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Ras Al Khaimah (“RAK”), one of the seven emirates that form the United Arab Emirates (“UAE”), by its counsel Cleary Gottlieb Steen & Hamilton LLP, submits this *amicus* brief in support of defendant-appellant Société Nautique de Genève’s (“SNG”) motion for an expedited appeal and a stay pending appeal of the New York Supreme Court’s (Kornreich, J) (the “IAS court”) October 30, 2009 ruling on venue (the “Order”) (attached as Exhibit A to the Affirmation of Barry R. Ostrager In Support Of SNG’s Motion For An Order Expediting Appeal And For Expedited Relief, A Stay Pending Appeal, Consolidation Of Appeals And For Oral Argument, dated November 4, 2009 (“Ostrager Aff.” or “Ostrager Affirmation”)),¹ and its appeal of that Order. Based upon an erroneous interpretation of the April 7, 2009 order of the predecessor judge, reinstated by the Court of Appeals (the “April 7 Order”) (Ostrager Aff. Ex. C), the IAS court wrongly rejected SNG’s selection of RAK as the host of the 33rd America’s Cup race, with devastating financial and reputational consequences to RAK and the UAE, one of the United States’ closest friends in the Middle East. RAK will suffer grave loss unless this Court reverses the decision of the IAS court. For the reasons set forth herein, as well as those stated in the Affirmation Of Jennifer L. Gorskie On Behalf Of RAK’s Motion For

¹ Unless otherwise noted, documents cited in this brief are attached to the Ostrager Affirmation, submitted with SNG’s motion for a stay and expedited appeal.

Leave To File Brief As *Amicus Curiae*, dated November 4, 2009 (“Gorskie Aff.”), RAK respectfully submits this *amicus* brief.

Rather than repeat the background to this dispute, RAK refers to and incorporates the statement of facts presented by defendant-appellant SNG. Facts specifically pertinent to RAK’s *amicus* submission are contained within the argument.

STATEMENT OF INTEREST OF *AMICUS CURIAE*

RAK’s interest in this dispute arose when plaintiff-respondent Golden Gate Yacht Club (“GGYC”) challenged SNG’s choice of RAK to host the 33rd America’s Cup, alleging, among other things, that RAK was unsafe and otherwise unfit to host the America’s Cup. In order to protect its international reputation from GGYC’s attacks and prevent the loss of the significant expenditures it had already made in preparation for the event, RAK moved for and was granted leave to file an *amicus* brief and supporting affirmations in the IAS court. See Ostrager Aff. Ex. A at 30:20-23 (IAS court granting RAK’s motion for leave to file as *amicus*).²

Although the IAS court correctly decided that it would be inappropriate to pass judgment on RAK’s safety and suitability as a matter of international comity, it rejected SNG’s choice of RAK based on an erroneous

² RAK’s *amicus* submission in the IAS court is attached to the Ostrager Affirmation as Exhibits N, P, T, U and V.

interpretation of the April 7 Order. Ostrager Aff. Ex. A at 30:11-19. In reaching this decision, the trial judge erred in failing to consider GGYC's inequitable conduct in waiting nearly two months before bringing its venue challenge, and the potential irreparable harm to RAK of the decision to remove RAK as the host venue just three months before the scheduled race. RAK therefore submits the present brief as *amicus curiae*, so that it can continue to be heard directly on these issues, including the potentially devastating consequences that the IAS court's erroneous ruling will have for the Emirate unless reversed.

RAK will also suffer irreparable harm should this Court decline to stay the Order pending appeal and grant an expedited appeal. SNG's motion for a stay pending appeal and expedited appeal relates directly to RAK's interests in this dispute, as RAK has already spent millions of dollars in preparation for the 33rd America's Cup and needs to know as soon as possible whether to continue its preparations. Indeed, should a stay and expedited appeal schedule not be granted, it is the UAE, and RAK in particular, that will suffer perhaps the gravest loss of all.

GGYC has advised RAK that it does not oppose RAK's participation as *amicus curiae*. Gorskie Aff. ¶ 10.

