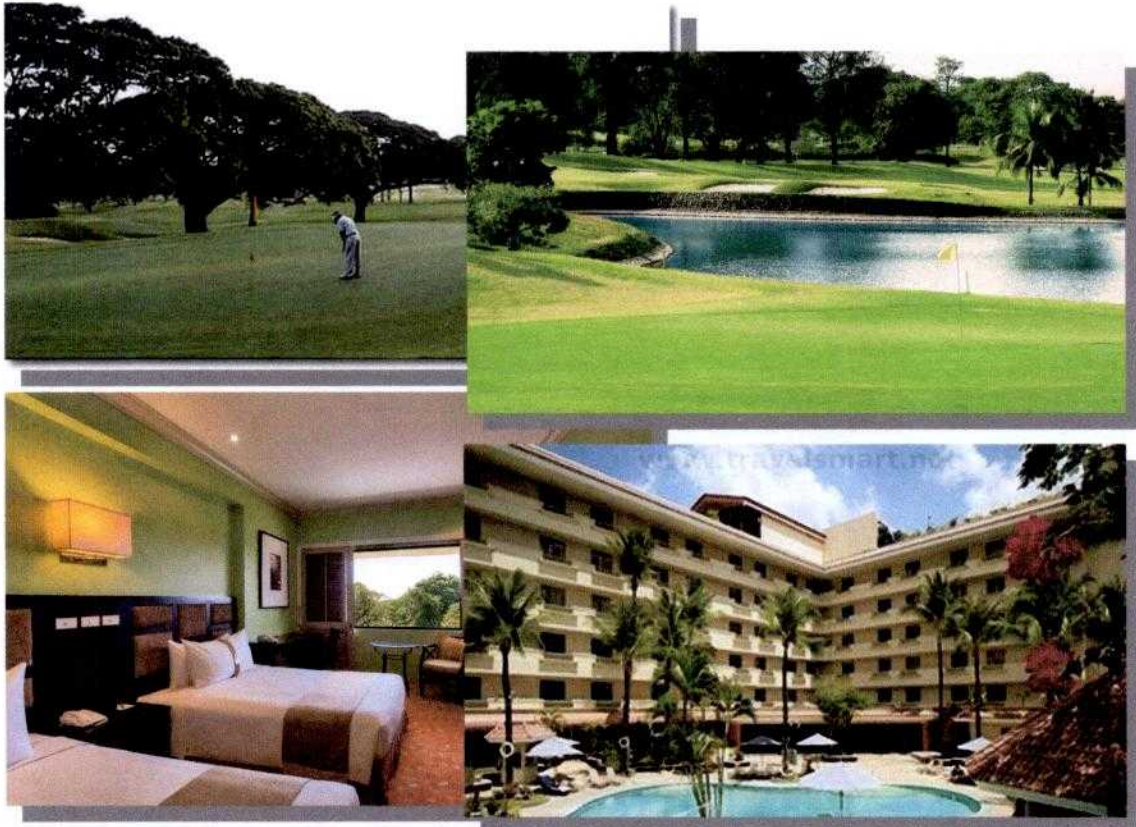




**Clark Development Corporation**



# **TERMS OF REFERENCE**

**PRIVATIZATION OF THE FORMER MIMOSA LEISURE ESTATE  
COVERING 201.64 HECTARES, THRU A 50-YEAR LEASE  
ARRANGEMENT**

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## TERMS OF REFERENCE

### PRIVATIZATION OF THE FORMER MIMOSA LEISURE ESTATE COVERING 201.64 HECTARES, THRU A 50-YEAR LEASE ARRANGEMENT

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#### ARTICLE I PROJECT RATIONALE

- Section 1     **Congressional Mandate.** Republic Act No. 7227, as amended by Republic Act No. 9400, otherwise known as the Bases Conversion and Development Act of 1992, and Proclamation No. 163, Series of 1993, the Clark Freeport Zone (CFZ) and Clark Special Economic Zone (CSEZ) were created consisting of parcels of land formerly occupied by the Clark military reservations and its contiguous extensions as covered by the 1947 Military Bases Agreement between the Philippines and the United States of America.
- Executive Order No. 80 (EO 80), series of 1993, authorized the establishment of Clark Development Corporation (CDC) as the implementing arm of the Bases Conversion Development Authority (BCDA) and the development authority for the CFZ and CSEZ.
- Section 2     **Approval.** On 17 August 2015, the CDC Board of Directors approved the privatization thru public bidding of the Former Mimosa Leisure Estate covering 201.64 Hectares, thru a 50-Year lease arrangement.
- Section 3     **Strategic and Secure Location.** The Estate is located within the fenced Clark Freeport Zone (CFZ), approximately 100 kilometers North of Manila. It is a sprawling estate accentuated by century old acacia trees and creates a magnificent setting of superb parkland course. The Estate is set against stunning mountain foothills, which afford scenic vistas for the idyllic surrounding countryside. There is no fault line within the CFZ. The Location Map showing the Estate is attached as **Annex "A"**.
- Section 4     **Availability of Vital Infrastructure.** It is served by the Clark International Airport and connected to the Subic Seaport by the Subic-Clark-Tarlac Expressway (SCTEx). It is located at the convergence point of two (2) major tollways – North Luzon Expressway (NLEX) connecting it to Metro Manila; Subic-Clark-Tarlac Expressway (SCTEx) connecting it to the Subic Seaport and Freeport Zone.
- Section 5     **Legal Basis.** This privatization is to be carried out pursuant to the provisions of Republic Act No. 7227 ("The Bases Conversion and Development Act of 1992"), as amended by RA 9400, Executive Order No. 62 prescribing the policies and guidelines to implement R.A. 7227, Executive Order No. 429 amending Executive Order No. 62, Executive Order No. 80 (EO 80), series of 1993, authorizing the establishment of

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Clark Development Corporation (CDC) as the implementing arm of the Bases Conversion Development Authority (BCDA) and the development authority for the CFZ and CSEZ.

- Section 6 This bidding is being administered by the Special Asset Privatization Committee (SAP-Com) of CDC whose decisions or actions shall be subject to the approval of the CDC Board of Directors.

## **ARTICLE II BACKGROUND OF THE ESTATE**

- Section 1 **Location of the Estate.** The Estate is located within the Clark Freeport Zone with relatively flat terrain.

- Section 2 **Status of the Estate.**

- 2.1 Hotel building and thirty four villas. Operational. Currently being managed by the Intercontinental Hotels Group (IHG) under an Interim Management Agreement, carrying the brand of Holiday Inn.
- 2.2 36-hole golf course and former Montevista Villas. Operational. Currently being managed by CDC as a special project.
- 2.3 Concessionaires. Operational. With contracts conditioned on the privatization of the estate.

Details of the above-mentioned facilities and their operational performance, as may be relevant are in **Annex "B"**.

- Section 3 **Freeport Zone Tax Incentives.** As the Estate is within the CFZ, the developers, locators and investors therein, if found qualified, may be granted tax and other incentives under Republic Act No. 7227: The Bases Conversion and Development Act, as amended by RA 9400. Freeport Zone Incentives presented as **Annex "C"**

- Section 4 **Land Uses for the Estate.** The Conceptual Land Use Plan for the Clark Freeport Zone which was adopted and approved by the CDC Board, identifies the Estate land use to be residential, recreation, mixed-use, tourism or other similar/equivalent activities. The copy of the Land Use is hereto attached as **Annex "D"**.

- Section 5 **Proposed Development Density.** The Estate is to be developed in accordance with the principles of "green, smart and disaster-resilient developments". In addition, all developments within the Estate shall be undertaken in strict compliance 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.

- 5.1 **Environmental Preservation.** All developments to be undertaken in the Estate, shall be designed to incorporate and complement the site's natural topography, hydrology, and ecosystem. As such, all developments should comply with environmental laws and implement green and sustainable technologies.

### **ARTICLE III MODE OF DISPOSITION AND MINIMUM BID PRICE**

- Section 1 The CDC Lessee shall be chosen on the basis of a competitive selection process in accordance with this Terms of Reference (TOR). The Winning Bidder shall form a New Company (NC) and shall lease from CDC, manage, develop and operate the Estate. The Lease Agreement (LA) will be for a period of 50 years renewable for another 25 years upon mutual agreement by the parties, provided that there is no default on the part of the Lessee, provided further that the Lessee is in good standing, and provided finally that the commercial terms shall be based on the prevailing market rates during the period of renewal.
- Section 2 The **minimum acceptable bid** for the right to lease, manage, operate and develop the Estate from CDC shall be **Eight Hundred Million Pesos (PhP800,000,000.00)**, payable to CDC upon signing of the Lease Agreement.

### **ARTICLE IV OTHER COMPLIANCE REQUIREMENTS**

- Section 1 The Bidders shall also state their compliance on the following:
- A. Technical**
- 1. Investment Commitment** - Minimum Investment commitment amounting to Php5 Billion, which should be completed within five (5) years upon approval of the Detailed Development Plan based on the timetable submitted by the **Lessee**.  
  
Starting Year 6 from signing of the LA, a Capital Replacement Fund, equivalent to 3% of gross revenues from the proceeding period, shall be annually set aside for the improvement or replacement of furnishings, fixtures and equipment and other capital items that have worn-out or otherwise need replacing in order to continue the operation of the estate and to remain competitive in the market.
  - 2. Draft Lease Agreement (General Conditions of the Contract (GCC) and Special Conditions (SC))**, attached as **Annex "E"**.



**3. Standards** - The Estate is to be developed in accordance with the principles of "green, smart and disaster-resilient developments". All designs, construction, renovation, ground improvement and other related developments shall be in accordance with the following standards:

- National Building Code of the Philippines
- Department of Environment and Natural Resources(DENR) Laws and its IRR's
- Civil Aviation Authority of the Philippines (CAAP) for Height Clearance
- Construction and Utility Clearances/Permits from Clark Development Corporation

**4. Minimum Design as may be applicable:**

4.1 For Hotel, Villas, and other structures. The façade and architectural features and general construction should have an aesthetic appeal that blends with the generally intended development for the estate meeting international standards.

**4.2 Landscaping**

Landscaping and hardscaping at the front garden, exterior facade and other outdoor spaces like pools must have a cohesive design to create a joyful environment around the buildings and give the guests or occupants a healthy breath, good appearance and natural beauty.

**4.3 Golf Course – Championship golf course**

**5. Recognition of the golf playing rights.**

**Playing Privileges.** The NC to be formed by the Winning Bidder shall recognize the playing privileges of the members of the former Mimosa Golf & Country Club (MGCC) as endorsed in good standing by CDC.

**B. Financial**

**1. Payment of Lease.** Annual Minimum Guaranteed Lease (AMGL) **PLUS** Percentage of Gross Revenues (PGR), **PLUS**, in the event of a Casino operation, Percentage of Gross Revenues (PGR) from casino operations based on prevailing rates.

**1.1. AMGL** – Php160 Million with 10% compounded increase starting on year six (6) and every three (3) years thereafter.

**1.2. PGR** – 2% of gross revenues generated from the entire estate whether from own operations of the lessee, sublessees, affiliates and subsidiaries and similar arrangements for present and future facilities.

- For purposes of computing the percentage of gross revenues, the LESSEE, SUBLESSEE/ CONCESSIONAIRE/ CONSIGNOR AND/OR ASSIGNEE'S Gross Revenues shall be defined as follows: All income earned (collected or uncollected) minus service charge, Gross sales on merchandise, rental revenues, and/or gross revenues from services, such as but not limited to the following:
  - a) Room revenues/charges
  - b) Food and beverage revenues/sales
  - c) Fees on recreational facilities (themeparks, spa, salons, sports and game rooms, etc.)
  - d) Membership dues allocated as consumable
  - e) Revenues derived from sale of food and beverage and rental of convention, function rooms, karaoke, and other facilities
  - f) Sale of merchandise on convenience store, souvenir shops, kiosks, tee houses and other similar establishments
  
- **"Sublessee"** refers to any sole proprietorship, partnership, corporation or any juridical entity distinct and separate from the **Lessee** and has subleased a portion or portions of the Property. It shall include concessionaire(s), consignor(s), or any individual/entity with business arrangement with the **Lessee**, whether written or otherwise, wherein specific business operations are not directly handled or managed by the **Lessee**.

## PLUS

**1.3. PGR from Casino Operations**, if any, based on prevailing policy on CDC share at the time of actual operation.

## 2. Remittance of Lease Payments

2.1 Minimum Guaranteed Lease - Lease payment shall commence after 1 year from signing of the LA and be paid monthly on or before the fifth (5<sup>th</sup>) day of the current month without the necessity of demand from the Lessor.

2.2 Percentage of Gross Revenues - Lease payment shall commence after 1 year from signing of the LA and be paid monthly on or before the fifteenth (15<sup>th</sup>) day of the succeeding month without the necessity of demand from the Lessor.



### 3. Advance Lease Payment (ALP) and Security Deposit (SD)

Total ALP and SD is equivalent to twelve (12) months MGL or PhP 160 Million payable upon signing of LA in the form of manager's/cashier's check.

### 4. Performance Security (PS)

Performance Security is equivalent to twelve (12) months MGL or PhP 160 Million payable upon signing of LA in the form of manager's/cashier's check.

### 5. Equity

CDC is entitled to a 5% Equity in the NC.

5.1 It shall be five percent (5%) of all classes of shares to be issued (present and future), with pre-emptive rights, free from all liens and encumbrances, all taxes thereon fully paid, without any payment from CDC or obligation by CDC to reimburse anybody, and represented by duly-issued stock certificates.

### 6. Board Seat

CDC is entitled to one (1) Board seat in the NC with the rights of minority stockholder as provided for in the Corporation Code.

6.1 CDC shall have the right to nominate a director in the NC.

6.2 Lessee agrees to cast its votes in favor of the CDC nominee to be elected as a director.

6.3 Lessee agrees not to remove the CDC nominee director except for cause.

6.4 In case of death, resignation, disqualification, or removal for cause of the CDC nominee director, the same provision shall likewise apply to the replacement or substitute director who shall serve the unexpired term of his/her predecessor.

6.5 The breach of these provisions shall be a ground for the suspension/revocation/cancellation/termination of the Lease Agreement without need of judicial action.

## ARTICLE V THE WINNING BIDDER

Section 1 The Winning Bidder shall be the one who submitted the **Highest Ranked and Complying Bid**, and has complied with all the minimum

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compliance requirements as contained in Article IV and has complied with the bidding process under Articles VII and VIII of the TOR, including the post-qualification process.

## **ARTICLE VI**

### **RIGHTS AND RESPONSIBILITIES OF THE PARTIES**

#### **Section 1      Rights and Responsibilities of the Winning Bidder**

- 1.1      Pay the right to lease, manage, develop and operate the Estate from CDC as stated in the Article III.2 and Article VIII.2
- 1.2      Pay the lease, ALP, SD, PS as stated in Article IV.
- 1.3      Comply with other requirements of Article IV.
- 1.4      The Winning Bidder shall establish and register the NC under applicable laws, rules and regulations.

The Winning Bidder shall assume the cost in initiating the legal, financial, administrative, technical and other processes needed to incorporate and register the said corporation with the Philippine Securities and Exchange Commission (SEC). On best effort basis, CDC shall assist the Winning Bidder in securing all the government approvals required for the project.

- 1.5      Sign the LA with CDC not later than the date specified in Article IX: Timetable of Activities.
- 1.6      Submit to CDC, for approval, the **Detailed Development Plan** for the Estate within six (6) months from the signing of the LA. It is understood that the CDC-approved **Detailed Development Plan** shall be made part of the LA executed between CDC and the Winning Bidder. The **Detailed Development Plan** shall, at the minimum, contain the following information:
  - a) site development plan which includes the proposed land uses which must conform with the general land use identified for the Estate;
  - b) conceptual design, features and amenities;
  - c) detailed design standards and guidelines;
  - d) development timetable/development phasing plan, including major development milestones (in terms of percentage completion) and start-end date of construction/development, timetable for leasing, including start date of marketing and actual leasing operations; and
  - e) schedule of the capital investments.



- 1.7 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.
- 1.8 Recognition of the golf playing rights.

**Playing Privileges.** The NC to be formed by the Winning Bidder shall recognize the playing privileges of the members of the former Mimosa Golf & Country Club (MGCC) as endorsed in good standing by CDC.

