

# Exhibit D Agreement Form

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

## **HOTEL GOLF RESORT OPERATING AGREEMENT**

This OPERATING AGREEMENT (hereinafter "Agreement"), is between the DEPARTMENT OF PUBLIC LANDS, a department of the Commonwealth of the Northern Mariana Islands (hereinafter "Owner") and \_\_\_\_\_ (hereinafter "Operator").

### **WITNESSETH THAT**

**WHEREAS**, Owner is the legal owner of certain land, improvements, and property comprising of a hotel and golf course, known as "The Marianas Resort and Spa" and the "Mariana's Country Club Golf Course," respectively and collectively referred to herein as the "Resort" or "Property," on public land as further defined in Article 1 in Marpi, Saipan, Commonwealth of the Northern Marianas Islands held for the benefit of residents of the NMI who are of Northern Mariana Islands Descent;

**WHEREAS**, Operator (or its key management staff) has hotel management and operations experience, as well as the requisite knowledge and skill concerning the industrial, commercial operation of the type of property stated above and has been determined by Owner to be a responsible bidder in connection with DPL RFP18-DPL/RED-092;

**WHEREAS**, In connection with DPL RFP18-DPL/RED-092, Operator submitted a conforming and responsive proposal to operate the above-mentioned Property;

**WHEREAS**, Owner, having the authority and responsibility over 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 allow Operator to manage said public land on behalf of Owner for such purpose.

**NOW, THEREFORE**, in view of the above recitals, and in consideration of the mutual covenants, conditions, and the benefits to be derived herein, Owner and Operator mutually agree as follows:

## ARTICLE 1: DEFINITIONS

For the purposes of this Agreement, unless another meaning is implicitly indicated by the context, the following terms shall have the meanings set forth below:

“Annual Operating Budget” shall have the meaning set forth in Section 3.3.

“Building Systems” means, the systems and related facilities necessary for the Operation of the Hotel, including, without limitation, all life/safety, heating, ventilation, air conditioning, elevator, escalator, telephone, computer, electrical, plumbing, sanitation, laundry, dry cleaning, kitchen, mechanical and other systems and facilities.

“Capital Expenditures” means expenditures for or on account of Capital Improvements.

“Capital Improvements” means all alterations, additions, replacements and improvements to the Hotel that are considered to be of a capital nature under the Operator’s Accounting Policies, including, without limitation, Building Systems, Furniture, Fixtures and Equipment, structural repairs and changes or replacements of structural components, but excluding repairs and maintenance and Building Systems and Furniture, and Equipment expenditures properly chargeable as Operating Expenses.

“Day” means calendar days

“Golf Course” the golf course facility part of the Resort.

“Hotel” means the Hotel Facilities and the Hotel Property.

“Hotel Facilities” means (i) the Lands, (ii) the Improvements, (iii) the Hotel Related Facilities, (iv) any related buildings and improvements which in the future may be owned or leased by the Owner, and (v) all entrances, exits, rights of ingress and egress, licenses and easements related to any of (i) through (iv) above.

“Hotel Property” means the Furniture, Fixtures and Equipment, the Operating Equipment and the Operating Supplies.

“Fiscal Year” means the twelve-month period commencing on the 1st day of October through September 30 of the next year and shall be named by the latter year.

“Furniture, Fixtures and Equipment” means all furniture, furnishings, fixtures and equipment required for the proper and efficient Operation of the Hotel in accordance with the Standard, including, without limitation, lobby furniture, carpeting and floor coverings, draperies, wall coverings, artwork, bedspreads, television sets, radios, office furniture and equipment such as safes, cash registers and accounting, computer, duplicating and communication equipment, telephone equipment, guest room furniture, specialized hotel equipment such as equipment required for the operation of kitchens, laundries, the front desk, dry cleaning facilities, bars and cocktail lounges and decorative lighting, material handling equipment and cleaning and

engineering equipment and all other furniture, furnishings, fixtures, equipment, apparatus and personal property needed for such purposes or for the Operation of the Hotel, but excluding (i) Building Systems, (ii) Operating Equipment, (iii) Operating Supplies and (iv) Proprietary Materials. “Management Fee” means an amount designated to be paid to Operator as set forth in Section 4.4.

“Marketing” means all marketing, advertising, promotion, sales, public relations, publicity and related activities conducted by the Operator for the purpose of promoting the name and business of the Resort pursuant to the terms of this Agreement.

“Operating Expenses” shall have the meaning set forth in Section 4.2.

“Operating Equipment” means all blankets, linens, uniforms, glassware, silverware, china, crockery and other items of a similar nature necessary for the Operation of the Resort, all such items being of a class or grade corresponding with the Standard and not less in quality or relative scope than that generally used from time to time in other Operator Hotels.

