



BCDA
Bases Conversion and
Development Authority

JHMC
JOHN HAY MANAGEMENT CORPORATION

Terms of Reference

Long-term Lease of the Sheridan Drive Center within the John Hay Special Economic Zone, Baguio City

**TERMS OF REFERENCE
FOR THE LONG-TERM LEASE AND DEVELOPMENT OF THE
SHERIDAN DRIVE CENTER
WITHIN THE JOHN HAY SPECIAL ECONOMIC ZONE
BAGUIO CITY, PHILIPPINES**

**ARTICLE I
PROJECT RATIONALE**

- Section 1 Republic Act No. 7227, as amended, mandates the Bases Conversion and Development Authority (BCDA) to accelerate the sound and balanced conversion into alternative productive uses of the former Clark and Subic military reservations and their extensions, to raise funds through the sale or lease of portions of Metro Manila, and to apply said funds for the development and conversion of the said reverted military baselands.
- Section 2 The BCDA with its subsidiary, John Hay Management Corporation (JHMC) which is in charge of the administration and management of the John Hay Special Economic Zone (JHSEZ) in Baguio City, Philippines, wishes to consider bids for the long-term lease and development of the **5,700-square-meter**, more or less, Sheridan Drive Center (hereinafter referred to as the "Property") located within the JHSEZ. The vicinity map of the Property is attached as Annex "A".
- Section 3 The disposition is to be carried out pursuant to the provisions of Republic Act No. 7227 ("The Bases Conversion and Development Act of 1992") as amended, Executive Order No. 62 prescribing the policies and guidelines to implement R.A. 7227, the BCDA Lease Guidelines, and other relevant laws, Executive Orders, and rules and regulations, to the extent applicable.
- Section 4 This bidding is being administered by the joint Asset Disposition Program Committee (ADP-Com) of BCDA and JHMC.

**ARTICLE II
BACKGROUND OF THE PROPERTY**

- Section 1 **Description of the Property.** The Property has a land area of approximately **5,700-square-meters**, and located in the south corner of Sheridan Drive in the JHSEZ, Baguio City.

For reference, a lot plan illustrating the foregoing information is attached as Annex "B-1".

- Section 2 **Status of the Property.** The Property is within the JHSEZ and was transferred to BCDA through Presidential Proclamation No. 198 series of 1993. The JHSEZ, by virtue of Presidential Proclamation No. 1191 series of 2006, has been designated as a Special Tourism Economic Zone. Since the Property is within an Economic Zone, the Winning Bidder, may qualify for tax and other incentives under Republic Act 7916: The Special Economic Zone Act of 1995.

The Property has an existing structure which is called the Igorot Lodge formerly operated by the Asian Institute of Management (AIM) and occupying approximately 2,000 square meters.

A map showing the existing structure within the Property and the Land Use Map of JHSEZ is hereto attached as Annex "B-1", "B-2" and "C", respectively.

Section 3 **Option to Lease the JHMC Cottages.** The Winning Bidder may opt to lease an additional developable area, situated on the south of the Property, with an approximate area of **3,100 square meters**, where two (2) JHMC Cottages (625/626 & 627/628) are located. The option to lease may be exercised within one (1) year from the signing of the Contract of Lease.

The maximum gross floor area of the additional leasable area shall be **9,300 square meters**.

The same restrictions as enumerated in Article II, Section 5, except Section 5.5 of this TOR, shall apply to this property. Should the Winning Bidder opt to lease the additional area, securing of permits from the Department of Environment and Natural Resources (DENR) for cutting and balling of trees and all related costs thereto shall be the sole responsibility of the Winning Bidder.

The same rights and obligations as enumerated in Article VII, except Section 1.9, of this TOR, shall apply to this property. JHMC shall assist the Winning Bidder in securing permits from the DENR through a written endorsement.

For reference, a lot plan illustrating the foregoing information is attached as Annex "B-2".

Section 4 **Land Uses for the Property.** The Sheridan Drive Center, shall be a **mixed-use development** primarily for a hotel with commercial office/retail services and recreational spaces.

The areas of which shall be within the allowable GFA for the property.

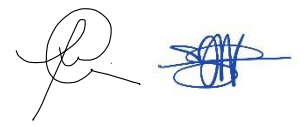
Section 5 **Restrictions on the Property.** The development of the Property shall strictly comply with the Comprehensive Master Development Plan (CMDP) and Design Standards and Guidelines (DSG) of JHSEZ and all pertinent government standards such as, but no limited to, the National Building Code, the Comprehensive Fire Code of the Philippines and other relevant laws, rules, regulations and issuances of the agencies of the National Government, both existing and subsequent issuances.

Moreover, the following restrictions shall govern the development of the Property:

5.1 **Maximum Gross Floor Area (GFA) and Easements/Open Spaces.** The Property shall have a maximum allowable gross floor area (GFA) of **17,100 square meters**, as prescribed by the CMDP.

The Property shall have a minimum Open Space/Easement requirement of twenty-five percent (25%) of the total property.

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5.2 **Height Restriction.** The building/structure to be constructed on the property shall have a height restriction of fifteen (15) meters measured from the lower ground line to the apex of the building/structure.

5.3 **Completion of the Development of the Property.** The development of the Sheridan Drive shall be completed **within four (4) years** from the signing of the Contract of Lease.

5.4 **Parking.** Provisions for parking shall conform to the requirements set under the National Building Code of the Philippines and of the development policy and guidelines set by the BCDA/JHMC through the JSHEZ Design Standards and Guidelines.

5.5 **Cutting of Trees.** The JHMC shall undertake to secure permits for the project from the Department of Environment and Natural Resources (DENR) with the assistance of the Winning Bidder for the 5,700 square meter property. However, cutting/balling of trees and related costs thereto shall be the sole responsibility of the Winning Bidder.

5.6 **Clearing of Existing Structures.** Clearing of the existing structures shall be the sole responsibility of the Winning Bidder after securing the necessary permits or clearances from JHMC. In cases where developmental permits from other National Government Agencies need to be secured, JHMC will endorse such applications to the concerned Agencies.

The clearing works shall include the removal of Asbestos from the existing structures by JHMC prior to Contract Signing.

5.7 **Green Development Principles.** Development of the Property should incorporate sustainable design features with the overall objective of reducing greenhouse gas emissions, water and power use and waste generation. Examples of sustainable design features include, but not limited to:

- a. maximized natural light access
- b. maximized natural ventilation opportunities
- c. thermally efficient building design and shell
- d. passive solar building design
- e. inclusion of green roofs/walls
- f. water sensitive urban design
- g. low water demand plant species in landscape design
- h. no water-intensive and chemical-intensive uses (e.g. swimming pools)

The Winning Bidder should explore opportunities for sustainability excellence and cultural and environmental preservation by following best practice environmental benchmarks for building and development.

5.8 **Design and Visual Impact.** The development should enhance the physical fabric of its vicinity. Building and landscape designs should be compatible with the prominent character and architectural style of Camp John Hay. The Winning Bidder must ensure that buildings and structures will not negatively impact the visual amenity and view corridors of the property. The assessment shall consider (1) the suitability of the building with the landscape's natural contour, (2) suitability of building's colors, forms, textures, and materials, (3) visibility of natural/landscape resources from interior and exterior observation points.

5.9 **Governing Development Plans.** The Winning Bidder will be provided copies of the following development plans which shall serve as guide in the development of the property:

- a. JHSEZ Comprehensive Master Development Plan (CMDP); and
- b. JHSEZ Design Standards and Guidelines (DSG)

ARTICLE III

MODE OF DISPOSITION AND MINIMUM BID PRICE

Section 1 BCDA/JHMC is offering the Property for long-term lease and development for a period of **twenty-five (25) years**, commencing on the signing of the Contract of Lease (draft attached as Annex "D"), with options for renewal specified in Article VI. For this purpose, any negotiation for renewal may not start earlier than two (2) years prior to the expiration of the existing lease term, unless a strong reason justifies an early renewal, subject to the approval of BCDA.

Section 2 The subject of the bidding for the Property is the equivalent annual lease rate on the fifth (5th) year of the lease period. **The Minimum Bid shall not be less than Pesos: Five Million One Hundred Thousand Pesos (Php5,100,000.00)**, exclusive of twelve percent (12%) Value added Tax (VAT).

ARTICLE IV

LEASE PAYMENTS AND TERMS

Section 1 The Winning Bidder shall pay BCDA thru JHMC,

1.1 **Advance Lease Rental.** The Advance Lease Rental equivalent to the sum of the Annual Fixed Lease of the 5th, 6th, 7th and 8th years of the lease as indicated in the Schedule of Payments attached as annex to the Contract of Lease, which shall be considered as automatic payments to such years.

1.2 **Payment of Annual Fixed Lease.** The Annual Fixed Lease for the 9th year, shall be paid without need of demand within thirty (30) days from the start of the 9th year reckoned from the date of the signing of the Contract of Lease (the "Anniversary Date"). Succeeding lease payments shall be made every year thereafter, within thirty (30) days from the start of the succeeding lease period, also without need of demand from BCDA/JHMC.

Section 2 **Escalation Rate.** The lease rate for the Sheridan Drive shall be subject to a ten percent (10%) escalation every three (3) years. Computation of the escalation rate shall commence upon signing of the Contract of Lease.

Section 3 **Grace Period.** The **LESSEE shall be allowed** to use the whole property with no lease payments for the first four (4) years of the lease agreement, but the **LESSEE** shall pay the corresponding cost of the utilities and other cost of

operations. Within the grace period, the **LESSEE** shall start development of the property, and establish operations.

When the Option to Lease the JHMC Cottages is exercised by the Winning Bidder, the grace period shall be extended/applied but shall expire simultaneously as the grace period for the Sheridan Drive Center.

ARTICLE V SECURITIES

Section 1 **Security Deposit.** This shall be equivalent to the sum of the Annual Fixed Lease of the 5th and 6th years of the lease and shall be maintained at all times for the duration of the lease, subject to replenishment if necessary, to answer for any damage to the leased premises, common utility facility (i.e. water pipes, power lines, etc.) used by the Lessee, unpaid utilities, or any accountabilities of the Lessee during construction and development of the Sheridan Drive Center, in the form below:

- a. Cash, Cashier's or Manager's Check or irrevocable Letter of Credit issued by a universal bank acceptable to BCDA.

Section 2 **Lease Payment Security.** To fully secure the annual fixed lease for the property, not later than three (3) months before the start of the 8th year of the lease. The winning bidder shall submit a continuing guaranty with a face value equivalent to the Annual Fixed Lease for the ensuing year of the lease, in any of the following forms below:

- a. Cash, Cashier's or Manager's Check or irrevocable Letter of Credit issued by a universal bank acceptable to BCDA; or
- b. Bank Guaranty or Irrevocable Letter of Credit by a Universal or Commercial Bank acceptable to BCDA.

Section 3 **Performance Security.** On the signing date of the Lease Agreement, and to secure the LESSEE's faithful compliance with the submitted Development Plan, the LESSEE shall deliver to the satisfaction of the LESSOR a Performance Security in any of the following forms:

- a. Irrevocable Letter of Credit issued by a universal bank authorized by the BSP equivalent to five percent (5%) of the total Investment Commitment;
- b. Unconditional Bank Guarantee or Stand-by Letter of Credit issued by a universal bank authorized by BSP equivalent to ten percent (10%) of the total Investment Commitment

ARTICLE VI EXPIRATION AND RENEWAL

Section 1 **Renewal.** The Contract of Lease may be renewed subject to the submission of a written Letter of Intent for lease renewal by the Lessee, two (2) years prior to the expiration of the lease period. The lease agreement may be renewed at the following options:

- a. Additional ten (10) years with a continuing lease rate and terms;

- b. Additional twenty-five (25) years with a new lease rate equivalent to the fair rental value of the improvements based on a third-party appraisal by two (2) independent appraisal companies mutually acceptable to both BCDA/JHMC and the Winning Bidder.

The costs of the appraisal for the improvements shall be equally borne by BCDA/JHMC and the Winning Bidder.

The annual escalation rate of ten percent (10%) every three (3) years shall continue to apply on the Annual Lease for the additional lease period.

Section 2 **Expiration.** Upon termination of the initial lease period and without the Lessee exercising the option to renew the lease period, the ownership of all buildings and permanent facilities/improvements introduced by the Winning Bidder on the Property shall automatically transfer to BCDA.

ARTICLE VII RIGHTS AND RESPONSIBILITIES OF THE PARTIES

Section 1 **Rights and Responsibilities of the Winning Bidder and Penalties for Violation**

The Winning Bidder shall:

1.1 Strictly comply with the terms and conditions of the Contract of Lease to be executed between BCDA, JHMC and the Winning Bidder and maintain all warranties and representations in good standing for the duration of the contract period.

1.2 Undertake planning, construction, financing, development, operation and maintenance of the Property upon signing of the Contract of Lease.

1.3 Submit to BCDA, for approval, its Development Plan for the Property within six (6) months from the signing of the Contract of Lease. It is understood that the BCDA-approved Development Plan shall be made part of the Contract of Lease executed between BCDA, JHMC and the Winning Bidder.

As a guide, the Development Plan shall, at the minimum, contain the following information:

- proposed land uses and corresponding GFA for each use;
- conceptual design, features and amenities (if any);
- the timetable, including major development milestones;
- schedule of capital investments; and
- estimated total development cost.

Strictly comply with the allowable land use/s and the development restrictions for the Property as set in this Terms of Reference (TOR), specifically under Article II, Sections 4 and 5.

1.4 Commence site development on the Property within six (6) month from the receipt of the BCDA approval, of the Development Plan and complete the development of the Property in accordance with the prescribed Development Plan as specified in Article II, Sections 5.3 above.



1.5 Upon signing of the Contract of Lease, submit to BCDA a performance security in any of the described forms as specified in Article V, Section 3, to guarantee the faithful performance of the development of the Property as prescribed in the Bidding.

1.6 Not later than three (3) months before the start of the 8th year of the lease, submit to BCDA an acceptable form of continuing guaranty or Surety Bond in any of the described forms as specified in Article V, Section 2, which shall be automatically renewed until the end of the lease to fully secure the Annual Lease for the Property.

1.7 Not later than two (2) months after completion of construction, obtain, at its own cost, an all-risk insurance coverage for construction and 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.

1.8 Pay, at its sole account, all applicable taxes, real property tax (if any), licenses, fees and charges due on the lease transaction, the Property and its improvements, and those that may be imposed by law during the entire term of the Contract of Lease. Where any taxes are required by law to be withheld from the payment to BCDA/JHMC, the Winning Bidder shall submit certification of taxes withheld at the time of payment to BCDA/JHMC, otherwise any such taxes withheld will not be considered as authorized deductions.

1.9 Assist JHMC in securing the Tree-Cutting Permit from the Department of Environment and Natural Resources for the clearing of trees for cutting or balling.

1.10 Undertake, at its sole cost, on-site development and provide utilities, access roads to the Property, and internal road networks. This includes clearing and properly disposing of the existing cottages/structures within the property, in accordance with the law and environmental rules and regulations, at the Winning Bidder's own cost.

1.11 Upon expiration or termination of the lease term, turn-over/transfer ownership of permanent structure/s, facilities and other improvements introduced by the Winning Bidder on the Property to BCDA.

1.12 In case of a consortium, each member shall be jointly and severally liable with all other members in the performance of the obligations of the Winning Bidder.

1.13 Shall pay the required maintenance, special assessment or utility fees, which will be assessed by JHMC.

1.14 A historical marker, to commemorate the history of the Property, shall be placed in a conspicuous place and an area with high foot traffic.

Should the Winning Bidder fail to perform its responsibilities stipulated in Sections 1.5, 1.6 and 1.7 above, the Winning Bidder shall be liable to pay BCDA the amount of **Fifty Thousand Pesos (PhP50,000.00)** for every day of delay of the submission of the guaranty and the original insurance policy.

Should the Winning Bidder fail to perform any of its responsibilities as specified in Sections 1.2, 1.3 and 1.4 above, BCDA shall have the option to terminate the Contract of Lease as well as the option to re-bid the Property. In such instance, the Winning Bidder shall forfeit any and all monies so far remitted to BCDA/JHMC in relation to the lease of the Property.

The section shall not preclude BCDA/JHMC from exercising its rights/remedies set out anywhere else in this *TOR* or in the *Contract of Lease* for the Property.

Section 2 Rights and Responsibilities of BCDA/JHMC

The BCDA/JHMC shall:

2.1 BCDA shall give the Winning Bidder the sole right to lease, develop, operate, and manage the Property, subject to the restrictions and terms and conditions of the agreements entered into between BCDA/JHMC and the Winning Bidder.

