

**VIRGIN ISLANDS PORT AUTHORITY  
LEASE AGREEMENT FOR REAL PROPERTY**

**LACATION: WATERFRONT,  
ST. THOMAS, VI  
ST. CROIX, VI**

THIS LEASE AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_

by and between the **VIRGIN ISLANDS PORT AUTHORITY**, of P. O. Box 1707, St. Thomas, VI (hereinafter called the "Authority") and **SEABORNE VIRGIN ISLANDS, INC.**, of 5305 Long Bay Road, St. Thomas, VI (hereinafter called the "Tenant").

W I T N E S S E T H:

WHEREAS, the Authority, by virtue of Title 29, V.I.C. Section 531, et. seq., is charged with the responsibilities of administration, maintenance and operation of public air facilities in the Virgin Islands; and

WHEREAS, the Tenant will operate a viable Seaplane service from property currently under the jurisdiction and control of the Authority pursuant to this Lease Agreement; and

WHEREAS, the Governing Board of the Authority, at a meeting duly called and consisting of the quorum mandated by 29 V.I.C. §542(b), authorized on the 18th day of June, 1997, its Executive Director to execute this Agreement.

NOW, THEREFORE, the parties hereto, for and in consideration of the covenants and mutual promises hereinafter set forth, covenant and agree as follows:

**ARTICLE I - GENERAL TERMS AND CONDITIONS**

Section 1.01. PREMISES. The Authority hereby leases to Tenant the following

described premises, commonly referred to as the "Seaplane Ramps":

Parcel #B, Waterfront, St. Thomas, VI, (1.225 acres more or less) consisting of Operational Area with existing Terminal Building, Ramp Area and West Parking Lot Area, all as more fully detailed on the attached "Exhibit A, Page 1", incorporated herein. Parcel No. 10, Christiansted Waterfront (1.719 acres more or less), all as more fully detailed on the attached "Exhibit A, Page 2", incorporated herein.

Section 1.01A. TERM, RENEWAL AND OPTION. The duration of the rights and privileges granted herein shall be as follows:

- (1) An initial term of twenty (20) years beginning on the date of approval of this Agreement by the Legislature of the Virgin Islands; and
- (2) Upon the expiration of the lease term described in paragraph (1) of this section, this agreement may be renewed at the option of the Tenant for ten (10) years, provided, the Tenant shall not be in default of any of the provisions or covenants contained herein at the time of the exercise of the option and further, that the Tenant shall notify the Authority in writing of its intention to exercise the option no earlier than one hundred and eighty (180) days and no later than ninety (90) days prior to the expiration date of this Agreement.

Section 1.02. USE. The Tenant shall be entitled to the full enjoyment, exclusive use, occupancy and possession of said Premises, the primary use of which shall be for the operation of a seaplane transportation system for the carriage of persons between the islands of St. Thomas and St. Croix, Virgin Islands, and other ancillary uses as

defined in Section 6.03 hereof.

Tenant covenants and agrees that the use of the premises does not, during the term of this agreement, and any option period thereto, permit the operation of a food and/or beverage concession on the St. Thomas leased premises by any person, partnership, proprietorship, corporation or other entity, other than Petite Pump Room, Inc., which shall have the exclusive right to operate a concessionaire cart on the general concrete area of the St. Thomas premises, exclusive of designated landing areas.

Beginning December 12, 19<sup>97</sup>, Tenant shall have the right to enter the Premises to undertake such surveys and inspections of the Premises and all improvements thereon, and upon final government approval Tenant shall have the right to undertake such construction thereon as may be necessary to enable tenant to commence operations. Notwithstanding the foregoing, Tenant shall coordinate such surveys, inspection and construction with the Authority so as not to interfere with the ability of the Authority to meet its obligations under Section 1.05.

In order to enhance the safety of Seaplane service and pursuant to the proprietary powers of the Authority, the Authority shall not grant to any other person any rights or privileges to operate a competing seaplane transportation system utilizing property owned, controlled or otherwise within the jurisdiction of the Authority.

Notwithstanding the foregoing, the Tenant covenants and agrees that it will exert its best efforts to accommodate an agreement with one provider of helicopter sightseeing/ambulance services (hereinafter, "Helicopter Service Provider") to be

conducted from the Seaplane Ramp on the Charlotte Amalie waterfront apron, which agreement shall, to the maximum extent possible, (1) assure for safe operations on such Seaplane Ramp, and (2) provide that the Tenant has priority preference for parking, refueling, parking of aircraft and movement of passengers. It is expressly acknowledged, however, that Tenant shall have the absolute right to make all final determinations as to the arrangements with the Helicopter Service Provider, and in the event a dispute arises between the parties the Tenant shall have the sole right to make the final decision regarding any such dispute.

Nothing in this Agreement shall be construed as granting to Tenant any right to operate any business not expressly granted herein.

Section 1.03. FEE. Rental payments will begin (the "Rent Commencement Date") on the earlier of (1) the granting of all required permits for docks on both islands, the hangar on St Croix and approved fueling arrangements on both islands or (2) 120 days after the Lease is approved by the Legislature of the Virgin Islands, provided, however, that if the permits cited in (1) above are not in place, the rent payable will be THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00) per month for the use of all premises that can be used absent the outstanding permits until the earlier of (a) the permits being in place or (b) 240 days from approval of the Lease by the Legislature of the Virgin Islands, at which time Tenant shall have the option of continuing the Lease at full rent as set forth hereafter, or terminating the Lease.

Except as stated above in this Section 1.03, commencing on the first day of the

month following the Rent Commencement Date, and continuing on the first day of each successive month for the period of one year thereafter, the Tenant shall pay the Authority the annual fee of Sixty Thousand Dollars (\$60,000) at a monthly rate of Five Thousand Dollars (\$5,000). Commencing on the first anniversary of the Rent Commencement Date and continuing on the first day of each successive month for the period of two years thereafter the Tenant shall pay the Authority the annual fee of Seventy Two-Thousand Dollars (\$72,000) at a monthly rate of Six Thousand Dollars (\$6,000).

In the event Tenant exercises its option to renew this agreement for a further period of ten (10) years as provided above, the fee during the option period shall be determined on the basis of the then-existing Fair Market Value ("FMV") of the premises, including all improvements located thereon. FMV shall be established by the average of three appraisals of the leased premises; one appraiser shall be selected by the Tenant, one appraiser shall be selected by the Authority, the two of whom shall then jointly select a third appraiser. Commencing on the third anniversary of the option period commencement date, and every three years thereafter, the fee during the option period ~~shall~~ shall be adjusted in accord with the provisions of Section 1.04 below, provided that at no time during the option period shall the annual fee be less than the initial FMV established.

Notwithstanding the above, in the event Tenant shall have invested during the initial period of the Lease a sum in excess of One Million Dollars (\$1,000,000; the dollar value of which shall be measured in November 1997 dollars), in the infrastructure and

physical improvements, including all buildings and structures, to the premises leased, the rent to be paid during the option period shall be at fifty percent (50%) of the FMV of all improvements made and/or constructed by Tenant and one hundred percent (100%) of the FMV of all improvements made and/or constructed by the Authority, subject to adjustment in accord with the provisions of the second paragraph of this Section 1.03 and the provisions of Section 1.04.

