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13 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**  
14 **PROCUREMENT APPEALS**

15  
16  
17 IN THE APPEAL OF:

18 CORE TECH INTERNATIONAL CORP.,

19  
20 Appellant.

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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FILE NO OPA-PA: 16-007/16-011

**CONSOLIDATED APPEAL NOS.:**

**OPA-PA-16-007**

**OPA-PA-16-011**

**INTERESTED PARTY GUAM  
EDUCATIONAL FACILITIES  
FOUNDATION, INC.'S OPPOSITION TO  
APPELLANT CORE TECH  
INTERNATIONAL CORP.'S REQUEST  
FOR DETERMINATION THAT GEFF'S  
PROPOSAL WAS NON-RESPONSIVE**

1           **GUAM EDUCATIONAL FACILITIES FOUNDATION, INC.** (“GEFF”), an  
2 interested party and the offeror selected as the most qualified in the instant procurement, hereby  
3 submits its objections and opposition to Appellant Core Tech International Corp.’s (“Core Tech”)  
4 Request for Determination that GEFF’s proposal was non-responsive (“Request”).

5           Core Tech’s Request is procedurally defective and wholly without merit, indeed frivolous.  
6 There is no doubt that GEFF is the named offeror under its proposal and has met or exceeded the  
7 experience required under RFP No. 730-5-1055-L-YIG - Lease Financing for Design, Renovation  
8 Rehabilitation, Construction and Maintenance of Public Schools (Beginning with Simon Sanchez  
9 High School) (the “RFP”). Accordingly, for the reasons set forth herein, GEFF requests that the  
10 Public Auditor reject and/or deny the Request in its entirety.

11           **I.           CORE TECH’S CHALLENGE TO GEFF’S PROPOSAL CANNOT BE**  
12           **REVIEWED OR DETERMINED BY THE OPA IN THE FIRST INSTANCE**

13           If Core Tech takes issue with the evaluation of GEFF’s proposal as to identity and  
14 experience, Core Tech’s *mandatory* first line of recourse was to file an administrative protest  
15 with DPW. Core Tech failed to do that. Instead, as has been its *modus operandi* throughout this  
16 proceeding, Core Tech is trying to insert a new issue on appeal without first going through the  
17 well-established administrative process of filing a protest with the procuring agency. In light of  
18 this *procedural* and *jurisdictional* defect, the OPA must reject Core Tech’s tactics and summarily  
19 deny the Request.

20           The issue as to GEFF’s identity and experience were not raised in Core Tech’s prior  
21 protests, DPW’s denials of those protests, or Core Tech’s Notices of Appeal. The statement of  
22 grounds of appeal raised in Core Tech’s two Notices of Appeal are as follows:

23           First Notice of Appeal, OPA-PA-16-007:

- 24           1. “Core Tech’s Appeal Was Timely Filed.”  
25           2. “DPW Violated 2 GAR § 3114 When It Allowed GEFF To Submit Four New  
26           Proposals.”  
27           3. “The Negotiating Team Did Not Have the Authority to Modify the RFP or to Accept  
28           GEFF’s New Proposal.”

1 4. "The Offeror Must be Bondable and a [sic] 100% Performance and Payment Bond"  
2 (Core Tech First Notice of Appeal filed June 23, 2016.)

3 The foregoing are issues that were raised in Core Tech's second protest<sup>1</sup> and addressed in  
4 DPW's denial of said protest. (Core Tech Exhibits ("CT Exs.") 14 and 15.)

5 Second Notice of Appeal, OPA-PA-16-011:

6 1. "Core Tech's Appeal Was Timely Filed."

7 2. "The IDIQ Contract Envisions GEFf Circumvention of the \$100M Cap In Violation  
8 of the RFP."

9 3. "DPW Failed to Maintain a Complete Procurement Record Required Under Guam  
10 Procurement Law."

11 (Core Tech Second Notice of Appeal filed August 10, 2016.)

12 The foregoing are the exact issues that were raised in Core Tech's third protest and  
13 addressed in DPW's denial of said protest. (CT Exs. 20 and 22.)

14 As is clearly evident from the grounds of appeal stated in Core Tech's two Notices of  
15 Appeal, which are identical to the grounds for protest delineated in Core Tech's second and third  
16 protests, the issue raised by Core Tech in its Request – that the OPA determine whether GEFf's  
17 proposal is responsive to the RFP's sections regarding identity and experience – is *not* properly  
18 before the OPA. It is improper for Core Tech to challenge the evaluation of GEFf's identity and  
19 experience for the first time on appeal before the OPA. Core Tech's Request is a blatant attempt  
20 to circumvent the long-standing administrative procedures and remedies set forth in the Guam  
21 Procurement Law that require the filing of a protest with the procuring agency first.

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22  
23 <sup>1</sup> Core Tech's second protest with DPW also raised one additional issue, i.e., "The  
24 Involvement of FOL Guam, LLC and E.C. Development Is a Conflict or a Potential Conflict  
25 Which Had to be Disclosed." (CT Ex. 14, pg. 6.) However, Core Tech subsequently abandoned  
26 and therefore waived that issue by failing to include it in its Second Notice of Appeal. This  
27 abandoned ground was denied by DPW along with the other grounds originally stated in Core  
28 Tech's protest letter. (CT Ex. 15 ("Core Tech's final objection presents an unsubstantiated  
speculation of possible conflicts of interest. This objection is unsubstantiated by fact and is  
without merit."))

1 Further, any hypothetical rejection of GEFf's proposal, if at all, must be carried out by  
2 DPW in the first instance. Moreover, this is entirely in DPW's "sole discretion." The RFP  
3 provides as follows with regard to the rejection of proposals:

4 **3.11 DPW RIGHTS RESERVED**

5 While DPW and the government of Guam have every intention to issue an award  
6 as a result of this RFP, issuance of the RFP in no way constitutes a commitment  
7 by DPW or the government of Guam to award and execute a contract. Upon a  
8 determination such actions would be in its best interest, **DPW, in its sole  
discretion, reserves the right to:**

9 • Cancel or terminate this RFP as provided in the Guam Procurement Regulations;

10 • **Reject any or all proposals received in response to this RFP in the best  
11 interests of DPW or the government of Guam as provided in the Guam  
Procurement Regulations;**

12 ....

13 (CT Ex. 1, pg. 16.) (Emphasis added.) *See also* Section 2.4.6 of the RFP (stating same and citing  
14 Guam Procurement Regulations § 3115(e)) and Section 3.7 of the RFP (noting that proposals *may*  
15 be found non-responsive during the evaluation phase or contract negotiations) (emphasis added).

16 (CT Ex. 1, pp. 16, 9 and 15.).

17 As is set forth in Section 3.11 of the RFP, it is DPW who retains *the discretion* to  
18 determine whether a proposal should be rejected in the first instance. If Core Tech believes that  
19 DPW (or the evaluation or negotiation committees) did not properly review GEFf's proposal as  
20 to identity and experience, then under the administrative regime established in the Procurement  
21 Law and Regulations, Core Tech is first required to file a protest with DPW, the procuring  
22 agency. The Procurement Law provides that "Any actual or prospective bidder, offeror, or  
23 contractor who may be aggrieved in connection with the method of source selection, solicitation  
24 or award of a contract, may protest to the Chief Procurement Officer, the Director of Public  
25 Works or the head of a purchasing agency." 5 GCA § 5425(a). *See also* 2 GAR Div. 4 §  
26 9101(c)(2) ("Protestors may file a protest on **any phase of solicitation** or award including, but  
27 not limited to, specifications preparation, bid solicitation, award, or disclosure of information  
28 marked confidential in the bid or offer.") (Emphasis added.).



1 If the protest is not resolved by mutual agreement, the head of the agency is required to  
2 promptly issue a written decision. See 5 GCA § 5425(c). A protester may then appeal the  
3 *decision* to the OPA. *Id.* at § 5425(e). The OPA is charged with determining “whether a **decision**  
4 **on the protest** of method of selection, solicitation or award of a contract, or entitlement to costs  
5 is in accordance with the statutes, regulations, and the terms and conditions of the solicitation.”  
6 (Emphasis added.) 2 GAR Div. 4 § 12201. Thus, the authority and jurisdiction of the OPA is  
7 limited to reviewing a “decision on the protest”; it is improper for a party to request a  
8 determination by the OPA in the first instance regarding an issue not first raised in the protest or  
9 the agency decision on the protest. Here, Core Tech was required to protest the issue raised in its  
10 instant Request to DPW *first*. Its failure to do so means that its Request is improperly before the  
11 OPA. See *Perez v. Gutierrez*, 2001 Guam 9 ¶ 19 (noting that *Pacific Rock I* held “that the Guam  
12 Procurement Law is a comprehensive statute providing a **mandatory** scheme of administrative  
13 and judicial remedies. . . .”) (Emphasis added.); *In the Appeal of Guam Community Improvement*  
14 *Foundation, Inc.*, OPA-PA-09-005, Decision at 11-12 (Public Auditor’s jurisdiction is limited to  
15 reviewing issues raised in the appellant’s protest and the government’s decision denying the  
16 protest).

17 **II. IT IS TOO LATE FOR CORE TECH TO RAISE QUESTIONS**  
18 **REGARDING GEF’S IDENTITY AND EXPERIENCE SINCE CORE**  
19 **TECH SHOULD HAVE KNOWN OF SUCH ISSUES ON SEPTEMBER 23,**  
20 **2016, AT THE LATEST, AND THE TIME TO PROTEST HAS EXPIRED**

20 The Procurement Law is clear in its mandate that a “protest *shall* be submitted in writing  
21 *within fourteen (14) days* after such aggrieved person knows or should know of the facts giving  
22 rise thereto.” 5 GCA § 5425(a) (emphasis added). “Protests filed after the 14 day period *shall*  
23 *not* be considered.” 2 GAR Div. 4 § 9101(c)(1) (emphasis added).

24 In its Request, Core Tech states that “[b]ased on the testimony received by the Public  
25 Auditor to date, an issue regarding Guam Educational *Facilities* Foundation’s identity as an  
26 offeror came to light.” (Request at 2, lines 26-27 (italics in original).) Core Tech further claims  
27 that based on the testimony of Jon Fernandez, Mana Silva Taijeron, and Felix C. Benavente, all  
28 members of the evaluation and negotiation committees, and Randy Romero, “they all believed the

1 current GEF, Guam Educational *Facilities* Foundation was the GEF entity that built the Four  
2 Schools.” (*Id.* at 5, lines 1-5 (italics in original).) Also, Core Tech claims that the Negotiation  
3 Committee Memorandum attached to the Notice of Intent to Award “confirms the Negotiation  
4 Committee’s belief that when it was negotiating with the current GEF, Guam Educational  
5 *Facilities* Foundation, it was negotiating with the GEF entity that constructed the Four Schools,  
6 *and the Okkodo expansion...*” (*Id.* at lines 17-21 (italics in original).)

7 The Negotiation Committee Memorandum, attached to the Notice of Intent to award, was  
8 received by Core Tech on May 13, 2016. (CT Ex. 11.) The testimony of Felix Benavente, Randy  
9 Romero, Jon Fernandez, and Mana Silva Taijeron were taken on September 7, 15, 19, and 23,  
10 respectively. (Request at 5, lines 7-16.) Based on these dates, Core Tech should have known of  
11 the issues relating to GEF’s identity and experience since May 13, 2016, at the earliest, and  
12 September 23, 2016, at the latest. More than fourteen (14) days have passed since September 23.  
13 Based on that date, the 14-day deadline expired on October 7, 2016. It is now October 14 as of  
14 the date of this Opposition. To GEF’s knowledge Core Tech has failed to file any new protest  
15 with DPW. Accordingly, any protest filed now would be untimely. The OPA should find that  
16 Core Tech is barred from bringing a protest on this issue as DPW would be absolutely prohibited  
17 from considering any such protest, and the OPA would lack jurisdiction to consider the issue  
18 should it be appealed. *See* 5 GCA § 5425; 2 GAR Div. 4 § 9101(c)(1) (“Protests filed after the 14  
19 day period shall not be considered.”). *In the Appeal of Dick Pacific Construction Co., Ltd.*, OPA-  
20 PA-07-007, Decision at p. 10 (“Therefore, Public Auditor finds that she does not have the  
21 jurisdiction to review or decide this issue because it is not properly before the Public Auditor  
22 because it is untimely due to DPC’s failure to file a protest on this issue by May 31, 2007.”); *In*  
23 *the Appeal of Pacific Data Systems*, OPA-PA-12-011, Decision at p. 3 (“If the protest was not  
24 filed within the time required, it would have been untimely and could not be appealed to the OPA.  
25 *In Re Appeal of Island Business Systems & Supplies*, OPA-PA-08-011, Page 6.”) (bold in original  
26 removed).

1                   **III. THE PROCUREMENT LAW DOES NOT COMPEL A RESPONSIVENESS**  
2                   **DETERMINATION UNDER THE CIRCUMSTANCES HERE, EVEN AT**  
3                   **THE ADMINISTRATIVE AGENCY LEVEL**

4                   In its Request, Core Tech purports to seek a so-called “determination” from the OPA as to  
5                   whether GEF’s proposal is “responsive” to the RFP’s sections regarding identity and experience.  
6                   Aside from the arguments discussed above as to the procedural impropriety of this issue being  
7                   raised before the OPA as well as the untimeliness of these arguments at the administrative agency  
8                   level, Core Tech’s request would not succeed at the agency level for an additional reason.  
9                   Determinations of “responsiveness” under the procurement laws appear to be largely confined to  
10                  *invitations for bids (IFBs)*, rather than requests for proposals (RFPs). *See* 5 GCA § 5201(g)  
11                  (“Responsive Bidder means a person who has submitted a bid which conforms in all material  
12                  respects to the Invitation for Bids.”) and §5211(g) (stating that an award under an IFB is made to  
13                  the “lowest responsible bidder whose bid meets the requirements and criteria set forth in the  
14                  Invitation for Bids”); 2 GAR Div. 4 § 3109(n)(2) (“Responsibility and Responsiveness.  
15                  Responsibility of prospective contractors is covered by §3116 (Responsibility) of this Chapter.  
16                  Responsiveness of bids is covered by 5 GCA §5201(g), of the Guam Procurement Act, which  
17                  defines *responsive bidder* as a person who has submitted a bid which conforms in all material  
18                  respects to the Invitation for Bids.”). *See also* 2 GAR Div. 4 § 3109(n)(1) (“The contract is to be  
19                  awarded ‘to the lowest responsible and responsive bidder’ whose bid meets the requirements and  
20                  criteria set forth in the Invitation for Bids.”).

21                  With regard to RFPs, the procurement law specifically mentions “responsiveness” in the  
22                  context of only *two* instances (within Chapter 3 of 2 GAR Div. 4), neither of which applies here.  
23                  The first deals with “all or none” bids or proposals, and the second deals with “conditioning bids  
24                  or proposals upon other awards”. *See* 2 GAR Div. 4 § 3115(f) (“Only when provided by the  
25                  solicitation may a bid or proposal limit acceptance to the entire bid or proposal offering.  
26                  Otherwise, such bids or proposals *shall be deemed to be nonresponsive.*”) (emphasis added); 2  
27                  GAR Div. 4 § 3102(g) (“Any bid or proposal which is conditioned upon receiving award of both  
28                  the particular contract being solicited and another territorial contract *shall be deemed*

1 *nonresponsive* and not acceptable.”) (emphasis added). Because the solicitation at issue here is  
2 an *RFP*, and *not* an IFB, and because none of the limited references in the law to responsiveness  
3 of *proposals* would apply to the circumstances here, Core Tech’s request for a “responsiveness  
4 determination” is facially improper at any level, and should be rejected.<sup>2</sup>

5 **IV. EVEN IF THE ISSUES OF GEFF’S IDENTITY AND EXPERIENCE WERE**  
6 **PROPERLY BEFORE THE OPA – WHICH THEY ARE NOT – THERE IS**  
7 **NO DOUBT THAT GEFF MEETS OR EXCEEDS THE REQUIREMENTS**  
8 **OF THE RFP**

9 The gist of Core Tech’s arguments in its Request is that GEFF purportedly identified the  
10 offeror in its proposal as Guam Education Financing Foundation<sup>3</sup> (“GEFF I”) or Guam Education  
11 Financing Foundation II (“GEFF II”) and claimed the experience of GEFF I and GEFF II as its  
12 own. What GEFF’s proposal clearly shows, however, is that Guam Educational Facilities  
13 Foundation, Inc. is the offeror, not GEFF I and/or GEFF II. GEFF’s proposal identifies *Guam*  
14 *Educational Facilities Foundation, Inc.* as the offeror. (See also CT Ex. 2, pg. 15 (“The Offeror  
15 shall use the exact legal name, as registered with the Department of Revenue and Taxation.”).)  
16 GEFF provided as part of its proposal its certificate of formation and a certificate of existence and  
17 good standing from the Department of Revenue and Taxation. All of these documents can be  
18 made available, and have been offered by GEFF to be made available since at least July 22,  
19 2016),<sup>4</sup> for *in camera* review by the OPA.

20 <sup>2</sup> GEFF anticipates that Core Tech might argue in its reply to this opposition that its  
21 request for a responsiveness determination is actually a challenge to the *evaluation* of GEFF’s  
22 proposal, since the issues raised in the Request as to identity and experience are related to the  
23 evaluation factors set forth in the RFP. (CT Ex. 2, pg. 48 (describing Evaluation Criteria as  
24 including expertise and experience).) However, regardless of how Core Tech spins its 11-page  
25 filing, the request is, by any measure, facially improper and should be denied for all the reasons  
26 set forth herein.

27 <sup>3</sup> This entity (GEFF I) is *not* the same entity as the “**Guam Financing Foundation, Inc.**”  
28 which was Core Tech’s non-profit special purpose entity that was involved in the controversial  
Tiyan High School transaction several years ago. See **Exh. A** (at p. 2), **Exh. B** (Annual Report),  
**Exh. C** (Official Statement without Appendices) (at pp. 19-21), and **Exh. D** (Trust Indenture) (at  
pp. 1-2, 5-6, 8, A-7), attached hereto. Although in these appeals Core Tech has feigned its  
unfamiliarity with non-profit special purpose entities, the facts show that Core Tech is intimately  
familiar with utilizing this special device in its business dealings.

<sup>4</sup> See Declaration of Sean Easter, filed herein July 22, 2016, at ¶ 5.

1 GEFF does not dispute the obvious, i.e., that the “current GEFF is not the same GEFF  
2 entity that constructed the Four Schools.” (Request at 3.) Nor does GEFF dispute the other  
3 obvious proposition, that “it is clear that Guam Education *Financing* Foundation, Guam  
4 Education Financing Foundation II, and Guam Educational Facilities Foundation are all distinct  
5 corporate entities.” (Request at 4 (*italics in original*)). However, it bears mentioning that these  
6 distinctions were intentional, and by design. As Mr. Richard Inman, GEFF’s President, and  
7 others testified, it is a necessary requirement of the financing process to establish a special  
8 purpose bankruptcy-remote entity for the lease-financing contemplated under the RFP.  
9 (Testimony of Richard C. Inman, Sept. 16, 2016; *See also* Testimony of Sean Easter, Oct. 4,  
10 2016.) Indeed, a special purpose bankruptcy-remote entity by its very nature is formed for a  
11 specific project to be undertaken. (*Id.*) Thus, it is quite evident that Core Tech does not  
12 comprehend (or more appropriately, *pretends* not to comprehend) GEFF’s established business  
13 model, which was explicitly permitted by the RFP. (CT Ex. 1, pg. 20 § 4.2.1.1 (“A special  
14 purpose corporation such as a non-profit organization may also submit a proposal.”).)

15 Core Tech also fails to acknowledge that the RFP explicitly permits an offeror to rely on  
16 the experience and qualification of *its individual team members and key personnel*. For  
17 example, the RFP sections provide as follows:

18 • RFP Section 6: Proposal Structure:

19 Section 2.a. – “Provide a brief overview of your firm, *including key team members...*  
20 Provide a list of your *key team members* with a brief *background of their experience and*  
21 *education.*”

22 Section 3.b. – “Provide the *name(s), education, qualifications, experience, and the role*  
23 *of each key personnel* assigned to perform the services under this RFP. If the Offeror is a firm,  
24 the *proposal should include a resume of all the individuals* who will be working on any aspect  
25 of the project.”

26 (CT Ex. 1, pg. 42)

27 • RFP Section 5.3: Evaluation, Rating and Selection

28

1 Evaluation Criteria – Project Expertise and Experience. “The education and experience of  
2 *key personnel* to be assigned to design, construct and manage this project in accordance with this  
3 RFP.”

4 (CT Ex. 2, pg. 13.)

- 5 • RFP Addenda (Questions and Answers):

6 “Please confirm that the *collective experience and demonstrated capabilities of the*  
7 *offeror’s team members* are considered as offeror’s experience and demonstrated capabilities for  
8 purposes of evaluating qualifications under this RFP.

9 *Answer: Yes.”*

10 (CT Ex. 2, pg. 36.)

11 “Will GDOE accept experience from a teaming partner to the General Contractor for this  
12 and other appropriate RFP sections where the 5 year limit on applicable experience limits the  
13 projects that can be used to qualify. It should be noted that there are only a handful of projects  
14 that allow a contractor to qualify under this RFP and most of those projects are under one and  
15 possibly two Guam based contractors.

16 Answer: Yes, a developer/construction team up is acceptable as long as they meet the  
17 minimum requirement set forth in this RFP. ...”

18 (CT Ex. 2, pg. 33.)

19 The RFP permitted an offeror to be *a special purpose entity*. (CT Ex. 1. pg. 20 § 4.2.1.1.)  
20 The very nature of a special purpose entity is that it is newly formed for the financing of each  
21 particular project to be undertaken. (Testimony of Richard C. Inman, Sept. 16, 2016.) Accepting  
22 Core Tech’s argument that “[GEFF’s] failure to submit information regarding its own experience  
23 (or lack thereof) should have resulted in a finding of non-responsiveness” renders virtually  
24 meaningless the RFP’s acceptance of proposals from “special purpose entities.” Core Tech fails  
25 to understand that by their very nature special purpose entities do not have prior experience. That  
26 is why the RFP repeatedly sets forth that proposers will be evaluated based on their team  
27 members’ and key personnel’s experience. GEFF’s proposal was properly evaluated, and based  
28

1 on the scores given by the evaluation committee, the committee members clearly found that  
2 GEFF, its team members and its key personnel, met or exceeded the experience required under  
3 the RFP.

4 **V. CORE TECH FAILED TO DISCLOSE ITS PRIOR DEFAULT HISTORY**  
5 **WITH THE GOVERNMENT OF GUAM, AND MORE RECENTLY HAS**  
6 **DELAYED AND FAILED TO TIMELY COMPLETE ITS**  
7 **CONSTRUCTION OF GDOE TIYAN OFFICES AND WAREHOUSES**

8 Significantly, no evidence has been presented in this Consolidated Appeal that GEFF's, or  
9 any other proposer's proposal, was determined to be non-responsive by DPW. However, if a  
10 determination on responsiveness regarding GEFF's proposal is ordered at this late stage –  
11 however, improper that would be – then *proposals from all other offerors, including Core Tech,*  
12 should also be assessed for their “responsiveness.” Under such circumstances, it appears that  
13 Core Tech is a nonresponsive proposer and should be disqualified from any further participation  
14 in the RFP. Upon information and belief, Core Tech failed to disclose to DPW and in its proposal  
15 its past history of *default* on one or more Government of Guam contracts, which was in clear  
16 violation of the requirements of the RFP. As an example, Core Tech was given notice by DPW  
17 of its *default* on the recent Agana bridges construction project. (CT Ex. 2, pg. 11,<sup>5</sup> and DPW Ex.  
18 R (Relating to DPW's letter finding Core Tech's default under its contract for Route 1/Route 8  
19 Intersection Improvements and Agana Bridges Replacement, Project No. GU-DAR-TI01(001)) (a  
20 copy of which is attached as **Exh. F** to this Opposition).

21 Moreover, more recently, in connection with Core Tech's controversial \$250 million  
22 Tiyan School project,<sup>6</sup> Core Tech failed to timely complete construction of the new GDOE  
23 offices and warehouse facilities in Tiyan, with a delay in completion of six months (until March

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24 <sup>5</sup> (“5.1.1 Competency of Bidders. The Government may require bidders to present  
25 satisfactory evidence that he has sufficient experience and he is fully prepared with necessary  
26 capital, material, machinery and skilled workmen and supervision staff to carry out the contract  
satisfactorily. Accordingly, the Contractor must submit for review the following statements; ... i)  
Record of past performance of government contracts including record of default and non-payment  
of obligations. ...”)

27 <sup>6</sup> See **Exh. E** (at pg. 2), attached hereto.

1 of next year). See **Exh. G** attached hereto. Despite this delay in performance, it is outrageous  
2 that Core Tech continues to accept \$1.7 in lease payments from the Government of Guam for the  
3 *uncompleted* offices and facilities, which GDOE obviously can't even use and will be unable to  
4 use for several months. *Id.* This scandal has prompted renewed alarms about, and inquiries into,  
5 Core Tech's highly controversial Tiyan deal which has been the subject of various media reports  
6 and investigations over the past several years.

7 **VI. CONCLUSION**

8 Core Tech's Request is procedurally defective and wholly without merit, indeed even  
9 frivolous. Accordingly, for the reasons stated herein, GEFf respectfully requests that the Public  
10 Auditor DENY Core Tech's Request.

11 Dated: October 14, 2016.

12 **THE LAW OFFICES OF  
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26  
27  
28



# Exhibit A

# Tiyan costs to rise, GovGuam to pay \$10M a year

Gaynor Dumat-ol Daleno , [gdumat-ol@guampdn.com](mailto:gdumat-ol@guampdn.com) 10:25 p.m. ChST June 18, 2016



(Photo: PDN file)

The government of Guam's revised deal for a former military barracks complex in Tiyan will start to take a bigger bite out of GovGuam's budget soon, a recently released audit report shows.

Guam law initially authorized \$2.5 million in tax credits for the fiscal 2015 lease payments for the Tiyan properties, which now house Tiyan High and Guam Department of Education central offices, according to the audit report released on June 9. However, in November 2014, Gov. Eddie Calvo's administration signed a revised deal that converted the lease into a purchase, and instead of tax credits, the payment arrangement shifted to cash.

The cost of installment payments on the purchase will increase from \$7 million this year to more than \$10 million every year starting next year, the audit report shows. The payments of \$10 million will continue for 21 years, and include a 10-percent interest rate, the audit report shows.

Additional yearly payments will continue through 2041, and when all payments add up, the Tiyan purchase will top \$250 million, the audit report shows.



PACIFIC DAILY NEWS

[Tiyan High deal changed](#)

[\(http://www.guampdn.com/story/news/2015/09/20/tiyan-high-deal-changed/72384242/\)](http://www.guampdn.com/story/news/2015/09/20/tiyan-high-deal-changed/72384242/)

## Funding struggles

The higher annual cost of payments for Tiyan High School and Guam DOE offices and warehouses has come up as Guam DOE waits for a requested \$10 million supplemental funding. Guam DOE needs the money to repair aging schools and prepare 40 public schools for the new school year, which begins in August.

In light of Guam DOE's cash struggles and the higher payment for the Tiyan purchase, Vice Speaker Benjamin Cruz recently described the Tiyan lease-turned-purchase as "a bad deal brokered by Adelup."

"Clearly, its budgetary impact is both serious and profound, hurting our community in ways only being felt now," the vice speaker said. "(The late Sen.) Ben Pangelinan called this agreement a 'sweetheart deal,' and he was right."

Amendments to the deal "were negotiated behind closed doors" and now force the Guam Legislature to appropriate funds for the facilities covered by the agreement, according to Cruz.

"This isn't the low-impact, tax-credit deal we were promised, and our students are suffering because of it. Every dollar we pay to this 'bait and switch' is a dollar we could be spending on math and science," he said.

GovGuam's earlier lease deal for Tiyan didn't include building new central offices and warehouses for Guam DOE.

Of the \$10 million annual payment for the Tiyan property purchase, \$2.8 million would be for brand-new Guam DOE central office facilities, even when Guam DOE is already operating in office spaces at older buildings in Tiyan.

"Why are we buying a Ferrari with our credit card, when all we need is a reliable Camry to do the job?" Cruz asked.

## Student needs

Sen. Nerissa Underwood, who heads a legislative committee that has oversight over Guam DOE, and is a former education superintendent, said the health, safety and overall welfare of all of Guam's public school students should always be at the center of GovGuam's decision-making processes.

"Although the agreement to amend the Tiyan lease was made before the current Legislature, I hope that the needs of all our students were considered when the amendments resulted in a \$10 million annual lease," Underwood said. "I agree that this sticker-shock lease arrangement raises questions and eyebrows on how all our schools and students are being impacted. The reality is that our government is responsible for the health and safety of our students and we are legally required to provide a safe and healthy learning environment for all."



PACIFIC DAILY NEWS

Officials question Tiyan purchase

(<http://www.guampdn.com/story/news/2015/09/20/officials-question-tiyan-deal/72384526/>)

## Was owned by GovGuam

The executive branch's decision to convert the Tiyan deal from lease to purchase, and from tax credits to cash-only payments, has previously raised questions because GovGuam had previously owned the Tiyan property. When the military downsized and no longer needed Tiyan as a naval air station, a vast area of Tiyan was returned to GovGuam.

GovGuam later transferred ownership of some Tiyan property to a local family that claimed ancestral ownership of the land. That local family later sold the property to Core Tech.

Core Tech planned to use the former military barracks for housing construction workers who were supposed to be brought in by the hundreds or thousands when the military buildup plan in Guam was initially discussed. When the military buildup projects didn't start as planned, Core Tech leased, and, subsequently sold, the Tiyan property to GovGuam.

→ Now, GovGuam has been unable to back out of the deal because, through a series of transactions, Core Tech transferred ownership of Tiyan properties through Guam Facilities Foundation Inc., its nonprofit affiliate. The nonprofit used the property as collateral for a \$107 million bond debt, using GovGuam's annual payments as a source of repayment on the debt.

Although GovGuam has been making lease-to-own payments for Tiyan property, the transfer of ownership of the property to GovGuam will wait until all payments have been made — in 2041, documents show.

## GovGuam stuck

GovGuam has a proverbial gun to its head with the Tiyan deal, Cruz said, because Tiyan High students will lose their campus if GovGuam stops making payments to creditors who hold the mortgage on Tiyan property.

Underwood agrees GovGuam is stuck making the payments and said other critical needs of Guam DOE for other schools and for many other students get the short end of the stick as a result.

"I do not agree that this building is a higher priority than other possible projects, but we do have to honor contracts and arrangements that are legally binding," Underwood said. "The challenges facing our school system are not just limited to this lease agreement, but also the continued shortfall from the administration in critical cash allotments to run and maintain this school system — that includes the cash available for critical back-to-school repairs needed before our students and staff return to school.

"The amount of cash shortfalls burdened to Guam DOE has reached millions of dollars."



PACIFIC DAILY NEWS

CoreTech: DPW violates procurement law

(<http://www.guampdn.com/story/news/2016/01/08/coretech-dpw-violates-procurement-law/78455436/>)

Read or Share this story: <http://www.guampdn.com/story/news/education/2016/06/18/tiyan-costs-rise-govguam-pay-10m-year/86032106/>



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# Exhibit B

DEPT. OF REVENUE & TAXATION  
GOVERNMENT OF GUAM

JUL 24 2015

BUSINESS REGISTRATION

(Domestic) Charter Number: D-16966

(Foreign) Registration Number: \_\_\_\_\_

Year: 2015

DEPT. OF REVENUE & TAXATION  
GOVERNMENT OF GUAM

JUL 24 2015

BUSINESS REGISTRATION

# GUAM ANNUAL REPORT

for

Guam Facilities Foundation, Inc.

was duly incorporated under the laws of Guam/State of Guam or  
of the country United States of America, the Date of Incorporation: 12/1/2011.

If it is a foreign corporation, the date it was duly authorized/admitted to transact business in Guam:  
N/A

It's Registered Agent for Service of Process and registered agent's address: (for domestic Managing Agent) N/A

(Street Address)

The physical address of the Principle Office in Guam is: \_\_\_\_\_  
111 Chalan Pipitas, Summer Town Estates Community Center, Dededo Guam 96929

The name and business addresses of the corporation's directors and principal officers are as follows:

Name	Title	Business Address
<u>Nenita Baldovino</u>	<u>Chairperson</u>	<u>111 Chalan Pipitas, Summer Town Est Com Ctr, Dededo Guam 96929</u>
<u>Anthony P. Sgro</u>	<u>Director</u>	<u>111 Chalan Pipitas, Summer Town Est Com Ctr, Dededo Guam 96929</u>
<u>Amier C. Younis</u>	<u>Director</u>	<u>111 Chalan Pipitas, Summer Town Est Com Ctr, Dededo Guam 96929</u>

A brief statement of the character of the business in which the corporation is actually transacting on Guam is as follows:

Organized exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code.

The total number of shares authorized. Itemized by class, par value of shares, shares without par value shares are as follows:


Shares authorized	Class of Stock	Par Value of each share	Shares without par value
Not Applicable			

The number of shares outstanding, itemized by class, par value of shares, share without par value are as follows:  
Not Applicable

The corporation has less than fifteen (15) shareholders, their names, citizenship, number and class of shares held are as follows:

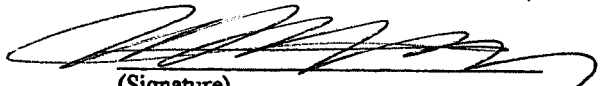
Name	Citizenship	Shares Subscribed	Class of Stock
Not Applicable- A non-stock corporation			

Pursuant to Section 4308, Title 6, Guam Code Annotated, I declare under the penalty of perjury under the Laws of Guam that the foregoing is true and correct.

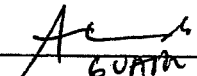
Signature:   
Name: Lenita Baldovino

Date: July 22, 2015  
Title: Chairperson

I, Nenita Baldovino, being duly sworn, depose and say that I am the President or Treasurer or Secretary of: Chairperson of Guam Facilities Foundation, Inc. and that this Annual Report and the information set forth herein is true and correct to the best of my information, knowledge and belief.

  
(Signature)

Subscribed and sworn before me this 22<sup>nd</sup> day of July, 2015

Notary Public   
State of GUAM  
My Commission Expires \_\_\_\_\_

**AVELINA T. BALDO**  
**NOTARY PUBLIC**  
In and for Guam, U.S.A.  
My Commission Expires: **March 04, 2017**  
106 Kayen Che'op Machanao Dededo, Guam 96929



# Exhibit C

*In the opinion of Kutak Rock LLP, Bond Counsel, in reliance on the opinion of Edwin Ching, Esq. that the Member is an organization described in Section 501(c)(3) of the Code and that the Facilities will not be used in an unrelated trade or business within the meaning of Section 513 of the Code, under existing laws, regulations, rulings and judicial decisions and assuming continuing compliance with certain covenants, interest on the Bonds is excluded from gross income for federal income tax purposes and is not a specific preference item for purposes of the federal alternative minimum tax. Interest on the Bonds is exempt from State of Arizona personal income taxes. For a more complete description, see "TAX MATTERS" herein.*

**\$107,405,000**

**THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA**  
**Lease Revenue Bonds**  
**(Guam Facilities Foundation, Inc. Project), Series 2014**

**Dated: Date of Delivery**

**Due: February 1, as shown on the inside front cover**

The Industrial Development Authority of the City of Phoenix, Arizona (the "Issuer"), is issuing its Lease Revenue Bonds (Guam Facilities Foundation, Inc. Project), Series 2014 (the "Bonds") pursuant to a Trust Indenture, to be dated as of December 1, 2014 (the "Indenture"), by and between the Issuer and U.S. Bank National Association, as trustee (the "Trustee"), and pursuant to Title 35, Chapter 5, Arizona Revised Statutes, as amended (the "Act").

Pursuant to a Loan Agreement, to be dated as of December 1, 2014 (the "Loan Agreement"), between the Issuer and AZ GFF Tiyan, LLC, an Arizona limited liability company (the "Borrower"), the sole member of which is the Guam Facilities Foundation, Inc., a Guam non-profit corporation (the "Member"), the proceeds of the Bonds are to be loaned (the "Loan") to the Borrower (i) to finance the acquisition of real property located in Barrigada, Guam (the "Project Site"), (ii) to pay costs of financing, acquiring, designing, constructing and/or rehabilitating certain facilities located on the Project Site to be used exclusively by the Government of Guam for public education purposes (as further described herein, the "Facilities"), (iii) to fund capitalized interest with respect to the Bonds to August 1, 2015, and (iv) to pay costs of issuing the Bonds (collectively, the "Project"). The Government of Guam is leasing the Project Site and the Facilities pursuant to an Amended and Restated Lease Purchase Agreement (Restated Agreement), as amended by the First Amendment to the Amended and Restated Lease Purchase Agreement (Restated Agreement), each dated November 6, 2014 (collectively, the "Restated Lease Agreement"), each by and between Core Tech International Corporation, a Guam corporation ("Core Tech"), as landlord, and the Government of Guam, as tenant (the "Tenant"). The Borrower is causing the financing, acquisition, design, construction and/or rehabilitation of the Facilities pursuant to an Assignment and Assumption of Lease, to be dated as of the date of delivery of the Bonds (the "Assignment of Lease"), by and between Core Tech and the Borrower. The Facilities are to be developed pursuant to a Design and Development Agreement, to be dated as of December 1, 2014 (the "Development Agreement"), by and between the Borrower and Core Tech, as the Developer, and managed pursuant to a Management Agreement, to be dated as of December 1, 2014 (the "Management Agreement"), between the Borrower and Core Tech, as Manager.

The Loan is a nonrecourse obligation of the Borrower pursuant to which the Borrower is required, among other things, to make payments at times and in amounts sufficient to pay the principal of and interest on the Bonds. The Borrower's obligations under the Loan Agreement are secured by an assignment by the Borrower to the Trustee of its rights and interests in the Management Agreement, the Development Agreement and the Assignment of Lease, including rights to receive Base Rent and Additional Rent under the Restated Lease Agreement, pursuant to an Assignment Agreement, to be dated as of the date of delivery of the Bonds (the "Assignment Agreement"), and by a Mortgage with Power of Sale in the Project Site and the Facilities, to be dated as of the date of delivery of the Bonds (the "Mortgage"), granted by the Borrower to the Trustee. The Borrower's sole source of funds to make payments under the Loan Agreement to pay debt service on the Bonds and to pay certain operating and maintenance expenses relating to the Project is expected to be the Base Rent and Additional Rent to be paid by the Government of Guam, as Tenant, under the Restated Lease Agreement, and assigned to the Borrower pursuant to the Assignment of Lease. The Government of Guam is obligated to pay Base Rent and Additional Rent under the Restated Lease Agreement only from Available Funds as may be annually appropriated by the Legislature of Guam or otherwise made available on an annual basis by the Government of Guam. Upon an Event of Non-appropriation, the Government of Guam may terminate its obligations under the Restated Lease Agreement, including the obligation to pay Base Rent and Annual Rent, effective as of the end of the then-current annual rental term. The full faith and credit of the Government of Guam is not pledged to the payment of the Base Rent and Additional Rent or to the payment of the principal of and interest on the Bonds. Neither the Bonds nor the Government of Guam's obligations under the Restated Lease Agreement constitute public indebtedness under Section 11 of the Organic Act of Guam.

Interest on the Bonds from their date of delivery will be payable semiannually on February 1 and August 1 of each year, commencing August 1, 2015. The Bonds are subject to redemption prior to their scheduled maturities as described herein.

When issued, the Bonds will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the Bonds. Purchases of beneficial interests in the Bonds will be made in book-entry form, in denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof within a maturity. Purchasers will not receive certificates representing their interests in the Bonds, except as described herein. So long as DTC or its nominee is the registered owner of the Bonds, payments of principal of and interest on the Bonds will be made directly to DTC or to such nominee. Disbursements of such payments to DTC's Direct Participants are the responsibility of DTC, and disbursements of such payments to the Beneficial Owners are the responsibility of the Direct Participants and the Indirect Participants, as described herein.

The Bonds and the interest thereon are special, limited obligations of the Issuer, secured solely by and payable solely from the Trust Estate described herein. The Bonds do not constitute a debt or a loan of credit or a pledge of the full faith and credit or taxing power of the Issuer, the City of Phoenix, Arizona (the "City"), or of the State of Arizona (the "State"), or of any political subdivision thereof, within the meaning of any State constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the Issuer, the City or the State. The Bonds shall not constitute, directly or indirectly, or contingently obligate or otherwise constitute a general obligation of or a charge against the general credit of the Issuer, but shall be a special, limited obligation of the Issuer payable solely from the sources described in the Indenture, but not otherwise. The Issuer has no taxing power.

*This cover page contains certain information for general reference only. It is not a summary of the security for or terms of the Bonds. Potential purchasers are advised to review carefully this entire Official Statement to obtain information essential to the making of an informed investment decision.*

The Bonds are offered when, as and if issued and received by the Underwriter subject to the opinion of Kutak Rock LLP, Bond Counsel. Certain legal matters will be passed upon for the Issuer by Kutak Rock LLP, for the Underwriter by Nixon Peabody LLP, and for the Borrower by Edwin Ching, Esq. Certain legal matters in connection with the preparation of this Official Statement will be passed upon by Orrick, Herrington & Sutcliffe LLP, as special disclosure counsel to the Government of Guam. It is expected that delivery of the Bonds will be made by Fast Automated Securities Transfer through the facilities of DTC on or about December 22, 2014.



## MATURITY SCHEDULE

\$107,405,000

### THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA

Lease Revenue Bonds

(Guam Facilities Foundation, Inc. Project), Series 2014

#### \$6,265,000 Serial Bonds

<u>Due (February 1)</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>CUSIP Number<sup>±</sup></u>
2016	\$ 425,000	3.00%	2.25%	71885MAK8
2017	2,845,000	5.00	2.50	71885MAL6
2018	2,995,000	5.00	3.00	71885MAM4

\$14,260,000 5.000% 2014 Term Bonds due February 1, 2024, Priced to Yield 4.550%, CUSIP No. 71885MAN2<sup>±</sup>

\$21,375,000 5.000% 2014 Term Bonds due February 1, 2029, Priced to Yield 5.125%, CUSIP No. 71885MAP7<sup>±</sup>

\$26,375,000 5.125% 2014 Term Bonds due February 1, 2034, Priced to Yield 5.400%, CUSIP No. 71885MAQ5<sup>±</sup>

\$39,130,000 5.375% 2014 Term Bonds due February 1, 2041, Priced to Yield 5.600%, CUSIP No. 71885MAR3<sup>±</sup>

No dealer, broker, salesperson or other person has been authorized by the Issuer, the Borrower, the Government of Guam or the Underwriter to give any information or to make any representation with respect to the Bonds other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

The information set forth or included in this Official Statement has been provided by the Borrower, the Government of Guam and from other sources believed by the Borrower to be reliable. The Issuer provided only the information set forth in this Official Statement under the heading "THE ISSUER" and under the heading "LITIGATION—The Issuer." The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale hereunder shall create any implication that there has been no change in the financial condition or operations of the Borrower or the Government of Guam described herein since the date hereof. This Official Statement contains, in part, estimates and matters of opinion that are not intended as statements of fact, and no representation or warranty is made as to the correctness of such estimates and opinions or that they will be realized.

