

**DASMARINAS  
VILLAGE**

**NAVY  
VILLAGE**

**BEACON  
SCHOOL**

**BONIFACIO  
SOUTH POINTE**

**PHIL. NAVY  
GOLF COURSE**

**AFP OFFICERS  
VILLAGE**

**SOUTH LUZON EXPRESSWAY**

Whether needed or emailed

# TERMS OF REFERENCE

FOR THE COMPETITIVE CHALLENGE  
FOR THE SELECTION OF BCDA'S  
JOINT VENTURE PARTNER FOR THE  
PRIVATIZATION AND  
DEVELOPMENT OF THE  
**BONIFACIO SOUTH POINTE**



**TERMS OF REFERENCE  
FOR THE COMPETITIVE CHALLENGE FOR THE SELECTION  
OF BCDA'S JOINT VENTURE PARTNER FOR THE  
PRIVATIZATION AND DEVELOPMENT OF THE BONIFACIO SOUTH POINTE**

This Terms of Reference (TOR) describes the procedures that shall be followed in connection with the disposition of the approximately Three Hundred Thirty-one Thousand Three Hundred Twenty-seven square meters (331,327 sq.m.) or 33.1-hectare Bonifacio South Pointe (the "Property"), erstwhile known as the Bonifacio Naval Station (BNS)/Philippine Marine Corps (PMC)/Army Support Command (ASCOM)/Service Support Unit (SSU)/Division Administrative Command Center (DACC) Properties, located along Lawton Avenue, Fort Bonifacio, Taguig City, Metro Manila, Philippines (Location Map of the Property attached as Annex "A").

This TOR explains the procedures and requirements for the Competitive Challenge of the proposal submitted by SM Land, Inc. (SMLI, the Original Proponent), as well as the Original Proponent's Right to Match, and the final selection of BCDA's JV Partner for the privatization and development of the Property.

BCDA reserves the right to amend this TOR at any time prior to the submission of the Bid Proposals.

This TOR shall be administered by the Joint Venture Selection Committee (JVSC) that has been duly constituted for the purpose pursuant to BCDA Board Resolution No. 2017-02-036. Any decision of and/or action taken by the JVSC is recommendatory and is subject to the approval of the BCDA Board. The Joint Venture Agreement (JVA) with the Winning PSE shall be subject to legal review of the Office of the Government Corporate Counsel (OGCC), as BCDA's statutory counsel.

**I. PROJECT RATIONALE**

**A. BCDA's Mandate and Applicable Laws**

1. Under Republic Act No. 7227, BCDA is mandated to accelerate the sound and balanced conversion into alternative productive uses of the Clark and Subic military reservations and their extensions, to raise funds by the sale of portions of Metro Manila camps, and to apply said funds for the development and conversion to productive civilian use of said military base lands.
2. In this Competitive Challenge for the selection of joint venture partner for the privatization and development of the Property, BCDA has followed the "Guidelines and Procedures for Entering into Joint Venture (JV) Agreements Between Government and Private Entities" (JV Guidelines), issued by the National Economic and Development Authority (NEDA). Annex C thereof, or the "Detailed Guidelines for Competitive Challenge Procedure for Public-Private Joint Ventures", summarized the process for the unsolicited proposal as follows:

*"I. Negotiated JVs – Any Government Entity may directly negotiate a JV activity with a private sector entity whenever allowed under the Guidelines issued by the NEDA.*

*"II. Competitive Challenge Procedure - In all cases where the Government Entity directly negotiates with a private sector participant for a proposed JV undertaking, the negotiated terms shall be subjected to a competitive challenge wherein other*

*private sector entities shall be invited to submit comparative proposals, to ensure that JV Agreements are entered into under a transparent and competitive process that promotes accountability in government transactions.”*

3. The laws governing the operation and implementation of this TOR shall include, but not limited to, Republic Act No. 7227, as amended by Republic Act No. 7917, and the “Guidelines and Procedures for Entering into Joint Venture Agreements Between Government and Private Entities” issued by the NEDA pursuant to Executive Order No. 423, which took effect on 02 May 2008, as well as Executive Order No. 62.

**B. Background of Competitive Challenge**

1. On 04 May, 2010, SMLI submitted to BCDA an unsolicited proposal for the development of the Property. The BCDA evaluated said unsolicited proposal following the 2008 NEDA JV Guidelines and entered into a detailed negotiation with SMLI. On August 6, 2010, the BCDA issued SMLI the “Certification of Successful Negotiation”. A copy of said Certification is attached to this TOR as Annex “B”.
2. The BCDA then proceeded to conduct the Competitive Challenge on the SMLI’s Unsolicited Proposal, as required under the NEDA Guidelines. But, before BCDA could start the Competitive Challenge, a change of administration and consequently, a shift in the policy direction from the Office of the President (OP), intervened. Instead of unsolicited proposal, the OP preferred submitting the development of the Property to competitive bidding.
3. Thus, the BCDA, through Supplemental Notice No. 5 dated 26 August 2012, terminated the Competitive Challenge and decided to subject the Property to a new solicited bidding. On December 21, 2012, BCDA invited interested proponents to submit bids for the development of the Property, now referred to as Bonifacio South Pointe. The SMLI filed a Temporary Restraining Order (TRO) and Preliminary Injunction with the Supreme Court. On January 9, 2013, and before the opening of the bids, the Court enjoined BCDA from proceeding with the new selection process for the development of the Property.
4. The Supreme Court, in its Decision dated 13 August 2014, set aside BCDA’s Supplemental Notice No. 5, and ordered the conduct and completion of the Competitive Challenge pursuant to the Certification issued to SMLI and the NEDA JV Guidelines. BCDA, after two (2) failed Motions for Reconsideration, and with the SC Decision having become final, requested the Court for clarification on which NEDA Guidelines to use: the 2008 NEDA JV Guidelines in effect when the Competitive Challenge was started, or the 2013 NEDA JV Guidelines issued during the pendency of the case with the Supreme Court.
5. The Supreme Court issued a Resolution dated April 17, 2017, received by the BCDA on June 6, 2017, declaring that the applicable guidelines to be followed should be the 2008 JV NEDA Guidelines.
6. The BCDA, in consultation with the Original Proponent, has reviewed the TOR for the Competitive Challenge in light of updates in the market and

*(Handwritten signatures and initials)*

**C. Relocation and Functional Replication of Existing Military Facilities**

1. The property is currently occupied by the following military facilities, as shown in Annex "E":

	<b>Land Area Occupied</b>
Army Support Command (ASCOM)/ Service Support Unit (SSU)/Division Administrative Command Center (DACC)	11.5 hectares
Bonifacio Naval Station (BNS)/Philippine Marine Corps (PMC)	21.6 hectares
<b>Total</b>	<b>33.1 hectares</b>

2. The Winning PSE shall fund the functional replication of all structures and facilities of the BNS, PMC, ASCOM, SSU and DACC found within the Property including their relocation to the Relocation Site to be identified by BCDA, the Armed Forces of the Philippines (AFP), and the Department of National Defense (DND). For this purpose, BCDA will provide the Winning PSE the Detailed Architectural and Engineering Design (DAED) which shall serve as basis for the implementation of the functional replication works. The total cost of relocation and functional replication advanced by the Winning PSE shall be recoverable, without interest, against the MASR in five (5) equal annual installments beginning on the immediately succeeding year after the completion of the functional replication works. The total budget for the relocation and functional replication shall be determined upon completion and approval of the DAED as mutually agreed by BCDA and the Winning PSE. Any amount in excess of said budget advanced by the Winning PSE for this purpose may not be recovered, unless with prior written approval from BCDA.
3. After finalizing the DAED for a particular replication works, the BCDA shall issue a Notice to Proceed (NTP) to the Winning PSE to commence the functional replication works. The Winning PSE shall complete or cause to complete the functional replication works within thirty-six (36) months from issuance of the NTP. BCDA, in coordination with the Winning PSE, will facilitate the issuance of Certificate of Completion and Certificate of Acceptance by the DND-AFP. The Winning PSE shall also be responsible for the demolition of all structures. BCDA shall keep the Winning PSE free and harmless from any liability arising from the transfer of the occupants within the Property to the Relocation Site.

**D. Lawton Avenue Widening**

1. Lawton Avenue, which serves as the main access leading to the Property, is presently a dual 2-lane road with an approximate length of 3.20 kilometers from Sales Interchange to 5<sup>th</sup> Avenue of the Bonifacio Global City. The MDP-Bonifacio South recommends widening of the Lawton Avenue to 35 meters total right-of-way such that it will become a dual 4-lane road, with one lane for each direction dedicated to the proposed Bus Rapid Transit (BRT) System. The widening of Lawton Avenue is also a requirement of the City Government of Taguig for the approval of the MDP for the Property.
2. The widening of Lawton Avenue shall be done in phases. The proposed first phase entails widening of Lawton Avenue to a dual 3-lane road running from 5<sup>th</sup> Avenue until the junction at Bayani Road. The second phase entails widening of the Lawton Avenue to a dual 3-lane road from the junction at Bayani Road to Sales Interchange. BCDA shall be responsible for the civil works component for the widening of the Lawton Avenue while the Winning

PSE shall contribute, at no cost to BCDA, a strip of the Property along Lawton Avenue, measuring approximately one (1) hectare, subject to final survey, for the required road right-of-way.

3. The Winning PSE shall be responsible for the cost and relocation of the overhead power lines, communication lines and other utilities, which will be affected by the widening of Lawton Avenue. For this purpose, the Winning PSE shall be responsible in securing the necessary clearances/permits from appropriate local and national agencies.

It is clarified that, during construction works for the widening of Lawton Avenue, the Winning PSE shall temporarily relocate the affected utilities to another viable site or location. However, after completion of the second phase of the Lawton Avenue widening, the Winning PSE shall cause, on its own account, the permanent relocation of the affected utilities to underground lines.

4. Not later than five (5) years from signing of the JV Agreement, BCDA shall conduct a traffic study to determine if the traffic demand then prevailing and projected would necessitate widening of Lawton Avenue to the ultimate design of eight (8) lanes, which will be the third phase of the road widening. The additional two (2) lanes are intended for the planned BRT system. Construction and implementation of the BRT system shall be undertaken by the proponent of the BRT System and not BCDA. The right-of-way for the BRT System shall be provided within the right-of-way of the widened Lawton Avenue. For this purpose, the Winning PSE shall also contribute, at no cost to BCDA, an additional strip of the Property along Lawton Avenue measuring approximately one (1) hectare, subject to final survey. In the meantime that the additional two (2) lanes to complete the ultimate design for the expansion of Lawton Avenue to eight (8) lanes are not yet required, the Winning PSE may develop the strip along Lawton Avenue originally reserved for such additional two (2) lanes for Lawton Avenue into developable areas; Provided, however, that such development shall be temporary in nature; Provided, further, that BCDA and the Winning PSE shall agree on the Allocation Percentage of the parties that will apply to the development of such area originally reserved for Lawton Avenue expansion.

#### E. Relocation of Utilities

1. For the Property, as well as the roads bordering the Property, BCDA requires that all lines for power, water, sewer, communication, gas, and all other utilities shall be underground. In this regard, the existing overhead power lines, communication lines and other utilities, if any, in the Property are required to be relocated underground, within a timetable to be determined jointly by BCDA and the Winning PSE, in consultation with the utility providers.
2. The Winning PSE shall be responsible for the relocation of all existing utilities (i.e., power, water, sewer, communication, gas, others) on or bordering the Property underground, and shall, likewise, shoulder all costs for said undertaking.

#### IV. NEW DEVELOPMENTS ON THE PROPERTY

##### A. Best Land Use for the Property

1. The Winning PSE may, before or during project implementation, but subject to BCDA approval, re-distribute the FARs among the lots or propose changes to the development plan for the Property, as recommended in the MDP-Bonifacio South; Provided, that such revision of the plan shall still comply with the maximum allowable GFA for the Property.
2. The Wining PSE shall submit for BCDA's approval a Detailed Development Plan for the Property within six (6) months from the signing of the JVA.
3. The Detailed Development Plan should conform to the MDP-Bonifacio South. The Winning PSE may propose changes to the land use plan based on the current best uses for the Property. Any such changes to the plan shall be subject to BCDA's approval, in consideration of the following factors, among others:
  - a) Minimum Secured Revenue (MSR); and
  - b) BCDA's Share in Allocated Units.
4. The final allocation of Floor Area Ratio (FAR) and land uses to be reflected in the Winning PSE's development plan shall have to be approved by the BCDA Board, the Planning Review Board (PRB) of Bonifacio South Properties and Taguig City Government. The development of the Property, including those of the utilities (power, water and sewer, telecommunications and gas), shall be subject to the MDP-Bonifacio South, and the policies and rules set by the PRB. Any changes, modifications and revisions to the MDP shall be subject to the approval of the PRB.

Any increase or decrease in the land area, resulting from a final joint survey between BCDA and the Winning PSE, shall not result in the corresponding adjustment of the financial proposal unless this results in increase or decrease in the maximum GFA. In that case, the NPV of the financial proposal shall be proportionately adjusted to reflect such increase or decrease in GFA in relation to the maximum GFA stated in this TOR.

BCDA cannot commit nor does BCDA make any representation on the height restrictions that will be set by the Civil Aviation Authority of the Philippines (CAAP). Should there be unanticipated changes in the policies, requirements and limitations imposed by CAAP which shall cause a reduction in the maximum allowable gross floor area, corresponding adjustments in the NPV of the financial proposal shall be agreed upon by BCDA and the Winning PSE.

5. In addition, the development of the Property should be able to complement the development of the entire Bonifacio South, especially with respect to utilities and road networks, and the provision of adequate drainage facilities to prevent possible flooding in the area and its vicinity. The Development Plans to be submitted should have an assumed building efficiency of not more than eighty percent (80%) and shall comply with, at the minimum, the National Building Code, the Height Restrictions set by the Civil Aviation Authority of the Philippines (CAAP), the ordinances of the local government of Taguig City and all other regulations imposed by appropriate national and local government agencies.

6. The Winning PSE shall also comply with the applicable laws, rules and regulations of the agencies of the National Government and of the Local Government of Taguig City, including the PRB of Bonifacio South Properties and the Sangguniang Panlungsod of Taguig City.

**B. Planned Developments Around the Property**

1. The Winning PSE is given the flexibility to convert the planned minor roads and pedestrian strips to buildable areas as long as the main/circulation road shall be developed in compliance with this TOR, and the buildable area shall not be more than seventy percent (70%) of the gross area of 331,327 sq.m. Any change in the configuration, alignment and width of the main/circulation road shall require prior written consent/approval of BCDA.
2. **Bonifacio South Main Boulevard.** A 25-meter-wide road, which may increase to 28-meter-wide, is envisioned to traverse along the north and north-western boundaries of the Property. This road will have a dedicated lane for the proposed Bus Rapid Transit (BRT) System. The Winning PSE shall be responsible for the construction of the road, particularly the portion within the length of the Property boundary. However, BCDA may opt to advance the needed funds for the construction of said road, in which case, the Winning PSE shall reimburse BCDA the actual cost incurred for the construction of the road, specifically for the portion within the length of the Property boundary.
3. **Government Offices.** Several Government Offices (e.g., Senate of the Philippines, Office of the Solicitor General, Court of Appeals, National Mapping and Resources Information Authority) have expressed interest to locate in the area beside the Property. The presence of government offices is expected to drive commercial activities around Bonifacio South Pointe.

**C. Increase in Appraised Value of the Property**

1. The Property's proximity to new and ongoing development projects, particularly the McKinley West and New Port City mixed-use developments, precipitated a considerable increase in the value of the Property. Currently, based on the 2017 Appraisal Study done on the Property by a third party commissioned by BCDA, the Fair Market Value (FMV) has increased to Php90,000.00 per square meter, which would translate to a total value for the Property of Php29,819,430,000.00.

**V. SMLI'S UNSOLICITED PROPOSAL**

- A. The SMLI's Unsolicited Proposal, for which a "*Certification of Successful Negotiation*" was issued by BCDA on August 6, 2010, shall be used as a basis for the conduct and completion of the Competitive Challenge, in accordance with the Supreme Court decision.
- B. Under the SMLI Proposal, which shall be the basis for the Challengers' *Financial Proposal*, the Property shall have a maximum allowable GFA of one million three hundred fifty-five thousand six hundred sixty (1,355,660) square meters, with an assumed building efficiency ratio of no more than eighty percent (80%). The distribution of GFA for the land uses under SMLI Proposal shall be as follows:

- (a) Residential - up to sixty-nine and three-tenths percent (69.3%) of the maximum allowable GFA or nine hundred forty thousand one hundred eighty (940,180) square meters; and
  - (b) Other Uses (Retail, Office, Commercial, Recreational, Entertainment and Civic/Institutional) - up to thirty and seven-tenths percent (30.7%) of the maximum allowable GFA or four hundred fifteen thousand four hundred eighty (415,480) square meters; Provided, that Retail Use should only be a support use and GFA for retail shall not exceed 70,000 sq.m. Neither shall the PSEs/SMLI develop or build Retail Use as a support use or other support uses on a "stand-alone" basis in any of the Blocks, or prior to, or separate from, the Principal Use of such Blocks.
- C. Due to the lapse of time from the date of the "*Certification of Successful Negotiation*", certain events have transpired that render some of the terms and conditions of the Certification obsolete or not applicable anymore. Thus, BCDA, in consultation with SMLI, has, without violating the Supreme Court decision, used the updated terms in this TOR which the Winning PSE, be it SMLI or another PSE, agree to abide by participating in this Competitive Challenge. Said revised terms refer to the following:
- 1. Article III, Sections C, D and E; and
  - 2. Article IV, Sections A and B.
- D. Other than the foregoing enumeration, the terms and conditions stated in the "*Certification of Successful Negotiation*" have been applied and made integral part of this TOR.
- E. SMLI must submit the updated *Eligibility Documents* required under this TOR, and post the prescribed *Proposal Security* within the period specified by the JVSC.

## VI. COMPETITIVE CHALLENGE

### A. Competitive Challenge Process

1. **Subject of the Challenge.** The PSEs wishing to challenge the SMLI's Proposal need only submit a better *Financial Proposal* as follows:
  - a) **Minimum Net Present Value** - The minimum Net Present Value of the Cash Flows to be paid to BCDA for 20 years, discounted using the rate of 10%, should be higher than SMLI's Proposal of **Thirty-six Thousand Nine Hundred Pesos (PhP36,900.00)** per square meter; provided that, the following amounts, components of the 20-year Cash Flows, shall not be lower than any of the amounts proposed by SMLI:
    - (i) **Upfront Cash Payment** - The amount, payable by the Winning PSE upon signing of the resulting JVA, should not be lower than SMLI's proposal of **Two Billion Pesos (PhP2,000,000,000.00)**. Any proposal for Upfront Cash lower than this amount shall be automatically rejected; and
    - (ii) **Required Secured Net Cash Inflows** - The annual net cash inflows to BCDA shall not be lower than any of the Minimum Annual Secured Revenue Share (MASRS) offered in the SMLI Proposal (see



*Annex B*). The MASR shall be remitted to BCDA on the first (1<sup>st</sup>) anniversary of JVA signing, and every year thereafter without need of demand.

2. **BCDA's Share or Allocated Units** - In order to support the proposed MASRS, proponents agree that the BCDA's share in the total saleable or leasable GFAs shall not be lower than ten percent (10%), less applicable deductions, as discussed in the SMLI's Proposal.

The net proceeds from the sale or lease of BCDA allocated units shall be remitted to BCDA, less the MASRS. If the net proceed is less than the MASRS, the Winning PSE shall remit the difference.

3. **Publication of Invitation for Comparative Proposals**. BCDA shall publish in three (3) newspapers of general nationwide circulation, for two (2) consecutive weeks, and in the BCDA website ([www.bcda.gov.ph](http://www.bcda.gov.ph)) the "*Invitation for Competitive Challenge*" to inform and to invite prospective PSEs to the Competitive Challenge subject of this TOR.

4. **Pre-Bid Conference and Changes to the TOR**

- a) Interested parties 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 Article XI *Timetable of Activities* at the BCDA Corporate Center, 2/F Bonifacio Technology Center, 31<sup>st</sup> St., Crescent Park West, Bonifacio Global City, Taguig City, Metro Manila, Philippines. Succeeding conferences with the prospective PSEs, when needed, shall be scheduled by the JVSC prior to the submission of proposals. Any change in the *Timetable of Activities*, as well as JVSC decisions or actions on the issues raised by the Bidders shall be contained embodied in Supplemental Notice(s).
- b) Clarification inquiries from PSEs regarding this TOR shall be addressed only to the JVSC Chairman. All clarification inquiries on the submission of Bid Proposals should be received by the JVSC on or before the date specified, and responses to these inquiries shall be made through Supplemental Notices to be issued no later than the date indicated, in the *Timetable of Activities*.
- c) The information and/or procedures contained in this TOR may be amended or replaced at any time, at the discretion of the JVSC, subject to the approval/confirmation of the BCDA Board. Should any of the information and/or procedures contained in this TOR be amended or replaced, the JVSC shall inform and send Supplemental Notices to all PSEs that have bought the bid documents through their e-mail addresses.

#### B. **Eligibility Criteria**

A PSE shall be considered eligible if it satisfies all of the following requirements:

1. **Legal and Technical Requirements**

- a) **Legal Capacity.** The PSE must be a duly-registered and existing corporation authorized by Philippine laws to own, hold or develop lands in the Philippines. A joint venture or consortium of local firms or local and foreign firms may also apply for eligibility, provided that the ownership of such joint venture or consortium shall not be in violation of

existing laws restricting foreign ownership of land in the Philippines. If the PSE is a consortium, it should also submit a copy of the duly-executed consortium agreement among all members of such consortium showing the principal rights and obligations of the members, the extent of participation of each member, and their commitment to be jointly and severally liable to BCDA for their responsibilities in relation to this Property.

- b) **Technical Capability.** The PSE (or, in case of a consortium, any member thereof) should have been in the business of real estate development for at least ten (10) years, and must have completed a project which is in the nature of a mixed-use development with a total cost of at least **Ten Billion Pesos (PhP10,000,000,000.00)**, excluding the value of the land.
- c) **Timely and Complete Payment of Taxes.** The Bidder (and all its consortium members) should have no tax liabilities in the Philippines. A Tax Clearance Certificate issued by the BIR, when applicable, shall be required as part of the post-qualification process.
- d) **Bid Documents.** The PSE must have purchased the TOR (including bid forms and pertinent documents) for a non-refundable fee of **Three Hundred Thousand Pesos (PhP300,000.00)**. 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 JVSC.

## 2. Financial Requirements

- a) **Financial Capacity.** The PSE (or, in case of a consortium, any member thereof) must have adequate capability to finance the proposed development of the Property and meet all of its financial obligations to BCDA, which shall be measured in terms of its audited cash bank balance as of the latest fiscal year 2016 or 2017, or a valid credit line facility from a universal bank, the amount of which shall be at least **Five Billion Pesos (PhP5,000,000,000.00)**,
- b) **Proposal Security.** To ensure that the Winning PSE enters into a JV Agreement with BCDA, BCDA shall require the eligible PSEs to post a *Proposal Security*, as part of the Bid Proposal, equivalent to **One Hundred Eighty Seven Million Pesos (PhP187,000,000.00)**, in the form of bank manager's check or cashier's check, along with the Financial Proposal.

