

**REQUEST FOR PROPOSALS  
FOR**

**LEASE AND DEVELOPMENT OF PUBLIC LANDS IN LOWER  
BASE, SAIPAN**

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



**RFP20 – RED009**

**RFP  
INSTRUCTION AND INFORMATION PACKAGE**

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

**FOR OFFICIAL DPL USE**

PACKET # \_\_\_\_\_

Date: \_\_\_\_\_  
Packet Issued by: \_\_\_\_\_

### **INTRODUCTION AND GENERAL BACKGROUND**

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

DPL serves as the trustee of public lands and is responsible for the management and disposition of all public lands in the CNMI. In line with responsibilities is the duty to maximize financial returns from the use of public lands. By law, the Department of Public Lands may lease public lands for up to 40 years, and with legislative approval may extend or renew public land leases for an additional 15 years.

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

### **OBJECTIVE**

DPL's principle objective of this RFP is to lease public lands and properties in Lower Base, Saipan, to the most responsive responsible firm capable of providing DPL the highest financial return from the anticipated commercial use and development.

For purposes of this RFP, DPL is seeking a proposal that provides the greatest overall financial benefit to DPL based on the evaluation and selection criteria of this RFP.

### **PROPERTY DESCRIPTION**

Overview of the following property are attached as Exhibits A-1, A-2, and A-3:

- **Lot No. 045 E 02 containing 2,000 square meters, more or less, in Lower Base, Saipan,**

Proposers are encouraged to obtain additional information regarding the property from publically available sources.

### **LEASE DESCRIPTION**

DPL proposes to grant the successful bidder a commercial lease on a "triple net" basis for an initial term of up to 40 years with a possibility of an extension of an additional 15 years conditioned on the satisfactory performance of the lessee in the initial term as determined by DPL and approved by the CNMI Legislature. The lease transaction will be on the form attached as Exhibit B. Below are the basic lease payment terms:

Minimum<sup>1</sup> annual rent amounts due shall be the following:

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

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

#### **Percentage of BGR Lease Payment Schedule**

<u>Tier</u>	<u>BGR Per Year</u>		<u>% of</u>	<u>Minimum</u>
	<u>From</u>	<u>To</u>	<u>BGR</u>	<u>In Tier</u>
1	\$ -	\$ 50,000.49	1.50%	
2	\$ 50,000.50	\$ 100,000.49	1.45%	\$ 750
3	\$ 100,000.50	\$ 200,000.49	1.39%	\$ 1,445
4	\$ 200,000.50	\$ 400,000.49	1.34%	\$ 2,780
5	\$ 400,000.50	\$ 800,000.49	1.28%	\$ 5,340
6	\$ 800,000.50	\$ 1,600,000.49	1.22%	\$ 10,240
7	\$ 1,600,000.50	\$ 3,200,000.49	1.17%	\$ 19,520
8	\$ 3,200,000.50	\$ 6,400,000.49	1.11%	\$ 37,280
9	\$ 6,400,000.50	\$12,800,000.49	1.06%	\$ 71,040
10	\$12,800,000.50	and Over	1.00%	\$135,040

#### **PROPOSAL CONTENT AND LAYOUT**

Proposals submitted must contain the following information in the order listed below and proposers will be subjected to DPL's regulations attached as Exhibit C. Proposers who do not follow these guidelines or submit incomplete information may be disqualified.

##### **I. Identification & Background Information**

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

##### **II. Corporate Resolutions, and Authorizations**

- a. A corporate resolution authorizing the company to negotiate and enter into a lease agreement for the properties and designating authorized signatories for the lease.

- b. Written authorization to obtain information from banks, investment banks, etc. sufficient for DPL to verify the proposing firm(s) standing with financiers or equity partners.

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

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

### **IV. Financial Standing and Capability**

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

### **V. Proposed Rent Payments**

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

## **VI. Written Confirmation from Proposer**

- a. To provide DPL a good faith deposit to start and complete the project. The amount shall be the greater of 5.00% of the total development/construction cost or \$250,000.00 due to DPL upon signing of a Lease Agreement. Upon project completion these funds may be credited towards final lease payments.
- b. Firm's willingness and agreement to enter into a lease in the form attached as **Exhibit B** as modified to include firm's proposed rents in excess of minimum and the firm's additional proposed public benefits.

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

### **EVALUATION AND SELECTION CRITERIA:**

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

#### **I. Evaluation Criteria**

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

#### **II. Selection**

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

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

### **SUBMISSION DEADLINES**

Questions from proposing firms regarding the contents of the RFP packet must be received, **no later than 4:30 pm on Friday, July 10, 2020 ChST** and must be submitted in writing via mail, email or facsimile to Ms. Marianne Concepcion-Teregeyo, Secretary, Department of Public Lands at the following address:

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

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

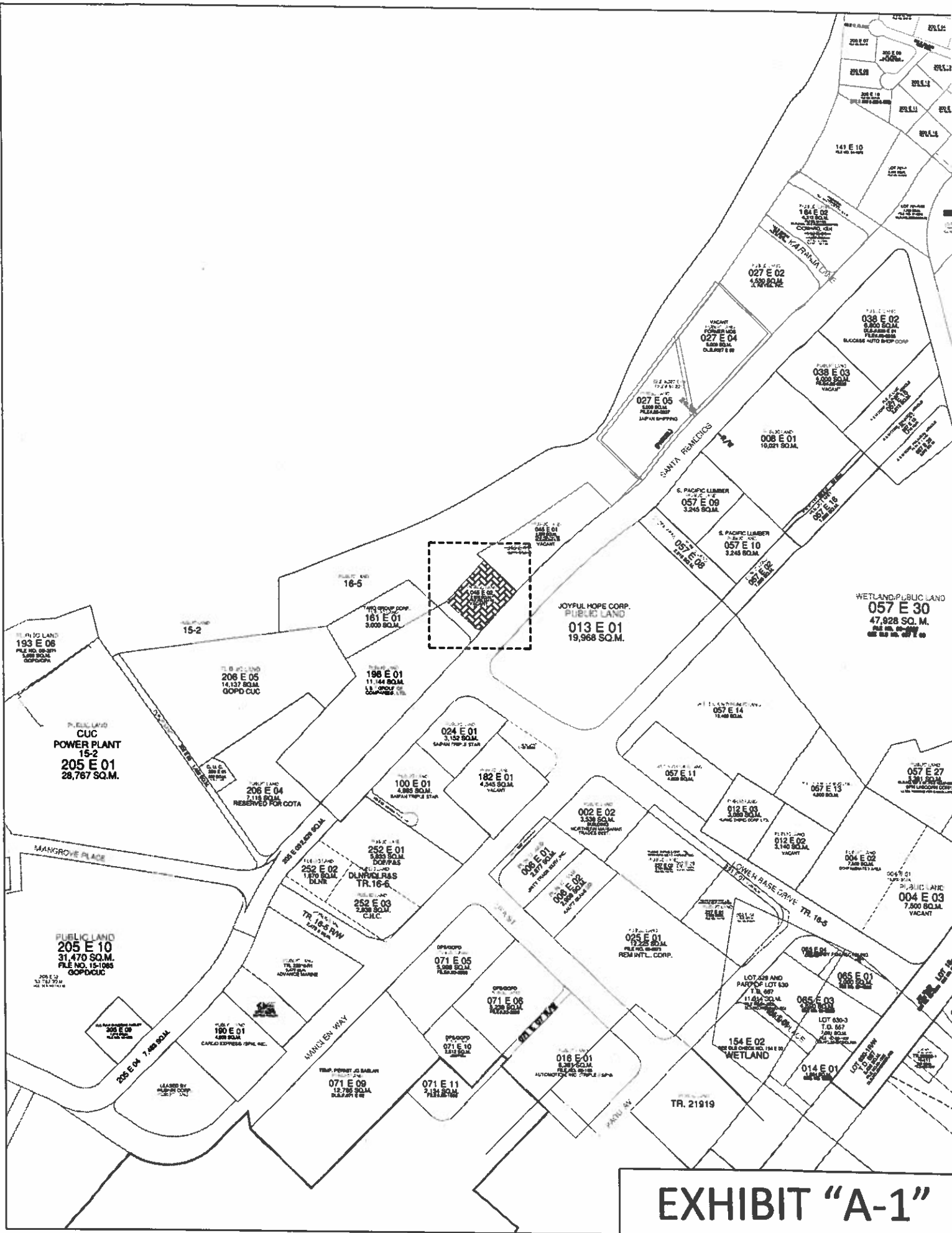
All proposals must be submitted to DPL by **4:30 p.m. on Friday, August 07, 2020ChST**. All proposals must be sealed and marked "**RFP20 – RED009- LEASE & DEVELOPMENT OF PUBLIC LANDS IN LOWER BASE, SAIPAN**" and contain (1) original and five (5) copies of the proposals. Failure to submit the required number of copies may be cause for rejection of a proposal.

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

**IMPORTANT INFORMATION TO PROPOSERS:**

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

All responses to this RFP should take into account any and all taxes, including excise tax, or fees which will be the obligation of the company or individual awarded the initial term of up to 40 years given on the Lease Agreement with DPL for public land.







LAND  
5

TANO GROUP CORP.  
PUBLIC LAND  
**161 E 01**  
3,000 SQ.M.

PUBLIC LAND  
**196 E 01**  
11,144 SQ.M.  
L & T GROUP OF  
COMPANIES, LTD.

PUBLIC LAND  
**024 E 01**  
3,152 SQ.M.  
SAIPAN TRIPLE STAR

PUBLIC LAND  
**045 E 01**  
4,200 SQ.M.  
FILE NO. 14-1161  
DLS.NO.045 E 02  
VACANT

**045 E 03**  
6,200 SQ.M.

PUBLIC LAND  
**045 E 02**  
2,000 SQ.M.  
FILE NO. 14-1161  
VACANT

JOYFUL HOPE  
PUBLIC LAND  
**013 E**  
19,968 SQ.M.

PUBLIC LAND  
1,139 SQ.M.

**EXHIBIT "A-3"**



# Exhibit B

## Draft Lease Agreement

(Space Above for Recording Purposes Only)

### COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

### SAIPAN, MARIANA ISLANDS

#### LEASE AGREEMENT

(LA \_\_ - \_\_\_\_S)

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

#### WITNESSETH:

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

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

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

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

#### **ARTICLE 1: GRANT OF LEASE**

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

**[Insert Legal Description]**

**[Insert description of existing improvements if any]**

#### **ARTICLE 2: PURPOSE**

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

#### **ARTICLE 3: TERM**

The term (hereinafter the "Term") of this Lease shall be for a period of (INSERT YEARS) years, unless otherwise terminated or cancelled pursuant to applicable provisions of this Lease. The Term shall commence on the Commencement Date as set forth above. Pursuant to P.L. 20-84, the DPL may not transfer a leasehold interest in public lands that exceeds forty years including renewal rights.

#### **ARTICLE 4: EXTENSIONS**

An extension of up to fifteen years may be granted with approval of the legislature in accordance with P.L. 20-84. Consistent with its fiduciary duty to manage the use and disposition of public lands for the benefit of the collective owners, the DPL

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

## ARTICLE 5. RENT

The Lessee, in consideration of the foregoing, shall pay to the DPL, in the manner prescribed herein, in lawful money of the United States, Base Rent and Additional Rent for the Premises as follows:

### BASE RENT

[Greater of proposed or 5% of fee simple value]

### ADDITIONAL RENT

[Percent established by regulation in effect on Commencement Date or greater percentage proposed by Lessee]

**A. Base Rent.** Lessee shall pay Base Rent as set forth above in advance on an annual basis on each anniversary of the Commencement Date without invoice, notice, or other demand upon or to Lessee.

**B. Additional Rent.** In addition to the Base Rent provided for above, the Lessee shall pay to the DPL in the manner prescribed herein the percentage of Gross Receipts as described in the above rental schedule from whatever business activity is related to or conducted within the described premises during the Term of this Lease and any extension thereof, and as further defined in Article 40G hereof ("Additional Rent"). This additional amount, shall be paid quarterly, within forty-five (45) days from the end of the calendar quarter, with adjustment, if any, to be made at the end of every calendar year upon submission of the annual certified financial statements as provided in Article 12 hereof. A copy of the Lessee's CNMI Business Gross Revenue Tax Monthly Returns

must be submitted concurrently with any payment together with the computation of the quarterly Gross Receipts Rental to substantiate any additional payment or non-payment.

**C. Manner of Payment.** The Lessee shall discharge its obligation of payment by depositing the payments required under this Article with the DPL, at such location as the DPL may from time to time designate in writing.

**D. Time and Payment; Interest; Amortization.** All rents payable pursuant to the terms of this Lease shall be deemed to have commenced on the first day of the month after the Commencement Date of this Lease, and shall be paid without prior notice or demand. Past due rental payments shall bear interest at one and one half percent (1.5%) per month compounded monthly, from the date it becomes due until paid. This provision shall not be construed to relieve the Lessee from any default in making any rental payment at the time and in the manner herein specified, but is subject to the amortization provisions set forth herein.