In addition and supplemental to any rents and/or fees imposed by this Section 1.03 and Section 6.03, Tenant shall pay to Authority an amount equal to the CPI-adjusted value of \$1.00 (adjusted from the date of approval of this Lease by the Legislature of the Virgin Islands) per revenue passenger over 100,000 passengers departing from the St. Thomas and St. Croix ramps. Tenant shall pay this supplemental fee annually in three (3) equal payments togetherwith the March, April and May rental payments under this Lease

All rents and fees shall be payable to the Virgin Islands Port Authority at its Administrative Offices, Cyril E. King Airport, St. Thomas, or mailed to the attention of its Executive Director at Post Office Box 1707, St. Thomas, United States Virgin Islands 00803.

Section 1.04. ADJUSTMENTS IN FEE. Commencing the third anniversary of the Rent Commencement Date, and every three years thereafter during the initial term of this agreement, the annual fee for the following three years shall be computed by comparing

for said year the Consumer Price Index ("CPI") as established by the U. S. Department of Labor, Bureau of Statistics, with the CPI for the same period commencing in 1997. The annual rental payments shall be increased or decreased in the same proportion as said CPI has increased or decreased with the consumer price index for calendar year 1997 when this Agreement was executed, provided, however, that subsequent annual rents shall not be less than Seventy Two Thousand Dollars (\$72,000.00).

Section 1.05. PREMISES - OBLIGATIONS OF THE AUTHORITY. Authority shall, at its own cost, expense and liability:

- (1) maintain fencing around the premises which complies with the requirements of the Federal Aviation Administration;
- (2) provide Tenant with certification from an appropriate environmental agency that the premises, at the time of execution of this agreement, are in full compliance with all applicable United States and Virgin Islands environmental requirements;
- (3) maintain and repair the structural integrity of the landing areas and concrete ramps presently located on the leased premises, except where damage to the said landing areas and/or ramps is caused by Tenant's invitees, agents, employees, guests or authorized users.

Section 1.06. PREMISES - OBLIGATIONS OF THE TENANT. The Tenant agrees to expend no less than One Hundred Fifty Thousand Dollars (\$150,000.00) on capital expenditures within six (6) months of final approval of all permits necessary for the development of a seaplane service. For purposes of this section, expenditures shall mean monies actually expended or contracted for. The Tenant shall not make any alterations, additions or improvements to the Premises without first submitting the plans

and specifications of the proposed changes to the Authority and receiving its written approval thereof. The Authority shall respond to Tenant within Twenty One (21) days of the date of submission of such plans and specifications. Such plans and specifications shall be deemed approved if the Authority, after the Twenty One (21) day period specified herein, fails to approve or disapprove same within seven (7) days of receipt of written notice from Tenant that no action has been taken thereon.

Title to any permanent improvements to the Premises made by the Tenant shall vest in the Tenant during the initial term of this agreement, not to include the option period; such permanent improvements shall become the property of the Authority at the end of the initial term of this Agreement, or upon the sooner termination thereof, and Tenant covenants that it will execute any and all documents in favor of Authority reasonably necessary to transfer title of same to the Authority upon the expiration of the initial term or sooner termination thereof.

Except as provided in Section 1.05, the Tenant shall, at its sole cost and expense, have and keep said Premises in constant good condition and repair, and shall surrender at termination of this Agreement same to Authority in as good condition as received, reasonable wear and tear excepted. Tenant shall be solely responsible for the maintenance and repair, major and minor, of the entire premises leased hereunder, including any and all improvements located thereon existing at the time of execution of this Agreement or constructed subsequent thereto.

Section 1.07. FIRE AND HEALTH HAZARDS. The Tenant shall maintain the

Premises reasonably free from accumulations of scraps, oil, debris, etc., caused by or resulting from the Tenant's operations in and upon the Premises. All trash, garbage and debris shall be removed from the Premises regularly. Further, Tenant promptly shall comply with all reasonable written recommendations made to it by the Authority and by other Governmental officials relating to fire prevention and health hazards.

A duly authorized representative of the Authority shall have the right to enter upon the Premises at all reasonable hours for the purpose of making an inspection for compliance with this covenant.

Section 1.08. UTILITY SERVICE. The Tenant shall make separate arrangements and shall pay for any and all utility services needed for its own purposes on the Premises and with any improvements.

Section 1.09. TAXES AND ASSESSMENT. Tenant shall pay all lawful taxes which may be assessed against the property during the term of this lease by any legally constituted taxing authority.

Section 1.10. SECURITY. The Authority shall accept a Bond in a form satisfactory to the Authority, in an amount equal to one (1) year's ~~year's~~ rent, which sum shall be increased periodically in the event that the annual rental is increased and conditioned on the faithful performance by Tenant of the covenants herein.

Section 1.11. INTEREST. The parties hereto agree that the Authority may charge the Tenant interest at the rate of one and one-half percent (1.5%) per month on all accounts which are overdue in excess of thirty (30) days.

The parties further agree that the charging of interest shall not affect or limit any of the rights that the Authority may have regarding eviction or any other actions or rights available to said Authority under the terms of this Agreement.

Section 1.12. WAIVER. No act or acceptance by the Authority of fees, charges or other payments, in whole or in part, for any periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Tenant shall be deemed a waiver of any right on the part of the Authority to terminate this Agreement unless such waiver is executed by the Authority in writing, showing a clear intent on the part of the Authority to create such a waiver.

A waiver by the Authority of any default of Tenant or by Tenant of any default of the Authority in the performance of any of the covenants, terms or conditions of this Agreement shall not be deemed or considered to be a future waiver of the same matter or of any future or present matter, and it is mutually covenanted and agreed that the various rights, powers, privileges, options and remedies of Authority and Tenant herein respectively contained shall be construed to be cumulative and that no one of them shall be deemed to be exclusive of the other or exclusive of any rights, powers, privileges, options or remedies provided by law.

Section 1.13. RULES AND REGULATIONS. Tenant shall observe and obey all rules and regulations which reasonably, from time to time during the term of this Agreement, may be proscribed by the Authority for conduct and operation at or on the premises or by law, rules and regulations of any Federal or local agency having

jurisdiction and/or authority over the Premises.

The Authority shall give the Tenant notice of any change in Authority's rules and regulations at least fifteen (15) days prior to the effective date of such change or changes, whenever practical and possible, and the Authority shall furnish to the Tenant copies thereof. Tenant shall have five (5) days after receipt of such copies in which to submit in writing any objections or modification to proposed rules. The Tenant hereby agrees to be bound by and to comply with said rules and regulations, subject to the right of the Tenant to challenge in good faith in a court of law the validity of such amended rules and regulations.

Section 1.14. PERSONAL PROPERTY AND DAMAGE. All personal property of any kind or description whatsoever located in the Premises shall be there at the Tenant's sole risk, and the Authority shall not be liable for any damage done to or loss of such personal property or damage or loss suffered by the business or occupation of the Tenant from any act or neglect by other occupants of the building. Except as otherwise provided, the Authority shall not be liable for any damage occasioned or done by plumbing, such as water, steam or other pipes, sewerage, or bursting, leaking or running of any cistern, tank, washstand, water closet or waste pipe in, above, upon or about said premises, nor for damage occasioned by water being upon or coming through any roof, ceiling, skylight, trapdoor or otherwise.

