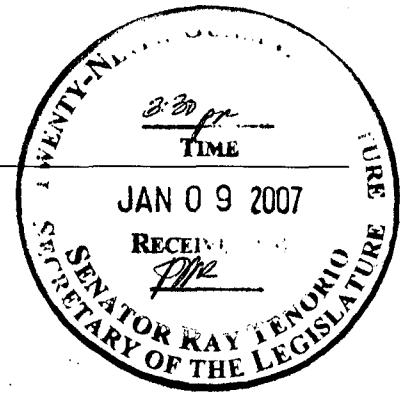




Office of the Governor of Guam

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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

05 JAN 2007

Honorable Mark Forbes
Speaker
I Mina Bente Nueve Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96932

Office of the Speaker
MARK FORBES

Date: 1/9/07
Time: 11:39am
Rec'd by: [Signature]
Print Name: Carl Q.
29-07-0025

Dear Speaker Forbes:

Hafa Adai! Transmitted herewith is a proposed amendment by request of I Maga' Låhen Guåhan, the Governor of Guam, in accordance with the Organic Act of Guam, as amended "AN ACT TO APPROVE THE AGREEMENT BETWEEN THE LENDING CONSORTIUM AND THE GOVERNMENT OF GUAM FOR THE COLA PAYMENTS ORDERED BY THE SUPERIOR COURT IN SP0206-93; PLEDGE SECTION 30 FUNDS; AMEND PL 28-151 AND THE PROCEDURES CREATED THEREIN FOR THE DISTRIBUTION OF COLA PAYMENTS; AMEND TAX REBATE; AND ABSOLUTION," that I introduce for I Liheslatura's immediate consideration.

As we welcome in a new year and look toward a progressive term ahead of us, we must continue working together to carry out our government's mission to provide for the critical needs of our community. There are many factors that impact our people and together, we have worked to address the issues concerning our financial obligations.

Last year, we were faced with the challenges of fulfilling a 13-year-old debt that has, and continues to affect the lives of some of our community's most vulnerable citizens, our retirees. Many of our manam'ko live on an inadequate fixed income, even as the cost of living continues to rise. The price of our most basic necessities have exceeded their ability to sustain an adequate lifestyle and many are forced to make critical financial decisions that significantly affect their way of life. As leaders, we have taken on a responsibility not only to protect the health and safety of our people, but also to ensure a quality of life that supports the growth of our community.

For several months, my Administration has been working to identify a solution that would address the \$123 million in past due COLA debt without significantly affecting the operations of this government's critical services. It is through our consortium agreement with our local financial institutions that we are able to address this matter.

0022

Transmitted with this letter is legislation that will amend existing public law in order to allow our government to pay what is owed to all of our retirees. This legislation seeks to clarify PL 28-151, through identifying \$10 million per year from Section 30 Funds for loan repayment and simplifying administration and distribution procedures for awardees, as well as additional provisions for tax rebates and General Fund absolutions.

This legislation provides the director of the Government of Guam Retirement Fund with the authority to administer and determine individual COLA payments as set by PL 28-151. This measure allows the director to identify awardees and their beneficiaries and allows the Retirement Fund to establish the necessary requirements for this process. It also simplifies the procedures for death benefits and probate processes so survivors can also receive their money in a more timely and efficient manner.


The legislation also establishes a tax rebate cap for awardees receiving no more than \$30,000. As we work to identify solutions to help our retirees, it is essential that we address the financial discrepancies among those receiving higher annuities. Just as we are working to help all of our *manam'ko*, we must take into account that those with larger obligations to our government are also more susceptible to the rising cost of living.

As my legislation focuses on addressing the needs of those who are financially challenged, the final amendment absolves any financial obligations a COLA recipient may have to the government of Guam General Fund. I believe that it is important for us to consider the financial situations of those who need our help most.

It is essential that we continue working with one another to ensure that our government remains responsible to those we serve. I am confident that this legislation will help us move forward with this critical issue. I anticipate the progress of a great partnership and collaboration with the 29<sup>th</sup> Guam Legislature.

Thank you and may God bless you always.

*Sinseru yan Magâhet,*

A handwritten signature in black ink, appearing to read 'Felix P. Camacho', with a long, sweeping underline.