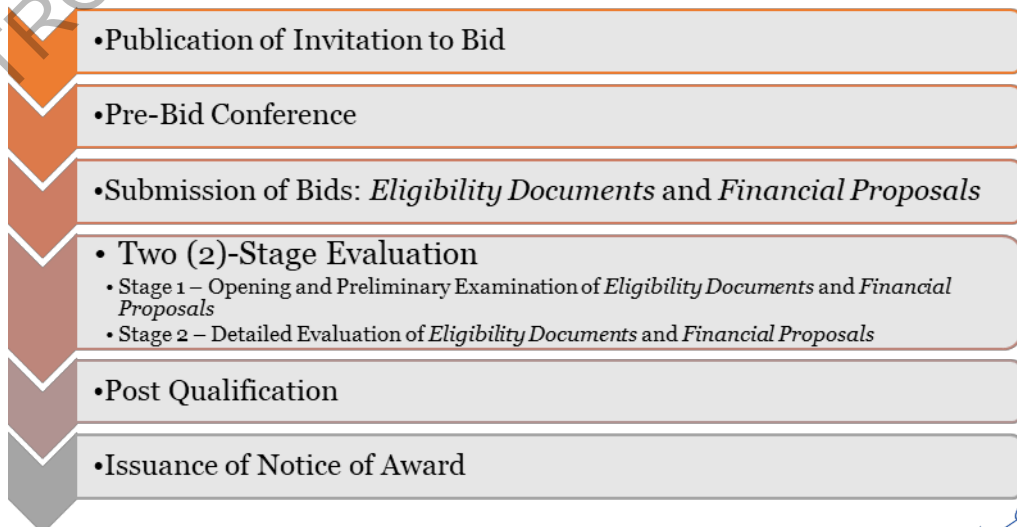
2.2 BCDA/JHMC shall deliver the Property on an as-is-where-is basis, upon signing of the Contract of Lease.

2.3 JHMC shall provide the Tree Cutting Permit for the 5,700 square meter developable area to the Winning Bidder, not later than 9 months after the submission of the initial draft of the Conceptual Development Plan to BCDA/JHMC. However, all costs related to the application of permits and clearing of the trees shall be for the account of the Winning Bidder.

Section 3 The rights and responsibilities of BCDA/ JHMC and the Winning Bidder shall be governed by the provisions of this *TOR* and the *Contract of Lease* to be signed between the Parties. In case of conflict or inconsistency between the two documents, this *TOR* shall prevail over the *Contract of Lease*.

**ARTICLE VIII
BIDDING PROCEDURE**

Section 1 Process Flow. The Bidding process shall proceed as follows:



Section 2 **Publication of Invitation to Bid.** BCDA/JHMC shall publish thrice the “*Invitation to Bid*” in three (3) newspapers or publications of general circulation. It shall also be posted in the BCDA and JHMC websites, www.bcdagov.ph and www.jhmc.com.ph respectively. This shall serve to inform and invite prospective Bidders to the subject bidding.

Section 3 **Submission of Bids.** Bidders shall submit their bids comprising of their *Eligibility Documents* and *Financial Proposals* no later than the deadline specified in Article X *Timetable of Activities*. The *Eligibility Documents* and *Financial Proposals* shall be submitted simultaneously, in two (2) separate sealed envelopes:

First Envelope containing two (2) sets of the **Eligibility Documents**, as listed in Article IX, Section 2, appropriately marked as: “*Original Copy: Eligibility Documents*” and “*Copy 1: Eligibility Documents*”; and

Second Envelope containing two (2) sets of the **Financial Proposal**, as described in Article IX, Section 3, appropriately marked as: “*Original Copy: Financial Proposal*”, and “*Copy 1: Financial Proposal*”.

**ARTICLE IX
ELIGIBILITY CHECK, EVALUATION OF BIDS
AND SELECTION OF WINNING BIDDER**

Section 1 BCDA/JHMC shall adopt a two (2)-stage evaluation process.

Stage 1 involves the opening and preliminary examination of the *Eligibility Documents* to determine completeness of documents submitted by the Bidder and the sufficiency of data/information provided therein.

Stage 2 involves the opening and initial evaluation of the *Financial Proposal* to determine compliance with the financial bid requirements specified under this *TOR*.

Section 2 **Eligibility**

2.1 **Eligibility Criteria.** A Bidder shall be considered eligible if it satisfies all of the following requirements:

2.2 **Legal Capacity.** The Bidder must be a corporation duly-registered with the Philippine Securities and Exchange Commission (SEC) or its equivalent in the country of incorporation and allowed to lease and develop lands in the Philippines, if a foreign corporation. A consortium or joint venture may also apply for eligibility, provided that, the lead member/partner of the consortium/joint venture is duly registered with the Philippine SEC. The consortium or joint venture should submit during the bid submission a copy of the duly executed consortium agreement/joint venture agreement among all members of such consortium/joint venture showing the principal rights and obligations of the members/partners, the extent of participation of each member/partner and their commitment to be jointly and severally liable to BCDA for their responsibilities in relation to the lease of the Property.

2.3 Compliance Commitment. The Bidder (or all its consortium members/joint venture partners) must commit to comply, in the development of the Property, with: (1) the allowable land use/s, and the development restrictions for the Property; and (2) all other pertinent government standards such as, but not limited to, the National Building Code, the Comprehensive Fire Code of the Philippines, and other relevant laws, rules, regulations and issuances of the agencies of the National Government for the entire duration of the lease.

2.4 Technical Capability. The Bidder (or a member, if a consortium/joint venture) should have at least five (5) years of experience in developing projects similar to the allowable uses for the Property, as specified under Article II Section 4 of this TOR, and must have completed a similar project with a total project cost of not less than **Three Hundred Million Pesos (PhP300,000,000.00)** excluding the cost of the land.

2.5 Financial Capacity. The Bidder (or the lead member/partner, if a consortium/joint venture) must have adequate capability to finance the proposed development of the Property and meet all of its financial obligations to BCDA/JHMC, which shall be measured in terms of the audited cash bank balance or credit line facility. The Bidder (lead member/partner, if a consortium/joint venture) should have an available cash balance or credit line of at least 70% of the estimated project development cost of **Five Hundred Million Pesos (PhP500,000,000.00)**.

2.6 Assignment and Substitution. Subject to the written approval of BCDA, a consortium member/joint venture partner may assign to any member/partner of the consortium/joint venture or to a third party, its rights, interests or obligations in the Contract of Lease with BCDA/JHMC, provided that, a fee of 5% of the Annual Fixed Lease prevailing at the assignment date or consideration of PhP500,000.00, whichever is higher, will be charged to the Winning Bidder.

There should be no substitution of nominated consortium member/s or joint venture partner/s until the signing of the Contract of Lease. Substitution of consortium member/s or joint venture partner/s after the signing of the Contract of Lease shall be subject to the written approval of BCDA. Prior to approval by BCDA, the name of the nominated member/partner of the consortium/joint venture must be disclosed to BCDA/JHMC.

2.7 No Default. The Bidder (and all its consortium members/joint venture partners), 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/JHMC at the day of submission of bids, as determined by the BCDA/JHMC Board.

2.8 No Pending Case. The Bidder (and all its consortium members or joint venture partners/nominated firm or assignee, in case of consortium or joint venture), its parent company, or its subsidiaries, or affiliates with common controlling shareholdings, if any, should not be involved in any case against BCDA/JHMC and/or their affiliates and subsidiaries.

2.9 Timely and Complete Payment of Taxes. The Bidder (and all its consortium members) should have no tax liabilities in the Philippines. A Tax

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Clearance Certificate issued by the Bureau of Internal Revenue (BIR) shall be required as part of the post-qualification process.

2.10 Bid Documents. The Bidder must have purchased the TOR (including bid forms and pertinent documents) for a non-refundable fee of **Fifty Thousand Pesos (PhP50,000.00)**. Only those who have purchased the TOR (including bid forms and pertinent documents) shall be entitled to participate in this bidding and receive Bid Bulletins or official responses from the ADP-Com.

2.11 Eligibility Documents. To be eligible, Bidders are required to submit the following documents described in the attached Checklist (Annex "E"):

Duly notarized Eligibility Statement or Joint Eligibility Statement (format attached as Annex "F-1" or Annex "F-2", as applicable) which shall include the following information in support of the Bidder's eligibility:

- Bidder's Profile (format attached as Annex "G"), which contains general organization and financial information about the Bidder. This should be accomplished by all members, in case of consortium;
- Cash bank balance or credit facilities with reputable banks of the Bidder or any of its members in case of a consortium;
- A statement of Commitment to comply with: (1) the allowable land use/s, and the development restrictions for the Property; and (2) all other pertinent government standards;
- A statement of "no-default" on its financial or other obligations to BCDA/JHMC;
- A statement of no pending or unpaid tax liabilities in the Philippines;
- A statement of acceptance of the qualification criteria established by the BCDA/JHMC, commitment to abide by the decision of the BCDA Board, and waiver of its rights to seek legal remedies against BCDA, JHMC, its Board of Directors, Officers, staff, consultants and authorized representatives/personnel in connection with this selection process;
- A statement of attesting to the veracity of all information presented and authenticity of all documents submitted;
- A statement of affirmation of BCDA's/JHMC's anti-corruption policy; and
- A summary of the Bidder's (or in case of a consortium, of the member which meets the Technical Capability requirement) completed projects as well as on-going projects, which are similar to the intended development for the Property, including description, area of development, nature of the entity's participation, status of the project and the project cost (format attached as Annex "H").
- If a joint venture/consortium member, or nominated firm/consultant/affiliate will be used to comply with any of the

Technical Capability Requirements or the Financial Capacity Requirements, the Bidder must submit a duly notarized Certification of Nomination or Affiliation (format attached as Annex "I"). For nominated firm/consultant/affiliate, a Memorandum of Understanding may also be submitted which discusses the intent by the Bidder and the nominated firm/consultant/affiliate to collaborate, work together and arrive at a more definitive agreement relative to the implementation of the Project. Such definitive agreement shall be submitted to the BCDA/JHMC no later than sixty (60) calendar days from the signing of the Contract of Lease.

- Certification from the bank/s reflecting the Bidder's cash balance or available credit facilities of the Bidder as of the month prior to the deadline set for the submission of bids (if bidding as a consortium, any member of the consortium).
- SEC Registration together with the General Information Sheet (GIS) of the Bidder for the latest applicable calendar or fiscal year (or all members, in case of a consortium) or, for foreign corporations, the equivalent document duly authenticated by the Philippine Consulate based in the foreign company's domicile.
- Articles of Incorporation and By-Laws of the Bidder (or all members in case of consortium), and any amendments thereof.
- A Board Resolution or Secretary's Certificate of the Bidder (or all members in case of consortium) expressly authorizing its participation in the bidding process, and appointing its authorized representative/s and signatory for this purpose.
- BCDA/JHMC requires that each and every consortium member shall, as may be applicable, submit all of the above Eligibility Documents and shall be subject to the Eligibility Requirements.

Section 3 **Final Proposal.** The *Final Proposal* shall consist of the following:

3.1 **Final Bid Letter.** The Bidder should submit its bid proposal (Annex "J"), stating its bid for the Annual Lease for the Property duly signed by its authorized representative, which amount shall not be less than the amount stated in Article III, Section 2.

3.2 **Bid Security** in the amount equivalent to ten percent (10%) of the Bid Price for the property, which shall be in the form of bank manager's check or cashier's check. The Bid Security of the Winning Bidder will be treated as earnest money for its required payment at the time of signing of the *Contract of Lease*. The Bid Security of all other Bidders shall be returned without interest upon signing of the *Contract of Lease* between BCDA/JHMC and the Winning Bidder, unless otherwise forfeited under Article X, Section 9.

Section 4 **Evaluation of Bids**

4.1 **Preliminary Examination of Bids.** On the date and time specified in the *Timetable of Activities*, the sealed envelopes containing the *Eligibility*

Documents shall be opened by the Joint ADP-Com to determine completeness of documents and sufficiency of data/information provided therein.

Only those Bidders determined by the Joint ADP-Com during the preliminary examination to have submitted complete Eligibility Documents under this *TOR* shall be qualified for the opening of their *Final Proposals*. Those Bidders determined by the Joint ADP-Com to have failed to submit complete Eligibility Requirements shall automatically have their *Final Proposals* returned to them unopened.

The Joint ADP-Com shall open the *Final Proposals* to determine compliance with the requirements under Article IX, Section 3 of this *TOR*. *Final Proposals* that are found to be non-complying shall be automatically rejected, and the Bid Security shall be immediately returned to the concerned Bidder.

4.2 Detailed Evaluation of Bids. Within the period specified in the *Timetable of Activities*, the Joint ADP-Com shall conduct a detailed evaluation of the *Eligibility Documents* and *Final Proposals* submitted. Bids that have satisfied all the requirements of this *TOR* shall be ranked based on the starting Annual Lease, and the highest proposed starting Annual Lease shall be declared the **Highest Ranked Bid**. The results of the Joint ADP-Com's detailed evaluation of bids shall be subject to the approval of the BCDA Board.

Section 5 **Post-qualification**

5.1 The Bidder with the Highest Ranked Bid must pass a post-qualification process to verify accuracy and authenticity of all submitted documents and information, including submission of a Tax Clearance Certificate issued by the BIR in accordance with Executive Order No. 398 Series of 2005 and if a consortium, the corresponding *Memorandum of Agreement*. The *Memorandum of Agreement* must include the following information:

- brief description of the consortium/joint venture, the individual members of the consortium and the nature and extent of the participation (capital of each member in relation to the whole capital);
- the lead member of the consortium/joint venture who is authorized by all the members to represent and sign any and all documents related to this bidding including the *Contract of Lease* with BCDA/JHMC; and
- agreement of all members to be jointly and severally liable for the obligations of the consortium/joint venture under the award/contract.

Any material insufficiency in the information required, inconsistencies, errors or misinterpretations in the submitted documents shall be ground for disqualification and forfeiture of its Bid Security.

5.2 If the Bidder with the Highest Ranked Bid passes post-qualification, its proposal shall be declared as the **Highest Ranked and Complying Bid**. The Joint ADP-Com shall recommend to the BCDA/JHMC Boards the award of the contract to said Bidder (Winning Bidder).

5.3 If the Bidder with the Highest Ranked Bid fails post-qualification, the ADP-Com shall notify the Bidder of the results thereof. The Joint ADP-Com

shall subject the Bidder with the Second Highest Ranked Bid to post-qualification.

5.4 If the Bidder with the Second Highest Ranked Bid passes post-qualification, it shall be declared as the Winning Bidder. If, however, the bidder with the Second Highest Ranked Bid fails post-qualification, the post-qualification process shall be repeated for the bidder with the next highest ranked bid, and so on until a Winning Bidder is determined.

Section 6 **Award.** A Notice of Award (NOA) shall be issued to the Winning Bidder, inviting the Winning Bidder to execute the *Contract of Lease* within thirty (30) calendar days from receipt thereof.

ARTICLE X TIMETABLE OF ACTIVITIES

Activities	Revised Schedule
Publication of Invitation to Bid	September 15, 22 and 29, 2020
Issuance of TOR	September 22 to October 27, 2020
Pre-bid Conference	September 29, 2020, 10:00 AM
Deadline of Submission of Requests for Clarification	October 8, 2020
Last day of Issuance of Bid Bulletin	October 22, 2020
Deadline for Submission of the Eligibility Documents and the Final Proposals	October 28, 2020, 12:00 NN BCDA Clark
Opening and Preliminary Examination of Bids	October 28, 2020, 12:00 NN
Detailed Evaluation of Bids	October 28 - November 4, 2020
Board approval of the Results of Evaluation of Bids	November 5, 2020
Post-qualification	November 6 - November 10, 2020
Estimated Board Approval of Results of Post-qualification and ADP-Com Recommendation to declare the Winning Bidder	November 16, 2020
Announcement of the Winning Bidder and Issuance of Notice of Award	November 18, 2020
Signing of Contract	November 23, 2020

The above is an indicative timetable which may change at the discretion of the Joint ADP-Com.

ARTICLE XI TAKE-OVER OF THE PROPERTY

Section 1 The Winning Bidder shall authorize BCDA/JHMC to enter the Property as the agent or attorney-in-fact of the Winning Bidder, without the need of any judicial action, in the following instances:

1.1 The Property is abandoned, deserted or vacated within the duration of the *Contract of Lease*;

1.2 Violation of any terms thereof by the Winning Bidder; or

1.3 Non-payment of lease in full by the Winning Bidder.

BCDA/JHMC shall further have the option to dispose the same to other parties as the agent of the Winning Bidder, to receive the payments thereof, and to apply the same to the emoluments due under the *Contract of Lease*, holding the Winning Bidder liable for any deficiency, without prejudice to any right of action against the Winning Bidder.

For purposes of this Section, the Property is considered to be abandoned, deserted or vacated if the Winning Bidder or its authorized representatives or beneficiaries has not within the lease period used or entered the Property for three (3) consecutive months without prior due notification to BCDA/JHMC.

This section shall also not preclude BCDA/JHMC from exercising its right/remedies that shall be set out anywhere else in this TOR or in the *Contract of Lease* for the Property.

