject matter.

Section 6. Execution of Lease. The Secretary of Lands and Natural Resources shall issue the approved lease within thirty (30) days following the effective date of this Act in accordance with 2 CMC § 1223 (P.L. 6-13).

Section 7. Severability. If any provision of this Act, or its application to any person or circumstances is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provisions, and to this end the provisions of this Act are severable.

Section 8. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way, modifying, any liability civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 9. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

CERTIFIED BY:

ATTESTED BY:

/s/ Diego T. Benavente
DIEGO T. BENAVENTE
Speaker
House of Representatives

/s/ Evelyn C. Fleming
EVELYN C. FLEMING
House Clerk

Approved this 24th day of July, 1995

/s/ Jesus C. Borja
~~FROILAN C. TENORIO~~ JESUS C. BORJA
Acting Governor
Commonwealth of the Northern Mariana Islands

SUBMERGED LANDS LEASE AGREEMENT

(Pursuant to P. L. 6-13)

This Submerged Lands Lease Agreement ("Lease") is made and entered into this _____ day of _____, 1995 on the island of Saipan, Commonwealth of the Northern Mariana Islands ("Commonwealth" or "CNMI"), by and between the Department of Lands and Natural Resources, its successors and assigns, Government of the Commonwealth, by and through its Secretary ("Secretary"), and Marine Revitalization Corporation, a non-profit Commonwealth corporation ("Lessee").

RECITALS

1. Lessee wishes to lease the Premises (as defined herein) in order to construct a seventy-six boat marina complex.
2. This marina development project will enhance Commonwealth tourism and business opportunities for local fishermen, create new water recreational facilities, and will not adversely affect the protection and preservation of Commonwealth 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 by 2 CMC § 1212.
3. The granting of this Lease will provide employment opportunities for citizens of the Commonwealth both in the construction of the facility and in its operation and maintenance once complete.
4. Accordingly the parties hereby agree as follows:

Section 1. Definitions. The following terms and definitions shall apply in this Lease:

- (a) "Commercial" means used directly for revenue or profit or to produce revenue.
- (b) "fastlands" means improved land controlled by the Federal Government.
- (c) "NPS" means the National Park Service of the United States Department of the Interior.
- (d) "Net Earnings" means any and all revenues collected from the boat slip rental fees, sales of fuel, business concessions, recreational facilities and any and all other revenues generated from the operation of Outer Cove Marina after deducting all ordinary operation and maintenance expenses including salaries, wages, utilities, loan payments, and the cost of an environmental impact study conducted pursuant to Section 29 of this Lease, ordinary federally mandated concession fees under the concession agreement executed between Lessee and NPS, and all other ordinary expenditures pertaining to the operation and maintenance of Outer Cove Marina.
- (e) "Outer Cove Marina" means the marina and accompanying facilities which Lessee proposes to develop on the Premises.
- (f) "Premises" means the following submerged lands in the Outer Cove of Smiling Cove, north and east of the American Memorial Park, Saipan, CNMI:

Cadastral Plat — Outer Cover Marina (descriptions)

N 56,141.890
E 51, 464.289

N55,964.206
E 51,541. 099

N 77 07' 05"
(23.380)

E N 30 44' 13"
(38.00)

S 12 52' 55" E
(167. 657)

N 59 15' 47" E
(204. 517)

N 12 52 55" W
(167.657)

S 59 15' 47" W
(203.517)

S 77 07' 05" W
(23.380)
(3,920 sq. meters)

S 30 44' 13" E
(38.00)
(7,734 sq meters)

N 55,119.471

E 51,740. 421

S 69 45' 40" W
(36.62)

S 69 45' 40"
(16.00)

S 20 14' 20" E
(41.752)

S 20 14' 20" E
(13.195)

N 69 45' 40" S

52 04' 52" E

N 20 14' 20" W
(41.752)

S 37 55' 08" W
(10.00)

(1,624 sq. meters)

S 52 04' 52" E
(37.00)

N 37 55' 08" E
(36.00)

N 52 04' 52" W
(37.00)

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 approximately 16,394 square meters.