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

For purposes of calculating Guaranteed Minimum Annual Rent during the initial five (5) year period, the parties stipulate that the value of a fee simple estate in the Premises is as set forth on the Lease Data Sheet. At the end of the initial five (5) year period of this Lease and each succeeding five (5) year period, the Base Rent payable by the Lessee to the DPL shall be based upon the percentage of the value of the improved land as of the commencement of each five-year period; however, that the Base Rent for the succeeding five year period shall not be less than the Base Rent of the previous five year period provided for under article 5A. An independent appraiser who must be a member of a nationally accepted appraisal society, (selected by agreement between the DPL and the Lessee), will establish the value subject to upward adjustment by the DPL in accordance with the regulations set forth at NMIAC § 145-70-301. In the event that the DPL and the Lessee cannot reach an agreement on the selection of the appraiser, a committee of three (3) arbitrators being selected by the other two will select the appraiser. The cost of appraisal and any arbitration will be borne by the Lessee.

## **ARTICLE 7. SECURITY DEPOSIT AND PERFORMANCE BONDS.**

Upon Execution of the lease, Lessee shall deposit the sum of \$250,000 as reflected on the Lease Data Sheet as a Security Deposit with the DPL. The Security Deposit will be held in an interest bearing account of the DPL. This Security Deposit is security that the Lessee will comply with all the terms of this Lease and indicates Lessee's good faith commitment to undertake and complete the construction, development and operation the proposed development. This Security Deposit shall also be security to ensure performance of Lessee's obligations upon the expiration or termination of the Lease.

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

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

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

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

## **ARTICLE 8. PERMITS, CONSTRUCTION PLANS, AND SPECIFICATIONS**

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

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



## **ARTICLE 9. CONSTRUCTION SCHEDULE**

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

## **ARTICLE 10. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION**

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

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

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

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

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

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

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

#### **ARTICLE 11. EXCUSED DELAY OF PERFORMANCE**

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

#### **ARTICLE 12. ANNUAL REPORTS AND AUDIT**

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

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

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

### **ARTICLE 13. PUBLIC BENEFIT OBLIGATION**

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

### **ARTICLE 14. SUBLEASE, ASSIGNMENT, TRANSFER, CONCESSIONS**

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

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

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

(3) Grant concessions, permits, or otherwise contract for or permit any business or commercial enterprise or activities to be constructed or performed on the

Premises by any person other than the Lessee, unless the following conditions are met:

- (i) The availability of such concession, permit or enterprise shall be advertised by in a newspaper of general circulation in the Northern Mariana Islands;
- (ii) First priority in granting the concession, permit or enterprise shall be given to bona fide residents of the Northern Mariana Islands;
- (iii) The granting of such concession, permit or enterprise shall be subject to the approval of DPL or its successor.

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

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

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

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

subletting.

For purposes of this section, "Premises" includes any portion of the leased premises or any improvement on the leased premises, and "Lessee" includes Lessee's employees, successors and assigns.

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

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

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

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

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

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

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

**E. Assignment or Change In Control Fee .** If the DPL consents to an assignment of this Lease or to a change in control of Lessee, as described in Section B of this Article, it shall assess a fee of twenty-five percent (25%) of the gain or profit

attributable to the leased land. For purposes of this section the terms "gain" and "profit" are defined as the proceeds from any change in control or assignment less the book value of improvements and fixtures installed by Lessee. Lessee shall pay the fee to DPL at closing of the assignment or the change in control of the Lessee.

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

#### **ARTICLE 15. STATUS OF SUBLEASES**

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

#### **ARTICLE 16. AGREEMENTS FOR UTILITY LINES**

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



## ARTICLE 17. RIGHT OF MORTGAGE

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

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

Any mortgage entered into shall be in strict compliance with all applicable laws and regulations, including mortgage security instrument laws, or applicable constitutional provisions, in order to be valid and enforceable. All funds received

pursuant to any mortgage of the leasehold property shall be expended only for leasehold improvements within the Northern Mariana Islands.

#### **ARTICLE 18. RIGHTS OF LEASEHOLD MORTGAGEES**

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

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

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

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

**D. Termination.** Notwithstanding while the leasehold mortgage remains unsatisfied of record, if any event or events shall occur which shall entitle the DPL to terminate this Lease, and if before the expiration of thirty (30) days after the date of service of notice of termination by the DPL all rent and other payments herein provided for then in default is fully paid, and the Lessee shall have complied or shall be engaged in the work of complying with all the other requirements of this Lease, if any, then in

default, then in such event the DPL shall not be entitled to terminate this Lease, and any notice of termination theretofore given shall be void and of no force or effect, provided, however, nothing herein contained shall in any way affect, diminish or impair the right of DPL to terminate this Lease or to enforce any other subsequent default in the performance of any of the obligations of the Lessee hereunder.

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

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

## **ARTICLE 19. STORM, FIRE AND DAMAGE INSURANCE**

The Lessee shall procure upon the Commencement Date and shall continue to maintain in force during the entire Term of this Lease or any extension thereof, storm

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

## **ARTICLE 20. LIABILITY INSURANCE**

The Lessee shall, from the Commencement Date of this Lease, procure and maintain in force during the entire term of this Lease or any extension thereof, at its

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

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

#### **ARTICLE 21. NOTICES**

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

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

LESSEE:            [Input from Lease Data Sheet]

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

#### **ARTICLE 22: RESERVATION OF EASEMENTS/MINERAL RIGHTS**

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

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

**ARTICLE 23. RIGHT OF INSPECTION; INGRESS/EGRESS**

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

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

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

## **ARTICLE 24. CONDEMNATION**

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

## **ARTICLE 25. COVENANT AGAINST DISCRIMINATION**

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

*Lease Agreement*

*Lessee's Name*

LA20-

## **ARTICLE 26. ABANDONMENT / UNDERUTILIZATION OF PREMISES**

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

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

## **ARTICLE 27. DEFAULT**

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

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

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

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

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

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



## **ARTICLE 28. REMEDIES**

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

## **ARTICLE 29. ACCORD AND SATISFACTION**

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

## **ARTICLE 30. WAIVER OF BREACH**

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

## **ARTICLE 31. EXPENSE OF ENFORCEMENT**

If an action is brought by the DPL for rent or any other sums of money due under this Lease, or if any action is brought by the DPL to enforce performance of any of the covenants and/or conditions of this Lease, Lessee shall pay reasonable attorney's fees

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

### **ARTICLE 32. INDEMNIFY, DEFEND AND HOLD HARMLESS**

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

### **ARTICLE 33. QUIET ENJOYMENT**

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

#### **ARTICLE 34. GOVERNMENT REQUIREMENT**

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

#### **ARTICLE 35. UNLAWFUL USE AND COMPLIANCE WITH LAWS**

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

#### **ARTICLE 36: HOLDOVER CLAUSE**

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

#### **ARTICLE 37. CONDITION OF PREMISES**

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

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

### **ARTICLE 38. VACATING THE PREMISES**

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

### **ARTICLE 39. PUBLIC AUDITOR**

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

### **ARTICLE 40. GENERAL PROVISIONS AND DEFINITIONS**

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

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

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

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

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

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

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

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

The following items may be deducted from the gross receipts:

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

#### **ARTICLE 41. LEASE AGREEMENT BINDING**

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

#### **ARTICLE 42. ADDITIONAL OBLIGATIONS OF LESSEE**

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

#### **ARTICLE 43. PERSONAL / PARENT COMPANY GUARANTEE**

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

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

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



liability hereunder or in respect of any liabilities or other obligations of the Lessee to the Guarantors. The Guarantors will hold any security held by it in breach of this provision in trust for the DPL.

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

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

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

**LESSEE**

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

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

NOW IN CONSIDERATION OF THE SUM OF ONE UNITED STATES DOLLAR (\$1.00)  
(THE RECEIPT AND SUFFICIENCY OF WHICH THE GUARANTORS HEREBY  
ACKNOWLEDGE) THE GUARANTORS HEREBY COVENANT WITH THE DPL AS IS  
SET FORTH IN ARTICLE 43 ABOVE.

**GUARRANTORS**

[ ]

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

Name: \_\_\_\_\_

Title: President

[ ]

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

Name: \_\_\_\_\_

Title: President

## SCHEDULE 1

### Lease Data Sheet

**Lessee Name:**

**Lessee's Representative:**

**Form of Business Entity:**

**Permitted Purpose of Lease:**

**Lease Term:**

**Property Description:**

**Fee Simple Value of Premises  
(applicable during first 5 years of term):**

**Base Rent during initial 5 year period  
(in dollars):**

**Additional Rent (as percent of BGR):**

**Security Deposit:** \$250,000

**Public Benefit Obligations:**

**Additional Obligations of Lessee:**

**Additional Restrictions upon Lessee:**

**Specific Authorizations  
(permitted under body of lease):**

# EXHIBIT C

## TITLE 145: DEPARTMENT OF PUBLIC LANDS

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### CHAPTER 145-70 TEMPORARY OCCUPANCY RULES AND REGULATIONS

#### **Part 001 - General Provisions**

§ 145-70-001 Authority

§ 145-70-005 Purpose

§ 145-70-010 Definitions

§ 145-70-205 Occupancy and Easements  
for Private Telecommunications

§ 145-70-210 Temporary Occupancy  
Agreement

§ 145-70-215 Concession Agreements

§ 145-70-220 Occupancy not Covered in  
this Part

#### **Part 100 - Lease Policies**

§ 145-70-101 General Requirements and  
Restrictions

§ 145-70-105 Procedures for Issuing  
Leases, Extensions, and Renewals

§ 145-70-110 Lease Agreements  
Requirements

§ 145-70-115 Lease Form

§ 145-70-120 Underwriting Requirements

#### **Part 300 - Policies on Appraisals for Leases**

§ 145-70-301 Appraisals

#### **Part 400 - Application Processing Fees**

§ 145-70-401 Fee Schedule

#### **Part 200 - Policies and Procedures for Temporary Non Exclusive Occupancy of Public Lands**

§ 145-70-201 Scope

§ 145-70-202 General Requirements

#### **Appendix A - Lease Form**

#### **Appendix B - Maps**

Chapter Authority: N.M.I. Const. art. XI, 1 CMC §§ 2801–2810.

Chapter History: Amdts Adopted 41 Com. Reg. 42802 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42740 (July 28, 2019); Amdts Adopted 41 Com. Reg. 42800 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42730 (July 28, 2019); Amdts Adopted 39 Com. Reg. 40376 (Nov. 28, 2017); Amdts Proposed 39 Com. Reg. 39951 (Sept. 28, 2017); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Department of Public Lands adopted the regulations proposed at 37 Com. Reg. 37247 (Nov. 28, 2015) with modifications set forth at 38 Com. Reg. 37440 (Jan. 28, 2016). The Commission numbered unnumbered sections and subsections included in the proposed regulations pursuant to 1 CMC § 3806(a). The Commission changed capitalization for the purpose of conformity throughout the chapter pursuant to 1 CMC § 3806(f).

#### **Part 001 - General Provisions**

##### **§ 145-70-001 Authority**

The regulations in this chapter are promulgated by the Department of Public Lands pursuant to the authority set forth in Article XI of the Commonwealth Constitution and Public Law 15-2 (1 CMC § 2801 *et. seq.*).

Modified, 1 CMC § 3806(g).

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## TITLE 145: DEPARTMENT OF PUBLIC LANDS

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History: Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission inserted a period at the end of the section to correct a manifest error.

### § 145-70-005 Purpose

These promulgated rules and regulations govern new leases, lease renewals, new temporary occupancy agreements, and temporary occupancy agreement renewals of public lands whether by permit, lease, or temporary authorization as in conformity with the obligation to objectively manage the use and disposition of public lands set forth at 1 CMC § 2801 *et. seq.* No commercial use of public lands is authorized or permitted without a valid lease, temporary occupancy agreement, permit, or concession agreement authorized by these regulations.

The Department of Public Lands (DPL) shall enforce these regulations to the extent allowed by law. DPL shall issue written notice of violation to any person or entity using or occupying public lands without authorization or in violation of these regulations for any activity or purpose.

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

### § 145-70-010 Definitions

(a) “Applicant” means the person, persons, entity, or entities that have submitted a proposal to the DPL to lease or otherwise use public lands including respondents to requests for proposals issued by DPL for the leasing, development, or use of public lands, including without limitation persons or entities who have responded to one or more land use RFPs issued by the DPL.

(b) “Commercial Use” means used for revenue generating activities. Active use means the actual physical operations or facilities generating revenue. Passive use means a supplementary use that augments the revenue generating operations or facility (e.g. parking lots). For purposes of these regulations, residential dwellings (e.g. condominiums, apartments, or houses) are not recognized as Commercial Use, except that all development shall have no more than 2% of passive use dedicated for employee housing.

(c) “Department” means the Department of Public Lands (DPL).

(d) “Government” means, for purposes of the regulations in this chapter, the departments and agencies of the CNMI Government other than the Department of Public Lands, unless otherwise specified in these regulations.

(e) “Lessee” means the person, persons, entity, or entities holding leasehold interests in public lands.

(f) “Occupant” means the person or entity whose name appears on the temporary occupancy agreement.

