

James McCaffrey, M.I. Adm. # 103
THE MCCAFFREY FIRM, LTD.
RRE (BoMI) Bldg., 2nd Flr.
P.O. Box 509
Majuro, MH 96960, Marshall Islands
Tel: +692-625-6000
James@McCaffreyFirm.com

FILED

FEB 17 2015

ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

Attorney for Defendants

IN THE HIGH COURT
REPUBLIC OF THE MARSHALL ISLANDS

EIGIGU HOLDING CORPORATION

Plaintiff,

vs.

LEANDER LEANDER and LIJUN LEANDER

Defendants

Civil Action No. **2014-067 DT**

MOTION FOR RELIEF FROM DEFAULT;
EXHIBITS A TO F; [Lodged] ANSWER OF
DEFENDANTS LEANDER LEAND AND
LIJUN LEANDER and CERTIFICATE OF
SERVICE

Comes now Defendant Leander Leander (“Leander”) through his Attorney of record, James McCaffrey, and moves this Court for Relief from Entry of Default Judgment under Rules 55(c) and 60(b)(1) and 60(b)(6) of the Marshall Islands Rules of Civil Procedure on the grounds that:

- 1) Plaintiff would not be prejudiced if the default was set aside;
- 2) Defendant has a meritorious defense;
- 3) Defendant’s conduct was not culpable in the default.

Memorandum of Points & Authorities

I. Statement of Facts

Defendants Leander Leander and Lijun Leander have been doing business in the Eastern Gateway area for the past 14 years. Initially they entered into a lease agreement with the duly

authorized Representative of Plaintiff and/or the Nauru Local Government Council in 2001. This lease was later extended by the parties in 2002. Finally the parties revised and extended the existing lease agreement in 2010. (A true and correct copy of said revised and extended Lease Agreement is attached hereto as Defendant's EXHIBIT A). Payment was received by Plaintiffs in the amount of \$200,000.00 in 2002 and \$71,000.00 in 2010. (A true and correct copy of a written receipt for such payments is attached hereto as Defendant's EXHIBIT B). At time the parties entered into the various lease agreements, the duly authorized representative of both the Nauru Government Council, and Eigigu Holdings was Mr. Rubin Tsitsi.

On 13 July 2014, two years after the final revision of Defendants' Lease Agreement, Plaintiff /Nauru Government Council terminated the services of Mr. Tsitsi. (A true and correct copy of said termination is attached hereto as Defendant's EXHIBIT C). However, such termination took place two years after Defendants' 2010 revised and extended lease was signed and in no manner voided Defendant's sub-lease. Concurrently, the Nauru Council/Plaintiff was engaged in a dispute with the traditional landowners over the 1990 Lease between said Landowners and the Nauru Local Government Council. Said disputes were eventually resolved, and a 2013 Amendment to the 1990 Lease Agreement for the Eastern Gateway Hotel was signed by Plaintiff and landowner representatives (A true and correct copy is attached hereto as EXHIBIT D). Later in November of 2013, the landowners and Plaintiff entered into second amended ground lease with almost the exact same terms and conditions as the earlier Amendment (Exhibit "D") except for the inclusion of a recital stating that "Tenant and Landlords fully recognize that the termination of the Original Lease terminated any existing subleases or sub tenancies on the Premises as a matter of law;" See Plaintiff's Exhibit 8 at page 1, Para. 4. However, such bad faith acts on the part of Plaintiff does not void Defendant's lease. In fact such an act by Plaintiff constitutes a breach of its sub-lease with

Defendants, and in no manner gives cause for a claim by Plaintiff. Rather such acts by Plaintiff would give rise to a claim by Defendants.

On or about April 7, 2014, Plaintiff's filed their claim in this action. However, Defendant Leander Leander was not served till July 7, 2014. Within 7 days of being served, Defendant retained counsel Russell Kun to represent him. Defendant Leander had been told on numerous occasions by Mr. Kun about all the cases Mr. Kun had won and he believed Mr. Kun could and would competently represent him. See EXHIBIT E, Affidavit of Leander Leander in Support of His Motion for Relief from Entry of Default.

For reasons unknown, Mr. Kun did not file an Answer on behalf of his client. Due to Mr. Kun's inexplicable failure to protect his client's interests and file an Answer, Plaintiff's filed a request for an Entry of Default Judgment.

On Friday, November 7, 2014, Defendants retained John Masek as counsel. On Monday, November 10, 2014, Mr. Masek promptly filed a motion for relief from the entry of default.

Subsequently, Plaintiff brought a motion to disqualify Mr. Masek which the Court granted on December 29, 2014. Mr. Masek remains a percipient witness to certain facts in this case and facts supporting this motion. See EXHIBIT F, Affidavit of John E. Masek in Support of Defendants Motion for Relief from Entry of Default.

II. Factors considered by Courts under Rule 60(b)(1) merit relief from default.

Rule 60(b)(1) allows a Court to relieve a party from final judgment for "mistake, inadvertence, surprise, or excusable neglect..." "Courts apply Rule 60(b)(1) equitably and liberally ... to achieve substantial justice. In cases that have not been heard on the merits, the determination of whether neglect is excusable takes into account the length and reasons for the delay, the impact on

the case and judicial proceedings, and whether the movant requesting relief has acted in good faith”.
Burrell v. Henderson, 434 F.3d 826, 832 (6th Cir.2006) [internal quotations omitted].

When considering a motion for relief from a default judgment, courts generally consider three factors in deciding whether relief should be granted on the ground of excusable neglect: (1) whether the defaulting party engaged in any culpable conduct that caused the default; (2) whether the defaulting party has a meritorious defense; (3) whether there is any prejudice to the non-defaulting party if relief is granted. *Brandt v. American Bankers Ins. Co. of Florida*, 653 F3d 1108, 1111 (9th Cir. 2011); *Burrell v. Henderson*, 434 F.3d 826, 834 (6th Cir.2006); *Gucci America, Inc. v. Gold Ctr. Jewelry*, 158 F3d 631, 634 (2nd Cir. 1998).

The RMI Supreme Court has squarely addressed this issue in *Pacific Basin, Inc. v Mama Store*, 3 MILR 34, 36:

“[A] trial court has the discretion to deny a Rule 60(b) motion to vacate a default judgment is (1) the plaintiff would be prejudiced if the judgment was set aside, (2) defendant has no meritorious defense, or (3) the defendant’s culpable conduct led to the default. This tripartite test is disjunctive.”

A) No Prejudice to the Plaintiff:

Plaintiffs will not suffer any prejudice as a result of granting this motion. Defendant Lijun Leander has not yet been served with the Summons and Complaint, although she has filed an Answer and thus this matter will by necessity proceed to a trial on the merits as to her.

“To be prejudicial, the setting aside of a judgment must result in greater harm than simply delaying resolution of the case. Rather, “the standard is whether [plaintiff’s] ability to pursue his claim will be hindered.” *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001), citing *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir.1984). “[T]o be considered prejudicial, the delay must

result in tangible harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion.” *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691,701 (9th Cir. 2001) [internal citations omitted].

In the instant case, no prejudice will inure to the Plaintiff. In particular, no default has been entered against Defendant Lijun Leander, hence a trial on the merits will be conducted in this case. Furthermore, there is no lost evidence or any other tangible harm. Rather the parties will both be able to go forward and have the case decided on the merits.

B) There are multiple Meritorious Defenses:

“A defendant seeking to vacate a default judgment must present specific facts that would constitute a defense. *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 700 (9th Cir. 2001), citing *Madsen v. Bumb*, 419 F.2d 4, 6 (9th Cir.1969) (holding that district court had not erred in declining to vacate default judgment when defendant offered “mere general denial without facts to support it”). “But the burden on a party seeking to vacate a default judgment is not extraordinarily heavy.” *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 700 (9th Cir. 2001), citing, *In re Stone*, 588 F.2d 1316, 1319 n. 2 (10th Cir.1978) (explaining that the movant need only demonstrate facts or law showing the trial court that “a sufficient defense is assertible”).

In the instant case, the Defendant executed three different leases with the duly authorized representative of Plaintiff/Nauru Council, Mr. Rubin Tsitsi. At the time these leases were executed, Mr. Tsitsi had full authority to do so, and Plaintiff is bound by the acts of its duly authorized agent.

