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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 to inform the Court about the safety and suitability of RAK to host the 33rd America’s Cup in February 2010. RAK is surprised and offended by Golden Gate Yacht Club’s (“GGYC”) statements regarding RAK, as there is absolutely no basis for the assertion that RAK is an unsafe or otherwise unfit venue for the America’s Cup. To the contrary, RAK is a safe, prosperous and modern emirate. RAK has earned its reputation as a pre-eminent commercial center with an innovative, dynamic and entrepreneurial business culture. RAK has made a considerable investment in infrastructure and planning for the America’s Cup, and is more than prepared to host the event. As set forth in this *amicus* brief and the supporting affirmations of Dr. Khater Massaad and Jennifer L. Gorskie, GGYC’s challenge to RAK as a secure and appropriate venue for the 33rd America’s Cup is unfounded.

RAK submits this *amicus* brief and supporting affirmations solely to present the Court with information regarding its suitability as a venue for the America’s Cup. This submission should not be construed as an express or implied waiver of RAK’s sovereign immunity under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 et seq., or as a submission by RAK to the jurisdiction of the Court. RAK is a sovereign territory entitled to all of the privileges and immunities afforded to sovereign entities under U.S. law. RAK reserves all of the rights to which it is entitled as a sovereign territory, including its right of sovereign immunity.

STATEMENT OF INTEREST OF AMICUS CURIAE

On August 5, 2009, it was publicly announced that RAK had been selected by Société Nautique de Genève (“SNG”) as the venue for the 33rd America’s Cup, scheduled to be

held in February 2010. GGYC has challenged the designation of RAK as the venue for the America's Cup and seeks an order directing that the America's Cup be held "in Valencia, Spain, unless the parties mutually consent otherwise." Mem. Of Law In Supp. Of GGYC's Motion To Enforce Compliance With The Order And Judgment Entered April 7, 2009 Regarding Venue Location For The 33rd America's Cup, dated Oct. 1, 2009, at 7 ("Pl. Br."). In support of its motion, GGYC argues, among other things, that RAK is an unsafe venue for the 33rd America's Cup and that RAK lacks the infrastructure necessary to host the America's Cup. Id. at 4-5.

RAK's interest in the outcome of this dispute is three-fold. First, RAK is gravely concerned about the egregious statements of GGYC, made in this litigation and publicly, that RAK presents a security risk to the participants of the America's Cup. In recent years, RAK has built its reputation as a modern and secure city, attracting major international business investment and a robust tourism industry. RAK thus has a keen interest in protecting its reputation, as well as the reputation of the UAE as a whole, against the baseless attacks made by GGYC.

Second, RAK has a specific interest in ensuring that the Court does not accept GGYC's allegations that it is an unsuitable host for the America's Cup, an event that will bring international recognition to RAK and attract both business and tourism to the region. Through its *amicus* submission, RAK seeks to present the Court with a full and accurate picture of the safety and security of RAK for an international sporting event, as well as the specific security measures which will be put in place by RAK for the America's Cup. Similarly, RAK seeks to present the court with an accurate and complete record of the infrastructure improvements and logistical planning that RAK has undertaken in preparation for the America's Cup, which render RAK fully prepared to host the event.

Third, since it was selected as the host venue in August, RAK has invested considerable time and money in preparing to host the America's Cup. For two months (a full one-third of the time between RAK's formal selection and the event itself), GGYC failed to disclose its intention to challenge the race venue, during which time RAK invested in significant infrastructure improvements, spent large sums on logistical planning, and entered into multiple third-party contracts, all in reliance on SNG's selection of RAK as the host venue. RAK thus has a significant interest in demonstrating to the Court why its designation as the host venue for the America's Cup should not be disturbed.

RAK's *amicus curiae* submission will provide the Court with a full and accurate picture of the suitability of RAK to serve as the venue for the 33rd America's Cup, which has been directly challenged by GGYC. As a sovereign territory and ally of the United States, RAK understandably wishes to present the Court with its own views as to the safety of RAK and the infrastructure put in place for the America's Cup. Because RAK has been independently conducting its preparation for the America's Cup and has unique knowledge about its geopolitics, economic development and state security, it is in a position to present facts and arguments that go to the core of one of GGYC's prayers for relief from a perspective the parties are unable to provide.