“Operating Cash Flow” is the amount of cash generated by a company's normal business operations. Cash Flow from Operating Activities = Net income + Noncash Expenses + Changes in Working Capital. The noncash expenses are usually the depreciation and/or amortization expenses listed on the firm's income statement.

“Property” or “Resort” means the Hotel and Golf Course facilities including the 50 meter swimming pool and baseball field sporting facility, collectively, situated on the following:

Lot Number	Facilities Description	Lot Size, M <sup>2</sup>
<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
<b>Facilities West of Main Road:</b>		<b>265,038</b>
<i>(East of Main Road - Inland)</i>		
003 A 15	Pool / Baseball / Open Field	43,637
003 A 18 &	18 Hole Golf Course / Club House,	905,784
008 A 01	Executive Villas	<u>30,000</u>
<b>Facilities East of Main Road:</b>		<b>979,421</b>

**Aggregate Facilities Area in M<sup>2</sup>: 1,244,459**

“Three Star Rating” hotel rating standard as defined by Travelocity and Orbitz.

“Working Capital” means the funds classified as working capital in accordance with the Operator’s Accounting Policies.

## **ARTICLE 2: PURPOSE**

On the terms and subject to the conditions of this Agreement, Owner hereby engages Operator as the manager and operator of the Resort, and Operator hereby undertakes and agrees to directly perform, either directly, or with DPL's written consent through its subcontractors, the services set forth in this Agreement and to comply with all the provisions of this Agreement.

During the term of this Agreement and any renewal thereof, the Operator shall use, manage, and operate the Resort to a three-star standards in a reasonably prudent manner, so as to not cause nuisance or hazards to the public, and to not allow or suffer, any waste or unlawful, improper or offensive activities within the Resort premises. This agreement gives Operator no rights in or to the land upon which the Resort resides and Owner reserves the right to enter the Resort premises at any time for any purpose (in which case Owner will conduct itself in a manner reasonably calculated so as to not disturb Resort guests). It is the intent of the parties that the Resort be managed and operated by Operator for the account and benefit of Owner.

## **ARTICLE 3: SERVICES TO BE PERFORMED BY OPERATOR**

### **SECTION 3.1 – MANAGE, OPERATE, AND MAINTAIN**

In consideration for the Management Fee set forth in Section 4.4 Operator shall have the responsibility and duty to direct supervise, manage, and operate the Resort and to determine the programs, policies, prices, and terms to be followed in connection therewith (subject to the restrictions set forth in this agreement), all in accordance with the provisions of this Agreement. However, Operator agrees to consult with and obtain approval of Owner on all major programs and policy matters which could substantially affect the Resort's character, reputation or financial performance.

Operator shall have authority over and with respect to, and shall be responsible for, the operation and maintenance of the Property. Such control, discretion, and authority shall, subject to the terms of the Agreement and all express obligations and limitations set forth in the applicable Annual Operating Budget in carrying out its responsibilities, be subject to approval by Owner.

Operator shall operate and maintain the Property and all of its departments, facilities,

and activities in such manner as is customary and usual and in accordance with industry standards. Such responsibilities include, but are not limited to, the maintenance of the Resort's buildings and improvements, lawn and landscaping, course maintenance, pro-shop maintenance and improvements, front office, housekeeping, food and beverage, restaurants, spas, shops, and all sales activities.

Operator shall be responsible for the establishment and implementation of any and all operating policies, standards, prices, price schedules, rates, rate schedules, rebates, and refunds for or with respect to the Property, and the collection, receipt and giving of receipt for all revenue of any nature from the operation of the Property.

Operator shall plan, purchase, and supervise, in Owner's name, all Inventories, Fixed Asset Supplies, Furniture, Fixtures and Equipment, operating supplies and other consumables which, in the normal course of business in accordance with the Annual Operating Budget, as are necessary, desirable, or appropriate to maintain and operate the Property. Operator shall comply with the applicable Procurements Regulations. Notwithstanding the foregoing, such Furniture, Fixtures and Equipment specified in RFP18-DPL/RED-092 as to be provided by Operator shall be held and maintained in Operator's name and Operator shall bear all risk of loss and liability in connection therewith.

To the extent operating funds are available, the Operator shall keep the Property, including its furniture, fixtures, and equipment, in good order, repair, and condition, including without limitation, making necessary, desirable, or appropriate replacements, improvements, additions, and substitutions to ensure that the Property is maintained and adequately furnished to three-star industry standards.

