

ASSET DISPOSITION PROGRAM (ADP)

**SELECTION OF BCDA'S PARTNER IN THE DEVELOPMENT OF THE BCDA ICONIC BUILDING AT THE
7,275-SQUARE METER LOT 9 BLOCK 6 IN THE NORTH BONIFACIO DISTRICT OF BONIFACIO
GLOBAL CITY, TAGUIG CITY**

ADP BID BULLETIN NO. 9

27 June 2018

Please be advised of the following further clarifications/revisions/supplements to the Terms of Reference for the subject disposition.

The revisions stated herein are the official response of the ADP Committee.

	QUESTIONS/COMMENTS	ANSWERS
1	Is BCDA open in increasing the Gross Floor Area and commit to secure the adjustment in the GFA?	Yes, BCDA is willing to increase the GFA from 40,000-sqm to a maximum of 50,000-sqm . BCDA shall be responsible in securing its approval from the Planning Review Board of North Bonifacio District. Improvements on the design shall be done jointly by BCDA, Winning Bidder and Design Consultant during the Detailed Design Stage. BCDA reserves its right to approve all revisions proposed by the Winning Bidder.
2	Are there any services diversion works and/or works outside the site boundary that will be required to be carried out by the Winning Bidder?	BCDA shall provide a parcel of land which the Winning Bidder may develop into an off-site parking subject to the approval of the North Bonifacio, Bonifacio Global City, Planning Review Board.

Further, the following TOR provisions are revised as follows:

Item	Original TOR	Revisions on the TOR
1	Article IV Mode of Disposition and Minimum Bid Price/Requirements, Section 2	The subject of the bid shall be the <u>Annual Fixed Lease (minimum bid) starting on the 5th year</u> of the Initial Lease Period which shall not be lower than Five Million Pesos

	<p>The subject of the bid shall be the <u>Annual Fixed Lease (minimum bid) starting on the 5th year</u> of the Initial Lease Period which shall not be lower than Twenty Five Million Pesos (PhP25,000,000.00) exclusive of twelve percent (12%) Value-Added Tax (VAT). The Annual Fixed Lease shall be subject to an annual escalation rate as defined in Article II hereof.</p>	<p>(PhP 5,000,000.00) exclusive of twelve percent (12%) Value-Added Tax (VAT). The Annual Fixed Lease shall be subject to an annual escalation rate as defined in Article II hereof.</p> <p>In addition to the Annual Fixed Lease, BCDA shall also require a Five Percent (5%) Annual Variable Share on the annual gross revenues of the Winning Bidder arising from the sub-lease of its leasable office and retail spaces. Payment of the BCDA variable share shall start on the 5th year of the Initial Lease Period.</p> <p>For year 5, the computation of the 5% BCDA Annual Variable Share shall cover all collections starting year 1 to 4, if any. For year 6 onwards, The computation of the 5% BCDA Annual Variable Share shall be based on the actual collection from the preceding year of operation.</p>
<p>2</p>	<p>Article V Lease Payments, Terms and Renewal Section 1</p> <p>Upon signing of the Contract of Lease which shall be the start of the effectivity of lease, the Winning Bidder shall remit to BCDA <u>the Advance Lease Rental equivalent to the lease payment for the 5th and 6th year, subject to annual escalation rate.</u></p>	<p>Upon signing of the Contract of Lease which shall be the start of the effectivity of lease, the Winning Bidder shall remit to BCDA <u>the Advance Lease Rental equivalent to the Annual Fixed Lease payment for the 5th and 6th year, subject to annual escalation rate.</u></p>
<p>3</p>	<p>Article VI Rights and Responsibilities of the Parties Section 1 Rights and Responsibilities of the Winning Bidder and Penalties for Violation</p> <p>Section 1.2 Remit the <u>Advance Lease Rental for the 5th and 6th year plus annual escalation upon signing of the</u></p>	<p>Section 1.2 Remit the <u>Advance Lease Rental for the 5th and 6th year plus annual escalation upon signing of the Contract of Lease,</u> pay the Annual Fixed Lease and 5% Annual Variable Share on gross revenues, every year without need of demand; on the anniversary date of the contract.</p>

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	<p>Contract of Lease and pay the Annual Fixed Lease every year without need of demand;</p>	
<p>4</p>	<p>Article VII Bidding Procedure Section 3 Submission of Bids Bidders shall submit a Portable Document Format (PDF) copy of their bids comprising their <i>Eligibility Documents</i> and <i>Final Proposal</i> electronically through adpcom@bcda.gov.ph no later than the deadline specified in Article IX <i>Timetable of Activities</i>. The <i>Eligibility Documents</i> and <i>Final Proposal</i> should be separate PDF files and protected by a password.</p> <p>BCDA shall not receive any physical submission of <i>Eligibility Documents</i> and <i>Final Proposal</i> from any Bidder on the deadline specified in Article IX <i>Timetable of Activities</i>.</p> <p>Interested bidders who submitted bids electronically shall bring two (2) original and two (2) copies of their <i>Eligibility Documents</i> and <i>Final Proposal</i> during the opening and preliminary examination of bids specified in Article IX <i>Timetable of Activities</i>.</p> <p>The physical copy of the <i>Eligibility Documents</i> and <i>Final Proposal</i> shall be in two (2) separate sealed envelopes, as follows:</p> <ul style="list-style-type: none"> ● First Envelope containing two (2) copies of the Eligibility Documents, as listed in Article VIII, Section 2.2, appropriately marked as: “<i>First Set: Eligibility Documents</i>” and “<i>Second Set: Eligibility Documents</i>”; and 	<p>Section 3 Submission of Bids</p> <p>Bidders shall submit their bids comprising their <i>Eligibility Documents</i> and <i>Financial Proposals</i> no later than the deadline specified in Article IX <i>Timetable of Activities</i>. The <i>Eligibility Documents</i> and <i>Final Proposals</i> shall be submitted simultaneously, in two (2) separated sealed envelopes:</p> <ul style="list-style-type: none"> ● First Envelope containing two (2) copies of the Eligibility Documents, as listed in Article VII, Section 2.2, appropriately marked as: “<i>First Set: Eligibility Documents</i>” and “<i>Second Set: Eligibility Documents</i>”; and ● Second Envelope containing two (2) copies of the Final Proposal, as described in Article VII, Section 3, appropriately marked as: “<i>First Set: Final Proposal</i>” and “<i>Second Set: Final Proposal</i>”.

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	<ul style="list-style-type: none">● Second Envelope containing two (2) copies of the Final Proposal, as described in Article VIII, Section 3, appropriately marked as: "<i>First Set: Final Proposal</i>", and "<i>Second Set: Final Proposal</i>".	
5	<p>Article VIII Eligibility Check, Evaluation of Bids and Selection of Winning Bidder Section 3.1 Bid Security</p> <p>In the amount equivalent to ten percent (10%) of the submitted Bid, in the form of bank manager's check or cashier's check. Xxx</p>	<p>In the amount equivalent to Ten Million Pesos, in the form of bank manager's check or cashier's check. Xxx</p>

The clarifications herein issued amend, modify or revise any provision in the TOR and/or bid bulletins which are inconsistent or contradictory thereto.