**ARTICLE XII
OTHER MATTERS**

Section 1 **Amendments.** The major terms, provisions and procedures contained in this TOR may be amended or replaced at any time, at the discretion of the Joint ADP-Com, subject to the approval of the BCDA Board, without giving prior notice or providing any reasons thereof. Should any of the information and/or procedures contained in this TOR be amended or replaced, the Joint ADP-Com shall inform all Bidders of such amendments by way of a Bid Bulletin. To ensure that all Bidders are informed of any amendments to this TOR, all Bidders are requested to inform BCDA/JHMC of their contact persons as well as contact telephone numbers and e-mail addresses. In addition, receipt of all Bid Bulletins shall be duly acknowledged by each Bidder prior to the submission of bids and shall be so indicated therein.

Section 2 **Pre-Bid Conference.** Interested bidders are invited to attend a Pre-Bid Conference to discuss the Property, this TOR and other possible questions. The Conference shall be held on the date and time specified in the *Timeline of Activities*. The Pre-Bid Conference shall be held via Zoom; Meeting ID: **852 8887 0997** Passcode: **048713**. Succeeding conferences with the prospective Bidders shall be scheduled by the Joint ADP-Com prior to the submission of bids. Any change in the *Timetable of Activities*, as well as resolutions and actions on the issues raised by the Bidders shall be embodied in a Bid Bulletin.

Section 3 **Requests for Clarifications.** Bidders are enjoined not to contact any employee or officer of BCDA/JHMC, whether personally or through phone calls. All relevant inquiries and concerns shall be raised in writing and addressed only to the ADP-Com Chairperson as follows:

THE CHAIRPERSON

BCDA-JHMC Joint Asset Disposition Program Committee
Bases Conversion and Development Authority/
John Hay Management Corporation
BCDA Clark Office, 9F One West Aeropark Building
Industrial Estate-5, Clark Global City, Clark Freeport Zone

Mabalacat 2023, Pampanga, Philippines

All clarifications and inquiries on the submissions of Bids should be received by the Joint ADP-Com on or before the date specified in this *TOR*.

Section 4 **Due Diligence.** Each prospective Bidder shall be solely responsible for its own due diligence of all matters relating to this *TOR* and the Property which may affect its valuation of the Property of the nature of its proposal. BCDA/JHMC shall not be responsible for any erroneous interpretation or conclusion of the Bidder out of data furnished or indicated in this *TOR* and official eligibility and proposal forms, including any addenda, amendments or Bid Bulletins issued by the Joint ADP-Com.

No verbal agreement or conversation with, nor any verbal clarification from, any officer or employee of BCDA/JHMC, the Joint ADP-Com or any of their advisers shall affect or modify any of the terms and conditions contained in this *TOR*. Only amendments, supplements or clarifications to this *TOR* that are set down in writing and circulated to proponents by the Joint ADP-Com shall be relied upon as authorized. Neither the BCDA, JHMC, its Directors, Officers, staff, consultants, and authorized representatives/ personnel may make any representation or warranty concerning any matter affecting this bidding except for the representations and warranties of BCDA and JHMC that shall be set out in the *Contract of Lease* for the Property.

Section 5 **Failure of Bidding.** The Joint ADP Committee, upon approval of the BCDA Board, shall declare a failure of bidding in any of the following instances:

- 5.1 No bid is received;
- 5.2 No Bidder passed the preliminary examination of bids;
- 5.3 No Bidder qualified during the detailed evaluation of bids;
- 5.4 No Bidder passed post-qualification;
- 5.5 The Winning Bidder refused to accept the award or enter into contract with BCDA/JHMC; and
- 5.6 The happening of a fortuitous event or any reason beyond the control of BCDA/JHMC, including but not limited to change in government policy, which prevents the completion of the contract or unduly delays its conclusion.

Section 6 **Appeal.** A Bidder determined as disqualified and/or whose bid has been found non-complying may file an appeal in writing (Notice of Appeal) to the BCDA Board of Directors. The appeal must be filed within seven (7) calendar days from receipt of the bid bulletin containing the questioned resolution. The Notice of Appeal shall be accompanied by a sworn statement and corresponding payment of a non-refundable appeal fee in the amount of **Ten Million Pesos (PhP10,000,000.00)**, in the form of a bank manager's check.

The bidding process will be suspended for a maximum period of thirty (30) calendar days while the appeal is being evaluated. The decision of the BCDA and JHMC Boards on the appeal shall be final and immediately executory. If

the appeal is not resolved within the said period, the appeal is deemed denied, and the bidding process will proceed.

Section 7 **Confidentiality of Bids.** All bids and accompanying documents shall be treated as confidential. Both parties shall hold any and all confidential information in strict adherence and will not disclose or use any confidential information or any part of it except for the proper performance of the party's obligations under the *TOR*.

Section 8 **Waiver of Right to Seek Legal Remedies.** BCDA and JHMC, its Board of Directors, Officers, staff, consultants, and authorized representatives/personnel shall be held free and harmless from any liability, costs and expenses arising from the participation by the Bidders in this bidding process. All Bidders, in participating in the bidding, waive all rights to seek legal action (e.g. Temporary Restraining Order, lawsuits, etc.) to prevent BCDA/JHMC from awarding and executing a contract with the Winning Bidder or against any decision of the BCDA/JHMC in connection with the evaluation, award, suspension or termination of the bidding process.

Section 9 **Forfeiture of Bid Security.** Any of the following shall be ground for the forfeiture of the Bid Security in favor of BCDA upon certification by the Joint ADP-Com:

9.1 Any material misrepresentation, error and/or fraudulent declaration made by the Bidder in the bid documents or any of the required attachments discovered at any time after the preliminary examination of bids;

9.2 Withdrawal or modification, whether conditional or otherwise, of the proposal after the deadline for the submission of bids;

9.3 Failure or refusal of a Winning Bidder to enter into a *Contract of Lease* with BCDA/JHMC within the prescribed period;

9.4 Any judicial or extrajudicial action by the Winning Bidder that shall delay the execution of the *Contract of Lease* and/or its compliance with its obligations as set out in this *TOR*; and

9.5 Any circumstance or reason that provides the BCDA Board reasonable and valid basis to believe that the Bidder is or has been rendered incapable of completing its obligation, as proposed.

The decision of the BCDA Board shall be final.

Section 10 **Integrity Initiative.** The Bidders, their Directors and Officers are prohibited from communicating with or contacting, directly or indirectly, any of the BCDA's Directors, Officers, staff, consultants and other authorized representatives/personnel on matters concerning the bidding for the entire duration of the bidding process except for queries and clarifications of proposals which must be in writing and addressed to the Joint ADP-Com Chairperson.

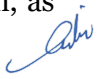
The Bidders shall not offer or give, directly or indirectly, any amount, benefit or advantage to any Director, Officer, employee, consultant, or authorized representative/personnel of BCDA nor of JHMC. Violation of this policy shall be a ground for disqualification or revocation of the award, if any, without

prejudice to damages that BCDA/JHMC may recover for any loss or damage that may result therefrom.

Section 11 **Qualifications and Waivers.** The BCDA Board reserves the right to reject any or all bids and its decision shall be final. BCDA reserves the right to review all relevant information affecting the Bidder or the proposal before the execution of the *Contract of Lease*. BCDA may disqualify the Bidder or suspend/terminate the bidding process or declare a failure of bidding should such review uncover any misrepresentation, error, mistake, or fraud in any of the submitted documents or information or evaluation which affects the substance of its proposal.

The BCDA Board further reserves the right to call off the bidding at any stage prior to the signing of the *Contract of Lease* and call for a new bidding under amended rules, without any liability whatsoever to any and all the Bidders. In such a case, the Bid Security shall be returned to the Bidder.

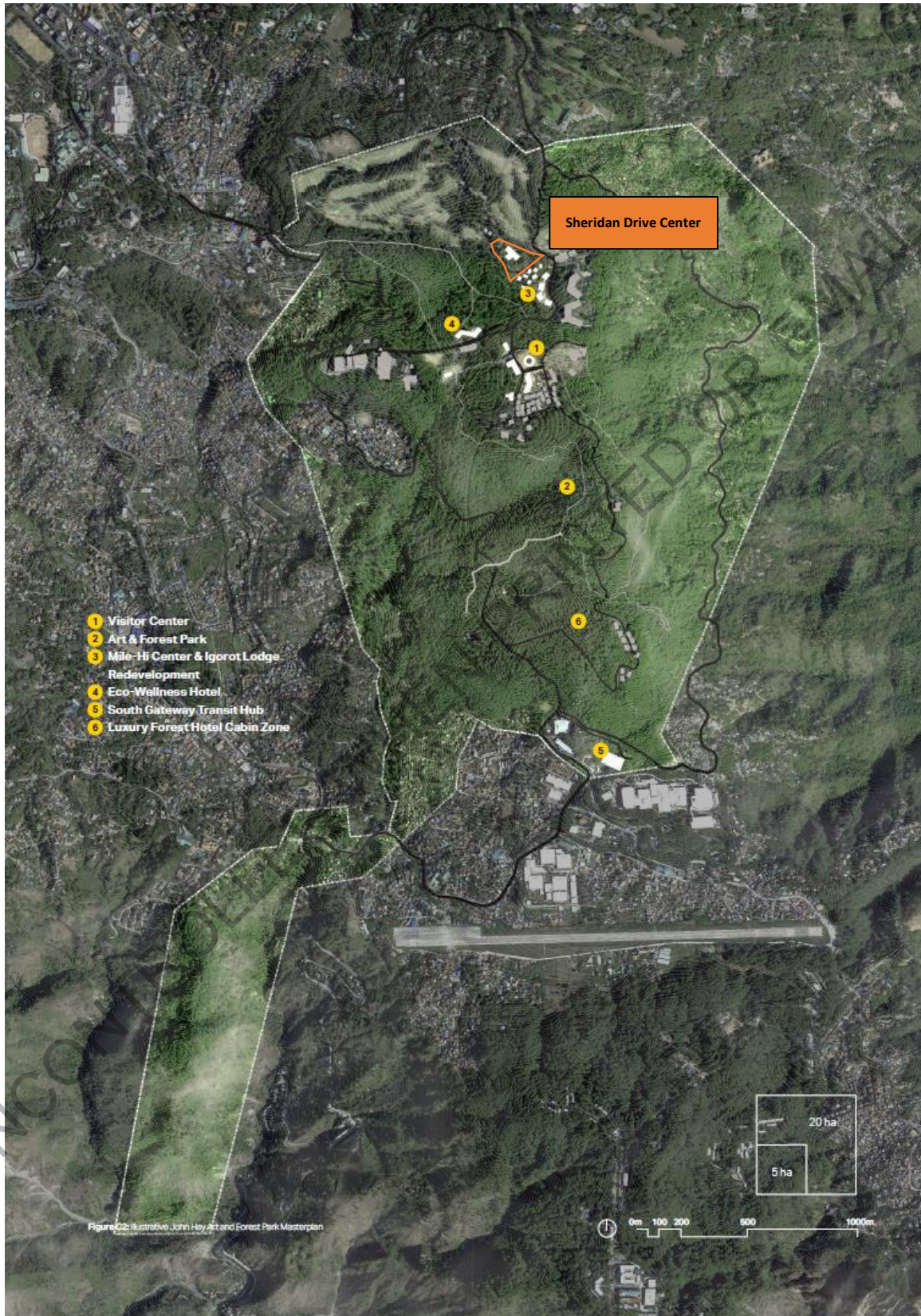
Section 12 **Interpretation of Documents.** The *TOR* and all its Annexes have been crafted with a view toward fair, transparent, and competitive bidding of the subject Property. Any ambiguity in, or conflict between, the *TOR* and its Annexes shall be resolved toward fulfilling the intent of this privatization, as determined by BCDA/JHMC.



UNCONTROLLED WHEN PRINTED FOR EMAIL



ANNEX "A"



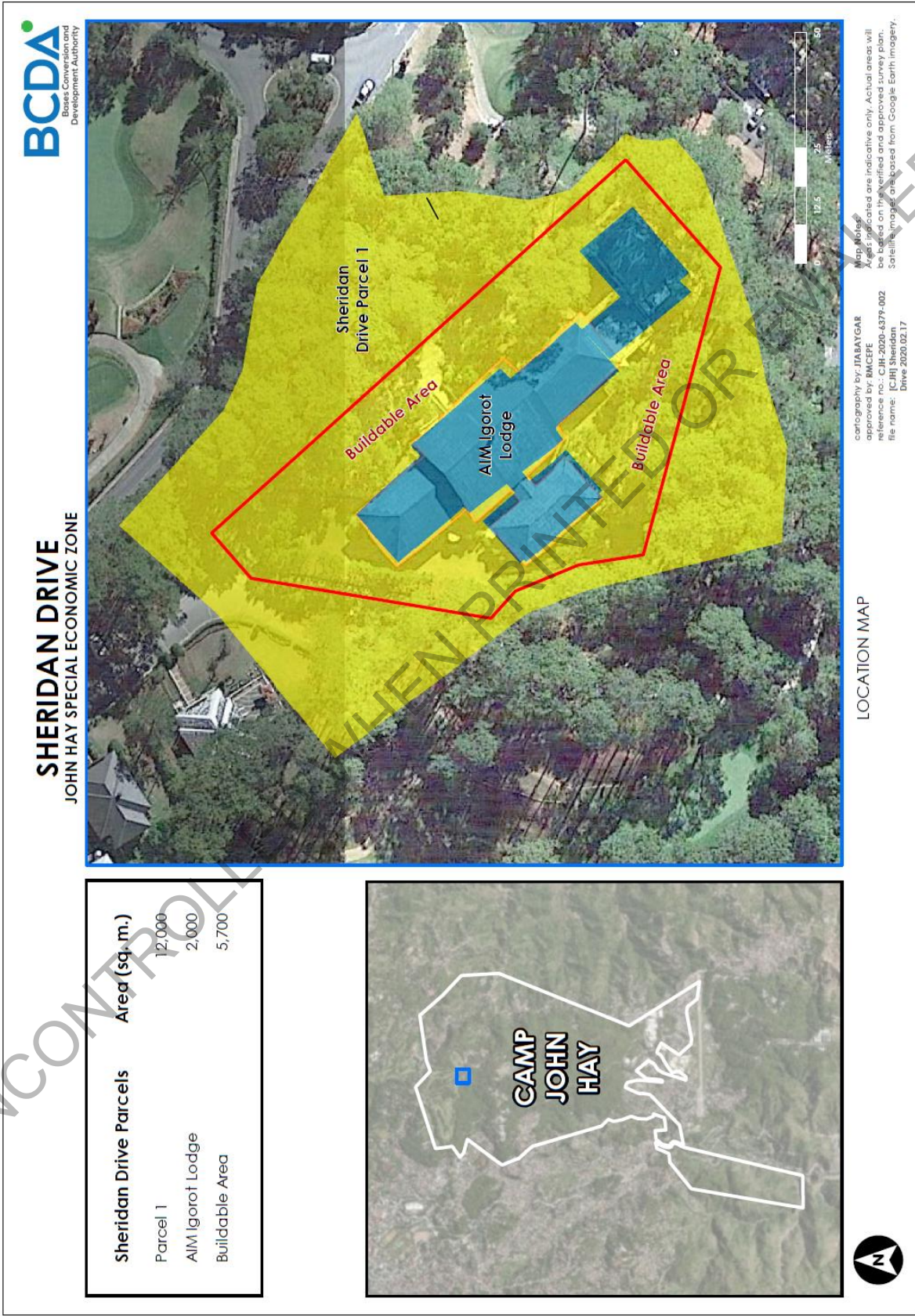
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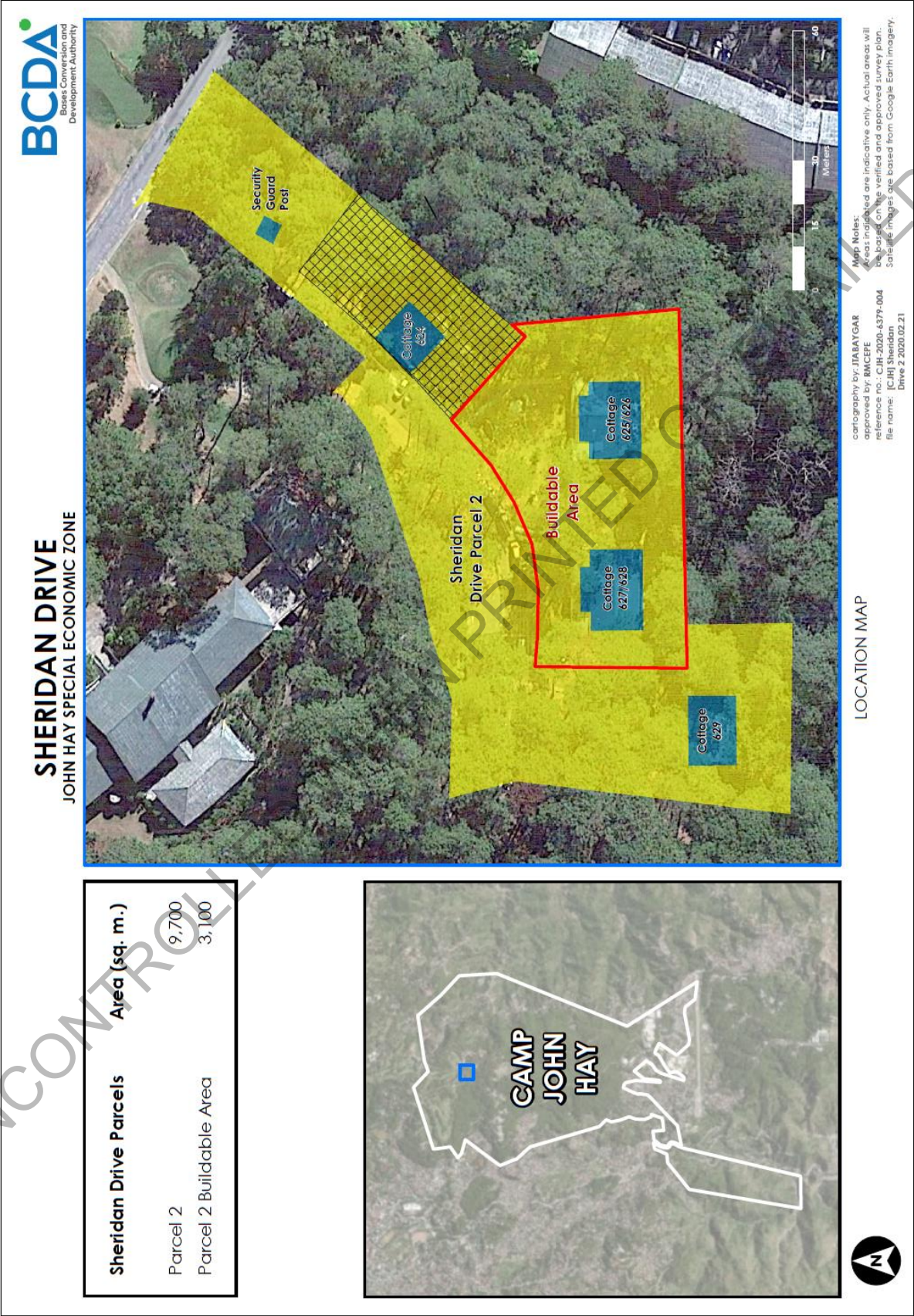
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ANNEX "B-1"



