

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

**ARTICLE I
PROJECT RATIONALE**

- Section 1 Republic Act No. 7227 mandates the Bases Conversion and Development Authority (BCDA) to accelerate the sound and balanced conversion into alternative productive uses of the former Clark and Subic military reservations and their extensions, to raise funds through the sale or lease of portions of Metro Manila camps, and to apply said funds for the development and conversion to productive civilian use of said reverted military baselands.
- Section 2 The John Hay Management Corporation (JHMC), as BCDA’s operating and implementing arm for the administration and development of the John Hay Special Economic Zone (JHSEZ) in Baguio City, Philippines, wishes to consider bids for the long-term lease and development of the 25,000-square-meter, more or less, Sheridan Drive Center (hereinafter referred to as the “Property”) located within the JHSEZ on an “*as-is, where-is*” basis. The vicinity map of the Property is attached as [Annex “A”](#).
- Section 3 The disposition is to be carried out pursuant to the provisions of Republic Act No. 7227 (“The Bases Conversion and Development Act of 1992”), as amended, Executive Order No. 62 prescribing the policies and guidelines to implement R.A. 7227, and other relevant laws, Executive Orders, and rules and regulations, to the extent applicable.
- Section 4 This bidding is being administered by the Asset Disposition Program Committee (ADP-Com) of JHMC whose decisions or actions shall be subject to the approval of the JHMC Board of Directors.

**ARTICLE II
BACKGROUND OF THE PROPERTY**

- Section 1 **Description of the Property.** The Property has a total land area of approximately 25,000-square-meters, and located in the south corner of Sheridan Drive in the JHSEZ, Baguio City. The Property is composed of two (2) parcels, described and broken down as follows:

PARCEL NUMBER	LOT COVERAGE	AREA (SQ.M.)
1	Portions of Lots 1, 5, 6 and 7	10,000
2	Portions of Lots 1, 5 and 4	15,000
TOTAL AREA OF THE PROPERTY		25,000

Parcels 1 and 2 are contiguous plots. For reference, a parcel map illustrating the foregoing information is attached as [Annex "B"](#).

Section 2 **Status of the Property.** The Property is within the JHSEZ, and all the lots making up the two (2) parcels of the Property were transferred to BCDA through Presidential Proclamation No. 198 series of 1993. The JHSEZ, by virtue of Presidential Proclamation No. 1191 series of 2006, has been designated as a Special Tourism Economic Zone. Since the Property is within the Special Tourism Economic Zone, the Winning Bidder, if found qualified, may be granted tax and other incentives under Republic Act 7916: The Special Economic Zone Act of 1995.

Also, the following conditions pertaining to each of the two (2) parcels comprising the Property are hereby disclosed:

Parcel 1. Presently existing within the parcel are four (4) cottages built during the American occupation of Camp John Hay. Portions of each cottage were constructed using materials containing asbestos.

Parcel 2. Presently existing within the parcel is the Igorot Lodge which is managed and operated by the Asian Institute of Management (AIM). The AIM has a lease over the aforesaid area until 15 April 2018. Portions of this structure were constructed using materials containing asbestos.

A map showing the existing structures within the Property is hereto attached as [Annex "C"](#).

Section 3 **Land Uses for the Property.** The Sheridan Drive Center, which is the intended development for the Property, is envisioned to be a focal point in the overall development of the JHSEZ. The Sheridan Drive Center shall be a mixed-use development following the "*live, work and play concept*" while, at the same time, promoting and preserving the JHSEZ's eco-tourism theme. The Sheridan Drive Center shall have all the following developments and land uses, and should adhere to the following land use allocation:

- (i) Hotel/Accommodation - At the minimum, forty percent (40%) of the total development should be allocated for these types of development;
- (ii) Office. At the minimum, ten percent (10%) of the total development should be allocated for these types of development; and
- (iii) Commercial/Retail. At the minimum, twenty percent (20%) of the total development should be allocated for these types of development.

As guide, a *Conceptual Plan* for the development of the Property was prepared by the BCDA/JHMC , and is hereto attached as [Annex "D"](#).

Section 4 **Restrictions on the Property.** The development of the Property shall strictly comply with all pertinent government standards such as, but not limited to, the

National Building Code, the Comprehensive Fire Code of the Philippines and other relevant laws, rules, regulations and issuances of the agencies of the National Government, both existing and subsequent issuances.

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

4.1 **Minimum Gross Floor Area (GFA).** The Property shall have a minimum gross floor area (GFA) of **Twenty Eight Thousand square meters (28,000-sq.m.)**. The minimum GFA per parcel shall be as follows:

AREA	GFA (SQ.M.)
Parcel 1	14,000
Parcel 2	15,000
TOTAL	29,000

4.2 **Maximum Number of Building Floors.** The maximum number of floors allowed for all buildings/structures to be constructed on the property shall be five(5) reckoned from the upper ground line but shall not exceed 25 meters in total height measured from the lower ground line to the apex of the building/structure.

4.3 **Development Phasing.** Due to non-availability of Parcel 2 until the expiry of the AIM’s lease contract in April 2018, the development of the Property shall be done in two (2) Phases:

- **Phase 1 Development** involves the development of Parcel 1 which shall be turned over by JHMC to the Winning Bidder upon signing of the *Contract of Lease*. The development of Parcel 1 should be completed within two (2) years from signing of the *Contract of Lease*.
- **Phase 2 Development** involves the development of Parcel 2 which shall commence not later than 15 April 2018, or upon turnover of the subject Parcel to the Winning Bidder, whichever comes first. The development of Parcel 2 should be completed within two (2) years from turnover of the same by JHMC to the Winning Bidder.

4.4 **Parking.** Provisions for parking shall conform to the requirements set under the National Building Code of the Philippines.

4.5 **Cutting of Trees.** As a general rule, there shall be no cutting of Benguet Pine Trees. However, Benguet Pine Trees having a diameter at breast height of 15 centimeters and smaller may be earth-balled subject to existing laws or regulations of the Department of Environment and Natural Resources (DENR).

4.6 **Clearing of Existing Structures.** The demolition or clearing of the existing cottages/structures within the Property shall only be conducted

after securing the necessary permits or clearances from JHMC. In cases where developmental permits from other National Government Agencies need to be secured, JHMC will endorse such applications to the concerned Agencies.

- 4.7 **Green Development Principles.** The development of the Property should adhere to the principles of “green developments/buildings”. In line with this, the Winning Bidder shall secure such certification/s from the Philippine Green Building Council (PHILGBC) or any reputable Green Building Council.

Moreover, the property should be developed guided by the principle of a “walkable environment” where use of motorized transportations will be discouraged in order to ensure minimum carbon footprint.

ARTICLE III MODE OF DISPOSITION AND LEASE RENEWAL

Section 1 JHMC is offering the Property, on an “*as-is, where-is*” basis, for long-term lease and development for a period of twenty-five (25) years, commencing on the signing of the *Contract of Lease* (draft attached as [Annex “E”](#)), and renewable for another twenty-five (25) years upon mutual agreement of the parties. For this purpose, any negotiation for renewal may not start earlier than two (2) years prior to the expiration of the existing lease term, unless a strong reason justifies an early renewal, subject to the approval of JHMC.

Section 2 Upon the expiration of the lease period, the ownership of all buildings and permanent facilities/improvements introduced by the Lessee/Winning Bidder on the Property shall automatically be transferred to BCDA AND JHMC. Therefore, should the Lessee/ Winning Bidder opt to renew its lease over the Property, the new lease rate for the next twenty-five (25)-year extension period shall cover the land as well as the buildings and permanent facilities/improvements transferred to JHMC/ BCDA.

To determine the Annual Lease for the initial year of the lease extension period, JHMC and the Lessee/Winning Bidder shall have the Property, including the permanent facilities/improvements introduced therein, appraised by two (2) independent appraisers mutually acceptable to both parties at the start of the last year of the initial lease period. The Annual Lease for the initial year of the lease extension period shall be the higher of:

- (i) five percent (5%) of the average fair market value of the Property as appraised; or
- (ii) the Annual Lease for the Property on the last year of the initial lease period, plus five percent (5%) escalation;

The annual escalation rate of five percent (5%) shall continue to apply on the Annual Lease for the lease extension period.

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

ARTICLE IV MINIMUM BID PRICE AND LEASE PAYMENTS

Section 1 Upon signing of the *Contract of Lease*, which shall be the effective date of the lease, the Winning Bidder shall pay JHMC the amount of **Twenty-Eight Million Pesos (PhP28,000,000.00)**, exclusive of twelve percent (12%) Value-added Tax (VAT), representing rent for the 10,000-square-meter Parcel 1 (Phase 1 Development of the Property) from the effective date of the lease until 15 April 2018.

Section 2 The subject of this bidding is the starting annual lease for the whole Property (i.e. Parcel 1 and Parcel 2) which shall commence on 15 April 2018 or upon turnover of Parcel 2 to the Winning Bidder, whichever comes first. The minimum bid shall not be less than **Twenty Million Pesos (PhP20,000,000.00)**, exclusive of twelve percent (12%) VAT. The minimum bid was computed based on the GFA of 28,000-sq.m. For any GFA developed in excess of 28,000-sq.m., the Winning Bidder agrees to pay an additional lease equivalent to the average lease per square meter.

The annual lease shall be subject to five percent (5%) escalation every year, and shall be paid in advance on or before the anniversary date of the *Contract of Lease*.

Any additional GFA to be developed shall require prior approval of BCDA AND JHMC, and shall conform to all government rules and regulations then existing.

Section 3 In case the JHMC is able to turnover Parcel 2 to the Winning Bidder earlier than 15 April 2018, the rent for the 10,000-square-meter Parcel 1, already advanced by the Winning Bidder to the JHMC, shall be recalculated and proportionately adjusted to cover only the period from the effective date of the lease up to the date of actual turnover. The excess amount of the advanced rent shall then be applied to the starting annual lease proposed by the Winning Bidder for the whole property (i.e., Parcel 1 and Parcel 2) at the start of the Phase 2 Development of the Property.