Plaintiff attempts to side step Defendant’s leases by claiming that such sub-leases were terminated “as a matter of law” when the landowners attempted to terminate the 1990 Lease. This is false. as set forth in Exhibit “D” the 1990 lease was not terminated, rather it was “Amended.”

Furthermore, Nauru/Plaintiff still has the property under lease. Under the terms of the sub-lease between Plaintiff/Nauru and Defendants, ‘the two parties shall not vacate and abandon the premises at any time during the term of this lease. The lessor cannot cancel the lease with (sic) any reasons.’ See EXHIBIT A, page 3, section 8. Finally, if the lease between Nauru/Plaintiff and the landowners was terminated, this would give rise to a claim for unjust enrichment and breach of lease by Leander against Plaintiff/Nauru Council. It would not result in the uncompensated termination of Leader’s sub-lease.

Plaintiff also attempts to claim Defendant’s sub-lease is void due to a lack of description of the property. This is a false claim. The latest and currently controlling lease (signed and recorded with the Land Registration Authority on July 9, 2014) contains no less than 5 exhibits setting forth in detail the area covered under the lease agreement.

Plaintiff then attempts to invoke 24 MIRC Section 438, and provides an edited quote of the statute. First, this Statute was not enacted till 2003, one year after advance payments were made to Nauru/Plaintiff in 2002, and hence the statute is not applicable to such payments. Furthermore, such payment shall be “void as against any heirs or successors of the lessor who acquired their interest in the land between the date the rent was paid, and one year before it was due”, 24 MIRC Sec 438(2). In the case at hand, the party receiving the advance payments is the same party trying to void the lease because it received advance payments. Section 438 does not provide a remedy for the party receiving the advance payments. Plaintiffs/Nauru Council cannot attempt to void a lease because it was paid in full in advance.

Next, Plaintiff tries to argue that the leases with Defendants were in the name of the “Nauru Council” and such entity does not have authority to enter into any lease or sub-lease. First and foremost, it is Eigigu Holdings that lacks legal standing, as Eigigu Holdings did not have a Foreign

Investment Business License till October 3, 2014. Under 36 MIRC Chapter 2, Section 203(a) “no non-citizen shall be permitted to do business in the Republic without first obtaining a Foreign Investment Business License under this Chapter.” Plaintiff Eigigu Holdings had no such license, hence it is Eigigu Holdings, and not the Nauru Council that lacked standing.

As set forth above, Defendant’s have a binding sub-lease, and they have committed no breach of such sub-lease. Hence, not only does Defendant have a ‘meritorious defense’ but a very strong case and is likely to prevail in any trial on the merits.

C) No Culpable Conduct of Defendant

Defendant’s failure to Answer was not due to any culpable conduct on the part of Defendant and was the result of his original, public counsel’s egregious failure to file a timely Answer.

Under the Marshall Islands Constitution, Article II, Section 15, “The Government of the Marshall Islands recognizes the right of the people to health care, education, and **legal services** and the obligation to take every step reasonable and necessary to provide these services.” [boldface added].

As to legal services, the Government implements this right by providing the Office of the Public Defender and contributing funds to the Micronesian Legal Services Corporation. A lay person might reasonably expect that these government provided legal services be competent otherwise their provision – and this right – would be a nullity.

In *Pacific Basin, Inc. v Mama Store*, 3 MILR 34, 38, the Supreme Court examined one of the cited cases which has a fact pattern similar to this one, “In *Karlen, supra*, the Karlens’ attorney intentionally misled his clients into believing that their case was progressing and concealed the fact

their case had actually been dismissed. Given the ‘egregious conduct’ of the attorney the court held the trial court did not err in granting relief.”

In the instant action, Defendant Leander Leander retained Counsel within 7 days of being served with the Summons and Complaint, see EXHIBIT E. He had every reason to believe that his attorney, Chief Public Defender Russell Kun, would protect his interests. Mr. Kun had 14 days to file an Answer at the time he was retained by Leander. Failing to file a timely Answer was professionally incompetent.

Mr. Kun did not inform Leander of the Entry of Default. Leander subsequently learned of the entry of Default after a hearing for a Default Judgment was scheduled for a date in October. He then consulted Attorney John Masek on November 6, 2014. Leander acted promptly and did everything a lay person would be expected to do, i.e. to retain counsel in a timely manner. The failure of Leander’s original, public attorney, Mr. Kun, to act was egregious and inexcusable on the part of Mr. Kun.

“Neglectful failure to answer as to which the defendant offers a credible, good faith explanation negating any intention to take advantage of the opposing party, interfere with judicial decision making, or otherwise manipulate the legal process is not “intentional” under our default cases, and is therefore not necessarily...culpable or inexcusable.” *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 698, (9th Cir. 2001). Here, Leander’s failure to answer was the result of mistaken beliefs that his attorney was adequately representing him and would be filing needed pleadings such as an Answer.

III. Trials on the merits are favored over default judgments.

“It is axiomatic that the law favors fair trials on the merits of the cases.” *Crosby v. Avon Products, Inc.*, 474 So. 2d 642, 644 (Ala. 1985). “We, therefore, emphatically hold that a trial court,

in determining whether to grant or deny a motion to set aside a default judgment, should exercise its broad discretionary powers with liberality and should balance the equities of the case with a strong bias toward allowing the defendant to have his day in Court.” *Williams v. Colonial Bank*, 626 So. 2d 1247, 1249 (Ala. 1993).

In the instant case there is ample evidence to be tested at trial. A trial on the merits is warranted in order to test the competing claims of the parties. The Court should have the opportunity to examine all relevant facts and render a decision based upon the evidence.

IV. Conclusion.

The Default should be set aside on the grounds that:

- 1) Plaintiff would not be prejudiced if the default was set aside;
- 2) Defendant has a meritorious defense; and
- 3) Defendant’s conduct was not culpable in the default.

The Court should exercise its discretion in favor of allowing this matter to proceed and a decision rendered on the merits of the case.

Therefore, Defendants request that the Default be set aside and that Defendants’ lodged Answer, attached hereto, be accepted.

Dated: 17 February 2015

By: _____


James McCaffrey
Attorney for Defendants LEANDER LEANDER
and LIJUN LEANDER

Outway From 2002 - 2040

copy

LEASE AGREEMENT FOR EXTENSION AND REVISION OF A PORTION OF EASTERN GATEWAY HOTEL BUILDING AND SURROUNDING PREMISES

Remjon Weto, Delap Island, Majuro Atoll, Republic of the Marshall Islands 96960.

THIS LEASE AGREEMENT (hereinafter referred to as this "Lease") is duly made and entered on July 09, 2010, between the two Parties so named in this Agreement, **Leander Leander Jr & Li Jun Leander**, owners of **MAJI/MAP VISION**, whose address is P.O. Box 1342, Delap Island, Majuro Atoll, MH 96960 (hereinafter collectively referred to as "Lessee") and the **Nauru Council**, by and through their Authorized Representative, **Rubin Tsitsi**, whose address is P.O. Box 106, Delap Island, Majuro Atoll, MH 96960 (hereinafter referred to as "Lessor").

RECITALS

The Parties recite and acknowledge the following intentions under this Lease

WHEREAS the Lessor constructed the Eastern Gateway Hotel Building located on Remjon Weto, Delap Island, Majuro Atoll, MH 96960, hereinafter referred to as the "Premises" to which also refers to the real property and to any developments and improvements located on the Premises, and that all portions of the Premises duly belongs to Nauru Council as the Lessor.

WHEREAS the two parties are desirous of extension and revising the existing Lease, to look into and confirm certain portions and measurements on and around the Premises and to consolidate all the previous leases on the Premises on which the Lessee are leasing from the Lessor, as are described in Section 2 of this Lease.

WHEREAS the parties have executed this AGREEMENT FOR EXTENSION AND REVISION OF LEASE to continue the lease without interruption and supersedes the lease agreements entered in 2002. Lessee are currently leasing the Premises and have made advance and full payments for this Lease of the all Premises they leased until February 28, 2040. as set out in Sections 4 and 5 of this Lease.

