



## COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Eloy S. Inos**  
Governor

**Jude U. Hofschneider**  
Lieutenant Governor

14 NOV 2014

Honorable Joseph P. Deleon Guerrero  
Speaker, House of Representatives  
Eighteenth Northern Marianas  
Commonwealth Legislature  
Saipan, MP 96950

Honorable Ralph DLG. Torres  
Senate President, The Senate  
Eighteenth Northern Marianas  
Commonwealth Legislature  
Saipan, MP 96950

Dear Mr. Speaker and Mr. President:

This is to inform you that I have signed into law House Bill No. 18-198, HS1, entitled, "To approve the submerged land lease agreement between Sea Touch, Saipan and the Commonwealth of the Northern Mariana Islands Government via the Department of Lands and Natural Resources pursuant to the Submerged Lands Act, (2 CMC Section 1201 et.seq.)" which was passed by the House of Representatives and the Senate of the Eighteenth Northern Marianas Commonwealth Legislature.

This bill becomes **Public Law No. 18-68**. Copies bearing my signature are forwarded for your reference.

Sincerely,

  
**ELOY S. INOS**

cc: Lt. Governor; Lt. Governor's Legal Counsel; Attorney General's Office; Department of Lands & Natural Resources; Bureau of Environmental and Coastal Quality; Public Auditor; Special Assistant for Administration; Special Assistant for Programs and Legislative Review



# House of Representatives

18<sup>th</sup> NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

P.O. BOX 500586  
SAIPAN, MP 96950

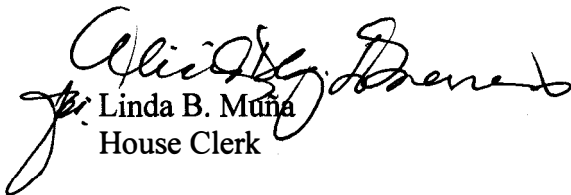
October 29, 2014

The Honorable Eloy S. Inos  
Governor  
Commonwealth of the Northern  
Mariana Islands  
Capitol Hill  
Saipan, MP 96950

Dear Governor Inos:

I have the honor of transmitting herewith for your action **H. B. No. 18-198, HS1**, entitled: "*To approve the submerged land lease agreement between Sea Touch, Saipan and the Commonwealth of the Northern Mariana Islands Government via the Department of Lands and Natural Resources pursuant to the Submerged Lands Act, (2 CMC Section 1201 et.seq.)*", which was passed by the House of Representatives and the Senate of the Eighteenth Northern Marianas Commonwealth Legislature.

Sincerely yours,

  
Linda B. Muña  
House Clerk

Enclosure



*Eighteenth Legislature*  
*of the*  
*Commonwealth of the Northern Mariana Islands*  
**IN THE HOUSE OF REPRESENTATIVES**

**Third Special Session**

**July 8, 2014**

Representative Joseph P. Deleon Guerrero, of Saipan, Precinct 1 (*for himself*), in an open and public meeting with an opportunity for the public to comment, introduced the following Bill:

**H. B. No. 18-198, HS1**

**AN ACT**

**TO APPROVE THE SUBMERGED LAND LEASE AGREEMENT  
BETWEEN SEA TOUCH, SAIPAN AND THE COMMONWEALTH  
OF THE NORTHERN MARIANA ISLANDS GOVERNMENT VIA  
THE DEPARTMENT OF LANDS AND NATURAL RESOURCES  
PURSUANT TO THE SUBMERGED LANDS ACT, (2 CMC  
SECTION 1201 ET SEQ.).**

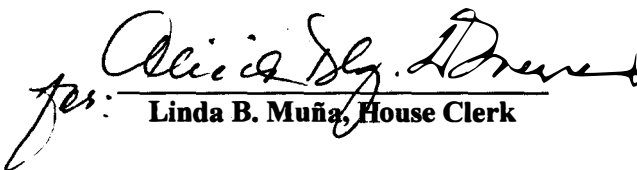
The Bill was referred to the House Committee on Natural Resources, the bill was withdrawn from Committee and placed on the Bill Calendar.

**THE BILL WAS PASSED BY THE HOUSE OF REPRESENTATIVES ON  
FIRST AND FINAL READING, OCTOBER 3, 2014;**  
*with amendments* in the form of H. B. 18-198, HS1 and transmitted to the  
**THE SENATE.**

The Bill was referred to the Senate Committee on Committee on Resources, Economic, Development and Programs.

**THE BILL WAS PASSED BY THE SENATE ON FIRST AND FINAL READING, OCTOBER 24, 2014;**  
*without amendments* and returned to  
**THE HOUSE OF REPRESENTATIVES.**

**THE BILL WAS FINALLY PASSED ON OCTOBER 3, 2014.**

*for:*   
Linda B. Muña, House Clerk



*Eighteenth Legislature*  
*of the*  
*Commonwealth of the Northern Mariana Islands*  
**IN THE HOUSE OF REPRESENTATIVES**

FOURTH DAY, FOURTH REGULAR SESSION

OCTOBER 3, 2014

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**H. B. 18-198, HS1**

AN ACT

**TO APPROVE THE SUBMERGED LAND LEASE AGREEMENT BETWEEN SEA TOUCH, SAIPAN AND THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS GOVERNMENT VIA THE DEPARTMENT OF LANDS AND NATURAL RESOURCES PURSUANT TO THE SUBMERGED LANDS ACT, (2 CMC SECTION 1201 ET SEQ.).**

**Be it enacted by the Eighteenth Northern Marianas Commonwealth Legislature:**

1     **Section 1. Short Title.** This Act shall be known as the “Sea Touch, Saipan Submerged Land  
2     Lease Act of 2014.”

3             **Section 2. Findings.** The Legislature finds that under the provisions of the  
4     Submerged Land Act (2 CMC sections 1201 et seq.), the Legislature has exclusive right to  
5     approve, disapprove, or modify the provisions of any development lease or water dependent  
6     use of submerged lands and that all leases shall be approved by law. The Legislature finds  
7     that the Submerged Land Act requires the Secretary of the Department of Lands and Natural  
8     Resources (hereafter, “Secretary”) to submit all leases, licenses, and permits for the use of  
9     Commonwealth Submerged Lands to the Legislature for approval.

