

**REQUEST FOR PROPOSALS
FOR**

**LEASE AND DEVELOPMENT OF PUBLIC LANDS IN MARPI,
SAIPAN**

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF PUBLIC LANDS**



RFP15 – RED006

RFP

INSTRUCTION AND INFORMATION PACKAGE

Department of Public Lands
P.O. Box 500380
Saipan, MP 96950
Telephone number(s): (670) 234-3751/52/53
Facsimile number: (670) 234-3755

FOR OFFICIAL DPL USE

PACKET # _____

Date: _____
Packet Issued/Payment Received by: _____

Payment Method Information: _____

INTRODUCTION AND GENERAL BACKGROUND

The Commonwealth of the Northern Mariana Islands (CNMI) Government's Department of Public Lands (DPL) is inviting proposals in support of its fiduciary duty to select a firm that is most capable of providing DPL the highest return from the use of certain public lands described under the Property Description section of this RFP information package.

DPL serves as the trustee of public lands and is responsible for the management and disposition of all public lands in the CNMI. In line with responsibilities is the duty to maximize financial returns from the use of public lands. By law, the Department of Public Lands may lease public lands for up to 25 years, and with legislative approval may extend or renew public land leases for an additional 15 years. The lease with our present investor is coming to the end of its maximum 40 year life, and the DPL must now make a new leasing decision, consistent with its fiduciary duty to its beneficiaries, to enter into a new lease on the most favorable terms to DPL that the market will bear.

This RFP does not commit the CNMI or the DPL to award a contract or pay any costs incurred in the preparation of the proposal or attendance at meetings with the CNMI or DPL staff.

OBJECTIVE

DPL's principle objective of this RFP is to lease public lands and properties in Marpi, Saipan, to the most responsive responsible firm capable of providing DPL the highest financial return from the anticipated commercial use and development with facilities beneficial to tourism and residents. As these properties are greater than five hectares in size, DPL will submit the final lease agreement with the winning firm to the CNMI Legislature and request for its approval. DPL does not commit to execution of a lease after submission to the legislature if the legislature's approval is conditioned upon terms substantially different from those presented by the DPL.

DPL will not consider proposals to lease / develop individual lots, however DPL may consider proposals to lease / develop the group of properties east of the main road separately from those located west of the main road. For purposes of this RFP, DPL is seeking a proposal or combination of proposals that provide the greatest overall financial benefit to DPL based on the evaluation and selection criteria of this RFP.

PROPERTY DESCRIPTION

A description with photographs of the property is attached as Exhibit A. Proposers are encouraged to obtain additional information regarding the resort facilities from publically available sources including travel sites that describe and provide photographs of Marianas Resort. The table below is a general description.

Lot Number	Current Use	Lot Size, M ²
<i>(West of Main Road - Oceanside)</i>		
003 A 05	Race Cart Track	115,500
003 A 06	Mini Golf Course / Hotel	49,500
003 A 07	Main Lobby / Hotel / Cottages	69,300
003 A 08	Villas / Maintenance	30,738
003 A 24	Vacant Land	<u>109,003</u>
Group of Properties West of Main Road:		374,041
<i>(East of Main Road - Inland)</i>		
003 A 15	Pool / Baseball / Open Field	43,637
003 A 18 &	18 Hole Golf Course & Club-	905,784
008 A 01	House	30,000
064 A 02	Vacant Land	10,000
064 A 03	Vacant Land	39,000
086 A 01	Vacant Land	153,443
Part of TR 7-1 & 8	Vacant Land	<u>56,759</u>
Group of Properties East of Main Road:		1,238,623
Aggregate Area in Square Meters:		1,612,664

LEASE DESCRIPTION

DPL proposes to grant the successful bidder a commercial lease on a “triple net” basis for an initial 25-year term with a possibility of an extension of an additional 15 years conditioned on the satisfactory performance of the lessee in the initial term as determined by DPL and approved by the CNMI Legislature. The lease transaction will be on the form attached as Exhibit B. Below are the basic lease payment terms:

Minimum¹ annual rent amounts due shall be the following:

- I. 5.00% per year of the Appraised Fair Market value of the fee simple interest, as is, adjusted every five years based on an updated appraisal, **plus**
- II. A percentage of Business Gross Receipts (BGR) based on the following schedule starting in year one (1) of the lease;

¹ Proposers should indicate amounts in excess of these minimums they are willing to pay as rent.

Percentage of BGR Lease Payment Schedule

Tier	BGR Per Year		% of BGR	Minimum In Tier
	From	To		
1	\$ -	\$ 50,000.49	3.00%	
2	\$ 50,000.50	\$ 100,000.49	2.89%	\$ 1,500
3	\$ 100,000.50	\$ 200,000.49	2.78%	\$ 2,889
4	\$ 200,000.50	\$ 400,000.49	2.67%	\$ 5,556
5	\$ 400,000.50	\$ 800,000.49	2.56%	\$ 10,667
6	\$ 800,000.50	\$ 1,600,000.49	2.44%	\$ 20,445
7	\$ 1,600,000.50	\$ 3,200,000.49	2.33%	\$ 39,112
8	\$ 3,200,000.50	\$ 6,400,000.49	2.22%	\$ 74,669
9	\$ 6,400,000.50	\$12,800,000.49	2.11%	\$142,227
10	\$12,800,000.50	and Over	2.00%	\$270,234

PROPOSAL CONTENT AND LAYOUT

Proposals submitted must contain the following information in the order listed below. Proposers who do not follow these guidelines or submit incomplete information may be disqualified.

I. Identification & Background Information

- a. A cover letter signed by an officer of the proposing firm who is authorized to discuss and commit the firm to a contractual agreement with the DPL.
- b. Firm's name, email address, business postal address, contact name, telephone and fax number(s), and email address.
- c. A brief history of the firm including: organization, business operations engaged in, size of firm, and office locations. Specify the office location where the work associated with the project would be performed.
- d. Firm organizational chart, identifying key contacts including agent(s), representative(s) or attorney(s) who will be authorized and responsible for regular communication with DPL.

II. Corporate Resolutions, and Authorizations

- a. A corporate resolution authorizing the company to negotiate and enter into a lease agreement for the properties and designating authorized signatories for the lease.
- b. Written authorization to obtain information from banks, investment banks, etc. sufficient for DPL to verify the proposing firm(s) standing with financiers or equity partners.

III. Business and Development Plan, Time Schedule of Completion of Project

- a. A business plan that includes the following:
 - i. A description of the proposed business and operations;
 - ii. Firms plan to continue operating the existing facilities;

- iii. The cost of construction to improve existing facilities or build new facilities, total amount of investment proposed;
 - iv. Propose method of financing (i.e. self-financing, bank loan, etc.);
 - v. Pro-forma financial statements showing projected business gross revenues of each activity to be conducted for the fifteen (15) years of operations, and total revenues;
 - vi. Firms plan for continuing the employment of personnel operating the existing facilities; and
 - vii. Estimated number of additional jobs to be created for operations along with recruiting plans.
- b. Preliminary master plan:
- i. Development plan describing the elements of improvements to existing facilities or each new structure to be constructed;
 - ii. Renderings showing the proposed facilities on the property;
 - iii. Timeline of construction progress through completion;
 - iv. Provide an outline or strategy for how construction will be executed, taking into account the need for sufficient laborers and technical personnel which may require recruitment from outside the CNMI; and

IV. Financial Standing and Capability

- a. Documentary evidence that the proposing firm is in good standing with its creditors, the Division of Revenue and Taxation, and all regulatory agencies.
- b. Verifiable evidence of availability of funds (funds on deposit, letter of credit, loan commitment, or similar concrete evidence of ability to proceed) for the construction, development, and start of operations.

V. Proposed Rent Payments

- a. Firm's proposed rental rates in excess of the minimums stated in the Lease Description section of this RFP package for determining 1) the annual percentage of Appraised Fair Market Value, and 2) the annual Percentage of BGR Lease Payments, respectively.
- b. Projected rent payment per year based on firm's proposed rates.
Note: The winning party will be held to their BGR projections through a minimum rent provision which will be calculated based upon revenues of not less than 80% of projected BGR.

VI. Written Confirmation from Proposer

- a. To provide DPL a good faith deposit to start and complete the project. The amount shall be the greater of 5.00% of the total development/construction cost or \$200,000.00 due to DPL upon signing of a Lease Agreement. Upon project completion these funds may be credited towards final lease payments.
- b. Firm's willingness and agreement to enter into a lease in the form attached as **Exhibit B** as modified to include firm's proposed rents in excess of minimum and the firm's additional proposed public benefits.

VII. Disclosure of any potential conflict of interest and any ongoing litigation that might affect firm’s ability to carry out its operations.