## Section 2

### **Rights and Responsibilities of CDC**

- 2.1 Delivery of the Estate to the winning bidder.
- 2.2 Own five percent (5%) equity with One (1) Board Seat in the NC with the rights of minority as provided for in the Corporation Code of the Philippines.
- 2.3 On best effort basis, assist the NC in getting the needed permits from the government agencies.
- 2.4 **Employment.** There shall be no continuity of employment of the existing personnel of the estate (SPRO/Holiday Inn). NC shall however have the option to hire from the existing pool of employees subject to their operational requirements. The separation pay due to the existing manpower based on applicable laws shall be borne solely by CDC.
- 2.5 **Indemnification.** CDC shall hold the winning bidder free and harmless from any liabilities arising from the following pending cases:
  - a. MLRC vs. CDC and PAGCOR consolidated cases, Civil Case Nos. 12761, 13344 and 13347
  - b. Arjan Trading Corporation vs. Jose Antonio Gonzales and/or MLRC, CDC and PAGCOR, Civil Case No. 10447
  - c. Asset Pool A (SPV-AMC), Inc. vs. CDC, Civil Case No. 13926
  - d. Asset Pool A (SPV-AMC), Inc. vs. CDC, G.R. No. 205915
  - e. Asset Pool A (SPV-AMC), Inc. vs. CDC, G.R. No. 216793
  - f. Asset Pool A (SPV-AMC), Inc. vs. CDC, COA CP Case No. 2010-11
  - g. Asset Pool A (SPV-AMC), Inc. vs. CDC, G.R. No. 213058
  - h. CDC vs. Association of Clark Mimosa Employees (ACME), CA-G.R. SP No. 138893
  - i. CDC vs. Association of Clark Mimosa Employees (ACME), CA-G.R. SP No. 135199
  - j. Angelito M. Padilla vs. CDC-SPRO, Roxanne M. De Leon, Danilo D. Teria, and Teresito T. Tiotuyco, NLRC Case No. RAB-III-04-21454-14
  - k. Jose John Giovanni Cabarle & Oliver Fernandez vs. Mimosa Golf & Country Club, SEAD-NLRC-RAB-III-06-1116-14

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- l. Isais L. Juliao Jr. vs. Mimosa Golf & Country Club, SEAD-NLRC-RAB-III-07-1168-14
- m. Angelito M. Padilla vs. CDC-SPRO, Roxanne M. De Leon, Danilo D. Teria, and Teresito T. Tiotuyco, NLRC Case No. RAB-III-08-2180-14
- n. Aldorhai C. Lacson vs. CDC-SPRO, Roxanne M. De Leon, and Danilo D. Teria, NLRC Case No. 04-22738-15
- o. Sa Chul Hong, Chang Sup Shim and Jaesung Shim vs. CDC, Civil Case No. 13651
- p. Ponciano Dela Cruz vs. CDC represented by its Acting Chairman/President&CEO, Gen. Eduardo S.L. Oban Jr. and Mr. Teresito T. Tiotuyco in his capacity as the present Acting General Manager of Clark Development Corporation – Special Project for Resort Operation (CDC-SPRO), Civil Case No. 12-2916

2.6 **Concessionaires/Long Staying Guests.** Shall be turned-over to the NC.

## ARTICLE VII BIDDING PROCEDURE

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



Section 2 **Publication of Invitation to Bid.** CDC shall publish the "*Invitation to Bid*" in two (2) newspapers or publications of general circulation, once every week for three (3) consecutive weeks, as well as in the CDC website ([www.clark.com.ph](http://www.clark.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 *Financial Proposal* no later than the deadline specified in Article IX *Timetable of Activities*. The *Eligibility Documents* and *Financial Proposal* shall be submitted simultaneously in two (2) separate sealed envelopes. The two (2) envelopes should be appropriately marked as follows:

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- **Eligibility Documents.** This envelope should contain three (3) sets of the *Eligibility Documents*, as listed in Article VIII, Section 1.2. Each set should be properly marked as: "*First Set: Eligibility Documents*", "*Second Set: Eligibility Documents*" and "*Third Set: Eligibility Documents*"; and
- **Financial Proposal.** This envelope should contain three (3) sets of the *Financial Proposal*, as described in Article VIII, Section 2. Each set should be appropriately marked as: "*First Set: Financial Proposal*", "*Second Set: Financial Proposal*", and "*Third Set: Financial Proposal*".

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

- i) the title of the bidding for which the bid proposal is being offered; and
- ii) the name and address of the Bidder.

## ARTICLE VIII ELIGIBILITY CHECK, EVALUATION OF BIDS AND SELECTION OF WINNING BIDDER

### Section 1      **Eligibility**

- 1.1 **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 duly authenticated by the Philippine Consulate based in the foreign company's domicile, or an unincorporated consortium. If the Bidder is a consortium, it should also submit a copy of the duly-executed consortium agreement among all members of such consortium showing the principal rights and obligations of the members, the extent of participation of each member, and their commitment to be jointly and severally liable to CDC for their responsibilities in relation to this Estate.
  - b. **Technical Capability.** The Bidder (or, in case of a consortium, any member thereof) should have been in the business of mixed-use, tourism-related activities equivalent to at least fifty percent (50%) of the Php5 Billion committed investment.

- c. **Financial Capacity.** The Bidder must have adequate capability to finance the proposed development of the Estate and meet all of its financial obligations to CDC, which shall be measured in terms of the audited cash bank balance or credit line facility. The Bidder should have an available cash balance or credit line of at least **Five Billion Pesos (PhP5,000,000,000.00)**, or in case of a consortium, the aggregate available cash balance or credit line of all members.
- d. **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 CDC, BCDA and its subsidiaries, on the day of the submission of bids unless the event of default has been cured prior to such submission.
- e. **No Pending Case.** The Bidder (and all its consortium members), its parent company, or its subsidiaries, or affiliates, should have no pending case or claim against CDC, BCDA and its subsidiaries.
- 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.

For foreign corporations, the equivalent document duly authenticated by the Philippine Consulate based in the foreign company's domicile. A Delinquency Verification Certificate issued by the Collection and Enforcement Division of the BIR to non-resident foreign corporations/non-resident aliens not engaged in trade or business attesting to the fact that the taxpayer has no outstanding final assessment notice and/or delinquent account, may also be required.

- g. **Bid Documents.** The Bidder must have purchased the *TOR* (including bid forms and pertinent documents) for a non-refundable fee of **Five Hundred Thousand Pesos (PhP500,000.00)**. 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 SAP-Com. The payment for the *TOR* must be in the form of a manager's check or cashier's check.

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

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- a. Eligibility Statement or Joint Eligibility Statement (format attached as **Annex "G-1" or Annex "G-2"**, as applicable) which shall include the following information in support of the Bidder's eligibility duly notarized in the country of residence of the bidder:
- (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) A summary of the Bidder's (or in case of a consortium, of the member which meets the Technical Capability requirement) similar projects which are in the nature of mixed-use, tourism-related activities equivalent to at least fifty percent (50%) of the Php5 Billion committed investment including description, area of development, nature of the entity's participation, status of the project and the project cost (format attached as **Annex "I"**);
  - (iii) A statement of "no-default" on its financial or other obligations to CDC, BCDA and any of its subsidiaries (refer to **Annex "G-1" or Annex "G-2"**, as applicable);
  - (iv) A statement of not having filed any case prejudicial to CDC, BCDA and its subsidiaries performance of its mandate (refer to **Annex "G-1" or Annex "G-2"**, as applicable);
  - (v) A statement of acceptance of the qualification criteria established by CDC, commitment to abide by the decision of the CDC Board, and undertaking not to seek provisional remedies including but not limited to, temporary restraining orders or preliminary injunctions, or preliminary mandatory injunctions, against CDC its Board of Directors, Officers, Staff, Consultants, and Authorized representatives/personnel, which will unduly stop, restrain, delay or prevent CDC from awarding and executing a contract with the winning bidder or against any decision of the CDC in connection with the evaluation, award, suspension or termination of the bidding process (refer to **Annex "G-1" or Annex "G-2"**, as applicable);
  - (vi) A statement attesting to the veracity of all information presented and authenticity of all documents submitted (refer to **Annex "G-1" or Annex "G-2"**, as applicable);

(vii) A statement of affirmation of CDC's anti-corruption policy (refer to **Annex "G-1" or Annex "G-2"**, as applicable); and

(viii) If the Bidder is a consortium, the Bidder must also submit a *Memorandum of Agreement*, which 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 LA with CDC; and
- agreement of all members to be jointly and severally liable for the obligations of the consortium under the award/contract.

b. Tax Clearance Certificate issued by the BIR National Office in accordance with Executive Order No. 398 Series of 2005.

For foreign corporations, the equivalent document duly authenticated by the Philippine Consulate based in the foreign company's domicile. A Delinquency Verification Certificate issued by the Collection and Enforcement Division of the BIR to non-resident foreign corporations/non-resident aliens not engaged in trade or business attesting to the fact that the taxpayer has no outstanding final assessment notice and/or delinquent account, may also be required.

c. 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 a consortium, the available cash balances or credit lines shall be the aggregate amount of all members).

d. 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 by the Philippine Consulate based in the foreign company's domicile.

e. Articles of Incorporation and By-Laws of the Bidder (or all members, in case of consortium), and any amendments. For foreign corporations, the certified copies of the original



Articles of Incorporation duly filed in the country of incorporation subject to authentication and translation, if needed, by the nearest Philippine embassy or consulate.

- f. 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. For foreign corporations, the certified copies of the required documents shall be submitted, subject to authentication and translation, if needed, by the nearest Philippine embassy or consulate.
- g. Latest Audited Financial Statements
- h. Compliance with the Technical Requirements as stated in Article IV.1A, (Format Attached as **Annex "J"**)
- i. Compliance with the Financial Requirements stated in Article IV.1B, (Format attached as **Annex "K"**)

CDC requires that each and every consortium member shall submit all of the above Eligibility Documents and shall be subject to the Eligibility Requirements.

Section 2 **Financial Proposal.** The *Financial Proposal* shall consist of the following:

- 2.1 **Final Bid Letter.** The Bidder shall submit a bid proposal in the form of **Annex "L"**, duly signed by its authorized representative, stating its bid for the right to lease, manage, develop and operate the Estate, with minimum acceptable bid of **Eight Hundred Million Pesos (PhP800,000,000.00)**. In addition, there shall be no pre-conditions to the payment of said sum, otherwise, the proposal shall automatically be declared non-complying and shall therefore be rejected outright.
- 2.2 **Bid Security** in the amount equivalent to ten percent (10%) of the Bid offered by the Bidder, which shall be in the form of manager's check or cashier's check. The Bid Security of the Winning Bidder and all other Bidders shall be returned without interest upon signing of the LA between CDC and the Winning Bidder, unless otherwise forfeited under Article X, Section 10.

Section 3 **Submission, Opening and Evaluation of Bids**

- 3.1 Bids shall be submitted on the date and time specified in the *Timetable of Activities*.
- 3.2 CDC shall adopt the following evaluation process.

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

Those Bidders determined by the SAP-Com to have failed to submit complete Eligibility Requirements shall automatically have their *Financial Proposals* returned to them unopened.

In case of appeal, the SAP-Com shall keep the Bid Envelopes of the said non-complying bidder unopened and/or duly sealed, including the Bid Security until such time that the appeal has been resolved.

**Stage 2** involves the opening of the *Financial Proposal* of those who passed the Stage 1 to determine compliance with all the requirements specified under Article VIII, Section 2 of this *TOR*.

*Financial Proposals* that are found to be non-complying shall be automatically rejected, and the Bid Security shall be immediately returned to the concerned Bidder.

In case of appeal, the SAP-Com shall keep the Bid Envelopes of the said non-complying bidder, including the Bid Security until such time that the appeal has been resolved.

- 3.3 Bids that have satisfied all the requirements of this *TOR* shall be ranked based on the bid amount, and the highest bid amount shall be declared the **Highest Ranked Bid**. The results of the SAP-Com's detailed evaluation of bids shall be subject to the approval of the CDC Board.

#### Section 4 **Post-qualification**

- 4.1 The Bidder with the Highest Ranked Bid must pass a post-qualification process to verify accuracy and authenticity of all submitted documents and information.
- 4.2 If the Bidder with the Highest Ranked Bid passes post-qualification, its proposal shall be declared as the **Highest Ranked and Complying Bid**. The SAP-Com shall recommend to the CDC Board the award of the contract to said Bidder (Winning Bidder).
- 4.3 If the Bidder with the Highest Ranked Bid fails post-qualification, the SAP-Com shall notify the Bidder of the results thereof. The SAP-Com shall subject the Bidder with the Second Highest Ranked Bid to post-qualification.
- 4.4 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 5 **Award.** A Notice of Award (NOA) shall be issued to the Winning Bidder, with the obligation to execute the LA with CDC no later than the date specified in Article IX: Timetable of Activities.

## ARTICLE IX TIMETABLE OF ACTIVITIES

Activities	Timelines
Publication of Invitation to Bid	19 (Wed) 25 (Tue) & 30 (Sun) August 2015
Issuance of TOR	24 August 2015 to 14 September 2015
Pre-bid Conference	16 September 2015 10:00AM
Deadline for Submission of Requests for Clarification	22 September 2015
Last day of Issuance of Bid Bulletin	02 October 2015
Submission of Bids: Eligibility Documents and Financial Proposal	13 October 2015 1:00PM
Opening and Evaluation of Bids	13 October 2015
Board approval of the Results of Evaluation of Bids	16 October 2015
Announcement of Results of Evaluation of Bids	19 October 2015
Post-qualification Period	20 October to 11 November 2015
Board Approval/Notice of Award	12 November 2015
Finalization of the Lease Agreement	13 November to 30 November 2015
Signing of Lease Agreement	1 December 2015

The above is an indicative timetable which may change as approved by the CDC Board.

## 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 SAP-Com, subject to the approval of the CDC 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 SAP-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 CDC 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 enjoined to attend a Pre-Bid Conference to discuss the Estate, this *TOR* and other possible questions. Only those who have purchased the *TOR* (including bid forms and pertinent documents) shall be allowed to participate in the conference. The Conference shall be held on the date and time specified in the *Timetable of Activities* at the CDC Boardroom, Bldg. 2125 E. Quirino Street, Clark Freeport Zone, Philippines. If necessary, succeeding conferences with the prospective Bidders may be scheduled by the SAP-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 prohibited from contacting or communicating with any employee or official of CDC, whether personally or through phone calls. All relevant inquiries and concerns shall be raised in writing and addressed only to the SAP-Com Chairperson as follows:

THE CHAIRPERSON  
Special Asset Privatization Committee (SAP-Com)  
Clark Development Corporation  
SAP-Com Office, Bldg. 2121, E. Quirino Street,  
Clark Freeport Zone, Philippines

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

Section 4 **Due Diligence.** Each prospective Bidder shall be solely responsible for its own due diligence of all matters relating to this *TOR* and the Estate which may affect its valuation of the Estate or the nature of its proposal. CDC 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 SAP-Com.

No verbal agreement or conversation with, nor any verbal clarification from, any officer or employee of CDC, the SAP-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 SAP-Com shall be relied upon as authorized. Neither the CDC, 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 CDC that shall be set out in the LA for the development of the Estate.



Section 5      **Site Inspection.** Bidders can request in writing addressed to the SAP-Com the conduct of site inspection anytime from the date of purchase of the TOR up to Ten (10) working days before the scheduled date of submission of bid as specified in Article IX.

Section 6      **Failure of Bidding.** CDC shall declare a failure of bidding in any of the following instances:

- 6.1 No bid is received;
- 6.2 No Bidder passed the evaluation of bids;
- 6.3 No Bidder passed post-qualification;
- 6.4 The Winning Bidder refused to accept the award or enter into LA with CDC; and
- 6.5 The happening of a fortuitous event or any reason beyond the control of CDC, including but not limited to change in government policy, which prevents the completion of the contract or unduly delays its conclusion.

Section 7      **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 CDC Board of Directors. The appeal must be filed within seven (7) calendar days from receipt of the formal notification. 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/cashier's check.

In no case shall any appeal from the decision of the SAP-Com or the Board stay or delay the bidding process. Appeal must be resolved within the period of thirty (30) calendar days and before any award is made. The decision of the CDC Board on the appeal shall be final and immediately executory. If the appeal is not resolved within said period, the appeal is deemed denied, and the bidding process will proceed.

Section 8      **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 9      **Free and Harmless.** CDC, 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.