## C. Submission, Opening and Evaluation of Proposals

1. **Submission of Bid Proposals.** Interested PSEs shall submit their Bid Proposals comprising their *Eligibility Documents* and *Financial Proposals* no later than the deadline specified in Article XI *Timetable of Activities*. The *Eligibility Documents* and *Financial Proposals* shall be submitted simultaneously in two (2) separate sealed envelopes. The two (2) envelopes should be appropriately marked as follows:
  - **Eligibility Documents.** This envelope should contain two (2) sets of the *Eligibility Documents*, properly marked as: "*First Set: Eligibility Documents*" and "*Second Set: Eligibility Documents*"; and

- **Financial Proposal.** This envelope should contain two (2) sets of the *Financial Proposal*, appropriately marked as: “*First Set: Financial Proposal*”, and “*Second Set: Financial Proposal*”.

Both envelopes containing the *Eligibility Documents* and the *Financial Proposal* must be sealed in an outer envelope (i.e., enclosed in one package), which must be properly marked with the following information:

- (i) the caption “competitive challenge for Bonifacio South Pointe”, and
  - (ii) the name and address of the PSE.
2. **Eligibility Documents.** To be eligible, PSEs are required to submit the following documents described in the attached Checklist (Annex “F”):
- a. Eligibility Statement or Joint Eligibility Statement (format attached as Annex “G-1” or Annex “G-2”, as applicable) which shall include the following information or schedule in support of the PSE’s eligibility duly notarized in the country of residence of the bidder:
    - (i) PSE’s Profile (format attached as Annex “H”), which contains general organization and financial information about the PSE. This should be accomplished by all members, in case of consortium;
    - (ii) A summary of the PSE’s (or in case of a consortium, of the member which meets the Technical Capability requirement) completed projects which are in the nature of mixed-use developments, including description, area of development, nature of the entity’s participation, status of the project and the project cost (format attached as Annex “I”);
    - (iii) Commitment to invest of **Twenty Billion Pesos (PhP20,000,000,000.00)** to develop the Property, spread over twenty (20) years;
    - (iv) A statement of no pending or unpaid tax liabilities in the Philippines;
    - (v) A statement of acceptance of the qualification criteria established by BCDA, commitment to abide by the decision of the BCDA Board, and waiver of its right to seek legal remedies against BCDA, its Board of Directors, Officers, staff, consultants and authorized representatives/personnel in connection with this selection process;
    - (vi) A statement attesting to the veracity of all information presented and authenticity of all documents submitted;
    - (vii) A statement of affirmation of BCDA’s anti-corruption policy; and
    - (viii) If the PSE is a consortium, the PSE must also submit a copy of their *Consortium Agreement*, which should include the following information:
      - brief description of the consortium, the individual members of the consortium and the nature and extent of the participation (capital of each member in relation to the whole capital);
      - nature of the consortium (whether a contractual or corporate joint venture)

5

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*

5

- the lead member of the consortium who is authorized by all the members to represent and sign any and all documents related to this bidding including the JVA with BCDA; and
  - agreement of all members to be jointly and severally liable for the obligations of the consortium under the award/contract.
- b. Certification from a universal bank/s reflecting the PSE's cash balance or available credit facilities in the amount of not less than **Five Billion Pesos (PhP5,000,000,000.00)**, issued no earlier than (30) days from the date of opening of the bids.
  - c. Copy of SEC Registration together with the latest General Information Sheet (GIS) of the PSE for the latest applicable calendar or fiscal year (or all members in case of consortium), or for foreign corporations, the equivalent document duly authenticated by the Philippine Consulate based in the foreign company's domicile.
  - d. 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.
  - e. A Board Resolution or Secretary's Certificate of the PSE (or all members, in case of a consortium) expressly authorizing their participation in the bidding process, and appointing their authorized representative/s for this purpose. For foreign corporations, the certified copies of the required documents shall be submitted, subject to authentication and translation if needed.
3. **Financial Proposal.** The *Financial Proposal* shall consist of the following:
- a. The NPV of the Cash Flows presented and computed according to prescribed format (prescribed Form attached as Annex "J"); and
  - b. Proposal Security in the amount of **One Hundred Eighty Seven Million Pesos (PhP187,000,000.00)**, in the form of bank manager's check or cashier's check. The Proposal Security shall be returned without interest upon signing of the JVA between BCDA and the Winning PSE.
4. The Bid Proposals, comprising the *Eligibility Documents* and *Financial Proposals*, should comply with all the requirements specified in this TOR; thus, a complying proposal is one that satisfies and complies with all the requirements set forth in this TOR. Any violation of a requirement or provision in this TOR shall render a proposal non-complying and the proposal shall, therefore, be automatically rejected.
5. **Opening of Proposals**
- a. During the Opening of the Proposals, the JVSC shall first determine the completeness and sufficiency of the *Eligibility Documents* before proceeding to the *Financial Proposals*. The *Financial Proposal* of the PSE shall only be opened if the *Eligibility Documents* are found to be complete or sufficient.
    - (i) The first envelope shall contain the *Eligibility Documents*. Upon opening, the JVSC shall ascertain whether the required documents are present and sufficient in terms of the data/information required.

If the *Eligibility Documents* are found incomplete or patently insufficient the PSE shall be considered not eligible and its financial proposal shall be returned unopened to the concerned PSE.

- (ii) Should there remain at least one (1) eligible PSE after the opening of the first envelopes containing the *Eligibility Documents*, the opening of the envelope containing the *Financial Proposal* shall immediately follow. The envelope containing the *Financial Proposal* shall then be opened to determine the accuracy of financial proposal and its compliance with the prescribed format as well as the presence of the required Proposal Security.

#### 6. Evaluation of Financial Proposal

- a. The PSE's *Financial Proposal* shall be evaluated based on the resulting NPV per square meter, computed using the template provided by BCDA, consisting of Upfront Cash and MASRS for 20 years discounted at 10% rate. The NPV shall not be lower than the minimum NPV prescribed under Article VI, Section A.1(a), otherwise, the proposal shall be automatically rejected.
- b. The *Financial Proposals* of the eligible PSE's shall be ranked according to amount of the NPV, as verified. In case of conflict between the NPV computed by the PSE and the NPV computed by BCDA, the latter shall prevail.
- c. In case no complying comparative *Financial Proposal* is received, SMLI shall be declared the Winning PSE and awarded the contract, subject to post-qualification.

### VII. SMLI'S RIGHT TO MATCH

#### A. Original Proponent's Right to Match

1. The best or most advantageous proposal received shall then be subject to the Right to Match by the Original Proponent, or SMLI, within thirty (30) calendar days after receipt of notification from BCDA of the results of the Competitive Challenge. Should no matching offer be received within said period from SMLI, the PSE submitting the most advantageous proposal shall be considered for award, subject to post-qualification. On the other hand, if a matching or better offer is received within the prescribed period, the contract shall be awarded to SMLI, subject to post-qualification.

#### B. Failure of SMLI to Match

1. In case SMLI refuses, fails or is unable to enter into contract with BCDA, the PSE which submitted the most advantageous offer shall then be considered for contract award, subject to post-qualification. If the PSE with the best complying offer refuses, fails, or is unable to enter into contract with BCDA, BCDA shall consider the PSE with the next best complying offer, and so on until the contract is awarded, subject to post-qualification to be conducted by BCDA. The PSE's Proposal Security will be forfeited in case the proposal is withdrawn after the Opening Date.
2. In the event that the Winning PSE refuses, fails or is unable to enter into contract with BCDA, BCDA shall consider the PSE who submitted the next best complying offer for contract award, provided that SMLI shall likewise be

given the right to match such next best complying offer within seven (7) calendar days from receipt of notice from BCDA, and so on until the contract is awarded. If SMLI again fails to submit a matching offer, the process shall be repeated until the Winning PSE is determined.

## VIII. AWARD AND APPROVAL OF CONTRACT

- A. **Post-qualification.** Before issuance of Notice of Award (NOA) for the Project, the Winning PSE shall undergo and pass a post-qualification process to be conducted by BCDA. Post-qualification shall cover verification of the submitted eligibility and proposal documents to ascertain authenticity of the same and absence of misrepresentation on these documents.
- B. **Notice of Award**
1. Upon completion of the evaluation and post-qualification procedure, the JVSC shall submit the recommendation of award to the BCDA Board. A "Notice of Award" shall be issued to the Winning PSE after the BCDA Board approval thereof.
  2. The "Notice of Award" to be issued by the BCDA shall contain the instruction to the Winning PSE to comply with conditions precedent for the execution of the Joint Venture Agreement and to submit compliance statements with regard thereto. Failure to comply with the conditions precedent for the execution of the Joint Venture Agreement within the prescribed period shall result in the revocation of award and forfeiture of the Proposal Security.
- C. **Execution of the Joint Venture Agreement (JVA).**
1. The Winning PSE and the BCDA shall execute and sign the JVA, which shall be subject to OGCC legal review. The draft JVA is attached as Annex "K".
  2. Upon award by BCDA of the contract to the Winning PSE, the latter may apply its Proposal Security to the Upfront Cash, and any difference shall be remitted by the Winning PSE upon signing of the JVA. The Proposal Security of all the other PSEs shall be returned to them without interest upon signing of the JV Agreement between BCDA and the Winning PSE.

## IX. RIGHTS AND WARRANTIES

### A. BCDA's Rights and Warranties

1. **Waiver of Right to Seek Legal Remedies.** BCDA shall be held free and harmless from any liability, costs and expenses, suit or allegation arising out of the participation of the PSEs in this competitive challenge.

The decision of the JVSC is final. All PSEs waive all rights to seek legal action (e.g. Temporary Restraining Order, lawsuits, etc.) to prevent BCDA from awarding and executing a contract with the Winning PSE, as manifested in the waiver submitted by the PSEs along with the Eligibility Documents for this Competitive Challenge.

2. **Due Diligence**

- a) BCDA is disposing the Property on an "AS-IS, WHERE-IS" basis. Each PSE shall be solely responsible for its own due diligence of all matters

relating to this TOR and Property. BCDA shall not be responsible for any erroneous interpretation or conclusion by the PSE of data furnished or indicated in this TOR and official eligibility and proposal forms, including any addenda, amendments or Supplemental Notices issued by the JVSC. Failure of the eligible PSE to so examine and inform itself shall be at its sole risk and no relief for error or omission shall be given.

- b) The PSE shall investigate the Property as to all topographical, geological and other conditions thereat that may affect directly or indirectly the full implementation of the proposed development and to carefully examine the conditions of the Property and its surrounding vicinities which may affect the development works. The PSEs may participate in the relocation survey to be facilitated by BCDA. The PSE, by the act of submitting its proposal, acknowledges that it has inspected the Property, determined the general characteristics of the said Property and accepted all the terms and conditions for this competitive challenge as set forth in this TOR.
  - c) The PSEs are responsible for having taken steps to carefully examine this TOR including its attachments and deemed to have become familiar with all existing laws, decrees, ordinances, acts, rules and regulations which may affect this TOR.
3. **Title to the Property.** BCDA hereby warrants to protect the title to the Property and shall be responsible, if necessary, for the defense of the same in court, including all costs such action may incur.
  4. **Relocation of Military Facilities.** BCDA shall be responsible for the relocation of existing military facilities in the Property, subject to Article III, Section D above.
  5. **Qualifications and Waivers**
    - a) BCDA reserves the right to reject any or all proposals, to waive any defect or formality thereon or minor deviations, which do not affect the substance and validity of the proposal. BCDA reserves the right to reject the proposals of any PSE who:
      - (i) has been declared an eligible PSE on the basis of suppressed, undisclosed or false information; or
      - (ii) has previously failed to satisfactorily perform/complete any contract undertaken by him.
    - b) BCDA reserves the right to review other relevant information affecting the PSE or the proposal before the approval of the contract. Should such review uncover any misrepresentations made in the proposal documents, or any change in the situation of the PSE, which affects the substance of its proposal, BCDA may disqualify the PSE from obtaining any award/contract.
    - c) BCDA further reserves the right to terminate the Competitive Challenge at any time prior to contract award and call for a new disposition activity under amended rules, and without any liability whatsoever to any or all the PSEs, except the obligation to return the Proposal Security.
    - d) No verbal agreement or conversation with, nor any verbal clarification from, any officer or employee of BCDA, the JVSC 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 PSEs by the JVSC shall be relied upon as authorized.

6. **Unutilized GFA.** Any unutilized GFA shall revert to, and become the sole property of, BCDA.

#### B. PSE's Rights and Warranties

1. **Clearing, Demolition and Functional Replication of Structures.** The Winning PSE shall be responsible for the clearing, demolition and replication of the military structures (if any) on the Property.
2. **Performance Bond.** Upon signing of the JV Agreement, the Winning PSE shall be required to post a Performance Bond during the term of the JV to secure faithful compliance with its obligations to develop the Property in accordance with its development proposal and pay BCDA the proposed MASRS.

The Performance Bond shall be in the form of a Surety Bond issued by the Government Service Insurance System (GSIS) or any reputable private insurer/insurance company acceptable to BCDA, and shall be in the amount of Eight Billion Pesos (PhP8,000,000,000.00) or the value of the remaining development, whichever is lower.

The Winning PSE undertakes to keep the performance bond current and updated in accordance with the development commitment without any need of notice or demand from BCDA. Failure to do so within ten (10) days from due date or demand shall be a ground for default on the part of the Winning PSE. In addition, the winning PSE shall pay a penalty of ten thousand pesos (Php10,000.00) for every day of delay in posting the bond.

3. **Compliance with the Development Restrictions on the Property.** The Winning PSE shall comply with the prescribed development densities and development restrictions laid out in this TOR, MDP-Bonifacio South, the rules, regulations and standards set by the PRB, as well as applicable laws, rules and regulations of the agencies of the National Government and of the Local Government of Taguig City.
4. **Taxes, fees and any other charges related to the disposition of the Property.** From and after signing of the JV Agreement and turn-over of physical possession of the Property, the Winning PSE shall be responsible for all taxes, fees and any other charges related to the Property, including real property taxes on the Property, if any, and fees imposed by PRB including membership fees, annual maintenance dues and other contributions, if any.
5. **Transfer of Equity.** The Winning PSE shall not sell, assign, transfer, mortgage, pledge or encumber its equity or its rights and interest in connection with the JVA except with the prior written approval of BCDA, which consent shall not be unreasonably withheld; otherwise, the same shall be considered as a ground for termination of the JVA.

#### X. MISCELLANEOUS PROVISIONS

- A. **Confidentiality of Proposals.** All proposals and accompanying documents shall be treated as confidential. Each party will 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.

**B. Forfeiture of Proposal Security.** Any of the following shall be ground for the forfeiture of the Proposal Security in favor of BCDA:

1. Any misrepresentation and/or breach of warranty made by the PSEs in the eligibility and/or proposal documents or any of the required attachments which prevents the BCDA from entering into a contract with said PSE;
2. Withdrawal or modification, whether conditional or otherwise, of the Bid Proposal after the deadline for the submission of the same;
3. Failure or refusal of a Winning PSE to enter into a JV Agreement with the BCDA within ten (10) days from receipt of the Notice of Award from BCDA;
4. Any action, whether judicial or otherwise, which delays the execution of the contracts, the submission of required performance security and/or its compliance with its obligations as set out in these TOR; and
5. Any circumstance or valid ground so as to give BCDA reasonable and valid basis to believe that such event renders the Winning PSE incapable or unwilling to enter into the contract.

**C. Appeals Mechanism.** Decisions of the JVSC with respect to conduct of the Competitive Challenge procedure may be appealed in writing to the BCDA Board; Provided, however, that a prior motion for reconsideration should have been filed by the PSE concerned, and the same has been resolved by the JVSC. The appeal must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the JVSC denying its motion for reconsideration. An appeal may be made by filing a verified position paper with the BCDA Board, accompanied by the payment of a non-refundable appeal fee. The non-refundable appeal fee shall be in an amount equivalent to no less than one-half (1/2) of one percent (1%) of the project cost, or One Hundred Million Pesos (PhP100,000,000.00).

**D. Correspondence with the JVSC.** All correspondences with the JVSC shall be addressed to the attention of:

The Chairman  
Joint Venture Selection Committee for the Competitive Challenge in the  
Development of the Bonifacio South Pointe  
Bases Conversion and Development Authority  
2/F Bonifacio Technology Center, 31<sup>st</sup> Street, Crescent Park West  
Bonifacio Global City, Taguig City

**E. Management and Monitoring of the Joint Venture**

1. BCDA and the Winning PSE shall form a Project Management and Monitoring Committee (PMMC) which shall set the policies for the development and the management of the Project and work for the early resolution of any issues and problems related to the implementation of the JVA. The PMMC shall be chaired by BCDA and shall be represented by three (3) members from each side. Expense of the PMMC shall be borne by the Winning PSE.
2. Plans requiring the approval of the Local Government of Taguig and the Housing and Land Use Regulatory Board (HLURB) shall be subject to prior written approval of BCDA.

3. The Winning PSE shall give BCDA the right to examine, review, and/or audit the financial records and books that shall be separately maintained for the Project and which directly relate to the receipt of gross income or revenues arising from the development of the Property for the purpose of verifying the basis of payments due to BCDA.
4. The Winning PSE shall establish an Escrow Account with a Government Financial Institution (GFI) of choice by BCDA, to which the net proceeds of the sale of BCDA allocated units shall be deposited and subject to audit by BCDA.

**XI. TIMETABLE OF ACTIVITIES**

<b>ACTIVITIES</b>	<b>TIMETABLE</b>
Publication of Invitation for Competitive Challenge	03, 10 and 17 November 2017
Issuance of TOR	03 November 2017 to 08 January 2018
Pre-Bid Conference	21 November 2017; 10:00 a.m.
Deadline for Submission of Requests for Clarification	04 December 2017; 5:00 p.m.
Deadline for Submission of the Eligibility Documents and the Financial Proposals	09 January 2018; 12:00 noon
Opening, Examination and Ranking of Proposals	09 January 2018; 2:00 p.m.
Announcement of the Highest Ranked Proposal	12 January 2018
Deadline for SMLI to Submit Matching Offer	12 February 2018
Post-qualification of Superior Proposal	12 February 2018 to 23 February 2018
Announcement of the Winning PSE and Issuance of Notice of Award	28 February 2018
Signing of Contract	07 March 2018

**ANNEX "A"**

**LOCATION MAP OF THE PROPERTY**

Uncontrolled when printed or emailed

A

✗

guy


2/9/

✗

# BONIFACIO SOUTH POINTE

## FORT BONIFACIO, TAGUIG CITY

**LEGEND:**

 BONIFACIO SOUTH POINTE (33.13 HAS)



**Notes:**

Areas indicated are indicative only. Actual areas will be based on the verified and approved survey plan.


Satellite images based from Google Earth imagery



Republic of the Philippines  
Office of the President



cartography by:  VMDFRANCIA

approved by:  RBMCEPE

filename: BNS- location map.mxd



CERTIFICATION OF SUCCESSFUL NEGOTIATION

Uncontrolled when printed or emailed

f

x

f

x



Bases Conversion and Development Authority

### CERTIFICATION OF SUCCESSFUL NEGOTIATION

WHEREAS, under Republic Act No. 7227, the Bases Conversion and Development Authority (BCDA) is mandated to accelerate the sound and balanced conversion into alternative productive uses of the Clark and Subic military reservations and their extensions, to raise funds by the sale of portions of Metro Manila military camps, and to apply said funds for the development and conversion to productive civilian use of said military base lands;

WHEREAS, on 04 May 2010, BCDA received from **SM LAND, INC.** (SMLI) an unsolicited proposal for the development of approximately 33.13-hectare Bonifacio Naval Station (BNS)/Philippine Marine Corps (PMC)/Army Support Command (ASCOM)/Service Support Unit (SSU) Property in Bonifacio South, Taguig City (the subject "Property"). The "Guidelines and Procedures for Entering Into Joint Venture (JV) Agreements Between Government and Private Entities" (JV Guidelines), issued by the National Economic and Development Authority (NEDA) in consultation with the Government Procurement Policy Board (GPPB) and the Office of the Government Corporate Counsel (OGCC) pursuant to Executive Order No. 423 s. 2005, was published last 17 April 2008 (Philippine Star) and had taken full force and effect on 02 May 2008. Annex C thereof, or the "Detailed Guidelines for Competitive Challenge Procedure for Public-Private Joint Ventures", provides the bases for BCDA's consideration of the unsolicited proposal of SMLI, to wit:

- Item I - "Any Government Entity may directly negotiate a JV activity with a private sector entity whenever allowed under the Guidelines issued by the NEDA"; and
- Item II - "In all cases where the Government Entity directly negotiates with a private sector participant for a proposed JV undertaking, the negotiated terms shall be subjected to a competitive challenge wherein other private sector entities shall be invited to submit comparative proposals to ensure that JV Agreements are entered into under a transparent and competitive process that promotes accountability in government transactions";

WHEREAS, after evaluation of the unsolicited proposal submitted by SMLI in accordance with the provisions of Annex "C" of the JV Guidelines, the Joint Venture Selection Committee (JV-SC) created by BCDA for the selection of a private partner for the BNS/PMC/ASCOM/SSU Property recommended to the BCDA Board, and the BCDA Board approved, per Board Resolution No. 2010-05-100, the acceptance of the unsolicited proposal, subject to the condition that such acceptance shall not bind BCDA to enter into a JV activity, but shall mean that authorization is given to proceed with detailed negotiations on the terms and conditions of the JV activity;

WHEREAS, pursuant to the authorization granted by the Board and issued pursuant to Annex "C", Part III, Stage One of the JV Guidelines, BCDA went into detailed negotiations with SMLI. The JV-SC simultaneously ascertained the eligibility of SMLI in accordance with Annex "C", Part III, Stage 2 (2) of the JV Guidelines;

## Bases Conversion and Development Authority

WHEREAS, this Certification is issued pursuant to Annex "C", Part III, Stage 2 (3) of the JV Guidelines; and

NOW, THEREFORE, for and in consideration of the foregoing, BCDA and SMLI have, after successful negotiations pursuant to Stage II of Annex C - *Detailed Guidelines for Competitive Challenge Procedure for Public-Private Joint Ventures* of the NEDA JV Guidelines, reached an agreement on the purpose, terms and conditions on the JV development of the subject property, which shall become the terms for the Competitive Challenge pursuant to Annex C of the JV Guidelines, as follows:

1. Privatization Mode. Pursuant to the Original Proposal submitted by SMLI to BCDA which the latter accepted, and BCDA's requirements, the subject Property shall be developed under a contractual JV where BCDA and SMLI shall perform their respective primary functions and obligations under the JV Agreement without forming a JV Company. BCDA's sole contribution shall be the Property while SMLI's contribution shall be the Investment Commitment, which includes cost of development, among others.
2. Land Use, Development Density and Development Restrictions. The subject Property shall be developed primarily for a high and medium density residential development, with support mixed use development, commercial, recreational and civic/institutional structures, based on and subject to the 2010 Master Development Plan for Bonifacio South (the "MDP-Boni South"). The approximately 33.13-hectare Property shall have a maximum allowable Gross Floor Area (GFA) of one million three hundred fifty-five thousand six hundred sixty (1,355,660) square meters, with an assumed building efficiency ratio of no more than eighty percent (80%). The final allocation of Floor Area Ratio (FAR) and land uses to be reflected in the SMLI's development plan shall have to be approved by the BCDA Board, the Planning Review Board (PRB) of Bonifacio South Properties and the Taguig City Government. The development of the Property, including those of the utilities (power, water and sewer, telecommunications and gas), shall be subject to the MDP-Boni South, and the policies and rules set by the PRB. Any changes, modifications and revisions to the Master Development Plan shall be subject to the approval of the PRB. The distribution of GFA for the land uses under the proposal shall be as follows:
  - Residential - up to sixty-nine and three-tenths percent (69.3%) of the maximum allowable GFA or nine hundred forty thousand one hundred eighty (940,180) square meters; and
  - Other Uses (Retail, Office, Commercial, Recreational, Entertainment and Civic/Institutional) - up to thirty and seven-tenths percent (30.7%) of the maximum allowable GFA or four hundred fifteen thousand four hundred eighty (415,480) square meters; Provided, that Retail Use should only be a support use and GFA for retail shall not exceed 70,000 sq.m. Neither shall SMLI develop or build Retail Use as a support use or other support uses on a "stand-alone" basis in any of the Blocks, or prior to, or separate from, the Principal Use of such Blocks. The maximum GFA for the support uses (including Retail Use as a support use) in said Blocks shall be determined as follows:

Maximum GFA for Support Uses =  $C \times [3 \div D]$

Where: C = Total GFA built on such Lot

D = Maximum allowable FAR for such lot

In addition, the development of the Property should be able to complement not only the development of the JUSMAG property, but also of the entire Bonifacio South, especially with respect to utilities and road networks. The primary concern with utilities is the provision of adequate drainage facilities to prevent possible flooding in the area and its vicinity. The Development Plans to be submitted should have an assumed building efficiency of not more than eighty percent (80%) and shall comply with, at the minimum, the National Building Code, the Height Restrictions set by the Civil Aviation Authority of the Philippines (CAAP), the ordinances of the local government of Taguig City and all other regulations imposed by appropriate national and local government agencies.