ARGUMENT

I. A STAY OF THE COURT’S ORDER AND EXPEDITED APPEAL SCHEDULE ARE NECESSARY TO AVOID IRREPARABLE HARM TO RAK

Since SNG’s announcement on August 6 of its selection of RAK as the host venue for the 33rd America’s Cup scheduled to take place next February, RAK has been actively preparing for the event. RAK has spent approximately \$120 million building infrastructure (some of which is specific to the race) in preparation to host the event, nearly all of which has now been built or is near completion. See Affirmation of Dr. Khater Massaad, dated October 13, 2009 (“Massaad Affirmation” or “Massaad Aff.”) ¶ 27.³ The America’s Cup was expected to bring substantial, but not readily calculable, benefits to RAK and the UAE in the form of favorable publicity as a successful venue for one of the world’s premier sporting events and increased tourism and investment in the region. If RAK is denied the opportunity to host the 33rd America’s Cup, not only will millions of dollars have been wasted, but RAK will be unable to obtain the benefits it was poised to receive as host of the 33rd America’s Cup.

Absent an expedited appeal, justice may come too late for RAK. The current uncertainty regarding the race venue leaves RAK in limbo as to whether to spend millions more in its final America’s Cup preparations, as is necessary in

³ A true and correct copy of the Massaad Affirmation is attached as Exhibit N to the Ostrager Affirmation.

order to meet the tight schedule mandated for a February race, or whether it should cease activity in order to avoid further cost and harm to the Emirate. An expedited appeal is essential to remove this uncertainty as promptly as possible, at a time when it is still possible for RAK to complete its preparations.

A stay of the Order pending appeal is also necessary in order to protect RAK's interests. Absent a stay, SNG may be forced into selecting a new site for the 33rd America's Cup even during the pendency of the appeal; the new site will begin costly preparations and the parties may take steps toward racing there that will be irreversible. Once that happens, it may be impossible to move the race back to RAK even if SNG ultimately prevails on appeal. Only a stay of the Order would maintain the status quo and ensure that RAK can be reinstated as host of the America's Cup if SNG succeeds in persuading this Court to reverse the Order. See Herbert v. City of N.Y., 126 A.D.2d 404, 407, 510 N.Y.S.2d 112, 114 (1st Dep't 1987) (granting stay where an appeal would effectively be rendered moot otherwise).

Accordingly, RAK respectfully requests that this Court grant SNG's request to stay the Order pending appeal and for an expedited appeal schedule.

II. RAK IS A PROPER VENUE FOR THE 33RD AMERICA'S CUP

A. **The IAS Court Correctly Ruled That It Would Be “Inappropriate” to Pass Judgment on RAK’s Suitability as a Host Nation**

After spending millions preparing for the event before any challenge was brought, RAK became the subject of harsh and untrue attacks by plaintiff-respondent GGYC in its public effort to have SNG’s selection of RAK rejected. That effort included baseless allegations that RAK was an unsafe venue to host the 33rd America’s Cup, with GGYC going so far as to suggest that RAK’s proximity to Iran made terrorism more predictable there (where it has never occurred) than any place else terrorism may strike.

The IAS court correctly decided that it would be inappropriate to pass judgment on the safety and security of RAK, one of seven emirates of the UAE, a close Middle Eastern ally of the United States, stating, “[t]he Court will not comment and does not believe it is appropriate for me to comment, or need I comment at this point, about security and safety.” Ostrager Aff., Ex. A at 30:20-23 (emphasis added). The court below made clear that its venue ruling was wholly unrelated to the security of RAK, stating, “I’m not even going to reach the security issue. I’m telling you that. That is not part of my decision.” Id. at 37:15-17.⁴

⁴ The IAS judge also commented disapprovingly of GGYC’s litigation approach in general:

1. Comity Dictated That the IAS Court Reject GGYC's Baseless Attacks On RAK

The IAS's court's ruling that it was inappropriate to consider GGYC's challenge to the suitability of RAK to host the America's Cup was correct as a matter of law.

As fully set forth in RAK's *amicus* brief in the lower court, see *Ostrager Aff. Ex. T*, it is well settled that "the conduct of one independent government cannot be successfully questioned in the courts of another." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 417 (1964) (citation omitted). As the U.S. Supreme Court has held, "[t]o permit the validity of the acts of one sovereign state to be reexamined and perhaps condemned by the courts of another would very certainly 'imperil the amicable relations between governments and vex the peace of nations.'" Id. at 417-18 (citing *Oetjen v. Central Leather Co.*, 246 U.S. 297, 303-04 (1918)). Because foreign relations are committed by the U.S. Constitution to the executive and legislative branches, courts often rely on principles of international comity in declining to pass judgment on the acts of