**Undertaking.** All Bidders participating in this bidding, undertake not to seek provisional remedies including but not limited to, temporary restraining orders or preliminary injunctions, or preliminary mandatory injunctions, against CDC its Board of Directors, Officers, Staff, Consultants, and Authorized representatives/personnel, which will unduly stop, restrain, delay or prevent CDC from awarding and executing a contract with the winning bidder or against any decision of the CDC in connection with the evaluation, award, suspension or termination of the bidding process.

**Indemnity.** The Winning Bidder shall hold CDC free and harmless from any liability, costs and expenses, suit or allegation arising out of the participation by the bidder/s in this bidding procedure.

The decision of the CDC Board is final. Prospective bidder shall submit the said Undertaking together with the Eligibility Documents to CDC.

Section 10 **Forfeiture of Bid Security.** Any of the following shall be ground for the forfeiture of the Bid Security in favor of CDC:

- 10.1 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 evaluation of bids;
- 10.2 Withdrawal or modification, whether conditional or otherwise, of the proposal after the deadline for the submission of bids;
- 10.3 Failure or refusal of a Winning Bidder to enter into a LA with CDC within the prescribed period;
- 10.4 Any judicial or extrajudicial action by the Winning Bidder that shall delay the execution of the LA and/or its compliance with its obligations as set out in this *TOR*;
- 10.5 Any circumstance or reason that provides CDC reasonable and valid basis to believe that the Bidder is or has been rendered incapable of completing its obligation, as proposed; and
- 10.6 Commits all other acts that tend to defeat the purpose of the competitive bidding.

The decision of the CDC Board shall be final.

Section 11 **Anti-corruption Policy.** The Bidders, their Directors and Officers are prohibited from communicating with or contacting, directly or indirectly, any of CDC'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 SAP-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 CDC. Violation of this policy shall be a ground for disqualification or revocation of the award, if any, without prejudice to damages that CDC may recover for any loss or damage that may result therefrom.

Section 12 **Qualifications and Waivers.** CDC reserves the right to reject any or all bids and its decision shall be final. CDC reserves the right to review all relevant information affecting the Bidder or the proposal before the execution of the LA. CDC 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.

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

Section 13 **Interpretation of Documents.** The *TOR* and all its Annexes have been crafted with a view toward fair, transparent and competitive bidding of the subject Estate. Any ambiguity in, or conflict between, the *TOR* and its Annexes shall be resolved toward fulfilling the intent of this competitive bidding, as determined by CDC.

Section 14 **Policy on Tie.** In case of a tie on the item for bid, the concerned bidders will be required to submit "best and final financial offer" to be scheduled by the SAP-Com.

**LOCATION MAP**

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
THRU A 50-YEAR LEASE ARRANGEMENT

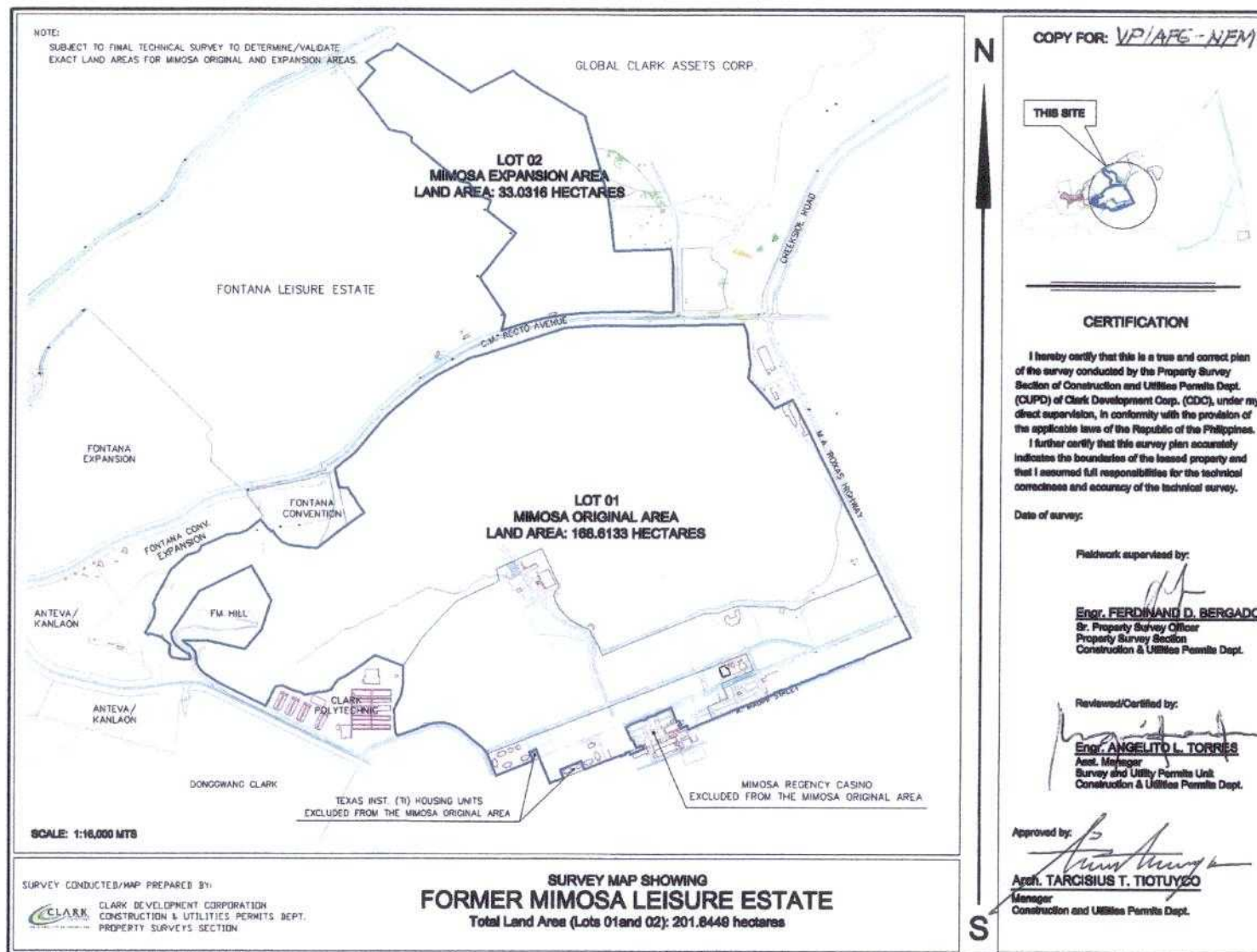




CA-2



CLARK  
FREEPORT  
UNLIMITED



THRU A 50-YEAR LEASE ARRANGEMENT



**DETAILS OF THE FACILITIES**

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
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**A. HOTEL & VILLAS****A.1 Details of the Building**

1. Holiday Inn Resort Hotel - Under a Management Agreement with Holiday Inn.
  - a. 7-storey hotel with 303 guest rooms (273 single and double rooms and 30 executive suites); Total floor area is approximately 17,551 sqm
  - b. 34 one-storey, fully furnished 2-bedroom villas; Total floor area is approximately 5,236 sq. m.
  - c. Utility Building
  - d. Ballroom

Set – Up	Maximum Capacity
Banquet	600 Persons
Buffet	550 Persons
Theater	950 Persons
Classroom	400 Persons

- e. Swimming Pool, Kiddie and Adult
- f. Gym
- g. Paint Ball Field

**A.2 Financial Performance**

	2012	2013	2014
Available Rooms	121,146	120,815	120,815
Total Occupied Rooms incl Compl. rooms	84,919	89,223	93,777
% Occupancy	70.10%	73.85%	77.62%
Average Room Rate	3,145.95	3,222.69	3,305.77
RevPar	2,205.20	2,379.99	2,565.95
Rooms Department Profit	213,972,556.96	229,356,164.34	245,956,034.86
F&B Department Profit	73,768,887.24	81,461,464.40	82,999,623.17
Telephone Department Profit	(1,407,064.62)	(1,418,586.12)	(1,690,194.06)
Other Operating Department Profit	17,279,347.49	24,546,470.30	23,636,704.96
<b>Operating Departmental Profit</b>	<b>303,613,727.07</b>	<b>333,945,512.92</b>	<b>350,902,168.93</b>
Total Unallocated Expenses	124,687,283.96	131,954,236.50	133,806,116.87
GOP	178,926,443.11	201,991,276.42	217,096,052.06
<b>FIXED CHARGES:</b>			
P&L Basic Management Fee	12,546,827.46	13,766,980.94	14,295,239.83
P&L Incentive Management Fee	8,070,972.54	9,161,719.57	9,929,973.44
Total	20,617,800.00	22,928,700.51	24,225,213.27
<b>IBFC</b>	<b>158,308,643.11</b>	<b>179,062,575.91</b>	<b>192,870,838.79</b>
<b>Owners Employee benefits</b>	<b>1,583,967.74</b>	<b>1,555,288.43</b>	<b>1,548,000.00</b>
<b>Net of Owners Empl. Benefits</b>	<b>156,724,675.37</b>	<b>177,507,287.48</b>	<b>191,322,838.79</b>

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
THRU A 50-YEAR LEASE ARRANGEMENT



**B. GOLF COURSE AND MONTEVISTA VILLAS**

This is managed by CDC- Special Project for Resort Operations (SPRO). Details of the facilities under the CDC SPRO are as follows:

**B.1 Details of the Golf**

- a. 36-hole Golf Course
- b. Golf Clubhouse
- c. Golf Academy with 3 function rooms with total capacity of approximately 105 persons
- d. Plant Nursery
- e. Golf Maintenance Equipment
- f. Food and Beverage Facilities : Restaurant and Function Rooms, details as follows:

Location	Set – Up	Maximum Capacity
Hilltop Restaurant	Banquet	170 Persons
	Garden	500 Persons
	Classroom	150 Persons
Function Room Villas	Classroom	30 Persons
Verandah Restaurant		120 Persons
Golf Academy Area		
Montevista Café	Restaurant	40 Persons
	Patio	250 Persons
Lakeview Function Room	Classroom	50 Persons
Acacia (1&2)Function Room	Classroom	55 Persons
Mimosa Recreational Area	Garden	500 Persons
Mimosa Convention Hall	Banquet	400 Persons
	Theater	600 Persons
	Classroom	350 Persons

- g. Unfinished Country Club, 3-level building with floor area of approximately 4,684 sqm

**B.2. MONTEVISTA VILLAS****B.2.1 Details of the Montevista Villas**

1. Resort Villas - 92 one-storey, fully furnished villas

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
THRU A 50-YEAR LEASE ARRANGEMENT

<b>Villa Type</b>	<b>Description</b>	<b>Saleable</b>	<b>Out of Inventory Villas</b>	<b>Total</b>
Standard	2-bedroom	38	6	44
Premier Villa	2-bedroom	10	0	10
Superior	2-bedroom	15	3	18
Superior Executive Suite	1-bedroom	1	0	1
Deluxe Executive Suite	1-bedroom	0	1	1
Executive Suite	2-bedroom	16	2	18
<b>Total</b>		<b>80</b>	<b>12</b>	<b>92</b>

Out of Inventory Villas: used as office, KTV bar, function rooms and others

2. Forty Three (43) Two-Storey, Three-bedroom, fully furnished villas

<b>Villa Type</b>	<b>Saleable</b>	<b>Out of Inventory Villas</b>	<b>Total</b>
<b>Total</b>	<b>24</b>	<b>19</b>	<b>43</b>

Out of Inventory Villas: used as office, staff house, Long Staying Guests and 2 incomplete set-up

3. Unfinished Villas, ninety (90) one-storey villas

### **B.3 CONCESSIONAIRES**

#### **B.3.1 List of Concessionaires**

1. Lake Side Driving Range and grill
2. Island Green by Calle (Batang Calle Food Mfg. Corp.)
3. Friendship Golf Shop
4. YI Leisure
5. Gastropub, Inc.
6. Mugunhwa-Clark Inc. (MCI)
7. Korea House
8. SPE Food Enterprise Phils., Corp.
9. Aguiluz Fast Food



**C. FINANCIAL PERFORMANCE OF CDC-SPRO (IN THOUSANDS)**

Year	2012	2013	2014
<b>Revenue</b>			
Golf & Country Club	198,599	212,657	202,893
Montevista Villas	51,835	64,663	50,354
Food & Beverage	49,213	47,761	42,764
Laundry	6,669	5,827	4,466
Others	17,649	9,596	8,027
<b>Total Revenue</b>	<b>323,965</b>	<b>340,504</b>	<b>308,503</b>
<b>Cost and Expenses</b>			
Golf & Country Club	83,530	86,858	78,055
Montevista Villas	43,542	48,198	43,537
Food & Beverage	51,970	52,152	48,289
Laundry	13,324	11,437	11,844
Others	6,952	6,974	25,411
<b>Total Operating Expenses</b>	<b>199,318</b>	<b>205,619</b>	<b>207,137</b>
<b>Operation Income(Loss)</b>	<b>124,647</b>	<b>134,885</b>	<b>101,366</b>
General and Administrative Expenses	111,419	108,738	85,418
<b>Net Income - SPRO</b>	<b>13,228</b>	<b>26,147</b>	<b>15,948</b>

**D. GOLF MEMBERS IN GOOD STANDING AS OF 13 AUGUST 2015**

Type of Membership	Total
INDIVIDUAL	781
C1	92
C2	274
C3	650
TEXAS INSTRUMENT	6
<b>TOTAL</b>	<b>1,803</b>

**E. LIST OF AVAILABLE PLANS FOR THE FACILITIES OF THE FORMER MIMOSA LEISURE ESTATE**

1. Golf\_Academy\_Fire Alarm Detector Layout
2. Golf\_Academy\_HotCold Waterline Layout
3. Golf\_Academy\_LightingLayout
4. Golf\_Academy\_PowerAuxillaryLayout
5. Golf\_Academy\_Tel\_Aux\_SystemLayout
6. Golf\_Academy\_Ventilation SystemLayout
7. Golf\_Academy\_Waste VentsLayout\_SP1

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
THRU A 50-YEAR LEASE ARRANGEMENT

8. Holiday\_Inn\_Seminar\_Bldg
9. HolidayInn\_34VillaFloorPlan
10. Holiday inn 3<sup>rd</sup>floorlayout
11. Holiday inn 6th FloorLayout
12. Holiday inn Room Details
13. Holiday inn second floorlayout
14. MontevistaHotel\_CeilingPlan\_R1
15. MontevistaHotel\_CeilingPlan\_R2
16. MontevistaHotel\_Fixture\_FurnishingPlan\_FF1
17. MontevistaHotel\_Fixture\_FurnishingPlan\_FF2
18. MontevistaHotel\_FloorConveyingPlan\_FC1
19. MontevistaHotel\_FloorConveyingPlan\_FC2
20. Montevista Hotel\_FloorPlan
21. Monte vista Villa Architectural Details1-5
22. MontevistaVilla\_Cross Sections
23. MontevistaVilla\_ElecAndFloorCover
24. MontevistaVilla\_Electr And Floor CoverID2-3
25. MontevistaVilla\_Exterior Elevations
26. MontevistaVilla\_Fixtures And ArchiPlans1-2
27. MontevistaVilla\_FixturesDetails 1-2
28. MontevistaVilla\_Interior Elevations 1-6
29. MontevistaVilla\_Lighting And CeilingPlanID1-2
30. MontevistaVilla\_Moulding Sched 1-2
31. MontevistaVilla\_Perimeter Lighting Scheme
32. MontevistaVilla\_Perspective
33. MontevistaVilla\_Plumbing Layout
34. MontevistaVilla\_Power Aux System
35. MontevistaVilla\_Toilet And Bath 1-2
36. Raw\_Water\_Measurements\_DeepWells
37. Standard Villa Floor Plan
38. Jr Suite Exe Villa Floor Plan

***Note: All listed plans are in scanned/soft copies contained in a USB Pen Drive.***



**TAX AND DUTY FREE INCENTIVES**

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
THRU A 50-YEAR LEASE ARRANGEMENT

## TAX AND DUTY FREE INCENTIVES

Investors in the Clark Freeport Zone enjoy investment incentives designed to be highly competitive with the Freeport zones around the world.

### A. 5% tax on Gross Income Earned

In lieu of all national and local taxes, a qualified Ecozone or Freeport enterprise may avail of the special tax rate of five percent (5%) based on Gross Income Earned (Gross Sales less allowable deductions) provided that seventy percent (70%) of the gross income earned was generated from foreign sources consisting of direct and constructive export.