EVALUATION AND SELECTION CRITERIA:

Proposals will be evaluated based on their completeness as described in the Proposal Content and Layout section of this RFP based on the following criteria:

I. Evaluation Criteria

1. 40% - Lease revenues to the DPL. Additional consideration will be given to firms that propose to pay rent in excess of the minimum rates stated above and the total dollars paid to DPL.
2. 25% - Amount of Investment Proposed. The amount of funds to be invested as proposed is a major factor that will be considered and will be evaluated in comparison with overall merit of proposals.
3. 25% - Financial Capability, Evidence of Availability of Funds and Readiness to begin construction.
4. 10% - Improvement / Development Plan: Site Plan (Conceptual Schematic Layout), Business Plan: Operation Plans (Financial Projections: profit & loss statement 15 yrs.), Time Schedule for project commencement, and proposed public benefits in addition to those required in Exhibit B.

II. Selection

In the event the top two most responsive and responsible proposals are similarly beneficial to DPL, both firms may be included on DPL’s shortlist of candidates and interviews may be conducted with each firm to determine a final selection.

Final selection will be made by the Secretary of Public Lands with input from a review committee to be constituted by DPL staff.

SUBMISSION DEADLINES

Questions from proposing firms regarding the contents of the RFP packet must be received, **no later than 4:30 pm on February 26, 2016 ChST** and must be submitted in writing via mail, email or facsimile to Mr. Pedro A. Tenorio, Secretary, Department of Public Lands at the following address:

Department of Public Lands
P.O. Box 500380
Saipan, MP 96950
Telephone number(s): (670) 234-3751/52/53
Facsimile number: (670) 234-3755
Email: pete.tenorio@dpl.gov.mp

Questions and DPL’s response will be summarized and compiled, and shared with all proposers in a “Question and Answer” format.

All proposals must be submitted to DPL by **4:30 p.m. on May 27, 2016 ChST**. All proposals must be sealed and marked “**RFP15 – RED006 - LEASE & DEVELOPMENT OF PUBLIC LANDS IN MARPI, SAIPAN**” and contain (1) original and five (5) copies of the proposals. Failure to submit the required number of copies may be cause for rejection of a proposal.

DPL reserves the right to reject any or all proposals and to waive any imperfection in any proposal, if, in its opinion to do so would be in the best interest of DPL and its beneficiaries. All proposals shall become the property of DPL.

IMPORTANT INFORMATION TO PROPOSERS:

All leases of public lands of five (5) hectares or more and any lease extensions or renewals require legislative approval. In these cases, it is the intent of DPL to recommend to the legislature the approval of a lease to the winning bidder.

All proposals shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best and final offer. In conducting discussions, there shall be no disclosure of any information derived from any of the competing proposals submitted.

All responses to this RFP should take into account any and all taxes, including excise tax, or fees which will be the obligation of the company or individual awarded the 25-year term Lease Agreement with DPL for public land.

In the interest of full disclosure Kan Pacific Saipan, Ltd., whose lease expires on April 30, 2018, has asserted a perceived right to renew its lease for an additional 40 year period. The Department of Public Lands disputes this interpretation of the present lease, as a lease on those terms would be void under Commonwealth law. The DPL will defend and aggressively enforce its position, however proposers bid at their own risk.

Attachment A-1 Overview



Attachment A-1B Outline

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RFP15-RED006

Note – Image for Illustration
Purposes only – Not to Scale



Attachment A-2 General Description of Facilities

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Facilities Description

Hotel - 118 Guestrooms

- Full Service Restaurant
- Bar/lounge
- Full-Service Spa
- Hotel Pools
- 2 Outdoor Tennis Courts

18-Hole Golf course

Olympic Size Swimming Pool

Baseball Field



Attachment A-3 Facilities West of Main Road

DPL
RFP15-RED006

Hotel Description

<u>Room Type</u>	<u>Area</u>	<u>Rooms</u>	<u>View</u>
Twin (two single beds)	60 sqm	68	Ocean
Family Suite (four single beds)	120 sqm	3	Ocean
Executive Suite	60 sqm	3	Ocean
<u>Villas / Cottages</u>	<u>Units</u>		
Ocean Villa (w/ Jacuzzi)	55.25 sqm	11	Ocean
Maisonette Villa	50.25 sqm	20	Landscape
Mandi Suite Villa	66.50 sqm	9	Spa / Landscape Pool / Landscape
Pool Suite Villa	100 sqm	3	Landscape
Total Rooms		117	



Attachment A-4 Facilities East of Main Road

Total Area	99,000 meters
Holes	18 Holes
Par	72
Opened	Feb-82
Design	Mr. Toshio Suzuki
Green	328
Tee	Velvet Lawn
Fairway	Bermuda
Bunker	45
Pond	Water Hazard: Holes 5, 6, 8, 9, & 18 Lateral: Holes 15, 18
Hole Descriptions	Difficult Hole: 5 & 6 (Ponds Surround Greens) View of Ocean & Managaha Island: Hole 2 & 12
Practice Green	2 Practice Net
Club House	Pro-Shop, Restaurant, Toilet and Locker



Attachment B

Draft Lease Agreement

(Space Above for Recording Purposes Only)

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, MARIANA ISLANDS

LEASE AGREEMENT

(LA 18-_____.)

This Lease Agreement (hereinafter the "Lease") is made and entered into this _____ day of _____ 20[xx] (hereinafter the "Commencement Date"), by and between the **DEPARTMENT OF PUBLIC LANDS** (hereinafter the "DPL"), established under Public Law 15-2, having authority and responsibility over the management, use and disposition of public lands in the Commonwealth, , and [**insert Lessee's Name**] (hereinafter the "Lessee"), a [**insert form of business entity**].

WITNESSETH:

WHEREAS, the Lessee desires to lease public land on [**insert island**], Commonwealth of the Northern Mariana Islands, for the purposes set forth on the lease data sheet attached hereto as Schedule 1 (hereinafter the "Lease Data Sheet"); and

WHEREAS, the DPL, being responsible for the management, use and disposition of public lands in the Commonwealth finds it desirable, beneficial and in the interest of the Commonwealth and public land beneficiaries to permit the Lessee to use public land for such purpose; and

WHEREAS, the Lessee has paid a lease application fee in accordance with DPL's regulations.

Lease Agreement

NOW THEREFORE, in consideration of the mutual covenants and benefits to be derived herein, the parties agree as follows:

ARTICLE 1: GRANT OF LEASE

The DPL leases to the Lessee the below-described public land (hereinafter the “Premises”), more particularly described as follows:

[Insert Legal Description]
[Insert description of existing improvements if any]

ARTICLE 2: PURPOSE

The Lessee shall use the Premises for the purpose set forth on the Lease Data Sheet. No portion of the Premises shall be used as housing or dwelling purposes, whether temporary or permanent. Lessee agrees to use the Premises in a reasonably prudent manner, so as not to cause nuisance or hazards to the public, and not to allow, permit, or suffer, any waste or unlawful, improper or offensive use of the Premises. Lessee shall be responsible for obtaining all required licenses and permits for such use from all departments and agencies having jurisdiction over such use.

ARTICLE 3: TERM

The term (hereinafter the “Term”) of this Lease shall be for a period of twenty-five (25) years, unless otherwise terminated or cancelled pursuant to applicable provisions of this Lease. The Term shall commence on the Commencement Date as set forth above. Pursuant to P.L 15-2, the DPL may not transfer a leasehold interest in public lands that exceeds twenty-five years including renewal rights.

ARTICLE 4: EXTENSIONS

An extension of up to fifteen years may be granted with approval of the legislature in accordance with P.L. 15-2. Consistent with its fiduciary duty to manage the use and disposition of public lands for the benefit of the collective owners, the DPL will entertain requests for extensions no sooner than two (2) years after completion of all

development contemplated hereunder, and no later than two (2) years from expiration of the Term. The DPL will make its determination to seek legislative approval, or to decline to seek such approval based upon Lessee’s actual performance versus its projections provided in connection with the negotiation and execution of this Lease, as well as its compliance record with the DPL prior to Lessee’s extension request.