The Underwriter has provided the following sentence for inclusion in this Official Statement. The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of this Official Statement.

THE UNDERWRITER MAY OFFER AND SELL THE BONDS TO CERTAIN DEALERS, UNIT INVESTMENT TRUSTS OR MONEY MARKET FUNDS AT PRICES LOWER THAN OR AT YIELDS HIGHER THAN THE PUBLIC OFFERING PRICES OR YIELDS STATED ON THE INSIDE FRONT COVER PAGE OF THIS OFFICIAL STATEMENT. SUCH PUBLIC OFFERING PRICES OR YIELDS MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITER WITHOUT PRIOR NOTICE.

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<sup>±</sup> Copyright 2014, American Bankers Association. CUSIP® is a registered trademark of the American Bankers Association. The CUSIP data herein are provided by CUSIP Global Services, managed on behalf of the American Bankers Association by S&P Capital IQ. The CUSIP numbers are not intended to create a database and do not serve in any way as a substitute for CUSIP service. CUSIP numbers are provided solely for convenience and reference. The CUSIP numbers for a specific series and maturity or maturities are subject to change after the issuance of the Bonds. None of the Issuer, the Borrower, the Underwriter, GEDA or the Government of Guam takes responsibility for the accuracy of the CUSIP numbers, and no representation is made as to their correctness on the applicable Bond certificates or in this Official Statement.

IN CONNECTION WITH THE OFFERING OF THE BONDS, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICES OF THE BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

CERTAIN STATEMENTS CONTAINED OR INCORPORATED BY REFERENCE IN THIS OFFICIAL STATEMENT ARE NOT INTENDED TO REFLECT HISTORICAL FACTS BUT ARE ESTIMATES AND "FORWARD-LOOKING STATEMENTS." THE ACHIEVEMENT OF RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE THE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM THE FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. IN THIS RESPECT, THE WORDS "ESTIMATE," "PROJECT," "FORECAST," "ANTICIPATE," "EXPECT," "ASSUME," "INTEND," "BELIEVE" AND SIMILAR EXPRESSIONS ARE INTENDED TO IDENTIFY FORWARD-LOOKING STATEMENTS. ALL PROJECTIONS, FORECASTS, ASSUMPTIONS, EXPRESSIONS OF OPINION, ESTIMATES AND OTHER FORWARD-LOOKING STATEMENTS ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY THE CAUTIONARY STATEMENTS SET FORTH IN THIS OFFICIAL STATEMENT. THE BORROWER DOES NOT PLAN TO ISSUE ANY UPDATES OR REVISIONS TO SUCH FORWARD-LOOKING STATEMENTS IF OR WHEN ITS EXPECTATIONS OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED DO OR DO NOT OCCUR.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXEMPTION CONTAINED IN SUCH ACT. THE BONDS HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

THIS OFFICIAL STATEMENT HAS BEEN "DEEMED FINAL" AS OF ITS DATE BY THE BORROWER PURSUANT TO RULE 15c2-12 OF THE SECURITIES AND EXCHANGE COMMISSION PROMULGATED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

**THE INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF PHOENIX, ARIZONA**

**BOARD OF DIRECTORS**

Donald P. Keuth, President  
Judith A. Bernas, Secretary  
Charlene Tarver, Director

Tommy Espinoza, Vice President  
Bruce Mosby, Director  
Barbara Ryan Thompson, Director

Christa Severns, Treasurer  
Sal Rivera, Director  
Marian M. Yim, Director

**AZ GFF TIYAN, LLC  
Sole Member**

Guam Facilities Foundation, Inc.

**GOVERNMENT OF GUAM**

EDWARD J.B. CALVO  
Governor

RAYMOND S. TENORIO  
Lieutenant Governor

**GUAM ECONOMIC DEVELOPMENT AUTHORITY  
Special Representative of the Government of Guam**

John Rios  
Administrator

Lester L. Carlson, Jr.  
Manager, Public Finance Division

**SPECIAL SERVICES**

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Scottsdale, Arizona

*Borrower's Counsel*  
Edwin Ching, Esq.  
Tamuning, Guam

*Special Disclosure Counsel to the Government of Guam*  
Orrick, Herrington & Sutcliffe LLP  
San Francisco, California

*Trustee*  
U.S. Bank National Association  
Los Angeles, California

*Independent Auditors*  
Deloitte & Touche LLP

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## OFFICIAL STATEMENT

**\$107,405,000**

**THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA**

**Lease Revenue Bonds**

**(Guam Facilities Foundation, Inc. Project), Series 2014**

### INTRODUCTION

The purpose of this Official Statement, which includes the cover page, the inside cover page and the Appendices hereto, is to provide information concerning the issuance by The Industrial Development Authority of the City of Phoenix, Arizona (the "Issuer") of \$107,405,000 aggregate principal amount of The Industrial Development Authority of the City of Phoenix, Arizona Lease Revenue Bonds (Guam Facilities Foundation, Inc. Project), Series 2014 (the "Bonds").

The Bonds are authorized by a resolution adopted by the Board of Directors of the Issuer on November 19, 2014, and are being issued pursuant to the Constitution of the State of Arizona (the "State") and the Industrial Development Financing Act, Title 35 Chapter 5, Articles 1 through 5, Arizona Revised Statutes, as amended (Sections 35-701 through 35-761, inclusive) (the "Act"), and pursuant to the terms of the Trust Indenture, to be dated as of December 1, 2014 (the "Indenture"), by and between the Issuer and U.S. Bank National Association, as trustee (the "Trustee").

The proceeds of the Bonds are to be loaned (the "Loan") to AZ GFF Tiyan, LLC, an Arizona limited liability company (the "Borrower"), the sole member of which is Guam Facilities Foundation, Inc., a Guam non-profit corporation (the "Member"), pursuant to a Loan Agreement, to be dated as of December 1, 2014 (the "Loan Agreement"), between the Issuer and the Borrower. The Borrower is to apply the proceeds of the Bonds (i) to finance the acquisition of real property located in Barrigada, Guam (the "Project Site"), (ii) to pay costs of financing, acquiring, designing, constructing and/or rehabilitating a gymnasium, office buildings, warehouses and existing school and office facilities located on the Project Site to be used exclusively by the Government of Guam for public education purposes (as further described herein, the "Facilities"), (iii) to fund capitalized interest with respect to the Bonds to August 1, 2015, and (iv) to pay costs of issuing the Bonds (collectively, the "Project"). The Project Site and the Facilities are sometimes referred to in this Official Statement collectively as the "Premises" or the "Tiyan Campus." See "PLAN OF FINANCE" and "THE FACILITIES."

The Government of Guam is leasing the Project Site and the Facilities pursuant to an Amended and Restated Lease Purchase Agreement (Restated Agreement), as amended by the First Amendment to the Amended and Restated Lease Purchase Agreement (Restated Agreement), each dated November 6, 2014 (collectively, the "Restated Lease Agreement"), each by and between Core Tech International Corporation, a Guam corporation ("Core Tech"), as landlord, and the Government of Guam, as tenant (the "Tenant" or the "Lessee"). The Borrower is causing the financing, acquisition, design, construction and/or rehabilitation of the Facilities pursuant to an Assignment and Assumption of Lease, to be dated as of the date of issuance of the Bonds (the "Assignment of Lease"), by and between Core Tech and the Borrower. The Facilities are to be developed pursuant to a Design and Development Agreement, to be dated as of December 1, 2014 (the "Development Agreement"), by and between the Borrower and Core Tech, in its capacity as the developer of the Facilities (the "Developer"), and are to be managed by Core Tech pursuant to a Management Agreement, to be dated as of December 1, 2014, between the Borrower and Core Tech, in its capacity as manager of the Facilities (the "Manager"). See "THE FACILITIES."

The Loan is a nonrecourse obligation of the Borrower pursuant to which the Borrower is required, among other things, to make payments at times and in amounts sufficient to pay the principal of and interest on the Bonds. The Borrower's obligations under the Loan Agreement are secured by an assignment by the Borrower of its rights and interests in the Management Agreement, the Development Agreement and the Assignment of Lease, including rights to receive Base Rent and Additional Rent under the Restated Lease Agreement, pursuant to an Assignment Agreement, to be dated as of the date of issuance of the Bonds (the "Assignment Agreement"), and by a Mortgage with Power of Sale in the Project Site and the Facilities, to be dated on or before the date of delivery of the Bonds (the "Mortgage"), granted by the Borrower to the Trustee. **The Borrower's sole source of funds to make**



payments under the Loan Agreement to pay debt service on the Bonds and to pay certain operating and maintenance expenses relating to the Project is expected to be the Base Rent and Additional Rent to be paid by the Government of Guam, as Tenant, under the Restated Lease Agreement, and assigned to the Borrower pursuant to the Assignment of Lease. The Government of Guam is obligated to pay Base Rent and Additional Rent under the Restated Lease Agreement only from Available Funds as may be annually appropriated by the Legislature of Guam or otherwise made available on an annual basis by the Government of Guam. Upon an Event of Non-appropriation, the Government of Guam may terminate its obligations under the Restated Lease Agreement, including the obligation to pay Base Rent and Annual Rent, effective as of the end of the then-current annual rental term. The full faith and credit of the Government of Guam is not pledged to the payment of the Base Rent and Additional Rent or to the payment of the principal of and interest on the Bonds. Neither the Bonds nor the Government of Guam's obligations under the Restated Lease Agreement constitute public indebtedness under Section 11 of the Organic Act of Guam. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS," "THE RESTATED LEASE AGREEMENT," "BONDHOLDERS' RISKS" and "TAX MATTERS."

Capitalized terms used but not defined in the forepart of this Official Statement have the meanings given such terms in the Indenture and in the Loan Agreement, summaries of which are included in this Official Statement as APPENDIX C, and in the Restated Lease Agreement, a copy of which is included in this Official Statement as APPENDIX D.

This Introduction is not a summary of this Official Statement. It is only a brief description of, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover and inside cover pages and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. The offering of the Bonds to potential investors is made only by means of the entire Official Statement. The descriptions of various documents set forth in this Official Statement do not purport to be comprehensive or definitive, and reference is made to each document for complete details of all terms and conditions. Copies of the Indenture, the Loan Agreement, the Restated Lease Agreement, the Assignment of Lease, the Assignment Agreement and the Mortgage will be available for inspection at the office of the Trustee.

#### PLAN OF FINANCE

The proceeds of the Bonds are to be applied (i) to finance the acquisition of the Project Site; (ii) to pay costs of financing the construction of an approximately 14,000 square foot gymnasium, the construction of an approximately 83,500 square foot office building, the construction of two approximately 10,000 square foot warehouses, each with an additional 6,500 square foot mezzanine space, the acquisition and rehabilitation of existing school facilities and the acquisition and rehabilitation of an existing office building (as further described herein, the "Facilities"), all of which are to be located on the Project Site and are being leased to the Government of Guam, as Tenant under the Restated Lease Agreement, to be used by the Government of Guam exclusively for public educational purposes; (iii) to fund capitalized interest with respect to the Bonds to August 1, 2015, and (iv) to pay costs of issuing the Bonds. In addition, the Developer is depositing funds to the Capitalized Rent Fund. See "THE PROJECT SITE AND THE FACILITIES" and "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS—Capitalized Rent Fund." The proceeds of the Bonds and the funds provided by the Developer are expected to be applied as shown in the table below.

## Estimated Sources and Uses of Funds

	<u>Bonds</u>
<b>Sources:</b>	
Principal Amount	\$107,405,000.00
Net Original Issue Discount	(1,531,600.00)
Developer Deposit to Capitalized Rent Fund	3,049,161.98
Total Sources	<u>\$108,922,561.98</u>
<b>Uses:</b>	
Deposit to Project Fund	\$100,604,009.58
Capitalized Interest Account	3,371,052.55
Capitalized Rent Fund	3,049,161.98
Costs of Issuance <sup>(1)</sup>	1,898,337.87
Total Uses	<u>\$108,922,561.98</u>

(1) Includes Underwriter's discount, Trustee fees, legal fees and expenses, rating agency fees, printing costs and other miscellaneous costs of issuance.

## DESCRIPTION OF THE BONDS

### General

The Bonds are being issued in the aggregate principal amount and will bear interest at the rates per annum and mature on the dates and in the principal amounts set forth on the inside front cover page of this Official Statement.

The Bonds will be dated their date of issuance, and bear interest from that date, payable semiannually on February 1 and August 1 of each year (each an "Interest Payment Date"), commencing August 1, 2015. Interest will be calculated on the basis of a 360-day year comprised of twelve 30-day months.

The Bonds when issued will be registered in the name of Cede & Co., as registered owner and nominee of The Depository Trust Company, New York, New York ("DTC"). Purchases of beneficial interests in the Bonds will be made in book-entry form, in denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof within a maturity. So long as DTC, or its nominee, is the registered owner of all Bonds, all payments of principal of and interest on the Bonds will be made directly to DTC. Disbursement of such payments to the DTC Participants will be the responsibility of DTC. Disbursement of such payments to the Beneficial Owners of the Bonds will be the responsibility of the DTC Participants as more fully described herein. If the book-entry system is discontinued, interest on and principal of the Bonds will be payable by check mailed by first-class mail to the persons in whose names the Bonds are registered on the 15<sup>th</sup> day of the calendar month immediately preceding each such Interest Payment Date (each, a "Record Date"), or, upon the written request of a registered owner of \$1,000,000 or more in aggregate principal amount of Bonds received prior to the applicable Record Date, by wire transfer. See APPENDIX G - "DTC AND ITS BOOK-ENTRY ONLY SYSTEM" herein.

### Redemption of the Bonds

**Optional Redemption.** The Bonds maturing on or after February 1, 2025 shall be subject to redemption prior to maturity at the option of the Borrower on or after February 1, 2024, in whole or in part at any time, at a redemption price equal to 100 percent of the principal amount of the Bonds being redeemed, plus interest accrued to the date fixed for redemption.

**Mandatory Sinking Fund Redemption.** The Bonds maturing on February 1, 2024, are subject to mandatory redemption pursuant to mandatory sinking fund requirements, at a redemption price of 100 percent of the principal amount redeemed plus interest accrued to the redemption date, in the following principal amounts in the years specified:

**Bonds Maturing 2024**

<b>Year (February 1)</b>	<b>Principal Amount</b>
2021	\$3,365,000
2022	3,490,000
2023	3,670,000
2024*	3,735,000

\* Maturity Date

The Bonds maturing on February 1, 2029, are subject to mandatory redemption pursuant to mandatory sinking fund requirements, at a redemption price of 100 percent of the principal amount redeemed plus interest accrued to the redemption date, in the following principal amounts in the years specified:

**Bonds Maturing 2029**

<b>Year (February 1)</b>	<b>Principal Amount</b>
2025	\$3,925,000
2026	4,110,000
2027	4,265,000
2028	4,490,000
2029*	4,585,000

\* Maturity Date

The Bonds maturing on February 1, 2034, are subject to mandatory redemption pursuant to mandatory sinking fund requirements, at a redemption price of 100 percent of the principal amount redeemed plus interest accrued to the redemption date, in the following principal amounts in the years specified:

**Bonds Maturing 2034**

<b>Year (February 1)</b>	<b>Principal Amount</b>
2030	\$4,820,000
2031	5,060,000
2032	5,265,000
2033	5,545,000
2034*	5,685,000

\* Maturity Date

The Bonds maturing on February 1, 2041, are subject to mandatory redemption pursuant to mandatory sinking fund requirements, at a redemption price of 100 percent of the principal amount redeemed plus interest accrued to the redemption date, in the following principal amounts in the years specified:

<b>Bonds Maturing 2041</b>	
<b>Year</b>	
<b>(February 1)</b>	<b>Principal Amount</b>
2019	\$3,040,000
2020	3,210,000
2035	5,995,000
2036	6,310,000
2037	6,590,000
2038	6,960,000
2039	2,420,000
2040	2,555,000
2041*	2,050,000

\* Maturity Date

The Indenture provides that whenever the Bonds are purchased, redeemed (other than pursuant to mandatory sinking fund redemption) or are delivered by the Issuer or the Borrower to the Trustee for cancellation at least 30 days preceding the applicable mandatory sinking fund redemption date, a credit is to be given against the unsatisfied balance of the mandatory sinking fund redemption requirement for such maturity with respect to the mandatory sinking fund redemption dates specified by the Borrower equal to the principal amount of the Bonds so purchased or redeemed.

**Extraordinary Mandatory Redemption of the Bonds Upon Damage, Destruction or Condemnation.** The Bonds are subject to extraordinary mandatory redemption prior to maturity in whole or in part, at a redemption price equal to 100% of the principal amount of Bonds being redeemed, plus interest accrued to the date fixed for redemption, at any time in the event of damage, destruction or condemnation (or conveyance in lieu of condemnation) of all or any part of the Facilities, and the Borrower has determined that net proceeds of hazard insurance or any award received as a result of such condemnation (or conveyance in lieu thereof) are insufficient to repair, rebuild, restore, or re-equip the Facilities to substantially the same condition thereof as existed prior to the event causing such damage, destruction or condemnation, such redemption to be made with the net proceeds of hazard insurance or any award received as a result of such condemnation (or conveyance in lieu thereof).

**Selection by Trustee of the Bonds to be Redeemed.** If less than all of the Outstanding Bonds of a maturity are to be redeemed, then the particular Bonds or portions thereof to be redeemed are to be selected by the Trustee in such random selection manner as the Trustee deems appropriate; provided that the portion of any Bond to be redeemed and the portion not to be redeemed each is required to be in an Authorized Denomination. DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed. See APPENDIX H—"DTC AND ITS BOOK-ENTRY SYSTEM."

**Partial Redemption of Bonds.** Upon the selection and call for redemption of, and the surrender of, any Bond for redemption in part only, the Issuer shall cause to be executed (but need not prepare) and the Trustee shall authenticate and deliver to or upon the written order of the Owner thereof, at the expense of the Borrower, a new Bond or Bonds of the same series and maturity in Authorized Denominations in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered.

**Effect of Call for Redemption.** On the date designated for redemption by notice given as provided in the Indenture, the Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds on such date. If on the date fixed for redemption moneys sufficient for payment of the redemption price and accrued interest are held by the Trustee as provided herein, interest on the Bonds so called for redemption shall cease to accrue, such Bonds shall cease to be entitled to any benefit or security under the Indenture except the right to receive payment from the moneys held by the Trustee and the amount of such Bonds so called for redemption shall be deemed paid and no longer Outstanding.

**Notice of Redemption.** Pursuant to the Indenture, in case of optional redemption of the Bonds, the Borrower is required, at least 30 days prior to the date fixed for redemption, to deliver a written request to the Issuer and the Trustee (unless a shorter notice shall be satisfactory to the Issuer and Trustee) notifying the Issuer and the Trustee of such redemption date and of the principal amount of the Bonds to be redeemed and is, on or before the date fixed for redemption, to deliver to the Trustee sufficient funds to pay the redemption price of all Bonds subject to redemption.

Pursuant to the Indenture, notice of any redemption (other than mandatory sinking fund redemption) is required to be given at least 20 days and not more than 60 days prior to the date fixed for redemption by first-class mail to the Owners of the Bonds to be redeemed. However, the failure to give a notice of redemption or a defect in it does not affect (i) the validity of any proceedings for the redemption of a Bond if the Owner of such Bond receives actual notice of the redemption from any source or (ii) the validity of the proceedings for the redemption of any Bonds for which proper notice was given. If any Bonds have been called for redemption but have not yet been presented to the Trustee for payment within 60 days after the date set for redemption, the Trustee is required to send to the Owners of those Bonds a second notice of redemption, within 75 days of the date set for redemption. So long as DTC is acting as securities depository for the Bonds, notice of any redemption of the Bonds is to be sent by the Trustee only to Cede & Co. Information also to be sent in such manner as the Trustee deems appropriate to the registered securities depositories and national information services that disseminate redemption notices that the Trustee determines to be customary or appropriate.

If at the time of mailing of any notice of optional redemption or of extraordinary mandatory redemption upon damage, destruction or condemnation as described above, there shall not have been deposited with the Trustee moneys sufficient to redeem all the Bonds called for redemption, such notice may (if requested by the Borrower) state that it is subject to the deposit of the redemption money with the Trustee not later than the opening of business on the redemption date and will be of no effect unless such money is so deposited.

## DEBT SERVICE REQUIREMENTS

Set forth in Table 1 below are the amounts required to be paid with respect to the Bonds during each fiscal year of the Borrower.

**Table 1**  
**Annual Debt Service Requirements for the Bonds**

Fiscal Year (Ending December 31)	Bonds		
	Principal	Interest	Total Debt Service <sup>(1)</sup>
2015		\$ 3,371,052.55	\$ 3,371,052.55
2016	\$ 425,000	5,535,081.26	5,960,081.26
2017	2,845,000	5,457,581.26	8,302,581.26
2018	2,995,000	5,311,581.26	8,306,581.26
2019	3,040,000	5,155,006.26	8,195,006.26
2020	3,210,000	4,987,037.51	8,197,037.51
2021	3,365,000	4,816,643.76	8,181,643.76
2022	3,490,000	4,645,268.76	8,135,268.76
2023	3,670,000	4,466,268.76	8,136,268.76
2024	3,735,000	4,281,143.76	8,016,143.76
2025	3,925,000	4,089,643.76	8,014,643.76
2026	4,110,000	3,888,768.76	7,998,768.76
2027	4,265,000	3,679,393.76	7,944,393.76
2028	4,490,000	3,460,518.76	7,950,518.76
2029	4,585,000	3,233,643.76	7,818,643.76
2030	4,820,000	2,995,506.26	7,815,506.26
2031	5,060,000	2,742,331.26	7,802,331.26
2032	5,265,000	2,477,753.13	7,742,753.13
2033	5,545,000	2,200,746.88	7,745,746.88
2034	5,685,000	1,912,978.13	7,597,978.13
2035	5,995,000	1,606,184.38	7,601,184.38
2036	6,310,000	1,275,487.51	7,585,487.51
2037	6,590,000	928,800.01	7,518,800.01
2038	6,960,000	564,643.76	7,524,643.76
2039	2,420,000	312,556.26	2,732,556.26
2040	2,555,000	178,853.13	2,733,853.13
2041	2,050,000	55,093.75	2,105,093.75
<b>Total<sup>(1)</sup></b>	<b>\$107,405,000</b>	<b>\$83,629,568.40</b>	<b>\$191,034,568.40</b>

<sup>(1)</sup> Totals may not add due to rounding.

## SECURITY AND SOURCES OF PAYMENT FOR THE BONDS

### The Trust Estate

The Bonds, the premium, if any, and the interest thereon are special limited obligations of the Issuer payable solely from the revenues and receipts, and certain funds pledged under the Indenture. Pursuant to the

Indenture, as security for the payment of the principal of and interest on the Bonds, and to secure the performance and observance of the conditions and covenants contained in the Bonds and in the Indenture, the Issuer has granted a security interest in, assigned, transferred, pledged, granted and conveyed unto the Trustee the following (collectively, the "Trust Estate"):

- (a) the Mortgage granted by the Borrower in favor of the Trustee;
- (b) all rights and interests of the Issuer in, under and pursuant to the Loan Agreement, including but not limited to payments to be made by the Borrower thereunder from amounts payable to the Borrower under the Assignment of Lease, but excluding (i) any assignment of any obligation of the Issuer under the Loan Agreement (and the Trustee shall have no duties with respect thereto) or (ii) any of the "Issuer Unassigned Rights" consisting of all rights expressly granted to the Issuer in the Indenture or in the Loan Agreement to (A) inspect books and records, (B) give or receive notices, approvals, consents, requests, and other communications, (C) receive payment or reimbursement for expenses, (D) receive payment of the Issuer Fees and Expenses, (E) immunity and limitation from liability, (F) indemnification from liability by the Borrower, and (G) security for the Borrower's indemnification obligations;
- (c) the Assignment Agreement between the Borrower and the Trustee;
- (d) amounts on deposit from time to time in the funds and accounts created pursuant to the Indenture (excluding the Rebate Fund), subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture;
- (e) the rights and interests of the Issuer under the Note; and
- (f) any and all other real or personal property of any kind from time to time subsequently specifically conveyed, pledged, assigned or transferred, as and for additional security under the Indenture for the Bonds, by anyone on behalf of the Issuer or with its written consent, or by or on behalf of the Borrower, in favor of the Trustee.

Pursuant to the Loan Agreement, the Loan is a nonrecourse obligation of the Borrower under which the Borrower is required, among other things, to make payments at times and in amounts sufficient to pay the principal of and interest on the Bonds. The Borrower's sole source of funds to make payments under the Loan Agreement to pay debt service on the Bonds and to pay certain operating and maintenance expenses relating to the Project is expected to be the Base Rent and Additional Rent to be paid by the Government of Guam, as Tenant, under the Restated Lease Agreement, and assigned to the Borrower pursuant to the Assignment of Lease. See "—Loan Agreement" and "—Other Security Documents."

As provided in the Restated Lease Agreement, the payment of Base Rent and Additional Rent and any other payments and costs by the Government of Guam, as Lessee under the Restated Lease Agreement, is subject to the availability of Available Funds, which are defined in the Restated Lease Agreement as any amounts either: (1) appropriated on an annual basis by the Legislature of Guam for the purpose of making Base Rent and Additional Rent payments and other payments and costs under the Restated Lease Agreement or (2) otherwise made available on an annual basis by the Government of Guam for such purposes.

Although the Government of Guam, as Lessee, agrees in the Restated Lease Agreement to use its best reasonable efforts to include sufficient Available Funds in the Government of Guam's annual budgets during the term of the Restated Lease Agreement for all Base Rent and Additional Rent and other costs due in each year, nothing in the Restated Lease Agreement obligates the Legislature of Guam to make such appropriations or obligates the Government of Guam to the Restated Lease Agreement beyond the period for which an appropriation sufficient to pay Base Rent and Additional Rent has been made by the Legislature of Guam. Upon an Event of Non-appropriation, the Government of Guam may terminate its obligations under the Restated Lease Agreement, including the obligation to pay Base Rent and Annual Rent, effective as of the then-current annual rental term. The Restated Lease Agreement provides also that in the event appropriated funds are not legally available for payment of Base Rent and Additional Rent or other obligations under the Restated Lease Agreement, the Restated Lease

Agreement shall terminate. See "THE RESTATED LEASE AGREEMENT—Limitation on Liability; Event of Non-appropriation."

**The full faith and credit of the Government of Guam is not pledged to the payment of the Base Rent and Additional Rent or to the payment of the principal of and interest on the Bonds. Neither the Bonds nor the Government of Guam's obligations under the Restated Lease Agreement constitute public indebtedness under Section 11 of the Organic Act of Guam.**

#### **Limited Obligations of the Issuer**

The Bonds, the premium, if any, and the interest thereon are special, limited obligations of the Issuer payable solely from the Trust Estate granted in the Indenture. The Bonds do not constitute a debt or loan of credit or a pledge of the full faith and credit or taxing power of the Issuer, the City, or the State, or of any political subdivision thereof, within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of Issuer, the City or the State. The Bonds shall not constitute, directly or indirectly, or contingently obligate or otherwise constitute a general obligation of or a charge against the general credit of the Issuer, but shall be special, limited obligations of the Issuer payable solely from the sources described in the Indenture, but not otherwise. The Issuer has no taxing power.

#### **Flow of Funds**

The Indenture provides that there shall be deposited to the Revenue Fund as and when received all amounts paid by the Government of Guam as Base Rent and Additional Rent under the Restated Lease Agreement (and assigned to the Borrower pursuant to the Assignment of Lease), any amounts required to be deposited to the Revenue Fund by the Borrower pursuant to the Loan Agreement and the Indenture, any earnings on the amounts held on the Revenue Fund and all other moneys deposited to the Revenue Fund pursuant to the Indenture and the Loan Agreement. The moneys received by the Trustee are to be disbursed as described below.

FIRST, to the Base Rent Account, amounts sufficient to pay, in the following order of priority:

- (i) on each February 1 commencing on February 1, 2016 for deposit in the Interest Account of the Bond Fund an amount (after taking into account earnings on the Interest Account) equal to the amount of the interest due on the Bonds on such date and the next succeeding Bond Payment Date, plus any overdue amounts of interest which have not otherwise been credited to the Interest Account of the Bond Fund;
- (ii) on each February 1, commencing in February 1, 2016, for deposit in the Principal Account of the Bond Fund an amount equal to the principal due on the Bonds on such date, plus any overdue amounts of principal on the Bonds which have not otherwise been credited to the Principal Account of the Bond Fund; and
- (iii) to the extent amounts remain in the Base Rent Account after items (i) and (ii) are satisfied, to the Additional Rent Account.

SECOND, to the Additional Rent Account, amounts sufficient to pay, in the following order of priority:

- (i) on February 1 of each year, commencing in February 2016, (A) to the Trustee Fee Account of the Expense Fund an amount equal to the Trustee Fees and Expenses due for such year, (B) to the Issuer Fee Account of the Expense Fund, an amount equal to the Issuer Fees and Expenses due for such year, plus (C) any amount previously due under this paragraph that remains unpaid;
- (ii) on the last Business Day of every Rebate Year and continuing until the full amount is paid, to the Rebate Fund, any amount as calculated by the Arbitrage Rebate Consultant, required of the Borrower to be deposited in the Rebate Fund;



- (iii) On February 1 of each year, commencing in 2016, to the Management Fee Fund an amount equal to the Management Fee; and
- (iv) to the extent amounts remain in the Additional Rent Account after items (i) through (iii) are satisfied, to the Surplus Fund.

See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS—SUMMARY OF THE INDENTURE—Definitions,” “—Cost of Issuance Fund,” “—Expense Fund,” “—Bond Fund; Application of Loan Agreement Payments” and “—Management Fee Fund” for definitions of the capitalized terms used above and descriptions of certain of the Funds and Accounts referenced above.

#### **Surplus Fund**

The Indenture requires that moneys on deposit in the Surplus Fund, including investment earnings, remain on deposit in the Surplus Fund subject to the lien of the Indenture until such time as the Bonds are no longer Outstanding. The Indenture provides that amounts on deposit in the Surplus Fund are required to be used first to restore a current deficiency in any of the Project Fund, the Bond Fund, the Expense Fund, the Rebate Fund and the Management Fee Fund. If the amounts on deposit are not required for such purposes, they may be applied to pay for repairs or for the construction and installation of improvements or additions to the Facilities including equipment therefor or to pay mechanics, laborers, materialmen, suppliers or vendors amounts which were contested in accordance with the Development Agreement or the Restated Lease Agreement.

Upon payment in full of the Bonds or discharge of the lien of the Indenture in accordance with defeasance provisions of the Indenture summarized in APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE PRINCIPAL LEGAL DOCUMENTS—SUMMARY OF THE INDENTURE—Discharge,” and payment of all amounts due to the Trustee and the Issuer, amounts in the Surplus Fund are to be released to the Borrower.

#### **Capitalized Rent Fund**

On the date of delivery of the Bonds, the Developer is providing funds in the amount of \$3,049,161.98 to be deposited into the Capitalized Rent Fund. The Indenture provides that amounts on deposit in the Capitalized Rent Fund are to be used to pay principal, if any, and interest on the Bonds from and including February 1, 2016 through August 1, 2017 if sufficient Base Rent therefore has not been paid by the Government of Guam under the Restated Lease Agreement. If, on or before February 1, 2016, the Trustee holds sufficient amounts in the Base Rent Account of the Revenue Fund to make the February 1, 2016 and August 1, 2016 payments of principal of and interest on the Bonds, and has received a certificate from the Developer that all components of the Facilities scheduled to be complete on or before such date have achieved “substantial completion” (as defined in the Restated Lease Agreement), the Trustee is to release \$704,648.27 to the Developer. If on or before February 1, 2017, the Trustee holds sufficient amounts in Base Rent Account of the Revenue Fund to make the February 1, 2017 and August 1, 2017 payments of principal of and interest on the Bonds, and has received a certificate from the Developer that all components of the Facilities scheduled to be complete on or before such date have achieved “substantial completion” (as defined in the Restated Lease Agreement), the Trustee is to release any amounts remaining in the Capitalized Rent Fund to the Developer. Any amounts remaining in the Capitalized Rent Fund on August 2, 2017 are to be released to the Developer.

#### **No Debt Service Reserve Fund**

No Debt Service Reserve Fund is being established for the Bonds.

#### **Additional Bonds**

The Indenture provides that the Issuer may issue Additional Bonds secured by the Indenture and the Trust Estate on a parity with the Bonds then Outstanding to provide funds for the acquisition, construction or equipping of additional facilities provided for under amendments to the Restated Lease Agreement (a “Proposed New Facility”)

or to refund any Bonds Outstanding, subject to the satisfaction of the requirements set forth in the Indenture, including:

(a) there shall have been furnished to the Trustee (i) an opinion of Bond Counsel to the effect that the issuance of the Additional Bonds will not adversely affect the exemption from federal income taxation of the interest on any Outstanding series of Bonds; (ii) a Certificate of the Issuer and the Borrower to the effect that the Loan Agreement is in effect and no "event of default" (as such term is defined in the Loan Agreement) exists thereunder which shall not be cured upon the issuance of the Additional Bonds; (iii) a resolution of the Issuer authorizing the issuance of the Additional Bonds; (iv) executed counterparts of a supplement to the Indenture describing the Additional Bonds; and (v) executed counterparts of an amendment to the Loan Agreement establishing the amounts paid on the Loan will be sufficient in time and amount to pay the interest and principal due on the Additional Bonds;

(b) in the case of the issuance of Additional Bonds for a Proposed New Facility, there shall have been furnished to the Trustee (i) an executed amendment to the Restated Lease Agreement describing the terms and conditions of the acquisition, construction and/or equipping of the Proposed New Facility and the payment of rent therefor; (ii) an Opinion of Counsel to the effect that the amendment to the Restated Lease Agreement, the Facilities Proposed New Facility does not adversely affect the original terms of the Restated Lease Agreement, the Facilities originally financed with the Bonds or the obligation of the Government of Guam to make payments under the Restated Lease Agreement, in a form reasonably satisfactory to the Issuer; (iii) a mortgage, which may be an amended and restated mortgage, granted by the Borrower to the Trustee, encumbering the real property upon which the Proposed New Facility will be located, such mortgage to continue to include the original Project Site, in a form reasonably satisfactory to the Issuer; (iv) a title policy or appropriate endorsements to the existing Title Policy (as defined in the Loan Agreement) covering the Project Site and the real property to be acquired for the Proposed New Facility, which title policy is reasonably satisfactory to the Issuer; and (v) an executed construction or development contract for any construction for the Proposed New Facility, in a form reasonably satisfactory to the Issuer;

(c) if the Additional Bonds are being issued to redeem Bonds, the Borrower provides to the Trustee evidence that the maximum amount of annual principal and interest requirements of the Bonds (after the issuance of such Additional Bonds) in the then current or any future fiscal year will not increase as a result of the issuance of such Additional Bonds; and

(d) no Additional Bonds shall be issued if such issuance causes a downgrade or withdrawal of the then current rating on the Bonds, and until such Additional Bonds are assigned a rating equal to or superior to the then current rating on the Bonds, if the Bonds are then rated.

#### **Events of Defaults and Remedies; No Acceleration**

The Indenture specifies a number of Events of Default and remedies. The Bonds are not subject to acceleration. For descriptions of the various Events of Default and remedies, see APPENDIX C – "SUMMARY OF CERTAIN PROVISIONS OF LEGAL DOCUMENTS—SUMMARY OF THE INDENTURE—Events of Default" and "—Remedies and Enforcement of Remedies."

#### **Amendments to the Indenture**

The Indenture provides that certain amendments can be made to the Indenture without the consent of the Bondholders. See APPENDIX C – "SUMMARY OF CERTAIN PROVISIONS OF LEGAL DOCUMENTS—SUMMARY OF THE INDENTURE—Supplements Not Requiring Consent of or on Behalf of Owner."

#### **Loan Agreement**

**General.** The Borrower's obligations under the Loan Agreement are non-recourse to the Borrower. The Borrower agrees in the Loan Agreement to make payments at the times and in the amounts to be paid as principal or redemption price of or interest on the Bonds when due, whether at maturity, upon redemption or otherwise. The Borrower agrees also in the Loan Agreement make certain additional payments to the Trustee, the Issuer and the Manager, among others. See "APPENDIX C – "SUMMARY OF CERTAIN PROVISIONS OF LEGAL DOCUMENTS—SUMMARY OF THE LOAN AGREEMENT—Payments of Principal, Premium and Interest" and "—Additional Payments." The Borrower's sole source of funds to make payments under the Loan Agreement to

pay debt service on the Bonds and to pay certain operating and maintenance expenses relating to the Project is expected to be the Base Rent and Additional Rent to be paid by the Government of Guam, as Tenant, under the Restated Lease Agreement, and assigned to the Borrower pursuant to the Assignment of Lease and funds made available under the Indenture. The payment of the Base Rent and the Additional Rent under the Restated Lease Agreement are subject to annual appropriation by the Legislature of Guam, and the Restated Lease Agreement is subject to termination in accordance with its terms following an Event of Non-appropriation. See "THE RESTATED LEASE AGREEMENT—Limitation on Obligations; Event of Non-Appropriation."

**Optional Prepayment.** The Borrower is permitted under the Loan Agreement to pay in advance and in any order of due dates all or part of the amounts to become due under the Loan Agreement by depositing such amounts with the Trustee and directing the Trustee at least 45 days in advance to apply such amounts to retire Bonds by purchase, redemption or both, in accordance with the provisions of the Indenture. The Borrower is permitted also to prepay all indebtedness under the Loan Agreement by defeasing all of the Bonds in accordance with the provisions of the Indenture.

**Other Covenants.** In the Loan Agreement, the Borrower covenants, among other things, that it will not use any of the properties acquired, constructed, remodeled, renovated or equipped out of proceeds of the Bonds or any proceeds of the disposition of such properties or permit such properties or proceeds to be used (A) other than as a "project" within the meaning of the Act or to prepay the Loan or (B) in any manner that would adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes; to maintain its limited liability company existence and not consolidate with or merge with or into any entity or sell or convey all or substantially all of the property financed with Bond proceeds except as permitted by the Loan Agreement; to do everything reasonably within its power to retain the Member's status as a tax-exempt 501(c)(3) corporation; that it will not occur any additional debt relating to the Facilities (other than trade payables, etc., incurred in the ordinary course of business) without that Issuer's consent; that it will not sell, transfer or otherwise dispose of its interest in the Project Site and in the Facilities without the prior written consent of the Issuer and subject to the requirements set forth in the Loan Agreement; and neither to take nor fail to take any action reasonably within its control that would result in the interest on the Bonds becoming includable in gross income for federal income tax purposes. In addition, in the Loan Agreement, the Borrower agrees that it will maintain a rating from the Rating Agency on the Bonds at all times and that it will not agree or consent to any amendment to the Restated Lease Agreement that will have a materially adverse effect on the Borrower's ability to make payments under the Loan Agreement. See APPENDIX C – "SUMMARY OF CERTAIN PROVISIONS OF LEGAL DOCUMENTS—SUMMARY OF THE LOAN AGREEMENT—Particular Covenants."

**Amendments.** The Indenture provides that the consent of the Bondholders is required for certain amendments to the Loan Agreement. See APPENDIX C – "SUMMARY OF CERTAIN PROVISIONS OF LEGAL DOCUMENTS—SUMMARY OF THE LOAN AGREEMENT—Amendments and Supplements" and "SUMMARY OF CERTAIN PROVISIONS OF LEGAL DOCUMENTS—SUMMARY OF THE INDENTURE—Amendments to the Loan Agreement Requiring Consent of or on Behalf of Owners."

**Loan Default Events and Remedies.** The Loan Agreement specifies a number of Events of Default and remedies. For descriptions of the various Events of Default and remedies, see APPENDIX C – "SUMMARY OF CERTAIN PROVISIONS OF LEGAL DOCUMENTS—SUMMARY OF THE LOAN AGREEMENT—Events of Default" and "—Remedies in General."

## **Mortgage**

Pursuant to the Mortgage, the Borrower is granting a mortgage with the power of sale in the Project Site and in the Facilities in favor of the Trustee to secure the payment of the Bonds. As additional security, the Borrower also grants to the Trustee in the Mortgage the right, power and authority to collect the rents, issues and profits, option payments and payments under any agreement of said property.

The Mortgage provides that a Default or default under the Note, the Loan Agreement or the Indenture shall constitute a default under the Mortgage and the Trustee shall have the immediate right to enforce or use all or any one of the following remedies: (i) take over the control of and manage the property, whereby the cost of management and all costs incurred shall be paid for by the Borrower; (ii) declare all or portion of the obligations under the Mortgage, the Note, Loan Agreement or Indenture immediately due and payable and institute foreclosure

of the property by judicial or by private power of sale; (iii) collect, as set forth in the Mortgage, all rents and income arising from the property; and (iv) to exercise all other rights and remedies available at law and/or equity. In the event of a default under the Mortgage that is not otherwise a default under the Note, the Loan Agreement or the Indenture, the Trustee may give the Borrower 20 days' written notice to cure such default. The Mortgage provides that if after any applicable cure period, a default has not been cured, the Trustee shall have the ability to institute the above referenced remedies, including, but not limited to, the right to foreclose by private power of sale. The Borrower may be the purchaser at a judicial sale or at a public sale.

#### **Other Security Documents**

**Assignment of Lease.** Pursuant to the Assignment of Lease, Core Tech, as the Lessor, is irrevocably assigning to the Borrower all of the Lessor's right, title, interest, responsibilities, liability, obligations and benefits in, to and under the Restated Lease Agreement, together with the right to receive all payments of Base Rent and Additional Rent and other amounts payable by the Tenant under the Restated Lease Agreement. In the Assignment of Lease, Core Tech and the Borrower agree that Core Tech remains obligated to provide the Collateral Equipment and retains the right to receive payment for the Collateral Equipment. The Assignment of Lease also provides that, in the event the Tenant fails to make any payment for the Collateral Equipment, Core Tech may not pursue any remedies against the Tenant without the prior written consent of the Borrower.

**Assignment of License.** In the Assignment and Assumption of Exchange License Agreement, to be dated on or before the date of delivery of the Bonds (the "Assignment of License"), Core Tech is irrevocably assigning to the Borrower all of Core Tech's right, title, interest, responsibilities, liabilities, obligations and benefits in, to and under the Exchange License. See "THE PROJECT SITE AND THE FACILITIES—General."

**Assignment Agreement.** The Borrower and the Trustee are entering into the Assignment Agreement pursuant to which the Borrower is irrevocably granting, conveying, transferring and assigning to the Trustee all of the Borrower's right, title and interest in, to and under, and granting a first and priority security interest in, the Borrower's rights and interests in the Management Agreement, the Development Agreement, the License Agreement (assigned to the Borrower pursuant to the Assignment of License) and the Restated Lease Agreement (assigned to the Borrower pursuant to the Assignment of Lease), including the Borrower's rights to receive Base Rent and Additional Rent under the Restated Lease Agreement (collectively, the "Contract Rights").