### **SECTION 3.2 – RECORDS AND REPORTS**

Operator shall record, maintain, and keep adequate and accurate books and records of all receipts and disbursements in connection with the management and operation of the Resort. All books and records, including books of accounts, guest records and preferences, and front office records, shall at all times be the property of the Owner and shall not be removed or disposed of without the Owner's consent. The Owner shall be entitled to receive a copy of any and all such data and information ascertained or maintained by the Operator during the operation of the Resort. The books and records relating to or reflecting the operation of the Property shall be kept at the Resort and shall be subject to inspection and review by Owner and

Owner's designees including the Commonwealth's Public Auditor.

Within 15 days after the end of each calendar month, the Operator shall deliver to the Owner a monthly report as to the balance, profit and loss, total revenues, and management fees as of the end of said calendar month.

Within 15 days after the end of each calendar quarter, the Operator shall deliver to the Owner an aged receivable listing as of the end of such calendar quarter and management prepared unaudited financial statements, including a balance sheet, cashflow statement, a statement of income, a statement of capital and a statement of change in financial position, which: (1) shows the results of the Operation of the Property and the calculation of the Total Revenues, management fees for such calendar quarter, and (2) shall be certified by the Operator as having been prepared in accordance with generally accepted accounting principles.

Within 45 days after the end of each fiscal year, the Operator shall deliver to the Owner annual audited financial statements, including a balance sheet, cashflow statement, a statement of income, a statement of capital and a statement of changes in financial position, which shows the results of the Operation of the Property and the calculation of the Total Revenues, and Management Fees for such fiscal year.

The Operator shall deliver to the Owner such additional reports and financial statements as may be requested from time to time. Operator shall promptly and without delay inform Owner of any current or projected deviations from the Annual Operating Budget then in effect and the reasons for such deficiencies and/or deviations.

### **SECTION 3.3 – ANNUAL OPERATING BUDGET**

Owner is required to submit its proposed annual budget to the Governor's Office in February of each preceding fiscal year. Accordingly, Operator shall submit to Owner a proposed Annual Operating Budget for each Fiscal Year on or before January 15 preceding such fiscal year, commencing with the January immediately succeeding the effective date of this Agreement. Each proposed Annual Operating Budget shall include a narrative management summary, budget justification, and estimates of all revenues and any and all amounts needed for Capital Expenditures, Operating Expenses, Working Capital requirements, and a schedule of, and budget for, Capital Improvements and replacements, substitutions and additions to Furniture, Fixtures and Equipment, together with a cash flow forecast and a monthly breakdown of each of the foregoing for such Fiscal Year, for the Fiscal Year and for each

month within the Fiscal Year.

All proposed Annual Operating Budgets shall be subject to approval of the Owner. Any proposed amendments submitted by Operator after final approval by both the Owner and Operator shall be submitted in writing to Owner, along with a narrative management summary detailing the necessity of the amendment. The Owner shall have the sole discretion to approve any amendment to the respective budget based upon available revenues, necessity of the amendment, and business judgment, and such Annual Operating Budget shall be subject to Owner's budget approved by public law for the relevant fiscal year. Accordingly, while the parties shall use commercially reasonable efforts to agree upon the Annual Operating Budget, and any amendments thereto, in the event the parties cannot agree upon the Annual Operating Budget, or any amendments thereto, Owner shall make the final determination on any dispute, without recourse by Operator.

### **SECTION 3.3 – PERSONNEL**

Operator shall recruit, employ, train, supervise, manage, promote, and terminate, all Resort employees necessary, desirable, and appropriate for the operation of the Resort. Operator shall ensure management and staff (including without limitation the executive management) are properly trained and qualified for their positions. All Resort management staff shall be employees of the Operator. Operator shall establish appropriate payroll accounts and all compensation, benefits, and taxes related thereto shall be paid and provided by Operator.

The status of the Operator shall be that of an independent contractor. The Operator, its employees, agents and any subcontractors performing under this Agreement are not employees or agents of the Owner, the Commonwealth of the Northern Mariana Islands, or any agency, division, or department thereof. Neither Operator nor its employees shall be considered employees of Owner or the Commonwealth of the Northern Mariana Islands for any purpose including without limitation federal or Commonwealth tax purposes.

### **SECTION 3.4 – CONTRACTS**

Operator shall negotiate and enter into, in the best interests of Owner, contracts, leases, licenses, and agreements incidental to the operation of the Resort and required in the ordinary course of business of operating the properties in accordance with the Annual Operating Budget.

Notwithstanding the foregoing and anything to the contrary of this Agreement, the Operator shall not, without the Owner's written approval:

- (a) enter into any service or operating contract (i) which provides payments that are, in the aggregate, in excess of the approved amount in the applicable budget, or (ii) for a term exceeding the Term hereof;
- (b) enter into any agreement creating a voluntary lien or encumbrance affecting the Property;
- (c) enter into any lease, agreement to lease, sublease, license, concession, or other contract for stores, office space, lobby space at the Resort.