### B. Customs Duties and Taxes

Entitlement to tax-exemption and duty Free importation of capital equipment and raw materials

### C. Other Incentives

- a) Up to 100% Foreign ownership, as may be allowed under the 9<sup>th</sup> Foreign Investment negative list.
- b) Exemption from Real Property Tax
- c) Special Visas for Foreign Nationals

### D. ALLOWABLE DEDUCTIONS IN COMPUTING 5% TAX ON GIE

- Direct salaries, wages, or labor expenses, inclusive of training directly related to the registered activity;
- Service supervision salaries;
- Direct materials, supplied used;
- Depreciation of machinery, equipment used in the rendition of registered services, and of that portion of the building owned or constructed by the registered enterprise that is used exclusively in the rendition of the registered service;
- Rent and utility charges for buildings and capital equipment used in the rendition of registered services;
- Financing charges associated with fixed assets used in the registered service business the amount of which was not previously capitalized.

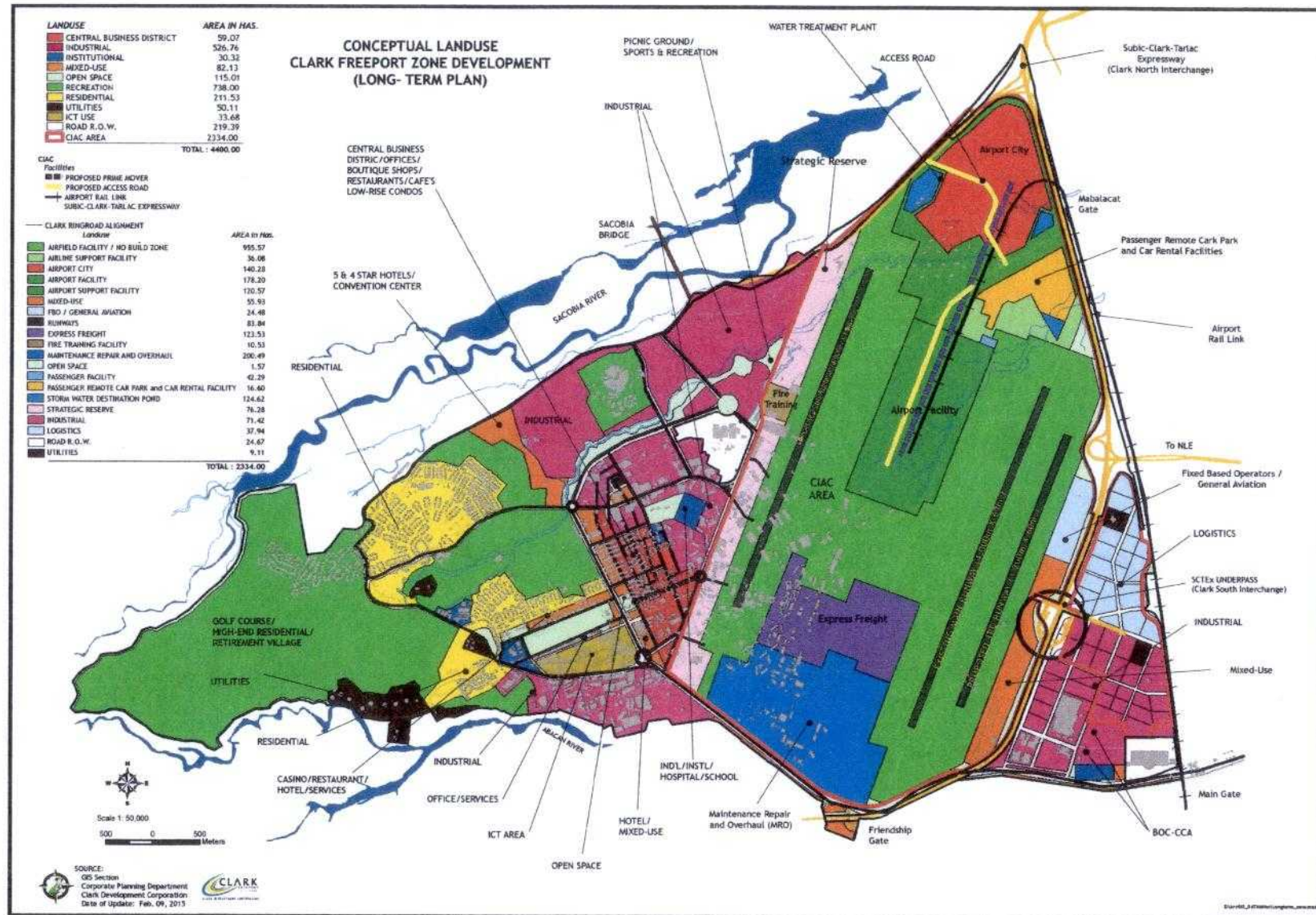


**CONCEPTUAL LAND USE PLAN**

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
THRU A 50-YEAR LEASE ARRANGEMENT







## ANNEX "E"

### DRAFT LEASE AGREEMENT

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
THRU A 50-YEAR LEASE ARRANGEMENT





**LEASE AGREEMENT**

This Agreement is executed between:

**CLARK DEVELOPMENT CORPORATION (CDC)**, a government owned and controlled corporation created by virtue of Executive Order No. 80, series of 1993, with principal office at Bldg. 2122, E. Quirino St., Clark Freeport Zone (CFZ), Philippines 2023, represented herein by its President and Chief Executive Officer, **ARTHUR P. TUGADE**, duly authorized for the purpose of this Agreement under CDC Board Resolution No. \_\_\_\_\_ dated \_\_\_\_\_, hereafter referred to as the "**Lessor**";

- and -

\_\_\_\_\_, a corporation duly organized and existing under the laws of the Republic of the Philippines and with principal office at \_\_\_\_\_, represented herein by its \_\_\_\_\_, \_\_\_\_\_, duly authorized for the purpose of this Agreement under its Board Resolution No. \_\_\_\_ dated \_\_\_\_\_, hereafter referred to as the "**Lessee**".

**ANTECEDENTS**

Pursuant to Republic Act No. 7227, otherwise known as **BASES CONVERSION AND DEVELOPMENT ACT OF 1992**, as amended, and Proclamation No. 163, Series of 1993, the Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ) were created consisting of parcels of land formerly occupied by the Clark military reservations and its contiguous extensions;

Executive Order No. 80, series of 1993, authorized the establishment of the CDC as the implementing arm of the Bases Conversion Development Authority ("BCDA") and the development authority for the CSEZ and CFZ;

CDC is the present manager and operator of the former Mimosa Leisure Estate (the "Estate") by virtue of the Writ of Execution dated December 1, 1999 issued by the Regional Trial Court of Angeles City and sustained by the Supreme Court;

The **Lessor**, in the exercise of its powers as defined under Republic Act No. 7227, as amended, and its Implementing Rules and Regulations, Executive Order No. 62 and Executive Order No. 80, approved the privatization of the Estate, through public bidding;

On \_\_\_\_\_, the **Lessee** submitted a bid which was rated as the Highest Ranked Bid and qualified for post qualification;

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
THRU A 50-YEAR LEASE ARRANGEMENT



## ANNEX "E"

On \_\_\_\_\_, the **Lessor**, through Board Resolution No. \_\_\_\_\_, Series of 2015 approved the award of the Project: "Lease, Develop, Manage and Operate the former Mimosa Leisure Estate" to the **Lessee**, whose bid has been determined to be the Highest Ranked and Complying Bid and Most Advantageous to the Government;

Pursuant to the bidding documents, the **Lessor**, hereby leases in favor of the **Lessee** the Property/ies specifically described under the **Special Conditions (SC)** of this Lease Agreement and the **Lessee** accepts the lease subject to the terms and conditions herein set forth;

**ACCORDINGLY**, for and in consideration of the foregoing premises, the parties agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the General and Special Conditions of Lease Agreement hereinafter referred to.

2. The following documents shall be attached, deemed to form and be read and construed as part of this Agreement but shall not affect the effectivity of this Agreement, viz.:

- a. The Terms of Reference for the Project;
- b. The Bidding Documents submitted by the **Lessee**;
- c. The General Conditions (GC) of Lease Agreement and its Appendices;
- d. The Specific Conditions (SC) of Lease Agreement;
- e. The approval of the award and terms and conditions of this Agreement by the **Lessor's** Board of Directors;
- f. The Secretary's Certificate on the **Lessor's** Board Resolution granting authority to its President and Chief Executive Officer to issue the Notice of Award and to sign the Lease Agreement.
- g. The Secretary's Certificate on the **Lessee's** Board Resolution granting authority to its \_\_\_\_\_ to sign this Lease Agreement.
- h. Other related agreements/contracts if any; and

3. Upon signing of this Agreement, the Lessee shall remit to the Lessor the following payments:

3.1. The amount of \_\_\_\_\_ (Php \_\_\_\_\_) (the highest ranked and complying bid) as payment for the right to lease, manage, develop and operate the Estate. This shall be in the form of manager's check or cashier's check;

3.2. Total Advance Lease Payment and Security Deposit equivalent to twelve (12) months Minimum Guaranteed Lease (MGL) or **One Hundred Sixty Million Pesos (PhP160,000,000.)** This shall be in the form of manager's check or cashier's check;

3.3. Performance Security equivalent to twelve (12) months MGL or **One Hundred Sixty Million Pesos (PhP160,000,000.)** This shall be in the form of manager's check or cashier's check

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
THRU A 50-YEAR LEASE ARRANGEMENT





**ANNEX "E"**

IN WITNESS WHEREOF, the parties hereunto have caused their respective duly authorized officers to execute this Agreement on this \_\_\_\_ day of \_\_\_\_\_.

**CLARK DEVELOPMENT  
CORPORATION**  
(Lessor)

(Lessee)

By :

By :

**ARTHUR P. TUGADE**  
President and Chief Executive  
Officer

*Signed in the presence of:*

\_\_\_\_\_

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
THRU A 50-YEAR LEASE ARRANGEMENT



**ANNEX "E"**

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES )  
 ) S.S.

Before me, a Notary Public in and for \_\_\_\_\_, Philippines, this  
\_\_\_\_<sup>th</sup> day of \_\_\_\_\_ 2015, personally appeared:

<i>Name</i>	<i><u>Competent Government ID</u></i>	<i><u>Date &amp; Place Issued</u></i>
-------------	---	---------------------------------------

**ARTHUR P. TUGADE**  
in his capacity as P/CEO of CDC

Known to me to be the same persons who executed the foregoing instrument and they acknowledged to me that the signatures they affixed is their voluntary act and those of the corporation they represent.

This contract refers to a **Lease Agreement** and consists of \_\_\_\_\_ (\_\_\_\_) pages including the Annexes thereof and the one on which this acknowledgment is written, all of which have been signed by the parties and their instrumental witnesses on each and every page thereof.

**IN WITNESS WHEREOF**, I have hereunto affixed my signature and my official seal on the date and place first written above.

Notary Public

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2015.

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
THRU A 50-YEAR LEASE ARRANGEMENT





## ANNEX "E"

### GENERAL CONDITIONS (GC) OF LEASE AGREEMENT (LA)

#### Notes on the GC:

- The **GC** shall be read in conjunction with the **Specific Conditions (SC)** of Lease Agreement and other documents listed therein should be a complete document expressing all the rights and obligations of the **Lessor** and the **Lessee**.
- The **GC** shall not be altered. Any changes and complementary information, which may be needed, shall be introduced only through the **SC**.

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### 1. Governing Law and Language

- 1.1. This Agreement shall be construed, interpreted and implemented in accordance with the laws of the Republic of the Philippines.
- 1.2. All CFZ existing rules and regulations including those that shall be issued and implemented by the **Lessor** shall form an integral part of this Agreement with which the **Lessee** hereby agrees to unconditionally abide.
- 1.3. This Agreement has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Agreement. All communications shall be in the English language. A glossary of common terms in this Agreement is hereto attached as **Appendix I** to define their meanings which shall be interpreted as indicated.
- 1.4. In case of doubt, ambiguity or inconsistency, on the interpretation of terms and conditions appearing in various documents, the following order of preference shall be applied:
  - 1.4.1. Between the **GC** and **SC**, the latter shall prevail.
  - 1.4.2. Between the **Bidding documents submitted** by the **Lessee** and the **Terms of Reference**, the latter shall prevail.
  - 1.4.3. Between the **Terms of Reference** and **SC**, the former shall prevail.
  - 1.4.4. Between other related contracts/agreements and LA, the latter contract shall prevail.
  - 1.4.5. Between the words and numbers, the former shall prevail.

### 2. Parties

The parties to this Agreement shall hereinafter be referred to as the "**Lessor**" and the "**Lessee**" and collectively as the "Parties".

### 3. Property

- 3.1. The Property is specifically described in the **SC**, as defined and delineated in accordance with the **Lessor's** CLUDP.
- 3.2. The location, boundaries and technical description of the Property, as surveyed and certified by the **Lessor** is shown in **Appendix II**, which is the attached Map.
- 3.3. The **Lessee** may also conduct technical survey of the Property for purposes of verifying its exact area and location.

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### 4. Inspection of the Property

- 4.1. The **Lessor** hereby leases the Property to the **Lessee** on an "as-is-where-is" basis.
- 4.2. The **Lessor** makes no warranty as to the conditions or structural integrity, or as to any hidden defect of the Property, which the **Lessee** warrants to know by virtue of the **Lessee's** duty to inspect.
- 4.3. The **Lessee** hereby accepts and confirms that the Property has been inspected prior to the execution of this Agreement and acknowledges that its condition is fully satisfactory.

### 5. Legal Possession of the Property

Upon signing of this Agreement, the legal possession of the Property shall be deemed turned-over to the **Lessee**.

### 6. Building Standards

- 6.1. The prior written consent or approval of the **Lessor** is required for the following activities of the **Lessee**, its employee/s, contractor/s, or agent/s, such as, but not limited to:
  - 6.1.1. Demolition, clearing, removal, disposal and bring-out of scrap materials and debris.
  - 6.1.2. Underground survey to locate and identify possible underground utility lines or other buried items which can pose risk during construction and operation.
  - 6.1.3. Constructions, renovations, repairs, rehabilitation, additions and other improvements in the Property.
- 6.2. In all of the foregoing activities, the costs shall be borne exclusively by the **Lessee**.
- 6.3. All of the foregoing activities shall be undertaken in accordance with applicable laws, rules and regulations including, but not limited to, National Building Code (NBC) of the Philippines, Fire Code of the Philippines and Aviation Laws and Standards and other related laws. Otherwise, the **Lessee** shall be subject to the applicable penalty/ies provided for by law.
- 6.4. Approval and evaluation of site development and building plans shall be done by the **Lessor** in conformity with the NBC and the framework standards and objectives of the **Lessor's** CLUDP and with all zoning regulations, including the provision of setback for expansion or infrastructures such as roads, sidewalks, etc.

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### 7. Environmental Standards

- 7.1. The **Lessee** shall strictly abide with applicable environmental laws and Clark Freeport Zone (CFZ) rules and regulations and shall secure the necessary permits and clearances, such as but not limited to Environmental Certificate Compliance (ECC).
- 7.2. The **Lessee** shall preserve the existing trees located in the Property and shall have provisions for the planting of additional plants, shrubs and trees to enhance the ecological state of the Property.
- 7.3. In cases, however, where the **Lessee** finds it necessary to cut, uproot, transplant or transfer trees, a Special Tree Cutting/Transfer Permit shall be secured from the Department of Environment and Natural Resources (DENR) through the **Lessor**. No tree shall be cut, uprooted, transplanted or transferred without said Permit. Failure to secure the necessary Permit as aforesaid shall subject the **Lessee** to applicable penalty/ies provided for by law.

### 8. Term of Lease

Unless sooner revoked, cancelled or otherwise terminated in accordance with law and/or for reasons stated in **GC 38**, on Grounds for Suspension/Revocation/Cancellation/Termination, the Lease Term of this Agreement shall be within the period stated in the **SC** and may be renewed in writing upon such new terms and conditions mutually agreed upon by the **Lessor** and the **Lessee**.

### 9. Lessee's Registered Business Activity

- 9.1. The business activity to which the **Lessee** is allowed to undertake or engage into under this Agreement is stated in the **SC**.
- 9.2. The **Lessee** shall exclusively use the Property for its registered business activity and there shall be no deviation therefrom without the prior written consent of the **Lessor**.

### 10. Lease Payment

The minimum guaranteed lease (MGL) plus percentage (%) of gross revenues (PGR) and/or percentage (%) of gross rental revenue (PGRR) of the **Lessee**/Sublessee, if applicable, as stated in the **SC** shall be remitted to the **Lessor** without need of demand.