ARTICLE V RIGHTS AND RESPONSIBILITIES OF THE PARTIES

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

The Winning Bidder shall:

- 1.1 Strictly comply with the terms and conditions of the *Contract of Lease* to be executed between JHMC and the Winning Bidder and maintain all warranties and representations in good standing for the duration of the contract period.
- 1.2 Submit to JHMC, for approval, its *Development Plan* for the Property within six (6) months from the signing of the *Contract of Lease*. It is understood that the JHMC-approved *Development Plan* shall be made part of the *Contract of Lease* executed between JHMC and the Winning Bidder.
As a guide, the *Development Plan* shall, at the minimum, contain the following information:
 - (i) proposed land uses and corresponding GFA for each use;
 - (ii) conceptual design, features and amenities (if any);
 - (iii) the timetable, including major development milestones;
 - (iv) schedule of the capital investments; and
 - (v) estimated total development cost.
- 1.3 Strictly comply with the allowable land use/s and the development restrictions for the Property as set in this *Terms of Reference (TOR)*, specifically under Article II, Sections 3 and 4.
- 1.4 Commence development on the Property within one (1) year from the approval, by JHMC, of the *Development Plan*, and complete the development of the Property in accordance with the prescribed *Development Phasing* as specified in Article II, Sections 4.3 above.
- 1.5 Not later than three (3) months before 15 April 2018, submit to JHMC an acceptable form of continuing guaranty or Surety Bond which shall be automatically renewed until the end of the lease to fully secure the Annual Lease for the Property. In case, however, JHMC is able to turnover the remainder of Parcel 2 to the Winning Bidder earlier than 15 April 2018, the Winning Bidder shall submit the required continuing guaranty or Surety Bond not later than three (3) months before the first (1st) anniversary of the actual turnover of the whole Property to the Winning Bidder.
- 1.6 Not later than two (2) months after completion of construction, obtain, at its own cost, an all-risk insurance coverage for construction and improvements introduced during the term of the lease in an amount equivalent to its replacement value with JHMC as the beneficiary, and submit to JHMC the original insurance policy and the corresponding Official Receipt within five (5) days from the issuance of said insurance policy.
- 1.7 Pay, at its sole account, all applicable taxes, licenses, fees and charges due on the lease transaction, the Property and its improvements, and those that may be imposed by law during the entire term of the *Contract of Lease*. Where any taxes are required by law to be withheld

from payment to JHMC, the Winning Bidder shall submit certification of taxes withheld at the time of payment to JHMC, otherwise any such taxes withheld will not be considered as authorized deductions.

- 1.8 Undertake, at its sole cost, on-site development and provide utilities, access roads to the Property, and internal road networks. This includes clearing and properly disposing of the existing cottages/structures within the property, in accordance with law and environmental rules and regulations, at the Winning Bidder's own cost.
- 1.9 Upon expiration or termination of the lease term, turn-over/transfer ownership of permanent structure/s, facilities and other improvements introduced by the Lessee/Winning Bidder on the Property to BCDA and JHMC.
- 1.10 In case of a consortium, each member shall be jointly and severally liable with all other members in the performance of the obligations of the Winning Bidder.
- 1.11 Agree to pay the required maintenance or utility fees, which will be assessed by JHMC.

Should the Winning Bidder fail to perform any of its responsibilities stipulated in Sections 1.5 and 1.6 above, the Winning Bidder shall be liable to pay JHMC the amount of **Ten Thousand Pesos (PhP 10,000.00)** for every day of delay of the submission of the guaranty and the original insurance policy.

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

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

Section 2 **Rights and Responsibilities of JHMC**

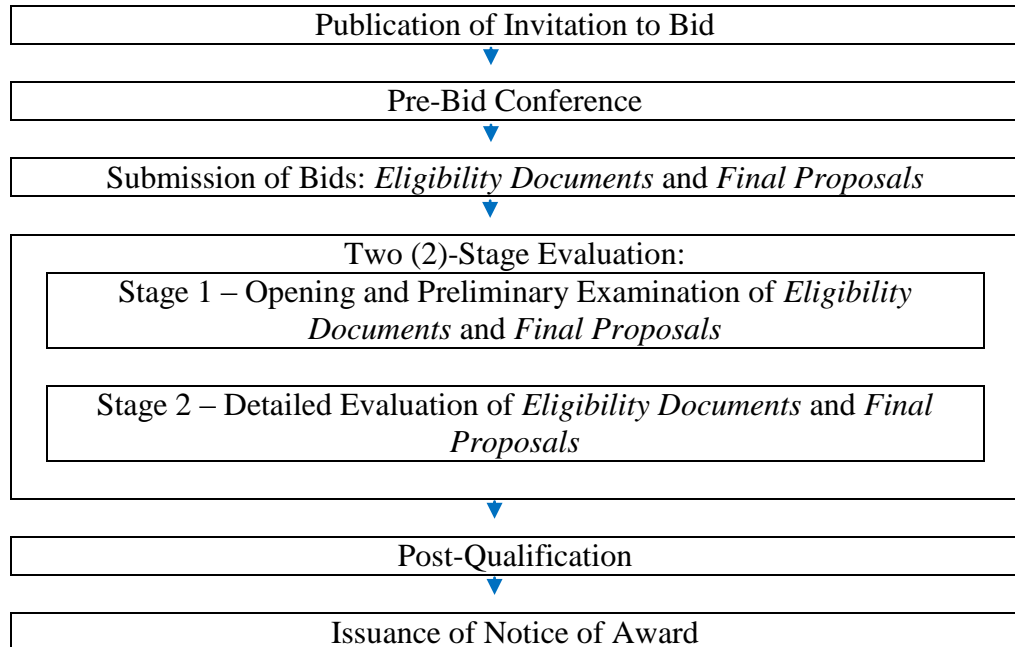
The JHMC shall:

- 2.1 Give the Winning Bidder the sole right to lease, develop, operate and manage the Property, subject to the restrictions and terms and conditions of the agreements entered into between JHMC and the Winning Bidder.
- 2.2 Deliver possession of the Property to the Winning Bidder, on an "*as-is, where-is*" basis, upon the execution of the *Contract of Lease*.

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

ARTICLE VI BIDDING PROCEDURE

Section 1 **Process Flow.** The bidding follows the following process flow:



Section 2 **Publication of Invitation to Bid.** JHMC shall publish the “*Invitation to Bid*” in three (3) newspapers or publications of general circulation, once every week for three (3) consecutive weeks, as well as in the JHMC website (www.jhmc.com.ph). This shall serve to inform and invite prospective Bidders to the subject bidding.

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

- **First Envelope** containing two (2) sets of the **Eligibility Documents**, as listed in Article VII, Section 2.2, appropriately marked as: “*First Set: Eligibility Documents*” and “*Second Set: Eligibility Documents*”; and
- **Second Envelope** containing two (2) sets of the **Final Proposal**, as described in Article VII, Section 3, appropriately marked as: “*First Set: Final Proposal*”, and “*Second Set: Final Proposal*”.

ARTICLE VII
ELIGIBILITY CHECK, EVALUATION OF BIDS AND SELECTION OF WINNING BIDDER

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

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

Stage 2 involves the detailed evaluation of the *Eligibility Documents* and the *Final Proposal* to determine compliance with all the requirements specified under this *TOR*.

Section 2 **Eligibility**

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

- a. **Legal Capacity.** The Bidder must be a corporation duly-registered with the Philippine Securities and Exchange Commission (SEC) or its equivalent in the country of incorporation and allowed to lease and develop lands in the Philippines. A consortium may also apply for eligibility, provided that the lead member of the consortium is duly registered with the Philippine SEC and the members of the consortium shall undertake to execute a *Memorandum of Agreement* which shall be required as part of the post-qualification process.

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

- c. **Technical Capability.** The Bidder (or a member, if a consortium) should have at least five (5) years of experience in developing projects similar to the allowable uses for the

Property, as specified under Article II Section 3 of this TOR, and must have completed a similar project with, either a land area of at least five (5) hectares, or a total project cost of not less than **One Billion Pesos (PhP1,000,000,000.00)** excluding the cost of the land.

- d. **Financial Capacity.** The Bidder (or a member, if a consortium) must have adequate capability to finance the proposed development of the Property and meet all of its financial obligations to JHMC, which shall be measured in terms of the audited cash bank balance or credit line facility. The Bidder (or a member, if a consortium) should have an available cash balance or credit line of at least **One Billion Pesos (PhP1,000,000,000.00)**.
 - e. **No Default.** The Bidder (and all its consortium members), its parent company, or its subsidiaries, or affiliates with common controlling shareholdings, if any, is not considered in default of its financial or other obligations, in any past or current project being undertaken with JHMC at the day of submission of bids, as determined by the JHMC Board.
 - f. **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 Bureau of Internal Revenue (BIR) shall be required as part of the post-qualification process.
 - g. **Bid Documents.** The Bidder must have purchased the *TOR* (including bid forms and pertinent documents) for a non-refundable fee of **One Hundred Thousand Pesos (PhP100,000.00)**. Only those who have purchased the *TOR* (including bid forms and pertinent documents) shall be entitled to participate in this bidding and receive Bid Bulletins or official responses from the ADP-Com.
- 2.2 **Eligibility Documents.** To be eligible, Bidders are required to submit the following documents described in the attached Checklist ([Annex “F”](#)):
- a. Duly notarized Eligibility Statement or Joint Eligibility Statement (format attached as [Annex “G-1”](#) or [Annex “G-2”](#), as applicable) which shall include the following information in support of the Bidder’s eligibility:
 - (i) Bidder’s Profile (format attached as [Annex “H”](#)), which contains general organization and financial information about the Bidder. This should be accomplished by all members, in case of consortium;

- (ii) Cash bank balance or credit facilities with reputable banks of the Bidder or any of its members in case of a consortium;
 - (iii) A statement of Commitment to comply with: (1) the allowable land use/s, and the development restrictions for the Property; and (2) all other pertinent government standards;
 - (iv) A statement of “no-default” on its financial or other obligations to JHMC;
 - (v) A statement of no pending or unpaid tax liabilities in the Philippines;
 - (vi) A statement of acceptance of the qualification criteria established by JHMC, commitment to abide by the decision of the JHMC Board, and waiver of its right to seek legal remedies against JHMC, its Board of Directors, Officers, staff, consultants and authorized representatives/ personnel in connection with this selection process;
 - (vii) A statement attesting to the veracity of all information presented and authenticity of all documents submitted;
 - (viii) A statement of affirmation of JHMC’s anti-corruption policy; and
 - (ix) A summary of the Bidder’s (or in case of a consortium, of the member which meets the Technical Capability requirement) completed projects as well as on-going projects, which are similar to the intended development for the Property, including description, area of development, nature of the entity’s participation, status of the project and the project cost (format attached as [Annex “T”](#)).
- b. Certification from the bank/s reflecting the Bidder’s cash balance or available credit facilities of the Bidder as of the month prior to the deadline set for the submission of bids (if bidding as a consortium, any member of the consortium).
 - c. SEC Registration together with the General Information Sheet (GIS) of the Bidder for the latest applicable calendar or fiscal year (or all members, in case of a consortium) or, for foreign corporations, the equivalent document duly authenticated by the Philippine Consulate based in the foreign company’s domicile.