To support this *amicus* brief, RAK submits herewith an affirmation from Dr. Khater Massaad, CEO of the RAK Investment Authority, the entity responsible for organizing the 33rd America's Cup. See Affirmation of Dr. Khater Massaad, dated October 13, 2009 ("Massaad Affirmation" or "Massaad Aff."). Dr. Massaad has first-hand knowledge of the facts pertaining to the RAK, including its America's Cup preparations, security measures and infrastructure improvements. The brief and accompanying affirmation bring to the Court's

attention important background information and specific information about the safety and infrastructure in RAK that have regrettably been omitted by GGYC, and that render its purported recitation of the facts severely misleading.

ARGUMENT

I. RAS AL KHAIMAH IS A SAFE VENUE FOR THE 33RD AMERICA'S CUP

A. Ras Al Khaimah Is A Safe, Modern And Prosperous Venue, Familiar With Hosting International Sporting Events

As set forth in great detail in the Massaad Affirmation, the UAE, and RAK specifically, is a safe and secure venue for the America's Cup. See Massaad Aff. ¶ 7. RAK is a prosperous modern emirate that has peaceful and friendly relations with all of its neighbors, including Iran. Id. 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. See Massaad Aff. ¶ 9. More than 10 million tourists visit the UAE every year. Id. Furthermore, the UAE annually welcomes international events of all sorts, including academic, diplomatic, sporting, entertainment and business events. See Massaad Aff. ¶ 13.

The UAE is a relatively small nation, and each of the emirates is quite close to one another physically. See Massaad Aff. ¶ 8. For example, RAK is less than an hour drive from Dubai, which is a similar distance from Abu Dhabi. Id. In addition to the close proximity of the emirates, they all share a federal police force and numerous other centralized governmental services. Id. Accordingly, any assessment of the security in and experiences of RAK should logically take into account the security and experiences of the UAE as a whole. Id.

The UAE has open and friendly relations with many countries. See Massaad Aff. ¶ 9. There are approximately 180,000 Americans currently living in the UAE while over

500,000 other Western expatriates also reside in the UAE. Id. The UAE is home to numerous foreign companies, including nearly 400 from North America and more than 1,600 from Europe. See Massaad Aff. ¶ 10. Among the approximately 400 North American companies, over 220 are headquartered in the United States. Id. 28% of those have operations specifically in RAK, demonstrating their belief that the Emirate is a safe and productive place to do business and live. Id. The local and federal governments have worked hard to transform RAK and the UAE as a whole into an investor's haven, with security as a core element. See Massaad Aff. ¶ 7. 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. See Massaad Aff. ¶ 10. Indeed, despite their unfounded attacks, even Oracle – whose co-founder and CEO, Larry Ellison, is plaintiff GGYC's principal sponsor – has its Middle East headquarters located in Dubai. See Massaad Aff. ¶ 11. Lead counsel for plaintiff, Latham & Watkins L.L.P., also has offices in the UAE. Id.

In addition to substantial U.S. presence in the field of business, American universities have established a presence in RAK and the UAE and conduct classes peacefully without fear of terrorist attacks, including Harvard Medical School and the American University, which has campuses in Dubai, Sharjah and RAK. See Massaad Aff. ¶ 12. Additionally, Michigan State University and Rochester Institute of Technology offer classes in Dubai. Id. The actions of these universities, which could have selected any other venue for their Middle Eastern campuses, show that they do not consider the UAE to be afflicted by safety concerns from terrorism or otherwise. Id.¹

The UAE has significant experience in hosting international events of all sorts.

¹ Other international universities with a presence in the UAE include Middlesex University (United Kingdom), Dublin Business School (Ireland), Heriot-Watt University (Scotland), and the University of Wollongong (Australia). See Massaad Aff. ¶ 12.