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**HOUSE BILL 18-198, HS1**

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1           The Legislature further finds that the Notice of the Public Hearing has been widely  
2 publicized in accordance with the requirements of applicable law. Public hearing on this  
3 lease was held on May 6, 2014 pursuant to NMIAC § 145-60-101 (b) (4), and detailed  
4 testimony was submitted by affected governmental agencies. The public sentiment expressed  
5 in the hearing was generally in favor of the project and the Legislature has determined that no  
6 substantive changes were needed to the Lease agreement that is incorporated by reference  
7 herein as Exhibit A. The only changes made to the lease by the Legislature were the revised  
8 calculations to reflect an accurate total in square meters of the land being leased (from 4,575  
9 to 1,481 square meters) and a change in the coordinates from four geocoordinates to eight  
10 CNMI local grid coordinates which are reflected in Exhibit D. Neither the change to the  
11 square meters nor the coordinates added or subtracted from the actual land that the parties  
12 negotiated and agreed to lease.

13           **Section 3. Purpose.** The purpose of this Act is to approve the Submerged Lands  
14 Lease Agreement (hereafter "The Lease") executed between the Sea Touch, Saipan, and the  
15 Commonwealth Government of the Northern Mariana Islands via the Department of Lands  
16 and Natural Resources which is incorporated herein and attached as Exhibit A.

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

**HOUSE BILL 18-198, HS1**

1           (a) Premises Leased: The markings of the proposed lease area is contained  
2 within the eight (8) corners of the following CNMI Local Grid coordinates as set forth  
3 in Exhibit D which is incorporated herein:

4           (1) North 55327.4854 East 50568.5398

5           (2) North 55289.6662 East 50564.9327

6           (3) North 55289.8077 East 50528.4530

7           (4) North 55329.4854 East 50532.0601

8           (5) North 55329.3132 East 50532.2351

9           (6) North 55329.1717 East 50568.7309

10          (7) North 55329.0889 East 50590.0667

11          (8) North 55327.2220 East 50590.0667

12           The above-described property contains an area of 1,481 (1,375.0+39.0+67.0)  
13 square meters, more or less as set forth in Exhibit C which is hereby incorporated by  
14 reference as if set forth in full herein. It consists of two areas:

15           “**Area 1:** The submerged lands adjacent to the Fiesta Hotel in Garapan  
16 located in the coordinates set forth in Exhibit D and depicted in Exhibit C as  
17 “Sea Touch Submerge Area”; and

18           “**Area 2:** The submerged lands adjacent to the Fiesta Hotel in Garapan  
19 to be used for the floating pathway at the coordinates set forth in Exhibit B1  
20 and depicted in Exhibit B2 as “Pathway Area and Pathway Area 1,”  
21 respectively.

HOUSE BILL 18-198, HS1

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(b) Lessor : Commonwealth Government of the Northern Mariana Islands Department of Lands and Natural Resources

(c) Lessee : Sea Touch, Saipan

Atten. Mark S. Baldyga,

1199 San Vitores, Guam, 96911

(d) Conditions:

(1) The Secretary of Lands and Natural Resources or his designee 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 for three (3) years following the effective date of the Lease.

(3) The Lease is for a term of five (5) years subject to the provisions of the Lease Agreement (Section II. Paragraph 2.1 (A) and the terms of renewal set forth on Section II. Paragraph 2.1 (B).

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

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**HOUSE BILL 18-198, HS1**

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1           **Section 5. Approval of Lease.** The Lease, entitled, "Lease of Water Dependent Use  
2 of Submerged Lands," between Sea Touch, Saipan, and the Commonwealth Government of  
3 the Northern Mariana Islands is hereby approved in substantially the form attached hereto  
4 ("Submerged Lands Lease Agreement"). This approval is as to the Lease Agreement only, in  
5 compliance with 2 CMC §§ 1201-1231, and does not relieve Sea Touch, Saipan of any duties  
6 under provisions of other applicable law, federal or local, with respect to the subject matter.

7           **Section 6. Execution of Lease.** The Secretary of the Department of Lands and  
8 Natural Resources shall issue the approved lease within thirty (30) days following the  
9 effective date of this Act in accordance with the Submerged Lands Act, 2 CMC § 1201 et  
10 seq.

11           **Section 7. Severability.** If any provisions of this Act or the application of any such  
12 provision to any person or circumstance should be held invalid by a court of competent  
13 jurisdiction, the remainder of this Act or the application of its provisions to persons or  
14 circumstances other than those to which it is held invalid shall not be affected thereby.

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



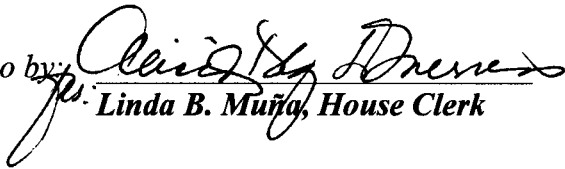
**HOUSE BILL 18-198, HS1**

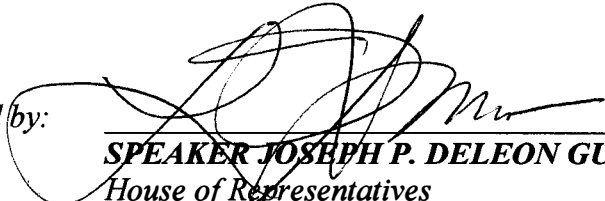
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**Section 9. Effective Date.** This Act shall take effect upon its approval by the

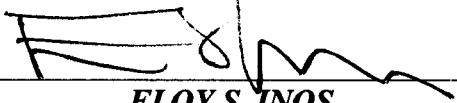
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Governor, or its becoming law without such approval.