**FELIX P. CAMACHO**

*I Maga' Lâhen Guâhan*  
Governor of Guam

**MINA' BENTE NUEBE NA LIHESLATURAN GUÅHAN**  
**2007 (FIRST) Regular Session**

**Bill No.**

**Introduced by:**

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*By request of I Maga'lahaen  
Guåhan in accordance with  
the Organic Act of Guam .*

**AN ACT TO APPROVE THE LOAN AGREEMENT BETWEEN  
THE BANK OF GUAM AND THE GOVERNMENT OF GUAM FOR  
THE COLA PAYMENTS ORDERED BY THE SUPERIOR COURT  
IN SP0206-93; PLEDGE SECTION 30 FUNDS AND  
APPROPRIATION; AMEND P.L. 28-151 AND THE PROCEDURES  
CREATED THEREIN FOR THE DISTRIBUTION OF COLA  
PAYMENTS; AMEND TAX REBATE; AND ABSOLUTION**

1        **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2        **Section 1. Approval of Agreement.** The Promissory Note, Loan Agreement,  
3 and Pledge and Assignment, along with the appended loan documents, between the  
4 Bank of Guam and the Government of Guam in order to fund the payment of the cost of  
5 living adjustment payments awarded pursuant to Superior Court Case No. SP0206-93  
6 are hereby approved.

7        **Section 2. Pledge Section 30 Funds and Appropriation.**        Section 9

8 of Public Law 28-151 is hereby repealed and re-enacted to read as follows:

9        *I Maga'lahaen* may pledge up to Ten Million Dollars (\$10,000,000) per year  
10 from payments received by the government of Guam pursuant to Section 30 of

1 the Organic Act as security for repayment of the loan agreement approved herein  
2 and in the event that the pledge of Section 30 funds are insufficient or  
3 unavailable, there are hereby appropriated from the General Fund such sums as  
4 will equal in each year the amount of money necessary to pay the principal of and  
5 interest on the loan.

6 **Section 3.** 4 G.C.A. § 7101 is repealed and re-enacted to its original form  
7 that was effective prior to the enactment of P.L. 28-151.

8 **Section 4.** A 4 G.C.A. § 8140.2 is repealed and re-enacted to read as  
9 follows:

10 **§ 8140.2. Definitions.** As used in this chapter:

11 (a) COLA AWARD means Cost of Living Adjustment Payments made  
12 pursuant to Superior Court Case No. SP0206-93.

13 (b) COLA AWARDEE means a government retiree entitled to receive a  
14 COLA AWARD.

15 **Section 5.** Title 5 G.C.A. §20101.1 and Title 4 G.C.A §8140.3 as added by  
16 Public Law No. 28-151 are repealed and Title 4 G.C.A. § 8410.3 is enacted to read:

17 **§8140.3. Director of Retirement Fund to Authorize and Determine COLA**  
18 **AWARDS.** Unless the Superior Court of Guam orders otherwise, the Government  
19 of Guam Employees Retirement Fund shall administer payment of COLA AWARDS  
20 pursuant to Superior Court Case No. SP0206-93. The Director of the Retirement

1 Fund shall notify the Treasurer of Guam to issue COLA payments according to the  
2 following priority:

3 (1) The COLA AWARDEE;

4 (2) COLA AWARDEE's surviving spouse;

5 (3) to the person designated by the COLA AWARDEE as his beneficiary  
6 pursuant to Title 4 G.C.A. § 8132;

7 (4) All of the COLA AWARDEE's adult and minor children in equal shares  
8 provided that, if a child is deceased, to the deceased child's descendants in equal  
9 shares; or

10 (5) to the COLA AWARDEE's estate in accordance with Title 15 G.C.A. §  
11 3101.1.

12 **Section 6.** Title 5 G.C.A. § 20101.2 is repealed and re-enacted as Title 4 G.C.A.

13 § 8140.4 to read:

14 **§ 8140.4. Other Duties of Director of Retirement Fund Regarding COLA**  
15 **AWARDS.**

16 (a) The Director of the Government of Guam Employees' Retirement Fund  
17 shall identify the appropriate persons to receive COLA AWARDS pursuant to  
18 Title 4 G.C.A. § 8140.3 when a retiree who is entitled to receive a COLA  
19 AWARD pursuant to the court's judgment in SP0206-93 dies before receiving the  
20 award. Among other things, the Director may require the following:

21 (1) the COLA AWARDEE's death certificate;

1 (2) an affidavit stating (i) that the COLA AWARDEE was entitled to  
2 the award; (ii) that he died before receiving it; and (iii) the name,  
3 date of birth and mailing address of every person entitled to receive  
4 the award pursuant to Title 4 G.C.A. § 8140.3

5 (b) The Director may reasonably rely on affidavits and supporting  
6 documentation submitted, and shall notify Treasurer of Guam to pay  
7 the COLA AWARD to the appropriate persons in accordance with Title  
8 4 G.C.A. § 8140.3.