ARTICLE 5. RENTAL

The Lessee, in consideration of the foregoing, shall pay to the DPL, in the manner prescribed herein, in lawful money of the United States, annual rental in quarterly installments for the Premises in the amounts set out in the schedule below:

A. Rental Schedule.

Annual rent amounts due shall be the following:

- III.** 5.00% [OR GREATER AMOUNT AS BID] per year of the Appraised Fair Market value of the fee simple interest of the of the property with improvement starting in year one (1), adjusted every five years based on an updated appraisal, **plus**
- IV.** A percentage of Business Gross Receipts (BGR) based on the following schedule [OR GREATER AMOUNT AS BID] starting in year one (1) of the lease;

Percentage of BGR Lease Payment Schedule

<u>Tier</u>	<u>BGR Per Year</u>		<u>% of</u>	<u>Minimum</u>
	<u>From</u>	<u>To</u>	<u>BGR</u>	<u>In Tier</u>
1	\$ -	\$ 50,000.49	3.00%	
2	\$ 50,000.50	\$ 100,000.49	2.89%	\$ 1,500
3	\$ 100,000.50	\$ 200,000.49	2.78%	\$ 2,889
4	\$ 200,000.50	\$ 400,000.49	2.67%	\$ 5,556
5	\$ 400,000.50	\$ 800,000.49	2.56%	\$ 10,667
6	\$ 800,000.50	\$ 1,600,000.49	2.44%	\$ 20,445
7	\$ 1,600,000.50	\$ 3,200,000.49	2.33%	\$ 39,112
8	\$ 3,200,000.50	\$ 6,400,000.49	2.22%	\$ 74,669
9	\$ 6,400,000.50	\$12,800,000.49	2.11%	\$ 142,227
10	\$12,800,000.50	and Over	2.00%	\$ 270,234

The percent of gross receipts listed above shall be assessed against the gross receipts as defined in Article 41G. The guaranteed annual minimum rental amount on

BGR shall be assessed on not less than 80% of the BGR Lessee submitted to DPL in response to the RFP to lease the Premises. A copy of the CNMI Business Gross Revenue Tax Monthly Return must be submitted monthly, together with the computation of the monthly gross receipts rental to substantiate the additional payment or non-payment.

B. Manner of Payment. The Lessee shall discharge its obligation of payment by depositing the payments required under this Article with the DPL, presently located in Dandan, Saipan, Northern Mariana Islands, or in such manner as the DPL may from time to time designate in writing.

C. Time and Payment; Interest; Amortization. All rents payable pursuant to the terms of this Lease shall be deemed to have commenced on the first day of the month after the Commencement Date of this Lease, and shall be paid without prior notice or demand. Past due rental payments shall bear interest at one percent (1%) per month compounded monthly, from the date it becomes due until paid. This provision shall not be construed to relieve the Lessee from any default in making any rental payment at the time and in the manner herein specified, but is subject to the amortization provisions set forth herein.

ARTICLE 6. APPRAISAL AND DETERMINATION OF RENTAL AFTER EACH FIVE YEAR PERIOD

For purposes of calculating Guaranteed Minimum Annual Rent during the initial five (5) year period, the parties stipulate that the value of a fee simple estate in the Premises is as set forth on the Lease Data Sheet. At the end of the initial five (5) year period of this Lease and each succeeding five (5) year period, the Base Rent payable by the Lessee to the DPL shall be based upon the percentage of the value of the improved land as of the commencement of each five-year period. An independent appraiser who must be a member of a nationally accepted appraisal society, (selected by agreement between the DPL and the Lessee), will establish the value subject to upward adjustment by the DPL in accordance with the regulations set forth at NMIAC § 145-70-301. In the event that the DPL and the Lessee cannot reach an agreement on the selection of the

appraiser, a committee of three (3) arbitrators being selected by the other two will select the appraiser. The cost of appraisal and any arbitration will be borne by the Lessee.

ARTICLE 7. SECURITY DEPOSIT AND PERFORMANCE BONDS.

Within ten (10) days after the Commencement Date, the Lessee shall deposit the sum reflected on the Lease Data Sheet as a Security Deposit with the DPL. The Security Deposit will be held in an interest bearing account of the DPL. This Security Deposit is security that the Lessee will comply with all the terms of this Lease and indicates Lessee's good faith commitment to undertake and complete the construction, development and operation the proposed development. This Security Deposit shall also be security to ensure performance of Lessee's obligations upon the expiration or termination of the Lease.

If the Lessee defaults on this Lease prior to the expiration of this Lease, the DPL shall be able to keep all or part of this Security Deposit to cover unpaid rent, administrative costs, attorneys' fees, damage to the property, and/or other expenses.

At the expiration of this Lease, the DPL will inspect and fully document the condition of the Premises. Within thirty (30) days of the expiration of this Lease, if the Lessee has supplied the DPL with a forwarding address and the Lessee has complied with all terms of this Lease, the DPL will return the Security Deposit plus any interest earned, or the DPL will provide the Lessee with a written notice including an itemized list as to why the full Security Deposit amount is not being returned and a check for any remaining Security Deposit owed to the Lessee after such deductions have been made.

The DPL may retain and apply as much of the Security Deposit as necessary as compensation or reimbursement for unpaid rent, administrative costs, attorneys' fees, damages, or other expenses resulting from Lessee's use of the Premises or from any default of the Lease by the Lessee. If during the Term the DPL applies all or part of the Security Deposit for the reasons set forth above, the DPL may demand that the Lessee replace such sum.

Lease Agreement

In addition to the Security Deposit, Lessee shall within thirty (30) days after the Commencement Date deliver to the DPL a Completion Bond, Stand by Letter of Credit, or a combination thereof covering 100% of the cost of Lessee's proposed development.

ARTICLE 8. PERMITS, CONSTRUCTION PLANS, AND SPECIFICATIONS

A. Construction Plans and Specifications. Lessee has provided conceptual drawings and specifications depicting its proposed development as a basis for negotiation of this Lease. The Lessee agrees and covenants that within three (3) months from the Commencement Date of this Lease, it will at its own cost, risk and expense, submit to the DPL its complete construction plans and specifications, which shall be consistent with its previously tendered conceptual design of the development of the Premises. Upon submittal by the Lessee, the DPL shall have thirty (30) working days to review the submitted construction plans and specifications and to notify the Lessee of approval or disapproval of the plans. In the event that changes are necessary, the DPL shall give the Lessee reasonable time to make the necessary changes to the plans for re-submittal. If the DPL does not notify the Lessee in writing of the status of the submitted plan within the thirty (30) working day review period, then the plans and specifications are deemed approved. In no event shall construction, demolition, repair or other development activity commence on the Premises unless and until plans have been approved by DPL or the thirty (30) day review period set forth above has expired without comment by DPL.

B. The Lessee agrees and covenants that within six (6) months from the Commencement Date of this Lease, it will at its own expense and risk secure all required CNMI Government and applicable Federal permits for the development and construction to be completed on the Premises and shall immediately commence construction. Copies of such permits must be delivered to the DPL within five (5) days of their issuance. If the Lessee requires additional time to secure the permits, it must notify the DPL in writing of the reason for the delay in securing the necessary approval and its request for extension. The DPL shall review the Lessee's request for extension and provide for additional time if the extension is reasonable, necessary, and is not due to any delay or inaction on the part of Lessee.

Lease Agreement

ARTICLE 9. CONSTRUCTION SCHEDULE

The Lessee agrees and covenants that within the time hereinafter stipulated it will, at its own cost, risk and expense, fully equip and furnish any improvements, structures and associated facilities within two (2) years after the Commencement Date of this Lease.

ARTICLE 10. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION

All construction, improvements, renovations, and repairs placed on the Premises shall be constructed in good workmanlike manner and in compliance with applicable laws, regulations, ordinances, and building codes. Principal structures serving the primary use (as define defined by Saipan Zoning) of the Premises shall be of full concrete construction for exterior and load bearing walls, and ceilings (i.e. no tin roofs, framed structural walls, etc.). Accessory structures (as defined by Saipan Zoning) that serve the principal building may be concrete framed finished with other materials to accentuate the theme of the primary use. All portions of buildings located upon the Premises exposed to perimeter properties or to the public view shall present a pleasant appearance, and all service areas shall be screened from public view. The Lessee shall, at all times during the Term of this Lease and at the Lessee's sole cost and expense, maintain the Premises and all improvements thereon in good order and repair and in a neat, sanitary and attractive condition.

Unless the same are to be promptly replaced with improvements having at least an equal value, no removal or demolition of improvements which has a value in excess of \$25,000.00 shall take place without the prior written consent of the DPL. No additions having a value in excess of \$100,000.00 shall be constructed on the Premises without the prior written consent of the DPL. The Lessee shall indemnify and hold harmless the DPL and the CNMI Government against liability for all claims arising from the Lessee's failure to maintain the Premises and the improvements situated thereon as hereinabove provided, and / or from the Lessee's violation of any law, ordinance, or regulation applicable thereto.