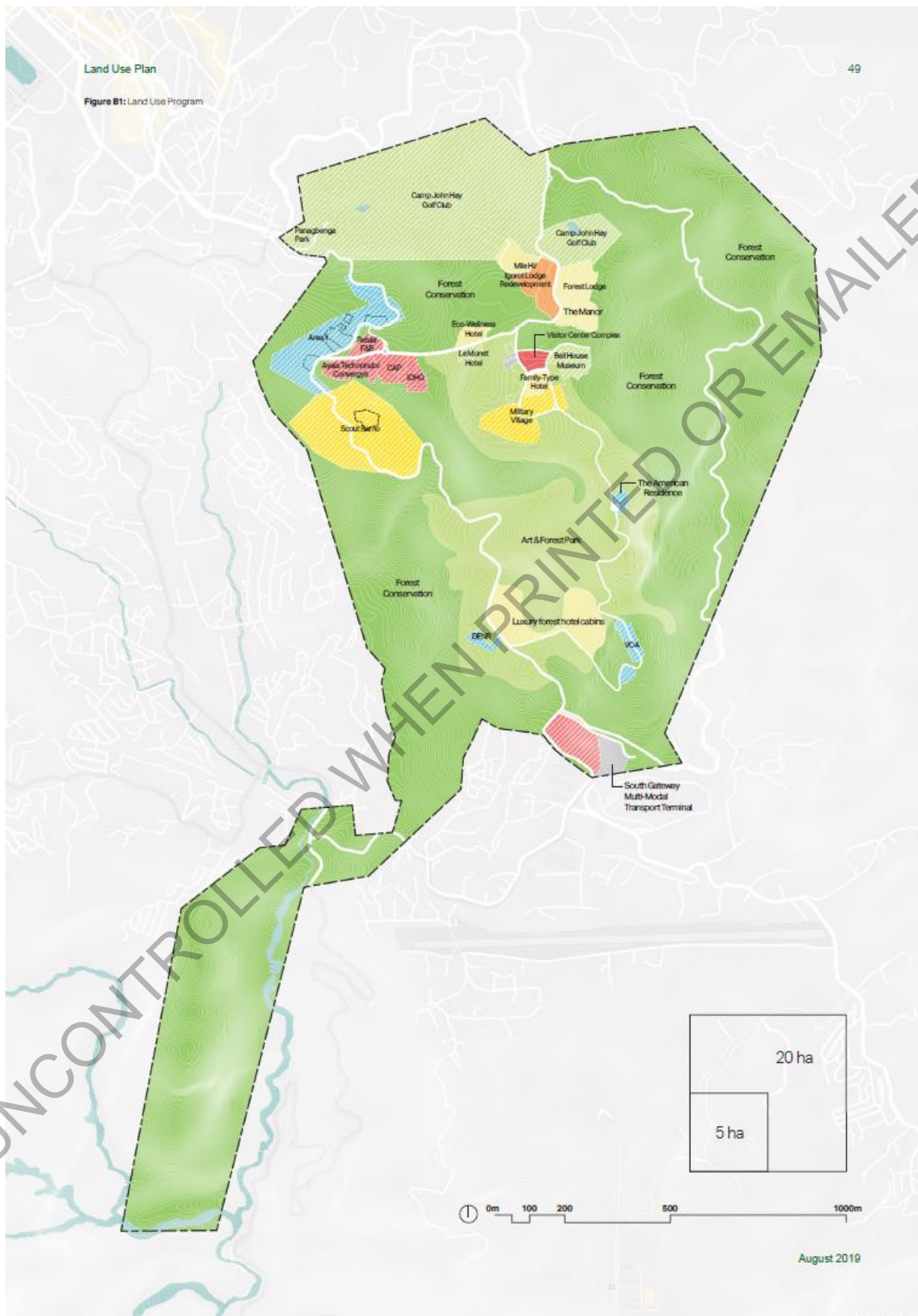
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ANNEX "B-2"



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ANNEX "C"



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ANNEX “D”

DRAFT CONTRACT OF LEASE

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CONTRACT OF LEASE

THE PUBLIC IS INFORMED:

This Contract of Lease, made and entered into by and between:

BASES CONVERSION AND DEVELOPMENT AUTHORITY, a government instrumentality vested with corporate powers created under and by virtue of Republic Act (RA) No. 7227, as amended, with principal office address at the BCDA Corporate Center, 2/F Bonifacio Technology Center, 31st Street corner 2nd Avenue, Bonifacio Global City, Taguig City, Metro Manila, represented by its President and Chief Executive Officer, **VIVENCIO B. DIZON**, who is authorized for this purpose by the BCDA Board of Directors through Board Resolution No. _____, Series of 2020, evinced by Secretary's Certificate dated _____, a copy of which is attached as **Annex A**, hereinafter referred to as "**BCDA**";

JOHN HAY MANAGEMENT CORPORATION, a subsidiary of BCDA, created under and by virtue of Executive Order No. 103, series of 1993, with principal office address at the John Hay Special Economic Zone (JHSEZ), Camp John Hay, Baguio City, who is authorized for this purpose through JHMC Board Resolution No. _____, evinced by Secretary's Certificate dated _____, a copy of which is attached as **Annex B**, hereinafter referred to as "**JHMC**";

-and-

_____, with principal office address at _____, represented by its _____, who is authorized for this purpose through Board Resolution No. _____, evinced by Secretary's Certificate dated _____, a copy of which is attached as **Annex C**, hereinafter referred to as "_____".

(BCDA/JHMC and _____ are individually referred to as a "Party" and collectively as the "Parties".)

ANTECEDENTS:

Republic Act (RA) No. 7227, as amended, mandates BCDA to accelerate the sound and balanced conversion into alternative productive uses of the former Clark and Subic military reservations and their extensions, to raise funds by the sale or disposition of portions of Metro Manila military camps, and to apply said funds for the development and conversion to productive civilian use of said reverted military base lands.

Proclamation No. 198, series of 1993 transferred to BCDA the ownership, administration and control over the John Hay Air Station (now the “Camp John Hay”), which was declared for tourism, human resource development center, and multiple use forest watershed reservation purposes.

Executive Order (EO) No. 103, series of 1993 authorized the establishment of the John Hay Management Corporation (JHMC) as BCDA’s operating and implementing arm to manage the Camp John Hay.

Pursuant to its mandate, BCDA, with its subsidiary, JHMC, conducted a public bidding through solicited competitive selection, for the long-term lease and development of the Sheridan Drive Center with an area of approximately 5,700 square meters located within the John Hay Special Economic Zone (JHSEZ) (hereinafter the “Project”).

The disposition of the Sheridan Drive Center was carried out pursuant to the provisions of RA 7227, as amended, Executive Order No. 62, series of 1993, as amended, which prescribes the policies and guidelines to implement RA 7227, the BCDA Revised Guidelines for the Sale and Lease of BCDA Properties, and other relevant laws, executive orders, and rules and regulations, to the extent applicable.

On 04 March 2020, BCDA, through the BCDA-JHMC Joint Asset Disposition Program (ADP) Committee (hereinafter, the “Joint ADP Committee”) for the disposition of JHMC properties, published the Invitation to Bid to invite all interested private sector proponents to participate in the bid for the long-term lease and development of the Sheridan Drive Center within the JHSEZ.

On _____, _____ interested private sector proponents submitted their bids for the Project containing their eligibility documents and financial proposals.

Out of the _____ prospective private sector proponents who submitted the bids, only _____ proponents have qualified and were subjected to the detailed evaluation/examination of the bids as to their legal, technical and financial capabilities.

After the detailed bid evaluation conducted by the Joint ADP Committee, the LESSEE, who was ranked as the bidder with the Highest Ranked Bid (HRB), underwent the post-qualification stage to verify the accuracy and authenticity of all its submitted documents and information and to determine its compliance with the requirements of the Project pursuant to the terms of reference/bidding documents.

After thorough verification and validation of all the documents and information submitted by the LESSEE and after determining the LESSEE’s compliance with all the requirements of the subject bidding, the Joint ADP Committee, through a resolution¹, declared the LESSEE as the bidder with the Highest Ranked and Complying Bid (HRCB) and recommended to BCDA/JHMC the award of the Project.

¹ Annex D – Joint ADP Committee Resolution No. _____, dated _____.

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In _____² and _____³, BCDA and JHMC, through their respective Board of Directors, approved the award of the Project to the LESSEE.

ACCORDINGLY, the Parties have agreed as follows:

ARTICLE I GENERAL AGREEMENTS

Section 1. Leased Property

BCDA/JHMC conveys, by way of lease on **“as-is where-is”** basis with a right to develop, a parcel of land with a total area of approximately **5,700 square meters and a maximum gross floor area of 17,100 square meters**, the metes and bounds of which is subject to actual survey to be jointly conducted by the Parties, (hereinafter the “Leased Property”) to the LESSEE, subject to the provisions herein. The Leased Property, as shown in the attached map⁴, is located in the southern portion of Sheridan Drive in JHSEZ. It is the developable portion of Parcel 1 covering approximately 5,700 square meters of the Sheridan Drive Properties, which has an aggregate area of approximately 12,000 square meters. The remaining undevelopable portion of the Sheridan Drive Properties with an approximate area of 6,300 square meters shall be under the management of JHMC.

Section 2. Option to Lease Additional Area

Subject to the approval of BCDA, the LESSEE may lease an additional developable land with an approximate area of **3,100 square meters** and a maximum gross floor area of **9,300 square meters** situated in the southern part of the Leased Property, where the two (2) JHMC Cottages are located, namely: (1) Cottage 625/626; and (2) Cottage 627/628 (hereinafter the “Option/Additional Area”). The option to lease the Option/Additional Area may be exercised by the LESSEE **within a period of one (1) year only from the signing of the Contract of Lease**, otherwise, the LESSEE shall lose its right to exercise said option. Not later than one year from signing of the Contract of Lease, the LESSEE shall signify to BCDA/JHMC in writing, its intent to lease the Option/Additional Area. As in Section 1 above, the remaining undevelopable area of the Option/Additional Area shall be under the management of JHMC.

Section 3. Use of the Property

The Leased Property shall be used primarily for the development of a hotel with a mix of commercial/retail and recreational components.

In like manner, if the LESSEE opts to lease and develop the Option/Additional Area, the development of the property must be characterized as a mixed-use development, wherein different

² Annex E – BCDA Board Resolution No. _____, dated _____.

³ Annex F – JHMC Board Resolution No. _____, dated _____.

⁴ Annex G – Location Map of the Leased Property

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land uses, i.e. commercial/retail, recreational, etc., are integrated or combined into one area of development.

The development of the Leased Property and the Option/Additional Area (as may be applicable) must be within the allowable Gross Floor Area (GFA) as specified herein.

Should the LESSEE use and/or devote the Leased Property and the Option/Additional Area, (as may be applicable), or a portion or portions thereof, to a use/s or purpose/s different from what are provided herein and in the BCDA-approved Development Plan without prior written approval of BCDA, it shall be a ground for the immediate termination of this Contract of Lease without need of judicial termination.

Section 4. Restrictions on the Property

In developing the Leased Property, the LESSEE must strictly comply with the Comprehensive Master Development Plan (CMDP) and the Design Standard and Guidelines (DSG) of the JHSEZ as well as all pertinent government standards, such as but not limited to, the National Building Code, the Comprehensive Fire Code of the Philippines, and other relevant laws, rules, regulations and issuances of the concerned government agencies, which include both existing and subsequent issuances.

The LESSEE shall likewise observe the following restrictions:

a. **Maximum Gross Floor Area and Easement/Open Spaces**

Under the CMDP for the JHSEZ, the maximum allowable gross floor area for the Leased Property shall be **17,100 square meters**. The Leased Property shall have a minimum Open Space/Easement requirement of twenty-five percent (25%) of the total leased property.

b. **Height Restriction**

The building/structure to be constructed on the Leased Property shall have a height restriction of fifteen (15) meters measured from the lower ground line to the apex of the building/structure.

c. **Completion of the Development of the Property**

The LESSEE is required to complete the development of the Leased Property within a period of **four (4) years** from the signing of the Contract of Lease. Should the LESSEE opt to lease the Option/Additional Area, the allowable period for the development of the Leased Property shall be extended or applied but the expiration of the period must be simultaneous with the grace period required for the Leased Property.



d. Parking

The provisions for the parking must conform to the requirements set forth in the National Building Code of the Philippines and of the development policy and guidelines set by the BCDA/JHMC through the JHSEZ Design Standards and Guidelines.

e. Cutting of Trees

The required permits from the Department of Environment and Natural Resources (DENR) shall be secured by JHMC, with the assistance of the LESSEE. However, the cutting/balling of the trees within the Leased Property shall be the responsibility of the LESSEE, and all costs related thereto shall be for the account of the LESSEE.

f. Clearing of Existing Structures

Clearing of the existing structures within the Leased Property shall be the sole responsibility of the LESSEE after securing the necessary permits or clearances from JHMC. In cases where developmental permits from other national government agencies need to be secured, JHMC will endorse such applications to the concerned agencies.

The clearing works shall include the removal of the Asbestos from the existing structures by JHMC prior to contract signing.

g. Green Development Principles

In the development of the Leased Property, the LESSEE must consider sustainable design features with overall objectives of reducing greenhouse gas emissions, water and power use and waste generation. The sustainable design features may include the following:

1. maximized natural light access
2. maximized natural ventilation opportunities
3. thermally efficient building design and shell
4. passive solar building design
5. inclusion of green roofs/walls
6. water sensitive urban design
7. low water demand plant species in landscape design
8. no water and chemical-intensive uses (e.g. swimming pools)

The LESSEE should explore opportunities for sustainability excellence and cultural and environmental preservation by following best practice environmental benchmarks for building and development.

h. Design and Visual Impact

The development of the Leased Property should enhance the physical fabric of its vicinity. Building and landscape designs should be compatible with the prominent character and architectural style of Camp John Hay. The LESSEE must ensure that the buildings and structures to be erected shall not have a negative impact on the visual amenity and view corridors of the Leased Property. The assessment shall consider the following: (1) suitability of the building with the landscape's natural contour; (2) sustainability of the building's colors, forms, textures, and materials; (3) visibility of natural/landscape resources from interior and exterior observations points.

i. Government Development Plans

The CMDP and the DSG for the JHSEZ shall serve as the LESSEE's guide in the development of the Leased Property. BCDA/JHMC shall provide the LESSEE with copies of the CMDP and DSG for the JHSEZ immediately after the execution of this Contract of Lease.

Except for Section 1.04 (a) & (e), the restrictions provided in the preceding Section shall also apply in case the LESSEE opts to lease the Option/Additional Area. For the Option/Additional Area, the maximum allowable gross area under the CMDP for the JHSEZ is **9,300 square meters**. Should the LESSEE opt to lease the Option/Additional Area, the cutting and balling of trees within the Option/Additional Area, including the securing of the corresponding permits from the DENR, and all costs related thereto, shall be the sole responsibility of the LESSEE.