Section 2. Grant of Premises.

The Secretary hereby leases the Premises to Lessee subject to all the terms and conditions contained in this Lease.

(a) Slip rental fees in Outer Cove Marina shall be set by the Lessee with approval of the Secretary. Thirty (30) days written notice shall be given to the Secretary before the proposed effective date of any proposed changes therein. Such changes shall automatically be deemed approved unless the Secretary shall notify the Lessee to the contrary within such thirty (30) day period. Once set and approved, initial slip rental fees shall be published at least twice in the succeeding thirty (30) days in at least two Commonwealth newspapers and any subsequent changes shall also be so published.

(b) The Secretary covenants to vigorously enforce the rules and regulations of the local and federal agencies that prohibit bunkering and fueling of boats at Outer Cove Marina and in the waters of the Commonwealth, including at approved and designated Outer Cove Marina fueling facilities.

(c) The Secretary covenants to establish a policy for the existing Smiling Cove Marina barring owners of commercial passenger and commercial fishing boats from renting slips in Smiling Cove Marina.

(d) The Lessee, in consultation with the Secretary and NPS, and in accordance with applicable laws, rules and regulations, shall establish overall rules governing the operation of the Premises and Outer Cove Marina within one hundred eighty (180) days after the execution of this Lease. Once established, such rules may be modified by the Lessee in consultation with the Secretary and NPS.

Section 3. Purpose

The Premises shall be used for the construction, operation and maintenance of Outer Cove Marina by Lessee, including but not limited to a pier or dock, the placement of fill and shoreline protection at the boundary of the fastland and the submerged land and the docking of vessels at said facility. The Outer Cove Marina shall be a harbor facility primarily for Commercial vessels. Vessels owners engaged in the Commercial carriage of passengers or cargo and or commercial fishing in and about the waters of the Commonwealth and all owners of private boats larger than thirty-nine feet (39) may rent slips on the Premises. Owners of other vessels may rent slips for private, personal, non-Commercial use on a space available basis; provided that no slip space exists at Smiling Cove Marina.

Section 4. Term

The term of this Lease shall be for fifteen (15) years with option to renew unless sooner terminated pursuant to applicable provisions of this Lease. The terms and conditions of the renewal will be negotiated at that time. The Lease term shall begin three (3) months from the date of the approval of the Legislature. After the termination of the Lease, Lessee agrees to turn over to the Secretary title to all improvements on the Premises.

Section 5. Rental

(a) Rental Calculation. Commencing on the first anniversary of the effective date of this Lease, Lessee shall pay annually of seventy-five percent (75%) of Lessee's Net Earnings in such year as rent under this Lease. Such amount shall be paid to the Treasury of the Commonwealth of the Northern Mariana Islands, hereinafter the "Treasury". The remaining twenty-five percent (25%) of such Net Earnings shall be deposited in a trust fund ("Fund") for the purposes of future development of Outer Cove Marina and its immediately surrounding shoreline, for extraordinary maintenance projects required outside the ordinary scope of business and to the extent feasible thereafter for the enhancement and improvement of the immediate fastland of the American Memorial Park, and facilities that pertains to the operation of Outer Cove Marina. Lessee may request and direct disbursements from the Fund for the purposes stated above upon consultation and written approval of the Secretary and NPS. After termination of the Lease, any remaining balance in the Fund shall remain in the Fund to be used by the CNMI for the same purposes available to Lessee.

(b) Construction. Lessee covenant to construct the Outer Cove Marina within one (1) year of the granting of the Lease and the receipt of the necessary government permits for development of the Premises. Lessee shall make good-faith efforts to obtain all necessary permits in a timely manner.

(c) Excused Delay of Performance. Whenever under this Lease a time is stated within which or by which original construction, repairs, reconstruction, or other performance by the Lessee shall be commenced or completed, and a failure or delay in such performance is due in whole or in part to accident, breakdown of machinery or facilities, strike, lockout, combination of workmen, war, insurrection, riot, act of God, or the public enemy, or any contingency or delay or failure or cause of any nature beyond the reasonable control of either party whether or not any such contingency is presently occurring or occurs in the future, and such failure, or delay does not result from the fault or negligence of the Lessee, the period of delay so caused shall be added to the period allowed herein for the completion of such work provided, however, that Lessee shall notify the Secretary in writing within thirty (30) days after the occurrence of any of the above events and the extent of delay shall be mutually agreed.