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## TITLE 145: DEPARTMENT OF PUBLIC LANDS

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- (g) “Owner” means the person, persons, entity, or entities holding fee simple title in lands that are not public lands.
- (h) “Permanent Structure” means a structure placed on or in the ground, or attached to another structure or fixture in a fixed position, and intended to remain in place for more than 6 months.
- (i) “Permittee” means a person or persons given a permit by DPL and whose name appears on the permit.
- (j) “Principal” means the applicant personally or a person employed by the applicant with the legal authority to negotiate, decide, and enter into agreements on behalf of the applicant.
- (k) “Public Lands” means all those lands defined as public lands by N.M.I. Const. art. XI, § 1 including improvements thereon.
- (l) “Secretary” means the Secretary of the Department of Public Lands.
- (m) “Related Party” means the person, persons, entity, or entities who participate in the funding or operations of the applicant or lessee’s development or proposed development including without limitation parent companies in multinational company structures, as well as controlling or major shareholders. For the avoidance of doubt, related party shall include persons or entities that provide funding to an applicant or lessee. Transactions that, because of their nature, may be indicative of the existence of related parties include:
- (1) Borrowing or lending on an interest-free basis or at a rate of interest significantly above or below market rates prevailing at the time of the transaction.
  - (2) Making loans with no scheduled terms for when or how the funds will be repaid.
  - (3) Lack of sufficient working capital or credit to continue the business, or lack of complete business plan or financial projections.
- (n) “Request for Proposal” (RFP) means an open solicitation made through a bidding process by DPL to determine interest of potential lessees to lease and develop certain public lands at terms determined by or acceptable to DPL.

History: Amdts Adopted 41 Com. Reg. 42802 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42740 (July 28, 2019); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

### **Part 100 - Lease Policies**

#### **§ 145-70-101 General Requirements and Restrictions**

- (a) No right or interest in or to public lands shall be created orally. Any right to use, access, or enjoy public lands must be in writing signed by the Secretary in full compliance with these regulations or is void *ab initio*. Public lands shall be leased only for Commercial Use. Consideration and preference must first be given to non-productive developed public land or

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## TITLE 145: DEPARTMENT OF PUBLIC LANDS

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underutilized public land before undeveloped land is considered for development. Consideration for entering into a lease shall be consistent with DPL's fiduciary duties to its beneficiaries. The Secretary of DPL shall have reasonable discretion regarding issues not anticipated by these regulations.

(b) Every lease shall be properly documented via a written lease agreement and such other documents deemed necessary or appropriate by DPL to complete the transaction. All duly executed lease agreements shall be recorded at the Commonwealth Recorder's Office by the party receiving an interest in Public Land in accordance with 2 CMC § 4913. The Department shall strictly enforce all terms of every lease requirement imposed as a condition of legislative approval of a lease or lease extensions, if any. Leases for mining shall require appropriate environmental impact study, damage mitigation plan, and restoration plan, an assessment on the value of minerals to be mined, and any other studies required by law or DPL as a condition precedent to possession. AH costs including those for appraisals, surveys, topographical surveys, geotechnical reports, studies, etc. whether required by the DPL or the Government shall be borne by applicant.

(c) Eligibility. All applicants must be current and in good standing with the Department of Finance Division of Revenue and Taxation, all licensing and regulatory authorities, and with the DPL.

(1) Individuals – must be at least 18 years of age.

(2) Businesses – must be duly formed, in good standing and authorized to do business in their jurisdiction of origin AND in the CNMI, and must provide all documentation required by the DPL to confirm such status.

(3) All applicants must demonstrate credit worthiness, ability to pay rent, and ability to fund all proposed development, and to comply with all the conditions and covenants of the lease agreement to the satisfaction of the Secretary.

(d) Restrictions.

(1) It is DPL's preference not to lease public lands where the proposed structures/facilities will overlap boundaries of adjacent private lands.

(i) If necessary and in the best interest of DPL's beneficiaries, the DPL may permit such development provided that all such proposed development and construction of facilities that will occupy both private and public lands shall be performed in a manner to facilitate and simplify segregation of improvements on the public lands from those on adjacent private lands upon expiration or termination of the lease. Alternatively a land trust consisting of the private lands and public lands may be formed with the DPL as trustee, or the fee simple title to the private lands may be assigned to DPL, at lessee's expense. For the avoidance of doubt, such permitted improvements shall be designed and constructed to be free and independent from private land improvements so that upon expiration or termination of the lease, when the DPL takes possession of the improvements, such improvements and DPL's (or its designee's) operation thereof shall not be dependent upon adjacent private lands. This restriction shall not apply if the fee simple interest in the private lands is assigned or transferred to the DPL as described herein.

(ii) Before commencement of construction or development, lessee shall be required to place on deposit with DPL the amounts necessary to perform such segregation at the expiration or

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termination of the lease, as estimated by an engineer selected by DPL and periodically deposit additional amounts to adjust upward for general inflation.

(2) Notwithstanding the foregoing, for minor developments such as parking structures attached to adjacent improvements, if such improvements will be of little value to the DPL, the Secretary may waive the obligations set forth in subsection 1 above if the Applicant places on deposit concurrent with the execution of the lease the projected cost of demolition and removal of improvements, and restoration of leased premises.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

### **§ 145-70-105 Procedures for Issuing Leases, Extensions, and Renewals**

(a) The DPL will deal only with the principals of the applicant.

(b) DPL shall satisfy its fiduciary duties by taking the following steps towards entering into new leases, extensions, or renewals:

(1) Properties not under lease – DPL shall select proposals that provide DPL the greatest revenue over the course of the lease term. All leases must be aligned with DPL’s land use plan. In all instances, the DPL shall negotiate lease terms most favorable to its beneficiaries.

(i) Unsolicited Proposals – If the DPL receives a proposal or application to lease public land, it shall upon conclusion of negotiations (if any), publish a Notice of Proposed Lease of Public Land in accordance with Public Law 15-2 and these regulations, to determine if there are other interested parties, and consider public comments. If a second or other proposals are received during the notice period, the DPL may either select the most beneficial proposal or issue an RFP.

(ii) Solicited Proposals – If the DPL solicits proposals to lease specific parcels or tracts of public lands and two or more proposals are received by the DPL, DPL may select the most beneficial proposal. If only one proposal is received the DPL may award the sole applicant, re-issue the Request for Proposal, or reserve the relevant parcels for future disposition.

(2) Properties under lease – if a current lessee is interested in re-leasing, extending, or renewing its lease, DPL shall:

(i) Thoroughly review the performance of the lessee to determine if re-leasing or extending the lease is in the best interest of its beneficiaries.

(ii) Issue a Notice of Proposed Lease of Public Lands in accordance with 1 CMC § 2807 up to four years prior to expiration, but only if an extension or renewal of the existing lease is determined to be in the best interest of DPL and its beneficiaries, and no other firm has indicated an interest to lease affected parcel.

(iii) If additional proposals are received in response to such Notice, or if DPL has knowledge of one or more additional interested parties, DPL shall issue an open RFP at least two years prior to the expiration of the existing lease if in DPL’s judgment the second proposal is in the best interest of DPL and is significantly advantageous to the proposal of the existing lessee.

(iv) If a competing proposal does not materially enhance the existing lessee’s proposal, operations, or otherwise project to materially increase the revenue to DPL, and lessee has satisfied all the covenants and conditions of its existing lease, it is DPL’s preference to renew the lease with the current lessee with lease payments comparable to that proposed or implied by the



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## TITLE 145: DEPARTMENT OF PUBLIC LANDS

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best competing proposal, but in no case shall DPL accept lease rent less than what was established in any preceding period.

(v) If a current lessee does not intend on re-leasing, extending, or renewing, DPL shall issue an open RFP at least two years prior to the expiration of the existing lease.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

### **§ 145-70-110 Lease Agreement Requirements**

DPL shall include in lease agreements provisions typical of commercial practices. All public land leases are on a “triple net” basis “as is where is”. All leases shall conform to the following provisions:

(a) Legal description of the property(ies) subjected to the lease.

(b) Purpose – a detailed description of the intended development and operations.

(c) Term – the effective date and duration of the lease shall not exceed 40 years. Note: Upon expiration of the term, the property including all improvements shall revert to DPL for renewal, extension, or re-leasing to the highest best bidder as determined by these regulations in accordance with CNMI law.

(d) Fees, Security Deposit, Costs.

(1) Prior to the preparation of any lease or supporting document, the applicant shall deposit an administrative processing fee equal to the greater of \$2,500, or 0.25% of the estimated value of the subject property, not to exceed \$100,000.

(2) Prior to any lease approval, lessee must deposit at least 5% of the total cost of the proposed project to which the lease pertains. These funds will be held by the DPL to secure construction start up, and remediation costs. However, for large projects that certified engineers estimate will require more than two years to construct and will be constructed in phases, lessee shall deposit 5% of each phase, or an amount mutually agreeable to both parties prior to construction commencement (for clarity, 5% prior to the commencement of each subsequent phase). Provided, however, that each phase is constructed in a manner that allows for the facility within each phase to be operable independent of other phases. DPL may seek the assistance of the Department of Public Works to certify each phase complete.

(3) The security deposit requirement shall also apply to lease extensions or renewals where one or more key factors for approval is lessee’s proposal to further develop the property it currently occupies.

(4) Upon execution of a lease for public lands, lessee shall deposit as security \$250,000 that shall be maintained for the duration of the lease term. Funds remaining on account with the DPL after the completion of the proposed development in excess of \$250,000 shall be released to lessee upon completion of the project development. Remaining funds shall be retained as security, and lessee shall be obligated to maintain a constant balance for the term of the lease.

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## TITLE 145: DEPARTMENT OF PUBLIC LANDS

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(5) Funds shall forfeit to DPL should the project be cancelled or start date delayed more than one year from the execution of the lease. Mere ceremonious commencement (i.e. ground breaking or ribbon cutting without materially beginning and continuing construction) will not avoid forfeiture.

(6) All costs related to the lease including underwriting, leasehold fee simples, surveys, topographical surveys consolidations, excavation, studies, recordings, etc. shall be borne by applicant or lessee. In the event of lessee's failure to perform any obligation under a lease, DPL may (but shall not be obligated to) expend funds held in lessee's account (including security deposits) to satisfy such obligation to the extent feasible (e.g., to procure surveys, appraisals, or insurance).

(e) Rental Rates.

Rent derived from public lands shall be based on the value of the property, and actually computed and collected on that basis; provided, that the DPL shall, within the limits set by fiduciary duty and the provisions of Public Law 15-2 and 20-84, have discretion in negotiating basic rents and additional rents upward taking into account changing economic conditions and other relevant trends and factors including other land transactions deemed substantially similar to the proposed lease. For the avoidance of doubt the Secretary of DPL may determine that a property's true value is greater (but not less than) an appraised value determined by independent appraisal.

(1) New Leases – shall include new leases, and renewals.

(2) Basic rent shall be based on the value of the fee simple title to the property. It is the policy of DPL to collect at least 5% of a property's value each year for the term of the lease as base rent. DPL may cap the base rent at \$4 million for a large development project that will require more than two years to complete if DPL determines that the capital investment in the project will be no less than \$36 million and will benefit the economic development of the Commonwealth.

(3) In no event shall the rent in subsequent years be less than the amounts in previous years of the lease.

(4) Properties shall be re appraised and basic rent adjusted upward to market every five years based on an updated appraisal. For the purpose of determining basic rent, the value in subsequent periods shall include all improvements on the property less the value of improvements made by the lessee during the term of the lease.

(5) New Leases – shall be based on the value of the fee simple interest including improvements (if any).

(6) Extensions – shall be based on the appraised value of the fee simple interest including improvements less the value of improvements made by the lessee since the inception of the lease.

(7) Renewals – shall be treated as new leases for purposes of determining rent.

(8) Additional Rent – Percentage of Business Gross Receipts – due to the scarcity of public lands and in accordance with its fiduciary duties owed to its beneficiaries, DPL shall charge additional rent that allows its beneficiaries to participate in the revenues generated as a result of the lease. This rent shall be charged as a percentage of lessee's business gross receipts (BGR) and shall also apply to the BGR of lessee's subtenants, concessionaries and others permitted to engage in commercial activity upon the leased premises. DPL may cap the additional rent due at \$5 million for a large development project that will require more than two years to complete if DPL determines that the capital investment in the project will be no less than \$36 million and

# EXHIBIT C

## TITLE 145: DEPARTMENT OF PUBLIC LANDS

will benefit the economic development of the Commonwealth. For the sake of clarity, BGR includes enterprise BGR, not just BGR derived from parts of the enterprise situated on public lands. The additional rent per year for every year of the lease term shall be as follows:

### **Business Gross Receipt Payment Schedule**

<b><u>Annual BGR Amounts</u></b>				<b><u>% of</u></b>	<b><u>Minimum</u></b>
<b><u>Tier</u></b>	<b><u>From</u></b>	<b><u>To</u></b>		<b><u>BGR</u></b>	<b><u>Per Tier</u></b>
1	\$ -	\$ 50,000.49		1.50%	
2	\$ 50,000.50	\$ 100,000.49		1.45%	\$ 750
3	\$ 100,000.50	\$ 200,000.49		1.39%	\$ 1,445
4	\$ 200,000.50	\$ 400,000.49		1.34%	\$ 2,780
5	\$ 400,000.50	\$ 800,000.49		1.28%	\$ 5,340
6	\$ 800,000.50	\$ 1,600,000.49		1.22%	\$ 10,240
7	\$ 1,600,000.50	\$ 3,200,000.49		1.17%	\$ 19,520
8	\$ 3,200,000.50	\$ 6,400,000.49		1.11%	\$ 37,280
9	\$ 6,400,000.50	\$ 12,800,000.49		1.06%	\$ 71,040
10	\$ 12,800,000.50	and Over		1.00%	\$ 135,040

(9) Passive Uses – Rent for standalone leases of public lands for use as parking area or activities that supplement the actual enterprise shall be basic rent and additional rents as outlined in this subsection. Additional rent shall be assessed based on the ratio of public lands to lessee's other lands on the BGR of the entire enterprise supplemented by the public lands (e.g. Lessee's private land area is 10,000 square meters. Lessee wants to expand parking area by leasing 400 square meters of public lands. The ratio of public lands for use as parking is  $400/10,000 = 4.0\%$ . Rent will therefore be assessed at basic rent, plus  $4.0\% \times \text{applicable \% of BGR} \times \text{BGR}$ ).