IN CONSIDERATION of the covenants duly contained in this Lease, the Parties mutually agree as follows :

SECTION 1. Grant of Leasehold Interest. Subject to terms and conditions set forth in this Lease, the Lessor lease to Lessee and the Lessee hereby from Lessor the leasehold

Page 1 of 13

Recorded on 03:27 PM 09-Jul-10

H. H. H.
Registrar




interest to portions of the Eastern Gateway Hotel Building and surrounding premises and portions of Remjon Weto, Delap Island, Majuro Atoll, and particularly described in **Section 2.**

SECTION 2. Description of Premises. As provided in this Lease, the use of the term "**Premises**" refers to the real property and to any improvements located on the real property from time to time during the term of this Lease. An overview description of the Premises so surveyed and measured are shown as follows:

- (i) A sketched map of the overall Premises under this Lease. The measuring at the premises are 248ft long and the width of the premises is 195ft. Attached hereto as Exhibit A.
- (ii) A sketched map of the Eastern Gateway Hotel Building refers to the First Floor, the Second Floor include the Cocktail & Bar area located in the middle of the left stairways (facing towards the public highway) and the Third Floor. Exhibit include the middle and right stairways and all rooms between the middle and right stairways in the First, Second and Third Floors of the Eastern Gateway Hotel Building, Attached hereto as Exhibit B.
- (iii) A sketched map referring to a portion of the Premises adjacent to the main public highway and measuring at 165ft x 85ft. Attached hereto as Exhibit C.
- (iv) A sketched map referring to a portion of the Premises adjacent to the Exhibit B and C portion and the main public highway and measuring at 83ft x 95ft. Attached hereto as Exhibit D.
- (v) A sketched map referring to a portion of the Premises adjacent to the Exhibit B portion and located at the back and right side of the Eastern Gateway Hotel Building (facing towards the public highway) and measuring at 135ft x 43ft. Attached hereto as Exhibit E.

SECTION 3. Use of Premises. The Parties agree that the Lessee may use the Premises for any lawful purposes without restriction or limitation by the Lessor.

SECTION 4. Term. The Lessee currently have and hold the leasehold interest on the Premises for a term period of 25 years, to which commenced from the 25th day of September, 2002 and ending on the 24th day of September, 2027, and it shall continue for another term period of 13 years, without any notice and additional payment to Lessor, from the 24th day of September, 2027 and shall end on the 28th day of February, 2040, at midnight, as the two Parties have agreed.

Land Registration Authority
Instrument : 4010
Page 2 of 13
Recorded on 03:02 PM 09-Jul-10

Registrar

SECTION 5. Rent. The two Parties recognize and acknowledge that the Lessee have made the advance and full payments in the amount of US\$271,000.00 for the term of this Lease and to the Lessor at the office of Nauru Council at Majuro, Marshall Islands 96960, upon the execution of this Lease from the 25th day of September, 2002 until 28th day of February, 2040.

Both Parties have entered into a covenant that, the Lessee shall not be responsible for any form of payments to the Landowners, such as the Iroij (Chief), Alap and Dri Jerbal titleholders on and over the Remjon Weto, including the Lessor, upon the full payment of the \$271,000.00 at anytime throughout this Lease. The Lessor shall responsible for any payment to the Landowners throughout this Lease.

SECTION 6. Warranties of Title and Quiet Possession. The Lessor covenants to the Lessee that, with respect to Remjon Weto for which they are executing this Lease, the Lessor represent all persons having an interest in the said Weto under the laws of the Marshall Islands, and have the right and authority to make this Lease.

(a) The Lessor warrants that, the Lessee shall be granted peaceable and quiet enjoyment of the Premises, duly free from eviction or interference by the Lessor, so long as the Lessee perform the terms and conditions of this Lease.

(b) The Lessor warrants that, the rights of the Lessee to the Premises shall be defended against the claims, demands, and suits of any persons, so long as the Lessee perform the terms and conditions of this Lease.

(c) The Lessor warrants that, the Lessee shall lawfully, peacefully, and quietly occupy, use, hold, possess and enjoy the Premises during the full term of this Lease without hindrance, eviction, ejection or interruption, as long as the Lessee perform the terms and conditions of this Lease.

(d) The Lessor warrants that, during the term of this Lease, the Lessor may execute any necessary documents and or perform any necessary act in respect of ensuring that the Lessee have full use and enjoyment of the Premises or to enforce any term or provision of this Lease.

SECTION 7. Assignment or Sublease. The Lessee may assign or sublease its interest in this Lease or any right or interest in the Premises to any other person(s) or entity(s) in whole or in part without the consent of the Lessor and without any additional payment to the Lessor.


SECTION 8. Abandonment. The two parties shall not vacate and abandon the premises at any time during the term of this lease. The lessor can not cancel the lease with any reasons.

Land Registration Authority

Instrument : 4010

Page 3 of 13

Recorded on: 03:42 PM 09-Jul-10



SECTION 9. Construction, Alterations and Improvements. The Lessee have free and right to construct new and additional building, alter and or improvements on, in or around the leased Premises without approval and additional fees or costs to the Lessor.

SECTION 10. Repairs and Maintenance. The Lessee shall, throughout the term of this Lease, at their own cost and without expense of the Lessor, keep and maintain the premises and improvements thereto, in good, sanitary, and neat order.

SECTION 11. Utility Fees and Taxes. The Lessee shall pay as they become due all charges incurred for utility services supplied to the premises, such as electricity, water, sewer, telephone, and internet, but not property taxes. The Lessor shall be obligated to pay property taxes and assessments levied on the Premises by any authorized agency, and shall have no responsibilities to cover utility fees concerning the portions of the Premises used by the Lessee.

SECTION 12. Easements, Agreements and Encumbrances. The Parties shall be bound by all existing easements, agreements and encumbrances of record relating to the Premises.

SECTION 13. Indemnity. The both parties shall indemnify the against all expenses, liability, claims, loss, damages or expenses or on behalf of any person or entity arising out of either.

- (a) A failure of both parties to perform any of the terms or conditions of this lease.
- (b) Any damage or injury happening on or in the premises.
- (c) If the Lessor failure to comply with any acts and or regulations of any Local and National Governmental Entities of the Republic of the Marshall Islands that involves the Premises, the Lessor shall indemnify the lessee against all cost.

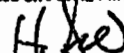
SECTION 14. Force Majeure. In the event of damage and or destruction to any leased portions of the Premises as a result of an event or effect that the Lessee could not have anticipated or beyond their control, the Lessee may be liable for the repair or restoration of any construction or improvement build during their use of the Premises.

- (a) Where certain portions of the Premises are destroyed, the Lessee shall have right for repair or restoration of the damaged or destroyed portions on the Premises.
- (b) Where the entire Premises is destroyed, the Lessee shall have the right to construct a new building as they deem fit, and the Lessor shall waive their right to compel the Lessee to construct any buildings for their business operations on the Premises.

Instrument : 4010

Page 4 of 13

Recorded on : 06:42 PM 09-Jul-10


Registrar

- (c) The events or effects would include natural acts such as, tsunamis, earthquakes, fire, floods and include all natural acts and also include man generated obstacles such as, war, riot and strike.
- (d) The building collapse cause of old, shown as Exhibit B as premises, the lessee shall not response for any damages and payments.

SECTION 15. Condemnation. The rights and duties of the parties in the event of condemnation as follow.

- (a) If a portion of the premises is taken or condemned, this lease shall not terminate, the parties have agreed.
- (b) If the portion of the premises is taken or condemned, Lessor shall pay back to lessee all cost include the US\$271,000.00 dollars.

SECTION 16. Liability of Lessor and Lessee. The Lessee shall have exclusive control and possession of the Premises, during the term of this Lease, the Lessor and assigns, successors in interest or of any person acting under direction or control shall not be liable for any injury or damages on the Premises.

SECTION 17. Surrender of the Premises. The Lessee shall, at the expiration of this Lease, to peacefully and quietly surrender and deliver the Premises to the Lessor, including fixed additions and other improvements constructed thereon, except for moveable trade fixtures. Upon such expiration of the Lessee shall peacefully and quietly surrender to the Lessor the Premises.