- d. Articles of Incorporation and By-Laws of the Bidder (or all members in case of consortium), and any amendments.
- e. A Board Resolution or Secretary's Certificate of the Bidder (or all members in case of consortium) expressly authorizing its participation in the bidding process, and appointing its authorized representative/s for this purpose.

JHMC requires that each and every consortium member shall, as may be applicable, submit all of the above Eligibility Documents and shall be subject to the Eligibility Requirements.

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

- 3.1 **Final Bid Letter.** The Bidder should submit its bid proposal (**Annex "J"**), stating its bid for the Annual Lease for the whole property (i.e. Parcel 1 and Parcel 2) at the start of Phase 2 of the Development of the Property, duly signed by its authorized representative, which amount shall which shall not be less than the amount stated in Article IV, Section 2.
- 3.2 **Bid Security** in the amount equivalent to ten percent (10%) of the Bid Price for the property, which shall be in the form of bank manager's check or cashier's check. The Bid Security of the Winning Bidder will be treated as earnest money for its required payment at the time of signing of the *Contract of Lease*. The Bid Security of all other Bidders shall be returned without interest upon signing of the *Contract of Lease* between BCDA and the Winning Bidder, unless otherwise forfeited under Article X, Section 9.

Section 4 **Evaluation of Bids**

- 4.1 **Preliminary Examination of Bids.** On the date and time specified in the *Timetable of Activities*, the sealed envelopes containing the *Eligibility Documents* shall be opened by the ADP-Com to determine completeness of documents and sufficiency of data/information provided therein.

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

The ADP-Com shall open the *Final Proposals* to determine compliance with the requirements under Article VII, Section 3 of this *TOR*. *Final Proposals* that are found to be non-complying shall be

automatically rejected, and the Bid Security shall be immediately returned to the concerned Bidder.

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

Section 5 **Post-qualification**

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

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

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

- 5.2 If the Bidder with the Highest Ranked Bid passes post-qualification, its proposal shall be declared as the **Highest Ranked and Complying Bid**. The ADP-Com shall recommend to the JHMC Board the award of the contract to said Bidder (Winning Bidder).
- 5.3 If the Bidder with the Highest Ranked Bid fails post-qualification, the ADP-Com shall notify the Bidder of the results thereof. The ADP-Com shall subject the Bidder with the Second Highest Ranked Bid to post-qualification.

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

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

ARTICLE VIII TIMETABLE OF ACTIVITIES

Activities	Timetable
Publication of Invitation to Bid	Mar. 25, Apr. 02 and 10, 2015
Issuance of TOR	Mar. 25 to Jun. 19, 2015
Pre-bid Conference	10 A.M. of May 22, 2015
Deadline for Submission of Requests for Clarification	Jun. 01, 2015
Last day of Issuance of Bid Bulletin	Jun. 09, 2015
Deadline for Submission of the Eligibility Documents and the Final Proposals	10 A.M. of Jun. 22, 2015
Opening and Preliminary Examination of Bids	10:30 A.M. of Jun. 22, 2015
Detailed Evaluation of Bids	Jun. 23 to Jul. 13, 2015
Board approval of the Results of Evaluation of Bids	Jul. 20, 2015
Announcement of Results of Evaluation of Bids	Jul. 21, 2015
Post-qualification	Jul. 22 to Aug. 04, 2015
Estimated Board Approval of Results of Post-qualification and ADP-Com Recommendation to declare the Winning Bidder	Aug. 10, 2015
Announcement of the Winning Bidder and Issuance of Notice of Award	Aug. 11, 2015
Board approval of Contract	Aug. 24, 2015
Signing of Contract	Sept. 07, 2015

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

ARTICLE IX TAKE-OVER OF THE PROPERTY

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

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

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

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

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

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

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

ARTICLE X OTHER MATTERS

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

Section 2 **Pre-Bid Conference.** Interested bidders are invited to attend a Pre-Bid Conference to discuss the Property, this *TOR* and other possible questions. The Conference shall be held on the date and time specified in the *Timetable of Activities* at Cottage 624, JHMC Office, Camp John Hay, Baguio City, Philippines. Succeeding conferences with the prospective Bidders shall be scheduled by the ADP-Com prior to the submission of bids. Any change in the *Timetable of Activities*, as well as resolutions and actions on the issues raised by the Bidders shall be embodied in a Bid Bulletin.

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

THE CHAIRPERSON
Asset Disposition Program Committee
John Hay Management Corporation
John Hay Special Economic Zone, Camp John Hay
Baguio City, Philippines

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

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

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

Section 5 **Failure of Bidding.** JHMC shall declare a failure of bidding in any of the following instances:

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

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

The bidding process will be suspended for a maximum period of thirty (30) calendar days while the appeal is being evaluated. The decision of the JHMC Board on the appeal shall be final and immediately executory. If the appeal is not resolved within the said period, the appeal is deemed denied, and the bidding process will proceed.

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

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

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

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

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

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

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

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

The decision of the JHMC Board shall be final.

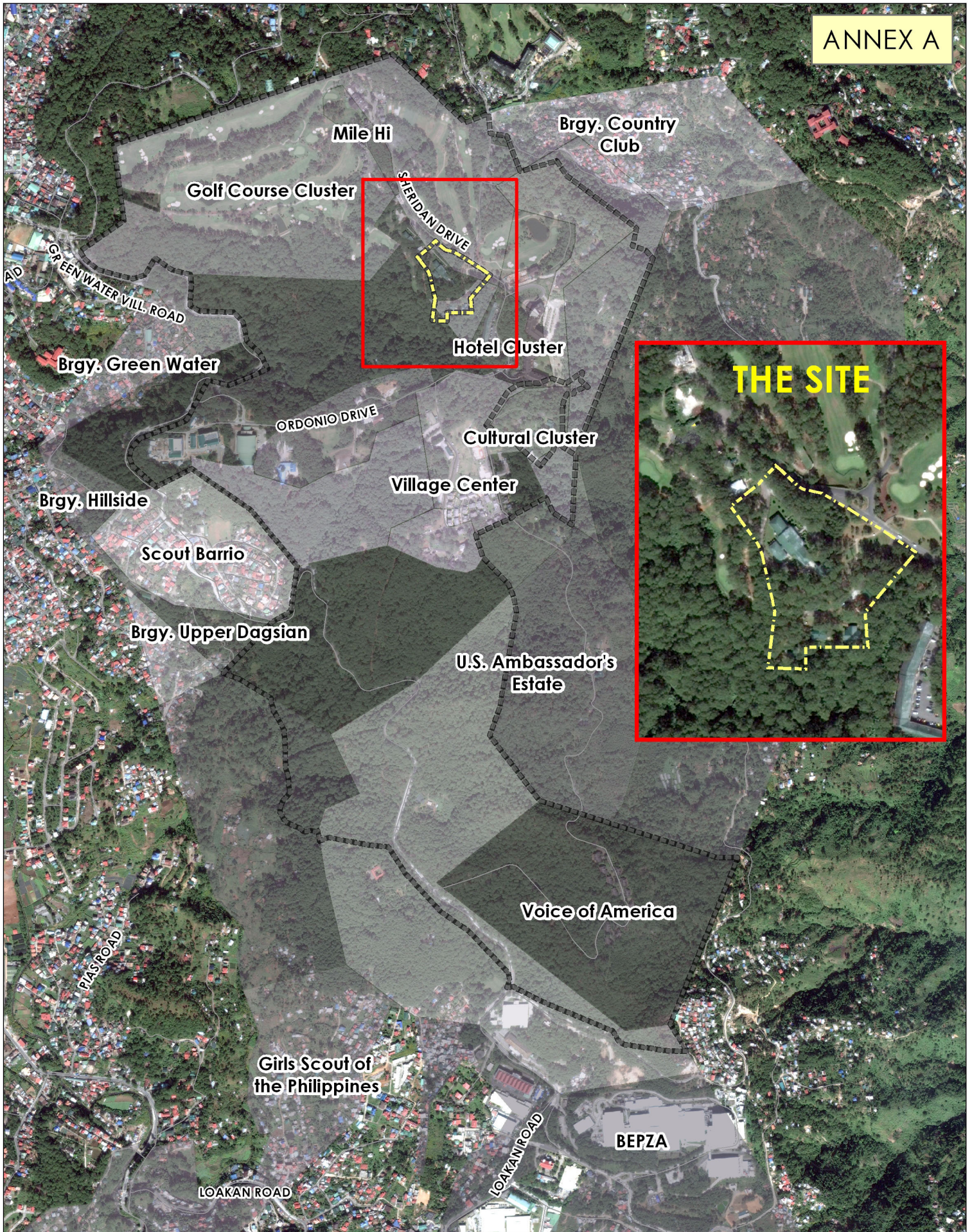
Section 10 **Integrity Initiative.** The Bidders, their Directors and Officers are prohibited from communicating with or contacting, directly or indirectly, any of JHMC's Directors, Officers, staff, consultants and authorized representatives/personnel on matters concerning the bidding for the entire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

The Bidders shall not offer or give, directly or indirectly, any amount, benefit or advantage to any Director, Officer, employee, consultant or authorized representative/personnel of JHMC. Violation of this policy shall be a ground for disqualification or revocation of the award, if any, without prejudice to damages that JHMC may recover for any loss or damage that may result therefrom.

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

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

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



DISCLAIMER: THIS IS A COMPUTER-GENERATED DRAWING SUBJECT TO VERIFICATION BY A GEODETIC ENGINEER. AREAS AND MEASUREMENTS PROVIDED HEREIN MAY VARY FROM THE OFFICIAL SURVEY PLAN.



