

CONSTRUCTION SERVICE AGREEMENT

This Construction Service Agreement (this "Agreement") entered into this _____ ("Effective Date") by and between:

KIMBERLAND CONSTRUCTION INC., a corporation duly organized and existing under Philippine law, with principal address at 10-26 Purok 1 AMSIC, Angeles City, Pampanga, Region III (Central Luzon), 2009 (herein referred to as "CONTRACTOR"), represented herein by its President, Jeanne Lois Ramoneda.

- and -

NEW COAST LEISURE INC. a corporation duly organized and existing under Philippine law, with principal address at 5th Floor, M.H. Del Pilar corner Pedro Gil St., Malate, Manila, (hereinafter referred to as "OWNER"), represented herein by its Authorized Signatory, Chen Yeming.

(Each, a "Party"; collectively, the "Parties").

WHEREAS, OWNER desires to engage a qualified and competent provider for Services;

WHEREAS, CONTRACTOR represents and warrants that it has the requisite qualifications, resources, and competence relevant and sufficient to meet the requirements of OWNER;

WHEREAS, for services in connection with the following described Project:

Construction and Renovation works for OWNER's premises located M.H. Del Pilar corner Pedro Gil St., Malate, Manila ("Scope of Work" or the "Project").

WHEREAS, the Scope of Work is attached herein as Annex "A", the Construction Schedule is attached herein as Annex "B", and the Contract Price is attached herein as Annex "C".

NOW THEREFORE, OWNER agrees to engage the CONTRACTOR, and CONTRACTOR agrees to provide the services to OWNER, under the terms and conditions set forth in this Agreement and its Schedules.

ARTICLE I Extent of Agreement

The CONTRACTOR accepts the relationship of trust and confidence established between him and the OWNER by this Agreement. CONTRACTOR agrees to furnish the construction and renovation services set forth herein and agrees to furnish efficient business administration and superintendence, and to use their best efforts to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the OWNER.

1.1 *Extent of Agreement:* This Agreement represents the entire agreement between the OWNER and the CONTRACTOR and supersedes all prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by a subsequent written

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instrument signed by both OWNER and CONTRACTOR.

1.2 *Definitions:*

The *Project* is the totality work to be performed by the CONTRACTOR on the building.

The term *day* shall mean calendar day unless otherwise specifically designated.

The term *Contract Documents* shall include any and all documents as mentioned in Article II of this Agreement

ARTICLE II
CONTRACT DOCUMENTS

- 2.1 The following documents, including all amendments thereto, if any, shall be referred to collectively as the Contract Documents and shall comprise the entire contract between the OWNER and the CONTRACTOR, whether annexed hereto or made reference herein:
- 2.2 This Agreement shall include the following, which shall form an integral part of this Agreement:
 - 2.2.1 OWNER Secretary Certificate authorizing entering into this agreement and the authority of their authorized signatory to execute such;
 - 2.2.2 CONTRACTOR Secretary's Certificate authorizing entering into this agreement and the authority of their authorized signatory to execute such
 - 2.2.3 Notice of Award;
 - 2.2.4 Notice to Proceed;
 - 2.2.5 Technical Annexes (approved construction schedule, manpower schedule, organizational chart, equipment schedule, "S-Curve");
 - 2.2.6 Technical Specifications for Renovation;
 - 2.2.7 Plans and Drawings as approved by OWNER, per attached list and dates.
- 2.3 The various documents comprising the entire Contract Documents are meant to be complementary with each other, and what is called for or prescribed under one document shall be construed to be called for or prescribed under all the others. In case of any discrepancy, inconsistency, omission, or ambiguity between any or among all of the individual documents, this Agreement shall be the controlling document.
- 2.4 The OWNER shall have the right to issue to the CONTRACTOR, at any time during the progress of the Project, any additional plans, drawings, documents or instructions that may be deemed necessary for the proper and timely execution of the Project or any portion thereof, which plans, drawings, documents or instructions as submitted by the CONTRACTOR to the OWNER, shall form integral parts of the Contract Documents. Any variation in quantities or change in the scope of the Project resulting from such issuances shall be treated in accordance with Article VII, hereof.

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ARTICLE III
Contractor's Responsibilities

3.1 Contractor's Services

- 3.1.2 The CONTRACTOR shall be responsible for designing, constructing, furnishing and demolition as contemplated by the Scope of Work as stated under Annex "A" as herein attached ("Scope of Work"). The OWNER and CONTRACTOR shall develop a Construction Schedule ("Schedule") and the OWNER shall be responsible for prompt decisions and approvals so as to maintain the approved schedule. The Construction Schedule is attached herein as Annex "B".
- 3.1.3 The CONTRACTOR shall secure, and pay the fees and expenses for, such licenses, permits, and certifications necessary for the completion of the Project, including but not limited to Philippine Contractors Accreditation Board (PCAB) license.
- 3.1.4 The CONTRACTOR may subcontract specialty works that are among its Scope of Work, subject to the prior written consent of the OWNER, which shall not be unreasonably withheld. To obtain the OWNER's consent, the CONTRACTOR shall nominate its proposed subcontractor and submit proof of the subcontractor's eligibility and other documents as may be required by the OWNER's authorized representative. If consent is given, the CONTRACTOR shall directly engage the subcontractor and the OWNER's consent thereto shall not, under any circumstance, be construed as to create any contractual relation between the subcontractor and the OWNER.
- 3.1.5 Notwithstanding any contrary agreement (such as between the CONTRACTOR and a subcontractor), the CONTRACTOR shall, at all times, remain fully responsible to the OWNER for the acts and omissions of the subcontractors and the persons directly or indirectly employed by the subcontractors. The CONTRACTOR shall also provide for all coordination of the works performed by its and its subcontractors, and ensure the timely and proper accomplishment of the Project according to the plans, specifications, and Contract Documents approved by the OWNER.
- 3.1.6 The CONTRACTOR shall furnish the OWNER with all of the names of the subcontractors with which the CONTRACTOR has entered into agreements with, as well as a copy of the agreements. The CONTRACTOR shall ensure that all sub-contractors are aware of the CONTRACTOR's responsibility to do so and shall hold the OWNER free and harmless for any confidential information or personal data shared in regards thereto.

3.2 Responsibilities with Respect to Construction

- 3.2.1 The CONTRACTOR will provide all construction supervision, inspection, labor, materials, tools, construction equipment and subcontracted items necessary for the execution and completion of the Project.