Attested to by:   
**Linda B. Muña, House Clerk**

Certified by:   
**SPEAKER JOSEPH P. DELEON GUERRERO**  
House of Representatives  
18<sup>th</sup> Northern Marianas Commonwealth Legislature

**APPROVED** this 14<sup>th</sup> day of November, 2014

  
**ELOY S. INOS**  
Governor  
Commonwealth of the Northern Mariana Islands



**Commonwealth of the Northern Mariana Islands**

**Department of Lands and Natural Resources**

Lower Base, P.O. Box 10007  
Saipan, MP 96950  
Tel: 670-322-9830/34 Fax: 670-322-2633

June 30, 2014

Honorable Ralph DLG. Torres  
Senate President  
18<sup>th</sup> Northern Marianas  
Commonwealth Legislature  
Capitol Hill  
Saipan, MP 96950

Honorable Joseph P. Deleon Guerrero  
Speaker, House of Representatives  
18<sup>th</sup> Northern Marianas  
Commonwealth Legislature  
Capitol Hill  
Saipan, MP 96950

Dear Senate President Torres and Speaker Deleon Guerrero:

I am respectfully submitting for your review and approval the terms and conditions of the submerged land lease agreement for Sea Touch Saipan.

Pursuant to 2 CMC § 2653(k), DLNR has the statutory authority to manage and dispose of submerged lands in the CNMI. Furthermore, the power to lease Commonwealth-owned submerged lands is vested in the Department, which has the authority to make leases for water and non-water dependent uses upon terms, conditions, and length of time in conformance with the Constitution of the Northern Mariana Islands and Submerged Lands Act (2 CMC §§ 1201-1231).

On January 3, 2014, Sea Touch Saipan submitted to DLNR a request for approval of a submerged land lease for the development of a marine activity project. The proposed project Sea Touch Saipan provided the following documents for examination and review: (1) Environmental Assessment, (2) Operational Management documentation, (3) Pictures of marine enclosure and intended area of operation. The markings for the proposed area in contained within the four corners of the following geo-coordinates:

- (1) 15 DEG 12.838 145 DEG 42.909
- (2) 15 DEG 12.838 145 DEG 42.880
- (3) 15 DEG 12.870 145 DEG 42.883
- (4) 15 DEG 12.870 145 DEG 42.989

HOUSE CLERK'S OFFICE  
RECEIVED BY   
DATE 7/7/14 TIME 4:24 pm

As required by NMIAC § 145-60-101(b)(4), DLNR conducted a public hearing on May 6, 2014 on this proposed submerged land lease as it has a potentially significant impact on public uses. Sea Touch Saipan received strong support from community members mainly as it provides an opportunity for a novel tourist attraction in the CNMI. Some concerns were raised regarding the identified location of the project, wherein Sea Touch Saipan presented findings from assessments leading to the identification of the project location.

DLNR has considered the value of the Commonwealth-owned submerged lands as a wildlife habitat, natural area preserve, representative ecosystem, spawning area, and traditional fishing area. With thorough examination and careful consideration, DLNR finds that the Sea Touch Saipan proposed project will not adversely affect the protection, preservation, and uses of marine resources. DLNR also finds that the proposed project is consistent with the management guidelines and will benefit the public in that it will encourage direct public use and access, foster a water-dependent use, ensure environmental protection, and generate revenue for the Commonwealth.

Therefore, DLNR submits the Sea Touch Saipan land lease agreement with a recommendation for approval.

Respectfully,

  
Arnold I. Palacios  
Secretary, DLNR

cc: ~~Governor. Eloy S. Ino;~~  
~~Lt. Governor. Jude U. Hofschneider;~~  
~~Mark Baldyga, CEO, Baldyga Group~~

Exhibit A.

**LEASE OF SUBMERGED LANDS**

This Lease Agreement is made and entered into this 17<sup>th</sup> day of June 2014, by and between the Commonwealth of the Northern Mariana Islands ("the Commonwealth"), through the Department of Lands and Natural Resources ("DLNR") as the entity with the authority and responsibility for the management, use, and disposition of submerged lands in the Commonwealth, and Sea Touch, LLC (the "Lessee").

**WITNESSETH**

**WHEREAS**, pursuant to 1 CMC § 2653(k), DLNR is responsible for the management, use, and disposition of the Commonwealth's submerged lands in accordance with the Submerged Lands Act (2 CMC §§ 1201-1231); and

**WHEREAS**, Lessee submitted an application for lease of submerged lands; and

**WHEREAS**, Lessee wishes to lease submerged land in the lagoon adjacent to the Fiesta Hotel in Garapan, Saipan, Northern Mariana Islands, for water-dependent recreational purposes, including a temporary recreational enclosure for containment of marine animals; and

**WHEREAS**, DLNR determined that the proposed use could have a potentially significant impact on public uses and held a public meeting on May 6, 2014; and

**WHEREAS**, DLNR approved Lessee's application for lease of submerged lands; and

**WHEREAS**, the use of submerged lands for the water-dependent uses are to be prioritized over non-water-dependent uses; and

**WHEREAS**, the granting of this lease will enhance tourism in the Commonwealth by providing a new tourist attraction and will create new jobs and business opportunities; and

**WHEREAS**, the project will not adversely affect the protection or the preservation of marine resources; and

**WHEREAS**, the project will benefit the public and is consistent with the management guidelines for submerged lands in that it will encourage direct public use and access, foster a water-dependent use, ensure environmental protection, and generate revenue for the Commonwealth; and

**WHEREAS**, a submerged lands lease must be approved by law, and the Legislature has the right to approve, disapprove, or modify the provisions of a lease agreement for submerged lands;

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NOW, THEREFORE, in view of the above recitals, together with the public benefits to be gained, DLNR, pursuant to its powers under 1 CMC § 2653(k) and 2 CMC §§ 1201-1231, hereby leases to Lessee the following submerged lands located in Garapan, Saipan:

**Area 1**

The submerged lands adjacent to the Fiesta Hotel in Garapan located at the coordinates set forth in Exhibit A and depicted in Exhibit C as "Sea Touch Submerge Area."