Section 5. Term and Renewal of Lease

The lease of the 5,700-square meter Leased Property shall be for a period of **twenty-five (25) years**, reckoned from the date of signing of the Contract of Lease (hereinafter "Initial Lease Period"). The Parties, upon mutual agreement, may opt to renew the lease at the following options, subject to submission by the LESSEE of a Letter of Intent to renew the lease at least one (1) year prior to the expiration of the Initial Lease Period:

- a. Additional ten (10) years with a continuing lease rate and terms; or
- b. Additional twenty-five (25) years with a new lease rate equivalent to the fair rental value of the improvements based on a third-party appraisal by two (2) independent appraisal companies, which are acceptable to all the parties.

The costs of the appraisal for the improvements shall be equally borne by BCDA/JHMC and the LESSEE.



For purposes of renewal of the lease, no negotiations shall take place between the Parties earlier than two (2) years prior to the expiration of the Initial Lease Period.

Should the LESSEE opt to lease the Option/Additional Area, the lease thereof shall be co-terminus with the lease of the 5,700-square meter Leased Property.

The foregoing provisions on the renewal of lease of the 5,700-square meter Leased Property shall likewise apply to the Option/Additional Area.

Section 6. Lease Rental

For the 5,700-square meter Leased Property the LESSEE shall pay BCDA through JHMC an annual lease in the amount of _____ Pesos (PhP _____), exclusive of the applicable rate of value-added tax (VAT), which shall be remitted by the LESSEE to BCDA through JHMC together with the payment, to commence on the 9th year of the lease term. The lease for the 9th year shall be paid, without need of demand, within thirty (30) calendar days from the start of the 9th year, reckoned from the date of signing of the Contract Lease (hereinafter "Anniversary Date"). The lease payments for the succeeding years shall be made within thirty (30) calendar days from the start of each year, also without need of demand from BCDA/JHMC.


The lease rate and the manner of payments for the succeeding years of lease shall likewise apply if the LESSEE opts to lease the Option/Additional Area which covers approximately 3,100 square meters.

The Lease Payment Schedule for the Leased Property and the Option/Additional Area⁵ is attached to, and shall form an integral part of this Contract.

Section 7. Advance Lease

Upon the signing of the Contract of Lease, the LESSEE shall pay to BCDA through JHMC in advance, exclusive of the applicable rate of VAT, which shall be remitted by the LESSEE to BCDA through JHMC together with the payment, the amount equivalent to the sum of the Annual Fixed Lease for the 5th, 6th, 7th and 8th years of the lease for the 5,700-square meter Property as indicated in the attached Schedule of Payments made as an integral part hereof⁶, which shall be considered as automatic payments for such years.

Should the LESSEE opt to lease the Option/Additional Area, it shall likewise pay to BCDA through JHMC an advance lease equivalent to the sum of the Annual Fixed Lease of the 5th, 6th, 7th and 8th years of the lease for the Option/Additional Area, exclusive of the applicable rate of VAT, which shall be remitted by the LESSEE to BCDA through JHMC together with the payment.. The terms of the lease for the Option/Additional Area shall start to be effective upon written approval by BCDA of



⁶Annex H – Lease Payment Schedule for the Leased Property and Option/Additional Area

the option to lease. The payments pertaining to the Option/Additional Area shall also be due upon written approval by BCDA of the option to lease.

This Contract shall not be deemed effective despite the execution of the Parties in case of failure of the Lessee to pay the Advance Lease as provided herein. In such a case, the LESSEE shall not be allowed occupation or possession of any portion of the Leased Property or Option/Additional Area, if applicable, or start development on any portion of the Leased Property or Option/Additional Area, if applicable, and the LESSEE shall not commence marketing or selling activity or any related activity in relation to the Leased Property or Option/Additional Area, if applicable.

Section 8. Rent-Free Period

The LESSEE shall be entitled to occupy and use the Leased Property for the first four (4) years of the lease term from Effective Date, free of rent; Provided that, the LESSEE must start its development on the Leased Property and establish its operations therein during the rent-free period; Provided further that, the LESSEE shall pay CUSA to JHMC, the cost of utilities and expenses it incurred for its operations during the said rent-free period.

Should the LESSEE opt to lease the Option/Additional Area within the allowable period, it shall likewise be granted a rent-free period for the first four (4) years, commencing from the time of the written approval by BCDA of the option to lease until the expiry of the four (4)-year rent-free period accorded to the LESSEE for the use of the Leased Property.

During the rent-free period, the LESSEE is still bound by the terms and conditions of this Contract of Lease. Further, any delay in the development of the Leased Property during this period shall not in any way release the LESSEE from its obligation to pay the annual lease and other obligations due and stipulated herein.

Section 9. Escalation Rate

The Annual Lease for the 5,700-square meter Leased Property shall be subject to a **ten percent (10%)** escalation every three (3) years from the signing of the Contract of Lease as per the attached Schedule of Lease Payments.

The escalation rate of 10% every three years shall likewise apply in case the Parties opt to renew the lease.

The same escalation rate shall apply to the lease of the Option/Additional Area. However, the computation of the escalation rate shall commence upon written approval by BCDA of the option to lease.

⁷ Refer to Annex H

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Section 10. Common Usage Service Area Fee

The LESSEE shall pay BCDA, through JHMC, a Common Usage Service Area (CUSA) Fee for the Leased Property and the Option/Additional Area (as may be applicable) at the rate of PhP80.00 per square meter per month based on the building's footprint which are actually built with Certificate/Notice of Occupancy, regardless of whether such building footprint is operational, to cover the expenses for the road maintenance and maintenance of other common areas, external security and fire protection, solid waste collection and disposal requirements of the Leased Property and the Option/Additional Area (as may be applicable). The CUSA does not however include fees and charges for utilities, such as water, power and telecommunications, which shall be paid by the LESSEE directly to the utility service provider.

The LESSEE shall pay the CUSA Fee to BCDA, through JHMC, without need of prior notice or demand on or before each anniversary of the signing of this Contract. Any delay in payment shall be subject to penalty as herein provided.

Upon reasonable notice to the LESSEE, BCDA, through JHMC, may increase the CUSA Fee in such reasonable amount, taking into account any increase in the cost of operating, managing and administering the Leased Property and the Option/Additional Area (as may be applicable) as well as the common areas.

Section 11. Late Payments

Should the LESSEE fail to pay the annual lease or the CUSA on the day it falls due, the LESSEE shall pay BCDA a penalty interest equivalent to three percent (3%) of the amount due per month of delay, computed from due date until the date of full payment thereof.

ARTICLE II CONDUCT OF CONSTRUCTION

Section 1. Building Standards

All construction works in the Project shall subscribe to the minimum building standards of the National Building Code of the Philippines and other pertinent laws, BCDA-approved Development Plan, and the requirements set by BCDA/JHMC

Section 2. Easements within the Property

The Leased Property and Option/Additional Area, if applicable shall be subject to appropriate setback and easement requirements as defined in the National Building Code of the Philippines, the DSG of JHSEZ and other pertinent laws.



Should the LESSEE fail to remedy any material easement requirement within a realistic period following notice thereof from BCDA/JHMC, the BCDA/JHMC acting reasonably may, without the necessity of a court order, remove and/or demolish or cause the removal or demolition of any structure built or constructed in violation of the specific easements or any other restrictions specified herein at the expense of the LESSEE. The LESSEE shall reimburse BCDA/JHMC for the cost of such removal/demolition within five (5) days upon receipt of proofs of BCDA/JHMC incurring such cost. The LESSEE hereby voluntarily submits and agrees that BCDA/JHMC shall not incur any civil or criminal liability for the said action.

In addition, BCDA/JHMC shall likewise have the right to call upon the Performance Security posted by the LESSEE in an amount equivalent to the cost of removing the structure/s built or constructed in violation of the required easements by reason of LESSEE's failure to comply with the setback and easement requirements pursuant to the National Building Code of the Philippines, the DSG of JHSEZ and other pertinent laws.

Section 3. Damage to Infrastructure

The LESSEE shall immediately undertake the repair of any material damages caused by the entry and/or exit of any of its equipment and personnel to existing infrastructure in the JHSEZ including but not limited to roads, curbs, gutters and other public utility facilities.

Should the LESSEE fail or refuse to undertake the repairs required despite demand, BCDA/JHMC may perform the same for the exclusive account of the LESSEE. BCDA/JHMC may use or apply a portion of the Security Deposit being maintained by the LESSEE during the duration of the lease to pay for the cost of repairs of the damaged infrastructure. If BCDA/JHMC uses or applies a portion of the Security Deposit, the LESSEE shall deposit monies with BCDA sufficient to restore said Security Deposit to the full amount required by this Lease within ten (10) days after written request therefor and receipt of proof that BCDA/JHMC has incurred such cost. For this purpose, the LESSEE shall grant BCDA/JHMC unimpeded access to the Leased Property and Option/Additional Area, if applicable, and utility systems within the Leased Property and Option/Additional Area, if applicable. The LESSEE shall hold BCDA/JHMC free and harmless from any disruption or losses that its operations may suffer occasioned by such repairs.

The LESSEE shall be required and shall likewise require their contractors to adopt measures which will ensure the cleanliness, sanitation and safety of the area as required by existing or prevailing or future applicable and relevant laws, rules and regulations.

ARTICLE III RIGHTS AND RESPONSIBILITIES OF THE PARTIES

Section 1. BCDA and JHMC shall have the following rights and responsibilities:



- 1.1 Give the LESSEE the exclusive right to lease, develop, operate, and manage the Leased Property, subject to the restrictions and terms and conditions specified herein;
- 1.2 Upon the signing of the Contract of lease, deliver to the LESSEE the Leased Property on an **“as-is-where-is”** basis.
- 1.3 Provide a Tree Cutting Permit for the 5,700-square meter developable area to the LESSEE, not later than nine (9) months after the submission of the initial draft of the Conceptual Development Plan to BCDA/JHMC. However, all costs related to the application of permits and clearing of the trees within the Leased Property shall be for the account of the LESSEE; and
- 1.4 Undertake the removal of the Asbestos from the existing structures prior to contract signing.

Except for Section 1.3 hereof, BCDA/JHMC shall have the same obligations in case the LESSEE opts to lease the Option/Additional Area. However, the delivery of the Option/Additional Area to the LESSEE shall take place upon the written approval by BCDA of the option to lease.

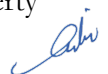
Section 2. The LESSEE shall have the following rights and responsibilities

- 2.1 Strictly comply with the terms and conditions of this Contract of Lease and maintain all warranties and representations in good standing for the duration of the contract period;
- 2.2 Undertake planning, construction, financing, development, and operation and maintenance of the Leased Property upon signing of the Contract of Lease;
- 2.3 Submit to BCDA, for approval, its Development Plan for the Leased Property within six (6) months from the signing of the Contract of Lease which takes into consideration LESSEE's Minimum Investment Commitment for the Project. The BCDA-approved Development Plan shall be made an integral part of this Contract of Lease.

The Development Plan shall, at the minimum, contain the following information:

- a. proposed land uses and corresponding GFA for each use;
- b. conceptual design, features and amenities (if any);
- c. the timetable, including major development milestones;
- d. schedule of capital investments;
- e. estimated total development cost; and
- f. business plan/business model for the development and use of the Leased Property





The LESSEE shall likewise submit for approval by BCDA the Development Plan for the Option/Additional Area within six (6) months from written approval by BCDA of the option to lease.

- 2.4 Strictly comply with the allowable land use/s and the restrictions pertaining to the development for the Leased Property as set forth herein and in the Terms of Reference (TOR) of the Project, specifically under Article II, Sections 4 and 5 of the Revised TOR
- 2.5 Commence the development on the Leased Property within six (6) months from the approval of the Development Plan and complete the development of the Leased Property in accordance with the prescribed Development Plan;
- 2.6 On Effective Date, submit to BCDA a continuing Lease Payment Security or Surety Bond in any of the prescribed forms as provided under Section 2, Article XVIII of this Contract, which shall be automatically be renewed until the end of the lease term to fully secure the annual lease payments. The LESSEE is required to submit the Lease Payment Security or Security Bond not later than three (3) months before the start of the 5th year of the lease term;
- 2.7 Upon signing of this Contract of Lease, submit to BCDA a Performance Security in any of the prescribed forms as provided under Section 3, Article XVIII of this Contract to guarantee the faithful compliance by the LESSEE with the BCDA-approved Development Plan and its Minimum Investment Commitment to the Project, and other obligations under this Contract;
- 2.8 Not later than two (2) months after the completion of the construction, obtain, at its own cost, an all-risk insurance policy with the Government Service Insurance System (GSIS) or any reputable insurance company acceptable to BCDA for all the constructions and improvements introduced during the term of the lease against all risks of loss or damage to the leased premises 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) calendar days from the issuance of said insurance policy.
- 2.9 Should the LESSEE fail to perform its responsibilities stipulated in the above Section 2.6 (as it refers to Lease Payment Security), Section 2.7 (as it refers to Performance Security), and Section 2.8 (as it refers to All-Risk Insurance) hereof, it shall be liable to pay BCDA/JHMC the amount of **Fifty Thousand Pesos (PhP50,000.00)** for every day of delay in the submission of the guaranty and the original insurance policy.
- 2.10 Pay, at its sole account, all applicable taxes, license fees, and other charges due on this Contract of Lease and/or lease transaction, including but not limited to the payment for notarization thereof and of the Documentary Stamp Tax on due date, the Leased Property and its improvements from execution of this Contract of Lease, and those that may be



imposed by law during the entire lease term. If payment for taxes is required by law to be withheld from the lease payments to BCDA/JHMC, the LESSEE shall submit to BCDA/JHMC a certification of the taxes withheld at the time of payment, otherwise any such taxes withheld shall not be considered as authorized deductions. Should BCDA or JHMC be required or constrained to pay taxes and charges as provided herein arising from the failure of LESSEE to pay them on due date, LESSEE shall pay BCDA or JHMC the amount of taxes and/or charges paid including interest and penalty surcharges, if any, within thirty (30) days from BCDA's or JHMC's payment plus interest of twelve percent (12%). Should LESSEE refuse to pay or reimburse BCDA or JHMC despite demand, BCDA/JHMC may terminate this Contract of Lease without need of judicial determination.

- 2.11 Undertake the clearing, cutting or balling of trees within the Leased Property and assist JHMC in securing the corresponding Tree-Cutting Permit from the Department of Environment and Natural Resources (DENR). All costs appurtenant to the clearing, cutting or balling of trees within the Leased Property, including the expenses for securing the Tree-Cutting Permit from the DENR shall be for the account of the LESSEE;
- 2.12 Undertake, at its own cost, on-site development, and provide utilities, access roads to, and internal road networks within the Leased Property;

This obligation of the LESSEE, which must be performed in accordance with law and environmental rules and regulations, includes the clearing and proper disposal of the existing cottages/structures within the Leased Property, except the removal of the asbestos from the existing structures, which shall be the responsibility of BCDA and JHMC.

- 2.13 Throughout the duration of the lease, keep and maintain the Leased Property, at its own expense, in clean and sanitary conditions, free from offensive odor, disturbing noises or other nuisances, and dispose all the waste only through the means and places provided by BCDA/JHMC;
- 2.14 Comply with existing and future national and local environmental and labor laws, rules and regulations, being or to be implemented by the appropriate government authorities;
- 2.15 Upon the expiration or termination of the lease term, turn-over and transfer to BCDA/JHMC the ownership of the permanent structure/s, facilities and other improvements introduced by the LESSEE on the Leased Property; and
- 2.16 Pay the maintenance and utility fees corresponding to the Leased Property, which will be assessed by JHMC in accordance with Article I, Section 10 hereof.

If and where applicable, the same obligations and responsibilities of the LESSEE above shall apply should the LESSEE opt to lease the Option/Additional Area and BCDA

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approve in writing such option. The LESSEE, however, shall be responsible for securing the required permits from the DENR and other relevant agencies for the cutting and balling of trees located within the Option/Additional Area, and all costs associated thereto shall be for the LESSEE's sole account

ARTICLE IV WARRANTIES AND REPRESENTATIONS

Section 1. BCDA and JHMC hereby warrant and represent the following:

- 1.1 BCDA is a government instrumentality vested with corporate powers duly created under Republic Act No. 7227, as amended, and is the bona fide owner of the Leased Property and Option/Additional Area, which is free from all liens and encumbrances;
- 1.2 JHMC is the operating and implementing arm of BCDA to manage the Camp John Hay;
- 1.3 BCDA and JHMC are authorized by their respective Board of Directors to enter into this Contract of Lease;
- 1.4 The LESSEE shall have the sole and exclusive right to use the Leased Property and the Option/Additional Area, if applicable, during the lease term; Provided that, this right is exercised in accordance with the terms and conditions of this Contract and applicable laws and regulations;
- 1.5 It shall deliver possession of the Leased Property and the Option/Additional Area, if applicable, on an **"as-is, where-is"** basis upon the execution of the Contract; and
- 1.6 It shall ensure the LESSEE's peaceful and continuous occupation and enjoyment of the Leased Property and the Option/Additional Area, if applicable, within the stipulated term.