(10) All rental amounts payable under all lease agreements and reimbursement of costs incurred by DPL as a result of enforcing the lease shall be fully assessed and collected from the Lessee.

(11) Lease rental payments shall be collected when due or timely pursuant of default provisions of the lease agreement shall be made.

(12) Past due rental payments of any amount shall bear interest at one and one half percent (1.5%) per month compounded monthly, from the date it becomes due until fully paid.

(13) Application of Rent Payments – Rent payments shall be applied in the following order (with oldest receivables in each category being credited first):

- (i) Outstanding cost reimbursements due to DPL first.
- (ii) Penalties due second.
- (iii) Past due interest third.
- (iv) Rent last.

(f) Construction Quality, Maintenance, Repairs, Alterations.

(1) Construction repairs and alterations shall be in good workmanlike manner and in compliance with applicable laws, regulations, ordinances, and building codes.

(2) Maintenance – Lessee shall maintain its leased premises in the level of condition at industry standards of similar facilities for the duration of the lease.

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(3) Alterations – Lessee shall inform DPL of any proposed alterations or improvements exceeding 1.00% of the total cost of the facility or will result in the reducing the value of the property by more than 1.00% shall be subject to DPL’s prior approval. Proposed alterations shall be in line with or enhance to existing operations and lessee shall submit pro forma financial statements showing the additional revenues (or revenue reduction) anticipated as a result of the alteration. DPL may require additional documentation for a proper assessment.

(g) Financing – Submission by lessee (and related party if any portion of the operations will be continuously funded by the related party) of the following periodically as required in the lease agreement: audited financial statements, annual reports of lessee, related parties, and subtenants, and CNMI BGR tax filings from lessee.

(1) No later than sixty days after lessee’s fiscal year, financial statements audited by a certified public accountant certified in the United States comparing financial information of the past two years including any restatements on its profit and loss and cash flow statements, change in ownership and owner’s equity, and balance sheet.

(2) Applicants and lessees with less than \$500,000 in BGR may submit management prepared financial statements together with a certified tax transcript for the corresponding period in lieu of audited statements.

(3) Publicly held corporations and corporations required to issue annual reports to their shareholders shall submit their annual report to shareholders to DPL at the time of issuance. Lessees shall submit to DPL all periodic reports required by the CNMI Department of Commerce before the filing deadline.

(4) Financial statements from lessee and subtenants shall include a schedule of gross receipts indicating sources and deductions in support of the gross receipts fee and any other documents DPL may deem necessary to properly determine lessee’s compliance with conditions or covenants of the lease.

(5) Submit CNMI BGR tax filings upon filing but no later than one tax period after the filing deadline.

(h) Guarantees. The following guaranties and security are required for all public lands leases:

(1) Guarantees from all related parties to guaranty lessee’s obligations under the lease and funding of the proposed development.

(2) Formal written resolutions authorizing the guarantee for each guarantor other than individual guarantors.

(3) Performance bond, completion bond, deposit, stand by letter of credit, guarantee of payment, any finance document, or a combination thereof covering 100% of development cost. The performance bond, completion bond, deposit, stand by letter of credit, or combination thereof covering 100% of the development costs must be submitted to DPL for its approval, such approval being in the sole discretion of DPL.

(i) Assignment and Subleases – Leases shall not be assigned or subleased in part or in whole without the prior written consent of the DPL.

(1) Proposed assignees and sublessees shall be subject to the same eligibility requirements, qualifying factors, and level of scrutiny as lessees.

(2) Leases of less than five years from date of execution or within five years from date of expiration shall not be assignable.

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(3) In no instance shall the deposits of applicant or lessee be refunded until assignee or subtenant deposits equal or greater amounts with DPL.

(4) Lessee and assignee or subtenant shall provide DPL a complete and accurate copy of their proposed assignment agreement and/or sublease showing the total consideration given for or in connection with the assignment or subleasing transaction.

(5) DPL shall charge a fee of 25% of the value of the monthly/annual sublease fee or assignment fee, if any.

(j) Renewals, Extensions – DPL will consider proposals to renew or extend leases no sooner than the latter of the completion of construction or two years after the commencement date of the lease agreement, and thereafter, at least two years prior to the expiration of an existing lease. Such consideration shall be based on the lessee's performance under its existing lease.

(1) Consideration for renewal and extension shall be based on lessee's performance on its existing lease and subject to the same eligibility requirements, qualifying factors, and level of scrutiny as new lessees. Lessees with more than three late payments within the previous 24-month period shall be ineligible for renewal or extension.

(2) Base rent for renewals shall be based on the appraisal of the property including improvements.

(k) Mortgage.

(1) The lessee and its permitted successors and assigns may, subject to the express prior written approval of the DPL, mortgage its lease and its interest in the property provided that no holder of any mortgage of the lease, or any one claiming by, through or under any such mortgage shall, by virtue thereof, except as otherwise specified in the lease agreement acquire any greater rights hereunder than the lessee.

(2) No mortgage of the lease or the lessee's interest in the leased property, in whole or in part, by the lessee or the lessee's successors or assigns shall be valid, unless:

(i) At the time of the making of such mortgage, there shall be no default under any of the agreements, terms, covenants and conditions to be performed by the lessee under the lease;

(ii) The mortgage shall be subject to all the agreements, terms, covenants and conditions of the lease;

(iii) The mortgage shall reserve to the DPL prior right, and in the event of lessee's default under the same and after notice of the same character and duration as required to be given to Lessee, to correct the default or to purchase the same and terminate the lease.

(3) The mortgage shall contain the following provisions: The consent by the DPL to an assignment, transfer, management contract, or subletting may be granted, denied or made subject to such conditions as the DPL finds it in the best interest of its beneficiaries.

(4) All proceeds from the facility secured by the mortgage shall be used solely for the improvement of the leased property.

(l) Termination, Recapture.

(1) Notice shall be given to lessees who are in material default as follows: 1st notice with 30 days to cure, final notice with 15 days to cure, and notice of termination effective immediately.

(2) DPL may terminate a lease agreement that remains in default forty-five days after the 1st notice has been delivered unless otherwise stated in these regulations for reasons including without limitation:

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- (i) Failure to consistently and significantly reduce past due rents, fees, or taxes or other charges required to be paid by lessees;
  - (ii) Other material defaults due to non performance including without limitation failure to complete development in accordance with the development plan and projections upon which a lease is based;
  - (iii) Abandonment; and
  - (iv) Use of the property other than lessee's proposed purpose and as stated in the lease.
- (3) DPL may recapture all or portions of properties under lease in the event the use of the property is not consistent with the proposed development as stated in the lease or in the event of under-utilization of public lands when such lands may have a higher and better use via notice to lessee.
- (m) Holdover.
- (1) If a lessee fails to vacate the leased property upon the expiration, termination or cancellation of its lease, Lessee shall be deemed a holdover tenant.
- (2) The fee during any holdover period shall be not less than 150% of the latest basic rent amount, and additional rent.
- (3) Payment of the holdover fee shall in no way constitute a limitation upon any rights or remedies the DPL may be entitled to pursue for violation of the lease, for trespass or illegal possession or for any other cause of action arising out of the holdover tenant's failure to vacate the premises including the right to evict the holdover tenant without court action, and the cost thereof to be paid by the holdover tenant.
- (4) The lessee shall be responsible, at its sole cost and expense and even after termination of the lease, for removing any person or entity, authorized or unauthorized by the lessee, from the premises who may have been on the premises prior to the termination of the lease and continues to occupy a portion of the premises thereafter. The failure of the lessee to remove the person or entity from the premises at the end of the lease constitutes a holdover.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 41 Com. Reg. 42802 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42740 (July 28, 2019); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: [Historical codification comments removed.]

### **§ 145-70-115 Lease Form**

All leases shall be in a form substantially similar to that set forth in Appendix A below.

History: Amdts Adopted 41 Com. Reg. 42802 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42740 (July 28, 2019); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: In codifying 38 Com. Reg. 37440 (Jan. 28, 2016), the Commission included the lease form included in Appendix A of this chapter. The Commission substituted "set forth below" with "set forth in Appendix A below" pursuant to 1 CMC § 3806(d).

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### § 145-70-120 Underwriting Requirements

In order for the DPL to properly assess and compare proposals, Project Details – All proposals submitted shall include the following:

(a) Qualifying Criteria.

(1) Character – Evidence of experience in and knowledge of the industry of the proposed development and evidence that applicant and related parties are in good standing with taxing and regulatory authorities, creditors, and depository institutions.

(2) Capacity – Evidence of a combined net worth of applicant and related parties of at least 30% of the proposed development cost with current free cash flow to cover at least 150% of basic rent.

(3) Capital – Evidence of combined liquid capital (cash or cash equivalents) to cover at least 20% of the total cost of development or attestation from a reputable investment bank experienced in funding similar projects on applicant group's ability to raise 105% of the capital required to fund the development including applicant's capital.

(b) Business plan including financial projections, opportunities and risks, and who or what the competition is in its industry. Pro forma financial statements including profit and loss statement, cash flows, and balance sheet for first five years of the proposed development, and revenue projections over the life of the lease. If multiple revenue generating activities will be conducted, pro forma statements shall show revenues from each activity including the subletting of commercial space to tenants. Business plans must address the areas of market analysis, financial viability, and operational issues.

(c) Financial Documents.

(1) Evidence of adequate financing showing commitment to fund the proposed development project and satisfy payment obligations under the proposed lease including documents showing the funding source and an attestation to the legal nature of funds.

(2) Financial Statements of applicant, guarantors, related party, or equity investors/shareholders of the Applicant. Audited statements are required for companies with business gross revenues of \$500,000 or greater.

(d) Ownership, Structure, Resolutions to Enter Lease, Guarantees, Authorizations.

(1) List of owners having an ownership interest in the applicant of 10% or greater.

(2) Certified entity formation documentation, certificate of incumbency, and transactional authorizations of lessee and related parties. If lessee or any related party is not a domestic entity or resident individual, such party shall first be domesticated and authorized to do business in the Commonwealth. Foreign documents and signatures shall be authenticated and legalized (or apostilled if originated in Hague Convention jurisdiction). An organizational chart showing the relationship of parent companies, subsidiaries, and related parties involved in the funding and operations of the proposed development shall be provided.

(3) Formal resolution from applicant authorizing applicant to enter a lease with the DPL and designating a specific director or officer of applicant to negotiate and execute the lease agreement and related transactional documents.

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- (4) Formal resolution from each related party identifying its authorized signatory and authorizing related party to provide full financial support for the proposed project and to guarantee applicant's obligations under the lease agreement.
  - (5) Evidence of ability to secure performance bond, completion bond and/or stand by letter of credit as security for lessee's development obligations under the lease.
  - (6) Agreement to issue personal guarantee from all related parties.
  - (7) Written authorization from applicant and related parties for creditors, banks, financiers, and depository institutions to release information to DPL regarding account balances, credit standing, and general business conduct of applicant and related parties.
- (e) Construction Plans and Specifications. Applicant shall provide:
- (1) Architectural layout and design of the development overall with its application, and the same shall be updated at each phase of development.
  - (2) Renderings showing the proposed layout, elevations of the facility and how it will be situated on the premises.
  - (3) Timeline for construction schedule and cost schedule updated at each phase of development.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission inserted open parentheses to subsections (a)(1)–(3); changed “incumbency” and “apostilled” in subsection (d)(2) to “incumbency” and “apostilled” respectively; changed “and/or” to “and/or” in subsection (d)(5); and inserted a period at the end of subsections (d)(5) and (d)(6).

### **Part 200 - Policies and Procedures for Temporary Non Exclusive Occupancy of Public Lands**

#### **§ 145-70-201 Scope**

DPL's authority does not extend to the issuance of land use permits and licenses. “Land use” in the licensing and permitting context generally involves the regulation of specific uses or activities, without regard to ownership or authorization to occupy land. The authorities that regulate “land use” in the Commonwealth include Zoning, BECQ, Historic Preservation Office, DLNR Division of Fish and Wildlife, and other Government regulatory agencies that issue permits and licenses pursuant to their respective enabling legislation. DPL, however is charged with management of the use of public lands, subject to its land use plan and all other land use regulations and regulatory agency approvals. The regulations in this Part describe how the DPL will manage and authorize such public land use, and the fees and charges that will be imposed therefore. These regulations neither supersede, nor amend the Commonwealth's land use regulations.

Modified, 1 CMC § 3806(a).



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History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission numbered this section and created the section title.

