

NPM No. 09-2009

3 February 2009

HON. JOHN EMMANUEL MADAMBA

Assistant Solicitor General

Chairman, Bids and Awards Committee

OFFICE OF THE SOLICITOR GENERAL

134 Amorsolo St., Legaspi Village,

Makati City

Re : Alternative Methods of Procurement

Dear Sir:

In letter dated 18 December 2008, we understand that the Office of the Solicitor General (OSG) entered into a Memorandum of Agreement with Deed of Usufruct¹ with the Bases Conversion and Development Authority. Under this agreement, the OSG is granted beneficial usufruct over a 9,000 square meter property under the condition that it commences construction of its new office building on said property within two years from signing. Since OSG is time pressed to comply with its obligations, you are inquiring which among the construction activities necessary for the development and construction of the OSG Complex may be conducted through any of the alternative modes of procurement.

While the general rule mandated under Republic Act No. 9184 (R.A. 9184) is for procuring entities to adopt public bidding as the general mode of procurement, the law, nevertheless, recognizes extraordinary circumstances where public bidding is neither adequate nor befitting. Thus, alternative methods of procurement under Rule XVI of R.A. 9184 and its Implementing Rules and Regulations Part-A (IRR-A) may be resorted to in such highly exceptional cases.²

Hiring an Individual Consultant

Procuring entities may resort to the alternative mode of negotiated procurement under Section 53 (f) of the IRR-A, and engage an individual consultant if the conditions prescribed under said provision are fully complied with. The provision reads as follows:

¹ Dated 12 August 2008.

² Section 48.2, Implementing Rules and Regulations Part-A (IRR-A), Republic Act No. 9184 (R.A. 9184).

Section 53. Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

xxx

- f) In the case of **individual consultants** hired to do work that is **(i) highly technical or proprietary; or (ii) primarily confidential or policy determining**, where trust and confidence are the primary consideration for the hiring of the consultant: *Provided, however*, That the term of the individual consultants shall, at the most, be on a six month basis, renewable at the option of the appointing head of the procuring entity, but in no case shall exceed the term of the latter; (Emphasis supplied)

xxx

The determination of whether work to be done by the individual consultant is highly technical or proprietary, or is primarily confidential or policy-determining, where trust and confidence are the primary consideration for the hiring of the consultant, lies with the procuring entity.

Agency-to-Agency Agreements

Another alternative method that may be resorted to by government agencies which may not have the proficiency or capability to undertake a particular procurement is to request other government agencies (except government corporations formed under the Corporation Code) to undertake such procurement in their behalf. Under Section 53 (e) of the IRR-A, the procuring entity may tap the services of other government agencies that have the necessary expertise should the procurement from the latter prove to be more efficient and economical pursuant to a Cost-benefit Analysis conducted for the purpose.³

For instance, the land survey may be conducted by the Department of Environment and Natural Resources or the National Mapping and Resource Information Authority. The Department of Public Works and Highways may also undertake the necessary soil testing.

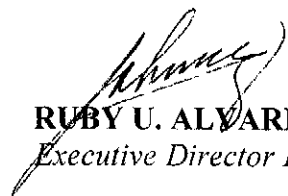
Design and Build Scheme

Finally, to reduce the design and construction bidding periods, as well as the final project cost, the procuring entity has the option to adopt the design and build scheme, in accordance with the GUIDELINES FOR THE PROCUREMENT AND IMPLEMENTATION OF CONTRACTS FOR DESIGN AND BUILD INFRASTRUCTURE PROJECTS, per GPPB Resolution No. 22-2007, dated 28 September 2007. Under this scheme, the procuring entity bids both the design and construction components of its project and is assured that only one contractor shall bear all the responsibilities, including the risks related to design.

³ Implementing Guidelines on Agency-to-Agency Agreements, per GPPB Resolution No. 18-2007, 31 May 2007.

We trust that your queries have been sufficiently addressed. Should you have additional concerns, please do not hesitate to contact us.

Very truly yours,



RUBY U. ALVAREZ
Executive Director III



Good work Hylee. Let
discuss some ways to
improve further your
work
JG 1/2/09

TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Avenue, Ortigas Center,
Pasig City, Philippines 1605

NPM No. _____

05 January 2009

HON. JOHN EMMANUEL MADAMBA
Assistant Solicitor General
Chairman, Bids and Awards Committee
OFFICE OF THE SOLICITOR GENERAL

Re : Alternative Methods of Procurement

Dear **Hon. Madamba**:

This pertains to your letter dated 18 December 2008 which we received on 22 December 2008. In your letter, you stated that the Office of the Solicitor General (OSG) is time constrained in complying with its obligations under the Memorandum of Agreement with Deed of Usufruct¹ on the proposed development and construction of the OSG Complex. For this reason, you are inquiring which among the building construction activities² necessary for the said proposal may be conducted through means other than the full-scale procedure of competitive bidding.³

While the general rule mandated under R.A. 9184 is for procuring entities to adopt public bidding as the mode of procurement, the law, nevertheless, recognizes extraordinary circumstances where public bidding is neither adequate nor befitting. Alternative methods of procurement under Rule XVI of Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part-A (IRR-A) may be resorted to in such highly exceptional cases.⁴

Hiring an Individual Consultant

Government agencies intending to procure infrastructure projects with imperious need are allowed several courses of action under the law to address their concerns. For instance, in the pre-design and design stages of construction, procuring entities may

¹ Dated 12 August 2008, executed with the Bases Conversion and Development Authority (BCDA).

² Annex A Building Construction Schedule of Activities

³ As discussed during the meeting between the GPPB-TSO and the OSG last December 24, 2008.

⁴ Section 48.2, Implementing Rules and Regulations Part-A (IRR-A), Republic Act No. 9184 (R.A. 9184).

resort to the negotiated procurement of consulting services by an individual if the conditions provided for in Section 53 (f) of R.A. 9184 and its IRR-A are fully complied with. The provision reads as follows:

Section 53. Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

xxx

- f) In the case of **individual consultants** hired to do work that is (i) **highly technical or proprietary**; or (ii) **primarily confidential or policy determining**, where trust and confidence are the primary consideration for the hiring of the consultant: *Provided, however*, That the term of the individual consultants shall, at the most, be on a six month basis, renewable at the option of the appointing head of the procuring entity, but in no case shall exceed the term of the latter; (Emphasis supplied)

xxx

In the matter of determining whether the work to be done by the consultant is highly technical or proprietary or is primarily confidential or policy-determining, where trust and confidence are the primary consideration for the hiring of the consultant, the same lies exclusively with the procuring entity's prerogative.

Having determined and established that the project falls under the contemplation of Section 53 (f), the procuring entity, may directly negotiate with a qualified individual consultant, subject to the pertinent requirements provided for in R.A. 9184 and its IRR-A. To be clear, general rules in the procurement of consulting services as prescribed in Section 24 of the IRR-A, as to the conditions for the allowance of such procurement and the eligibility of the consultant to be hired, shall be followed to the extent reasonably possible.] ?

It is noteworthy to state in this regard that an employee of the procuring entity may not be hired as a consultant for the same government agency under the provisions against conflict of interest⁵ and other pertinent Civil Service Rules and Regulations.⁶ }

Agency-to-Agency Agreements

Another method to hasten project implementation of agencies which may not have the proficiency or capability to undertake a particular procurement is to request

⁵ Generic Procurement Manual-Manual of Procedures for the Procurement of Consulting Services (Volume 4), p. 36. June 2006.