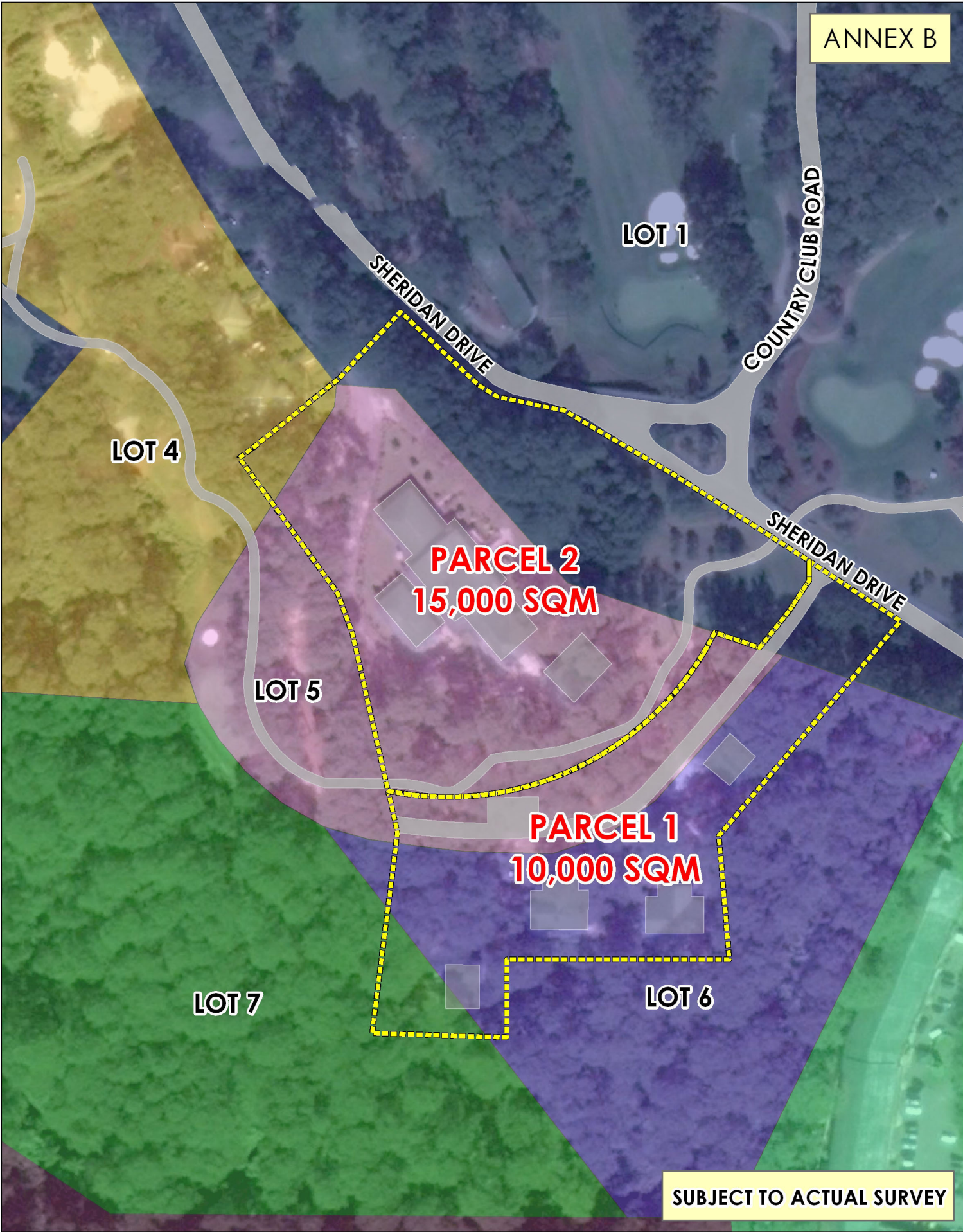
Prepared by: JF Crisostomo

Approved by: RM Cepe

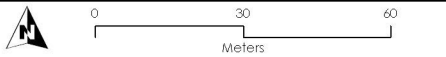
2.5 - HECTARE CJH PROPERTY

VICINITY MAP

ANNEX B



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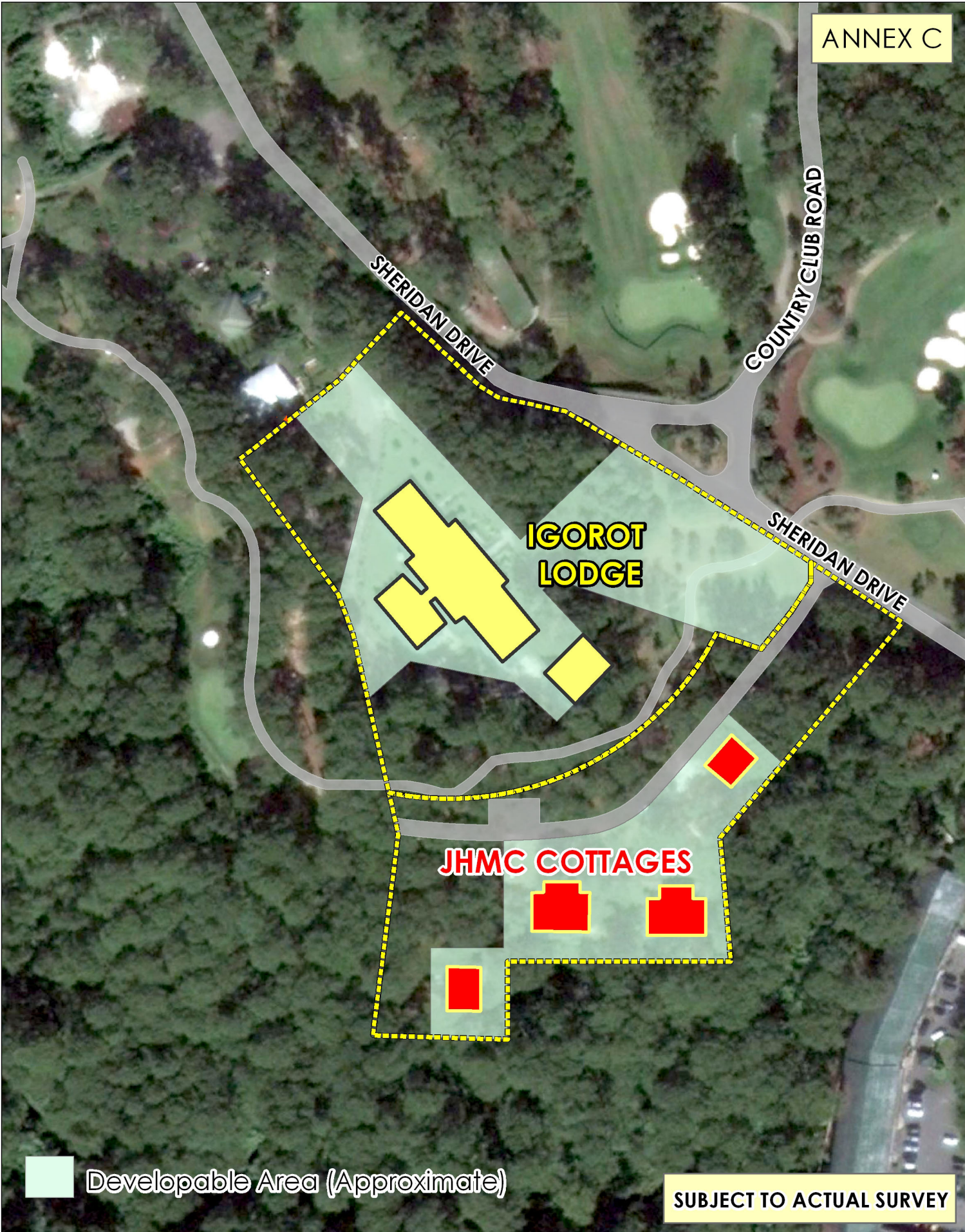
Prepared by: JF Crisostomo

Approved by: RM Cepe

2.5 - HECTARE CJH PROPERTY

PARCEL MAP

ANNEX C



Developable Area (Approximate)

SUBJECT TO ACTUAL SURVEY

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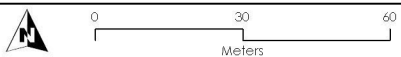
Approved by: RM Cepe

2.5 - HECTARE CJH PROPERTY

STRUCTURAL MAP



DISCLAIMER: THIS IS A COMPUTER-GENERATED DRAWING SUBJECT TO VERIFICATION BY A GEODETIC ENGINEER. AREAS AND MEASUREMENTS PROVIDED HEREIN MAY VARY FROM THE OFFICIAL SURVEY PLAN.



Prepared by: JF Crisostomo

Approved by: RM Cepe

2.5 - HECTARE CJH PROPERTY

CONCEPTUAL PLAN

CONTRACT OF LEASE

THE PUBLIC IS INFORMED:

This **CONTRACT OF LEASE** (“**CONTRACT**” *for brevity*) executed by and between:

The **BASES CONVERSION AND DEVELOPMENT AUTHORITY**, a government instrumentality vested with corporate powers created by virtue of Republic Act No. 7227, as amended by Republic Act No. 7917, with principal office address BCDA Corporate Center, 2/F Bonifacio Technology Center, 31st Street Corner 2nd Avenue, Bonifacio Global City Taguig, Metro Manila, through its President & CEO, **ARNEL PACIANO D. CASANOVA, Esq.**, who is duly authorized for this purpose under Board Resolution No. _____ Series of 2012, as evidenced by the Secretary’s Certificate dated _____, a copy of which is hereto attached as *Annex “_”*, hereinafter referred to as “**BCDA**”;

-and-

JOHN HAY MANAGEMENT CORPORATION, Government- Owned and Controlled Corporation operating by virtue of the laws of the Republic of the Philippines and a member of the Bases Conversion and Development Authority (BCDA), with SEC Registration No. ASO **9304846**, with office and postal address at John Hay Special Economic Zone, Camp John Hay Special Economic Zone, Baguio City 2600, Philippines, represented herein by its President and Chief Executive Officer (PCEO), **JAIME ELOISE M. AGBAYANI, MD.**, who is hereby authorized for the purpose pursuant to JHMC Board Resolution No. 2011-0315-028 dated 15 March 2011, a copy of which is hereto attached as ANNEX “A” to form an integral part hereof, and hereinafter referred to as the “**JHMC**”;

-and-

The **(LESSEE)** , corporation/consortium duly created and existing under applicable laws, with office address at _____, through its _____, _____, duly authorized for this purpose under Board Resolution No. _____ Series of 2014, as evidenced by the *Secretary’s Certificate* dated _____, a copy of which is hereto attached as *Annex “_”*, hereinafter referred to as the “**LESSEE**”.