Section 1.15. WATER. It is further expressly understood by the parties hereto that said Premises are located in an area which is subject periods of limited rainfall and

that Tenant assumes the risk of such condition. Nothing herein shall be construed to be a promise or guarantee on the part of the Authority that there will be water available at all times of for the needs of Tenant's business. Tenant shall have full access to and use of cistern and potable water at the Premises, but the Authority is under no obligation to provide water of any type or source to Tenant.

Section 1.16. CONDEMNATION. In case any action or other proceeding by a governmental agency or agencies for the taking for a public use if any interest in all or part of the Premises, or in case of any deed, lease or other conveyance in lieu thereof, the Tenant shall not be entitled to assert any claim to any compensation, award or part thereof, made or to be made, therein or therefore in connection with the fee ownership and other rights to the Authority, but Tenant shall have the right to institute any action or proceeding or to assert any claim against the condemning authority, but not against the Authority (unless the Authority is the condemning agency) for any such taking or conveyance.

It is understood and agreed between the parties hereto that the Authority shall be entitled to all compensation awards made, to be made or paid, and to all such consideration or rental free of any claim or right of the Tenant provided, however, that the Authority shall not be entitled to any portion of the award made to Tenant for loss of business or other leasehold damages.

Section 1.17. NON-DISCRIMINATION. The Tenant rights or privileges herein granted to it, shall not discriminate on the grounds of race, color, sex or national origin

against any person or group of persons in any manner prohibited by Part 15 of the Federal Aviation Regulations. The Authority hereby is granted the right to take such action, anything to the contrary herein notwithstanding, as the United States may direct to enforce this non-discrimination covenant.

Section 1.18. OFFICIALS NOT TO BENEFIT. No member of Congress, official of the United States or official of the Government of the Virgin Islands, or member, employee or agent of the Authority, shall be admitted to any share or part of this Agreement, or to any benefit which may arise therefrom, but this restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

Section 1.19. TITLE. Title to all improvements built or constructed on the leased premises by Tenant shall be vested in, and remain with, Tenant during the initial twenty (20) year period of this Lease. On the first day of the option period hereunder title to all improvements then existing on the leased premises, whether built or constructed on the leased premises by Tenant or Authority, shall revert to the Authority. Tenant covenants that it will do all things reasonable and necessary to effectuate the transfer of title from Tenant to Authority, including, but not limited to, the execution and tender of all documents necessary to record said title in the name of the Authority.

## ARTICLE 2 - LIABILITY

Section 2.01. GENERAL. The use of the named Premises by Tenant, its agents, employees, licensees and invitees, for the term set forth herein, shall be at their sole risk

and with no liability to the Authority. The Tenant agrees to indemnify and hold the Authority safe and harmless from all claims, costs and liabilities for injury to or the death of any person or damage to any property arising out of or in any way connected with the use or occupancy of the Premises by Tenant, its agents, employees, licensees or invitees, providing (1) that such claims, costs, and liabilities do not arise from the negligence of the Authority, or (2) are not proximately caused by the failure of the Authority to meet an obligation under Section 1.05. Tenant hereby does release the Authority from all claims, costs and liabilities which may arise from damage to or destruction of Tenant's property caused by fire during the term set forth herein.

Section 2.02. INSURANCE. The Tenant shall carry liability and property damage insurance with limits of not less than \$500,000 for one person, \$6,000,000 for one accident for public liability, and \$1,000,000 property damage. The Tenant shall provide a certificate of insurance to the Authority certifying that such coverage is in force and that the Authority will be notified at least (30) days before cancellation of or material change to said policy.

At its own expense, the Tenant shall keep in force and effect insurance upon all improvements existing on the Premises (except for the landing areas and concrete ramps the repair and maintenance of which are the obligation of the Authority under Section 1.05) and improvements which shall be construed or installed by Tenant upon the Premises.

Section 2.03. FORM AND EVIDENCE OF INSURANCE. All such insurance

policies or certificates required by this Agreement shall be issued by an insurance or surety company, or companies, of sound and adequate financial responsibility.

The Tenant shall deposit with the Authority a copy of such property insurance policy, or policies, or a certificate of such insurance coverage. In the alternative, at the option of the Authority and in lieu of the insurance required of the Tenant in this Agreement, the Tenant may provide the Authority with satisfactory evidence of equal insurance protection by an adequate self-insurance program.

Section 2.04. INDEMNIFICATION. The Authority agrees to defend (with counsel approved by Tenant), fully indemnify, and hold entirely free and harmless Tenant from and against all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the lease term and which are imposed on, paid by, or asserted against Tenant by reason or on account of, or in connection with, or arising out of presence or suspected presence of Hazardous Material in the soil, ground water, or soil vapor on or about the Premises, except to the extent that the Hazardous Material is present as a result of (i) Tenant's activities on the Premises, or (ii) the activities of the Tenant's agents, invitees, employees, contractors, concessionaires or subtenants. Other than as limited by the preceding sentence, this indemnification of Tenant by the Authority includes, without limitation, costs incurred in connection with any of the following:

- (a) any investigative or remedial action involving the presence of Hazardous

Material on or about the Premises or releases of Hazardous Material from the Premises;

- (b) any allegations made by any governmental authority or any private citizen or entity or group of citizens or entities as to the violation of any United States or Virgin Islands environmental requirements involving the Premises or the operations conducted thereon; and/or
- (c) any injury or harm of any type to any be to any person or entity or damage to any property arising out of, in connection with, or in any way relating to (i) the use, generation, manufacture, refinement, transportation, treatment, storage, release, or disposal, or other handling of Hazardous Material on the Premises or pursuant to the operations conducted thereon, and/or (ii) the violation of any such environmental requirements, and/or (iii) the contamination of the Premises.

For purposes of this Section 2.04, the term "Hazard Material" shall mean any hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. Section 172.101) or by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302 and amendments thereto), petroleum products and their derivatives, and such other substances, materials and wastes as become regulated or subject to cleanup authority under any United States or Virgin Islands environmental requirements.

The provisions of this Section 2.04 shall survive the expiration or earlier termination of this Agreement.

**ARTICLE 3 - RIGHTS AND PRIVILEGES RESERVED BY THE AUTHORITY**

Section 3.01. AT TIME OF WAR. The Authority reserves the right during the time of war or national emergency to lease its properties, or any part thereof to the United States Government for military or naval use and, if any such lease is executed, the privileges of this instrument, insofar as they are inconsistent with the privileges of the lease to the government, shall be suspended.

Section 3.02. INSPECTION. The duly authorized representative of the Authority, or any other Federal or local government agency, shall have the right, upon the provision of reasonable notice, to enter upon the Premises at all reasonable hours for the purpose of making an inspection in relation to the Tenant's operations and the Tenant shall cooperate with such inspection.

#### **ARTICLE 4 - GENERAL RIGHTS OF TENANT**

Section 4.01. RIGHTS-OF-WAY. The Tenant shall have the right to use rights-of-way at locations hereafter designated in writing common with others, including, but not limited to, those for the passage of aircraft and for conduits, duct, pipes, wires, cables and for facilities (including but not limited to, facilities and equipment related or incidental to communications, control, teletypes, telephones, interphone systems, and pneumatic tubes) where such equipment and facilities have been installed in the Premises.

