

Exhibit B
Agreement Form

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF PUBLIC LANDS

RACE TRACK, SWIMMING POOL, AND GOLF DRIVING RANGE
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 race track, swimming pool, and golf driving range, known as "Marianas Resort," respectively and collectively referred to herein as the "Race Track, Swimming Pool, Golf Driving Range" 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 race track, swimming pool, and golf driving range 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 RFP19-DPL/RED-012;

WHEREAS, In connection with DPL RFP19-DPL/RED-012, 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:

“Building Systems” means, the systems and related facilities necessary for the Operation of the existing structures, including, without limitation, all life/safety, heating, ventilation, air conditioning, elevator, escalator, telephone, computer, electrical, plumbing, sanitation, 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 Race Track, Swimming Pool, and Golf Driving Range 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

“Race Track, Swimming Pool, and Golf Driving Range” the race track, swimming pool, golf driving range facilities.

“Buildings” means the Existing Structures.

“Race Track, Swimming Pool, and Golf Driving Range Facilities” means (i) the Lands, (ii) the Improvements, (iii) 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.

“Race Track, Swimming Pool, and Golf Driving Range 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 Race Track, Swimming Pool, and Golf Driving Range in accordance with the Standard, including, without limitation, furniture, carpeting and floor coverings, draperies, wall coverings, artwork, television sets, radios, office furniture and equipment such as safes, cash registers and accounting, computer, duplicating and communication equipment, telephone equipment, specialized equipment such as equipment

required for the operation of 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 Race Track, Swimming Pool, and Golf Driving Range, 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 Race Track, Swimming Pool, and Golf Driving Range 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, and other items of a similar nature necessary for the Operation of the Race Track, Swimming Pool, and Golf Driving Range, 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 Race Track, Swimming Pool, and Golf Driving Ranges.

“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 “Race Track, Swimming Pool, and Golf Driving Range” means the Race Track, Swimming Pool, and Golf Driving Range facilities including the 50 meter swimming pool, collectively, situated on the following:

Lot Number	Facilities Description	Lot Size, M ²
<i>(West of Main Road - Oceanside)</i>		
003 A 05	Mini Race Track	25,406
	Golf Driving Range	20,774
	Facilities West of Main Road:	46,180
<i>(East of Main Road - Inland)</i>		
003 A 15	Swimming Pool	3,188
	Facilities East of Main Road:	3,188
Aggregate Facilities Area in M²:		49,368

“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 Race Track, Swimming Pool, Golf Driving Range, 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 Race Track, Swimming Pool, Golf Driving Range 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 Race Track, Swimming Pool, Golf Driving Range premises. This agreement gives Operator no rights in or to the land upon which the Race Track, Swimming Pool, Golf Driving Range resides and Owner reserves the right to enter the Race Track, Swimming Pool, Golf Driving Range premises at any time for any purpose (in which case Owner will conduct itself in a manner reasonably calculated so as to not disturb Race Track, Swimming Pool, Golf Driving Range personnel or guests). It is the intent of the parties that the Race Track, Swimming Pool, Golf Driving Range 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 Race Track, Swimming Pool, Golf Driving Range 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 Race Track, Swimming Pool, Golf Driving Range'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 Race Track, Swimming Pool, Golf Driving Range's buildings and improvements, lawn and landscaping, course maintenance, pro-shop maintenance and improvements, shops, and all sales activities (excluding the structures heretofore known as the club house and the annex).

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 laws and regulations applicable to Owner in connection to management services herein.