(Each a “PARTY”, and collectively, the “PARTIES”)

- Antecedents -

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

John Hay Management Corporation (JHMC), as BCDA's operating and implementing arm for the administration and development of the John Hay Special Economic Zone (JHSEZ) in Baguio City, Philippines, wishes to consider bids for the long-term lease and development of the 26,700-square-meter, more or less, South Drive Center (hereinafter referred to as the "Property") located within the JHSEZ on an "*as-is, where-is*" basis. The vicinity map of the Property is attached as Annex "___".

The disposition is to be carried out pursuant to the provisions of Republic Act No. 7227 ("The Bases Conversion and Development Act of 1992"), as amended, Executive Order No. 62 prescribing the policies and guidelines to implement R.A. 7227, and other relevant laws, Executive Orders, and rules and regulations, to the extent applicable.

The **LESSEE** has submitted the Highest Ranked and Complying Bid.

In view thereof, the **BCDA and JHMC** Board of Directors passed BCDA BOD Resolution __ Series of 20__ on _____ and JHMC BOD Resolution __ Series of 20__ on _____ respectively, approving the award of this **CONTRACT** to the **LESSEE**.

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

**ARTICLE I
GENERAL AGREEMENTS**

Section 1. THE PROPERTY

- a. **Description.** The Property, which shall be hereafter known as "**Sheridan Drive Center**", has a total land area of approximately 25,000 square-meters, and located in the south corner of Sheridan Drive in the JHSEZ, Baguio City. The Property is composed of two (2) parcels, described and broken down as follows:

PARCEL NUMBER	LOT COVERAGE	AREA (SQ.M.)
1	Portions of Lots 1, 5, 6 and 7	10,000
2	Portions of Lots 1, 5 and 4	15,000
TOTAL AREA OF THE PROPERTY		25,000

- b. **Status of the Property.** The Property is within the JHSEZ, and all the lots making up the two (2) parcels of the Property were transferred to BCDA through Presidential Proclamation No. 198 series of 1993. The JHSEZ, by virtue of Presidential Proclamation No. 1191 series of 2006, has been designated as a Special Tourism Economic Zone. Since the Property is within the Special Tourism Economic Zone, the **Lessee**, if found qualified, may be granted tax and other incentives under Republic Act 7916: The Special Economic Zone Act of 1995.
- c. **Disclosures.** Also, the following conditions pertaining to each of the three (3) parcels comprising the Property are hereby disclosed:

i) **Parcel 1 (10,000-sq.m.)**

- (1) **Existing Structures.** Presently existing within the Parcel are four (4) cottages built during the American occupation of Camp John Hay. Portions of each cottage were constructed using materials containing asbestos.

ii) **Parcel 2 (15,000-sq.m.)**

- 1) **Existing Structures.** Presently existing within the parcel is the Igorot Lodge, which is managed and operated by the Asian Institute of Management (AIM). The AIM has a lease over the aforesaid area until 15 April 2018. Portions of this structure were constructed using materials containing asbestos.

A map showing the existing structures as well as the estimated developable and non-developable portions of the Property is hereto attached as Annex “__”.

Section 2. Land Uses for the Property. The Sheridan Drive Center, which is the intended development for the Property, is envisioned to be a focal point in the overall development of the JHSEZ. The Sheridan Drive Center shall be a mixed-use development following the “*live, work, and play concept*” while, at the same time, promoting and preserving the JHSEZ’s eco-tourism theme. The Sheridan Drive Center shall have all the following developments and land uses, and should adhere to the following land use allocation:

- a. Hotel/Accommodation - At the minimum, forty percent (40%) of the Gross Floor Area (GFA), as defined hereunder should be allocated for these types of development;
- b. Office/BPO. At the minimum, ten percent (10%) of the GFA should be allocated for these types of development; and
- c. Commercial/Retail. At the minimum, twenty percent (20%) of the GFA should be allocated for these types of development.

As guide, a *Conceptual Plan* for the development of the Property was prepared by the BCDA and JHMC , and is hereto attached as Annex “ ___.”

Section 3. Restrictions on the Property. The development of the Property shall strictly comply with all pertinent government standards such as, but not limited to, the National Building Code, the Fire Code and other relevant laws, rules, regulations and issuances of the agencies of the National Government and of the Local Government, both existing and subsequent issuances, as well as the rules, regulations, and policies issued and to be issued by the JHMC.

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

a. **Maximum Gross Floor Area (GFA).** The Property shall have a maximum gross floor area (GFA) of **Twenty-eight Thousand square meters (28,000-sq.m.)** or, a floor area ratio (FAR) of 5 on a total developable area of 14,200-square-meters, hence:

AREA	FAR	GFA (SQ.M.)
Parcel 1	5	11,200
Parcel 2	5	17,000
TOTAL		28,000

b. **Development Phasing.** Due to non-availability of Parcel 2 until the expiry of the AIM’s lease contract in 15 April 2018, the development of the Property shall be done in two (2) Phases:

i. **Phase 1 Development** involves the development of Parcel 1 (Required GFA: 11,200-sq.m.), which shall be turned over by **BCDA** and **JHMC** to the **LESSEE** upon signing of the *Contract of Lease*. The development of Parcel 1 should be completed within two (2) years from signing of the *Contract of Lease*.

ii. **Phase 2 Development** involves the development of Parcel 2 (Required GFA: 16,800) which shall commence not later than 15 April 2018, or upon turnover of the subject Parcel to the **LESSEE**, whichever comes first. The development of Parcel 2 should be completed within two (2) years from turnover of the same by **BCDA** and **JHMC** to the **LESSEE**.

c. **Parking.** Common parking space shall be provided, either at grade or below ground level. The Property is envisioned to be a “walkable” development with minimum carbon footprint. The provisions for the parking supply should conform to the requirements set under the National Building Code.

- d.* **Cutting of Trees.** As a general rule, there shall be no cutting of Benguet Pine Trees. However, earth-balling may be allowed subject to existing laws or regulations of the Department of Environment and Natural Resources (DENR).
- e.* **Clearing of Existing Structures.** The demolition or clearing of the existing cottages/structures within the Property shall only be conducted after securing the necessary permits or clearance from **JHMC**. In cases where developmental permits from other National Government Agencies need to be secured, **JHMC** will endorse such applications to the concerned Agencies.
- f.* **Green Development Principles.** The development of the Property should adhere to the principles of “green developments/buildings”. In line with this, the **LESSEE** shall secure such certification/s from the Philippine Green Building Council (PHILGBC) or any reputable Green Building Council.
- g.* The **LESSEE** shall neither use nor occupy the **PROPERTY**, nor permit the same to be used and occupied, nor permit anything to be done in, on or to, the **PROPERTY**, in whole or in part, in a manner which would in any way:
- i.* Violate any applicable law affecting the Leased Property. In this connection **BCDA and JHMC** hereby confirms that the required use is not in violation of applicable law;
 - ii.* Make void or voidable any insurance then in force in respect thereto, or which may make it extremely difficult to obtain fire or other insurance thereon required to be furnished by **LESSEE** hereunder;
 - iii.* Constitute a public or private nuisance; or
 - iv.* Violate any material provision of this **CONTRACT**.
- h.* If at any time during the term of this lease the **PROPERTY** is used for other purposes in violation of Section 2 of this Article or for purposes which violate the restrictions pertaining to the use of the **PROPERTY**, **BCDA and JHMC** shall have the right to terminate this **CONTRACT** without prejudice to such other rights of **BCDA and JHMC** under this **CONTRACT** and other applicable laws.

Section 4. LEASE TERM.

- a.* The **PROPERTY** shall be leased, on an “*as-is, where-is*” basis, for long-term lease and development for a period of twenty-five (25) years, commencing on the signing of the *Contract of Lease*, and renewable for another twenty-five

(25) years upon mutual agreement of the parties. For this purpose, any negotiation for renewal may not start earlier than two (2) years prior to the expiration of the existing lease term, unless a strong reason justifies an early renewal, subject to the approval of **BCDA and JHMC**.

- b. Upon the expiration of the lease period, the ownership of all buildings and permanent facilities/improvements introduced by the **LESSEE** on the Property shall automatically be transferred to **BCDA and JHMC**. Therefore, should the Lessee opt to renew its lease over the Property, the new lease rate for the next twenty-five (25)-year extension period shall cover the land as well as the buildings and permanent facilities/improvements transferred to **BCDA and JHMC**.
- c. To determine the Annual Lease payment for the initial year of the lease extension period, BCDA, JHMC and the Lessee shall have the Property, including the permanent facilities/improvements introduced therein, appraised by two (2) independent appraisers mutually acceptable to both parties at the start of the last year of the initial lease period. The Annual Lease payment for the initial year of the lease extension period shall be the higher of:
 - (i) five percent (5%) of the average fair market value of the Property as appraised; **or**
 - (ii) the Annual Lease for the Property on the last year of the initial lease period, plus five percent (5%) escalation;

The annual escalation rate of five percent (5%) shall continue to apply on the Annual Lease payment for the lease extension period.

The costs of the appraisal shall be equally borne by BCDA, JHMC and the Lessee.

Section 5. SCHEDULE OF PAYMENT

- a. Upon signing of the *Contract of Lease*, which shall be the effective date of the lease, the **LESSEE** shall pay JHMC the amount of Twenty-Eight Million Pesos (PhP 28,000,000.00) exclusive of twelve percent (12%) Value-added Tax (VAT), representing rent for the 10,000-square-meter Parcel 1 (Phase 1 Development of the Property) from the effective date of the lease until 15 April 2018.
- b. The **LESSEE** shall pay the lease even if the actual development is less than the GFA of 11,800-sq.m. For any GFA developed in excess of 11,800-sq.m., the Lessee agrees to pay an additional lease equivalent to the average lease per square meter.