### **SECTION 3.5 – MARKETING AND ADVERTISEMENT**

Operator shall be responsible for the planning, preparation, and contracting for all Resort marketing. Operator shall be responsible for all day-to-day decisions related to the marketing and advertising, including determining room rates, group discounts, sales promotions, and terms thereof.

Operator shall develop and implement the Resort's marketing, sales, and program. Operator shall annually review and update said program as it deems necessary, desirable, and prudent in accordance with industry standards and for the successful operation of the Hotel. All costs and expenses of the marketing program shall be detailed in the Annual Operating Budget, and shall be paid by the Owner in accordance with the applicable budget or otherwise approved by Owner.

### **SECTION 3.7 – OTHER ADDITIONAL DUTIES**

Operator shall be responsible for and maintain public relations.

Operator shall cooperate and consult with Owner on any plans and agreements for capital improvements to the Property, and shall, from time to time, make recommendations for future capital improvements that Operator deems in the best interest of the Owner and consistent with the operational plans of the Property.

With prior consent of or at the direction of Owner, Operator shall take such action at law or in equity in the name of either Operator or Owner, which are deemed necessary, desirable, or appropriate in connection with routine matters, such as, but not limited to, dispossession proceedings for nonpayment of rent, collection proceedings for amounts due or for services rendered.

## **ARTICLE 4: EXPENSES, REVENUE, DISTRIBUTION AND FEES**



#### **SECTION 4.1 – TOTAL REVENUE**

Total Revenue, whether or not in excess of the Guaranteed Distribution described herein, shall be received by Operator and held on behalf of Owner. Total Revenues means all revenue, income and proceeds of sales of every kind, whether in cash or on credit, resulting from the Operation of the Property. Total Revenues shall include, but not be limited to, the following:

- (a) all revenues from the rental of guest rooms and suites, patrons of the Property, and other persons occupying space in or using the Property;
- (b) all revenues derived from goods sold, including food and beverage, and services provided in connection to this Agreement; and
- (c) any other form of revenue from any source whatsoever which is attributable to the Operation of the Property.

Total Revenue, less reimbursable Operating Expenses, less the Management Fee and Guaranteed Annual Distribution shall be remitted to Owner annually with the Guaranteed Annual Distribution called for in Section 4.5 below.

#### **SECTION 4.2 – OPERATING EXPENSES AND REIMBURSEMENT**

Operator shall pay all Operating Expenses as such expenses become due and owing. Subject to the Guaranteed Annual Distribution described in Section 4.5 below, Operator may deduct and be reimbursed from Total Revenue for allowable Operating Expenses paid by Operator that are in accordance with the Annual Operating Budget. Quarterly financial statement shall reflect all deducted Operating Expenses and shall be delivered to Owner with sufficient supporting documents to justify each respective deduction.

Operating Expenses means all costs and expenses of Operating the Resort during the Operating Term pursuant to this Agreement which are provided for in the Annual Budget and are properly attributable to the calendar month, Fiscal Year or portion of a Fiscal Year under consideration under the Operator's Accounting Policies, including, without limitation, the following:

- (a) salaries and wages of Resort Staff, including costs of payroll and similar taxes, Employee Benefits, relocation expenses and severance;
- (b) costs incurred with respect to sales and other revenues generated at the Hotel;
- (c) costs of all utilities and services including, without limitation, heat, air conditioning,

- water, light and power, local and long-distance telephone service, and data communication and computer services;
- (d) costs incurred from the purchase of all food and beverages to be sold at or consumed on the Property;
  - (e) the costs of all other goods and services provided, arranged or obtained by the Operator in connection with its Operation of the Resort;
  - (f) all reasonable costs and fees of any arbitrators, auditors, lawyers and similar professionals who perform services required or permitted pursuant to this Agreement;
  - (g) the reasonable costs and expenses of approved technical consultants and specialized operational experts or personnel, including Head Office Personnel, for services rendered;
  - (h) the costs of repair and maintenance of the Property,
  - (i) expenses related to marketing and promotion of the Property;
  - (j) the costs of maintaining books of account and other records and producing financial statements;
  - (k) the actual amount of any goods and services or other similar value added Taxes imposed by any Governmental Authority having jurisdiction and paid as a result of the operations of the Hotel, less any credits with respect to such Taxes otherwise granted with respect to the operations of the Hotel;
  - (l) reasonable reserves for bad debts in accordance with the Operator's Accounting Policies;
  - (m) all out-of-pocket expenses and disbursements determined by the Independent Accountants to have been incurred by the Operator or any of its Affiliates pursuant to, in the course of, and directly related to the Operation of the Hotel under this Agreement, including, without limitation, all reasonable travel, telephone, telegram, facsimile transmission, radiogram, cablegram, voice and data communication, courier, air express and other incidental expenses and for which the Owner has reimbursed the Operator;
  - (n) all rent and other charges under leases or licenses of personal property incurred in the ordinary course of business consistent with the practices of the Operator at the date of this Agreement; and
  - (o) all expenses otherwise contemplated by this Agreement to be Operating Expenses.