Attached is the copy of the Draft Contract of Lease which is subject to the legal comments of the Office of the Government Corporate Counsel.

Thank you for your continued interest in BCDA's Asset Disposition Program.

FOR THE ADP-COMMITTEE FOR THE BCDA ICONIC BUILDING:


JOSHUA M. BINGCANG

Chairman

Asset Disposition Program Committee *how*

CONTRACT OF LEASE

THE PUBLIC IS INFORMED:

This **CONTRACT OF LEASE** (*hereinafter the CONTRACT for brevity*) executed by and between:

The **BASES CONVERSION AND DEVELOPMENT AUTHORITY** (*hereinafter "BCDA" for brevity*), a government instrumentality vested with corporate powers created by virtue of Republic Act No. 7227, as amended by Republic Act No. 7917, with principal office address at BCDA Corporate Center, 2/F Bonifacio Technology Center, 31st Street Corner 2nd Avenue, Bonifacio Global City, Metro Manila, through its President & CEO, **VIVENCIO B. DIZON**, who is duly authorized for this purpose as evidenced by the Secretary's Certificate dated _____, attached as **Annex A**;

-and-

(Each a **PARTY**, and collectively, the **PARTIES**)

- Antecedents -

BCDA is the beneficial owner of approximately 7,275-square meter property identified as Lot 9 Block 6 located at the North Bonifacio District in the Bonifacio Global City.

On 06 December 2016, the Board of Directors of BCDA approved the development of its new corporate office on the said property, which is envisioned to be an iconic landmark representing not only the Bonifacio Global City, but the Philippines in general (*hereinafter the "BCDA Iconic Building Project" for brevity*).

On 5 June 2017, BCDA selected the iCone Tower design, designed by Henning Larsen Architects as the winning conceptual design for the BCDA Iconic Building Project.

BCDA conducted a competitive bidding to consider proposals from the interested eligible private sector participants for the long-term lease of the property, on an *as-is, where-is* basis, and with the end view of developing therein the Icone Tower.

The **LESSEE** has submitted the Highest Ranked and Complying Bid based on the Terms of Reference (TOR) for the disposition of the property.

In view thereof, the Board of Directors of BCDA passed on _____ Resolution No. _____, Series of _____, approving the award of this **CONTRACT** to the **LESSEE**.

ACCORDINGLY, in consideration of the foregoing premises, and for the stipulations and covenants hereinafter provided, the **PARTIES** agree and bind themselves to the following:

ARTICLE I GENERAL AGREEMENTS

Section 1. THE CONTRACT

This **CONTRACT** is to lease the **PROPERTY** for a period of fifty (50) years (Initial Lease Period), renewable for a maximum period of twenty-five (25) years under the same terms and conditions (except for the payment of lease rentals), with:

- a. an Option to Purchase on the 25th year of the Initial Lease Period; or
- b. an Option to Renew on the 50th year, should there be no exercise of the Option to Purchase.

Section 2. THE PROPERTY

The **PROPERTY** is a parcel of land with a total land area of approximately 7,275 square meters. It is located on the North Bonifacio District of Bonifacio Global City, Taguig City. The **PROPERTY** is bounded on the north by the 11th Drive, on the east by 11th Avenue, on the south by Lane T, and on the west by Lane C.

Below are the Lot Information:

Title	TCT 2152 P, registered in the name of Fort Bonifacio Development Corporation (FBDC)* *FBDC and BCDA are in the process of transferring the title to BCDA
Lot Number	Lot 9 Block 6
Zoning	Mixed-use with limited retail (40% buildable : 60% open park)
Lot Area	7,275 square meters
Floor Area Ratio	6.9
Gross Floor Area (GFA)	50,000 square meters

Exemption in the computation of GFA	Museum, Gallery and Observatory Deck areas are excluded in the computation of the GFA
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Section 3. DEFINITION OF TERMS

As used in this Agreement, the following terms shall have the meanings ascribed to them.

“Annual Fixed Lease” shall mean the amount to be remitted by the LESSEE to BCDA as payment for the rent of the PROPERTY.

“Annual Variable Share” shall mean the amount to be remitted by the LESSEE to BCDA equivalent to five percent (5%) on the annual gross revenues arising from the lease and sub-lease of its leasable office and retail spaces.

“Basic Architectural Finishes and Fit-outs” shall mean the internal surfaces finishes, raised floor with finishing, suspended ceilings with lighting fixtures, blinds, distribution of mechanical and electrical services, installation of reception area and installation of Board Rooms. Such include adequate connection and tapping points for telecom.

“Bonifacio Global City North Bonifacio District- Design Standards and Guidelines” shall refer to the design standards and guidelines established to, generally, facilitate the accurate interpretation and implementation of the intent, purpose and provisions of the Master Plan for the North Bonifacio District of the Bonifacio Global City, and particularly, govern the development of the Property and the implementation of the Project, to the extent applicable.

“DAED” shall refer to the Detailed Architectural and Engineering Design of the BCDA Iconic Building Project.

“Defects Liability Period” shall mean one (1) year from the issuance of the Certificate of Completion and turnover of the BCDA office spaces, museum, gallery, and observatory. During such Period, the LESSEE shall rectify any defect on the spaces, and shall make and pay for any corresponding costs associated to such rectification.

“Escalation Rate” Equivalent to five percent (5%) which shall be applied annually starting on the Annual Fixed Lease for the 6th year of the Initial Lease Period.

“Floor Area Ratio” shall refer to the factor for the determination of development density. When the FAR of a lot is multiplied by the land area of the lot, this shall result in the total permissible Gross Floor Area of the building.

“Gross Floor Area” Means the area contained within the external walls (or in the absence of walls, the external perimeters) of any building(s) to be erected on a lot measured at each floor or level (including any floor below the level of the ground) together with the area of each balcony in such building(s) which shall be calculated from the overall dimensions of the balcony (including the thickness of the sides).

“Initial Lease Period” shall mean the lease term for 50 years.

“Option to Purchase” shall mean the option of the LESSEE to purchase the PROPERTY on the 25th year of the Initial Lease Period.

“Property” shall refer to the 7,275 square meters parcel of land subject of the project located on the North Bonifacio District of the Bonifacio Global City, Taguig City, Metro Manila, and more particularly described in Article I Section 2 hereof.

“Planning Review Board of North Bonifacio District Bonifacio Global City” shall refer to the policy-making body that has exclusive jurisdiction to set the policies and restrictions in the North District of the Bonifacio Global City.

“Reimbursable Amount” shall mean the PhP 215,000,000.00 representing all the advances made and expenses incurred for the BCDA Iconic Building Project design.

ARTICLE II RIGHTS AND RESPONSIBILITIES OF THE PARTIES

Section 1. RIGHTS AND RESPONSIBILITIES OF THE LESSEE

The LESSEE shall:

- 1.1 Strictly comply with the terms and conditions of this **CONTRACT** and maintain all warranties and representations in good standing for the duration of this **CONTRACT**.
- 1.2 Finance and implement the design and undertake the development of the Project. It is understood that the BCDA-approved Detailed Architectural and Engineering Design (DAED) of the BCDA Iconic Building shall be made part of this **CONTRACT**.
- 1.3 Reimburse BCDA all the advances made and expenses incurred for the iconic building design amounting to Two Hundred Fifteen Million Pesos Only (PhP 215,000,000.000), upon signing of this **CONTRACT**.
- 1.4 Complete the development of the **PROPERTY** within three (3) years from the approval of the **DAED** of the BCDA Iconic Building to the **LESSEE**.