C2

C1

**Area 2**

The submerged lands adjacent to the Fiesta Hotel in Garapan to be used for the floating walkway at the coordinates set forth in Exhibit B and depicted in Exhibit C as "Path-Way Area" and "Path-Way Area 1."

B1 and B2

The above-described properties (the "Premises") contain an area of <sup>C1</sup> 4,575 square meters, more or less. This Lease Agreement shall be subject to the following terms and conditions:

6481.0

(one thousand four hundred eighty one) sq meters

**I. PURPOSE**

**1.1 Purpose**

The Lessee shall use the Premises for water-based recreational purposes including but not limited to snorkeling, Sea Trek, and the operation of "Sea Touch Saipan," an educational, tourist-oriented activity that provides people with an up-close encounter with local marine life. Marine life will be enclosed in holding pens and accessed via a pontoon walkway.

**II. TERM**

**2.1 Term**

(A) *Five-year term.* The term of this Lease Agreement shall be for five years, unless earlier terminated pursuant to the applicable provisions of this Lease Agreement. The term shall begin sixty days from the date the Lease Agreement is approved by the Legislature ("Commencement Date").

(B) *Renewal.* The Lease Agreement may be renewed for up to an additional twenty years, provided however that each renewal term may not exceed five years. Lessee shall submit a request for renewal to the Secretary of DLNR ("Secretary") no earlier than twelve months and no later than six months before the term expires.

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(C) *Extension requiring legislative approval.* An extension exceeding the twenty-five years allowed under subsections (A) and (B) must be approved by the Legislature and may not exceed fifteen years.

**III. FEES**

**3.1 Rental Fees**

(A) *Fee.* Rent shall be Twelve Thousand Dollars (\$12,000.00) per year.

(B) *One-year, advance payment.* The rental fee shall be paid in advance on an annual basis. Lessee shall remit the annual fee to DLNR by January 31 of the applicable year. DLNR shall remit the payment to the Department of Public Lands for remittal to the Marianas Public Land Trust.

**3.2 Late Payment Fee**

In the event Lessee does not remit rental fee within seven days after the annual payment is due, Lessee, after receiving written notice of such late condition, shall pay a late payment fee of \$200. The late payment fee and the rental fee must be remitted within fifteen days of receipt of notice.

**IV. USE OF PREMISES**

**4.1 Improvements**

(A) *Permanent improvements.* Lessee may not erect any permanent improvements on the Premises.

(B) *Temporary improvements.* Lessee may erect temporary holding pens and a floating walkway on the Premises in accordance with the Application previously submitted by Lessee to DLNR in connection with Lessee's request for use of the Premises together with all supplemental documents and exhibits submitted in support thereof ("Application"). Lessee must obtain written approval from the Secretary before erecting other temporary improvements.

**4.2 Dredging and Filling**

Lessee may not engage in dredging or filling, in the course of making temporary improvements or otherwise, on the Premises.

**4.3 Mineral Extraction**

This Lease Agreement does not extend rights to Lessee for the exploration for or extraction of any oil, gas or other mineral deposits from the Premises and shall not be construed

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as extending any such rights. Lessee is prohibited from extracting oil, gas, or other mineral deposits located on the Premises.

**4.4 Federal and Commonwealth Laws**

Lessee shall use the Premises for the stated purpose and shall do so in accordance with applicable federal and Commonwealth laws and regulations

**4.5 Inspection of the Premises**

**(A) *DLNR's Right of Inspection***

The Secretary or his or her designee shall have the right to inspect the Premises to determine whether Lessee is in compliance with applicable laws and regulations and the terms of this Lease Agreement.

**(B) *Commonwealth and Federal Agencies' Right of Inspection***

Other Commonwealth agencies and federal agencies shall also have the right to inspect the Premises to determine whether Lessee is in compliance with the laws and regulations enforced by the respective agencies.

**4.6 Waste and Nuisance Prohibited**

Lessee shall not commit, or permit others to commit, waste or erect, permit to be erected, or allow to exist any nuisance on the Premises.

**4.7 Dumping and Accumulation of Refuse Prohibited**

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 except in designated receptacles. No garbage on board any vessel shall be dumped into the ocean with the territorial waters of the Commonwealth. Lessee shall place signs informing the Lessee's patrons that it is illegal to dump rubbish, swill, garbage, refuse, or sewage into territorial waters.

Lessee shall not permit any trash or garbage to accumulate on or about the Premises. Lessee will collect all garbage, and trash within the Premises. Lessee shall notify the Division of Environmental Quality in the event of the discovery of any spill slick or sewage found on the Premises.

**4.8 Incorporation**

The Lessee's Application, including the accompanying coastal engineering study and biological assessment, is hereby incorporated into the Lease Agreement. Lessee shall use the

Premises in a manner consistent with the Application and this Lease Agreement. Should any terms of the Application conflict with this Lease Agreement, the latter shall control.

4.9 Typhoon Condition II or Other Extreme Weather

In a situation of an impending typhoon or other extreme weather disturbance, Lessee shall relocate the marine animals to a shore-side tank facility and remove the holding pens from the Premises.

4.10 Concealed Archaeological Resources

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

4.11 Protection of Environment and Natural Resources

(A) *Avoidance and Minimization*

Lessee shall at all times engage in appropriate avoidance and minimization measures to prevent the unlawful taking, possession or destruction of any coral or other marine life. Lessee shall avoid disturbance of the bottom substrate.

(B) *Monitoring the Effects on Environment*

On a date four years after the commencement of the Lease Agreement term, and every four years thereafter, DLNR (with the assistance of other Commonwealth agencies or the enlistment of a contractor, if necessary) 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. All costs of preparing such a study shall be borne exclusively by Lessee. In no case shall the cost of the aforesaid study exceed \$5,000.00. The Lease Agreement shall not be renewed if the Secretary determines that Lessee's use of the Premises is having an adverse impact on the environment.