### § 145-70-202 General Requirements

(a) The temporary occupancy of public lands or properties may be authorized via temporary occupancy agreements (TOA), concession agreements, permits, temporary authorizations (TA), and other agreements appropriate for the activity to be conducted. The activity for which the premises will be used must be permitted by the land use permitting agencies of the CNMI and applicable laws. These agreements shall generally:

- (1) Provide a benefit to the public;
- (2) Be short term (i.e., revocable and for periods of no less than one year but not more than five years) or intermittent in nature;
- (3) Be uniform in expiration dates, as follows:

<b><u>Types of Temporary Occupancy Agreements</u></b>	<b><u>Expiration Dates</u></b>
Beachfront Concession	December 31st
Agricultural and Grazing Permit	January 31st
Parking Permit (Parking/Encroachment)	February 28th
Signboard and Maintenance	March 31st
Encroachment, Container Storage, and Staging	April 30th
Roadside Vendor, Telecommunication Tower, Rock Quarry, Others	May 31st

- (4) Be reviewed periodically for compliance;
- (5) Prohibit the construction of permanent structures;
- (6) Provide non-exclusive rights to the land or property unless otherwise stated in these regulations;
- (7) Be non-transferable, non-assignable, and cannot be sold, subjected to mortgage, or used as collateral;
- (8) Self-terminate should occupant or operator cease to exist or ceases the activity described in the application; and
- (9) Require compliance with all business licensing, permitting, and regulatory requirements for business or other activities to be conducted including without limitation all zoning, building and other permits as applicable.
- (10) Property valuations for purposes of calculating fees for TOA's may be determined by DPL's in-house appraiser.

Modified, 1 CMC § 3806(a), (f).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission renumbered this section from § 145-70-201 to § 145-70-202.

### § 145-70-205 Occupancy and Easements for Private Telecommunications

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(a) Non-exclusive occupancy rights or easements granted to non-governmental telecommunications service providers may be granted for multiple year terms up to 25 years in total. Occupancy or proposed uses that sever, transect, or present a material impediment to the use of the surface land or air above or otherwise render the burdened and/or adjacent lands undevelopable, shall not be eligible for easement or similar authorization contemplated in this section but instead, shall only be authorized through leases of fully burdened parcels on commercially reasonable terms in accordance with the leasing regulations set forth herein.

(b) Underground Telecommunication Cables - The activity involving the use of public lands to lay, maintain and operate underground telecommunication cable wires and related telecommunication equipment. Upon promulgation of these regulations the annual fee for buried cable trenches shall be 5.0% per year of 50.0% of average market price of lands on the island where the trenching will occur. Average market price shall be an area-weighted average determined by DPL based on recent publicly available real estate sales data for fee simple land transactions.

(c) Telecommunication Tower - The activity involving the use of small parcels of public lands to, erect, maintain and operate commercial pedestals, access nodes underground telecommunication cable wires and radio transmitter antenna, and or wireless communication equipment shelter for cellular telephones, paging systems or similar related wireless telecommunication equipment. The annual fee for the use of public land for this purpose shall be 8.00% of the estimated fair market value. In environmentally, historically, or otherwise sensitive areas including tourist destinations, such activity (if permitted in DPL's sole discretion) may be subject to space-sharing conditions as imposed by DPL.

Modified, 1 CMC § 3806(a), (e).

History: Amdts Adopted 41 Com. Reg. 42800 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42730 (July 28, 2019); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: [Historical codification comments removed.]

### **§ 145-70-210 Temporary Occupancy Agreement**

Temporary Occupancy Agreements (TOA) shall be used for the temporary occupancy of certain public lands laying fallow at the time of application where no proposals have been received by DPL for the long term lease of those lands. In any case, TOA's do not in any way grant an interest in the land, written or implied, and the new construction of permanent structures shall not be allowed. Allowable purposes include short-term agricultural use, temporary livestock grazing, sporting or social events, or planning activities in anticipation of a lease. TOAs are subject to termination upon 30 day's written notice by DPL. DPL will consider issuing 5-year agricultural permits to NRCS eligible candidates.

For applications submitted by CNMI government entities for sporting events, signboards/banners, filming, and social events, DPL may provide an annual TOA for multiple

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department/agency requests throughout the period covered by the TOA provided, however, that the department/agency submits a written request to the Secretary for each occurrence. The Secretary may approve such requests via letterhead within thirty days of receipt after which the request shall be deemed approved if no action is taken by the Secretary. All fees and insurance requirements may be waived provided that the department/agency indemnify DPL of all risks and liabilities.

(a) The following apply to all TOA's:

- (1) All TOAs are terminable by DPL at will;
- (2) Applications for renewal (if any) shall be made annually two months prior to expiration or as solicited via a Request for Proposal or at auction;
- (3) Unless otherwise provided in this section the fee per use shall be an annual charge of 8% of estimated value but not less than \$250 per month and 3% of revenue generated, or such greater amount as bid;
- (4) TOAs are non-exclusive with the exception of Agricultural, Staging, and Quarry which shall be exclusive and limited to the activities performed directly by Occupant;
- (5) Property shall be used solely as outlined in the application for TOA in accordance and DPLs regulations for the operations of the Occupant;
- (6) DPL can demand the removal of any and all structures at any time at Occupant's expense;
- (7) Liability insurance shall be required with exception of Agricultural (Farming and/or Livestock) and Residential Maintenance. The policy shall name DPL and the Commonwealth as co-insured, with a minimum coverage of \$50,000 in an action for wrongful death, \$200,000 for each occurrence, \$100,000 in bodily injury per person, and \$100,000 in property damage for each occurrence, or such higher amounts as DPL may reasonably require.

(b) Agricultural use shall be limited to family subsistence (non-commercial) purposes and shall only be permitted as follows:

- (1) Farming - limited to up to 2,000 square meters (per household) of public lands determined by DPL to be suitable for farming, the annual application fee shall be \$150 per TOA; and
- (2) Livestock - limited to up to 250,000 (25 Hectares) square meters (per household) of public lands for cattle grazing 50,000 square meters (5 Hectares) for livestock and/or goat grazing, and 20,000 square meters (2 Hectares) for confined livestock, the annual application fee shall be \$150 per TOA. TOA's shall be assessed an annual fee of \$10 per 10,000 square meters (equivalent to 1 hectare) but shall not exceed 250,000 square meters as follows:

Area Size	Per Hectare Fee	Annual Application Fee	Annual TOA Fee
0.01 – 1 Hectare	\$10	\$150	\$160
1.1 – 2 Hectares	\$20	\$150	\$170
2.1 – 3 Hectares	\$30	\$150	\$180
3.1 – 4 Hectares	\$40	\$150	\$190
4.1 – 5 Hectares	\$50	\$150	\$200
5.1 – 6 Hectares	\$60	\$150	\$210
6.1 – 7 Hectares	\$70	\$150	\$220

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7.1 – 8 Hectares	\$80	\$150	\$230
8.1 – 9 Hectares	\$90	\$150	\$240
9.1 – 10 Hectares	\$100	\$150	\$250
10.1 – 11 Hectares	\$110	\$150	\$260
11.1 – 12 Hectares	\$120	\$150	\$270
12.1 – 13 Hectares	\$130	\$150	\$280
13.1 – 14 Hectares	\$140	\$150	\$290
14.1 – 15 Hectares	\$150	\$150	\$300
15.1 – 16 Hectares	\$160	\$150	\$310
16.1 – 17 Hectares	\$170	\$150	\$320
17.1 – 18 Hectares	\$180	\$150	\$330
18.1 – 19 Hectares	\$190	\$150	\$340
19.1 – 20 Hectares	\$200	\$150	\$350
20.1 – 21 Hectares	\$210	\$150	\$360
21.1 – 22 Hectares	\$220	\$150	\$370
22.1 – 23 Hectares	\$230	\$150	\$380
23.1 – 24 Hectares	\$240	\$150	\$390
24.1 – 25 Hectares	\$250	\$150	\$400

(3) Agricultural uses in excess of the limitations in this subsection, or which require fixed terms shall be subject to the lease requirements of these regulations.

(i) Occupants with permits to use properties for livestock/grazing prior to and through the effective date of the regulation of February 2016 and subsequent amendments thereafter that (A) have been continuously used/maintained and (B) are currently bound by USDA agricultural program support grant requirements, shall be exempt from the 25 Hectare limit as long as occupant continues to utilize the entire area and receive and is bound by USDA program agricultural grant requirements.

(c) Vehicular Parking - The activity that involves a location(s) and designated area(s)/assignment(s) on public land where motor vehicles may be temporarily stored or parked shall only be permitted under a temporary occupancy agreement as follows:

(1) Temporary vehicular parking spaces are categorized as primary, secondary, and tertiary parking zones. The parking zone descriptions for Rota and Tinian, respectively are shown in Schedule 145-70-210(c)(1). The parking zones for Saipan are tied to the Saipan Zoning districts as follows:

### **Primary**

GC: Garapan Core  
GE: Garapan East  
BR: Beach Road  
MC: Mixed Commercial  
PR: Public Resource

### **Secondary**

IN: Industrial  
VC: Village Commercial

### **Tertiary**

AG: Agriculture  
RU: Rural  
VR: Village Residential

(2) The annual permit fee per square meter shall be \$10 for primary, \$6 for secondary, and \$2 for tertiary zones.

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(3) Parking Permit Fees - Non-Income Generating Non-Commercial Humanitarian or Social Welfare Non-Profits (Charitable Organizations, NMC Foundation, Health & Social Welfare, and Churches). The annual permit fee per square meter shall be \$2 for All Zones.

(d) Signboards/Banners - The activity that involves erecting or placement of a temporary board, poster, banner, a piece of cloth or bunting, placard, or other temporary sign varying in size, color, and design which is temporarily displayed, posted, erected, hung, or tied in a certain public location or tract of land to advertise or to convey information or a direction shall only be permitted as follows:

(1) Public lands zones for the placement of signboards or banners are categorized as primary, secondary, and tertiary zones identical to Vehicular Parking.

(2) CNMI government and non-commercial Humanitarian or Social Welfare non-profit organizations shall not be charged a fee for local government funded signboards for public awareness purposes. The fees for the placement of signboard by other Applicants are shown in the tables below:

### **SIGNBOARD PERMIT STANDARD FEES**

	<b>Primary Zone</b>	<b>Secondary Zone</b>	<b>Tertiary Zone</b>
<b>Annually</b>	\$600	\$350	\$250
<b>Monthly</b>	\$100	\$ 70	\$ 50

### **SIGNBOARD PERMIT FEES – NON-COMMERCIAL NON-PROFITS**

	<b>All Zones</b>
<b>Annually</b>	\$250
<b>Monthly</b>	\$50

(3) Political signboards: political signboards are charged an administrative processing fee of \$50 along with a semi-annual fee of \$100 and cannot be erected sooner than six months before the election date. A candidate may erect and place a maximum of 10 signboards on its respective electoral senatorial district. A Candidate running for office on a CNMI wide election may erect and place a maximum of 20 signboards on each senatorial district.

(i) No signboard shall be placed on the western beach side along Tun Thomas P. Sablan and along Beach Road in Saipan, or such other areas as determined by DPL.

(ii) No signboard shall be placed or erected on any trees on public land.

(iii) No signboard shall be placed or erected on any utility poles.

(iv) No signboard shall be placed or erected within 50 feet from any traffic light.

(v) No signboard shall be placed or erected within 6 feet of any road pavement and any public right-of-way.

(vi) No signboard shall be placed on any public buildings, facilities, monuments, public parks, and tourist sites.

(vii) No signboard exceeding dimensions of 4ft by 8ft shall be placed on public land.

(e) Roadside Vendors - The activity that involves the use of a temporary structure, vehicle, or mobile canteen for the sale of local produce or fish, other perishables or non-perishable items

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such as handicrafts, trinkets, souvenirs, or other goods, at a permitted distance from the side of a road or thoroughfare at a location(s) or designated area(s)/assignment(s) on public land shall be permitted on the same financial terms as other concession TOA: A monthly fee of at least \$250 per concession (up to 100 square feet) shall be charged in addition to 1% of BGR.

(f) Maintenance – The activity that involves the clearing and cutting of brush or vegetation for no-use purposes (ex. fire break) may be permitted as follows:

(1) Up to 300 square meters of public lands adjacent to an occupant's private property may be cleaned and maintained under a maintenance permit. Residential maintenance permits shall be assessed a non-refundable application fee of \$20 per year.

(2) Commercial maintenance permits inclusive of commercial beachfront properties within 150 ft. high water mark for beautification purposes (non-exclusive) shall be assessed a non-refundable application fee of \$100 per year and shall be subject to an assessment equal to 2% of the estimated fair market value of the premises annually.

(g) Filming/Photography – The activity involving the use of public lands in the production of video or motion picture films, commercial advertisement filming, photography, and other activities that involve video or film production at certain locations or areas of public lands.

(1) The fee for engaging in commercial motion/still filming or photography on public land in any location in the CNMI is \$250 per day with the exception of Managaha which is \$500 per day plus location credits within the publication indicating that the film or photograph was taken in the CNMI, the island, and the specific location. Use of any part of a day is charged as one full day. One full day is defined as a continuous 24-hour period beginning at 12:01 a.m. DPL may use discretion in waiving any fee(s) when requested by Marianas Visitors Authority (MVA) on a case-by-case basis, when the commercial motion/still filming or photography on public land promotes the CNMI.