Relatedly, the **LESSEE** may utilize for free, parcel of land dedicated to be used as a staging area exclusively for the Project during the construction period of the BCDA Iconic Building Project.

- 1.5 Strictly comply and implement the **DAED** of the **BCDA** Iconic Building.

- 1.6 Commence excavation works within three (3) months from signing of the **CONTRACT**.
- 1.7 Provide **BCDA** with the Office Space at the top floors of the BCDA Iconic Building, with basic architectural finishes and fit-outs and turn-over the same to **BCDA** without cost and free of lease to **BCDA**.
- 1.8 Provide the BCDA the Gallery and Museum Space with basic architectural finishes and turn-over the same to BCDA, without cost and free of lease.
- 1.9 Provide the BCDA the Observatory Space with basic architectural finishes, vegetation, public arts, and human sized statues, and turn-over the same to **BCDA** without cost and free of lease.
- 1.10 Provide BCDA with contiguous and adequate parking spaces for cars and bicycles proportionate to the BCDA Office Space in accordance with the parking ratio per GFA under the BGC North Bonifacio DSG and turn-over the same to **BCDA** without cost and free of lease.

Relatedly, the development of the Gallery, Museum and Observatory Space shall be allocated with sufficient parking spaces in accordance with the parking ratio per GFA under the BGC North Bonifacio DSG and turn-over the same to **BCDA** without cost and free of lease.

- 1.11 Enjoy a rent free period of four (4) years reckoned from the signing of the **CONTRACT**.
- 1.12 Undertake principally, by itself or through a third-party contractor, the development operations and maintenance of the public open space. The service level required from the said third-party contractor shall be agreed upon with the Bonifacio Estate Services Corporation (BESC). Relatively, the **LESSEE** understands that only minimal cleaning activities to the public open space's vicinity shall be performed by the BESC.
- 1.13 Secure approval from **BCDA** and/or BESC prior to the implementation thereof for any commercial activity which may be established in such public open space.

- 1.14 Be a member of and perform all duties and responsibilities required from members of the Bonifacio Global City Estate Association (BGCEA), including but not limited to payment of association dues/fees, contribution to the Art Fund in the amount prevailing or imposed by BGCEA.
- 1.15 Submit to **BCDA** not later than six (6) months before the start of the 7th year of the lease, a bank guaranty or irrevocable letter of credit issued by a Universal or Commercial Bank acceptable to **BCDA** to fully secure the Annual Fixed Lease for the **PROPERTY** for year 7 until the end of the lease.
- 1.16 Obtain, at its own cost and not later than two (2) months after completion of construction, an all-risk insurance coverage for improvements introduced during the term of the lease in an amount equivalent to its replacement value with **BCDA** as the beneficiary, and submit to **BCDA** the original insurance policy and the corresponding Official Receipt within five (5) days from the issuance of said insurance policy.
- 1.17 Pay, at its sole account, all applicable taxes, licenses, fees and charges due in the implementation of this **CONTRACT**, the **PROPERTY** and its improvements, and those that may be imposed by law on the **LESSEE** during the entire term of this **CONTRACT**. Where any tax is required by law to be withheld from payment to **BCDA**, the **LESSEE** shall submit a certificate of the taxes withheld at the time of payment to **BCDA**, otherwise, any such taxes withheld will not be considered as authorized deduction.
- 1.18 Provide a **Defects Liability Period** of one (1) year from the date of the official turn-over of the **BCDA** Office, Museum, Gallery Observatory Spaces and Parking Spaces. During such Period, the **LESSEE** shall rectify any defect on the spaces, and shall make and pay for any corresponding costs associated to such rectification.
- 1.19 Abide by the conditions or encumbrances imposed or annotated on the title of the **PROPERTY**, including, but not limited to the land use limitations of the **PROPERTY**.
- 1.20 Upon expiration or termination of the lease term, turn-over/transfer ownership of the Improvements introduced by the **LESSEE** on the **PROPERTY** to **BCDA**.

- 1.21 Prepare the Construction Documentation including the Building Information Modeling (level of detail is 400) of the BCDA Iconic Building, subject to the review and approval of **BCDA**.

The professional fees and other related cost corresponding to preparation and review shall be borne by **LESSEE**.

- 1.22 Assume the cost for the Common Use Service Area (CUSA) fee which may be charged for the use of the BCDA Office Space, Gallery, Museum and Observatory.
- 1.23 Submit to **BCDA** a Service Quality Manual at least six (6) months prior to the completion of the BCDA Iconic Building Project.

Should the **LESSEE** fail to perform its obligation under Paragraph 1 of Section 1.4 above, the **LESSEE** shall be liable to pay BCDA the amount equivalent to One Hundred Thousand Pesos (Php 100,000.00), for every day of delay in the project construction.

Should the **LESSEE** fail to perform any of its responsibilities as specified in Sections 1.5 to 1.10 above after written demand, **BCDA** shall have the option to terminate this **CONTRACT** as well as the option to re-bid the **PROPERTY**. In such instance, the **LESSEE** shall forfeit any and all monies so far remitted to **BCDA** in relation to the lease of the **PROPERTY**.

Should the **LESSEE** fail to perform any of its responsibilities stipulated in Sections 1.15 and 1.16 above after written demand, the **LESSEE** shall be liable to pay **BCDA** the amount of 1/10 of one percent (1%) of the Annual Fixed Lease of the **LESSEE**, for every day of delay in the submission of the guaranty and the original insurance policy.

This Section does not preclude **BCDA** from exercising any right or remedy provided in the TOR or this **CONTRACT**.

Section 2. RIGHTS AND OBLIGATIONS OF BCDA

BCDA shall:

- 2.1 Give the **LESSEE** the sole right to lease, develop, operate and manage the **PROPERTY** and the BCDA Iconic Building, provided that the right shall be exercised subject to the restrictions and terms and conditions of the agreements entered into between **BCDA** and the **LESSEE**;
- 2.2 Deliver possession of the **PROPERTY** to the **LESSEE**, on an "As-is, Where-is" basis, upon the execution of this **CONTRACT**.

- 2.3 Timely provide all the necessary approvals, information, documents, and assistance to the **LESSEE** which the **LESSEE** may need in its planning, development, construction, permits and licenses, and government compliance in relation to this **CONTRACT**.
- 2.4 Retain and absolutely enjoy the naming rights on the buildings and improvements it shall introduce on the **PROPERTY**.
- 2.5 Hire, commission and engage the services of a Construction Management and Supervision Consultant to manage the day to day activities of the construction and shall report directly to the Joint Project Management Team.
- 2.6 Provide an area, free of lease, to be utilized by the **LESSEE** for the development of an off-site parking for buses.

**ARTICLE III
LEASE PAYMENT**

Section 1. RATE OF LEASE

The Annual Fixed Lease starting on the 5th year of this **CONTRACT** shall be _____, exclusive of twelve percent (12%) Value-Added Tax (VAT), and applicable taxes and fees. It shall be subject to five percent (5%) escalation every year until the 50th year of the lease **beginning on the 6th year**.