SECTION 18. Insurance. The Lessee shall, throughout the term of this lease, obtain and maintain at their own expense, of any appropriate type and amount of insurance, including fire, casualty, and liability insurance. The Lessor shall have their own insurance on the Premises also.

SECTION 19. Nuisance or Unlawful Activity. The Lessee shall not commit or suffer to be committed, any waste on the Premises or any nuisance.

SECTION 20. Right of Access to Premises. The Lessee and its agents, employees or invited and authorized guests shall have the right to access to the premises at all times. The Lessee shall have exclusive and unrestricted control of the premises, subject to the right of Lessor to enter the premises upon reason notice to the lessee.

SECTION 21. Compliance with Laws. Both parties shall comply with the law of the Republic of the Marshall Islands.

SECTION 22. Lessees' Option to Terminate. At any time during the term of this Lease, the Lessee may elect, at its own discretion and for any reason, to terminate this Lease upon the Lessee issuing two (2) year's notice to the Lessor. Upon termination of this Lease, the Lessees' liability hereunder shall cease and possession of the Premises shall be surrendered to the Lessor.

SECTION 23. Grounds for Termination. Where the Lessee vacates, surrenders and abandons the premises in violation of Section 22;

SECTION 24. Waiver. The waiver of any breach of the provisions of this Lease by the Lessor shall not constitute a continuing waiver or a waiver of any subsequent breach the Lessee; either of the same or of any other provision of this Lease.

SECTION 25. Notices. Any notice, approval, consent, waiver or other communication required or permitted to be given or to be served upon any person in connection with this Lease shall be in writing. Such notices shall be addressed to the party to whom such notice is to be given at the party's address set forth herein :

Rubin Tsitsi/Nauru Council
PO Box 106
Delap Island, Majuro Atoll
MH 96960

Leander Leander Jr & Li Jun Leander
PO Box 1342
Delap Island, Majuro Atoll
MH 96960

SECTION 26. Binding Effect of Lease. This Lease shall, including all of its terms and conditions, shall apply to and be binding on the Heirs, Successors, Executors, Administrators and Assigns of the two Parties hereto.

SECTION 27. Governing Law. The language in all provisions of this Lease shall be interpreted simply, and according to its fair meaning, and not strictly for or against the Lessor and or the Lessee. This Lease shall be governed by and construed in accordance with the laws of the Republic of the Marshall Islands.

SECTION 28. Survivability. If any provision of this lease is held invalid, it shall not affect the other provision of this lease and this lease shall remain in full force and effect without such provision.

Land Registration Authority

Instrument: 4010

Page 6 of 13

Recorded on : 03:42 PM 09-Jul-10

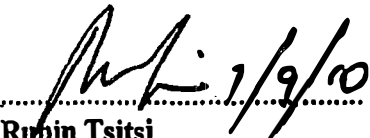

Registrar

SECTION 29. Merger. This Lease constitutes the entire Agreement between the Lessor and Lessee respecting the Premises or the leasing of the Premises to the Lessee and correctly sets forth the obligations of the Lessor and Lessee to each other as of its date of signing, and can only be altered, amended or replaced only by a duly written Instrument.

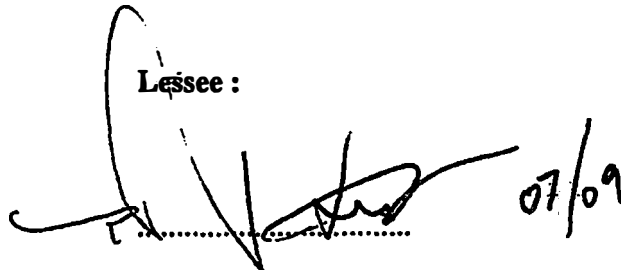
SECTION 30. Time is of the Essence. Time is expressly declared to be the essence in all provisions of this Lease.

IN WITNESS WHEREOF, the Parties hereto have signed this AGREEMENT FOR EXTENSION AND REVISION OF LEASE in July 9th, 2010, on the dates shown with respect to each of the signatures below.

Nauru Council as Lessor :


.....
Robin Tsitsi
Authorized Representative
Dated :

Lessee :


.....
Leander Leander Jr & Li Jun Leander
Dated :

Sworn and subscribed before me :


.....
Notary Public



Land Registration Authority

Instrument : 4010

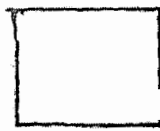
Page 7 of 13

Recorded on : 03:42 PM 09-Jul-10


.....
Registrar

EXHIBIT

"A"



EXHIBIT

"A"

SUBSCRIBED AND SWORN TO BEFORE
ME THIS 9th DAY OF July 2010
[Signature]
Asst. Clerk of Courts
Republic Of The Marshall Islands