- c. Starting 15 April 2018 or upon turnover of Parcel 2 whichever is earlier, the Lessee shall pay the **Annual Lease** in the amount of _____, exclusive of twelve percent (12%) Value-Added Tax (VAT), on or before thirty (30) calendar days prior to the anniversary date of the *Contract of Lease*. The annual lease payment shall be subject to five percent (5%) escalation every year, and shall be paid
- d. Any additional GFA to be developed shall require prior approval of **BCDA** and **JHMC**, and shall conform to all government rules and regulations then existing.
- e. In case **BCDA** or **JHMC** is able to turn over Parcel 2 to the **LESSEE** earlier than 15 April 2018, the rent for Parcel 1, already advanced by the **LESSEE** to **JHMC**, shall be recalculated and proportionately adjusted to cover only the period from the effective date of the lease up to the date of actual turnover. The excess amount of the advanced rent shall then be applied to the starting annual lease proposed by **LESSEE** for the three (3) parcels, which would be the start of the Phase 2 Development of the Property.

For clarity, the **PARTIES** agree to the schedule provided below:

PERIOD COVERED	RATE OF LEASE	SCHEDULE OF PAYMENT
Year 1 to 15 April 2018 or upon turnover of Parcel 2	PhP28,000,000	Upon signing of the Lease Contract
Starting 15 April 2018 or upon turnover of Parcel 2 and annually thereafter	Annual Lease plus 5% escalation rate every year after turnover of Parcel 2	On or before thirty (30) days before the anniversary of the Lease

Section 6. PLACE AND MODE OF PAYMENTS

The **LESSEE** shall pay the rent, together with all other amounts due under this **CONTRACT**, to **JHMC** at the address set forth in this **CONTRACT** without need of demand and without deduction, set-off or counterclaim unless a deduction or withholding is required by applicable law.

Section 7. SUBLEASE, TRANSFER OF RIGHTS, ASSIGNMENT, ETC.

The **LESSEE** may sublease, assign, transfer or convey its leasehold rights over the **PROPERTY** provided that prior written approval of **BCDA** and **JHMC** is secured and provided further that, the sub-lessee or assignee agrees to accept the terms and conditions of this **CONTRACT** including but not limited to the restrictions on the use of the **PROPERTY** as mentioned in Sections 2 and 3, Article I, of this Contract.

The sublease or assignment shall not in any way release the **LESSEE** from any of its obligations under this **CONTRACT** over the **PROPERTY**. The **LESSEE** and its sub-

lessee or assignee shall be held solidarily liable to **BCDA and JHMC** in the performance of its obligations under this **CONTRACT**.

Section 8. CARE OF THE PROPERTY AND THE IMPROVEMENTS

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

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

Section 9. LIEN ON THE PROPERTY

The **LESSEE** shall not create any liens on the land or any structure or improvement in securing project financing. **BCDA and JHMC** may terminate this **CONTRACT** by sending to the **LESSEE** a written notice without need for judicial action should the **LESSEE** cause the creation of any lien or encumbrance on the land or any structure or improvement during the effectivity of this **CONTRACT**.

ARTICLE II RIGHTS AND RESPONSIBILITIES OF THE PARTIES

Section 1. RIGHTS AND RESPONSIBILITIES OF THE LESSEE AND PENALTIES FOR VIOLATION

The **LESSEE** shall:

- a. Strictly comply with the terms and conditions of the *Contract of Lease* executed with **BCDA and JHMC**. The **LESSEE** shall maintain all warranties and representations in good standing for the duration of the contract period.
- b. Submit to **JHMC**, for approval, its *Development Plan* for the Property within six (6) months from the signing of the *Contract of Lease*. It is understood that the **JHMC**-approved *Development Plan* shall be made part of this *Contract of Lease*.

At the minimum, the *Development Plan* shall contain the following information:

- (i) proposed land uses and corresponding GFA for each use;
- (ii) conceptual design, features and amenities (if any);
- (iii) the timetable, including major development milestones;
- (iv) schedule of the capital investments; and

- (v) estimated total development cost.
- c. Strictly comply with the allowable land use/s and the development restrictions for the Property as set in the *Terms of Reference (TOR)*, specifically under Article II, Sections 3 and 4, and Sections 2 and 3, Article 1 of this Contract.
- d. Commence development on the Property within one (1) year from the approval, by **JHMC**, of the *Development Plan*, and complete the development of the Property in accordance with the prescribed *Development Phasing* as specified in Article II, Sections 4.2 of the *Terms of Reference*.
- e. Not later than three (3) months before 15 April 2018, submit to **JHMC** an acceptable form of continuing guaranty or Surety Bond which shall be automatically renewed until the end of the lease to fully secure the Annual Lease for the Property. In case, however, **JHMC** is able to turn over the remainder of the Property (i.e. Parcel 2) to the **LESSEE** earlier than 15 April 2018, the **LESSEE** shall submit the required continuing guaranty or Surety Bond not later than three (3) months before the first (1st) anniversary of the actual turnover of the whole Property to the **LESSEE**.
- f. Not later than two (2) months after completion of construction, obtain, at its own cost, an all-risk insurance coverage for construction and improvements introduced during the term of the lease in an amount equivalent to its replacement value with **JHMC** as the beneficiary, and submit to **JHMC** the original insurance policy and the corresponding Official Receipt within five (5) days from the issuance of said insurance policy.
- g. Pay, at its sole account, all applicable taxes, licenses, fees and charges due on the lease transaction, the Property and its improvements, and those that may be imposed by law during the entire term of this *Contract of Lease*. Where any taxes are required by law to be withheld from payment to **JHMC**, the **LESSEE** shall submit certification of taxes withheld at the time of payment to **JHMC**, otherwise any such taxes withheld will not be considered as authorized deductions.
- h. Undertake, at its sole cost, on-site development and provide utilities, access roads to the Property, and internal road networks. This includes clearing and properly disposing of the existing cottages/structures within the Property, in accordance with law and environmental rules and regulations, at the **LESSEE'S** own cost.
- i. Upon expiration or termination of the lease term, turn-over/transfer ownership of permanent structure/s, facilities and other improvements introduced by the **LESSEE** on the Property to **BCDA and JHMC**.
- j. In case of a consortium, each member shall be jointly and severally liable with all other members in the performance of the obligations of the **LESSEE**.
- k. Agree to pay the required maintenance or utility fees, which will be assessed by the **JHMC**.

- l. Submit to **JHMC** monthly reports relative to its operations such as transaction reports and gross receipts from sales and services and Monthly VAT Declaration (presently BIR Form No. 2550M or its replacement in case of revisions in the future) stamped received by the Bureau of Internal Revenue (BIR), not later than the twenty-fifth (25th) day following the close of the month, starting on the fifth (5th) year of lease;
- m. Authorize **JHMC**, as it is hereby authorized, to examine, review, and/or audit the financial records and books which directly relate to the receipt of gross revenues from goods and services and allow **JHMC** to access its point-of-sales (POS) system to generate complete and up-to-date business transaction log, starting on the fifth (5th) year of lease;
- n. Should the **LESSEE** fail to perform any of its responsibilities stipulated in paragraphs *e*) and *f*) above, the Lessee shall be liable to pay **JHMC** the amount of P10,000.00 for every day of delay of the submission of the guaranty and the original insurance policy.
- o. Should the **LESSEE** fail to perform any of its responsibilities as specified in paragraphs b, c and d above, **JHMC** shall have the option to terminate the *Contract of Lease* as well as the option to re-bid the Property. In such instance, the **LESSEE** shall forfeit any and all monies so far remitted to **JHMC** in relation to the lease of the Property.

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

Section 2. Rights and Responsibilities of BCDA and JHMC

BCDA and JHMC shall:

- a. Give the **LESSEE** the sole right to lease, develop, operate and manage the Property, subject to the restrictions and terms and conditions of the agreements entered into between **BCDA and JHMC** and the **LESSEE**.
- b. Deliver possession of the Property to the **LESSEE**, on an “*as-is, where-is*” basis, upon the execution of the *Contract of Lease*.

Section 3. TAKE-OVER OF THE PROPERTY

The **LESSEE** shall authorize **BCDA and JHMC** to enter the Property as the agent or attorney-in-fact of the **LESSEE**, without need of any judicial action, in the following instances:

- a. The Property is abandoned, deserted or vacated within the duration of the *Contract of Lease*;
- b. Violation of any terms thereof by the **LESSEE**; or

- c. Non-payment of lease in full by the **LESSEE**.

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

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

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

ARTICLE III PERFORMANCE SECURITY AND INSURANCE

Section 1. PURPOSE OF PERFORMANCE SECURITY

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

Section 2. PERFORMANCE SECURITY ON THE ANNUAL LEASE FOR THE PROPERTY

The **LESSEE** shall submit to **BCDA and JHMC**, not later than three (3) months before the fourth (4th) anniversary of the signing of this **CONTRACT**, a bank guaranty or irrevocable letter of credit issued by a Universal Bank or Commercial Bank or a continuing Surety Bond issued by the GSIS with a face value equivalent to the Annual Lease for the **PROPERTY** to fully secure its payment. Such Surety Bond shall contain provisions for automatic renewal and replenishment of the face value as the case may be.

Section 3. COMPREHENSIVE ALL-RISK INSURANCE

- a. The **LESSEE** shall obtain, at its own cost, an all-risk insurance coverage from the Government Service Insurance System (GSIS) for construction and improvements introduced during the term of the lease in an amount equivalent to their replacement value with **BCDA and JHMC** as the beneficiary of the required insurance.
- b. The **LESSEE** shall obtain the insurance coverage herein stipulated not later than two (2) months after completion of construction and update the insurable amount based on the foregoing provision.

- c. The **LESSEE** shall submit to **BCDA and JHMC** the original insurance policy and the Official Receipt of payments within five (5) days from obtaining the insurance coverage.
- d. Should the insurable risk occur and the insurance proceeds be insufficient for purposes of reconstruction or rehabilitation of the **PROPERTY** as herein required, the **LESSEE** shall assume the additional cost of replacement of the structures without reimbursement from **BCDA**. Alternatively, both the **LESSEE** and **JHMC/BCDA** may agree on termination of the **CONTRACT**, in which case, **JHMC/BCDA** shall retain the insurance proceeds.

Section 4. UTILIZATION OF INSURANCE PROCEEDS

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

ARTICLE IV FORCE MAJEURE AND SUSPENSION

Section 1. DEFINITION

Force Majeure or fortuitous events shall mean events which could not have been foreseen, or if foreseen were inevitable and beyond the control of a **PARTY**, without any accompanying fault or negligence of the **PARTY** invoking it as an excuse for the non-performance of its obligations as specified hereunder, which prevent or materially affect the ability of said **PARTY** to comply with any of its obligations under this **CONTRACT**, 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 or violent demonstrations; and
- (d) government acts which shall render the facility inoperable.