### 11. Grace Period on Lease Payments

- 11.1. The **Lessee** is entitled to non-payment of MGL during the grace period as stated in the **SC**.

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11.2. The grace period is part of the lease term of this Agreement.

### 12. Advance Lease Payment (ALP)

- 12.1. Upon signing of this Agreement, the **Lessee** shall pay to the **Lessor** a non-interest bearing **ALP** in an amount stated in the **SC** in the form of cash, manager's check, bank draft/guarantee confirmed by a local bank or wire transfer only.
- 12.2. The **ALP** shall remain valid until expiration of this Agreement and the **Lessor** shall have full use and complete disposition of the same during the effectivity of this Agreement.
- 12.3. The **ALP** shall be applied to the remaining months prior to expiration of this Agreement. **During the effectivity of this Agreement, the Lessee shall not be allowed to offset or apply the ALP to any monetary obligation of the Lessee under this Agreement.** In case said **ALP** shall not cover the outstanding monthly obligations, the **Lessee** shall pay to the **Lessor** the remaining amount or difference, without need of demand.

### 13. Security Deposit (SD)

- 13.1. Upon signing of this Agreement, the **Lessee** shall put up a non-interest bearing **SD** in favor of the **Lessor** in an amount stated in the **SC** in the form of cash, manager's check, bank draft/guarantee confirmed by a local bank or wire transfer only.
- 13.2. The **SD** shall remain valid until expiration of this Agreement and the **Lessor** shall have full and complete disposition of the same during the effectivity of this Agreement including, but not limited to, application of **SD** to any unpaid rentals.
- 13.3. In case of failure by the **Lessee** to pay the MGL plus PGR and/or PGRR, if applicable, when the same becomes due, the **Lessor** shall have the right to apply the **SD** to said monetary obligation/s and the **Lessee** shall be notified of such application. The **Lessee** shall restore the **SD** to its original amount before the immediately succeeding due date for the payment of the MGL plus PGR and/or PGRR. Should the **Lessor** exercise its rights under this paragraph, the **Lessee** shall be considered in default unless and until it complies with the said restoration of the original amount of the **SD** within the specified period and the interest and penalty for default provided under item 41 shall be applied.
- 13.4. During the effectivity of this Agreement, the **Lessee** shall not be allowed to offset or apply the **SD** to any monetary obligation of the **Lessee** under this Agreement.

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13.5. The **SD** shall be forfeited in favor of the **Lessor** without prejudice to its right to demand payment from the **Lessee** of any of its unpaid monetary obligations in the following events:

13.5.1. Pre-termination of this Agreement by the **Lessee**; or

13.5.2. Termination of this Agreement by the **Lessor**.

13.6. **After the** expiration of this Agreement, the **SD** may be refunded by the **Lessor** less payment of all monetary obligations of the **Lessee** to the **Lessor**, and other monetary dues, such as, but not limited to, **unpaid monthly rentals**, unpaid utility bills and damages which the Property and its improvements may suffer or have suffered. Provided, however, that the **Lessee** shall still be liable for any and all damages that may exceed the **SD**.

### 14. Performance Security (PS)

14.1. Unless otherwise specified in the **SC**, the **Lessee** shall post, maintain and furnish to the **Lessor** a non-interest bearing **PS** in the amount equivalent to the **Lessee's** MGL and in the form of manager's check, cashier's check, wire transfer, bank draft/guarantee confirmed by a local bank, irrevocable letter of credit issued by a universal bank, or a surety bond callable upon demand issued by the Government Service Insurance System (GSIS). This is for submission to the **Lessor** upon signing of this Agreement.

14.2. The **Lessor** shall have full use and complete disposition of the **PS** for the entire duration or effectivity of this Agreement.

14.3. Subject to evaluation and prior written approval of the **Lessor**, the **PS** is replaceable on the second year from signing of this Agreement by a bank draft/guarantee, irrevocable letter of credit issued by a universal bank or surety bond callable upon demand issued by the Government Service Insurance System (GSIS) in the amount provided in the **SC**.

14.4. The **PS** shall be renewed annually and shall be maintained in the amount specified in the **SC** for the entire duration or effectivity of this Agreement.

14.5. The **Lessee** shall submit to the **Lessor** a monthly progress report on the status of the performance commitments stated in the **SC**.

14.6. The **PS** shall be forfeited in favor of the **Lessor** as liquidated damages in any of the following events:

14.6.1. Failure of the **Lessee** to perform any or all such obligations in this Agreement, including the specific performance commitments stated in the **SC**;

14.6.2. Pre-termination of this Agreement; and/or.

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14.6.3. Termination of this Agreement **by the Lessor**.

14.7. **After** the expiration of this Agreement and the Lessee has fully and faithfully performed or complied with any and all of its obligations in this Agreement, the **PS** shall be refunded/returned by the **Lessor**.

### 15. Remittance of Lease Payments

15.1. The **Lessee** shall pay the MGL on or before the fifth (5<sup>th</sup>) day of the current month without the necessity of demand from the **Lessor**.

15.2. The **Lessee** and the Sublessee, if applicable, shall pay the monthly Percentage of Gross Rental Revenues (PGRR) on or before the fifth (5<sup>th</sup>) day of the current month without the necessity of demand from the **Lessor**.

15.3. The **Lessee** and the Sublessee shall pay the monthly Percentage of Gross Revenues (PGR) on or before the fifteenth (15<sup>th</sup>) day of the succeeding month without the necessity of demand from the **Lessor**.

### 16. Gross Revenues, Accounting, Reporting and Inspection of Books

16.1. The **Lessee** and Sublessee(s), if any, shall keep at the Property accurate accounts and records of all its daily revenues and operations.

16.2. The **Lessor** has the right to inspect the books of accounts, records, report of receipts and other pertinent records necessary to determine gross revenues from operations of **Lessee** and Sublessee(s), if any.

16.3. The **Lessee** and the Sublessee(s), if any, shall regularly submit to the **Lessor** the following:

16.3.1. Monthly gross revenues report/sales report within a period of fifteen (15) days from the end of the month.

16.3.2. Quarterly financial statement duly sworn to by the **Lessee**, within thirty (30) days from the end of the quarter.

16.3.3. Audited year-end financial statement within one hundred twenty (120) days from the end of the audit report.

16.4. The **Lessee** and the Sublessee(s), if any, shall shoulder the costs of an audit when requested by the **Lessor** for valid reasons when circumstances so require.

### 17. Other Fees and Charges

The **Lessee** shall pay applicable charges, exaction or fees, as enumerated in the

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attached **Appendix III.** on Schedule of Fees and Charges. The fees and charges may be subject to change with or without prior notice.

### 18. Insurance

- 18.1. The **Lessee** shall insure the Property against all risks, including its interest in all current and prospective immovable facilities and improvements in an amount equal to the maximum insurable value and adjusted yearly commensurate to the increasing value of the **Lessor's** insurable interest. All premium(s) for such insurance coverage shall be for the account of the **Lessee**.
- 18.2. The insurance coverage shall be secured from the GSIS, through the **Lessor**, within thirty (30) days after construction/rehabilitation of structure, wherein the **Lessor** shall be designated as the sole beneficiary **or the proceeds shall be assigned in full to the Lessor**. The insurance coverage shall be renewed annually during the effectivity of this Agreement.
- 18.3. For movable properties, business interruptions and third-party liability insurance coverage shall be secured from any insurance company duly accredited by the Insurance Commission.
- 18.4. In case of loss or damage to the Property, including immovable facilities and improvements of the **Lessee**, during the effectivity of this Agreement, the **Lessor** may, at its option, repair, reconstruct or restore the lost or damaged property using the proceeds from the insurance and in case the insurance proceeds are insufficient, the **Lessee** shall provide the necessary funds to augment the insurance proceeds.

### 19. Other Required Permits and Clearances

The **Lessee** shall apply for the necessary permits and clearances listed in **Appendix IV.** and others which may be required by the **Lessor** prior to the conduct of any business activity within the Property.

### 20. CFZ Registration and Business Operation

- 20.1. The **Lessor** shall issue to the **Lessee** the applicable **CFZ Registration Certificate** after the **Lessee's** compliance with the following:
  - 20.1.1. Payment of all due monetary obligations in this Agreement; and
  - 20.1.2. Submission of clearances and documents as may be reasonably required by the **Lessor** pursuant to this Agreement.
- 20.2. The CFZ registration certificate shall at all times be displayed by the **Lessee** in conspicuous places within the Property.
- 20.3. Unless revoked or withdrawn by the **Lessor** based on **GC 38.** on Grounds for Suspension/Revocation/Cancellation/Termination of this Agreement, the CFZ registration certificate shall be valid for the period indicated therein.

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- 20.4. Prior to its expiration, the **Lessee** shall apply for the renewal of its CFZ registration certificate.
- 20.5. Upon satisfactory compliance and submission of all the requirements in accordance with the **Lessor's** policies, rules and regulations, which are deemed incorporated in this Agreement, the Lessor shall issue the CFZ registration.

### 21. Utilities

- 21.1. The **Lessee** shall avail or obtain its utility requirements from the duly CFZ registered or enfranchised utility providers. The installations cost and monthly bills for such utilities shall be for the sole account of the **Lessee**.
- 21.2. All provisions for utility lines covering the Property shall have a prior coordination with the **Lessor** for endorsement to the proper utility provider.
- 21.3. Utility lines damaged by the **Lessee**, its officers, employees, contractors, workers or representatives shall be repaired, restored or replaced by the utility providers at the expense of the **Lessee**.
- 21.4. Upon prior written notice, the **Lessor** and/or the utility providers shall be allowed access to the Property for inspection and maintenance of utility lines except in cases of emergency.

### 22. Computer Base Link-Up

The **Lessee** shall provide **Lessor** with access/link-up to their computer system and other pertinent documents for purposes of inventory and sales/revenue monitoring. All costs necessary and/or incidental to such access/link-up shall be for the account of the **Lessee**. The **Lessee** shall use a Point of Sale (POS) system, if applicable, and comply with other regulatory measures that may be imposed by the **Lessor** from time to time.

### 23. Labor Standards

- 23.1. The generation of economic activity and employment within the CFZ is a primary consideration of this Agreement. The **Lessee** represents and warrants that at least seventy percent (70%) of its employees shall be **Filipinos**, and whose eligibility shall be registered with the **Lessor**.
- 23.2. In case the required expertise is not available, the **Lessee**, upon written notice to the **Lessor**, may hire said experts outside of Philippines.
- 23.3. To assure the welfare of Filipino workers, the **Lessee** shall comply with the minimum standards under Philippine laws including but not limited to, Labor Code of the Philippines, Minimum Wage Law, Employment and Compensation Law, Social Security Act, and their Implementing Rules and Regulations (IRR).

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### 24. Government Compliance Reports

The **Lessee** shall furnish the **Lessor** with copies of reports which by law or regulation it is required to submit to the National Statistics Office, Bangko Sentral ng Pilipinas, Department of Labor and Employment, Securities and Exchange Commission, Bureau of Internal Revenue, Social Security System and other government agencies concerning its operations, personnel, capital structure and like matters affecting its business as CFZ-registered business enterprise.

### 25. General Maintenance, Repairs Safety, and Security

- 25.1. The **Lessee** shall keep the Property in a clean, safe and sanitary condition and make all the necessary repairs and maintenance which shall be for the sole account of the **Lessee**. In case of non-compliance by the **Lessee**, the **Lessor** may at its sole option, undertake the necessary repairs and maintenance of the Property, cost of which shall be chargeable to the account of the **Lessee**.
- 25.2. The **Lessee** shall properly dispose all its garbage, waste, and other pollutants from the Property in accordance with laws and rules and regulations promulgated by the **Lessor**.
- 25.3. The **Lessee** shall not introduce, keep, deposit or store within the Property, any obnoxious, toxic or flammable material or substance that may pose danger to life, the Property or the environment.
- 25.4. The **Lessee** shall provide its own security on the Property in coordination with the **Lessor**.

### 26. Inspection of Property and Monitoring of Operations

The **Lessor** shall have the right to enter and inspect the Property during business hours with prior written notice and proper coordination with the **Lessee** to conduct regular monitoring on operations and compliances by the **Lessee** and Sublessee, if any, with this Agreement, laws, CFZ rules and regulations such as but not limited to laboratory testing or sampling to ascertain environmental compliance, the costs of which shall be borne by the **Lessee**.

### 27. Access to the Property

Subject to **GC 26**, on the right of the **Lessor** to inspect the Property, only authorized employees, agents or representatives of the **Lessor** shall be allowed access to and from the Property, in connection with the operation and maintenance of the **Lessee's** registered business activity as herein provided.

### 28. Sub-Lease

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- 28.1. Unless otherwise stated in the **SC**, the **Lessee** shall not sublease the property or any portion thereof without securing the prior written consent and approval of the Lessor, subject to the terms and conditions provided in Section 28.2 hereof.
- 28.2. In the event that sublease is allowed, the **Lessee** shall secure a prior written consent and approval from the **Lessor** subject, but not limited, to the following conditions:
- 28.2.1. The **Lessee** must be in good standing such that it has fully complied with all its contractual obligations under this Agreement.
- 28.2.2. The **Lessee** shall act as the surety of the Sublessee for the purpose of this Agreement such that it shall be jointly and solidarily liable in case of default by the latter.
- 28.2.3. Prospective Sublessee shall be technically and financially capable to undertake the proposed business activity in the CFZ as evaluated and determined by the **Lessor**.
- 28.2.4. The Sublessee's use of the subleased Property should comply with the **Lessor's** CLUDP.
- 28.2.5. The Sublease Agreement must provide for a specific provision that the PGRR stated in the **SC** shall be directly remitted by the Sublessee to the **Lessor**.
- 28.2.6. The **Lessor** reserves the right to approve or disapprove the Sublease Agreement.

### 29. Assignment and Transfer of Rights

- 29.1. The **Lessor** shall have the right to assign, transfer or encumber any of its rights, interests and obligations under this Agreement to any other entity upon written notice to the **Lessee** without need of prior consent of the **Lessee**.
- 29.2. The **Lessee** and/or Sublessee, if any, shall have no right to sell, mortgage, assign, transfer or otherwise encumber its leasehold rights, interests and/or obligations under this Agreement without the prior written consent of the **Lessor**.
- 29.2.1. The **Lessee** and/or the Sublessee, if any, shall not sell, transfer or assign the following without the prior written consent of the **Lessor**:
- 29.2.1.1 ownership of the business, in cases of sole proprietorships/partnerships;
- 29.2.1.2 ownership of all or substantially all of the assets, in cases of

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corporation, joint venture, consortia or cooperatives.

- 29.2.2. The **Lessee** and/or the Sublessee, if any, shall not record in its corporate books the sale, transfer or assignment of majority or more of the shares of their respective outstanding capital stock or that will cause a change in the control of the **Lessee** and/or Sublessee without the prior written notice to the **Lessor**.
- 29.3. In any case, upon written approval by the **Lessor** of such assignment, encumbrance and transfer of rights in favor of a third party and cases covered by Section 29.2 hereof, the **Lessee** and Sublessee, if any, shall pay a transfer fee in accordance with the **Lessor's** existing guidelines.
- 29.4 All structures or improvement to be introduced by the **Lessee** and Sublessee, if any, within the Property, as well as the machineries and/or equipment to be used in its operation, shall not be sold, mortgaged, assigned, transferred or otherwise encumbered by the **Lessee** and Sublessee, if any, without the prior written consent of the **Lessor**.
- 29.5. No right, title, interest, or obligation therein shall be conferred on or vested in any party, other than the **Lessee** without said prior written consent.
- 29.6. In the event that the assignment is allowed, the **Lessee** shall secure a prior written consent and approval from the **Lessor** subject, but not limited, to the following conditions:
- 29.6.1. The **Lessee** must be in good standing such that it has fully complied with all its contractual obligations under this Agreement.
- 29.6.2. Prospective Assignee shall be technically and financially capable to undertake the proposed business activity in the CFZ as determined by the **Lessor**.
- 29.6.3. The **Assignee** shall assume the rights and obligations of the **Lessee** pursuant to the Deed of Assignment without prejudice to any of the **Lessor's** right under the assignment.
- 29.6.4 If allowed, the Deed of Assignment is not being entered into for purpose of evading/avoiding settlement of existing obligations entered into by the parties.
- 29.7. The **Lessor** reserves the right to approve or disapprove the Deed of Assignment of Leasehold Right.
- 29.8. In the event of such transfer, assignment or encumbrance, the rights, interests and obligations of the **Lessor** and **Lessee** under this Agreement shall be respected and observed in its entirety and term by the transferee, assignee, and mortgagee.