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 cause the Property to be 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 Race Track, Swimming Pool, Golf Driving Range. 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 Race Track, Swimming Pool, Golf Driving Range. The books and records relating to or reflecting the operation of the Property shall be kept at the Race Track, Swimming Pool, Golf Driving Range 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 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 reasonably requested from time to time. Operator shall promptly and without delay inform Owner of any current or projected substantial 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 3.4 – PERSONNEL

Operator shall recruit, employ, train, supervise, manage, promote, and terminate, all Race Track, Swimming Pool, Golf Driving Range employees necessary, desirable, and appropriate for the operation of the Race Track, Swimming Pool, Golf Driving Range. Operator shall cause management and staff (including without limitation the executive management) to be properly trained and qualified for their positions. All Race Track, Swimming Pool, Golf Driving Range 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 3.5 – CONTRACTS

Operator shall negotiate and enter into, in the best interests of Owner, contracts, leases, licenses, and agreements incidental to the operation of the Race Track, Swimming Pool, Golf Driving Range 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 Race Track, Swimming Pool, Golf Driving Range.

SECTION 3.6 – MARKETING AND ADVERTISEMENT

Operator shall be responsible for the planning, preparation, and contracting for all Race Track, Swimming Pool, Golf Driving Range marketing. Operator shall be responsible for all day-to-day decisions related to the marketing and advertising, including determining rates, group discounts, sales promotions, and terms thereof.

Operator shall develop and implement the Race Track, Swimming Pool, Golf Driving Range'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 Race Track, Swimming Pool, Golf Driving Range. 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 equipment to patrons of the Property, and other persons occupying space in or using the Property;
- (b) all revenues derived from goods sold, and services provided in connection with 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 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. Monthly and annual 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 Race Track, Swimming Pool, Golf Driving Range 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 Race Track, Swimming Pool, Golf Driving Range 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 Race Track, Swimming Pool, Golf Driving Range;
- (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) the costs of all other goods and services provided, arranged or obtained by the Operator in connection with its Operation of the Race Track, Swimming Pool, Golf Driving Range;
- (e) all reasonable costs and fees of any arbitrators, auditors, lawyers and similar professionals who perform services required or permitted pursuant to this Agreement;
- (f) the reasonable costs and expenses of approved technical consultants and specialized operational experts or personnel, including Head Office Personnel, for services

- rendered;
- (g) the costs of repair and/or maintenance of the Property,
 - (h) expenses related to marketing and/or promotion of the Property;
 - (i) the costs of maintaining books of account and other records and producing financial statements;
 - (j) 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 Race Track, Swimming Pool, Golf Driving Range, less any credits with respect to such Taxes otherwise granted with respect to the operations of the Race Track, Swimming Pool, Golf Driving Range;
 - (k) reasonable reserves for bad debts in accordance with the Operator's Accounting Policies;
 - (l) all out-of-pocket expenses and disbursements reasonably incurred by the Operator or any of its Affiliates pursuant to, in the course of, and directly related to the Operation of the Race Track, Swimming Pool, Golf Driving Range 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;
 - (m) 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;
 - (n) cost of race track, swimming pool, and golf driving range liability insurance, 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 Race Track, Swimming Pool, Golf Driving Range, 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 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; and
- (h) expenses of the Owner related to asset management.

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 Race Track, Swimming Pool, Golf Driving Range.
- (b) Any expenses of Operator's principal or branch offices that are not located on the Race Track, Swimming Pool, Golf Driving Range.
- (c) Any expenses for advertising or promotional materials that feature Operator's name or activities other than the Race Track, Swimming Pool, Golf Driving Range
- (d) Any part of Operator's capital expenses.
- (e) Operator's overhead or general expenses incurred at Operator's principal or branch offices that are not located on the Race Track, Swimming Pool, Golf Driving Range.
- (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

Operator's fee for the management, operation and maintenance of the Race Track, Swimming Pool, Golf Driving Range shall be determined by calculating the amount of net profit derived from the management, operation and maintenance of the Race Track, Swimming Pool, Golf Driving Range. Net profit shall be the amount remaining after deducting from the total gross revenues derived from the management, operation and maintenance of the Race Track, Swimming Pool, Golf Driving Range the allowable Operating Expenses specified in Section 4.2 above paid out in connection with the management, operation and maintenance of the Race Track, Swimming Pool, Golf Driving Range. The Operator's Fee shall be the first \$ _____ **AS BID**, of such net profit and AS BID _____% of any net profit in excess thereof with the remainder of such net profit being disbursed to the Owner. If there is no net profit derived from the management, operation and maintenance of the Race Track, Swimming Pool, Golf Driving Range, operator shall not be entitled to any operator's fee.