In addition to the Annual Fixed Lease, the **LESSEE** shall remit to BCDA an Annual Variable Share equivalent to Five Percent (5%) of the annual gross revenues arising from the lease and sub-lease of its leasable office and retail spaces. Payment of the BCDA variable share shall start on the 5th year of the Initial Lease Period.

For year 5, the computation of the 5% BCDA Annual Variable Share shall cover all collections starting year 1 to 4, if any. For year 6 onwards, The computation of the 5% BCDA Annual Variable Share shall be based on the actual collection from the preceding year of operation.

Upon signing of this **CONTRACT**, the **LESSEE** shall remit to **BCDA** the **Advance Annual Fixed Lease** in the amount of _____ equivalent to the payment for the 5th and 6th year Lease.

The schedule of payment for the Annual Fixed Lease are as follows:

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PERIOD COVERED	RATE OF LEASE / RECEIVABLES	SCHEDULE OF PAYMENT
Year 1 to 4	<i>Annual Fixed Lease</i>	Rent Free Period
	<i>Annual Variable Share</i>	On or before 30 calendar days prior to the fifth anniversary date of CONTRACT signing.
Year 5 to 6	<i>Annual Fixed Lease</i>	Upon Contract Signing
	<i>Reimbursable Amount</i>	
	<i>Annual Variable Share</i>	On or before 30 calendar days prior to the sixth and seventh anniversary date of CONTRACT signing.
Year 7 to 50	<i>Annual Fixed Lease plus escalation</i>	On or before 30 calendar days prior to the anniversary date of CONTRACT signing.
	<i>Annual Variable Share</i>	On or before 30 calendar days prior to the anniversary date of CONTRACT signing of the succeeding year.

The **LESSEE** shall also remit to **BCDA** the Reimbursable Amount amounting **Two Hundred Fifteen Million Pesos (PhP 215,000,000.00)** representing all the advances made and expenses incurred for the **BCDA Iconic Building Design** upon signing of this **CONTRACT**.

Section 2. PERFORMANCE SECURITY ON THE ANNUAL FIXED LEASE

A *Performance Security* shall be posted by the **LESSEE** to ensure that it will fulfill its obligations under this **CONTRACT**.

The **LESSEE** shall submit to **BCDA**, not later than six (6) months before the start of the 7th year of the lease, a continuing bank guarantee or irrevocable letter of credit issued by a Universal Bank or Commercial Bank acceptable to **BCDA** or a continuing Surety Bond issued by the **GSIS** with a face value equivalent to the **Annual Fixed Lease** for the **PROPERTY** to fully secure its payment. Such *Performance Security* shall contain provisions for automatic renewal and replenishment of the face value as the case may be. It shall be adjusted annually to reflect the adjustment in the obligations of the **LESSEE** for the remaining period of the Lease.

ARTICLE IV SALE OR RENEWAL OF THE LEASE

Section 1. OPTION TO PURCHASE AND ITS EXERCISE

The **LESSEE** shall have an Option to Purchase the **PROPERTY** and shall inform BCDA of its desire to exercise this right no earlier than five (5) years nor later than three (3) years prior to the 25th year of the Initial Lease Period.

The **LESSEE**, should it exercise its Option to Purchase the **PROPERTY**, must have the legal capacity to own land in the Philippines as provided under the law.

The purchase price of the **PROPERTY** shall be based on its Fair Market Value including the permanent facilities and improvements.

BCDA and the **LESSEE** shall have the **PROPERTY** and Improvements appraised by two (2) independent appraisers mutually acceptable to both parties prior to the 25th year of the Initial Lease Period. The cost of appraisal shall be equally borne by the **PARTIES**.

BCDA retains the sole authority to approve the purchase price of the **PROPERTY** and its Improvements, should there be different findings or valuation of the independent appraisers.

In any case, it shall be understood that the purchase of the **PROPERTY** shall not include the areas allocated for the use of **BCDA** such as the BCDA Office, Gallery, Museum, Observatory Deck and Parking Spaces including the utilities and other building services for these areas.

If the Option to Purchase is not exercised, all Improvements the **LESSEE** introduced to the **PROPERTY** shall automatically become **BCDA's** properties upon the expiration of the **CONTRACT's** Initial Lease Period.

For this purpose, Improvements shall include the **BCDA Iconic Building** which shall be constructed by the **LESSEE** and those that were introduced by the **LESSEE** which cannot be removed without defacing or damaging the integrity of the structure of the building.

Section 2. RENEWAL OF THE LEASE

The **LEASE** shall not be automatically renewed despite the **LESSEE's** continuous possession of the **PROPERTY** for any period of time after the expiration of the **CONTRACT's** term. For this purpose, the **LESSEE** shall inform **BCDA** of its intention to renew the lease not earlier than five (5) years or later than three (3) years prior to the expiration of the Initial Lease Period.

Upon the expiration of the Initial Lease Period, the ownership of all Improvements introduced by the **LESSEE** on the **PROPERTY** shall automatically be transferred to **BCDA**.

Consequently, in the event that the **LESSEE** exercises its option to renew its lease over the **PROPERTY**, the new lease rate shall cover the land as well as the buildings and permanent facilities/improvements transferred to **BCDA**.

Section 3. SALE OR ENCUMBRANCE OF THE PROPERTY BY BCDA

Notwithstanding the **LESSEE**'s Option to Purchase under Section 1 of this Article, **BCDA** may, at any time during the Initial Lease Period, assign, in whole or in part the **PROPERTY** or any of its rights and interests in the **CONTRACT** provided there is prior notice to the **LESSEE**.

In the event that **BCDA** decides to sell or assign, in whole or in part the **PROPERTY** or any of its rights and interests in the **CONTRACT**, the **LESSEE** shall have a Right of First Refusal. **BCDA** shall notify the **LESSEE** of its intention and allow the **LESSEE** to study, review, and accept the proposal of **BCDA** within six (6) months from the written notice of **BCDA**.

Should the **LESSEE** opt not to exercise its Right of First Refusal and/or Right to Purchase the **PROPERTY** and Improvements in accordance with this **CONTRACT**, **BCDA** may sell, assign, mortgage or otherwise encumber or dispose of in whole or in part the **PROPERTY** and Improvements or any of its rights and interest in the **CONTRACT** provided that it shall be **BCDA**'s requirement in the definitive agreements for the third parties such as the prospective buyers, assignees, mortgagees, or other obliges, to maintain and respect the terms and conditions of this **CONTRACT**.