9 (c) The Director shall create a form affidavit to assist applicants for COLA  
10 AWARDS.

11 **Section 7.** Title 15 G.C.A. § 3101.1 is repealed and reenacted to read as  
12 follows:

13 **§3101.1. Estates of Deceased COLA AWARDEES; Summary**

14 **Administration of Probate; Affidavit.** When the Director of the Government  
15 of Guam Retirement Fund determines that a member of the Government of Guam  
16 Retirement Fund who is entitled to receive a COLA payment pursuant to Superior  
17 Court Case No. SP0206-93 died before receiving the award, and that the award  
18 cannot be distributed in accordance with Title 4 G.C.A. § 8104.2 through 8140.5,  
19 the Director shall pay over the COLA AWARD as follows:

20 (a) If no proceeding regarding the COLA AWARDEE's estate was brought  
21 pursuant to Title 15 G.C.A., a person who has a right to succeed to the

1 COLA AWARDEE's property may, without bringing such a proceeding,  
2 submit to the Director an affidavit showing the name, date of birth and  
3 address of every person entitled to the COLA AWARD pursuant to the  
4 laws of intestate succession. If the Director determines that the affidavit is  
5 correct, he shall notify the Treasurer of Guam to distribute the COLA  
6 AWARD accordingly.

7 (b) If a proceeding regarding the COLA AWARDEE's estate pursuant to Title  
8 15 G.C.A. is pending, the court in said proceeding shall order the Director  
9 to pay over the award to the COLA AWARDEE's personal representative.

10 (c) If a proceeding regarding the COLA AWARDEE's estate brought  
11 pursuant to Title 15 G.C.A. is closed, the personal representative or an heir  
12 of the member may request payment of the COLA AWARD and present  
13 the Director with a certified copy of the Decree of Final Distribution. The  
14 Director may instruct the Treasurer of Guam, in accordance with said  
15 Decree, in the appropriate amounts to the heirs named therein or to their  
16 personal representatives or successors in interest.

17 The Director shall develop form affidavits to assist applicants for COLA  
18 AWARDS.

19 **Section 8.** Title 11 G.C.A. § 44101(a) is amended to read:

1 (a) COLA AWARDEE means a government retiree or eligible survivor  
2 entitled to receive a Cost of Living Adjustment pursuant to Superior  
3 Court Case No. SP02026-93.

4 **Section 9. Tax Rebate for COLA Awardees.** 11 G.C.A. § 44102 is  
5 amended to read as follows:

6 A tax rebate in an amount equal to the total withholding tax due from COLA  
7 AWARDEES whose total COLA AWARD does not exceed \$30,000.00 is hereby  
8 established and declared.

9 **Section 10. Absolution.** A member of the COLA class in SP0206-93 who is  
10 liable to the General Fund as a result of the offset ordered by Superior Court is hereby  
11 absolved from payment owed to the General Fund as a result of the offset.



## LOAN AGREEMENT

### WITNESSETH:

THIS AGREEMENT, made this \_\_\_ day of \_\_\_\_\_, 2006, by and between, on one hand, BANK OF GUAM, a Guam Banking Corporation organized under the laws of Guam, and authorized to do business within Guam, and \_\_\_\_\_ Bank, \_\_\_\_\_ Bank, (collectively "Lender") and on the other hand, the GOVERNMENT OF GUAM, hereinafter sometimes referred to as "the Government" is with reference to the following facts:

Pursuant to Public Law-\_\_\_\_\_ the Legislature of Guam has authorized the Governor of Guam to borrow or arrange a line of credit not to exceed One Hundred Twenty-Three Million Eight Hundred Thousand Dollars (\$123,800,000.00), and has further authorized a pledge of the Revenues payable to the Government of Guam by the United States of America under Section 30 of the Organic Act of Guam, 48 U.S. Code §1421h, as security for repayment of the Loan. The Governor of Guam has determined to borrow in the form of, and has negotiated, a term loan in the sum of One Hundred Twenty-Three Million Eight Hundred Thousand Dollars (\$123,800,000.00), and Lender has agreed to extend such loan, all upon the terms and conditions herein provided.