Section 4.02. RIGHT OF INGRESS AND EGRESS. The Tenant, its employees, customers, guests, contractors, suppliers of materials, furnisher of services, and/or invitees in common with others shall have the non-exclusive rights of ingress to and

egress from any and all premises herein and to and from such other portions of the airport facility area which said persons reasonably require ingress or egress in such manner and at such locations as the Authority may from time to time designate.

Section 4.03. ARCHITECTS, CONTRACTORS AND BUILDERS. The Tenant shall have the right to employ such architects, contractors or builders as the Tenant shall deem necessary or desirable in connection with the authorized construction, installation, alteration, modification, repair and/or maintenance of any building, structure or improvement upon the Premises provided, however, that any such architects, contractors or builders shall be licensed in the U.S. Virgin Islands and otherwise competent in their respective professions or trade.

Section 4.04. SIGNS. The Tenant shall have the right to install and operate upon the Premises, at the Tenant's expense, advertising signs representing its business. Design, size and locations of such signs shall be subject to the prior written approval of the Authority. The Authority shall respond to Tenant within Fourteen (14) days of the date of submission of a proposed sign and the Authority shall not be withheld unreasonably. Said signs shall be so constructed and installed as to comply with any existing building and other existing regulations.

Upon the expiration or the sooner termination of this Agreement, the Tenant, if requested by the Authority, shall remove, obliterate or paint out any and all advertising, signs, posters and similar devices placed by the Tenant on the Premises. The Authority shall be the sole judge as to which of these actions shall be performed. In the event on

the part of the Tenant of the failure to remove, obliterate or paint out each and every sign or piece of advertising so requested by the Authority, the Authority may perform such necessary work, and the Tenant shall be responsible and shall pay the costs thereof to the Authority upon demand.

Section 4.05. WAIVER OF AIRPORT OPERATIONS. Tenant expressly waives hereby, during the term of this Lease, and any extensions, renewals or option periods granted hereunder, the right to operate between the Cyril E. King Airport, St. Thomas, Virgin Islands, and the Henry E. Rohlsen Airport, St. Croix, Virgin Islands, for the purpose of taking on or discharging passengers. This section shall not apply to the taking on or discharging of passengers at either of the aforementioned Airports in the course of or resulting from, as determined by the Tenant in good faith, an emergency, or where weather conditions will not permit take-offs and landings from or on the water. The Authority may waive the restrictions imposed on Tenant under this Section 4.5 at any time. Nothing in this 4.5 shall be construed to restrict in any way the operations of any entity affiliated with the Tenant.

#### **ARTICLE 5 - ENCUMBRANCE OF LEASEHOLD ESTATE**

Section 5.01. TENANT'S RIGHT TO ENCUMBER. Tenant may, from time to time during the term of this Lease, encumber to any bank or financial institution (herein called "Lender"), by deed of trust or mortgage or other security instrument, all of Tenant's interest under this Lease and the leasehold estate hereby created in Tenant for the purpose of securing monies advanced and used in constructing improvements on the

leasehold premises; provided, however that no encumbrances incurred by Tenant pursuant to this section shall, and Tenant shall not have the power to incur any encumbrances that will constitute in any way a lien or encumbrance on the fee of said premises or any interest of the Authority in said premises.

Section 5.02. REQUEST FOR NOTICE OF LOAN DEFAULT. Immediately after the recording of any deed of trust or mortgage executed pursuant to Section 5.01 of this Lease and containing a power of sale as defined by Virgin Islands law, Tenant shall, at Tenant's own cost and expense, record in the office of the Recorder of Deeds, St. Thomas, Virgin Islands, a written request executed and acknowledged by the Authority for a copy of any notice of sale under deed of trust or mortgage to be mailed to the Authority at the address specified in the request by the Authority.

Section 5.03. NOTICE TO AND SERVICE ON LENDER. The Authority shall mail to Lender, should Tenant incur any encumbrance pursuant to Section 5.01 of this Lease, a duplicate copy of any and all notices the Authority may from time to time give to or serve on Tenant pursuant to or relating to this Lease. The Tenant shall at all times keep the Authority informed in writing of the name and mailing address of Lender and any changes in Lender's mailing address. Any notices or other communications permitted by this or any other section of this Lease or by law to be served on or given to Lender by the Authority shall be deemed duly served on or given to Lender when deposited in the United States mail, first class postage pre-paid, addressed to Lender at the last mailing address for Lender furnished in writing to the Authority by Tenant or Lender.

Section 5.04. NO MODIFICATION WITHOUT LENDER'S CONSENT. Should Tenant incur any encumbrance pursuant to Section 5.01 of this Lease, Tenant and the Authority hereby expressly stipulate and agree that they will not modify this Lease in any way nor cancel this Lease by mutual agreement without the written consent of Lender having such encumbrance.

Section 5.05. RIGHTS OF LENDER. Should Tenant incur any encumbrance pursuant to Section 5.01 of this Lease, the Lender having such encumbrance shall have the right at any time during the term of this Lease and the existence of this encumbrance:

- a. Do any act or thing required of Tenant under this Lease, and any such act or thing done and performed by Lender shall be as effective to prevent a forfeiture of Tenant's rights under this Lease as if done by Tenant itself;
- b. Realize on the security afforded by the Leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by the security document, herein called the "Trust Deed", and to:
  1. Transfer, convey, or assign the title of Tenant to the Leasehold estate created by this Lease to any purchaser at any foreclosure sale, whether the foreclosure sale be conducted pursuant to court order or pursuant to a power of sale contained in the Trust and Deed; and
  2. Acquire and succeed to the interest of Tenant under this Lease by virtue of any foreclosure sale, whether the foreclosure sale be conducted pursuant to court order or pursuant to a power of sale contained in the Trust Deed.

Section 5.06. RIGHT OF LENDER TO CURE DEFAULTS. Should Tenant incur an encumbrance pursuant to Section 5.01 of this Lease, before the Authority may terminate this Lease because of any default under or breach of this Lease by Tenant, the

Authority must give written notice of the default or breach to Lender and afford Lender the opportunity after service of the notice to:

- a. Cure the breach or default within ninety (90) days where the default can be cured by the payment of money to the Authority or some other person;
- b. Cure the breach or default within one hundred eighty (180) days where the breach or default must be cured by something other than the payment of money and can be cured within that time; or
- c. Cure the breach or default in such reasonable time as may be required where something other than money is required to cure the breach or default and cannot be performed within one hundred eighty (180) days provided that acts to cure the breach or default are commenced within that time period after service of notice of default on Lender by the Authority and are thereafter diligently continued by Lender.

Section 5.07. FORECLOSURE IN LIEU OF CURING DEFAULT. Notwithstanding any other provision of this Lease, a Lender under and encumbrance incurred by Tenant pursuant to Section 5.01 of this Lease may, among other things, forestall termination of this Lease by the Authority by commencing proceedings to foreclose the encumbrance on the leasehold estate created by this Lease. The proceedings so commenced may be for foreclosure of the encumbrance under a power of sale contained in the instrument creating the encumbrance. The proceedings shall not, however, forestall termination of this Lease by the of breach by Tenant unless:

- a. They are commenced within ninety (90) days after service on Lender of the notice described in Section 5.06 of this Lease;
- b. They are, after having been commenced, diligently pursued in the manner required by law to completion; and
- c. Lender shall keep and perform all of the terms, covenants and conditions

of this Lease requiring the payment or expenditure of money by Tenant until the foreclosure proceedings are completed or discharged by redemption, satisfaction, payment, or conveyance of the leasehold estate to Lender.