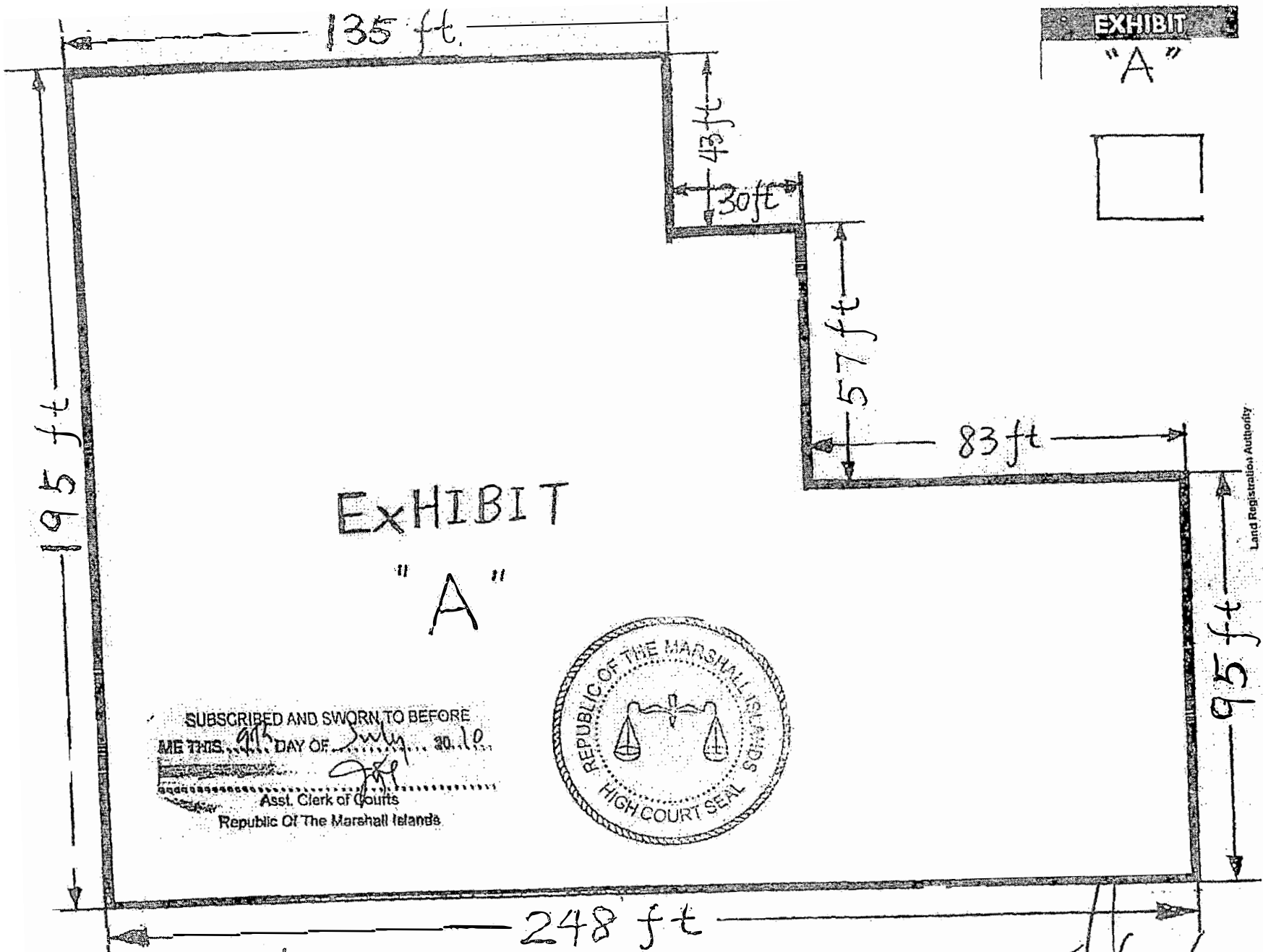
Land Registration Authority

Instrument: 4010

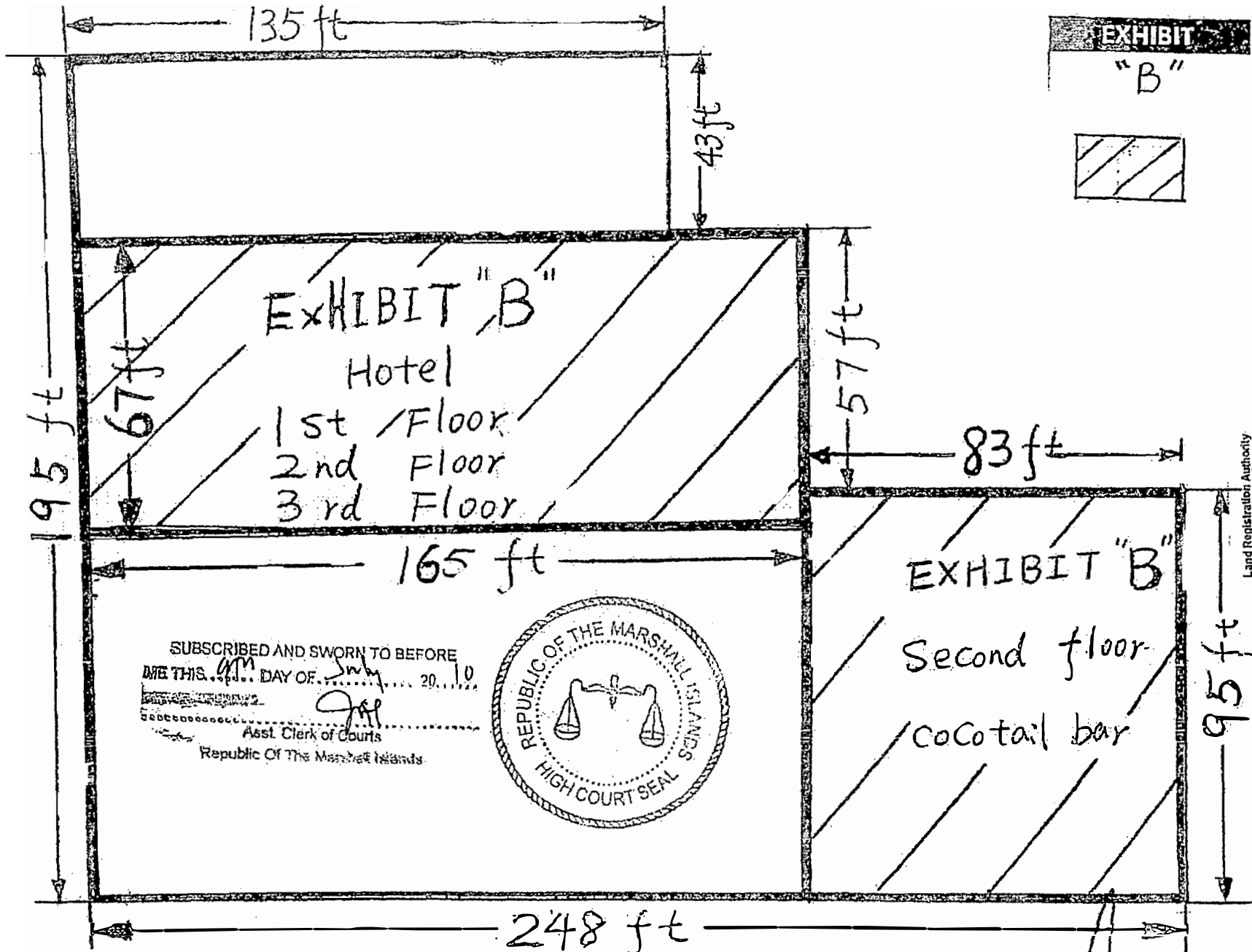
Page 8 of 13

Recorded on 10:42 PM 09-Jul-10

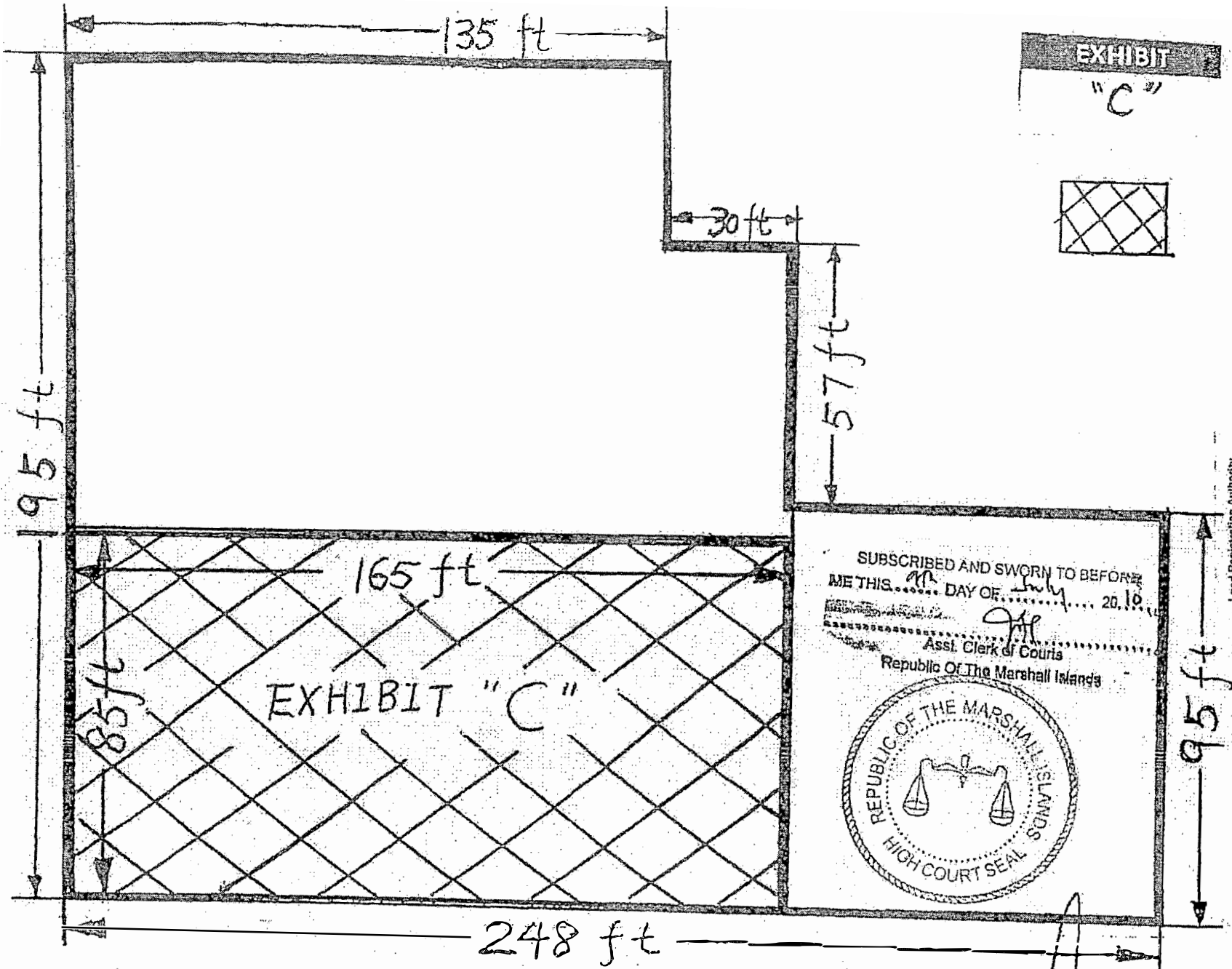
[Signature]
Registrar



PL- 2/9/10 MAIN PUBLIC HIGHWAY



At: 7/9/10 MAIN PUBLIC HIGHWAY 07/09



EXHIBIT

"C"