Bank of Guam will use its best efforts to obtain the participation of other financial institutions to lend the sum of up to \$123,800,000.00.

In consideration of the mutual promises hereinafter contained, and of other valuable consideration, Lender and the Government agree as follows:

1. **Loan.**

(a) Subject to the conditions and upon the terms herein provided, Lender agrees to lend and the Government will borrow the sum of up to One Hundred Twenty-Three Million Eight Hundred Thousand Dollars (\$123,800,000.00), lawful money of the United States (hereinafter "the Loan").

(b) The Loan shall be evidenced by a Promissory Note (hereinafter "the Note") in the form of Exhibit "A", attached hereto, and by referenced incorporated herein.

(c) Interest on the Loan will be exempt from all Government of Guam taxation.

2. **Interest and Repayment.**

The Loan shall bear interest and shall be repaid pursuant to the provisions of the Note in the form of **Exhibit A** hereto.

3. **Security.**

(a) The obligations of the Government under the Loan are general and not special obligations of the Government of Guam, subject to the full faith and credit of the territory of Guam.

(b) The Loan shall be secured by a pledge of revenues payable to the Government under Section 30 of the Organic Act, 48 U.S. Code §1421h, ("the Pledge"), in the form of **Exhibit B** hereto, subject to two prior pledges of such revenues pursuant to: (i) the terms of an Indenture made between the Government of Guam and Bank of Guam as Trustee and Depository and U.S. Bank Trust National Association as Co-Trustee with respect to the Government of Guam Limited Obligation (Section 30) Bonds including the \$76,895,000 Government of Guam Limited Obligation (Section 30) Bonds Series 2001A ("the Indenture") dated as of December 1, 2001, and issued pursuant to 5 GCA §1508.1 and 12 GCA Chapter 51; and (ii) a Bank of Guam loan dated as of September 17, 2002 with an outstanding balance of \$6,682,479.32, with a maturity date of October 1, 2012, ("the Bank of Guam 2002 Loan") but otherwise a first lien upon such Revenues.

(c) In the event that the pledge of revenues in section 3(b) above is insufficient or unavailable to pay the Loan, Lender may take or hold additional or substitute collateral or security, including but not limited to, any real or personal property of the Government, for repayment of the Loan.

4. **Representations, Warranties and Agreements.** The Government makes the following representations, covenants and warranties, which shall survive the execution and delivery of this Agreement, the Pledge, and the Note and shall be continuing:

(a) The Government has the authority necessary to execute, deliver and perform the terms of this Agreement, the Pledge and the Note, and to borrow hereunder. The execution, delivery and performance of this Agreement, the Pledge and the Note, and all other agreements, instruments and documents provided for herein and the borrowing contemplated hereby have been duly authorized by proper proceedings and do not and will not conflict with or result in a breach by Government or any officer or representative of the Government of any law

or any regulation, order, writ, injunction or decree.

(b) This Agreement constitutes a valid and binding obligation of the Government, enforceable in accordance with its terms, and the Pledge and the Note when duly executed on behalf of the Government, and delivered in accordance with this Agreement, will constitute valid and binding obligations of the Government enforceable in accordance with their terms. The Pledge is, subject only to the rights of a trustee, depository or of the bond holders under the Indenture, and under the Bank of Guam 2002 Loan, valid, binding and enforceable upon the Government of Guam, and upon the property subject thereto, and as to other parties who may claim interests in the property subject thereto and is effective to create and perfect the lien it purports to create upon the property subject thereto.

(c) There is no action, suit or proceeding pending or, to the knowledge of the Government, threatened against or affecting the Government in any court or before any arbitrator or before any governmental agency, wherein an adverse determination would materially adversely affect the ability of the Government to perform its obligations under this Agreement, the Pledge and the Note.

(d) All borrowings or public indebtedness of the Government, in addition to the borrowing represented by the Loan, do not exceed the ten percent (10%) ceiling imposed by Section 11 of the Organic Act of Guam, 48 U.S. Code §1423a, as amended.

(e) All necessary action required by law to authorize performance of the terms and conditions of the Loan by the Government has been made including any necessary appropriation for repayment.

(f) The Government will not be immune from suit and the Government does hereby waive sovereign immunity in any action whatsoever as may arise out of the Loan, and Lender will not be limited in any way as to the remedies available to it, or as to the amount or amounts that may be collected under such litigation.