ARTICLE V DEVELOPMENT AND CONSTRUCTION

Section 1. DEVELOPMENT OF THE PROPERTY

The **PROPERTY** shall be developed with the following Improvements:

- 1.1 The BCDA Iconic Building shall be constructed based on the **DAED** approved by BCDA and the requirements of the TOR;
- 1.2 The top floors of the Iconic Building shall be constructed for the BCDA Office Space, with basic architectural finishes and fit-outs. The **LESSEE** shall turn-over the said office space to **BCDA** without cost and allow **BCDA** to occupy the same free of lease.
- 1.3 The Gallery, and Museum Spaces, shall be constructed within the BCDA Iconic Building, with basic architectural finishes. The **LESSEE** shall turn over the said areas to **BCDA** and allow **BCDA** to use the same free of lease.
- 1.4 The Observatory Deck, shall be constructed within the BCDA Iconic Building, with basic architectural finishes, vegetation, public arts, and human-sized statues. The **LESSEE** shall turn-over the said areas to BCDA and allow BCDA to use the same free of lease.
- 1.5 The Parking Spaces, in accordance with the parking ratio per GFA under the BGC North Boni DSG including the BCDA Office Space, Gallery, Museum and Observatory Deck, shall be provided within the BCDA Iconic Building and on a designated area outside the BCDA Iconic Building for such purpose. The **LESSEE**

shall turn-over the said areas to BCDA and allow BCDA to use the same free of lease.

In the development of the Property, the **LESSEE** may employ third-party contractors. The **LESSEE** shall be fully responsible for the acts and defaults of the third-party contractor, its agents and employees as if it were the acts or defaults of the **LESSEE**.

In any case, the third-party contractor must be limited to those which have been determined by **BCDA** to be qualified in accordance with the TOR of this Project, and approved by **BCDA** for carrying out the Works as set out in **DAED**. **BCDA** may withhold approval of the third-party contractor if any legal action has been initiated by **BCDA** against or has been initiated against **BCDA** by the proposed contractor or subcontractor.

Any deviation of the **LESSEE** from the **DAED** should always be made with the prior written approval of **BCDA**.

Section 2. MONITORING AND IMPLEMENTATION OF THE DEVELOPMENT OF THE PROPERTY

The **PARTIES** shall create a **Project Management and Development Committee (PMDC)** to jointly manage, monitor, and audit the progress of the construction until the completion of the development of the **PROPERTY**. The **PMDC** shall be composed of 3 representatives from **BCDA** and 3 representatives from the **LESSEE** and shall be chaired by a **BCDA** representative.

Any alteration on the **DAED** shall be endorsed by the Design Consultant and / or the Construction Management and Supervision Consultant (**CMS**) including the corresponding cost implication which may affect the Minimum Investment Commitment of the **LESSEE** to the **PROPERTY** to the **PMDC**. The **BCDA** shall have the final approval of any proposed change.

If the design change is caused or proposed by **BCDA**, the cost implication, the amount of which shall be agreed with **BCDA**, may be deducted from the next payment of **Annual Fixed Lease**.

If the design change is caused or proposed by the **LESSEE**, then the cost implication shall be borne by the **LESSEE**.

If the **LESSEE** manages to reduce the construction cost without changing the design, the **LESSEE** shall not be penalized with respect to its investment commitment on the Property.

In all cases, the **PMDC** shall ensure strict compliance with the implementation of the **DAED**. The **PMDC** shall also create a Joint Project Management Team (**JPMT**) to manage and monitor the day to day activities of the construction and facilitate resolution of any issues that may require urgent decisions related to the design and construction of the project. Said **JPMT** shall report directly to the **PMDC**.

No extension of construction duration shall be granted due to ordinary unfavorable weather conditions and inexcusable failure or negligence of the **LESSEE** and/or its third-party contractor. Extension of construction duration may be granted only when the affected activities falls within the critical path of the schedule and additional works of any kind or other circumstances of any kind whatsoever occur such as to fairly entitle the **LESSEE** and its third-party contractor an extension of construction duration.

Section 3. RESTRICTIONS ON THE PROPERTY

The development of the **PROPERTY** shall strictly comply with all pertinent government standards such as, but not limited to, the National Building Code, the Fire Code, and other relevant laws, rules, regulations, and issuances of the agencies of the National Government and the Local Government. The development must comply with the provisions of the BGC North Boni DSG.

It should be noted, however, that the **PROPERTY** is already reclassified from Reserved Lot into Mixed-use with limited retail by the Planning Review Board of North Bonifacio District Bonifacio Global City.

Section 4. USE OF THE PROPERTY AND THE BCDA ICONIC BUILDING

The **LESSEE** shall neither use nor occupy the **PROPERTY** and/or the BCDA Iconic Building, nor permit the same to be used and occupied, nor permit anything to be done in, on or to the **PROPERTY**, in whole or in part, in a manner which would in any way:

- 4.1 Violate the TOR for disposition or any applicable law affecting the Leased **PROPERTY**. In this connection, **BCDA** confirms that the required use is not in violation of applicable law;
- 4.2 Make void or voidable any insurance then in force in respect thereto, or which may make it extremely difficult to obtain fire or other insurance thereon required to be furnished by **LESSEE**;
- 4.3 Constitute a public or private nuisance; or
- 4.4 Violate any material provision of this **CONTRACT**.

The **LESSEE** holds the **BCDA**, its officers and employees, free and harmless from the acts of the **LESSEE**'s assigns, agents, representatives, or personnel with respect to the use of the **PROPERTY** and in relation to any third party claim.

Section 5. LIEN ON THE PROPERTY

The **LESSEE** shall not create any liens on the land or any structure or improvement in securing project financing. **BCDA** may terminate this **CONTRACT** by sending to the **LESSEE** a written

notice without need for judicial action should the **LESSEE** cause the creation of any lien or encumbrance on the land or any structure or improvement during the effectivity of this **CONTRACT**.

However, the **LESSEE** may cause the annotation of the **CONTRACT** on the title covering the **PROPERTY** in order to protect its rights as **LESSEE**. The **PARTIES** shall timely execute the necessary documents in order to effect the said annotation of the **CONTRACT**. Cost of annotating the **CONTRACT** on the title shall be for the sole account of the **LESSEE**.

ARTICLE VI OPERATIONS AND MAINTENANCE

Section 1. SUBLEASE, TRANSFER OF RIGHTS, ASSIGNMENT, ETC.

The **LESSEE** may sublease, assign, transfer or convey its rights over the BCDA Iconic Building provided that prior written approval of **BCDA** is secured, and the sub-lessee or assignee agrees to accept the terms and conditions of this **CONTRACT** including but not limited to the restrictions on the use of the **PROPERTY**.

The sublease or assignment shall not in any way release the **LESSEE** from any of its obligations under its **CONTRACT** over the **PROPERTY**. The **LESSEE** and its sub-lessee or assignee shall be held solidarily liable to **BCDA** in the performance of its obligations under this **CONTRACT**.

Section 2. MAINTENANCE OF THE PROPERTY AND THE IMPROVEMENTS

The **LESSEE** shall, at its expense, keep and maintain the **PROPERTY** in a clean and sanitary condition, free from offensive odors, disturbing noises, or other nuisances and dispose of all rubbish only through the means and places indicated by **BCDA**. The **LESSEE** shall further undertake at its exclusive expense, all maintenance and repairs on the developments, improvements and fixtures introduced during the lease period, as may be required to maintain such developments, improvements and fixtures in good and tenantable condition.

Should the **LESSEE** opt to commission the operation and maintenance of the BCDA Iconic Building through a third-party service provider, such third-party service provider should have at least five (5) years' experience in facility management of premium office buildings.