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3.2.2 The OWNER will pay all sales, use, gross receipts and similar taxes related to the Project provided by the CONTRACTOR which have been legally enacted at the time of execution of this Agreement.

3.2.3 The CONTRACTOR will prepare and submit for the OWNER's approval an estimated progress schedule for the Project. This schedule shall indicate the dates for the starting and completion of the various stages of the renovation and demolition. Any changes to the schedule shall be subject to the approval and written consent of the OWNER.

3.2.4 The CONTRACTOR shall at all times keep the premises free from the accumulation of waste materials or rubbish caused by its operations. At the completion of the work, CONTRACTOR shall remove all of its waste material and rubbish from and around the Project as well as all its tools, construction equipment, machinery and surplus materials.

3.2.5 The CONTRACTOR will give all notices and comply with all laws and ordinances legally enacted and in force during the duration of the Agreement.

3.2.6 The CONTRACTOR shall take necessary precautions for the safety of their employees, and shall comply with all applicable provisions of law and existing regulations enacted and in force during the duration of the Agreement to prevent accidents or injury to person on, about or adjacent to the Project site, including but not limited to, the appointment of an Occupational Safety and Health ("OSH") Officer, and the permits necessarily included therein. They shall erect and properly maintain, at all times, as required by the conditions and progress of the construction, necessary safeguards for the protection of workmen and the public. It is understood and agreed, however, that the CONTRACTOR shall have no responsibility for the elimination or abatement of safety hazards created or otherwise resulting from work at the job site carried on by other persons or firms directly employed by the OWNER as separate contractors.

3.2.7 The CONTRACTOR shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The system shall be satisfactory to the OWNER, who shall be afforded access to all the CONTRACTOR'S records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. Such records shall be available to OWNER upon written request and during normal business hours. The CONTRACTOR shall preserve all such records for a period of three (3) years after the final payment or longer where required by law.

3.2.8 The CONTRACTOR shall ensure that the WORKS will be implemented diligently, continuously, expeditiously and within the approved Construction Schedule. It shall not, however, be liable for any delay in the execution of the Project or any item of work therein caused by force majeure or other events and circumstances beyond its control and unavoidable which might adversely affect the timely and proper conduct of works at the project site; provided that, this provision shall not excuse the CONTRACTOR from the consequences of its acts or omissions amounting to fraud, negligence, misconduct, delay, or


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contravention of this Agreement whether such occur prior to or simultaneous with a force majeure event. Such force majeure conditions include earthquakes, typhoons, floods, and other natural calamities, insurrection, rebellion, war and warlike conditions, and general strikes and lock-outs (except strikes and lock-outs initiated by or involving the personnel and employees of the CONTRACTOR and/or any of its sub-contractors). It shall be the responsibility of the CONTRACTOR to prosecute the Project with due diligence and care by safeguarding the site and all ongoing work from the effects of natural occurrences or force majeure events.

- 3.2.9 With respect to all CONTRACTOR-supplied materials, the CONTRACTOR shall provide as many samples as necessary to secure approval of the OWNER and for testing by a competent testing laboratory acceptable by the OWNER. The CONTRACTOR shall shoulder all costs of shipment, delivery, handling and testing of CONTRACTOR-supplied samples.
- 3.2.10 The CONTRACTOR, together with representatives of the OWNER, shall witness all testing of all materials samples, including OWNER-Supplied Materials, if any. The CONTRACTOR shall also provide or construct all requirements, storage, or facilities (such as silos or cylinders for testing of concrete) for the testing of materials. Photos of the tests conducted (with date and time stamp on when the photo was taken) shall be part of CONTRACTOR's accomplishment or progress reports, and all certificates and summary of test results issued by an independent laboratory acceptable to the OWNER shall be submitted by CONTRACTOR to OWNER.
- 3.2.11 Standard testing shall be conducted at the expense of CONTRACTOR. These tests shall include, but not be limited to, rebound hammer test, concrete core test, concrete hollow block load test, moisture test for wood materials (doors, jambs, and others), welding test for structural members, tensile and bending tests for rebars, field density tests, flood testing for all waterproof areas, and such other necessary tests as may be required by OWNER.
- 3.2.12 Mechanical and electrical testing necessary to acquire operational and safety permits shall be conducted at the expense of CONTRACTOR. These tests shall include, but not be limited to, elevator testing, pump testing, fire and safety testing.

3.3 Royalties and Patents

- 3.3.1 The CONTRACTOR shall pay all royalties and license fees for materials, methods and systems incorporated in the work. They shall defend all suits or claims for infringement of any patent rights and shall hold the OWNER free and harmless from loss or liability on account thereof except when a particular design, process or product is specified by the OWNER. In such case the CONTRACTOR shall be responsible for such loss only if they have reason to believe that the design, process or product so specified is an infringement of a patent, and fails to give such information promptly to the OWNER.

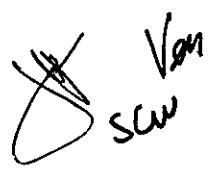
3.4 Warranties and Completion

- 3.4.1 The CONTRACTOR will secure required certificates of inspection, testing or

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approval and deliver them to the OWNER.

- 3.4.2 The CONTRACTOR will collect all written warranties and equipment manuals and deliver them to the OWNER.
- 3.4.3 The CONTRACTOR, with the assistance of the OWNER's maintenance personnel, will direct the checkout of utilities and operations of systems and equipment for readiness, and will assist in their initial start-up and testing.
- 3.4.4 The CONTRACTOR represents and warrants that it is fully aware of all the documents comprising the Contract Documents stipulated in Article II hereof, that it has complete and full understanding of the same in relation to this Agreement and the Project, and that it shall faithfully execute and satisfactorily complete the Project in accordance with the true intent and meaning of the Contract Documents taken together, whether the same, or any portion thereof, may or may not be specifically shown in the plans and drawings or described in the specifications, provided that the same can be reasonably inferred therefrom.
- 3.4.5 The CONTRACTOR represents that it has inspected the project site; that it has informed itself fully as to the conditions which might affect the nature, extent, and cost of the Project; and that the OWNER shall in no way be responsible for any costs or expenses which may develop on account of failure of the CONTRACTOR to make an accurate examination of present or future factors that may affect the cost of execution.
- 3.4.6 The CONTRACTOR represents and warrants that it shall undertake and complete the Project in the most diligent, continuous and professional manner and with the highest possible quality of workmanship, that all materials and supplies that it will incorporate into the Project shall be free from any defect or quality deficiency, shall be new and of recent manufacture, and that it shall fully conform to the generally accepted trade practices, methods and procedures in undertaking the Project. As part of its progress report or at any time upon the OWNER's request, the CONTRACTOR shall provide documentation to show proof of the manufacture and fabrication dates of any material, equipment or appliance brought to or installed in the Project.
- 3.4.7 The CONTRACTOR guarantees the Project against any and all defects, deficiencies and failures caused by or resulting from inferior materials it has supplied, used and installed, unsatisfactory workmanship and/or non-compliance with the Contract Documents and the like for a period of one (1) year reckoned from the day of final acceptance of the Project by the OWNER ("Defects Liability Period"). In case any defect, failure and poor workmanship of any part of the Project is discovered during the said Defects Liability Period, except those resulting from normal wear and tear, or the negligence or misuse of the OWNER, the CONTRACTOR shall be bound to make good such defect, failure or poor workmanship, without any cost or expense to the OWNER. In any case during the same period, the CONTRACTOR shall hold the OWNER free and harmless from any and all liabilities and damages that may be incurred as a result of any breach of the said CONTRACTOR's guarantees, including