4.12 Public Access

Lessee shall not restrict public access to the shoreline and the waters surrounding the Premises or interfere with the public use and enjoyment of such.

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**V. TERMINATION AND REMEDIES**

**5.1 Early Termination by Lessee**

(A) Lessee may terminate this Lease Agreement prior to expiration of the term hereof upon the happening of one or more of the following events:

i. Assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Premises, or any substantial part thereof, in such manner as to substantially restrict Lessee in its operations hereunder for a period of ninety (90) consecutive calendar days.

ii. Issuance by a court of competent jurisdiction of a permanent injunction that in any way prevents or restrains use of the Premises in a manner substantially restricting Lessee's operations hereunder.

(B) Early termination by Lessee pursuant to this section shall be upon not less than thirty days' advance written notice to the Secretary, which notice shall state the basis of such termination and the effective date thereof.

(C) In the event of early termination by Lessee pursuant to this section, Lessee shall be obligated to pay rent up to and including the date of such termination. The Commonwealth agrees to make a proportionate reimbursement to Lessee for any rent paid but not earned.

**5.2 Early Termination by the Commonwealth**

(A) The Commonwealth may terminate this Lease Agreement prior to expiration of the term hereof upon thirty (30) days' notice to Lessee, or less if indicated below, and the happening of one or more of the following events:

**i. Monetary Default**

(a) Lessee remains in arrears in any payment of rent required by Article III for a period of fifteen days or more following written notice of such arrearage from DLNR served upon Lessee as provided herein for the giving of notice.

(b) Lessee fails or refuses to pay any late payment fees required by this Lease Agreement to be paid within fifteen days following written notice of such default from DLNR served upon Lessee as provided herein for the giving of notice.

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ii. Non-Monetary Default

(a) Lessee fails to obtain or maintain the insurance required by this Lease Agreement.

(b) Lessee abandons the Premises.

(c) Lessee fails to use the Premises as herein authorized.

(d) Lessee fails to maintain the Premises as herein required.

(e) Upon the material breach of any condition, covenant or term hereof.

(f) Lessee makes a general assignment for the benefit of its creditors or suffers an attachment, execution or receivership, without discharge within thirty (30) days.

(g) Lessee files a voluntary petition, or becomes the subject of an involuntary petition in any proceedings in Bankruptcy Court.

iii. Detriment to the environment or hindrance to public access or enjoyment

(a) Lessee's use of the Premises is determined by D.I.N.R to have a detrimental impact on the environment.

(b) Lessee's use of the Premises proves to be a hindrance on public access to the shoreline or the waters surrounding the premises, or a hindrance on enjoyment of the shoreline and the waters surrounding the premises.

(B) *Possession by the Commonwealth upon early termination.* In the event the Commonwealth exercises its early termination rights pursuant to Section 5.2, Lessee acknowledges and agrees that the Commonwealth may assume immediate and lawful possession of the Premises.

(C) *Time to cure.* With respect to the Non-Monetary Defaults described in Subsections (A)(ii)(a) through (e) of this section, the default by Lessee in performance of any promise, term, condition, or covenant required of it hereunder, shall not be a default hereunder and shall not trigger a right in favor of the Commonwealth to effect an early termination of this Lease Agreement unless Lessee fails to cure such default within seven calendar days following receipt of written notice of such default from the Commonwealth served upon Lessee as herein provided. Further, if the nature of such default is such that it cannot reasonably be cured within such period, Lessee shall be deemed to have cured such default if within such period Lessee commences performance thereof and thereafter diligently prosecutes the same to completion.

(D) *No waiver.* Any failure by the Commonwealth to serve notice of termination upon the happening of any of the events described herein shall not operate to bar, destroy or waive the Commonwealth's right to thereafter declare such termination upon the subsequent happening of any such event.

(E) The happening of any of the events in subsection (A) of this section shall constitute a material breach of the Lease Agreement by Lessee.

### 5.3 The Commonwealth's Remedies

(A) The remedies set forth in this section shall be in addition to all other remedies that the Commonwealth may have in the event of breach of this Lease Agreement by Lessee, and nothing herein contained shall be construed to limit the Commonwealth's right to pursue the same, whether in law or in equity.

(B) The Secretary shall refer any matter related to this Lease Agreement that may require litigation, including the enforcement of terms and regaining of lawful possession, to the Attorney General of the Commonwealth.

(C) No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

### 5.4 Lessee's Remedies

(A) The remedies set forth in this section shall be in addition to all other remedies that Lessee may have in the event of breach of this Lease Agreement by the Commonwealth, and nothing herein contained shall be construed to limit Lessee's right to pursue the same, whether in law or in equity.

(B) No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

## VI. GENERAL CONDITIONS

### 6.1 Public Auditor Right of Inspection

For three years after the termination of this Lease Agreement, the Public Auditor shall have the right to access, examine, and/or copy any records, data, or documents relevant to the Lease Agreement; Lessee shall permit the Public Auditor to access any records, data, or documents related to the Lease Agreement.

**6.2 Sublease, Assignment, and Transfer**

Lessee shall not sublease, assign, or transfer, in whole or in part, its interest under this Lease Agreement in or to the Premises without the written approval of the Secretary and memorialized by an amendment to this Lease Agreement. Any such transaction that is not approved by the Secretary shall be void ab initio. Approval by the Secretary shall not be unreasonably withheld.

**6.3 Insurance; Liability****(A) Insurance**

Lessee shall, from the effective date of this Lease Agreement, carry liability insurance for general liability coverage of at least one million dollars (\$1,000,000). The policy shall contain a clause requiring that the Secretary be given thirty 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 thirty days after the Lease Agreement is approved by the Legislature. Thereafter, proof of insurance shall be annually submitted to the Secretary by January 31.

Lessee agrees that if insurance policies lapse or are otherwise not kept in force, Lessee shall immediately suspend operation of Sea Touch Saipan until insurance is reinstated. Failure to reinstate insurance may result in termination as provided in Section 5.2.