Within thirty (30) days after the Commencement Date, Lessee shall procure a performance or completion bond in favor of the DPL for the full cost of development

and construction contemplated hereunder. The parties' initial estimate of such cost is set forth on the Lease Data Sheet which shall serve as the basis for bonding. In the event of an upward adjustment in construction or development costs, Lessee shall immediately notify the DPL of such, and shall ensure that such bonds are commensurately increased within thirty (30) days thereafter. Failure to procure and maintain such security shall be cause for immediate termination of this Lease by DPL.

Unless specifically authorized on the Lease Data Sheet, Lessee shall not construct structures or other improvements that overlap boundaries of adjacent private lands. Any authorization permitting such must be set forth on the Lease Data Sheet, and shall be in conformance with DPL's regulations in effect on the Commencement Date AND be consistent with the following principles:

- (i) Development and construction of facilities and improvements that will occupy both private and public lands shall be performed in a manner to facilitate and simplify segregation of improvements on the public lands from those on adjacent private lands upon expiration or termination of the lease, unless a land trust consisting of the private lands and public lands is formed with the DPL as trustee, or fee simple title to the private lands is assigned to DPL, at Lessee's expense prior to development. For the avoidance of doubt, such permitted improvements shall be designed and constructed to be free and independent from private land improvements so that upon expiration or termination of the Lease, when the DPL takes possession of the improvements, such improvements and DPL's (or its designee's) operation thereof shall not be dependent upon adjacent private lands. This restriction shall not apply if the fee simple interest in the private lands is assigned or transferred to the DPL.
- (ii) Before commencement of construction or development Lessee shall be required to place on deposit with DPL the amounts necessary to perform such segregation at the expiration or termination of the lease as estimated by an engineer selected by DPL.
- (iii) Notwithstanding the foregoing, for minor developments such as parking structures attached to adjacent improvements, if such improvements will

be of little value to the DPL, the Secretary may waive the obligations set forth in subsection (a) above if in addition to the Security Deposit the Applicant places on deposit concurrent with the execution of the lease the projected cost of demolition and removal of improvements, and restoration of leased premises.

ARTICLE 11. EXCUSED DELAY OF PERFORMANCE

Whenever under this Lease a time is stated within which or by which original construction, repairs, reconstruction or other performance by the Lessee shall be commenced or be or be completed, and a failure or delay in such performance is due, in whole or in part, to fire, explosion, earthquake, storm, flood, drought or other unusually severe weather conditions, strike, war, insurrection, riot, act of God or the public enemy (each a “Force Majeure Event”) provided that such failure or delay does not result in whole or in part from the fault or negligence of the Lessee, the period of delay so caused shall be added to the period allowed herein for the completion of such work provided, however, that the Lessee shall notify the DPL in writing within thirty (30) days after the occurrence of any of the above events. Notwithstanding the foregoing, no Force Majeure Event (or combination of them) shall excuse any failure or delay in excess of One Hundred Eighty (180) days.

ARTICLE 12. ANNUAL REPORTS AND AUDIT

The Lessee shall, not later than forty-five (45) days after the end of each calendar year of this Lease, submit to the DPL financial statements certified by a CNMI licensed Certified Public Accountant, which shall include a schedule of gross receipts indicating sources and deductions in support of the gross receipts rental requirement under Article 5A. DPL shall have access to and the right to examine and audit any or all pertinent books, documents, papers and records of the Lessee and its sublessees and concessionaires relating to this Lease during the normal business hours of any working day. Lessee shall insert a similar provision in all subleases, concession and similar agreements pertaining to this right of access, examination, and audit, and shall make available to said representative(s) or agent(s) all books and records of the Lessee or its

sublessees and concessionaires which may be requested or may be necessary for completion of a special audit of any or all activities or enterprises conducted on the Premises.

The Lessee shall keep and maintain its accounting and bookkeeping system in accordance with generally accepted accounting principles. The Lessee shall keep its accounting books and records at all times in the English language.

ARTICLE 13. PUBLIC BENEFIT OBLIGATION

As a public benefit, Lessee shall give a local discount of no less than a 10% (or any greater amount set forth on Lease Data Sheet (which shall be mandatory if local discount is only applicable public benefit) and such other local benefits acceptable to the Secretary as more fully described on the Lease Data Sheet. Lessee shall allow public parking (non-exclusive), and provide public access, restrooms, and related recreational amenities at all beach and other recreational areas situated upon public land adjacent to the leased Premises as more fully described on the Lease Data Sheet. The Lessee is further obligated to provide proper lighting and security on the Premises and take all other reasonable actions and steps in order to ensure the safety, well-being and protection of its guests and invitees upon the public land that it is utilizing.

As part of the commitment to develop, manage and operate the **[INSERT FACILITY DESCRIPTION]**, the Lessee shall also conduct the following:

1. Construct and maintain a modern stadium complete with US Major league standard baseball field, and little league field, respectively with lighting for night games, training facilities, 2,000-seat spectator seating areas and restrooms, two team locker rooms with shower and restrooms, equipment storage rooms, lighting for night events, and adequate parking spaces.
2. Construct and maintain a modern aquatics facility consisting of a 25 meter short-course pool, and a 50 meter Olympic standard long-course pool complete with equipment and modern timing system, covered spectator seating areas with bleachers, restrooms and changing rooms, lighting for night events, equipment storage rooms, and adequate parking spaces.

1. Guarantee of local employment and management training program

The Lessee, in consideration for the granting of this Lease, covenants and agrees to the following:

A. Local Employment. Lessee shall comply with all CNMI local labor laws.

B. Job Training. The Lessee shall develop and implement a job training program with such government agencies as WIA, Office of Personnel Management, and NMC, with the approval of the Secretary of Commerce and the Director of Labor, to train CNMI residents in the type of jobs required by the Lessee in the operation and maintenance of the leased Premises.

C. Management Opportunities. The Lessee shall undertake all reasonable efforts to encourage, induce and promote qualified CNMI residents to positions of increasing responsibility and management levels in the operation and maintenance of the leased Premises. The Lessee shall make an annual report to the Secretary of Commerce and the Director of Labor on the status of the Lessee's effort to place CNMI residents in management level positions.

ARTICLE 14. SUBLEASE, ASSIGNMENT, TRANSFER, CONCESSIONS

A. Consent Required. Except with the prior consent in writing of the DPL in each instance, Lessee shall not, with respect to development on the public land leased hereby:

(1) Assign, lease, sublease, sell, convey, mortgage, encumber, transfer or dispose of all or any part of Lessee's interest in or to the Premises, or permit the Premises to be used or occupied by others; or

(2) Enter into a management contract or other arrangement by which the activities engaged in on the Premises shall be managed and operated by anyone other than Lessee; or

(3) Grant concessions, permits, or otherwise contract for or permit any business or commercial enterprise or activities to be constructed or performed on the Premises by any person other than the Lessee, unless the following conditions are met:

(i) The availability of such concession, permit or enterprise shall be advertised by in a newspaper of general circulation in the Northern Mariana Islands;

(ii) First priority in granting the concession, permit or enterprise shall be given to bona fide residents of the Northern Mariana Islands;

(iii) The granting of such concession, permit or enterprise shall be subject to the approval of DPL or its successor.

For the purposes of this condition, “concession, permit or enterprise” shall mean a privilege or right to sell products or perform services, which are peripheral to Lessee’s proprietary use of the Premises.

Provided, however, Lessee may sublease this Lease to any affiliate or subsidiary of the Lessee in existence and under joint ownership or control at the time of execution of this Lease, without the consent of the DPL. Provided that such sublease shall in no way relieve Lessee of its responsibilities, obligations, or duties hereunder; and provided further that such assignment or sublease does not result in a change of control as defined in Article 14B.

The consent by the DPL to an assignment, transfer, management contract, or subletting may be granted, denied or made subject to such conditions as the DPL finds it in the best interest of its beneficiaries. Any purported assignment, lease, sublease, sale, conveyance, transfer, mortgage or encumbrance of this Lease, whether written or oral, or any other action for which DPL consent is needed as outlined above, to which the DPL has not given its prior consent is null and void and is of no force or effect and is a violation of this Lease. No sublease, assignment, transfer, or contract shall be valid without the approval of the DPL, and then only if the respective sublessee, assignee, transferee, or other contracting party agrees in writing that the provisions of this Lease bind such sublessee, assignee, transferee, or contracting party. DPL will not consider any assignment, sublease, or transfer during the initial five (5) years of the lease term nor the final five (5) years of the lease term.

Once given, the DPL’s consent shall not relieve Lessee, or any subsequent sublessees, assignees or transferees, in any way from obtaining the prior consent in writing of the DPL to any further assignment, transfer, management contract, or subletting.

For purposes of this section, “Premises” includes any portion of the leased premises or any improvement on the leased premises, and “Lessee” includes Lessee’s

employees, successors and assigns.