The Assignment Agreement provides that, upon (i) the occurrence of an event of default under the Loan Agreement or (ii) the continuation of any breach by the Borrower of any representation, warranty, covenant, assurance, agreement, term, condition, or provision in the Assignment Agreement for 30 days after written notice of the breach by the Trustee to the Borrower (each, an event of default under the Assignment Agreement), the Trustee may, at its option and without notice and without bringing any legal action or proceeding, exercise any or all of the following remedies: (a) take physical possession of the property and all books, records, documents, and accounts relating to the property and exercise, without interference from Borrower, any and all rights which Borrower has with respect to the property; (b) either with or without taking possession of the property, through a receiver or otherwise, in its own name or otherwise, collect rents (including, without limitation, any past due and unpaid rent); (c) without releasing Borrower from its obligations under the Assignment Agreement or the Loan Agreement, cure any such event of default; (d) enter the Property and do acts and things that the Trustee deems necessary or desirable to protect the property or the Restated Lease Agreement; and (e) take other actions or commence other proceedings as Trustee deems necessary or advisable to protect its interest in the property and the Restated Lease Agreement and its ability to collect the payments due under the Loan Agreement as are available under the applicable law of the territory of Guam.

The Assignment Agreement provides also that if an Event of Default under the Assignment Agreement occurs or if the Trustee determines action is necessary to protect against the termination of the Management Agreement and Development Agreement or to protect and preserve the right, title, and interest of Trustee under the Assignment Agreement, the Trustee may, but is not obligated to: (i) execute, acknowledge, and deliver all documents or things necessary or required as a term, covenant, or condition of the Management Agreement and Development Agreement; (ii) perform any obligation that the Borrower failed to perform when due under the Management Agreement or satisfy any condition of the Management Agreement and Development Agreement; (iii) demand and receive all performances due under or with respect to the Management Agreement and Development

Agreement and take all lawful actions for the enforcement of the Management Agreement and Development Agreement; (iv) make concessions to the other parties in the Management Agreement and Development Agreement; and (v) exercise any and all other rights and remedies under the Management Agreement and Development Agreement and/or are otherwise available to Assignor at law, in equity or by statute. In addition, upon the occurrence of an Event of Default, Trustee may, at its option, cause an early termination of the Management Agreement and Development Agreement.

### **THE RESTATED LEASE AGREEMENT**

The following is a brief summary of certain provisions of the Restated Lease Agreement. A complete copy of the Restated Lease Agreement is included in this Official Statement as APPENDIX D.

Pursuant to the Assignment of Lease, the Borrower has assumed Core Tech's obligations as Lessor or Landlord under the Restated Lease Agreement, other than the obligations specifically retained by Core Tech with respect to Collateral Equipment. Any references to "Lessor" or "Landlord" under this heading are to be deemed to refer to the Borrower.

#### **General**

The Restated Lease Agreement supersedes and replaces prior agreements between the Lessor and the Lessee that provided for the lease from the Lessor to the Lessee of the Project Site and certain existing buildings, structures and improvements thereon previously owned by the United States and used as a U.S. Navy base and the development of additional facilities (including the Facilities described below), as well as for an option to purchase such property and improvements and facilities. The Lessee has exercised its option to purchase, and, accordingly, after paying all Base Rent and Additional Rent and any other amounts due under the Restated Lease Agreement, the Lessee will receive legal ownership of the Project Site and all existing buildings, structures and improvements on the Project Site, including the Facilities. Under the Restated Lease Agreement, the Tenant will continue to lease the Premises and all payments of the principal included in Base Rent mentioned below received by the Lessor from January 1, 2014 through December 31, 2041 are to be credited towards the purchase price. The Restated Lease Agreement is not subject to prepayment.

Under the Restated Lease Agreement, the Lessor is obligated to develop and construct the Facilities. Pursuant to the Assignment of Lease discussed below, Core Tech, as the Lessor, is irrevocably assigning to the Borrower all of the Lessor's right, title, interest, responsibilities, liability, obligations and benefits in, to and under the Restated Lease Agreement, including the obligation to develop and construct the Facilities, and the Borrower is causing the financing, acquisition, design, construction and/or rehabilitation of the Facilities.

Upon the acquisition of the Project Site and the Facilities, the Borrower is required to cause the financing, acquisition, design, construction and/or rehabilitation of the Facilities to be located on the Project Site: (i) the construction of an approximately 14,000 square foot gymnasium; (ii) the construction of an approximately 83,500 square foot; (iii) the construction of two approximately 10,000 square foot warehouses, each with an additional 6,500 square foot mezzanine space; (iv) the acquisition and rehabilitation of existing school facilities; and (v) the acquisition and rehabilitation of an existing office building. Pursuant to the Restated Lease Agreement, the Base Rent for each of the new gymnasium, the warehouses and the new office building will commence upon the substantial completion of such new structure.

Pursuant to the Restated Lease Agreement, the Premises are required to be used exclusively for public educational purposes unless allowed by law or the specific written authorization of the Lessor is obtained. The Restated Lease Agreement also requires, however, that the Government of Guam, as Tenant, use the Premises exclusively in a manner so as to maintain the exclusion from gross income for federal income tax purposes of interest on any bonds payable from Base Rent or Additional Rent, such as the Bonds.

#### **Payments under the Restated Lease Agreement**

During the extended term of the Restated Lease Agreement, which extends from January 1, 2014 through December 31, 2041, the Government of Guam, in its capacity as Lessee, is obligated to pay the principal and interest

costs for the land and buildings leased pursuant to the Restated Lease Agreement (such payments, the "Base Rent") and to pay for insurance, operations, taxes and assessments and maintenance (such payments, defined as "Additional Rent" in the Restated Lease Agreement), as more fully set forth in the Restated Lease Agreement. Base Rent and Additional Rent are due and payable annually on January 1, in advance, for each calendar year. The Base Rent and the Additional Rent for the initial term, which ended on December 31, 2013, and for the first annual term (ending December 31, 2014) during the extended term of the Restated Lease Agreement have already been paid by the Government of Guam.

As provided in the Restated Lease Agreement, the payment of Base Rent and Additional Rent and any other payments and costs by the Tenant under the Restated Lease Agreement are subject to the availability of Available Funds or, solely in the case of Collateral Equipment (as described below), from Available Funds and/or Available Tax Credits as may be appropriated by the Legislature of Guam. In the Restated Lease Agreement, Lessor and the Government of Guam, as the Lessee, have agreed that Base Rent and Additional Rent and any other payments and costs are to be paid in cash from Available Funds from the Non-pledged Portion (as defined below) or other Available Funds; provided, however, that the Tenant at its sole option may pay for Collateral Equipment from Available Tax Credits. Notwithstanding anything in the Restated Lease Agreement to the contrary, tax credits previously authorized by the Legislature of Guam for the purchase of Collateral Equipment may be applied to payment and costs of such Collateral Equipment and tax credits are to be made available by the Government of Guam in lieu of the reservations and deposits for the Base Rent and Additional Rent due on January 1, 2015.

Under the Restated Lease Agreement, the Government of Guam, as Lessee, is required to use its reasonable best efforts to include sufficient Available Funds in the Government of Guam's annual budgets during the term of Restated Lease Agreement for all Base Rent and Additional Rent and other costs due in each year. In addition, the Governor and the Guam Department of Education (the "DOE") are required to annually budget Base Rent and Additional Rent and to request an appropriation therefor. Nothing in the Restated Lease Agreement, however, obligates the Legislature of Guam to make appropriations with which to make Base Rent and Additional Rent payments under the Restated Lease Agreement, and nothing in the Restated Lease Agreement obligates the Government of Guam to the Restated Lease Agreement beyond the period for which an appropriation sufficient to make payments of Base Rent and Additional Rent has been made by the Legislature of Guam. See "—Limitation of Obligations; Event of Non-Appropriation" below.

As discussed above, Available Funds are any amounts either (1) appropriated on an annual basis by the Legislature of Guam for the purpose of making Base Rent and Additional Rent payments and other payments and costs under the Restated Lease Agreement or (2) otherwise made available on an annual basis by the Government of Guam for such purposes.

The Non-pledged Portion consists of the revenues generated by the one percent (1%) of the four percent (4%) tax business privilege tax imposed by Section 26201 of Article 2 of Chapter 26 of Title 11 of the Guam Code Annotated, as amended, or any successor provision that is not pledged to the payment of the Government of Guam Business Privilege Tax Bonds. **Notwithstanding anything to the contrary contained in the Restated Lease Agreement, the Government of Guam, as Lessee, will not be required to advance any money derived from any source other than the Non-Pledged Portion annually appropriated by the Legislature of Guam for the purpose of making payments as provided in the Restated Lease Agreement.** The Restated Lease Agreement provides, however, that the Government of Guam may, but is not required to, advance for any of the purposes of the Restated Lease Agreement any funds of the Government which may be made available to it for such purposes. Although Available Funds to pay the Base Rent and the Additional Rent may be appropriated from the Non-pledged Portion, the Government of Guam is not required to pay the Base Rent and the Additional Rent only from the Non-pledged Portion, and the Non-pledged Portion is not pledged to the payment of the Base Rent and the Additional Rent. For a discussion of the business privilege tax and the bonds secured by the business privilege tax, see "FINANCIAL INFORMATION REGARDING THE GOVERNMENT OF GUAM—Major Sources of General Fund Revenue."

Pursuant to the Restated Lease Agreement, commencing on October 1, 2014, by the end of each October, November and December, the Government of Guam, as Lessee, is obligated to cause to be reserved and deposited in a segregated account established by the Department of the Administration for the express purpose of receiving Available Funds for the payment of Base Rent and Additional Rent (the "Account") the Non-pledged Portion (or other Available Funds) so that amounts of such Non-pledged Portion, or Available Funds, as applicable, on deposit

in the Account by the end of each such October, November and December will equal one-third (1/3), two-thirds (2/3) and one hundred percent (100%), respectively, of the total Base Rent and Additional Rent due the following January 1, such reservations and deposits to be subject to prior appropriation of the Non-pledged Portion, or Available Funds, as applicable, for such purposes by the Legislature of Guam; provided, however, that in lieu of the reservations and deposits for the payments of Base Rent and Additional Rent due on January 1, 2015, the Government of Guam, as Lessee, is to make available in the same amount of tax credits as authorized by law for the payment thereof. The Account is to be held by or on behalf of the Government of Guam, as Tenant, separate and apart from all other accounts held on or behalf of the Lessee. The Restated Lease Agreement provides that, to the extent amounts have been appropriated for Base Rent, Additional Rent and other costs under the Restated Lease Agreement and reserved and deposited as described in this paragraph, such amounts may be subjected to any lien and pledge created by any document authorizing bonds payable from Base Rent or Additional Rent, including the Indenture.

The obligations of the Government of Guam, as Lessee, under the Restated Lease Agreement do not constitute "public indebtedness" for purposes of Section 11 of the Organic Act of Guam.

#### **Limitation of Obligations; Event of Non-Appropriation**

Pursuant to the Restated Lease Agreement, the Government of Guam will not be obligated to perform its obligations under the Restated Lease Agreement, including the payment of Base Rent and Additional Rent, except to the extent funds may be available for such performance or payments from Government of Guam appropriations or other available funds. The Legislature of Guam is not obligated to make future appropriations for the payment of Base Rent and Additional Rent or the performance of any other obligations under the Restated Lease Agreement. The Restated Lease Agreement also provides that in the event that appropriated funds are not legally available for payment of Base Rent and Additional Rent or other obligations under the Restated Lease Agreement, the Restated Lease Agreement shall be terminated.

An Event of Non-Appropriation will have occurred if Available Funds are not appropriated or authorized, as applicable, by the Legislature of Guam or otherwise made available by the Government of Guam on or prior to the beginning of an annual rental term in an aggregate amount sufficient for the making of Base Rent and Additional Rent payments and other payments or costs or payments due under the Restated Lease Agreement.

Under the Restated Lease Agreement, if an Event of Non-appropriation occurs, the Lessee will not be obligated to make rental and costs payments provided for in the Restated Lease Agreement beyond the last day of the annual rental term for which such Event of Non-appropriation occurs, except for the Lessee's obligation to make rental payments which were payable prior to the termination of the Restated Lease Agreement; provided, however, that if an Event of Non-appropriation occurs and Lessee continues to occupy and possess any portion of the Premises, with or without the consent of Lessor, beyond the then-current annual rental term, the Lessee will be liable for the rental payments and all costs and expenses under the Restated Lease Agreement for the entire Premises for the time it has retained occupancy and possession of any portion of the Premises.

Upon the occurrence of an Event of Non-appropriation, the Lessee may terminate its obligations under the Restated Lease Agreement, without penalty, effective at the end of the then-current annual rental term, and the Lessor may as its sole remedy upon the occurrence of an Event of Non-appropriation terminate the Restated Lease Agreement and Lessee's possessory rights under the Restated Lease Agreement and sue for any unpaid rental payment and costs under the Restated Lease Agreement for any holdover period to the extent that Lessee retains use and occupancy of the Premises, with or without the consent of Lessor. Under the Restated Lease Agreement, such termination will not be considered or treated as a default under the Restated Lease Agreement or any other document. In the Restated Lease Agreement, the Lessee agrees to surrender the Premises to Lessor and to cease use of the Premises if the Restated Lease Agreement is so terminated. **For avoidance of doubt, the sole remedies under the Restated Lease Agreement for an Event of Non-appropriation, whether for an annual rental payment or otherwise, shall be termination of the Restated Lease Agreement, including termination of Lessee's right of use and occupancy of the related Premises, and termination of the Restated Lease Agreement without delivery to Lessee of title or ownership to the Premises.**

The Lessor may waive any Event of Non-appropriation that is cured by Lessee within a reasonable time as determined by Lessor.

## **Events of Default and Remedies**

Under the Restated Lease Agreement, subject to the provisions of the Restated Lease Agreement described in “—Limitation of Liability; Event of Non-Appropriation,” the following events shall be deemed events of default by the Tenant: (a) the Tenant fails to pay any installment of Base Rent or Additional Rent or fails to pay any other charges required to be paid by the Tenant under the Restated Lease Agreement, if any, and such failure continues for a period of thirty (30) days from and after the date of written notice specifying such failure is delivered to Tenant; or (b) the Tenant fails to comply with any terms, provisions or covenants of the Restated Lease Agreement, other than the payment of Base Rent, Additional Rent, or other charges, and does not commence to remove or to cure such failure within thirty (30) days from and after the date of written notice specifying such failure is delivered to the Tenant, or having commenced to remove or to cure such failure within such thirty (30) day period, the Tenant thereafter fails to proceed with reasonable diligence to completely remove or cure such failure.

Subject to the provisions of the Restated Lease Agreement described in “—Limitation of Liability; Event of Non-Appropriation,” if the Tenant is in default under the Restated Lease Agreement, and fails to cure its default within thirty (30) days after written notice has been given by Lessor, then the Lessor shall have the right and authority to immediately terminate the Restated Lease Agreement and to cause the Tenant to vacate the Premises. The Restated Lease Agreement provides that in addition to any termination, the Tenant will be required to pay immediately to the Lessor the remaining balance due to Lessor for the Collateral Equipment, all damages, other costs as allowed under the Restated Lease Agreement, ten percent (10%) interest, late payment fees (if any), collection costs and fees, and any other damages incurred by Lessor. The Restated Lease Agreement provides further that the Lessor shall have all other rights and remedies available at law and equity against Tenant.

Under the Restated Lease Agreement, if the Lessee fails to complete the purchase of the Premises as a result of a termination of the Restated Lease Agreement following an event of default by the Lessee, all improvements to the Premises will revert to the Lessor.

If the Lessor is in default, then the Tenant shall have all legal and equitable remedies at law against the Lessor.

## **Assignment and Subletting**

Under the Restated Lease Agreement, the Tenant is not permitted to assign and sublet the Premises, in whole or in part, without Lessor's prior written consent. The Lessor is permitted to assign its rights and obligations under the Restated Lease Agreement to the Borrower, or any other entity affiliated with or created by the Lessor, and the Lessor may assign its rights under the Restated Lease Agreement, including its right to receive Base Rent, Additional Rent, and other payments, to the Trustee to secure financing to fulfill its obligations under the Restated Lease Agreement. In the Restated Lease Agreement, the Tenant assents to such assignment, and agrees that its obligation to pay the rents and other payments under the Restated Lease Agreement from Available Funds or Available Tax Credits (in the case of Collateral Equipment) are absolute and unconditional and, except as expressly provided in the Restated Lease Agreement, shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach by the Lessor of any obligation to Lessee, whether under the Restated Lease Agreement or otherwise, or out of any indebtedness or liability at any time owing to the Tenant by the Lessor. Upon such assignment, the Tenant will be required to make all payments to the Trustee or any other party, as designated by the Lessor.

## **Collateral Equipment**

Under the Restated Lease Agreement, Core Tech, as Lessor, is obligated to purchase certain personal property for the Tenant's use, such as furniture, computer systems, etc. (the “Collateral Equipment”), which will be deemed to be the personal property of the Guam Public School System. In the Assignment of Lease, Core Tech and the Borrower agree that Core Tech remains obligated to provide the Collateral Equipment and retains the right to receive payment for the Collateral Equipment. Pursuant to the Restated Lease Agreement, the Government of Guam, as Tenant, is required to make full payment within 30 days after delivery of Collateral Equipment, and any late payments are subject to late charges. The Assignment of Lease also provides that, in the event the Tenant fails



to make any payment for the Collateral Equipment, Core Tech may not pursue any remedies against the Tenant without the prior written consent of the Borrower. See “—Events of Default and Remedies.”

The costs with respect to a portion of the Collateral Equipment purchased or to be purchased pursuant to the Restated Lease Agreement have been financed with Available Tax Credits previously authorized by the Legislature of Guam. The costs payable with respect to the remaining Collateral Equipment to be purchased under the Restated Lease Agreement may be paid from Available Funds or Available Tax Credits, as appropriated by the Legislature of Guam. The costs of the Collateral Equipment are not included in either Base Rent or Additional Rent and are not being financed with proceeds of the Bonds.

## **THE PROJECT SITE AND THE FACILITIES**

### **General**

The Tiyan Campus consists of the Project Site and the Facilities. The Project Site and certain existing buildings, structures and improvements thereon were previously owned by the United States and used as a U.S. Navy base. Core Tech acquired all but one parcel of the real property (“Tiyan 3”) in 2007. Tiyan 3 is owned by the A.B. Won Pat Guam International Airport Authority (the “Airport Authority”). Core Tech and the Airport Authority have entered into the Exchange License Agreement, dated April 5, 2012 (the “License Agreement”), pursuant to which Core Tech is permitted to use and possess Tiyan 3 and the buildings located thereon for 30 years from and after the completion of the renovation work on the buildings located on Tiyan 3. Under the Restated Lease Agreement, Tiyan 3 is being sublet to the Government of Guam, as the Tenant. Core Tech is assigning its rights and obligations under the License Agreement to the Borrower pursuant to the Assignment of License. The Borrower is acquiring the Project Site (including the license for Tiyan 3) and the Facilities located thereon from Core Tech.

Upon the acquisition of the Project Site and the Facilities, the Borrower is required to cause the financing, acquisition, design, construction and/or rehabilitation of the Facilities to be located on the Project Site: (i) the construction of an approximately 14,000 square foot gymnasium; (ii) the construction of an approximately 83,500 square foot; (iii) the construction of two approximately 10,000 square foot warehouses, each with an additional 6,500 square foot mezzanine space; (iv) the acquisition and rehabilitation of existing school facilities; and (v) the acquisition and rehabilitation of an existing office building. Pursuant to the Restated Lease Agreement, the Base Rent for each of the new facilities described in (i) through (iii) will commence upon the substantial completion of such Facilities.

The Tiyan Campus facilities have previously been leased to the Government of Guam to provide an interim campus for the students and faculty of the John F. Kennedy High School during the construction of the new John F. Kennedy High School facilities and to provide an interim campus for students and faculty of the Untalan Middle School. The Facilities are being developed to serve as the permanent Tiyan High School, to provide a headquarters facility for the DOE, to provide warehouse space for DOE storage and to provide facilities for the Guahan Charter School.

The rehabilitation of the existing office building and the rehabilitation of the existing school facilities discussed in (iv) and (v) above have already been completed and those Facilities are already in use. Upon the acquisition of the Project Site in connection with the issuance of the Bonds, the acquisition and rehabilitation of those Facilities will be complete. The rehabilitated school facilities on the Tiyan Campus are currently being used as the campus for the Tiyan High School, which enrolls approximately 1,400 students reassigned from Barrigada, Barrigada Heights, Mongmong, Toto, Maite, Tiyan, Adelup, Anigua, Agana, Maina, Mogfog, Las Palmas, and Macheche to alleviate overcrowding in other schools and to realign attendance in local schools. The gymnasium to be constructed pursuant to the Restated Lease Agreement will be part of the Tiyan High School campus.

Pursuant to the Restated Lease Agreement, the gymnasium is required to be substantially complete (ready for occupancy but prior to the occupancy permit being issued) by November 5, 2016 (within two years after the date of the Restated Lease Agreement), the office building is required to be substantially complete by November 5, 2017 (within three years after the date of the Restated Lease Agreement), and the warehouses are required to be substantially complete by November 5, 2016 (within two years after the date of the Restated Lease Agreement).

The gymnasium is currently expected to be completed in December 2015, with a 12-month construction schedule. One warehouse (with the exception of the mezzanine) has already been completed, and construction of the mezzanine for such warehouse and the second warehouse (including mezzanine) are expected to be completed by December 2015, with a 12-month construction schedule. The office building is currently expected to be completed in December 2016, and has a 24-month construction schedule.

The Government of Guam, as Lessee under the Restated Lease Agreement, has exercised its option to purchase the Project Site and the Facilities, and, accordingly, after paying all Base Rent and Additional Rent and any other amounts due under the Restated Lease Agreement, the Lessee will receive legal ownership of the Project Site and the Facilities. If the Government of Guam does not pay such amounts, either as the result of an Event of Non-appropriation or an event of default under the Restated Lease Agreement, the Borrower will retain ownership of the Premises.

### **Development of the Facilities**

The Borrower is engaging Core Tech, in its capacity as Developer, to complete, or to cause to be completed, the design, development, equipping, construction and/or rehabilitation of the Facilities on the Project Site for and on behalf of the Borrower pursuant to a Design and Development Agreement, to be dated as of December 1, 2014 (the "Development Agreement"), between the Borrower and the Developer. Pursuant to the Development Agreement, the Developer agrees to provide certain services relating to the development of the Facilities, including general project management, schedule management, cost management, pre-construction and design services (most of which are substantially complete), construction and/or rehabilitation services and management and certain post-construction services following substantial completion of the Facilities.

The Developer has provided to the Borrower a project schedule (as revised from time to time, the "Project Schedule") that is consistent with the requirements of the Restated Lease Agreement and that it will take all necessary action to mitigate the effects of any delay in the progress of design or the work in connection with the Facilities. See "—General" above for a discussion of the schedule for the substantial completion of certain of the Facilities required under the Restated Lease Agreement.

Prior to the issuance of the Bonds and the execution of the Development Agreement, the Developer is required to develop and submit to the Trustee and to the Borrower a project budget (the "Project Budget") setting forth the estimated receipts and expenditures to be realized or incurred in connection with the development of the Facilities. In the Development Agreement, the Developer and the Borrower agree that the development of the Facilities is to be provided at a fixed price, in accordance with the Project Budget, the Development Agreement, the Restated Lease Agreement and the Indenture. The Developer may allocate contingency line items among other line items. The rehabilitation of the existing school facilities and the existing office building are complete. The Developer currently estimates the project costs for the gymnasium, the warehouses and the new office building to be approximately \$2.8 million, \$2.2 million and \$16.7 million, respectively.

Subject to the terms of the Indenture, the Developer is entitled to request the Borrower requisition funds from the Project Fund for the payment of Project Costs consistent with the Project Budget. The Development Agreement prohibits the Developer from approving or implementing any change order or otherwise approving any changes to the Facilities that would have the effect of increasing the costs of Facilities beyond the amounts on deposit in the Project Fund unless the Developer agrees to fund such cost increases. The Development Agreement also provides that if actual Project Costs exceed the Project Budget (after utilization of general contingency and any allocations of contingency line items) and such excess is attributable to the Developer's failure to perform any of its duties at the requisite standard, the Developer will be required to bear the cost of such overage.

### **Management of the Facilities**

The Facilities are to be managed by the Core Tech, in its capacity as Manager, pursuant to a Management Agreement, to be dated as of December 1, 2014 (the "Management Agreement"), between Core Tech and the Borrower. Pursuant to the Management Agreement, the Manager agrees, on behalf of and at the expense of the Borrower, to perform the Borrower's contractual obligations as the "Landlord" under the Restated Lease Agreement as it relates to the operation and maintenance of the Facilities and the Project Site as set forth in the Restated Lease Agreement (collectively, the "Management Services"). Except as otherwise provided in the Management

Agreement, the Manager will be obligated to perform its responsibilities and obligations under the Management Agreement only to the extent funds of the Borrower are available therefor, which funds are to be derived solely from Additional Rent under the Restated Lease Agreement, funds on deposit under the Indenture, or the exercise of remedies under the Loan Agreement, the Mortgage, the Assignment of Lease, the Assignment Agreement, the Development Agreement or the Management Agreement.

The Manager will receive fees for the performance of the Management Services, as set forth in the Management Agreement, which fees are to be requested and paid pursuant to the terms of the Indenture.

Pursuant to the Management Agreement, the Borrower's sole financial contribution to pay the costs of the Management Services is to be made from the payment of Additional Rent under the Restated Lease Agreement to the Trustee pursuant to the terms of the Indenture. The Borrower will not be required to contribute any of its own funds for the Management Services or to raise or contribute any funds for the Management Services in excess of the amounts deposited in the Management Fee Fund established under the Indenture, and the Borrower will have no obligation for the payment of any costs or expenses related to the Management Services, except to the extent that funds are available in the Management Fee Fund for the payment of such costs and expenses.

The Management Agreement prohibits the Borrower from agreeing to any amendments or modifications to the Indenture that would adversely affect the rights or the obligations of Manager under the Management Agreement or the Indenture, without the prior written consent of Manager, which consent is not be unreasonably withheld, conditioned or delayed.

The term of the Management Agreement will commence on the effective date of the Assignment of Lease and will end on the fifteenth (15<sup>th</sup>) anniversary of such date, unless terminated in accordance with the terms of the Management Agreement. The term of the Management Agreement will be automatically renewed unless the Borrower provides notice of non-renewal to the Manager within 60 days prior to the end of the initial term.

#### **THE ISSUER**

The Issuer is an Arizona nonprofit corporation designated a political subdivision of the State incorporated with the approval of the City of Phoenix, Arizona (the "City"), pursuant to the provisions of the Constitution of the State and the Act. The Issuer is governed by a Board of Directors, currently consisting of nine members, who are appointed by the City Council of the City.

Pursuant to the Act, the Issuer is empowered to issue its bonds to provide funds for financing and refinancing the costs of the acquisition, construction, renovation, equipping and improvement of a "project," as defined in the Act, including the Project.

The Issuer has assets and may obtain additional assets in the future. Such assets, however, are not pledged to secure the payment of the Bonds, and the Issuer has no obligation or expectation of making such assets subject to the lien of the Indenture. The Issuer has no taxing power and has committed no source of funds for the payment of the Bonds other than the Trust Estate pledged under the Indenture. The Issuer does not have the power to pledge the general credit or taxing power of the State or of any political subdivision thereof, including, but not limited to, the City. All payments made pursuant to the Loan Agreement will be made directly from the Borrower to the Trustee for disbursement to the owners of the Bonds.

The Issuer does not and will not in the future monitor the financial condition of the Borrower or the use of the Facilities or otherwise monitor payment of the Bonds or compliance with the documents relating thereto. The responsibility for the design, construction, use and operation of the Facilities will rest entirely with the Borrower and the entities with whom the Borrower has contracted for services and not with the Issuer. The Issuer will rely entirely upon the Trustee and the Borrower to carry out their responsibilities under the Loan Agreement and with respect to the Facilities and the Project.

The Issuer has determined that financial and operating data concerning the Issuer is not material to any decision to purchase, hold or sell the Bonds, and the Issuer will not provide such information.

None of the Issuer, its Executive Director, its board of directors, its employees or its independent contractors has furnished, reviewed, investigated or verified the information contained in this Official Statement other than the information included under this heading and under the heading "LITIGATION—The Issuer" as it relates to the Issuer. The Issuer has not, and will not, undertake any responsibility to provide continuing disclosure with respect to the Bonds or the security therefor, and the Issuer will have no liability to holders of the Bonds with respect to any such disclosure.

### **THE BORROWER AND THE SOLE MEMBER**

The Borrower, AZ GFF Tiyan, LLC, is an Arizona limited liability company, which was formed in September 2014 for the purpose of financing the Project. The Borrower is managed by its sole Member, the Guam Facilities Foundation, Inc. Certain steps have been taken to structure the Borrower as a special-purpose bankruptcy-remote entity. The Borrower's management and activities are governed by a Limited Liability Company Agreement, to be effective prior to the delivery of the Bonds (the "Operating Agreement"). In the Operating Agreement, the Borrower is covenanting, among other things, to limit its activities to those pertaining to the financing, acquiring, designing, constructing and/or rehabilitating the Facilities and related activities of the Borrower, as described in this Official Statement, and to take certain actions to preserve its separate existence. The Borrower has no employees. It will enter into service contracts with third party vendors, including the Management Agreement with Core Tech, to manage and maintain the Project.

The Guam Facilities Foundation, Inc. ("GFFI"), the Borrower's sole Member, is a Guam non-profit corporation, which has received a determination letter from the Internal Revenue Service recognizing it as a exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), because it is described in Section 501(c)(3) of the Code. GFFI was formed in 2011 with a mission to bring affordable housing and other community-focused projects to Guam. GFFI's primary focus has been on the development and maintenance of affordable housing and educational facilities on Guam, and since its inception, GFFI has been instrumental in the financing, development and property management of over \$168 million in affordable housing and educational facilities on Guam.

GFFI is led by a Board of Directors comprised of three (3) experienced business leaders on Guam. The operations of GFFI are generally managed by an Executive Director and a staff of dedicated professionals. As of October 2014, GFFI has a staff of eight full and part-time employees in addition to the Board and the Executive Director. In addition, GFFI expects to add three more community programs specialists in the beginning of 2015 as part of its effort to increase its property management and community programs capabilities.

### **CORE TECH**

Core Tech is a full service general contractor firm on Guam. Since its inception in 1991, Core Tech has grown in size and experience, completing numerous projects for a wide range of clients, including the U.S. military, local governmental entities and the private sector. Core Tech has extensive experience in project planning, project management and project execution, as well as in managing supply chain logistics. Over the past several years, Core Tech has been consistently recognized in the annual Excellence in Construction Awards awarded through the Guam Contractors Association. As of November 1, 2014, Core Tech has assets totaling \$166 million. Core Tech also has an aggregate bond capacity of over \$400 million provided by Zurich N.A.

Core Tech's portfolio of completed projects includes over 220 projects completed for the Department of Defense with a cumulative value of \$245 million and more than 3,000 residential homes all over Guam with a cumulative value of \$150 million. In addition, over the last 10 years, Core Tech has built five public schools and renovated one public school on Guam, as well as one charter school. Core Tech also has unique experience of being the only construction company on Guam that has provided financing, construction, maintenance and collateral equipment for the Government of Guam for multiple schools. In addition to the development of the Tiyan Campus under the Restated Lease Agreement, education facility projects completed by Core Tech for the Government of Guam include the construction of the Liguán Elementary School located in Dededo, Guam, completed in 2008 with a contract price of \$8.8 million; the construction of Adacao Elementary School located in Mangilao, Guam, completed in 2009 with a contract price of \$9.7 million; the construction of Astumbo Middle School located in Dededo, Guam, completed in 2008 with a contract price of \$12.4 million; and the construction of the Okkodo High

School located in Dededo, Guam, completed in 2008 with a contract price of \$27 million. The Developer also completed construction of a three-story headquarters building for the Guam Power Authority and the Guam Waterworks Authority in November 2014, with a contract price of \$26.4 million and has completed construction of three approximately 10,000 square foot warehouses almost identical to the warehouses to be constructed on the Tiyan Campus.

Core Tech Development, LLC ("CTD"), founded in 2007, is the real estate and property management division of Core Tech. CTD owns and/or manages 1,000 apartment rental units, including on-going low income housing tax credit projects, and several commercial properties at five locations on Guam. CTD's total property management portfolio is valued at over \$155 million.

## **GUAM ECONOMIC DEVELOPMENT AUTHORITY**

The Guam Economic Development Authority ("GEDA") has acted as a special representative of the Government of Guam in connection with the issuance of the Bonds. GEDA is a Guam public corporation with broad responsibility for the centralized direction, control and supervision of an integrated plan for the economic development of Guam. GEDA's mission is to develop a sound and sustainable economy through innovative programs that preserve and promote local culture, economic opportunities and quality of life

## **THE LESSEE/TENANT**

In 2005, the Guam Legislature enacted Public Law 28-45, known as the "Every Child is Entitled to an Adequate Public Education Act" (the "Adequate Education Act"). In the Adequate Education Act, the Guam Legislature declared its policy that the education of Guam's children is the top priority of the Government of Guam. The DOE oversees a single unified school district (the "School District") that provides public education to young people throughout Guam in grades kindergarten through twelve (K-12). The DOE is a department of the executive branch of the Government of Guam administered by a Superintendent of Education (the "Superintendent"). The Superintendent is responsible for the implementation of policies of the Guam Education Policy Board ("Board"), which appoints the Superintendent.

Guam statutes mandate that every child on Guam from age 5 through 16 must be enrolled in and attending school. Any such child, regardless of citizenship or military status, is eligible to attend School District schools. In addition to the 42 public schools in the School District, Guam currently has 24 private schools, four Department of Defense schools and one charter school providing K-12 education. Guam statutes also permit charter schools to be established on Guam. The School District consists of 27 elementary schools, 8 middle schools, 6 high schools (including Tiyan High School) and an Alternative School, which together serve a total of approximately 31,500 students in Guam. Of those, approximately 10,100 are high school students.

The deterioration of Guam's public school facilities, together with the increasing number of students, has impacted the Government of Guam's and the School District's abilities to provide essential educational services to Guam's students. Over the last several years, the Government of Guam has relied upon partnerships with the private sector to finance, acquire, design, develop, construct and/or renovate the School District's aging and/or new schools and related facilities, which has allowed the Government of Guam and the School District to address overcrowding and health and safety concerns without significantly increasing public indebtedness. In addition to the Tiyan Campus facilities currently being developed under the Restated Lease Agreement and the Liguán Elementary School, Adacao Elementary School and Astumbo Middle School developed by Core-Tech, the Government of Guam entered into a public-private partnership to finance the replacement of the John F. Kennedy High School facility in Tumon, Guam.

## **FINANCIAL INFORMATION REGARDING THE GOVERNMENT OF GUAM**

### **Budgetary Process**

The Governor is required by law to direct the preparation and administration of the Executive Budget for the Government on an annual basis. The Executive Budget represents the Governor's financial proposal with

recommended priorities for allocating resources. The budget for the Government is developed through a four-phase process: formulation ("Formulation Phase"); adoption ("Adoption Phase"); execution ("Execution Phase"); and audit ("Audit Phase"). With the exception of the Adoption Phase, the Bureau of Budget and Management Research (the "Bureau") is the administrative entity responsible for carrying out the four phases of the budget cycle.

Public Law 30-13 provides that Guam's annual budget must be adopted by the Legislature and presented to the Governor for approval no later than August 31st each year, which commenced with the budget for Fiscal Year 2010. The Organic Act of Guam, 48 U.S.C. § 1423j, provides that if, at the termination of any fiscal year, the Legislature shall have failed to pass appropriation bills providing for payments of the necessary current expenses of the Government and meeting its legal obligations for the ensuing fiscal year, then the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be applicable, shall be deemed to be reappropriated, item by item.

During the Formulation Phase, the revenue forecast and the distribution of those revenues in the program and financial plan transmitted to the Legislature by January 30 of each year is accomplished. Economic data and historical revenue data are analyzed to project revenues for the upcoming fiscal year. Over the past few fiscal years, the accuracy of the revenue and expense projections used by the Government of Guam in its budgeting forecasts has improved, resulting in budget surpluses in Fiscal Years 2012 and 2014.

After the revenue projections are finalized, the allocations are made. Top priority in the distribution is the debt service requirements for various bonds and loans of the Government of Guam from the sources identified to service those debts. The next priority is the provision for tax refunds and earned income tax credits. Finally, education, health, and public safety are prioritized for the remaining governmental operations. Programmatic reviews and the spend rate of the previous five (5) years are also taken into account in the final determination of some agency levels.

The Adoption Phase includes the legislative review of individual department and agency budgets, the hearing process, revisions or adjustments at mark-up sessions and final passage of the General Appropriations Bill by the Legislature and its enactment into law by the Governor.

The Execution Phase begins once the General Appropriations Bill is signed into law. Department and agency allotment schedules are prepared based on appropriated amounts and projected cash receipts. Review of program appropriation is conducted to ensure that planned expenditures are consistent with the Governor's goals and objectives and the General Appropriations Bill.

The Bureau, in coordination with the chief financial officer of each governmental agency, is responsible for ensuring that expenditures are within budget. The Bureau releases allotments of cash to pay ongoing operational expenses monthly only after reviewing cash flow statements prepared by the Department of Administration to ensure that adequate cash resources are available for such releases. All major fiscal transactions (including personnel actions, travel and new contracts) are required to be approved by the Bureau to ensure that such transactions are consistent with the General Appropriations Bill. This daily review of transactions by the Bureau is performed to achieve two objectives: (i) to ensure that authorized program objectives are being met, and (ii) to ensure that adequate appropriations and cash resources are available to cover the expenditures. Failure of a requesting agency to meet both of these objectives will automatically result in disapproval of the proposed transaction and may also result in the impoundment of previously released allotments of cash. Only the Governor has the power to override such actions by the Bureau.

In the event of revenue shortfalls, the Government may institute various measures which include the implementation of various cost containment policies, reprioritization of programs and the withholding or rescinding of allotment releases. In addition, Public Law 12-115 mandates the Bureau to modify or withhold planned expenditures at any time during the appropriation period if the Bureau finds that such expenditures are greater than those necessary to execute the programs at the level authorized by the Governor and the Legislature or that anticipated receipts and/or appropriated funds will be insufficient to meet the authorized expenditure levels. Revenue shortfalls are determined by the Bureau by analysis of monthly revenue tracking reports prepared by the Department of Administration. Guam statutes require that the Bureau perform a monthly revenue tracking exercise by comparing actual revenues collected for the month as well as year to date. The results of this tracking exercise are then reported to the Legislature and posted on the Bureau's website along with the official projections for the same period. A penalty of 20% reduction in salary is imposed on the director, deputy director and chief financial officer of any agency that does not comply with these requirements. The monthly revenue statements are

countersigned by the Directors of the Bureau, the Department of Administration, and the Department of Revenue and Taxation.

The Audit Phase identifies potential program deficiencies in order to improve program performance. During the Audit Phase, all financial transactions, accounts and reports are examined to determine compliance with applicable laws and regulations, to assure economic use of resources, and to enhance achievement of goals and objectives.

The Director of the Bureau of Budget and Management Research, in collaboration with the Director of Revenue and Taxation and the Director of Administration, is required to prepare monthly reports of revenue collected and funds spent or encumbered during each month of the fiscal year. If revenues are tracking below projected revenues for the fiscal year, the Bureau of Budget and Management Research is required to adjust and sequester an amount of the remaining allotments for expenditures that is equal to the percentage of shortfall of actual revenues relative to projected revenues. In addition, those same Directors are to determine at the close of each fiscal quarter whether actual revenues collected for that quarter are consistent with the projected revenues for the fiscal year. If the Directors determine that projected fiscal year revenues, based on actual revenues collected, are three percent (3%) or more lower than revenue projections adopted by the annual budget act, the Governor is required to submit to the Legislature a fiscal realignment plan that is to address the revenue disparity. The fiscal realignment plan may include, but is not limited to, cost-containment and austerity measures, governmental reorganization plans and other such actions.

Guam law mandates penalties for failure to comply with deadlines set by the Bureau towards the development and implementation of performance-based budgeting for the Department of Administration, the Bureau, the Department of Revenue and Taxation, the Department of Public Works, the Department of Parks and Recreation, the Department of Land Management, the Department of Agriculture, the Bureau of Statistics and Plans, and the central operations of the DOE. In addition, appropriate employees of the respective agencies are required by law to attend all performance-based budgeting workshops and training opportunities offered by the Government.

#### **Audited Financial Statements**

Generally, the audited Government-wide financial statements for a given fiscal year are not available until approximately nine months after the close of the fiscal year. The fiscal year for the Government of Guam currently ends on September 30. The Government-wide financial statements of the Government for the Fiscal Year ended September 30, 2013 have been audited by Deloitte & Touche LLP, independent auditors, and whose opinion was based, in part, on reports of other auditors and contained an emphasis of matter paragraph regarding restatements relating to the adoption of certain accounting pronouncements and to correct an error, as stated in their report appearing in APPENDIX B hereto. Reference should be made to the audited financial statements included in APPENDIX B for a complete understanding of the information provided therein. The independent auditors have not reviewed this Official Statement.

#### **Major Sources of General Fund Revenues**

The General Fund is the fund into which all Guam revenues, not otherwise restricted by statute, are deposited and from which appropriations are made. As described in Table 2, the two primary sources of General Fund revenues are tax revenues and federal contributions. Tax revenues are comprised of income taxes and business privilege taxes (formerly known as gross receipts taxes), which accounted for approximately 42.9% and 36.3% of total General Fund revenues, respectively, during Fiscal Year 2013. The Government is the only taxing authority in Guam. There are no separate municipal, county, school district or improvement district taxes.

During Fiscal Year 2013, total General Fund revenues amounted to approximately \$610.6 million as compared to approximately \$596.2 million during Fiscal Year 2012, an increase of approximately 2.4%. Tax revenues increased by approximately 3.6%, to approximately \$582.4 million in Fiscal Year 2013 as compared to \$561.9 million in Fiscal Year 2012. Business privilege tax collections increased slightly to approximately \$221.7 million in Fiscal Year 2013 from \$221.4 million in Fiscal Year 2012. Revenues from income taxes decreased to approximately \$232.8 million from approximately \$284.2 million, or by 7.9%. Section 30 revenues (as defined below in this section) increased approximately 80.1% percent to approximately \$96.1 million in Fiscal Year 2013 from approximately \$53.1 million in Fiscal Year 2012.

General Fund revenues for Fiscal Year 2012 were \$596.2 million, an increase of 7.9% from Fiscal Year 2011. General Fund revenues for Fiscal Year 2011 were \$552.4 million, an increase of 12.5% from Fiscal Year 2010. General Fund revenues for Fiscal Year 2010 increased slightly to approximately \$491.0 million from \$483.2 million in Fiscal Year 2009, or by 1.6%.