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**30. Force Majeure**

- 30.1. Neither the **Lessor** nor the **Lessee** shall be held liable for any delay in or failure of performance of any of their respective obligations in this Agreement by reason of *force majeure* provided the proper precautions, due care and reasonable alternative measures were made to avoid or otherwise minimize the delay or failure.
- 30.2. In claiming the benefit of *force majeure*, the **Lessor** or **Lessee**, within fifteen (15) days from the occurrence of *force majeure*, shall give a written notice with sufficient information as to the fact thereof.

**31. Indemnity**

- 31.1. The **Lessee** shall hold the **Lessor** free and harmless from any claim or demand by third persons for loss or damage arising out of the use of the Property by the **Lessee** or its officers, employees, representatives or agents, including but not limited to claims for property damage, personal injury or wrongful death.
- 31.2. The **Lessee** shall secure a General Liability and Third-Party Liability Insurance Coverage in favor of the **Lessor** for such events.

**32. Amendments/Supplements**

- 32.1. This Agreement and any other provisions or terms specifically incorporated herein shall constitute the entire agreement of the **Lessor** and the **Lessee** with respect to the Property.
- 32.2. Any amendment and/or supplements to this Agreement shall be made in writing signed by the **Lessor** and the **Lessee** and shall form part of this Agreement.

**33. Proper Authorizations**

The **Lessor** and the **Lessee** are respectively represented in this Agreement by their duly authorized signatory.

**34. Non-Waiver of Rights**

- 34.1 The failure of either the **Lessor** or the **Lessee** to insist upon a strict performance of any of the terms, conditions and covenants contained herein shall not be deemed a relinquishment or waiver of any right/remedy that the **Lessor** or **Lessee** may have, nor shall it be construed as a waiver, condonation or pardon of any subsequent breach of the same or other terms, conditions or covenants.

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- 34.2 No waiver by the **Lessor** or **Lessee** of any of its rights under this Agreement shall be deemed to have been made unless expressed in writing and signed by their duly authorized representative.

### 35. Pre-termination Procedure

- 35.1 On or before sixty (60) days of the intended date of pre-termination, the **Lessee** shall notify the **Lessor** in writing of its intention to pre-terminate this Agreement and the reason therefor.

- 35.2 Within the given period, the **Lessee** shall turn-over the Property and comply with **GC 37**. on Exit Procedure.

### 36. Renewal or Expiration Procedure

- 36.1 On or before sixty (60) days of the expiration date of this Agreement, the **Lessee** shall notify the **Lessor** in writing of its intention to renew or not to renew this Agreement.

- 36.2 Otherwise, the **Lessee** shall be deemed to have no intention to renew this Agreement.

- 36.3 In the event of non-renewal of this Agreement, the **Lessee** shall turn-over the Property to the **Lessor** and comply with **GC 37**. on Exit Procedure.

### 37. Exit Procedure

- 37.1. In case of pre-termination, termination or expiration of this Agreement, the following procedure shall apply and must be complied with by the **Lessee** without need of judicial action by the **Lessor**:

37.1.1 The **Lessee** shall formally turn-over the Property to the **Lessor** devoid of all the personal properties owned by **Lessee**. If upon turn-over, there remains in the Property personal properties of the **Lessee**, an inventory of personal properties of the **Lessee** and the appraisal of the Property shall be jointly conducted by the **Lessor** and the **Lessee**. Thereafter, the **Lessor** shall padlock the Property. The **Lessor** shall have the right to dispose of these personal properties and use the proceeds thereof to defray the expenses of such and the **Lessee** hereby waives, releases and shall hold harmless the **Lessor** from any and all claims as a consequence thereof

37.1.2 The **Lessee** shall secure from the **Lessor** a Certificate of Clearance from any and all liabilities with the **Lessor**, other pertinent government agencies and utility providers.

37.1.3 The **Lessee** shall surrender to the **Lessor** its CFZ Registration Certificate and Import Permit Pads.

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- 37.2. Failure of the **Lessee** to comply with this provision, the **Lessor** shall apply GC 40. on Termination Procedure of this Agreement.

### 38. Grounds for Suspension/ Revocation/Cancellation/Termination

- 38.1. Any of the following shall be deemed a default or breach of this Agreement and shall constitute as grounds for suspension/ revocation/withholding of incentives, cancellation/termination of this Agreement and take-over of the Property **without need of judicial action**:
- 38.1.1. Failure of the **Lessee** to pay any of its monetary obligations despite final written demand by the **Lessor**;
  - 38.1.2. Use by the **Lessee** of the Property for purposes other than those specified in the **SC**, unless otherwise mutually agreed in writing by the **Lessor** and the **Lessee**;
  - 38.1.3. Failure of the **Lessee** to comply with its performance commitments within the period stated in the **SC**;
  - 38.1.4. Failure of the **Lessee** to conduct its business activity for a period of six (6) months, without any justifiable reason, even if rentals are paid;
  - 38.1.5. Failure of the **Lessee** to comply with laws, rules or regulations including, but not limited to the Labor Code, Minimum Wage Law, Employment and Compensation Law, Social Security Act and such other labor laws, decrees and regulations;
  - 38.1.6. Declaration under oath by the **Lessee** of its insolvency and/or mere filing of a Petition for Insolvency or Petition for Suspension of Payments, or Petition for Corporate Rehabilitation;
  - 38.1.7. Failure of the **Lessee** to comply with the provision on transfer of rights provided in this Agreement;
  - 38.1.8. Violation of the **Lessee** of any other terms and conditions of this Agreement and failure to cure such violation within a period provided by the **Lessor**;
  - 38.1.9. Violation of the **Lessee** of any conditions provided in the **Lessee's** CFZ Certificate of Registration and all other CFZ rules and regulations being implemented and to be issued by the **Lessor**;
  - 38.1.10. Any disagreement, misunderstanding, falling out or intra-corporate dispute between and among the **Lessee's** investors, partners,

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representatives or assigns which in any way impedes or disrupts compliance or implementation of this Agreement;

38.1.11. Smuggling by the **Lessee**, or any other form of illegal activity as defined by law;

38.1.12. Abandonment of the Property by the **Lessee** for a period of thirty (30) days; and

38.1.13. Any other analogous grounds for suspension/withholding of incentives, cancellation/termination of this Agreement and take-over of Property.

38.2. The **Lessee** hereby waives its right to resort to judicial action in connection with the suspension/ revocation/withholding of incentives, cancellation/termination of this Agreement and take-over of the Property and further releases, remises, waives, and forever discharges and hold Lessor, its directors, officers, stockholders, agents, employees, associates and assignees, harmless against losses, damages, costs, fees, expenses, claims, or actions, whether civil, criminal, administrative or otherwise, which were reasonably foreseeable results of or proximately caused by suspension/ revocation/withholding of incentives, cancellation/termination of this Agreement and take-over of the Property. The **Lessee** hereby agrees that any and all acts performed by the **Lessor** under the provisions of this Section may not be subject to any action in court, including but not limited to a Petition for Injunction and/ or Preliminary Injunction.

### 39. Effects and Remedies in cases of Default or Breach

39.1. Default on payment of monetary obligations by the **Lessee** shall have the following effects:

39.1.1 The **Lessor** shall charge an interest of one percent (1%) per month plus penalty thereof of one percent (1%) per month to be computed from the date of delay, which shall be compounded until full payment is remitted and shall be made without demand from the **Lessor**.

39.1.2 The Lessee shall be granted a curing period, which shall in no case exceed sixty (60) days to be counted from the date said payments ought to have been made, within which to settle its outstanding monetary obligations. During said curing period, the Lessee must satisfy all its due monetary obligations including those which correspond to the same curing period.

39.1.3 In case of dispute as to the amount due, the Lessee shall immediately and promptly remit the amount not controverted.

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- 39.1.4 Despite the lapse of the sixty (60) day curing period and the **Lessee** still fails or refuses to settle its outstanding monetary obligations with the **Lessor** without justifiable reason, the **Lessor** shall automatically suspend/withhold the CFZ incentives and privileges granted under its CFZ registration certificate; and authorize the utility providers to discontinue utility services without need of prior notice.
- 39.2. In all other cases of breach of this Agreement, violation of laws, CFZ rules and regulations, the **Lessee** shall be granted a curing period of thirty (30) days from the receipt of written notice issued by the **Lessor** within which to correct/remedy such breach or violation.
- 39.3. In the event of the **Lessee's** failure to cure/remedy any of all the above cases within the given curing period, the **Lessor** shall exercise its rights under **GC 40.** on Termination Procedure.

### 40. Termination Procedure

- 40.1. Failure of the **Lessee** to cure any of the foregoing default/breach within the given periods from receipt of written notice issued by the **Lessor**, shall result to all, but not limited to, the following, without need of judicial action:
- 40.1.1. Revocation of **Lessee's** incentives and privileges;
- 40.1.2. Cancellation/termination of this Agreement and forfeiture of the **ALP**, **SD** and **PS**; and
- 40.1.3. Take-over and padlock the Property.
- 40.2. Any structure and fixed improvements or alterations, of whatever nature, introduced by the **Lessee** shall on each lease anniversary date, be owned by the **Lessor** in such proportion of the tenure over the term of the lease, provided, however, that any and all assessments or taxes during the term of this Agreement on the improvements introduced by the **Lessee** shall be for the exclusive account of the **Lessee**. The structure and fixed improvements or alterations introduced by Lessee shall wholly be owned by the **Lessor** upon the termination or expiration of this Agreement, without need of reimbursement in favor of the **Lessee**. Upon termination or expiration of this Agreement, the **Lessee** shall promptly deliver, surrender, vacate, and turn-over to the **Lessor** the Property, inclusive of all new constructions and improvements introduced during the effectivity of this Agreement, in good and tenantable condition in all respects, reasonable wear and tear excepted, devoid of all occupants, furniture, articles and effects of any kind except the permanent improvements, immovable or real property as defined by the Civil Code of the Philippines and the **Lessor** shall have the right to offer to any interested third parties the lease of the Property without prejudice to the **Lessor's** right to recover and claim from the **Lessee** its outstanding monetary obligations,

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penalties, damages, and fees, and such other reliefs and/or remedies available to the **Lessor** under the law.

- 40.3. All outstanding monetary obligations after the termination of this Agreement shall be charged damages at the rate of three percent (3%) per month until full payment by the **Lessee**.
- 40.4. Should the **Lessee** fail to surrender, vacate, and turn-over the Property after termination of this Agreement, the **Lessor**, its employees, representatives or agents are hereby authorized to enter the Property to conduct inventory and assessment of the Property without incurring any liability or damages. Any and all personal properties found therein shall be transferred and deposited for storage at the **Lessee's** expense.
- 40.5. The **Lessor** shall notify in writing the **Lessee** at the address stated in the **SC** of the transfer or deposit of the personal properties and shall be given a period of thirty (30) days from receipt thereof to claim and pay in full any and all expenses incurred for the storage plus thirty percent (30%) penalty on the entire amount due. If after the lapse of the period provided above and the **Lessee** refuses and/or fails to claim such properties, the properties shall be deemed abandoned and the **Lessor** shall have full and complete ownership thereof.

### 41. Lien over Personal Properties

The **Lessor** shall have preferred lien upon all merchandise, equipment, and other personal properties found in the Property, if any, to secure the payment of all claims and damages the **Lessor** may have against the **Lessee**.

### 42. Venue and Attorney's Fees

- 42.1. Any suit or claim arising from this Agreement shall exclusively be filed before the courts of Angeles City, Philippines.
- 42.2. If the services of a lawyer/counsel is engaged by the **Lessor** or **Lessee** to enforce its rights under this Agreement, losing party shall be liable for payment of attorney's fees equivalent to ten percent (10%) of the claim, but shall in no case be less than Twenty Thousand Pesos (Php20,000.00) nor more than One Hundred Thousand Pesos (Php100,000.00).

### 43. Notices

- 43.1. Any notice, request or consent required or permitted to be given or made pursuant to this Agreement shall be in writing and shall be transmitted to the address and authorized representative stated in the **SC**.
- 43.2. The **Lessor** and **Lessee** may change their address and/or contact information at any time by giving written notice of such change to the other party in the manner provided herein. All notices shall be deemed to have given or made

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on the date of receipt, either by personal delivery, registered mail, courier or facsimile.

- 43.3. Upon the **Lessee's** request, the **Lessor** may provide copies of any notice given to the **Lessee** to any sub-lessee, mortgagee, or collateral assignee of the **Lessee**.

### 44. Disclosure and Confidentiality

- 44.1. All information provided to the **Lessor** by authorized representatives of the **Lessee** for purposes of or in connection with this Agreement are, to the best knowledge of the **Lessee**, true and accurate in all material respects on the date as of which such information is dated, conveyed, or disclosed.
- 44.2. Except for disclosures required under the laws, rules and regulations of the Philippines or pursuant to orders of courts or other governmental agencies, the **Lessor** and the **Lessee** shall not, without the prior written consent of the other, make any disclosure to a third party of this Agreement, any of the terms contained herein, or any information, reports, or filings required under the terms of this Agreement. This provision shall survive the termination of this Agreement.

### 45. Warranty Against Corruption

- 45.1. The **Lessee** hereby warrants that:

45.1.1 The **Lessee**, its officers, employees and/or members of its Board of Directors has/have not offered any officer, employee and/or member of the Board of Directors of the **Lessor** any consideration, in whatever form or amount, nor has it exerted or utilized any corrupt or unlawful acts or influences to secure or solicit the approval of any agreement with the **Lessor**.

45.1.2 The **Lessee**, its officers, employees and/or members of its Board of Directors shall not pay nor give any consideration, in whatever form and amount, nor subcontract any portion or portions of its obligations under any Agreement with the **Lessor** to any person officer, employee or member of the Board of Directors of the **Lessor** who is directly or indirectly involved in the negotiation, perfection and or implementation of this Agreement, nor to any company in which said officer, employee or director has a financial interest.

- 45.2. Any violation by the **Lessee** of this certification/warranty shall constitute a sufficient ground for the automatic termination of any agreement with the **Lessor** without need of any court action, and without prejudice to the filing of administrative, civil or criminal actions under applicable laws against the **Lessee** and/or its representatives and the **Lessor's** concerned officers, employees and directors.

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46. **Installation of Closed Circuit Television (CCTV) Camera System** – The **Lessee** shall install a CCTV camera system within the leased premises as a requirement for safety and business monitoring purposes.

47. **Fire Prevention System** – The **Lessee** shall install a fire prevention system to for safety purposes.

48. **Binding Effect**

This Agreement shall be binding upon, inure to the benefit of and be enforceable by or against the **Lessor** and the **Lessee**, and their respective nominee(s), successor(s), and/or assignee(s).

49. **Registration of Agreement**

The **Lessee** may, at its option and at its expense, cause this Agreement to be registered with the appropriate Registry of Deeds.

50. **Other Special Conditions/Undertakings of the Lessee**

Unless otherwise stated in the **SC**, the **Lessee** shall not be subject to any other special conditions or undertakings.

51. **Separability**

Should any of the provisions of this Agreement be held or declared invalid, or unenforceable in any respect under any applicable law, rules, regulations, or decision of any court or authority of competent jurisdiction, all the remaining provisions not otherwise affected thereby shall continue to be in force and effect.



**SPECIFIC CONDITIONS (SC)**  
**OF LEASE AGREEMENT**

**Notes:**

The provisions in this **SC** are intended to assist the **Lessor** in providing contract-specific information in relation to corresponding provisions in the **GC**.

The provisions of this **SC** complement the **GCC**. In preparing the **SC**, the following aspects should be checked:

- (a) Information that complements provisions of **GC** must be incorporated.
- (b) Amendments and/or supplements to provisions of **GC**, as necessitated by the circumstances on the use of the Property, must also be incorporated in the **SC**.

However, no special condition which defeats or negates the general intent and purpose of the provisions of **GC** should be incorporated herein.