(2) The fee for still/portrait photography not for commercial publication, sale, or distribution (e.g. family portrait intended for sale only to the subject family) shall be \$1,000 per year per commercial photographer.

(3) The occupant shall provide DPL a copy of the finished product, and location credits within the product indicating that the film or photograph was taken in the CNMI, the island, and specific location.

(4) Applicants must submit a copy of their CNMI business license, sufficient liability insurance, and an approved CRM (to the extent required) permit along with their application.

(h) Staging – The activity involving the temporary use of public lands to store or place construction equipment, materials, tool sheds, contractor's trailer or field office, and for storage or stockpiling of applicant's materials (e.g. coral, aggregate, or manufactured sand), and other similar uses incidental to a construction project may be permitted as follows: the fee for the temporary use of public land for a staging area is 8% of the estimated fair market value per permit year, or a fraction thereof.

(i) Quarry – A large, open excavation or pit from which rock products or other minerals are extracted by excavation, cutting, or blasting (this definition also includes mining activities).

(1) The permit shall specify the type of materials the permittee is authorized to extract and sell.

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(2) Upon promulgation of these regulations, the minimum annual rent shall be a total of \$12,000. Each year following promulgation of these regulations, the minimum annual rent shall increase by 5% in each subsequent year. Additionally, permittee shall pay a royalty fee of at least \$3 per cubic yard of limestone materials extracted, plus 0.5% of BGR, or such greater amounts as proposed for each category.

(3) Extraction of other materials shall be subject to additional permitting and assessed a higher royalty fee as a percentage of market prices as quoted on a major U.S. commodities exchange for those materials or minerals.

(j) Encroachment – The activity involving the temporary use of public land for commercial or residential purposes may be permitted as follows:

(1) The annual fee for the temporary permitted encroachment on public land for commercial purposes is based on 8% of the estimated fair market value or 3% of gross receipts if this amount is greater than the annual permit fee. Assessment of rent against gross receipts shall be apportioned pro-rata based upon increase of business capacity (i.e., showroom space, seating capacity, or the like) by virtue of the encroachment unless the encroachment is deemed by DPL to be of strategic value. However, where an applicant's business could not proceed or continue without the use of public land (e.g., landlocked parcel, no parking, insufficient ingress or egress, etc.), no such apportionment will apply, and fees will be assessed upon 100% of the business' gross receipts.

(2) The annual fee for the encroachment of public land for residential applicant purposes is 8% of the estimated fair market value. Permanent structures will only be permitted under an encroachment permit if they precede the effective date of these regulations (February 8, 2016)\* and they are located on land that DPL is permitted to lease by law and regulation.

(k) Community Events – The activity involving the temporary short-term use of public land for government or non-commercial activities that benefit the community (e.g., festivals, holiday celebrations, parades, and the like) may be permitted without charge upon approval by the Secretary, provided the permitted event or activity shall be no more than 45 days in duration.

(l) Non-Use – The activity involving the entry upon public land to survey, appraise, or gather other information necessary or helpful to an applicant to lease public lands; or to enter upon public land to construct authorized improvements for public benefit.

\*So in original.

Modified, 1 CMC § 3806(c), (e), (f), (g).

History: Amdts Adopted 41 Com. Reg. 42800 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42730 (July 28, 2019); Amdts Adopted 39 Com. Reg. 40376 (Nov. 28, 2017); Amdts Proposed 39 Com. Reg. 39951 (Sept. 28, 2017); Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: [Historical codification comments removed.]

In codifying 41 Com. Reg. 42800 (Sept. 28, 2019), the Commission retained subsections (f) to (l) as unmodified although they were omitted from the proposed regulation at 41 Com. Reg. 42730 (July 28, 2019).

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### § 145-70-215 Concession Agreements

Concession agreements grant the concessionaire the right to conduct business operations from a designated area, zone, or venue on terms determined by DPL.

(a) Upon receipt of request, DPL will determine the desirability of proposed use and past performance and/or experience (if any) of proposed concessionaire. If acceptable to the DPL and if consistent with designated use, zoning, surrounding activities, DPL may issue a notice of intent.

(b) DPL may issue an RFP or conduct an auction if there are two or more similar competing interests with respect to a given concession area, or in any instance at the discretion of the Secretary.

(c) Monthly fees of at least \$250 per concession (up to 200 square feet) shall be charged in addition to 3% of BGR. Concessions negotiated through RFP or auction may be subject to higher fees based upon applicant's proposal or bid amount.

(d) Premises shall be used solely for the business operations of the Occupant. Subconcessions are not permitted unless expressly authorized in these regulations. Any change in ownership of occupant shall be considered an assignment. Assignments are not permitted for concessions or permits. (Only one concession agreement is allowed per applicant, permittee, and/or principal.)

(e) The term of any concession agreement shall be for no longer than one year per concession agreement with a maximum holdover of 12 months with the exception of the Managaha Concession which may be for terms of up to five years.

(f) Criteria for evaluating an application/proposal for a concession agreement under consideration shall be the same as those outlined in the regulation on leases.

(g) Beach concessions for beach and ocean recreational activities shall be limited as follows:

(1) Concessions for activities involving commercial motorized and non-motorized water craft shall not be permitted outside of the area designated by the BECQ – Coastal Resource Management Office and shall occur only within specific zones authorized by DPL.

(i) Concessions are restricted to areas adjacent to boundary corners of hotels, or if no hotel is located in the vicinity, to the perimeter boundaries of the public land perpendicular to the high water mark.

(ii) Beach concession permits will be limited to twenty five total concessions per year due to limited space and safety concerns and in an effort to maintain a peaceful beach experience for those not participating in concession activities. The number of beach concession permits may be limited to a lesser amount if the Division of Fish and Wildlife, Coastal Resources Management Office or other CNMI government and federal governments\* determines that the marine sports activities cause an impact on marine life species and/or their habitats are disrupted, harmed, or destroyed resulting from such activities.

(2) Enforcement procedures shall be as follows:



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- (i) A first violation of permit terms or conditions will result in a citation and fine of \$200.
- (ii) A second violation within 30 days of any citation shall result in an order to show cause not to terminate. A hearing shall be scheduled within 15 days if requested by concessionaire. If no hearing is requested, Concessionaire's authorization shall be terminated with immediate effect. Violators shall not be eligible for a concession agreement for three years following any termination.

\*So in original.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission struck the figure "(90)" in subsection (g)(3) and struck the figures "(30)", "(15)", and "(3)" in subsection (g)(4)(ii) as a mere repetitions of written words. Commission inserted open parentheses to subsections (a)–(g); changed "desirablity" in subsection (a) to "desirability"; changed "Subconcesions" in subsection (d) to "Subconcessions"; changed "an Concession" to "a concession" in subsection (f); and changed "boudary", "vacinity", and "perimiter" in subsection (g)(1)(i) to "boundary", "vicinity", and "perimeter" respectively.

### **§ 145-70-220 Occupancy not Covered in this Part**

Proposed occupancy and use of public lands not covered under this Part shall be evaluated and determination made by the Secretary for the best interest of its beneficiaries.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission substituted "Part" for the term "Subsection" in the section title and the body of the section.

### **Part 300 - Policies on Appraisals for Leases**

#### **§ 145-70-301 Appraisals**

(a) Procedures are hereby established for the regular appraisal of all public lands leased for commercial purposes, which ensure that the fair market value basis for computation of basic rent for any given lease is updated no less frequently than every five years. All appraisal reports shall be reviewed by DPL's staff appraiser for completeness of the technical aspects, and to certify if the appraised value meets or exceeds the fair market value of the property. The findings of the staff appraisers shall be for internal use only. As this information may affect the negotiation of lease terms it shall be held confidential during negotiations. DPL may discuss any areas of concern with the independent appraiser and the applicant.

(b) The cost of appraisals and their review shall be borne by applicant or lessee and in no instance shall DPL reimburse the cost to lessee or offset any such costs or expenses against rent.

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However, DPL shall require the appraiser to acknowledge that DPL is the client and that the report is being prepared on behalf of DPL.

(c) Appraisals shall be first prepared by an independent U.S.-CNMI certified general real estate appraiser who is licensed to do business in the CNMI. The appraiser shall acknowledge that the appraisal report is being prepared in accordance with the requirements of the appraisal standards and procedures for the benefit of the Department of Public Lands.

(d) All appraisals must be performed and completed in compliance with the current Uniform Standards of Professional Appraisal Practice (USPAP) and the CNMI issued regulations and procedures by the Board of Professional Licensing.

(e) The Secretary shall review all appraisal reports for reasonableness, and shall use the value shown in the report as a guide to assess annual base rent. The value may be adjusted upwards for reasonableness if deemed appropriate by the Secretary to take into account the strategic value of the property and recent real estate sales or lease transactions that were not adequately considered by the appraiser in DPL's opinion.

(f) Lessee shall re-appraise the fee simple interest of the leased property every five years on the anniversary of the lease and if necessary rent shall be adjusted upward to current value based on the new appraisal as adjusted by the Secretary in conformance with these regulations.

Modified, 1 CMC § 3806(a), (f).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission numbered the leading paragraph (a) and accordingly renumbered the following subsections consecutively.

### **Part 400 - Application Processing Fees**

#### **§ 145-70-401 Fee Schedule**

DPL shall charge an application fee to recover the cost of processing. Unless otherwise stated in these regulations, the application and renewal processing fees are as follows:

<b>Transaction</b>	<b>Application Fee</b>
Application for TOA (other than Agriculture and Concessions)	\$ 50
Renewal of TOA	\$ 50
Amendment of TOA	\$ 50
Application for Concession/Subconcession	\$ 75
Renewal of Concession/Subconcession	\$ 75
TOA for Agriculture: Farming	\$ 250
Livestock	\$ 225
Amendment of Lease Agreement	\$ 1,500

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Lease Agreement Extension	\$ 2,500
Assignment of Lease Agreement	\$ 2,500
Sublease Agreement	\$ 2,500
Renewal of Sublease Agreement	\$ 2,500

Modified, 1 CMC § 3806(b).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission rearranged the material under Part 400 under this section to fit harmoniously with the Code.

### **Part 500 - Request for Proposal Requirements**

#### **§ 145-70-501 Request for Proposals**

DPL may issue RFPs at the discretion of the Secretary. At a minimum, RFPs shall require the following:

- (a) A description of the property, including the legal description and physical location in layman's terms making it readily identifiable by interested firms and the general public;
- (b) Interested firms shall be allowed to view the property and shall be provided general information on property including photographs, land maps, and boundary descriptions;
- (c) Requirement for Proposals. Interested firms shall:
  - (1) Identify the applicant, and if the applicant is not a natural person, the names of the officers, directors, and principal shareholders or members of the proposed lessee, and including all real parties in interest;
  - (2) Identify the names of principals, and attorneys that will be involved in negotiating the lease on behalf of the proposed lessee;
  - (3) Provide a concise statement of the intended use of the property;
  - (4) Provide a detailed description of proposed structures/facilities to be built on the land including architectural renderings and landscaping. If existing improvements will be replaced with new improvements, proposer shall additionally provide plans for removal and disposal of demolished or excavated materials including a timeline of intended progress;
  - (5) Provide a Gantt chart showing construction time line, cost per phase if construction will occur in multiple phases, and total cost of improvements;
  - (6) Provide five-year pro forma financial statements including business gross revenue projections starting in year one of operations including rental income lessee anticipates to receive from subtenants, and the potential BGR of subtenants;
  - (7) Provide an estimate of number of jobs required for operations (total full time equivalents) and shall provide recruiting plans.
- (d) Criteria for comparing competing proposals include:
  - (1) Rental income to DPL in absolute dollars;

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- (2) Cost of construction of the development (and anticipated value of improvements);
- (3) Lessee's credit worthiness and ability to fund the proposed development;
- (4) Consistency of the proposed development with DPL's land use plan and other applicable land use laws and regulations.

(e) In the event two or more proposals are determined to be similarly advantageous, DPL may request more information from respondents for clarification purposes, or conduct in-person interviews to determine the proposal that is most advantageous to DPL and its beneficiaries.

(f) DPL shall always request a best and final offer on the amount of rent payments and public benefit options before selecting the final proposal.

(g) In the event there are more than one interested party in the same property (whether all or portions thereof), priority shall be given to the party that is willing to pay the highest premium above the minimum payment amount and whose proposal is most consistent with the highest and best use of the property.

(h) Criteria for award:

- (1) Highest rental income to DPL;
- (2) Cost of construction;
- (3) Consistency of the proposed development with DPL's land use plan;
- (4) Lessee's credit worthiness and ability to fund the proposed development;
- (5) Negotiated lease terms most favorable to DPL.

Modified, 1 CMC § 3806(a), (b), (f) (g).

History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission numbered this section, created the section title, and renumbered subsections (c)(4)[second]–(6) to subsections (c)(5)–(7) respectively. The Commission inserted a semicolon at the end of subsection (c)(6), inserted a period at the end of subsection (c)(7), inserted a period at the end of subsection (e), and changed the period in subsection (h) to a colon.

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### Appendix A

§ 145-70-115 Lease Form

All leases shall be in the form set forth below.