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- "[GGYC's statements on the venue issue] may well have been double dealing, it may well have been ambiguous, there – it may well have been done as a tactical measure." *Ostrager Aff. Ex. A* at 12:14-17 (emphases added).
 - "The Court does, however, want to state for the record that it feels again that what occurred here was unsportsmanlike on the part of GGYC. I believe that there were tactics employed that should not have been employed in an unsportsmanlike fashion if there really was going to be good sportsmanship." Id. at 30:24-31:5 (emphases added).
 - "I think there were -- there may well have been tactical reasons that this motion was brought, things were done...." Id. at 35:8-10 (emphasis added).

another state. Freund v. Republic of France, 592 F. Supp. 2d 540, 565 (S.D.N.Y. 2008) (“International comity is clearly concerned with maintaining amicable working relationships between nations.”) (quoting JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V., 412 F.3d 418, 422 (2d Cir. 2005)). In alleging that RAK – and, given its federal security system, the UAE as a whole – is an unsafe and unsuitable location for the America’s Cup, GGYC asked the IAS court to make a judgment about matters that are central to the functioning of a sovereign state and that directly relate to the state’s international reputation and stature. See Int’l Tin Council v. Amalgamet Inc., 138 Misc. 2d 383, 387, 524 N.Y.S.2d 971, 974-75 (Sup. Ct. N.Y. County 1988) (international comity is “the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience”) (citations omitted); see also Frazier v. Foreign Bondholders Protective Council, Inc., 283 A.D. 44, 49, 125 N.Y.S.2d 900, 904-05 (1st Dep’t 1953). The IAS court correctly declined to do so.

2. As a Factual Matter, GGYC’s Allegations Regarding The Safety Of RAK Were Without Basis

Even were it appropriate for the IAS court to have ruled on the issue of RAK’s safety as a factual matter, the record is overwhelming that RAK offers a safe and secure venue for the America’s Cup. In its *amicus* submission to the court below, which included a 13-page affirmation from Dr. Khater Massaad, CEO of

the RAK Investment Authority, the body responsible for RAK's America's Cup preparations, RAK set forth in great detail the many reasons why GGYC's inflammatory allegations about the security and preparedness of RAK were patently untrue.

As outlined in the Massaad Affirmation, the UAE generally, and RAK specifically, is a safe and secure venue for the America's Cup. RAK is a prosperous modern emirate that has peaceful and friendly relations with all of its neighbors, including Iran. Massaad Aff. ¶ 7. The UAE is a relatively small nation, and each of the emirates is quite close to one another physically. Id. ¶ 8. For example, RAK is less than an hour drive from Dubai, which is a similar distance from Abu Dhabi (both of which GGYC implicitly conceded would be safe venues). Id. In addition to the close proximity of the emirates, they all share a federal police force and numerous other centralized governmental services. Id. Assessing the security facilities and track record of RAK therefore necessarily involves looking at the record of the UAE as a whole.

That record is enviable. The UAE has an international reputation as one of the safest travel destinations and for maintaining one of the lowest crime rates in the world. Id. ¶ 9. More than 10 million tourists visit the UAE every year. Id. The UAE annually welcomes international events of all sorts, numerous examples of which are set forth in the Massaad Affirmation. Id. ¶¶ 13-20. Most

notably, BMW Oracle Racing, GGYC's representative team for the 2010 America's Cup, is itself scheduled to race *this month* in the Dubai RC44 Gold Cup 2009. Id. ¶ 16. None of these academic, diplomatic, sporting, entertainment and business events has ever experienced security problems or concerns different than those experienced elsewhere in today's world.

Additionally, there are tens of thousands Americans currently living in the UAE along with over 500,000 other Western expatriates. Id. ¶ 9. The UAE is also home to numerous foreign companies, including nearly 400 from North America and more than 1,600 from Europe. Id. ¶ 10. These include Oracle itself – whose co-founder and CEO, Larry Ellison, is plaintiff GGYC's principal sponsor – which has its Middle East headquarters located in Dubai. Id. ¶ 11. Not one of the 2,000 Western companies in the UAE has ever been targeted by terrorists or faced any threat of terrorism in UAE territory. Id. ¶ 10. Mr. Ellison presumably would not have chosen the UAE as the home for his corporation's Middle Eastern operations if he thought it was unsafe, unwelcoming or in any other way inappropriate.

As with any other event held in the UAE, the security for the America's Cup will be under the responsibility of UAE's Ministry of Interior, which will receive full cooperation from the Navy, Coast Guard and federal and local police to ensure the safety and well being of all visitors to RAK. Id. ¶ 21.