B. Change in Control of Lessee. If the sale, assignment, transfer, use, or other disposition of any of the issued and outstanding capital stock of Lessee (or of any successor or assignee of Lessee which is a corporation), or of the interest of any general partner in a partnership owning the leasehold estate created hereby, or of the interest of any member of a joint venture, syndicate, or other group which may collectively own such leasehold estate, shall result in changing the control of Lessee or such other corporation, partnership, joint venture, syndicate, or other group, then such sale, assignment, transfer, use, or other disposition shall be deemed an assignment of this Lease and shall be subject to all the provisions of this Lease with respect to assignments.

For purposes of this Article, if Lessee is a corporation or a limited liability company, "change of control" shall mean any dissolution merger, consideration, or other reorganization of Lessee, or the sale or other transfer of a controlling percentage of the capital stock of the Lessee, or the sale of at least fifty-one percent (51%) of the value of the assets of the Lessee. The term "controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the combined total voting power of all classes of Lessee's capital stock issued, outstanding and entitled to vote for the election of directors.

For purposes of this Article, if Lessee is a partnership, joint venture, syndicate or other group which collectively holds this Lease, "change of control" means a withdrawal or change, voluntary or involuntary or by operation of law, of any partner, individual or entity owning more than fifty-one percent (51%) of the beneficial interest in the partnership, joint venture, syndicate or other group.

For the purposes of this Article, "control" of any corporation shall be deemed to be vested in the person or persons owning more than fifty percent (50%) of the voting power for the election of the Board of Directors of such corporation, and "control" of a partnership, joint venture, syndicate, or other group shall be deemed to be vested in the person or persons owning more than fifty percent (50%) of the general partner's interest in such partnership or of the total interest in such joint venture, syndicate, or other group. For purposes of determining control by a person, members of the family of any assignor or transferor shall

be included. For purposes of this section, "members of the family" include a person's spouse, grandparents, parents, brothers and sisters, nephews and nieces, and children by adoption and by blood. Lessee shall furnish an annual statement to the DPL that includes the names and addresses of all stockholders in any corporation or general partners in any partnership holding this lease, showing the number of shares of stock owned by each stockholder of such corporation, or the respective interest of the partners in such partnership, as the case may be. Such statement shall be signed under oath by an officer of each corporation and by a general partner of each partnership holding this lease.

C. Notice to DPL. Lessee shall furnish a statement of ownership/control to the DPL prior to the Commencement Date of this Lease, and on the same date annually thereafter. If Lessee is a corporation, such statement shall include the names and addresses of all principal stockholders and officers in any corporation acting as Lessee, which stockholder(s) own more than ten percent (10%) of the total combined voting power of all classes of Lessee's capital stock issued, outstanding and entitled to vote for the election of directors. If the Lessee is a partnership, joint venture, syndicate or other group, such statement shall include the name, address and respective interest of each person or entity with an interest in the partnership, joint venture, syndicate or other group.

D. Assignee's Duties. No assignment, sublease or transfer made with DPL's consent shall be effective until there shall have been delivered to DPL an executed counterpart of such assignment, sublease or transfer containing an agreement, in recordable form, executed by the assignor, sublessor or transferor and the proposed assignee, sublessee or transferee in which the latter assumes due performance of the obligations on the former's part to be performed under this Lease to the end of the leasehold term.

E. Assignment or Change In Control Fee. If the DPL consents to an assignment of this Lease or to a change in control of Lessee, as described in Section B of this Article, it shall assess a fee of twenty-five percent (25%) of the gain or profit attributable to the leased land. For purposes of this section the terms "gain" and "profit" are defined as the proceeds from any change in control or assignment less the book value

of improvements and fixtures installed by Lessee. Lessee shall pay the fee to DPL at closing of the assignment or the change in control of the Lessee.

G. Transfer Fee. In addition to any other fees due as a result of an assignment or transfer, if the DPL consents to an assignment, or other transfer of the leased Premises, as particularly described in Article 1 of this Lease, it shall assess a fee of 25% of the remaining rent due under this Lease for the remainder of the Term of the Lease. The transfer fee shall be assessed and Lessee shall pay the fee to DPL at closing of the transfer.

ARTICLE 15. STATUS OF SUBLEASES

Termination of this Lease, in whole or in part, by cancellation or otherwise, shall operate either as an assignment to the DPL of any and all such subleases, concessions, and sub-tenancies or shall terminate all such subleases, concession agreements or sub-tenancies at DPL's discretion.

ARTICLE 16. AGREEMENTS FOR UTILITY LINES

The Lessee shall have the right to enter into agreements with public utility companies or with the Government of the Commonwealth of the Northern Mariana Islands and/or any of its agencies to provide utility services, including water, electricity, telephone, television, and sewer lines necessary to the full enjoyment of the Premises and the development thereof in accordance with the provisions of this Lease. Subject to prior consultation with Lessee, the DPL reserves the authority to grant utility rights-of-way across the Premises. The Lessee shall furnish to the DPL executed copies thereof together with a plat or diagram showing the true location of the utility lines to be constructed in accordance therewith. Nothing herein contained shall be deemed to imply an obligation on the part of DPL to furnish Lessee with any water services or other utilities whatsoever and DPL does not guarantee the availability of same. It is expressly understood that the Lessee shall obtain such services at its sole cost and expense.

ARTICLE 17. RIGHT OF MORTGAGE

The Lessee, its successors and assigns may, subject to the express prior written approval of the DPL, mortgage this Lease and the Lessee's interest hereunder, provided that no holder of any mortgage of this Lease or the Lessee's interest hereunder, or any one claiming by, through or under any such mortgage shall, by virtue thereof, except as provided herein, acquire any greater rights hereunder than the Lessee, and no mortgage of this Lease or the Lessee's interest hereunder, in whole or in part, by the Lessee or the Lessee's successors or assigns shall be valid, unless: (i) at the time of the making of such mortgage, there shall be no default under any of the agreements, terms, covenants and conditions to be performed by the Lessee under this lease; (ii) such mortgage shall be subject to all the agreements, terms, covenants and conditions of this Lease, (iii) any such mortgage shall reserve to the DPL prior right, in the event of Lessee's default under the same and after notice of the same character and duration as required to be given to Lessee, to correct the default or to purchase the same and terminate this Lease; and (iv) such mortgage shall contain the following provisions:

This instrument is executed upon condition that (unless this condition be released or waived by the DPL or its successors in interest by an instrument in writing), no purchaser or transferee of said Lease at any foreclosure sale hereunder, or other transfer authorized by law by reason of a default hereunder where no foreclosure sale is required, shall, as a result of such sale or transfer, acquire any right, title or interest in or to said Lease or the leasehold estate hereby mortgaged unless (i) the DPL shall receive written notice of such sale or transfer of said Lease within fifteen (15) days after the effective date of such sale or transfer and (ii) a duplicate original copy of the instrument or instruments used to effect such sale or transfer shall be delivered to the DPL within thirty (30) days after the execution and delivery thereof.

Any mortgage entered into shall be in strict compliance with all applicable laws and regulations, including mortgage security instrument laws, or applicable constitutional provisions, in order to be valid and enforceable. All funds received pursuant to any mortgage of the leasehold property shall be expended only for leasehold improvements within the Northern Mariana Islands.

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ARTICLE 18. RIGHTS OF LEASEHOLD MORTGAGEES

If the Lessee or the Lessee's successors or assigns shall mortgage this Lease or its interest in the Premises in accordance with the provisions of this Lease, then so long as any such leasehold mortgage as hereinafter defined shall remain unsatisfied of record, the following provisions shall apply:

A. Notice to Mortgagee. The DPL shall serve upon the Lessee any notice of default pursuant to the provisions of Article 27 or any other notice under the provisions of or with respect to this Lease. The Lessee shall thereafter serve a copy of such notice upon the holder of the then existing mortgage of this Lease of the Premises. Service of such notice of default upon the Lessee shall be deemed as service on the mortgagee who shall thereafter have the same period as the Lessee for remedying the default or causing the same to be remedied, as is given the Lessee after service of such notice upon it.

B. Remedy. Such leasehold mortgage of this Lease or the Premises, in case the Lessee shall be in default hereunder, shall, within the period and otherwise as herein provided have the right to remedy such default, or cause the same to be remedied, and the DPL shall accept such performance by or at the instigation of such leasehold mortgagee as if the same had been performed by the Lessee.

C. Diligent Prosecution. No default on the part of Lessee in the performance of work required to be performed, or acts to be done, or conditions to be remedied, shall be deemed to exist, if steps shall, in good faith, have been commenced promptly to rectify the same and shall be prosecuted to completion with diligence and continuity in accordance with Article 27 hereof, on "Default", unless otherwise specified in this Lease.