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portions of the Project that may have been done by sub-contractors or service providers of the CONTRACTOR. It is hereby understood, however, that these stipulations shall not in any manner affect or limit the rights and liabilities of the parties under Article 1723 and other provisions of the Civil Code, nor under any existing law, rules, and regulations.

- 3.4.8 The CONTRACTOR shall, at its own expense, repair and/or rectify, to the OWNER's satisfaction, all defects or deficiencies noted in the Project within the said Defect Liability Period. In the event the CONTRACTOR fails or refuses, for any reason whatsoever, to repair or rectify any defect, deficiency or failure in the Project within fifteen (15) days from receipt of notice, the OWNER reserves the right to undertake the said repair or rectification and charge the cost thereof against the Retention Money of the CONTRACTOR, or to collect from the guarantee bond, as the case may be. For the avoidance of doubt, the exercise of the right to charge the cost against the Retention Money or to collect from the guarantee bond shall not be considered as a forfeiture or waiver of any rights, remedies or claims which the OWNER may have against the CONTRACTOR in respect of any shortfall in repair or rectification costs.
- 3.4.9 The CONTRACTOR represents and warrants to engage only those sub-contractors and service providers with proven capability and track record to undertake any portion of the Project, that it will hire and/or assign only highly competent and qualified managers, supervisors, skilled personnel and laborers as part of its organization in the Project, and that it shall be fully responsible for the proper conduct and satisfactory performance of all the personnel and workers under its employ. The CONTRACTOR warrants and confirms that its obligations under this CONTRACT are not lessened or otherwise affected by subcontracting the performance of those obligations. The CONTRACTOR shall likewise ensure that the sub-contractor and service providers that it will engage complies and shall continue to comply with all the requirements of the Philippine Contractor's Accreditation Board or the Department of Labor and Employment, and other government agencies, insofar as may be applicable. The OWNER reserves the right to monitor the conduct and performance of all personnel and laborers involved in the WORKS and demand the removal of any of them who may be found to be unqualified or to perform unsatisfactorily.
- 3.4.10 The OWNER reserves the right to request the replacement of any CONTRACTOR personnel assigned to the Project should the OWNER, in its discretion, deem such replacement necessary to safeguard project performance, coordination, or overall efficiency. The CONTRACTOR shall comply with such request and propose a qualified replacement acceptable to the OWNER. Any delay herein shall warrant OWNER to the following cumulative remedies: (i) suspend payments due for the affected period until such request or requests are complied with at the satisfaction of the OWNER and/or (ii) the imposition of the fee of $\frac{1}{4}$ of 1% of the value of the fee for the affected period.
- 3.4.11 The CONTRACTOR represents and warrants that it shall comply with and abide by all the rules and regulations promulgated by the OWNER at the project site, and that it shall ensure that all its sub-contractors, personnel and workers shall do the same at all times. The OWNER reserves the right to impose

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sanctions on the CONTRACTOR and/or on any of their sub-contractors, personnel and workers, for any violation of the said rules and regulations.

3.4.12 CONTRACTOR represents and warrants that it shall provide for a weekly and monthly report on the status of all works being handled and shall provide recommendations on how any delays or deficiencies shall be avoided or minimized. The said weekly and monthly reports shall include but not limited to the following:

- a. Completion Timeline
- b. Supplier/ Contractor Evaluation of Services
- c. Completeness and Review of Contractor Documentation
- d. Tracking of Progress of Project
- e. Policy and Procedure Improvements

3.4.13 Moreover, CONTRACTOR warrants that it shall provide for regularly monitored databases that will be available for OWNER's inspection at regular hours of business, which shall include, but not limited to, all existing job orders, materials requested, billings, and relevant project completion reports.

3.4.14 CONTRACTOR likewise guarantees that all management instructions are complied with and appropriate completion of project phases are, done within the stated time periods by providing appropriate proof of completion or non-completion, including daily accomplishment or progress reports from sub-contractors and third parties.

3.4.15 The CONTRACTOR shall submit a bid proposal ("Bid Proposal") which shall include an indicative Bill of Materials ("BOM") which shall be used in the Project. The Bid Proposal shall be subject to the written consent of the OWNER, which shall not be unnecessarily withheld. The CONTRACTOR represents and warrants that the total quantities of the OWNER-Supplied Materials, that it indicated in its Bid Proposal are the maximum quantities that will be used in the Project, and that it shall be responsible for the procurement, at its own expense, of any quantity of said materials in excess of the maximum guaranteed quantities under its bid proposal. CONTRACTOR shall update the guaranteed maximum quantities as necessary following approved changes in the Project. In the event that the OWNER procures such excess quantities, the cost of the same shall be charged against and deducted from the available billing(s) of the CONTRACTOR after these are installed and incorporated into the Project. In the case of reinforcing steel bars and ready-mix concrete, the CONTRACTOR shall calculate the quantities of the same required for the Project. The resultant quantification of the CONTRACTOR, including a reasonable allowance of three percent (3%) for wastage and losses, upon approval by the OWNER, shall thence serve as the maximum guaranteed quantities. Any excess of the owner supplied materials from the maximum guaranteed quantities, including scrap materials generated therefrom, shall belong to the OWNER.