Real property tax revenues are required to be deposited in the Territorial Educational Facilities ("T.E.F.") Fund, which is not a part of the General Fund. However, moneys in the T.E.F. Fund are required to be used to reimburse the General Fund for payments of debt service on general obligation bonds of the Government. Audited real property tax revenues totaled approximately \$21.3 million in Fiscal Year 2013.

Business privilege taxes are assessed and collected monthly against persons on account of their businesses operating within Guam measured by the application of the business privilege tax rate against values, gross proceeds of sales or gross income, as applicable, pursuant to Article 2 of Chapter 26 of Title 11 of the Guam Code Annotated. The Government levies the business privilege tax on a broad base of services and goods, including the sale of tangible personal property and the provision of professional services; however, certain entities or sales, including most wholesale businesses, governmental entities, charitable and community organizations, hospitals, most agricultural producers and fisheries, home industries, licensed child care facilities and certain fuel sales, are exempt from the business privilege tax. In addition, certain small businesses with gross annual income under \$50,000 are granted an exemption on the first \$40,000 of annual revenues. Banks, banking institutions, small lenders, building and loan associations, and other lending institutions are taxed annually at the business privilege tax rate on their net income. There are no limitations on business privilege tax rates.

The Legislature is responsible for setting business privilege tax rates. Business privilege taxes consist of five categories: the general business privilege tax (formerly known as the gross receipts tax), the alcoholic beverage tax, the liquid fuel tax, the tobacco tax and automotive surcharges. Other than the general business privilege tax, which has remained at the current level of 4.0% for more than ten years (with the exception of a period of time between April 1, 2003 and March 31, 2004 when the rate was temporarily increased from 4.0% to 6.0%), the other categories are taxed at varying rates on the basis of volume of fuel, or the amount of beverage or tobacco purchased.

Business privilege taxes are payable on a monthly basis, no later than the 20th day of the month following the taxable activity, except that banks and other lending institutions are required to pay business privilege taxes annually, no later than 90 days following the close of the taxpayer's tax year.

Generally, collections have increased over the last several years due to increased tourist arrivals, population growth, expansion of existing military facilities, and upgrades to a number of local hotels to accommodate increased demand for high-end rooms. For Fiscal Year 2013, the most recent complete fiscal year for which audited information is available, the Government of Guam received business privilege tax revenues of approximately \$221.7 million. For information regarding business privilege tax revenues for prior fiscal years, see Table A-6 in APPENDIX A. Based on preliminary information, the Government of Guam currently estimates that it will receive business privilege tax revenues in the amount of approximately \$227.0 million in Fiscal Year 2014.

The revenues generated from three percentage points of the business privilege tax are pledged to secure the payment of the Government of Guam Business Privilege Tax Bonds, which as November 15, 2014, are outstanding in the aggregate principal amount of \$361,130,000. See Table 3 under "—Existing Indebtedness."

Under the Organic Act of Guam, the Territorial Income Tax Code mirrors the United States Internal Revenue Code. As a result, the income tax laws in force in the United States are deemed to impose a separate Territorial income tax on residents of Guam payable to the Government of Guam. During each Fiscal Year, the Government collects individual and corporate income taxes through withholdings and payments from taxpayers. At the end of each Fiscal Year, the Government estimates the amount owed to taxpayers for overpayments. These estimated amounts, together with the actual tax refunds claimed for prior years but not yet paid are recorded as tax refunds payable and a reduction of tax revenues. At the end of Fiscal Year 2013, the Government recorded a provision for unpaid tax refunds in the amount of approximately \$103.3 million, including interest payable to taxpayers for unpaid prior year tax refunds.

The Government of Guam levies taxes on real property at a fixed rate of seven-eighths percent (7/80%) of the assessed value and levies taxes on improvements to real property at a fixed rate of seven-twentieths percent (7/20%) of the assessed value of the improvements. By statute, all real property and improvements are assessed at 100% of appraised value. In each year during which no such appraisal occurs, the assessor is required to update the valuation of all taxable property, taking into account new improvements or additions to the property and any change



in use, damage, destruction or removal of improvements from the property. Such updated appraisals are required to be certified to the Board of Equalization not later than September 1 of each year, whereupon they are made available for public inspection and application by the assessee to the Board of Equalization for equalization or reduction through October 15 of each year. The updated appraisals are then certified to the tax collector on or before October 31 of each year. Although Guam statutes require a triennial update to the appraised value of all taxable property in Guam, the last updated appraisal of all taxable property was completed in 1995. An island-wide assessment is currently being conducted by a firm engaged by the Government of Guam, however, which is expected to be completed by the end of the first quarter of calendar year 2015.

Federal contributions have traditionally represented the second largest source of General Fund revenues. Such revenues are comprised primarily of amounts paid to the Government by the United States of America pursuant to Section 30 of the Organic Act of Guam, 48 U.S.C. § 1421h ("Section 30 revenues"). Section 30 revenues include all amounts received by or on behalf of the Government as proceeds of customs duties and federal income taxes derived from Guam, the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in Guam and transported to the United States, its Territories, or possessions, or consumed in Guam, and the proceeds of any other taxes which may be levied by Congress on the inhabitants of Guam (including, but not limited to, compensation paid to members of the Armed Forces and pensions paid to retired civilian and military employees of the United States, or their survivors, who are residents of, or who are domiciled in, Guam), and all quarantine, passport, immigration and naturalization fees collected in Guam, and such other taxes as may be collected pursuant to Section 30 of the Organic Act of Guam, and held in account for the Government. Beginning in Fiscal Year 2012, the Government of Guam changed its method of presenting Section 30 revenues in its audited financial statements, and these amounts are now presented as a component of the Government of Guam's tax revenues.

Table 2 below sets forth the sources and amounts of revenue for the General Fund for Fiscal Years 2009 through 2013, the latest complete fiscal year for which audited information is available.

#### **Major Expenditure Categories of General Fund**

Table 2 also describes the overall increase in General Fund expenditures and transfers out during Fiscal Years 2009 through 2013, as well as the major expenditure categories. Expenditures of General Fund revenues are made pursuant to appropriation laws. The two largest expenditure categories, public education and protection of life and property (primarily, police, fire and corrections), accounted for 37.5% and 14.2% of total General Fund expenditures in Fiscal Year 2013, respectively.

#### **Fiscal Year 2013 Results for the General Fund**

The General Fund had a total fund balance of approximately \$2.3 million at September 30, 2013 as compared to \$30.1 million at September 30, 2012, representing a decrease of \$27.8 million, which was attributed primarily to Guam Department of Energy federal stimulus capital project expenditures of approximately \$29.0 million in Fiscal Year 2013 for which revenues were recorded in Fiscal Year 2012.

As shown in Table 2, the Government experienced recurring operating deficits during Fiscal Years 2009 through 2011, resulting in an accumulated General Fund deficit of \$303.1 million at the end of Fiscal Year 2011. Commencing with Fiscal Year 2010, Guam law requires that the Legislature appropriate no more than 98% of projected General Fund revenues. This requirement, together with an initiative of the Bureau to cap spending at 97% of budgeted levels, was expected to result in an annual reduction in the deficit. Beginning in Fiscal Year 2012, the General Fund had positive balance at the end of the Fiscal Year.

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**Table 2**  
**Summary of Major Categories of General Fund Revenues and Expenditures**  
**Fiscal Years 2009-2013**

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
<b>REVENUES:</b>					
Taxes <sup>(1)</sup>	\$427,872,690	\$431,363,966	\$485,006,669	\$561,852,857	\$582,357,741
Licenses, fees and permits	4,470,091	4,546,349	5,735,762	7,587,723	5,454,970
Use of money and property	871,525	432,203	183,100	-	-
Charges for services	-	-	-	5,325,196	4,171,584
Fines and forfeits	-	-	-	385,935	485,471
Interest and investment earnings	-	-	-	897,701	50,812
Federal contributions <sup>(1)</sup>	40,481,512	40,782,814	54,786,178	-	-
Guam Department of Education	1,175,560	4,272,611	1,429,568	-	-
Contributions from component units	2,027,632	4,863,593	2,199,058	2,114,429	2,204,682
Other	6,251,173	4,705,828	3,015,325	14,089,616	13,521,806
<b>Total revenues</b>	<u>483,150,183</u>	<u>490,967,364</u>	<u>552,355,660</u>	<u>596,160,711</u>	<u>610,635,410</u>
<b>EXPENDITURES:</b>					
General government	40,895,439	47,828,161	75,912,295	105,276,792	68,203,713
Protection of life and property	86,859,431	78,943,168	84,925,138	80,456,682	92,310,739
Public health	14,017,664	17,123,990	13,792,959	20,595,552	20,670,331
Community services	4,837,599	4,111,456	20,081,263	12,635,550	12,624,323
Recreation	3,382,846	2,850,817	2,763,566	2,298,701	3,009,100
Individual and collective rights	12,219,611	11,356,950	38,718,463	11,779,426	43,822,615
Transportation	-	-	-	-	-
Public education	207,148,495	204,166,004	209,562,604	213,894,786	244,053,198
Economic development	3,445,863	3,201,411	3,592,927	3,265,545	3,529,849
Transfer to persons	-	-	-	-	-
Payments to autonomous agencies	58,538,890	49,834,892	55,546,122	69,310,240	63,218,260
Miscellaneous appropriations	20,452,184	19,411,979	27,321,971	53,797,613	22,274,382
Interest and other charges <sup>(3)</sup>	46,609,389	18,027,410	23,108,677	-	-
Capital Projects	-	-	65,735,000	-	-
Debt service payments <sup>(2),(3)</sup>	26,103,484	43,041,598	56,608,444	79,479,548	75,899,121
<b>Total expenditures</b>	<u>524,510,895</u>	<u>499,897,836</u>	<u>677,669,429</u>	<u>652,750,435</u>	<u>649,615,631</u>
Excess/(deficiency) of revenues over/(under) expenditures	<u>(41,360,712)</u>	<u>(8,930,472)</u>	<u>(125,313,769)</u>	<u>(56,589,724)</u>	<u>(38,980,221)</u>
<b>OTHER FINANCING SOURCES (USES):</b>					
Proceeds from bonds issued	271,070,000	-	-	-	22,640,000
Proceeds from issuance of bonds	-	-	-	343,700,000	-
Proceeds from issuance of long-term debt	-	-	-	-	-
Premium on bonds issued	-	-	-	14,516,986	-
Premium/(discount) on refunded bonds issued	(9,622,491)	-	-	-	2,957,923
Payment to refunded bond escrow agent	-	-	-	-	(25,088,795)
Proceeds from refinancing short-term obligations	-	-	-	-	19,937,926
Capital Leases	-	-	65,735,000	-	-
Net transfers in/(out) <sup>(4)</sup>	(69,949,233)	(62,137,020)	77,763,531	31,641,308	(9,276,386)
<b>Total other financing sources (uses)</b>	<u>191,498,276</u>	<u>(62,137,020)</u>	<u>143,498,531</u>	<u>389,858,435</u>	<u>11,170,668</u>
<b>Net change in fund balances (deficits)</b>	<u>150,137,564</u>	<u>(71,067,492)</u>	<u>18,184,762</u>	<u>333,268,711</u>	<u>(27,809,553)</u>
Fund balance (deficit) at beginning of year	<u>(415,514,935)</u>	<u>(265,377,371)</u>	<u>(321,317,023)</u>	<u>(303,132,261)</u>	<u>30,136,450</u>
Fund balance (deficit) at end of year	<u><u>\$</u>(265,377,371)</u>	<u><u>\$</u>(336,444,863)</u>	<u><u>\$</u>(303,132,261)</u>	<u><u>\$</u>30,136,450</u>	<u><u>\$</u>2,326,897</u>

<sup>(1)</sup> Federal contributions consist primarily of Section 30 revenues. Beginning in the Government of Guam's audited financial statements for Fiscal Year 2012, the Section 30 revenues are reflected in revenues from taxes.

<sup>(2)</sup> Includes debt service on outstanding Section 30 Obligations secured by pledges of Section 30 revenues. See "Existing Indebtedness" below.

<sup>(3)</sup> Beginning in the Government of Guam's audited financial statements for Fiscal Year 2012, the Statement of Revenues does not include a separate line item for "interest and other charges," but does include a line item for "interest and fiscal charges" under "Debt Service."

<sup>(4)</sup> Net transfers out consist primarily of transfers to the Federal Grants Fund, the Unified Courts of Guam Operations Fund, the Supplemental Annuity Benefits Fund, and the Medically Indigent Program Payment Revolving Fund

Source: Extracted from the Audited Financial Statements, Government of Guam for fiscal years ended September 30, 2009 through 2013.

## **Fiscal Year 2014 Budget and General Fund Revenue Update**

The Fiscal Year 2014 Budget Act (the "2014 Budget") was approved by the Legislature as Substitute Bill 1 (4-S) on September 4, 2013 and signed by the Governor of Guam on September 11, 2013. The 2014 Budget provided for total projected General Fund revenue available for operations of \$602.8 million, of which \$518.2 million is to be derived from taxes, including income taxes and business privilege taxes, and \$65.1 million is to be derived from federal sources, including Section 30 revenues. Income tax revenues are projected to total \$292.1 million (net of provision for tax refund payments), while business privilege tax revenue is projected to reach \$232.8 million. The 2014 Budget provides for total General Fund appropriations of \$591.1 million.

Preliminary reports indicate that actual General Fund revenue collections for Fiscal Year 2014 were approximately \$617.0 million, an approximate 10.4% increase relative to General Fund revenues collected during Fiscal Year 2013. These revenues included approximately \$300.2 million of income tax revenues (net of an approximately \$120.0 million provision for income tax refunds) and approximately \$227.4 million of business privilege tax revenues. Income tax revenues and business privilege tax revenues collectively represent approximately 85.5% of the total General Fund revenues. Based on preliminary, unaudited information for Fiscal Year 2014, income tax revenues showed a 14.6% increase in collections during Fiscal Year 2014 compared to Fiscal Year 2013, while business privilege tax revenues were up 2.6% relative to Fiscal Year 2013. The information in this paragraph is based on preliminary, unaudited information for Fiscal Year 2014 and is subject to audit and to year-end adjustments.

## **Fiscal Year 2015 Budget Act**

The Fiscal Year 2015 Budget Act (the "2015 Budget") was approved by the Legislature as Substitute Bill 269-32 (LS) on August 25, 2014 and signed by the Governor of Guam on September 5, 2014. The 2015 Budget provides for total projected General Fund revenue available for operations of \$666.4 million, of which \$573.0 million is to be derived from taxes, including income taxes and business privilege taxes, and \$68.0 million is to be derived from federal sources, including Section 30 revenues. Income tax revenues are projected to total \$336.1 million (net of provision for tax refund payments), while business privilege tax revenue is projected to reach \$247.2 million. The 2015 Budget provides for total General Fund appropriations of \$648.0 million.

## **Retirement Fund and Other Post-Employment Benefits**

**Government of Guam Retirement Fund.** The Government of Guam Retirement Fund (the "GGRG") provides retirement annuities and other payments to retired Government employees and their dependents. Although the retirement plan has historically been a defined benefit plan (the "DB Plan"), all new Government of Guam employees hired after September 30, 1995 are instead participants in a defined contribution retirement plan (the "DC Plan"). The DB Plan and the DC Plan are administered by the GGRF. The GGRF issues a publicly available financial report that includes financial statements and required supplementary information for the DB Plan. As of September 30, 2013, there were a total of 15,468 members in the DB Plan and 7,885 active employees and 544 retirees under the DC Plan.

The DB Plan is a cost-sharing multiple-employer plan to which the Government contributes based upon a fixed percentage of the payroll for Government of Guam employees who are members of the DB Plan. A single actuarial valuation is performed annually covering all DB Plan members, and the same contribution rate applies to each employer. Members of the DB Plan are required to contribute a certain percentage of their annual covered salary. The DB Plan member and employer contribution requirements are established, and may be amended, by the GGRF.

Based on the Government of Guam Retirement Fund Actuarial Valuation as of September 30, 2013, which was issued on May 6, 2014 (the "2013 Valuation"), at September 30, 2013 the DB Plan had an actuarial accrued liability of approximately \$2.855 billion, with an unfunded actuarial accrued liability of approximately \$1.442 billion.

Under Title 4, Chapter 8, Section 8137 of the Guam Code Annotated, as amended, the Government of Guam is required to completely fund the unfunded actuarial accrued liability by 2031. The annual actuarial valuations prepared for the DB Plan include actuarial employer contribution rates intended to satisfy this

requirement. The actuarial employer contributions rates set forth in the annual valuations apply to the fiscal year beginning one year after the valuation date. Based on the information provided in the 2013 Valuation and in prior valuations, the actuarial employer contribution rates for the fiscal years ended September 30, 2014, 2013, 2012 and 2011 were 33.03%, 30.76%, 30.09% and 28.06%, respectively, of covered payroll.

Although the actuarial contributions rates are provided to the Legislature of Guam by the GGRF in advance of each Fiscal Year and used for budget preparation, the Legislature of Guam is not required to adopt such rates. For the Fiscal Years ended September 30, 2013, 2012 and 2011, employers, including the Authority, funded lower statutory contribution rates of 30.09%, 28.30% and 27.46%, respectively, of covered payroll, based in part on Section 3 of Public Law No. 28-150, which provides that the employer contribution rate to the Retirement Fund are to increase over a five-year period, beginning with Fiscal Year 2007, until it reaches the actuarial recommended contribution rate. The contribution rate for Fiscal Year 2011 was further reduced to 21.44% for the period from June 4, 2011 to September 30, 2011 for most Government agencies. Statutory employee contribution rates for the DB Plan were 9.50% in each such Fiscal Year. During the Fiscal Years 2013, 2012 and 2011, the Government of Guam made contributions to the DB Plan in the amounts of \$33,170,773, \$31,730,829, and \$30,290,344, respectively, which amounts were equal to the required contributions for those years.

For the Fiscal Year ending September 30, 2015, the Legislature of Guam has adopted statutory employer and employee contribution rates of 29.85% and 9.5%, respectively. Based on the information provided in the 2013 Valuation, the actuarial employer contribution rate for the DB Plan the Fiscal Year ending September 30, 2015 is 29.85%.

Contributions to the DC Plan by members are based on an automatic deduction of 5% of the member's regular base pay. The contribution is periodically deposited into an individual annuity account within the DC Plan. The statutory employer contribution rate for the DC Plan for the years ended September 30, 2013, 2012 and 2011 were determined using the same employer statutory contribution rates as the DB Plan. Of such amounts contributed by the employers under the DC Plan, only an amount equal to 5% of the DC Plan member's regular base pay is deposited into the member's individual annuity account; the remaining amount is contributed towards the unfunded liability of the DB Plan. DC Plan members are fully vested upon the completion of five years of government service.

For Fiscal Years 2013, 2012 and 2011, the Government of Guam made contributions to the DC Plan in the amounts of \$58,450,372, \$54,060,053 and \$48,480,208, respectively.

For Fiscal Year 2013, the DB Plan investment portfolio positive return of 14.36%, compared to a positive return of 20.1% in Fiscal Year 2012 and a negative return of 2.0% in Fiscal Year 2011. The GGRF ended Fiscal Year 2013 with a positive 7.2% return. In addition, the GGRF liquidated \$56.1 million in investments during Fiscal Year 2013, including \$35.0 million of interest and dividend income, primarily due to increases in benefit payments.

The Government's agencies are responsible for remitting employer and member contributions directly to the GGRF. At the end of Fiscal Year 2013, the GGRF had employer contributions receivable of approximately \$6.2 million, member contributions receivable of approximately \$1.2 million, and interest and penalties receivable of \$274,402. A significant portion of these contributions receivable represents contributions from the Department of Education ("DOE") and the Guam Memorial Hospital Authority ("GMHA"). Public Law 28-38, as subsequently amended, requires the General Fund to remit interest-only payments monthly to the GGRF for these receivables from DOE and GMHA. Such payments will continue until the outstanding balances are fully paid; however, if the obligations are not fully paid by July 2015, payment responsibility will return to DOE and GMHA. A portion of the proceeds of general obligation bonds issued by the Government in 2009 and in 2011 were applied to reduce these outstanding balances. At the end of Fiscal Year 2013, contributions receivable from DOE and GMHA totaled approximately \$3.4 million and \$1.0 million, respectively.

In 1988, Public Law 19-19, as codified in 4 G.C.A. Section 8137.1, required the Government to pay an annual lump-sum cost of living allowance ("COLA") to retirees and survivors on the first retirement payday after July 1 of each year. In 1993, a Government retiree filed a class action suit in the Superior Court of Guam on behalf of 4,877 retirees and survivors, alleging that they were being denied such COLA benefits. The Governor and the Retirement Fund submitted to the Court their respective calculations of the COLA owed. In October 2006, the

Court ordered the Retirement Fund to revise its COLA calculation, resulting in an award of \$123,580,231 to the COLA class. On July 28, 2009, the Government reached a settlement agreement with the attorney representing COLA class recipients for the issuance of certificates of claim, which includes acknowledgment of the payment of interest in accordance with Public Law 29-18. Approximately \$82.6 million of this award was paid during Fiscal Year 2009 using both general fund revenues and a portion of the proceeds of general obligation bonds issued by the Government in June 2009. At September 30, 2013, the outstanding COLA liability was approximately \$4.9 million.

Public Law 25-72, passed in 1999, requires the payment of supplemental annuity and COLA benefits to retirees and specifies that these payments are to be vested, limited-duration benefits to be provided by the GGRF. Such benefits are to be actuarially funded over a twenty-year amortization period through an increase in contributions. The GGRF initially recorded these benefit payments as a receivable in the amount of \$137.2 million and has reduced this receivable by a portion of employer contributions received. As of September 30, 2013, the receivable recorded by the GGRF amounted to approximately \$50.8 million.

**Other Post-Employment Benefits.** The Government makes certain annual expenditures for certain postretirement healthcare benefits to retirees who are members of the Retirement Fund. The Government provides medical, dental, and life insurance coverage. The retiree medical and dental plans are fully-insured products provided through insurance companies. The Government shares in the cost of these plans, with its contribution amount set each year at renewal. Current statutes prohibit active and retired employees from contributing different amounts for the same coverage. As such, the Government contributes substantially more to the cost of retiree healthcare than to active healthcare. For the life insurance plan, the Government provides retirees with \$10,000 of life insurance coverage through an insurance company. Retirees do not share in the cost of this coverage. As of the end of Fiscal Year 2013, the OPEB unfunded actuarial accrued liability for the Government of Guam was approximately \$2.08 billion.

The Government made its required contributions for postretirement healthcare benefits in each of the three previous Fiscal Years, equal to \$16,922,668 in Fiscal Year 2013, \$22,610,227 in Fiscal Year 2012 and \$27,299,574 in Fiscal Year 2011.

#### **Limitation on Indebtedness**

Section 11 of the Organic Act of Guam provides that no public indebtedness of the Government shall be authorized or allowed in excess of ten percent of the aggregate tax valuation of the property in Guam.

On March 27, 2007, the Supreme Court of the United States issued its decision in the case of *Limtiaco v. Camacho*, which, among other things, interpreted "aggregate tax valuation" to mean the assessed valuation (i.e., the amount upon which the property tax rate is levied, as opposed to appraised value). At the time, the assessed valuation of property in Guam was defined by Guam statutes to mean 35% of the property's appraised value, as ascertained by the Guam assessor. Guam's property taxation statutes have since been amended so that assessed value is now defined as 100% of appraised value, with related amendments to property tax rates so that revenue impacts were neutral.

The aggregate tax valuation of the property of Guam as of February 2014 was approximately \$11.59 billion, and the public indebtedness of the Government (excluding indebtedness of its autonomous agencies and indebtedness not considered public indebtedness for purposes of Section 11 of the Organic Act of Guam) as of November 15, 2014 was approximately \$1,109.9 million, which results in approximately \$59.6 million of additional public debt that currently may be incurred by the Government.

Neither the Bonds nor the Government of Guam's obligations under the Restated Lease Agreement will be treated as public indebtedness of the Government for purposes of Section 11 of the Organic Act of Guam.

#### **Existing Indebtedness**

The outstanding long-term indebtedness of the Government and its autonomous agencies as of November 15, 2014 is set forth in Table 3 below. Only general obligation and limited obligation indebtedness are considered to be public indebtedness the incurrence of which is limited by the provisions the Organic Act. Limited obligation and revenue bond indebtedness are payable from a particular source of revenues and are not secured by a pledge of the full faith and credit of the Government of Guam.

**TABLE 3**  
**Government of Guam Outstanding Indebtedness**  
**As of November 15, 2014**

Description of Indebtedness	Aggregate Outstanding Principal Amount	Final Maturity (Fiscal Year ending September 30)
<i>General Obligation Bonds and Other General Obligation Indebtedness</i>		
Guam General Obligation Bonds, 2007 Series A	\$151,935,000	2038
Guam General Obligation Bonds, 2009 Series A	253,015,000	2040
Guam Waterworks Authority Subordinate Loan (2010) (P.L. 30-55, P.L. 30-101 and P.L. 30-146) <sup>(1)</sup>	16,945,638	2015
Guam Memorial Hospital Authority Loan (2011) (P.L. 30-200, P.L. 30-235, P.L. 32-043 and P.L. 32-105) <sup>(1)</sup>	23,456,905	2024
Government of Guam, Guam Legislature Building (Resolution No. 174-30, 2 G.C.A. §1126 and 21 G.C.A. §79602, and P.L. 32-106) <sup>(9)</sup>	4,000,000	
<i>Subtotal</i>	<u>\$ 449,352,543</u>	
<i>Limited Obligation Bonds and Other Limited Obligation Indebtedness</i>		
University of Guam Rural Development Loan (2003) (P.L. 26-48) <sup>(2)</sup>	\$ 12,105,685	2044
Limited Obligation (Section 30) Bonds, 2009 Series A <sup>(3)</sup>	193,010,000	2035
Limited Obligation (HOT) Bonds, 2011 Series A <sup>(4)</sup>	83,625,000	2040
Business Privilege Tax (BPT) Bonds, Series 2011A <sup>(5)</sup>	235,000,000	2042
Business Privilege Tax (BPT) Bonds, Series 2012B-1 and 2012B-2 <sup>(5)</sup>	108,700,000	2042
Business Privilege Tax (BPT) Bonds, Series 2013C <sup>(5)</sup>	17,430,000	2018
<i>Subtotal</i>	<u>\$ 649,870,685</u>	
<i>Revenue Bonds and Other Indebtedness<sup>(6)</sup></i>		
Guam Power Authority Revenue Bonds, 2010 Series A	\$150,440,000	2041
Guam Power Authority Revenue Bonds, 2012 Series A	340,510,000	2035
Guam Power Authority Revenue Bonds, 2014 Series A	76,740,000	2045
Guam Power Authority Subordinate Revenue Bonds, 2010 Series A	14,155,000	2016
Guam Airport Authority General Revenue Bonds, 2003 Series A, B & C	237,490,000	2044
Guam Airport Authority 2012 Subordinate Loan	11,224,719	2017
Guam Waterworks Authority Water and Wastewater System Revenue Bonds, Series 2010	118,825,000	2040
Guam Waterworks Authority Water and Wastewater System Revenue Bonds, Series 2013	172,630,000	2043
Guam Waterworks Authority Water and Wastewater System Revenue Bonds, Series 2014A&B	85,600,000	2035
Guam Housing and Urban Renewal Authority Loan	1,208,729	2030
Guam Housing Corporation Mortgage-Backed Revenue Bonds, Series 1998	4,000,415	2031
Judicial Building Fund Revenue Note (2006) (P.L. 26-124 & 28-68)	8,252,968	2018
Guam Education Financing Foundation Certificates of Participation <sup>(7)</sup>	49,315,000	2027
Guam Economic Development Authority Tobacco Settlement Asset-Backed Bonds, Series 2007A and Series 2007B	27,395,000	2057
Guam Department of Education Certificates of Participation, Series 2010A <sup>(8)</sup>	63,260,000	2041
Guam Department of Education Certificates of Participation, Series 2013A <sup>(8)</sup>	22,818,000	2030
Port Authority of Guam 2014 Loan <sup>(9)</sup>	10,000,000	
<i>Subtotal</i>	<u>\$1,383,594,831</u>	
<b>Total Indebtedness</b>	<b><u>\$ 2,482,818,059</u></b>	

<sup>(1)</sup> Although other sources of revenue are also pledged to these loans, they are subject to the full faith and credit of the Government of Guam and are therefore classified herein as general obligation debt.

<sup>(2)</sup> Payable primarily from mass transit automotive surcharges.

<sup>(3)</sup> Secured by and payable primarily from Section 30 revenues.

<sup>(4)</sup> Payable primarily from transient occupancy taxes.

<sup>(5)</sup> Payable primarily from business privilege tax revenues.

<sup>(6)</sup> Not treated as "public indebtedness" for purposes of the Organic Act debt limit.

<sup>(7)</sup> Payable primarily from Compact Impact Funds (funds appropriated by the U.S. government to mitigate the impact on Guam of the Covenants of Free Association of the Republic of the Marshall Islands and the Federated States of Micronesia); lease payments due in 2023-25 relating to \$14,015,000 of certificates are payable from the General Fund, subject to annual appropriation by the Government of Guam.

<sup>(8)</sup> Lease payments are subject to annual appropriation by the Government of Guam.

<sup>(9)</sup> Represents the maximum principal amount that may be drawn. As of November 15, 2014, there is no principal amount outstanding.

Source: Guam Economic Development Authority.

## **Investment Policies of the Government of Guam**

The investment of Government funds is restricted by statute. The Director of Administration must determine whether any portion of the money in the General Fund is not necessary for immediate use. Any moneys in the General Fund or special funds of the Treasury of Guam in excess of 120% of the average monthly disbursements made from the General Fund for the immediately preceding 12-month period may be declared available for investment. Following the determination of the Director of Administration, the Governor may then designate moneys as available to be invested in United States bonds, United States interest-bearing notes or other United States obligations, and to the extent insured by the FDIC, as successor to FSLIC, in shares or investment certificates of any savings and loan association organized under the laws of Guam which is an insured institution as defined in Title IV of the National Housing Act and has been approved by the Director of Administration. Deposits or investment certificates insured by the FDIC do not require further security. To receive or retain other types of deposits, an eligible institution must place with, or to the accounts of, the Government of Guam, as security for such deposits: (i) United States Treasury notes or bonds or those for which the faith and credit of the United States are pledged for the payment of principal and interest, (ii) any evidence of indebtedness of the Government, (iii) investment certificates of the Federal Home Loan Bank, or (iv) other securities approved by the Director of Administration and the Governor, each in an amount in value at least 110% of the amount of moneys deposited with the institution.

The Department of Administration prepares quarterly projections of the cash sources and requirements of the General Fund as well as daily cash flow resources and requirements reports and weekly and month-end cash and investments reports. During the last twelve months, most of the unrestricted moneys available for payment of General Fund liabilities have been invested in savings and checking accounts. The Government has no investments in derivative products.

## **BONDHOLDERS' RISKS**

*In considering the matters set forth in this Official Statement, prospective investors should carefully review all investment considerations set forth throughout this Official Statement, and should specifically consider certain risks associated with the Bonds. There follows a discussion of some, but not necessarily all, of the possible considerations and risks which should be carefully evaluated by prospective purchasers of the Bonds prior to purchasing any Bonds. The following discussion of investment considerations does not necessarily reflect the relative importance of the various topics discussed. The Bonds may not be suitable investments for all persons. Prospective purchasers should be able to evaluate the risks and merits of an investment in the Bonds and should confer with their legal and financial advisors before considering a purchase of the Bonds. Prospective purchasers of the Bonds are advised to consider the following factors, among others, and to review the other information in this Official Statement, including the Appendices hereto, in evaluating the Bonds. Any one or more of the considerations discussed and others could lead to a decrease in the market value and/or the liquidity of the Bonds.*

### **Limitation on Remedies; No Acceleration of the Bonds**

The Bonds are not subject to acceleration under any circumstances or for any reason, including without limitation on the occurrence or continuance of an Event of Default. Upon the occurrence or continuation of an Event of Default under the Indenture, a Bondholder would only be entitled to principal and interest payments on the Bonds as they come due. Under certain circumstances, Holders of the Bonds may not be able to pursue certain remedies or enforce covenants contained in the Indenture. The remedies available to the Holders of the Bonds upon an Event of Default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing law, the remedies specified by the Indenture and the Bonds may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Bonds (including Bond Counsel's approving opinion) will be qualified, as to the enforceability of the various legal instruments, by limitations imposed by bankruptcy, insolvency or other laws affecting the rights of creditors generally.

### **Lease Payments Subject to Annual Appropriation**

The Government of Guam is obligated to pay Base Rent and Additional Rent only from Available Funds as may be annually appropriated by the Legislature of Guam or otherwise made available on an annual basis by the

Government of Guam. Nothing in the Restated Lease Agreement, however, obligates the Legislature of Guam to make appropriations with which to make Base Rent and Additional Rent payments under the Restated Lease Agreement, and nothing in the Restated Lease Agreement obligates the Government of Guam to the Restated Lease Agreement beyond the period for which an appropriation sufficient to make payments of Base Rent and Additional Rent has been made by the Legislature of Guam. There can be no assurance that the Legislature of Guam will appropriate funds or that the Government of Guam will otherwise make funds available to pay Base Rent and Additional Rent under the Restated Lease Agreement. Upon an Event of Non-appropriation, the Government of Guam may terminate its obligations under the Restated Lease Agreement, including the obligation to pay Base Rent and Annual Rent, effective as of the then-current annual rental term. The Restated Lease Agreement also provides that in the event that appropriated funds are not legally available for the payment of Base Rent and Additional Rent or other obligations under the Restated Lease Agreement, the Restated Lease Agreement will be terminated. A termination of the Restated Lease Agreement would terminate the Government of Guam's rights of use and occupancy of the Facilities.

### **General Limitations on Remedies**

The rights of the Owners of the Bonds are subject to the limitations on legal remedies against public agencies in the State. Additionally, enforceability of the rights and remedies of the Owners of the Bonds, and the obligations incurred by the Issuer and the Borrower, may become subject to the following: the Federal Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditor's rights generally, now or hereafter in effect; equity principles which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police powers inherent in the sovereignty of the State and its governmental bodies in the interest of servicing a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or State government, if initiated, could subject the Owners of the Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation, or modification of their rights.

### **Limitations Relating to Remedies under the Mortgage**

There are two methods of foreclosing on a mortgage under Guam law, by judicial sale and by non-judicial trustee's sale. Foreclosure of a mortgage by judicial sale is commenced by filing a lawsuit pursuant to Guam statutes. A non-judicial sale may be accomplished by private power of sale, which has been recognized by the Guam courts, and sale commonly follows the Guam laws of execution sales of real estate. After a judicial foreclosure sale, the property may be redeemed within one year. As for a non-judicial sale, the property may be redeemed within one year based on Guam case law.

By contrast to non-judicial foreclosure sale, judicial foreclosure sale is generally subject to most of the delays and expenses characteristic of other lawsuits, and may require several years to complete. The primary advantage of a judicial foreclosure sale is that the beneficiary may be entitled, subject to other limitations, to obtain a deficiency judgment against the mortgagor to the extent that the amount of the debt is in excess of the fair market value of the property. As for a non-judicial sale, a separate law suit must be filed to recover deficient amounts.

Other statutory provisions (such as the federal bankruptcy laws) may have the effect of delaying enforcement of the lien of the Mortgage in the event of a default by the Borrower. See "—Bankruptcy and Other Factors that Could Affect Security for the Bonds" below.

### **Bankruptcy and Other Factors that Could Affect Security for the Bonds**

The ability of the Trustee to enforce the obligations of the Borrower under the Loan Agreement may be limited by laws relating to bankruptcy, insolvency, reorganization or moratorium and by other similar laws affecting creditors' rights, including equitable principles. In addition, the Trustee's ability to enforce such agreements will depend upon the exercise of various remedies specified by such documents which may in many instances require judicial actions that are often subject to discretion, delay and substantial costs or that otherwise may not be readily available or may be limited.



The various legal opinions to be delivered concurrently with the delivery of the Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by State and federal laws, rulings and decisions affecting remedies, and by bankruptcy, reorganization or other laws of general application affecting the enforcement of creditors' rights, including equitable principles.

In the event of bankruptcy of the Borrower, the rights and remedies of holders of the Bonds will be subject to various provisions of the federal Bankruptcy Code. If the Borrower were to file a petition in bankruptcy, or if creditors were to file a petition in bankruptcy against the Borrower, payments made by the Borrower during the 90-day (or perhaps one-year) period immediately preceding the filing of such petition may be avoidable as preferential transfers to the extent such payments allow the recipients thereof to receive more than they would have received in the event of the Borrower's liquidation. Security interests and other liens granted to the Trustee and perfected during such preference period may also be avoided as preferential transfers to the extent such security interest or other lien secures obligations that arose prior to the date of such perfection. Such a bankruptcy filing would operate as an automatic stay of the commencement or continuation of any judicial or other proceeding against the Borrower, and its property, and as an automatic stay of any act or proceeding to enforce a lien upon or to otherwise exercise control over its property as well as various other actions to enforce, maintain or enhance the rights of the Trustee. If the bankruptcy court so ordered, the property of the Borrower could be used for the financial rehabilitation of the Borrower, despite any security interest of the Trustee therein. The rights of the Trustee to enforce its security interest could be delayed during the pendency of the rehabilitation proceeding.

The Borrower could file a plan for the adjustment of its debts in any such proceeding which could include provisions modifying or altering the rights of creditors generally, or any class of them, secured or unsecured. The plan, when confirmed by a court, binds all creditors who had notice or knowledge of the plan and, with certain exceptions, discharges all claims against the debtor to the extent provided for in the plan. No plan may be confirmed unless certain conditions are met, among which are that the plan is feasible and has been accepted by each class of claims impaired thereunder. Each class of claims has accepted the plan if at least two-thirds in dollar amount and more than one-half in number of the class cast votes in its favor. Even if the plan is not so accepted, it may be confirmed if the court finds that the plan is fair and equitable with respect to each class of non-accepting creditors impaired thereunder and does not discriminate unfairly.

The Trustee's security interest in the Trust Estate under the Indenture may be subordinated to the interest and claims of others in several instances. Some examples of cases of subordination of prior claims are (i) statutory liens, (ii) rights arising in favor of the United States of America or any agency thereof, (iii) present or future prohibitions against assignment in any statutes or regulations, (iv) constructive trusts, equitable liens or other rights impressed or conferred by any state or federal court in the exercise of its equitable jurisdiction, (v) federal or state bankruptcy or insolvency laws that may affect the enforceability of the Loan Agreement or pledge of the Trust Estate, (vi) rights of third parties in proceeds of the Trust Estate converted to cash and not in the possession of the Trustee or a depository bank, (vii) commingling of proceeds of the Trust Estate with other moneys of the Borrower not subject to the security interest in the Trust Estate; and (viii) claims that might arise if appropriate financing or continuation statements are not filed in accordance with the Arizona Uniform Commercial Code as from time to time in effect.

#### **Ability to Sell or Lease the Facilities**

In the event of a default in payment of principal of and interest on the Bonds, a remedy available to the Trustee is to foreclose on the Mortgage and attempt to sell the Facilities or to lease the Facilities. The Facilities are being developed to be used for public educational purposes by the Government of Guam. As a result, the Facilities may not be readily suitable for other uses by other entities, and it is therefore likely that, for a significant period of time, the Facilities could not be sold for a price equal to the amount of proceeds of the Bonds being used to finance the development and construction of the Facilities or the aggregate principal amount of Bonds then outstanding or leased at a rate that would generate lease payments sufficient to pay the principal of and interest on the Bonds. Even if the Trustee should acquire title to the Facilities pursuant to its remedies under the Mortgage, the ability of the Trustee to lease or sell the Facilities to third parties, thereby liquidating the investment, could be limited as a result of the nature of the Facilities. Therefore, no assurance can be given that the amount realized upon any forced sale of the Facilities would be sufficient to pay and discharge the Bonds. In particular, there can be no representation that the cost of the property included in the Facilities constitutes a realizable amount upon any forced

sale thereof. Investors should not assume that the disposition of the Facilities in the event of default would provide sufficient funds to pay the principal of Bonds outstanding at that time. In addition, any sale or lease of the Facilities may require compliance with the laws of the Guam applicable thereto. Such compliance may be difficult, time-consuming and/or expensive.

### **Construction and Completion of the Facilities**

Although the rehabilitation of the existing office building and the existing school facilities have already been completed and those Facilities are already in service, the remainder of the Facilities, consisting of the gymnasium, the two warehouses and the new three-story office building, are still under development and/or construction, and the Developer currently expects that these Facilities will be completed in December 2015, December 2015 and December 2016, respectively. The ability of the Lessee to take occupancy of all of the Facilities may be adversely affected if construction delays are encountered. Pursuant to the Restated Lease Agreement, the Government of Guam's obligation to pay Base Rent for each of the new gymnasium, the new office building and the new warehouses will commence upon each such Facility's substantial completion. If the substantial completion of such Facilities is delayed such that the Government of Guam is not obligated to pay Base Rent with respect to such Facilities on the currently expected schedule, the Borrower may not have sufficient funds to pay debt service on the Bonds. The ability of the Lessee to take occupancy of all of the Facilities may also be adversely affected if cost overruns are encountered. To mitigate the potential risk of cost overruns, in the Development Agreement, the Developer and the Borrower agree that the Developer may not approve any changes to the Facilities that would result in increasing the costs of the Facilities beyond the amounts on deposit in the Project Fund unless the Developer agrees to fund such cost increases and that the Developer will be required to bear any actual Project Costs in excess of the Project Budget if such excess is the costs of any overages if attributable to the Developer's failure to perform any of its duties at the requisite standard. In addition, to mitigate the potential risk of construction delays, interest on the Bonds to August 1, 2015 is being funded from Bond proceeds and the Developer is funding the Capitalized Rent Fund, which can be applied to pay debt service on the Bonds from and including February 1, 2016 through August 1, 2017 in the event sufficient Base Rent has not been paid by the Government of Guam.

### **Impact of Tourism and U.S. Military Presence**

Guam's economy is largely based on tourism and the U.S. military presence, both of which are dependent on world economic, social and political events.

Tourism, particularly from Japan, where approximately 68 percent of visitors to Guam in Fiscal Year 2013 originated, represents a significant share of the economic activity on Guam. Historically, the tourism industry, both worldwide and on Guam, has correlated closely with the state of the world's economies and levels of real disposable income. Also, currency exchange rates, trade balances, political relationships, and conflicts within and between countries are increasingly important influences on tourism. A weak economy, war, epidemic outbreaks, or the threat of terrorist activity, among other influences that are beyond the Government's control, can adversely affect the tourism industry. Economic conditions in Japan and throughout the Pacific Rim, and the resulting effect on overseas travel from these countries, are a major determinant of tourism on Guam. The Japanese government has encouraged international travel as a means of reducing its trade surplus and Guam has benefited directly from this policy. Any change in the policy could affect Government revenues. In the event of a significant downturn in tourism, including a downturn related to Japanese economic conditions or social policies, the Government could likely suffer a reduction in revenues. For example, following the earthquake and tsunami in Japan on March 11, 2011, the number of tourists visiting Guam from Japan in Fiscal Year 2011 dropped by approximately 7.3% compared to Fiscal Year 2010. Although visitor arrivals from Japan increased in Fiscal Year 2012, increasing 10.2% over Fiscal Year 2011, no assurance can be given that Guam will not experience a similar or greater reduction in the number of visitors from Japan or other visitor markets as a result of other natural disasters or other economic, political or societal conditions. A decrease in tourism could in turn result in reduced employment levels as well as reduced tax revenues from hotels and other related tourist facilities. See "DEMOGRAPHIC AND ECONOMIC INFORMATION – Tourism Industry" in APPENDIX A.