SECTION 4.5 DISTRIBUTION TO OWNER

Consistent with Section 4.4 above, Operator shall remit all revenues in excess of the allowable Operator's Fee and reimbursable expenses allowed pursuant to Section 4.2 periodically to Owner. The parties contemplate that Operator will bear the risk of loss associated with operation of the Race Track, Swimming Pool, Golf Driving Range Property. Therefore, 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 [One Dollar (\$1.00) **OR GREATER AS BID**] each fiscal year as a result of Race Track, Swimming Pool, Golf Driving Range operations (the "Guaranteed Annual Distribution"). Such 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 Annual Distribution. For the avoidance of doubt, in addition to the Annual Distribution Operator shall promptly pay, transfer, and remit such additional consideration proposed in response to this RFP in such amounts, forms, and quantities as is set forth in its proposal.

ARTICLE 5: ADDITIONAL CONSIDERATION

In addition to the profit shared pursuant to Section 4.5, Operator shall provide as follows:

- Public Benefits **AS BID/PROPOSED**
- In-Kind (non-cash) Consideration **AS BID**

ARTICLE 6: TERM OF AGREEMENT

The term of this Agreement (hereinafter the “Term”) shall be for a two-year period beginning ____,and ending on _____(hereinafter the “Expiration Date”).

ARTICLE 7: EXTENSION

This Agreement may be extended by Owner and/or Operator annually for up to three additional one-year periods 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 any such additional 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.

ARTICLE 8: 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 9: 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 Race Track, Swimming Pool, Golf Driving Range. 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 10: 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 Race Track, Swimming Pool, Golf Driving Range, the real property upon which the Race Track, Swimming Pool, Golf Driving Range 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 11: RIGHT OF INSPECTION; INGRESS/EGRESS

A. Owner and its officers and agents shall have the right to enter the Race Track, Swimming Pool, Golf Driving Range 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 an appropriate 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 cause the property to be operated in a safe and healthful manner.

ARTICLE 12: 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 13: 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 14: 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 15: 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 16: TERMINATION OF AGREEMENT BY OWNER AND/OR OPERATOR

It is expressly understood and agreed that either party may terminate this Agreement for cause (including without limitation breach of any provision hereof) at any time upon giving sixty (60) days advance written notice. In such case Owner shall have the right to take over and manage the Property or any part thereof and Operator shall cease management, operation and control there over without the necessity for any legal action. 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. Following the initial two-year term, during any

extension hereof either party may cancel or terminate this Agreement, and/or any extension thereof, for convenience or any other reason upon sixty (60) days' prior written notice.

ARTICLE 17: RESERVED

ARTICLE 18: 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 19: 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 Race Track, Swimming Pool, Golf Driving Range operations and take over operation of the Race Track, Swimming Pool, Golf Driving Range. 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 20: VACATING THE RACE TRACK, SWIMMING POOL, AND GOLF DRIVING RANGE FACILITIES

Upon the expiration or earlier termination or cancellation of this Agreement, the Operator shall quietly and peacefully vacate the Race Track, Swimming Pool, Golf Driving Range premises

within 10 days of termination of this Agreement 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 21: 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 22: 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 23: CONDITION OF RACE TRACK, SWIMMING POOL, AND GOLF DRIVING RANGE FACILITIES

The Operator acknowledges that it has examined the Race Track, Swimming Pool, Golf Driving Range 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 Race Track, Swimming Pool, Golf Driving Range in its present condition at the Date of Execution of this Agreement.

ARTICLE 24: 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 25 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 Race Track, Swimming Pool, Golf Driving Range; 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 Race Track, Swimming Pool, Golf Driving Range; 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 26: 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 27: 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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DEPARTMENT OF PUBLIC LANDS
P.O. Box 500380 Saipan, MP 96950

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RFP19-DPL/RED-012

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)
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 **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
Attorney General

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