Section 6. Permanent Improvements

All improvements on the Premises, except removable personal property, vessels, and equipment shall remain on the Premises after the termination of the Lease and shall become the property of the CNMI Government, unless agreed to otherwise in writing by the Secretary. The term "removable personal property" as used in this Section shall not include property which has been attached or affixed to the improvements in such a way that it would become part of the improvements, regardless of whether such property is in fact so placed in or on or affixed or attached to the improvements in such a way as to legally retain the characteristics of personal property.

Section 7. Improvements; Condition of Premises.

All improvements placed on the Premises shall be constructed in good, workmanlike manner and in compliance with applicable local and federal laws, regulations, and ordinances. All improvements on the Premises exposed to public view shall present a pleasant appearance. The Lessee shall, at all times, during the term of the Lease and at the Lessee's sole cost and expense,

maintain the Premises and all improvements thereon in good order and repair and in a neat, sanitary and attractive condition.

Section 8. Sublease, Assignment, Transfer.

Other than to the extent necessary in connection with the rental of individual boat slips to vessel owners, Lessee shall not sublease, assign, or transfer all or any part of its interest in this Lease or the Premises or any portion thereof or any improvement thereon without the express written approval of the Secretary. In addition, all rental/sublease agreements used by Lessee in connection with rental of boat slips shall expressly prohibit further subleases, transfers or assigns and shall require that all slips rented shall be for the actual use of the renter/vessel owner.

Section 9. No Mining/Non-conforming Use of the Premises.

Lessee shall not remove sand, coral, soil, or rock from the Premises for the purpose of selling these materials to any person or for any purpose other than accomplishment of the development, maintenance and improvement of Outer Cove Marina contemplated by this Lease.

Section 10. Compliance with the Law.

The Lessee shall not use the Premises for any purpose in violation of any present or future federal or Commonwealth statute, rule, regulation or order of a governmental agency, as such statutes, regulations, or administrative order concerning the use and safety of the Premises.

Section 11. Indemnification.

Lessee shall, as to any events that occur on or respecting the Premises during Lessee's term of possession of the Premises, indemnify the Secretary and the Commonwealth Government against all liability, loss, cost, damage, or expense sustained by said parties, including attorney's fees and other expenses of litigation.

Section 12. Insurance.

Lessee shall, from the effective date of this Lease, carry fire and damage insurance with extended coverage endorsements, jointly in the names of the Lessee and the Commonwealth Government covering the full insurable value of all permanent improvements on the Premises, subject to appropriate co-insurance provisions. The Policy shall contain a clause requiring that the Secretary be given thirty (30) days notice prior to any cancellation or termination of the policy. A copy of such policy or policies or an acceptable certificate shall be deposited with the Secretary within ninety (90) days of the effective date of this Lease. Lessee agrees that if such insurance policies are not kept in force the Secretary may procure the necessary insurance, pay the premium and such premium will be repaid by Lessee upon demand of the Secretary. In the event of damage to any permanent improvement on the Premises, Lessee shall reconstruct such improvement in compliance with applicable laws, ordinances, and regulations and in accordance with the applicable provisions of this Lease. Such reconstruction shall commence within three (3) months after the damage occurs and shall be pursued diligently and completed within one (1) year of the occurrence. In the event of contemporaneous damage to the extent of seventy-five percent (75%) or more of the total value of all permanent improvements on the Premises, Lessee for sixty (60) days shall have the option to agree to reconstruct the damaged improvement(s). Should Lessee fail to notify the Secretary in writing of the exercise of its option to reconstruct within sixty (60) days of the occurrence of damage, Lessee

shall be deemed to have decided not to reconstruct the Premises, the Lease shall terminate, Lessee shall deliver possession of the Premises and any remaining improvements thereon to the Secretary, and all insurance proceeds accruing as a result of the fire or damage, shall be for the sole benefit of and made payable to the Treasury.