D. Termination. Notwithstanding while the leasehold mortgage remains unsatisfied of record, if any event or events shall occur which shall entitle the DPL to terminate this Lease, and if before the expiration of thirty (30) days after the date of service of notice of termination by the DPL all rent and other payments herein provided for then in default is fully paid, and the Lessee shall have complied or shall be engaged in the work of complying with all the other requirements of this Lease, if any, then in default, then in such event the DPL shall not be entitled to terminate this Lease, and any notice of termination theretofore given shall be void and of no force or effect, provided,

however, nothing herein contained shall in any way affect, diminish or impair the right of DPL to terminate this Lease or to enforce any other subsequent default in the performance of any of the obligations of the Lessee hereunder.

E. Notice of Termination. In the event of the termination of this Lease prior to the natural expiration of the term hereof, whether by summary proceedings to dispossess, service of notice to terminate or otherwise, due to default of the Lessee as provided in Article 27 hereof, or any other default of the Lessee, the DPL shall serve upon the holder of the then existing mortgage on this Lease or the Premises written notice of such termination. Nothing herein contained shall release the Lessee from any of its obligations under this Lease, which may not have been discharged or fully performed by any mortgagee of this Lease or the Premises, or its designee.

F. First Mortgage Only. Whenever reference is made herein to the holder of the mortgage on this Lease or the Premises, the same shall be deemed to refer only to the holder of the first record mortgage on this Lease or the Premises, if any, as shown by the records of the Commonwealth Recorder's office. Notice of such mortgage shall be sent to the DPL by certified or registered mail, and include a copy of the recorded mortgage certified by the Commonwealth Recorder's office as to the date and time of recordation. Any notice or other communication to any such mortgagee by the DPL shall be in writing and shall be served either personally or by certified or registered airmail address to such holder or mortgagee at his/her address appearing on such records or at such other address as may have been designated by notice in writing from such holder or mortgagee to the party serving such notice of communications. Nothing contained in this Article shall be construed so as to require the DPL to serve notices upon or recognize any leasehold mortgagees other than the holder or such first mortgage on this Lease or the Premises, as aforesaid.

ARTICLE 19. STORM, FIRE AND DAMAGE INSURANCE

The Lessee shall procure upon the Commencement Date and shall continue to maintain in force during the entire Term of this Lease or any extension thereof, storm (typhoon) fire and damage insurance for the Premises with a company or companies authorized to do business in the Northern Mariana Islands, with extended coverage

endorsements jointly in the names of the Lessee and the DPL, covering the full insurable value of all improvements on the Premises, subject to appropriate co-insurance provisions (no greater than 10%). The policy shall contain a clause requiring that the DPL be given thirty (30) days notice prior to any cancellation or termination of the policy. A copy of such policy or policies or an acceptable certificate shall be deposited with the DPL within thirty (30) days of the same obtained by the Lessee. The Lessee shall pay all premiums and other charges payable in connection with insurance carried by the Lessee. In the event of damage to any permanent improvement on the premises, the Lessee shall reconstruct such improvement in compliance with applicable laws, ordinances, and regulations and in accordance with the applicable provisions of this Lease. Such reconstruction shall commence within six (6) months after the damage occurs and shall be pursued diligently and completed within one (1) year of the occurrence. In the event of damage to the extent of seventy-five percent (75%) or more of the total value of all permanent improvements on the Premises during the last five (5) years of the term of this Lease, the Lessee for ninety (90) days shall have the option to agree to reconstruct the damaged improvements. Should the Lessee fail to notify the DPL in writing of the exercise of its option to reconstruct within ninety (90) days of the occurrence of damage, the Premises shall be cleared at the Lessee's expense and upon completion of such clearing this Lease shall terminate. In the event Lessee shall elect not to rebuild damaged improvements during the last five-year term of the Lease, all insurance proceeds accruing as a result of the fire or damage, shall be for the sole benefit of and made payable to the DPL, or its lawful successors and assigns. Any damages incurred or suffered by any sublessee, assignee, mortgagee or otherwise as a result of such termination shall be borne solely by the Lessee.

ARTICLE 20. LIABILITY INSURANCE

The Lessee shall, from the Commencement Date of this Lease, procure and maintain in force during the entire term of this Lease or any extension thereof, at its sole expense, commercial general liability insurance (all risk) for the Premises and operations conducted thereon, with the DPL and the CNMI Government as named

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co-insured, in a company or companies authorized to do business in the Northern Mariana Islands, with a minimum coverage of \$1,000,000 per occurrence / \$5,000,000 in the aggregate or such higher amounts as the DPL may reasonably require. Copies of such policies shall be delivered to the DPL within thirty (30) days of their issuance, and shall contain a clause requiring at least thirty (30) days' written notice shall be given to the DPL prior to cancellation or refusal to renew any such policies. Lessee agrees that if such insurance policies are not kept in force during the entire term of this Lease, the DPL may procure the necessary insurance, pay the premium therefore, and such premium shall be repaid to the DPL immediately upon the DPL's demand.

All insurance obtained by the Lessee in compliance with this Lease shall be obtained from reputable companies acceptable to the DPL.

ARTICLE 21. NOTICES

Except as otherwise specified herein, all notices required or permitted under this Lease shall be in writing and shall be delivered in person or deposited in the United States mail in an envelope addressed to the proper party, certified or registered mail, postage prepaid as follows:

DPL: Department of Public Lands
P.O. Box 500380
Saipan, MP 96950

LESSEE: [Input from Lease Data Sheet]

or at such other address as the DPL or Lessee may from time to time specify in writing. All notices shall be deemed delivered (1) on the date personal delivery is made, or (2) on the date falling three (3) days after the date of the post mark by the U.S. Post Office of any mail or notice properly addressed and containing sufficient postage.

ARTICLE 22: RESERVATION OF EASEMENTS/MINERAL RIGHTS

This Lease shall be subject to all existing easements, roadways, and rights-of-way across or through the Premises. The DPL and the CNMI Government retain the

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right at all times to cause the construction, maintenance, operation or repair of public utilities or parts thereof on the premises, including, but not necessarily limited to, electric power transmission, telegraph, telephone and pipelines, and for roads and other community projects. Lessee shall be entitled to no compensation from the DPL or the CNMI government for such uses of the Premises. The DPL hereby reserves all rights to minerals and resources on the Premises, including the right of access to and use of such parts of the surface of the Premises as may be necessary for the mining and saving of said minerals. The right of ingress to and egress from the Premises upon which public utilities and other improvements have been constructed, and for the purposes of inspection by the DPL, as well as for the performance of official duties in the maintenance, operation and repair of such utilities and other improvements is hereby reserved.

ARTICLE 23. RIGHT OF INSPECTION; INGRESS/EGRESS

A. The DPL, its agents, and representatives shall have, upon reasonable notice, the right to enter the Premises at any time for inspection purposes in order to determine whether the provisions of the Lease are being complied with by the Lessee, to serve notices required under this Lease, or for any other purpose deemed appropriate by the DPL. In addition, DPL shall have the right to inspect and examine all the books, records, documents, and accounts of the Lessee or its sublessees, from time to time upon request.

B. The DPL reserves to the CNMI Government the right to order cessation of all operations on the Premises until further notice should the CNMI Government, any agency thereof, or the DPL determine the Lessee is not exercising a high degree of care in protecting the safety of persons and property in the conduct of its activities on the Premises.

Regardless of the above provisions, it always remains the sole responsibility and duty of the Lessee to ensure that the operation is operated in a safe and healthful manner.

ARTICLE 24. CONDEMNATION

The DPL and Lessee covenant and agree that in the event the whole property hereby leased shall be taken in condemnation proceedings or by any right of eminent domain, or otherwise, for public purposes, then and on the happening of any such event, the DPL or Lessee, may terminate this Lease and the Term hereby granted and all the rights of the Lessee hereunder, and the rent shall be paid up to the date of such condemnation or termination and any unearned rent paid in advance by the Lessee shall be refunded pro rata. In the event any portion of the property hereby leased is condemned or taken by right of eminent domain or otherwise for public purposes, thereby rendering the leased property unsuitable for the purpose of Lessee as stated in Article 2 above, then and on the happening of such event Lessee may terminate this Lease and the Term hereby granted, and all the rights of the Lessee hereunder and the rent shall be paid up to the date of such termination or condemnation and any unearned rent paid in advance by the Lessee shall be refunded pro rata. If Lessee does not terminate this Lease upon such event, then the rent shall be reduced in proportion to the land taken as such bears to the total area of land leased. The DPL and the Lessee may each independently file separate claims in such proceedings for the purpose of having the value of their respective interests determined, and the award shall be paid accordingly; but if the public or governmental authorities shall object or refuse to permit separate claims to be proved and/or distributed in such manner, the DPL will prosecute all claims for damages to the Premises on behalf of both the DPL and the Lessee (and authority to do so is hereby granted), and after deducting all reasonable expenses incurred by the DPL incident thereto, the balance of said award shall be divided between the DPL and the Lessee as established in that proceeding. In the event the DPL prosecutes the claim on behalf of both parties hereto, all such awards shall be paid to the DPL for the account of the DPL and Lessee as hereinbefore provided.