⁶ Rule XVIII Prohibitions, Sections 1 and 2, *Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws.*

other agencies to undertake such procurement for them or at their option, recruit and hire consultants or procurement agents to assist them directly and/or train their staff in the management of the procurement function.⁷ The procuring entity may tap the services of other government agencies that have the necessary expertise should the procurement from the latter prove to be more efficient and economical pursuant to a Cost-benefit Analysis conducted for the purpose.⁸

For the procurement of infrastructure projects, these agencies may include the Department of Environment and Natural Resources (DENR), the Department of Public Works and Highways (DPWH), or the National Mapping and Resource Information Authority (NAMRIA), among others.

Design and Build Scheme

Finally, to reduce the design and construction periods, as well as the final project cost, the procuring entity has the option to adopt the design and build scheme, where the procuring entity is assured that only one contractor shall bear all the responsibilities, including the risks related to design. Through this arrangement, the procuring entity is assured of the quality of the structure, considering that only infrastructure and design experts are involved in the construction project.⁹

We trust that your queries have been sufficiently addressed. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III

⁷ Section 53 e) of the IRR-A

⁸ Implementing Guidelines on Agency-to-Agency Agreements

⁹ See Section 17.6 and Guidelines For the Procurement and Implementation of Contracts for Design and Build Infrastructure Projects, page 139.

Resolution No



Republic of the Philippines
Office of the Solicitor General

Hycee,

December 18, 2008

Director RUBY U. ALVAREZ
Executive Director III
Technical Support Office
Government Procurement Policy Board
Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City 1106

*Pls. draft response
as discussed.*

12/23/08

Dear Madam:

12/22/08

On August 12, 2008, the Office of the Solicitor General (OSG) and the Bases Conversion Development Authority (BCDA) entered into a memorandum of agreement, a copy of which is hereto attached as Annex "A". Under the said agreement, the OSG was given the beneficial usufruct of nine thousand (9,000) square meters, to be used as its office complex. We have two years from the signing of the said memorandum of agreement within which to commence the construction of our new office building. At present, we have barely one year and eight months to start construction.


Relative thereto, we would like to solicit your opinion as to which of the items listed in our checklist, copy of which is hereto attached as Annex "B", can be done without having to bid them out? We are of the opinion that preliminary matters (such as hiring the services of a surveyor, draftsman/architect) can be done without public bidding. Additionally, we already have a building design and floor lay-out made by an architect. However, we are hesitant to contract with him as it might not fall into those items which are exempt from the requirements of being publicly bid out. Hence, we are seeking your esteemed guidance on the matter.

We would like very much to follow the procedures laid down in Republic Act 9184 (The Government Procurement Act). However, since we are laboring under time constraint (any delay can be construed as a waiver of the usufruct given by BCDA), we have to make certain that only the most important items will be offered for public bidding so as to save us time.

It is hoped that your office, as the agency tasked with enforcing RA 9184 and being experts on the subject, can enlighten and guide us on this endeavor.

Thank you.

Very truly yours,


JOHN EMMANUEL MADAMBA
Assistant Solicitor General
Chairman
OSG Building Bids and Awards Committee


maritesssjl / ron

MEMORANDUM OF AGREEMENT WITH DEED OF USUFRUCT

This Memorandum of Agreement with Deed of Usufruct, entered into and executed by and between:

The **Bases Conversion and Development Authority (BCDA)**, a government instrumentality vested with corporate powers, created under Republic Act No. 7227, with postal address at BCDA Corporate Center, 31st Street, Crescent Park West, Bonifacio Global City, Taguig City, Metro Manila, represented by its President and CEO, General **Narciso L. Abaya (Ret.)** herein referred to as **BCDA**,

-and-

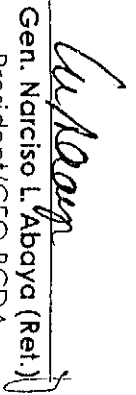
The **Office of the Solicitor General (OSG)**, with postal address at 134 Amorsolo Street, Legaspi Village, Makati City, Metro Manila, represented by the Solicitor General, **Agnes VST Devanadera**, herein referred to as **OSG**;

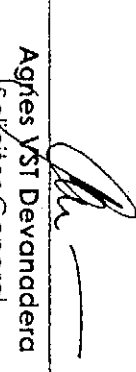
WITNESSETH:

WHEREAS, the BCDA is the owner of a twenty-one thousand four hundred sixty-three (21,463) square meter lot located at the Philippine Army Security Escort Group [BCDA (PA-SEG)] area, Fort Bonifacio, Taguig City;

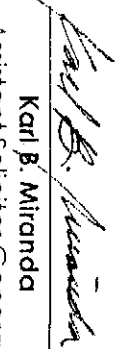
WHEREAS, the BCDA is authorized under paragraph 16, Section 1 of Republic Act (R.A.) No. 7917 to designate forty (40) hectares of Fort Bonifacio as national government and local government centers;

WHEREAS, the OSG has been authorized to provide ample space for its legal and administrative staffs, which have been increased by virtue of the mandated expansion under R.A. No. 9417 (the OSG Reform Law);


Gen. Narciso L. Abaya (Ret.)
President/CEO-BCDA


Agnes VST Devanadera
Solicitor General


Isaac S. Puno, III
Executive Vice President-BCDA


Karl B. Miranda
Assistant Solicitor General



WHEREAS, the OSG has requested the BCDA for a property within Fort Bonifacio to be used as its principal office and other purposes in accordance with its mandate under R.A. No. 9417 and other related laws;

WHEREAS, in special consideration of the unique attorney and client relationship of the parties and in response to the request of the OSG, the BCDA Board of Directors, in a Resolution No. 2008-04-072 dated April 8, 2008, granted the OSG use of nine thousand (9,000) square meters of the BCDA (PA-SEG) lot located in Fort Bonifacio, Taguig City, pursuant to paragraph 16, Section 1 of R.A. No. 7917;

NOW, THEREFORE, in consideration of the foregoing premises and the covenants set forth hereunder, the parties hereby agree and bind themselves as follows:

SECTION 1. The Area. The BCDA grants the OSG use and enjoyment of nine thousand (9,000) square meters of the BCDA (PA-SEG) property in Fort Bonifacio, Taguig City, hereinafter referred to as the property. Attached hereto as Annex "A" and made part of this Memorandum of Agreement with Deed of Usufruct is the map of the BCDA (PA-SEG) property which delineates the nine thousand (9,000) - square meter area being given by the BCDA to the OSG.

SECTION 2. Use and Enjoyment of the Property. The OSG, as usufructuary, shall use and enjoy the property as the site of the OSG Complex and its support facilities which it may develop and use in accordance with its mandate under R.A. No. 9417 and other related laws. This Memorandum of Agreement with Deed of Usufruct shall be effective from the signing of the same and for as long as the OSG, or its successor/s-in-interest, shall be in juridical existence and for as long as the use of the property is in accordance with this Section.