3. Minimum Investment Requirement. BCDA'S Minimum Investment Requirement shall be at least **Eighteen Billion Seven Hundred Million Pesos (PhP18,700,000,000.00)**, for which SMLI's commitment is **Twenty Billion Pesos (PhP20,000,000,000.00)**, within a period of **twenty (20) years** from the signing of the contract for the development of the Property and turn-over by BCDA of the physical possession of the Property. SMLI shall be required to commence development of the Property within twelve (12) months from the date of occurrence of all of the following: (i) completion of the Replicated Facilities, (ii) issuance by the AFP of the Certificate of Acceptance of such Replicated Facilities, and (iii) turnover of such Replicated Facilities to the AFP; Provided, that all pertinent Government approvals and all other permits and approvals necessary to commence development have been obtained from the PRB, Local Government of Taguig City, and appropriate national and local government agencies.
4. Lawton Avenue Widening. Lawton Avenue, which serves as the main access leading to the Property, is presently a dual 2-lane road with an approximate length of 3.20 kilometers from the Sales Interchange to 5<sup>th</sup> Avenue of the Bonifacio Global City. The MDP-South recommends widening of the Lawton Avenue to 35 meters total right-of-way such that it will become a dual 4-lane road, with one lane for each direction dedicated to the proposed Bus Rapid Transit (BRT) System. The widening of Lawton Avenue is also a requirement of the City Government of Taguig for the approval of the MDP for the Property. Widening of Lawton Avenue shall be done in phases. The proposed first phase entails widening of Lawton Avenue to a dual 3-lane road running from 5<sup>th</sup> Avenue until the junction at Bayani Road. The second phase entails widening of Lawton Avenue to a dual 3-lane road starting from the junction at Bayani Road until the Sales Interchange. BCDA shall be responsible for the civil works component for the widening of Lawton Avenue while SMLI shall contribute, at no cost to BCDA, a 10-meter strip of the Property along Lawton Avenue for the required road right-of-way. However, BCDA may, at its option, request SMLI to undertake the civil works for the second phase of the widening of the Lawton Avenue to improve accessibility of the Property, in which case, SMLI shall deduct, without interest, the actual cost incurred for the civil works from BCDA's Minimum Annual Secured Revenue Share (MASRS); Provided, that both Parties shall agree on the cost, design, and timetable of construction. SMLI shall not be entitled to any other compensation for the conduct of such civil works which shall be conducted at no additional cost to BCDA on top of the actual cost thereof. In connection with the widening of Lawton Avenue, SMLI shall immediately commence discussions/negotiations with MERALCO and TRANSCO for the relocation of the overhead power lines to underground lines. For this purpose, BCDA shall provide assistance to SMLI in the negotiations with MERALCO and TRANSCO on a best-effort basis. In case of failure to reach an agreement with MERALCO and/or TRANSCO by the time SMLI is ready to commence development of



the Property, BCDA shall, as an alternative to underground relocation, allow SMLI to relocate the MERALCO and/or TRANSCO poles to another site on the widened Lawton Avenue (i.e., still overhead) or to any other viable location to be agreed upon by the parties; Provided, that the cost of such relocation shall be for the account of SMLI.

Not later than five (5) years from signing of the JV Agreement, BCDA shall conduct a traffic study to determine if the traffic demand then prevailing and projected would necessitate widening of Lawton Avenue to the ultimate design of eight (8) lanes, which will be the third phase of the road widening. The additional two (2) lanes are intended for the BRT System should such project push through. Implementation of this third phase shall have to be undertaken by the proponent of the BRT System and not BCDA. The right-of-way for the BRT System shall be provided within the right-of-way of the widened Lawton Avenue and shall be within the 10-meter strip of the Property contributed by SMLI. SMLI shall not be required to spend for the BRT System Project. In the meantime that the additional two (2) lanes to complete the ultimate design for the expansion of Lawton Avenue to eight (8) lanes are not yet required, SMLI may develop the strip along Lawton Avenue originally reserved for road right-of-way for such additional two (2) lanes for Lawton Avenue into developable areas; Provided, however, that such use shall be temporary in nature; Provided, further, that BCDA and SMLI shall agree on the Allocation Percentage of the parties that will apply to the development of such area originally reserved for Lawton Avenue expansion.

5. Replication and Relocation of BNS, PMC, ASCOM and SSU structures. SMLI shall be responsible for the replication of all the structures and facilities found inside the BNS, PMC, ASCOM and SSU including the relocation of the military facilities presently located within the fenced area controlled by the AFP to the Relocation Site to be identified by BCDA. For this purpose, BCDA shall, at the time of signing of the JV Agreement, provide SMLI the minimum specifications for the replication works and the relocation site. The total cost of replication and relocation shall be recoverable, without interest, against BCDA's secured revenue share, in five (5) equal annual installments beginning on the immediately succeeding year after the completion of the replication and relocation works.

SMLI shall be responsible for developing the final, specific design/technical specifications for the replication works, subject to the approval of the Department of National Defense (DND), AFP, and BCDA (DND-AFP-BCDA) Joint Technical Working Team (JTWT). Not later than twenty-four (24) months from signing of the JV Agreement, BCDA shall issue a Notice to Proceed (NTP) to SMLI directing the latter to commence the replication works; Provided, that the agreement between DND-AFP and BCDA for the replication of the Structures for Replication has been signed/executed. BCDA shall facilitate the signing and execution of the agreement between DND-AFP and BCDA to ensure that the Notice to Proceed (NTP) to SMLI is issued within twenty-four (24) months from signing of the JV Agreement. SMLI shall complete or cause to complete the replication of the Structures for Replication within twenty-four (24) months from issuance of the NTP. BCDA, in coordination with SMLI, will facilitate the issuance of Certificate of Completion and Certificate of Acceptance by the AFP. As agreed between BCDA, DND and AFP, as soon as the Structures for Replication have been replicated, the occupants will vacate the Property. Thereafter, SMLI shall be responsible for the demolition of all Structures for Replication as BCDA is disposing the Property on an "AS-IS, WHERE-IS" basis. BCDA shall keep SMLI free and harmless from any liability arising from the transfer of the occupants within the Property to the Relocation Site.

6. Relocation of Utilities. For the BNS/PMC/ASCOM/SSU Property, as in the rest of Bonifacio South, BCDA requires that all lines for power, water, gas, and all other utilities shall be underground. In this regard, the existing overhead power lines of TRANSCO and MERALCO in the Property are required to be relocated underground, subject to the consent of TRANSCO and MERALCO, within a timetable to be determined jointly by BCDA and SMLI, in consultation with TRANSCO and MERALCO.
7. PRB and Development Guidelines. SMLI shall strictly comply with the development restrictions and conditions set forth in the MDP-Boni South, as well as all applicable laws, rules and regulations of the agencies of the National Government and of the Local Government of Taguig City, including the PRB of Bonifacio South Properties and the Sangguniang Panlungsod of Taguig City. SMLI may, during project implementation, re-distribute the FARs among the Subdivided Parcels; Provided, however, that the general configuration of the land use plan for the BNS/PMC/ASCOM/SSU Property is observed. Provided, further, that such redistribution of FARs shall be subject to prior written approval of BCDA and should not exceed the GFA of 1,355,660 sq.m. for the subject Property. SMLI is given the flexibility to convert the planned minor roads and pedestrian strips to buildable areas as long as the main roads shall be developed in strict adherence with the MDP-Boni South and the buildable area shall not be more than seventy percent (70%) of the gross area or 331,327 sq.m. Any change in the configuration, alignment and width of the main roads as identified in the MDP-Boni South shall require prior written consent/approval of BCDA.
8. Minimum Present Value of the Property. The Minimum Present Value (PV) of the Property shall be Thirty-six Thousand Nine Hundred Pesos (PhP36,900.00) per square meter.
9. BCDA's Revenue Share. In return for its contribution to the JV development of the 33.13-hectare subject Property, BCDA shall be entitled to a share in the JV in the form of ten percent (10%) of the total saleable or leasable gross floor areas converted into BCDA's allocated units. Proceeds from sale or lease of said BCDA's allocated units will be remitted to BCDA less the following deductions: 1) twelve percent (12%) marketing and management fee due SMLI, and 2) value-added tax (VAT) and creditable withholding taxes (CWT), if such taxes are required to be withheld and remitted to the BIR. For this purpose, BCDA and SMLI agree to open a dedicated account for the benefit of BCDA to ensure timely compliance of the tax remittances to the BIR and payment of net proceeds to BCDA. The 12% marketing and management fee due SMLI is already inclusive of VAT and all charges including real property taxes and association dues, if any, due on unsold units.

Furthermore, SMLI has the option to pay the balance of the secured payments (BCDA's MASRS) in full at an earlier time discounted at a rate acceptable to both parties.

10. Upfront Cash Requirement. Upon signing of the resulting JV agreement, SMLI shall remit to BCDA an Upfront Cash in the amount of Two Billion Pesos (PhP2,000,000,000.00). The Upfront Cash shall be recoverable against the proceeds from the sale or lease of BCDA Allocated Units in excess of BCDA's MASRS as described in Item 11 below.
11. Required Secured Net Cash Inflows to BCDA. Net Cash inflows to BCDA pertain to: (i) the Upfront Cash and (ii) BCDA's share in the Net Proceeds from the JV activity. Net Cash Inflows to BCDA shall be evaluated based on the PV of the net cash inflows to

BCDA, computed using a discount rate of ten percent (10%). The face value of a projected net cash inflow to BCDA shall be fully secured (i.e., 100% of face value) by an acceptable form of guaranty such as cashier's or manager's check, bank guaranty, bank letter of credit issued by a universal bank acceptable to BCDA or surety bond issued by the Government Service Insurance System (GSIS) or any duly accredited private surety or insurance company acceptable to BCDA. Secured net cash inflows shall be credited one hundred percent (100%) of its value while unsecured net cash inflows shall not be given any credit in the evaluation. BCDA further requires that the PV of the secured net cash inflows to BCDA shall be no less than the Minimum Value of the Property as stated in Item 8 above. Under its proposal, which BCDA accepted, SMLI committed to remit for a 20-year period, BCDA's Minimum Annual Secured Revenue Share (MASRS) from the proceeds of the development. BCDA's MASRS for Years 1 to 3 shall be equivalent to **One Billion Twenty-nine Million Nine Hundred Forty Thousand Pesos (PhP1,029,940,000.00)** per annum, which shall be subject to 8.05% escalation on Year 4 and every three (3) years thereafter, as shown in Annex A.

SMLI shall remit to BCDA the first MASRS no later than 01 February 2012, and the succeeding MASRS not later than the anniversary date of the remittance of the first MASRS.

SMLI shall be required to commence the selling period within twelve (12) months from the date of occurrence of all of the following: (i) completion of the Replicated Facilities, (ii) issuance by the AFP of the Certificate of Acceptance of such Replicated Facilities, and (iii) turnover of such Replicated Facilities to the AFP; Provided, that all Government approvals for the selling and commencement of development of the Property and all other permits and licenses from appropriate approving Government Agencies, and the PRB, when applicable, have been obtained.

12. Proposal Security. The Proposal Security, which shall be posted by SMLI on the first day of the Publication of the Invitation to Apply for Eligibility and to Submit Comparative Proposals (IAESCP) shall be **One Hundred Eighty-seven Million Pesos (PhP187,000,000.00)**, in the form of manager's check or cashier's check. PSEs who shall be submitting comparative proposals to challenge the Original proposal of SMLI shall be required to post the same amount of proposal security along with the Technical Proposal.
13. Performance Bond. Upon signing of the JV Agreement, SMLI shall be required to post a Performance Bond to secure faithful compliance with its obligations to develop the Property in accordance with its development proposal, in any of the following forms:
  - Cash, Cashier's or Manager's Check, or irrevocable Letter of Credit - equivalent to five percent (5%) of the total estimated development cost;
  - Bank Guarantee - equivalent to ten percent (10%) of the total estimated development cost; or
  - Surety Bond issued by the GSIS or any reputable private insurer/insurance company acceptable to BCDA - equivalent to thirty percent (30%) of the total estimated development cost.

If the performance bond posted is in the form of bank guarantee or surety bond, SMLI or the winning PSE undertakes to keep the performance bond current and updated in

## Bases Conversion and Development Authority

accordance with the development commitment without any need of notice or demand from BCDA.

14. Compliance with the Development Restrictions on the Property. SMLI (or winning PSE) shall comply with the prescribed development densities and development restrictions laid out in the Terms of Reference (TOR), MDP-Boni South, the rules, regulations and standards set by the PRB, as well as applicable laws, rules and regulations of the agencies of the National Government and of the Local Government of Taguig City.
15. Turn Over, Management and Monitoring of the Property. BCDA shall turn over the Property to SMLI upon signing of the resulting JV Agreement and payment of the Upfront Cash. BCDA and SMLI shall form a Project Management and Monitoring Committee (PMMC) which shall set the policies for the development and the management of the Project and work for the early resolution of any issues and problems related to the implementation of the JV Agreement. The PMMC shall be alternately chaired by BCDA and SMLI.
16. BCDA's Authority to Audit and Access Private Sector Entity's (PSE's) POS System. SMLI shall give BCDA the right to examine, review, and/or audit the financial records and books that shall be separately maintained for the Project and which directly relate to the receipt of gross income or revenues arising from the development of the Property for the purpose of verifying the basis of payments due to BCDA. SMLI shall be required to authorize and allow BCDA to gain access to its point-of-sales (POS) system, if any, to generate complete and up-to-date business transactions.
17. Taxes, fees and any other charges related to the disposition of the Property. From and after signing of the JV Agreement and turn-over of physical possession of the Property to SMLI, all taxes, fees and any other charges related to the Property, including real property taxes on the Property, if any, and fees imposed by PRB including membership fees, annual maintenance dues and other contributions, if any, shall be shared by BCDA and SMLI in proportion to their respective interests in the JV.
18. Transfer of Equity. SMLI shall not sell, assign, transfer, mortgage, pledge or encumber its equity or all or substantially all of its rights and interest in connection with the JV Agreement except upon the prior written approval of BCDA, which consent shall not be unreasonably withheld; otherwise, the same shall be considered and dealt with as a ground for termination of the JV Agreement. It is also understood, however, that the assignment or transfer of all or part of the SMLI's rights, interests and/or obligations under these parameters, the JV Agreement, and any agreement entered into by the parties in connection therewith, to its affiliates or subsidiaries shall also require the prior written consent of BCDA.
19. Post-qualification. In any and all cases, before issuance of Notice of Award (NOA) for the Project, SMLI (or any PSE) shall undergo and pass a post-qualification process to be conducted by BCDA.

FURTHERMORE, BCDA hereby declares SMLI eligible to enter into the proposed JV activity. Based on the eligibility documents submitted by SMLI, BCDA has determined that SMLI (i) is a duly registered and existing corporation with Filipino ownership of more than sixty percent (60%) and is authorized by Philippine laws to own, hold or develop lands in the Philippines; (ii) it has completed within a period of ten (10) years from the date of submission of and receipt of its Proposal a similar or related development Project with a total cost of at

**Bases Conversion and Development Authority**

least fifty percent (50%) of the minimum investment requirement, which in this case is P18.7 billion; and (iii) it has the financial capability to undertake the Project.

BCDA and SMLI have agreed to subject SMLI's Original Proposal to Competitive Challenge pursuant to Annex C - Detailed Guidelines for Competitive Challenge Procedure for Public-Private Joint Ventures of the NEDA JV Guidelines, which competitive challenge process shall be immediately implemented following the Terms of Reference (TOR) Volumes 1 and 2. BCDA shall, thus, commence the activities for the solicitation for comparative proposals, with the publication of the Invitation to Apply for Eligibility and to Submit Comparative Proposals (IAESCP) thrice for two (2) consecutive weeks in three (3) major newspapers starting on 10 August 2010, on which date SMLI shall post the required Proposal Security as stated above. Pursuant to Annex C of the NEDA JV Guidelines, if, after solicitation of comparative proposals, BCDA determines that an offer by a comparative PSE is found to be superior to SMLI's Original Proposal, SMLI shall be given the right to match such superior offer within the period prescribed in the attached TOR Volumes 1 and 2. If SMLI is able to match such superior offer, SMLI shall be issued the Notice of Award, subject to Item No. 19 above. In the event, however, that SMLI is unable to match the superior offer, the comparative PSE which submitted such superior offer shall be awarded the contract, subject to Item No. 19 above.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to affix their signatures hereunder on this AUG 06 2010, 2010.

For and on behalf of

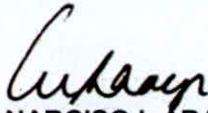
For and in behalf of

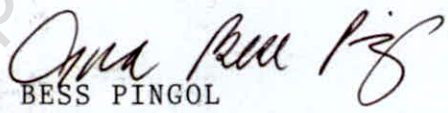
**BASES CONVERSION AND DEVELOPMENT AUTHORITY**

**SM LAND, INC.**

By:

By:

  
**GEN NARCISO L. ABAYA (Ret)**  
President and CEO

  
**ANA BESS PINGOL**  
SVP/CF0

(Name and Designation)

**BCDA**

Business Development Department  
DB2010-0553

Signed in the Presence of:





ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)  
**PASAY CITY** ) SS

BEFORE ME, a Notary Public for and in the City of **PASAY CITY**, personally appeared:

Name	Competent Evidence of Identity	
	Type of ID	ID No. & Expiry Date
Narciso L. Abaya	1	Passport UU0812310 Valid until 03/06/2012
	2	Office ID 05-001
Ana Bess G. Pingol	1	Driver's License N01-93-154112
	2	Expires on: 02-21-12

both known to me and to me known to be the same persons who executed the foregoing instrument and they acknowledged to me that the same is their own free will and voluntary act and deed and the free and voluntary act and deed of the corporations represented.

This instrument, consisting of nine (9) pages including this page of the acknowledgment but excluding all Annexes, refers to a Certification of Successful Negotiation over a 331,327-square meter real property located along Lawton Avenue, Fort Bonifacio, Taguig City, Metro Manila and has been duly signed by the parties hereto and two instrumental witnesses on each and every page hereof.

WITNESS MY HAND AND SEAL on the date and at the place first above-written.

Doc. No. 300  
Page No. 61;  
Book No. 8;  
Series of 2010.

*Christine Dugeno*  
**ATTY. CHRISTINE DUGENO**  
NOTARY PUBLIC  
UNTIL DECEMBER 31, 2010  
TR No. 9959520; 1/6/10; LAS PIÑAS;  
IBP No. 085436; 1/5/10; RSM  
ROLL No. 40897

Selection of BCDA's JV Partner for the Privatization and Development of the BNS/PNSC/ASCOM/SSU  
 Project Proponent: SM Land, Inc.  
 Summary Information Requirements for Financial Criteria Evaluation  
 (P000,000)

Signature: *[Signature]*  
 Date: \_\_\_\_\_

Certified by: \_\_\_\_\_

Model/Cashflow Item	Security/Guarantee Issued by	0	YEAR																	TOTAL								
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17		18	19	20					
Joint Venture																											2,000.00	
Up-front Cash		2,000.00																										
Future Application																												
BCDA's Share in Net Proceeds from JV Activity																												
Secured	Surety Bond	1,075.35	1,075.34	1,075.34	1,112.86	1,112.86	1,112.86	1,112.86	1,112.86	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45	1,287.45
Unsecured																												
TOTAL																												

When printed or emailed

*[Handwritten marks]*

*[Handwritten mark]*

*[Handwritten signature]*

*[Handwritten marks]*

SN No. 0009725129 REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF JUSTICE  
Land Registration Authority  
QUEZON CITY

REGISTRY OF DEEDS FOR THE TAGUIG CITY

# Transfer Certificate of Title

No. 13602

IT IS HEREBY CERTIFIED that certain land situated in the Municipality of Taguig, Metro Manila bounded and described as follows:

---A parcel of land (Lot 1-A of the subd. plan Bsd-00-001245, being a portion of Lot 1 Swo-00-001261, LRC Rec. No. ), situated in Brgy. of Fort Bonifacio, Taguig City, M.M., island of Luzon. Bounded on the SE., along line 1-2 by Lot 1 Swo-007607-000717-D, Parcel 3, Psu-2031 (Portion); along lines 2-10 by Lot 1 (Lot 10117), along lines 10-16 by Lot 3 (Lot 10120), all of Lawton Avenue; on the SW., NW., along lines 16-22 by Lot 3, along line 22-23 by Lot 2, all Swo-13-000183, Meadm-590-D, Taguig Cad.  
( OVER )

is registered in accordance with the provisions of the Property Registration Decree in the name of\*

**BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA)**

as owner thereof in fee simple, subject to such of the encumbrances mentioned in Section 44 of said Decree as may be subsisting, and to

IT IS FURTHER CERTIFIED that said land was originally registered on the 17<sup>th</sup> day of October, in the year nineteen hundred and 15<sup>th</sup>, in the Registration Book of the Office of the Register of Deeds of Volume 12, page 40, as Original Certificate of Title No. , pursuant to Decree No. issued in L. R. C. Record No. , in the name of

This certificate is a transfer from Transfer Certificate of Title No. 61974, which is cancelled by virtue hereof in so far as the above-described land is concerned.