**(B) No liability for loss or damage to Lessee's property**

In the event that Lessee's equipment or temporary structures installed on the Premises are damaged in any way, irrespective of the cause, other than by the willful misconduct or malfeasance of the Commonwealth, the Commonwealth shall not be liable therefore and Lessee shall have no claim or right against the Commonwealth for the costs of repair or replacement. This clause is intended as a complete release of liability, except as otherwise stated in this Section 6.3(B), in favor of the Commonwealth, including without limitation all claims whether known or unknown, liquidated or unliquidated, contingent or absolute.

**6.4 Indemnification**

By acceptance of this Lease Agreement, Lessee hereby agrees to defend (with counsel reasonably acceptable to the Commonwealth), indemnify, and hold harmless the Commonwealth, its officials, agents, and employees from and against any and all demands,

claims, actions, liabilities, losses, damages, and costs, including reasonable attorney's fees, arising out of or resulting from the condition or use of the Premises, or from activity or operations on the Premises during Lessee's possession thereof, except claims arising from the willful misconduct or malfeasance of any of the parties indemnified hereunder.

#### **6.5 Notice of Claims and Suit**

(A) The Commonwealth and Lessee shall each give the other prompt and timely written notice of any personal injury or other accident claim for in excess of one thousand dollars (\$1,000.00), and of any lawsuit coming to its knowledge when either such claim or lawsuit arises out of or is in any way connected with the Premises or the operations of Lessee hereunder, which in any way, directly, indirectly, contingently or otherwise, might reasonably affect the parties' relationship under this Lease Agreement.

(B) Such notice shall be deemed prompt and timely if given within thirty calendar days following the date of receipt of such claim by an officer, agent, or employee of either party, and if given within ten calendar days following the date of service of process upon either party with respect to any such lawsuit.

#### **6.6 Force Majeure**

Neither the Commonwealth nor Lessee shall be deemed to be in breach of this Lease Agreement if either is prevented from performing any of its obligations hereunder by reason of strike, boycott, labor dispute, embargo, shortage of energy or materials, act of God, act of a public enemy, act of a superior governmental authority, weather conditions, rebellion, riot, sabotage, or any other circumstance for which it is not responsible, or which is not within its control.

#### **6.7 Damage or Destruction**

If destruction, total or partial, of the Premises occurs during the term of this Lease Agreement, this Lease Agreement may be terminated by either party.

#### **6.8 Abandonment of the Premises**

Should the Lessee fail to make any use of the premises for the purposes set forth in this Lease Agreement for a consecutive period of one hundred and eighty (180) days without securing the written consent of the Secretary, the Lessee shall be deemed to have abandoned the Premises.

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**6.9 Expense of Enforcement**

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

**6.10 Covenant of Quiet Enjoyment**

The Commonwealth covenants that the Lessee, upon paying of the rent required herein and upon fulfilling all the conditions and agreements 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 lawful claiming by, from, under or against the Commonwealth.

**6.11 Surrender/Holding Over**

(A) Lessee shall peaceably surrender possession of the Premises upon expiration or sooner termination of this Lease Agreement in as good order and condition as when received, excepting reasonable wear, destruction by lightning or other natural causes, or fire not caused by the acts or omissions of Lessee, its officers, agents, employees, subcontractors, customers, invitees, or other persons doing business with Lessee, or on the Premises with the consent of Lessee.

(B) Upon expiration or sooner termination of this Lease Agreement, Lessee shall promptly remove all temporary structures and other property from the Premises. Lessee shall remove such personal property within thirty days of such expiration or earlier termination date. Should Lessee fail to remove or dispose of such property in a manner satisfactory to the Commonwealth, the Commonwealth may, at its election, consider such property abandoned and may dispose of same at Lessee's expense, or after sixty days of such expiration or earlier termination declare the personal property of Lessee to be property of the Commonwealth.

(C) If Lessee remains in possession of the Premises for sixty (60) or fewer days following the expiration or sooner termination of this Lease Agreement, such holding over shall not be deemed to constitute an extension or renewal of this Lease Agreement. In the event of



such holding over. Lessee shall perform all terms, promises, conditions and covenants, required of it hereunder, but shall pay rent pro rata. The Commonwealth may terminate within the 60-day hold over period upon thirty days' notice.

**6.12 Title to the Premises**

Fee title to the Premises is and shall remain vested in the Commonwealth. Nothing contained in this Lease Agreement and no action or inaction by the Commonwealth shall be deemed or construed as a grant to Lessee any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance upon the estate of the Commonwealth in the Premises.

**6.13 The Commonwealth's Reserved Rights**

(A) *Entry*. The Commonwealth reserves the right, without liability to Lessee, to enter the Premises for purposes of inspection, surveying, test hole boring, and any other use not substantially interfering with Lessee's use.

(B) *Reassignment*. The Commonwealth reserves the right, at any time during the term of this Lease Agreement, to demand and receive reassignment from Lessee of all, or any portion of, the Premises used by Lessee for any purposes not authorized by this Lease Agreement. Any such demand by the Commonwealth for reassignment shall be made in writing. Lessee hereby agrees that Commonwealth's decision in the matter shall be conclusive and further agrees to make such reassignment when so requested. If any portion of the Premises is reassigned to the Commonwealth as provided herein, the parties hereto agree that the terms of this Lease Agreement shall remain in full force and effect with regard to the Premises not reassigned. If applicable, Rent based on acreage will be adjusted to reflect the change in acreage. The Commonwealth shall not be liable for any of Lessee's costs associated with the Commonwealth's exercise of its rights herein

**6.14 Licenses and Permits**

Lessee shall obtain, at Lessee's sole cost and expense, all necessary licenses and permits required for construction of improvements or installation of equipment on the Premises, and any other licenses or permits necessary for the conduct of Lessee's operations.

**6.15 Acceptance of the Premises "As Is"**

Lessee hereby accepts the Premises "as is." in the condition existing at the beginning of the term of Lease Agreement. Lessee's taking possession of the Premises shall be conclusive evidence that the condition thereof is satisfactory to Lessee. The Commonwealth makes no representation or warranty that the Premises are suitable for the uses to which Lessee shall be restricted under this Lease Agreement.