Section 2. The LESSEE hereby warrants and represents the following:

- 2.1 It has been authorized by its Board of Directors to enter into this Contract of Lease with BCDA and JHMC;
- 2.2 It shall strictly comply with the restrictions and terms and conditions specified herein and in the Terms of Reference of the Project for the development of the Leased Property and the Option Area/Additional Area, if applicable;
- 2.3 It has conducted due diligence on the Leased Property and Option/Additional Area, if applicable, and knowingly undertakes the lease and development of the Leased Property

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and Option/Additional Area, if applicable, with the knowledge of existing circumstances on the same;

- 2.4 Unless consented to in writing by BCDA, the Leased Property and the Option/Additional Area, if applicable, shall be used solely and exclusively for the purpose/s for which it was leased out to in accordance with the terms and conditions as provided under this Contract of Lease and of the Terms of Reference for the Project;
- 2.5 It shall indemnify and hold free and harmless BCDA/JHMC, its directors, officers, employees, agents and representatives from and against any claim or liability in connection with the use of the Leased Property and the Option/Additional Area, if applicable, including the injury or death of third persons, or damage to Property; and
- 2.6 It shall be accountable for and shall indemnify BCDA/JHMC for any liability, damage or cost it may incur due to the LESSEE's failure or refusal to vacate the Leased Property and the Option/Additional Area, if applicable, upon the expiration or termination of the Contract of Lease, whichever comes first.

BCDA/JHMC and the LESSEE shall comply with all other the warranties and representations in case the LESSEE opts to lease the Option/Additional Area.

ARTICLE V RETURN OF THE LEASED PROPERTY

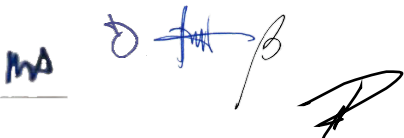
Upon the expiration or termination of the Contract of Lease, whichever comes first, the LESSEE shall promptly deliver the Leased Property, inclusive of all the permanent facilities/improvements introduced during the term of the lease, to BCDA/JHMC, in good and tenantable condition.

Should the LESSEE decide to lease the Option/Additional Area, it shall have the same obligation to promptly deliver said Area, including all the permanent improvements and structures found thereon, upon the expiry or termination of this Contract, whichever comes first.

ARTICLE VI PRE-TERMINATION

This Contract may be pre-terminated by mutual written agreement signed by all the Parties. It may likewise be pre-terminated upon the instance of any Party by service of a thirty (30)-day written Notice of Intent to Terminate upon the other Parties.

If the pre-termination is caused by BCDA/JHMC, it shall return to the LESSEE, within a period of thirty (30) calendar days from pre-termination date, the lease rentals that the LESSEE had paid covering the period after the pre-termination date.





If the pre-termination is at the instance of the LESSEE, all unpaid rentals shall be paid and any rental payments made for the current year shall be forfeited in favor of BCDA/JHMC. The LESSEE shall, within a period of thirty (30) calendar days from pre-termination date, return and surrender the Property to BCDA/JHMC.


ARTICLE VII EVENTS OF DEFAULT

Section 1. The occurrence of any of the following events shall constitute an Event of Default by the LESSEE:

- 1.1 Delay, lack of payment or failure of the LESSEE to pay rentals or CUSA as it falls due, or any penalty interest thereof after lapse of the Curing Period under Section 2, Article IX of this Contract;
- 1.2 Failure of the LESSEE to comply with all its financial commitments under this Contract;
- 1.3 Failure of the LESSEE to comply with any of its covenants, warranties and undertakings under this Contract;
- 1.4 The LESSEE devotes the whole or a portion or portions of the Leased Property and/or the Option/Additional Area, if the latter is applicable, to any use/s or purpose/s different from that for which it has been leased without BCDA/JHMC's prior written consent or approval which shall result to immediate termination of this contract without need of judicial determination. BCDA/JHMC's consent, however, shall not be unreasonably withheld; and
- 1.5 Failure of the LESSEE to perform its responsibilities specified in Sections 2.2. (Planning, Development and Operation of the Leased Property and Option/Additional Area, if applicable), 2.3 (Submission of a Development Plan) and 2.4 (Compliance with the Allowable Land Use/) of Article III of this Contract of Lease.

Section 2. The occurrence of any of the following events shall constitute an Event of Default by BCDA/JHMC:

- 2.1 Failure of BCDA/JHMC to comply with any of its covenants, warranties and undertakings under this Contract; and
- 2.2 Failure of BCDA/JHMC to comply with any of its obligations under this Contract.



**ARTICLE VIII
CONSEQUENCES OF EVENTS OF DEFAULT**

Section 1. Upon the occurrence of any Event of Default, the lease may be terminated in the manner provided herein.

Section 2. Procedure for Termination due to an Event of Default

2.1 If the Event of Default by the LESSEE occurs:

- a. BCDA/JHMC shall provide a written notice of default specifying in reasonable detail the event of default to the LESSEE within thirty (30) calendar days from occurrence of the event of default.
- b. The LESSEE shall have thirty (30) calendar days from its receipt of the written notice within which to cure such event of default (the "Curing Period").
- c. If the event of default is not cured within the thirty (30)-day curing period, BCDA/JHMC may terminate this Contract without need of judicial action by delivering a Termination Notice to the LESSEE effective on the date specified by BCDA/JHMC in the Termination Notice, which shall not be less than thirty (30) calendar days from the date the LESSEE received the Notice of the Event of Default.

2.2 If the Event of Default by BCDA/JHMC occurs:

- a. The LESSEE shall provide BCDA/JHMC a written notice of default specifying in reasonable detail the event of default within thirty (30) calendar days from occurrence of the event of default.
- b. BCDA/JHMC shall have thirty (30) calendar days from its receipt of the Notice of the Event of Default within which to cure such default.
- c. If the Event of Default by BCDA/JHMC is not cured within the thirty (30)-day curing period, the LESSEE may terminate this Contract of Lease without need of judicial action by delivering a Termination Notice to BCDA/JHMC, which termination shall be effective as of the date specified by the LESSEE in the Termination Notice, which shall be not less than thirty (30) calendar days from the date BCDA/JHMC receives the Notice of the Event of Default.

Section 3. Rights and Remedies Available to the Parties in case of Termination due to an Event of Default

3.1 On the Part of BCDA/JHMC:

- a. BCDA/JHMC shall have the right to take-over the Leased Property and the Option/Additional Area, if the latter is applicable, and all improvements, facilities and utilities thereon, and conduct a re-bidding for the disposition of the Leased Property and the Option/Additional Area, as may be applicable.
- b. BCDA/JHMC shall be entitled to payment of liquidated damages in the amount equivalent to 3% of the annual lease for every day of delay should the LESSEE fail or refuse to vacate and turnover the full possession of the entire Leased Property and the Option/Additional Area, as may be applicable, including all improvements, facilities and utilities thereon;
- c. BCDA/JHMC shall be entitled to draw on the Security Deposit, Lease Payment Security and Performance Security to the extent of any liabilities owing to BCDA as a result of the breach.
- d. Any and all payments that have been remitted so far by the LESSEE to BCDA/JHMC in relation to the lease of the Property/ies shall automatically be forfeited in favor of BCDA/JHMC.

3.2 On the Part of the LESSEE:

- a. BCDA/JHMC shall immediately return to the LESSEE the available balance of Security Deposit, Lease Payment Security and Performance Security; and
- b. The LESSEE shall be entitled to payment of liquidated damages equivalent to 3% of the annual lease for every day of delay in the return of the available balance of Security Deposit, Lease Payment Security and Performance Security.

This shall not however preclude the Parties from exercising their other legal rights and remedies set out in the TOR, in this Contract, and under the pertinent laws.

**ARTICLE IX
TAKE-OVER OF THE LEASED PROPERTY**

Section 1. The LESSEE shall authorize BCDA/JHMC to enter the Leased Property and the Option/Additional Area, if applicable, and take-over all of its improvements, facilities and utilities, as its agent or attorney-in-fact, without the need of any judicial action, in the following instances:

- a) The Leased Property and the Option/Additional Area, if applicable, is totally abandoned, deserted or vacated within the period under Section 3 hereof.
- b) Violation by the LESSEE of any of the terms hereof; and

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- c) Delay, lack of payment or failure to pay annual lease in full, CUSA, or penalty interest and other charges due by the LESSEE, subject to the Curing Period as provided under Section 3, Article IX of this Contract.

Section 2. BCDA/JHMC shall likewise have the option to dispose the same to other parties as the agent of the LESSEE, in case of non-payment of the annual lease; to receive the payments thereof, and to apply the same to the emoluments due under the Contract of Lease, holding the LESSEE liable for any deficiency, without prejudice to any right of action against the LESSEE.

Section 3. For purposes of this Article, the Leased Property is considered to have been abandoned, deserted or vacated if the LESSEE or its authorized representatives or beneficiaries has not within the lease period used or entered the Leased Property for three (3) consecutive months without prior due notification to BCDA/JHMC.

Section 4. This shall not, however, preclude BCDA/JHMC from exercising its rights/remedies set out anywhere else in the TOR, Contract of Lease, and under the pertinent laws.

Section 5. This take-over provision shall likewise apply to the Option/Additional Area.

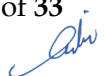
ARTICLE X SUBLEASE

Except with the prior written consent or approval of BCDA, the LESSEE cannot sublease the Leased Property and the Option/Additional Area (as may be applicable), in whole or in part. Prior to the sublease and the approval by BCDA thereof, the LESSEE must disclose to BCDA/JHMC the name of its sub-lessee/s who/which should have a written agreement/s with the LESSEE indicating (i) that the sub-lessee is aware of and shall abide with all the terms and conditions of this Contract, as may be applicable; (ii) that the term of the sub-lease/s shall not exceed the term of this Contract of Lease, (iii) that the sub-lessee/s shall immediately vacate the Leased Property and the Option/Additional Area (as may be applicable) in case of termination or expiration of this Contract, whichever comes first; and the detailed terms of the sublease of the LESSEE to the proposed sub-lessee/s.

ARTICLE XI ASSIGNMENT AND ENCUMBRANCE

The LESSEE shall not assign or encumber its rights and interests under this Contract without the prior written consent or approval of BCDA, which shall not be unreasonably withheld. In case of assignment, a fee of 5% of the annual lease prevailing at the date of assignment or an amount of PhP500,000.00, whichever is higher, shall be charged to the LESSEE. Prior to approval of assignment or encumbrance, the LESSEE must disclose to BCDA/JHMC the name of the assignee/substitute as





well as the detailed terms of the assignment. The LESSEE and the Assignee shall likewise present to BCDA in writing their agreement to the effect: (i) that the SUBLESSEE is aware of and shall abide with all the terms and conditions of this Contract, as may be applicable; (ii) that the term of the sub-lease/s shall not exceed the term of this Contract of Lease, (iii) that the sub-lessee/s shall immediately vacate the Leased Property and the Option/Additional Area (as may be applicable) in case of termination or expiration of this Contract, whichever comes first.

ARTICLE XII SOLIDARY LIABILITY

In case the LESSEE is a consortium, there shall be no substitution of nominated consortium member/s or joint venture partner/s until the signing of the Contract of Lease. Substitution of consortium member/s or joint venture partner/s after the signing of the Contract of Lease shall be subject to the prior written approval of BCDA. Prior to approval by BCDA, the name of the nominated member/partner of the consortium/joint venture must be disclosed to BCDA/JHMC.

Each member or partner of the consortium or joint venture agrees and acknowledges that it is jointly and severally liable for the payment and performance of all the obligations of the LESSEE pursuant to this Contract, whether or not such member or partner of the consortium or joint venture ceases to be a member or partner of such consortium or joint venture.

(This provision is applicable only if the Winning Bidder/LESSEE is a consortium or joint venture)

ARTICLE XIII PARENT COMPANY GUARANTEE

After signing of this Contract and upon prior written approval of BCDA, the LESSEE may designate or assign a Special Purpose Company (SPC) to exercise the rights and perform the responsibilities, obligations and commitments of the LESSEE under this Contract of Lease; Provided, that the LESSEE shall execute a Parent Company Guarantee, the draft terms of which shall be subject to the prior written approval of BCDA and stating that the LESSEE shall be jointly and severally liable with the SPC for all the LESSEE's debts and the obligations, responsibilities and commitments of the LESSEE under this Contract and provide such Parent Company Guarantee to BCDA/JHMC.

ARTICLE XIV INSPECTION OF PREMISES

BCDA/JHMC reserves the right to enter and inspect the Leased Property and Option/Additional Area (as may be applicable) at reasonable times and with prior notice to the LESSEE. The LESSEE

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agrees to cooperate with BCDA/JHMC in keeping the Leased Property and the Option/Additional (as may be applicable) in good and tenable condition.

**ARTICLE XV
COMPLIANCE WITH HEALTH AND SANITATION STANDARDS**

The LESSEE shall ensure a safe, clean and healthful environment within the Leased Property. The LESSEE must at all times comply with all health and sanitary standards and protocols prescribed by local and national government authorities, especially during the outbreak of a disease, or when there is epidemic or pandemic.

The LESSEE shall maintain, at its own expense, all areas of the leased premises in clean and sanitary condition, free from debris, garbage and physical hazards. The LESSEE shall perform routine cleaning throughout the leased premises on a regular basis.

**ARTICLE XVI
ENVIRONMENTAL COMPLIANCE**

The LESSEE shall ensure that all processes and operations in the Leased Property and the Option/Additional Area, as may be applicable, comply with existing environmental standards set forth under applicable laws, rules and regulations, including specific environmental rules and regulations being implemented by the appropriate authority. BCDA/JHMC shall have the right to inspect the Leased Property and Option/Additional Area, as may be applicable, to ascertain environmental compliance.

**ARTICLE XVII
COMPLIANCE WITH LABOR LAWS AND REGULATIONS**

The LESSEE shall, during the duration of the contract, abide by and comply at all times with all existing laws and regulations respecting employment, occupational health and safety, and other terms and conditions of employment. The LESSEE shall assume full responsibility for any claim that its personnel or employees may make by reason of their employment.

ARTICLE XVIII





SECURITIES

Section 1. Security Deposit

In addition to the Advance Lease under Section 7, Article I of this Contract, the LESSEE shall pay BCDA through JHMC, upon contract signing, a security deposit in an amount equivalent to sum of the Annual Fixed Lease for the 5th and 6th years of the lease for the 5,700-square meter Property, and for the Option/Additional Area (as may be applicable), which is equivalent to the sum of the Annual Fixed Lease for the 5th and 6th years of the lease for the Option/Additional Area, and shall be maintained at all times for the duration of the lease, subject to replenishment, if necessary, to answer for any damage to the Leased Property and the Option/Additional Area (as may be applicable), or common utility facilities (i.e. water pipes, power lines, etc.) being used by the LESSEE; unpaid utilities; or any accountabilities of the LESSEE during the construction and development of the Leased Property and Option/Additional Area (as may be applicable), including unpaid lease rentals. The Security Deposit shall be in any of the following forms: (a) Cash; (b) Cashier's or Manager's Check; or (c) irrevocable Letter of Credit issued by a universal bank acceptable to BCDA.

After charging the appropriate amounts as provided above, the balance of the Security Deposit shall be returned to LESSEE without interest after termination or expiration of the lease/this Contract of Lease, whichever comes first, subject to forfeiture provision thereof under this Contract of Lease, if applicable.

This Contract shall not be deemed effective despite the execution of the Parties in case of failure of the Lessee to provide the Security Deposit as provided herein. In such a case, the LESSEE shall not be allowed occupation or possession of any portion of the Leased Property and Option/Additional Area, if applicable or start development on any portion of the Leased Property and Option/Additional Area, if applicable, and the LESSEE shall not be allowed to commence marketing or selling activity or any related activity in relation to the Leased Property and Option/Additional Area, if applicable.

Section 2. Lease Payment Security

To fully secure the Annual Fixed Lease for the Leased Property and the Option/Additional Area (as may be applicable), the LESSEE shall submit to BCDA/JHMC, not later than three (3) months before the start of the 8th year of the lease term for the Leased Property and for the Option/Additional Area (as may be applicable), a continuing guaranty with a face value equivalent to the lease for the ensuing years in any of the following forms:

- a. Cash, Cashier's or Manager's Check or irrevocable Letter of Credit issued by a universal bank acceptable to BCDA; or
- b. Bank Guaranty or Irrevocable Letter of Credit by a Universal or Commercial Bank acceptable to BCDA.



This Contract shall not be deemed effective despite the execution of the Parties in case of failure of the Lessee to provide the Lease Payment Security as provided herein. In such a case, the LESSEE shall not be allowed occupation or possession of any portion of the Leased Property and Option/Additional Area, if applicable or start development on any portion of the Leased Property and Option/Additional Area, if applicable and the LESSEE shall not commence marketing or selling activity or any related activity in relation to the Leased Property and Option/Additional Area, if applicable.