**Section 5.08. ASSIGNMENT WITHOUT CONSENT ON FORECLOSURE.**

Provided that Lender under any encumbrance incurred by Tenant pursuant to Section 5.01 of this Lease gives written notice of transfer to the Authority setting forth the name and address of the transferee as well as the effective date of the transfer, the written consent of the Authority shall not be required for transfer of the Tenant's interest under this Lease to:

- a. A purchaser at a foreclosure sale of the encumbrance whether the foreclosure sale is conducted pursuant to court order or pursuant to a power of sale in the instrument creating the encumbrance; or
- b. A purchaser from Lender after foreclosure where Lender was the purchaser of Tenant's interest at the foreclosure sale of the encumbrance.

**Section 5.09. NEW LEASE TO LENDER.** Notwithstanding any other provision of this Lease, should this Lease terminate because of the insolvency or bankruptcy of Tenant or because of any default under or breach of this Lease by Tenant, the Authority will execute a new Lease for said premises to the Lender under encumbrance incurred by Tenant pursuant to Section 5.01 of this Lease as Tenant, provided:

- a. Lender has complied with the provisions of Section 5.06 of this Lease.
- b. A written request for the new lease is served on the Authority by Lender within sixty (60) days after service on Lender of the notice described in Section 5.03 of the Lease.

- c. The new lease is for a term ending on the same date the term of this Lease would have ended had not this Lease been terminated; it provides for the payment of rent at the same rate that would have been payable under this Lease during the remaining term of this Lease not been terminated; and it contains the same terms, covenants, conditions and provisions as are contained in this Lease.
- d. Lender, on execution of the new lease by the Authority shall pay any and all sums that would at the time of the execution of the new Lease be due under this Lease but for its termination and shall otherwise fully remedy, or agree in writing to remedy, any other defaults under or breaches of this Lease committed by Tenant that can be remedied.
- e. Lender, on execution of the new lease, shall pay all reasonable cost and expenses, including attorney's fees and court costs incurred in terminating this Lease, recovering possession of said premises from Tenant or the representative of Tenant, and preparing the new Lease.
- f. The new lease shall:
  - 1. Extend the time for performance of any unperformed acts required by Article 5 of this Lease for such period as is equal to the sum of (a) delay in performance of the act caused by Tenant's inability or failure to perform the act cause by Tenant's inability or failure to perform the act and (b) the time required to terminate this Lease and execute a new lease to Lender; and
  - 2. Excuse the performance of any act required by this Lease that has already been performed by Lender. Lender's assignee, as Tenant under the new lease, shall be liable for payment of all costs and expenses incurred in the performance of any act required by Article 5 of this Lease, whether performed before or after execution of the new lease, that might be alleged or claimed as a lien against said premises

**Section 5.10. NO MERGER OF LEASEHOLD AND FEE ESTATES.**

Should Tenant incur any encumbrance pursuant to Section 5.01 of this Lease then there shall thereafter, during the existence of the encumbrance, be no merger without the

consent of the Authority and Lender under such encumbrance of the leasehold estate created by this Lease and the fee estate in said premises merely because both estates have been acquired or become vested in the same person or entity.

**ARTICLE 6 - ASSIGNMENT AND SUBLEASING**

Section 6.01. NO ASSIGNMENT WITHOUT THE AUTHORITY'S CONSENT. Except as provided in Section 1.02, Article 5 or Section 6.02 of this Lease, and in this Section, Tenant shall not assign, or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in said premises or any of the improvements that may now or hereafter be constructed or installed on said premises, without the prior written consent of the Authority, which consent shall not be unreasonably withheld. Any assignment or transfer by Tenant, whether it be voluntary or involuntary, by operation of law or otherwise, is void and of no force and effect and shall, at the option of the Authority, terminate this Lease, except for an assignment or sublease of this Lease to an entity formed by or with the written consent of Tenant for (a) the purpose of raising investment capital and/or (b) to construct the improvements to the property required under this Lease.

Section 6.02. ASSIGNMENTS TO FINANCIAL INSTITUTIONS. Tenant may also with the prior written consent of the Authority as to the identity of the assignee only, which consent shall not unreasonably be withheld, transfer and assign all of Tenant's interest under this Lease and the leasehold estate hereby created in Tenant

under the following conditions:

- a. The assignment or transfer is to a bank or other financial institution which has advanced or has committed itself to advance monies to the Tenant for the construction of improvements on the leased premises, or for other purposes, and, in order to secure the repayment of which said bank or financial institution (hereinafter called the "holder of the Leasehold Mortgage") has taken back or will take back a Leasehold Mortgage on the leased premises.
- b. Said consent to the assignment shall be conditioned on the Tenant and holder agreeing that the Authority shall have the right of first refusal to assume the obligation of Tenant in the Leasehold Mortgage under the following conditions and terms:
  1. The holder of the Leasehold Mortgage acquired the right of foreclosure or the right to acquire possession of the leased premises, by virtue of a default by the Tenant under the note which it secures.
  2. The holder of the Leasehold Mortgage, before commencing its action to foreclose the Leasehold Mortgage, or to otherwise acquire possession of the leased premises, as the case may be, shall give written notice thereof to the Authority.
  3. The Authority shall have a period of sixty (60) days from its receipt of said notice to elect, by written notice to the Tenant and to the holder of the Leasehold Mortgage to assume the obligations of the Leasehold Mortgage.
  4. The Tenant shall surrender this Lease to the Authority and the Tenant hereby covenants to do so within (15) days after Tenant's receipt of the Authority's written notice of such election.
  5. The Tenant hereby further agrees that the covenant to surrender to the Authority may be specifically enforced by the Authority or by the holder of the Leasehold Mortgage or by both.
  6. The holder shall have agreed in writing to the terms and conditions of this Section 6.02.

7. The consideration to be paid by the Authority for any surrender to this Lease which is made pursuant to the foregoing shall be the higher of:
  - i. the appraised value of the improvements placed on the leased premises, excluding the value of the land itself; or
  - ii. the indebtedness (including principal, accrued interest, costs and fees, legal fees included) owed by the Tenant to the holder of the Leasehold Mortgage.
8. Said consideration shall be first applied toward the indebtedness owed by the Tenant to the holder of the Leasehold Mortgage, and the balance, if any, shall be paid by the Tenant. The appraisal of the improvements placed on the leased premises referred to above shall be made by two appraisers, one of which shall be selected by the Authority and one selected by the Tenant. If the two appraisers selected cannot agree on an appraised value then they shall agree on a third appraiser whose appraised value shall be used for their computation.

Section 6.03. RIGHT TO SUBLET. Tenant shall have the right to sublet portions of the premises to subtenants and/or concessionaires for "Ancillary Uses," defined to include paid parking, rental car operators, package or mail delivery services, travel agencies and tour operators. Any ancillary use not specified herein must be first approved by the Authority.