Specifically, the Ministry of Interior will increase the amount of police and guards patrolling RAK during the event, and provisions have been made for additional troops, police, and coast guards to be transferred temporarily from Abu Dhabi for the days leading up to and during the event. Id. ¶ 22. The Coast Guard intends to send out extra patrols to monitor the territorial waters of Iran (although the race course will not go near these waters) and will be on high alert to inform the competing boats of any unexpected activity. Id. There will also be boats installed by the America's Cup Management to oversee the outer boundaries of the racecourse. Id. To dispel any doubts raised by GGYC, RAK submitted to the IAS court a letter from the UAE Ambassador to the United States articulating the commitment of the UAE federal government to the success of RAK's hosting of the America's Cup. See Ostrager Aff. Ex. AA; see also id. Ex. A at 20:14-21.

The race course chartered for the 33rd America's Cup will take place entirely in RAK territorial waters and the immediately adjacent contiguous zone of the UAE, and will not venture anywhere near territorial waters claimed by Iran. Massaad Aff. ¶ 24. Nevertheless, as an example of GGYC's efforts to debase RAK, the day before the hearing in the IAS court, GGYC's counsel went on CNBC and declared that racing in RAK "is not like sailing off Dubai, this is sailing right on the edge of Iranian [waters]." Ostrager Aff. Ex. A at 21:13-15 (Counsel for RAK, quoting counsel for GGYC); see also Battle of Boating Billionaires:

Inside the battle for America's Cup (CNBC television broadcast Oct. 26, 2009), available at <http://www.cnbc.com/id/15840232?video=1308539895&play=1>.

GGYC's counsel was referring to the disputed island of Abu Musa, see Ostrager Aff. Ex. A at 7:19-25, which is geographically *closer* to Dubai than to RAK. See Massaad Aff. Ex. B. In any event, these same waters serve as a busy waterway for commercial shipping boats as well as military boats, and boats carrying the U.S. flag pass through the waters off RAK on a daily basis. Massaad Aff. ¶ 24. There has never been a single incident involving Iran and these boats. Id. Nor does RAK's proximity to Iran put it at risk for an attack by Al Qaida or any other terrorist group. There has never been a single reported terrorist attack on RAK territory, nor has there been any such attack in the UAE for decades. No Al Qaida terrorist cells are believed to exist in the UAE, nor is the UAE viewed by the international community as particularly sensitive to terrorist attacks. Id. ¶ 26.

In sum, GGYC's allegations regarding the security of RAK are meritless. This Court should follow the IAS court in not entertaining them but if it reaches them, it should reject them as having no factual basis.

B. The IAS Court Erred In Failing To Weigh GGYC's Obvious Inequitable Conduct and Tactical Delay In Ruling That RAK Could Not Host The America's Cup

Despite the IAS court correctly ruling that it would be inappropriate to entertain GGYC's allegations regarding the safety and security of RAK, it

nevertheless granted GGYC's request for specific relief to prevent SNG from holding the America's Cup in RAK. This decision was based on an erroneous interpretation of the April 7 Order, which is discussed at length in the appeal brief of SNG, and will, if upheld, have devastating financial and reputational consequences to an emirate of one of the United States' closest friends in the Middle East. Given the drastic consequences of overturning SNG's selection of RAK so close to the race date based upon its own view that the April 7 Order was ambiguous, the IAS court should have examined – but failed to examine – the relative conduct of the parties and the potential harm associated with its decision. Based on any such assessment, the selection of RAK should have been upheld. The IAS court's failure to consider such equities was erroneous as a matter of law.

RAK accepted SNG's selection of it as host venue of the 33rd America's Cup in good faith, and had no reason to question the validity of that selection. GGYC never appealed the venue aspect of the April 7 Order, and it represented on several occasions that it understood SNG to have the option of choosing any location it wanted for the February race. Indeed, as early as a July 16, 2008 press conference held by BMW Oracle, representatives of both GGYC and BMW Oracle expressly acknowledged that Justice Cahn's May 2008 Order (the same order that was later reinstated by the Court of Appeals and is at issue

here) provided SNG with the ability to select any venue in the world in either hemisphere. See Ostrager Aff. Ex. G.