ARTICLE 25. COVENANT AGAINST DISCRIMINATION

The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, or a physical handicap, or as provided by Commonwealth or Federal laws.

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ARTICLE 26. ABANDONMENT / UNDERUTILIZATION OF PREMISES

Should the Lessee fail to use the Premises for the purpose set forth in this Lease for a consecutive period of ninety (90) days without securing the written consent of the DPL, the Lessee shall be deemed to have abandoned the Premises, so that in such event this Lease may, at the option of the DPL, be terminated pursuant to the provisions of Article 27 hereof without further notice to the Lessee.

In the event of a use other than the permitted use set forth on the Lease Data Sheet, or utilization of the Premises that fails to comport with the conceptual design upon which this Lease was based, DPL may recapture all or portions of properties under lease when such lands may have a higher and better use than as actually being used or developed by Lessee. In such case Lessor shall give notice to Lessee and an opportunity to cure or within sixty (60) days reach agreement with the DPL on a proposed course of action to cure or such non-conforming or underutilized portions of the premises shall revert to the DPL.

ARTICLE 27. DEFAULT

Time is of the essence and Lessee shall automatically be in default of this Lease if:

A. Failure to pay. Lessee shall fail to pay any installment or rent hereby reserved or shall fail to pay any taxes or other charges required to be paid by Lessee within thirty (30) days after the due date under the terms of this Lease.

B. Other Breach of Lease. Lessee shall breach any term, provision or covenant of this lease, other than the payment of rent, taxes, or other charges, and fails to cure such breach within thirty (30) days from and after written notice from the DPL.

C. Insolvency or Bankruptcy. Lessee, its successors and assigns, becomes insolvent or file for relief under the United States Bankruptcy Code.

D. Abandonment. Lessee abandons the Premises as provided in Article 26.

Upon the occurrence of Lessee's default of this Lease as described above, all Lessee's rights under this Lease are terminated, including, but not necessarily limited to Lessee's right to use the Premises. Any notices, as may be required by law or this Lease, shall be delivered as provided by Article 21 of this lease.

ARTICLE 28. REMEDIES

Upon termination of Lessee's rights under this Lease pursuant to Article 27, the DPL may terminate this Lease and may, upon fifteen (15) days written notice, enter in, into and upon the leased premises and take possession of all buildings, fixtures and improvements, and evict Lessee without liability of trespass. The remedies herein shall not prejudice the DPL's other rights and remedies at law or equity.

ARTICLE 29. ACCORD AND SATISFACTION

No payment by Lessee or receipt by the DPL of a lesser amount than the annual rent herein stipulated shall be deemed to be other than on account of rents due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent be deemed an accord and satisfaction, and the DPL may accept such check or payment without prejudice to the DPL's right to recover the balance of such rent or pursue any other remedy provided in this lease. In the event that the rent or any other monies which are due hereunder by Lessee are delinquent, the DPL may, upon the receipt of any payments, apply them to any account or period it shall determine in its discretion.

ARTICLE 30. WAIVER OF BREACH

Waiver by the DPL of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of rent by the DPL shall not be deemed to be a waiver of any of the terms or conditions including the remedies of DPL hereof. No covenant herein shall be deemed waived by the DPL unless such waiver is in writing by the DPL.

ARTICLE 31. EXPENSE OF ENFORCEMENT

If an action is brought by the DPL for rent or any other sums of money due under this Lease, or if any action is brought by the DPL to enforce performance of any of the covenants and/or conditions of this Lease, Lessee shall pay reasonable attorney's fees to be fixed by the Court as a part of the costs in any action. Use of in-house counsel or

the Office of Attorney General shall not be a basis to reduce or avoid an award of such costs. In such event, fees shall be calculated by multiplying the prevailing hourly rate for private counsel in the Commonwealth by the reasonable number of hours spent in connection with such enforcement activities.

ARTICLE 32. INDEMNIFY, DEFEND AND HOLD HARMLESS

Lessee hereby releases and forever discharges and agrees to defend, indemnify and hold harmless the DPL, the CNMI Government, their successors, employees and assigns, from any and all injury or loss and all liability for injury or loss to persons or property which occur on the Premises or which arise out of or in connection with any activities contemplated under this Lease during the Term of this Lease, any extension thereto or during any holdover by Lessee whether or not such claims, demands or actions are rightfully or wrongfully brought or filed and against all costs incurred by the DPL, the CNMI Government, their successors, employees and assigns therein. In case a claim should be brought or an action filed with respect to the subject of indemnity herein, Lessee agrees the DPL, the CNMI Government, their successors, employees and assigns may employ attorneys of their own selection to appear and defend the claim or action on their behalf, at the expense of the Lessee. The DPL, the CNMI Government, their successors, employees and assigns, at their own option, shall have the sole authority for the direction of the defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against them.

ARTICLE 33. QUIET ENJOYMENT

The DPL covenants that the Lessee, upon paying the rent required herein and upon fulfilling all the conditions and agreements required of the Lessee, shall and may lawfully, peacefully and quietly have, hold, use, occupy and possess and enjoy the property during the Term agreed upon without any suit, hindrance, eviction, ejection, molestation, or interruption whatsoever of or by the DPL, or by any other person lawfully claiming by, from, under or against the DPL.

ARTICLE 34. GOVERNMENT REQUIREMENT

Lessee shall procure all licenses, certificates, permits, and other required authorizations from any and all other governmental authorities having jurisdiction over the Operation of the Lessee under this Lease. Lessee shall provide the DPL with copies of all such licenses, certificates, permits and other required authorizations from other governmental authorities within three (3) months after the Commencement Date of this Lease.

ARTICLE 35. UNLAWFUL USE AND COMPLIANCE WITH LAWS

Lessee covenants and agrees not to use or cause or permit to be used any part of the Premises for any unlawful conduct or purpose. Lessee agrees to comply with all property, building, health, sanitation, safety and other laws and regulations of the Commonwealth of the Northern Mariana Islands, which are in effect or which may hereafter become effective.

ARTICLE 36: HOLDOVER CLAUSE

If the Lessee fails to vacate the Premises upon the expiration, termination or cancellation of this Lease, Lessee shall be deemed a holdover Lessee. Such holdover Lessee shall be obligated to pay the DPL a holdover fee during the holdover period of not less than 150% of the monthly-prorated Base Rent and Additional Rent for the Five Year Period immediately preceding the holder period as provided in Article 5A. Payment of such liquidated damages shall in no way constitute a limitation upon any other rights or remedies the DPL may be entitled to pursue for violation of the Lease, for trespass or illegal possession or for any other cause of action arising out of holdover Lessee's failure to vacate the Premises including the right to evict the Lessee without court action, and the cost thereof to be paid by the Lessee.

ARTICLE 37. CONDITION OF PREMISES

The Lessee acknowledges that it has examined the Premises prior to the making of this Lease and knows the conditions thereof, and that no representations or warranties

other than those expressed herein have been made by the DPL. Lessee hereby accepts the Premises as-is in their present condition at the Commencement Date of this Lease.

ARTICLE 38. VACATING THE PREMISES

Upon the expiration or earlier termination or cancellation of the Lease, the Lessee shall quietly and peacefully vacate the Premises and surrender the possession thereof. The DPL may, at its option, require the removal of all improvements and property on the Premises, or it may require all improvements, except removable personal property, trade fixtures and equipment, remain on the Premises and become the property of the DPL after termination of this Lease. Upon the failure or neglect of the Lessee to remove her property from the Premises or restore the Premises, the DPL, its officers or agents, may enter the Premises and remove all persons and property therefrom without recourse to any action or proceeding at law or in equity. Such removal and/or restoration shall be at the cost and expense of the Lessee, and no claim for damages of any nature whatsoever against the DPL, the CNMI Government or any officer or agent thereof shall be created by or made on account of such removal.

ARTICLE 39. PUBLIC AUDITOR

This Lease is subject to 1 CMC § 7845. The Lessee shall provide, upon request of the Public Auditor of the Commonwealth all records and reports, and shall allow audit, inspection, access and the right to copy her books, records, documents, correspondence, and any other data and material relating to this Lease, to the Public Auditor, and do any other acts required under 1 CMC § 7845. This right of access, inspections, and copying shall continue until the expiration of three (3) years after the final payment under the Lease is made, or such other time as set forth in 1 CMC § 7845.