Upon the expiration/cancellation/termination of the **CONTRACT**, the **LESSEE** shall surrender and return the **PROPERTY** to **BCDA**, together with the Improvements, in good condition, ordinary wear and tear excepted. The **LESSEE** shall be liable for any damage or deterioration caused by his/her representative/assignee, or his/her representative's/assignee's family, his/her household staff, guests or visitors.

Section 3. OTHER BUSINESS AND COMMERCIAL OPPORTUNITIES

- 3.1 In the event that **BCDA** will require an operation and maintenance provider for the Museum and/or the Observatory Deck, **BCDA** may enter into a separate agreement with the **LESSEE**. The said agreement may also cover the sharing in expenses and revenues to be generated from the guests of the Museum and/or Observatory Deck.
- 3.2 In the event that the **PARTIES** discover new business opportunities within the open spaces (grand plaza) the **PARTIES** may also enter into a separate agreement for the development, operation and maintenance of the said area.
- 3.3 In the event that the **PARTIES** agree that the **LESSEE** will undertake additional construction other than the Improvements stated in Article V, Section 1 for BCDA Office Space, Museum, Gallery and Observatory Deck, the cost may be charged by the **LESSEE** against the Annual Fixed Lease to BCDA.

Section 4. ENVIRONMENTAL COMPLIANCE

The **LESSEE** shall, by itself, and cause all assignees, transferees, sub lessees, licensees, contractors, subcontractors, suppliers and invitees to use and maintain the Leased Property in compliance with all existing national environmental laws, rules and regulations, including the specific environmental rules and regulations being implemented by the appropriate authority. Accordingly, the **LESSEE** shall file the necessary application for Environmental Compliance Certificate (ECC) which should be issued in favor of both the **LESSEE** as proponent/developer, and the **BCDA** as landowner. The **BCDA** shall assist the **LESSEE** in securing the required ECC for the project. The **LESSEE** shall furnish **BCDA** a copy of such ECC as soon as available.

Section 5. FIRE SAFETY CODE AND SAFETY STANDARDS

The **LESSEE** shall comply with the fire code and safety standards imposed by the appropriate authority. The **LESSEE** shall hold fire and other calamity drills exercises among its employees and building occupants within the **PROPERTY** once every year. It shall also promote fire protection awareness among its employees and locators.

Section 6. SECURITY

The **LESSEE** shall comply with all applicable laws, rules and regulations relating to the security of the **PROPERTY** including those which, from time to time, may be imposed by the appropriate authority. It shall cooperate in securing the **PROPERTY** so as to prevent or deter unauthorized access to, and criminal or other disruptive activity on, the **PROPERTY**. The **LESSEE** shall employ, at its own expense, security personnel for the **PROPERTY**.

Except as may be necessary to secure the operations of the **LESSEE**, no one is allowed to keep or carry firearms and/or other deadly weapons within the **PROPERTY**. However, the **LESSEE** shall take all the necessary precautions to insure the security of the **PROPERTY**.

ARTICLE VII
PERFORMANCE BOND AND INSURANCE

SECTION 1. PERFORMANCE BOND

Within one (1) month from the approval of the **DAED**, the **LESSEE** shall be required to post a Performance Bond effective from the date of posting until one year after the Completion of the development. The Performance Bond shall secure the faithful compliance with its obligations to develop the **PROPERTY** and may be allowed in any of the following forms:

- 1.1 Cash or Cashier's / Manager's Check issued by a Universal or Commercial bank equivalent to Ten Percent (10%) of the total estimated Development Cost.
- 1.2 Bank Draft / Guarantee or irrevocable Letter of Credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a Foreign Bank equivalent to Ten Percent (10%) of the total estimated Development Cost.
- 1.3 Surety bond callable upon demand issued by a surety or insurance company duly certified by Insurance Commission as authorized to issue such security equivalent to Thirty Percent (30%) of the total estimated Development Cost.

Should the **LESSEE** fail to post a Performance Bond after written demand, the **LESSEE** shall be liable to pay **BCDA** the amount of 1/10 of one percent (1%) of the Annual Fixed Lease of the **LESSEE** for every day of delay in its submission.

Section 2. COMPREHENSIVE ALL-RISK INSURANCE

The **LESSEE** shall obtain, at its own cost, an all-risk insurance coverage from the Government Service Insurance System (GSIS) for all existing structures as well as new construction and improvements introduced during the term of the lease in an amount equivalent to their replacement value with **BCDA** as the beneficiary of the required insurance.

The **LESSEE** shall obtain the insurance coverage herein stipulated not later than two (2) months after completion of construction and update the insurable amount based on the foregoing provision.

The **LESSEE** shall submit to **BCDA** the original insurance policy and the Official Receipt of payments within five (5) days from obtaining the insurance coverage.

Should the insurable risk occur and the insurance proceeds be insufficient for purposes of reconstruction or rehabilitation of the **PROPERTY** as herein required, the **LESSEE** shall assume the additional cost of replacement of the structures without reimbursement from **BCDA**.

Alternatively, both the **LESSEE** and **BCDA** may agree on termination of the **CONTRACT**, in which case, **BCDA** shall retain the insurance proceeds.

In case of a total loss, the period of reconstruction/rehabilitation suspends the running of the lease period and, therefore, such period shall be added to the original lease period. However, the **LESSEE** shall continue to be responsible for the payment of the Real Property Tax during this period.

There shall be no adjustment in the lease period in case of a partial loss.

Section 3. UTILIZATION OF INSURANCE PROCEEDS

In the event of a claim on the insurance policy obtained in the immediately preceding Section, the proceeds of the insurance policy must be utilized by **BCDA** or its authorized agent to reconstruct/rehabilitate the damaged structure or improvements.

BCDA may, subject to applicable law, assign the proceeds of the insurance in favor of the **LESSEE** and appoint the **LESSEE** as the authorized agent to reconstruct/rehabilitate the damaged structure or improvements.

ARTICLE VIII

REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

Section 1. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS OF THE LESSEE

The **LESSEE** represents, warrants and covenants to the **BCDA** that:

- 1.1 It is corporation duly authorized to operate under the laws of the Republic of the Philippines. It has all the necessary power and authority to carry on its business as presently conducted, to hold under lease the **PROPERTY** and enter into and perform its obligations under the agreements to which it is or is to be a party;
- 1.2 The execution, delivery and performance by **LESSEE** under this **CONTRACT** have been duly authorized by all necessary corporate action, and do not require any other approval from the holder of any of its indebtedness or other obligation, and do not contravene or constitute a default under its organizational documents or, to the best of its knowledge, any provision of applicable law or any agreement, judgment, injunction, order, decree or other instrument binding upon it, or subject the performance of its obligations in this **CONTRACT** to any lien. It is in compliance with all applicable laws and government approvals which govern its ability to perform its obligations under the **CONTRACT**;