**6.16 Relationship with the Commonwealth**

(A) Lessee is not an employee or agent of the Commonwealth by reason of this Lease Agreement, or otherwise. As between the Commonwealth and Lessee, Lessee shall be solely responsible for its acts and omissions arising from or relating to its operations or activities.

(B) Nothing in this Lease Agreement shall be construed to render the Commonwealth, in any way or for any purpose, a partner, joint venturer, or associate in any relationship with Lessee, other than that of landlord and tenant, nor shall this Lease Agreement be construed to authorize either the Commonwealth or Lessee to act as agent for the other.

**6.17 Notice**

(A) *Designation of Location*

Any notice, demand, request, consent, or approval that either party hereto may give or is required to give the other, shall be in writing, and shall be either personally delivered or sent by first class mail in a postpaid envelope, addressed as follows:

To the Commonwealth:  
Department Lands and Natural Resources  
Attention: Secretary of DLNR  
Lower Base  
P.O. Box 10007  
Saipan, MP 96950

To the Lessee:  
Sea Touch, LLC  
Attention: Mark S. Baldyga  
1199 San Vitores Road  
Tamuning, Guam 96911

(B) *Change of Location*

Either party hereto shall have the right by giving notice to the other, to change the address at which it will receive such communications. Such communications shall be deemed

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received upon delivery, if personally delivered, or on the fifth (5th) day following deposit in the mail, if sent by mail.

**6.18 Changes**

This Lease Agreement may be amended only by written instrument duly executed by the parties hereto.

**6.19 Headings**

The headings of the articles and sections of this Lease Agreement are inserted only as matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Lease Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**6.20 Interpretation of Agreement**

It is agreed and acknowledged by the parties hereto that the provisions of this Lease Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to seek revision of the provisions of this Lease Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing and interpreting this Lease Agreement.

**6.21 Applicable Law**

**(A) Interpretation**

This Lease Agreement shall be interpreted and enforced in accordance with the statutory and decisional law of the Commonwealth.

**(B) Venue**

Any litigation filed or arbitration sought by Lessee or the Commonwealth against the other regarding the terms of this Lease Agreement, performance of a party's obligations under this Lease Agreement, or any other reason related in any way to this Lease Agreement, shall be filed in a federal or state court of competent jurisdiction located in the Commonwealth.

**6.22 Attorney's Fees**

Any party may bring a suit or proceeding to enforce or require performance of the terms of this Lease Agreement, and each party in that suit or proceeding shall, except as otherwise

provided herein in respect to the payment of attorney's fees by a losing party, be responsible for its own attorney's fees and costs.

**6.23 Nonwaiver of Rights**

No waiver of default by either party hereto of any of the terms, promises, covenants, or conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, promises, covenants, or conditions herein contained, to be performed, kept, and observed by such other party.

**6.24 Time of the Essence**

Time is of the essence in the performance of this Lease Agreement.

**6.25 Execution of the Agreement**

The Lease Agreement and the terms set forth herein are contingent upon and subject to the approval of the Legislature. Submission of this document to the Legislature by the Commonwealth for review, examination or execution by Lessee does not constitute a reservation of an option to lease the Premises or any other property within the Commonwealth. The Legislature may approve (with or without modification) or disapprove of this Lease Agreement through an act of law. This document shall not be effective as a lease agreement, or otherwise, unless and until approved by the Legislature.

**6.26 Entire Agreement**


This Lease Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein.

**6.27 Counterparts**

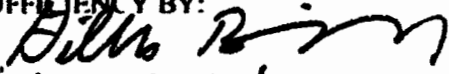

This Lease Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which when taken together will constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Lease Agreement attached thereto.

**IN WITNESS WHEREOF.** the parties hereto have caused this Lease Agreement to be duly executed as of the day and year first above written.

**THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

BY:   
ARNOLD I. PALACIOS  
Secretary  
Department of Lands and Natural Resources

REVIEWED AND APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY BY:

  
  
JOEY P. SAN NICOLAS  
Attorney General

**SEA TOUCH, LLC**

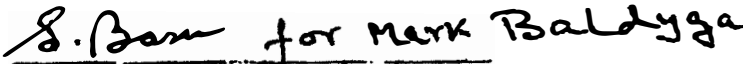
BY:  for Mark Baldyga  
MARK S. BALDYGA  
President

EXHIBIT A

SEA TOUCH AREA

-----  
Parcel name: SEATOUCH AREA

North: 55326.8035	East : 50551.8807
Line Course: S 05-28-06.5 W	Length: 57.970
North: 55269.0973	East : 50546.3562
Line Course: N 89-14-11.5 W	Length: 52.019
North: 55269.7904	East : 50494.3419
Line Course: N 05-28-06.5 E	Length: 57.477
North: 55327.0059	East : 50499.8193
Line Course: S 89-46-39.5 E	Length: 52.062
North: 55326.8038	East : 50551.8809

Perimeter: 219.527 Area: 2,992.59 SQ.M. 0.299 hectares

Mapcheck Closure - (Uses listed courses and chords)  
Error Closure: 0.0004 Course: N 36-14-04.1 E  
Error North: 0.00033 East : 0.00024  
Precision 1: 548,820.000

EXHIBIT B

PATHWAY AREA FRONT

-----  
Parcel name: PATH-WAY AREA

North: 55328.6328	East : 50552.0558
Line Course: S 89-46-39.5 E	Length: 44.287
North: 55328.4609	East : 50596.3425
Line Course: S 00-00-00.0 W	Length: 1.830
North: 55326.6309	East : 50596.3425
Line Course: N 89-46-39.5 W	Length: 44.462
North: 55326.8035	East : 50551.8808
Line Course: N 05-28-06.5 E	Length: 1.838
North: 55328.6331	East : 50552.0560