5. **Supporting Documents.** Government will as a condition of the Loan and prior to disbursement of the Loan deliver the following documents in form and substance satisfactory to Lender:

(a) The Pledge in the form of **Exhibit B** hereto executed and delivered by the Government of revenues payable from time to time by the United States of America to the Government pursuant to Section 30 of the Organic Act.

(b) An opinion of the Attorney General of Guam in the form of **Exhibit C** hereto.

(c) A certification by the Director of the Department of Administration of the Government that all borrowings or public indebtedness of the Government of Guam, in addition to and inclusive of the borrowing under the Loan, do not exceed the ten percent (10%) ceiling imposed by Section 11 of the Organic Act of Guam, 48 U.S. Code §1423a.

(d) An opinion of counsel to the Guam Economic Development and Commerce Authority that the Loan has been duly authorized by such Authority consistent with 12 GCA §50103(k).

(e) A Revenue Ruling by the Director of the Department of Revenue & Taxation that all of the interest earned the loan is exempt from all Government of Guam taxation.

6. **Opinion of Counsel.** The obligation of Lender to make the Loan disbursement is subject to receipt from their own counsel of a favorable opinion that such counsel has reviewed all documents required by this Agreement, in connection with the Loan, are satisfied with their contents, and deems them to be sufficient to secure the Loan.

7. **Bank Fee.** In consideration of Bank of Guam's management and administration of the Loan and its best efforts to obtain participation of other financial institutions for the Loan, the Government shall pay Bank of Guam an amount equal to one-fourth (1/4) of one percent (1%) of the Loan amount.

8. **Use of Loan Funds.** The Loan funds extended hereunder shall be used as needed by the Government in amounts not exceeding the authorized amount of the Loan hereunder for the purposes specified in Public Law \_\_\_\_\_.

Loan funds hereunder shall not be diverted by the Government to or drawn for any other purpose than permitted by law.

Breach of this provision or of any statutory provision as to application of the Loan shall not impair the obligations of the Government to Lender hereunder.

9. **General Conditions to Disbursement.** Lender shall not be obligated to make any disbursement under the Loan:

(a) When the Government has defaulted in the making of any payment required by this Agreement.

(b) When the Government is in breach of any covenant, condition or warranty under this Agreement or the Pledge.

(c) When any claim has been made by the Department of Revenue and Taxation of the Government of Guam, or the Internal Revenue Service of the United States, that interest hereon is not exempt from taxation under the Internal Revenue Code of the United States, the Guam Territorial Income Tax or the Guam Business Privilege Tax.

10. **Conditions to Disbursement.** The obligations of Lender to disburse funds hereunder shall be conditioned upon the following, which shall be satisfied prior to disbursement of any funds hereunder:

(a) All conditions to the lawful borrowing by the Government hereunder, to the making and performance of this Agreement and to the making and performance of the Pledge by the Government shall have been obtained.

(b) The Government shall have made and delivered to Lender:

(1) This Agreement.

(2) The Note.

(3) The Pledge and Assignment.

(4) Notice of the Pledge and Assignment as required by the Pledge to the trustee and depository under the Indenture, and direction to pay funds held by such trustee and depository under the Indenture as and when payable to the Government to Lender hereunder pursuant to the provisions of the Pledge, duly acknowledged by such trustee and depository.

(5) Notice of the Pledge as required by the Pledge to the Secretary of the Treasury and Secretary of the Interior of the Government of the United States, subject to the prior pledge under the Indenture.

(6) A Certificate of appropriate officials of the Government of Guam to the effect that the obligations of the Government of Guam under the Pledge, together with all other obligations of the Government of Guam outstanding, do not exceed the limitations provided by Section 11 of the Organic Act, 48 U.S. Code §1423a.

(c) Lender and their legal counsel shall have been furnished an opinion of the Attorney General of Guam in substantially the form of **Exhibit C** hereto.

(d) Government shall have furnished to Lender and their legal counsel the Revenue Ruling, and a true copy of the application for the Revenue Ruling referred to in Section 11 hereof, together with other assurances as to the tax exempt status of the Loan reasonably requested by Lender.

(e) Approvals of the borrowing hereunder and of the terms and conditions thereof by Resolution of the Guam Economic Development and Commerce Authority and of the Legislature of Guam as required by 12 GCA §50103(k) have been obtained and evidence thereof furnished to Lender.