3.4.16 The CONTRACTOR represents and warrants that it is a duly licensed independent contractor that possesses all necessary licenses and permits,

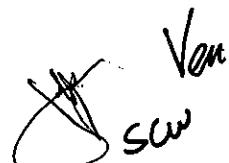
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including the Philippine Contractors Accreditation Board license, resources, manpower, with substantial capital, tools, equipment and facilities necessary to perform its obligations under this CONTRACT and that the workers utilized to carry out its obligations herein are the CONTRACTOR's employees and that the workers' deployment in the Project or the discontinuance of such deployment shall not affect the employment status of such workers with the CONTRACTOR. For this reason, it is the sole responsibility of the CONTRACTOR to comply with all labor and/or employment laws, rules and regulations. The CONTRACTOR shall comply with all laws, rules and regulations pertaining to labor employment such as, but not limited to, payment of the workers' wages, statutory benefits, as well as contributions to Social Security System, PagIBIG and PhilHealth. The CONTRACTOR further warrants and undertakes that it will at its own costs obtain any additional licenses and permits, resources, manpower, tools, equipment and facilities necessary to perform its obligations as required under any laws, rules and regulations as enacted and in force from time to time during the duration of the Agreement

- 3.4.17 The CONTRACTOR represents and warrants to defend the OWNER against any demand, charge or claim of any third party, including but not limited to its sub-contractors, suppliers and service providers as well as its employees and workers and those of its sub-contractors and service providers, and to hold the OWNER free and harmless from any liability arising from any such demand, charge or claim or brought about by its failure or refusal to faithfully comply with the Contract Documents and/or with pertinent laws, ordinances, codes, standards, rules, regulations and/or generally accepted construction methods and practices. The CONTRACTOR further warrants to fully indemnify the OWNER for whatever loss or damage they or the Project might suffer or incur from any demand, charge, claim or suit that might be brought by any said third party against them or the Project resulting from the performance of their obligations.
- 3.4.18 The CONTRACTOR represents and warrants that it has secured the required authority from its Board of Directors and all other necessary consents and approvals for the validity of this Agreement, the appointment of its authorized representatives, and the execution and performance of its undertakings under the Agreement.
- 3.4.19 The CONTRACTOR shall appoint all necessary officers, including but not limited to an Authorizing Managing Officer ("AMO"), Occupational Safety and Health ("OSH") Officer and a Sustaining Technical Employee ("STE"), who shall be responsible for overseeing the day to day operations of the Project. The Manager shall be directly responsible for the management of the project and shall be available for communications as regards all aspects of progress of the project.

3.5 Additional Services

- 3.5.1 The CONTRACTOR may provide additional services upon the request of the OWNER. A written agreement between the OWNER and CONTRACTOR shall



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define the extent of such additional services and the amount and manner in which the CONTRACTOR will be compensated for such additional services.

ARTICLE IV Parties' Responsibilities

- 4.1 The OWNER shall provide full information regarding their requirements for the Project.
- 4.2 The CONTRACTOR shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.
- 4.3 Each Party shall be responsible to pay for the taxes that may be imposed by law on their respective ends as a consequence of this Agreement
- 4.4 If the OWNER becomes aware of any fault or defect in the Project or non-conformance by the CONTRACTOR of this Agreement, the OWNER shall give prompt written notice thereof to the CONTRACTOR.
- 4.5 The services and information required by the above paragraphs shall be furnished with reasonable promptness at the OWNER's expense and the CONTRACTOR shall be entitled to rely upon the accuracy and the completeness thereof, dependent upon the performance of the CONTRACTOR's own due diligence.
- 4.6 The OWNER shall have no contractual obligation to the CONTRACTOR's Subcontractors, if any, and shall communicate with such Subcontractors only through the CONTRACTOR.

ARTICLE V Contract Time Schedule

- 5.1 The work to be performed under this Agreement shall be commenced and be completed as agreed upon by the Parties. The Construction Schedule for the Project is attached to this Agreement and made an integral part hereof as **Annex "B"**.
- 5.2 The Project shall be deemed completed only upon the satisfaction of the following conditions:
 - 5.2.1 Sufficient completion of services such that the OWNER can occupy or otherwise utilize the Project for the use for which it is intended;
 - 5.2.2 Submission by the CONTRACTOR of all necessary permits, including but not limited to any Occupancy Permit, necessary for the OWNER's utilization of the Project; and
 - 5.2.3 The OWNER's acceptance that the Project is completed and all necessary permits have been submitted.
- 5.3 Upon completion of the Project, the CONTRACTOR shall notify the OWNER that the Project is ready for final inspection and acceptance. If the OWNER finds the Project to be acceptable, the latter shall signify its acceptance in the Certificate of Completion and Acceptance prepared by the CONTRACTOR, provided, however, that the OWNER, by accepting the Project, does not waive any of its rights arising from: (a) any faulty work

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or hidden defects appearing after completion, turn-over and acceptance; (b) any work that do not comply with this Agreement; and (c) CONTRACTOR's warranty on the Project.

In the event that the OWNER does not accept the Project, the latter shall signify its non-acceptance in writing within thirty (30) days and shall state therein the deficiencies on the Project and other works which have to be made on the said Project.

- 5.4 If the CONTRACTOR is delayed at any time in the progress of the Project by any act or neglect in breach of the Contract Documents of the OWNER or by force majeure events, any separate contractor employed by the OWNER, or by changes ordered in the Project, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any cause beyond the CONTRACTOR's control, or a delay authorized by the OWNER pending arbitration, then the date of completion may be extended by the written agreement of the parties.
- 5.5 If the CONTRACTOR fails or refuses to satisfactorily complete the Work within the specified Completion Time or within the agreed period of extension, after written notice from the OWNER, the CONTRACTOR shall pay the OWNER liquidated damages in the amount of 1/10 of 1% of the Total Contract Price per day of delay, without obligation on the part of the OWNER to prove that it has incurred actual damages due to CONTRACTOR'S delay in the performance of the Work. The total liquidated damages under this shall not exceed ten percent (10%) of the Total Contract Price. Such amount shall be deducted by the OWNER from any money due or which may become due the CONTRACTOR, or may be collected from the retention money or other securities posted by the CONTRACTOR. For the avoidance of doubt, the exercise of the right to deduct from any money due or which may become due or to collect from the Retention Money or other securities posted by the CONTRACTOR shall not be considered as a forfeiture or waiver of any rights, remedies or claims which the OWNER may have against the CONTRACTOR in respect of any shortfall in liquidated damages.

ARTICLE VI Contract Price and Manner of Payment

6.1 Contract Price

- 6.1.1 For and in consideration of the services rendered by the CONTRACTOR, the OWNER shall pay the CONTRACTOR the Total Contract Price stated in and in accordance with the terms of Annex "C", inclusive of value-added tax (VAT) and subject to applicable withholding tax ("Total Contract Price").

All costs and expenses for the supply of materials, labor, supervision, vehicles, tools, equipment, labor, overhead, insurance premiums, materials, scaffoldings, dewatering system, use of equipment, fuel, oils, tools, including the cost of continence, overtime or extra shift work, site and national income, required bonds and insurance policies, testing of materials, all permits, fees, temporary facilities, water and power requirements, overhead and all other costs necessary to properly and timely complete the Works, including fees and costs payable to sub-contractors and service providers engaged by the Project, if any, shall be for the account of the CONTRACTOR.

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6.2 Guaranteed Maximum Price

6.2.1 The CONTRACTOR guarantees that the maximum price to the OWNER for the cost of the Project, will not exceed the sum as stated in Annex "C" ("Guaranteed Maximum Price")

6.3 Manner of Payment

6.3.1 The OWNER shall pay the CONTRACTOR in the following manner:

- a. OWNER shall retain from all payments due in relation to this Agreement, prior to any deductions, in an amount as stated in Annex "C" ("Retention Money"). It is understood that the Retention Money shall be released no earlier than the lapse of the Defect Liability Period under Section 3.4.7 and under the terms and conditions as stated in this Agreement.
- b. Advance Payment in the amount stated in Annex "C" ("Advance Payment") upon the OWNERS issuance of the Notice to Proceed and the submission by the CONTRACTOR of the insurances and bonds under Annex "C" to the satisfaction of the OWNER
- c. Regular Progress Payments equivalent to the value of actual accomplishments of the CONTRACTOR on the Project, minus mandated tax deductions, proportionate recoupment of the Advance Payment, provision for retention payable on the succeeding Friday after thirty (30) days from the OWNER's approval of the CONTRACTOR's billing, duly certified to and endorsed for approval by the OWNER's authorized representative. It is understood that all payment releases shall be made only on Fridays. If the 30th day does not fall on a Friday, the payment release shall be made on the next succeeding Friday, without the imposition of interest.
- d. The total accumulated Retention Money, as stated in Annex "C", shall be released, without interest, upon CONTRACTOR'S request after the lapse of the Defect Liability Period.
- e. Regular progress payments by the OWNER shall cover attendance and coordination services. Regular progress payments shall be based on and proportionate to the actual work accomplishment of CONTRACTOR and/or such nominated trade and specialty contractors or supplied materials incorporated into the work for the billing period as certified to by the authorized representative of the OWNER, net of withholding tax. No down payment shall be required or payable for the CONTRACTOR's attendance and coordination services.
- f. Prior to and as among the conditions for the processing and approval of the final billing, the CONTRACTOR shall deliver and turn-over to the OWNER the complete set of As-Built Plans and notarized warranty certificates duly signed by the CONTRACTOR's authorized representative.

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- g. Any progress payment shall not be construed as an acceptance by the OWNER that the CONTRACTOR has satisfactorily performed or is satisfactorily performing the WORKS in accordance with the Contract Documents, or that such works are free from defects of any kind, hidden or otherwise, or that the CONTRACTOR is complying or has complied with the provisions, terms, and conditions of the Contract Documents or of any of the CONTRACTOR's obligations thereunder.
- h. Unless otherwise agreed to by the OWNER, all upward adjustments on the Total Contract Price, whether for additional quantities or for additional items of work, will not be provided with down payments. Payments for any such upward adjustment will be made by the OWNER in the manner prescribed under Article III and Article VI hereof.
- i. Unless otherwise agreed to by the OWNER, all materials and supplies delivered by the CONTRACTOR at the project site shall not be considered as part of its accomplishments on the Project until the same are actually installed or incorporated as integral parts of the Project in accordance with the plans, drawings and specifications provided.
- j. It is hereby clarified that all materials and supplies delivered by the CONTRACTOR at the Project site shall be deemed as property of the OWNER, without waiver to any claims as regards the materials and supplies for any defects of any kind, hidden or otherwise. As such, CONTRACTOR is forbidden from removing such materials and supplies from the premises without prior written notice to the OWNER.

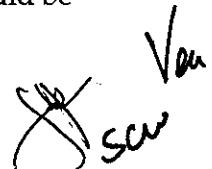
6.3.2 The OWNER shall have the right to withhold, upon due notice in writing, any payments due to the CONTRACTOR on account of:

- a. Any legitimate claim against the CONTRACTOR is made and is coursing through the OWNER by a party for the payment of labor, services, supplies and/or materials, or for rentals for the use of tools and equipment, or in case of non-compliance or defective or irregular compliance with any of the CONTRACTOR's obligations under this Agreement; or
- b. Any defective work not promptly remedied; or
- c. Reasonable evidence that the Project cannot be completed or will not be completed in accordance with the Construction Schedule.

The amounts withheld shall not be paid until the cause for withholding them has been satisfactorily removed or corrected by the CONTRACTOR.

ARTICLE VII
Changes in the Project

7.1 The OWNER, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions. All such changes in the Project, including price adjustments, if any, should be



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agreed upon in writing by the Parties. Such approval shall not be unreasonably withheld.

ARTICLE VIII

Protection of Persons and Property

- 8.1 The CONTRACTOR, at its own expense, shall be responsible for initiating (including formulation), implementing maintaining, and supervising all construction occupational safety and health precautions and programs, including health and sanitation requirements, disease prevention and control measures, and safety rules and regulations for the safe and unimpeded performance of the Project. It is the duty and obligation of the CONTRACTOR to strictly comply with the occupational safety and health standards issued by the Department of Labor and Employment, including but not limited to, the appointment of an Occupational Safety and Health (OSH) Officer, and the permits necessarily included therein, and to indemnify and hold the OWNER, its officers or employees free and harmless from any obligation or liability that may arise therein from non-compliance or violations thereof.
- 8.2 The CONTRACTOR shall take all reasonable and necessary protection to prevent damage, injury or loss to:
 - 8.2.1 all employees on the project site and other persons who may be affected thereby;
 - 8.2.2 the building and all materials and equipment to be incorporated therein; and,
 - 8.2.3 other property at the site or adjacent thereto. The CONTRACTOR shall indemnify the OWNER for any such damage, injury or loss to the OWNER, its officers, employees, agents and representatives.
- 8.3 The CONTRACTOR shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any relevant public authority bearing on the safety of persons and property and their protection from damage, injury, or loss.
- 8.4 Work stoppage due to unsafe conditions or violation of the occupational safety and health standards issued by the Department of Labor and Employment or any environmental laws, rules and regulations, shall be deemed a violation on the part of Contract to comply with this Agreement and is not a ground for an extension of the Construction Schedule. If the CONTRACTOR fails or does not immediately adopt the necessary corrective measures, OWNER may perform them and deduct the cost thereof from any payments due to the CONTRACTOR. For the avoidance of doubt, the exercise of the right to deduct the costs of adopting corrective measures from any money due or which may become due or to collect from the Retention Money or other securities posted by the CONTRACTOR shall not be considered as a forfeiture or waiver of any rights, remedies or claims which the OWNER may have against the CONTRACTOR in respect of any shortfall in such rectification costs.
- 8.5 The CONTRACTOR shall promptly remedy all damage to any portion of the Project and/or Building caused in whole or in part by the CONTRACTOR, any of the latter's sub-contractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

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ARTICLE IX
Termination of the Agreement

9.1 The OWNER shall have the right to terminate the CONTRACTOR, subject to thirty (30) days prior written notice to the CONTRACTOR, for the following reasons:

- 9.1.1 In the event that the CONTRACTOR becomes insolvent or declares bankruptcy or assigns its assets for the benefit of its creditors;
- 9.1.2 In the event that the CONTRACTOR incurs unjustified delay of at least five percent (5%) in the implementation of the Project, or any portion thereof, from the approved Construction Schedule.
- 9.1.3 In case the CONTRACTOR, and/or any of its subcontractors and service providers, fail or refuse, without any justifiable reason, to conform to the plans, drawings, specifications, and other documents pertaining to the implementation of the Project, including any revision or modification therein, or the instructions of the OWNER with regard to the implementation thereof;
- 9.1.4 In case the CONTRACTOR violates any condition or stipulation of this Agreement, or in case it, and/or any of its sub-contractors and service providers, continuously violate any of the rules and regulations enforced by the CONTRACTOR at the site;
- 9.1.5 The CONTRACTOR becomes liable for liquidated damages in an amount corresponding to ten percent (10%) of the total contract amount;
- 9.1.6 The CONTRACTOR breaches any of its obligations, representations and warranties under this Contract;
- 9.1.7 The CONTRACTOR fails to undertake repairs and/or rectification works of defects discovered during inspection within thirty (30) calendar days from receipt of notice from the OWNER; or
- 9.1.8 The CONTRACTOR abandons the Project.
Should any one of the aforesited events occur, the OWNER reserves the right to take over the Project and cause the completion thereof by other parties and to withhold any payment due the CONTRACTOR until the Project have been fully completed, without prejudice to other legal remedies that the OWNER may be entitled to. In case the cost of completing the Project exceeds the remaining portion of the total Construction Fee at the time of the termination of this Agreement, the OWNER reserves the right to collect the excess from the CONTRACTOR.

9.2 The CONTRACTOR shall, within thirty (30) days from receipt of the notice of termination, clear the worksite of all tools, implements and manpower/ personnel and demobilize all machineries and equipment thereat. Failure to do so shall entitle the OWNER to charge the CONTRACTOR storage fees for all tools, implements, machineries and equipment left at the worksite and, after sixty (60) days of inaction, forfeit the same as abandoned in favor of the OWNER. Further, the OWNER shall have the right to summarily ask the manpower/personnel of the CONTRACTOR who remains at the work site to leave the premises without prejudice to the right of the

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OWNER to seek the assistance of the local authorities in case of resistance to said request. Any damage that the OWNER may sustain as a result of the refusal of the CONTRACTOR to comply herewith shall entitle the OWNER to compensation for such damage. The OWNER reserves the right to retain at site and use any materials, tools, equipment and personnel of the CONTRACTOR towards the completion of the Project subject to payment of reasonable rental rates or wages. For the avoidance of doubt, the retention at site and use of any materials and supplies delivered to the site by the CONTRACTOR which are deemed to be properties of the OWNER under Section 6.3.1j of Article V shall not be subject to payment of rental rates or wages.

9.3 The termination of this Agreement shall also result in the automatic termination of any contracts or arrangements that the CONTRACTOR may have with its sub-contractors or service providers. The CONTRACTOR shall make it clear to its sub-contractors and service providers that, upon the termination of this Agreement, they will have no direct recourse whatsoever to the OWNER for any compensation due to them.

9.4 The OWNER may, at its sole option, also terminate this Agreement for the following reasons:

9.4.1 Prolonged force majeure conditions or the direct effects thereof, which might render the project site unsafe or unfit for the continuation of the WORKS beyond three (3) months from the start of the force majeure event.

9.4.2 Protracted regional or global economic or health crisis or the effects thereof which might adversely impair or diminish the capability of the OWNER to financially support and sustain the regular pace or schedule of the Project.

9.4.3 In the event the Government enacts any law, statute, or ordinance, rule or regulation, or imposes any condition or restriction, which will render the continuation of the development of the Project impossible or impracticable.

9.5 The CONTRACTOR may terminate this Agreement, subject to sixty (60) days prior written notice to the OWNER, for the following reasons:

9.5.1 In case the owner fails or refuses to comply with any of its obligations under this Agreement, including, but not limited to, non-payment of the certified billings of the CONTRACTOR, subject to a grace period of thirty (30) days from demand or notice from CONTRACTOR to allow the OWNER to rectify or remedy any default;

9.5.2 In the event the Government enacts any law, statute, ordinance, rule or regulation, or imposes any condition or restriction, which will render the continuation of the Project impossible.

ARTICLE X Governing Law

10.1 This Agreement shall be governed by and construed according to Philippine law. Venue of any court action, suit or proceeding between the Parties arising out of or relating to the Agreement shall be exclusively in the City of Manila.

In case any legitimate claim against the CONTRACTOR is filed in connection with this Agreement before the court, tribunal or any other government agency or with the OWNER in which the CONTRACTOR and/or OWNER might eventually be held liable

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for, the OWNER shall have the exclusive option to withhold payment of the Fees under this Agreement. This shall be understood to be without prejudice to any other remedy, which the OWNER may pursue against the CONTRACTOR. However, no liability shall attach to the OWNER should it fail to exercise such option.

ARTICLE XI

General Provisions

- 11.1 This Agreement embodies the entire agreement between the OWNER and the CONTRACTOR with respect to the Project. Neither party shall be bound by and held liable for any statement, warranty, commitment or representation made or issued by either of them or their respective representatives which is not contained herein unless such statement, warranty, commitment or representation is reduced in writing, signed by both parties hereto and made an integral part of this Agreement.
- 11.2 It is expressly understood that any and all acts of tolerance or forbearance that the OWNER or any of its agents, or any of their designated representatives, shall not in any way or under any circumstance be construed as a renunciation or waiver of its rights, remedies and courses of action under this Agreement, or as valid and binding amendments hereto. The OWNER and/or any of its said agents reserves the right to enforce or apply any of the provisions of this Agreement at any time, including any which will correct or rectify previous errors of omission, notwithstanding the fact that it may have failed or refused to enforce or apply the same previously.
- 11.3 This Agreement shall not be amended or modified in any way without the express consent of both the OWNER and the CONTRACTOR. All amendments hereto shall be valid and binding on both parties hereto only if the same are reduced in writing, signed by both parties and made integral parts of this Agreement.
- 11.4 In the event any of the provisions of this Agreement is declared with finality as null and void by the proper courts, the other provisions hereof not adversely affected nor impaired thereby shall remain in full force and effect.
- 11.5 This Agreement shall take effect immediately upon its execution by both parties hereto and shall remain valid and binding until all of the obligations of both parties have been fully accomplished and discharged satisfactorily, unless the Agreement is terminated in accordance with the provisions provided in Article IX of this Agreement.
- 11.6 Within fifteen (15) days after the execution of this CONTRACT by both parties hereto, and as a condition for the OWNER's issuance of the **Notice to Proceed** and release of the Advance Payment, the CONTRACTOR shall procure at its own cost and submit to the OWNER verified original copies of the following bonds and insurance policies issued by any of the bonding/insurance companies acceptable to the OWNER:
 - 11.6.1 **Contractor's All-Risk Insurance** in an amount equivalent to the Total Contract Price, for the purpose of insuring against any and all losses, damages, and liabilities incurred by the OWNER or the CONTRACTOR, including but not limited to Force Majeure events and work-related injuries of workers, death and dismemberment, including medical reimbursements, if any, during the course of the execution of the Project, and to remain valid and effective until

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the Project has been completed and accepted by the OWNER.

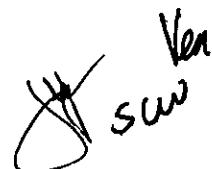
- 11.6.2 **Advance Payment Security** in an amount equivalent to the Advance Payment which shall be maintained until the Advance Payment is fully utilized.
- 11.6.3 Subject to the OWNER'S approval, the CONTRACTOR may request to collect the accumulated Retention Money, or a portion thereof, from the OWNER before the lapse of the stipulated one-year warranty period, by submitting to the latter a guarantee bond, callable on demand, equivalent to the amount of the Retention Money being collected, issued by any bonding company acceptable to the OWNER which shall be valid and effective up to the end of the aforesaid warranty period.
- 11.7 The validity and effectivity of any of the bonds and insurance coverages prescribed herein shall not in any way be diminished, impaired or adversely affected by any amendment to this Agreement or any alteration, revision, adjustment on any item or portion of the Project mutually agreed upon between the OWNER and the CONTRACTOR. It shall be the sole responsibility of the CONTRACTOR, at its own cost, to ensure the continuous and uninterrupted validity and effectivity of all the bonds and insurance coverages, without need for reminders from the OWNER, by causing the immediate amendment of the same, if necessary, to account for any such amendment to this Agreement or alteration, revision or adjustment on any item or portion of the Project. The inability or failure of the CONTRACTOR to secure the necessary bonds and insurance policies shall be a ground for the termination of the Agreement by the OWNER.
- 11.8 The CONTRACTOR shall, at its own cost, be responsible for ensuring that all the required bonds and insurance covers remain valid and fully effective throughout the prescribed periods therefor for until completion of the Project. The OWNER reserves the right to withhold any or all payments to the CONTRACTOR in case any of the said bonds and insurance covers will lapse, until the latter has caused the renewal or reinstatement of the same.
- 11.9 The OWNER and CONTRACTOR hereby jointly make manifest their full commitment to work harmoniously together towards the satisfactory and timely completion of the Project. They likewise make manifest their commitment to endeavor to amicably settle all disputes, conflicts and differences, if any, pertaining to the Project and/or this Agreement. In the event, however, that all efforts by both parties towards the amicable settlement of any such dispute, conflict or difference fails, both parties hereto hereby agree to submit themselves to arbitration pursuant to Executive Order No. 1008, including the Rules of Procedures Governing Construction Arbitration approved and promulgated by the Construction Industry Arbitration Commission (CIAC), and R.A. 9285 (Alternative Dispute Resolution Act of 2004), including the 2009 Implementing Rules and Regulations thereto.
- 11.10 In the meantime that the disputes, conflicts and differences, if any, pertaining to the Project and/or this Agreement are being heard on referral before an arbitral body, the CONTRACTOR and OWNER shall as much as practicable, treat the dispute, conflict and/or difference as an isolated event which should not affect the continuity and satisfactory completion of the Project unless the disputes, conflicts and/or differences are such that would call for the termination of this Agreement.


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11.11 Nothing in this provision that will preclude the OWNER from securing equitable and injunctive relief in the interim in order to protect its interests and rights.

11.12 This Agreement may be executed in one or more counterparts, each of which shall be an original document, and all of which together shall constitute one and the same instrument.

[signature page follows]

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IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this _____ day of _____, at _____, Philippines.

NEW COAST LEISURE, INC.

Owner

By:


CHEN YEMING
Authorized Signatory

KIMBERLAND CONSTRUCTION INC.

Contractor

By:


JEANNE LOIS RAMONEDA
Authorized Signatory

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ACKNOWLEDGEMENT

Republic of the Philippines)
_____) S.S.

BEFORE ME, a Notary Public for and in _____, this _____ day of _____, personally appeared the following persons, with their competent evidence of identity as follows:

Name	Evidence of Identity	Date/ Place of Issue
CHEN YEMING		
JEANNE LOIS RAMONEDA	PRC I.D.: 0045356	02-15-19 / MANILA

known to me and to me known to be the same persons who executed the foregoing instrument and declared to me that the same is their free and voluntary act and deed and of the corporation they respectively represent, of which corporation they have the authority to sign in a representative capacity, and further declared to me that their signatures above are affixed for the purpose stated in the foregoing.

This instrument pertains to the Construction Services Agreement, consisting of _____ (_____) pages including this page where the acknowledgement is written, signed by the parties hereto and their instrumental witnesses.

NOTARY PUBLIC

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of 202_.

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ANNEX A

Scope of Work of the Project

1. Scope of Renovation Area:

- a. Casino:
 - a.1. Ground Floor Casino Main Entrance and Drop-off Area.
 - a.2. 3RD Floor Extension Area
- b. Hotel:
 - b.1. B1 Floor Permanent Power LVSG - A & B Equipment
 - b.2. 7TH Floor UPS Equipment.
 - b.3. 10TH Floor Presidential Suite Area.
 - b.4. 17TH Floor Hotel Guest Room & Corridor & Elevator Lobby Area.
 - b.5. 19TH Floor Hotel Guest Room & Corridor & Elevator Lobby Area.
 - b.6. 28TH,29TH,30TH Floor Hotel Guest Room & Corridor &

2. Scope of Renovation Work

a. Casino:

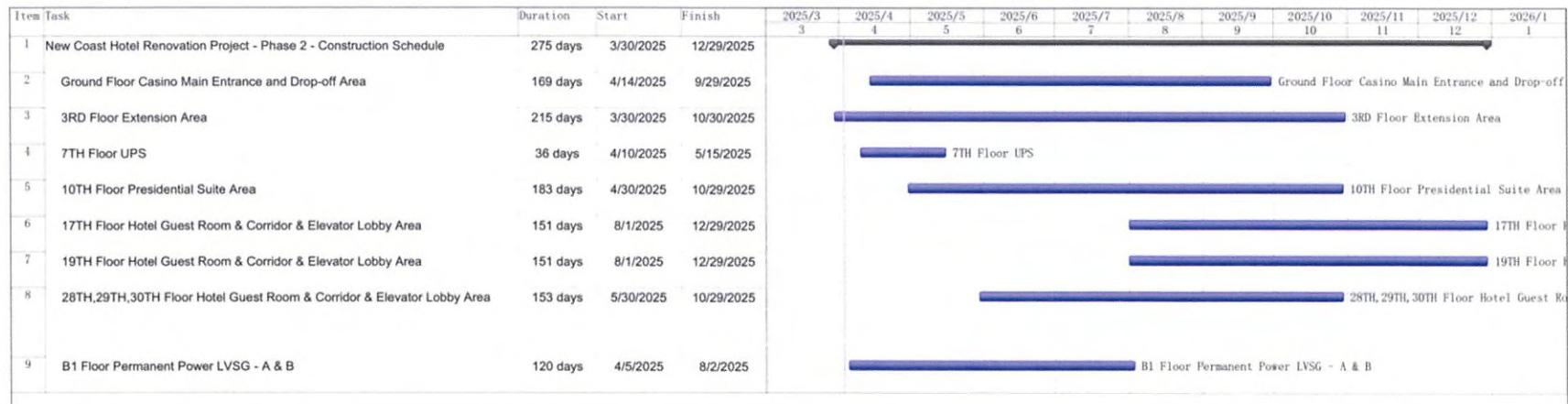
- a.1. Wall finishes, ceilings, floor finish. (exclude artworks)
- a.2. Fixture cabinet and chandelier (exclude loose furniture, LED screen).
- a.3. Air-con: include AHU, FCU, chiller pipe, drain pipe, grilles, ducting.
- a.4. Electric: include roughing-ins, panel board, switch, outlet and lighting fixture (exclude electrical appliances, WIFI/internet cable, Telephone cable) .
- a.5. Plumbing: Sanitary fixture, plumbing pipe.
- a.6. FDAS: Smoke detector, manual pull station, ceiling speaker, fire alarm control panel.
- a.7. Fire-protection: Sprinkler and branch pipe.

b. Hotel:

- b.1. Wall finishes, ceilings, floor finish (exclude artworks)
- b.2. Fixture cabinet (exclude loose furniture ,bed mattress, curtain)
- b.3. Air-con: include FCU, chiller pipe, drain pipe, grilles, ducting
- b.4. Electric: include roughing-ins, switch, outlet and lighting fixture (exclude electrical appliances, WIFI cable, TV cable, Telephone cable)
- b.5. Plumbing: Sanitary fixture, plumbing pipe
- b.6. FDAS: Smoke detector, manual pull station, ceiling speaker
- b.7. Fire-protection: Sprinkler and branch pipe
- b.8. UPS (2 set 320KVA).

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ANNEX C
Contract Price

		(In Philippine Peso)
I	GUARANTEED MAXIMUM PRICE	1,053,140,480.00
II	PRELIMINARIES	51,716,720.00
III	BILL OF QUANTITIES¹	888,587,280.00
IV	NET ESTIMATED COST	940,304,000.00
V	VALUE ADDED TAX (12%)	112,836,480.00
VI	TOTAL CONTRACT PRICE	1,053,140,480.00

[Manner of Payment and Bill of Quantities follows]

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ANNEX C - continued
Manner of Payment

Total Contract Price	ONE BILLION AND FIFTY-THREE MILLION ONE HUNDRED AND FORTY THOUSAND FOUR HUNDRED AND EIGHTY PESOS AND ZERO CENTAVO (PHP 1,053,140,480.00) INCLUSIVE OF TWELVE PERCENT (12%) VALUE ADDED TAX	
Advance Payment	PHP 421,256,192.00	Forty Percent (40%) of Total Contract Price; payable within fourteen (14) calendar days from after the Effective Date, subject to the CONTRACTOR (directly or through its subcontractors furnishing OWNER with the following insurances and bonds to the satisfaction of the OWNER: i. Contractor's All-Risk Insurance in the amount equivalent to the value of the Total Contract Price. All bonds shall be procured from an insurance company acceptable to the OWNER
Regular Progress Payment	PHP 579,227,264.00	Fifty-Five Percent (55%) of Total Contract Price; payable in progress billings within the period as stated in the Agreement
Retention Money	PHP 52,657,024.00	Five Percent (5%) of the Total Contract Price; to be retained by the OWNER and subject to release within the period and to conditions as stated in the Agreement
Total Amount Payable	PHP 1,053,140,480.00	

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