Section 13. Covenant Against Waste

Lessee shall neither commit nor permit waste on the Premises except to the extent caused by natural causes or force majeure.

Section 14. Storage Of Fuel On Marina.

No fuel or lubricant shall be stored on any part of or all of the pier. In order to fuel at Outer Cove Marina, a grounding line must be connected first to the vessel, and then to the shore ground.

Section 15. Emergency Response Plans.

Before commencing operation of Outer Cove Marina, Lessee shall submit emergency contingency plans to the Secretary and the National Park Service for their approval. The plans shall include procedures for cleaning up oil, gas and raw sewage spills as well as procedures for protecting and mitigating potential environmental damage caused by typhoons and other natural causes. In the event of an oil, gas or sewage spill, all costs of the clean-up shall be paid by the Lessee.

Section 16. Refuse Control.

No rubbish, swill, garbage, or refuse of any kind shall be thrown in the water, washed overboard or placed on the pier or at any location within the Premises. No garbage on board any vessel shall be dumped into the ocean with the territorial waters of the Commonwealth. Lessee shall include a term to this effect in all contracts with vessel owners and others using Outer Cove Marina and shall place signs informing the Premises' patrons that it is illegal to dump rubbish, swill, garbage, refuse, or sewage into territorial waters. The Secretary covenants to vigorously enforce the rules and regulations of the local and federal agencies that concern such activities at Outer Cove Marina

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

Section 17. Covenant Against Maintenance of a Nuisance

Lessee shall not, during the term hereof, maintain, commit, or permit any nuisance on the Premises.

Section 18. Inspection of Premises

The Secretary shall have free access to the Premises, including improvements thereon, at all reasonable times for the purpose of examining or inspecting the conditions thereof.

Section 19. Public Access

Lessee shall provide public access over the Premises for the public use and enjoyment of the shoreline. Lessee may, with the approval of the Secretary, restrict access to finger piers offices,

storage facilities and other similar areas within Outer Cove Marina.

Section 20. Condemnation

The Secretary and Lessee covenant and agree that in the event the whole Premises shall be taken in condemnation proceedings or by any right of eminent domain, or otherwise, then and on the happening or any such event, the Secretary or Lessee, may terminate this Lease and the term hereby granted and all the rights of the Lessee hereunder, and the rent shall be paid up to the date of such condemnation or termination and any unearned rent paid in advance by the Lessee shall be refunded pro rata. In the event any portion of the Premises is condemned or taken by right of eminent domain or otherwise for other public purposes, in the Lessee's sole opinion, thereby rendering the leased property unsuitable for the purposes of Lessee as stated in Section 2 above, then and on the happening of such event Lessee may terminate this Lease and the term hereby granted and all the rights of the Lessee hereunder and the rent shall be paid up to the date of such termination or condemnation and any unearned rent paid in advance by the Lessee shall be refunded pro rata.

Section 21. Default.

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

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

(b) Lessee shall breach any term, provision, or covenant of this Lease, or any related agreement with the National Park Service other than the payment of rent, taxes, or other charges thereunder, and fails to remove or cure such breach within thirty (30) days from and after the date written notice specifying each failure is received by Lessee.

(c) Lessee shall at any time during the term of this Lease become insolvent, or if proceedings in bankruptcy shall be instituted by or against the Lessee, or if the Lessee shall make an assignment for the benefit of creditors, or if any execution or attachment shall issue against the Lessee, whereupon the said Premises shall be taken or attempted to be taken, or if a receiver or trustee shall be appointed for the Lessee's property.

(d) Lessee fails to make use of the Premises for any of the purposes set forth in this Lease for a consecutive period of one hundred and eighty (180) days without securing the written consent of the Secretary, which consent shall not be withheld except for good cause.

(e) Lessee fails to meet the construction requirement in Section 5(c) of this Lease.

Section 22. Remedies Upon Default.