(f) Participating banks or financial institutions have executed an agreement authorizing the Bank of Guam to service, manage, and administer the Loan.

11. **Warranty and Covenants with Respect to Tax Exempt Status of Loan.** This Agreement is made upon the condition (and Government does hereby warrant) that the interest of the Loan paid to Lender shall be exempt from taxation under the U.S. Internal Revenue Code of the United States, as mirrored or utilized by the Government of Guam for purposes of the Guam Territorial Income Tax and the Guam Business Privilege Tax.

Prior to initial disbursement hereunder the Government shall furnish to Lender a Revenue Ruling with specific reference to the Loan issued by the Department of Revenue of Taxation in the manner provided, and after application made, as provided by law to the effect that the interest of this Loan is exempt from taxation under the Guam Territorial Income Tax and the Guam Business Privilege Tax. The Government shall first make application for such Revenue Ruling, providing accurate detail as to the terms, conditions and purposes of this Loan, including detailed information as to the intended usage of Loan funds hereunder.

Government shall not use directly or indirectly any portion of the Loan proceeds hereunder for any purpose inconsistent with that disclosed to the Department of Revenue and Taxation in the application for the Revenue Ruling.

Government shall not use, directly or indirectly, any of the Loan proceeds hereunder in any manner that may result in a determination that the Loan or interest hereof is, in whole or in part, or for the whole or any portion of the term of the Loan or period in which it remains outstanding, subject to taxation under the U.S. Internal Revenue Code of the United States, as

mirrored or utilized by the Government of Guam for purposes of the Guam Territorial Income Tax or Guam Business Privilege Tax. Without limitation of the foregoing, Government shall not utilize all or any portion of the Loan proceeds hereunder in a manner that may result in a determination that the Loan or either Note constitutes in whole or in part an "arbitrage bond", or a "private facility bond" which is not a "qualified bond" under the provisions of the U.S. Internal Revenue Code of the United States, as mirrored or utilized by the Government of Guam for purposes of the Guam Territorial Income Tax.

Government agrees to indemnify and hold Lender harmless from any claim (including costs of defense of such claim whether or not such claim be sustained) that the interest on the Loan is in any period in which it remains outstanding subject to taxation under the U.S. Internal Revenue Code of the United States, as mirrored or utilized by the Government of Guam for purposes of the Guam Territorial Income Tax or Guam Business Privilege Tax. For any period (1) as to which it is determined as a result of a change in law or a final determination of any administrative officer or official having enforcement powers or jurisdiction over the administration of such tax, or as a result of the final decision of any court of competent jurisdiction or by any other final determination binding upon Lender that interest hereunder is subject to taxation under the U.S. Internal Revenue Code of the United States, as mirrored or utilized by the Government of Guam for purposes of the Guam Territorial Income Tax or Guam Gross Receipts Tax, or (2) such interest becomes subject to taxation under the laws of the United States or of Guam as a result of any change in any of such taxes or any rule or regulation thereunder, or by reason of the enactment by any governmental entity of any other tax upon net incomes, on gross receipts of revenues, or by reason of any other change in law, then in any of such events the effective rate of interest hereunder shall be one percent 1% per annum above the Reference Rate of the Bank of Guam instead of the interest rates provided in the Note. The provisions of this paragraph and obligations of the Government hereunder shall be continuing and survive repayment of the principal of this Loan.

12. **Warranties.** The Government makes the following warranties which shall continue in effect until the obligations hereunder have been fully paid and satisfied.

(a) The Government has the statutory authority necessary to make, deliver and to perform the terms of this Agreement, the Note and the Pledge, and to borrow as provided hereunder.

(b) The making, delivery and performance of this Agreement, and the borrowing contemplated hereby have been duly and regularly authorized by all requisite action of the Government and of each agency or instrumentality of the Government of Guam having jurisdiction.

(c) This Agreement constitutes a legal, valid and binding obligation of the Government, enforceable in accordance with its terms.

(d) There is no action, suit or proceeding pending or, to the knowledge of the Government, threatened against or affecting the Government in any court or before any arbitrator or before any other forum which may materially adversely affect the ability of the Government to perform its obligations under this Agreement, nor has any default occurred or any claim of default been made with respect to any covenant, indenture or agreement to which Government is a party.