In addition to any other rental fees specified elsewhere herein, Tenant shall pay to the Authority, on the first day of each month, a sum equal to Twenty Percent (20%) of all gross revenues due Tenant for use or occupancy of any existing improved portions of the leased premises by businesses other than Tenant, and Ten Percent (10%) of all gross revenues due Tenant for the use or

occupancy of improvements built or constructed by Tenant.

At the end of the initial twenty year term of this Lease Tenant and Authority shall review the use of the premises by ancillary users and the rents to be paid to Authority by Tenant on account of said ancillary uses shall be renegotiated during the "Notice to Exercise Option" period specified in Section 1.01(2) above.

#### **ARTICLE 7 - TERMINATION OF AGREEMENT**

Section 7.01. **BY THE AUTHORITY.** This Agreement may be terminated at the option of the Authority without future notice to the Tenant only upon the occurrence of one or more of the following events:

- (1) The Tenant shall fail to pay the said annual fee in advance monthly installments as aforesaid within ten (10) days after having written notice from the Authority; or
- (2) The Tenant shall break, violate or fail to perform any of the within covenants or conditions and shall fail to comply therewith within fifteen (15) days after written notice from the Authority; or
- (3) The Tenant shall voluntarily abandon, desert or vacate the Premises for a period of seven (7) consecutive days, excepting closings as a result of acts God and of the public enemy, the elements, fires, accidents, breakdowns, strikes, labor disputes, and any other industrial, civil or public disturbance.

Section 7.02. **BY THE TENANT.** This Agreement may be terminated at the option of the Tenant without future notice to the Authority if the Authority shall break or violate or fail to perform any of the within covenants or conditions and shall fail to comply therewith within fifteen (15) days after written notice from the Tenant. Tenant may also

terminate this Agreement in the event that it is unable, exercising due diligence and best efforts, to secure all government permits necessary within six (6) months of the date of approval of this Agreement by the Legislature of the Virgin Islands.

**ARTICLE 8 -NOTICES**

Section 8.01. Wherever it is required in this Agreement that the Tenant send notice to the Authority or apply for prior approval, consent or permission thereof, or whenever it is required that the Authority notify the Tenant, such notice or application to the Authority or to the Tenant shall be deemed sufficient if either hand-delivered or sent by First Class Mail, Certified, directed to the attention of the Authority's Executive Director or successor person at the Virgin Islands Port Authority, Cyril E. King Airport, St. Thomas, V. I. or Post Office Box 1707, St. Thomas, United States Virgin Islands 00803; and to the Tenant addressed to SEABORNE VIRGIN ISLANDS, INC., 5305 Long Bay Road, Charlotte Amaile, United States Virgin Islands 00802; or to such other respective address as the parties may designate in writing from time to time.

Any approval, consent or permission so granted by the Authority shall be in writing and may not be oral for such approval, consent or permission to be binding upon the Authority.

**ARTICLE 9 - SEVERABILITY**

Section 9.01. Any provision of this Lease which is prohibited or unenforceable

shall be ineffective to the extent of such prohibition or un-enforceability without invalidating the remaining provisions hereof.

**ARTICLE 10 - VALID AGREEMENT**

Section 10.01. This Agreement shall become valid and binding upon (1) the execution thereof by the parties hereto, and (2) the final approval of the Virgin Islands government as required by law.

IN TESTIMONY WHEREOF, the parties herein have hereunto set their hands and seal this 23 day of December 19 97.

IN WITNESS:

VIRGIN ISLANDS PORT AUTHORITY

Juliette F. Patten  
[Signature]

By: Gordon A. Finch  
GORDON A. FINCH  
EXECUTIVE DIRECTOR

[Signature] 12-10-97  
Mike B [Signature] 12-10-97

SEABORNE VIRGIN ISLANDS, INC.  
By: Chuck Slagle  
CHUCK SLAGLE  
PRESIDENT

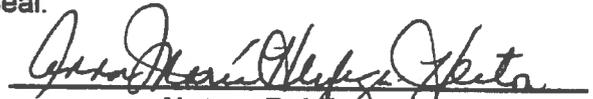
TERRITORY OF THE VIRGIN ISLANDS:

DISTRICT OF ST. THOMAS

: SS:  
:

I Hereby Certify, that on this 12<sup>th</sup> day of December 1997, before me, the subscriber, a Notary Public of the Territory of the United States Virgin Islands, personally appeared Chuck Stagle, known to me, or satisfactorily proven to be the person whose name is subscribed to within instrument, and acknowledge that he executed the same for the purposes therein contained.

As witness: my hand and notarial seal.

  
Notary Public

APPROVAL

LEGAL SUFFICIENCY:

By: Don C. Mills  
DON C. MILLS  
LEGAL COUNSEL

By: Wylie Whisonant  
WYLIE WHISONANT  
CHAIRMAN

By: Roy L. Schneider  
HONORABLE ROY L. SCHNEIDER, M.D.  
GOVERNOR, U. S. VIRGIN ISLANDS

7-28-98  
DATE

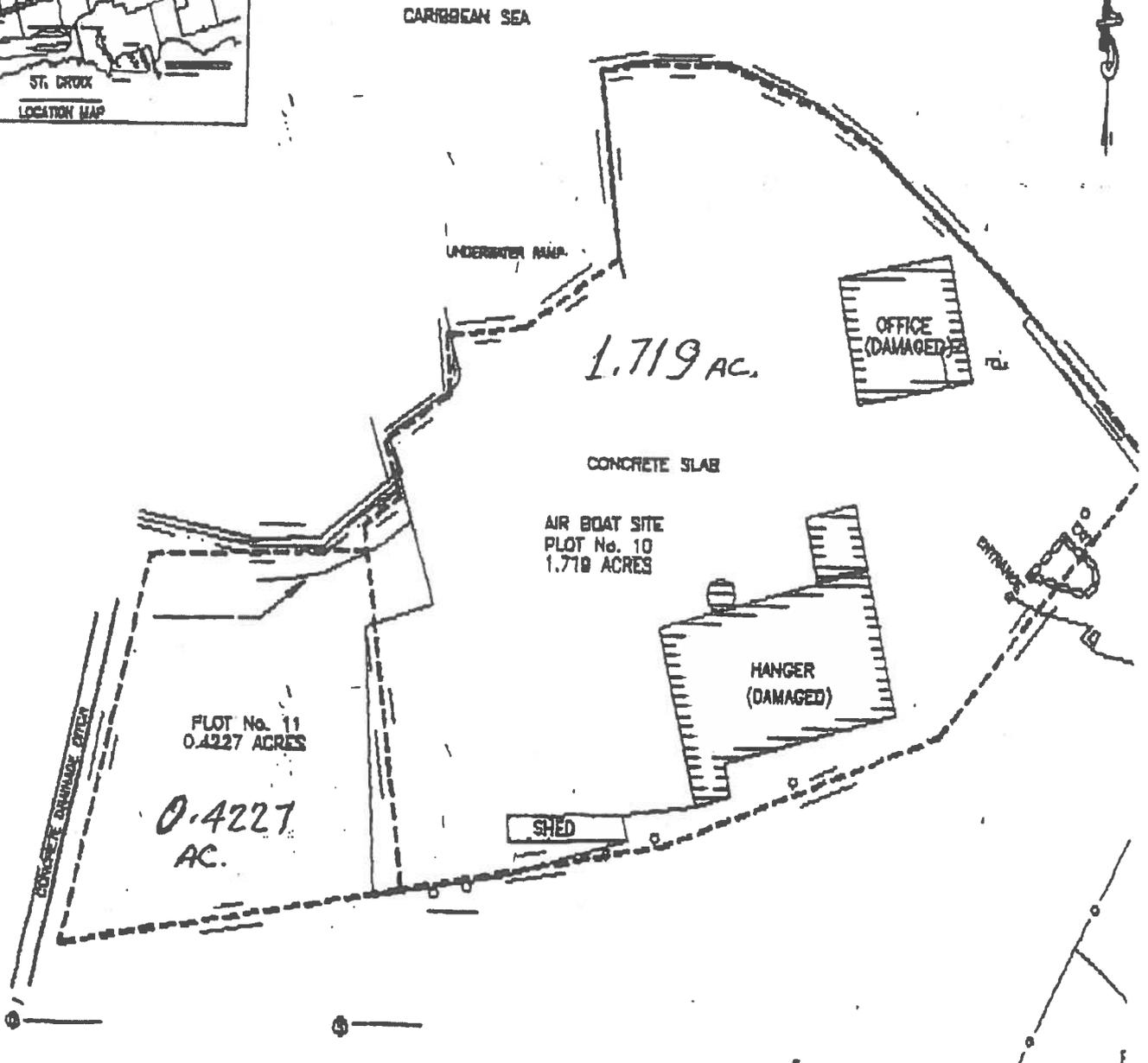
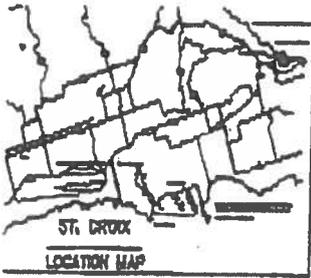
By: Lorraine R. Berry  
LEGISLATURE OF THE VIRGIN ISLANDS