For the purpose of calculating the Management Fees payable pursuant to this

Agreement, Operating Expenses SHALL NOT INCLUDE any of the following:

- (a) any payments, whether principal or interest, relating to Capital Improvements to or encumbrances with respect to the Hotel, including expenditures for initial Furniture, Fixtures and Equipment and replacements or substitutions therefore or additions thereto;
- (b) depreciation and amortization expenses, including costs of Capital Improvements;
- (c) income, capital, franchise or gross receipts taxes of a Party;
- (d) excise, sales, use and other taxes (including room taxes) or similar charges (i) collected directly from patrons or guests or as part of the sale price of any goods or services or displays, (ii) remitted to a Governmental Authority and (iii) excluded from Total Revenues;
- (e) salaries, wages, asset management fees or amounts paid to individuals or entities by or upon the instruction of an Owner to the extent such individuals or entities are not under the supervision or direction of the Operator;
- (f) interest payable on any bank credit facility provided to fund Working Capital;
- (g) insurance premiums for insurance obtained by or on behalf of the Operator or the Owner with respect to the Property;
- (h) expenses of the Owner related to asset management;
- (i) the Basic Fee and Incentive Fee; and
- (j) any cost or expense incurred in connection with the creation of any item of revenue, income or proceeds that is excluded from Total Revenues.

#### **SECTION 4.3 – EXPENSES BORNE BY OPERATOR**

The following shall be expenses of Operator and shall not be charged to or borne by Owner:

- (a) All costs, expenses (except those provided in Section 4.2 hereof), salaries, wages or other compensation of corporate level employees of Operator, excepting only employees who are regularly employed full-time at the Resort.
- (b) Any expenses of Operator's principal or branch offices.
- (c) Any expenses for advertising or promotional materials that feature Operator's name or activities

- (d) Any part of Operator's capital expenses.
- (e) Operator's overhead or general expenses incurred at Operator's principal or branch offices.
- (f) Any cost for which Operator is liable under Article 12 and the cost of any increased insurance premiums (but only to the extent relating to the term of this Agreement) directly attributable to action of Operator, its agents or its employees.

#### **SECTION 4.4 -MANAGEMENT FEE**

During each Fiscal Year during the Term, Operator shall as consideration for services rendered pursuant to this Agreement deduct from Total Revenue: (i) a fee (the "Basic Fee") no greater than 2% percent **OR LOWER AS BID** of the Total Revenues of the Resort for such Fiscal Period, and (ii) an additional fee (the "Incentive Fee") no greater than 1% percent **OR LOWER AS BID** of Operating Cash Flows after deducting for Owner's Guaranteed Distribution and the Basic Fee for such Fiscal Year. The Basic Fee and Incentive Fee are referred to collectively as the "Management Fee." Payment of the Basic Fee and the Incentive Fee shall be monthly but is subject to subordination or deferral to payment of Operating Expenses and the Guaranteed Annual Distribution.

#### **SECTION 4.5 – GUARANTEED DISTRIBUTION TO OWNER**

Notwithstanding anything to the contrary set forth in this Agreement, Operator represents, warrants and covenants that after all fees, costs, expenses and other payments, Owner shall receive a distribution from Operator of no less than Four Hundred Thousand (\$363,000) **OR GREATER AS BID** each fiscal year as a result of Resort operations (the "Guaranteed Annual Distribution"). Such Guaranteed Annual Distribution shall be remitted to Owner in four equal installments no later than the end of each calendar quarter and fully paid by December 31 of the subsequent fiscal year. Operator shall bear all risk of loss to the extent revenues are insufficient or excess expenses yield a net income insufficient to cover the Guaranteed Annual Distribution.

#### **ARTICLE 5: TERM OF AGREEMENT**

The term of this Agreement (hereinafter the "Term") shall be for a one-year period beginning **\_\_\_\_\_**, and ending on **\_\_\_\_\_** (hereinafter the "Expiration Date").