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(Space Above for Recording Purposes Only)

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
SAIPAN, MARIANA ISLANDS

LEASE AGREEMENT

(LA\_ -\_\_\_\_S)

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

WITNESSETH:

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

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

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

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

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### ARTICLE 1: GRANT OF LEASE

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

!Insert Legal Description)  
!Insert description of existing improvements if any]

### ARTICLE 2: PURPOSE

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

### ARTICLE 3: TERM

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

### ARTICLE 4: EXTENSIONS

An extension of up to fifteen years may be granted with approval of the legislature in accordance with P.L. 15-2. Consistent with its fiduciary duty to manage the use and disposition of public lands for the benefit of the collective owners, the DPL will entertain requests for extensions no sooner than two (2) years after completion of all development contemplated hereunder, and no later than two (2) years before expiration of the Term. The DPL will make its determination to seek legislative approval, or to decline to seek such approval based upon Lessee's actual performance versus its projections provided in connection with the negotiation and execution of this Lease, as well as its compliance record with the DPL prior to Lessee's extension request.

### ARTICLE 5. RENT

The Lessee, in consideration of the foregoing, shall pay to the DPL, in the manner prescribed herein, in

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lawful money of the United States, Base Rent and Additional Rent for the Premises as follows:

### BASE RENT

[Greater of proposed or 5% of fee simple value]

### ADDITIONAL RENT

[Percent established by regulation in effect on Commencement Date or greater percentage proposed by Lessee]

A. Base Rent. Lessee shall pay Base Rent as set forth above in advance on an annual basis on each anniversary of the Commencement Date without invoice, notice, or other demand upon or to Lessee.

B. Additional Rent. In addition to the Base Rent provided for above, the Lessee shall pay to the DPL in the manner prescribed herein the percentage of Gross Receipts as described in the above rental schedule from whatever business activity is related to or conducted within the described premises during the Term of this Lease and any extension thereof, and as further defined in Article 40G hereof ("Additional Rent"). This additional amount, shall be paid quarterly, within forty-five (45) days from the end of the calendar quarter, with adjustment, if any, to be made at the end of every calendar year upon submission of the annual certified financial statements as provided in Article 11 hereof. A copy of the Lessee's CNMI Business Gross Revenue Tax Monthly Returns must be submitted concurrently with any payment together with the computation of the quarterly Gross Receipts Rental to substantiate any additional payment or non-payment.

C. Manner of Payment. The Lessee shall discharge its obligation of payment by depositing the payments required under this Article with the DPL, at such location as the DPL may from time to time designate in writing.

D. Time and Payment; Interest; Amortization. All rents payable pursuant to the terms of this Lease shall be deemed to have commenced on the first day of the month after the Commencement Date of this Lease, and shall be paid without prior notice or demand. Past due rental payments shall bear interest at one and one half percent (1.5%) per month compounded monthly, from the date it becomes due until paid. This provision shall not be construed to relieve the Lessee from any default in making any rental payment at the time and in the manner herein specified, but is subject to the amortization provisions set forth herein.

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

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For purposes of calculating Guaranteed Minimum Annual Rent during the initial five (5) year period, the parties stipulate that the value of a fee simple estate in the Premises is as set forth on the Lease Data Sheet. At the end of the initial five (5) year period of this Lease and each succeeding five (5) year period, the Base Rent payable by the Lessee to the DPL shall be based upon the percentage of the value of the improved land as of the commencement of each five-year period. An independent appraiser who must be a member of a nationally accepted appraisal society, (selected by agreement between the DPL and the Lessee), will establish the value subject to upward adjustment by the DPL in accordance with the regulations set forth at NMIAC § 145-70-301. In the event that the DPL and the Lessee cannot reach an agreement on the selection of the appraiser, a committee of three (3) arbitrators being selected by the other two will select the appraiser. The cost of appraisal and any arbitration will be borne by the Lessee.

### ARTICLE 7. SECURITY DEPOSIT AND PERFORMANCE BONDS.

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

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

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

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

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

### ARTICLE 8. PERMITS, CONSTRUCTION PLANS, AND SPECIFICATIONS

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

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

### ARTICLE 9. CONSTRUCTION SCHEDULE

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

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### ARTICLE 10. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION

All construction, improvements, renovations, and repairs placed on the Premises shall be constructed in good workmanlike manner and in compliance with applicable laws, regulations, ordinances, and building codes. Principal structures serving the primary use (as defined by Saipan Zoning) of the Premises shall be of reinforced full concrete construction or structural steel for exterior and load bearing walls, roofs, and ceilings; and exterior wall materials shall be engineered and constructed to withstand the harsh local environment and be in serviceable condition for at least 50 years (i.e. no bare or exposed structural steel, framing, or tin roofs, frames structural walls, etc.). Accessory structures (as defined by Saipan Zoning) that serve the principal building may be eoaer-ete framed with reinforced concrete or weather-coated structural steel finished with other materials to accentuate the theme of the primary use. All portions of buildings located upon the Premises exposed to perimeter properties or to the public view shall present a pleasant appearance, and all service areas shall be screened from public view. The Lessee shall, at all times during the Term of this Lease and at the Lessee's sole cost and expense, maintain the Premises and all improvements thereon in good order and repair and in a neat, sanitary and attractive condition.

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

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

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

- (i) Development and construction of facilities and improvements that will occupy both private and

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public lands shall be performed in a manner to facilitate and simplify segregation of improvements on the public lands from those on adjacent private lands upon expiration or termination of the lease, unless a land trust consisting of the private lands and public lands is formed with the DPL as trustee, or fee simple title to the private lands is assigned to DPL, at Lessee's expense prior to development. For the avoidance of doubt, such permitted improvements shall be designed and constructed to be free and independent from private land improvements so that upon expiration or termination of the Lease, when the DPL takes possession of the improvements, such improvements and DPL's (or its designee's) operation thereof shall not be dependent upon adjacent private lands. This restriction shall not apply if the fee simple interest in the private lands is assigned or transferred to the DPL.

(ii) Before commencement of construction or development Lessee shall be required to place on deposit with DPL the amounts necessary to perform such segregation at the expiration or termination of the lease as estimated by an engineer selected by DPL.

(iii) Notwithstanding the foregoing, for minor developments such as parking structures attached to adjacent improvements, if such improvements will be of little value to the DPL, the Secretary may waive the obligations set forth in subsection (a) above if in addition to the Security Deposit the Applicant places on deposit concurrent with the execution of the lease the projected cost of demolition and removal of improvements, and restoration of leased premises.

Lessee shall maintain the quality of the property in serviceable condition for the term of this lease and shall not defer any maintenance that may cause the value of the property to be less than its appraised value had it been properly maintained.

### ARTICLE 11. EXCUSED DELAY OF PERFORMANCE

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

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### ARTICLE 12. ANNUAL REPORTS AND AUDIT

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

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

### ARTICLE 13. PUBLIC BENEFIT OBLIGATION

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

### ARTICLE 14. SUBLEASE, ASSIGNMENT, TRANSFER, CONCESSIONS

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

- (1) Assign, lease, sublease, sell, convey, mortgage, encumber, transfer or dispose of all or any part of Lessee's interest in or to the Premises, or pennit the Premises to be used or occupied by others; or
- (2) Enter into a management contract or other arrangement by which the activities engaged in on the Premises shall be managed and operated by anyone other than Lessee; or
- (3) Grant concessions, pennits, or otherwise contract for or pennit any business or commercial

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enterprise or activities to be constructed or performed on the Premises by any person other than the Lessee, unless the following conditions are met:

- (i) The availability of such concession, permit or enterprise shall be advertised by in a newspaper of general circulation in the Northern Mariana Islands;
- (ii) First priority in granting the concession, permit or enterprise shall be given to bona fide residents of the Northern Mariana Islands;
- (iii) The granting of such concession, permit or enterprise shall be subject to the approval of DPL or its successor.

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

Provided, however, Lessee may sublease this Lease to any affiliate or subsidiary of the Lessee in existence and under joint ownership or control at the time of execution of this Lease, without the consent of the DPL. Provided that such sublease shall in no way relieve Lessee of its responsibilities, obligations, or duties hereunder; and provided further that such assignment or sublease does not result in a change of control as defined in Article 4B.

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

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

For purposes of this section, "Premises" includes any portion of the leased premises or any improvement on the leased premises, and "Lessee" includes Lessee's employees, successors and assigns.

B. Change in Control of Lessee. If the sale, assignment, transfer, use, or other disposition of any of the issued and outstanding capital stock of Lessee (or of any successor or assignee of Lessee which is a corporation), or of the interest of any general partner in a partnership owning the leasehold estate created hereby, or of the interest of any

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member of a joint venture, syndicate, or other group which may collectively own such leasehold estate, shall result in changing the control of Lessee or such other corporation, partnership, joint venture, syndicate, or other group, then such sale, assignment, transfer, use, or other disposition shall be deemed an assignment of this Lease and shall be subject to all the provisions of this Lease with respect to assignments.

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

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

For the purposes of this Article, "control" of any corporation shall be deemed to be vested in the person or persons owning more than fifty percent (50%) of the voting power for the election of the Board of Directors of such corporation, and "control" of a partnership, joint venture, syndicate, or other group shall be deemed to be vested in the person or persons owning more than fifty percent (50%) of the general partner's interest in such partnership or of the total interest in such joint venture, syndicate, or other group. For purposes of determining control by a person, members of the family of any assignor or transferor shall be included. For purposes of this section, "members of the family" include a person's spouse, grandparents, parents, brothers and sisters, nephews and nieces, and children by adoption and by blood. Lessee shall furnish an annual statement to the DPL that includes the names and addresses of all stockholders in any corporation or general partners in any partnership holding this lease, showing the number of shares of stock owned by each stockholder of such corporation, or the respective interest of the partners in such partnership, as the case may be. Such statement shall be signed under oath by an officer of each corporation and by a general partner of each partnership holding this lease.

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

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and respective interest of each person or entity with an interest in the partnership, joint venture, syndicate or other group.

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

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

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

### ARTICLE 15. STATUS OF SUBLEASES

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

### ARTICLE 16. AGREEMENTS FOR UTILITY LINES

The Lessee shall have the right to enter into agreements with public utility companies or with the Government of the Commonwealth of the Northern Mariana Islands and/or any of its agencies to provide utility services, including water, electricity, telephone, television, and sewer lines necessary to the full enjoyment of the Premises and the development thereof in accordance with the provisions of this Lease. Subject to prior consultation with Lessee, the DPL reserves the authority to grant utility rights-of-way across the Premises. The Lessee shall furnish to the DPL executed copies thereof together with a plat or diagram showing the true location of the utility lines to be constructed in accordance therewith. Nothing herein contained shall be deemed to imply an obligation on the part of DPL to furnish Lessee with any water services or

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other utilities whatsoever and DPL does not guarantee the availability of same. It is expressly understood that the Lessee shall obtain such services at its sole cost and expense.

### ARTICLE 17. RIGHT OF MORTGAGE

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

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

Any mortgage entered into shall be in strict compliance with all applicable laws and regulations, including mortgage security instrument laws, or applicable constitutional provisions, in order to be valid and enforceable. The loan secured by this leasehold mortgage shall not exceed the appraised value of the Premises. All funds received pursuant to any mortgage of the leasehold property shall be expended only for leasehold improvements within the Northern Mariana Islands.

### ARTICLE 18. RIGHTS OF LEASEHOLD MORTGAGEES

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

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

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

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

D. Termination. Notwithstanding while the leasehold mortgage remains unsatisfied of record, if any event or events shall occur which shall entitle the DPL to terminate this Lease, and if before the expiration of thirty (30) days after the date of service of notice of termination by the DPL all rent and other payments herein provided for then in default is fully paid, and the Lessee shall have complied or shall be engaged in the work of complying with all the other requirements of this Lease, if any, then in default, then in such event the DPL shall not be entitled to terminate this Lease, and any notice of termination theretofore given shall be void and of no force or effect, provided, however, nothing herein contained shall in any way affect, diminish or impair the right of DPL to terminate this Lease or to enforce any other subsequent default in the performance of any of the obligations of the Lessee hereunder.

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

F. First Mortgage Only. Whenever reference is made herein to the holder of the mortgage on this Lease or the Premises, the same shall be deemed to refer only to the holder of the first record mortgage on this Lease or the Premises, if any, as shown by the records of the Commonwealth Recorder's office. Notice of such mortgage shall be sent to the DPL by certified or registered mail, and include a copy of the recorded mortgage

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certified by the Commonwealth Recorder's office as to the date and time of recordation. Any notice or other communication to any such mortgagee by the DPL shall be in writing and shall be served either personally or by certified or registered airmail address to such holder or mortgagee at his/her address appearing on such records or at such other address as may have been designated by notice in writing from such holder or mortgagee to the party serving such notice of communications. Nothing contained in this Article shall be construed so as to require the DPL to serve notices upon or recognize any leasehold mortgagees other than the holder or such first mortgage on this Lease or the Premises, as aforesaid.

### ARTICLE 19. STORM, FIRE AND DAMAGE INSURANCE

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

### ARTICLE 20. LIABILITY INSURANCE

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The Lessee shall, from the Commencement Date of this Lease, procure and maintain in force during the entire term of this Lease or any extension thereof, at its sole expense, commercial general liability insurance (all risk) for the Premises and operations conducted thereon, with the DPL and the CNMI Government as named co-insured, in a company or companies authorized to do business in the Northern Mariana Islands, with a minimum coverage of \$1,000,000 / \$5,000,000 in the aggregate or such higher amounts as the DPL may reasonably require. Copies of such policies shall be delivered to the DPL within thirty (30) days of their issuance, and shall contain a clause requiring at least thirty (30) days' written notice shall be given to the DPL prior to cancellation or refusal to renew any such policies. Lessee agrees that if such insurance policies are not kept in force during the entire term of this Lease, the DPL may procure the necessary insurance, pay the premium therefore, and such premium shall be repaid to the DPL immediately upon the DPL's demand.