Section 2. APPLICABILITY

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

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

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

Section 3. NON-APPLICABILITY

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

Section 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 **CONTRACT** as far as practicable, and shall notify the other **PARTY** of the steps the **PARTY** invoking the *force majeure* proposes to take, including reasonable measures to mitigate the effects of the *force majeure*.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

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

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

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

- (c) It has duly and validly executed and delivered this **CONTRACT** which constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms;
- (d) It has all the required skills and capacity necessary to perform or cause to be performed all its obligations under this **CONTRACT** in a proper, timely and professional manner;
- (e) It has the knowledge of all the legal requirements and good business practices that must be followed in performing its obligations under this **CONTRACT**, and the same will be in conformity with such requirements and practices and in compliance with all applicable laws and Governmental Approvals;
- (f) It is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this **CONTRACT**;
- (g) 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, threatened against, or affecting, it or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on its ability to perform its obligations under this **CONTRACT** or on the validity or enforceability of this **CONTRACT**;
- (h) The **LESSEE**, its parent company, or its subsidiaries or affiliates with common controlling shareholdings, if any, is not declared in default of its financial or other obligations by **BCDA and JHMC**, or any of its subsidiaries at the time of the execution of this **CONTRACT**;
- (i) The **LESSEE**, its parent company, or its subsidiaries or affiliates with common controlling shareholdings, if any, is not included in the negative list of **BCDA and JHMC** at the time of the execution of this **CONTRACT**;
- (j) It has not committed, directly or indirectly, any of the acts prohibited under Republic Act Nos. 3019 (Anti-Graft and Corrupt Practices Act) and 6713 (Code of Conduct and Ethical Standards of Public Officials and Employees). Any violation of this warranty shall be sufficient ground for the revocation or termination of this **CONTRACT** without prejudice to the criminal, civil and/or administrative liabilities of those involved;
- (k) It has neither applied nor filed any insolvency, bankruptcy, rehabilitation, or suspension of payments and liquidation proceeding against or on behalf of the **LESSEE** before any Governmental Authority; and
- (l) It is not involved in any money laundering activity as defined by the Anti-Money Laundering Act of 2001 (RA 9160).

Section 2. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS OF BCDA and JHMC

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

- (a) WITH RESPECT TO ITS CORPORATE AUTHORITY:
- (i) It is a government instrumentality vested with corporate powers by Republic Act No 7227, as amended by Republic Act No. 7917, and has all necessary power and authority under its Charter to award the disposition and privatization of the **PROPERTY** to the **LESSEE** under the Terms of Reference;
 - (ii) To the best of its knowledge, it has all the necessary power and authority to execute, deliver and perform its obligations under this **CONTRACT**. Should there be any other requirement of law, rules or regulation, **BCDA and JHMC** commits to comply therewith; and
 - (iii) No application has been filed with any Governmental Authority for the commencement of any insolvency or bankruptcy proceeding against or on behalf of **BCDA and JHMC**.
- (b) WITH RESPECT TO THE PROPERTY:
- (i) Except for the existing Lease Agreement with AIM which will expire on April 15, 2018, 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 the **BCDA and JHMC** and as otherwise disclosed in the Terms of Reference. There are no outstanding options or rights of first refusal to purchase the **PROPERTY**.

**ARTICLE VI
DEFAULT AND ITS CONSEQUENCES**

Section 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 covenants and undertakings as provided in the General Agreements (*Article I*), Rights and Responsibilities of the Parties (*Article II*) and Performance Security and Insurance (*Article III*) of this **CONTRACT**;
- (b) Any representation or warranty of any **PARTY** contained in this **CONTRACT** is shown to have been untrue, incorrect, inaccurate or misleading in any material respect as of the time that it was made or deemed to have been made and such breach is not remediable or, if capable

of being remedied, shall remain after the lapse of the Curing Period mentioned in Section 2 (b) hereof, as provided for in this Article;

- (c) Failure of the **LESSEE** to comply with its financial commitments under this **CONTRACT** on the due dates after the lapse of the applicable grace period specified in this **CONTRACT**;
- (d) 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;
- (e) Merger, consolidation or change of ownership of the **LESSEE** without the prior written consent of **BCDA and JHMC**, which consent shall not be unreasonably withheld; and
- (f) Any other cause, due to the fault or negligence of either **PARTY** that prevents it from fully exercising its rights under this **CONTRACT**.

Section 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 **CONTRACT** and pertinent laws, have the following rights which may be exercised cumulatively or alternatively:

- (a) The non-defaulting **PARTY** shall have the alternative right to (1) compel the performance of the defaulting **PARTY**, or (2) upon prior written notice to the Defaulting **PARTY**, rescind or terminate this **CONTRACT** without the necessity of judicial action if the event giving rise to the default is incurable;
- (b) Should the event giving rise to the right of a **PARTY** to terminate this **CONTRACT** be curable, the defaulting **PARTY** shall have the right to cure the same within a period of sixty (60) days from receipt of written demand by the non-defaulting **PARTY** (the "Curing Period") and the non-defaulting **PARTY** shall only be entitled to rescind or terminate this **CONTRACT** without judicial intervention if such default shall have not been cured within the Curing Period;
- (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 **CONTRACT** within such period of time as may be required by the non-defaulting **PARTY**, failing which, the non-defaulting **PARTY** may by written notice to the defaulting **PARTY** and without the necessity of judicial action (1) terminate this **CONTRACT** or (2) elect to continue the transaction in both cases reserving its right to claim damages for such non-

compliance and/or seek such other legal remedies as may be available to it under the law; and

- (d) **BCDA and JHMC** may, in addition to the rights of a non-defaulting party, call on the *Performance Security* pursuant to Article III hereof.

Section 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 rights of the **PARTIES**, and exhaust all reasonable options or remedies, prior to availing of the remedies afforded under Section 2 hereof.

ARTICLE VII MISCELLANEOUS PROVISIONS

Section 1. PRIORITY OF DOCUMENTS

This **CONTRACT** constitutes the entire agreement of the **PARTIES**. For matters not provided in the Terms of Reference (TOR) for the disposition of the **PROPERTY**, this **CONTRACT** supplements the same. However, in case of conflict between the provisions of this **CONTRACT** and those of the TOR, the provisions of the TOR shall prevail, it being imperative that this **CONTRACT** should comply with the TOR.

In case of conflict between this **CONTRACT** on one hand and/or the TOR on the other hand, the **PARTIES** agree to execute the necessary amendment of this **CONTRACT** to conform with the TOR.

Section 2. DISPUTE RESOLUTION

The **PARTIES** agree to resolve any dispute, controversy or claim that may arise between them with respect to this **CONTRACT** through amicable negotiation in good faith. Any dispute, claim or controversy arising out of, or relating to, this **CONTRACT** shall be settled by arbitration in accordance with the Alternative Dispute Resolution (ADR) Law effective at the time of the dispute.

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

Section 3. BINDING EFFECT

This **CONTRACT** and all of the provisions hereof shall be binding upon and inure to the benefit of the **PARTIES** hereto and their respective lawful successors and assigns.

Section 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 **CONTRACT** 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 **CONTRACT**.

Section 5. AMENDMENTS

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

Section 6. GOVERNING LAW

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

Section 7. NOTICE

Any notice required or permitted in this **CONTRACT** or otherwise, in connection herewith shall be in writing and delivered personally, 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:

For **BCDA**:

ARNEL PACIANO D. CASANOVA
President and CEO
Bases Conversion and Development Authority
2/F Bonifacio Technology Center
31st St. Crescent Park West
Bonifacio Global City, Taguig City 1634

For **JHMC**:

JAMIE ELOISE M. AGBAYANI
President and CEO
John Hay Management Corporation
Camp John Hay, Baguio City

For the **LESSEE**:

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

Section 8. SEVERABILITY

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

Section 9. CONFIDENTIALITY

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

Section 10. ENVIRONMENTAL COMPLIANCE

The **LESSEE** shall by itself, and cause all assignees, transferees, sublessees, licensees, contractors, subcontractors, suppliers and invitees to use and maintain the Leased Property in compliance with all existing national environmental laws, rules and regulations, including the specific environmental rules and regulations being implemented by the Department of Environment and Natural Resources and **JHMC**. Accordingly, the **LESSEE** shall file the necessary application for Environmental Compliance Certificate (ECC) which should be issued in favor of both the **LESSEE** as proponent/developer, and **BCDA** as landowner. The **LESSEE** shall submit to **BCDA and JHMC** a copy of such ECC prior to commencement of the construction works.

Section 11. FIRE SAFETY CODE AND STANDARDS

The **LESSEE** shall comply with the fire code and standards imposed by the Bureau of Fire Protection, **JHMC**, and other appropriate authorities. The **LESSEE** also warrants that it shall hold fire drills and exercises among its employees and locators within the **PROPERTY** once every year. It shall also promote fire protection awareness among its employees and locators.

Section 12. SECURITY

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

PROPERTY. The **LESSEE** shall employ, at its own expense, security personnel for the **PROPERTY.**

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

Section 13. OGCC REVIEW

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

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

BASES CONVERSION AND DEVELOPMENT AUTHORITY

JOHN HAY MANAGEMENT CORPORATION

By:

By:

ARNEL PACIANO D. CASANOVA, Esq.
President & Chief Executive Officer

JAMIE ELOISE M. AGBAYANI, M.D.
President & Chief Executive Officer

By:

Signed in the presence of:

ACKNOWLEDGEMENT

Republic of the Philippines)
) S.S.

BEFORE ME, a Notary Public in and for the above jurisdiction, this ____ day of _____, _____, personally appeared the following:

NAME	COMPETENT EVIDENCE OF IDENTITY*	DATE/PLACE ISSUED
BCDA, by: ARNEL PACIANO D. CASANOVA, Esq.		
JHMC, by: JAMIE ELOISE M. AGBAYANI, M.D.		

*Passport/SSS ID/TIN ID/Driver’s License/Voter’s ID

known to me and to me known and who have been identified by me through their competent evidence of identity mentioned above to be the same persons who executed the foregoing **CONTRACT** and acknowledged to me that the same is their free act and deed and of the entities they represent, for the uses and purposes herein stated.