(e) The making, delivery and performance of this Agreement by the Government are not contrary to any provision of law or regulation, nor will the same constitute, or with lapse of time and giving of notice, give ground to declare a default or breach of any covenant, warranty, indenture or agreement to which the Government is a party or which is secured by a pledge of assets or revenues of Government.

(f) The Government is not immune from suit to enforce the obligations hereunder or under the Pledge and Assignment.

(g) The Pledge has been duly and validly executed and delivered to Lender, and constitutes the valid, binding and enforceable lien upon the property therein described as security for the Loan, subordinate only to the Indenture.

13. **Default and Remedies of Lender.** The following shall constitute events of default: (1) any default (by failure to make payment on or before the due date) in the payment of principal or interest on the Note; or, (2) the occurrence of certain other events as set forth in the Pledge. In the event of default Lender shall have the remedies set forth in the Pledge, in addition to any other rights and remedies Lender may have, pursuant to the Note, the Loan, this Agreement, a Loan Participation Agreement, or by law.

14. **Affirmative Covenants of Government.** The Government will duly perform and observe all covenants and conditions undertaken and to be observed by it pursuant to this Agreement, the Pledge and the Note, the terms of which are incorporated herein.



15. **Restriction on Further Pledge or Change of Trustee or Depository under Indenture.** The Government of Guam shall not create or permit the creation of any pledge, lien, charge or other encumbrance upon the Revenues, or other assets pledged or assigned under the Pledge and Assignment while the Loan remains outstanding except the Pledge or any encumbrance subordinate to the Pledge. The Government shall not assert against such property any pledge, lien, charge or encumbrance which the Government of Guam itself may hold. The Government of Guam shall not issue, while the Loan remains outstanding, under authority of the Indenture, any further bonds of equal rank to those issued and outstanding under the Indenture.

The Government shall furnish to Lender such information as to the projected amount of and date of payment in each year of revenues pursuant to Section 30 of the Organic Act. Not later than September 15<sup>th</sup> of each calendar year, or 15 days prior to any earlier date upon which revenues payable under Section 30 of the Organic Act in such calendar year are projected to be received, the Government shall advise the Lender of the projected amount of revenues to be paid in such calendar year, and projected date of receipt by the Government or for its account of such revenues. Nothing contained herein shall limit the obligation of the Government under the Pledge with respect to payment of such revenues to a depository or trustee under the Indenture so long as the Indenture remains outstanding or to Lender under the Pledge.

16. **Non-Waiver.** Any failure or neglect by Lender to collect or receive any payments due upon any collateral, or to collect any collateral or to collect or receive any payments due under this Agreement, the Note or the Pledge shall not release Government from any liability to Lender or constitute a waiver of any of the rights or remedies available to Lender.

17. **Saturdays, Sundays and Legal Holidays.** If any party hereto is required to perform, pursuant to a provision of this Agreement, any act on a date which falls on a Saturday, Sunday or legal holiday, the party required to perform such act shall be deemed to have performed it in a timely manner, and in conformance with such provision, if it shall perform such act on the next succeeding business day.

18. **Construction.**

(a) Powers Cumulative. All rights, powers and remedies herein given to Lender are cumulative and not alternative, and are in addition to all statutes or rules of law; and partial exercise or forbearance or delay by Lender in exercising the same shall not operate as any waiver thereof or of any other power or rights hereunder or granted to Lender by law, and the exercise of any rights or partial exercise thereof or of any other rights, and the same shall continue in full force and effect until specifically waived by an instrument in writing executed by Lender.

(b) Covenants Survive Closing. All covenants, agreements, undertakings, representations and warranties made herein shall survive the execution hereof and all closings hereunder.

(c) No Trust for Third Parties. Nothing herein contained shall be deemed to establish any trust fund for the benefit of any third person or persons, nor to impose any liability upon Lender to pay or be chargeable with any claims of third persons against the Government.

(d) Invalid Provisions. In the event any one or more of the provisions contained in this Loan Agreement or in any documents which are the subject of this Loan Agreement or given hereunder shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, unenforceability or illegality shall not affect any other provision of this Loan Agreement and/or of such other documents, and this Loan Agreement and such documents shall be construed as if such provision had never been contained herein or therein.

(e) Governing Law. This Loan Agreement is executed, delivered and to be performed in the Territory of Guam, and the validity, construction, enforcement, and interpretation of this Loan Agreement and all security agreements executed and delivered pursuant to this Loan Agreement shall be governed by the laws of the Territory of Guam.