SECTION 3. Reversion. The property shall automatically return or revert to the BCDA, its assignee or successor if:

Narciso L. Abaya
Gen. Narciso L. Abaya (Ret.)
President/CEO-BCDA

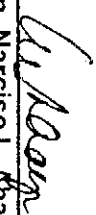
Agnes VST Devanadera
Agnes VST Devanadera
Solicitor General


Isaac S. Puno, III
Isaac S. Puno, III
Executive Vice President-BCDA

Karl B. Miranda
Karl B. Miranda
Assistant Solicitor General

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Gen. Narciso L. Abaya (Ret.)
President/CEO-BCDA


Agnes VST Devanadera
Solicitor General

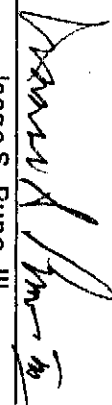
- 3.1 The OSG ceases to use the property as site for an OSG Complex as provided for under Section 2;
- 3.2 The OSG fails to commence the replication of the Philippine Army K-9 unit within one (1) year from the signing of this Memorandum of Agreement with Deed of Usufruct as provided under Section 4.2.6. herein and it fails to commence construction of the OSG Complex within two (2) years after the replication of the K-9 unit; or
- 3.3 A law would so provide.

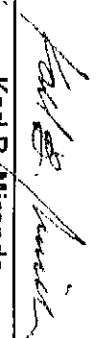
In case of reversion, the OSG shall peacefully vacate the property and restore possession thereof to the BCDA. The OSG, however, shall be given a reasonable period to look for a suitable location where it can transfer its principal office.

SECTION 4. Responsibilities of the Parties

4.1. The BCDA shall:

- 4.1.1 Allow the OSG as usufructuary to use nine thousand (9,000) square meters of the BCDA (PA-SEG) property in Fort Bonifacio, Taguig City as the site of the OSG Complex and other facilities necessary for its beneficial use in accordance with its mandate under R.A. No. 9417 and other related laws; and
- 4.1.2 On a best effort basis, request Megaworld Corporation to allow the OSG to use the existing roads in the adjacent property that the former is developing as access to the OSG Complex.


Isaac S. Puno, III
Executive Vice President-BCDA


Karl B. Miranda
Assistant Solicitor General


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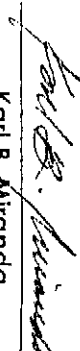
4.2 The OSG shall:

- 4.2.1 Undertake, at its own expense, the planning, design, site development, construction, and maintenance of the property, the OSG Complex and its support facilities thereon;
- 4.2.2 Secure all necessary permits and licenses for the location, site development, construction and operation of the OSG Complex and its support facilities;
- 4.2.3 Assume responsibility for the installation of utilities within the property and the payment of all bills appurtenant to the use thereof;
- 4.2.4 Provide security for the subject property;
- 4.2.5 Assist, when possible, in titling the entire BCDA (PA-SEG) property in the name of the BCDA, and assume the expenses incurred for the annotation of the usufruct on the certificate of title of the property given to the OSG;
- 4.2.6 Assume, at the OSG's sole cost, the relocation of the Philippine Army K-9 unit presently occupying the BCDA (PA-SEG) property, in coordination with the BCDA and the Philippine Army, in an area to be identified by the Philippine Army; and
- 4.2.7 Bear and be responsible for all assessments, taxes, duties, levies, fees, fines and any other charges which are, or may be, imposed against the property, the OSG Complex and its support facilities from the date of signing of this


Gen. Narciso L. Abaya (Ret.)
President/CEO-BCDA


Agnes YST Devanadera
Solicitor General


Isaac S. Puno, III
Executive Vice President-BCDA


Karl B. Miranda
Assistant Solicitor General

X-----X

Memorandum of Agreement with Deed of
Usufruct and during the period of the
usufruct.

SECTION 5. Turnover of Property

The OSG shall cause the conduct by a duly licensed geodetic engineer of a survey and identification of the lot corner monuments on the ground, to be approved by the BCDA. After the survey, the OSG, or its duly authorized representative, shall execute a written certification that it has ascertained the accuracy of the placement and description of the monuments. The conduct of the survey and the corresponding issuance of the said certification shall be construed as actual knowledge on the part of the OSG of the metes and bounds of the property.


Upon the issuance by the OSG of the aforementioned certification, as approved by the BCDA, the possession of the property is deemed transferred to the OSG. The certification of the metes and bounds from the OSG shall be deemed incorporated into this Memorandum of Agreement with Deed of Usufruct.


SECTION 6. Effectivity Clause

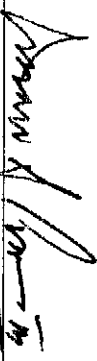
This Memorandum of Agreement with Deed of Usufruct shall take effect upon signing thereof.

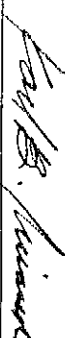
SECTION 7. Non-Waiver of Rights

The failure of one party to insist upon a strict performance of any of the terms, conditions and covenants hereof, shall not be deemed a relinquishment or waiver of any right/remedy that said party may have, nor shall it be construed a waiver of any subsequent breach of the same or other terms or conditions of this Memorandum of Agreement with Deed of Usufruct.


Gen. Narciso L. Abaya (Ret.)
President/CEO-BCDA


Agnes VST Devanadera
Solicitor General


Isaac S. Puno, III
Executive Vice President-BCDA


Karl B. Miranda
Assistant Solicitor General



X-----X

SECTION 8. Exclusion of Subject Property from Future Sale

Should the BCDA decide to sell, in the future, its property/ies in the Fort Bonifacio Area, for any future development plan, the sale shall exclude the area of land, subject of this Memorandum of Agreement with Deed of Usufruct, granted to the OSG.

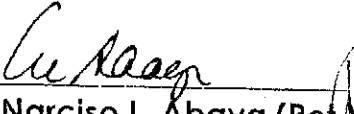
SECTION 9. Approval of the Government Corporate Counsel

Pursuant to Presidential Memorandum Circular No. 9, S-1998, this Memorandum of Agreement with Deed of Usufruct shall be subject to the review by the Office of the Government Corporate Counsel. Its review, comments, instructions and directions shall form part of the same.

IN WITNESS WHEREOF, the parties hereto have signed this Memorandum of Agreement with Deed of Usufruct through their duly authorized representatives this 12th day of August 2008.

**Bases Conversion and
Development Authority**

Office of the Solicitor General

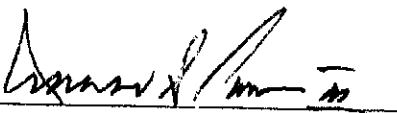


Gen. Narciso L. Abaya (Ret.)
President/CEO



Agnes VST Devanadera
Solicitor General

WITNESSES:



Isaac S. Puno, III
Executive Vice President



Karl B. Miranda
Assistant Solicitor General

X-----X

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
Municipality of Taguig)

BEFORE ME, a Notary Public for and in Taguig City, Philippines, on this 12th day of August 2008, personally appeared:

Name	Identification No.	Issued by/on
Narciso L. Abaya	05-001	Bases Conversion and Development Authority, November 4, 2004
Agnes VST Devanadera	001	Office of the Solicitor General, March 2, 2007

who have satisfactorily proven to me their identity through the foregoing identification document, issued by their respective official agencies, and who are known to me to be the same persons who executed the foregoing Memorandum of Agreement with Deed of Usufruct, and acknowledged to me that the same is their free act and deed and of the agencies they represent, for the uses and purposes herein stated.