I further certify that the foregoing **CONTRACT** consists of ____ pages, including this page and that each and every page thereof has been signed by the Parties and by their witnesses, and sealed with my notarial seal.

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

Doc. No. _____

Page No. _____
Book No. _____
Series of 2014.

JHMCO

ANNEX “F”

CHECKLIST OF DOCUMENTS

Reference in the TOR	Document	Remarks
Eligibility Documents		
Annex G-1	Duly notarized Eligibility Statement for Corporation	Mark as “A”
Annex G-2	Duly notarized Eligibility Statement for Consortium and MOA	Mark as “A”
Annex H	Bidder’s Profile, or if a Consortium, of all members	Mark as “A-1”
Annex I	Summary of Projects of the Corporation or, if a Consortium, the member which meets the Technical Capability requirement	Mark as “A-2”
	Certification from Bank/s reflecting the cash balance or available credit facilities of the Bidder as of the month prior to the deadline set for the submission of bids (if bidding as a Consortium, any member of the consortium who meets the Financial Capacity requirement)	Mark as “B”
	SEC Registration together with the General Information Sheet (GIS) of the Bidder for the latest applicable calendar or fiscal year (or all members in case of consortium), or for foreign corporations, the equivalent document duly authenticated document duly authenticated by the Philippine Consulate based in the foreign company’s domicile.	Mark as “C”
	Articles of Incorporation <u>and</u> By-Laws, or the foreign equivalent documents	Mark as “D”
	A Board Resolution or Secretary’s Certificate of the Bidder (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	Mark as “E”
Final Proposal		
Annex J	Final Bid Letter	
	Bid Security	

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

ELIGIBILITY STATEMENT

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

1. The (*name of Corporation*) (Bidder) is interested in the bidding for the long-term lease and development of the 25,000-square-meter Sheridan Drive Center located within the John Special Economic Zone (JHSEZ) in Baguio City, Philippines;
2. I am the (*designation*) of the Bidder, duly authorized to make this Statement for and on its behalf;
3. In compliance with the Eligibility Requirements, the following information are hereto attached:
 - a. Bidder's Profile (Annex A-1); and
 - b. Summary of Projects (Annex A-2)
4. The Bidder, its parent company or subsidiaries or affiliates with common controlling shareholdings, if any, is not considered in default of its financial or other obligations, in any past or current project being undertaken with JHMC, at the day of submission of bids, as determined by the JHMC Board,
5. The Bidder has no pending or unpaid tax liabilities in the Philippines;
6. The Bidder accepts the Terms of Reference, qualification criteria and the terms and conditions set by JHMC;
7. The Bidder, if awarded the contract to lease and develop the subject Property, commits to comply with: (1) the allowable land use/s and the development restrictions for the Property; and (2) all other pertinent government standards such as, but not limited to, the National Building Code, the Fire Code, and other relevant laws, rules, regulations and issuances of the agencies of the National Government and of the Local Government, for the entire duration of the lease;
8. The Bidder commits to abide by the decision of the ADP-Com, waives its right to seek legal remedies against JHMC, and holds its Board of Directors, Officers and staff, consultants and authorized representatives/personnel free and harmless from any liability, costs, and expenses, suit or allegation arising from its participation in this bidding process;

9. All information in this statement, including attachments and enclosures thereof, are true and correct. Any falsity, error, or misrepresentation shall constitute ground for disqualification from this bidding or revocation of award as determined by JHMC;
10. The Bidder, its Directors, Officers and staff or any representative thereof, shall not attempt to establish any contact with any of JHMC's Directors, Officers, staff, consultants, and authorized representatives/personnel on matters concerning the bidding from the date of the submission of their bids up to the conclusion of the bidding process, except for clarifications on Proposal which must be in writing and addressed to the ADP-Com, through its Chairperson.

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

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

11. The Bidder is not involved in any money laundering activity as defined by the Anti-Money Laundering Act of 2001 (RA 9160) and as further governed by RA 10365.
12. The Bidder authorizes JHMC or its authorized representatives to conduct investigation and verification of the statements, documents and information submitted relative to our bid.

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

IN FAITH WHEREOF, I have hereunto affixed my signature this ____ day of _____ 2014 at _____, Philippines.

Affiant

SUBSCRIBED AND SWORN TO before me this ____ day of _____ 2013, affiant exhibiting to me his competent evidence of identity (e.g. Passport, Driver's License, etc.) _____ issued at _____, Philippines on _____, 2013.

NOTARY PUBLIC

Doc. No. _____
 Page No. _____
 Book No. _____
 Series of 2014.

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 bidding for the long-term lease and development of the 25,000-square-meter Sheridan Drive Center located within the John Hay Special Economic Zone (JHSEZ) in Baguio City, Philippines, and shall undertake to execute a Memorandum of Agreement among all members, to be submitted during the post-qualification process.
2. The Consortium is composed of the following:

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

3. In compliance with the Eligibility Requirements, the following information are hereto attached:
 - a. Bidder's Profile of all members (Annex A-1); and
 - b. Summary of Projects of the member which meets the Technical Capability requirement (Annex A-2).
4. The Consortium (and all its members), its parent company or subsidiaries or affiliates with common controlling shareholdings, if any, is not considered in default of its financial or other obligations, in any past or current project being undertaken with JHMC, at the day of submission of bids, as determined by JHMC;
5. The Consortium has no pending or unpaid tax liabilities in the Philippines;
6. The Consortium accepts the Terms of Reference, qualification criteria and the terms and conditions set by JHMC;

7. The Consortium, if awarded the contract to lease and develop the subject Property, commits to comply with: (1) the allowable land use/s, and the development restrictions for the Property; and (2) all other pertinent government standards such as but not limited to the National Building Code, the Fire Code, and other relevant laws, rules, regulations and issuances of the agencies of the National Government and of the Local Government, for the entire duration of the lease;
8. The Consortium commits to abide by the decision of the ADP-Com, waives its right to seek legal remedies against JHMC, and holds its Board of Directors, Officers and staff, consultants and authorized representatives/personnel free and harmless from any liability, costs, and expenses, suit or allegation arising from its participation in this bidding process;
9. All information in this statement, including attachments and enclosures thereof, are true and correct. Any falsity, error, or misrepresentation shall constitute ground for disqualification from this bidding or revocation of award as determined by JHMC;
10. The Consortium members and their Directors and Officers, shall not attempt to establish any contact with any of JHMC's Directors, Officers, staff, consultants, and authorized representatives/personnel on matters concerning the bidding from the date of the submission of their bids up to the conclusion of the bidding process, except for clarifications on Proposal which must be in writing and addressed to the ADP-Com, 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 bidding or revocation of the award, if any, without prejudice to damages that JHMC may recover for any loss or damage that may result therefrom.

11. 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.
12. The Consortium members authorize JHMC or its authorized representatives to conduct investigation and verification of the statements, documents and information submitted relative to the bid of the Consortium.

For this purpose, the 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.

IN FAITH WHEREOF, we have hereunto affixed our signatures this ____ day of _____ 2014 at _____, Philippines.

Affiant

Affiant

Affiant

Affiant

SUBSCRIBED AND SWORN TO before me this day ____ of ____ 2014, 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 2014.

BIDDER'S PROFILE

I. GENERAL INFORMATION

Business Name:	
Brief Description of Business:	
Address:	
Contact No/s.:	
Email 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)

III. FINANCIAL CAPACITY

Key Banking Relations			
		As of <i>(the month prior to the deadline for submission of bids) 2014</i>	
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:

To be accomplished by the Corporate Bidder or at least one member of the Consortium

NAME OF BIDDER: _____

(If a Consortium, indicate the name of the Member with technical capability.)

Years of experience in development projects _____.

SUMMARY OF PROJECTS

- A. Completed Projects** similar to the Intended Development for the Property with a total cost of One Billion Pesos (PhP1,000,000,000.00) per project, excluding the cost of the land; or with an area of at least 5 hectares, per project.

	Project 1	Project 2	Project 3
Project Description			
Nature of Participation			
Location/Country			
Area in Hectares			
Gross Floor Area of Development			
Project Cost (excl. value of land)			
Value of Land			
Year Started			
Year Completed			

(Use additional sheets if necessary)

- B. Ongoing Projects** similar to the Intended Development for the Property with a total cost of One Billion Pesos (PhP1,000,000,000.00) per project, excluding the cost of the land; or with an area of at least 5 hectares, per project.

	Project 1	Project 2	Project 3
Project Description			
Nature of Participation			
Location/Country			
Area in Hectares			
Gross Floor Area of Development			
Project Cost (excl. value of land)			
Value of Land			
Year Started			
Year Completed			

(Use additional sheets if necessary)

FINAL BID LETTER

DATE

THE CHAIRPERSON

Asset Disposition Program Committee

John Hay Management Corporation

John Hay Special Economic Zone

Baguio City, Philippines

Sir/Madam:

In connection with the bidding for the long-term lease and development of the 25,000-sq.m. Sheridan Drive Center located within the John Hay Special Economic Zone (JHSEZ) in Baguio City, Philippines, our Company (State the name of the Corporation/Lead Member Corporation), hereby, formally proposes a starting Annual Lease for the whole Property (i.e., Parcels 1 and 2) at the start of Phase 2 Development of the Property, which shall commence on 15 April 2018 or upon turnover of Parcel 2 to our Company, whichever comes first, in the amount of _____ (PhP _____), exclusive of twelve percent (12%) Value-added Tax. Succeeding lease payments, which shall be subject to five percent (5%) escalation every year, shall be remitted to JHMC every year thereafter, on or before the anniversary date of the signing of the contract.

We understand that, should our Company be declared the Winning Bidder, we shall, upon signing of the Contract of Lease with the JHMC, immediately remit to them an Advance Payment in the amount of _____ (PhP _____), exclusive of 12% VAT, as rent for the 10,000.00-square-meter Parcel 1 (Phase Development of the Property) from the effective date of the lease until 15 April 2018. In case, however, the JHMC is able to turnover Parcel 2 to our Company earlier than 15 April 2018, the advanced rent for the 10,000-00-square-meter Parcel 1 shall be recalculated and proportionately adjusted to cover only the period from the effective date of the lease up to the date of actual turnover. The excess amount of the advanced rent shall then be applied to our proposed starting annual lease for the whole Property at the start of Phase 2 Development of the Property.

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

Submitted by:

(Signature)
Name of Authorized Representative

Position