#### **ARTICLE 6: EXTENSION**

This Agreement may be extended by Owner for up to **1** additional one (1) year period without further solicitation by Owner provided that Operator has performed satisfactorily in accordance with the requirements of this Agreement. If Operator desires to extend this Agreement for another one (1) year period, written notice of such desire must be given to Owner not less than sixty (60) days before the Date of Expiration of this Agreement or any extension thereof.

Failure by Operator to submit the required written notice under this Article shall not automatically renew or extend this Agreement. This Agreement shall be deemed terminated on the Date of Expiration unless expressly extended by Owner in writing. Unless this Agreement is extended, Operator agrees and covenants to promptly vacate the Property, without further notice by Owner, upon expiration of the Agreement. Nothing in this Article shall be construed as to give Operator any right of renewal or extension. Renewal or extension, if any, shall be permissible only at the discretion of Owner.

#### **ARTICLE 7: NON-ASSIGNMENT OF AGREEMENT**

Neither this Agreement nor any interest therein shall be assigned, leased, subleased, sold, conveyed, mortgaged, or in any way encumbered, transferred or disposed of during its Term, or any extension thereof. Any such purported assignment, lease, sublease, sale, conveyance, transfer, mortgage or encumbrance of this Agreement, whether written or oral, is null and void and of no force or effect, and would be a violation of this Agreement.

Operator shall not enter into any management contract whereby another person or entity operates the commercial operation on the Property other than the Operator.

#### **ARTICLE 8: GOVERNMENT REQUIREMENTS AND GENERAL CONDITIONS**

Operator shall procure all licenses, certificates, agreements, and other required authorizations from the appropriate governmental authorities and shall comply with all applicable laws and regulations generally, and specifically as to its management and operation of the Resort. Operator shall provide Owner with copies of all such licenses, certificates, agreements and other required authorizations obtained from said governmental authorities no later than the effective date of this Agreement.

Operator shall be cognizant of, observe and comply with the provisions of all Commonwealth and Federal laws, rules and regulations, requirements, orders and directions

which may pertain to or apply to the Operation of the Property by the Operator.

**ARTICLE 9: TAXES, DEBTS, ASSESSMENTS AND UTILITY CHARGES.**

Operator shall pay when and as the same become due and payable, all taxes, assessments, licenses, fees, utility charges, and other like charges levied during the term of this Agreement upon or against the Property, any interest therein or property thereon for which the Operator may become liable. Upon written request the Operator shall furnish to OWNER written evidence, duly certified, that any and all taxes and other charges required to be paid by the Operator have been paid, satisfied or otherwise discharged. The Operator shall have the right to contest any claim, taxes, or assessment against the demised Property by posting bond to prevent enforcement of any lien resulting there from. The Operator agrees to protect and hold harmless Owner and the Resort, the real property upon which the Resort is located and all interests therein and improvements thereon from any and all claims, taxes, assessments and like charges, and from any lien therefore or sale or other proceeding to enforce payment thereof, and all costs in connection therewith. The Operator shall pay all charges for water, sewage, gas, electricity, telephone and other utility services supplied to the Property as they become due.

**ARTICLE 10: RIGHT OF INSPECTION; INGRESS/EGRESS**

A. Owner and its officers and agents shall have the right to enter the Resort at any time to determine whether the provisions of the Agreement are being complied with by the Operator, to serve notices required under this Agreement, or for any other purpose deemed necessary by Owner.

B. Owner reserves the right to order immediate cessation of all operations on the Property until further notice should Owner or other government agency determine the Operator is not exercising a high degree of care in protecting the safety of persons and property in the conduct of its business activities on the Property, or that Operator's activities are causing environmental dangers or contamination to the Property.

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

**ARTICLE 11: COVENANT AGAINST DISCRIMINATION**

The use and enjoyment of the Property shall not be in support of any policy which discriminates against anyone based on race, creed, sex, age, color, national origin, or any type of disability, or as provided by Commonwealth or Federal laws.

**ARTICLE 12: INDEMNIFY, DEFEND AND HOLD HARMLESS**

As a part of the consideration hereof, the Operator hereby releases and forever discharges and agrees to indemnify and hold harmless Owner, the CNMI Government, their successors, officials, 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 Property or which arise out of or in connection with any activities under this Agreement during the term of this Agreement, any extension thereto or during any holdover by Operator.