I further certify that the foregoing Memorandum of Agreement with Deed of Usufruct consists of eight (8) pages including this page, and the map attached as Annex "A", and that each and every page thereof has been signed by the parties executing the same and by their witnesses, and sealed with my notarial seal.

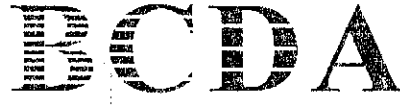
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at Taguig City, Metro Manila this 12th of August 2008.

[Handwritten signature]

Doc. No. 159;
Page No. 33;
Book No. II;
Series of 2008.

[Handwritten signature]
ATTY. CRISTINA S. LENON
COMMISSION EXPIRES ON 12-31-09
IBP NO. 41978
PTR NO. 0327649-3

Republic of the Philippines
Office of the President



Bases Conversion and Development Authority

CERTIFIED TRUE COPY

Mary Grace G. Zafra
MARY GRACE G. ZAFRA
Records Officer IV
BCDA Records Office

SECRETARY'S CERTIFICATE

I, **ARNEL PACIANO D. CASANOVA**, Corporate Secretary of the Bases Conversion and Development Authority (BCDA), hereby certify that based on the minutes of the 277th Regular BCDA Board Meeting held on 06 May 2008 at the BCDA Corporate Center, Bonifacio Technology Center, 31st Street, Crescent Park West, Bonifacio Global City, Taguig City, where a quorum was present, the Board passed the following resolution:

RESOLUTION NO. 2008-05-091

"Resolve, as it is hereby resolved, that the Draft Memorandum of Agreement (MOA) with Deed of Usufruct with the Office of the Solicitor General (OSG) over the 9,000-sq.m. BCDA Property in Fort Bonifacio as the new site of the OSG Complex to accommodate the expansion of the OSG Organization be, as it is hereby APPROVED.

Resolved, further, that BCDA President and CEO Narciso L. Abaya be, as he is hereby authorized to sign the said Agreement, for and on behalf of BCDA."

IN WITNESS WHEREOF, I have hereunto affixed my signature this 28th day of May 2008.

Arnel Paciano D. Casanova
ARNEL PACIANO D. CASANOVA
Corporate Secretary

SUBSCRIBED AND SWORN to before me this JUN 05 2008
day of May 2008 at Taguig City, affiant exhibiting his IBP
No. 03524 and Roll No. 44210.

Doc. No. 29
Page No. 7
Book No. 9
Series of 2008

Purpose: To be attached to the Deed of Usufruct with the OSG

SC2008-034

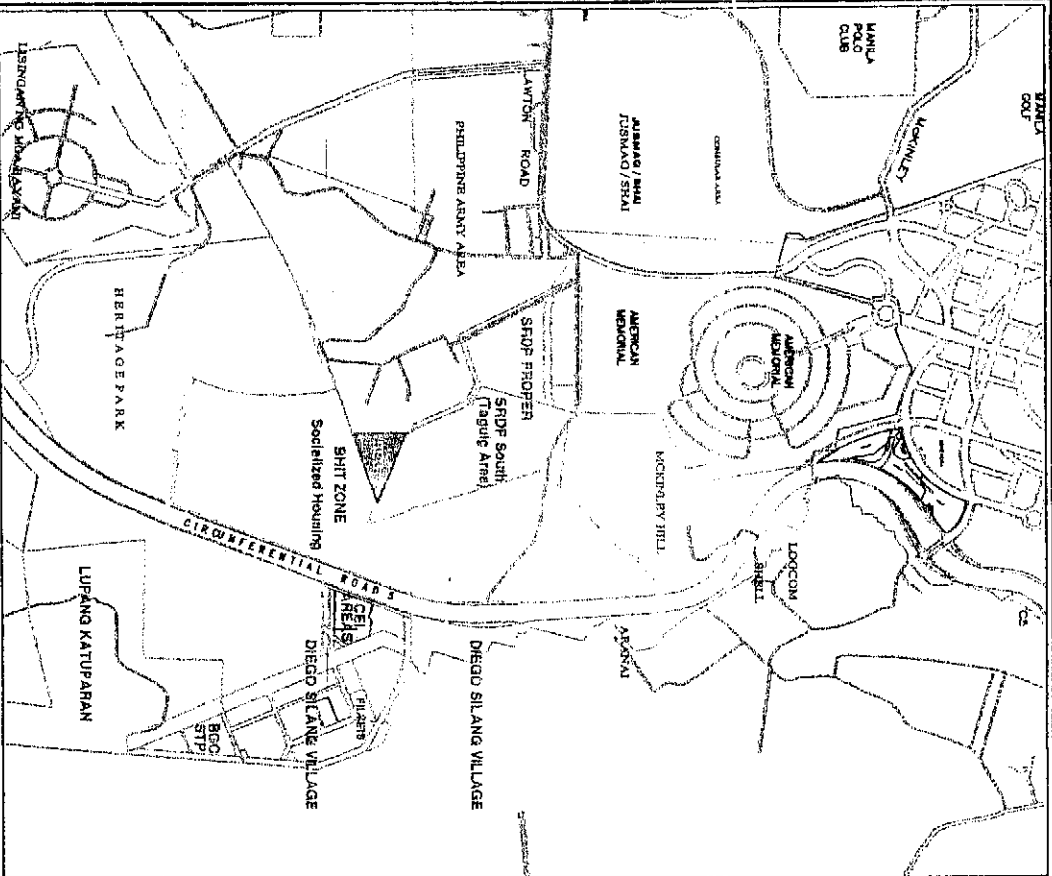
Notary Public
NOTARY PUBLIC
Atty. **Erica Labantog-Dela Cruz**
Notary Public
Until December 31, 2008
PTR No. 032213-B / 1.04.08 / Taguig City
IBP No. 733121 / 1.04.08 / RSM
Roll No. 50946

PROPERTY DESCRIPTIONS:

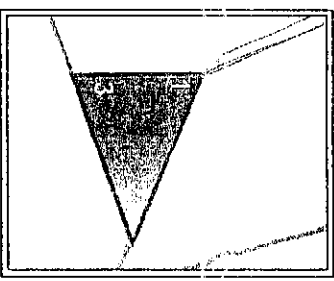
LOCATION: PA SECURITY ESCORT GROUP
 FORT BONIFACIO, TAGUIG CITY
 LOT AREA: 21,463 SQUARE METERS
 LOT NO.: Lot 1, (Portion)
 SURVEY NO.: Swo-007607-000717-D
 LAND USE: MIXED USE

TECHNICAL DESCRIPTION:

TIE LINE: FROM B.L.L.M No. 1, MCadm. 590-D TAGUIG CADASTRAL MAPPING			
TL-1	N81°08'W	2421.98 m	
1	S67°29'E	258.16 m	
2	S70°50'W	250.00 m	
3	N00°44'W	180.97 m	

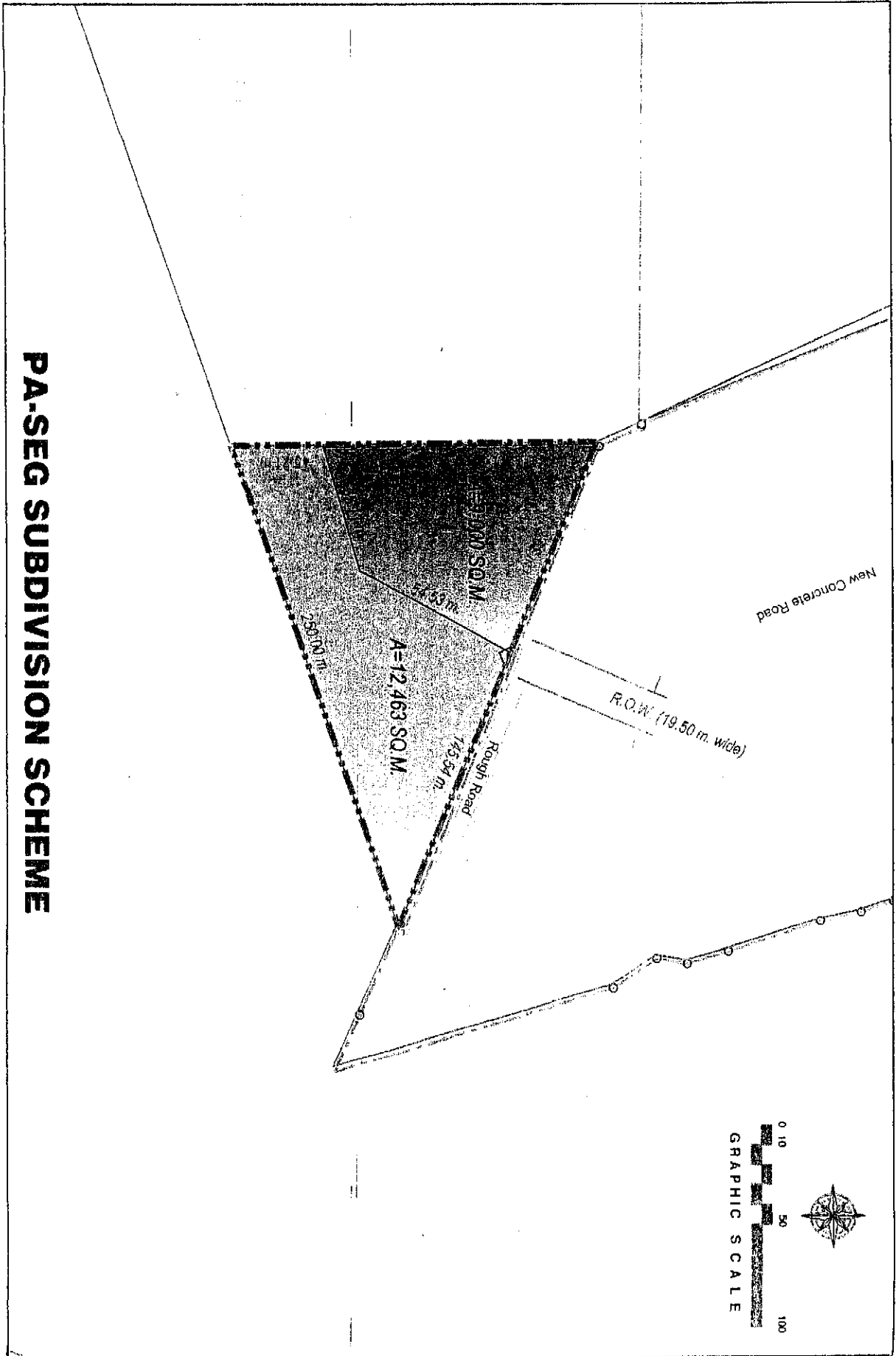


Office of the Director
 Planning and Development Group
 Land and Assets Development Department
PA SECURITY ESCORT GROUP
 PH. JPA-SEG LOT INQO PLAN/DWG
 REFERENCE NO.: TB-2006-0522-A
 Prepared by: [Name]
 Date: [Date]



Note: Subject to final ground survey

PA-SEG SUBDIVISION SCHEME



Office of the Solicitor General

Building Construction

Checklist of Activities



**BUILDING CONSTRUCTION
CHECKLIST OF ACTIVITIES**

May 26,2008

I. PRE-DESIGN STAGE

1. Lot Relocation Survey
2. Topographic Survey
3. Soil Test Study
4. Environmental Compliance Requirement Study and Secure ECC
5. Architect and Engineering Designer
6. Interior Design Architect
7. Project Manager Consultant
8. Design Terms of Reference
 - 7.1 List of Personnel and Floor Area Requirement
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2. Purchase of Owner Supplied Materials
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4. Utility Connection (power, telephone, water, internet, etc.)

IV. POST CONSTRUCTION

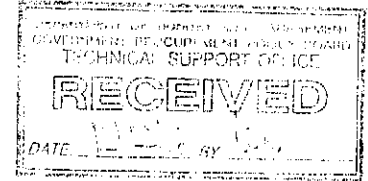
1. Turn-over of building.
2. As-Built Plans
3. Equipment Warranties/Operating Manuals
4. Equipment Maintenance Contracts



Republic of the Philippines
Office of the Solicitor General

December 18, 2008

Director RUBY U. ALVAREZ
Executive Director III
Technical Support Office
Government Procurement Policy Board
Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City 1106



Dear Madam:

On August 12, 2008, the Office of the Solicitor General (OSG) and the Bases Conversion Development Authority (BCDA) entered into a memorandum of agreement, a copy of which is hereto attached as Annex "A". Under the said agreement, the OSG was given the beneficial usufruct of nine thousand (9,000) square meters, to be used as its office complex. We have two years from the signing of the said memorandum of agreement within which to commence the construction of our new office building. At present, we have barely one year and eight months to start construction.


Relative thereto, we would like to solicit your opinion as to which of the items listed in our checklist, copy of which is hereto attached as Annex "B", can be done without having to bid them out? We are of the opinion that preliminary matters (such as hiring the services of a surveyor, draftsman/architect) can be done without public bidding. Additionally, we already have a building design and floor lay-out made by an architect. However, we are hesitant to contract with him as it might not fall into those items which are exempt from the requirements of being publicly bidden out. Hence, we are seeking your esteemed guidance on the matter.

We would like very much to follow the procedures laid down in Republic Act 9184 (The Government Procurement Act). However, since we are laboring under time constraint (any delay can be construed as a waiver of the usufruct given by BCDA), we have to make certain that only the most important items will be offered for public bidding so as to save us time.

It is hoped that your office, as the agency tasked with enforcing RA 9184 and being experts on the subject, can enlighten and guide us on this endeavor.

Thank you.

Very truly yours,


JOHN EMMANUEL MADAMBA
Assistant Solicitor General
Chairman
OSG Building Bids and Awards Committee


maritessjl / ron

MEMORANDUM OF AGREEMENT WITH DEED OF USUFRUCT

This Memorandum of Agreement with Deed of Usufruct, entered into and executed by and between:

The **Bases Conversion and Development Authority (BCDA)**, a government instrumentality vested with corporate powers, created under Republic Act No. 7227, with postal address at BCDA Corporate Center, 31st Street, Crescent Park West, Bonifacio Global City, Taguig City, Metro Manila, represented by its President and CEO, General **Narciso L. Abaya (Ret.)** herein referred to as **BCDA**,

-and-

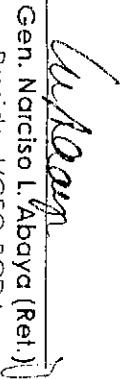
The **Office of the Solicitor General (OSG)**, with postal address at 134 Amorsolo Street, Legaspi Village, Makati City, Metro Manila, represented by the Solicitor General, **Agnes VST Devanadera**, herein referred to as **OSG**;

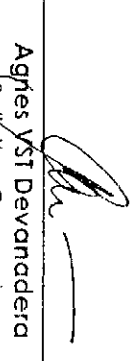
WITNESSETH:

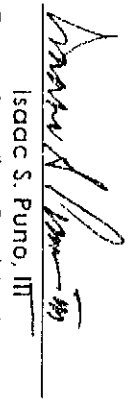
WHEREAS, the BCDA is the owner of a twenty-one thousand four hundred sixty-three (21,463) square meter lot located at the Philippine Army Security Escort Group [BCDA (PA-SEG)] area, Fort Bonifacio, Taguig City;


WHEREAS, the BCDA is authorized under paragraph 16, Section 1 of Republic Act (R.A.) No. 7917 to designate forty (40) hectares of Fort Bonifacio as national government and local government centers;

WHEREAS, the OSG has been authorized to provide ample space for its legal and administrative staffs, which have been increased by virtue of the mandated expansion under R.A. No. 9417 (The OSG Reform Law);


Gen. Narciso L. Abaya (Ret.)
President/CEO-BCDA


Agnes VST Devanadera
Solicitor General


Isaac S. Puno, III
Executive Vice President-BCDA


Karl B. Miranda
Assistant Solicitor General

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WHEREAS, the OSG has requested the BCDA for a property within Fort Bonifacio to be used as its principal office and other purposes in accordance with its mandate under R.A. No. 9417 and other related laws;

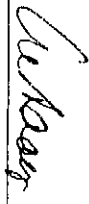
WHEREAS, in special consideration of the unique attorney and client relationship of the parties and in response to the request of the OSG, the BCDA Board of Directors, in a Resolution No. 2008-04-072 dated April 8, 2008, granted the OSG use of nine thousand (9,000) square meters of the BCDA (PA-SEG) lot located in Fort Bonifacio, Taguig City, pursuant to paragraph 16, Section 1 of R.A. No. 7917;


NOW, THEREFORE, in consideration of the foregoing premises and the covenants set forth hereunder, the parties hereby agree and bind themselves as follows:

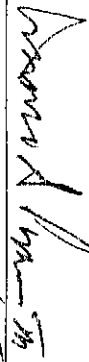
SECTION 1. The Area. The BCDA grants the OSG use and enjoyment of nine thousand (9,000) square meters of the BCDA (PA-SEG) property in Fort Bonifacio, Taguig City, hereinafter referred to as the property. Attached hereto as Annex "A" and made part of this Memorandum of Agreement with Deed of Usufruct is the map of the BCDA (PA-SEG) property which delineates the nine thousand (9,000) - square meter area being given by the BCDA to the OSG.

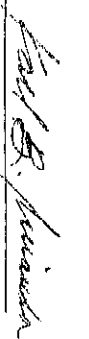
SECTION 2. Use and Enjoyment of the Property. The OSG, as usufructuary, shall use and enjoy the property as the site of the OSG Complex and its support facilities which it may develop and use in accordance with its mandate under R.A. No. 9417 and other related laws. This Memorandum of Agreement with Deed of Usufruct shall be effective from the signing of the same and for as long as the OSG, or its successor/s-in-interest, shall be in juridical existence and for as long as the use of the property is in accordance with this Section.

SECTION 3. Reversion. The property shall automatically return or revert to the BCDA, its assignee or successor if:


Gen. Narciso L. Abaya (Ret.)
President/CEO-BCDA


Agnes YST Devanadera
Solicitor General


Isaac S. Puno, III
Executive Vice President-BCDA


Karl B. Miranda
Assistant Solicitor General

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Gen. Narciso L. Abaya (Ret.)
President/CEO-BCDA

Agnes VST Devanadera
Solicitor General

- 3.1 The OSG ceases to use the property as site for an OSG Complex as provided for under Section 2;
- 3.2 The OSG fails to commence the replication of the Philippine Army K-9 unit within one (1) year from the signing of this Memorandum of Agreement with Deed of Usufruct as provided under Section 4.2.6. herein and it fails to commence construction of the OSG Complex within two (2) years after the replication of the K-9 unit; or
- 3.3 A law would so provide.

In case of reversion, the OSG shall peacefully vacate the property and restore possession thereof to the BCDA. The OSG, however, shall be given a reasonable period to look for a suitable location where it can transfer its principal office.

SECTION 4. Responsibilities of the Parties

4.1. The BCDA shall:

- 4.1.1 Allow the OSG as usufructuary to use nine thousand (9,000) square meters of the BCDA (PA-SEG) property in Fort Bonifacio, Taguig City as the site of the OSG Complex and other facilities necessary for its beneficial use in accordance with its mandate under R.A. No. 9417 and other related laws; and
- 4.1.2 On a best effort basis, request Megaworld Corporation to allow the OSG to use the existing roads in the adjacent property that the former is developing as access to the OSG Complex.

Isaac S. Puno, III
Executive Vice President-BCDA


Karl B. Miranda
Assistant Solicitor General

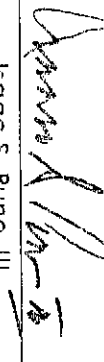
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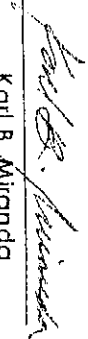
4.2 The OSG shall:

- 4.2.1 Undertake, at its own expense, the planning, design, site development, construction, and maintenance of the property, the OSG Complex and its support facilities thereon;
- 4.2.2 Secure all necessary permits and licenses for the location, site development, construction and operation of the OSG Complex and its support facilities;
- 4.2.3 Assume responsibility for the installation of utilities within the property and the payment of all bills appurtenant to the use thereof;
- 4.2.4 Provide security for the subject property;
- 4.2.5 Assist, when possible, in titling the entire BCDA (PA-SEG) property in the name of the BCDA, and assume the expenses incurred for the annotation of the usufruct on the certificate of title of the property given to the OSG;
- 4.2.6 Assume, at the OSG's sole cost, the relocation of the Philippine Army K-9 unit presently occupying the BCDA (PA-SEG) property, in coordination with the BCDA and the Philippine Army, in an area to be identified by the Philippine Army; and
- 4.2.7 Bear and be responsible for all assessments, taxes, duties, levies, fees, fines and any other charges which are, or may be, imposed against the property, the OSG Complex and its support facilities from the date of signing of this


Gen. Narciso L. Abaya (Ret.)
President/CEO-BCDA


Agnes YSI Devanadera
Solicitor General


Isaac S. Puno, III
Executive Vice President-BCDA


Karl B. Miranda
Assistant Solicitor General

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Memorandum of Agreement with Deed of
Usufruct and during the period of the
usufruct.

SECTION 5. Turnover of Property

The OSG shall cause the conduct by a duly licensed geodetic engineer of a survey and identification of the lot corner monuments on the ground, to be approved by the BCDA. After the survey, the OSG, or its duly authorized representative, shall execute a written certification that it has ascertained the accuracy of the placement and description of the monuments. The conduct of the survey and the corresponding issuance of the said certification shall be construed as actual knowledge on the part of the OSG of the metes and bounds of the property.

Upon the issuance by the OSG of the aforementioned certification, as approved by the BCDA, the possession of the property is deemed transferred to the OSG. The certification of the metes and bounds from the OSG shall be deemed incorporated into this Memorandum of Agreement with Deed of Usufruct.

SECTION 6. Effectivity Clause

This Memorandum of Agreement with Deed of Usufruct shall take effect upon signing thereof.

SECTION 7. Non-Waiver of Rights

The failure of one party to insist upon a strict performance of any of the terms, conditions and covenants hereof, shall not be deemed a relinquishment or waiver of any right/remedy that said party may have, nor shall it be construed a waiver of any subsequent breach of the same or other terms or conditions of this Memorandum of Agreement with Deed of Usufruct.

6

Gen. Narciso L. Abaya (Ret.)
President/CEO-BCDA

Agnes VST Devanadera
Solicitor General

Isaac S. Puno, III
Executive Vice President-BCDA

Karl B. Miranda
Assistant Solicitor General

X-----X

SECTION 8. Exclusion of Subject Property from Future Sale

Should the BCDA decide to sell, in the future, its property/ies in the Fort Bonifacio Area, for any future development plan, the sale shall exclude the area of land, subject of this Memorandum of Agreement with Deed of Usufruct, granted to the OSG.


SECTION 9. Approval of the Government Corporate Counsel

Pursuant to Presidential Memorandum Circular No. 9, S-1998, this Memorandum of Agreement with Deed of Usufruct shall be subject to the review by the Office of the Government Corporate Counsel. Its review, comments, instructions and directions shall form part of the same.

IN WITNESS WHEREOF, the parties hereto have signed this Memorandum of Agreement with Deed of Usufruct through their duly authorized representatives this 12th day of August 2008.

**Bases Conversion and
Development Authority**

Office of the Solicitor General

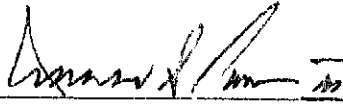


Gen. Narciso L. Abaya (Ret.)
President/CEO



Agnes VST Devanadera
Solicitor General

WITNESSES:



Isaac S. Puno, III
Executive Vice President



Karl B. Miranda
Assistant Solicitor General

X-----X

ACKNOWLEDGMENT

**REPUBLIC OF THE PHILIPPINES)
Municipality of Taguig)**

BEFORE ME, a Notary Public for and in Taguig City, Philippines, on this 12th day of August 2008, personally appeared:

Name	Identification No.	Issued by/on
Narciso L. Abaya	05-001	Bases Conversion and Development Authority, November 4, 2004
Agnes VST Devanadera	001	Office of the Solicitor General, March 2, 2007

who have satisfactorily proven to me their identity through the foregoing identification document, issued by their respective official agencies, and who are known to me to be the same persons who executed the foregoing Memorandum of Agreement with Deed of Usufruct, and acknowledged to me that the same is their free act and deed and of the agencies they represent, for the uses and purposes herein stated.

I further certify that the foregoing Memorandum of Agreement with Deed of Usufruct consists of eight (8) pages including this page, and the map attached as Annex "A", and that each and every page thereof has been signed by the parties executing the same and by their witnesses, and sealed with my notarial seal.

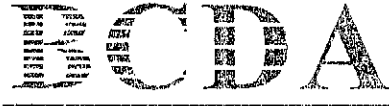
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at Taguig City, Metro Manila this 12th of August 2008.

Handwritten signature

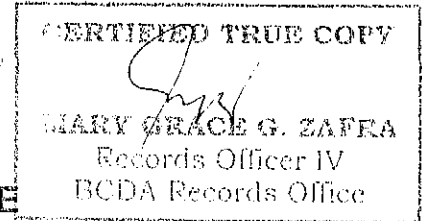
Doc. No. 159;
Page No. 32;
Book No. II;
Series of 2008.

Handwritten signature
ATTY. CRISTINA S. LENON
COMMISSION EXPIRES ON 12-31-09
IBP NO. 41978
PTR NO. 0327649-1

Republic of the Philippines
Office of the President



Bases Conversion and Development Authority



SECRETARY'S CERTIFICATE

I, **ARNEL PACIANO D. CASANOVA**, Corporate Secretary of the Bases Conversion and Development Authority (BCDA), hereby certify that based on the minutes of the 277th Regular BCDA Board Meeting held on 06 May 2008 at the BCDA Corporate Center, Bonifacio Technology Center, 31st Street, Crescent Park West, Bonifacio Global City, Taguig City, where a quorum was present, the Board passed the following resolution:

RESOLUTION NO. 2008-05-091

"Resolve, as it is hereby resolved, that the Draft Memorandum of Agreement (MOA) with Deed of Usufruct with the Office of the Solicitor General (OSG) over the 9,000-sq.m. BCDA Property in Fort Bonifacio as the new site of the OSG Complex to accommodate the expansion of the OSG Organization be, as it is hereby APPROVED.

Resolved, further, that BCDA President and CEO Narciso L. Abaya be, as he is hereby authorized to sign the said Agreement, for and on behalf of BCDA."

IN WITNESS WHEREOF, I have hereunto affixed my signature this 28th day of May 2008.

ARNEL PACIANO D. CASANOVA
Corporate Secretary

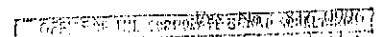
JUN 05 2008

SUBSCRIBED AND SWORN to before me this 28 day of May 2008 at Taguig City, affiant exhibiting his IBP No. 03524 and Roll No. 44210.

Doc. No. 29
Page No. 7
Book No. 9
Series of 2008

NOTARY PUBLIC
Atty. Bio-Sira Lapantog-Dela Cruz
Notary Public
Until December 31, 2008
PTR No. 032213-B / 1.04.08 / Taguig City
IBP No. 733121 / 1.04.08 / RSM
Roll No. 50946