135 ft

95 ft

30 ft

57 ft

165 ft

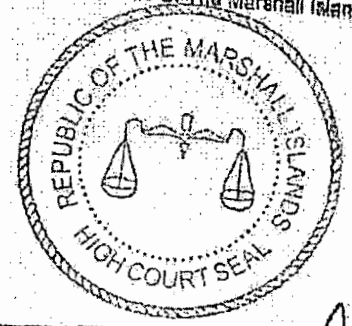
85 ft

EXHIBIT "C"

SUBSCRIBED AND SWORN TO BEFORE ME THIS... DAY OF... 20, 10

Asst. Clerk of Courts

Republic Of The Marshall Islands



95 ft

248 ft

Land Registration Authority

Instrument: 4010

Page 10 of 13

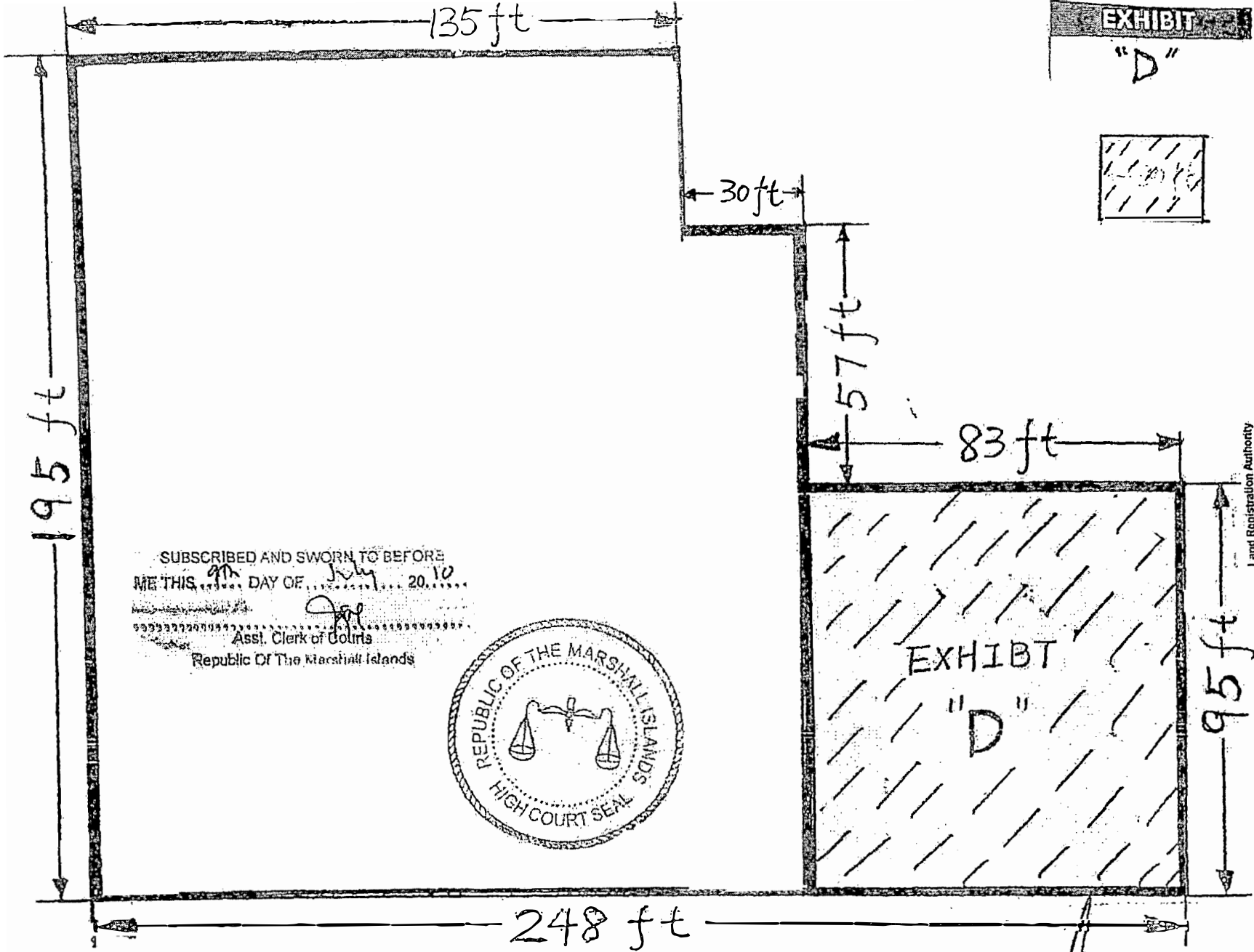
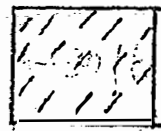
Recorded on: 03:42 PM 09-Jul-10

Registrar

Ref: 7/9/10 MAIN PUBLIC HIGHWAY

EXHIBIT

"D"



SUBSCRIBED AND SWORN TO BEFORE
ME THIS 9th DAY OF July 2010
Assst. Clerk of Courts
Republic Of The Marshall Islands