- 1.3 It has duly and validly executed and delivered this **CONTRACT** which constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms;
- 1.4 It has all the required skills and capacity necessary to perform or cause to be performed all its obligations under this **CONTRACT** in a proper, timely and professional manner;
- 1.5 It has the knowledge of all the legal requirements and good business practices that must be followed in performing its obligations under this **CONTRACT**, and the same will be in conformity with such requirements and practices and in compliance with all applicable laws and Governmental Approvals;
- 1.6 It is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this **CONTRACT**;
- 1.7 There is no action, suit or proceeding, at law or in equity, or official investigation before or by any government authority, arbitral tribunal or other body pending, threatened against, or affecting, it or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on its ability to perform its obligations under this **CONTRACT** or on the validity or enforceability of this **CONTRACT**;
- 1.8 The **LESSEE** (or any of its members, if a consortium), its parent company, or its subsidiaries or affiliates with common controlling shareholdings, if any, is not considered in default of its financial or other obligations, in any past or current project being undertaken with **BCDA**, or its subsidiaries at the time of the execution of this **CONTRACT**.
- 1.9 It has not committed, directly or indirectly, any of the acts prohibited under Republic Act Nos. 3019 (Anti-Graft and Corrupt Practices Act) and 6713 (Code of Conduct and Ethical Standards of Public Officials and Employees). Any violation of this warranty shall be sufficient ground for the revocation or termination of this **CONTRACT** without prejudice to the criminal, civil and/or administrative liabilities of those involved;
- 1.10 It has neither applied nor filed any insolvency, bankruptcy, rehabilitation, or suspension of payments and liquidation proceeding against or on behalf of the **LESSEE** before any Governmental Authority; and
- 1.11 It is not involved in any money laundering activity as defined by the Anti-Money Laundering Act of 2001 (RA 9160) and as further governed by RA 10365.

Section 2. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS OF BCDA

BCDA represents, warrants and covenants in favor of the **LESSEE** that:

2.1 WITH RESPECT TO ITS CORPORATE AUTHORITY:

- 2.1.1 It is a government instrumentality vested with corporate powers by Republic Act No 7227, as amended by Republic Act No. 7917, and has all the necessary power and authority under its Charter to award the disposition and privatization of the **PROPERTY** to the **LESSEE** under the TOR;
- 2.1.2 It has all the necessary power and authority to execute, deliver and perform its obligations under this **CONTRACT**. Should there be any other requirement of law, rules or regulations, **BCDA** commits to comply therewith; and
- 2.1.3 No application has been filed with any Governmental Authority for the commencement of any insolvency or bankruptcy proceeding against or on behalf of the **BCDA**.

2.2 WITH RESPECT TO THE PROPERTY:

- 2.2.1 **BCDA** is the owner and is in the process of securing the title to the **PROPERTY**, which, to the best of its knowledge, is free and clear of any encumbrance, easement, covenant, options to purchase and other restrictions which impair the current use, occupancy, or value, or the marketability of the **PROPERTY**, except as otherwise disclosed in the TOR and this **CONTRACT**;
- 2.2.2 There are no leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the **PROPERTY**. There are no other parties in possession of the **PROPERTY** or any portion thereof, except **BCDA** and as otherwise disclosed in the TOR. There are no outstanding options or rights of first refusal to purchase the **PROPERTY**.
- 2.2.3 To the best of **BCDA's** knowledge, no person has or shall have any claim of title which will compete with the rights, title and interest of the **LESSEE** over the **PROPERTY** or which will prevent the **LESSEE** from taking and maintaining full and complete title, peaceful possession, use and control of the **PROPERTY** from **BCDA**.

- 2.2.4 **BCDA** warrants to defend its title to the **PROPERTY** against any and all suits or claim instituted by third party.

ARTICLE IX FORCE MAJEURE AND SUSPENSION

Section 1. DEFINITION

Force Majeure or fortuitous events shall mean events which could not have been foreseen, or if foreseen were inevitable and beyond the control of a **PARTY**, without any accompanying fault or negligence of the **PARTY** invoking it as an excuse for the non-performance of its obligations as specified, which prevent or materially affect the ability of said **PARTY** to comply with any of its obligations under this **CONTRACT**, and shall include, but not limited to:

- 1.1 fires, earthquakes, lightning, flood, conflagration, volcanic eruption, storm and other similar natural calamities and occurrence;
- 1.2 acts of war or acts of the public enemy, whether war be declared or not;
- 1.3 public disorders, insurrection, rebellion, sabotage or violent demonstrations; and
- 1.4 government acts which shall render the facility inoperable.

Section 2. APPLICABILITY

A **PARTY** shall be excused from the performance of any of its obligations under this **CONTRACT** and shall not be considered in delay or in default in respect of any obligation by reason of *force majeure* if both of the following conditions are met:

- 2.1 there is no accompanying fault or negligence of the **PARTY** invoking it; and
- 2.2 the **PARTY** invoking *force majeure* shall have, within seven (7) days from the occurrence of *force majeure*, notified the other **PARTY** in writing of the occurrence of *force majeure*, the extent to which such *force majeure* suspends the affected **PARTY**'s obligations under this **CONTRACT**.

The other **PARTY** has a period of fourteen (14) days from receipt of such notice within which to verify the existence, nature and extent of the *force majeure* being invoked by the **PARTY** giving notice of such *force majeure*. The **PARTY** invoking *force majeure* shall resume performance of its obligations as soon as the effects of *force majeure* cease to exist.

Section 3. NON-APPLICABILITY

The following shall not, by themselves, constitute *force majeure*, unless the cause which gave rise to them constitutes *force majeure* under Section 1:

- 3.1 late payment of money;
- 3.2 delays resulting from reasonably foreseeable unfavorable weather; and
- 3.3 failure of a **PARTY** to exercise due diligence or undertake reasonable measures to contain the effect of *force majeure*.

Section 4. MITIGATION MEASURES

Upon the occurrence of *force majeure*, the **PARTY** invoking it to excuse performance of its obligations shall endeavor to continue to perform its obligations under this **CONTRACT** as far as practicable, and shall notify the other **PARTY** of the steps the **PARTY** invoking the *force majeure* proposes to take, including reasonable measures to mitigate the effects of the *force majeure*.

ARTICLE X DEFAULT AND CONSEQUENCES

Section 1. TAKE-OVER OF THE PROPERTY

The **LESSEE** authorizes **BCDA**, as its agent or attorney-in-fact, to enter and take-over the **PROPERTY**, without need of any judicial action, in the following instances:

- 1.1 The **PROPERTY** is abandoned, deserted or vacated before the expiration of this **CONTRACT**;
- 1.2 Violation of any terms of this **CONTRACT** by the **LESSEE**; or
- 1.3 Non-payment of lease in full by **LESSEE**.

BCDA shall further have the option to dispose the **PROPERTY** to another party as the **LESSEE**'s agent, to receive payments from it, and to apply such payments to the emoluments due under the **CONTRACT**, holding the **LESSEE** liable for any deficiency, without prejudice to any right of action against the **LESSEE**.

For purposes of this Section, the **PROPERTY** is considered to be abandoned, deserted or vacated if the **LESSEE** or its authorized representatives or beneficiaries has not used the **PROPERTY** for three (3) consecutive months without prior due notification to **BCDA**.

This Section shall not preclude **BCDA** to exercise its rights/remedies under Section 2 of Article VI of this **CONTRACT**.