**SPECIFIC CONDITIONS (SC)**  
**OF LEASE AGREEMENT**

GCLA	PROVISION						
2.	The <b>Lessor</b> is <b>Clark Development Corporation</b> .						
	The <b>Lessee</b> is _____.						
3.1.	<p>The <b>Property</b> is specifically described as follows:</p> <p>LOCATION: Within the Clark Freeport Zone specifically mentioned in Annex "A" of the Terms of Reference (TOR) for PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES, THRU A 50-YEAR LEASE ARRANGEMENT:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <th>Leased Property</th><th>Land/Floor Area</th></tr> <tr> <td>Land:</td><td>201.64 hectares</td></tr> <tr> <td>Total area</td><td>201.64 hectares</td></tr> </table> <p>The <b>Property</b> shall include the items mentioned in Annex "B" of the Terms of Reference (TOR) for PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES, THRU A 50-YEAR LEASE ARRANGEMENT .</p> <p>The <b>Property</b> shall also include the movables that will be subject of joint inventory by the <b>Lessor</b> and the <b>Lessee</b>.</p> <p>The <b>Property</b> shall also include existing deepwells. The Lessee may negotiate with the existing water concessionaire, its operation, management and maintenance.</p>	Leased Property	Land/Floor Area	Land:	201.64 hectares	Total area	201.64 hectares
Leased Property	Land/Floor Area						
Land:	201.64 hectares						
Total area	201.64 hectares						
8.	The Term of this Agreement is <b>fifty (50) YEARS</b> commencing from the signing of this Lease Agreement, renewable for another twenty-five (25) YEARS upon mutual agreement by the parties, provided that there is no default on the part of the Lessee, provided further that the Lessee is in good standing, and provided <b>finally</b> that the commercial terms shall be based on the prevailing market rates during the period of renewal.						
9.1.	The <b>Lessee's CFZ registered business activity</b> is:						

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	"To engage in and undertake the business of establishing, operating, maintaining, and/or managing tourism related activities, such as resorts, golf courses, theme parks, casinos, banking facilities, social athletics, country clubs, lodges, hotels, inns, restaurants, wellness centers, laundry, salon, convenience stores, sports and entertainment not prohibited by law and other allied businesses, as well as any and services and facilities incident thereto"
10.	<p>The <b>Lessee's lease payments</b> are as follows:</p> <p><b>ANNUAL MINIMUM GUARANTEED LEASE (AMGL) PLUS Percentage of Gross Revenues (PGR). PLUS, in the event of a Casino Operation, Percentage of Gross Revenues (PGR) from Casino Operation based on prevailing rates.</b></p> <p><b>1.4. AMGL</b> – Php160 Million with 10% compounded increase starting on year six (6) and every three (3) years thereafter.</p> <p><b>1.5. PGR</b> – 2% of gross revenue generated from the entire estate whether from own operations of the lessee, sublessees, affiliates and subsidiaries and similar arrangements for present and future facilities.</p> <ul style="list-style-type: none"> <li>• For purposes of computing the percentage of gross revenues, the LESSEE, SUBLESSEE/ CONCESSIONAIRE/ CONSIGNOR AND/OR ASSIGNEE'S Gross Revenues shall be defined as follows: All income earned (collected or uncollected) minus service charge, Gross sales on merchandise, rental revenues, and/or gross revenues from services, such as but not limited to the following: <ul style="list-style-type: none"> <li>g) Room revenues/charges</li> <li>h) Food and beverage revenues/sales</li> <li>i) Fees on recreational facilities (themeparks, spa, salons, sports and game rooms, etc.)</li> <li>j) Membership dues allocated as consumable</li> <li>k) Revenues derived from sale of food and beverage and rental of convention, function rooms, karaoke, and other facilities</li> <li>l) Sale of merchandise on convenience store, souvenir shops, kiosks, tee houses and other similar establishments</li> </ul> </li> <li>• <b>"Sublessee"</b> refers to any sole proprietorship, partnership, corporation or any juridical entity distinct and separate from the <b>Lessee</b> and has subleased a portion or portions of the Property. It shall include concessionaire(s), consignor(s), or any individual/entity with business arrangement with the <b>Lessee</b>, whether written or otherwise, wherein specific business operations are not directly handled or managed by the <b>Lessee</b>.</li> </ul>

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	<p><b>PLUS</b></p> <p><b>1.3 PGR from Casino Operations</b>, if any, based on prevailing policy on CDC share at the time of actual operation.</p>
<b>11.1.</b>	<p><b>Remittance of Lease Payment</b></p> <p>Minimum Guaranteed Lease - Lease payment shall commence after 1 year from signing of the LA and be paid monthly on or before the fifth (5<sup>th</sup>) day of the current month without the necessity of demand from the Lessor.</p> <p>Percentage of Gross Revenues - Lease payment shall commence after 1 year from signing of the LA and be paid monthly on or before the fifteenth (15<sup>th</sup>) day of the succeeding month without the necessity of demand from the Lessor.</p>
<b>12.1.</b>	<p><b>Advance Lease Payment</b> shall be the amount equivalent to six (6) months Minimum Guaranteed Lease payments (MGL) or <u>[Eighty Million Pesos (Php 80,000,000.00)] payable upon</u> signing of this Agreement in the form of manager's/cashier's check..</p>
<b>13.1.</b>	<p>The <b>Security Deposit</b> shall be in the amount equivalent to six (6) months Minimum Guaranteed Lease payments (MGL) or <u>[Eighty Million Pesos (Php 80,000,000.00)] payable upon</u> signing of this Agreement in the form of manager's/cashier's check.</p>
<b>14.1.</b>	<p>The <b>Performance Security</b> shall be in the amount equivalent to twelve (12) months Minimum Guaranteed Lease payments (MGL) or <u>[One Hundred Sixty Million Pesos (Php 160,000,000.00)] payable upon</u> signing of this Agreement in the form of manager's/cashier's check.</p>
<b>14.5</b>	<p>The following are the performance commitments of the <b>Lessee</b>:</p> <p>a) <b>Investment Commitment</b> - Minimum Investment commitment amounting to Php5 Billion which should be completed within five (5) years upon approval of the Detailed Development Plan based on the timetable submitted by the <b>Lessee</b>.</p> <p>Starting Year 6 from signing of the LA, a Capital Replacement Fund, equivalent to 3% of gross revenues from the proceeding period, shall be annually set aside for the improvement or replacement of furnishings, fixtures and equipments and other capital items that have worn-out or otherwise need replacing in order to continue the operation of the estate and to remain competitive in the market.</p> <p>b) <b>Standards</b> - All designs, construction, renovation, ground improvement and other related developments shall be in accordance with the following standards:</p>

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	<ul style="list-style-type: none"> <li>• National Building Code of the Philippines</li> <li>• Department of Environment and Natural Resources(DENR) Laws and its IRR's</li> <li>• Civil Aviation Authority of the Philippines (CAAP) for Height Clearance</li> <li>• Construction and Utility Clearances/Permits from Clark Development Corporation</li> </ul> <p>c) Minimum Design as may be applicable:</p> <ol style="list-style-type: none"> <li>1. For Hotel The facade, architectural features and general construction of the building shall have the distinctive qualities of a four (4) star hotel.</li> <li>2. For Villa and Other Structures Villas and other structures should have an aesthetic appeal. All rooms, facilities and amenities shall have equivalent quality to those of a 4 star hotel.</li> <li>3. Landscaping Landscaping and hardscaping at the front garden, exterior facade and other outdoor spaces like pools must have a cohesive design to create a joyful environment around the buildings and give the guests or occupants a healthy breath, good appearance and natural beauty.</li> <li>4. Golf Course – Championship golf course</li> </ol> <p>d.) Submit to CDC, for approval, the <b>Detailed Development Plan</b> for the Estate within six (6) months from the signing of the LA. It is understood that the CDC-approved <b>Detailed Development Plan</b> shall be made part of the LA executed between CDC and the Winning Bidder. The <b>Detailed Development Plan</b> shall, at the minimum, contain the following information:</p> <ol style="list-style-type: none"> <li>1. site development plan which includes the proposed land uses which must conform with the general land use identified for the Estate;</li> <li>2. conceptual design, features and amenities;</li> <li>3. detailed design standards and guidelines;</li> <li>4. development timetable/development phasing plan, including major development milestones (in terms of percentage completion) and start-end date of construction/development, timetable for leasing, including start date of marketing and actual leasing operations; and</li> <li>5. schedule of the capital investments.</li> </ol>
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28.1.	Subleasing is allowed, provided that the Lessor's Consent be secured and the Sub-lessee shall pay the corresponding percentage of gross revenues defined in SC10.B
43.1.	<p>The <b>LESSOR's</b> address for Notices/communications is:</p> <p><b>ARTHUR P. TUGADE</b>  <i>President and Chief Executive Officer</i>  Office of the President and Chief Executive Officer  <b>CLARK DEVELOPMENT CORPORATION</b>  Bldg. 2122, CDC Corporate Center  E. Quirino St., Clark Freeport Zone  2023 Philippines  Telefax No. (045) 599-9000 local 902</p> <p>The <b>LESSEE's</b> address for Notices/communications is:  <i>[Same format as above, please insert address including name of the authorized representative, fax and telephone number]</i></p>
50.	<p><b>Other Special Conditions:</b></p> <ol style="list-style-type: none"> <li>1. Payment of the right to lease equivalent to _____ (Php _____) upon signing of the Lease Agreement.</li> <li>2. Turn-over of CDC's movable properties within the Estate to the Lessee shall commence upon signing of the Lease Agreement, which will form part of the Leased Property subject to surrender value upon termination/expiration of this Agreement.</li> <li>3. The Lessee shall establish and register the NC under applicable laws, rules and regulations within one (1) month upon signing of this Agreement.</li> </ol> <p>The Lessee shall assume the cost in initiating the legal, financial, administrative, technical and other processes needed to incorporate and register the said corporation with the Philippine Securities and Exchange Commission (SEC). On best effort basis, Lessor shall assist the Lessee in securing all the government approvals required for the project.</p> <ol style="list-style-type: none"> <li>4. The Lessor shall be entitled to one (1) Board seat in the NC with the rights of minority stockholder as provided for in the Corporation Code.</li> </ol> <p>4.1 CDC shall have the right to nominate a director in the NC.</p> <p>4.2 Lessee agrees to cast its votes in favor of the CDC nominee to be elected as a director.</p> <p>4.3 Lessee agrees not to remove the CDC nominee director except for</p>

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	<p>a cause.</p> <p>4.4 In case of death, resignation, disqualification, or removal for cause of the CDC nominee director, the same provision shall likewise apply to the replacement or substitute director who shall serve the unexpired term of his/her predecessor.</p> <p>4.5 The breach of these provisions shall be a ground for the suspension/revocation/cancellation/termination of the Lease Agreement without need of judicial action.</p> <p>5. The Lessor shall be given Five percent (5%) Equity in the NC.</p> <p>5.1 It shall be five percent (5%) of all classes of shares to be issued (present and future), with pre-emptive rights, free from all liens and encumbrances, all taxes thereon fully paid, without any payment from CDC or obligation by CDC to reimburse anybody, and represented by duly-issued stock certificates.</p> <p>6. Recognition of the golf playing rights: The Lessee shall recognize the playing privileges of the members of the former Mimosa Golf &amp; Country Club (MGCC) as endorsed in good standing by CDC.</p> <p>7. The existing concessionaires/long staying guests in the estate shall be turned-over to the Lessee.</p> <p>8. Lessee shall secure all necessary permits and clearances from concerned CDC offices and appropriate government agencies to ensure that its operations in the leased property comply with existing rules and regulations.</p> <p>9. Non-recovery by the Lessee and/or Sub-Lessee of improvements in the leased property in case of pre-termination of the Lease Agreement pursuant to GC 35.</p> <p>10. Recovery of property of CDC if leased property is not developed according to the timeframe committed.</p> <p>11. Hiring of persons with disabilities (PWDs) or Aetas, on a best effort basis.</p> <p>12. Commitment to use LED lighting or any renewable energy sources.</p> <p>13. The following provisions under the GC are hereby amended, replaced and/or supplemented by the following:</p>
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SECTION	PROVISION
14.3	Upon full compliance of the performance commitments of the Lessee as validated and approved by the Lessor, the PS shall be reduced in the amount equivalent to three (3) months Minimum Guaranteed Lease payments of <u>(Forty Million Pesos (Php 40,000,000.00) which shall be maintained for the entire duration or effectivity of this Agreement.</u>
14.4, 14.5 & 14.7	Not applicable.
31.	<p><b>Indemnification.</b> CDC shall hold the winning bidder free and harmless from any liabilities arising from the following pending cases:</p> <ul style="list-style-type: none"> <li>a. MLRC vs. CDC and PAGCOR consolidated cases, Civil Case Nos. 12761, 13344 and 13347</li> <li>b. Arjan Trading Corporation vs. Jose Antonio Gonzales and/or MLRC, CDC and PAGCOR, Civil Case No. 10447</li> <li>c. Asset Pool A (SPV-AMC), Inc. vs. CDC, Civil Case No. 13926</li> <li>d. Asset Pool A (SPV-AMC), Inc. vs. CDC, G.R. No. 205915</li> <li>e. Asset Pool A (SPV-AMC), Inc. vs. CDC, G.R. No. 216793</li> <li>f. Asset Pool A (SPV-AMC), Inc. vs. CDC, COA CP Case No. 2010-11</li> <li>g. Asset Pool A (SPV-AMC), Inc. vs. CDC, G.R. No. 213058</li> <li>h. CDC vs. Association of Clark Mimosa Employees (ACME), CA-G.R. SP No. 138893</li> <li>i. CDC vs. Association of Clark Mimosa Employees (ACME), CA-G.R. SP No. 135199</li> <li>j. Angelito M. Padilla vs. CDC-SPRO, Roxanne M. De Leon, Danilo D. Teria, and Teresito T. Tiotuyco, NLRC Case No. RAB-III-04-21454-14</li> <li>k. Jose John Giovanni Cabarle &amp; Oliver Fernandez vs. Mimosa Golf &amp; Country Club, SEAD-NLRC-RAB-III-06-1116-14</li> <li>l. Isais L. Juliao Jr. vs. Mimosa Golf &amp; Country Club, SEAD-NLRC-RAB-III-07-1168-14</li> <li>m. Angelito M. Padilla vs. CDC-SPRO, Roxanne M. De Leon, Danilo D. Teria, and Teresito T. Tiotuyco, NLRC Case No. RAB-III-08-2180-14</li> <li>n. Aldorhai C. Lacson vs. CDC-SPRO, Roxanne M.</li> </ul>

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## ANNEX "E"

			<p>De Leon, and Danilo D. Teria, NLRC Case No. 04-22738-15</p> <p>o. Sa Chul Hong, Chang Sup Shim and Jaesung Shim vs. CDC, Civil Case No. 13651</p> <p>p. Ponciano Dela Cruz vs. CDC represented by its Acting Chairman/President&amp;CEO, Gen. Eduardo S.L. Oban Jr. and Mr. Teresito T. Tiotuyco in his capacity as the present Acting General Manager of Clark Development Corporation – Special Project for Resort Operation (CDC-SPRO), Civil Case No. 12-2916</p>
		<b>38.1</b>	Non-compliance with any and all provisions in this SC shall constitute an event of default and shall be governed by the provisions under Section 38.