Entered at Taguig City  
Philippines, on the 5<sup>th</sup> day of October  
in the year two thousand and nine  
at 04:46 p. m.

ATTEST:

BCDA Corporate Center,  
2/F Bonifacio Technology Center  
31<sup>st</sup> St. Crescent Park West, Bonifacio  
Global City, Taguig City

(Owner's postal address)

RANDY A. RUTAGUIO  
(Register of Deeds)

\*State the civil status, name of spouse if married, age if a minor, citizenship and residence of the registered owner. If the owner is a married woman, state also the citizenship of her husband. If the land is registered in the name of the conjugal partnership, state the citizenship of both spouses.

OWNER'S DUPLICATE CERTIFICATE




### MEMORANDUM OF ENCUMBRANCES

(When necessary use this page for the continuation of the technical description)

Entry No. .... TOT No. 13602/T-64/p. 02

Mapping, and on the NE., along line 2301 by Lot 1-B of the subd. plan. Beginning at a pt. marked 1 on plan, being N. 82 deg. 03'W., 4253.44 m. from BLLM 1, Mcadm-590-D, Taguig Cad. Mapping, thence; S. 46 deg. 52'W., 69.50 m. to pt. 2; S. 43 deg. 36'W., 173.12 m. to pt. 3; S. 36 deg. 29'W., 46.48 m. to pt. 4; S. 29 deg. 04'W., 41.12 m. to pt. 5; S. 24 deg. 17'W., 96.05 m. to pt. 6; S. 33 deg. 49'W., 46.48 m. to pt. 7; S. 48 deg. 48'W., 48.51 m. to pt. 8; S. 56 deg. 35'W., 77.17 m. to pt. 9; S. 57 deg. 52'W., 79.76 m. to pt. 10; S. 66 deg. 45'W., 102.44 m. to pt. 11; S. 66 deg. 39'W., 111.06 m. to pt. 12; S. 66 deg. 39'W., 43.52 m. to pt. 13; S. 61 deg. 08'W., 48.09 m. to pt. 14; S. 53 deg. 24'W., 39.48 m. to pt. 15; S. 50 deg. 15'W., 115.42 m. to pt. 16; N. 40 deg. 48'W., 21.27 m. to pt. 17; N. 30 deg. 20'W., 115.54 m. to pt. 18; N. 25 deg. 21'E., 129.21 m. to pt. 19; N. 61 deg. 46'E., 278.18 m. to pt. 20; N. 25 deg. 07'W., 267.65 m. to pt. 21; N. 64 deg. 53'E., 534.17 m. to pt. 22; N. 64 deg. 53'E., 176.74 m. to pt. 23; S. 25 deg. 07'E., 216.99 m. to the pt. of beginning, containing an area of THREE HUNDRED THIRTY ONE THOUSAND THREE HUNDRED TWENTY SEVEN SQ. METERS & FORTY SQ. DECIMETERS (331,327.40), more or less. All pts. referred to are indicated on plan and marked on the ground by Old PS cyl. conc. mons. 15x60 cm.; and the rest by PS cyl. conc. mons. 15x40 cm.; bearings true; date of orig. survey, that of the subd. survey, Jan. 22-28, Feb. 1, 2008 and approved on Jan. 20, 2009.//

  
 RANDY A. BATAQUIO, Reg. of Deeds/ea

x-x-x

(Memorandum of Encumbrances continued on Page ..... -B)  
 (Technical Description continued on Additional Sheet ....., Page ..... -)

*(Handwritten marks and signatures at the bottom of the page)*

**ANNEX "D"**

**DEVELOPMENT PLAN FOR THE PROPERTY PER  
MDP BONIFACIO SOUTH**

Uncontrolled when printed or emailed

*[Handwritten mark]*

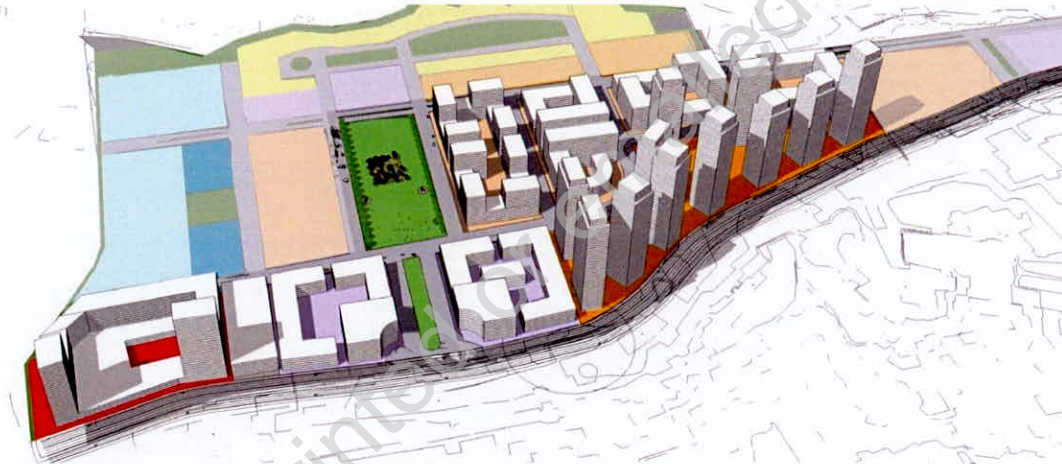
*[Handwritten signature]*

*[Handwritten mark]*

*[Handwritten mark]*

## 2.2 Parcel Areas

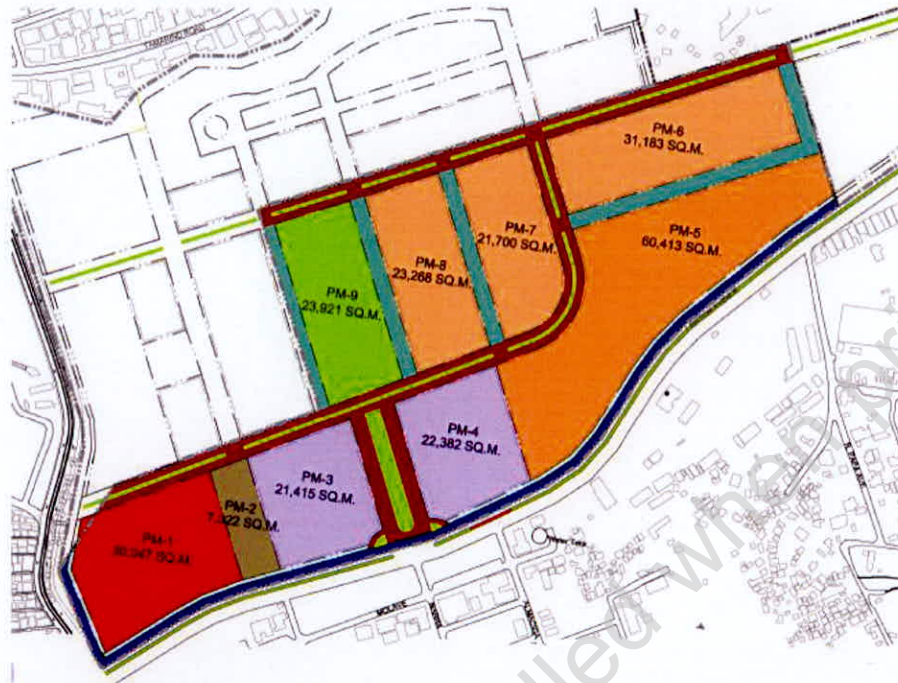
### BNS / PMC / ASCOM



Land Use	Site Area (sqm)	FAR	Total GFA (sqm)	Percent of Total GFA	Ave FAR	Parcel FAR	Efficiency
<b>5 BNS/PMC/ASCOM</b>	<b>331,327 sqm lot area</b>						
High-Density Residential	60,413	8	483,304	35.6%			
Medium-Density Residential	76,151	6	456,906	33.7%			
Civic/Institutional	43,797	4	175,188	12.9%			
Mixed-Use	30,047	8	240,376	17.7%			
Parking	7,322						
Recreation/Open Space	23,921						
Roads (Lawton Widening)	11,400						
Roads (P Tamo Widening)	1,304						
Roads (Lawton Pedestrian Strip)	5,128						
Roads (P Tamo Pedestrian Strip)	716						
Roads (Minor-Internal)	21,025						
Roads (Major Boulevard)	50,103						
<b>Total (Min Buildable)</b>	<b>217,730</b>				<b>6.2</b>		<b>68%</b>
<b>Total (Max Buildable)</b>	<b>244,599</b>		<b>1,355,774</b>	<b>100%</b>	<b>5.5</b>	<b>4.2</b>	<b>76%</b>

## 2.2 Parcel Areas

### BNS / PMC / ASCOM



- HIGH-DENSITY RESIDENTIAL
- MEDIUM-DENSITY RESIDENTIAL
- LOW-MED. DENSITY RESIDENTIAL
- LOW-DENSITY RESIDENTIAL
- MIXED USE
- COMMERCIAL
- CIVIC/INSTITUTIONAL
- RECREATION/OPEN SPACE
- MEDICAL
- PARKING
- SUBSTATION
- STP

- PM-1  
LAND USE : MIXED USE - OFFICE/ RETAIL  
FAR : 8  
SITE AREA : 30,047 SQM  
BUILDABLE SITE AREA : 27,965 SQM  
BUILDABLE FLOOR AREA : 240,376 SQM  
SETBACKS : 3M  
HEIGHT LIMIT : 85M
- PM-2  
LAND USE : PARKING  
FAR : N/A  
SITE AREA : 7,322 SQM  
BUILDABLE SITE AREA : 7,322 SQM  
SETBACKS : 3  
HEIGHT LIMIT : 20M
- PM-3  
LAND USE : CIVIC/INSTITUTIONAL  
FAR : 4  
SITE AREA : 21,415 SQM  
BUILDABLE SITE AREA : 19,711 SQM  
BUILDABLE FLOOR AREA : 85,660 SQM  
SETBACKS : 3M  
HEIGHT LIMIT : 50M
- PM-4  
LAND USE : CIVIC/INSTITUTIONAL  
FAR : 4  
SITE AREA : 22,382 SQM  
BUILDABLE SITE AREA : 20,640 SQM  
BUILDABLE FLOOR AREA : 89,528 SQM  
SETBACKS : 3M  
HEIGHT LIMIT : 50M
- PM-5  
LAND USE : HIGH-DENSITY RESIDENTIAL  
FAR : 8  
SITE AREA : 60,413 SQM  
BUILDABLE SITE AREA : 56,492 SQM  
BUILDABLE FLOOR AREA : 483,304 SQM  
SETBACKS : 3M  
HEIGHT LIMIT : 150M
- PM-6  
LAND USE : MEDIUM DENSITY RESIDENTIAL  
FAR : 6  
SITE AREA : 31,183 SQM  
BUILDABLE SITE AREA : 28,748 SQM  
BUILDABLE FLOOR AREA : 187,098 SQM  
SETBACKS : 3M  
HEIGHT LIMIT : 60M
- PM-7  
LAND USE : MEDIUM DENSITY RESIDENTIAL  
FAR : 6  
SITE AREA : 21,700 SQM  
BUILDABLE SITE AREA : 19,855 SQM  
BUILDABLE FLOOR AREA : 130,200 SQM  
SETBACKS : 3M  
HEIGHT LIMIT : 60M
- PM-8  
LAND USE : MEDIUM DENSITY RESIDENTIAL  
FAR : 6  
SITE AREA : 23,268 SQM  
BUILDABLE SITE AREA : 21,307 SQM  
BUILDABLE FLOOR AREA : 139,608 SQM  
SETBACKS : 3M  
HEIGHT LIMIT : 60M
- PM-9  
LAND USE : OPEN SPACE  
FAR : 0  
SITE AREA : 23,921 SQM  
BUILDABLE AREA : N/A  
SETBACKS : N/A  
HEIGHT LIMIT : N/A

- ROADS (LAWTON WIDENING)  
AREA : 11,400 SQM
- ROADS (PTAMO WIDENING)  
AREA : 1,304 SQM
- ROADS (LAWTON PEDESTRIAN STRIP)  
AREA : 5,128 SQM
- ROADS (PTAMO PEDESTRIAN STRIP)  
AREA : 716 SQM
- ROADS (MINOR-INTERNAL)  
AREA : 21,025 SQM
- ROADS (MAJOR BOULEVARD)  
AREA : 50,103 SQM

**ANNEX "E"**

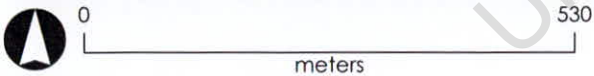
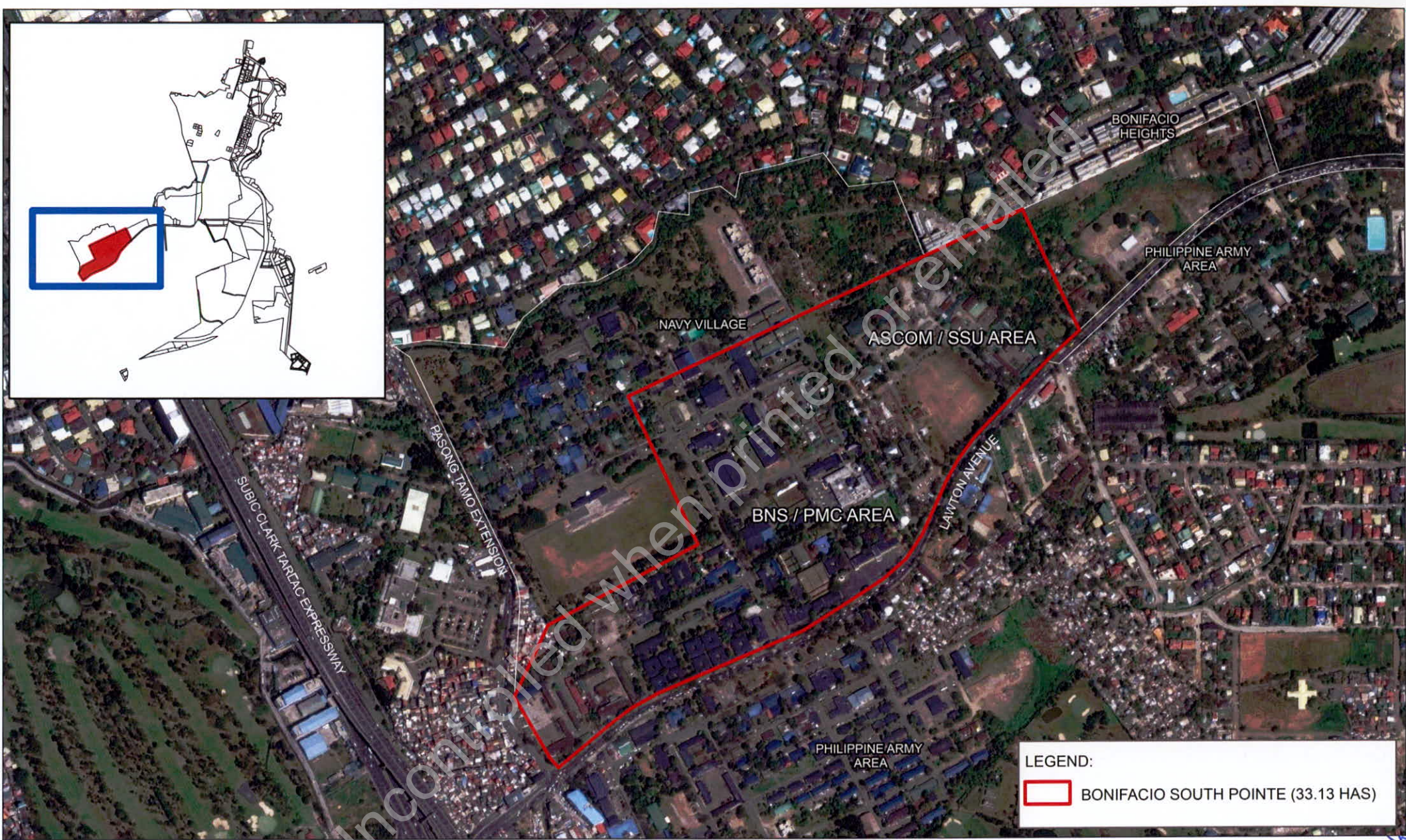
**PARCEL MAP OF THE PROPERTY  
SHOWING THE VARIOUS EXISTING MILITARY FACILITIES**

Uncontrolled when printed or emailed

✓

7

✗



**Notes:**  
 Areas indicated are indicative only. Actual areas will be based on the verified and approved survey plan.  
 Satellite images based from Google Earth Imagery

# BONIFACIO SOUTH POINTE

## ANNEX "F"

## CHECKLIST OF DOCUMENTS

Reference in the TOR	Document	Remarks
<b>Eligibility Documents</b>		
Annex G-1	Duly notarized Eligibility Statement for Corporation	Mark as Tab "A"
Annex G-2	Duly notarized Joint Eligibility Statement for Consortium	
Annex H	PSE's Profile (or all members in case of consortium)	Mark as Tab "A-1"
Annex I	Summary of Projects of the Corporation or, if a Consortium, the member which meets the Technical Capability requirement	Mark as Tab "A-2"
	<i>Additional Requirement for a Consortium: If the PSE is a consortium, the PSE must submit, as part of its Eligibility Statement, a Consortium Agreement executed by and among its members. The MOA shall contain the required information as specified in Article VI, Section B.2(viii) of the TOR.</i>	Mark as Tab "A-3"
	Certification from a universal bank/s reflecting the PSE's cash balance or available credit facilities in the amount of Five Billion Pesos (PhP5,000,000,000.00), issued no earlier than (30) days from the date of opening of the bids	Mark as Tab "B"
	Copy of SEC Registration together with the latest General Information Sheet (GIS) of the PSE for the latest applicable calendar or fiscal year (or all members in case of consortium), or for foreign corporations, the equivalent document duly authenticated by the Philippine Consulate based in the foreign company's domicile.	Mark as Tab "C"
	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.	Mark as Tab "D"
	A Board Resolution or Secretary's Certificate of the PSE (or all members, in case of a consortium) expressly authorizing their participation in the bidding process, and appointing their authorized representative/s for this purpose. For foreign corporations, the certified copies of the required documents shall be submitted, subject to authentication and translation if needed.	Mark as Tab "E"
<b>Financial Proposal</b>		
Annex J	Financial Bid (presented in the prescribed form)	
	Proposal Security in the amount of One Hundred Eighty Seven Million Pesos (PhP187,000,000.00)	

D

X

Pup

Z

4

JK

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*) (PSE) is interested in the Competitive Challenge for the privatization and development of the 33.1-hectare Bonifacio South Pointe located along Lawton Avenue, Fort Bonifacio, Taguig City, Metro Manila, Philippines.
2. I am the (*designation*) of the PSE, duly authorized to make this Statement for and on its behalf.
3. In compliance with the Eligibility Requirements, the following information are hereto attached:
  - a) PSE's Profile (Annex A-1); and
  - b) Summary of Projects (Annex A-2).
4. The PSE commits a Minimum Investment of **Twenty Billion Pesos (PhP20,000,000,000.00)**, spread over twenty (20) years, for the development of the 33.1-hectare Bonifacio South Pointe.
5. The PSE has no pending or unpaid tax liabilities in the Philippines, and shall submit the corresponding Tax Clearance during Post-qualification.
6. The PSE accepts the Terms of Reference, qualification criteria and the terms and conditions set by BCDA.
7. 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 Competitive Challenge or revocation of award as determined by BCDA.
8. The PSE, its Directors, Officers and staff or any representative thereof, shall not attempt to establish any contact with any of BCDA'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 Competitive Challenge, except for clarifications on Proposal which must be in writing and addressed to the JVSC, through its Chairperson.

The PSE, 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, or engage in any of the acts prohibited under R.A. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act", as amended.

0

*[Handwritten signature]*

*[Handwritten signature]*  
*[Handwritten initials]*



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

9. The PSE 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.
10. The PSE authorizes BCDA or its authorized representatives to conduct investigation and verification of the statements, documents and information submitted relative to our bid.

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

11. The PSE commits to abide by the decision of the JVSC, 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 Competitive Challenge.

**IN FAITH WHEREOF**, I have hereunto affixed my signature this \_\_\_\_ day of \_\_\_\_\_ 2017 at \_\_\_\_\_, Philippines.

\_\_\_\_\_  
**Affiant**

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_ day of \_\_\_\_\_ 2017, affiant exhibiting to me his competent evidence of identity (e.g. Passport, Driver's License, etc.) \_\_\_\_\_ issued at \_\_\_\_\_, Philippines on \_\_\_\_\_, 2017.

**NOTARY PUBLIC**

Doc. No. \_\_\_\_\_  
Page No. \_\_\_\_\_  
Book No. \_\_\_\_\_  
Series of 2017.

0

✓ sign

27

Handwritten signature

✱

**ANNEX "G-2"**  
**For 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 Consortium intends to participate in the Competitive Challenge for the privatization and development of the 33.1-hectare Bonifacio South Pointe located along Lawton Avenue, Fort Bonifacio, Taguig City, Metro Manila, Philippines.
2. The Consortium is composed of the following:

Composition	Nationality	Place of Incorporation	Extent of Participation
Lead Member Corporation:			
Members:			
Total			100%

Nature of Consortium     Contractual                       Incorporated

3. In compliance with the Eligibility Requirements, the following information are hereto attached:
  - a) PSE's Profile of all members (Annex A-1);
  - b) Summary of Projects of the member which meets the Technical Capability requirement (Annex A-2); and
  - c) Consortium Agreement executed by and among all members of the Consortium (Annex A-3).
4. The Consortium commits a Minimum Investment of **Twenty Billion Pesos (Php20,000,000,000.00)**, spread over twenty (20) years, for the development of the 33.1-hectare Bonifacio South Pointe.
5. The Consortium has no pending or unpaid tax liabilities in the Philippines, and shall submit the corresponding Tax Clearance/s during Post-qualification.
6. The Consortium accepts the Terms of Reference, qualification criteria and the terms and conditions set by BCDA.
7. 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 Competitive Challenge or revocation of award as determined by BCDA.

*(Handwritten mark)*

*(Handwritten signature)*

*(Handwritten signature)*

*(Handwritten signature)*

*(Handwritten mark)*

8. The Consortium members and their Directors and Officers shall not attempt to establish any contact with any of BCDA'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 Competitive Challenge, except for clarifications on Proposal which must be in writing and addressed to the JVSC, through its Chairperson.