Critically, for two full months after SNG's announcement – during which time RAK spent tens of millions of dollars preparing for the event – GGYC sat on its rights. Even worse, as discussed below, GGYC affirmatively led RAK to believe that it was an acceptable venue. In those two months, RAK engaged in significant preparations and expenditures; as set forth in detail in the Massaad Affirmation, RAK did the following:

- Spent more than US\$30 million to construct the event base, dredge the area surrounding the lagoon, deepen and widen the channel and all other waterways to accommodate the boats, and secure the gates and all security fences surrounding the marina, Massaad Aff. ¶ 28;
- Engaged third party contractors to assist in improvements, id. ¶ 32;
- Spent millions of dollars on significant developments to the newly constructed island off Al Hamra to accommodate the team bases, including leveling of the island, asphaltting the roads and installing domestic water, drainage, irrigation, electricity, street lighting, sewage treatment for both bases and the installation of fibre optic telecommunication for the bases with high definition internet and telephone, id. ¶ 34;
- Spent millions of dollars to improve and beautify the general infrastructure of Al Hamra, widening and beautifying the connecting roads, and other amenities related to hospitality and telecommunications, id. ¶ 27-31;

- Expended millions of dollars to provide accommodations for the event’s visitors, including transforming the Al Hamra Palace Residence (a cost of US\$50 million), construction of the Banyan Tree resort, and the furnishing of 150 apartments in Acacia Hotel, located two kilometers from the island, in order to provide additional hotel rooms for the event, id. ¶ 29; and
- Transformed its convention center into a press centre for the event. Id. ¶ 30.

While RAK was undertaking these tasks in preparation for the America’s Cup, GGYC took several steps to lead RAK to believe that no objections would be forthcoming. Not only did GGYC wait a remarkable two months before seeking relief, but it sent its entire sailing racing security and backup group to RAK to review the match course in early September 2009. See Massaad Aff. ¶¶ 23, 33. Brent Ivil, who represented himself as BMW Oracle’s security advisor, met with RAK officials and sent Dr. Massaad of RAK a highly favorable and encouraging report stating unequivocally that his risk assessment report of RAK would be “POSITIVE.” See Massaad Aff. ¶ 23, Ex. A. Mr. Ivil went on to state that he was “impressed by the harmony peacefulness and cooperation [in RAK]” and “look[ed] forward to working closely and in partnership with [RAK] security personal [sic] in making this major event a huge success demonstrating what a safe and beautiful emirate Ras al-Khaimah is”. Id. Ex. A. Additionally, GGYC submitted to the United States Coast Guard, under penalty of perjury, an application for a certificate of deposit indicating that it was

going to ship its racing yacht to RAK. See Ostrager Aff. Ex. A at 5:11-16 (IAS judge acknowledging GGYC’s application for a COD); see also Ostrager Aff. Ex.

O. Based on these actions, and the passage of two months (after GGYC had proclaimed – and indeed continues to proclaim – the need for six full months notice of the race venue), RAK had no reason to suspect that its selection would be challenged.

This inequitable conduct by GGYC – which went beyond mere inaction to taking steps affirmatively to indicate its intention to race in RAK next February – while RAK spent US\$120 million and drew the world’s attention to the race, led the IAS court to call GGYC’s behavior “double dealing,” “tactical,” and “unsportsmanlike.” See Ostrager Aff. Ex. A at 12:14-17; 30:24-31:5; 35:8-10. The IAS court erred when, having recognized this inequitable conduct, it nonetheless granted GGYC’s requested relief, particularly in the face of the irreparable injury to RAK associated with preventing RAK from hosting the America’s Cup.

It is a fundamental principle of equity that a party seeking equitable relief “must come to the court with clean hands.” See Haskins v. Thomajan, 99 A.D.2d 463, 464, 470 N.Y.S.2d 41, 42 (2d Dep’t 1984). “Where a litigant has himself been guilty of inequitable conduct with reference to the subject matter of the transaction in suit, a court of equity will refuse him affirmative aid.” Yemini v. Goldberg, No. 12402-05 (LBA), 2007 WL 1574422, *4 (Sup. Ct. Nassau County

May 29, 2007); see also Tepfer v. Berger, 119 A.D.2d 668, 669, 501 N.Y.S.2d 106, 107 (2d Dep't 1986) (same); Pecorella v. Greater Buffalo Press, 107 A.D.2d 1064, 1065, 486 N.Y.S.2d 562, 563 (4th Dep't 1985) ("Any willful conduct which would be condemned and pronounced wrongful by honest and fair-minded men, will be sufficient to make the hands of the applicant unclean.") (internal quotations omitted).