See Massaad Aff. ¶ 13. The country annually welcomes visitors from around the world to academic, diplomatic, sporting, entertainment and business events, and has never experienced security problems or concerns other than those commonly experienced elsewhere in the world. Id. Numerous examples of such events are detailed in the Massaad Affirmation and include those as prestigious as the Dubai World Cup, an event hosted annually by the UAE, which is the world's richest horse race and brings to the UAE many of the world's top thoroughbreds, trainers and owners each year. Id. In addition, in 2009 the UAE was selected from among seven bidders (including Russia and the United States) to host the Rugby Sevens World Cup, an event held every four years and contested by 24 nations, including the United States this year. See Massaad Aff. ¶ 14. Upcoming events scheduled to take place in the UAE include the Leaders In Dubai Conference (to be attended by former Vice-President of the United States Al Gore, U.S. President Obama's campaign manager David Plouffe, Archbishop Desmond Tutu, and business leader Gary Hamel), the Dubai World Championships, one of the world's richest golf events and part of the European tour, and the Abu Dhabi Formula One, among others. See Massaad Aff. ¶ 18. BMW Oracle Racing ("BMW Oracle"), plaintiff GGYC's representative team for the 2010 America's Cup, is itself scheduled to race next month in the Dubai RC44 Gold Cup 2009. See Massaad Aff. ¶ 16.

RAK is familiar with hosting sports personalities, including Americans, who compete in events with worldwide acclaim. See Massaad Aff. ¶ 15. Tiger Woods, probably the most famous American athlete worldwide, regularly competes at the Dubai World Championship and has designed a golf course that is being constructed in Dubai. Id. Roger Federer has competed in the World Tennis Championship in Abu Dhabi. Id. David Beckham spends time in Dubai, where his club AC Milan trains in the winter season, and Mr. Beckham also owns

property in Dubai. Id.

Similarly, numerous internationally renowned entertainers perform safely and securely in the UAE to large crowds, none of which have ever been targeted by terrorist attacks. See Massaad Aff. ¶ 17. As further detailed in the Massaad Affirmation, a long list of internationally recognizable entertainers like Justin Timberlake and Coldplay performed in the UAE to tens of thousands of fans in 2009, and Beyoncé and Aerosmith are both scheduled to perform at the Abu Dhabi Formula One in November of this year. Id.

The UAE is committed to the development of the sport of sailing in its country and has hosted numerous sailing events in recent years. See Massaad Aff. ¶ 20. Such events include the annual International Moth World Championships in Dubai, the Dubai RC44 Gold Cup 2009, the annual UIM Class One-World Powerboat Championship in Dubai and Abu Dhabi, the 2006-2007 Victory Challenge training session and the 2008 BMW Sailing Cup World Final. Id. The UAE also plans to host the International Open Winter Series in Dubai in February 2010. Id. RAK's hosting of the America's Cup, the world's premiere yachting event, will strengthen the UAE's proven commitment to the sport of sailing.

Having hosted these sailing events and numerous other high profile sporting events, including tennis and golf tournaments and the world's richest horse race in 2009, all attended by their sports' leading stars, the UAE has gained vast security experience in recent years. See Massaad Aff. ¶ 21. The America's Cup will benefit from this security experience and can be assured of receiving the highest level of protection, at least equal to what would be afforded in any other developed nation. Id.

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. 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. See Massaad Aff. ¶ 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.

These measures have been discussed and agreed upon between RAK and representatives from both teams. In stark contrast to GGYC’s current position, last month the Security Advisor for BMW Oracle, Brent Ivil, met with officials from UAE’s Police and Coast Guard to discuss relevant security issues and expressed complete satisfaction with RAK’s planned measures. See Massaad Aff. ¶ 23 & Ex. A. In a follow-up email sent from Mr. Ivil to Dr. Massaad, Mr. Ivil stated unequivocally that his risk assessment report of RAK would be “POSITIVE.” 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” Since Mr. Ivil’s email, BMW Oracle has never voiced to RAK a single concern about security. Id.

B. Ras Al Khaimah’s Proximity To Iran Poses No Increased Threat To The America’s Cup

GGYC’s statements about the risks inherent in RAK’s proximity to Iran are

entirely without merit. RAK maintains a good relationship with Iran, and foreigners visiting RAK have never been threatened by Iranian interests. See Massaad Aff. ¶ 24. Indeed, there is a small Iranian population currently living in RAK, as well as in all of the other emirates. Id.

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. See Massaad Aff. ¶¶ 24-25. 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. See id. ¶ 24. There has never been a single incident involving Iran and these boats. Id. Exhibit B to the Massaad Affirmation contains maps of the proposed race course for the America's Cup. As can be seen from these maps, the course is not in the northern waters closest to the Iranian border, but will largely be just off RAK's western coast, making it highly unlikely that the competing boats will venture anywhere remotely close to Iranian territorial waters. See Massaad Aff. ¶ 25.