Perimeter: 92.417 Area: 81.20 SQ.M. 0.008 hectares

Mapcheck Closure - (Uses listed courses and chords)  
Error Closure: 0.0004 Course: N 26-51-42.9 E  
Error North: 0.00031 East : 0.00016  
Precision 1: 231,042.500

EXHIBIT B

PATHWAY AREA 1.txt

-----  
Parcel name: PATHWAY AREA1

North: 55326.8035 East : 50551.8807  
Line Course: N 89-46-39.5 W Length: 52.062  
North: 55327.0055 East : 50499.8191  
Line Course: N 05-28-06.5 E Length: 1.838  
North: 55328.8352 East : 50499.9942  
Line Course: S 89-46-39.5 E Length: 52.062  
North: 55328.6331 East : 50552.0558  
Line Course: S 05-28-06.5 W Length: 1.838  
North: 55326.8035 East : 50551.8807

Perimeter: 107.798 Area: 95.27 SQ.M. 0.009 hectares

Mapcheck Closure - (uses listed courses and chords)  
Error Closure: 0.0000 Course: S 90-00-00.0 E  
Error North: 0.00000 East : 0.00000  
Precision 1: 107,800,000.000

## PATH-WAY AREA REVICE.txt

## Exhibit "B1"

---

Parcel name: PATHWAY

North: 55327.3439	East: 50568.5398
Line Course: S 05-28-07.0 W	Length: 1.838
North: 55329.1717	East: 50568.7309
Line Course: S 89-46-40.0 E	Length: 21.336
North: 55329.0889	East: 50590.0667
Line Course: S 00-00-00.0 E	Length 1.830
North: 55327.2220	East: 50590.0667
Line Course: N 89-46-40.0 W	Length: 21.336
North: 55327.3439	East 50568.5398

---

Perimeter: 46.149 Area: 38.85 sq.m. 0.003 hectares

Mapcheck closure -- (uses listed courses and chords)

Error Closure: 0.0003 Course: N 22-02-03.04 E

Error North: 0.00031 East : 0.00013

Precision 1: 153,830.000

## PATH-WAY AREA1 REVICE.txt

## Exhibit "B2"

---

Parcel name: PATHWAY AREA1

North: 55329.1717	East: 50568.7309
Line Course: S 05-28-07.0 W	Length: 1.838
North: 55327.3439	East: 50568.5398
Line Course: N 89-46-40.0 W	Length: 36.480
North: 55327.4854	East: 50532.0601
Line Course: N 05-28-07.0 E	Length 1.836
North: 55329.3132	East: 50532.2351
Line Course: S 89-46-40.0 E	Length: 36.496
North: 55329.1717	East 50568.7309

Perimeter: 76.634 Area: 66.731 sq.m. 0.006 hectares

Mapcheck closure -- (uses listed courses and chords)

Error Closure: 0.0005 Course: S 18-05-43.9 W

Error North: 0.00031 East : 0.00013

Precision 1: 153,300.000

---

PATH-WAY AREA REVISE.txt

EXHIBIT "B1"

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Parcel name: PATHWAY

North: 55327.3439	East: 50568.5398
Line Course: S 05-28-07.0 W	Length: 1.838
North: 55329.1717	East: 50568.7309
Line Course: S 07-40-40.0 E	Length: 21.336
North: 55329.0889	East: 50590.0667
Line Course: S 00-00-00.0 E	Length: 1.830
North: 55327.3439	East: 50590.0667
Line Course: N 89-46-40.0 W	Length: 21.336
North: 55327.3439	East: 50568.5398

---

Perimeter: 46.149 Area: 38.85 sq.m. 0.003 hectares  
Mapcheck closure - (uses listed courses and chords)  
Error Closure: 0.0003 Course: N 22-02-03.04 E  
Error North: 0.00031 East : 0.00013  
Precision 1: 153,830.000

PATH-WAY AREA1 REVISE.txt

Exhibit "B2"

---

Parcel name: PATHWAY AREA1

North: 55329.1717	East: 50568.7309
Line Course: S 05-28-07.0 W	Length: 1.838
North: 55327.3439	East: 50568.5398
Line Course: N 89-46-40.0 W	Length: 36.480
North: 55327.4854	East: 50532.0601
Line Course: N 05-28-07.0 E	Length: 1.836
North: 55329.3132	East: 50532.2351
Line Course: S 89-46-40.0 E	Length: 36.496
North: 55329.1717	East: 50568.7309

Perimeter: 76.634 Area: 66.731 sq.m. 0.006 hectares  
Mapcheck closure - (uses listed courses and chords)  
Error Closure: 0.0005 Course: S 18-05-43.9 W  
Error North: 0.00031 East : 0.00013  
Precision 1: 153,300.000





SEATOUCH AREA REVIVCE.txt

Exhibit "C2"

---

Parcel name: SEA TOUCH

North: 55327.4854	East: 50568.5398
Line Course: S 05-28-07.0 W	Length: 37.850
North: 55289.6662	East: 50564.9327
Line Course: N 89-46-40.0 W	Length: 36.480
North: 55289.8077	East: 50528.4530
Line Course: N 05-28-07.0 E	Length: 37.850
North: 55327.4854	East: 50532.0601
Line Course: S 89-46-40.0 E	Length: 36.480
North: 55327.4854	East: 50568.5398

---

Perimeter: 148.661 Area: 1,374.98 sq.m. 0.137 hectares

Mapcheck closure -- (uses listed courses and chords)

Error Closure: 0.0000

Course: S 90-00-00 E

Error North: 0.00000

East : 0.00000

Precision: 1: 148,660,000,000

"New Exhibit"  
D

CNMI Local Grid Coordinate System

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1. North: 55327.4854	East: 50568.5398
2. North: 55289.6662	East: 50564.9327
3. North: 55289.8077	East: 50528.4530
4. North: 55329.4854	East: 50532.0601
5. North: 55329.3132	East: 50532.2351
6. North: 55329.1717	East: 50568.7309
7. North: 55329.0889	East: 50590.0667
8. North: 55327.2220	East: 50590.0667

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