7/15/98  
DATE

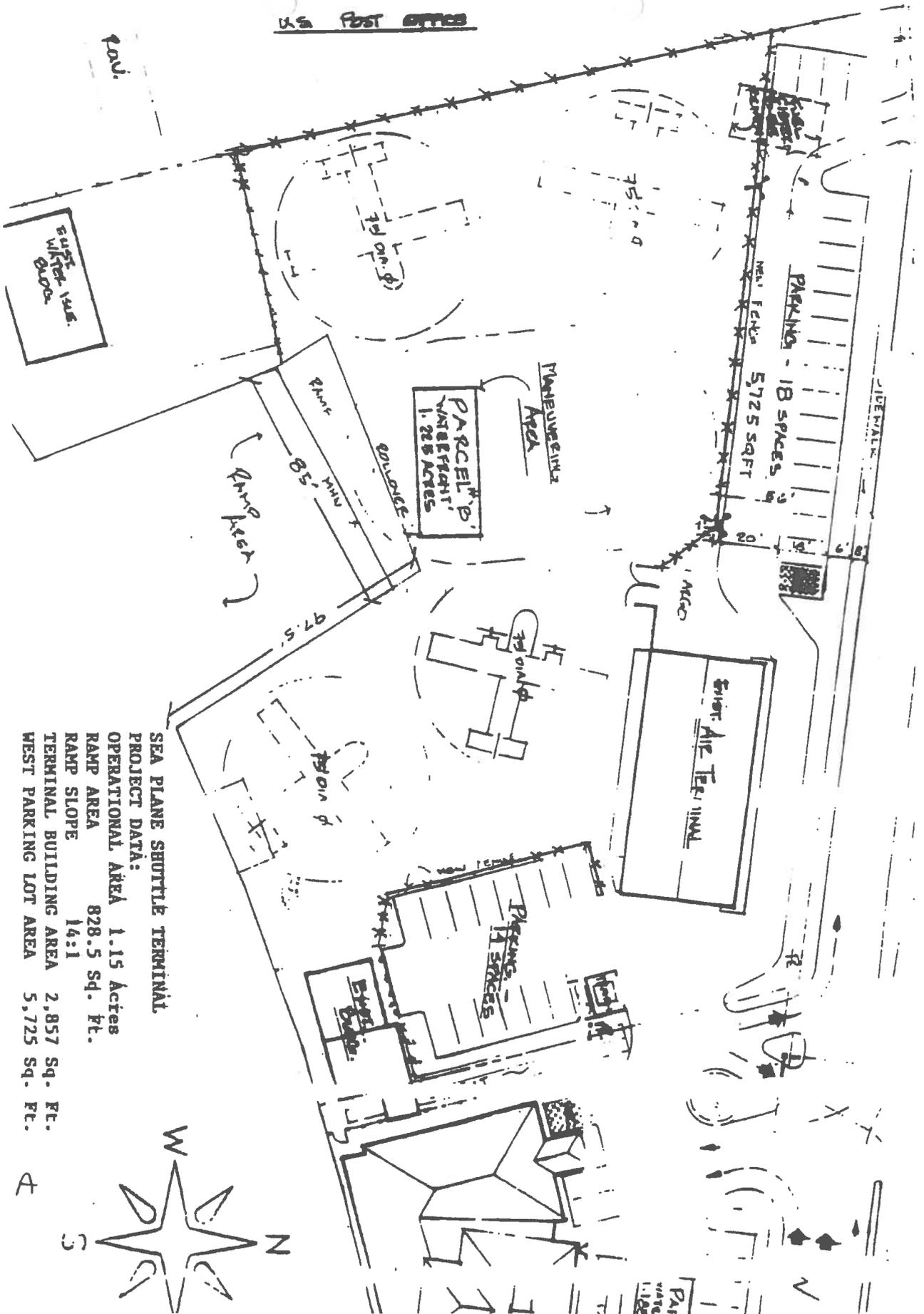
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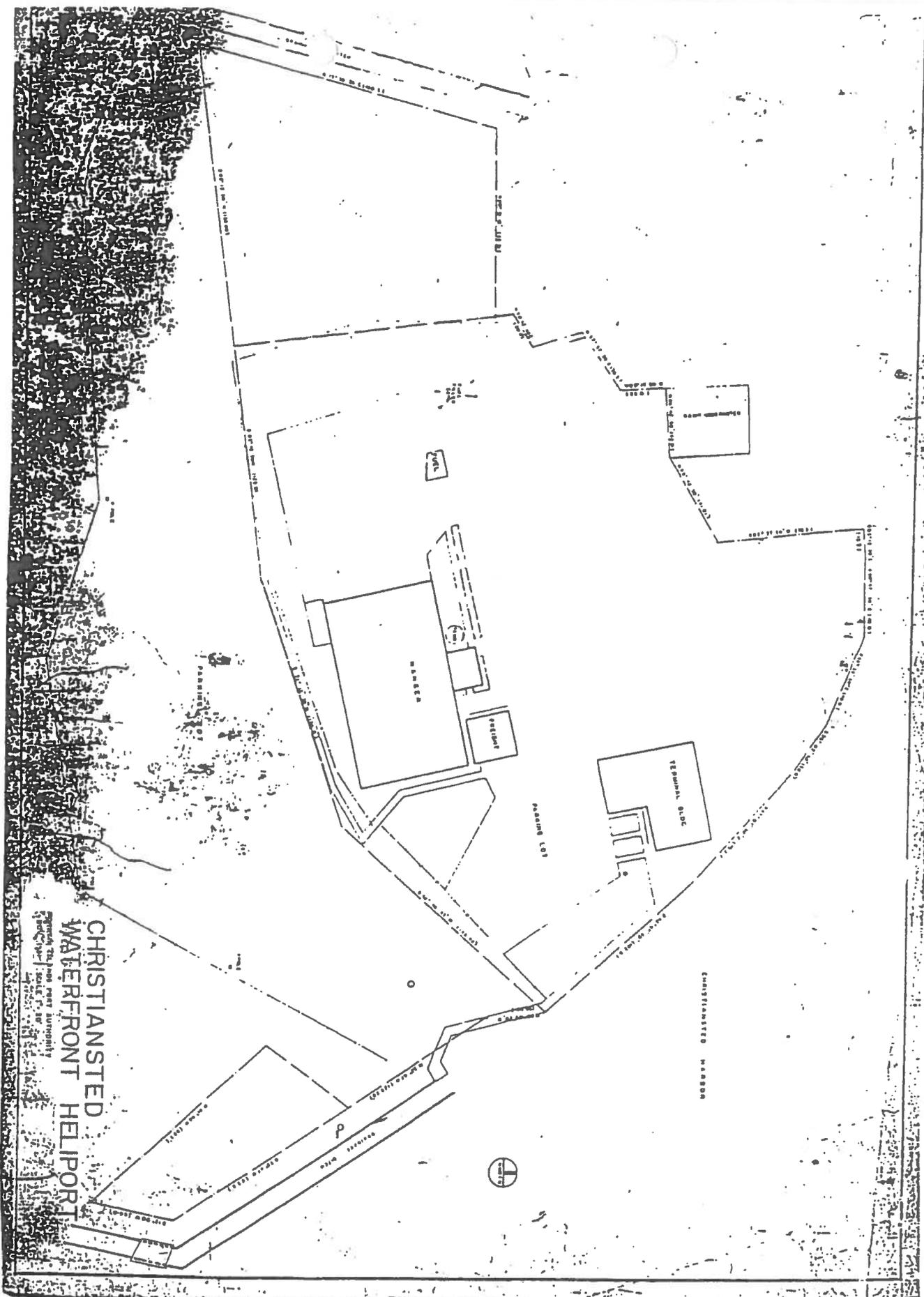