The Consortium members and their 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, 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 Competitive Challenge or revocation of the award, if any, without prejudice to damages that BCDA may recover for any loss or damage that may result therefrom.

9. No member of the 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.

10. The Consortium members authorize BCDA 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 Consortium members hereby authorize any public office, or any person or firm to furnish pertinent information deemed necessary and requested by BCDA to verify statements and information provided in this statement.

11. The Consortium commits to abide by the decision of the JVSC, 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 Competitive Challenge.

**IN FAITH WHEREOF**, we have hereunto affixed our signatures this \_\_\_\_ day of \_\_\_\_\_ 2017 at \_\_\_\_\_, Philippines.

\_\_\_\_\_  
**Affiant**

\_\_\_\_\_  
**Affiant**

\_\_\_\_\_  
**Affiant**

\_\_\_\_\_  
**Affiant**

3

de qm

PL  
Z  
K

**SUBSCRIBED AND SWORN TO** before me this day \_\_\_\_ of \_\_\_\_ 2017, 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. \_\_\_\_\_  
Page No. \_\_\_\_\_  
Book No. \_\_\_\_\_  
Series of 2017.

Uncontrolled when printed or emailed

5

*[Handwritten signature]*

*[Handwritten signature]*  
7 \*

## PRIVATE SECTOR ENTITY'S PROFILE

## 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

(use additional sheets if necessary)

D

\* Jm

Jm

\*

H

III. FINANCIAL CAPACITY

Key Banking Relations			
		As of (the month prior to the deadline for submission of bids) 2017	
Bank Name	Location	Bank Deposit	Credit Facility

IV. SUBSIDIARIES AND AFFILIATES

Subsidiaries and Affiliates	
Business Name	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:

0

*[Handwritten signature]*

*[Handwritten signature]*  
 \*  
 \*

**ANNEX "I"**

To be accomplished by the PSE or a member of the Consortium

**NAME OF BIDDER:** \_\_\_\_\_

*(If a Consortium, indicate the name of the Member with the required Technical Capability)*

Years of experience in development projects: \_\_\_\_\_

**SUMMARY OF COMPLETED PROJECTS**

The following Completed Projects are in the nature of mixed-use developments. Each Completed Project has a total cost of at least **Ten Billion Pesos (PhP10,000,000,000.00)**, excluding the value of the land:

	Project 1	Project 2
Project Description		
Nature of Participation		
Location/Country		
Area in Hectares		
GFA of Development		
Project Cost (excluding 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:

Position:

Date

0

*[Handwritten marks]*

*[Handwritten signature]*

*[Handwritten marks]*

**SELECTION OF BCDA's JV PARTNER FOR THE PRIVATIZATION  
AND DEVELOPMENT OF THE BONIFACIO SOUTH POINT**

**NAME OF PSE:**

**FINANCIAL PROPOSAL**

**Lot Area (LA) :** 331,327 sqm

Yr	Particulars	Amount (A)	10% Discount (B)	NPV $C = (A) \times (B)$
0	Upfront Cash		1.0000	-
1	MASR		0.9091	-
2	MASR		0.8265	-
3	MASR		0.7513	-
4	MASR		0.6830	-
5	MASR		0.6209	-
6	MASR		0.5645	-
7	MASR		0.5132	-
8	MASR		0.4665	-
9	MASR		0.4241	-
10	MASR		0.3855	-
11	MASR		0.3505	-
12	MASR		0.3186	-
13	MASR		0.2897	-
14	MASR		0.2633	-
15	MASR		0.2394	-
16	MASR		0.2176	-
17	MASR		0.1978	-
18	MASR		0.1799	-
19	MASR		0.1635	-
20	MASR		0.1486	-
	<b>Total</b>	-		-
	<b>NPV per sqm</b>	(Total NPV / Lot Area)		-

Notes:

1. Cash Flow commitment should be for a period of twenty (20) years.
2. The Upfront Cash should not be lower than Two Billion Pesos (PhP2,000,000,000.00), as proposed by SMLI.
3. No amount indicated as Minimum Annual Secured Revenues (MASRs) shall be lower than SMLI's MASR proposal.
4. In case of disparity between the PV computed by a PSE in its Financial Proposal and the PV resulting from BCDA's computation of data in the PSE's Financial Proposal, BCDA's computation of the PV of the concerned PSE's proposal shall prevail.

Handwritten signatures and initials are present at the bottom of the page, including a large blue signature on the left, a blue signature in the center, and a green signature on the right.



DRAFT JOINT VENTURE AGREEMENT

Uncontrolled when printed or emailed

*[Handwritten signature]*

*[Handwritten signature]*

**JOINT VENTURE AGREEMENT FOR THE PRIVATIZATION AND DEVELOPMENT  
OF THE 33.13-HECTARE BONIFACIO SOUTH POINTE**

**THE PUBLIC IS INFORMED:**

This Joint Venture Agreement (JVA) is executed by and between:

The **BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA)**, a government instrumentality vested with corporate powers, duly organized and existing pursuant to Republic Act (RA) No. 7227, as amended, with principal office at BCDA Corporate Center, 2/F Bonifacio Technology Center, 31<sup>st</sup> Street, Crescent Park West, Bonifacio Global City, Taguig City, represented herein by its President and CEO, **VIVENCIO B. DIZON**, duly authorized for this purpose under BCDA Board Resolution No. \_\_\_\_\_, Series of 2017, as evinced by a Secretary's Certificate dated \_\_\_\_\_, hereto attached as Annex "A" and made as an integral part hereof, hereinafter referred to as the "**BCDA**";

-and-

\_\_\_\_\_, a corporation duly registered under the laws of the Republic of the Philippines with principal office at \_\_\_\_\_, represented herein by its \_\_\_\_\_, duly authorized for this purpose under \_\_\_\_\_, as evinced by a Secretary's Certificate dated \_\_\_\_\_, hereto attached as Annex "B" and made as an integral part hereof, hereinafter referred to as "**the WINNING PRIVATE SECTOR PARTNER (PSP)**";

(BCDA and the **WINNING PSP** may individually be referred to as "**PARTY**" or collectively as "**PARTIES**").

**ANTECEDENTS:**

BCDA, under RA 7227, as amended, is mandated to accelerate the sound and balanced conversion into alternative productive civilian uses of the former Clark and Subic Military reservations and their extensions, to raise funds through the sale of portions of Metro Manila camps, and to apply said funds for the conversion and development of the former baselands;

On 04 May, 2010, SM Land, Inc. (SMLI) (the "Original Proponent") submitted to BCDA an unsolicited proposal for the development of the 331,327-square meter Bonifacio South Pointe (the "Property") under a joint venture agreement. BCDA evaluated said unsolicited proposal following the 2008 NEDA JV Guidelines and entered into a detailed negotiation with SMLI.

On August 6, 2010, BCDA issued SMLI the "Certification of Successful Negotiation," a copy of which is hereto attached as Annex "C" and forming an integral part hereof. BCDA then proceeded to conduct the competitive challenge on the SMLI's unsolicited proposal in accordance with Annex C of the 2008 NEDA Guidelines. The competitive challenge, however, did not proceed due to the change of administration and shift in the policy direction of the Office of the President which preferred that the Property be disposed through competitive bidding.

Thus, BCDA issued Supplemental Notice No. 5 dated 26 August 2012 terminating the competitive challenge and decided to subject the Property to competitive bidding.

On December 21, 2012, BCDA invited interested proponents to submit bids for the development of the Property.

On 9 January 2013, acting on SMLI's petition and application for Temporary Restraining Order (TRO) and preliminary injunction, the Supreme Court (SC) enjoined BCDA from proceeding with the new selection process for the development of the Property.

In its Decision dated 13 August 2014, the SC annulled and set aside the TRO and BCDA's Supplemental Notice No. 5, and ordered the conduct and completion of the competitive challenge pursuant to the Certification of Successful Negotiation issued to SMLI and the NEDA JV Guidelines. BCDA, after two (2) failed Motions for Reconsideration, and with the SC Decision having become final and executory, requested the SC for clarification on which NEDA Guidelines to use: the 2008 NEDA JV Guidelines in effect when the Competitive Challenge was started, or the 2013 NEDA JV Guidelines issued during the pendency of the case with the SC.

On April 17, 2017, the SC issued a Resolution declaring that the applicable guidelines to be followed should be the 2008 NEDA JV Guidelines.

BCDA, in consultation with the Original Proponent, has reviewed the Terms of Reference (TOR) for the competitive challenge in light of updates in the market and developments in Fort Bonifacio.

On 3 November 2017, BCDA invited interested proponents to submit comparative proposals for the privatization and development of the Property, in accordance with Annex C of the 2008 NEDA JV Guidelines.

On \_\_\_\_\_, BCDA informed the **WINNING PSP** that it submitted the best and most advantageous proposal and that in view thereof, BCDA has awarded in favor of the **WINNING PSP** the right to develop the Property via joint venture arrangement, and, further, appoints the **WINNING PSP** as the exclusive marketing, leasing and management agent of the Project;

**ACCORDINGLY**, for and in consideration of the foregoing premises and mutual promises, representations and warranties set forth, both Parties hereby agree as follows:

## **SECTION I DEFINITION OF TERMS**

As used in this JVA, the following terms shall have the meanings ascribed to them:

**"Affiliate"** shall refer to any party, individual, partnership, firm, corporation, company, association, trust, unincorporated or incorporated organization or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control of the **WINNING PSP**.

**"AFP"** shall refer to the Armed Forces of the Philippines.

“**Allocation Percentage**” shall mean the percentage share of a Party in the Units for sale or for lease in the Project, as specified in **Section 6** hereof, based on their values/gross selling prices specified in the price list at the time of allocation.

“**Allocated Units**” shall mean the Units allocated to **BCDA** and/or the **WINNING PSP**, as a result of the allocation process and based on the agreed allocation percentage under **Section 6** hereof.

“**Allowable Deductions**” shall mean the amounts to be deducted from the Gross Proceeds such as (i) any regular discount on the Selling Price granted to buyers of the BCDA Allocated Units under **Section 8(c)** hereof and (ii) the Marketing and Management Fee and/or the Leasing Agency and Management Fee, as provided in **Section 10** hereof. It also includes the amount of Replication Cost of DND/AFP structures, facilities and utilities to be deducted from the Minimum Annual Secured Revenue Share in five (5) equal installments without interest under **Section 2.4.2** hereof.

“**Association**” shall mean the relevant property owners association and/or condominium corporation in the Project or such equivalent entities organized for a similar purpose.

“**BCDA’s Minimum Annual Secured Revenue Share (MASRS)**” shall be the minimum amount which the **WINNING PSP** commits to remit to BCDA annually for twenty (20) consecutive years in the amount of Pesos: \_\_\_\_\_ (PhP \_\_\_\_\_) in accordance with **Section 13** hereof.

“**BIR**” shall refer to the Bureau of Internal Revenue or any successor government agency.

“**Bonifacio South Properties**” shall refer to parcels of land located south of Bonifacio Global City, Taguig City with an aggregate area of approximately 122 hectares and of which the Bonifacio South Pointe forms part.

“**Business Day**” shall mean a day which is not a Sunday, not a Saturday or not a day on which banks in Makati City and/or Taguig City, Metro Manila are closed for the transaction of business.

“**DENR-NCR**” shall refer to the Department of Environment and Natural Resources – National Capital Region.

“**Development Plan**” shall mean the final land use and development plan for the Bonifacio South Pointe to be submitted by the **WINNING PSP** within six (6) months from signing of this JVA and approved by **BCDA**, as supplemented, amended or replaced from time to time, subject to pertinent approvals from BCDA and/or other approving authorities, as applicable. The Development Plan shall show the road configuration, lot configuration or blocking, location of utilities and common areas, and FAR distribution or allocation.

“**FAR**” shall mean the Floor Area Ratio, which is a factor for the determination of development density. The FAR of a specific structure shall be determined based on the allotted lot per the Project Implementation Plan (PIP) approved by BCDA which when multiplied by the land area of the lot shall result in the total permissible Gross Floor Area or GFA of any building or buildings constructed or to be constructed on said lot.

“**Force Majeure**” shall have the meaning ascribed thereto under **Section 17** hereof.

"**GFA**" shall mean the Gross Floor Area, or the habitable area contained within the external faces of the external walls excluding the (i) floor area requirements imposed by government policies or standards such as covered footways or walkways; (ii) ground level and covered areas used for parking and vehicular access driveways, including vertical penetrations in parking floors, plant boxes and residual areas arising from layout of parking slots; (iii) uncovered areas such as roof decks, areas for air conditioning (AC) cooling towers, overhead water tanks, gardens, courts or plazas; (iv) building design features or use of modern construction techniques that do not give rise to additional floor space and increased density; and (v) floor areas having limited height clearance of one and one-half (1 ½) meters or less and used for mechanical and electrical (M&E) purposes including crawl spaces for maintenance access and cable ducts or chambers.

"**Governmental Approvals**" shall mean the clearances, licenses, permits and consents to be issued by, or filing, declaration, manifestation, registration and the performance of other acts, as may be necessary and appropriate, with, Philippine governmental agencies, national or local, and other entities, as may be necessary or appropriate to effect the implementation of the Project, such as, but not limited to, consolidation and subdivision of the titles to the Property; issuance of condominium certificates of title for the Units; development, construction and completion of the Project; marketing of the Project; leasing of the completed Units, and partition and distribution of and transfer of title over the same to buyers, including such governmental agencies as the Land Management Bureau, Housing and Land Use Regulatory Board, Department of Environment and Natural Resources, Register of Deeds, Bureau of Internal Revenue, Civil Aviation Authority of the Philippines (CAAP) and Taguig City Government, among others.

"**Gross Proceeds**" shall mean the total proceeds actually received from buyers or lessees as payment for the purchase price or lease rental of **BCDA** Allocated Units. For the avoidance of doubt, registration fees and other costs and expenses to be incurred in the registration or transfer of title over **BCDA** Allocated Units to the purchasers thereof shall not be considered part of the Gross Proceeds.

"**Implementing Agreements**" shall refer to such agreements implementing the provisions of this JVA that the Parties shall enter into pursuant to the provisions of this JVA, if and when necessary, which may be in the form of but shall not be limited to development agreements, marketing, management and leasing agency agreements, project monitoring/implementing agreements, and Deeds of Trust over the Property.

"**Leasing Agency and Management Fee**" shall refer to the fee inclusive of Value-Added Tax to be charged by the WINNING PSP for the leasing and management of **BCDA** Allocated Units for lease as provided in Section 10 hereof.

"**JVA**" shall refer to this Joint Venture Agreement for the privatization and development of the Property.

"**Marketing and Management Fee**" shall refer to the fee to inclusive of Value-Added Tax be charged by the WINNING PSP for the marketing and management of **BCDA** Allocated Units for sale as provided in Section 10 hereof.

"**MDP for Bonifacio South Pointe**" shall mean the Master Development Plan for the approximately 331,327-square meter Bonifacio South Pointe Property, which is part of the MDP Boni South.

“**MDP Bonifacio South**” shall refer to the MDP for the Bonifacio South Properties, which was prepared by the consortium of Parsons Brinckerhoff Philippines, Inc. (PBPI) and Filipinas Dravo Corp. (FDC), as commissioned by BCDA and approved by the **BCDA Board**.

“**NEDA JV Guidelines**” shall refer to the *Guidelines and Procedures for Entering Into Joint Venture Agreements Between Government and Private Entities* issued by the National Economic and Development Authority and which took effect on 02 May 2008.

“**Net Proceeds**” shall mean the difference between (i) the Gross Proceeds and (ii) the Deductions.

“**Performance Bond**” shall mean the security to be submitted or posted by the **WINNING PSP** to secure its obligations and commitments specified under **Section 16** hereof.

“**Permitted Uses**” shall mean the uses to which the Property may be devoted as indicated in **Section 2.3** hereof, and based on the MDP Bonifacio South.

“**Planning Review Board (PRB)**” shall refer to the policy-making body which shall set the policies and restrictions on the development for the Bonifacio South Pointe and on the development plan for the Bonifacio South Properties, to ensure that the vision of the MDP Bonifacio South is followed as far as practicable, as provided for in **Section 7.3** hereof.

“**Property**” shall refer to the parcels of land subject of this JVA with an area of 331,327 square meters, more or less, known as the Bonifacio South Pointe, which in turn makes up a portion of the Bonifacio South Properties located south of Bonifacio Global City, Taguig City, Metro Manila, and more particularly described in **Section 2** hereof.

“**Relocation Sites**” shall refer to the sites identified by **BCDA** where the Replicated Facilities will be built.

“**Replicated Facilities**” shall refer to the structures caused to be built by the **WINNING PSP** on the Relocation Sites to functionally replicate the Structures for Replication, in accordance with **Section 5.2** hereof.

“**Replication Fund**” shall refer to the amount to be advanced by the **WINNING PSP** upon signing of this JVA and Turn-over of the Property, for the exclusive purpose of functional replication of the structures, facilities, utilities and land/site development in accordance with **Section 5.2** hereof.

“**Restrictions**” shall refer to the restrictions on the use of the Property described in **Section 2.4** based on the MDP for Bonifacio South Pointe.

“**Selling Period**” shall mean a period of 365 days commencing on the date the **WINNING PSP** begins to offer the BCDA Allocated Units for sale or for lease to the public. The **WINNING PSP** shall be deemed to have begun offering the **BCDA** Allocated Units for sale to the public as of the date of launching of a building or phase in the Project in which the **BCDA** Allocated Units are located. However, for purposes of reconciling/monitoring sales, the first selling period shall end on the nearest anniversary date of payment of MASRS, regardless of actual number of days. This will coincide the selling period with anniversary period for payment of MASRS.

“**Structures for Replication**” shall refer to the structures owned and administered by the AFP which shall be functionally replicated on the Relocation Site.

“**Subdivided Parcel**” shall mean a parcel of land constituting a subdivided portion of the Property.

“**Terms of Reference (TOR)**” shall either singly, separately or collectively refer to the Terms of Reference; the Supplemental Notices including all Annexes thereof, and other electronic or written communication issued by BCDA to officially govern the submission of proposals for the Competitive Challenge for selection of BCDA’s joint venture partner (the **WINNING PSP**) pursuant to Annex C of the 2008 NEDA JV Guidelines. A copy of the Terms of Reference is hereto attached as Annex “\_\_\_”, and made an integral part of this JVA.

“**Turnover**” shall mean the delivery and transfer by BCDA to the **WINNING PSP** of the legal and physical possession of the Property, i.e., entitlement to possession of the Property in its present physical state -- occupied by persons and structures described in Section 2 hereof, as against “vacant possession”, which is control over the Property that has been cleared of its occupants and structures therein are ready for demolition. “Physical possession” of the Bonifacio South Pointe shall gain for the **WINNING PSP** all rights of a lawful possessor such as, but not limited to, the right to access, survey, test, fence-in except the AFP-controlled area, and post signages on, the Property, including the right to undertake development works thereon, as maybe applicable.

“**Upfront Cash**” shall mean the minimum cash to be paid to BCDA by the **WINNING PSP** immediately upon signing of this JVA which without it, this JVA shall be considered as not yet effective between BCDA and the **WINNING PSP**, and more particularly described in Article VI, Section A.1(a.i) of the TOR.

“**Unit**” shall mean a subdivision lot, condominium unit, parking space, or any other space in the Property, which is either for sale or lease.

## **SECTION 2 THE PROPERTY**

### **2.1. Status of the Titles**

The Property subject of this JVA is the 331,327-square meter or 33.13-hectare property located along Lawton Avenue, Fort Bonifacio, Bonifacio Global City, Taguig City which is known as the Bonifacio South Pointe and presently occupied by the military facilities of Bonifacio Naval Station (BNS), Philippine Marine Corps (PMS), Army Support Command (ASCOM), and Service Support Unit (SSU). The entire property is registered in the name of BCDA under Transfer Certificate of Title (TCT) No. 13602, a copy of which is hereto attached as Annex “\_\_\_”.

The Property is characterized by relatively flat to gently rolling terrain, is bounded on the North by the Bonifacio Heights residential development, on the West by the Navy Village and Pasong Tamo Extension, Makati City, on the South by Lawton Avenue, and on the East by the Petroleum, Oil and Lubricants (POL) Depot Area of the Philippine Army.

### **2.2. Status of the Property**

The **WINNING PSP** hereby acknowledges the disclosures pertaining to the status of the Property provided under the Terms of Reference. BCDA hereby warrants the legality, validity and marketability of its title to the Property, the same being its sole capital contribution to the joint venture, including the GFA up to the maximum area stated in the Terms of Reference. BCDA undertakes to

defend and protect its title to the Property and be responsible, if necessary, for the defense of the same in court, including all costs such action may incur, keeping the **WINNING PSP** fully indemnified against any claim, liability, loss, damage, cost or expense in connection therewith.

It shall be the responsibility of the **WINNING PSP** to transfer the title of the Property in its name or to other parties in order to give way to this JVA. All taxes, fees and charges that may be due on the transfer of title to the **WINNING PSP** and/or to other parties shall be the sole account of the **WINNING PSP**.

### **2.3. Permitted Uses**

The **WINNING PSP** shall be, and is hereby expressly, allowed to develop the Property primarily for a high and medium density residential development, with support mixed-use development, commercial, recreational and civic/institutional structures pursuant to the Terms of Reference, the Master Development Plan (MDP) for Bonifacio South Pointe approved by the Local Government of Taguig City and the **WINNING PSP's** Development Plan as approved by the BCDA Board, and the policies and restrictions set by the PRB, as applicable.

Based on the MDP-Bonifacio South Pointe, the relevant portions of which are attached hereto as Annexes “\_\_\_” and made an integral part hereof, approximately 21.8 hectares of the Property are buildable, 2.4 hectares are allocated for open spaces/parks, and 8.91 hectares are reserved for access lots.

Under the MDP-Bonifacio South Pointe, the Property shall be developed primarily for a high and medium density residential development, with support mixed use development, commercial recreational and civic/institutional structures. The Property shall have a maximum allowable Gross Floor Area (GFA) of **One Million Three Hundred Fifty-Five Thousand Seven Hundred Seventy-Four (1,355,774) square meters**, with an assumed building efficiency ratio of not more than **seventy-six percent (76%)**. The final allocation of Floor Area Ratio (FAR) and land uses to be reflected in the **WINNING PSP's** development plan shall have to be approved by the BCDA Board, the Planning Review Board (PRB) of Bonifacio South Pointe and Taguig City Government. The development of the Property, including those of the utilities (power, water, sewer, telecommunications, gas and other utilities), shall be subject to the MDP-Bonifacio South Properties, and the policies and rules set by the PRB. Any changes, modifications and revisions to the MDP shall be subject to the approval of the PRB.

In addition, the development of the Property should be able to complement the development of the entire Bonifacio South Properties, especially with respect to utilities and road networks, and the provision of adequate drainage facilities to prevent flooding in the area and its vicinity.

The **WINNING PSP** shall also comply with the applicable laws, rules and regulations of the agencies of the National Government and of the Local Government of Taguig City.