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

### ARTICLE 21. NOTICES

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

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

LESSEE: [Input from Lease Data Sheet]

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

### ARTICLE 22: RESERVATION OF EASEMENTS/MINERAL RIGHTS

This Lease shall be subject to all existing easements, roadways, and rights-of-way across or through the Premises. The DPL and the CNMI Government retain the right at all times to cause the construction, maintenance, operation or repair of public utilities or parts thereof on the premises, including, but not necessarily limited to, electric power transmission, telegraph, telephone and pipelines, and for roads and other community projects. Lessee shall be entitled to no compensation from the DPL or the CNMI government for

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such uses of the Premises. The DPL hereby reserves all rights to minerals and resources on the Premises, including the right of access to and use of such parts of the surface of the Premises as may be necessary for the mining and saving of said minerals. The right of ingress to and egress from the Premises upon which public utilities and other improvements have been constructed, and for the purposes of inspection by the DPL, as well as for the performance of official duties in the maintenance, operation and repair of such utilities and other improvements is hereby reserved.

### ARTICLE 23. RIGHT OF INSPECTION; INGRESS/EGRESS

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

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

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

### ARTICLE 24. CONDEMNATION

The DPL and Lessee covenant and agree that in the event the whole property hereby leased shall be taken in condemnation proceedings or by any right of eminent domain, or otherwise, for public purposes, then and on the happening of any such event, the DPL or Lessee, may terminate this Lease and the Term hereby granted and all the rights of the Lessee hereunder, and the rent shall be paid up to the date of such condemnation or termination and any unearned rent paid in advance by the Lessee shall be refunded pro rata. In the event any portion of the property hereby leased is condemned or taken by right of eminent domain or otherwise for public purposes, thereby rendering the leased property unsuitable for the purpose of Lessee as stated in Article 2 above, then and on the happening of such event Lessee may terminate this Lease and the Term hereby granted, and all the rights of the Lessee hereunder and the rent shall be paid up to the date of such termination or condemnation and any unearned rent paid in advance by the Lessee shall be refunded pro rata. If Lessee does not terminate this Lease upon such event, then the rent shall be reduced in proportion to the land taken as such bears to the total area of land leased. The DPL and the Lessee may each independently file separate claims

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in such proceedings for the purpose of having the value of their respective interests determined, and the award shall be paid accordingly; but if the public or governmental authorities shall object or refuse to permit separate claims to be proved and/or distributed in such manner, the DPL will prosecute all claims for damages to the Premises on behalf of both the DPL and the Lessee (and authority to do so is hereby granted), and after deducting all reasonable expenses incurred by the DPL incident thereto, the balance of said award shall be divided between the DPL and the Lessee as established in that proceeding. In the event the DPL prosecutes the claim on behalf of both parties hereto, all such awards shall be paid to the DPL for the account of the DPL and Lessee as hereinbefore provided.

### ARTICLE 25. COVENANT AGAINST DISCRIMINATION

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

### ARTICLE 26. ABANDONMENT / UNDERUTILIZATION OF PREMISES

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

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

### ARTICLE 27. DEFAULT

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

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

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

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

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

Upon the occurrence of Lessee's default of this Lease as described above, all Lessee's rights under this Lease are terminated, including, but not necessarily limited to Lessee's right to use the Premises. Any notices, as may be required by law or this Lease, shall be delivered as provided by Article 2I of this lease.

### ARTICLE 28. REMEDIES

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

### ARTICLE 29. ACCORD AND SATISFACTION

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

### ARTICLE 30. WAIVER OF BREACH

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

### ARTICLE 31. EXPENSE OF ENFORCEMENT

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If an action is brought by the DPL for rent or any other sums of money due under this Lease, or if any action is brought by the DPL to enforce performance of any of the covenants and/or conditions of this Lease, Lessee shall pay reasonable attorney's fees to be fixed by the Court as a part of the costs in any action. Use of in-house counsel or the Office of Attorney General shall not be a basis to reduce or avoid an award of such costs. In such event, fees shall be calculated by multiplying the prevailing hourly rate for private counsel in the Commonwealth by the reasonable number of hours spent in connection with such enforcement activities.

### ARTICLE 32. INDEMNIFY, DEFEND AND HOLD HARMLESS

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

### ARTICLE 33. QUIET ENJOYMENT

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

### ARTICLE 34. GOVERNMENT REQUIREMENT

Lessee shall procure all licenses, certificates, permits, and other required authorizations from any and all other governmental authorities having jurisdiction over the Operation of the Lessee under this Lease. Lessee shall provide the DPL with copies of all such licenses, certificates, permits and

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other required authorizations from other governmental authorities within three (3) months after the Commencement Date of this Lease.

### ARTICLE 35. UNLAWFUL USE AND COMPLIANCE WITH LAWS

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

### ARTICLE 36: HOLDOVER CLAUSE

If the Lessee fails to vacate the Premises upon the expiration, termination or cancellation of this Lease, Lessee shall be deemed a holdover Lessee. Such holdover Lessee shall be obligated to pay the DPL a holdover fee during the holdover period of not less than 150% of the monthly-prorated Base Rent and Additional Rent for the Five Year Period immediately preceding the holdover period as provided in Article 3A. Payment of such liquidated damages shall in no way constitute a limitation upon any other rights or remedies the DPL may be entitled to pursue for violation of the Lease, for trespass or illegal possession or for any other cause of action arising out of holdover Lessee's failure to vacate the Premises including the right to evict the Lessee without court action, and the cost thereof to be paid by the Lessee.

### ARTICLE 37. CONDITION OF PREMISES

The Lessee acknowledges that it has examined the Premises prior to the making of this Lease and knows the conditions thereof, and that no representations or warranties other than those expressed herein have been made by the DPL. Lessee hereby accepts the Premises as-is in their present condition at the Commencement Date of this Lease.

### ARTICLE 38. VACATING THE PREMISES

Upon the expiration or earlier termination or cancellation of the Lease, the Lessee shall quietly and peacefully vacate the Premises and surrender the possession thereof. The DPL may, at its option, require the removal of all improvements and property on the Premises, or it may require all improvements, except removable personal property, trade fixtures and equipment, remain on the Premises and become the property of the DPL after termination of this Lease. Upon the failure or neglect of the Lessee to remove her property from the Premises or restore the Premises, the DPL, its officers or agents, may enter the Premises and remove all persons and property therefrom without recourse to any action or proceeding at law or in equity. Such removal

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and/or restoration shall be at the cost and expense of the Lessee, and no claim for damages of any nature whatsoever against the DPL, the CNMI Government or any officer or agent thereof shall be created by or made on account of such removal.

### ARTICLE 39. PUBLIC AUDITOR

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

### ARTICLE 40. GENERAL PROVISIONS AND DEFINITIONS

A. Waiver. No waiver of any default of the Lessee hereunder shall be implied from any omission by the DPL to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect the default other than the default specified in the express waiver, and that only for the time and to the extent therein stated. One or more waivers of any covenant, term or condition of this Lease by the DPL shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the DPL to or of any act by the Lessee requiring the DPL's consent or approval shall not be deemed to waive or render unnecessary the DPL's consent or approval to or of any subsequent or similar acts by the Lessee. The acceptance of Lease fees by the DPL shall not be deemed to be a waiver of any of the terms or conditions, including the remedies of the DPL. No covenant of this Lease shall be deemed waived by either party unless such waiver is in writing and signed by the party waiving the covenant.

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

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

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

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

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

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

The following items may be deducted from the gross receipts:

1) credits for the exchange of goods or merchandise from the premises to another store or stores owned or operated by the Lessee, its parent or affiliate, where such exchange is made solely for the convenience of business and not for the purpose of consummating a sale previously made directly or indirectly from or upon the Premises;

2) to the extent the same shall have been included in "Gross Receipts", there shall be deducted credits to customers for returned merchandise, merchandise trade-ins, exchanges, and merchandise cancellations;;and

3) the amount derived from the sale or other disposition of fixtures, goodwill, improvements, furnishings, equipment, accessory, appliance, utensils or any other item of property: (i) which is either sold outside the ordinary course of the Lessee's business; or (ii) which is not acquired or held by the Lessee as a stock-in-trade or inventory for resale in the ordinary course of the Lessee's business

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### ARTICLE 41. LEASE AGREEMENT BINDING

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

### ARTICLE 42. ADDITIONAL OBLIGATIONS OF LESSEE

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

### ARTICLE 43. PERSONAL /PARENT COMPANY GUARANTEE

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

- A. Guarantors, jointly and severally, will in all respects guarantee the due and proper performance of the Lease and the due observance and prompt performance of all obligations, duties, undertakings, covenants, warranties, and conditions by or on the part of the Lessee contained therein and to be observed and performed by Lessee, which guarantee shall extend to included any variation or addition to the Lease throughout its Term and any permitted extension thereof.
- B. If Lessee fails to carry out, observe or perform all any of such obligations, duties undertakings, covenants, warranties and/or conditions under the Lease (unless relieved from the performance of any part of the Lease by statute or by the decision of a court or tribunal of competent jurisdiction) the Guarantors will be jointly and severally liable for and shall indemnify the DPL against all losses, damages, costs and expenses, whatsoever which the Beneficiary may incur by reason or in consequence of any such failure to carry out observe
- C. The Guarantors, (or any one of them), shall not be discharged or released from this Guarantee by the occurrence of any one or more of the following:-

- I. Any alteration to the nature of extent of the Lease;
2. Any allowance of time, forbearance, indulgence or other concession granted to the Lessee under the Lease or any other compromise or settlement of any dispute between the DPL and the Lessee

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3. The liquidation, bankruptcy, administration, absence of legal personality, dissolution, incapacity or any change in the name, composition or constitution of the Lessee or the Guarantor(s).

- D. This Guarantee is a continuing guarantee and accordingly shall remain in operation until all obligations, duties, undertakings, covenants, conditions and warranties now or hereafter to be carried out or performed by the Lessee under the Lease shall have been satisfied or performed in full and is in addition to and not in substitution for any other security which the DPL may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security and without taking any other steps or proceedings against the Lessee.
- E. So long as any sums are payable (contingently or otherwise) by the Lessee to the DPL under the terms of the Lease then the Guarantors shall not exercise any right of set off or counterclaim against the Lessee or any other person or prove in competition with the DPL in respect of any payment by the Guarantors hereunder and in case either Guarantor receives any sum from the Lessee or any other person in respect of any payment of the Guarantors hereunder the respective Guarantor shall hold such monies in trust for the DPL so long as any sums are payable (contingently or otherwise) under this Guarantee.
- F. Guarantors will not, without prior written consent of the DPL hold any security from the Lessee or any other person in respect of the Guarantors' liability hereunder or in respect of any liabilities or other obligations of the Lessee to the Guarantors. The Guarantors will hold any security held by it in breach of this provision in trust for the DPL.
- G. This Guarantee is in addition to and not in substitution for any present and future guarantee lien or other security held by the DPL. The DPL's rights under this Guarantee are in addition to and not exclusive of those provided by law.

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

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

LESSEE

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

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

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NOW IN CONSIDERATION OF THE SUM OF ONE UNITED STATES DOLLAR (\$1.00) (THE RECEIPT AND SUFFICIENCY OF WHICH THE GUARANTORS HEREBY ACKNOWLEDGE) THE GUARANTORS HEREBY COVENANT WITH THE DPL AS IS SET FORTH IN ARTICLE 43 ABOVE.

GUARANTORS GUARANTORS

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

Name: \_\_\_\_\_

Title: President

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

Name: \_\_\_\_\_

Title: President

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### SCHEDULE 1 Lease Data Sheet

Permitted Purpose of Lease:

Lessee Name:

Form of Business Entity:

Lessee's Representative:

Permitted Purpose of Lease:

Lease Term:

Property Description:

Parent Companies / Guarantors:

Fee Simple Value of Premises (applicable during first 5 years of term):

Base Rent during initial  $S$  year period (in dollars):

Additional Rent (as percent of BGR):

Security Deposit:

Public Benefit Obligations:

Additional Obligations of Lessee:

Additional Restrictions upon Lessee:

Specific Authorizations (permitted under body of lease):

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Modified, [1 CMC § 3806\(b\)](#).

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## TITLE 145: DEPARTMENT OF PUBLIC LANDS

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History: Amdts Adopted 39 Com. Reg. 39605 (May 28, 2017); Amdts Proposed 39 Com. Reg. 39351 (Mar. 28, 2017); Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).





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# Tinian

## Proposed Penrul Fees For Signboards on Public Right-of-way



## LEGEND

- Primary ZollC16  
 - - - - Secondary Zones  
 Tcriaiy Zones

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History: Adopted 38 Com. Reg. 37440 (Jan. 28, 2016); Emergency and Proposed 37 Com. Reg. 37247 (Nov. 28, 2015) (effective for 120 days from Nov. 28, 2015).

Commission Comment: The Commission rearranged these maps into Appendix B to fit harmoniously in the Code.