X#IBIT A  
Page 2



SEA PLANE SHUTTLE TERMINAL  
 PROJECT DATA:  
 OPERATIONAL AREA 1.15 Acres  
 RAMP AREA 828.5 Sq. Ft.  
 RAMP SLOPE 14:1  
 TERMINAL BUILDING AREA 2,857 Sq. Ft.  
 WEST PARKING LOT AREA 5,725 Sq. Ft.

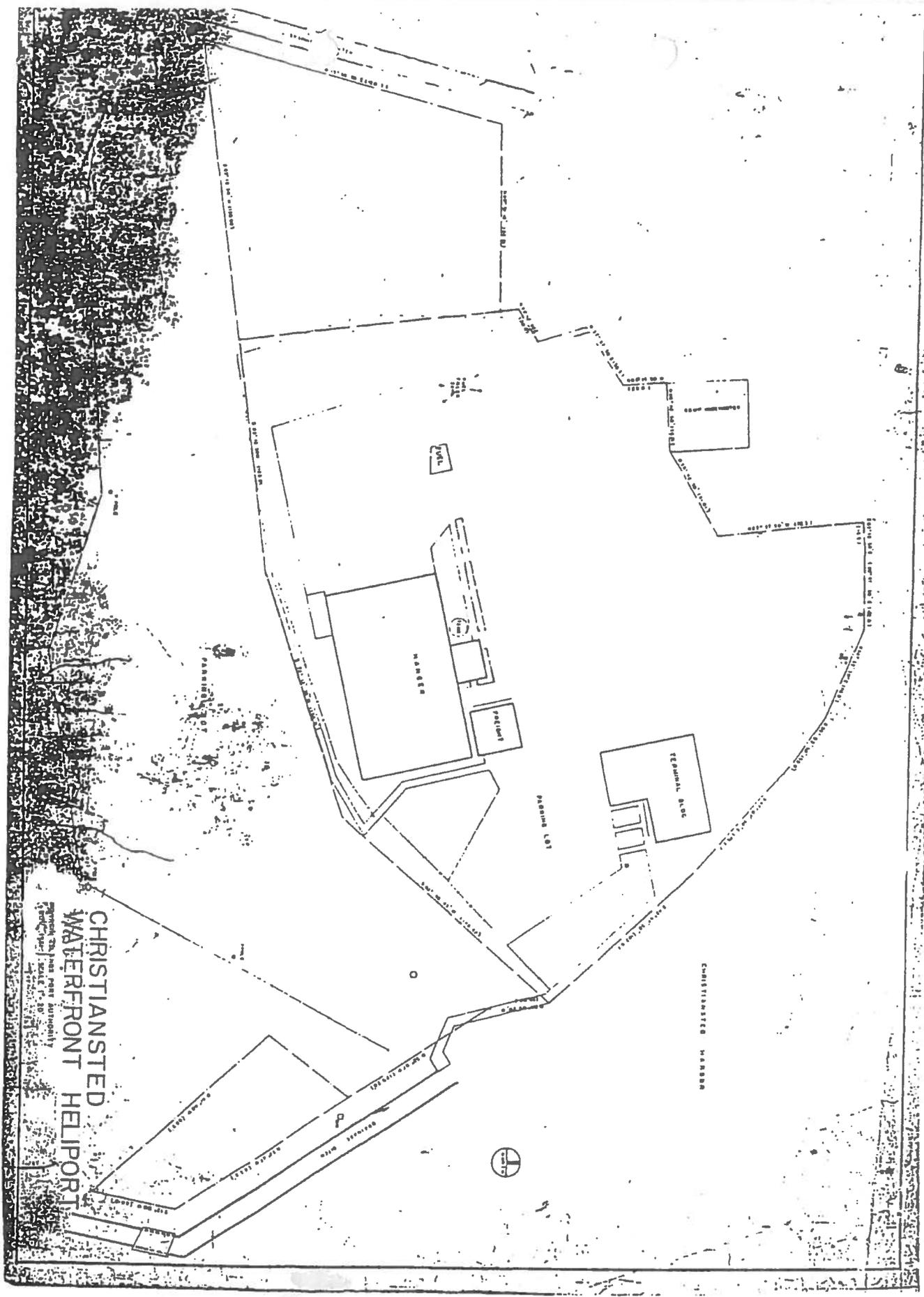
EXHIBIT A  
 Page 1



**CHRISTIANSTED  
WATERFRONT HELIPORT**

Prepared for the U.S. Navy by  
The U.S. Army Corps of Engineers  
Civil Engineering Center  
Fort Belvoir, St. Louis, Mo.

CHRISTIANSTED MARSH



**CHRISTIANSTED  
WATERFRONT HELIPORT**

Approved 23rd March 1988  
Scale 1:500