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## ANNEX "F"

### CHECKLIST OF DOCUMENTS

Reference in the TOR	Document	Remarks
<b>Eligibility Documents</b>		
Annex G-1	Duly notarized Eligibility Statement for Corporation	Mark as "A"
Annex G-2	Duly notarized Joint Eligibility Statement for Consortium	
Annex H	Bidder's Profile (or all members in case of Consortium)	Mark as "A-1"
Annex I	Summary of Projects of the Corporation or, if a Consortium, the member which meets the Technical Capability requirement that it has been in the business of mixed-use, tourism-related activities <i>equivalent to at least fifty percent (50%) of the Php5 Billion committed investment.</i>	Mark as "A-2"
	<u><i>Additional Requirement for a Consortium:</i></u>  <i>If the Bidder is a consortium, the Bidder must submit, as part of its Eligibility Statement, a Memorandum of Agreement (MOA) executed by and among its members. The MOA shall contain the required information as specified in Article VIII, Section 1.2 (viii) of the TOR.</i>	Mark as "A-3"
	Valid Tax Clearance Certificate issued by the BIR National Office in accordance with Executive Order No. 398 Series of 2005.  For foreign corporations, the equivalent document duly authenticated by the Philippine Consulate based in the foreign company's domicile. A Delinquency Verification Certificate issued by the Collection and Enforcement Division of the BIR to non-resident foreign corporations/non-resident aliens not engaged in trade or business attesting to the fact that the taxpayer has no outstanding final assessment notice and/or delinquent account, may also be required.	Mark as "B"
	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 a consortium, the available cash balances or credit lines shall be the aggregate amount of all members).	Mark as "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 consortium), or for foreign corporations, the equivalent document duly authenticated by the Philippine Consulate based in the foreign company's domicile.	Mark as "D"
	Articles of Incorporation and By-Laws of the Bidder (or all members in case of consortium), and any amendments. For foreign corporations, the certified copies of the original Articles of Incorporation duly filed in the country of incorporation subject to authentication and translation, if needed, by the nearest Philippine embassy or consulate.	Mark as "E"

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## ANNEX "F"

	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. For foreign corporations, the certified copies of the required documents shall be submitted, subject to authentication and translation, if needed, by the nearest Philippine embassy or consulate.	Mark as "F"
	Latest Audited Financial Statements	Mark as "G"
Annex J	Compliance with the Technical Requirements as stated in Article IV.1A	Mark as "H"
Annex K	Compliance with the Financial Requirements stated in Article IV.1B	Mark as "I"
<b>Financial Proposal</b>		
Annex L	Final Bid Letter	
	Bid Security	

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
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**REPUBLIC OF THE PHILIPPINES**  
**CITY OF \_\_\_\_\_) s.s.**

**ELIGIBILITY STATEMENT**

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

1. The (*name of Corporation*) (Bidder) intends to participate in the bidding for the Privatization of the Former Mimosa Leisure Estate covering 201.64 Hectares, thru a 50-Year Lease Arrangement located in the Clark Freeport Zone, 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 is not considered in default of its financial or other obligations, in any past or current project being undertaken with CDC, BCDA or any of its subsidiaries, at the day of submission of bids;
5. The Bidder, its parent company, or its subsidiaries, or affiliates, have no pending case or claim against CDC, BCDA and its subsidiaries;
6. The Bidder has no pending or unpaid tax liabilities in the Philippines;
7. The Bidder accepts the Terms of Reference, qualification criteria established by CDC, commitment to abide by the decision of the CDC Board, and undertaking not to seek provisional remedies including but not limited to, temporary restraining orders or preliminary injunctions, or preliminary mandatory injunctions, against CDC its Board of

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## ANNEX "G-1"

Directors, Officers, Staff, Consultants, and Authorized representatives/personnel, which will unduly stop, restrain, delay or prevent CDC from awarding and executing a contract with the winning bidder or against any decision of the CDC in connection with the evaluation, award, suspension or termination of the bidding process.

8. The Bidder commits to abide by the decision of the CDC Board.

**Free and Harmless.** CDC, 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.

**Undertaking.** All Bidders participating in this bidding, undertake not to seek provisional remedies including but not limited to, temporary restraining orders or preliminary injunctions, or preliminary mandatory injunctions, against CDC its Board of Directors, Officers, Staff, Consultants, and Authorized representatives/personnel, which will unduly stop, restrain, delay or prevent CDC from awarding and executing a contract with the winning bidder or against any decision of the CDC in connection with the evaluation, award, suspension or termination of the bidding process.

**Indemnity.** The Winning Bidder shall hold CDC free and harmless from any liability, costs and expenses, suit or allegation arising out of the participation by the bidder/s in this bidding procedure.

The decision of the CDC Board is final. Prospective bidder shall submit the said Undertaking together with the Eligibility Documents to CDC.

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 CDC;
10. The Bidder, its Directors, Officers and staff or any representative thereof, shall not attempt to establish any contact with any of CDC'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 SAP-Com, through its Chairperson.

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
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## ANNEX "G-1"

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 CDC, 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 CDC 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 CDC 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 CDC to verify statements and information provided in this statement.

**IN FAITH WHEREOF**, I have hereunto affixed my signature this \_\_\_\_ day of \_\_\_\_\_ 2015 at \_\_\_\_\_, Philippines.

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

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_ day of \_\_\_\_\_ 2015, affiant exhibiting to me his competent evidence of identity (e.g. Passport, Driver's License, etc.) \_\_\_\_\_ issued at \_\_\_\_\_, Philippines on \_\_\_\_\_, 2015.

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**ANNEX "G-1"**

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## 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 Privatization of the Former Mimosa Leisure Estate covering 201.64 Hectares, thru a 50-Year Lease Arrangement located in the Clark Freeport Zone, Philippines.
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);
  - b. Summary of Projects of the member which meets the Technical Capability requirement (Annex A-2); and
  - c. *Memorandum of Agreement* executed by and among all members of the Consortium (Annex A-3).
4. The Consortium (and all its members), its parent company or subsidiaries or affiliates with common controlling shareholdings is not considered in default of its financial or other obligations, in any past or current project being undertaken with CDC, BCDA or any of its subsidiaries, at the day of submission of bids;

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## ANNEX "G-2"

5. The Consortium (and all its members), its parent company, or its subsidiaries, or affiliates, should have no pending case or claim against CDC, BCDA and its subsidiaries;
6. The Consortium (and all its members) has no pending or unpaid tax liabilities in the Philippines;
7. The Consortium (and all its members) accepts the Terms of Reference, qualification criteria established by CDC, commitment to abide by the decision of the CDC Board, and undertaking not to seek provisional remedies including but not limited to, temporary restraining orders or preliminary injunctions, or preliminary mandatory injunctions, against CDC its Board of Directors, Officers, Staff, Consultants, and Authorized representatives/personnel, which will unduly stop, restrain, delay or prevent CDC from awarding and executing a contract with the winning bidder or against any decision of the CDC in connection with the evaluation, award, suspension or termination of the bidding process.
8. The Consortium (and all its members) commits to abide by the decision of the CDC Board.

**Free and Harmless.** CDC, 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.

**Undertaking.** The Consortium (and all its members) participating in this bidding, undertake not to seek provisional remedies including but not limited to, temporary restraining orders or preliminary injunctions, or preliminary mandatory injunctions, against CDC its Board of Directors, Officers, Staff, Consultants, and Authorized representatives/personnel, which will unduly stop, restrain, delay or prevent CDC from awarding and executing a contract with the winning bidder or against any decision of the CDC in connection with the evaluation, award, suspension or termination of the bidding process.

**Indemnity.** The Consortium (and all its members) shall hold CDC free and harmless from any liability, costs and expenses, suit or allegation arising out of the participation by the bidder/s in this bidding procedure.

The decision of the CDC Board is final. Prospective bidder shall submit the said Undertaking together with the Eligibility Documents to CDC.

## ANNEX "G-2"

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 CDC;
10. The Consortium (and all its members) and their Directors and Officers, shall not attempt to establish any contact with any of CDC'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 SAP-Com, through its Chairperson.

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

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
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**ANNEX "G-2"**

**IN FAITH WHEREOF**, we have hereunto affixed our signatures this \_\_\_\_ day of \_\_\_\_\_ 2015 at \_\_\_\_\_, Philippines.

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

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

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

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

**SUBSCRIBED AND SWORN TO** before me this day \_\_\_\_ of \_\_\_\_\_ 2015, affiants exhibiting to me their competent evidence of identity as provided hereunder:

<b>NAME</b>	<b>COMPETENT EVIDENCE OF IDENTITY</b>	<b>Validity Date and Place of Issuance</b>

**NOTARY**

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**BIDDER'S PROFILE****I. GENERAL INFORMATION**

Business Name:	
Brief Description of Business:	
Address:	
Contact No/s.:	
E-mail Address:	
Year Established/Registered:	Place of Registration:
Ownership Structure	
% owned by Filipino:	% owned by Foreign:

**II. OWNERSHIP AND MANAGEMENT**

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

Governing Board	
Name	Designation

Key Officers	
Name	Position/Nationality

(use additional sheets if necessary)

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**ANNEX "H"****III. FINANCIAL CAPACITY**

Key Banking Relations			
		As of <i>(the month prior to the deadline for submission of bids)</i> 2015	
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:

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

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

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

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

**SUMMARY OF COMPLETED PROJECTS**

The following Similar Projects are in the business of mixed-use, tourism-related activities equivalent to at least fifty percent (50%) of the **Php5 Billion committed investment**.

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

*(Use additional sheets if necessary)*

I hereby certify that the above statements are true and correct and I am duly authorized to make this statement for and

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
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**ANNEX "I"**

in behalf of *(Business Name)*:

(Signature)

Authorized Representative

Name:

Position:

Date:

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**STATEMENT OF CONFORMITY WITH THE MINIMUM INVESTMENT COMMITMENT AND  
STARDARDS  
(TECHNICAL)**

DESCRIPTION	STATEMENT OF CONFORMITY State "Comply" or "Not Comply"
<p><b>INVESTMENT COMMITMENT:</b></p> <p>Minimum Investment commitment amounting to Php5 Billion which should be completed within five (5) years upon approval of the Detailed Development Plan based on the timetable submitted by the <b>Lessee</b>. Starting Year 6 from signing of the LA, a Capital Replacement Fund, equivalent to 3% of gross revenues from the proceeding period , shall be annually set aside for the improvement or replacement of furnishings, fixtures and equipments and other capital items that have worn-out or otherwise need replacing in order to continue the operation of the estate and to remain competitive in the market place.</p>	
<p><b>DRAFT LEASE AGREEMENT</b></p>	
<p><b>STANDARDS:</b></p> <p>The Estate is to be developed in accordance with the principles of "green, smart and disaster-resilient developments". All designs, construction, renovation, ground improvement and other related developments shall be in accordance with the following standards:</p> <ul style="list-style-type: none"> <li>• National Building Code of the Philippines</li> <li>• Department of Environment and Natural Resources(DENR) Laws and its IRR's</li> <li>• Civil Aviation Authority of the Philippines (CAAP) for Height Clearance</li> <li>• Construction and Utility Clearances/Permits from Clark Development Corporation</li> </ul>	
<p><b>MINIMUM DESIGN:</b></p> <p><b><u>For Hotel, Villas, and Other Structures.</u></b> The façade and architectural features and general construction should have an aesthetic appeal that blends with the generally intended development for the estate meeting international standards.</p> <p><b><u>Landscaping</u></b> Landscaping and hardscaping at the front garden, exterior facade and other outdoor spaces like pools must have a cohesive design to create a joyful environment around the buildings and give the guests or occupants a healthy breath, good appearance and natural beauty.</p>	

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## ANNEX "J"

<b>Golf Course</b> – Championship golf course	
<b>Recognition of the golf playing rights.</b>  <b>Playing Privileges.</b> The NC to be formed by the Winning Bidder shall recognize the playing privileges of the members of the former Mimosa Golf & Country Club (MGCC) as endorsed in good standing by CDC.	

**IN FAITH WHEREOF**, I have hereunto affixed my signature this \_\_\_\_ day of \_\_\_\_\_  
2015 at \_\_\_\_\_, Philippines.

\_\_\_\_\_  
(Signature)

Authorized Representative

Name:

Position:

Date:

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
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## STATEMENT OF CONFORMITY WITH OTHER FINANCIAL REQUIREMENTS

DESCRIPTION	STATEMENT OF CONFORMITY State "Comply" or "Not Comply"
<p><b>1. Payment of Lease.</b> Annual Minimum Guaranteed Lease (AMGL) PLUS Percentage of Gross Revenues (PGR), PLUS, in the event of a Casino operation, Percentage of Gross Revenues (PGR) from casino operations based on prevailing rates.</p> <p>1.1. <b>AMGL</b> – Php160 Million with 10% compounded increase starting on year six (6) and every three (3) years thereafter.</p> <p>1.2. <b>PGR</b> – 2% of gross revenue generated from the entire estate whether from own operations of the lessee, sublessees, affiliates and subsidiaries and similar arrangements for present and future facilities.</p> <ul style="list-style-type: none"> <li>• For purposes of computing the percentage of gross revenues, the LESSEE, SUBLESSEE/ CONCESSIONAIRE/ CONSIGNOR AND/OR ASSIGNEE'S Gross Revenues shall be defined as follows: All income earned (collected or uncollected) minus service charge, Gross sales on merchandise, rental revenues, and/or gross revenues from services, such as but not limited to the following: <ul style="list-style-type: none"> <li>a) Room revenues/charges</li> <li>b) Food and beverage revenues/sales</li> <li>c) Fees on recreational facilities (themeparks, spa, salons, sports and game rooms, etc.)</li> <li>d) Membership dues allocated as consumable</li> <li>e) Revenues derived from sale of food and beverage and rental of convention, function rooms, karaoke, and other facilities</li> <li>f) Sale of merchandise on convenience store, souvenir shops, kiosks, tee houses and other similar establishments</li> </ul> </li> <li>• <b>"Sublessee"</b> refers to any sole proprietorship, partnership, corporation or any juridical entity distinct and separate from the <b>Lessee</b> and has subleased a portion or portions of the Property.</li> </ul>	

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<p>It shall include concessionaire(s), consignor(s), or any individual/entity with business arrangement with the <b>Lessee</b>, whether written or otherwise, wherein specific business operations are not directly handled or managed by the <b>Lessee</b>.</p> <p><b>PLUS</b></p> <p>1.3. <b>PGR from Casino Operations</b>, if any, based on prevailing policy on CDC share at the time of actual operation.</p>	
<p><b>2. Remittance of Lease Payments</b></p> <p>2.1 Minimum Guaranteed Lease - Lease payment shall commence after 1 year from signing of the LA and be paid monthly on or before the fifth (5<sup>th</sup>) day of the current month without the necessity of demand from the Lessor.</p> <p>2.2 Percentage of Gross Revenues - Lease payment shall commence after 1 year from signing of the LA and be paid monthly on or before the fifteenth (15<sup>th</sup>) day of the succeeding month without the necessity of demand from the Lessor.</p>	
<p><b>3. Advance Lease Payment (ALP) and Security Deposit (SD)</b></p> <p>Total ALP and SD is equivalent to twelve (12) months MGL or PhP 160 Million payable upon signing of LA in the form of manager's/cashier's check.</p>	
<p><b>4. Performance Security (PS)</b></p> <p>Performance Security is equivalent to twelve (12) months MGL or PhP 160 Million payable upon signing of LA in the form of manager's/cashier's check.</p>	
<p><b>5. Equity</b></p> <p>CDC is entitled to a 5% Equity in the NC</p> <p>5.1 It shall be five percent (5%) of all classes of shares to be issued (present and future), with pre-emptive rights, free from all</p>	

<p>liens and encumbrances, all taxes thereon fully paid, without any payment from CDC or obligation by CDC to reimburse anybody, and represented by duly-issued stock certificates.</p>	
<p><b>6. Board Seat</b></p> <p>CDC is entitled to one (1) Board seat in the NC with the rights of minority stockholder as provided for in the Corporation Code. .</p> <p>6.1 CDC shall have the right to nominate a director in the NC.</p> <p>6.2 Lessee agrees to cast its votes in favor of the CDC nominee to be elected as a director.</p> <p>6.3 Lessee agrees not to remove the CDC nominee director except for a cause.</p> <p>6.4 In case of death, resignation, disqualification, or removal for cause of the CDC nominee director, the same provision shall likewise apply to the replacement or substitute director who shall serve the unexpired term of his/her predecessor.</p> <p>6.5 The breach of these provisions shall be a ground for the suspension/revocation/cancellation/termination of the Lease Agreement without need of judicial action.</p>	

**IN FAITH WHEREOF**, I have hereunto affixed my signature this \_\_\_\_ day of \_\_\_\_\_ 2015 at \_\_\_\_\_, Philippines.

*(Signature)*

Authorized Representative

Name:

Position:

Date:

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
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**FINAL BID LETTER**

Date

**THE CHAIRPERSON**

Special Asset Privatization Committee (SAP-Com)  
Clark Development Corporation  
Bldg. 2121, E.Quirino Street, Clark Freeport Zone, Philippines

Sir:

In connection with the bidding for the Privatization of the Former Mimosa Leisure Estate covering 201.64 Hectares, thru a 50-Year Lease Arrangement located in the Clark Freeport Zone, Philippines, our Company, (State the name of the Corporation/Lead Member Corporation), hereby, formally offers to the CDC the amount of: \_\_\_\_\_ (PhP \_\_\_\_\_).

We understand that, should our Company be declared the Winning Bidder, we shall establish and register a Corporation under applicable laws, rules and regulations, wherein our Company and CDC shall own ninety-five percent (95%) and five percent (5%) of the equity, respectively.

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

PRIVATIZATION OF THE FORMER MIMOSA ESTATE COVERING 201.64 HECTARES,  
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