The U.S. military presence also affects economic activity on Guam in various ways, both directly, through individuals' demand for commercial, construction and other services, and indirectly, through Section 30 revenues. In addition, expansions in the U.S. military presence can have a direct, positive impact on the Guam economy by creating jobs in construction and related fields, increasing demand for services and attracting visitors.

For example, in late July 2010, the Joint Guam Program Office of the Department of the Navy released its Final Environmental Impact Statement (the "EIS") pertaining to the proposed U.S. military build-up on Guam. At the time the EIS was released, it was anticipated that the military build-up would have three major parts: relocation of part of the Third Marine Expeditionary Force from Okinawa, Japan, creation of the infrastructure for an aircraft carrier berthing, and installation of an Army Air and Missile Defense Task Force. Subsequent to 2010, however, Guam began to experience a decrease in military personnel as a result of the delay in the relocation of the Third Marine Expeditionary Force from Okinawa and Iwakuni, Japan to Guam. Concerns regarding the high cost of the relocation and delays in relocating U.S. military personnel and facilities currently within Japan, among other things, have extended the implementation timeframe for the relocation of the U.S. Marines from Japan. The proposed U.S. military build-up now is not expected to occur until after 2018. In addition, the expected size of the build-up has decreased. Economic, geopolitical, and other influences which are beyond the Government's control might result in a decision by the U.S. military to reduce its existing presence on Guam or forego some or all of the planned enhancements to its presence on Guam. In the event that the U.S. military changes its current plans with respect to staffing and other strategic improvements on Guam, expected benefits may not be realized and the economy could be adversely affected. In the event that the U.S. military elects to reduce or eliminate its presence on Guam, the economy could decline and the Government could likely experience a reduction in revenues. See "DEMOGRAPHIC AND ECONOMIC INFORMATION – Military Activity" and "— Future Role of the Military on Guam" in APPENDIX A.

### **Typhoons and Earthquakes**

Because of its location on the southern end of the Marianas island chain, Guam is exposed to periodic typhoons, super typhoons, earthquakes and floods. Typhoons, floods and earthquakes have in the past caused significant damage to facilities and infrastructure on Guam, including to its water and electric systems. Typhoons and other significant storm events and other natural disasters occur periodically and can cause extensive damage to facilities and infrastructure. Guam has established building codes in Guam that are specifically designed to ensure that structures be able to sustain strong typhoon winds and earthquakes. Although the United States Federal Emergency Management Agency ("FEMA") makes disaster relief assistance available after significant typhoon or earthquake damage, there can be no assurance that future typhoons, floods and/or earthquakes will not cause significant damage on Guam, including to the Facilities, or that FEMA will provide disaster relief assistance if significant damage is experienced. There can also be no assurance that, even with FEMA assistance, damage that results from future typhoons or earthquakes will not adversely affect the Guam economy or the Facilities.

## **TAX MATTERS**

### **In General**

In the opinion of Kutak Rock LLP, Bond Counsel, in reliance on the opinion of Edwin Ching, Esq. that the Member is an organization described in Section 501(c)(3) of the Code and that the Project will not be used in an unrelated trade or business within the meaning of Section 513 of the Code, under existing laws, regulations, rulings and judicial decisions, interest on the Bonds is excluded from gross income for federal income tax purposes and is not a specific preference item for purposes of the federal alternative minimum tax. The opinion described in the preceding sentence assumes compliance by the Issuer, the Member and the Borrower with covenants designed to satisfy the requirements of the Code that must be met subsequent to the issuance of the Bonds. Failure to comply with such requirements could cause interest on the Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Bonds. The Issuer, the Member and the Borrower have covenanted to comply with such requirements. Bond Counsel has expressed no opinion regarding other federal tax consequences arising with respect to the Bonds.

Notwithstanding Bond Counsel's opinion that interest on the Bonds is not a specific preference item for purposes of the federal alternative minimum tax, such interest will be included in adjusted current earnings of certain corporations, and such corporations are required to include in the calculation of alternative minimum taxable income 75% of the excess of such corporation's adjusted current earnings over its alternative minimum taxable income (determined without regard to such adjustment and prior to deduction for certain net operating losses).

The accrual or receipt of interest on the Bonds may otherwise affect the federal income tax liability of the owners of the Bonds. The extent of these other tax consequences will depend upon such owner's particular tax status and other items of income or deduction. Bond Counsel has expressed no opinion regarding any such consequences. Purchasers of the Bonds, particularly purchasers that are corporations (including S corporations and foreign corporations operating branches in the United States), property or casualty insurance companies, banks, thrifts or other financial institutions, certain recipients of social security or railroad retirement benefits, taxpayers otherwise entitled to claim the earned income credit, or taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations, should consult their tax advisors as to the tax consequences of purchasing or owning the Bonds.

### **Backup Withholding**

As a result of the enactment of the Tax Increase Prevention and Reconciliation Act of 2005, interest on tax-exempt obligations such as the Bonds is subject to information reporting in a manner similar to interest paid on taxable obligations. Backup withholding may be imposed on payments made after March 31, 2007 to any bondholder who fails to provide certain required information including an accurate taxpayer identification number to any person required to collect such information pursuant to Section 6049 of the Code. This reporting requirement does not in and of itself affect or alter the excludability of interest on the Bonds from gross income for federal income tax purposes or any other federal tax consequence of purchasing, holding or selling tax-exempt obligations.

### **Original Issue Discount**

The Bonds maturing on February 1, 2029, February 1, 2034 and February 1, 2041 (collectively, the "Discount Bonds") are being sold at an original issue discount. The difference between the initial public offering prices, as set forth on the cover page of the Official Statement, of such Discount Bonds and their stated amounts to be paid at maturity, constitutes original issue discount treated as interest which is excluded from gross income for federal income tax purposes, as described above.

The amount of original issue discount which is treated as having accrued with respect to such Discount Bond is added to the cost basis of the owner in determining, for federal income tax purposes, gain or loss upon disposition of such Discount Bond (including its sale, redemption or payment at maturity). Amounts received upon disposition of such Discount Bond which are attributable to accrued original issue discount will be treated as tax-exempt interest, rather than as taxable gain, for federal income tax purposes.

Original issue discount is treated as compounding semiannually, at a rate determined by reference to the yield to maturity of each individual Discount Bond, on days which are determined by reference to the maturity date of such Discount Bond. The amount treated as original issue discount on such Discount Bond for a particular semiannual accrual period is equal to the product of (i) the yield to maturity for such Discount Bond (determined by compounding at the close of each accrual period) and (ii) the amount which would have been the tax basis of such Discount Bond at the beginning of the particular accrual period if held by the original purchaser, less the amount of any interest payable for such Discount Bond during the accrual period. The tax basis is determined by adding to the initial public offering price on such Discount Bond the sum of the amounts which have been treated as original issue discount for such purposes during all prior periods. If such Discount Bond is sold between semiannual compounding dates, original issue discount which would have been accrued for that semiannual compounding period for federal income tax purposes is to be apportioned in equal amounts among the days in such compounding period.

Owners of Discount Bonds should consult their tax advisors with respect to the determination and treatment of original issue discount accrued as of any date and with respect to the state and local tax consequences of owning a Discount Bond.

### **Original Issue Premium**

The Bonds maturing on February 1, 2016, February 1, 2017, February 1, 2018 and February 1, 2024 (collectively, the "Premium Bonds") are being sold at a premium. An amount equal to the excess of the issue price of a Premium Bond over its stated redemption price at maturity constitutes premium on such Premium Bond. An initial purchaser of a Premium Bond must amortize any premium over such Premium Bond's term using constant yield principles, based on the purchaser's yield to maturity (or, in the case of Premium Bonds callable prior to their maturity, by amortizing the premium to the call date, based on the purchaser's yield to the call date and giving effect to the call premium). As premium is amortized, the purchaser's basis in such Premium Bond is reduced by a corresponding amount resulting in an increase in the gain (or decrease in the loss) to be recognized for federal income tax purposes upon a sale or disposition of such Premium Bond prior to its maturity. Even though the purchaser's basis may be reduced, no federal income tax deduction is allowed. Purchasers of the Premium Bonds should consult with their tax advisors with respect to the determination and treatment of amortizable premium for federal income tax purposes and with respect to the state and local tax consequences of owning a Premium Bond.

### **State of Arizona Income Taxation**

Bond Counsel is also of the opinion that interest on the Bonds is exempt from State of Arizona personal income taxation.

### **Changes in Federal Tax Law**

From time to time, there are legislative proposals in the Congress and in the states that, if enacted, could alter or amend the federal and state tax matters referred to above or adversely affect the market value of the Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether if enacted it would apply to bonds issued prior to enactment. In addition, regulatory actions are from time to time announced or proposed and litigation is threatened or commenced which, if implemented or concluded in a particular manner, could adversely affect the market value of the Bonds. It cannot be predicted whether any such regulatory action will be implemented, how any particular litigation or judicial action will be resolved, or whether the Bonds or the market value thereof would be impacted thereby. Purchasers of the Bonds should consult their tax advisors regarding any pending or proposed legislation, regulatory initiatives or litigation. The opinions expressed by Bond Counsel are based upon existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the date of issuance and delivery of the Bonds, and Bond Counsel have expressed no opinion as of any date subsequent thereto or with respect to any pending legislation, regulatory initiatives or litigation.

### **RATING**

Standard & Poor's Ratings Services, a division of The MacGraw-Hill Companies, Inc. ("S&P"), has assigned its rating of "B+" to the Bonds. The rating reflects only the view of S&P at the time such rating is given, and the Borrower makes no representations as to the appropriateness of such rating. Any explanation of the significance of such rating may only be obtained from S&P. Certain information and materials not included in this Official Statement concerning the Bonds were furnished to S&P. Generally, S&P bases its ratings on such information and materials and on investigation, studies and assumptions by S&P. There is no assurance that the rating mentioned above will remain for any given period of time or that it might not be lowered or withdrawn entirely by S&P if in the judgment of S&P, circumstances so warrant. Any such downward change in or withdrawal of such rating might have an adverse effect on the market price for and marketability of the Bonds.

### **UNDERWRITING**

The Bonds are to be purchased by Barclays Capital Inc. (the "Underwriter") pursuant to the terms of a bond purchase contract among the Underwriter, the Borrower and the Issuer (the "Purchase Contract"). The purchase price of the Bonds is \$104,799,350, representing the aggregate principal amount of the Bonds (\$107,405,000), less net original issue discount of \$1,531,600 and less Underwriter's discount of \$1,074,050. The Purchase Contract provides that the Underwriter will purchase all of the Bonds if any are purchased and that the obligation to make

such purchase is subject to certain terms and conditions set forth in the Purchase Contract, including the approval by counsel of certain legal matters.

The Underwriter reserves the right to join with dealers in offering the Bonds to the public. The Underwriter intends to offer the Bonds for sale at the prices or yields set forth on the inside cover page hereof. Such initial public offering prices or yields may be changed from time to time by the Underwriter without prior notice. The Underwriter may offer and sell the Bonds to certain dealers, unit investment trusts or money market funds at prices lower than or at yields higher than the public offering prices or yields stated on the inside front cover page.

The Underwriter and its affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. The Underwriter and its affiliates have, from time to time, performed, and may in the future perform, various investment banking services for the Government of Guam and its autonomous agencies, for which they received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the Underwriter and its affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (which may include bank loans and/or credit default swaps) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve securities and instruments of the Government of Guam and its autonomous agencies.

#### **CERTAIN LEGAL MATTERS**

All legal matters incident to the authorization, issuance, sale and delivery of the Bonds by the Issuer are subject to the approving opinion of Kutak Rock LLP, Scottsdale, Arizona, as Bond Counsel. A complete copy of the proposed form of Bond Counsel's opinion is included in this Official Statement as APPENDIX E.

Certain legal matters will be passed upon for the Issuer by Kutak Rock LLP, for the Underwriter by Nixon Peabody LLP, and for the Borrower by Edwin Ching, Esq.

Certain legal matters in connection with the preparation of this Official Statement will be passed upon by Orrick, Herrington & Sutcliffe LLP, as special disclosure counsel to the Government of Guam.

#### **LITIGATION**

##### **The Issuer**

There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body known to the Issuer to be pending or threatened against the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the existence or organization of the Issuer or the title to office of any director or officer of the Issuer or any power of the Issuer material to the issuance, sale and delivery of the Bonds, or (ii) the validity of the proceedings taken by the Issuer for the adoption, authorization, execution, delivery and performance by the Issuer of, or the validity or enforceability of, the Bonds, the Purchase Contract, the Indenture or the Loan Agreement.

##### **The Borrower**

There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body known to the Borrower to be pending or threatened against the Borrower wherein an unfavorable decision, ruling or finding would adversely affect (i) the corporate existence or organization of the Borrower or the title to office of any member of the Borrower's governing board or officer of the Borrower or any power of the Borrower material to the issuance, sale and delivery of the Bonds, or (ii) the validity of the proceedings taken by the Borrower for the adoption, authorization, execution, delivery and performance by the Borrower of, or the validity or enforceability of, the Bonds, the Purchase Contract, or the Loan Agreement.

## **The Government of Guam**

There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body known to the Government of Guam to be pending or threatened against the Government of Guam wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of the Restated Lease Agreement or the ability of the Government of Guam to pay the Base Rent and Additional Rent under the Restated Lease Agreement.

### **CONTINUING DISCLOSURE**

The Borrower is covenanting for the benefit of the beneficial owners of the Bonds to provide certain annual financial information and operating data relating to the Borrower (the "Annual Report") to the Municipal Securities Rulemaking Board (the "MSRB") through its Electronic Municipal Market Access ("EMMA") system. The Borrower has covenanted to provide such Annual Report to the MSRB not later than 270 days after the end of the Borrower's fiscal year, which currently ends on December 31. The Borrower is also covenanting to provide to the MSRB through its EMMA system notice of certain enumerated events. The specific nature of the financial information and operating data to be included in the Annual Report and the enumerated events of which the Borrower is to provide notice are set forth in the proposed form of Continuing Disclosure Certificate of the Borrower included in this Official Statement in APPENDIX G – "PROPOSED FORM OF CONTINUING DISCLOSURE CERTIFICATE OF THE BORROWER." This is the Borrower's first continuing disclosure undertaking.

At or prior to the date of delivery of the Bonds, either GEDA or the Government of Guam will covenant for the benefit of the beneficial owners of the Bonds to provide certain annual financial information and operating data relating to the Government of Guam (the "Annual Report") to the MSRB through its EMMA system. Either GEDA or the Government of Guam will covenant to provide such Annual Report to the MSRB not later than 270 days after the end of the Government of Guam's fiscal year, which currently ends on September 30. Either such entity will also covenant to provide to the MSRB through its EMMA system notice of certain enumerated events. The specific nature of the financial information and operating data to be included in the Annual Report and the enumerated events of which either GEDA or the Government of Guam is to provide notice are set forth in the proposed form of Continuing Disclosure Certificate included in this Official Statement in APPENDIX F – "PROPOSED FORM OF CONTINUING DISCLOSURE CERTIFICATE RELATING TO CERTAIN FINANCIAL AND OPERATING INFORMATION OF THE GOVERNMENT OF GUAM."

During the past five fiscal years, the Government of Guam did not always provide copies of its annual budget, as required in certain of its continuing disclosure undertakings with respect to its outstanding bonds. The Government of Guam also failed to provide timely notice of a ratings upgrade on certain of its outstanding bonds. The Government of Guam did not file any annual reports with respect to its Limited Obligation (Section 30) Bonds, 2001 Series A, although the Government of Guam did provide certain financial reports with respect to such bonds to the trustee and insurer for such bonds as required by the indenture for such bonds.

The Borrower and either the Government of Guam or GEDA are making these covenants to assist the Underwriter in complying with Rule 15c2-12 promulgated under the Securities and Exchange Act of 1934, as amended.

The Issuer has not undertaken any responsibility regarding and has no duty to enforce either the Borrower's or either GEDA's or the Government of Guam's continuing disclosure obligations with respect to the Bonds.

**MISCELLANEOUS**

The attached Appendices are integral parts of this Official Statement and should be read in their entirety. The Borrower has reviewed the information contained herein and has approved all such information for use in this Official Statement. Any statements in this Official Statement involving matters of opinion or estimates are intended hereby as expressions of opinion or as good faith estimates and no assurance can be given that facts will materialize in accordance with such opinions or estimates.

The execution and delivery of this Official Statement have been duly authorized by the Borrower.

AZ GFF TIYAN, LLC  
an Arizona Limited Liability Company

By:           /s/ Joe M. Arnett            
  Authorized Representative



# Exhibit D

**TRUST INDENTURE**

By and Between

**THE INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF PHOENIX, ARIZONA,**

as Issuer

and

**U.S. BANK NATIONAL ASSOCIATION**

as Trustee

Dated as of December 1, 2014

**\$107,405,000**  
**The Industrial Development Authority of the**  
**City of Phoenix, Arizona**  
**Lease Revenue Bonds**  
**(Guam Facilities Foundation, Inc. Project)**  
**Series 2014**

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## TRUST INDENTURE

**THIS TRUST INDENTURE** (the “Indenture”), made and entered into and dated as of December 1, 2014, by and between **THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX** (the “Issuer”), a nonprofit corporation designated as a political subdivision of the State of Arizona (the “State”), incorporated with the approval of the City of Phoenix, Arizona, pursuant to the provisions of the Constitution of the State and under Title 35, Chapter 5, Arizona Revised Statutes, as amended, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association duly organized and existing under the laws of the United States of America, as trustee (the “Trustee”).

### WITNESSETH:

WHEREAS, the Issuer exists under Title 35, Chapter 5, Arizona Revised Statutes, as amended (the “Act”); and

WHEREAS, pursuant to the Act the Issuer is authorized to make loans for the purpose of financing or refinancing the acquisition, construction, improvement or equipping of projects (as that term is defined in the Act) within or without the State of Arizona, including facilities owned or operated by a nonprofit organizations described in Section 501(c) of the Internal Revenue Code, and is authorized to issue its bonds to provide funds for such financing or refinancing; and

WHEREAS, the Act provides that the Issuer may exercise its powers, including the power to issue bonds, to provide financing or refinancing of “projects” located within the State or outside the State, provided the Board of Directors of the Issuer has determined the exercise of such powers will provide a benefit within the State; and

WHEREAS, the Borrower, an Arizona limited liability company, whose sole member is Guam Facilities Foundation, Inc., a Guam non-profit corporation and organization described in Section 501(c)(3) of the Code, will acquire from Core Tech International Corporation, a Guam corporation (the “Lessor”) real property located in Barrigada, Guam (the “Project Site”) under a Purchase Agreement dated on or before the Closing Date; and

WHEREAS, the Borrower and the Lessor will enter into an Assignment and Assumption of Lease, dated on or before the Closing Date (the “Assignment of Lease”) under which Assignment of Lease the Lessor will assign all of its rights and interest in the Amended and Restated Lease Purchase Agreement (Restated Agreement) dated as of November 6, 2014, as amended by the First Amendment to Amended and Restated Lease Purchase Agreement (Restated Agreement) dated as of November 6, 2014 (together, the “Lease”) between the Lessor as lessor and the Government of Guam as tenant; and

WHEREAS, the Borrower will cause the financing, acquisition, design, construction and/or rehabilitation of the following projects to be leased to the Government of Guam, as tenant under the Lease, and used by the Government of Guam exclusively for public educational purposes: (i) the construction of an approximately 14,000 square foot gymnasium, (ii) the construction of an approximately 83,500 square foot office building, (iii) the construction of two approximately 10,000 square foot warehouses, each with an additional 6,500 square foot mezzanine space, (iv) the acquisition and rehabilitation of existing school facilities, and (v) the

acquisition and rehabilitation of an existing office building, all to be located on the Project Site (collectively, the “Facilities”); and

WHEREAS, the Borrower has requested that the Issuer issue the Bonds and loan the proceeds thereof to the Borrower to finance (i) the acquisition of the Project Site, (ii) the acquisition, construction and/or rehabilitation of the Facilities, (iii) the funding of capitalized interest on the Bonds, and (iv) the costs of issuing the Bonds (collectively, the “Project”); and

WHEREAS, the Issuer has deemed it desirable and in keeping with its purposes under the Act to issue its \$107,405,000 The Industrial Development Authority of the City of Phoenix, Lease Revenue Bonds (Guam Facilities Foundation, Inc. Project) Series 2014 (the “Bonds”) under a Trust Indenture dated as of December 1, 2014 (the “Indenture”) by and between the Issuer and U.S. Bank National Association as trustee (the “Trustee”) and to make the proceeds thereof available to the Borrower to finance the Project; and

WHEREAS, the Issuer’s Board of Directors has determined the financing or refinancing of the Facilities will provide a benefit within the State; and

WHEREAS, the Facilities will be leased in whole to the Government of Guam, an unincorporated territory of the United States, as tenant under the Lease; and

WHEREAS, the Borrower and the Lessor will enter into a Design and Development Agreement dated as of December 1, 2014 (the “Development Agreement”) for the construction and/or rehabilitation of the Facilities;

WHEREAS, the Borrower and the Lessor will enter into a Management Agreement, dated as of December 1, 2014 (the “Management Agreement”) for the ongoing management of the Facilities; and

WHEREAS, the Borrower has assigned its rights and interests in the Management Agreement, the Development Agreement and the Assignment of Lease, including the Borrower’s rights to receive Base Rent and Additional Rent under the Lease to the Trustee under an Assignment Agreement, dated as of December 22, 2014 between the Borrower and the Trustee; and

WHEREAS, the Borrower will grant a Mortgage with Power of Sale in the Project Site, dated December 22, 2014 (the “Mortgage”) to the Trustee to secure the Bonds; and

WHEREAS, the issuance of the Bonds by the Issuer and the lease of the Facilities to the Government of Guam as described above will lessen the burden of government through the financing of essential public buildings; and

WHEREAS, the Trustee agrees to accept and administer the trusts created hereby.

#### GRANTING CLAUSES

NOW, THEREFORE, THIS INDENTURE FURTHER WITNESSETH: That the Issuer has, in consideration of the premises, of the acceptance by the Trustee of the trusts hereby



created, and of the purchase and acceptance of the Bonds by the holders thereof, and for the purpose of fixing and declaring the terms and conditions upon which the Bonds are to be issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become holders thereof, and in order to secure the payment of all of the Bonds at any time issued and Outstanding (as defined herein) hereunder and the interest and premium, if any, thereon according to their tenor, purport and effect, and in order to secure the performance and observance of all of the covenants and conditions therein and herein contained, executed this Indenture and does hereby grant a security interest in, assign, transfer, pledge, grant and convey unto the Trustee and its successors and assigns the following:

A. The Mortgage granted by the Borrower in favor of the Trustee.

B. All rights and interests of the Issuer in, under and pursuant to the Loan Agreement (as defined herein), including but not limited to payments to be made by the Borrower thereunder from amounts payable to the Borrower under the Assignment of Lease, provided that the assignment made by this clause shall not include (i) any assignment of any obligation of the Issuer under the Loan Agreement (and the Trustee shall have no duties with respect thereto) or (ii) any of the "Issuer Unassigned Rights" consisting of all rights expressly granted to the Issuer in this Indenture or in the Loan Agreement to (a) inspect books and records, (b) give or receive notices, approvals, consents, requests, and other communications, (c) receive payment or reimbursement for expenses, (d) receive payment of the Issuer Fees and Expenses, (e) immunity and limitation from liability, (f) indemnification from liability by the Borrower, and (g) security for the Borrower's indemnification obligations.

C. The Assignment Agreement between the Borrower and the Trustee.

D. Amounts on deposit from time to time in the funds and accounts created pursuant hereto (excluding the Rebate Fund), subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein.

E. The rights and interests of the Issuer under the Note.

F. Any and all other real or personal property of any kind from time to time hereafter by delivery or by writing of any kind specifically conveyed, pledged, assigned or transferred, as and for additional security hereunder for the Bonds, by anyone on behalf of the Issuer or with its written consent, or by or on behalf of the Borrower, in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all said properties pledged, assigned and conveyed by the Issuer hereunder, including all additional property which by the terms hereof has or may become subject to the encumbrance hereof, unto the Trustee and its successors in trust and its assigns forever, subject, however, to the rights reserved hereunder.

IN TRUST NEVERTHELESS, for the equal and proportionate benefit and security of the holders from time to time of the Bonds issued, authenticated, delivered and Outstanding hereunder, without preference, priority or distinction as to lien or otherwise of any of said Bonds over any other or others of said Bonds to the end that each holder of such Bonds has the same

rights, privileges and lien under and by virtue hereof; and conditioned, however, that if the Issuer shall well and truly cause to be paid fully and promptly when due all liabilities, obligations and sums at any time secured hereby, and shall promptly, faithfully and strictly keep, perform or observe or cause to be kept, performed and observed all of its covenants, warranties and agreements contained herein, then and in such event, this Indenture shall be and become void and of no further force and effect; otherwise, the same shall remain in full force and effect, and upon the trust and subject to the covenants and conditions hereafter set forth.

## ARTICLE I

### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

**Section 1.01. Definitions.** In addition to the terms defined in the Loan Agreement and Lease, for the purpose hereof unless the context otherwise requires, the following words and phrases shall have the following meanings:

“*Act*” means Arizona Revised Statutes Sections 35-701 *et seq.*, as amended.

“*Additional Bonds*” means any additional bonds issued pursuant to the terms and conditions of Section 2.09 of this Indenture

“*Additional Payments*” means the payments required by Section 4.04 of the Loan Agreement.

“*Additional Rent*” means the annual amount of additional rents due under the Lease, payable by the Government of Guam, as tenant, as set forth in Section 8 and 15 of the Lease.

“*Arbitrage Rebate Consultant*” means an accounting firm or a law firm or another person or firm with knowledge of or experience in advising bond trustees with respect to the provisions of Code Section 148(f) appointed, or caused to be appointed, by the Borrower.

“*Assignment Agreement*” means the Assignment Agreement dated as of December 22, 2014 by and between the Borrower and the Trustee, and acknowledged by the Manager and the Developer, relating to the assignment of the Borrower’s rights and interests in the Assignment of Lease, the Development Agreement and the Management Agreement to the Trustee.

“*Assignment of Lease*” means the Assignment and Assumption of Lease dated as of December 22, 2014 by and between the Lessor and the Borrower.

“*Authorized Denomination*” means denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof.

“*Base Rent*” means the annual amount of rents due under the Lease, payable by the Government of Guam, as tenant, as set forth in Section 8 of the Lease.

“*Board*” means the Board of Directors of the Issuer.

“*Bond*” or “*Bonds*” means the Issuer’s \$107,405,000 Lease Revenue Bonds (Guam Facilities Foundation, Inc. Project) Series 2014 and any Additional Bonds, issued pursuant to this Indenture.

“*Bond Counsel*” means Kutak Rock LLP, or another firm of attorneys of national reputation experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds, appointed by the Borrower, and to the extent the Issuer is to act or refrain from acting in reliance thereon, reasonably acceptable to the Issuer.

“*Bond Fund*” means the fund of that name created pursuant to Section 4.01 hereof.

“*Bond Payment Date*” means each interest payment date with respect to the Bonds and each date on which principal shall be payable on any of the Bonds according to their respective terms so long as any Bonds are Outstanding.

“*Bond Purchase Contract*” means the Bond Purchase Contract with respect to the Bonds among the Issuer, the Borrower, and the Underwriter.

“*Borrower*” means AZ GFF Tiyan, LLC, an Arizona limited liability company, whose sole member is Guam Facilities Foundation, Inc., a Guam non-profit corporation and its successors and assigns and any surviving, resulting or transferee entity, including any surviving, resulting or transferee entity in a transaction in compliance with the provisions of Section 5.01 of the Loan Agreement.

“*Borrower Documents*” shall mean the Loan Agreement, the Bond Purchase Contract, the Mortgage, the Assignment of Lease, the Management Agreement, the Development Agreement, the Assignment Agreement and the Tax Certificate with respect to the Bonds.

“*Borrower Representative*” means and includes the Chairman of the Member, and any other person at the time designated to act on behalf of the Borrower by written certificate furnished to the Issuer and the Trustee, containing the specimen signature of such person and signed on behalf of the Borrower by the president or secretary of the Borrower. Such certificate may designate an alternate or alternates who shall have the same authority, duties and powers as such Borrower Representative.

“*Business Day*” means any day of the year other than a Saturday or Sunday or a day on which (i) banks located in the city in which the Designated Office of the Trustee is located are not required or authorized to remain closed and (ii) the New York Stock Exchange is not closed.

“*Capitalized Interest Account*” means the account of that name created pursuant to Section 4.01 hereof.

“*Capitalized Rent Fund*” means the account of that name created pursuant to Section 4.01 hereof.

“*City*” means the City of Phoenix, Arizona.

“*Closing Date*” means the date of initial issuance of the Bonds. December 22, 2014.

“Code” means the Internal Revenue Code of 1986 and applicable regulations thereunder.

“Community Development Fund Fee” means an amount equal to \$100,000 payable to the Issuer on the Closing Date, which amount will assist the Issuer in fulfilling its mission within the State.

“Costs of Issuance Fund” means the fund of that name created pursuant to Section 4.01 hereof.

“Designated Office” of the Trustee means the office set forth in Section 10.07 or such other office designated by the Trustee in writing in accordance with Section 10.07 hereof.

“Developer” means the Lessor in its capacity as Developer under the Development Agreement.

“Development Agreement” means the Design and Development Agreement dated as of December 1, 2014 between the Borrower and the Developer for the construction and/or rehabilitation of the Facilities.

“Disclosure Agreement” means the Continuing Disclosure Certificate dated as of December 22, 2014, executed by the Borrower.

“Dissemination Agent” means GEDA, dissemination agent pursuant to the Disclosure Agreement.

“Event of Default” means any one of those events set forth in Section 6.01 hereof.

“Facilities” means the following projects to be acquired, constructed and/or rehabilitated and leased to the Government of Guam and used exclusively for public educational purposes: (i) an approximately 14,000 square foot gymnasium, (ii) an approximately 83,500 square foot office building, and (iii) two 10,000 square foot warehouses, each with an additional 6,500 square foot mezzanine space, (iv) school facilities, (v) an office building, all to be located on the Project Site.

“GEDA” means the Guam Economic Development Authority and any successors or assigns.

“GEDA Fee” means the fees to be paid to GEDA in accordance with Section 4.04 and Exhibit E hereof.

“Government Obligations” means (i) direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged, and (ii) obligations issued by a person controlled or supervised by and acting as an instrumentality of the United States of America, the payment of the principal of premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (i) or (ii) issued) or held in book-entry form on the books of the Department of the Treasury of the United States of America or Federal Reserve Bank.

“*Government of Guam*” means the Government of Guam, an unincorporated territory of the United States, as tenant under the Lease.

“*Guam Indemnified Parties*” means the Government of Guam, GEDA, their respective past, present and future directors, officers, counsel, advisors, employees, agents, individually and collectively.

“*Indenture*” means this Trust Indenture, and when amended or supplemented, this Indenture as amended or supplemented.

“*Interest Account*” means the account of the Bond Fund of that name created pursuant to Section 4.01 hereof.

“*Issuer*” means The Industrial Development Authority of the City of Phoenix, Arizona, a nonprofit corporation designated as a political subdivision of the State in accordance with the provisions of the Constitution of the State and under Title 35, Chapter 5, Arizona Revised Statutes, as amended, and its successors and assigns.

“*Issuer Administration Fee*” means the Issuer’s annual fee for the administrative expenses of the Issuer in an amount equal to 4 basis points (0.04%) of the aggregate principal amount of the Bonds Outstanding as of each January 1, to be paid on February 1 of each year, commencing February 1, 2016, with a minimum of \$3,000 per series, to be paid to the Issuer in advance, with the initial payment of \$44,139.00 to be paid to the Issuer on the Closing Date, which represents a prorated amount from the Closing Date until January 1, 2015 and the Issuer Administration Fee for 2015, and thereafter payable on or before each February 1, commencing February 1, 2016, without demand; provided that payment of such lesser amount may be necessary to not adversely impact the tax status of the Bonds.

“*Issuer Documents*” means collectively the Loan Agreement, this Indenture, the Bond Purchase Contract, the Tax Certificate, and any other agreement, certificate, contract, or instrument to be executed by the Issuer in connection with the issuance of the Bonds or the financing of the Facilities.

“*Issuer Fees and Expenses*” means (i) the Issuer’s Administration Fee; (ii) payment or reimbursement to the Issuer for any expenses or indemnification; and (iii) any other reasonable expense that may be incurred by the Issuer, plus any Late Fees incurred with respect to any of the foregoing.

“*Issuer Indemnified Party*” means, the Issuer, its past, present, and future directors, officers, counsel, advisors, employees, agents, and Executive Director, the City of Phoenix City Council, its past, present, and future council members, advisors and agents, individually and collectively, and the City.

“*Issuer Representative*” means and includes each of the president, vice president, secretary or treasurer, of the Issuer, or such other person as the Issuer may designate to act on its behalf by written certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf of the Issuer by its president or vice president.

*“Issuer’s Unassigned Rights”* means all of the rights of the Issuer under this Indenture and the Loan Agreement (i) to receive the Issuer Fees and Expenses and the Additional Payments; (ii) to be held harmless and indemnified in accordance with this Indenture and the Loan Agreement; (iii) to be reimbursed for fees and expenses upon enforcement of the Loan Agreement; (iv) to receive notices in accordance with this Indenture and the Loan Agreement; and (v) to give and withhold consent to amendments, changes, modifications and alterations of the Loan Agreement.

*“Late Fee”* means ten percent (10%) of any amount due to the Issuer that is received by the Issuer more than fifteen (15) calendar days after the due date.

*“Lease”* means the Amended and Restated Lease Purchase Agreement (Restated Agreement), dated November 6, 2014, as amended by the First Amendment to Amended and Restated Lease Purchase Agreement (Restated Agreement) dated as of November 6, 2014 between the Lessor and the Government of Guam and assigned to the Borrower pursuant to the Assignment of Lease.

*“Lessor”* means Core Tech International Corporation, a Guam corporation.

*“Loan Agreement”* means the Loan Agreement, dated as of December 1, 2014, by and between the Issuer and the Borrower with respect to the Bonds, and when amended or supplemented, such Loan Agreement, as amended or supplemented.

*“Management Agreement”* means the Management Agreement dated as of December 1, 2014 between the Borrower and the Manager for the management of the Facilities.

*“Management Fee”* means the fee due to the Manager under Section 4 of the Management Agreement.

*“Manager”* means the Lessor, in its capacity as Manager under the Management Agreement.

*“Mortgage”* means the Mortgage with Power of Sale, dated December 22, 2014, made by the Borrower in favor of the Trustee.

*“Note”* means the promissory note or notes, dated as of December 22, 2014, in the aggregate principal amount of \$107,405,000.

*“Opinion of Counsel”* means a written opinion of an attorney or firm of attorneys appointed by the Borrower, reasonably acceptable to the Trustee and, to the extent the Issuer is to act or refrain from acting in reliance thereon, reasonably acceptable to the Issuer, and who (except as otherwise expressly provided herein or in the Loan Agreement) may be counsel for the Borrower, the Issuer or the Trustee, and may be an employee of the Borrower or the Trustee.

“*Outstanding*” when used with reference to the Bonds, means, as of any date of determination, all Bonds theretofore authenticated and delivered except:

- (a) Bonds theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (b) Bonds which are deemed paid and no longer Outstanding as provided herein;
- (c) Bonds in lieu of which other Bonds have been issued pursuant to the provisions hereof relating to Bonds destroyed, stolen or lost, unless evidence satisfactory to the Trustee has been received that any such Bond is held by a bona fide purchaser; and
- (d) For purposes of any consent or other action to be taken hereunder or under the Loan Agreement by the Owner of a specified percentage in principal amount of Bonds, Bonds held by or for the account of the Issuer, the Borrower, or any person controlling, controlled by, or under common control with, any of them, unless all Bonds otherwise Outstanding or held by or for the account of any such person, in which such Bonds shall be taken into account.

“*Owner*” means the person in whose name the Bond is registered.

“*Permitted Investments*” means, to the extent permitted by law, the following obligations may be used as permitted investments for all purposes, including defeasance investments in refunding escrow accounts:

- a. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.
- b. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):
  - 1. U.S. Export-Import Bank (Eximbank) Direct obligations or fully guaranteed certificates of beneficial ownership
  - 2. Farmers Home Administration (FmHA) Certificates of Beneficial Ownership
  - 3. Federal Financing Bank
  - 4. Federal Housing Administration Debentures (FHA)
  - 5. General Services Administration Participation Certificates

6. Government National Mortgage Association (GNMA or Ginnie Mae) GNMA - guaranteed mortgage-backed bonds GNMA - guaranteed pass-through obligations (*these obligations are not acceptable for certain cash flow sensitive issues*)
7. U.S. Maritime Administration Guaranteed Title XI financing
8. U.S. Department of Housing and Urban Development (HUD) Project Notes  
Local Authority Bonds  
New Communities Debentures - U.S. government guaranteed debentures  
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds
9. Federal National Mortgage Association (FNMA or Fannie Mae) Mortgage-backed securities and senior debt obligations

c. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies which are not backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System Senior debt obligations
2. Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac) Participation Certificate Senior debt obligations
3. Student Loan Marketing Association (SLMA or Sallie Mae) Senior debt obligations
4. Resolution Funding Corp. (REFCORP) obligations
5. Farm Credit System Consolidated system wide bonds and notes

d. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by Standard and Poor's Rating Services of AAAM-G; AAA-m; or AA-m and if rated by Moody's Investor Service rated Aaa, Aa1 or Aa2.

e. Negotiable or non-negotiable certificates of deposit, time deposits, or other similar banking arrangements, issued by any nationally or state-chartered bank (including the Trustee) or trust company or any savings and loan association, domiciled in the State, if either (i) the long-term obligations of such bank or trust company are rated in one of the two highest rating categories by Standard & Poor's Ratings Services or Moody's Investors Service, or, upon the discontinuance of either or both of such rating services, any other nationally recognized rating service or (ii) the deposits are continuously secured as to principal, but only to the extent not insured by the Federal Deposit Insurance Corporation, or similar corporation chartered by the United States of



America, (1) by lodging with a bank or trust company, as collateral security, obligations described in paragraph (a) or (b) above or, as the Trustee is directed, other marketable securities eligible as security for the deposit of trust funds under applicable regulations of the Comptroller of the Currency of the United States of America or applicable state law or regulations, having a market value (exclusive of accrued interest) not less than the amount of such deposit, or (2) if the furnishing of security as provided in clause (1) of this paragraph is not permitted by applicable law, in such manner as may then be required or permitted by applicable state or federal laws and regulations regarding the security for the deposit of trust funds.

f. Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by Federal Deposit Insurance Corporation, including the Bank Insurance Fund and the Savings Association Insurance Fund.

g. Investment Agreements, including Guaranteed Investment Contracts, Forward Purchase Agreements and Reserve Fund Put Agreements, as the Trustee is directed.

h. Commercial paper rated, at the time of purchase, "Prime – 1" by Moody's Investor Service "A-1" or better by Standard and Poor's Rating Services.

i. Bonds or notes issued by any state or municipality which are rated by Moody's Investor Service and Standard and Poor's Rating Services in one of the two highest rating categories assigned by such rating agencies.

j. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime – 1" or "A3" or better by Moody's Investor Service and "A-1" or "A" or better by Standard and Poor's Rating Services.

k. Repurchase Agreements ("Repos") for 30 days or less must follow the following criteria. Repos which exceed 30 days must be acceptable to the Borrower (criteria available upon request). Repos provide for the transfer of securities from a dealer bank or securities firm to the Trustee on behalf of the Borrower, and the transfer of cash from the Trustee, on behalf the Borrower to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the Trustee on behalf of the Borrower in exchange for the securities at a specified date.

1. Repos must be between the Borrower, the Trustee and a dealer bank, securities firm or a non-bank financial institution (an "Eligible REPO Provider").

A. Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by Standard and Poor's Rating Services or "A2" or better by Moody's Investor Service or "A" by Fitch Ratings Inc., "A" by Fitch Ratings, Inc., or

B. Banks rated “A” or better by Standard and Poor’s Rating Services or “A2” or better by Moody’s Investor Service or “A” by Fitch Ratings, Inc.

2. The written repurchase agreement must include the following:

A. Securities which are acceptable for transfer are:

(i) Direct obligations of the United States of America referred to in subsection (a) of this definition, or

(ii) Obligations of federal agencies referred to in subsection (b) of this definition, or

(iii) Obligations of FNMA and FHLMC.

B. The term of the Repos may be up to 30 days.

C. The collateral must be delivered to the Trustee (if trustee is not supplying the collateral) or third party acting as agent for the Trustee is (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).

D. Valuation of Collateral:

(i) The securities must be valued weekly, market-to-market at current market price accrued interest.

(ii) The value of collateral must be equal to 104% of the amount of cash transferred by the Trustee on behalf of the Borrower to the dealer bank or security firm under the Repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by the Trustee on behalf of the Borrower, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.

(iii) An Opinion of Counsel which must be delivered to the Trustee and the Borrower that states that the Repo meets guidelines under State law for legal investment of public funds.

“*Principal Account*” means the account of the Bond Fund of that name created pursuant to Section 4.01 hereof.

“*Project*” means (i) the acquisition of the Project Site, (ii) the acquisition, construction and/or rehabilitation of the Facilities, (iii) the funding of capitalized interest on the Bonds, and (iv) the costs of issuing the Bonds.

“*Project Fund*” means the fund of that name created pursuant to Section 4.01 hereof.

“*Project Site*” means real property located in Barrigada, Guam, upon which the Facilities are located.

“*Purchase Agreement*” means the Purchase Agreement, dated on or before the Closing Date, between the Borrower and the Lessor, in its capacity as sell, for the purchase and sale of the Project Site.

“*Rating Agency*” means Standard & Poor’s Ratings Service or any other nationally recognized securities rating agency which at the relevant time is maintaining a rating on the Bonds at the request of the Borrower, or if no such rating agency is at the relevant time maintaining a rating on the Bonds, any nationally recognized securities rating agency designated by the Borrower by written notice to the Trustee.

“*Rebate,*” “*Rebate Requirement,*” or “*Rebate Amount*” means the amount of arbitrage rebate computed annually for payment as of the last day of every fifth (5<sup>th</sup>) bond year, pursuant to Code Section 148(f).

“*Rebate Fund*” means the fund into which the Trustee is to deposit rebatable arbitrage to be paid by the Borrower to the United States of America created pursuant to Section 5.06 hereof.

“*Rebate Year*” means each one year period that ends on the day selected by the Issuer. The first and last Rebate Years may be short periods. If no day is selected by the Issuer before the date that is five years from the issue date, each Rebate Year ends on the anniversary of the issue date and on the final maturity date.

“*Record Date*” means the fifteenth (15<sup>th</sup>) day of the calendar month preceding a Bond Payment Date (regardless of whether such fifteenth (15<sup>th</sup>) day is a Business Day), or, with respect to interest not paid when due, a special record date as may be designated pursuant to Section 2.02(c) hereof.

“*Redemption Account*” means the account of the Bond Fund of that name created pursuant to Section 4.01 hereof.

“*State*” means the State of Arizona.

“*Supplement,*” when used in reference to this Indenture, means an indenture supplementing or modifying the provisions hereof entered into by the Issuer and the Trustee in accordance with Article VIII hereof.

“*Surplus Fund*” means the fund of that name created pursuant to Section 4.01 hereof.

“*Tax Certificate*” means the Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986, executed by the Issuer, the Borrower and the Lessor in connection with delivery of the Bonds.

“*Trust Estate*” means the Trust Estate granted and conveyed under the granting clauses hereof.

“*Trustee*” means U.S. Bank National Association, a national banking association, in its capacity as trustee hereunder and any successor to its duties hereunder.

“*Trustee Fees and Expenses*” means \$4,000, payable on February 1 of each year, and any reasonable expense that may be incurred, including without limitation any audit expenses.

“*Trustee Indemnified Parties*” means the Trustee, its past, present, and future directors, officers, counsel, review advisors, and agents individually and collectively.

“*Underwriter*” means Barclays Capital Inc.

“*Written Request*” means a request in writing, signed, in the case of the Issuer, by an Issuer Representative, and in the case of the Borrower, by a Borrower Representative.

**Section 1.02. Interpretation.** In this Indenture, unless otherwise stated or the context otherwise requires:

(a) Words of one gender include the corresponding words of other genders; words of neuter include both genders; and words in the singular include words in the plural and vice versa.

(b) Words indicating persons, parties, or entities (and the like) include firms, associations, partnerships (including limited partnerships), limited liability companies (and the like), corporations, trusts and other legal entities, including public and governmental bodies, as well as natural persons.

(c) References to a statute refer to the statute, as amended, and any successor statute, and to all regulations promulgated under or implementing the statute or successor statute, as in effect at the relevant time.

(d) References to a governmental or quasi-governmental entity or representatives thereof also refer to an entity that succeeds to the functions of the governmental or quasi-governmental entity and representatives thereof.

(e) Headings preceding sections of text and any table of contents are solely for convenience of reference and are not part of this Indenture and are not to affect its meaning, interpretation or effect.

(f) Actions permitted under this Indenture may be taken at any time and from time to time in the actor’s sole discretion.

(g) The word “including” means “including, but not limited to” and the word “include” means “include, among others.”

(h) The terms “hereby,” “hereof,” “herein,” and “hereunder” (and the like) refer to this Indenture.

(i) Words importing the redemption of a Bond or the calling of a Bond for redemption do not mean or include the payment of a Bond at its stated maturity or the purchase of a Bond.

**Section 1.03. All Bonds Equally and Ratably Secured; Bonds Not General Obligations of the Issuer.** All Bonds issued hereunder and at any time Outstanding shall in all respects be equally and ratably secured hereby, without preference, priority, or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds, so that all Bonds at any time issued and Outstanding hereunder shall have the same right, lien and preference hereunder and shall all be equally and ratably secured hereby. The Bonds shall be special limited obligations of the Issuer and shall be payable solely out of the revenues and other security pledged hereby and shall not constitute an indebtedness or general obligation of the Issuer within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Issuer or be a charge against its general credit or a charge against the general credit or the taxing powers of the State or any political subdivision thereof. The Issuer has no taxing power.

## ARTICLE II

### AUTHORIZATION AND TERMS OF BONDS

**Section 2.01. Authorization of Bonds.** The Issuer hereby authorizes the issuance of the Bonds in the aggregate original principal amount of \$107,405,000 pursuant to the Act for the purpose of providing funds to assist in financing the Project. The Bonds shall be designated “The Industrial Development Authority of the City of Phoenix, Arizona Lease Revenue Bonds (Guam Facilities Foundation Inc. Project) Series 2014” and shall be issued and sold as directed by the Issuer in accordance with provisions of this Indenture.

**Section 2.02. Form, Date and Payment Terms of Bonds.**

(a) The Bonds shall be substantially in the form set forth in Exhibit A hereto with such omissions, insertions and variations as are consistent with the provisions hereof.

(b) The Bonds shall be in the original aggregate principal amount of \$107,405,000 and mature on February 1, 2041.

(c) The Bonds shall be dated as of their date of delivery, be issuable in Authorized Denominations, and bear interest from the most recent interest payment date to which interest has been paid or for which due provision has been made or, if no interest has been paid, from the date of initial issuance and delivery, payable on February 1 and August 1 each year commencing August 1, 2015.

(d) The Bonds shall bear interest from the date of initial issuance and delivery at the rates (calculated on the basis of a 360-day year of twelve 30-day months) and mature on the dates and in the principal amounts, subject to prior redemption as set forth therein, as follows:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
February 1, 2016	\$425,000	3.000%
February 1, 2017	\$2,845,000	5.000%
February 1, 2018	\$2,995,000	5.000%
February 1, 2024	\$14,260,000	5.000%
February 1, 2029	\$21,375,000	5.000%
February 1, 2034	\$26,375,000	5.125%
February 1, 2041	\$39,130,000	5.375%

(e) The Bonds shall be issuable only in fully registered form and shall be numbered or otherwise designated in a manner specified by the Trustee so as to distinguish each Bond from every other Bond.

(f) Interest on the Bonds shall be payable when due to the Owner at the close of business on the Record Date with respect to each Bond Payment Date, irrespective of any transfer or exchange of such Bond subsequent to such Record Date and prior to such Bond Payment Date, unless there is a default in the payment of interest due on such Bond Payment Date. In the event of any such default, such defaulted interest shall be payable to the Owner at the close of business on a special Record Date for the payment of such defaulted interest established by notice mailed by the Trustee to the Owners not less than 15 days preceding such special Record Date. Such notice shall be mailed to the Owners at the close of business on the fifth day preceding the date of mailing. If the Trustee registers the transfer of any Bond subsequent to the mailing of such notice and on or before the special Record Date, any such notice of payment of defaulted interest shall be binding upon the transferee and a copy of the notice of payment of defaulted interest shall be delivered by the Trustee to the transferee along with the Bond or Bonds.

(g) Principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which, on the related Bond Payment Dates, is legal tender for the payment of public and private debts. Principal of and any premium on the Bonds shall be payable at the Designated Office of the Trustee upon surrender of the Bond or Bonds on or after the maturity date or earlier redemption date. Payment of interest on the Bonds shall be made by check or draft mailed to the registered address of the person entitled thereto, or upon the written direction of any Owner of not less than \$1,000,000 in aggregate principal amount of Bonds delivered to the Trustee at least 15 days prior to the Record Date, together with an acknowledgment that the applicable wire transfer fees will be deducted from the amount of the wire transfer (which direction shall remain effective for so long as such Owner owns not less than \$1,000,000 in Bonds or until such Owner countermands such written direction in writing), the payment of interest on the Bonds may be made by wire transfer of immediately available funds to an account located in a bank within the United States which bank is a member of the Federal Reserve System pursuant to wire transfer directions issued by such Owner.

(h) Any payment of principal due on any Bond which shall not be paid when due shall continue to bear interest at a rate equal to the rate of interest borne on such

Bond, from the date such payment is due until the payment is made, calculated based upon a 360-day year of twelve 30-day months. Any payment of interest due on any Bond which shall not be paid when due shall not accrue interest.

**Section 2.03. Mutilated, Destroyed, Lost and Stolen Bonds.** If (i) any mutilated Bond is surrendered to the Trustee, or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Bond, and (ii) there is delivered to the Trustee and the Issuer such security or indemnity as the Trustee reasonably may require to hold the Issuer and the Trustee harmless, then, in the absence of notice to the Trustee that such Bond has been acquired by a bona fide purchaser and upon the Owner paying the reasonable expenses of the Trustee and the Issuer and of any security or indemnity bond required by the Trustee, the Issuer shall cause to be executed (but need not prepare) and the Trustee shall authenticate and deliver, in exchange for such mutilated Bond or in lieu of such destroyed, lost or stolen Bond, a new Bond of like principal amount, date and tenor. If any such mutilated, destroyed, lost or stolen Bond has become, or will on or before the next Bond Payment Date become, due and payable, the Trustee may, in its discretion, pay such Bond when due instead of delivering a new Bond.

**Section 2.04. Execution and Authentication of Bonds.** All Bonds shall be executed for and on behalf of the Issuer by an Issuer Representative. The signature of such officer may be mechanically or photographically reproduced on the Bonds. If any officer of the Issuer whose signature appears on any Bond ceases to be such officer before delivery thereof, such signature shall remain valid and sufficient for all purposes as if such officer had remained in office until such delivery.

Each Bond shall be manually authenticated by an authorized representative of the Trustee, without which authentication no Bond shall be entitled to the benefits hereof.

The Trustee shall authenticate the Bonds for original issue and deliver them in accordance with a certificate of an Issuer Representative delivered to the Trustee requesting such authentication and delivery upon payment therefor and stating the amount to be paid therefor to the Trustee for the account of the Issuer.

**Section 2.05. Custody of Bonds; Registration; Transfer of Bonds.**

(a) The Trustee may hold the Bonds as custodian for the Owners so long as the Bonds are registered in the name of Cede & Co., as nominee of The Depository Trust Company under the provisions of Section 2.08 hereof.

(b) All Bonds issued hereunder shall be negotiable, subject to the provisions for registration and transfer thereof contained herein or in the Bonds.

(c) So long as any Bonds are Outstanding, the Trustee shall maintain at its offices books for the registration and transfer of Bonds, and shall provide for the registration and transfer of any Bond under such reasonable regulations as the Trustee may prescribe. The Trustee shall act as bond registrar for purposes of exchanging and registering Bonds in accordance with the provisions hereof.

(d) Each Bond shall be transferable only upon the registration books maintained by the Trustee, by the Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Owner or his duly authorized attorney. Upon surrender for transfer of any Bond, the Issuer shall cause to be executed (but need not prepare) and the Trustee shall authenticate and deliver, in the name of the transferee, one or more new Bonds of the same aggregate principal amount at maturity, as appropriate, and maturity as the surrendered Bond.

(e) Any Bond, upon surrender thereof to the Trustee together with written instructions satisfactory to the Trustee, duly executed by the registered Owner or his attorney duly authorized in writing, may, at the option of the registered Owner thereof, be exchanged for an equal aggregate principal amount at maturity, as appropriate, of Bonds with the same maturity of any other Authorized Denominations.

(f) All Bonds surrendered in any exchange or transfer of Bonds shall forthwith be canceled by the Trustee.

(g) In connection with any such exchange or transfer of Bonds, the Owner requesting such exchange or transfer shall as a condition precedent to the exercise of the privilege of making such exchange or transfer remit to the Trustee an amount sufficient to pay any tax or other governmental charge required to be paid with respect to such exchange or transfer; provided, however, that no such amount shall be payable by the Owner in the case of the issuance of any Bond or Bonds for the unredeemed portion of a Bond surrendered for redemption.

(h) The Trustee may but shall not be obligated to exchange or register the transfer of any Bond (i) which has been called or selected for call for redemption in whole or in part or (ii) during a period of 15 days preceding the selection of Bonds to be redeemed for the purpose of the giving of a notice of redemption. If the transfer of any Bond which has been called or selected for call for redemption in whole or in part is registered, any notice of redemption which has been given to the transferor shall be binding upon the transferee and a copy of the notice of redemption shall be delivered by the Trustee to the transferee along with the Bond or Bonds.

**Section 2.06. Persons Deemed Owners.** The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal, interest or any applicable premium on any Bond shall be made only to or upon the written order of the registered Owner thereof. Such payment shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the amount so paid.

**Section 2.07. Non-Presentation of Bonds.** In the event any Bond shall not be presented for payment when the principal thereof and premium, if any, becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if moneys sufficient to pay the principal of, premium, if any, and interest on, such Bond shall have been deposited hereunder for such payment, all liability to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold



such moneys as provided herein, without liability for interest thereon, for the benefit of the Owner of such Bond, who shall thereafter be restricted exclusively to such moneys, for any claim of whatever nature on his part under this Indenture or on, or with respect to, such Bond.

**Section 2.08. Book-Entry Only System.** The Bonds shall be initially issued in the form of one or more separate single fully registered Bonds in substantially the form included as Exhibit A hereto as required by Section 2.02 hereof. The Bonds may be registered in the bond register in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”), and except as hereinafter provided, all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC. None of the Issuer, the Trustee or the Borrower shall have any responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, none of the Issuer, the Trustee or the Borrower shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC participant with respect to any ownership interest in any Bond, (ii) the delivery to any DTC Participant or any other person other than an Owner, as shown on the bond register, of any notice with respect to any Bonds, including without limitation any notice of redemption with respect to any Bond, or (iii) the payment to any DTC Participant or any other person other than an Owner as shown in the bond register, of any amount with respect to principal of, premium, if any, or interest on any Bond. Notwithstanding any other provision of this Indenture to the contrary, the Issuer, the Trustee and the Borrower shall be entitled to treat and consider the person in whose name each Bond is registered in the bond register as an absolute owner of such Bond for the purpose of payment of principal, premium, if any, and interest with respect to such Bond, for the purpose of giving notices of redemption with respect to any Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of, premium, if any, and interest on any Bond only to or upon the order of the respective Owners, as shown in the bond register as provided in this Indenture, or their respective attorneys in fact duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the obligations with respect to payment of principal of, premium of, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than an Owner, as shown in the bond register, shall receive a bond certificate evidencing the obligation to make payments of principal, premium, if any, and interest pursuant to this Indenture.

The Owners have no right to a depository for the Bonds. The Issuer, acting at the direction of the Borrower, or the Borrower may remove DTC or any successor thereto for any reason at any time. In such event, either (i) the Issuer, acting at the direction of the Borrower, shall appoint a successor securities depository qualified to act as such under Section 17(i) of the Securities Exchange Act of 1934, as amended, notify DTC of the appointment of such successor Securities Depository and transfer one or more separate bond certificates to such successor securities depository or (ii) the Trustee shall notify DTC of the availability through DTC of bond certificates and transfer one or more separate bond certificates to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the bond register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names the DTC Participants receiving Bonds shall designate, in accordance with the provisions of this Indenture.

The Issuer and the Trustee may execute one or more Letters of Representations to DTC in connection with the issuance of the Bonds. So long as any Bonds are registered in the name of Cede & Co., as nominee of DTC all payments with respect to the principal or redemption price of and interest on such Bonds and all notices with respect to such Bonds shall be made and given to DTC as provided in the Letters of Representation. The Issuer and the Trustee may allow DTC, or its nominee, Cede & Co., to make a notation on any Bonds redeemed in part to reflect, for informational purposes only, the principal amount and date of any such redemption.

**Section 2.09. Authorization of Additional Bonds.** In addition to the Bonds above described, the Issuer may in its discretion issue Additional Bonds to provide funds for the acquisition, construction or equipping of additional facilities provided for under amendments to the Lease (a "Proposed New Facility") or to refund any Bonds Outstanding. Any such Additional Bonds shall be authorized by resolution of the Issuer and described in a supplemental indenture executed by the Issuer and the Trustee and which, when so issued, authorized and described, shall be secured by this Indenture and the Trust Estate on a parity with the Bonds then Outstanding under this Indenture; provided, that no such Additional Bonds shall be issued under the Indenture or secured by the Trust Estate on a parity with the Outstanding Bonds unless the following conditions are met:

(a) In the case of the issuance of Additional Bonds for a Proposed New Facility, there shall have been furnished to the Trustee an executed amendment to the Lease describing the terms and conditions of the acquisition, construction and/or equipping of the Proposed New Facility and the payment of rent therefor;

(b) In the case of the issuance of Additional Bonds for a Proposed New Facility, there shall have been furnished to the Trustee an Opinion of Counsel to the effect that the amendment to the Lease for the Proposed New Facility does not adversely affect the original terms of the Lease, the Facilities originally financed with the Bonds or the obligation of the Government of Guam to make payments under the Lease, in a form reasonably satisfactory to the Issuer;

(c) In the case of the issuance of Additional Bonds for a Proposed New Facility, there shall have been furnished to the Trustee a mortgage, which may be an amended and restated mortgage, granted by the Borrower to the Trustee, encumbering the real property upon which the Proposed New Facility will be located, such mortgage to continue to include the original Project Site, in a form reasonably satisfactory to the Issuer;

(d) In the case of the issuance of Additional Bonds for a Proposed New Facility, there shall have been furnished to the Trustee a title policy or appropriate endorsements to the existing Title Policy (as defined in the Loan Agreement) covering the Project Site and the real property to be acquired for the Proposed New Facility, which title policy is reasonably satisfactory to the Issuer;

(e) In the case of the issuance of Additional Bonds for a Proposed New Facility, there shall have been furnished to the Trustee an executed construction or

development contract for any construction for the Proposed New Facility, in a form reasonably satisfactory to the Issuer;

(f) There shall have been furnished to the Trustee an opinion of Bond Counsel to the effect that the issuance of the Additional Bonds will not adversely affect the exemption from federal income taxation of the interest on any Outstanding series of Bonds;

(g) There shall have been furnished to the Trustee a Certificate of the Issuer and the Borrower to the effect that the Loan Agreement is in effect and no “event of default” (as such term is defined in the Loan Agreement) exists thereunder which shall not be cured upon the issuance of the Additional Bonds;

(h) The Trustee shall not authenticate any such Additional Bonds until there is also delivered to the Trustee: (i) a resolution of the Issuer authorizing the issuance of the Additional Bonds, (ii) executed counterparts of a supplement to this Indenture describing the Additional Bonds, and (iii) executed counterparts of an amendment to the Loan Agreement establishing the amounts paid thereunder will be sufficient in time and amount to pay principal and interest on the Additional Bonds; and

(i) If the Additional Bonds are being issued to redeem Bonds, the Borrower shall provide Trustee evidence that the maximum amount of annual principal and interest requirements of the Bonds (after the issuance of such Additional Bonds) in the then current or any future fiscal year shall not increase as a result of the issuance of such Additional Bonds; and

(j) No Additional Bonds shall be issued if such issuance causes a downgrade or withdrawal of the then current rating on the Bonds, and until such Additional Bonds are assigned a rating equal to or superior to the then current rating on the Bonds, if the Bonds are then rated.

### ARTICLE III

#### REDEMPTION OF BONDS

**Section 3.01. Right to Redeem.** The Bonds shall be subject to redemption prior to maturity at such times, to the extent and in the manner provided herein.

**Section 3.02. Optional Redemption of Bonds.** The Bonds maturing on or after February 1, 2025 shall be subject to redemption prior to maturity at the option of the Borrower on or after February 1, 2024, in whole or in part at any time, at a redemption price of 100% of the principal amount of the Bonds being redeemed, plus interest accrued to the date fixed for redemption.

**Section 3.03. Mandatory Sinking Fund Redemption.** The Bonds maturing on February 1 of the following years are subject to mandatory redemption pursuant to mandatory sinking fund requirements, at a redemption price of 100 percent (100%) of the principal amount

redeemed plus interest accrued to the redemption date, in the following principal amounts in the years specified:

**Bonds Maturing February 1, 2024**

<b>Year (February 1)</b>	<b>Principal Amount</b>
2021	\$3,365,000
2022	\$3,490,000
2023	\$3,670,000
2024*	\$3,735,000

\* Maturity Date

**Bonds Maturing February 1, 2029**

<b>Year (February 1)</b>	<b>Principal Amount</b>
2025	\$3,925,000
2026	\$4,110,000
2027	\$4,265,000
2028	\$4,490,000
2029*	\$4,585,000

\* Maturity Date

**Bonds Maturing February 1, 2034**

<b>Year (February 1)</b>	<b>Principal Amount</b>
2030	\$4,820,000
2031	\$5,060,000
2032	\$5,265,000
2033	\$5,545,000
2034*	\$5,685,000

\* Maturity Date

**Bonds Maturing February 1, 2041**

<b>Year (February 1)</b>	<b>Principal Amount</b>
2019	\$3,040,000
2020	\$3,210,000
2035	\$5,995,000
2036	\$6,310,000
2037	\$6,590,000
2038	\$6,960,000
2039	\$2,420,000
2040	\$2,555,000
2041*	\$2,050,000

\* Maturity Date

Whenever Bonds are purchased, redeemed (other than pursuant to this Section) or are delivered by the Issuer or the Borrower to the Trustee for cancellation at least 30 days preceding the applicable mandatory sinking fund redemption date, a credit shall be given against the unsatisfied balance of the mandatory sinking fund redemption requirement with respect to the sinking fund redemption dates specified by the Borrower. The amount of such credit shall be the principal amount of the Bonds so purchased or redeemed.

**Section 3.04. [RESERVED].**

**Section 3.05. Extraordinary Mandatory Redemption Upon Damage, Destruction or Condemnation.** The Bonds are subject to extraordinary mandatory redemption prior to maturity in whole or in part at any time in the event of damage, destruction or condemnation (or conveyance in lieu of condemnation) of all or any part of the Facilities, and the Borrower has determined that net proceeds of hazard insurance or any award received as a result of such condemnation (or conveyance in lieu thereof) are insufficient to repair, rebuild, restore, or re-equip the Facilities to substantially the same condition thereof as existed prior to the event causing such damage, destruction or condemnation, such redemption to be made with the net proceeds of hazard insurance or any award received as a result of such condemnation (or conveyance in lieu thereof). Any extraordinary mandatory redemption of the Bonds under these circumstances will be at a redemption price equal to 100% of the principal amount of Bonds being redeemed, plus interest accrued to the date fixed for redemption.

**Section 3.06. [RESERVED].**

**Section 3.07. Selection of Bonds to be Redeemed.** If less than all of the Bonds of a maturity are to be redeemed, then the particular Bonds or portions thereof to be redeemed will be selected by the Trustee in such random selection manner as the Trustee deems appropriate; provided that the portion of any Bond to be redeemed and the portion not to be redeemed each is required to be in an Authorized Denomination.

**Section 3.08. Partial Redemption of Bonds.** Upon the selection and call for redemption of, and the surrender of, any Bond for redemption in part only, the Issuer shall cause to be executed (but need not prepare) and the Trustee shall authenticate and deliver to or upon the written order of the Owner thereof, at the expense of the Borrower, a new Bond or Bonds of Authorized Denominations in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered.

**Section 3.09. Effect of Call for Redemption.** On the date designated for redemption by notice given as herein provided, the Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds on such date. If on the date fixed for redemption moneys sufficient for payment of the redemption price and accrued interest are held by the Trustee as provided herein, interest on the Bonds so called for redemption shall cease to accrue, such Bonds shall cease to be entitled to any benefit or security hereunder except the right to receive payment from the moneys held by the Trustee and the amount of such Bonds so called for redemption shall be deemed paid and no longer Outstanding.

**Section 3.10. Notice of Redemption.**

(a) In case of optional redemption of the Bonds, the Borrower shall, at least 30 days prior to the redemption date, deliver a written request to the Issuer and the Trustee (unless a shorter notice shall be satisfactory to the Issuer and Trustee) notifying the Issuer and the Trustee of such redemption date and of the principal amount of the Bonds to be redeemed and shall, on or before the redemption date, deliver to the Trustee sufficient funds to pay the redemption price of all Bonds subject to redemption.

(b) Notice of any redemption (other than mandatory sinking fund redemption) is required to be given at least 20 days and not more than 60 days prior to the date fixed for redemption by first-class mail to the Owners of the Bonds to be redeemed. However, the failure to give a notice of redemption or a defect in it does not affect (i) the validity of any proceedings for the redemption of a Bond if the Owner of such Bond receives actual notice of the redemption from any source or (ii) the validity of the proceedings for the redemption of any Bonds for which proper notice was given. If any Bonds have been called for redemption but have not yet been presented to the Trustee for payment within 60 days after the date set for redemption, the Trustee is required to send to the Owners of those Bonds a second notice of redemption, within 75 days of the date set for redemption. So long as DTC is acting as securities depository for the Bonds in accordance with Section 2.08 hereof, notice of any redemption of the Bonds shall be sent by the Trustee only to Cede & Co. Information also will be sent in such manner as the Trustee deems appropriate to the registered securities depositories and national information services that disseminate redemption notices that the Trustee determines to be customary or appropriate.

(c) If at the time of mailing of any notice of redemption pursuant to Section 3.02 or 3.05, there shall not have been deposited with the Trustee moneys sufficient to redeem all the Bonds called for redemption, such notice may (if requested by the Borrower) state that it is subject to the deposit of the redemption monies with the Trustee

not later than the opening of business on the redemption date and will be of no effect unless such moneys are so deposited.

**Section 3.11. Form of Bonds.** The definitive Bonds shall be in substantially the form set forth in Exhibit A with such necessary and appropriate omissions, insertions and variations as are permitted or required hereby and are approved by the Issuer Representative executing such Bonds on behalf of the Issuer and execution thereof by the Issuer Representative shall constitute conclusive evidence of such approval.

**Section 3.12. Temporary Bonds.**

(a) Until definitive Bonds are prepared, the Issuer may execute (but need not prepare) and, upon request by the Issuer, the Trustee shall authenticate and deliver temporary Bonds which may be typewritten, printed or otherwise reproduced in lieu of definitive Bonds subject to the same provisions, limitations and conditions as definitive Bonds. The temporary Bonds shall be substantially of the tenor of the definitive Bonds, but with such omissions, insertions and variations as the Issuer Representative(s) executing the same may determine.

(b) Without unreasonable delay after the issuance of temporary Bonds, if any, the Issuer shall execute (but need not prepare) and deliver definitive Bonds to the Trustee. Any temporary Bonds issued shall be exchangeable for definitive Bonds upon surrender to the Trustee at its principal corporate trust office (or such other location as may be designated by it) of any such temporary Bond or Bonds, and, upon such surrender, the Issuer shall execute and the Trustee shall authenticate and deliver to the Owner of the temporary Bond or Bonds, in exchange therefor, a like principal amount of definitive Bonds in Authorized Denominations. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefits as definitive Bonds authenticated and issued pursuant hereto.

(c) All temporary Bonds surrendered in exchange for a definitive Bond or Bonds shall forthwith be canceled by the Trustee.

**ARTICLE IV**

**REVENUES AND FUNDS**

**Section 4.01. Creation of Funds and Accounts.** Upon the issuance of the Bonds, the Trustee shall create the following funds and accounts to be held in trust for the Owners:

(a) The Cost of Issuance Fund;

(b) The Revenue Fund, which shall consist of the Base Rent Account and the Additional Rent Account;

(c) The Expense Fund, which shall consist of the Trustee Fee Account, the Issuer Fee Account and the GEDA Fee Account;

(d) The Bond Fund, which shall consist of (i) the Principal Account, (ii) the Interest Account, (iii) the Capitalized Interest Account, and (iv) the Redemption Account;

(e) The Project Fund;

(f) The Management Fee Fund;

(g) The Capitalized Rent Fund; and

(h) The Surplus Fund

**Section 4.02. Application of Bond Proceeds and Other Moneys.**

(a) The Trustee shall receive at the time of issuance of the Bonds \$104,799,350.00 consisting of the proceeds of the sale of the Bonds of \$107,405,000, minus original issue discount of \$1,531,600.00, less Underwriter's discount of \$1,074,050.00. The Trustee shall also receive \$3,049,161.98 from the Developer for deposit in the Capitalized Rent Fund.

(b) The amounts received by the Trustee as described in (a) shall be deposited by the Trustee as follows:

(i) to the Capitalized Interest Account of the Bond Fund, \$3,371,052.55;

(ii) to the Cost of Issuance Fund, \$892,389,000.00;

(iii) to the Project Fund, \$100,535,908.45; and

(iv) to the Capitalized Rent Fund, \$3,049,161.98.

**Section 4.03. Cost of Issuance Fund.** A deposit to the credit of the Cost of Issuance Fund shall be made as required by the provisions of Section 4.02 hereof. Moneys on deposit in the Cost of Issuance Fund shall be applied to pay the costs of issuing the Bonds, including, without limitation, all printing expenses in connection with this Indenture, the Loan Agreement, the Bonds and the preliminary official statement and official statement pertaining to the Bonds; Rating Agency fees; legal fees; the initial Issuer Fees and Expenses; the initial Trustee Fees and Expenses; and all other fees and expenses incurred in connection with the issuance of the Bonds. The costs described above shall be payable upon submission to the Trustee of a Written Request from the Borrower in the form of Exhibit D hereto. Any moneys remaining in the Cost of Issuance Fund on the earlier of August 1, 2015, or such date as the Borrower notifies the Trustee that all costs of issuance of the Bonds have been paid, shall be transferred to the Project Fund and the Costs of Issuance Fund shall be closed by the Trustee.

**Section 4.04. Revenue Fund.** There shall be deposited in the Revenue Fund as and when received, all moneys paid by the Government of Guam as Base Rent and Additional Rent under the Lease (as assigned to the Borrower pursuant to the Assignment of Lease), any amounts required to be deposited by the Borrower pursuant to Section 4.01 of the Loan Agreement, any



earnings on amounts held in the Revenue Fund and all other moneys deposited into the Revenue Fund pursuant to the Loan Agreement or this Indenture. Moneys received by the Trustee shall be disbursed as follows:

(a) FIRST, to the Base Rent Account, amounts sufficient to pay, in the following order of priority:

(i) on each February 1 commencing February 1, 2016 for deposit in the Interest Account of the Bond Fund an amount (after taking into consideration earnings on the Interest Account) equal to the amount of the interest due on the Bonds such date and the next succeeding Bond Payment Date, plus any overdue amounts of interest which have not otherwise been credited to the Interest Account of the Bond Fund pursuant of this paragraph;

(ii) on each February 1, commencing February 1, 2016, for deposit in the Principal Account of the Bond Fund an amount equal to the principal due on the Bonds such date, plus any overdue amounts of principal on the Bonds which have not otherwise been credited to the Principal Account of the Bond Fund pursuant to this paragraph; and

(iii) to the extent amounts remain in the Base Rent Account of the Revenue Fund after items (i) and (ii) above are satisfied, to the Additional Rent Account.

(b) SECOND, to the Additional Rent Account, amounts sufficient to pay, in the following order of priority:

(i) on February 1 of each year, commencing February 1, 2016, (i) to the Trustee Fee Account of the Expense Fund an amount equal to the Trustee Fees and Expenses due for such year, (ii) to the Issuer Fee Account of the Expense Fund, an amount equal to the Issuer Fees and Expenses due for such year, (iii) to the GEDA Fee Account, an amount equal to amount set forth in the schedule attached hereto as Exhibit E, plus (iv) any amount previously due under this paragraph that remains unpaid;

(ii) on the last Business Day of every Rebate Year and continuing until the full amount is paid, to the Rebate Fund, any amount as calculated by the Arbitrage Rebate Consultant, required of the Borrower to be deposited in the Rebate Fund;

(iii) On February 1 of each year, commencing February 1, 2016, to the Management Fee Fund an amount equal to the Management Fee; and

(iv) to the extent amounts remain in the Additional Rent Account of the Revenue Fund after items (i) through (iii) above are satisfied, to the Surplus Fund.

**Section 4.05. Expense Fund.** There shall be deposited into the Expense Fund as and when received (i) all moneys transmitted from the Revenue Fund to the Expense Fund pursuant

to Section 4.04 hereof, (ii) all other moneys required to be deposited therein pursuant to the Loan Agreement or this Indenture, and (ii) all other moneys received by the Trustee when accompanied by a direction from the Borrower Representative not inconsistent with the Loan Agreement or this Indenture that such moneys are to be paid into the Expense Fund.

(a) The Trustee shall withdraw sufficient funds and pay to the Trustee: (i) on the Closing Date, \$8,500.00 for Trustee's Fees and Expenses through February 1, 2016, and (ii) commencing February 1, 2016 and each year thereafter, the Trustee's Fees and Expenses and any amounts due the Trustee under Section 4.04 of the Loan Agreement.

(b) The Trustee shall withdraw sufficient funds and pay to the Issuer: (i) on the Closing Date, \$44,139.00 for the Issuer's Administration Fee through January 1, 2016, and (ii) on each February 1, commencing February 1, 2016, the Issuer's Fees and Expenses and any amounts due the Issuer under Section 4.04 of the Loan Agreement. The Issuer shall provide a written statement or invoice to the Trustee of the amounts owed to the Issuer under subsections (ii) and (iii) of the definition of Issuer Fees and Expenses, and any Late Fees incurred with respect to any Issuer Fees and Expenses, however the Issuer's Administration Fee shall be paid by the Trustee without demand.

(c) The Trustee shall withdraw sufficient funds and pay to GEDA on each February 1, commencing February 1, 2016, the amounts set forth on Exhibit E hereto.

**Section 4.06. Bond Fund; Application of Loan Agreement Payments.** So long as any Bonds are Outstanding, payments received by the Trustee from or for the Borrower under the Loan Agreement shall be applied in the following manner and order of priority:

(a) **Interest Account.** The Trustee shall deposit to the Interest Account as required by Section 4.04(a) hereof, the amount which, together with amounts then on deposit in the Interest Account, is equal to the amount of interest payable on the Bonds on the next two succeeding Bond Payment Dates. Moneys in the Interest Account shall be used to pay interest on the Bonds as it becomes due.

(b) **Principal Account.** The Trustee shall deposit to the Principal Account as required by Section 4.04(a) hereof, the amount which, together with the amount then on deposit in the Principal Account, is equal to the principal payable on the Bonds on the next Bond Payment Date, including mandatory sinking fund payments. Moneys in the Principal Account shall be used to retire Bonds by payment at their scheduled maturity and to pay mandatory sinking fund redemption requirements for Bonds on mandatory sinking fund redemption dates.

(c) **Capitalized Interest Account.** A deposit to the credit of the Capitalized Interest Account of the Bond Fund shall be made as required by the provisions of Section 4.02 hereof. Moneys in the Capitalized Interest Account shall be used to pay interest on the Bonds through August 1, 2015.

(d) **Redemption Account.** If the Bonds are to be redeemed pursuant to Sections 3.02 or 3.05, upon receipt by the Trustee of moneys accompanied by a certificate of a Borrower Representative stating that such moneys are to be applied to

redeem Bonds in accordance with Section 3.02 or 3.05 hereof, such moneys shall be credited to the Redemption Account and applied promptly by the Trustee to retire Bonds by purchase, redemption or both purchase and redemption in accordance with the Borrower's directions. Any such purchase shall be made at the best price obtainable with reasonable diligence and no Bond shall be so purchased at a cost or price (including brokerage fees or commissions or other charges) which exceeds the redemption price at which such Bond could be redeemed on the date of purchase or on the next succeeding date upon which such Bond is subject to redemption plus accrued interest to the date of purchase. Any such redemption shall be of Bonds then subject to redemption at the redemption price then applicable for redemption of such Bonds.

The principal amount of any Bonds so purchased or redeemed shall satisfy and be credited against the unsatisfied balance of mandatory sinking fund redemption requirements for Bonds in the order determined by the Borrower and delivered in writing to the Trustee.

Any balance remaining in the Redemption Account after the purchase or redemption of Bonds in accordance with the Borrower's directions shall be transferred to the Interest Account of the Bond Fund.

(e) Upon the refunding or providing for payment of less than all Bonds so that the Bonds refunded or provided for are no longer outstanding, amounts in the Bond Fund which would have been applied to payments on the Bonds refunded or provided for shall, upon the Borrower's written directions, be released for application in accordance with directions provided pursuant to the immediately preceding paragraph.

#### **Section 4.07. Project Fund.**

(a) An initial deposit to the credit of the Project Fund shall be made pursuant to Section 4.02 hereof. Such moneys, together with, all other moneys received by the Trustee when accompanied by written direction from a Borrower Representative stating that such deposit into the Project Fund is not inconsistent with the Loan Agreement or this Indenture shall be held in the Project Fund and disbursed as hereinafter provided.

(b) Moneys in the Project Fund shall be paid out to or upon the order of the Borrower to pay, or to reimburse the Borrower for the prior payment of, the costs of the Facilities (including any expense of planning, financing or other services constituting a cost of the Facilities), in each case only upon receipt by the Trustee of the Written Request of a Borrower Representative substantially in the form of Exhibit B.

(c) For the purposes of this Indenture and the Loan Agreement, the costs of the Facilities shall include the costs of acquiring, constructing, equipping, furnishing, developing, financing, renovating, remodeling, improving and equipping the Facilities, and shall include, without intending to limit or restrict any proper definition of costs within the meaning of the Act, (1) obligations incurred for labor, materials and services and to contractors, builders and others in connection with the acquisition, construction and installation of the Facilities, for machinery, equipment and furnishings, for utilities

including lines and connections, for landscaping, for the restoration or relocation of any property damaged or destroyed in connection with construction and installation, for the removal or relocation of any structures and for the clearing of lands, (2) the cost of acquiring lands, property, rights, rights of way, easements, franchises and other interests including options and partial payments, the cost of demolishing or removing any buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved and any damages incident to or consequent upon the acquisition, construction and installation of the Facilities, (3) the reasonable fees and expenses of the Trustee and others for services relating to the Facilities and the financing of the Facilities prior to and during the construction, including insurance premiums, (4) the cost of borings and other preliminary investigations to determine foundation or other conditions, expenses necessary or incident to determining the feasibility or practicability of constructing and installing the Facilities and fees and expenses of engineers, architects and management and other consultants, construction managers or project supervisors, (5) legal expenses and fees, and all of the items of expense not specified elsewhere in this paragraph and incident to the acquisition, construction, remodeling, furnishing and equipping of the Facilities, the financing thereof and the acquisition of lands, property, rights, rights of way, easements, franchises, and expenses of administration properly chargeable to the acquisition, construction, remodeling, furnishing and equipping of the Facilities, (6) any obligation or expense hereafter incurred or paid by or on behalf of the Borrower for any of the foregoing purposes, and (7) any other costs which may, pursuant to the Act, be paid from the Project Fund.

(d) Notwithstanding the foregoing, until such time as the Trustee shall receive a certificate of a Borrower Representative to the effect that all permits, licenses and zoning approvals have been obtained in order to commence construction of the Facilities, amounts may be disbursed from the Project Fund upon receipt of a Written Request in the form of Exhibit B of a Borrower Representative only for the following purposes: (1) payment or reimbursement to the Lessor for costs incurred for the design of the Facilities, (2) payment or reimbursement to the Lessor of expenses incurred prior to construction, including services relating to the Facilities, and (3) any amounts due to the Issuer, and (4) Costs of Issuance not otherwise paid from the Cost of Issuance Fund.

(e) On the date on which the Trustee receives a certificate of a Borrower Representative to the effect that the Facilities have been completed and the Trustee has paid all Written Requests theretofore tendered to the Trustee under the provisions of this Section, any balance of moneys in the Project Fund shall be withdrawn by the Trustee from the Project Fund and deposited into the Bond Fund or applied to other purposes if an opinion of Bond Counsel is delivered to the Trustee to the effect that the application of such moneys to other purposes will not have an adverse effect on the validity or enforceability of the Bonds or the exclusion from gross income of the interest on any such Bond for federal income tax purposes and the Trustee shall close the Project Fund.

#### **Section 4.08. Capitalized Rent Fund.**

(a) A deposit to the credit of the Capitalized Rent Fund shall be made as required by the provisions of Section 4.02 hereof.

(b) Amounts on deposit in the Capitalized Rent Fund shall be used to pay principal, if any, and interest on the Bonds from and including February 1, 2016 through August 1, 2017 if sufficient Base Rent therefore has not been paid by the Government of Guam under the Lease. Amounts on deposit in the Capitalized Rent Fund shall be disbursed as follows:

(i) If, on or before February 1, 2016, the Trustee holds sufficient amounts in the Base Rent Account of the Revenue Fund to make the February 1, 2016 and August 1, 2016 payments of principal of and interest on the Bonds, and has received a certificate from the Developer that all components of the Facilities scheduled to be complete on or before such date have achieved "substantial completion" (as defined in the Lease), the Trustee shall release \$704,648.27 to the Developer.

(ii) If on or before February 1, 2017, the Trustee holds sufficient amounts in Base Rent Account of the Revenue Fund to make the February 1, 2017 and August 1, 2017 payments of principal of and interest on the Bonds, and has received a certificate from the Developer that all components of the Facilities scheduled to be complete on or before such date have achieved "substantial completion" (as defined in the Lease), the Trustee shall release any amounts remaining in the Capitalized Rent Fund to the Developer.

(c) Any amounts remaining in the Capitalized Rent Fund on August 2, 2017 shall be released to the Developer.

#### **Section 4.09. The Management Fee Fund.**

(a) There shall be deposited into the Management Fee Fund as and when received (i) all moneys transmitted from the Revenue Fund to the Management Fee Fund pursuant to Section 4.04 hereof, (ii) all other moneys required to be deposited therein pursuant to the Loan Agreement, the Management Agreement or this Indenture, and (iii) all other moneys received by the Trustee when accompanied by a direction from a Borrower Representative not inconsistent with the Loan Agreement or this Indenture that such moneys are to be paid into the Management Fee Fund.

(b) Moneys on deposit in the Management Fee Fund shall be paid out upon the written order of the Borrower or the Manager to pay, or to reimburse the Borrower or the Manager for the payment of the Management Fee, in each case only upon receipt by the Trustee of a Written Request substantially in the form of Exhibit C hereto.

#### **Section 4.10. Surplus Fund.**

(a) There shall be deposited as and when received all moneys transmitted from the Revenue Fund to the Surplus Fund pursuant to Section 4.04 hereof.

(b) Moneys on deposit in the Surplus Fund shall remain on deposit therein subject to the lien of this Indenture until such time as the Bonds are no longer Outstanding. Amounts on deposit in the Surplus Fund shall be used to (i) first, restore a current deficiency in any of the Project Fund, the Bond Fund, the Expense Fund, the Rebate Fund and the Management Fee Fund; and (ii) second, when not required for the purposes described in clause (i), may be used for any of the following purposes: (A) to pay for repairs or for the construction and installation of improvements or additions to the Facilities including equipment therefor, or (B) to pay mechanics, laborers, materialmen, suppliers or vendors amounts which were contested in accordance with the Development Agreement or the Lease.

(c) Upon payment in full of the Bonds or discharge of the lien of this Indenture in accordance with Article X hereof, and payment of all amounts due to the Trustee and the Issuer, amounts in the Surplus Fund shall be released to the Borrower.

(d) Interest earned on investment of moneys in the Surplus Fund shall remain therein until paid out in accordance with this Section.

#### **Section 4.11. Investment of Moneys Held by the Trustee.**

(a) Moneys in all funds and accounts held by the Trustee shall be invested by the Trustee, as soon as possible upon receipt of immediately available funds at its designated corporate trust office, to the fullest extent possible in Permitted Investments as directed, in writing, by a Borrower Representative, or in the absence of direction by the Borrower in a money market mutual fund, including a proprietary money market mutual fund meeting subsection (d) of the definition of Permitted Investments herein.

(b) Amounts credited to a fund or account may be invested, together with amounts credited to one or more other funds or accounts, in the same Permitted Investment, provided that the Trustee maintains separate records for each fund and account and such investments are accurately reflected therein.

(c) The Trustee may purchase or sell securities herein authorized through itself or a related subsidiary as principal or agent.

(d) The Trustee may liquidate, or present for redemption, any Permitted Investment purchased by it as an investment whenever it shall be necessary in order to provide moneys to meet any payment or transfer from the fund or account for which such investment was made.

(e) The Issuer and the Borrower acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the right to receive brokerage confirmations of security transaction as they occur, the Issuer and the

Borrower specifically waive receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Issuer and the Borrower periodic cash transaction statements which shall include detail for all investment transactions made by the Trustee hereunder.

**Section 4.12. Liability of Trustee for Investments.** The Trustee shall not be liable for any loss resulting from the making of any investment made in accordance with the provisions hereof, except for its own gross negligence, willful misconduct or breach of trust.

**Section 4.13. Investment Income.** Except as otherwise provided herein, interest income and gain received, or loss realized, from investments or moneys in any fund or account shall be credited, or charged, as the case may be to such respective fund or account. Income and gain from Redemption Account investments may be transferred to any other fund or account upon written direction of the Borrower. Investment income and gain credited to the Revenue Fund and the Interest Account and available therein for payments on the Bonds, shall be a credit against amounts required to be deposited in the Interest Account or the Principal Account for the next forthcoming payment of the Bonds on the Bond Payment Date.

**Section 4.14. Repayment to the Borrower from Amounts Remaining in Bond Fund.** Any amounts remaining in the Bond Fund (i) after all of the Outstanding Bonds shall be deemed paid and discharged under the provisions of this Indenture, and (ii) after payment of all fees, charges and expenses of the Trustee, the Issuer and any paying agents and of all other amounts required to be paid under this Indenture and the Loan Agreement, including any amounts payable to the United States of America under the Tax Certificate and Section 5.06 hereof, shall be paid to the Borrower to the extent that those amounts are in excess of those necessary to effect the payment and discharge of the Outstanding Bonds.

**Section 4.15. Disposition of Unclaimed Funds.** Notwithstanding any provisions of this Indenture, and subject to applicable unclaimed property laws, any money deposited with the Trustee or any paying agent in trust for the payment of principal of, premium of or interest on the Bonds remaining unclaimed for four years after the principal of all Bonds has become due and payable (whether at maturity, by redemption or otherwise as provided in this Indenture): (a) shall be reported and disposed of by the Trustee in accordance with the unclaimed property laws of the State, to the extent that such provisions are applicable to such moneys, or (b) to the extent that such provisions are not applicable to such moneys, shall be paid to the State, whereupon all liability of the Issuer and the Trustee with respect to such money shall cease, and the Owners of the Bonds shall thereafter look solely to the State for payment of any amounts then due. All moneys held by the Trustee or any paying agent and subject to this Section shall be held uninvested and without liability for interest thereon.

**Section 4.16. Additional Funds and Accounts.** In addition to the funds and accounts specifically authorized under this Article, the Trustee shall have the authority to create and maintain such other funds and accounts as it may deem necessary for proper administration hereunder.

## ARTICLE V

### CERTAIN COVENANTS; LIMITATION OF LIABILITY

**Section 5.01. Payment of Principal and Interest.** Subject to the limited sources of payment specified herein, the Issuer covenants that it will promptly cause to be paid amounts due on the Bonds at the place, on the dates and in the manner provided herein and in said Bonds according to the terms thereof. The amounts due on the Bonds are payable solely from moneys held by the Trustee hereunder, all of which are hereby specifically assigned and pledged to such payment in the manner and to the extent specified herein and nothing herein or in the Bonds shall be construed as assigning or pledging any other funds or assets of the Issuer.

**Section 5.02. Performance of Covenants.** The Issuer shall have no liability or obligation with respect to the payment of the purchase price of the Bonds. None of the provisions of this Indenture shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless payable from the revenues pledged hereunder, or the Issuer shall first have been adequately indemnified to its satisfaction against the cost, expense, and liability which may be incurred thereby. The Issuer shall not be under any obligation hereunder to perform any record keeping or to provide any legal services, it being understood that such services shall be performed or provided by the Borrower. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions expressly contained in this Indenture, in any and every Bond executed, authenticated, and delivered hereunder, in the Loan Agreement and in all of its proceedings pertaining thereto; provided, however, that (a) the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Borrower or the Trustee, and (b) the Issuer shall have received the instrument to be executed, and, at the Issuer's option, shall have received assurance satisfactory to the Issuer that the Issuer shall be reimbursed for its reasonable expenses incurred or to be incurred in connection with taking such action or executing such instrument.

**Section 5.03. Instruments of Further Assurance.** The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered by the parties within its control, such instruments supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, mortgaging, conveying, pledging, assigning and confirming unto the Trustee the Issuer's interest in and to the payments under the Loan Agreement and all other interests, revenues and receipts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds in the manner and to the extent contemplated herein. The Issuer shall be under no obligation to prepare, record or file any such instruments or transfers.

**Section 5.04. Rights Under Loan Agreement.** The Issuer agrees that the Trustee in its own name or in the name of the Issuer upon notice to the Issuer may enforce all rights of the Issuer and all obligations of the Borrower (except with respect to the Issuer Unassigned Rights) under the Loan Agreement, for and on behalf of the Owners, whether or not the Issuer has undertaken to enforce such rights and obligations.



**Section 5.05. Protection of Lien.** The Issuer hereby agrees not to make or create or to agree to permit to be made or created any assignment or lien on a parity with or having priority or preference over the assignment and lien hereof upon the interests granted hereby or any part thereof except as otherwise specifically provided herein. The Issuer agrees that no obligation the payment of which is secured by property or revenues pledged hereunder will be issued by it except in lieu of, or upon transfer of registration or exchange of, any Bond as provided herein.

**Section 5.06. Arbitrage; Compliance with Tax Certificate.**

(a) The Issuer covenants and agrees not to take any action or fail to take any action with respect to the investment of moneys under this Indenture which action, or failure to act, is inconsistent with the provisions of this Indenture and which would result in the Bonds becoming arbitrage bonds within the meaning of Section 148 of the Code. The Issuer further covenants and agrees to comply with and take all actions required of it by the Tax Certificate and to continue to do so as specified in the Tax Certificate notwithstanding any satisfaction or discharge of this Indenture.

(b) The Trustee shall create and establish a special trust fund in the name of the Issuer to be designated the "Rebate Fund," which shall be continuously invested, expended, and accounted for in accordance with the Code and the Tax Certificate; provided, however, that the Rebate Fund need not be established until such time as the Trustee is directed to make deposits therein; and provided further that the Rebate Fund need not be maintained if and to the extent that the Issuer, the Trustee and the Borrower receive an opinion of Bond Counsel to the effect that the failure to maintain the Rebate Fund will not adversely affect the exclusion of interest on the Bonds from the gross income of the Owners thereof for purposes of federal income taxation. Moneys in the Rebate Fund shall not be considered moneys held under the Indenture and shall not constitute a part of the Trust Estate held for the benefit of the Owners, the Issuer or the Borrower.

(c) Within 60 days after each "computation date" (within the meaning of the regulations under Section 148(f) of the Code), the Borrower, in reliance upon a report of an Arbitrage Rebate Consultant, shall provide the Issuer with a certificate stating that all necessary actions have been taken as required by this Indenture and the Tax Certificate, in order to ensure that all necessary actions have been taken, including, but not limited to, the required annual arbitrage rebate calculations and transfer of money to the Rebate Fund, and payment of arbitrage rebate in accordance with Section 148(f) of the Code.

(d) If at any time when the Trustee is required to retain or pay the Arbitrage Rebate Consultant, the Trustee, after delivering to the Borrower a demand for payment of an amount sufficient to pay the Arbitrage Rebate Consultant, shall withdraw, from any funds established hereunder, such amount as may be needed to pay for the fees and expenses of the Arbitrage Rebate Consultant. If at any time when the Trustee is directed to withdraw money from the Rebate Fund and to pay to the United States of America the amount so withdrawn as Rebate, the amount held by the Trustee to the credit of the Rebate Fund is insufficient to permit such withdrawal and payment, the Trustee, after delivering a demand for such deficiency to the Borrower, shall withdraw, from any funds

established hereunder, such amounts as may be needed to make the amount held for the credit of the Rebate Fund, after such transfers, equal to the amount required to be withdrawn and paid to the United States of America and transfer the amounts so withdrawn in each case to the Rebate Fund. This Section shall supersede all other Sections of this Indenture, to the end that the exclusion from gross income for the purposes of federal income taxation of interest on the Bonds shall not be adversely affected as a result of the inadequacy at any time of the Rebate Fund, unless the total amount held by the Trustee under all funds established hereunder is insufficient, and no money for such purpose is provided by the Borrower.

**Section 5.07. Limitation of Liability.**

(a) **Reliance by the Issuer on Facts or Certificates.** Anything in this Indenture to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice, or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer.

(b) **Immunity of Issuer's Directors, Officers, Counsel, Review Advisors, and Agents.** No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in this Indenture, any other Issuer Documents, or in any Bond or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Facilities or the issuance and sale of the Bonds, against any of the Issuer Indemnified Parties, whether by virtue of any Constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any of the Issuer Indemnified Parties, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into by the Issuer with the Borrower or the Trustee, or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against each and every Issuer Indemnified Party is, by the execution of the Bonds, this Indenture, and the other Issuer Documents, and as a condition of, and as part of the consideration for, the execution of the Bonds, this Indenture, and the other Issuer Documents, is expressly waived and released.

(c) **No Pecuniary Liability of the Issuer.** No agreements or provisions contained herein, nor any agreement, covenant, or undertaking by the Issuer in connection with the Facilities or the issuance, sale, and/or delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way, except as may be payable from the revenues pledged hereby for the payment of the Bonds and their application as provided in this Indenture. No failure of the Issuer to comply with any term, covenant, or agreement contained in the Bonds, this Indenture or the Loan Agreement, or in any document executed by the Issuer in connection with the Facilities or the issuance and sale of the Bonds, shall subject the Issuer to liability for any claim for damages, costs, or other

financial or pecuniary charge, except to the extent the same can be paid from revenues derived under the Loan Agreement. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant, or agreement herein; provided that no costs, expenses, or other monetary relief shall be recoverable from the Issuer, except as may be payable from the revenues pledged under this Indenture for the payment of the Bonds or other revenue derived under the Loan Agreement. No provision, covenant, or agreement contained herein, or any obligations imposed upon the Issuer, or the breach thereof, shall constitute an indebtedness of the Issuer within the meaning of any State constitutional or statutory limitation or shall constitute or give rise to a charge against the Issuer's general credit. In making the agreements, provisions, and covenants set forth in this Indenture, the Issuer has not obligated itself, except with respect to the application of the revenues pledged in this Indenture for the payment of the Bonds or other revenues derived under the Loan Agreement.

(d) **Borrower's Obligations Non-Recourse.** The obligations of the Borrower to make payments, and to perform and observe all agreements on its part pursuant to the Loan Agreement shall be limited to the extent of payments of Base Rent and Additional Rent, the Trust Estate, other funds derived under this Indenture and insurance policies.

## ARTICLE VI

### DEFAULT AND REMEDIES

**Section 6.01. Events of Default.** Each of the following is hereby declared an "Event of Default" hereunder:

(a) If payment of any installment of interest on any Bond shall not be made in full when the same becomes due and payable;

(b) If payment of the principal or redemption premium, if any, on any Bond shall not be made in full when the same becomes due and payable, whether at maturity or by proceedings for redemption or otherwise;

(c) If, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of all or any part of the interests pledged hereunder and such custody or control shall continue for more than 60 days; or

(d) Any "Event of Default" under the Loan Agreement or the Mortgage.

**Section 6.02. [RESERVED].**

**Section 6.03. [RESERVED].**

**Section 6.04. Rights of the Trustee.** The Trustee, as pledgee and assignee of certain of the rights, title and interests of the Issuer in and to the Loan Agreement, shall, upon compliance

with applicable requirements of law and except as otherwise set forth in this Article, be, vis-a-vis the Issuer, the real party in interest with standing to enforce each and every right granted to the Issuer under the Loan Agreement which has been assigned to the Trustee by this Indenture. The Issuer and the Trustee hereby agree, without in any way limiting the effect and scope thereof, that the assignment hereunder to the Trustee of certain rights of the Issuer under the Loan Agreement shall constitute an agency appointment coupled with an interest on the part of the Trustee which, for all purposes of this Indenture, shall be irrevocable and shall survive and continue in full force and effect notwithstanding the bankruptcy or insolvency of the Issuer or its default hereunder or on the Bonds. In exercising such rights and the rights given the Trustee under this Article, the Trustee shall take such action as, in the judgment of the Trustee, would best serve the interests of the Owners.

**Section 6.05. Remedies and Enforcement of Remedies.**

(a) Upon the occurrence and continuance of any Event of Default, the Trustee may, and upon written request of the Owners of not less than a majority in principal amount of the Outstanding Bonds, together with indemnification of the Trustee to its satisfaction therefor, shall, proceed forthwith to protect and enforce its rights and the rights of the Owners hereunder and under the Act and the Bonds by such suits, actions or proceedings as the Trustee, being advised by counsel, shall deem expedient, including but not limited to:

- (i) Civil action to recover money or damages due and owing;
- (ii) Civil action to enjoin any acts or things, which may be unlawful or in violation of the rights of the Owners;
- (iii) With or without litigation or arbitration enforcement of any other right of the Issuer and the Owners conferred by law or hereby; and
- (iv) With or without litigation or arbitration enforcement of any other right conferred by the Loan Agreement, the Mortgage, the Lease, or the Assignment Agreement in the Event of Default hereunder.

(b) Regardless of the happening of an Event of Default, the Trustee, if requested in writing by the Owners of not less than a majority in principal amount of the Bonds then Outstanding shall, upon being indemnified to its satisfaction therefor, institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient (i) to prevent any impairment of the security hereunder by any acts which may be unlawful or in violation hereof, or (ii) to preserve or protect the interests of the Owners, provided that such request is in accordance with law and the provisions hereof and, in the sole judgment of the Trustee, is not unduly prejudicial to the interest of the Owners not making such request.

**Section 6.06. Application of Revenues and Other Moneys After Default.** During the continuance of an Event of Default all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses

and advances incurred or made by the Trustee with respect thereto, be deposited in the Revenue Fund to be applied as follows:

(a) Unless the principal amount of all Outstanding Bonds shall have become or have been declared due and payable:

First: To the payment of amounts, if any, payable pursuant to the Tax Certificate;

Second: To the payment to the persons entitled thereto of all installments of interest pro rata (including interest on amounts unpaid when due on the Bonds) then due on the Bonds in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the persons entitled thereto, without any discrimination or preference; and

Third: To the payment to the persons entitled thereto of the unpaid principal pro rata or redemption price of any Bonds which shall have become due (other than Bonds previously called for redemption for the payment of which moneys are held pursuant to the provisions hereof), whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the amounts of principal installments or redemption price due on such date, to the persons entitled thereto, without any discrimination or preference.

(b) If the principal amount of all Outstanding Bonds shall have become due and payable, to the payment of any amounts payable pursuant to the Tax Certificate and then to the payment of the principal and interest then due and unpaid upon the Bonds without preference or priority, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference.

(c) Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date upon which such application is to be made and upon such date interest on the amounts of principal of the Bonds to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Owner of any unpaid Bond until such Bond shall be presented to the Trustee for appropriate endorsement of any partial payment or for cancellation if fully paid.

**Section 6.07. Remedies Not Exclusive.** No remedy by the terms hereof conferred upon or reserved to the Trustee or the Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity or by statute (including the Act) on or after the date hereof.

**Section 6.08. Remedies Vested in Trustee.** All rights of action (including the right to file proof of claims) hereunder or under any of the Bonds may be enforced by the Trustee, without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto. Any such suit or proceeding may be brought without the necessity of joining as plaintiffs or defendants any Owners. Subject to the provisions of Section 6.06 hereof, any recovery or judgment shall be for the equal benefit of the Owners of the Outstanding Bonds.

**Section 6.09. Individual Owner Action Restricted.**

(a) No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement hereof or for the execution of any trust hereunder or for any remedy hereunder except for the right to institute any suit, action or proceeding in equity or at law for the enforcement of the Trustee's duties and powers hereunder upon the occurrence of all of the following events:

(i) The Owners of at least a majority in principal amount of Bonds Outstanding shall have made written request to the Trustee to proceed to exercise the powers granted herein; and

(ii) Such Owners shall have offered the Trustee indemnity as provided in Section 7.02(e) hereof; and

(iii) The Trustee shall have failed or refused to exercise the duties or powers herein granted for a period of 60 days after receipt by it of such request and offer of indemnity; and

(iv) During such 60 day period no direction inconsistent with such written request has been delivered to the Trustee by the Owners of a greater majority in principal amount of Bonds then Outstanding.

(b) No one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice the security hereof or to enforce any right hereunder except in the manner herein provided and for the equal benefit of the Owners of all Bonds Outstanding.

(c) Nothing contained herein shall affect or impair, or be construed to affect or impair, the right of the Owner (i) to receive payment of the principal of or interest on such Bond, as the case may be, on or after the due date thereof or (ii) to institute suit for the enforcement of any such payment on or after such due date; provided, however, no Owner may institute or prosecute any such suit or enter judgment therein if, and to the extent that, the institution or prosecution of such suit or the entry of judgment therein

would, under applicable law, result in the surrender, impairment, waiver or loss of the lien hereof on the moneys, funds and properties pledged hereunder for the equal and ratable benefit of all Owners.

**Section 6.10. Termination of Proceedings.** In case any proceeding taken on account of an Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Owners, then the Issuer, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights and powers of the Trustee and the Owners shall continue as if no such proceeding had been taken.

**Section 6.11. Waiver of Event of Default.**

(a) No delay or omission of the Trustee or of any Owner to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein. Every power and remedy given by this Article may be exercised from time to time and as often as may be deemed expedient.

(b) Unless instructed otherwise by the Owners of a majority in principal amount of Bonds Outstanding, the Trustee may waive any Event of Default which in its opinion shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions hereof, or before the completion of the enforcement of any other remedy hereunder.

(c) Notwithstanding anything contained herein to the contrary, the Trustee, upon the written request of the Owners of at least a majority of the principal amount of Bonds then Outstanding, shall waive any Event of Default hereunder and its consequences; provided, however, that a default in the payment of the principal of, premium, if any, or interest on any Bond, when the same shall become due and payable by the terms thereof or upon call for redemption, may not be waived without the written consent of the Owners of all the Bonds at the time Outstanding.

(d) In case of any waiver by the Trustee of an Event of Default hereunder, the Issuer, the Trustee and the Owners shall be restored to their former positions and rights hereunder, respectively, but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon. The Trustee shall not be responsible to anyone for waiving or refraining from waiving any Event of Default in accordance with this Section.

**Section 6.12. Notice of Default.**

(a) Within 30 days after (i) the occurrence of an Event of Default under Section 6.01(a) or (b) hereof of which the Trustee is deemed to have notice, or (ii) receipt, in writing or otherwise, by the Trustee of actual knowledge or notice of an Event of Default under any other subsection of Section 6.01 hereof, the Trustee shall, unless such Event of Default shall have theretofore been cured, give written notice thereof by first-class mail to each Owner of a Bond then Outstanding, provided that, except in the case of a default in the payment of principal installments or the redemption price of or

interest on any of the Bonds, the Trustee may withhold such notice if, in its sole judgment, it determines that the withholding of such notice is in the best interests of the Owners.

(b) The Trustee shall, as soon as practicable, notify the Issuer, the Borrower and the Government of Guam of (i) the occurrence of an Event of Default under Section 6.01(a) or (b) hereof or Section 6.01 of the Loan Agreement and (ii) when the Trustee has received actual knowledge or notice, in writing or otherwise, of an Event of Default under any other subsection of Section 6.01 hereof.

**Section 6.13. Limitations on Remedies.** It is the purpose and intention of this Article to provide rights and remedies to the Trustee and Owners which may be lawfully granted, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Owners shall be entitled, as above set forth, to every other right and remedy provided in this Indenture and by law.

## ARTICLE VII

### THE TRUSTEE

#### **Section 7.01. Certain Duties and Responsibilities.**

(a) Except during the continuance of an Event of Default:

(i) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which are required by any provision hereof or of the Loan Agreement, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture or the Loan Agreement.

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights, powers, duties and obligations vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent corporate indenture trustee would exercise or use under the circumstances.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct or breach of trust, except that:

(i) this subsection (c) shall not be construed to limit the effect of subsection (a) of this Section;



(ii) the Trustee shall not be liable for any error of judgment made in good faith and without gross negligence by the chairman or vice chairman of the board of directors, the chairman or vice chairman of the executive committee of the board of directors, the president, any vice president, any assistant vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the cashier, any assistant cashier, any trust officer or assistant trust officer, the controller and any assistant controller or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers or, with respect to a particular matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith and without gross negligence in accordance with the direction of the Owners of the Outstanding Bonds as provided herein relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder (other than the provisions of Section 6.12 hereof requiring the delivery of notice by the Trustee), or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Trustee may, nevertheless, begin suit, or appear in and defend suit, or do anything else in its judgment properly to be done by it as the Trustee, without prior assurance of indemnity, and in such case shall be entitled to reimbursement by the Borrower for all reasonable disbursements, including its own fees, and for all liability and damages suffered by the Trustee in connection therewith except for the Trustee's gross negligence, bad faith, willful misconduct or breach of trust.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

**Section 7.02. Certain Rights of Trustee.** Except as otherwise provided in Section 7.01:

(a) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) Any request or direction of the Issuer or the Borrower mentioned herein shall be sufficiently evidenced by a certificate of an Issuer Representative or a Borrower

Representative, respectively, and any action of the governing board of the Issuer or the Borrower may be sufficiently evidenced by a copy of a resolution certified by the secretary/treasurer or an assistant secretary/treasurer of the Issuer or secretary or assistant secretary of the Borrower to have been duly adopted by the board of directors of the Issuer or the Borrower and to be in full force and effect on the date of such certification and delivered to the Trustee.

(c) Whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may rely upon a certificate of an Issuer Representative or a Borrower Representative, respectively.

(d) The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(e) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Owners pursuant to this Indenture, unless such Owners shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

(g) The Trustee may engage agents and attorneys to assist it in executing any of the trusts or powers hereunder or performing any duties hereunder.

(h) Anything to the contrary notwithstanding, the Trustee shall not be required to enter, take possession of, or take any other action whatsoever with respect to the Facilities, and shall not be required to initiate foreclosure proceedings with respect to the Facilities and the Mortgage unless the Trustee is satisfied that the Trustee will not be subject to any liability under any local, state or federal environmental laws or regulations of any kind whatsoever or from any circumstances present at the Facilities relating to the presence, use, management, disposal of, or contamination by any environmentally hazardous materials or substances of any kind whatsoever.

**Section 7.03. Employment of Experts.** The Trustee is hereby authorized to employ as its agents such attorneys at law, certified public accountants and recognized authorities in their fields (who are not employees of the Trustee), as it reasonably may deem necessary to assist it to carry out any of its obligations hereunder, and shall be reimbursed by the Borrower for all reasonable expenses and charges in so doing.

**Section 7.04. Enforcement of Performance by Others.** Except as otherwise specifically provided herein, it shall not be the duty of the Trustee to see that any duties and obligations herein imposed upon the Issuer or the Borrower are performed.

**Section 7.05. Right to Deal in Bonds and Take Other Actions.** The Trustee may in good faith buy, sell or hold and deal in any Bonds with like effect as if it were not such Trustee and may commence or join in any action which an Owner is entitled to take with like effect as if the Trustee were not the Trustee. It is understood and agreed that the Trustee engages in a general banking business and no provision hereof or of the Loan Agreement is to be construed to limit or restrict the right of the Trustee to engage in such business with the Issuer, the Borrower, or any Owner. So engaging in such business shall not, in and of itself, and so long as the Trustee duly performs all of its duties as required hereby and by the Loan Agreement, constitute a breach of trust on the part of the Trustee, but neither shall engaging in such business abrogate, alter or diminish any duty or obligation of the Trustee as trustee hereunder.

**Section 7.06. Removal and Resignation of the Trustee.** The Trustee may resign at any time. The Trustee may be removed at any time, for any breach of the Trust set forth herein. The Trustee may also be removed at any time either by one or more instruments in writing signed by the Owners of not less than a majority in principal amount of Bonds then Outstanding, or, if no Event of Default or event which, with the giving of notice or the passage of time, or both, would become an Event of Default has occurred and is continuing and if no direction to the contrary is received from the Owners of a majority in principal amount of Bonds Outstanding, by an instrument in writing signed by the Borrower. Written notice of such resignation or removal shall be given by the Trustee to the Issuer and the Borrower and such resignation or removal shall take effect only upon the appointment and qualification of a successor Trustee. In the event a successor Trustee has not been appointed and qualified within 60 days of the date notice of resignation or removal is given, the Trustee, the Issuer or the Borrower may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section.

In the event of the resignation or removal of the Trustee or in the event the Trustee is dissolved or otherwise becomes incapable to act as the Trustee, the Borrower shall be entitled to appoint a successor Trustee. If the Owners of a majority of the principal amount of Bonds then Outstanding object to the successor Trustee so appointed and if such Owners designate another person qualified to act as the Trustee, the Borrower shall then appoint as the Trustee the person so designated by the Owners.

Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor Trustee shall be a trust company or bank having the powers of a trust company as to trusts, qualified to fulfill the obligations of the Trustee under this Indenture and having an officially reported combined capital, surplus, undivided profits and reserves aggregating at least \$75,000,000, if there is such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Every successor Trustee howsoever appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Borrower, an instrument in writing, accepting such appointment hereunder, and thereupon such successor Trustee, without further

action, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor, and such predecessor shall execute and deliver an instrument transferring to such successor Trustee all the rights, power and trusts of such predecessor, subject to the terms and conditions herein set forth, including, without limitation, the right of the predecessor Trustee to be paid and reimbursed in full for its reasonable charges and expenses (including reasonable costs and fees of its counsel) and to indemnification under Section 5.06 of the Loan Agreement. The predecessor Trustee shall execute any and all documents necessary or appropriate to convey all interest it may have to the successor Trustee. The predecessor Trustee shall promptly deliver all records relating to the trust or copies thereof and communicate all material information it may have obtained concerning the trust to the successor Trustee.

Each successor Trustee, not later than ten days after its assumption of the duties hereunder, shall mail a notice of such assumption to each Owner.

Notwithstanding any other provisions of this Indenture to the contrary, no removal, resignation or termination of the Trustee shall take effect until a successor shall be appointed.

**Section 7.07. Continuation Statements; Proof of Claim.** Within the period beginning six months prior to and ending 90 days prior to the expiration of five years after the initial UCC-1 filing for the security interest granted under this Indenture, and within six months prior to but in no event less than ninety days prior to the expiration of each five year period thereafter until this Indenture is discharged, the Trustee will, at the Borrower's expense, cause to be filed with the Arizona Secretary of State continuation statements to continue the perfection (to the extent that such perfection can be accomplished under applicable law by filing) of the security interest granted under this Indenture. To the extent the Trustee is required to prepare or file any instrument, the Trustee shall be entitled to retain counsel and shall be entitled to reimbursement of expenses pursuant to Section 7.03 and 7.08 hereof.

The Trustee shall have the right and power to take actions in the name and place of the Issuer or Owners to make proof of claim in any proceeding, bankruptcy, reorganization or otherwise where proof of claim may be required. Any amount recovered as a result of any such claim, after payment of all fees (including reasonable attorneys fees), costs, expenses and advances incurred by the Trustee or its agents in pursuing such claim, shall be for the equal benefit of all of the Owners.

**Section 7.08. Trustee's Fees and Expenses.** The Trustee shall be entitled to be paid from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust); to reimbursement upon request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and its agents), except any such expense, disbursement or advance as may be attributable to its gross negligence or bad faith or willful misconduct or breach of trust; and the Trustee, and its directors, officers, employees and agents, shall be entitled to be indemnified for, from and against any loss, liability or expense arising out of or in connection with the acceptance or administration of this trust or its duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its

powers, trusts, obligations or duties hereunder; provided, however, that the Issuer shall not be liable for any such amounts so payable except to the extent the same can be paid or recovered from funds paid or payable pursuant to the Loan Agreement and assigned to or payable to the Trustee hereunder. The Trustee's rights to compensation, reimbursement and indemnity for services provided and events occurring while serving as Trustee hereunder shall survive and continue notwithstanding the subsequent resignation or removal of the Trustee or discharge of the Indenture.

Any provision hereof to the contrary notwithstanding, if the Borrower fails to make any payment properly due to the Trustee for its reasonable fees, costs, expenses and fees of attorneys, certified public accountants, recognized authorities in their field and agents (not employees of the Trustee) incurred in performance of its duties, the Trustee may reimburse itself from any surplus moneys on hand in any fund or account created pursuant hereto, provided that no moneys in the Principal Account or Interest Account may be so applied.

**Section 7.09. Destruction of Bonds.** Upon payment of or surrender to the Trustee for cancellation of any Bond, the Trustee shall destroy such Bond.

**Section 7.10. Reports.** The Trustee shall quarterly, or at such other intervals as the Trustee and the Borrower shall from time to time agree upon (but in no event more frequently than monthly), prepare and submit to the Borrower (and to the extent requested by the Issuer, to the Issuer) reports covering all moneys received and all payments, expenditures and investments made as the Trustee hereunder since the last previous such report. No later than December 15 of each year, the Trustee shall provide to the Issuer in writing, the principal amount of all Bonds anticipated to be Outstanding as of January 1 of the following year.

**Section 7.11. Recitals and Representations.** The recitals, statements and representations contained herein, or in any Bond (excluding the Trustee's authentication on the Bonds or any recitals or representations concerning the Trustee or its rights, powers, duties, obligations or trusts) shall not be taken or construed as made by the Trustee, and the Trustee neither assumes nor shall be under any responsibility for the correctness of the same.

The Trustee makes no representation as to, and is not responsible for, the validity or sufficiency hereof, of the Bonds, or the validity or sufficiency of insurance to be provided or, except as herein required, the filing or recording or registering of any document. The Trustee shall not be deemed to have made representations as to the security afforded hereby or hereunder or as to the validity or sufficiency of such document. The Trustee shall not be concerned with or accountable to anyone for the use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof. The Trustee shall have no duty of inquiry with respect to any default or Events of Default described herein without actual knowledge of or receipt by the Trustee of written notice of a default or an Event of Default from the Issuer, the Borrower or any Owner.

**Section 7.12. Merger or Consolidation.** Any company or national banking association into which the Trustee may be merged or converted or with which it may be consolidated, or resulting from any merger, conversion or consolidation to which it shall be a party or to which it may sell or transfer all or substantially all of their corporate trust business, provided such entity

shall be authorized by law to perform all duties imposed on it by this Indenture, and which is eligible to be a successor Trustee under the provisions of this Indenture, shall be the successor to the Trustee without the execution or filing of any paper or the performance of any further act.

**Section 7.13. Co-Trustees.**

(a) At any time, for the purpose of meeting the legal requirements of any applicable jurisdiction, the Trustee or the Borrower (except upon the occurrence and during the continuation of an Event of Default), with the Trustee's approval, shall have power to appoint one or more persons to act as co-trustee under this Indenture, with such powers as may be provided in the Instrument of appointment, and to vest in such person or persons any property, title, right or power deemed necessary or desirable, subject to the remaining provisions of this Section; provided, however, that in no event shall the appointment of a co-trustee relieve the Trustee of any of its obligations under this Indenture.

(b) Each co-trustee shall, to the extent permitted by applicable law, be appointed subject to the following terms:

(i) The rights, powers, duties and obligations conferred or imposed upon any such trustee shall not be greater than those conferred or imposed upon the Trustee, and such rights and powers shall be exercisable only jointly with the Trustee, except to the extent that, under any law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights and powers shall be exercised by such co-trustee subject to the provisions of clause (iv) below.

(ii) The Trustee may at any time, by an instrument in writing executed by it, accept the resignation of or remove any co-trustee appointed under this Section.

(iii) No such co-trustee shall be liable by reason of any act or omission of any other such co-trustee.

(iv) No power given to such co-trustee shall be separately exercised hereunder by such co-trustee except with the consent in writing of the Trustee, anything herein contained to the contrary notwithstanding.

**ARTICLE VIII**

**SUPPLEMENTS**

**Section 8.01. Supplements not Requiring Consent of or on Behalf of Owners.** The Issuer acting through the Issuer Representative and the Trustee may, without the consent of or notice to any of the Owners enter into one or more Supplements for one or more of the following purposes:

(a) To cure any ambiguity or formal defect or omission herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein;

(b) To grant or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted or conferred upon them;

(c) To secure additional revenues or provide additional security or reserves for payment of the Bonds;

(d) To comply with the requirements of any state or federal securities laws or the Trust Indenture Act of 1939, as from time to time amended, if required by law or regulation lawfully issued thereunder;

(e) To provide for the appointment of a successor trustee pursuant to the terms of Section 7.06 hereof;

(f) To permit, (i) if lawful, the issuance of Bonds in book entry form not evidenced by physical certificates, or (ii) Bonds in bearer form if, in the opinion of Bond Counsel received by the Issuer and the Trustee, such action will not cause the interest on any Bonds to become includable in gross income for purposes of federal income taxes;

(g) To preserve the exclusion of the interest on the Bonds from gross income for purposes of federal or State income taxes and to preserve the power of the Issuer to continue to issue bonds or other obligations (specifically not limited to the Bonds authorized hereby) the interest on which is likewise exempt from federal and State income taxes;

(h) To make any other change or amendment hereto which does not materially adversely affect the interests of any Owner or the Trustee;

(i) To provide for the refunding or advance refunding of any Bonds, including the right to establish and administer an escrow fund and to take related action in connection therewith; and

(j) To provide for the issuance of Additional Bonds under Section 2.09 hereof.

Provided, however, that any Supplements entered into for the purposes enumerated above require the consent of the Borrower.

#### **Section 8.02. Supplements Requiring Consent of or on Behalf of Owners.**

(a) Other than Supplements referred to in Section 8.01 hereof and subject to the terms and provisions and limitations contained in this Article and not otherwise, the Owners of not less than a majority in principal amount of the Bonds then Outstanding, shall have the right, from time to time, anything contained herein to the contrary notwithstanding, to consent to and approve the execution by the Issuer acting through the

Issuer Representative and the Trustee of such Supplement as shall be deemed necessary and desirable by the Issuer and the Trustee for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained herein; provided, however, that no such Supplement shall be executed without the consent of the Borrower; provided further that nothing in this Section shall permit or be construed as permitting a Supplement which would:

(i) extend the stated maturity of or time for paying interest on any Bond or reduce the principal amount of or the redemption premium or rate of interest payable on any Bond without the consent of the Owner of such Bond;

(ii) prefer or give a priority to any Bond over any other Bond without the consent of the Owner of each Bond then Outstanding not receiving such preference or priority;

(iii) reduce the principal amount of Bonds then Outstanding the consent of the Owners of which is required to authorize such Supplement without the consent of the Owners of all Bonds then Outstanding; or

(iv) reduce the redemption price of any Bond upon optional redemption or reduce any period of time prior to commencement of any optional redemption period without the consent of the Owner of such Bond.

(b) When the Trustee determines that the requisite consents have been obtained for a Supplement requiring consent of the Owners, the Trustee shall date and file a certificate to that effect in its records and shall notify the Issuer and the Borrower. Such determination shall be conclusive and no action or proceeding to invalidate the Supplement shall be instituted or maintained unless commenced within 60 days after the filing of such certificate. Upon the filing of such certificate, the Supplement shall become effective without liability or responsibility to any Owner, whether or not such Owner shall have consented thereto.

(c) Consent of Owners may be evidenced by Bonds being sold on the basis of the effectiveness of the proposed Supplement or in any other manner acceptable to the Trustee in accordance with Section 10.01 hereof. If the Supplement will not take effect so long as any particular Bonds remain Outstanding, the consent of the Owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of determining the required consents. It shall not be necessary for the consent of the Owners under this Section to approve the particular form of any proposed Supplement, but it shall be sufficient if consent is given to the substance thereof. Any such consent shall be binding upon the Owner giving such consent and upon any subsequent Owner and of any Bond issued in exchange therefor (whether or not such subsequent Owner thereof has notice thereof), unless such consent is revoked in writing by the Owner giving such consent or by a subsequent Owner thereof by filing with the Trustee, prior to the execution by the Trustee of such Supplement, such revocation. If the Owners of the required amount or number of the Bonds Outstanding shall have consented to and approved the execution of such Supplement as herein provided, no Owner shall



have any right to object to the execution thereof, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

**Section 8.03. Execution and Effect of Supplements.**

(a) In executing any Supplement permitted by this Article, the Trustee and Issuer shall be entitled to receive and to rely upon an Opinion of Counsel stating that the execution of such Supplement is authorized or permitted hereby. The Trustee may but shall not be obligated to enter into any such Supplement which adversely affects the rights, duties or immunities of the Trustee.

(b) No Supplement under this Article shall become effective unless and until the Borrower shall have consented in writing to the execution and delivery of such Supplement. In this regard the Trustee shall cause notice of the proposed execution and delivery of any such Supplement together with a copy of the proposed Supplement to be delivered to the Borrower at least ten days prior to the date of its proposed effectiveness.

(c) Upon the execution and delivery of any Supplement in accordance with this Article, the provisions hereof shall be modified in accordance therewith and such Supplement shall form a part hereof for all purposes and every Owner theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

(d) Any Bond authenticated and delivered after the execution and delivery of any Supplement in accordance with this Article may, and if required by the Issuer or the Trustee shall, bear a notation in form approved by the Issuer and Trustee as to any matter provided for in such Supplement. If the Issuer shall so determine, upon advice of Bond Counsel, new Bonds so modified as to conform in the opinion of the Trustee and the Issuer to any such Supplement may be executed by the Issuer and authenticated and delivered by the Trustee in exchange for and upon surrender of Bonds then Outstanding.

**Section 8.04. Amendments to Loan Agreement Not Requiring Consent of or on Behalf of Owners.** The Trustee may, without the consent of or notice to any of the Owners, consent to and join with the Borrower in the execution and delivery of any amendment, change or modification of the Loan Agreement for one or more of the purposes described in Section 8.01.

**Section 8.05. Amendments to Loan Agreement Requiring Consent of or on Behalf of Owners.**

(a) Except for amendments, changes or modification to the Loan Agreement referred to in Section 8.04 hereof and subject to the terms and provisions and limitations contained in this Article and not otherwise, the Trustee may consent to and join with the Borrower in the execution and delivery of any amendment, change or modification to the Loan Agreement and of not less than a majority in principal amount of Bonds then Outstanding, given as provided in this Section, provided, however, no such amendment, change or modification may affect the obligation of the Borrower to make payments

under the Loan Agreement or reduce the amount of or extend the time for making such payments without the consent of the Owners of all Bonds then Outstanding.

(b) If the consent to and approval of the execution of such amendment, change or modification is given by the Owners of not less than the aggregate principal amount or number of Bonds specified in subsection (a) within the time and in the manner provided by Section 8.02 hereof with respect to Supplements hereto, but not otherwise, such amendment, change or modification may be consented to, executed and delivered upon the terms and conditions and with like binding effect upon the Owners as provided in Sections 8.02 and 8.03 hereof with respect to Supplements hereto.

#### **Section 8.06. Issuer Consent to Amendments.**

(a) Any proposed amendment, modification, or supplement to this Indenture which provides for terms less favorable to the Issuer (as determined in its sole discretion) than those set forth in Article V of this Indenture as originally executed and delivered, but permitted by law, shall require the Issuer's consent, which may be withheld for any reason.

(b) Any proposed amendment, modification or supplement of the Loan Agreement which provides for terms less favorable to the Issuer (as determined in its sole discretion) than those set forth in Sections 5.06 of the Loan Agreement as originally executed and delivered, but permitted by law, shall require the Issuer's consent, which shall not be withheld unreasonably.

### **ARTICLE IX**

#### **SATISFACTION AND DISCHARGE**

##### **Section 9.01. Discharge.**

(a) If payment of all principal of, premium, if any, and interest on all of the Bonds in accordance with their terms and as provided herein is made, or is provided for in accordance with this Article, and if all other sums, if any, payable by the Issuer hereunder shall be paid, then the liens, estates and security interests granted hereby shall cease. Upon all conditions precedent to the satisfaction and discharge of the lien hereof have been satisfied, the Trustee shall execute and deliver proper instruments acknowledging such satisfaction and discharging the lien hereof and the Trustee shall transfer all property held by it hereunder, other than moneys or obligations held by the Trustee for payment of amounts due or to become due on the Bonds or to such other person as may be entitled thereto as their respective interests may appear. Such satisfaction and discharge shall be without prejudice to the rights of the Trustee thereafter to charge and be compensated or reimbursed for services rendered and expenditures incurred in connection herewith.

(b) The Issuer or the Borrower may at any time surrender to the Trustee for cancellation any Bonds previously authenticated and delivered which the Issuer or the

Borrower may have acquired in any manner whatsoever and such Bonds upon such surrender and cancellation shall be deemed to be paid and retired.

**Section 9.02. Providing for Payment of Bonds.**

(a) Payment of all or any part of the Bonds in Authorized Denominations may be provided for by the deposit with the Trustee of moneys or Government Obligations which are not redeemable in advance of their maturity dates, or which are redeemable in advance of their maturity dates only at the option of the Owner thereof, or both. The moneys and the maturing principal and interest income on such Government Obligations, if any, shall be sufficient, as evidenced by a certificate of an independent certified public accountant or firm of such accountants, to pay when due the principal or redemption price of and interest on such Bonds. The moneys and Government Obligations shall be held by the Trustee irrevocably in trust for the Owners of such Bonds solely for the purpose of paying the principal, or redemption price of and interest on such Bonds as the same shall mature, come due or become payable upon prior redemption, and, if applicable, upon simultaneous direction, expressed to be irrevocable, to the Trustee as to the dates upon which any such Bonds are to be redeemed prior to their respective maturities.

(b) If payment of Bonds is so provided for, the Trustee shall mail a notice so stating to each Owner so provided for, which notice shall also describe the rights retained and reserved pursuant to Section 9.04.

(c) Bonds the payment of which has been provided for in accordance with this Section shall no longer be deemed Outstanding hereunder or secured hereby. The obligation of the Issuer in respect of such Bonds shall nevertheless continue but the Owners thereof shall thereafter be entitled to payment only from the moneys or Government Obligations deposited with the Trustee to provide for the payment of such Bonds.

(d) No Bond may be so provided for if, as a result thereof or of any other action in connection with which the provisions for payment of such Bond is made, the interest payable on any Bond is made includable in gross income for purposes of federal income taxes. The Trustee and the Issuer may rely upon an opinion of Bond Counsel (which opinion may be based upon a ruling or rulings of the Internal Revenue Service) to the effect that the provisions of this paragraph will not be breached by so providing for the payment of any Bonds.

(e) No Bond may be refunded or defeased unless an opinion of counsel is provided to the Issuer stating that (i) any escrow deposit will not constitute a voidable preference or transfer under the Federal Bankruptcy Code or any other similar state or federal statute in the event the Issuer or the Borrower becomes a debtor within the meaning of the Federal Bankruptcy Code or comes within the protection of such similar state or federal statute ("Insolvency Event"), and (ii) in such Insolvency Event, any escrow deposit will not be treated as part of the estate of the Issuer or the Borrower.

**Section 9.03. Provisions to Survive After Discharge.**

(a) Notwithstanding the discharge of the lien hereof as in this Article provided, the Trustee shall nevertheless retain such rights, powers, trusts, obligations and duties hereunder as may be necessary and convenient for the payment of amounts due or to become due on the Bonds and the registration, transfer, exchange and replacement of Bonds as provided herein.

(b) Notwithstanding the payment in full of the Bonds, the discharge of the Indenture, and the termination or expiration of the Loan Agreement, all provisions in this Indenture concerning (a) the tax-exempt status of the Bonds (including, but not limited to provisions concerning Rebate), (b) the interpretation of this Indenture, (c) the governing law, (d) the forum for resolving disputes, (e) the Issuer's right to rely on facts or certificates, (f) the immunity from and limitation on liabilities of the Issuer Indemnified Parties, (g) the Issuer Indemnified Parties' rights to indemnity, and (h) the Issuer's lack of pecuniary liability shall survive and remain in full force and effect.

**Section 9.04. Reserved Rights.** The Borrower reserves and retains the right to restructure the moneys and/or securities in any escrow established under Section 9.02 and to apply any of the proceeds available following such restructuring for any lawful purpose, subject to the requirements in Section 9.02(d) and (e).

**ARTICLE X**

**MISCELLANEOUS**

**Section 10.01. Evidence of Acts of Owners.**

(a) Any request, direction, consent or other instrument provided hereby to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such request, direction or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes hereof and shall be conclusive in favor of the Trustee and Issuer, with regard to any action taken by them, or either of them, under such request or other instrument, namely:

(i) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments in such jurisdiction, that the person signing such writing acknowledged before him the execution thereof, or by the affidavit of a witness of such execution; and

(ii) The ownership of Bonds shall be proved by the register of such Bonds.

(b) Nothing in this Section shall be construed as limiting the Trustee to the proof herein specified, it being intended that the Trustee may accept any other evidence of the matters herein stated which it may deem sufficient.

(c) Any action taken or suffered by the Trustee pursuant to any provision hereof, upon the request or with the assent of any person who at the time is the Owner of any Bond or Bonds, shall be conclusive and binding upon all future Owners of the same Bond or Bonds.

**Section 10.02. Limitation of Rights; Third Party Beneficiaries.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person other than the parties hereto, the Borrower and the Owners any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained and all covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the parties hereto, and the registered owners of the Bonds. Each of the Issuer Indemnified Parties and the Government of Guam in its capacity as a tenant under the Lease, shall be considered to be intended third party Beneficiaries of this Indenture.

**Section 10.03. Unrelated Bond Issues.** Prior to the issuance of the Bonds, the Issuer has issued, and subsequent to the issuance of the Bonds the Issuer may issue, bonds in connection with the financing of other projects (said bonds together with any bonds issued by the Issuer between the date hereof and issuance of the Bonds shall be referred to herein as the "Other Bonds"). Any pledge, mortgage or assignment made in connection with any Other Bonds shall be protected and any funds pledged or assigned for the payment of the Other Bonds will not be used for the payment of principal, premium, if any, or interest on the Bonds. Correspondingly, any pledge, mortgage or assignment made in connection with the Bonds shall be protected and no funds pledged or assigned for the payment of the Bonds shall be used for the payment of principal, premium, if any, or interest on the Other Bonds.

**Section 10.04. Severability.** If any one or more sections, clauses, sentences or parts hereof shall for any reason be questioned in any court of competent jurisdiction and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions hereof, or the Bonds issued pursuant hereto, but shall be confined to the specific sections, clauses, sentences and parts so adjudged.

**Section 10.05. Holidays.** When the date on which principal of or interest or premium on any Bond is due and payable is not a Business Day, payment may be made on Bonds presented at the place of payment on the next ensuing Business Day with effect as though payment were made on the due date, and, if such payment is made, no additional interest shall accrue from and after such due date. When any other action is provided herein to be done on a day named or within a time period named, and the day or the last day of the period falls on a day other than a Business Day, it may be performed on the next ensuing Business Day with effect as though performed on the appointed day or within the specified period.

**Section 10.06. Governing Law and Forum.** This Indenture shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations, and laws applicable to the Issuer and the Trustee. The parties hereto expressly acknowledge and agree that any judicial action to interpret or enforce the terms of this Indenture against the Issuer shall be brought and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa, in the United States District Court in and for the District of Arizona or in any United States Bankruptcy Court in any case involving or having jurisdiction over the Borrower or the Facilities.

**Section 10.07. Notices.**

Unless otherwise expressly specified or permitted by the terms hereof, all notices, consents or other communications required or permitted hereunder shall be deemed sufficiently given or served if given in writing, mailed by first-class mail, postage prepaid and addressed as follows:

To the Issuer:           The Industrial Development Authority  
of the City of Phoenix  
Calvin C. Goode Municipal Building  
251 West Washington Street, 9th Floor  
Phoenix, AZ 85003  
Attention: Executive Director  
Telephone: (602) 262-7304  
Facsimile: (602) 495-5605

With Copy To:           Kutak Rock LLP  
8601 N. Scottsdale Road  
Suite 300  
Scottsdale, Arizona 85253  
Attention: Patrick A. Ray, Esq.  
Telephone: (480) 429-5000  
Facsimile: (480) 429-5001

To the Trustee:           U.S. Bank National Association  
U.S. Bank Center, LM-AZ-X16P  
101 North First Ave., Suite 1600  
Attention: Global Corporate Trust Services  
Phone: (602) 257-5431  
Fax: (602) 257-5433

To the Borrower:        AZ GFF Tiyan, LLC  
388 South Marine Corps Drive, Suite 303  
Tamuning, Guam 96913  
Attention: Joe M. Arnett  
Phone: (671) 687-4111  
Fax: (671) 649-4932

With Copy To: 388 South Marine Corps Drive, Suite 303  
Tamuning, Guam 96913  
Attention: Joe M. Arnett  
Phone: (671) 687-4111  
Fax: (671) 649-4932

To Government  
of Guam: Government of Guam  
Attention: Office of the Governor  
P.O. Box 2950  
Hagatna, Guam 96932  
Phone: (671) 472-8931  
Fax: (671) 477-4826

The parties listed above may from time to time by notice in writing to the others designate a different address or addresses for notices hereunder.

**Section 10.08. [RESERVED].**

**Section 10.09. Additional Notices to Rating Agencies and Dissemination Agent.** The Trustee hereby agrees that if at any time (i) the Issuer shall redeem the entire principal amount of the Bonds Outstanding hereunder prior to maturity, (ii) a successor Trustee is appointed hereunder, or (iii) the Owners consent to any amendment to this Indenture or the Loan Agreement or waive any provision of this Indenture or the Loan Agreement, then, in each case, the Trustee will promptly give notice of the occurrence of such event to each rating agency, if any, then maintaining a rating on the Bonds, which notice in the case of an event referred to in clause (iii) shall include a copy of any such amendment or waiver. Further, the Trustee hereby agrees to provide notice to the Dissemination Agent of any Material Event (as defined in the Disclosure Agreement) actually known by Trustee as defined in SEC Rule 15c2-12.

**Section 10.10. Counterparts.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which together shall constitute one instrument.

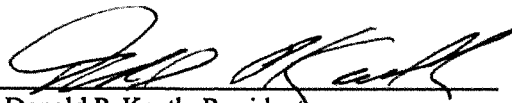
**Section 10.11. Binding Effect.** This instrument shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns subject to the limitations contained herein.

**Section 10.12. Notice of A.R.S. Section 38-511 - Cancellation.** Notice is hereby given of the provisions of Arizona Revised Statutes Section 38-511, as amended. By this reference, the provisions of said statute are incorporated herein to the extent of their applicability to contracts of the nature of this Indenture under the law of the State.

*[Remainder of Page Left Intentionally Blank]*

IN WITNESS WHEREOF, the Issuer has caused these presents to be signed in its name and on its behalf by its duly authorized officer and to evidence its acceptance of the trusts hereby created the Trustee has caused these presents to be signed in its name and on its behalf by its duly authorized officer, all as of the day and year first above written.

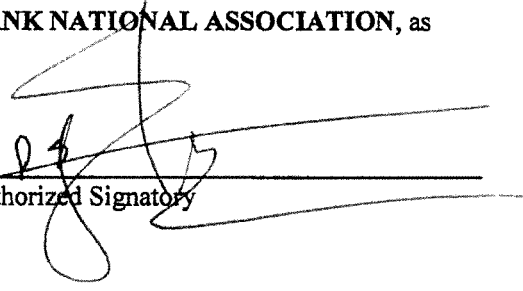
**THE INDUSTRIAL DEVELOPMENT  
AUTHORITY OF THE CITY OF PHOENIX,  
ARIZONA**

By:   
Donald P. Keuth, President

*(Signature page to Indenture)*



U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

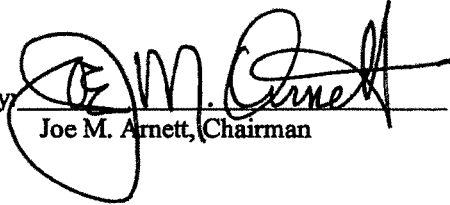
By:   
Authorized Signatory

*(Signature page to Indenture)*

ACKNOWLEDGED, ACCEPTED AND AGREED TO BY:

**AZ GFF TIYAN, LLC**, an Arizona limited liability company,  
as Borrower,

By: GUAM FACILITIES FOUNDATION, INC.,  
a Guam nonprofit corporation,  
its sole member

By:   
Joe M. Arnett, Chairman

*(Signature page to Indenture)*

**EXHIBIT A**

**FORM OF BOND**

(Form of Face of Bond)

UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY, "DTC"), (A) THIS BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO A NOMINEE OF DTC, OR BY A NOMINEE OF DTC TO DTC OR A NOMINEE OF DTC, OR BY DTC OR A NOMINEE OF DTC TO ANY SUCCESSOR SECURITIES DEPOSITORY OR ANY NOMINEE THEREOF AND (B) A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE TRUSTEE. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS BOND MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID.

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE BOND REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE TRUSTEE FOR PAYMENT OF PRINCIPAL OR REDEMPTION PRICE, AND ANY BOND ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC OR ITS NOMINEE OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, CEDE & CO., AS NOMINEE OF DTC, HAS AN INTEREST HEREIN.

No: R-

[\$ \_\_\_\_\_]

**\$107,405,000**  
**The Industrial Development Authority of the**  
**City of Phoenix, Arizona**  
**Lease Revenue Bonds**  
**(Guam Facilities Foundation, Inc. Project)**  
**Series 2014**

Interest Rate

Maturity Date

Dated

CUSIP

\_\_\_\_\_, 20\_\_

December 22, 2014

Registered Owner: CEDE & CO.

Principal Amount: [ \_\_\_\_\_ ]

The Industrial Development Authority of the City of Phoenix, an entity designated by law as a political subdivision of the State of Arizona (the "Issuer"), for value received hereby acknowledges itself obligated to, and promises to cause to be paid to, the registered owner identified above, or registered assigns, but only out of the sources pledged for that purpose as hereinafter provided, and not otherwise, on the maturity date set forth above, the principal amount set forth above, and to cause to be paid interest on the unpaid balance of said sum from the most recent interest payment date to which interest has been paid or for which due provision has been made or, if no interest has been paid, from the dated date set forth above, at the rate of interest per annum set forth above payable on February 1 and August 1 of each year commencing August 1, 2015, until the obligation with respect to payment of the principal amount is discharged. Interest is calculated based upon an assumption of a 360 day year of twelve 30 day months. Any payment of principal due on any Bond which shall not be paid when due shall continue to bear interest at a rate equal to the rate of interest borne on such Bond, from the date such payment is due until the payment is made.

Interest on this Bond shall be payable when due to the Owner in whose name such Bond is registered at the close of business on the Record Date with respect to each Bond Payment Date, irrespective of any transfer or exchange of such Bond subsequent to such Record Date and prior to such Bond Payment Date, unless there is a default in the payment of interest due on such Bond Payment Date. In the event of any such default, such defaulted interest shall be payable to the Owner in whose name such Bond is registered at the close of business on a special Record Date for the payment of such defaulted interest established by notice mailed by the Trustee to the Owners of the Bonds not less than 15 days preceding such special Record Date. Such notice shall be mailed to the Owners in whose name the Bonds are registered at the close of business on the fifth day preceding the date of mailing. If the Trustee registers the transfer of any Bond subsequent to the mailing of such notice and on or before the special Record Date, any such notice of payment of defaulted interest shall be binding upon the transferee and a copy of the notice of payment of defaulted interest shall be delivered by the Trustee to the transferee along with the Bond or Bonds.

Principal of and interest on this Bond shall be payable in any coin or currency of the United States of America which, on the related Bond Payment Dates, is legal tender for the payment of public and private debts. Principal of and any premium on this Bond shall be payable at the Designated Office of the Trustee upon surrender of this Bond on or after the maturity date or earlier redemption date. Payment of interest on this Bond shall be made by check or draft mailed to the registered address of the person entitled thereto, or upon the written direction of any Owner of not less than \$1,000,000 in aggregate principal amount of Bonds delivered to the Trustee at least 15 days prior to the Record Date, together with an acknowledgment that the applicable wire transfer fees will be deducted from the amount of the wire transfer (which direction shall remain effective for so long as such Owner owns not less than \$1,000,000 in Bonds or until such Owner countermands such written direction in writing), the payment of interest on the Bonds may be made by wire transfer of immediately available

funds to an account located in a bank within the United States which bank is a member of the Federal Reserve System pursuant to wire transfer directions issued by such Owner.

Any payment of principal due on any Bond which shall not be paid when due shall continue to bear interest at a rate equal to the rate of interest borne on such Bond, from the date such payment is due until the payment is made, calculated based upon a 360 day year of twelve 30 day months. Any payment of interest due on this Bond which shall not be paid when due shall not accrue interest.

The Indenture grants a security interest in, assigns, transfers, pledges, grants and conveys unto the Trustee and its successors and assigns the following described property:

- A. The Mortgage granted by the Borrower in favor of the Trustee.
- B. All rights and interests of the Issuer in, under and pursuant to the Loan Agreement (as defined herein), including but not limited to payments to be made by the Borrower thereunder from amounts payable to the Borrower under the Assignment of Lease, provided that the assignment made by this clause shall not include (i) any assignment of any obligation of the Issuer under the Loan Agreement (and the Trustee shall have no duties with respect thereto) or (ii) any of the "Issuer Unassigned Rights" consisting of all rights expressly granted to the Issuer in this Indenture or in the Loan Agreement to (a) inspect books and records, (b) give or receive notices, approvals, consents, requests, and other communications, (c) receive payment or reimbursement for expenses, (d) receive payment of the Issuer Fees, (e) immunity and limitation from liability, (f) indemnification from liability by the Borrower, and (g) security for the Borrower's indemnification obligations.
- C. The Assignment Agreement between the Borrower and the Trustee.
- D. Amounts on deposit from time to time in the funds and accounts created pursuant hereto (excluding the Rebate Fund), subject to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein.
- E. The rights and interests of the Issuer under the Note.
- F. Any and all other real or personal property of any kind from time to time hereafter by delivery or by writing of any kind specifically conveyed, pledged, assigned or transferred, as and for additional security hereunder for the Bonds, by anyone on behalf of the Issuer or with its written consent, or by or on behalf of the Borrower, in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

This Bond is a special limited obligation of the Issuer payable solely from the sources and in the manner described in the Indenture referred to herein.

Additional provisions of this Bond are set forth on the reverse hereof.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due form, time and manner as required by law.

*(Remainder of page intentionally left blank)*

IN TESTIMONY WHEREOF, the Issuer has caused this Bond to be executed and attested by the printed facsimile signatures of its duly authorized officers, and this Bond to be authenticated by the manual signature of an authorized representative of the Trustee, without which authentication this Bond shall not be valid nor entitled to the benefits of the Indenture.

**THE INDUSTRIAL DEVELOPMENT  
AUTHORITY OF THE CITY OF PHOENIX,  
ARIZONA**

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Secretary/Treasurer

**AUTHENTICATION CERTIFICATE**

The undersigned Trustee hereby certifies that this is one of the Bonds described in the within-mentioned Indenture.

Date: December 22, 2014

**U.S. BANK NATIONAL ASSOCIATION, as  
Trustee**

By: \_\_\_\_\_  
Authorized Representative



(Form of Reverse of Bond)

This Bond is one of the Bonds of the Issuer issued in an aggregate original principal amount of \$107,405,000 and designated as its Lease Revenue Bonds (Guam Facilities Foundation, Inc. Project) Series 2014 (the “Bonds”), issued under the Indenture, dated as of December 1, 2014 (the “Indenture”), between the Issuer and the Trustee, in order to finance a loan to AZ GFF Tiyan, LLC, an Arizona limited liability company (the “Borrower”) whose sole member is Guam Facilities Foundation, Inc., a Guam non-profit corporation, to finance (i) the acquisition of the Project Site (defined below), (ii) the acquisition, construction and/or rehabilitation of the Facilities (defined below), (iii) the funding of capitalized interest on the Bonds, and (iv) the costs of issuing the Bonds (collectively, the “Project”). The Facilities consist of (i) an approximately 14,000 square foot gymnasium, (ii) an approximately 83,500 square foot office building, (iii) two approximately 10,000 square foot warehouses, each with an additional 6,500 square foot mezzanine space, (iv) existing school facilities, (v) an existing office building, (items (i) through (v) referred to as the “Facilities”), which Facilities will be located on real property in Barrigada, Guam (the “Project Site”) and leased to the Government of Guam to be used exclusively for educational purposes.

Under a Loan Agreement dated as of December 1, 2014 (the “Loan Agreement”), between the Issuer and the Borrower, the Issuer has made available to the Borrower the proceeds of the Bonds.

Counterparts or copies of the Indenture and the other documents referred to herein are on file at the office of the Trustee and reference is hereby made thereto and to the documents referred to therein for the provisions thereof, including the provisions with respect to the rights, obligations, duties, powers and immunities of the Issuer, the Trustee, the Borrower, and the registered owners of the Bonds under such documents, to all of which the registered owner hereof, by acceptance of this Bond, assents.

The Bonds are issuable only in the form of fully registered bonds in denominations of \$100,000 or any integral multiple of \$5,000.

The Bonds are subject to redemption prior to maturity, as provided in the Indenture, and as follows:

**Optional Redemption.** The Bonds maturing on or after February 1, 2025 shall be subject to redemption prior to maturity at the option of the Borrower on or after February 1, 2024, in whole or in part at any time, at a redemption price of 100% of the principal amount of the Bonds being redeemed, plus interest accrued to the date fixed for redemption.

**Mandatory Sinking Fund Redemption.** The Bonds maturing on February 1 of the following years are subject to mandatory redemption pursuant to mandatory sinking fund requirements, at a redemption price of one hundred percent (100%) of the principal amount redeemed plus interest accrued to the redemption date, in the following principal amounts in the years specified:

**Bonds Maturing February 1, 2024**

<b>Year (February 1)</b>	<b>Principal Amount</b>
2021	\$3,365,000
2022	\$3,490,000
2023	\$3,670,000
2024*	\$3,735,000

\* Maturity Date

**Bonds Maturing February 1, 2029**

<b>Year (February 1)</b>	<b>Principal Amount</b>
2025	\$3,925,000
2026	\$4,110,000
2027	\$4,265,000
2028	\$4,490,000
2029*	\$4,585,000

\* Maturity Date

**Bonds Maturing February 1, 2034**

<b>Year (February 1)</b>	<b>Principal Amount</b>
2030	\$4,820,000
2031	\$5,060,000
2032	\$5,265,000
2033	\$5,545,000
2034*	\$5,685,000

\* Maturity Date

**Bonds Maturing February 1, 2041**

<b>Year (February 1)</b>	<b>Principal Amount</b>
2019	\$3,040,000
2020	\$3,210,000
2035	\$5,995,000
2036	\$6,310,000
2037	\$6,590,000
2038	\$6,960,000
2039	\$2,420,000
2040	\$2,555,000
2041*	\$2,050,000

\* Maturity Date

Extraordinary Mandatory Redemption Upon Damage, Destruction or Condemnation. The Bonds are subject to extraordinary mandatory redemption prior to maturity in whole or in part at any time in the event of damage, destruction or condemnation (or conveyance in lieu of condemnation) of all or any part of the Facilities, and the Borrower has determined that net proceeds of hazard insurance or any award received as a result of such condemnation (or conveyance in lieu thereof) are insufficient to repair, rebuild, restore, or re-equip the Facilities to substantially the same condition thereof as existed prior to the event causing such damage, destruction or condemnation, such redemption to be made with the net proceeds of hazard insurance or any award received as a result of such condemnation (or conveyance in lieu thereof). Any extraordinary mandatory redemption of the Bonds under these circumstances will be at a redemption price equal to 100% of the principal amount of Bonds being redeemed, plus interest accrued to the date fixed for redemption

If less than all of the Bonds are to be redeemed, then the particular Bonds or portions thereof to be redeemed will be selected by the Trustee in such random selection manner as the Trustee deems appropriate; provided that the portion of any Bond to be redeemed and the portion not to be redeemed each is required to be in an Authorized Denomination.

In case of optional redemption of the Bonds, the Borrower shall, at least 30 days prior to the redemption date, deliver a written request to the Issuer and the Trustee (unless a shorter notice shall be satisfactory to the Issuer and Trustee) notifying the Issuer and the Trustee of such redemption date and of the principal amount of the Bonds to be redeemed and shall, on or before the redemption date, deliver to the Trustee sufficient funds to pay the redemption price of all Bonds subject to redemption.

Notice of any redemption (other than mandatory sinking fund redemption) is required to be given at least 30 days and not more than 60 days prior to the date fixed for redemption by first-class mail to the Owners of the Bonds to be redeemed. However, the failure to give a notice

of redemption or a defect in it does not affect (i) the validity of any proceedings for the redemption of a Bond if the Owner of such Bond receives actual notice of the redemption from any source or (ii) the validity of the proceedings for the redemption of any Bonds for which proper notice was given. If any Bonds have been called for redemption but have not yet been presented to the Trustee for payment within 60 days after the date set for redemption, the Trustee will send a second notice of redemption, within 75 days of the date set for redemption.

If at the time of mailing of any notice of optional redemption, there shall not have been deposited with the Trustee moneys sufficient to redeem all the Bonds called for redemption, such notice may (if requested by the Borrower) state that it is subject to the deposit of the redemption monies with the Trustee not later than the opening of business on the redemption date and will be of no effect unless such moneys are so deposited.

So long as DTC is acting as securities depository for the Bonds in accordance with the Indenture, notice of any redemption of the Bonds shall be sent by the Trustee only to Cede & Co. Information also will be sent in such manner as the Trustee deems appropriate to the registered securities depositories and national information services that disseminate redemption notices that the Trustee determines to be customary or appropriate

**THE BONDS AND THE INTEREST THEREON ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE EXCLUSIVELY FROM REVENUES AND RECEIPTS UNDER THE LOAN AGREEMENT. THE BONDS DO NOT CONSTITUTE A DEBT OR A LOAN OF CREDIT OR A PLEDGE OF THE FULL FAITH AND CREDIT OR TAXING POWER OF THE ISSUER, THE CITY OF PHOENIX OR OF THE STATE OF ARIZONA, OR OF ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER, THE CITY OF PHOENIX OR THE STATE OF ARIZONA. THE BONDS SHALL NOT CONSTITUTE, DIRECTLY OR INDIRECTLY, OR CONTINGENTLY OBLIGATE OR OTHERWISE CONSTITUTE A GENERAL OBLIGATION OF OR A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER, BUT SHALL BE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE SOURCES DESCRIBED HEREIN AND IN THE INDENTURE, BUT NOT OTHERWISE. THE ISSUER HAS NO TAXING POWER.**

**NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT, OR FUTURE OFFICER, DIRECTOR, COUNSEL, ADVISOR, OR AGENT OF THE ISSUER, OR OF ANY SUCCESSOR TO THE ISSUER, AS SUCH, EITHER DIRECTLY OR THROUGH THE ISSUER OR ANY SUCCESSOR TO THE ISSUER, UNDER ANY RULE OF LAW OR EQUITY, STATUTE, OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, DIRECTORS, COUNSEL, ADVISORS, OR AGENTS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF AND CONSIDERATION FOR THE EXECUTION AND ISSUANCE OF THIS BOND.**

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute an action to enforce the covenants thereof, or to take any action with respect to a default hereof, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture.

The Indenture and other documents referred to therein may be modified or amended to the extent permitted by and as provided therein. Certain amendments, modifications or changes which would affect the rights of registered owners of Bonds of this issue may be made only with the consent of the affected registered owners of the Bonds then Outstanding under the Indenture, as provided in the Indenture. Any such consent by the registered owner of this Bond shall be conclusive and binding upon such registered owner and all subsequent registered owners.

Bonds of this issue are issuable only in fully registered form. Subject to the limitations provided for in the Indenture, this Bond may be exchanged for a like aggregate principal amount payable at maturity of Bonds of the same maturity in Authorized Denominations.

Bonds of this issue are transferable by the registered owner thereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided for in the Indenture and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds of the same maturity and in Authorized Denominations for the same aggregate principal amount payable at maturity will be issued to the transferee in exchange.

The Trustee may require a registered owner of this Bond, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture in connection with any exchange or transfer. The Trustee need not exchange or register the transfer of a Bond which has been selected for redemption and need not exchange or register the transfer of any Bond for a period of 15 days before a selection of Bonds to be redeemed.

The Issuer, the Trustee and any successor trustee or paying agent may treat the registered owner of this Bond as the absolute owner for the purpose of receiving payment as herein provided and for all other purposes and none of them shall be affected by any notice to the contrary.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

---

(Please Print or Typewrite Name, Address and Social Security Number or other Federal Tax Identification Number of Assignee) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
(Signature(s) must be guaranteed by an eligible guarantor institution pursuant to Securities and Exchange Commission Rule 17Ad-15.)

\_\_\_\_\_  
Note: The signature(s) on this assignment must correspond with the name(s) as written on the face of the within registered certificate in every particular without alteration or enlargement or any change whatsoever.

*(End of Form of Bond)*

**EXHIBIT B**

**FORM OF PROJECT FUND REQUISITION CERTIFICATE**

**\$107,405,000**

**The Industrial Development Authority of the  
City of Phoenix, Arizona  
Lease Revenue Bonds  
(Guam Facilities Foundation, Inc. Project)  
Series 2014**

The undersigned Borrower hereby requisitions funds from the Project Fund created pursuant to the Indenture pursuant to which the above-referenced Bonds are secured and hereby certifies:

- (1) Costs in the aggregate amount of \$\_\_\_\_\_ have been paid or incurred or financed for the Facilities. All of those costs are proper costs of the Facilities as provided in the Indenture, and no part of those costs was included in any previous requisition.
- (2) The amount to be paid from the Project Fund to be paid to:  
[check one]
  - \_\_\_\_\_ The Borrower to reimburse it for costs of the Project already paid
  - \_\_\_\_\_ The Developer to reimburse it for costs of the Project already paid
  - \_\_\_\_\_ The entity or entities indicated on the attached schedule

**Borrower's and/or Developer's Representations and Warranties**

1. The Borrower and the Developer have provided this requisition and any other documentation required by Security Title, title insurer for the Project Site, for its CLTA Form 122-96 Construction Lender Advance Endorsement. The Borrower and the Developer shall provide copies to the Trustee of all CLTA form 122-96 Endorsements granted by Security Title immediately upon receipt.

2. No changes have been made in the plans and specifications set forth in the Development Agreement for the Facilities which require and have not received the prior approval of (i) the Government of Guam or any party to the Borrower Documents, (ii) any Governmental Authority having jurisdiction over the Facilities, or (iii) any other parties from whom such approval is required.

3. Construction of the Facilities has been performed in accordance with the plans and specifications.

4. As of the date hereof, the Developer has executed change orders (increasing/decreasing) the cost of the Facilities by \$[ ] in the aggregate, has notified the Government of Guam and the Borrower of such changes and, to the extent necessary, has received any and all necessary approvals.

5. Funding of this Requisition is in accordance with the terms and provisions of the Indenture.

6. All money requisitioned by the Developer and the Borrower for construction and disbursed by the Trustee under previously approved requisitions has been paid to the Developer and, to the Developer's best knowledge, all subcontractors, vendor and suppliers; all other fund requisitioned by the Developer and disbursed by the Trustee under previously approved requisitions have been expended by the purpose for which they were requisitioned.

7. All of the information submitted in connection with this Requisition is true and accurate as of the date of submission and the obligation was properly incurred.

8. The Borrower [or Developer] represents and warrants that (i) there has occurred no Event of Default or event which, with the passage of time or the giving or notice or both, would constitute an Event of Default on the part of the Borrower under the terms of the Lease or the Developer under the terms of the Development Agreement, (ii) except as previously disclosed by the Developer to the Borrower, the Government of Guam or the Trustee, the Developer does not know and has not received notice from or been informed by any governmental authority of any alleged deficiencies in the work performed to date or any deviation of such work from the Development Agreement or notice of any assertion of a claim that the Facilities have not been constructed in accordance with the Development Agreement, (iii) other than the Mortgage, there are no liens against any portion of the Facilities, and (iv) the Development Agreement and the Lease are in full force and effect.

9. The Borrower [or Developer] represents and warrants that this Requisition is in the form of requisition required by the Indenture.

10. Attached hereto are originals of lien waivers from the Developer and all such subcontractors and materialmen requisitioning payment under this Requisition.

11. The Borrower [or Developer] represents and warrants that the Facilities can be completed with funds remaining in the Project Fund and within the time set forth for Substantial Completion in the Development Agreement.



Executed and certified on this \_\_\_ day of \_\_\_\_\_:

**BORROWER:**

**AZ GFF TIYAN, LLC**, an Arizona limited liability company

By: **GUAM FACILITIES FOUNDATION, INC.**,  
a Guam nonprofit corporation, its sole member

By: \_\_\_\_\_  
Authorized Representative

**DEVELOPER:**

**CORE TECH INTERNATIONAL CORPORATION**,  
a Guam corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[Attach schedule showing entity or entities to whom payment is to be made, and amount to each, if applicable (i.e., if not reimbursement to Developer or Borrower)]

**EXHIBIT C**

**FORM OF MANAGEMENT FEE FUND REQUISITION CERTIFICATE**

**\$107,405,000**

**The Industrial Development Authority of the  
City of Phoenix, Arizona  
Lease Revenue Bonds  
(Guam Facilities Foundation, Inc. Project)  
Series 2014**

The undersigned Borrower and Manager hereby requisition funds from the Management Fee Fund created pursuant to the Indenture pursuant to which the above-referenced Bonds are secured and hereby certifies that the Management Fee due to the Manager under the Management Agreement is due and payable to the Manager.

The amount to be paid from the Management Fee Fund for the payment of the Management Fee is \$[\_\_\_\_\_], less amounts necessary to pay any items under Section 4.04 or any other provisions of the Indenture, and is currently due and payable.

Executed and certified on \_\_\_ day of \_\_\_\_\_:

**BORROWER:**

**AZ GFF TIYAN, LLC**, an Arizona limited liability company

By: **GUAM FACILITIES FOUNDATION, INC.**,  
a Guam nonprofit corporation, its sole member

By: \_\_\_\_\_  
Authorized Representative

**MANAGER:**

**CORE TECH INTERNATIONAL CORPORATION,**  
a Guam corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT D**

**FORM OF COSTS OF ISSUANCE FUND REQUISITION CERTIFICATE**

**\$107,405,000**

**The Industrial Development Authority of the  
City of Phoenix, Arizona  
Lease Revenue Bonds  
(Guam Facilities Foundation, Inc. Project)  
Series 2014**

The undersigned Borrower Representative hereby requisitions funds from the Costs of Issuance Fund created pursuant to the Indenture pursuant to which the above-referenced Bonds are secured and hereby certifies:

The amount to be paid from the Costs of Issuance Fund to be paid to the entity or entities indicated on the attached schedule.

Executed and certified on this date: December 22, 2014

**BORROWER:**

**AZ GFF TIYAN, LLC**, an Arizona limited liability company

By: **GUAM FACILITIES FOUNDATION, INC.**,  
a Guam nonprofit corporation, its sole member

By: \_\_\_\_\_  
Joe M. Arnett, Chairman

[Attach schedule showing entity or entities to whom payment is to be made, and amount to each]

**EXHIBIT E**

**SCHEDULE OF GEDA FEES**

February 1, 2016	\$906.73
February 1, 2017	\$4,058.44
February 1, 2018	\$1,256.44
February 1, 2019	\$3,219.63
February 1, 2020	\$2,472.38
February 1, 2021	\$3,525.13
February 1, 2022	\$1,648.29
February 1, 2023	\$2,116.29
February 1, 2024	\$1,824.71
February 1, 2025	\$4,894.71
February 1, 2026	\$5,156.71
February 1, 2027	\$6,625.10
February 1, 2028	\$2,296.10
February 1, 2029	\$1,903.47
February 1, 2030	\$6,968.97
February 1, 2031	\$3,185.97
February 1, 2032	\$4,796.22
February 1, 2033	\$4,020.47
February 1, 2034	\$6,551.41
February 1, 2035	\$2,572.83

# Exhibit E

# Guam DOE not part of Tiyan negotiations

Haidee V Eugenio, Pacific Daily News 10:23 p.m. ChST July 24, 2016

## December target for central office building completion



(Photo: PDN file)

The Guam Department of Education was not a part of the Tiyan education complex cost negotiations, or the revision of the property deal from a lease to a **\$10 million-a-year purchase** ([/story/news/education/2016/06/18/tiyan-costs-rise-govguam-pay-10m-year/86032106/](http://story/news/education/2016/06/18/tiyan-costs-rise-govguam-pay-10m-year/86032106/)), education officials told senators.

Taling Taitano, Guam DOE's deputy superintendent for finance and administrative services, said the governor's office asked the department what they wanted to be built at the Tiyan complex, but was not asked about what those items would cost.

Taitano was responding to Vice Speaker Benjamin J. Cruz's line of questions about Adelup's decision to convert the Tiyan deal from lease to purchase, and from tax credits to cash-only payments.

"We were not part of the negotiations with the landlord, the leases between the government of Guam and Core Tech," Taitano told Cruz at a legislative budget hearing for the Guam DOE.



PACIFIC DAILY NEWS

[Tiyan costs to rise. GovGuam to pay \\$10M a year](http://www.guampdn.com/story/news/education/2016/06/18/tiyan-costs-rise-govguam-pay-10m-year/86032106/)

(<http://www.guampdn.com/story/news/education/2016/06/18/tiyan-costs-rise-govguam-pay-10m-year/86032106/>)

Cruz, chairman of the Legislature's budget committee, continues to dig deeper into how the terms of the Tiyan property agreement "were negotiated behind closed doors," and are now forcing the Guam Legislature to appropriate funds for the facilities covered by the agreement. Budget hearings continue next week.

The Tiyan deal began as a lease for a temporary high school campus that was supposed to be paid with \$4.5 million a year in tax credits. It later evolved into a government of Guam purchase of a set of renovated former military barracks and office complex for a total price of \$250 million, including a 10-percent annual interest rate.

Cruz is seeking a legal opinion from Attorney General Elizabeth Barrett-Anderson of whether the government of Guam can cancel or cut the cost of the Tiyan purchase.

## Not in the budget

Taitano said the education department's fiscal 2017 budget request of nearly \$326 million — which is about \$94 million more than the 2016 appropriation — does not include payment for the Tiyan property.

"I think that the only costs included in our budget related to Tiyan has to do with increase in utilities related to the new building," Taitano said.

Completion of the ongoing construction of the new Guam DOE central office building is scheduled for December, Taitano added.

She added that "no new warehouses are being built at this point."



PACIFIC DAILY NEWS

[A month before classes, Guam education agencies await \\$492M in funding](http://www.guampdn.com/story/news/2016/07/13/492m-education-funding-yet-remitted-month-before-schools-open/86978896/)

(<http://www.guampdn.com/story/news/2016/07/13/492m-education-funding-yet-remitted-month-before-schools-open/86978896/>)

Taitano said Guam DOE wanted to consolidate all its offices in one area in Tiyan for efficiency of operation because these offices are currently spread throughout the island, including those in Tamuning, Mangilao and Piti.

"So basically we were asked what we wanted, what we needed. We provided that to the governor's office. The negotiations on costs, we were not part of that," she said, adding that the department was not the one that asked to change the nature of the property agreement.

The cost of installment payments on the Tiyan purchase will increase from \$7 million this year to more than \$10 million every year starting next year, a June 9 audit report shows.

The payments of \$10 million will continue for 21 years, and include a 10-percent interest rate, the audit report shows.

Additional yearly payments will continue through 2041, and when all payments add up, the Tiyan purchase will top \$250 million, the audit report shows.



PACIFIC DAILY NEWS

Guam DOE looking for a way to keep SRO program going

(<http://www.guampdn.com/story/news/2016/07/20/guam-doe-looking-way-keep-sro-program-going/87329782/>)

Read or Share this story: <http://www.guampdn.com/story/news/education/2016/07/24/guam-doe-not-part-tiyan-negotiations/87428362/>

		<b>VENDING SUPERVISOR • BUSINESS CONSULTANT</b> <b>• SALES REPRESENTATIVE</b> <b>CLICK HERE FOR MORE INFORMATION</b>
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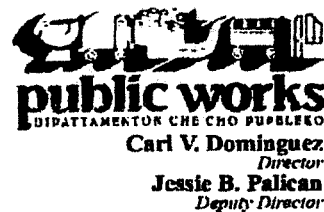


# Exhibit F



*The Honorable*  
**Eddie Baza Calvo**  
*Governor*

*The Honorable*  
**Ray Tenorio**  
*Lieutenant Governor*



**Carl V. Dominguez**  
*Director*  
**Jessie B. Palican**  
*Deputy Director*

August 26, 2014

Fidelity and Deposit Company of Maryland  
1400 American Lane  
Schaumburg, IL 60196 1056

Zurich American Insurance Company  
1400 American Lane, Tower 1, 19th Floor  
Schaumburg, IL 60196 1056

**Ref: Route 1/Route 8 Intersection Improvements and Agana Bridges Replacement**  
**Project No. GU-DAR-TI01(001)**  
**Contract Default Notification**

Dear Sirs,

The purpose of this letter is to formally notify Fidelity and Deposit Company of Maryland and Zurich American Insurance Company (Sureties) that the Sureties' bonded principal, Core Tech International (CTI), is considered to be in default of the terms and conditions of the construction contract on the above referenced project. The contract was required to be completed on February 15, 2014. The Government of Guam, acting by and through its Department of Public Works (Department), has granted a no cost time extension to CTI through April 16, 2014. The contract work remains unfinished and is projected to be completed in March 2015.

To date, CTI has not responded to the Department's request for a recovery schedule. Further, CTI is facing potential liquidated damages of over one million dollars.

Should you have any questions or need additional information, please contact Mr. Crispin Bensen, Project Engineer, at (671) 649-3115 with Department of Public Works or Mr. David Titzel, Construction Manager, at (671) 648-1066 with Parsons Transportation Group.

Sincerely,

**CARL V. DOMINGUEZ**

Cc: Rigoberto Diaz, DPW  
Crispin Bensen, DPW  
David Titzel, PTG  
Tom Keeler, DPW  
Richelle Takara, FHWA  
Ho S. Eun, CTI  
Conchita Bathan, CTI  
Roberto Lee, CTI  
Duarosan/PSlagel/JBlaz

# Exhibit G

# Cruz calls for renegotiation of Tiyan deal

Gaynor Dumat-ol Daleno , gdumat-ol@guampdn.com 12:09 a.m. ChST October 11, 2016



(Photo: PDN file)

The government of Guam shouldn't pay \$1.7 million for Department of Education offices that it can't use because of delayed construction in Tiyan, Vice Speaker Benjamin Cruz said Monday.

Cruz, who is seeking re-election, issued the statement Monday in support of Guam DOE's acting Superintendent Joseph M. Sanchez, who suggested the money should go toward helping the department pay for critical contracts to keep public schools open. Those contracts include custodial, trash disposal, air-conditioning repair and maintenance services, Sanchez wrote to Cruz on Sept. 20.

Guam DOE is expected to fall \$6 million short of its fiscal 2016 budget, said Cruz, chairman of the legislative Committee on Appropriations.

The Legislature appropriated \$2.8 million toward the lease for Guam DOE office and warehouse space at Tiyan – \$2.34 million for base rent and \$496,478 for operations and building insurance – for fiscal 2016, Cruz said. While waiting for the construction of new office and warehouse facilities, DOE has been using renovated former military facilities in Tiyan, which are part of what Core Tech International sold to GovGuam.



PACIFIC DAILY NEWS

[Tiyan High deal changed](#)

(<http://www.guampdn.com/story/news/2015/09/20/tiyan-high-deal-changed/72384242/>)

As Core Tech faces a shortage of construction workers, following the increased denial of H-2B foreign worker visas ([/story/news/2016/10/04/local-businesses-sue-feds-over-worker-visa-denials/91517270/](#)), Guam DOE has been informed that office and warehouse construction projects won't be completed until March, according to Cruz. The projects were supposed to have been completed last month.

The six-month delay should also require an adjustment of the payments to Core Tech, according to Cruz.

"Because of the delayed completion, the taxpayers of Guam will be paying for a building they won't be able to use for another six months," Cruz said.

Cruz's call for a renegotiation of the lease for the education department's offices at Tiyan revived public discussion of a controversial lease-to-own contract between GovGuam and Core Tech.

Core Tech officials weren't immediately available for comment Monday.



PACIFIC DAILY NEWS

[Guam DOE not part of Tiyan negotiations](#)

(<http://www.guampdn.com/story/news/education/2016/07/24/guam-doe-not-part-tiyan-negotiations/87428362/>)

GovGuam is paying \$10 million a year for Tiyan High School ([/story/news/education/2016/06/18/tiyan-costs-rise-govguam-pay-10m-year/86032106/](#)), Guahan Academy Charter School and the Guam DOE offices at Tiyan.

Renegotiating the lease would free up \$1.7 million "toward funding the operation of Guam's public schools," Cruz said.

GovGuam owned the former Naval Air Station property after the military closed the base, but then returned the land to an ancestral landowner's family. The family then sold the land to Core Tech International, which initially leased the property to GovGuam. The lease would be payable in tax breaks because GovGuam was short of cash.

Guam DOE wasn't part of Tiyan negotiations, which were handled by the Guam Economic Development Authority and the governor's office.

In late 2014, the administration agreed to change the deal from a lease to a sale. Instead of tax credits, the purchase would be payable in cash, at \$10 million a year over 25 years.

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The advertisement banner features the Zeng's Studio logo on the left, contact information for Joe Blas, Bolo, RT, and Zeng in the center, a photo of the studio staff in the middle, and the 'Best of Guam 2016' award logo and 'THE BEST BARBER SHOP' text on the right.