It is well settled under New York law that a party will be estopped from obtaining equitable relief where another has "rightfully relied" on his word or deed and "so relying, changes his position to his injury." Otis Elevator Co. v. Heggie Realty Co., Inc., 107 Misc. 2d 67, 68, 437 N.Y.S.2d 832, 833 (Sup. Ct. N.Y. County 1980); see also Triple Cities Constr. Co. v. Md. Cas. Co., 4 N.Y.2d 443, 448, 176 N.Y.S.2d 292 (1958)). As further articulated by the New York Court of Appeals:

[Estoppel] is imposed by law in the interest of fairness to prevent the enforcement of rights which would work fraud or injustice upon the person against whom enforcement is sought and who, in justifiable reliance upon the opposing party's word or conduct, has been misled into acting upon the belief that such enforcement would not be sought.

Nassau Trust Co. v. Montrose Concrete Products Corp., 56 N.Y.2d 175, 184, 451 N.Y.S.2d 663, 667 (1982) (citation omitted). Similarly, the doctrine of laches prevents relief to a party where, as a result of the party's inexcusable delay in

requesting such relief, the relief would result in inequity or be prejudicial to “defendants and others materially affected.” Schulz v. State, 81 N.Y.2d 336, 347, 599 N.Y.S.2d 469 (1993) (emphasis added).

While RAK is not a party to this dispute, the principles of good faith and fair dealing underlying the estoppel, laches, and unclean hands doctrines apply with equal force to it, and should have been taken into consideration by the IAS court. Here, RAK – an emirate of a sovereign nation and strong ally of this country – acted openly and under very public scrutiny in good faith reliance on SNG’s announcement of its selection as venue, expending large sums of money in preparation for the event. As an experienced America’s Cup competitor, GGYC clearly knew that RAK would so rely and undertake such expenditures during GGYC’s period of silence. Given GGYC’s actions, including making several public announcements acknowledging SNG’s right to select any northern or southern hemisphere venue, sending its security team to RAK, having its purported security expert advise RAK that his report would be “POSITIVE” and state that he looked forward to the race taking place in RAK in February, and GGYC’s open and notorious representations to the U.S. government that it would ship its boat there, RAK reasonably believed that GGYC would participate in a February race in RAK. GGYC’s delay in bringing the venue challenge and the manipulative tactics it engaged in for over two months before filing its venue motion all led RAK to

believe – unfairly and to its detriment – that it should go forward with its expensive America’s Cup preparations. The doctrine of equitable estoppel prevents GGYC from benefiting from such tactics, and the IAS court should not have sanctioned GGYC’s conduct by awarding it the equitable relief it sought.

Indeed, given that the UAE is a strong ally of the United States, this Court should be even more mindful of not allowing a party to play fast and loose with our legal system, lull an emirate of a friendly foreign state into spending tens of millions of dollars in preparation for a world class sporting event, wait two months before seeking equitable relief, and then disparage that emirate merely so that it can move the event to a more desirable location for it (one that is no more compliant with the Deed of Gift than RAK). Just as comity required the IAS court to avoid judging the suitability of RAK to host the event, the same principle should be a clear caution signal for our judiciary to avoid endorsing the behavior exhibited by GGYC here and the harm to RAK associated with GGYC’s delay and other tactics.

Accordingly, RAK urges this Court to reverse the IAS court’s Order and re-instate RAK as the venue for the 33rd America’s Cup. To the extent that GGYC insists that it is entitled to six-months notice of a race venue, this Court can start the six-month clock anew, thus avoiding prejudice to SNG and to RAK for the good faith selection of RAK. This would result in great benefit all around – SNG

would retain its absolute right as defender to select the venue, GGYC would get the full notice it demands, and RAK could be properly selected as a northern hemisphere venue for a race held in May 2010.

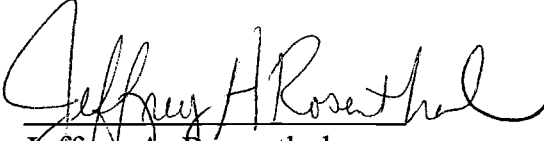
CONCLUSION

For all of the reasons above, RAK respectfully requests that the Court (1) grant SNG's motion for an expedited appeal and a stay of the Order pending appeal and (2) reverse the Order and re-instate RAK as the venue for the 33rd America's Cup.

Dated: New York, New York
November 4, 2009

Respectfully submitted,

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