As part of the consideration hereof, the Operator also agrees to defend Owner, the CNMI Government, their successors, officials, employees and assigns, from and against any claim, demand or lawsuit with respect to the subject of the indemnity contained herein, whether or not such claims, demands or actions are rightfully or wrongfully brought or filed against all costs incurred by Owner, 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, Operator agrees that Owner, the CNMI Government, their successors, officials, 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 Operator. Owner, the CNMI Government, their successors, officials, 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 13: LIABILITY INSURANCE**

Operator agrees to procure by no later than ten (10) days after the execution of this Agreement, and to maintain in force (on an occurrence basis) during the entire term of this Agreement or any extension thereof, at its sole expense, commercial general liability insurance (all risk) for the Property and operation conducted thereon, with Owner and the CNMI Government named as co-insured, in a company or companies authorized to do business in the

Northern Mariana Islands, with a minimum coverage of \$5,000,000 combined single limit, or such higher amounts as Owner may reasonably require. Copies of such policies shall be delivered to Owner within thirty (30) days of their issuance and shall contain a clause stating that at least thirty (30) days written notice shall be given to Owner prior to cancellation or refusal to renew any such policies. All insurance obtained by the Operator in compliance with this Agreement shall be obtained from reputable companies acceptable to Owner.

**ARTICLE 14: ABANDONMENT OF PROPERTY**

Should the Operator fail to operate the Property for a period of ninety (90) consecutive days without securing the written consent of Owner, the Operator shall be deemed to have abandoned the Property, and in such an event, Operator's rights to operate the Property may, at the option of Owner, be terminated with immediate effect.

**ARTICLE 15: CANCELLATION OF AGREEMENT BY OWNER**

It is expressly understood and agreed that Owner, at its sole discretion, with or without cause, may cancel this Agreement at any time upon giving ninety (90) days advance written notice, as to the whole or any part of the Resort, and Owner shall have the right to enter and take possession and control of the Property or any part thereof and Operator shall cease management, operation and control there over without the necessity for any legal action. In the event that Owner exercises its rights under this Article and terminates and cancels this Agreement with respect to all or some of the Resort prior to the expiration of the term hereof or the expiration of any renewal term, a pro-rata adjustment to the Guaranteed Annual Distribution shall be made. It is understood that there shall be no pro-rata adjustment if the cancellation or termination of this Agreement occurs as a result of Operator's violation of any conditions herein.

**ARTICLE 16: OPERATOR'S OPTION TO TERMINATE**

In the event Operator is, at any time, prevented from operating the Resort for a reason beyond the reasonable control of Operator (except those which would otherwise constitute a default under this Agreement), such as, but not limited to, the failure of Operator to receive the necessary government Agreements required for its Operation or action by any government agency or judicial decree preventing Operator from utilizing the Property for the intended purpose but at



no fault of Operator, Operator shall have the option to terminate this Agreement upon sixty (60) days written notice to Owner. Operator shall remain liable for performance under this Agreement until such notice of termination is effective, and all agreements set forth in this Agreement regarding actions upon termination or cancellation of the Agreement shall remain in force.

#### **ARTICLE 17: VIOLATIONS AND TERMINATION OF AGREEMENT**

A. Operator shall automatically be in DEFAULT of this Agreement if:

1. Failure to Pay. Operator shall fail to remit any revenue or distribute any fee as required by this Agreement or shall fail to pay any taxes or other charges required to be paid by the Operator within thirty (30) days after the due date under the terms of this Agreement.

2. Other Violations. If Operator violates any term, provision or agreement of this Agreement and fails to cure such violation within thirty (30) days from and after written notice from Owner.

3. Bankruptcy. Operator, its successors or assigns becomes insolvent or files for relief under the United States Bankruptcy Code.

B. Upon the occurrence of any of the violations described above, all Operator's rights under this Agreement are terminated.

#### **ARTICLE 18: ACTION UPON TERMINATION**

Upon termination or cancellation of Operator's rights under this Agreement Owner may, upon thirty (30) days' notice collect all records relating to the Resort operations and take over operation of the Resort. The remedies herein shall not prejudice Owner's other rights and remedies at law or equity, and are in addition to, and not instead of, all other rights Owner may otherwise have outside of this contract.

#### **ARTICLE 19: VACATING THE RESORT**

Upon the expiration or earlier termination or cancellation of this Agreement, the Operator shall quietly and peacefully vacate the Resort premises and shall cooperate and participate in a smooth handover and transition of operations. Owner may, at its option, require the removal of all of Operator's improvements and property on the Property, or it may require all improvements,

except removable personal property, trade fixtures and equipment, to remain on the Property and to become the property of Owner after termination of this Agreement. Upon the failure or neglect of the Operator to remove its property from the Property or restore the Property to its acceptable condition, Owner, its officers or agents, may enter the Property and remove all persons and property there from 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 Operator, and no claim for damages of any nature whatsoever against Owner, the CNMI Government or any official, employee, or agent thereof shall be created by or made on account of such removal.