Upon the occurrence of any event of default specified in Section 21, the Secretary may terminate this Lease and may, upon fifteen (15) days' written notice, with an opportunity to cure and upon failure to cure during such period may enter in, into and upon the Premises and take possession of all improvements thereon, and evict Lessee without liability of trespass. The remedies herein shall not prejudice the Secretary's other rights and remedies at law or equity.

Section 23. Waiver of Breach.

Waiver by the Secretary of any breach of any term, covenant or condition herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition. The acceptance of rent by the Secretary shall not be deemed to be a waiver of any term, covenant or condition. Covenant herein may only be waived in writing by the Secretary. Any

requirement of a writing herein may only be waived in writing or changed by written amendment hereto.

Section 24. Arbitration.

In the event of a disagreement or dispute between the parties with regard to any claim of breach under this Lease, the matter shall be submitted to binding arbitration at the request of either party and the parties shall employ the following rules and procedures in such arbitration:

(a) Rules of Arbitration. Except as otherwise provided in this Section, the arbitration shall be conducted pursuant to the rules of the American Arbitration Association.

(b) Appointment of Arbitrators. Each party shall designate and appoint one arbitrator and those two arbitrators shall appoint a third arbitrator, The panel of three arbitrators so selected shall consider and determine the matter in dispute.

(c) Submission of the Matter in Dispute. The nature of the dispute and the views of the parties on the matter in dispute shall be submitted to the arbitrators in writing within thirty (30) days of the appointment of the third arbitrator.

(d) Decision of the Arbitrators. The decision of the arbitrators shall be given, in writing, to both parties within thirty (30) days after the matter is submitted.

(e) Arbitrators' Decision Final and Enforceable. The decision of the arbitrators shall be final and binding on the parties. It shall be enforceable by either party in the Commonwealth courts

Section 25. Expense of Enforcement.

If any action be brought by either the Secretary or the Lessee to enforce performance of any of the terms, covenants or conditions of this Lease, the prevailing party shall be entitled to its reasonable attorney's fee to be fixed by the Court as a part of the costs in any such action.

Section 26. Covenant of Quiet Enjoyment

The Secretary covenants that the Lessee, upon paying of the rent required herein and upon fulfilling all the terms, conditions and covenants required of the Lessee, shall and may lawfully, peacefully and quietly have, and hold, use, occupy, and enjoy the Premises during the term agreed upon without hindrance, eviction, ejection, molestation, or interruption whatsoever of or by the Commonwealth, or by any other person lawfully claiming by, from, or under the Commonwealth. The Secretary covenants to vigorously defend the Commonwealth's title to the Premises from anyone claiming against the Commonwealth.

Section 27. "Hold Over" Clause

If the Lessee shall remain in possession after the termination of this Lease, including any extension thereof, the Lessee shall be deemed a tenant on a month-to-month basis and there shall be no automatic renewal of this Lease. The only manner of renewal shall be as provided by applicable law.

Section 28. Typhoon Condition I or II.

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

Section 29. Concealed Archaeological Resources.

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

Section 30. Monitoring the Effects on Environment

By the fifth anniversary of the effective date of the Lease, and every five (5) years thereafter, the Secretary shall complete a study of current, sediment activity, wave pattern and sand movement characteristics of the Premises utilizing standard methodology with statistical analysis of data and citations to relevant scientific literature and Lessee shall consult with the Secretary on how erosion and other environmental issues discovered in such study may be addressed. All costs of preparing such a study shall be borne exclusively by the lessee. Prior to commencing improvements on the Premises, Lessee shall consult with the Secretary concerning reasonable measures which may be taken to counteract and prevent erosion.

Section 31. Public Auditor

This Lease is subject to Public Law No. 1-8, Chapter 6, Section 6. The Lessee shall provide all information and reports, and allow audit, inspection, and access to its books, records, and accounts relating to this Lease to the Commonwealth Public Auditor. Nothing in this Section shall be construed so as to authorize the Public Auditor to obtain information privileged by law.

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

DEPARTMENT OF LANDS AND NATURAL RESOURCES

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MARINE REVITALIZATION CORPORATION

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APROVED AS TO FORM AND LEGAL CAPACITY

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