### **2.4. Restrictions**

In accordance with the MDP-Bonifacio South Properties, the following restrictions shall be observed by the **WINNING PSP** in the development of the Property:

#### **2.4.1 Types of Development and Maximum Gross Floor Area**



Any increase or decrease in the land area, resulting from a final joint survey between BCDA and the **WINNING PSP**, shall not result in the corresponding adjustment of the financial proposal of the **WINNING PSP** unless this results in increase or decrease in the maximum GFA. In that case, the Net Present Value (NPV) of the financial proposal shall be proportionately adjusted to reflect such increase or decrease in GFA in relation to the maximum GFA as stated in the Terms of Reference.

The **WINNING PSP** may, during the development of the Property, re-distribute the FARs among the Subdivided Parcels; *Provided*, however, that the general re-configuration of the land use plan for the Bonifacio South Pointe is observed; low medium lots shall have low to medium density development while the lots fronting Lawton Avenue shall have high density development; *Provided*, that such redistribution of FARs shall be subject to prior written approval of BCDA.

The **WINNING PSP** shall strictly comply with the height restrictions set by the Civil Aviation Authority of the Philippines (CAAP). Should there be unanticipated changes in the policies, requirements and limitations imposed by CAAP which shall cause a reduction in the Maximum Allowable GFA, BCDA and the **WINNING PSP** shall agree in writing on the corresponding adjustments in the NPV of the financial proposal of the **WINNING PSP**.

#### 2.4.2 Relocation and Functional Replication of Existing Military Facilities

The property is currently occupied by the following military facilities, as shown in Annex "\_\_\_\_\_".

	Land Area Occupied
Army Support Command (ASCOM)/ Service Support Unit (SSU)/Division Administrative Command Center (DACC)	11.5 hectares
Bonifacio Naval Station (BNS)/Philippine Marine Corps (PMC)	21.6 hectares
<b>Total</b>	<b>33.1 hectares</b>

The **WINNING PSP** shall fund the functional replication of all structures and facilities of the BNS, PMC, ASCOM, SSU and DACC found within the Property including their relocation to the Relocation Site to be identified by BCDA, the Armed Forces of the Philippines (AFP), and the Department of National Defense (DND). For this purpose, BCDA will provide the **WINNING PSP** the Detailed Architectural and Engineering Design (DAED) which shall serve as basis for the implementation of the functional replication works. The total cost of relocation and functional replication advanced by the **WINNING PSP** shall be recoverable, without interest, against the Minimum Annual Secured Revenue Share (MASRS) in five (5) equal annual installments beginning on the immediately succeeding year after the completion of the functional replication works. The total budget for the relocation and functional replication shall be determined upon completion and approval of the DAED as mutually agreed by BCDA and the **WINNING PSP**. Any amount in excess of said budget advanced by the **WINNING PSP** for this purpose may not be recovered, unless with prior written approval from BCDA.

After finalizing the DAED for a particular replication works, the BCDA shall issue a Notice to Proceed (NTP) to the **WINNING PSP** to commence the functional replication works. The **WINNING PSP** shall complete or cause to complete the functional replication works within thirty-six (36) months from issuance of the NTP. BCDA, in coordination with the **WINNING PSP**, will facilitate the issuance of

Certificate of Completion and Certificate of Acceptance by the DND-AFP. The **WINNING PSP** shall also be responsible for the demolition of all structures. **BCDA** shall keep the **WINNING PSP** free and harmless from any liability arising from the transfer of the occupants within the Property to the Relocation Site.

The **WINNING PSP** shall strictly adhere to the MDP-Bonifacio South Pointe and the **WINNING PSP's** Development Plan approved by the **BCDA Board** in the development of the Property. Any violation of this provision shall entitle **BCDA** to immediate termination of this JVA without need of judicial determination.

#### 2.4.3 Lawton Avenue Widening

Lawton Avenue, which serves as the main access leading to the Property, is presently a dual 2-lane road with an approximate length of 3.20 kilometers from Sales Interchange to 5<sup>th</sup> Avenue of the Bonifacio Global City. The MDP-Bonifacio South recommends widening of the Lawton Avenue to thirty-five (35) meters total right-of-way, more or less, such that it will become a dual 4-lane road, with one lane for each direction dedicated to the proposed Bus Rapid Transit (BRT) System. The widening of Lawton Avenue is also a requirement of the City Government of Taguig for the approval of the MDP for the Property.

The widening of Lawton Avenue shall be done in phases. The proposed first phase entails widening of Lawton Avenue to a dual 3-lane road running from 5<sup>th</sup> Avenue until the junction at Bayani Road. The second phase entails widening of the Lawton Avenue to a dual 3-lane road from the junction at Bayani Road to Sales Interchange. **BCDA** shall be responsible for the civil works component for the widening of the Lawton Avenue while the **WINNING PSP** shall contribute, at no cost to **BCDA**, a strip of the Property along Lawton Avenue, measuring approximately one (1) hectare, subject to final survey, for the required road right-of-way.

The **WINNING PSP** shall be responsible for the cost and relocation of the overhead power lines, communication lines and other utilities, if any, to underground lines as well as securing necessary clearances/permits from appropriate local and national agencies. For this purpose, **BCDA** shall provide assistance on best effort-basis, to the **WINNING PSP** in the negotiations with utility providers, and in securing necessary clearances/permits for the relocation. In case of failure to reach an agreement with utility providers by the time the **WINNING PSP** is ready to commence development of the Property, **BCDA** shall, as an alternative to underground relocation, allow the **WINNING PSP** to relocate the overhead power lines, communication lines and other utilities to another site on the widened Lawton Avenue (i.e. still overhead) or to any other viable location to be agreed upon by the parties; *Provided*, that the cost of such relocation shall be for the sole account of the **WINNING PSP**. It is clarified that, during the construction works for the widening of Lawton Avenue, the **WINNING PSP** shall temporarily relocate the affected utilities to another viable location. However, after completion of the second phase of the Lawton Avenue widening, the **WINNING PSP** shall cause, on its own account, the permanent relocation of the affected utilities to underground lines.

Not later than five (5) years from signing of the JV Agreement, **BCDA** shall conduct a traffic study to determine if the traffic demand then prevailing and projected would necessitate widening of Lawton Avenue to the ultimate design of eight (8) lanes, which will be the third phase of the road widening. The additional two (2) lanes are intended for the planned BRT system. The construction and implementation of the BRT system shall be undertaken by the proponent of the BRT System and not by **BCDA**. The right-of-way for the BRT System shall be provided within the right-of-way of the widened Lawton Avenue. For this purpose, the **WINNING PSP** shall also contribute, at no cost to **BCDA**, an

additional strip of the Property along Lawton Avenue measuring approximately one (1) hectare, subject to final survey. In the meantime that the additional two (2) lanes to complete the ultimate design for the expansion of Lawton Avenue to eight (8) lanes are not yet required, the **WINNING PSP** may develop the strip along Lawton Avenue originally reserved for such additional two (2) lanes for Lawton Avenue into developable areas; *Provided*, however, that such development shall be temporary in nature; *Provided*, further, that **BCDA** and the **WINNING PSP** shall agree on the Allocation Percentage between **BCDA** and the **WINNING PSP** that will apply to the development of such area originally reserved for Lawton Avenue expansion.

#### 2.4.4 Relocation of Utilities in the Property

It is required by **BCDA** and the **WINNING PSP** has agreed that for the Property, as well as the roads bordering the Property, all lines for power, water, sewer, communication, gas, and all other utilities shall be underground. In this regard, the existing overhead power lines, communication lines, water, sewer, communication, gas and all other utility lines (i.e., television cables) in the Property and on the roads bordering the Property are required to be relocated underground within a timetable to be determined jointly by **BCDA** and the **WINNING PSP**, in consultation with the utility providers. The cost for relocation of such utility lines including the cost of required electrical conduits for the power lines, as well as, securing necessary clearances and permits from appropriate local and national agencies in connection with the relocation of the utility lines to underground shall be for the exclusive account of the **WINNING PSP**, unless the utility providers agreed to shoulder the relocation to underground.

The **WINNING PSP** shall likewise be responsible for the relocation of all existing utilities (i.e., power, water, sewer, communication, gas, etc.) on the Property, or bordering the Property to underground and shall likewise shoulder all the costs for the relocation.

### SECTION 3 THE PROJECT

The Project consists of the planning, construction and development of the Property for the Permitted Uses; planning, consolidation and subdivision of the Property into Subdivided Parcels; design and construction of the internal road network, open space, infrastructure and facilities for common use; provision of utilities and connection of the same to the existing lines for such utilities; and the planning, design, marketing, leasing and management of the Units.

The Project shall be pursued in accordance with the Development Plan as approved by **BCDA Board**. The **WINNING PSP** shall submit for **BCDA Board's** approval the Detailed Development Plan for the Property within six (6) months from signing of the JVA. The Development Plan should conform to the MDP-Bonifacio South Properties. The **WINNING PSP** may, before or during the Project implementation, but subject to **BCDA's** written approval, redistribute the FARs among the lots or propose changes to the approved Development Plan for the Property, as recommended in the MDP-Bonifacio South Pointe; *Provided*, that such revision in the Development Plan shall still comply with the Maximum Allowable GFA for the Property. The **WINNING PSP** is likewise given the flexibility to convert the planned minor roads and pedestrian strips to buildable areas as long as the main/circulation road shall be developed in compliance with the Terms of Reference, and the buildable area shall not be more than seventy percent (70%) of the Gross Area of 331,327 square meters. Any change in the configuration, alignment and width of the main/circulation road shall require prior written approval of **BCDA**.

A twenty-five (25)-meter wide road, which may increase to twenty-eight (28)-meter wide, is envisioned to traverse along the north and north-western boundaries of the Property. This road will have a dedicated lane for the proposed Bus Rapid Trans (BRT) System. The **WINNING PSP** shall be responsible for the construction of said road, particularly the portion within the length of the boundary of the Property. **BCDA**, however, may opt to advance the needed funds for the construction of said road, in which case, the **WINNING PSP** shall reimburse **BCDA** the actual cost incurred for the construction of the road, specifically for the portion within the length of the boundary of the Property.

The **WINNING PSP** may propose changes to the land use plan based on the current best uses of the Property. Any such changes to the approved Detailed Development Plan shall require the written approval of **BCDA** in consideration of the following: (i) **BCDA's** Minimum Annual Secured Revenue Share and (ii) **BCDA's** Share in Allocated Units.

The final allocation of Floor Area Ratio (FAR) and land uses to be reflected in the **WINNING PSP's** development plan shall have to be approved by the **BCDA** Board, the Planning Review Board (PRB) of Bonifacio South Properties and Taguig City Government. The development of the Property, including those of the utilities (power, water and sewer, telecommunications and gas), shall be subject to the MDP-Bonifacio South, and the policies and rules set by the PRB. Any changes, modifications and revisions to the MDP shall be subject to the approval of the PRB.

Any violation of the **WINNING PSP** to the foregoing provision, as well as, to the approved Detailed Development Plan or in the revised Detailed Development Plan approved by **BCDA** shall entitle **BCDA**, subject to the Curing Period under Section 19.2 hereof, to immediate termination of this JVA without need of judicial action.

#### SECTION 4 BCDA CONTRIBUTIONS

##### 4.1. BCDA's Contribution to the Project

**BCDA** shall contribute all its rights, title and interest in and to the Property, including the GFA up to the maximum area as stated in the Terms of Reference, as its sole capital contribution to the joint venture (Project) in accordance with Sections 4.1.1 and 4.1.2. It shall be responsibility of the **WINNING PSP** to transfer the title of the Property in its name to give effect to this JVA. Taxes, fees and charges that may be due on the transfer of title to the **WINNING PSP** shall be for the sole account of the **WINNING PSP**. Any unutilized GFA shall revert to, and become the sole property of **BCDA**.

##### 4.1.1 Turn-over of the Property

Upon signing of this JVA, **BCDA** shall turn-over to the **WINNING PSP** the legal and physical possession of the Property on an "AS-IS-WHERE-IS" basis.

##### 4.1.2 Clearing of the Property of Occupants

In accordance with Section 2.4.2 hereof, after finalizing the DAED for a particular replication works, the **BCDA** shall issue a Notice to Proceed (NTP) to the **WINNING PSP** to commence the functional replication of all structures and facilities of the BNS, PMC, ASCOM, SSU and DACC found within the Property including their relocation to the Relocation Site identified by **BCDA**, the AFP and DND. The **WINNING PSP** shall complete or cause to complete the functional replication works within thirty-six (36) months from issuance of the NTP. **BCDA**, in coordination with the **WINNING PSP**, will

facilitate the issuance of Certificate of Completion and Certificate of Acceptance by the DND-AFP. After the occupants of the Structures for Replication have vacated the Property, the WINNING PSP shall be responsible for the demolition of all Structures for Replication since BCDA is disposing the Property on an "AS-IS-WHERE-IS" basis. All salvaged materials shall be turned over by the WINNING PSP to the DND-AFP. BCDA shall keep the WINNING PSP free and harmless from any liability arising from the transfer of the occupants within the Property to the Relocation Site.

In case of delay in, or failure of, clearing of the Property of the military structures or any structures found in the Property, and the WINNING PSP's timetable for development will be adversely affected, the BCDA and the WINNING PSP shall discuss and agree on the best options to address the situation. However, such delay in, or failure of, clearing the Property shall not be a ground on the part of the WINNING PSP to delay or withhold the payment of the WINNING PSP'S commitments under Section 12, 13, 14, 15 and 16 of the JVA but the WINNING PSP shall be entitled to withhold the amount equivalent to twenty percent (20%) of the amount due to BCDA, to be released only upon clearing of the entire Property. Upon clearing of the Property, the WINNING PSP shall immediately remit the remaining twenty percent (20%) unpaid amount. In case of failure to immediately remit the unpaid ten percent (10%) or a fraction thereof, the unpaid amount shall accrue an interest of ten percent (10%) per annum until fully paid. In case the delay in, or failure of, clearing the Property cannot be resolved within one (1) year from the target clearing date, the WINNING PSP has the option to request BCDA for:

- (1) Segregation of the affected area and proportionate reduction of the financial proposal based on impact on the GFA; or
- (2) Rescission of part of the entire contract, as maybe appropriate, based on the provisions of the Civil Code.

#### 4.1.3 Turnover/Conveyance of the Titles to the Property

Upon signing of this JVA, BCDA shall deliver to the WINNING PSP the owner's duplicate copy of TCT No. 13602 and tax declaration covering the Property and registered in the name of BCDA, free from annotations of liens and encumbrances, except as disclosed in the Terms of Reference and in this JVA.

In order to enhance and facilitate the marketing of the Project, BCDA shall, upon the request of the WINNING PSP, execute or cause the execution of Deeds of Trust authorizing the transfer of legal title to the Property to the WINNING PSP which shall hold the same in trust for BCDA and WINNING PSP as beneficial owners of their respective Allocated Units. Such Deeds of Trust shall be in such form and substance as will enable the issuance and registration of the titles to the Property and all titles to be derived therefrom including condominium certificates of title covering condominium units built on the Property, in the name of the WINNING PSP as trustee. In this case, it shall be the responsibility of the WINNING PSP to transfer the titles to the Property to its name through Deeds of Trust substantially in the form of Annex " \_\_\_\_".

#### 4.2. Assistance in obtaining Governmental and Other Approvals

BCDA shall render necessary assistance, on best-effort basis, to the WINNING PSP in securing or obtaining Governmental Approvals and such permits, licenses, certifications and approvals from other appropriate approving government agencies or any private entity, as may be required and desirable for the development, marketing, leasing or implementation of the Project including approval of the WINNING PSP's Development Plan/Detailed Development Plan.

## SECTION 5 THE WINNING PSP'S CONTRIBUTIONS

### 5.1. Financing of the Project

The **WINNING PSP** shall provide financing for, and shall undertake the planning, construction and development of the Project, in accordance with Sections 5.1 and 5.2, as its capital contribution to the Project.

### 5.2. Replication of Structures for Replication

The **WINNING PSP** shall advance the cost of functional replication of all structures, facilities, utilities and land/site development of the BNS/PMC and ASCOM/SSU/DACC facilities found within the Property including their relocation to the Relocation Site to be identified by **BCDA** and the **DND/AFP**. For this purpose, **BCDA** will provide the **WINNING PSP** the Detailed Architectural and Engineering Design (DAED) which shall serve as basis for the implementation of the functional replication works. The total cost of relocation and functional replication shall be recoverable, without interest, against the Minimum Annual Secured Revenue Share of **BCDA** in the Project in five (5) equal annual installments beginning on the immediately succeeding year after the completion of the functional replication works. The total budget for the relocation and functional replication to be advanced by the **WINNING PSP** shall be determined upon completion and approval of the DAED as mutually agreed by **BCDA** and the **WINNING PSP**. Any amount in excess of said budget advanced by the **WINNING PSP** for this purpose shall be for the account of the **WINNING PSP**.

As soon as **BCDA** and the **DND-AFP** have agreed on the design and relocation site of the replication works, **BCDA** shall issue the Notice to Proceed to the **WINNING PSP** directing the latter to commence the functional replication works. The **WINNING PSP** shall complete the functional replication works within **thirty-six (36) months** from issuance of the Notice to Proceed. **BCDA**, in coordination with the **WINNING PSP**, shall facilitate the issuance of Certificate of Completion and Certificate of Acceptance by the **DND-AFP**. As agreed between **BCDA** and the **DND/AFP**, as soon as the functional replication works have been completed, the occupants shall vacate the Property. Thereafter, the **WINNING PSP** shall be responsible for the demolition of all structures; Provided, that any materials salvaged or removed from the demolished structures shall be turned over to the **DND/AFP**. **BCDA** shall keep the **WINNING PSP** free and harmless from any liability arising from the transfer of the occupants within the Property to the Relocation Site.

### 5.3 Development of the Property

The **WINNING PSP** shall cause, oversee and coordinate the performance of all the necessary works for the purpose of constructing, developing and completing the Project. For this purpose, and without limiting the generality of the foregoing, the **WINNING PSP** shall have the exclusive right to perform the following acts:

- (a) develop and manage the development of the Property; cause its consolidation and subdivision into phases consisting of one or more Subdivided Parcels of the size and configuration as the **WINNING PSP** shall determine to be the best suitable for the Permitted Use to which such Subdivided Parcel or phase shall be designated. **BCDA** hereby grants its full and absolute approval and consent to the subdivision of the Property for the purpose of the development of the Project subject to the MDP for Bonifacio South Pointe Property and to the provisions, requirements and limitations set forth in this JVA;

- (b) determine the actual Permitted Use of a Subdivided Parcel, and the manner, concept and design of such use; amend, supplement or replace the Development Plan with **BCDA's** prior written approval pursuant to **Sections 2 and 3** of this JVA; determine the actual density of a Subdivided Parcel based on prevailing market conditions and subject to FAR limitations for the Property; cause the planning, design and construction of the internal road network of the Property, landscaping, common areas, open space, infrastructure and facilities for common use; cause the planning, design and construction of the improvements to be constructed in each Subdivided Parcel, including their building and interior specifications and over-all design and concept; and comply with the legal requirements applicable to the use, manner and concept of development which the **WINNING PSP** shall choose for the Property and subject further to the Development Plan, the MDP-Bonifacio South Pointe and changes thereof, approved by **BCDA**, the Planning Review Board-Bonifacio South Pointe and the Taguig City Government, and the provisions, requirements and limitations set forth in this JVA;
- (c) evaluate and select the architect, general contractor, suppliers, quantity surveyor, specialty contractors and consultants to be engaged or employed for the implementation and completion of the Project; and coordinate and evaluate their work for the purpose of effecting the completion of the Project;
- (d) cause the bidding of Project work packages; evaluate bids; negotiate the terms and conditions for the awarding of bids; accept bids or in the proper case, negotiate and accept contracts which the **WINNING PSP** will decide not to subject to bidding; and execute and deliver in the **WINNING PSP's** name all contracts for Project work packages;
- (e) perform normal legal review of all persons to be engaged for the implementation and completion of the Project; assess any default or delay suffered by the Project under any of such contracts; enter into a compromise of any claim arising from such default or delay; take the necessary action to obtain the relief from any consultant, supplier or contractor due to any such default or delay; and assess the necessity of and submit (whenever necessary) the issue of default or delay to arbitration;
- (f) review and approve all change orders, architectural, engineering, design and landscape plans and detailed design guidelines and construction drawings;
- (g) obtain all the Governmental Approvals and other required approvals with respect to the construction of the Project and development of the Property;
- (h) subject to compliance with the minimum requirements under Presidential Decree No. 1096, otherwise known as the National Building Code of the Philippines (the "Building Code"), and the provisions in **Sections 2 and 3** of this JVA, determine the conditions and restrictions to be constituted as voluntary easements governing the use or occupancy by residents, tenants and other occupants of the Units in a building or phase; determine whether Units in a particular building or phase should be sold under the Condominium Law or otherwise, and when proper, cause the issuance of separate condominium certificates of title and conditions which the **WINNING PSP** will determine to be applicable to such Units and cause the annotation thereof on the condominium certificate of title covering each such Unit, building and/or phase, as applicable;

- (i) effect the purchase of owner-supplied materials and supplies in the construction of the Project;
- (j) coordinate and supervise all activities leading to the turn-over of the Allocated Units from the general contractor to the buyers of the Allocated Units, including coordinating the preparation of the Project punch list and inspection of completed punch list items; and determine, coordinate and supervise the turn-over of roads, open space, facilities and infrastructure for common use which the Project will provide to the appropriate entity thereof, including the timing and phasing thereof; and
- (k) as necessary, construct structures on any portion of the Property to be used for the temporary housing for construction workers, temporary office or staging area for its contractors, batching plant or for other purposes connected with its development of the Property.

## SECTION 6 PROJECT SHARING

### 6.1. Return of Contributions

(a) BCDA's share in the total saleable or leasable GFAs shall not be lower than ten percent (10%) of the total GFAs, exclusive of all applicable taxes and fees which shall be paid and remitted by the **WINNING PSP** to the concerned government agencies and furnishing BCDA with copies of the proof of remittance and certificate of remittance thereof.

(b) Not later than seven (7) days prior to the launch of each phase of the Project, the **WINNING PSP** shall submit to BCDA a written request for allocation, as well as the plans showing all Units for sale or lease for that particular phase and the corresponding price list or lease rates of the Units for allocation. Not later than five (5) days prior to the launch of each phase of the Project, BCDA and the **WINNING PSP** shall meet and select by drawing of lots such Units in the relevant phase as will correspond, in terms of value, to their respective Allocation Percentage. The drawing of lots shall be conducted on a per block basis for subdivision lots, if any, and on a per floor basis for condominium units and parking spaces. In the event that the Allocation Percentage of a Party cannot be completely satisfied by a whole Unit in a particular block, floor or phase, such Allocation Percentage shall be satisfied in the next block, floor or phase, except when there are no remaining Units to be allocated, in which case the **WINNING PSP** shall pay the balance of BCDA's Allocation Percentage in cash.