Land Registration Authority

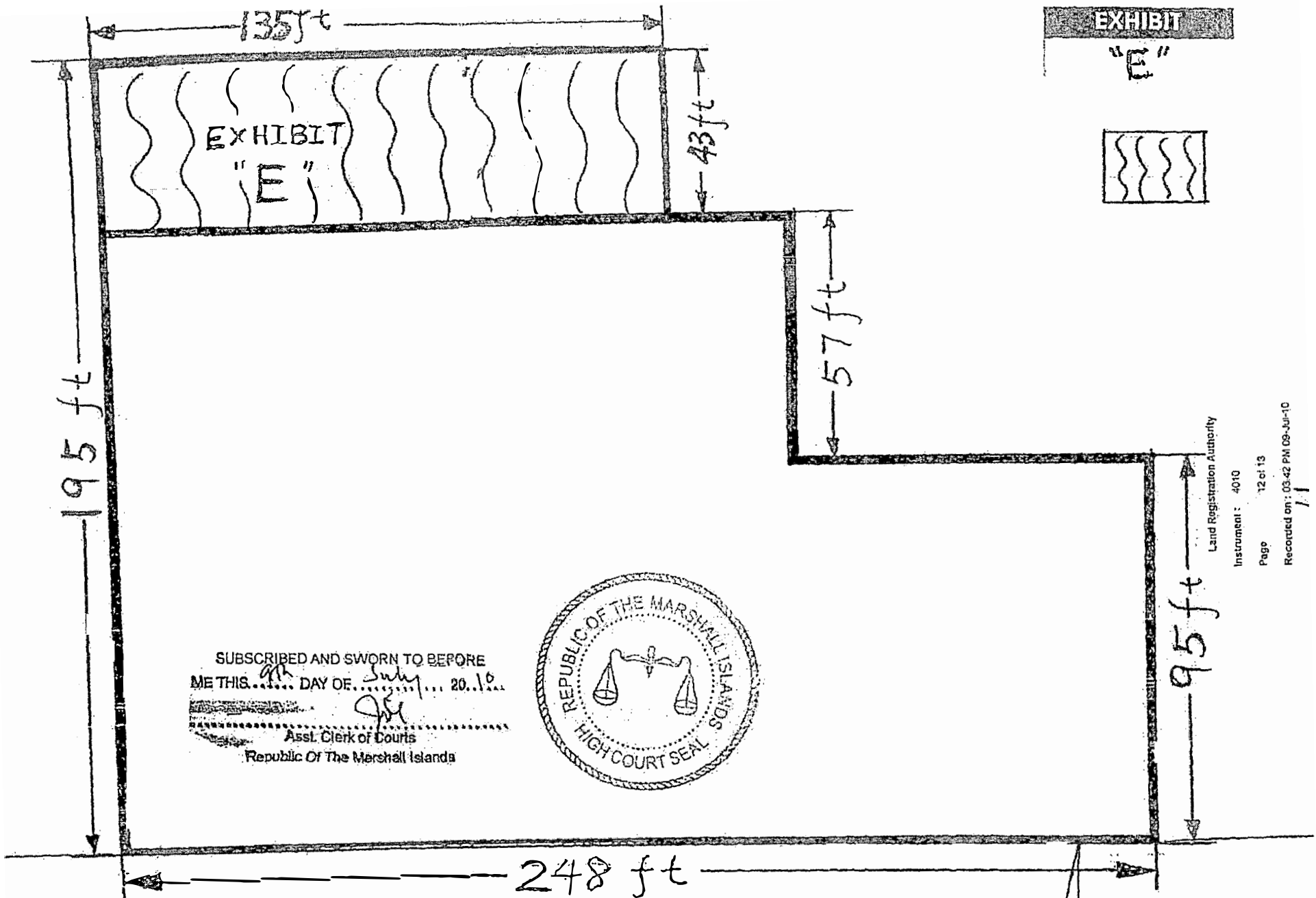
Instrument: 4010

Page 11 of 13

Recorded on: 03:42 PM 09-Jul-10

Registrar

M-7/9/10 MAIN PUBLIC HIGHWAY 07/09/10



SUBSCRIBED AND SWORN TO BEFORE
 ME THIS 9th DAY OF July 2010

 Asst. Clerk of Courts
 Republic Of The Marshall Islands



Land Registration Authority
 Instrument: 4010
 Page 12 of 13
 Recorded on: 03:42 PM 09-Jun-10

Ref- 7/9/10 MAIN PUBLIC HIGHWAY

NAURU COUNCIL OFFICE

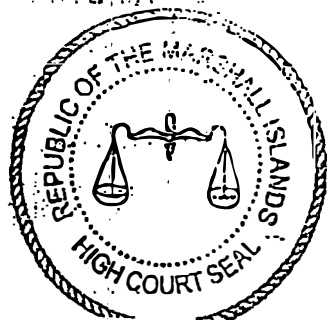
DELAP VILLAGE P.O. BOX 106 MAJURO MARSHALL ISLANDS 96960

I, Rubin Tsitsi as Nauru Council representative in Majuro, Marshall islands 96960 have received the amount of USD\$271,000.00 (Two hundred seventy one thousand and 00/100 US Dollars) from Leander Leander Jr and Li Jun Leander. The payments are the advance and full payment for all lease agreement between the Nauru Council,(the Lessor) and Leander Leander Jr and Li Jun Leander (the Lessee). The USD \$271,000.00 is for payment for all lease agreement entered into years 2002 and extension and revision the lease agreement entered into years 2010. The amount US \$271,000.00 is complete payment for the lease agreement from 25th day of September 2002 until 28th day of February, 2040. This amount include the payment USD \$200,000.00 in October 01, 2002.

Rubin Tsitsi 7/9/10

Rubin Tsitsi as Nauru Council

SUBSCRIBED AND SWORN TO BEFORE
ME THIS 17th DAY OF July 2010
Jk
Asst. Clerk of Courts
Republic Of The Marshall Islands



Instrument: 4010
Page 13 of 13

DEFENDANT'S EXHIBIT
B-17 Feb 2015



Republic of Nauru
Department of Foreign Affairs & Trade
Tel: (674) 441 3133 Ext: 267

13 July 2012

Mr. Rubin Tsitsi
Majuro, Marshall Islands 96960

Dear Sir,

This is to remind you that in accordance with Cabinet Resolution 128/2012 on 23rd April 2012, Cabinet decided to

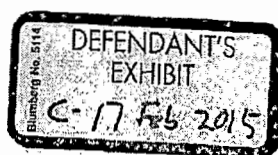
1. Terminate your services as the Eigigu Holdings Cooperation representative to the Marshall Islands with immediate effect.
2. Terminate your tenure as a representative of the Nauru Government to the Republic of Marshall Islands with immediate effect.

Further it was decided that Mr. David Aingimea will act as the representative of the Nauru Government to the Republic of the Marshall Islands and has full authority to represent the Government of Nauru and Eigigu Holdings Cooperation during this interim period.

The Department would appreciate your kind assistance and cooperation in facilitating the necessary arrangements to give effect to this decision.

Yours Sincerely,

Michael Aroi
Acting Secretary for Foreign Affairs & Trade



**2013 AMENDMENT TO THE 1990 LEASE AGREEMENT
FOR THE EASTERN GATEWAY HOTEL**

This amendment to the 1990 Lease Agreement for the Eastern Gateway Hotel ("original lease") recorded in the Land Registration Authority on September 13, 2006, as Instrument No. 489 is made and entered into on or about May, 2013, by and between Eigigu Holdings Corporation (hereinafter the "Tenant") and the owners and holders of the rights, titles, and interests according to Marshallese custom and tradition in Wotje and Remejon (Remjon) wetos, Delap, Majuro Atoll (hereinafter the "Landowners").

WHEREAS, on March 20, 2012, the Landowners notified Tenant that they were terminating the original lease as of April 6, 2012, for the Tenant's failure to cure its defaults listed in a February 15, 2012 Notice;

WHEREAS, The Termination of the 1990 Eastern Gateway Lease on Remejon and Wotje Wetos was recorded in the Land Registration Authority on May 8, 2012, as Instrument No. 4429; and

WHEREAS, Tenant has removed its representative at Landowners' request and desires to restore its relations with the Landowners and continue the original lease, as amended herein.

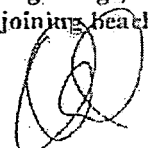

Witness that in consideration of the covenants hereinafter set forth and the benefits to be derived therefrom, the parties mutually agree as follows:

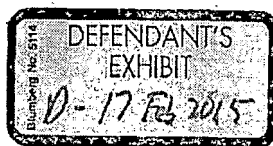
1. Section 3 of the original lease is amended and replaced to read as follows:

Section 3. Rent: Tenant shall pay the Landowners rent for the premises at the rate of \$15,000.00 per quarter for the term of the lease commencing with the quarter starting July 1, 2013. Tenant shall pay the Iroij 33.3% of the total quarterly rental payment; the Alap and Senior Dri-Jerbal of Remejon Weto 20.3% each of the total quarterly rental payment; and the Alap and Senior Dri-Jerbal of Wotje Weto 13% each of the total quarterly rental payment; or as otherwise directed by the particular Landowners.

2. Section 6 of the original lease is amended and replaced to read as follows:

Section 6. Waste and Nuisance Prohibited. Tenant shall not commit, or suffer to be committed, any waste on the premises, or any nuisance. Tenant shall arrange for schedule removal of all garbage and trash from the premises and adjoining beach area and shall keep the premises and adjoining beach area free and clear of garbage, waste, and vermin. As of May, 2013, the premises and adjoining beach area

 R.A.
ye 



are in a dilapidated condition and have not been maintained for many years. Tenant shall commence maintaining and beautifying the premises and adjoining beach area as is consistent with the originally envisioned hotel complex.

3. Section 10 of the original lease is amended and replaced to read as follows:

Section 10. Subletting and Assignment. Following the expiration of the current subleases on the premises, Tenant may sublease or assign the premises in whole or in part after first notifying the Landowners in writing, and Landowners have 30 days to file a written objection to the proposed sublease or assignment with Tenant. It is intended that the Landowners will not unreasonably object to a proposed sublease or assignment unless such involves illegal or immoral use. The Landowners will not object to such sublease or assignment so long as it is reasonably related to the improvement of the premises and the furtherance of developing the originally envisioned hotel complex.

4. A new Section 30 is added to the original lease to read as follows:

Section 30. Annual Meeting. Tenant and Landowners shall meet at least one time each year commencing June, 2014, or such other time as is convenient for the parties. The purpose of this annual meeting is for the parties to keep each other apprised of any anticipated changes or plans regarding the premises, requests of the opposite party, or complaints. The annual meeting is not intended to be a confrontational meeting, but, rather a further method of communication between the Tenant and Landowners.



R.A.



VI.


In witness whereof, the parties hereto have signed this amended lease agreement on the dates shown with respect to each of the signatures below.