Purpose: To be attached to The Deed of Usufruct with the OSG
SC2008-034

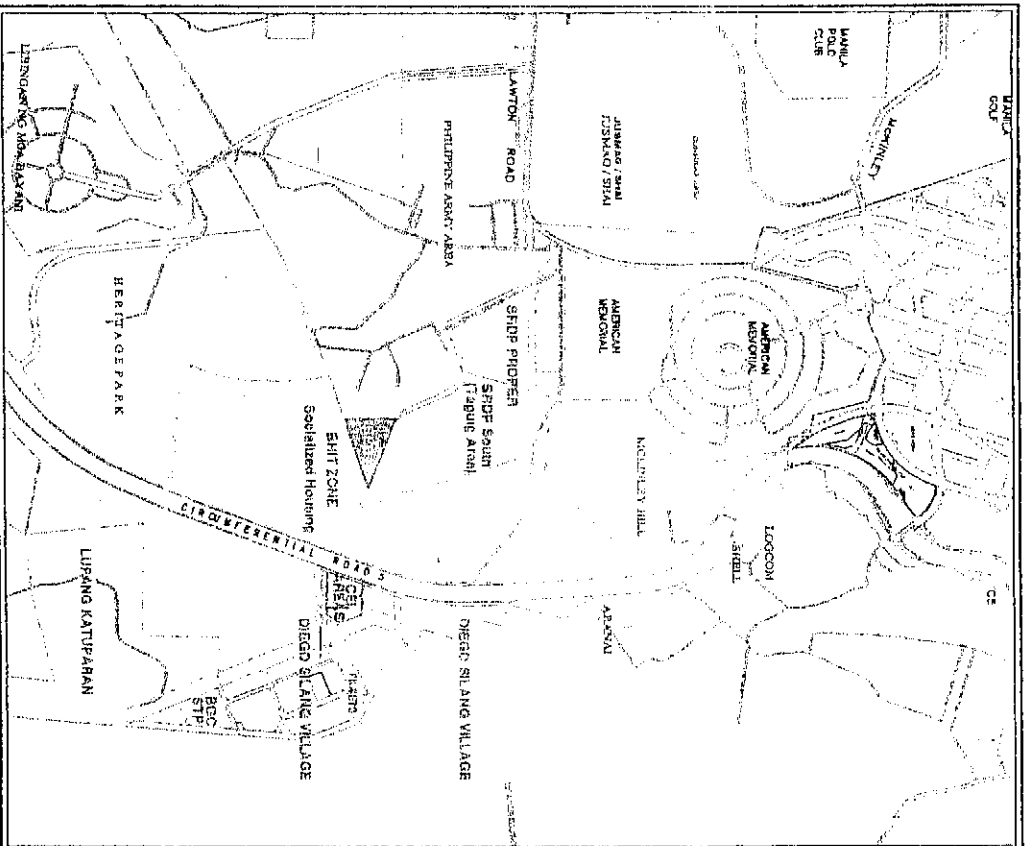


PROPERTY DESCRIPTIONS:

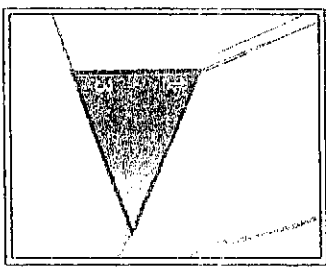
LOCATION: PA SECURITY ESCORT GROUP
 FORT BONIFACIO, TAGUIG CITY
 LOT AREA: 21,463 SQUARE METERS
 LOT NO.: Lot 1, (Portion)
 SURVEY NO.: SwO-007607-000717-D
 LAND USE: MIXED USE

TECHNICAL DESCRIPTION:

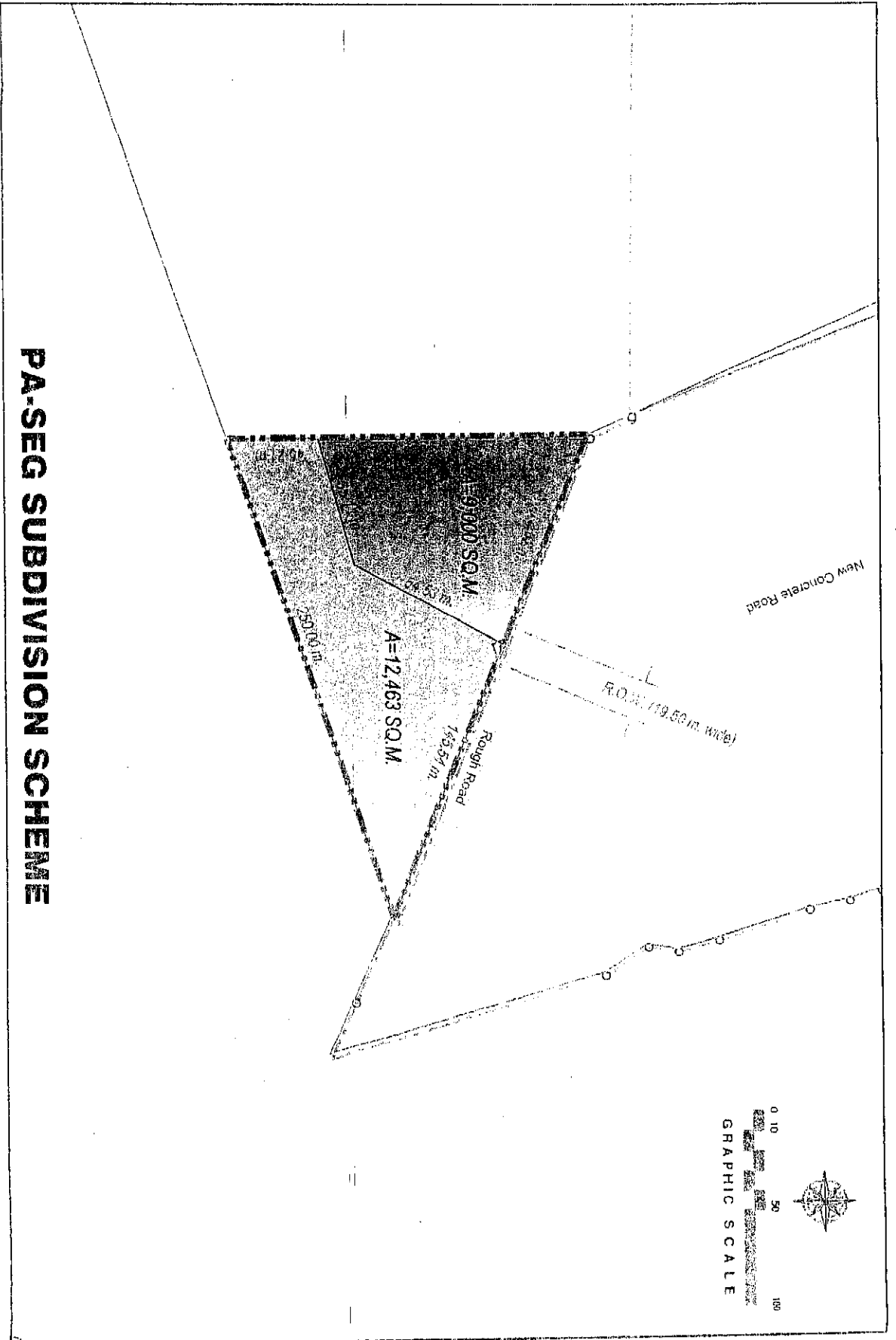
TIE LINE: FROM BILL.M No. 1, MCadm. 590-D TAGUIG			
CADASTRAL MAPPING			
TL-1	N51°08'W	2421.98 m	
1	S67°29'E	258.16 m	
2	S70°50'W	250.00 m	
3	N00°44'W	180.97 m	



Office of the Director
 Planning and Development Group
 Land and Assets Development Department
PA SECURITY ESCORT GROUP
 FNL VASSEG LOT INFO PLAN.DWG
 REFERENCE NO.: FB-2006-0527-0
 Prepared by: JMC
 Date Plotted: 23/07/2006 09:28 AM



Note: Subject to final ground survey

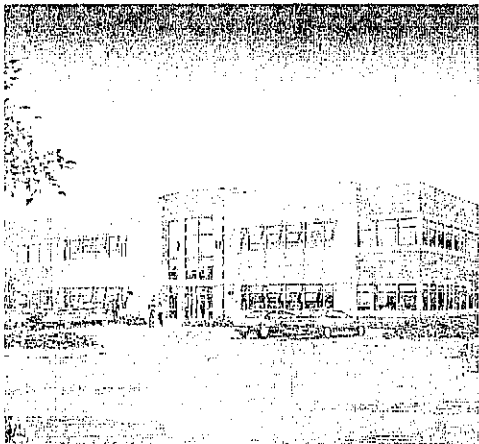


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Office of the Solicitor General

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