**ARTICLE 20: ACCORD AND SATISFACTION**

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

**ARTICLE 21: NOTICES**

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

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

OPERATOR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or at such other address as Owner or Operator may from time to time specify by notice. 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 notices properly addressed and containing sufficient postage stamps. These contacts shall also serve as the authorized representatives for purposes of this Agreement unless otherwise indicated by written notice.

#### **ARTICLE 22: CONDITION OF RESORT**

The Operator acknowledges that it has examined the Resort before issuance of this Agreement and knows the conditions thereof, and that no representations other than those expressed herein have been made by Owner. The Operator agrees to assume operation of the Resort in its present condition at the Date of Execution of this Agreement.

#### **ARTICLE 23: PUBLIC AUDITOR**

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

#### **ARTICLE 24 GENERAL PROVISIONS AND DEFINITIONS**

A. Waiver. No waiver of any default of the Operator hereunder shall be implied from any omission by Owner 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 Agreement by Owner shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by Owner to or of any action by the Operator requiring Owner's consent or approval shall not be deemed to waive or render unnecessary Owner's consent or approval to or

of any subsequent or similar acts by the Operator. The acceptance of fees or payments by Owner shall not be deemed to be a waiver of any of the terms or conditions, including the remedies of Owner. No covenant of this Agreement 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 Agreement, together with the exhibits attached hereto, contains all of the terms, covenants, conditions and agreements between the parties hereto relating in any manner to management and operation of the Resort; 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 understanding of any nature whatsoever between the parties hereto relating in any manner to the management and operation of the Resort; and that the terms, covenants, conditions and provisions of the Agreement 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 Agreement shall be in all cases construed simply, according to its fair and most reasonable meaning, and not strictly for or against Owner or the Operator. 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. Owner's Representative. The authorized representative of Owner for the purpose of this Agreement shall be the Secretary of the Department of Public Lands or the authorized designee.

E. Operator's Representative. The authorized representative of the Operator for the purpose of this Agreement shall be                     .

F. Law Governing. This Agreement shall be governed by and subject to the laws of the Commonwealth, both as to performance and interpretation therein. If any provision of this Agreement shall be held invalid under the laws of the Commonwealth of the Northern Mariana Islands for any reason, the remainder of this Agreement or the application of its provisions to persons or circumstances, other than those to which it is held invalid, shall not be affected thereby and remain in full force and effect.

**ARTICLE 25: AGREEMENT BINDING**

This Agreement 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. Any modifications or alteration in any manner whatsoever shall be properly executed by written amendment of this Agreement.

**ARTICLE 26: PERSONAL GUARANTEE**

In further consideration of entering into this agreement, the undersigned Operator representative personally guarantees full performance of all terms and conditions to be performed under this Agreement, including but not limited to, prompt payment of any and all obligations that may arise under this Agreement. If the Operator is a corporation, the undersigned officer of the corporation hereby personally guarantees full performance of all terms and conditions to be performed under this Agreement, including but not limited to, prompt payment of any and all obligations that may arise under this Agreement. If the Operator is a corporation, the undersigned principal of the corporation agrees to waive any corporate protection under the law pertaining to such personal guarantee of full performance of all terms and conditions to be performed by the corporation under this Agreement.

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

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OPERATOR: \_\_\_\_\_.

By: \_\_\_\_\_

Date: \_\_\_\_\_

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

ACKNOWLEDGMENT

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, a Notary Public in and for the Commonwealth of the Northern Mariana Islands, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledge to me that he executed the same on behalf of \_\_\_\_\_ 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

DEPARTMENT OF PUBLIC LANDS  
P.O. Box 500380 Saipan, MP 96950

**PERSONAL GUARANTOR:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

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

**ACKNOWLEDGMENT**

On this \_\_\_\_ day of \_\_\_\_\_, **2018**, before me, a Notary Public in and for the Commonwealth of the Northern Mariana Islands, personally appeared \_\_\_\_\_, **as an individual**, 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**

**DEPARTMENT OF PUBLIC LANDS**  
P.O. Box 500380 Saipan, MP 96950

**DEPARTMENT OF PUBLIC LANDS**

By: \_\_\_\_\_  
MARIANNE CONCEPCION-TEREGEYO  
Secretary, OWNER

Date: \_\_\_\_\_

COMMONWEALTH OF THE )  
NOTHERN MARIANA ISLANDS )  
SAIPAN, MARIANA ISLANDS )

**ACKNOWLEDGMENT**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, a Notary Public in and for the Commonwealth of the Northern Mariana Islands, personally appeared **Marianne Concepcion-Teregeyo, 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 she executed the same on behalf of the Department of Public Lands as her 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 E. MANIBUSAN  
AttorneyGeneral

**DEPARTMENT OF PUBLIC LANDS**  
Saipan, MP 96950  
P.O. Box 500380