Landowners:

Tenant

Dated: May 20, 2013

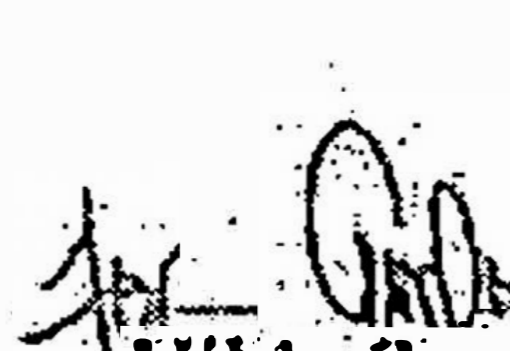

Dated: May 20, 2013



Jureiang Zedkaia, Iroij
Remejon and Wotje Wetos


David Aingimea, Chairman
Eigigu Holdings Corporation



Dated: ~~May~~ ^{June} 07, 2013

Dated: May 20, 2013

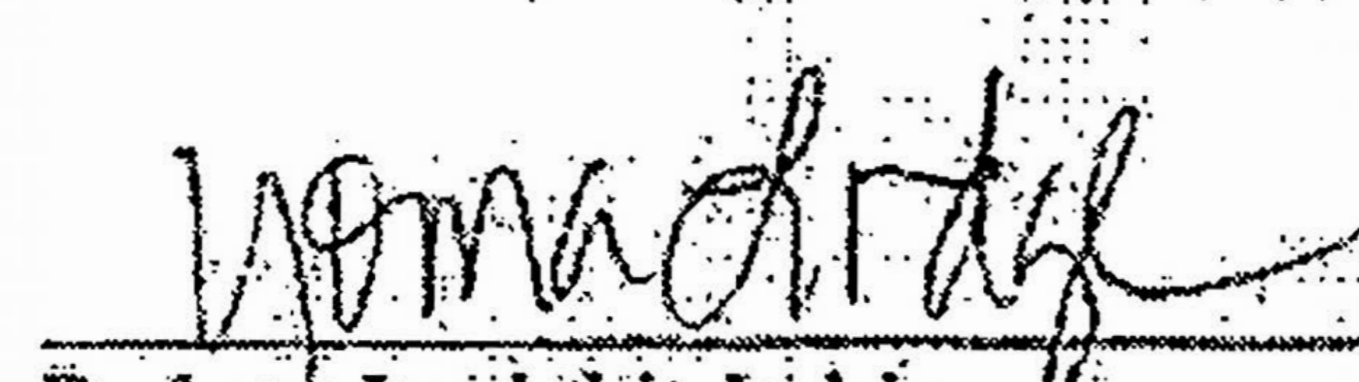

Hilda Samuel by 
Erin M. Joran
Alap and Senior Dri-Jerbal, Remejon Weto


Riddel Akua
Minister for Eigigu Holdings Corporation

Dated: ~~May~~ ^{Aug} 27, 2013


Francis Langinbit by 
Barbara Laninbit-Lobju
Alap, Wotje Weto

Dated: ~~May~~ ^{Aug} 27, 2013


Barbara Laninbit-Lobju
Senior Dri-Jerbal, Wotje Weto



John E. Masek, Esq.
P.O. Box 3373, Majuro,
Marshall Islands, 96960
Tel.: (692) 625-4824
Fax: (692) 625-4248
e-mail: 'jemesq@hotmail.com'

FILED

NOV 10 2014

ASST. CLERK OF COURTS
REPUBLIC OF MARSHALL ISLANDS

IN THE HIGH COURT
REPUBLIC OF THE MARSHALL ISLANDS

_____)	Civil Case No. 2014-067
Eigigu Holdings Corporation,)	
)	
)	
Plaintiff)	Affidavit of Leander Leander.
v.)	in Support of His Motion for
)	Relief from Entry of Default.
)	
Leander Leander and Lijun Leander,)	
)	
Defendants)	
_____)	

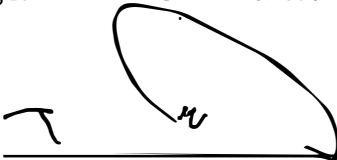
I, Leander Leander, declare:

1. I am over 21 years of age and resident of Majuro Atoll, and citizen of the Republic of the Marshall Islands.
2. I have personal first hand knowledge of the following facts, and if called as a witness could and would testify thereto in a Court of Law
3. In July of this year I was served with papers from Court, which I later learned were a Summons and Complaint in the above entitled matter.
4. Within 1 week of receiving the Summon and Complaint, I met with attorney Russel Kun. Mr. Kun had told me on many occasions about the various cases he had won, I and believed he was a good attorney. Mr. Kun agreed to represent me, and became my lawyer in this suit.

DEFENDANT'S
EXHIBIT
E-17 Feb 2015

5. Once I had retained Mr. Kun, I believed he would take all actions necessary to represent me, and protect my interests.
6. Within the past two weeks, I began to have doubts about Mr. Kun's ability to represent me. He also told me that he has a conflict because of his family in Nauru.
7. I became concerned, and attempted to meet with John Masek to discuss my case. Mr. Masek was not available till November 6, 2014. I met with Mr. Masek on the evening of November 6, 2014. He informed me that no Answer had been filed and Plaintiff was seeking to have a default entered against me. I was shocked and angry to hear this, as I relied upon Mr. Russel Kun to protect my interests, and file any needed Answer.
8. Attached as Exhibit "A" is a true and copy of the lease agreement signed and registered on July 9, 2010. Attached are 5 exhibits describing the property of have under my sub-lease. I have never violated any of the terms or conditions of this lease, and I believe that this sub-lease is still in full force and effect.
9. Attached hereto as Exhibit "B" is a receipt for the funds paid for my sub-leases. No rent is due at this time, and all rent has been fully paid.

I declare under penalty of perjury that the forgoing is true and correct. Executed this 10th day of November, 2014, at Majuro, Marshall Islands.



Leander Leander



SUBSCRIBED AND SWORN TO BEFORE
ME THIS 10th DAY OF Nov 2014

Asst. Clerk of Courts
Republic Of The Marshall Islands

John E. Masek, Esq.
P.O. Box 3373, Majuro,
Marshall Islands, 96960
Tel.: (692) 625-4824
Fax: (692) 625-4248
e-mail: jemesq@hotmail.com

FILED

NOV 10 2014

IN THE HIGH COURT
REPUBLIC OF THE MARSHALL ISLANDS

ASST. CLERK OF COURTS
REPUBLIC OF MARSHALL ISLANDS

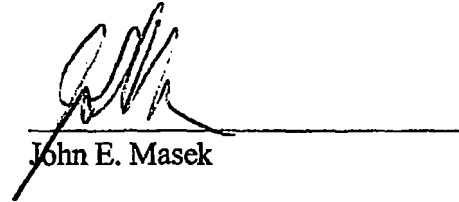
<hr/>		Civil Case No. 2014-067
Eigigu Holdings Corporation,)	
)	
)	
)	Affidavit of John E. Masek
Plaintiff)	in Support of Defendants Motion for
v.)	Relief from Entry of Default.
)	
)	
Leander Leander and Lijun Leander,)	
)	
)	
Defendants)	
<hr/>		

I, John E. Masek, declare:

1. I am over 21 years of age and resident of Majuro Atoll, and citizen of the United States of America.
2. I am the attorney of record for Defendants, and I have personal first hand knowledge of the following facts, and if call as a witness could and would testify thereto in a Court of Law.
3. On or about July 13, 2012, Mr. Rubin Tsitsi was terminated as the representative of Plaintiff, Eigigu Holdings and the Nauru Government Council. Attached as Defendant's Exhibit "C" is a true and correct copy of said termination letter, originally filed by Eigigu Holdings in the matter of Eigigu Holdings v Rubin Tsitsi, High Court case #2013-005.

4. Attached as Defendant's Exhibit "D" is a true and correct copy of 2013 Amendment to the 1990 Lease Agreement for the Eastern Gateway Hotel, originally filed Eigigu Holdings in the matter of Eigigu Holdings v Rubin Tsitsi, High Court case #2013-005.
5. On November 10, 2014, I went to the Registrar of Foreign Investment. Staff at the Registrar confirmed that Eigigu Holdings Foreign Investment Business License, License #RMI-2014-04, was issued on October 3, 2014. Staff further confirmed that there was no previous license for Eigigu Holdings.

I declare under penalty of perjury that the forgoing is true and correct. Executed this 10th day of November, 2014, at Majuro, Marshall Islands.



John E. Masek