For the purpose of effecting the distribution of their respective Allocations, the Parties shall execute an Allocation Agreement, a draft of which is hereto attached as Annex "\_\_\_", evidencing the results of the Allocation. Prior to the issuance of transfer/condominium certificates of title for the Allocated Units, the Parties shall enter into a Final Deed of Allocation/Partition with all the formalities required by law to enforce the allocation of the Units between the Parties. The Parties shall share proportionately in the cost of taxes and other charges in relation to the allocation of their respective Units, if any.

(c) All road lots, easements, utilities, facilities and open spaces in the Project shall be ceded to and registered in the name of the **WINNING PSP**, subject to the condition that the **WINNING PSP** shall grant a perpetual right-of-way easement through such roads for the benefit of all the residents, tenants and occupants of the Project and their guests and shall allow such residents, tenants, occupants and their guests perpetual use and enjoyment of such open spaces, utilities, facilities and easements. It is understood, however, that the right of way, use and/or enjoyment of such roads, easements, utilities,



facilities and open spaces in the Project shall be subject to such rules and regulations as determined and set by the Planning Review Board-Bonifacio South. The right of way easement and the constitution and recognition of open space and other easements shall be annotated on the transfer certificates of title covering the Subdivided Parcels.

(d) Any part of the Project which cannot be allocated to any of the Parties in accordance with the foregoing sections due to the nature of its development shall be operated or allocated by the Parties in such a manner as may be mutually agreed upon by the Parties in writing.

## 6.2. Taxes, Fees and Expenses

The following provisions shall govern the responsibility of each Party for the taxes, fees and expenses relating to the transactions contemplated by this JVA:

### 6.2.1 Real Property Tax and Other Charges.

BCDA shall be responsible for any real property tax and assessments, fees and any other charges imposed on the Property, prior to the signing of this JVA. From and after the signing of this JVA and turnover of the Property to the WINNING PSP, all real property tax and assessments, fees and any other charges imposed on the Property shall be for the sole account of the WINNING PSP. The WINNING PSP shall also be responsible for all other taxes that may be imposed on this joint venture with BCDA.

From and after the organization of the Associations, real property taxes and assessments on the Property being part of the common areas of the Project, may be passed on to the relevant Associations in the Project by the WINNING PSP, otherwise, the same shall be for the sole account of the WINNING PSP.

### 6.2.2 Conveyance of the Property and Common Areas

Taxes, fees and charges that may be imposed on the transfer of legal title to the Property to the WINNING PSP from BCDA by virtue of Deeds of Trust (if any) shall be for the account of the WINNING PSP.

### 6.2.3 Disposition, Maintenance and Improvement of Allocated Units

BCDA and the WINNING PSP shall each be responsible for the taxes, fees, expenses and charges on the sale, lease or disposition as well as on the maintenance and improvement of their respective Allocated Units in the Project. Provided, that real property taxes and association dues on completed but unsold BCDA Allocated Units shall not form part of the Deductions unless BCDA opts to retain these units.

Subject to Sections 8, 9 and 10 hereof, BCDA and the WINNING PSP shall enter into a separate Leasing Agency and Management Agreement to govern the leasing and management of BCDA Allocated Units for lease. The Parties shall, to the extent feasible, pass on to the buyers and lessees of their respective Allocated Units all taxes, fees and charges due on any sale, transfer, conveyance or lease, including the creditable withholding income tax in the case of sale or lease, and real property tax in the case of lease. Any amount that cannot be passed on to any buyer or lessee of an Allocated Unit shall be for the account of the Party to which such Allocated Unit belongs.

Except for the taxes, fees and charges that are authorized to be deducted from the Gross Proceeds of the **BCDA** Allocated Units under Section 6.1 above; the amounts excluded from the Gross Proceeds; and other taxes, fees and charges that are for **BCDA's** account under this JVA, all other taxes, fees and other charges, present and future, on the disposition of Allocated Units to their respective buyers and/or lessees shall be for the account of the **WINNING PSP**.

Within thirty (30) days from remittance by the **WINNING PSP** to BIR of the creditable withholding tax due on the sale of **BCDA** Allocated Units, the **WINNING PSP** shall transmit to **BCDA** the corresponding proof of payment of tax in the name of **BCDA** and creditable withholding tax certificates, also in the name of **BCDA**. Failure to submit the withholding tax certificates within the period stated shall result in non-deductibility of said taxes from the Gross Proceeds.

## SECTION 7 INVESTMENT COMMITMENT AND IMPLEMENTATION SCHEDULE

### 7.1. Investment Commitment

The **WINNING PSP** commits to invest a minimum of **Philippine Pesos: Twenty Billion and 00/100 (PhP20,000,000,000.00)** in the Project within the maximum development timetable of twenty (20) years from the commencement of development of the Project.

### 7.2. Project Management and Monitoring Committee

Within six (6) months from signing of this JVA, the Parties shall constitute a Project Management and Monitoring Committee (PMMC) which shall set the policies of the development and management of the Project and to work for early resolution of issues in the implementation of the Project. The PMMC shall be chaired by **BCDA** and shall be represented by three (3) members each from **BCDA** and the **WINNING PSP**.

**BCDA** has the right to examine, review, and/or audit the financial records and books of accounts that shall be separately maintained for the Project/this joint venture which directly relate to the receipt of gross receipts or revenues arising from the development of the Property. **BCDA** is entitled to the immediate termination of the JVA without need of judicial determination should it be proven that the **WINNING PSP** has committed willful fraud or irregularity in the maintenance of the records of all amounts due to **BCDA** under this JVA.

### 7.3. Planning Review Board (PRB)

Within three (3) months from signing of this JVA, **BCDA** and the **WINNING PSP** shall constitute a Planning Review Board (PRB) which shall set the policies and restrictions on the development of the Bonifacio South Pointe in line with the MDP-Bonifacio South Properties to ensure that the vision of the MDP-Bonifacio South Properties is followed as far as practicable in the Bonifacio South Pointe. Membership to such Planning and Review Board shall be comprised of duly authorized representatives of **BCDA** and the **WINNING PSP** on equal footing. Any changes to be introduced on the MDP-Bonifacio South Pointe and any mechanism to implement the MDP- Bonifacio South Pointe shall have to be approved by such Planning Review Board.

### 7.4. Proceeds of Sale or Lease of **BCDA** Allocated Units

For purposes of monitoring the proceeds of sale or lease of the **BCDA** Allocated Units, the **WINNING PSP** shall open an account with a government bank in the name of **BCDA** to which the proceeds from the sale or lease of the **BCDA** Allocated Units shall be deposited. Any withdrawal or transfer from the said account shall be authorized by the duly-authorized signatories for **BCDA** to officially acknowledge such withdrawal or transfer.

#### **7.5. Conduct of Construction**

All construction works shall comply with the minimum building standards of the National Building Code, height restrictions set by the Civil Aviation Authority of the Philippines (CAAP) and other pertinent laws, rules and regulations of all appropriate Government Authorities, national and local, the Planning Review Board-Bonifacio South Pointe, and the MDP for Bonifacio South.

### **SECTION 8 MARKETING, MANAGEMENT AND LEASING OF THE PROJECT**

The **WINNING PSP** shall be, and is hereby appointed, the exclusive marketing and management agent for the **BCDA** Allocated Units for sale, and leasing and management agent for **BCDA** Allocated Units for lease of the Project subject to the following conditions:

- (a) The appointment shall be co-terminus with the JVA;
- (b) The marketing and management fee shall be subject to the annual review by **BCDA** and the **WINNING PSP** to determine the prevailing rate in the market. The **WINNING PSP** shall adjust the rate based on such market rate;
- (c) The **WINNING PSP** shall not grant any discount to buyers except the regular term discount;
- (d) The **WINNING PSP** shall submit to **BCDA** a copy of all sales brochures/price lists for every project offered to the public and the lease rates of **BCDA** Allocated Units;
- (e) The **WINNING PSP** shall submit to **BCDA** a semi-annual report of all sales and leases of the **BCDA** Allocated Units for purpose of monitoring;
- (f) The **WINNING PSP** shall submit to **BCDA** copies of the Lease Agreements executed by the **WINNING PSP** with lessees of **BCDA** Allocated Units, including renewals thereof; and
- (g) The appointment of the **WINNING PSP** as marketing and management agent of **BCDA** may be revoked with thirty (30) days prior written notice if the **WINNING PSP** violates the conditions of this appointment or this JVA.

### **SECTION 9 SPECIAL POWER OF ATTORNEY**

Subject to the conditions in the preceding Section, **BCDA** shall issue in favor of the **WINNING PSP** a Special Power of Attorney authorizing it to sell, lease and/or manage the **BCDA** Allocated Units on its behalf, to sign on behalf of **BCDA** all contracts for the sale or lease of the **BCDA** Allocated Units, including but not limited to reservation agreements, contracts to sell, deeds of absolute sale, and contracts

of lease, and to receive all amounts due to **BCDA** in connection with the sale or lease of the **BCDA** Allocated Units.

The appointment of the **WINNING PSP** as Attorney-In-Fact of **BCDA** is coupled with interest but nevertheless, may be revoked by **BCDA** at any time based on justifiable reason(s) under this JVA. **BCDA** shall, within thirty (30) days from execution of this JVA, execute and deliver to the **WINNING PSP** a Special Power of Attorney evidencing the appointment of the **WINNING PSP** as its Attorney-In-Fact for purposes of the performance of the foregoing acts, together with the appropriate **BCDA** Board resolution authorizing its execution and designating **BCDA**'s authorized signatory.

#### SECTION 10 MARKETING, MANAGEMENT AND LEASING AGENCY FEES

For and in consideration of its performance of the functions as exclusive marketing and management agent for the Project, the **WINNING PSP** shall charge a Marketing and Management Fee equivalent to twelve percent (12%) of the gross selling price of the **BCDA** Allocated Units for sale, which is the price for which **BCDA** Allocated Units are sold to its buyers; *Provided*, that real property taxes and association dues on completed but unsold **BCDA** Allocated Units for the first three (3) years from turn-over to a buyer of the first Unit in the building or subdivision phase in which said completed but unsold **BCDA** Allocated Units are located, shall already be absorbed in the Marketing and Management Fee. The Marketing and Management Fee shall form part of the Deductions from Gross Proceeds to be remitted by the **WINNING PSP** to **BCDA**'s Bank Account for each Selling Period and for which, the **WINNING PSP** is obliged to furnish **BCDA** with a written computation upon remittance of such Net Proceeds to **BCDA**. The Marketing and Management Fee chargeable to **BCDA** under this Section is inclusive of Value-Added Tax. The **WINNING PSP** shall also be responsible for all taxes, present or future, with no recourse to **BCDA**, that may be assessed on account of its receipt of the Marketing and Management Fee.

For and in consideration of its performance of the functions as exclusive leasing and management agent for the Project, the **WINNING PSP** shall charge a Leasing Agency and Management Fee of twelve percent (12%) of the gross lease rental of **BCDA** Allocated Units for lease, which is the price for which **BCDA** Allocated Units are leased to its lessees. The Leasing Agency and Management fee shall form part of the Deductions from Gross Proceeds to be remitted by the **WINNING PSP** to **BCDA**'s Bank Account for each Leasing Period and for which, the **WINNING PSP** is obliged to furnish **BCDA** with a written computation upon remittance of such Net Proceeds to **BCDA**. The Leasing Agency and Management Fee chargeable to **BCDA** under this Section is inclusive of Value-Added Tax. The **WINNING PSP** shall also be responsible for all taxes, present or future, with no recourse to **BCDA**, that may be assessed on account of its receipt of the leasing agency and management fee.

The **WINNING PSP** shall remit to the BIR, for and in behalf of **BCDA** and within due date the amount of tax required to be withheld by **BCDA** from the Marketing and Management Fee and Leasing Agency and Management Fee and furnish **BCDA** with proof of such remittance together with a copy of the corresponding creditable withholding tax certificate within fifteen (15) days from date of remittance to BIR. Any penalty and surcharges that shall be assessed and incurred by **BCDA** on account of non-remittance or late remittance of said creditable withholding tax to the BIR shall be for the account of the **WINNING PSP**.

**SECTION 11**  
**COLLECTION AND REMITTANCE OF SALES OR LEASE PROCEEDS**  
**OF BCDA-ALLOCATED UNITS**

In order to facilitate monitoring of the Gross Proceeds from the sale and/or lease of **BCDA** Allocated Units, the **WINNING PSP** shall keep, maintain a separate bank account in the name of **BCDA** with a government bank to which the Gross Proceeds from the sale and/or lease of **BCDA** Allocated Units shall be deposited.

The **WINNING PSP** and **BCDA** shall, at the end of each Selling Period, determine the amount of Net Proceeds from the sale and/or lease of **BCDA** Allocated Units during such Selling Period.

If the Net Proceeds are more than **BCDA's** Minimum Annual Secured Revenue Share due to **BCDA** for a particular Selling Period, less any refund due the **WINNING PSP** and Other Advances made by the **WINNING PSP** for **BCDA's** account, if any, the **WINNING PSP** shall, within thirty (30) days after each Selling Period, remit to **BCDA** by depositing in **BCDA's** account, the amount corresponding to the Net Proceeds determined to be due to **BCDA** from the sale and/or lease of **BCDA** Allocated Units for the applicable Selling Period, less any amount corresponding to **BCDA's** Minimum Annual Secured Revenue Share falling due within the applicable Selling Period that may have already been remitted in advance to **BCDA** and Other Deductions, whenever applicable.

If the Net Proceeds are less than **BCDA's** Minimum Annual Secured Revenue Share due to **BCDA** for the particular Selling Period less any refund due the **WINNING PSP** and the Other Advances made by the **WINNING PSP** for **BCDA's** account, if any, the **WINNING PSP** shall still remit to **BCDA** the total Minimum Annual Secured Revenue Share for the particular Selling Period and the excess from the Net Proceeds shall be treated as an **Additional Advance Revenue Share** for the particular Selling Period.

This same procedure shall be repeated during the succeeding Selling Periods until full remittance of all of the Net Proceeds from the sale of all of **BCDA** Allocated Units at the end of the 20<sup>th</sup> year of this joint venture, which in no case, shall be lower than the total aggregate **BCDA's** Minimum Annual Secured Revenue Share committed by the **WINNING PSP** to **BCDA** at the end of the 20<sup>th</sup> year of the joint venture.

For the purpose of receiving the sums due **BCDA**, the **BCDA** Treasury Department shall solely be the authorized body to receive such sums from the **WINNING PSP**, and receipt of such sums by the **BCDA** Treasury Department shall be deemed as receipt by **BCDA**, *Provided*, the receipt is duly acknowledged by **BCDA's** issuance to the **WINNING PSP** of an Official Receipt issued by the authorized officer of the **BCDA** Treasury Department. For this purpose, it shall be the responsibility of the **WINNING PSP** to provide **BCDA** with notices of remittances and corresponding computation of amounts remitted/deposited in **BCDA** account and secure from the **BCDA** Treasury Department the Official Receipts acknowledging **BCDA's** actual receipt of the remittances of the **WINNING PSP**.

In the event that any sale or lease of **BCDA** Allocated Units, the Net Proceeds of which had already been remitted by the **WINNING PSP** to **BCDA**, is rescinded or canceled, and the **WINNING PSP** effects a Refund, then the amount received by **BCDA** corresponding to the Refund shall be deducted from the Gross Proceeds for the succeeding Selling Periods or from any other amount falling due and payable to **BCDA** under this JVA or any other agreement for the purpose of effecting the payment of such amounts due hereunder or thereunder; or the **WINNING PSP** may, in its discretion, bill and collect from **BCDA** such deficiency.

## SECTION 12 UPFRONT CASH AND OTHER ADVANCES

### 12.1. Upfront Cash

Upon signing of this JVA and Turnover of the Property to the WINNING PSP, the WINNING PSP shall remit to **BCDA** an Upfront Cash as stated in its bid. The joint venture and this JVA shall be construed to have not taken effect or become effective at all in case of failure of the WINNING PSP to pay **BCDA** the Upfront Cash in full.

The WINNING PSP hereby authorizes **BCDA** to apply its Bid Security as partial payment of the Upfront Cash upon execution of this JVA and turnover to the WINNING PSP of the Property.

### 12.2. Replication Cost

In addition to the Upfront Cash, the WINNING PSP shall also advance the costs of the functional replication of all existing DND/AFP structures and facilities in the Property including their relocation to the Relocation Sites identified by the DND-AFP pursuant to Section 5.2 hereof.

## SECTION 13 BCDA'S MINIMUM ANNUAL SECURED REVENUE SHARE

In addition to the Upfront Cash provided in the preceding Section, the WINNING PSP commits to cause the remittance to **BCDA** of **BCDA's** Minimum Annual Secured Revenue Share less any refund due the WINNING PSP and the Other Advances made by the WINNING PSP for the account of **BCDA**, if any, within thirty (30) days after the end of each Selling Period for twenty (20) consecutive years. The first Minimum Annual Secured Revenue Share shall be remitted by the WINNING PSP to **BCDA** not later than the first year anniversary of the signing of this JVA and every year/twelve-month period thereafter without need of demand from **BCDA**. Failure on the part of the WINNING PSP to remit to **BCDA** any MASRS on date due, subject to the Curing Period under Section 19.2 hereof, shall entitle **BCDA** to terminate this JVA without need of judicial action.

As agreed, the WINNING PSP shall remit to **BCDA** the committed Minimum Annual Secured Revenue Share regardless whether the actual proceeds from sale and lease of the **BCDA** Allocated Units is less than the amount of the Minimum Annual Secured Revenue Share due for that Selling Period/year. At the end of the 20<sup>th</sup> year of this joint venture, the Parties shall make a final determination whether in addition to the Upfront Cash committed at the start of this joint venture, the WINNING PSP has remitted to **BCDA** the committed total aggregate Minimum Annual Secured Revenue Share to **BCDA** for the term of the joint venture. The WINNING PSP shall complete any shortfall in the total aggregate Minimum Annual Secured Revenue Share still due to **BCDA** at the end of the joint venture.

## SECTION 14 INTEREST

All payments required to be made hereunder to a Party shall be effected as herein stipulated without necessity of any demand, but subject in any event to a grace period of sixty (60) days from due date. In the event that a Party is not able to receive the payment of any amount required hereunder due to a cause which is not recognized under this JVA as an excuse for non-performance or non-payment, then the Party from whom such payment is required or who agreed to effect such payment shall be liable for the payment of interest equivalent to two percent (2%) for every month of delay accruing on the

unpaid amount and commencing on the due date thereof. It is understood that payment beyond the due date but within the 60-day grace period shall also be subject to the interest herein stipulated.

## SECTION 15 PRE-PAYMENT OF BCDA'S MINIMUM ANNUAL SECURED REVENUE SHARE

Upon mutual agreement of the Parties, the WINNING PSP may at any time pay in advance all or any part of BCDA's Minimum Annual Secured Revenue Share due and owing to BCDA for the succeeding remittance period(s) using a discount rate equivalent to the prevalent lending rate.

## SECTION 16 PERFORMANCE BOND

### 16.1. WINNING PSP's Commitments

Upon signing of this JVA, the WINNING PSP shall post a Performance Bond to secure its faithful compliance with the following commitments:

- (a) To pay the Minimum Annual Secured Revenue Share for each Selling Period on due date;
- (b) To invest the committed minimum amount of not less than Philippine Pesos: Twenty Billion and 00/100 (PhP20,000,000,000.00) in the Project within the estimated development timetable of the Project of twenty (20) years, subject to the provisions of Section 7.1 hereof; and
- (c) To develop the Property in accordance with the Development Plan approved by BCDA and to abide by the Restrictions in the development of the Property as provided for in this JVA and the Terms of Reference.

Any material breach of any of the foregoing commitments of the WINNING PSP, after lapse of the Curing Period, as embodied in Section 19.2 (b), shall be a ground for calling on the Performance Bond for the amount of the damage to BCDA, without prejudice to the other rights and/or remedies available to BCDA under this JVA and existing laws.

### 16.2. Form and Term of Performance Bond

Upon signing of the JVA, the WINNING PSP shall post a Performance Bond during the term of the joint venture/JVA to secure the faithful compliance with its obligations to develop the Property in accordance with the approved Development Plan and pay BCDA the Minimum Annual Secured Revenue Share on due date. The Performance Bond shall be in the form of Surety Bond issued by the Government Service Insurance System (GSIS) or any reputable private insurer/insurance company acceptable to BCDA and shall be in the amount of Pesos: Eight Billion and 00/100 (PhP8,000,000,000.00) or the value of the remaining development whichever is lower. The WINNING PSP undertakes to keep the Performance Bond current and updated in accordance with its development commitment without need of notice or demand from BCDA. Failure to do within ten (10) days from due date shall be a ground for default on the part of the WINNING PSP. In addition, the WINNING PSP shall pay a penalty of Pesos: Ten Thousand and 00/100 (PhP10,000.00 for every day of delay in the posting of the Performance Bond. A reduction of the amount of the Performance Bond shall *pro tanto* release the WINNING PSP and/or the issuer thereof to the extent of the amount of reduction; *Provided*, the amount of the Performance Bond shall in no case be lower than Pesos: Two Billion and 00/100 (PhP2,000,000,000.00).

### 16.3 All-Risks Insurance

The **WINNING PSP** shall upon commencement of the development of each phase of the Project, secure or cause its contractors to secure, at its/their own expense, an All-Risks Insurance from the Government Service Insurance System or any reputable private insurer/insurance company acceptable to **BCDA** to insure that the relevant phase of the Project (including permanent and temporary works, and equipment and materials delivered at site) against all and such risks as customary in businesses of similar nature to such phase of the Project, and against third-party liabilities, and from whatever causes other than an event constituting Force Majeure. The insurance shall be in amount equivalent to the estimated development cost of the relevant phase of the Project. The **WINNING PSP** shall submit to copies of the insurance policy and the appurtenant receipts for premiums payment rendered as well as nay renewal policies for the same.

## SECTION 17 FORCE MAJEURE AND SUSPENSION

### 17.1. Definition

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

- (a) fires, earthquakes, lightning, flood, conflagration, volcanic eruption, storm and other similar natural calamities and occurrence;
- (b) acts of war or acts of the public enemy, whether war be declared or not;
- (c) public disorders, insurrection, rebellion, sabotage, **terrorism** or violent demonstrations; and
- (d) large-scale strikes or other large-scale labor disturbances.

### 17.2. Applicability

A Party shall be excused from the performance of any of its obligations under this JVA, and shall not be considered to be in delay or in default in respect of any obligation hereunder by reason of Force Majeure, *Provided*, that there is no accompanying fault or negligence of the Party invoking it. Should the aggregate period during which the Force Majeure, whether occurring as a single event or as a series of events, subsists in any Selling Period for more than thirty (30) days, then the period within which to perform the obligation which a Party is unable to perform due to Force Majeure shall be automatically extended by the period in which the Force Majeure subsists. The Party invoking Force Majeure shall, within seven (7) days from the occurrence of Force Majeure, notify the other Party in writing of the occurrence of Force Majeure, and the extent to which Force Majeure suspends the affected Party's obligations under this JVA. The other Party shall have a period of fourteen (14) days from receipt of such notice within which to verify the existence, nature and extent of the Force Majeure being invoked by the Party giving notice. The Party invoking Force Majeure shall resume performance of its obligations as soon as the effects of Force Majeure cease to exist.