Section 2. EVENTS OF DEFAULT

The occurrence of any of the following events shall constitute an Event of Default:

- 2.1 Failure of any **PARTY** to comply with any of its covenants and undertakings as provided in the General Agreements (*Article I*), Rights and Responsibilities of the Parties (*Article II*) and Performance Security (*Article III*) and Insurance (*Article VII*) of this **CONTRACT**;
- 2.2 Any representation or warranty of any **PARTY** contained in this **CONTRACT** is shown to have been untrue, incorrect, inaccurate or misleading in any material respect as of the time that it was made or deemed to have been made and such breach is not remediable or, if capable of being remedied, shall remain after the lapse of the Curing Period mentioned in Section 3.2, as provided for in this Article;
- 2.3 Failure of the **LESSEE** to comply with its financial commitments under this **CONTRACT** on the due dates after the lapse of the applicable grace period specified in this **CONTRACT**;
- 2.4 Insolvency of a **PARTY**, or the application by a **PARTY** for insolvency, rehabilitation or suspension of payments, or a **PARTY** is adjudged bankrupt, disposes or assigns all or substantially all of its assets for the benefit of creditors, or where a **PARTY** is subjected to voluntary or involuntary dissolution;
- 2.5 Merger, consolidation or change of ownership of the **LESSEE** without the prior written consent of the **BCDA**, which consent shall not be unreasonably withheld; and
- 2.6 Any other cause, due to the fault or negligence of either **PARTY** that prevents it from fully exercising its rights under this **CONTRACT**.

Section 3. CONSEQUENCES OF DEFAULT

Upon the occurrence of an Event of Default, the non-defaulting **PARTY** shall, in addition to such other rights and remedies available under other provisions of this **CONTRACT** and pertinent laws, have the following rights which may be exercised cumulatively or alternatively:

- 3.1 The non-defaulting **PARTY** shall have the alternative right to (1) compel the performance of the defaulting **PARTY**, or (2) upon prior written notice to the Defaulting **PARTY**, rescind or terminate this **CONTRACT** without the necessity of judicial action if the event giving rise to the default is incurable.
- 3.2 Should the event giving rise to the right of a **PARTY** to terminate this **CONTRACT** be curable, the defaulting **PARTY** shall have the right to cure the same within a period of ninety (90) days from receipt of written demand by the non-defaulting **PARTY** (the *Curing Period*) and the

non-defaulting **PARTY** shall only be entitled to rescind or terminate this **CONTRACT** without judicial intervention if such default shall have not been cured within the Curing Period.

- 3.3 In case the non-defaulting **PARTY** chooses to continue with the transaction despite the default of the defaulting **PARTY**, the non-defaulting Party may, by written notice, compel the defaulting **PARTY** to perform its obligations under this **CONTRACT** within such period of time as may be required by the non-defaulting **PARTY**, failing which, the non-defaulting **PARTY** may by written notice to the defaulting **PARTY** and without the necessity of judicial action (1) terminate this **CONTRACT** or (2) elect to continue the transaction in both cases reserving its right to claim damages for such non-compliance and/or seek such other legal remedies as may be available to it under the law.
- 3.4 **BCDA** may, in addition to the rights of a non-defaulting party, call on the *Performance Security* pursuant to Article III.

Section 4. COMMITMENT TO NEGOTIATE IN GOOD FAITH

The **PARTIES** agree that upon the occurrence of an Event of Default, both **PARTIES** shall cooperate and conduct in good faith such discussions and negotiations as may be necessary to cure or resolve the Event of Default and address the impact of the Event of Default on the rights of the **PARTIES**, and exhaust all reasonable options or remedies, prior to availing of the remedies afforded under Section 2.

ARTICLE XI MISCELLANEOUS PROVISIONS

Section 1. PRIORITY OF DOCUMENTS

This **CONTRACT**, together with the TOR and all Bid Bulletins issued by **BCDA**, shall constitute the entire agreement of the **PARTIES**. It supplements the TOR on matters which the latter does not address. However, in case of conflict between the TOR and **CONTRACT** provisions, the TOR provisions shall prevail since it is imperative that the **CONTRACT** comply with the TOR.

In case of such conflict, the **PARTIES** shall necessarily amend the **CONTRACT** to conform with the TOR.

Section 2. DISPUTE RESOLUTION

The **PARTIES** agree to resolve any dispute, controversy or claim that may arise between them with respect to this **CONTRACT** through amicable negotiation in good faith. Any dispute, claim or controversy arising out of, or relating to this, **CONTRACT** shall be settled by arbitration in

accordance with the Alternative Dispute Resolution (ADR) Law effective at the time of the dispute.

However, should the **PARTIES** be constrained to litigate, the appropriate case shall be filed in the competent courts of law of Metro Manila, to the exclusion of other courts of equal jurisdiction.

Section 3. BINDING EFFECT

This **CONTRACT** shall be binding upon, and inure to the benefit of, the **PARTIES** and their lawful successors and assigns.

Section 4. NON-WAIVER OF RIGHTS

A **PARTY**'s failure to insist upon a strict performance of any term or condition of the **CONTRACT** shall neither be deemed a relinquishment or waiver of its right or remedy nor construed as a waiver of a subsequent breach of such, any other terms or condition. A **PARTY**'s waiver, extension or forbearance of any **CONTRACT** term or condition shall not be construed as a waiver, extension or forbearance of its other terms or conditions.

Section 5. AMENDMENTS

Any amendment, modification or additional terms and conditions to this **CONTRACT** must be in writing and mutually agreed upon by the **PARTIES**.

Section 6. GOVERNING LAW

This **CONTRACT** shall be governed by, and construed, according to Philippine laws.

Section 7. NOTICE

A notice required, permitted or relating to the **CONTRACT** shall be in writing and delivered personally, sent by facsimile transmission or by certified or registered mail, postage prepaid to the **PARTY** at its address as specified below.

If to the **BCDA**:

THE PRESIDENT AND CEO
Bases Conversion and Development Authority
2/F Bonifacio Technology Center
31st St. Crescent Park West
Bonifacio Global City, Taguig City 1634
Fax No. 816-0917

If to the **LESSEE**:

or such other address or facsimile number as the **PARTY** to whom notice is to be given has furnished in writing to the other **PARTY**. A notice of change in address shall not be deemed to have been given until received by the addressee.

Section 8. SEVERABILITY

The invalidity or unenforceability of any portion or provision of this **CONTRACT** shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this **CONTRACT**. The **PARTIES** shall negotiate an equitable adjustment in the remaining portions or provisions of this **CONTRACT** to effect the underlying purposes of this **CONTRACT**.

Section 9. CONFIDENTIALITY

The **PARTIES** agree that any exchange of information or documents between the Parties in connection with this **CONTRACT** shall be treated with strict confidentiality and no such information or documents shall be released to third parties without the prior written consent of the other **PARTY** unless such information is required to be divulged or produced by any law, court order, or other competent authority.

Section 10. OGCC REVIEW

This **CONTRACT** is subject to the review of the Office of the Government Corporate Counsel (OGCC) which review shall be made part of this **CONTRACT**.

SIGNED BY the **PARTIES** through their duly authorized representatives on _____ at _____.

**BASES CONVERSION AND
DEVELOPMENT AUTHORITY**

_____ **LESSEE**

By:

By:

VIVENCIO B. DIZON
President and CEO

Signed in the presence of: