

MEMORANDUM OF AGREEMENT



KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Agreement (MOA) is entered into this ____ day of ~~MAY 28 2009~~ 2009 at ~~ANGELES CITY~~ by and between:

PHILIPPINE ECONOMIC ZONE AUTHORITY, a government corporation created and operating under Republic Act. No. 7916, as amended, with office address at PEZA Building, Roxas Boulevard corner San Luis Street, Pasay City, represented herein by its Director General, **LILIA B. DE LIMA**, who is duly authorized, and is hereinafter referred to as the "PEZA",

- AND -

CLARK DEVELOPMENT CORPORATION, a corporation duly organized and existing under Philippine Laws with principal office address at Building 2121 E. Quirino Street, Clark Freeport Zone, represented herein by its President and Chief Executive Officer, **BENIGNO N. RICAFORT**, who is duly authorized, and is hereinafter referred to as the "CDC",

WHEREAS, pursuant to Republic Act No. 7227, otherwise known as the "Bases Conversion and Development Act of 1992"; and Proclamation No. 163, Series of 1993, the Clark Special Economic Zone (CSEZ) was 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 as amended,;

WHEREAS, 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 CSEZ;

WHEREAS, on March 10, 2006, Proclamation No. 1035 was issued "creating and designating certain parcels of land of the public domain situated at Angeles City, Municipalities of Mabalacat and Porac, Pampanga and the Municipalities of Capas and Bamban, Tarlac, as a Special Economic Zone pursuant to Republic Act no. 7916, as amended by Republic Act No. 8748";

WHEREAS, Republic Act No. 9400, an act amending Republic Act No. 7227, declared that 4,400 hectares of the Clark Main Zone be designated as the Clark Freeport Zone and the remaining area of approximately Twenty Seven Thousand Hectares (27,000 has.) be designated as the Clark Special Economic Zone;

WHEREAS, Section 12 of RA 9400 repealed Section 50 of RA 7916 as amended on the non-applicability of PEZA incentives to Economic Zones created under RA 7227;

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WHEREAS, the Implementing Rules and Regulations of RA 9400 provides that the Clark Development Corporation should enter into a MOA with PEZA for the administration of tax incentives in the CSEZ.

NOW, THEREFORE, in consideration of the foregoing, the Parties agree to be bound by the following terms and conditions:

**ARTICLE I
RIGHTS AND OBLIGATIONS OF BOTH PARTIES**

CDC, as the Administrative Governing Authority, shall:

1. Identify and develop areas, and enter into lease agreements with locators in the CSEZ;
2. Provide PEZA with an approved comprehensive land use and zoning plan of the CSEZ;
3. Provide the necessary utility requirements in the CSEZ, inclusive of the following: power, water, telecommunications, wastewater treatment facilities, etc.;
4. Endorse to PEZA applications of locators in the CSEZ wanting to avail of PEZA incentives;
5. Endorse to PEZA all applications for Building Permits, Fire and Safety Permits, Sanitary Permits and Environment Permits of enterprises in the CSEZ;
6. Resolve issues/claims on property ownership before registration as developer/operator entitled to incentives

PEZA, as the Incentives Administration Authority, shall:

1. Register CDC as a CSEZ developer-operator with entitlement to incentives to the extent that it shall develop for PEZA locators;
2. Register qualified CSEZ locators upon the latter's submission of and PEZA's evaluation and approval of complete documentary requirements;
3. Issue Permits to Operate or Certificates of Registration, as the case may be, to qualified enterprises in the CSEZ;
4. Issue Building Permits, Fire and Safety Permits and Sanitary Permits to enterprises in the CSEZ and collect the corresponding fees therefore;
5. Conduct preliminary review and endorse to DENR-EMB CSEZ locators' application for ECC;
6. Administer incentives granted to investors within the CSEZ;
7. Assist CDC in promoting the CSEZ to foreign and domestic investors

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**ARTICLE II
REPRESENTATIONS AND WARRANTIES**

Each party hereto represents and warrants to the other party the following:

- a. It has full power and authority to execute, deliver and perform this Agreement.
- b. This Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with its terms;
- c. The execution of this Agreement does not and will not contravene any provision of its Articles of Incorporation and By-Laws or charter, does not and will not violate any applicable laws or regulations of the jurisdiction of its incorporation or organization and does not conflict with or result in a breach of any contract, agreement or other obligation to which it is a party or of which it may be bound.

**ARTICLE III
INDEMNITY**

The parties shall mutually hold the directors, officers and employees free and harmless from any claims or demands by third persons for loss of the other party or damage arising out of the performance of each party of its duties and responsibilities pursuant to the agreement, including but not limited to claims for property damage, personal injury or wrongful death, as well as other civil/contractual obligations, criminal liability and court litigations in connection with the Property.

**ARTICLE IV
AGREEMENT TO ARBITRATE**

In any dispute arising from the interpretation of this Agreement or any conflict regarding the implementation of the same, the parties hereby agree to submit their conflicting claims before a duly constituted arbitration panel of the Office of the Solicitor General (OSG) composed of three (3) members to the exclusion of other quasi-judicial tribunal(s). One member shall be chosen by CDC, one shall be chosen by PEZA, and the third to be chosen by both parties from a list as recommended by the OSG.

**ARTICLE V
MISCELLANEOUS**

Section 1. This Agreement shall be binding upon, and inure to the benefit of the parties and their representatives, successors and assigns.

Section 2. No party may assign its interest under this Agreement to any third party without the prior written consent of the other party.



Section 3. No modification of this Agreement shall be valid unless the same is in writing and signed by each party. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. The failure of a party at any time to insist upon strict performance of any condition or agreement set forth herein shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of the same at a future time.

Section 4. The parties, upon their request, agree to consult each other on any matter relating to the interpretation or implementation of this Agreement.

Section 5. Except for disclosures required under the laws, rules and regulations of the Philippines or pursuant to valid and enforceable orders of courts or other governmental agencies with jurisdiction over the subject matter of this Agreement, no party shall, without the prior written consent of the other party, make any disclosure to a third party, of 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.

Section 6. This Agreement shall be governed, construed and interpreted in accordance with Philippine laws.

Section 7. If any provision contained herein is invalid, illegal or unenforceable in any respect under any applicable law or decision, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired in any way.

IN WITNESS WHEREOF, the parties have hereunto caused their duly authorized representatives to execute this Memorandum of Agreement on _____ day of MAY 28 2009, 2009 at ANGELES CITY.

**PHILIPPINE ECONOMIC
ZONE AUTHORITY**

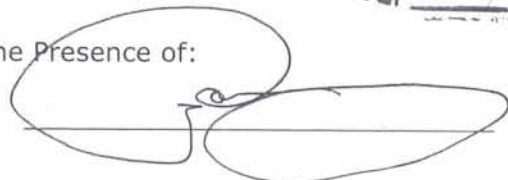

LILIA B. DE LIMA
Director General

**CLARK DEVELOPMENT
CORPORATION**


BENIGNO N. RICAFORT
President and CEO

Signed in the Presence of:





12379

X

ACKNOWLEDGMENT

Republic of the Philippines)
City of **ANGELES CITY**, S.S.

BEFORE ME, this JUN 05 2009, personally appeared the following:

NAME	Passport No.	Date/Place of Issue
LILIA B. DE LIMA	ZZ133340	5-10-05 / Manila
BENIGNO N. RICAFORT	ZZ225163	4-24-07 / Manila

both known to me and to me known to be the same persons who executed the foregoing instrument and acknowledged to me that the same is their free and voluntary act and deed as well as the entities represented.

Said instrument refers to a Memorandum of Agreement consisting of five (5) pages including this page, signed by the parties and their witnesses on each and every page thereof and sealed with my notarial seal.

Doc. No. 91;
Page No. 72;
Book No. XIV;
Series of 2009.

JOANNE D. VITUG-EVANGELISTA
 Notary Public
 Commission No. 2005-212
 Until Dec. 2010
 PTR No. 02138412 - Angeles City
 IBP No. 763724 - Angeles, Pangasinan
 Attorney's Roll No. 48564
 950 Fields Ave., Balibago, Angeles City

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