Section 3. Performance Security

On Effective Date, the LESSEE shall deliver to the satisfaction of BCDA/JHMC a Performance Security in any of the following forms to secure the LESSEE's faithful compliance with its submitted Development Plan:

- a. Irrevocable Letter of Credit issued by a universal bank authorized by the BSP equivalent to five percent (5%) of the total Investment Commitment; or
- b. Unconditional Bank Guarantee or Stand-by Letter of Credit issued by a universal bank authorized by BSP equivalent to ten percent (10%) of the total Investment Commitment

This Contract shall not be deemed effective despite the execution of the Parties in case of failure of the LESSEE to provide the Performance Security as provided herein. In such a case, the LESSEE shall not be allowed occupation or possession of any portion of the Leased Property and Option/Additional Area, if applicable or start development on any portion of the Leased Property and Option/Additional Area, if applicable and the LESSEE shall not commence marketing or selling activity or any related activity in relation to the Leased Property and Option/Additional Area, if applicable.

ARTICLE XIX FORCE MAJEURE

Section 1. Definition

For purposes of this Contract of Lease, the term *force majeure* shall mean any and all events which could not have been foreseen, were inevitable and beyond the control of either party or which are foreseen but could not have been avoided and which materially affect the ability of either party to comply with any of its obligations under this Contract of Lease. It may include but not limited to the following:



- a) Acts of war or the public enemy, whether war be declared or not;
- b) Public disorders, riots, insurrection, rebellion, sabotage or violent demonstrations;
- c) Strikes and other labor disputes;
- d) Fires, typhoons, earthquakes, volcanic eruptions or other destructive catastrophes or natural calamities;
- e) National emergencies;
- f) Subsequently promulgated laws, resolutions, decrees, executive orders and other governmental rules and regulations which effectively prevent the parties from fulfilling their respective obligations under this Contract of Lease;
- g) Failure of Relevant Consent;
- h) Any other event which under Philippine laws or court interpretations is defined as force majeure and/or fortuitous event; or
- i) Other circumstances beyond the control of the Parties or other analogous cases.

For this purpose, "Failure of Relevant Consent" means the denial of, or the refusal to renew, or an unreasonable delay in the granting or renewal of or the imposition of any onerous conditions on the grant or renewal of any Relevant Consent by any Government Authority (including, for this purpose, BCDA and JHMC) provided in each case: (i) that the LESSEE has made due application therefor in accordance with Legal Requirements; (ii) that the refusal to grant or renew or delay in granting or renewing or the imposition of onerous conditions is not attributable to any breach of any Legal Requirement on the part of the LESSEE; and (iii) the refusal or delay to grant or renew any such Relevant Consent has persisted for thirty (30) days or the period provided by applicable Legal Requirements from the date of the LESSEE's due application therefor and complete submission of all requirements therefor.

Section 2. Applicability

Any Party shall be excused from the partial or total performance of any of its obligations under this Contract of Lease, and shall not be construed as in delay or in default in the performance of any obligation hereunder for as long as the failure to perform such obligation shall be due to an event constituting *force majeure*. A Party shall be excused from complying with its obligations under this Contract of Lease by reason of *force majeure*, provided such party serves notice to the other parties in writing within fifteen (15) calendar days from the occurrence of the *force majeure*, including therein sufficient information as to the cause and actions done to contain and/or mitigate the effect of *force majeure*. Failure to comply with the notice requirement shall bar such party from raising *force majeure*.

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Section 3. Non-Applicability

Force Majeure shall not excuse the failure of any Party to exercise due diligence or undertake reasonable measures to contain the effects of *force majeure*.

ARTICLE XX DISPUTE RESOLUTION

“Dispute” means any disagreement, dispute, controversy or claim arising out of or in connection with, or the breach, termination, invalidity or interpretation of this Contract and succeeding contracts, including amendments or supplemental thereto, if any, or agreements to be agreed by the Parties for the purpose of, or in connection with this Contract or giving effect thereto or to any of its provisions, if any, after the Signing Date.

All disputes, controversies or claims arising out of or relating to this Contract, including any question regarding the breach, validity, or termination thereof, must be resolved amicably by the Parties through negotiations between the authorized representatives of the Parties.

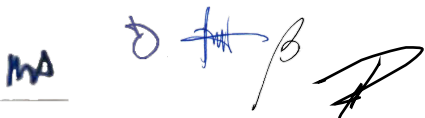
Any dispute or controversy not resolved within thirty (30) days from receipt by a Party of a written “Invitation/Notice to Negotiate” from the other Party shall be finally settled by arbitration under the Philippine Dispute Resolution Inc. (PDRCI) Arbitration Rules as at present in force by three (3) arbitrators appointed in accordance with the said Rules. The venue for arbitration shall be Manila, Philippines.

This shall not however prevent any Party from seeking a temporary, preliminary or permanent injunctive relief or any other form of equitable relief from the court.

ARTICLE XXI NOTICES

Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when received by the concerned party, either in person or through an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telegram or facsimile to such party at the following addresses:

For BCDA:

Handwritten initials and signatures in blue ink, including 'ms' and several stylized signatures.

Handwritten signature in blue ink.

President and Chief Executive Officer
BCDA Corporate Center, 2/F Bonifacio
Technology Center, 31st Street corner 2nd Avenue
Bonifacio Global City, Taguig City, Metro Manila

For JHMC:

President and Chief Executive Officer
John Hay Special Economic Zone
Camp John Hay, Baguio City

For the LESSEE:

Any change in the address of any of the Parties must be made in writing by giving the other Parties a written notice of such change.

**ARTICLE XXII
MISCELLANEOUS PROVISIONS**

Section 1. Rules of Interpretation

Unless the context otherwise requires:

- (a) In case of ambiguities or discrepancies within this Contract, the following rules of interpretation shall apply:
 - (i) Between two or more Sections of this Contract, the provisions of a specific Section relevant to the issue under consideration shall prevail over those in other Sections;
 - (ii) Between the Sections of this Contract and the Schedules, the Section shall prevail;
 - (iii) Between any two Schedules, the Schedules relevant to the issue shall prevail;
 - (iv) Between the Sections of this Contract and its schedules and amendments, and the Terms of Reference, the stipulations in this Contract and its schedules and amendments, the Terms of Reference, in this respective order, shall prevail;
 - (v) Between any value written in numerals and that in words, the latter shall prevail; and



- (vi) In case the ambiguities or discrepancies are not resolved by the foregoing rules, it should be resolved to give effect to the further assurances and good faith of the Parties as contained in Section 18.15 of this Contract.
- (b) “Include”, “includes”, and “including” are deemed to be followed by “without limitation” or “but not limited to” whether or not actually followed by such words or words of like import.
- (c) References to any document or agreement shall be deemed to include references to such document or agreement as amended, supplemented, novated, varied or replaced from time to time.
- (d) References to any gender include all genders, and references to the singular include the plural, and vice versa.
- (e) References to Sections are references to the Sections of this Contract, unless expressly provided otherwise.
- (f) References to Schedules, which do not specify which document they are annexed to, are references to Schedules of this Contract.
- (g) Headings are for convenience only and shall not affect the interpretation or construction of any provision of this Contract.
- (h) Reference to a “day” refers to a calendar day, unless expressly provided otherwise, reference to a “month” refers to a calendar month, and a “year” as a period of time commencing on a particular date and ending on the day before the anniversary of such date.
- (i) Reference to a “person” shall be construed as a reference to any individual, firm, company, corporation, society, or trust, as well as his/her/its successors-in-interest and permitted assigns.
- (j) Where there is any conflict or inconsistency between the provisions of the body of this Contract and any Schedule thereto, the former shall prevail.
- (k) Where any party is required under this Contract to give a consent, approval or acceptance, make any determination or be satisfied or find a matter acceptable or satisfactory, then unless words “in its absolute discretion” or words of similar import appear in reference to the Relevant Consent, approval, acceptance, determination, or expression of satisfaction, the Relevant Consent, approval, acceptance, determination, or expression of satisfaction shall not be unreasonably withheld.

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Handwritten signature in blue ink.

- (l) The following documents hereby comprise, and shall be read and construed as integral parts of this Contract, which, in case of any conflict or inconsistency with its terms, shall be interpreted using the following order of preference:
- (a) This Contract of Lease,
 - (b) Schedules, amendments/supplements and annexes to this Contract of Lease, and
 - (c) Terms of Reference.

Section 2. Severability and Construction

Each paragraph, part, term and/or provision of this Contract shall be considered severable, and if, for any reason, any paragraph, part, term and/or provision herein is determined to be invalid or contrary to, or in conflict with, any existing or future law or regulation, such shall not impair the operation of or affect the remaining portions, sections, parts, terms and/or provisions of this Contract, and the latter shall continue to be given full force and effect and bind the Parties hereto; and said invalid sections, parts, terms and/or provisions shall be deemed not part of this Contract; provided, however, that if the Parties determine that said finding of illegality adversely affect the basic consideration of this Contract, the Parties, may, at their option, reform or terminate the Contract.

Section 3. Amendments

Any amendments, modification or supplement to the terms and conditions of this Contract shall be effective only if made in writing and mutually agreed upon by the parties. The Parties shall negotiate any item or issue which has not been provided in this Contract

Section 4. Governing Law

The Contract shall be governed by and interpreted under the laws of the Republic of the Philippines.

Section 5. Entire Agreement

The Contract and its annexes/attachments contains the entire agreement between the Parties with respect to the Leased Property and the Option/Additional Area, if applicable, and supersedes and renders void any and all agreements and undertakings, oral and/or written, previously entered between the parties covering the Property. This Contract may not hereafter be modified or altered except by instrument in writing duly signed by the parties hereto.

Section 6. Binding Effect

This Contract shall be binding upon, and inure to the benefit of the Parties and their lawful successors and assigns.

Section 7. Authority



Each of the Parties represents and warrants that it has full power and authority to enter into and perform its obligations under this Contract. All necessary actions, consents and approvals for the signing of this Contract have been taken and/or obtained. This Contract constitutes the legal, valid and binding obligations of each of the Parties which are enforceable in accordance with its terms.

Section 8. Counterparts

This Contract may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one agreement/contract.

Section 9. Independent Contractor

Except as specifically otherwise provided in this Contract, this Contract does not create a fiduciary relationship between the Parties, nor does it constitute the LESSEE as an agent, legal representative, joint venture partner, employer or employee of BCDA/JHMC for any purpose whatsoever; and it is understood between the Parties hereto that the LESSEE shall be an independent contractor and is in no way authorized to make any contract, agreement, warranty or representation on behalf of the BCDA/JHMC to incur any debt, to create any obligation or to assume any obligation, express or implied, on behalf of the BCDA/JHMC.

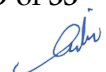
Section 10. Employer-Employee Relationship.

There is no employer-employee relationship between the Parties. All personnel and/or employees to be assigned by the LESSEE in the development, management and operation and maintenance of the Leased Property and the Option/Additional Area, as may be applicable, are understood to be the employees of the LESSEE, and no employer-employee relationship is created between such assigned personnel and/or employees of the LESSEE and the LESSOR for the lease and development of the Leased Property and Option/Additional Area, if applicable. A Party shall hold the other Party free and harmless against any and all claims made by the personnel and/or employees of the former against the latter on the basis that they are employees of the other Party. In addition, the LESSEE shall indemnify and hold the BCDA/JHMC free and harmless from any and all losses, claims, demands, payment, suits, action, recoveries and judgments of every nature brought by the LESSEE's creditors, subcontractors, government agencies, or any other claimants by reason of the non-payment of compensation or due to injury or death to the LESSEE's laborers or employees, by reason of any indebtedness or obligation contracted by the LESSEE in connection with the performance of its obligations under this Contract.

Section 11. Indemnity

The LESSEE shall hold the BCDA/JHMC, its subsidiaries, affiliates, directors, officers, employees and agents, free and harmless from any claim or demand by third persons for any loss or damages

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arising out of the use of the Leased Property and the Option/Additional Area, as may be applicable, by LESSEE.

Section 12. Non-waiver of Rights

The failure of one party to insist upon the strict performance of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any right/remedy that the said party may have nor shall it be construed as a waiver of any subsequent breach of the same or other terms, conditions, or covenants. No waiver by one party of any of its rights under this Contract shall be deemed to have been made unless expressed in writing and signed by the party concerned

Section 13. Anti-bribery

Neither the BCDA/JHMC nor the LESSEE has made or will make any offer, promise to pay or authorization of the payment of any money, gift or any other inducement to any official, political party, employee of Government or any other person, in contravention with applicable laws in connection with the execution of this Contract and performance of its obligations thereunder. Violation of this provision shall be a ground for immediate termination of this Contract.

Section 14. Environmental Compliance

The LESSEE shall, by itself, ensure that its agents, representatives, employees, contractors, sub-contractors, and all its persons possessing or using, or coming into possession or use, of the Leased Property and Option/Additional Area, if applicable, use and maintain the Leased Property and Option/Additional Area, if applicable in compliance with existing and future national environmental, health and sanitation laws, rules and regulations, including the specific environmental, health and sanitation rules and regulations being implemented by the appropriate authority in the JHSEZ. The LESSEE shall further 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 the landowner. The LESSEE shall submit to BCDA or JHMC a copy of such ECC prior to commencement of construction works.

Section 15. Headings

The descriptive headings contained in this Contract are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Contract.

All captions herein are intended solely for the convenience of the Parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

Section 16. Confidentiality

The Parties agree that any exchange of information or documents between the Parties in connection with this Contract and the Leased Property and Option/Additional Area, if applicable shall be treated with strict confidentiality and no such information or document shall be released to third parties

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without the prior written consent of the other party unless such information is required to be divulged or produced by law, court order, the rules of any regulated stock exchange, or other competent authority. Confidential Information may be disclosed to each Party's officers, employees, agents, shareholders, funders and subcontractors, provided such persons have agreed to maintain the confidentiality of this Contract on terms no less strict than the present clause.

Confidential Information means all business-related information, written or oral, whether or not is marked, that is disclosed or made available to the receiving Party, directly or indirectly, through any means of communication or observation, and shall include information that is not generally known outside the Parties or their subsidiaries or affiliates, information not otherwise available to the general public at the time of such disclosure, or information that under the circumstances surrounding disclosure, ought to be treated as confidential.

Section 17. Further Assurances; Good Faith

- (a) Each Party shall at its expense do any further act or thing that any other Party may reasonably request to carry out the intent and purposes of the transactions contemplated by this Contract.
- (b) Notwithstanding any other provision of this Contract, the Parties shall at all times act reasonably and in good faith in relation to each other, this Contract, the Project and all matters in connection therewith.
- (c) Without limiting the general requirement of reasonableness and good faith provided under this Section, a Party must respond within a reasonable time after any request for giving its consent, approval or acceptance for any matter, or making any determination or finding a matter acceptable or satisfactory. If a Party withholds its consent for any matter, it shall provide a written notice of the reasons for objections in reasonable detail.

Section 18. OGCC Review

This Contract is subject to the review of the Office of the Government Corporate Counsel (OGCC), whose comments, suggestions, and recommendations shall be incorporated in this Contract.

Section 19. Effectivity

This Contract shall take effect on the date of signing thereof, subject to LESSEE's full payment to BCDA/JHMC of the Advance Lease and/or provision/posting of the Security Deposit, Lease Payment and Performance Security as provided for under this Contract of Lease.

SIGNED BY THE PARTIES on _____ in _____.



**BASES CONVERSION AND
DEVELOPMENT AUTHORITY**

By:

VIVENCIO B. DIZON
President and Chief Executive Officer

**JOHN HAY MANAGEMENT
CORPORATION**

By:

ALLAN R. GARCIA
President and Chief Executive Officer

By:

Signed in the Presence of:

ACKNOWLEDGMENT

Republic of the Philippines)
_____) S.S.

BEFORE ME, a Notary Public for an in _____, personally appeared the following:







NAME	IDENTIFICATION DOCUMENT	DATE AND PLACE OF ISSUE
VIVENCIO B. DIZON		
ALLAN R. GARCIA		

known to me to be the same persons who executed the foregoing instrument and they acknowledge to me that the signatures they affixed confirm their own free acts and the entities they represent.

SIGNED AND SEALED on _____ in _____.

Doc No. _____;
Page No. _____;
Book No. _____;
Series of 2020.