### 17.3. Non-Applicability

17.3.1 The following shall, by themselves, not constitute Force Majeure, unless the cause which gave rise to any of the following events itself constitutes Force Majeure under Section 21.1 hereof:

- (a) late payment of money;
- (b) delays resulting from reasonably foreseeable unfavorable weather; and
- (c) failure of a Party to exercise due diligence or undertake reasonable measures to contain the effect of Force Majeure.

17.3.2 While the following events shall not constitute Force Majeure, the same shall be a basis for renegotiating in good faith the terms of this JVA such that the commercial intent of the Parties at the time of execution of this JVA is achieved in the context of the new circumstances:

- (a) site conditions which could not have been anticipated by the **WINNING PSP** upon execution of this JVA and which are likely to cause delay in the commencement and/or completion of the development of the Project; except if due to failure of the **WINNING PSP** to replicate the structures, facilities and utilities for replication within the agreed timetable;
- (b) state-imposed economic controls, such as but not limited to importation restrictions that make it impossible or difficult to obtain raw materials and equipment which will be used for the implementation of the Project; *Provided*, there are no equivalent materials and equipment available locally;
- (c) passage of a local ordinance or any unreasonable delay by any regulatory agency or government entity or approving entity that effectively prevents the implementation of the Project, such as failure or delay in the issuance of permits, clearances, authorizations, licenses, resolutions and opinions required for the implementation of the Project without fault or negligence on the part of any Party;
- (d) significant and material change in the financial, political and economic conditions in the Philippines, including shift in policy direction of the administration in relation to the development of the Property, from the conditions prevailing at the time of execution of this JVA which will cause undue hardship on any Party beyond the contemplation of the Parties at the time of execution of this JVA;
- (e) issuance of any order or decision from a court or governmental body or agency, the effect of which prevents the implementation of the Project; and
- (f) subsequently promulgated laws, decrees, executive orders and other governmental rules and regulations that effectively prevents or adversely affect the implementation of the Project.

### 17.4. Mitigation Measures

Upon the occurrence of Force Majeure, the Party invoking it to excuse performance of its obligations hereunder shall endeavor to continue to perform its obligations under this JVA so far as

reasonably practicable, and shall notify the other Party of the steps the Party invoking the Force Majeure proposes to take, including reasonable measures to mitigate the effects of the Force Majeure.

**SECTION 18  
REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS**

**18.1. Representations, Warranties and Additional Covenants of WINNING PSP**

The WINNING PSP hereby represents, warrants and covenants to BCDA that:

- (a) It is a corporation duly organized, validly existing, and in good standing under the laws of the Republic of the Philippines. It has all necessary power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under the agreements to which it is or is to be a party. It is duly qualified and licensed to do business in the Philippines.
- (b) It has all necessary power and authority to execute, deliver and perform its obligations under this JVA. The execution, delivery and performance by the WINNING PSP of this JVA have been duly authorized by all necessary corporate action, and do not require any other approval from the holder of any of its indebtedness or other obligation, and do not contravene or constitute a default under its organizational documents or, to the best of its knowledge, any provision of applicable law or any agreement, judgment, injunction, order, decree or other instrument binding upon it, or subject the performance of its obligations in this JVA to any lien. It is in compliance with all applicable laws and government approvals (1) which govern its ability to perform its obligations under the JVA (2) the non-compliance with which would have a material adverse effect on its ability to perform its obligations under this JVA.
- (c) Neither the execution and delivery by it of this JVA, nor the consummation by it of any of the transactions contemplated hereby, require, with respect to it, the consent or approval of, the giving of notice to, the registration with, the recording or filing of any documents with, or the taking of any other action in respect of any government authority, except for the Government Approvals required for the Project.
- (d) It has duly and validly executed and delivered this JVA and this JVA constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms.
- (e) It has all the required skills and capacity necessary to perform or cause to be performed all its obligations under this JVA in a proper, timely and professional manner.
- (f) It has the knowledge of all the legal requirements and business practices that must be followed in performing its obligations under this JVA, and the same will be in conformity with such requirements and practices and in compliance with all applicable laws and Governmental Approvals.
- (g) It is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this JVA. It shall require contractors or

suppliers whom it shall engage to complete the Project to furnish the required tools, materials, supplies, equipment, labor and design services needed for the implementation of the Project. It shall engage contractors and suppliers whom it believes in good faith to be experienced in and competent to complete the Project, both in terms of construction and design. It shall require the contractors which it shall engage for the implementation of the Project to use equipment which shall be free and clear of any lien and suitable for the requirements of the Project. Any structure or building to be constructed in the Property shall adhere to and comply with the minimum building standards of the Building Code, and other pertinent laws applicable to the Project.

- (h) To the extent that patents, trademarks, service marks, tradenames, copyrights, licenses, franchise or permits will become required for the valid implementation of the Project, it shall cause such patents, trademarks, service marks, tradenames, copyrights, licenses, franchise or permits to be obtained to allow it to perform its obligations under this JVA without conflict with the rights of others.
- (i) To the best of its knowledge, there is no action, suit or proceeding, at law or in equity, or official investigation before or by any government authority, arbitral tribunal or other body pending or, to the best of its knowledge, threatened against or affecting it or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on its ability to perform its obligations under this JVA or on the validity or enforceability of this JVA.
- (j) It has not given nor promised to give money or any other form of gift to any official or employee of **BCDA** for purposes of having **BCDA** execute and perform this JVA. Any violation of this warranty shall be sufficient ground for the revocation or termination of this JVA without prejudice to the criminal, civil and/or administrative liabilities of those involved.
- (k) No application has been filed with any Governmental Authority for commencement of any insolvency, bankruptcy, rehabilitation or suspension of payments proceeding against or on behalf of **WINNING PSP**.

## 18.2. Representations, Warranties and Additional Covenants of BCDA

BCDA represents, warrants and covenants in favor of **WINNING PSP** that:

- (a) With respect to its corporate authority:
  - (i) It is a government instrumentality vested with corporate powers, organized under the laws of the Republic of the Philippines, and has all necessary power and authority to award the disposition and privatization of the Property to the **WINNING PSP** under the Terms of Reference.
  - (ii) It has all necessary power and authority to execute, deliver and perform its obligations under this JVA, and the execution, delivery and performance by **BCDA** of this JVA have been duly authorized by all necessary corporate action, and do not contravene or constitute a default under its enabling law or, to the best of its

knowledge, any provision of applicable law or any agreement, judgment, injunction, order, decree or other instrument binding upon it, or subject the performance of its obligations in this JVA to any lien. It is in compliance with all applicable laws and government approvals which govern its ability to perform its obligations under the JVA, the non-compliance with which would have a material adverse effect on its ability to perform its obligations under this JVA.

- (iii) Neither the execution and delivery by it of this JVA, nor the consummation by it of any of the transactions contemplated hereby, require, with respect to it, the consent or approval of, the giving of notice to, the registration with, the recording or filing of any documents with, or the taking of any other action in respect of any government authority, except as may be required under Section 20.9.
  - (iv) There is no action, suit or proceeding, at law or in equity, or official investigation before or by any government authority, arbitral tribunal or other body pending or, to the best of its knowledge, threatened against or affecting it or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on its ability to perform its obligations under this JVA or on the validity or enforceability of this JVA or on the award of the disposition and privatization of the Property to **WINNING PSP** under the Terms of Reference.
  - (v) It has duly and validly executed and delivered this JVA and this JVA constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms.
  - (vi) **BCDA** is subject to Philippine civil and commercial laws with respect to its obligations under this JVA. Neither **BCDA** nor any of its assets enjoy any rights of immunity from set-off, suit, attachment prior to or in aid of execution upon a judgment or execution in respect of its obligations under this JVA, and to the extent that **BCDA** or any of its assets has or may hereafter acquire any such right of immunity, **BCDA** irrevocably and unconditionally waives such right to the full extent permitted under the law.
  - (vii) No application has been filed with any Governmental Authority for the commencement of any insolvency or bankruptcy proceeding against or on behalf of **BCDA**.
- (b) With respect to the Property:
- (i) **BCDA** is the registered owner and has legal, valid and marketable title to the Property, free and clear of any encumbrance, easement, usufruct, covenant, special assessments, options to purchase and other restrictions which impair the current use, occupancy, or value, or the marketability of title, of the Property, except as otherwise disclosed in the Terms of Reference and this JVA and for which encumbrances **BCDA** shall keep the **WINNING PSP** fully indemnified .
  - (ii) To the best of **BCDA's** knowledge, no suit, action or proceeding before any Governmental Authority is pending, which threaten or which may affect its title or right to the possession of the Property, and no judgment or order has been issued which has or is likely to have any material adverse effect on such title or right of possession except

as provided in **Section 2.2** and **Section 18.2(b)(v)** for which BCDA shall keep the **WINNING PSP** fully indemnified.

(iii) The description of the Property contained in Section 2.1 of this JVA describes the Property fully and adequately.

(iv) There are no leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Property. There are no parties in possession of the Property or any portion thereof, except BCDA and as otherwise disclosed in Section 2 of this JVA. There are no outstanding options or rights of first refusal to purchase the Property, or any portion thereof or interest therein.

(v) The **WINNING PSP** shall have the exclusive right to develop the Property for the Permitted Uses and with a density up to the Maximum Allowable GFA and FAR specified under **Section 2** of this JVA;

(vi) To the best of BCDA's knowledge, there is no law, ruling, regulation or fact, attributable to, or in connection with the title to the Property or the right to transfer control or possession over the same, which will prevent the **WINNING PSP** from possessing and using, or cause delay in the possession and use of the **WINNING PSP** of, the Property in the manner specified in this JVA.

### **18.3. Survival of Representations, Warranties and Covenants**

The respective representations, warranties and covenants of the Parties shall survive the execution of this JVA, except to the extent indicated therein or unless the context in which such representations, warranties or covenants otherwise require.

## **SECTION 19 DEFAULT AND ITS CONSEQUENCES**

### **19.1. Events of Default**

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

- (a) Failure of any Party to comply with any of its material covenants and undertakings under this JVA and the Implementing Agreements;
- (b) Any representation or warranty of any Party contained in this JVA is shown to have been untrue, incorrect, inaccurate or misleading in any material respect as of the time that it was made or deemed to have been made and such breach is not remediable or, if capable of being remedied, shall remain after the lapse of the Curing Period, as provided for in **Section 19.2**;
- (c) Failure of a Party to comply with its financial commitments under this JVA on the respective due dates after the lapse of the applicable grace period specified in this JVA;
- (d) It becomes unlawful for any Party to perform or comply with any of its obligations under this JVA, or this JVA ceases to be a legal, valid and binding obligation of any Party when executed by such Party;

- (e) Use by a Party of the Property for purposes other than the Permitted Uses or material violation of the development restrictions on the Property as set forth in this JVA;
- (f) Insolvency of a Party, or the application by a Party for insolvency, rehabilitation or suspension of payments, or a Party is adjudged bankrupt, disposes or assigns all or substantially all of its assets for the benefit of creditors, or where a Party is subjected to voluntary or involuntary dissolution;
- (g) Merger or consolidation of a Party when the same is effected without the prior written consent of the other Party;
- (h) Material violation by a Party of any of the other terms and conditions of this JVA which, upon the reasonable determination of the other Party, warrants a termination of this JVA due to the significant financial prejudice which the non-defaulting Party is forced to suffer by reason of such material violation;
- (i) Any other cause, other than when due to the fault or negligence of WINNING PSP that prevents WINNING PSP from commencing or continuing the full and complete implementation of the Project and fully exercising its rights under this JVA; and
- (j) Any other cause which this JVA specifies as a ground for termination.

## **19.2. Consequences of Default**

Upon the occurrence of an Event of Default, the non-defaulting Party shall, in addition to such other rights and remedies available under other provisions of this JVA including immediate termination of this JVA without judicial determination if so warranted under the circumstances, have the following rights which may be exercised cumulatively or alternatively, such as but not limited to:

- (a) The non-defaulting Party shall have the alternative right to (1) compel the performance by the defaulting Party, or (2) upon prior written notice to the Defaulting Party, terminate this Agreement without the necessity of judicial action.
- (b) If the event giving rise to the right of a Party to terminate this Agreement shall be capable of being cured, the defaulting Party shall have the right to cure the same during a period of sixty (60) days from receipt of written demand by the non-defaulting Party (the "60-day Curing Period") and the non-defaulting Party shall only be entitled to terminate this JVA by reason of such breach of warranty or representation if the same shall not have been cured within the 60-day Curing Period.
- (c) In case the non-defaulting Party chooses to continue with the transaction despite the default of the defaulting Party, the non-defaulting Party may, by written notice, compel the defaulting Party to perform its obligations under this JVA within such period of time as may be stipulated by the non-defaulting Party, failing which, the non-defaulting Party may by written notice to the defaulting Party and without the necessity of judicial action (1) terminate this JVA or (2) elect to continue the transaction in both cases reserving its right to claim damages for such non-compliance and/or seek such other legal remedies as may be available to it under the law.
- (d) The non-defaulting Party shall have the right to withhold the performance of its obligations and covenants under this JVA;

(e) As proper in the case of **BCDA**, as specified in **Section 16** hereof, call upon the Performance Bond to the extent allowed therein.

(f) Indemnify the non-defaulting Party and its employees and agents from and against any and all liabilities, claims, demands, actions, suits, losses, damages, costs and expenses (including reasonable attorney's fees) to be actually incurred or to be incurred by the non-defaulting Party and/or which will be payable to third persons resulting from the negligence or willful misconduct of the defaulting Party or its employees or agents, including but not limited to claims for property damage, personal injury or wrongful death, or from a breach by the defaulting Party of its representations, warranties and obligations under this JVA, except to the extent that such liabilities, claims, demands actions, suits, losses, damages, costs and expenses resulted from the negligence or willful misconduct of the non-defaulting Party.

### **19.3. Commitment to Negotiate in Good Faith**

The Parties agree that upon the occurrence of an Event of Default, both Parties shall cooperate and conduct in good faith such discussions and negotiations as may be necessary to cure or resolve the Event of Default and address the impact of the Event of Default on the Project and/or the rights of the Parties, and exhaust all reasonable options or remedies, prior to availing of the remedies afforded under **Section 19.2** hereof.

## **SECTION 20 GENERAL PROVISIONS**

### **20.1. Entire Agreement**

This JVA constitutes the entire agreement between the Parties and neither of them is and shall be bound by any stipulation, representation, agreement or promise not contained or incorporated herein. In case of conflict between the provisions of this JVA, on one hand, and those of the **WINNING PSP's** proposal, the Implementing Agreements or any other agreement entered into by the Parties in connection with the Project or the Terms of Reference and Selection/Tender Documents, on the other hand, this JVA shall prevail.

### **20.2. Dispute Resolution**

The Parties agree to resolve any dispute that may arise between them with respect to this JVA through good faith and amicable negotiation, failing which, the Parties may resort to the filing of the appropriate case in the competent courts of law of Taguig City, to the exclusion of the other courts.

### **20.3. Binding Effect**

This JVA and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

#### **20.4. Non-Waiver of Rights**

The failure of one Party to insist upon a strict performance of any of the terms, conditions and covenants hereof, shall not be deemed a relinquishment or waiver of any right/remedy that 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. Any waiver, extension or forbearance of any of the terms, conditions and covenants of this JVA by any Party hereto shall not in any manner whatsoever be construed as a waiver, extension or forbearance of any other terms, conditions and/or covenants of this JVA.

#### **20.5. Proper Authorization**

The Parties are respectively represented by their responsible officers empowered by proper authorizations.

#### **20.6. Assignment of Rights/Entering into Joint Ventures with Other Entities**

The **WINNING PSP** shall not sell, assign, transfer, mortgage, pledge or encumber its equity or all or substantially all of its rights and interest in connection with the JVA nor enter into joint venture arrangements with respect to the implementation of the JVA with any person or entity or its subsidiary, except upon the prior written approval of **BCDA** as to the assignee, to the extent and nature of the assignment of rights, and any other detail of the assignment. The **WINNING PSP** and its subsidiary or the entity to which such rights are to be assigned shall hold themselves jointly and severally liable for the performance of the obligations of **WINNING PSP** under the award/contract, the obligations and commitments to **BCDA**, and the obligations and liabilities of the **WINNING PSP** arising from the implementation of the Project.

#### **20.7. Amendments**

Any amendments or additional terms and conditions to this Agreement must be in writing.

#### **20.8. Employer-Employee Relationship**

It is hereby agreed that there is no employer-employee relationship between the Parties. All personnel and/or employees to be assigned by the **WINNING PSP** in the development, operation and management of the Property are understood to be the employees of the **WINNING PSP** or that of the third party engaged for the implementation and completion of the Project, and no employer-employee relationship is created hereby between such assigned personnel and/or employees of the **WINNING PSP** or that of the third party engaged by the **WINNING PSP** for the implementation and completion of the Project and **BCDA**. 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 **WINNING PSP** shall indemnify and hold **BCDA** free and harmless from any and all losses, claims, demands, payment suits, action, recoveries and judgments of every nature brought by the **WINNING PSP's** creditors, subcontractors or any other claimants by reason of the non-payment of compensation or due to injury or death to the **WINNING PSP's** laborers or employees, or by reason of non-payment of any indebtedness or obligation contracted by the **WINNING PSP** in connection with the services or obligations to be undertaken in this JVA.



**20.9. Approval of the Office of the Government Corporate Counsel**

This JVA has been submitted to and approved by the Office of the Government Corporate Counsel (OGCC), whose comments, suggestions and amendments have incorporated herein prior to the signing/execution by the Parties.

**20.10. Governing Law**

This Agreement shall be governed by and construed according to Philippine law.

**20.11 Notice**

Any notice required or permitted in this JVA or otherwise, in connection herewith shall be in writing and shall be delivered personally (including by a reputable courier), or sent by facsimile transmission or by certified or registered mail, postage prepaid to a Party at its address as specified below. Any such notice shall be deemed given when so delivered personally (including by a reputable courier), or if sent by facsimile transmission, when so transmitted, or if mailed, upon receipt by the other Party, as follows:

**If to BCDA:**

The President and CEO  
Bases Conversion and Development Authority  
2/F Bonifacio Technology Center  
31<sup>st</sup> St. Crescent Park West  
Bonifacio Global City, Taguig City 1634  
Telephone No. \_\_\_\_\_  
bcda@gov.ph

**If to WINNING PSP:**

The President and CEO  
The WINNING PSP  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone No. \_\_\_\_\_  
\_\_\_\_\_@\_\_\_\_\_.com.ph

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

**20.12. Severability**

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

### **20.13. Implementing Agreements**

The Parties shall use commercially reasonable efforts to negotiate and finalize, within three (3) months from the signing of this JVA or such earlier period as may be provided in this JVA, as may be extended upon mutual agreement of the Parties, all Implementing Agreements or project documents (in form and substance acceptable to the Parties), including without limitation the following, only where appropriate and necessary for the implementation of this JVA:

- (a) development agreement;
- (b) marketing and management agreement;
- (c) leasing agency agreement;
- (d) project monitoring and implementing agreement; and
- (e) Deeds of Trust over the Property.

### **20.14. Annotation**

BCDA hereby authorizes the WINNING PSP to cause the annotation and/or registration of this JVA or in lieu thereof, a development agreement to be executed by the Parties which will contain extracts or excerpts from this JVA and/or the Implementing Agreements, as may be necessary and desirable for the implementation of the Project, on the transfer certificates of title covering the Property or portions thereof, at any time after execution hereof. The annotation and/or registration costs shall be for the account of the WINNING PSP.

BCDA shall make available to the WINNING PSP such authorizations and other documents that may be required to carry out such annotation and/or registration including a sworn certification of its Corporate Secretary attesting to resolutions passed by its Board of Directors authorizing the registration or annotation of this JVA, development agreement and/or the Implementing Agreements on the titles to the Property or portions thereof and designating its authorized signatories.

### **20.15. Confidentiality**

The Parties acknowledge that in the event that each of them be granted access to, or come into possession of, the other's proprietary information such as confidential business plans, strategies and other information in connection with this JVA or negotiations, each of them agrees to maintain all such information in confidence. None of the Parties shall disclose this JVA or its content to any third person without the other Party's written consent except as required to fulfill applicable legal or regulatory requirements, including those of a stock exchange.

### **20.16. Rules of Interpretation**

In this JVA:

- (a) Where the context permits, the singular includes the plural and vice versa and one gender includes any gender. Words importing individuals shall be treated as importing corporations and vice versa and words importing the whole shall be treated as including a reference to any part thereof;
- (b) A reference to a statute or other legislation shall be construed as a reference to that statute as from time to time re-enacted or amended;

(c) References in this JVA to Sections, sub-sections, paragraphs and Schedules are references to those contained in this JVA;

(d) Section headings are for ease of reference only and shall not be taken into account in construing this JVA;

(e) The expression "including" shall not be construed as being by way of limitation and the expression "otherwise" shall not be construed as limited by words with which it is associated; and

(f) Where a word or expression is defined or the construction of any word or expression is addressed, cognate words and expression shall be construed accordingly.

**20.17. Effectivity**

This Joint Venture Agreement shall take effect on the date of signing thereof.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Joint Venture Agreement for the Privatization and Development of the Bonifacio South Pointe Property to be signed by their representatives this \_\_\_\_\_ 2017 at Taguig City.

**BASES CONVERSION AND  
DEVELOPMENT AUTHORITY**

**WINNING PSP**

By:

By:

**VIVENCIO B. DIZON**  
President and CEO

\_\_\_\_\_  
President and CEO

SIGNED IN THE PRESENCE OF:

\_\_\_\_\_

\_\_\_\_\_

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES)  
TAGUIG CITY ) SS

**BEFORE ME**, a Notary Public for and in the City of Taguig, personally appeared:

Name	Competent Evidence of Identity			
		Type of ID	Issued in	Valid Until
VIVENCIO B. DIZON	1	Passport#		
	2	BCDA ID#		
_____	1	Passport#		
	2	Corporate ID#		

both known to me and to me known to be the same persons who executed the foregoing “Joint Venture Agreement for the Privatization and Development of the Bonifacio South Pointe Property” and they acknowledged to me that the same is their own free and voluntary act and deed and the free and voluntary act and deed of the corporations represented.

This instrument, consisting of \_\_\_\_\_ pages including this page of the acknowledgment but excluding all Annexes, refers to a Joint Venture Agreement over a 331,327- square meter real property known as the Bonifacio South Pointe located in Fort Bonifacio, Taguig City, Metro Manila and the same has been duly signed by the parties hereto and two instrumental witnesses on each and every page hereof.

**WITNESS MY HAND AND SEAL** on the date and at the place first above-written.

Doc. No. \_\_\_\_;  
Page No. \_\_\_\_;  
Book No. \_\_\_\_;  
Series of 2017 \_\_\_\_.