ARTICLE 40. GENERAL PROVISIONS AND DEFINITIONS

A. Waiver. No waiver of any default of the Lessee hereunder shall be implied from any omission by the DPL to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect the default other than the default specified in the express waiver, and that only for the time and to the

extent therein stated. One or more waivers of any covenant, term or condition of this Lease by the DPL shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the DPL to or of any act by the Lessee requiring the DPL's consent or approval shall not be deemed to waive or render unnecessary the DPL's consent or approval to or of any subsequent or similar acts by the Lessee. The acceptance of Lease fees by the DPL shall not be deemed to be a waiver of any of the terms or conditions, including the remedies of the DPL. No covenant of this Lease shall be deemed waived by either party unless such waiver is in writing and signed by the party waiving the covenant.

B. Agreement Complete. It is hereby expressly agreed that this Lease, together with the exhibits attached hereto, contains all of the terms, covenants, conditions and agreements between the parties hereto relating in any manner to the use and occupancy of the Premises, and that the execution hereof has not been induced by either of the parties by representations, promises or understandings not expressed herein and that there are no collateral agreements, stipulations, promises or understandings of any nature whatsoever between the parties hereto relating in any manner to the use and occupancy of the Premises, and none shall be valid or of any force or effect, and that the terms, covenants, conditions and provisions of this Lease cannot be altered, changed, modified or added to except in writing signed by the parties hereto.

C. Interpretation. The language in all parts of this Lease shall be in all cases construed simply, according to its fair meaning, and not strictly for or against the DPL or the Lessee. Captions and paragraph headings contained herein are for convenience and reference only, and shall not be deemed to limit or in any manner restrict the contents of the paragraph to which they relate.

D. DPL's Representative. The authorized representative of the DPL for purposes of this Lease shall be the Secretary of the Department of Public Lands or his/her designee.

E. Lessee's Representative. The authorized representative of the Lessee for purposes of this lease shall be as set forth on the Lease Data Sheet.

F. Law Governing. This Lease shall be governed by the laws and regulations of the Commonwealth of the Northern Mariana Islands, both as to performance and interpretation therein. If any provision of this Lease shall be held invalid under the laws of the Commonwealth of the Northern Mariana Islands for any reason, the same shall in no way impair the validity of the remaining provisions of this Lease, and the remaining provisions of the Lease shall otherwise remain in full force and effect.

G. Gross Receipts. "Gross Receipts", as that term is used herein, means all income or revenue whatsoever, including money and any other thing of value, received by or paid to the Lessee, its sublessees or concessionaires, or received by or paid to others for the use and benefit of any of the aforementioned, derived from business done, sales made or services rendered from, on, or related to the leased Premises, or derived from the subleasing, sub-renting, permitting, contracting, or other use of the same. The Lessee shall not directly or indirectly divert from inclusion in Gross Receipts any income or revenue whatsoever derived from the leased Premises to any other business or enterprise located elsewhere and all revenues from any attempted or inadvertent diversion shall be calculated as revenue hereunder.

The following items may be deducted from the gross receipts:

- 1) credits for the exchange of goods or merchandise from the premises to another store or stores owned or operated by the Lessee, its parent or affiliate, where such exchange is made solely for the convenience of business and not for the purpose of consummating a sale previously made directly or indirectly from or upon the Premises;
- 2) to the extent the same shall have been included in "Gross Receipts", there shall be deducted credits to customers for returned merchandise, merchandise trade-ins, exchanges, and merchandise cancellations, ;
- 3) the amount derived from the sale or other disposition of fixtures, goodwill, improvements, furnishings, equipment, accessory, appliance, utensils or any other item of property: (i) which is either sold outside the ordinary course of the Lessee's business; or (ii) which is not acquired or held by the Lessee as a stock-in-trade or inventory for resale in the ordinary course of the Lessee's business;

ARTICLE 41. LEASE AGREEMENT BINDING

This Lease and the covenants, conditions and restrictions hereof shall extend to and be binding upon the parties hereto, their heirs, successors and assigns and to any other person claiming to hold or to exercise any interest by, under or through any of the parties hereto.

ARTICLE 42. ADDITIONAL OBLIGATIONS OF LESSEE

Lessee shall perform all responsibilities, obligations, and duties set forth on the Lease Data Sheet as if set forth within the body of this Lease.

ARTICLE 43. PERSONAL / PARENT COMPANY GUARANTEE

In further consideration for this Lease, Lessee's majority shareholder(s) and parent corporation(s) identified on the Lease Data Sheet, jointly and severally guarantee full performance of all terms and conditions to be performed by Lessee under this Lease including but not limited to, prompt payment of any and all obligations that may arise under this Lease as follows:

- A. Guarantors, jointly and severally, will in all respects guarantee the due and proper performance of the Lease and the due observance and prompt performance of all obligations, duties, undertakings, covenants, warranties, and conditions by or on the part of the Lessee contained therein and to be observed and performed by Lessee, which guarantee shall extend to included any variation or addition to the Lease throughout its Term and any permitted extension thereof.
- B. If Lessee fails to carry out, observe or perform all any of such obligations, duties undertakings, covenants, warranties and/or conditions under the Lease (unless relieved from the performance of any part of the Lease by statute or by the decision of a court or tribunal of competent jurisdiction) the Guarantors will be jointly and severally liable for and shall indemnify the DPL against all losses, damages, costs and expenses, whatsoever which the Beneficiary may incur by reason or in consequence of any such failure to carry out observe

- C. The Guarantors, (or any one of them), shall not be discharged or released from this Guarantee by the occurrence of any one or more of the following:-
1. Any alteration to the nature of extent of the Lease;
 2. Any allowance of time, forbearance, indulgence or other concession granted to the Lessee under the Lease or any other compromise or settlement of any dispute between the DPL and the Lessee
 3. The liquidation, bankruptcy, administration, absence of legal personality, dissolution, incapacity or any change in the name, composition or constitution of the Lessee or the Guarantor(s).
- D. This Guarantee is a continuing guarantee and accordingly shall remain in operation until all obligations, duties, undertakings, covenants, conditions and warranties now or hereafter to be carried out or performed by the Lessee under the Lease shall have been satisfied or performed in full and is in addition to an not in substitution for any other security which the DPL may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security and without taking any other steps or proceedings against the Lessee.
- E. So long as any sums are payable (contingently or otherwise) by the Lessee to the DPL under the terms of the Lease then the Guarantors shall not exercise any right of set off or counterclaim against the Lessee or any other person or prove in competition with the DPL in respect of any payment by the Guarantors hereunder and in case either Guarantor receives any sum from the Lessee or any other person in respect of any payment of the Guarantors hereunder the respective Guarantor shall hold such monies in trust for the DPL so long as any sums are payable (contingently or otherwise) under this Guarantee.
- F. Guarantors will not, without prior written consent of the DPL hold any security from the Lessee or any other person in respect of the Guarantors' liability hereunder or in respect of any liabilities or other obligations of the Lessee to the Guarantors. The Guarantors will hold any security held by it

in breach of this provision in trust for the DPL.

G. This Guarantee is in addition to and not in substitution for any present and future guarantee lien or other security held by the DPL. The DPL's rights under this Guarantee are in addition to and not exclusive of those provided by law.

Guarantors each agree to waive any corporate protection under the law pertaining to such guarantee of full performance hereunder.

IN WITNESS WHEREOF, the parties hereunto set their respective hands, the date and year first written above.

LESSEE:

By: _____

Date: _____

COMMONWEALTH OF THE)
NORTHERN MARIANA ISLANDS)
SAIPAN, NORTHERN MARIANA ISLAND)

ACKNOWLEDGMENT

On this _____ day of _____, **20xx**, before me, a Notary Public in and for the Commonwealth of the Northern Mariana Islands, personally appeared [**insert**] known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the purpose set forth therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public

LESSOR:

DEPARTMENT OF PUBLIC LANDS

By: _____
PEDRO A. TENORIO
Secretary

Date: _____

COMMONWEALTH OF THE)
NORTHERN MARIANA ISLANDS)
SAIPAN, NORTHERN MARIANA ISLAND)

ACKNOWLEDGMENT

On this _____ day of _____, **20xx**, before me, a Notary Public in and for the Commonwealth of the Northern Mariana Islands, personally appeared **Pedro A. Tenorio, Secretary of the Department of Public Lands**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the purpose set forth therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public

APPROVED AS TO FORM AND LEGAL CAPACITY

By: _____
EDWARD MANIBUSAN
Attorney General

Date: _____