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ANNEX “E”

CHECKLIST OF DOCUMENTS

Reference in the TOR	Document	Remarks
Eligibility Documents		
Annex F-1	Duly Notarized Eligibility Statement for Corporation	Mark as “A”
Annex F-2	Duly Notarized Joint Eligibility Statement for Joint Venture/Consortium	Mark as “A”
Annex G	Bidder’s Profile (If a Joint Venture/Consortium, profile of all members)	Mark as “A-1”
Annex H	Summary of the Bidder's (or the joint venture/consortium member, nominated firm/consultant/affiliate which meets the Technical Capability requirement) developed projects	Mark as “B”
	Commitment letter issued by a universal bank/s authorized by the BSP to guarantee the funding of the Project to the extent of 70% of the Minimum Investment Commitment of the Bidder.	Mark as “C”
	SEC Registration together with the General Information Sheet (GIS) of the Bidder, joint venture/consortium members, nominated firm/consultant/affiliate, for the latest applicable calendar or fiscal year, or for foreign corporations, the equivalent document duly authenticated by the Philippine Consulate based in the foreign company's domicile.	Mark as “D”
	Articles of Incorporation and By-Laws of the Bidder, joint venture/consortium members, nominated firm/consultant/affiliate and any amendments. For foreign corporations, the certified copies of the original Articles of Incorporation duly filed in the country of incorporation and duly authenticated by the Philippine Consulate based in the foreign company's domicile, and translated in English, if necessary.	Mark as “E”
	Audited Financial Statements for the past three (3) calendar (fiscal) years, stamped “Received” by the Bureau of Internal Revenue (BIR) when applicable, and its Income Tax Return for the last calendar (fiscal) year, or for foreign corporations, the equivalent documents duly authenticated by the Philippine Consulate based in the foreign company's domicile.	Mark as “F”
	A Board Resolution or Secretary’s Certificate of the Bidder (or all members, in case of a Joint Venture/Consortium), expressly authorizing their participation in the bidding process, and appointing their authorized representative/s for this purpose. For foreign corporations, the required document should be duly authenticated by the Philippine Consulate based in the foreign company's domicile, and translated in English, if necessary.	Mark as “G”
Annex I	Duly Notarized Statement of Nomination / Certification of Affiliation	Mark as “H”
Financial Proposal		
Annex J	Final Bid Letter	
	Bid Security	

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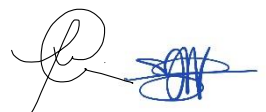
ANNEX "F-1"

REPUBLIC OF THE PHILIPPINES
CITY OF _____) s.s.

ELIGIBILITY STATEMENT

I, _____, of legal age, (*nationality*), and with office address at _____, under oath, hereby depose and say THAT:

1. The (*name of Corporation*) (Bidder) intends to participate in the public bidding conducted by the Bases Conversion and Development Authority (BCDA)/John Hay Management Corporation (JHMC) for the long-term lease and development of the Sheridan Drive Center within the John Hay Special Economic Zone, Baguio City, Philippines to be developed as a commercial or retail area.
2. I am the (*designation*) of the Bidder, duly authorized to make this Statement for and on its behalf;
3. In compliance with the Eligibility Requirements, the Bidder's Profile is hereto attached and marked as Annex A-1;
4. The Bidder, seeks to complement its technical capability and financial capacity requirements for the long-term lease and development over the Property through its nominated consultants/firms/affiliates. As such, a summary of the Bidder's developed projects and duly notarized statement of nomination / affiliation are attached and marked as Annex B and Annex H, respectively.
5. The Bidder, its parent company or subsidiaries or affiliates with common controlling shareholdings, if any, or its nominated consultants/firms/affiliates whose experience is proposed by the Bidder to meet any of the Technical Capability and Financial Capacity Requirements does not have any record of Unsatisfactory Performance in any project or contract that was commenced or in the process of implementation within the last five (5) years prior to the Bid Submission Date, nor has been included in a blacklist issued by any government agency in the Philippines or in the Debarred and Cross-Debarred Firms & Individuals list posted in websites of international financing institutions, whether as an individual contractor, partnership or corporation or as a member of a joint venture or consortium, and has not been involved in any Prohibited Act or having a Conflict of Interest insofar as the bid for Long-term Lease of the Sheridan Drive Center is concerned.
6. The Bidder, its parent company or 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 day of submission of bids, as determined by BCDA;
7. The Bidder, its parent company or subsidiaries or affiliates with common controlling shareholdings, if any, has not filed any case impinging on BCDA, JHMC, and/or their affiliates and subsidiaries' performance of their mandate;
8. The Bidder has no pending or unpaid tax liabilities in the Philippines;



9. The Bidder accepts the Terms of Reference, qualification criteria and the terms and conditions set by BCDA;
10. The Bidder, if awarded the contract to lease and develop the subject Property, commits to comply with: (1) the proposed development/land use and the development restrictions for the Property; and (2) all other 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 of the Local Government, for the duration of the contract period;
11. The Bidder commits to abide by the decision of the Joint ADP-Com, waives its right to seek legal remedies against BCDA and its subsidiaries, and holds its Board of Directors, Officers and staff, consultants and authorized representatives/personnel free and harmless from any liability, costs, and expenses, suit or allegation arising from its participation in this bidding process;
12. All information in this statement, including attachments and enclosures thereof, are true and correct. Any falsity, error, or misrepresentation shall constitute ground for disqualification from this bidding or revocation of award as determined by BCDA;
13. The Bidder, its Directors, Officers and staff or any representative thereof, shall not attempt to establish any contact with any of BCDA/JHMC's Directors, Officers, staff, consultants, and authorized representatives/personnel on matters concerning the bidding from the date of the submission of their bids up to the conclusion of the bidding process, except for clarifications on Proposal which must be in writing and addressed to the Joint ADP-Com, through its Chairperson.

The Bidder, its Directors and Officers have neither given nor offered, nor will it give nor offer, directly or indirectly, any bribe or other improper payment or advantage to any Directors, Officers, staff, consultants and authorized representatives/personnel of the BCDA/JHMC, or engage in any of the acts prohibited under R.A. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act", as amended.

Violation of any of the foregoing shall be a ground for the disqualification from the bidding or revocation of the award, if any, without prejudice to damages that BCDA/JHMC may recover for any loss or damage that may result therefrom.

14. The Bidder 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.
15. The Bidder authorizes BCDA/JHMC or its authorized representatives to conduct investigation and verification of the statements, documents and information submitted relative to our bid.

For this purpose, the Bidder hereby authorizes any public office, or any person or firm to furnish pertinent information deemed necessary and requested by BCDA/JHMC to verify statements and information provided in this statement.

IN FAITH WHEREOF, I have hereunto affixed my signature this _____ day of _____ 2020 at _____, Philippines.

Affiant

SUBSCRIBED AND SWORN TO before me this _____ day of _____ 2020, affiant exhibiting to me his competent evidence of identity (e.g. Passport, Driver's License, etc.) _____ issued at _____, Philippines on _____, 2020.

NOTARY

PUBLIC

Doc. No. _____
Page No. _____
Book No. _____
Series of 2020.

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ANNEX "F-2"
For Joint Venture/Consortium Only

REPUBLIC OF THE PHILIPPINES
CITY OF _____) s.s.

JOINT ELIGIBILITY STATEMENT

We, the undersigned representatives of the members of the Consortium, under oath, hereby depose and say THAT:

1. The (*name of Joint Venture/Consortium*) Joint Venture/Consortium intends to participate in the public bidding conducted by the Bases Conversion and Development Authority (BCDA)/John Hay Management Corporation (JHMC) for the long-term lease and development of the Sheridan Drive Center within the John Hay Special Economic Zone, Baguio City, Philippines to be developed as a mixed-use development area.
2. The Joint Venture/Consortium is composed of the following:

Composition	NAME OF ENTITY	Nationality	Type of Entity (Partnership, Corporation)	Place and Year of Incorporation	Participation in the Project
Lead Member Corporation:					
Member: (add additional rows, as necessary)					

3. In compliance with the Eligibility Requirements, the Bidder's Profile of all joint venture/consortium members is hereto attached and marked as Annex A-1. Further, a copy of the duly-executed Joint Venture Agreement/Consortium Agreement shall be submitted during the post-qualification process;
4. The Joint Venture/Consortium seeks to complement its technical capability and financial capacity requirements for the long-term lease and development over the Property to complement its technical capability and financial capacity requirements for the long-term lease and development over the Property through its nominated consultants/firms/affiliates. As such, a summary of the Joint Venture/Consortium's developed projects and duly notarized statement of nomination / affiliation are attached and marked as Annex B and Annex H, respectively.
5. The Joint Venture/Consortium (and all its members), or its nominated consultants/firms/affiliates whose experience is proposed by the Joint Venture/Consortium to meet any of the Technical Capability and Financial Capacity Requirements does not have any record of Unsatisfactory Performance in any project or contract that was commenced or in the process of implementation within the last five (5) years prior to the Bid Submission Date, nor has been included in a blacklist issued by any government agency in the Philippines or in the Debarred and Cross-Debarred Firms & Individuals list posted in websites of international financing institutions, whether as an individual contractor,

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partnership or corporation or as a member of a joint venture or consortium, and has not been involved in any Prohibited Act or having a Conflict of Interest insofar as the bid for Long-term Lease of the Sheridan Drive Center is concerned.

6. The Joint Venture/Consortium (and all its members), 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 day of submission of bids, as determined by BCDA;
7. The Joint Venture/Consortium (and all its members) has not filed any case impinging on BCDA, JHMC, and/or their affiliates and subsidiaries' s performance of its mandate;
8. The Joint Venture/Consortium has no pending or unpaid tax liabilities in the Philippines;
9. The Joint Venture/Consortium accepts the Terms of Reference, qualification criteria and the terms and conditions set by BCDA;
10. The Joint Venture/Consortium, if awarded the contract to lease and develop the subject Property, commits to comply with: (1) the proposed development/land use, and the development restrictions for the Property; and (2) all other 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 of the Local Government, for the duration of the contract period;
11. The Joint Venture/Consortium commits to abide by the decision of the Joint ADP-Com, waives its right to seek legal remedies against BCDA and its subsidiaries, and holds its Board of Directors, Officers and staff, consultants and authorized representatives/personnel free and harmless from any liability, costs, and expenses, suit or allegation arising from its participation in this bidding process;
12. All information in this statement, including attachments and enclosures thereof, are true and correct. Any falsity, error, or misrepresentation shall constitute ground for disqualification from this bidding or revocation of award as determined by BCDA;
13. The Joint Venture/Consortium members and their Directors and Officers, shall not attempt to establish any contact with any of BCDA/JHMC's Directors, Officers, staff, consultants, and authorized representatives/personnel on matters concerning the bidding from the date of the submission of their bids up to the conclusion of the bidding process, except for clarifications on Proposal which must be in writing and addressed to the Joint ADP-Com, through its Chairperson.
14. The Joint Venture/Consortium members and their Directors, employees and/or Officers, have neither given nor offered, nor will it give nor offer, directly or indirectly, any bribe or other improper payment or advantage to any Directors, Officers, staff, consultants and authorized representatives/personnel of the BCDA/JHMC, or engage in any of the acts prohibited under R.A. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act", as amended.

Violation of any of the foregoing shall be a ground for the disqualification from the bidding or revocation of the award, if any, without prejudice to damages that BCDA/JHMC may recover for any loss or damage that may result therefrom.

15. No member of the Joint Venture/Consortium is 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.
16. The Joint Venture/Consortium members authorize BCDA/JHMC or its authorized representatives to conduct investigation and verification of the statements, documents and information submitted relative to the bid of the Consortium.

For this purpose, the Joint Venture/Consortium members hereby authorize any public office, or any person or firm to furnish pertinent information deemed necessary and requested by BCDA/JHMC to verify statements and information provided in this statement.

IN FAITH WHEREOF, we have hereunto affixed our signatures this _____ day of _____ 2020 at _____, Philippines.

Affiant

Affiant

Affiant

Affiant

SUBSCRIBED AND SWORN TO before me this day _____ of _____ 2020, affiants exhibiting to me their competent evidence of identity as provided hereunder:

NAME	COMPETENT EVIDENCE OF IDENTITY	Validity Date and Place of Issuance

NOTARY

PUBLIC

Doc. No. _____

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Series of 2020. _____

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ANNEX "G"

BIDDER'S PROFILE

Note: This should be accomplished by all joint venture/consortium members, nominated firms/consultants/affiliates, if there are any. Use additional sheets if necessary.

I. GENERAL INFORMATION

Business Name:	
Brief Description of Business:	
Address:	
Contact No/s.:	
E-mail Address:	
Year Established/Registered:	Place of Registration:

Ownership Structure	
% owned by Filipino:	% owned by Foreign:

II. OWNERSHIP AND MANAGEMENT

Shareholders			
Name	Authorized Capital	Paid-up Capital	Extent of Financial Control

Governing Board	
Name	Designation

Key Officers	
Name	Position/Nationality

MS

III. FINANCIAL CAPACITY

Key Banking Relations (at least 3)			
as of March 2020			
Bank Name	Location	Bank Deposit	Credit Facility

IV. SUBSIDIARIES AND AFFILIATES

Subsidiaries and Affiliates	
Business Name	Nature of Affiliation and/or Percentage (%) of Ownership

I hereby certify that the above statements are true and correct and I am duly authorized to make this statement for and in behalf of (*Business Name*):

 (Signature)
 Authorized Representative

Name:
 Position:
 Date:

UNCONTROLLED WHEN PRINTED OR EMAILED

ANNEX "H"

To be accomplished by the Bidder or each Firm/Consultant/Affiliate nominated to fulfill the Technical Capability

NAME OF BIDDER:

(In case of nominated firm(s)/consultant(s)/affiliate(s), indicate the name of the nominated firm/consultant/affiliate)

Years of experience in development projects: _____

SUMMARY OF COMPLETED PROJECTS

The following Completed Projects are in the nature of commercial development.

Name of JV or Consortium Partner complying the Technical Capability Requirement	Project 1	Project 2	Project 3
Project Description			
Nature of Participation			
Location/Country			
Area in Hectares			
Gross Floor Area of Development			
Project Cost (excl. value of land)			
Value of Land			
Year Started			
Year Completed			

(Use additional sheets if necessary)

I hereby certify that the above statements are true and correct and I am duly authorized to make this statement for and in behalf of (*Business Name*):

(Signature)

Authorized Representative

Name:



ANNEX "I"

Position:
Date:

Republic of the Philippines)
) s.s.

STATEMENT OF NOMINATION/CERTIFICATION OF AFFILIATION

I, We (*corporate secretary or equivalent officer*), after having been duly sworn according to law, hereby depose and state that (*name of the Consultant/Firm/Affiliate*) is/are nominated to fulfill the (*state the Technical Capability / Financial Capacity requirement*) of (*name of the Bidder/Joint Venture/Consortium*) as defined in the Terms of Reference.

A brief description of such nomination/affiliation is given below:

(*State the facts showing affiliation, and attach relevant documents which prove this, if available – e.g., shareholding in the Affiliate of the Bidder/Consortium Member/entity being nominated to satisfy the Technical Capability/Financial Capacity Requirement; a copy of a signed Memorandum of Understanding or Agreement if control is exercised through a legal agreement etc.*)

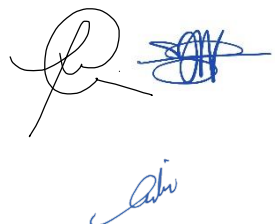
Place, Date of Execution.

[Corporate Secretary or equivalent officer]

SUBSCRIBED AND SWORN TO before me this (____) day of (*month and year*) at (*place*), each affiant exhibiting to me his/her (*proof of identity acceptable under Philippine notarial regulations*), issued at (*city*) on (*date*).

Notary Public

Doc. No.: _____
Page No.: _____
Book No.: _____
Series of 2020.







Bases Conversion and Development Authority

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Taguig, Philippines 1634

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 (+632) 8816-0996

 adpcom@bcda.gov.ph

 www.bcda.gov.ph

CLARK

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Industrial Estate - 5,
Clark Global City,
Clark Freeport Zone, Mabalacat
Pampanga, Philippines 2023

 (+6345) 599-8173



JOHN HAY MANAGEMENT CORPORATION

John Hay Management Corporation

John Hay Special Economic Zone
Camp John Hay
P.O. Box 1088
Baguio City, Philippines 2600

 (+6374) 444-5823

 www.jhmc.com.ph

ANNEX "J"

FINAL BID LETTER

(Date)

THE CHAIRPERSON

BCDA-JHMC Joint Asset Disposition Program Committee
Bases Conversion and Development Authority/
John Hay Management Corporation
BCDA Clark Office, 9F One West Aeropark Building
Industrial Estate-5, Clark Global City, Clark Freeport Zone
Mabalacat 2023, Pampanga, Philippines

Sir:

In connection with the public bidding for the long-term lease and development of a Sheridan Drive Center within the John Hay Special Economic Zone, Baguio City, Philippines, our Company (State the name of the Corporation/Lead Member if Joint Venture/Consortium), hereby, formally proposes a minimum Annual Lease Rate on the 5th Year of the lease period in the amount of Pesos: _____ (PhP _____), exclusive of 12% Value Added Tax (VAT).

We understand that, should our Company be declared the Winning Bidder, we shall, upon signing of the Contract of Lease with the BCDA and John Hay Management Corporation, fulfill all responsibilities and obligations as indicated in the Terms of Reference.

The undersigned, hereby, affirms that I am duly authorized by the Corporation/Joint Venture/Consortium to make this proposal for and on its behalf.

Submitted by:

(Signature)
Name of Authorized Representative

Position