Nor does RAK's proximity to Iran put it at risk for an attack by Al Qaida or any other terrorist group. See Massaad Aff. ¶ 26. There has never been a single terrorist attack on RAK territory, nor has there been any such attack in the UAE for several decades. Id. 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. It is also far-fetched to suggest that Iran would be a willing host for an Al Qaida launch, given its fundamental differences with Al Qaida (which led it, among other things, to lend support to the U.S. and coalition invasion of Afghanistan after 9/11), its friendly relationship with RAK, and the international repercussions of any interference with an international sporting event of this stature.

Indeed, in many respects the UAE is regarded as a much safer venue than many

Western countries that have hosted similar international sporting events, given that there is no history of terrorist attacks on UAE soil. Id. While terrorist attacks are impossible to predict, history reveals that the overwhelming majority of terrorist attacks that have occurred at international sporting events in recent history have actually occurred in Western nations, such as the massacre of Israeli athletes at the 1972 Munich Olympics and the bombing of Centennial Olympic Park at the 1996 Atlanta Olympics. And of course the most deadly terrorist attacks in recent history occurred in the United States on September 11, 2001 and in Madrid, Spain, in the heart of Western Europe, in March 2004.²

II. RAS AL KHAIMAH HAS THE NECESSARY INFRASTRUCTURE TO HOST THE 33RD AMERICA'S CUP

RAK has committed more than US\$120 million to develop the infrastructure necessary to host the America's Cup, the vast majority of which development is already completed. See Massaad Aff. ¶ 27. The teams will be hosted in Al Hamra Village ("Al Hamra"), a five million square meter new luxury residential and leisure resort island located at the southern end of the city of Ras Al Khaimah that has a championship golf course and its own marina. Id. RAK specifically constructed a 22-hectare island inside the Al Hamra lagoon for the event in order to host the team bases and provide facilities for media, sponsors and the public. Id.; see also Ex. C (Photos of Al Hamra and the marina).

RAK is fully equipped to accommodate the number of spectators that accompany events like the America's Cup. See Massaad Aff. ¶ 29. RAK already offers close to 3,000 hotel

² GGYC's further assertions regarding the heightened threat of a Israeli nuclear strike around the time of the America's Cup are hyperbolic speculation. See Affidavit of Graeme Given Brooks ¶ 5. The United Nations' inspections of Iran's nuclear facility are scheduled for December 2009, more than two months before the America's Cup is scheduled to take place. GGYC has submitted nothing of substance to suggest that the risk of war during the America's Cup is any greater than it would be at any other time or place in today's world. GGYC does not gain in credibility by indiscriminately rattling every saber that has any geographic relationship to the Middle East.

rooms, including the Hilton Ras Al Khaimah, and is also situated less than one hour north of Dubai, which has in excess of 58,000 hotel rooms available to visitors and fans of the event. Id. To provide even more accommodation options for the America's Cup, RAK turned its Al Hamra Palace Residence into a 240-room luxury hotel equipped with a restaurant, swimming pool, tennis court and several other amenities. Id.; see also Ex. E (Photos of the Al Hamra Palace Residence). In addition, the international company Banyan Tree built a desert resort consisting of 101 tented villas and RAK is currently developing another resort to be managed by Banyan Tree, which is scheduled to be operational by December 2009. Id.

RAK has ample power utilities to host the America's Cup and all of the accompanying spectators. See Massaad Aff. ¶ 30. To supplement its existing capabilities, RAK recently began operation of two new power generation plants that contain more than enough wattage to support the America's Cup events. Id. RAK also has an excellent communications network that will permit worldwide broadcast of the event. Id. Most recently, RAK built a convention center, which will be transformed into a press centre for the event. Id.

Finally, RAK has a vibrant transport network including three highways connecting RAK with Abu Dhabi, Dubai, Sharjah, Ajman and the other emirates. See Massaad Aff. ¶ 31. RAK is a 45-minute drive from Dubai, 30 minutes from Sharjah and 20 minutes from Ajman. Id. Furthermore, RAK's roadways are constantly being improved to accommodate the increased tourist traffic, as most recently evidenced by RAK's spending of US\$20 million to widen the local roads between the Al Hamra and the Emirates Highway to Dubai. Id.

In short, RAK is more than prepared and has the necessary infrastructure to host a high caliber event such as the America's Cup.

III. SINCE THE PUBLIC ANNOUNCEMENT OF RAS AL KHAIMAH'S SELECTION, RAS AL KHAIMAH HAS MADE CONSIDERABLE EXPENDITURES PREPARING FOR THE 33RD AMERICA'S CUP

For two months following the August 5, 2009 announcement that RAK was the chosen venue for the 33rd America's Cup, RAK has been actively engaged in preparations for the event, and has made considerable investments in infrastructure and planning. See Massaad Aff.

¶ 32. During this time, RAK received no indication from GGYC that it would undertake any effort to prevent the America's Cup from taking place in RAK. Id. In fact, as discussed above, BMW Oracle's Security Advisor expressed to RAK officials that he was satisfied with the RAK's safety planning for the event and that he looked forward to working with RAK toward a successful event. See id. ¶ 23 and Ex. A. BMW Oracle sent its equipment and an advance team to RAK, further leading RAK to believe that it had no objection to the venue selection. See id.

¶ 33. Given the preparations necessary to host such a significant event in just six months, there is no doubt that GGYC was aware that RAK would spend millions of dollars during the two months that it kept its objection undisclosed, and this is precisely what RAK did. Id.

As described above, since August 5, RAK has spent many millions of dollars in preparation for, and in reliance on its selection as the host of, the America's Cup. RAK spent over US\$30 million to construct the event base, which included the installations of pontoons for the participating boats and chase boats, the dredging of the area surrounding the lagoon, the deepening and widening of the channel and all other waterways to accommodate the boats, and securing the gates and all security fences surrounding the marina. See Massaad Aff. ¶ 28 and Exhibit D. RAK engaged third party contractors such as Dutch company Van Oord and Halcrow International from the United Kingdom to assist in improvements. Id. ¶ 32. RAK also made 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. See id. ¶ 34.

RAK has also expended millions 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. See Massaad Aff. ¶ 29. It has invested considerable further sums in transforming its convention center into a press centre for the event. See id. ¶ 30. Additionally, RAK has spent millions on improving and beautifying the general infrastructure of Al Hamra, widening and beautifying the connecting roads, and other amenities related to hospitality and telecommunications. See id. ¶¶ 27-31.

GGYC's contention that it will be required to construct its own boat shed and other structures for the event, Pl. Br. at 4, is untrue. RAK is currently awaiting receipt from BMW Oracle of the final specifications necessary to complete its base, which RAK presumes will include the boat shed and other structures. See Massaad Aff. ¶ 35. Following the receipt of its necessary specifications, RAK completed the base for Alinghi, the representative team for defendant SNG. Id. RAK similarly expects that it will build and complete GGYC's base within two weeks of receiving its requirements. Id.

RAK's significant expenditures, as well as the additional funds earmarked for the America's Cup, demonstrate its preparedness to host this event. Nearly all of the necessary infrastructure is already in place and the large majority of expenditures have already been made.

It would be extremely unjust to allow GGYC – which not only delayed in notifying RAK of its potential venue challenge for over two months, but has affirmatively led RAK to believe that it had no objection – to succeed in its challenge, rendering all of RAK’s expenditures an utter waste. RAK has also entered into multiple contracts with third-party vendors for construction projects and the provision of services for the America’s Cup. If RAK cannot host the event, it will be required to terminate these contracts and may be indebted to the third parties with which it contracted. RAK relied in good faith on the August 5 announcement that it would host the America’s Cup in February, and made considerable expenditures in reliance on its ability to host the event and the significant return, both financial and to its reputation, that the America’s Cup would bring to RAK. A change in venue at this point would result in a significant monetary loss to RAK. It could also have potentially damaging future repercussions, given the blow it would cause to RAK’s international reputation.

IV. GGYC’S ATTEMPT TO ENLIST THE COURT IN PASSING JUDGMENT ON THE SECURITY SITUATION IN A FRIENDLY FOREIGN STATE OFFENDS BASIC CONCEPTS OF COMITY

Beyond the lack of any factual basis for GGYC’s challenge to the staging of the 2010 America’s Cup in RAK in February 2010, GGYC’s request that the Court reject RAK – a loyal ally of the United States – as a safe and secure venue offends basic ideas of comity.

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, 84 S. Ct. 923, 935 (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, 84 S. Ct. at 935 (citing Oetjen v.

Central Leather Co., 246 U.S. 297, 303-04, 38 S. Ct. 309, 311 (1918)). Because foreign relations are committed by the Constitution to the executive and legislative branches, courts often rely on principles of international comity in declining to pass judgment on the acts of another state; as the Second Circuit stated in regard to one such principle, the “act of state” doctrine:

In essence, the act of state doctrine is a principle of law designed primarily to avoid judicial inquiry into the acts and conduct of the officials of the foreign state, its affairs and its policies and the underlying reasons and motivations for the action of the foreign government. Such an inquiry is foreclosed under the act of state doctrine, and this is true regardless of whether the foreign government is named as a party to the suit or whether the validity of its actions are directly challenged in the pleadings.

O.N.E. Shipping Ltd.v. Flota Mercante Grancolombiana, S.A., 839 F.2d 449, 452 (2d Cir. 1987) (citations omitted).

In alleging that RAK is an unsafe and unsuitable location for the America’s Cup, GGYC asks this Court to make a judgment about matters that are central to the functioning of a sovereign entity and that directly relate to the entity’s international reputation and stature. While GGYC has not and could not challenge the validity of any official action taken by RAK,³ it has plainly sought a ruling from this Court that RAK inadequately performs some of the most basic government functions, such as ensuring the safety of foreign visitors and securing its borders from terrorist attacks. GGYC also contends that RAK officials have not taken sufficient measures to prepare to host an international sporting event. These allegations touch upon the very dignity of RAK – and the UAE as a whole – and risk entangling the Court in matters that are more appropriately committed to the executive branch. See Mirabella v. Banco Indus. de la Republica Argentina, 101 Misc. 2d 767, 768, 421 N.Y.S. 2d 960, 961 (Sup. Ct. N.Y. County

³ The act of state doctrine is typically applied by courts when the outcome of the case turns on “the effect of official action by a foreign sovereign.” W.S. Kirkpatrick & Co., Inc., et al. v. Env’tl. Tectonics Corp., Int’l., 493 U.S. 400, 406, 110 S. Ct. 701, 705 (1990).

1979) (“The essence of the [act of state] principle is that the courts of this country will not question the acts of recognized foreign nations committed within their own territories”). The Court should decline this invitation.

General principles of international comity also caution against adjudging the suitability of RAK to host an international sporting event, thereby passing judgment on the acts taken by RAK to prepare for the event and its government’s efforts more generally to provide security for visitors and businesses in the Emirate. 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). These issues touch at the very core of the Emirate’s dignity, and are not appropriately resolved in a litigation fought between yachtsmen concerning the technicalities of a New York Deed of Gift. See id. at 386, 524 N.Y.S.2d at 974 (“Generally, this doctrine is involved where the dispute is intrinsically involved with some sovereign function of a foreign entity so that political as well as purely private commercial issues are implicated.”). The delicacy of such a judgment is even more pronounced in light of the fact that RAK is not even a party to these proceedings. See Frazier v. Foreign Bondholders Protective Council, Inc., 283 A.D. 44, 49, 125 N.Y.S. 2d 900, 904-05 (1st Dep’t 1953) (“Perhaps our courts should be even more sensitive to the involvements of a sovereign’s action when the sovereign is not a party to the action, and the adjudication as it affects its prestige and dignity partakes of the nature of an ex parte proceeding”).

Were this Court to declare RAK an unfit venue to host the America’s Cup, it would risk involving itself in serious matters of foreign relations that are clearly committed to

the executive and legislative branches of our Nation. See id. at 47, 125 N.Y.S. 2d at 903 (“One sovereign gives due recognition of the stature of another sovereign, and in turn expects similar consideration.”). The U.S. government currently has excellent relations with the UAE and does not consider the country to present any heightened risk, terrorist or otherwise, for American businessmen or travelers. On this point, the statements made by GGYC regarding the U.S. State Department’s travel advisory for the UAE are highly misleading. Pl. Br. at 4-5. The suggestion made in the State Department advisory that Americans traveling to the UAE “should exercise a high level of security awareness,” Pl. Br. at 4, is no more cautionary than the language found in the similar travel advisories issued for numerous Western nations in an era where terrorism is an ongoing threat. For example, the travel advisory for Germany states that “specific threats have been uncovered and prosecutions undertaken, though Germany itself has been largely free of terror incidents. However, like other countries in the Schengen area, Germany’s open borders with its European neighbors allow the possibility of dangerous individuals entering/exiting the country with anonymity.” See Affirmation of Jennifer L. Gorskie, dated October 13, 2009 (“Gorskie Aff.”), ¶ 9, Ex. G. Similarly, the advisory for Sweden echoes “...like other countries in the Schengen area, Sweden’s open borders with its Western European neighbors allow the possibility of terrorist groups entering/exiting the country with anonymity. Americans are reminded to remain vigilant with regard to their personal security and to exercise caution.” See Gorskie Aff. ¶ 10, Ex. H. Moreover, the advisory for France and Monaco warns that “over the last few years, there have been numerous arrests of suspected Islamic militants involved in various terrorist plots,” id. ¶ 8, Ex. F, while the travel advisory for the United Kingdom warns travelers that the United Kingdom “shares with the rest of the world an increased threat of terrorist incidents of international origin” and that “the current terrorism threat level for the

United Kingdom is ‘severe,’” id. ¶ 6, Ex. D.

Most notably, the country-specific travel advisory for plaintiff’s alternate venue – Spain – contains language more specific than that found in the UAE advisory, warning that Spain’s proximity to North Africa makes it vulnerable to attack from Al Qaeda terrorists in the Maghreb region,” and that “Americans are reminded to remain vigilant with regard to their personal security and exercise caution.” Gorskie Aff. ¶ 7, Ex. E. The advisory goes on to remind travelers that “in the deadliest terrorist attack in recent European history, in March 2004, Islamist extremists bombed four commuter trains entering Madrid, causing 191 deaths and over 1,400 injuries.” Id.

Unlike the generalized warnings issued for the UAE and other Western nations, when the State Department desires to warn Americans about a heightened or significant security risk in a certain region, it does so through “Travel Warnings,” which recommend that Americans avoid travel to a certain country, or “Travel Alerts,” which are intended to “disseminate information about terrorist threats and other relatively short-term and/or trans-national conditions posing significant risks to the security of American travelers.” Gorskie Aff. ¶ 3, Ex. A. The U.S State Department currently warns U.S citizens against traveling to 29 countries and has issued alerts for 10 additional countries, but the UAE is not included on either of these lists. See Gorskie Aff. ¶¶ 4-5, Exs. B, C.

Thus any judgment from the Court that casts doubt on the security of the UAE would be in direct conflict with the U.S. government’s official position on the UAE, and might dangerously imperil the relationship between the countries. 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)). It is not properly part of the Court's function to supplant the Federal Executive in making judgments about the safety and security of friendly foreign nations.

CONCLUSION

Hosting the America's Cup represents an important opportunity in the development of, and for the reputation of, RAK and the UAE in their goal of continued advancement toward achieving a position as a world-class international destination for tourists, business and other international events. RAK's success in this regard will help bring further investment to the region and improve the stature of the Emirate.

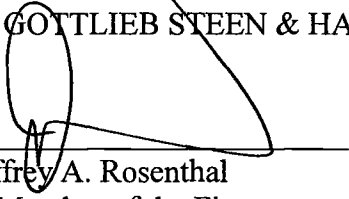
Since it was announced as the host venue in August, RAK has committed significant resources and invested considerable time and money and is fully prepared to host the event. No party would have more to lose than RAK were a terrorist event to disrupt the America's Cup, and RAK would not have pursued this opportunity without the utmost confidence that such an event will not occur. If this Court takes the America's Cup away from RAK mere months before it is scheduled to occur, the reputational damage to this sovereign ally of the United States will be immeasurable, to say nothing of the enormous sums of money expended to date preparing for the event.

RAK is a safe, secure and entirely appropriate venue for the 33rd America's Cup,
and this Court should decline GGYC's request for it to declare otherwise.

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Respectfully submitted,

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