(f) Captions; Accounting Terms. The captions and section headings herein are for reference and convenience only, and shall not enter into the interpretation hereof. In the event of any conflict between any caption and the written text, the terms of the written text shall control. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistent with those applied in the preparation of any financial statements or financial instruments submitted to Lender by Government pursuant to or in connection with this Loan Agreement.

19. Indemnification. Government shall indemnify and hold Lender harmless from

any liability, cost or damage arising out of Government's breach hereof or any actions, claims or disputes asserted by any third party. Lender may appear in or defend any action or proceedings purporting to affect the rights or duties of the parties hereunder or property, subject to any security interest, and Government shall pay all of the Lender's costs and expenses.

20. **Costs and Expenses.** Government shall pay on demand all costs and expenses in connection with the preparation, execution, delivery, filing and recording of the Loan Documents and the other documents to be delivered under the Loan Documents, including the reasonable fees and out-of-pocket expenses of counsel for Lender with respect thereto. Government shall pay all other expenses of Lender, including reasonable attorney's fees, in connection with the administration of this Loan Agreement and the other Loan Documents and all costs and expenses, if any, in connection with the enforcement of this Loan Agreement, the Note and the Pledge.

21. **Counterparts.** This Loan Agreement may be executed in as many counterparts as may be deemed necessary or convenient, and each counterpart shall be deemed an original.

22. **Assignment.** The Government hereby grants to Lender the unrestricted and unqualified right and power to sell, assign, convey or transfer all, or any part of, this Loan, and Note, and all the rights, powers, remedies, and benefits appertaining thereto (including but not limited to all tax exemptions), to one or more financial institutions, as Lender may in its sole discretion decide.

23. **Miscellaneous.**

(a) Any notice or demand upon the Government of Guam, or Lender shall be deemed to have been sufficiently given or served for all purposes by being deposited, postage prepaid, in a post office letter box, addressed to the applicable address set forth below, or at such other address as may have been filed in writing by such party with each other party or by delivery to such place as may be designated herein. At the date of execution of this Agreement, the address of the Government of Guam and Lender are as follows:

Government of Guam:

Lender: Bank of Guam  
111 Chalan Santo Papa  
Hagåtña, Guam 96910

(b) The Note contemplated to be executed and delivered pursuant to the Agreement is hereby made subject to all conditions, agreements and covenants contained herein to the same extent as if they were fully set forth in and made a part of the Note, and this Agreement is made subject to all the conditions, agreements and covenants contained in the Note to the same extent as if they would be set forth herein, and made a part hereof.

(c) Government shall execute and deliver to Lender, such other and further documents or instruments as may be reasonably requested in connection with the transaction contemplated hereunder.

(d) The section headings used herein are for reference and for convenience only and shall not enter into the interpretations hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers on this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

**BANK OF GUAM**

By: *Its Duly Authorized Representative*

\_\_\_\_\_ **BANK**

By: *Its Duly Authorized Representative*

\_\_\_\_\_ **BANK**

By: *Its Duly Authorized Representative*

**GOVERNMENT OF GUAM**

By:

**Governor of Guam**

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Guam, )  
City of Hagåtña ) ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2006, before me, a Notary Public of Guam, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

\_\_\_\_\_  
**NOTARY PUBLIC**

## PROMISSORY NOTE

The **GOVERNMENT OF GUAM**, (the "Government") promises to pay to the **BANK OF GUAM**, a Guam banking corporation, and to \_\_\_\_\_ Bank, \_\_\_\_\_ Bank, and \_\_\_\_\_ Bank (collectively "Lender"), or to their order, the principal sum of ONE HUNDRED TWENTY-THREE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$123,800,000.00) with interest as hereafter provided. This Note is made under a Loan extended by Lender to the Government pursuant to a certain Loan Agreement (the "Loan Agreement") and is given to evidence the obligation of the Government to Lender for repayment of the Loan as provided by the Loan Agreement. This Note is secured by a Pledge and Assignment ("the Pledge") of revenues payable to the Government of Guam by the Government of the United States pursuant to Section 30 of the Organic Act, 48 U.S. Code §1421h.

1. **Interest.** Bank of Guam's pro rata share of the principal outstanding upon this Note shall bear interest at a fixed rate of seven percent (7%) per annum. Each other lending institution's pro rata share of the principal outstanding upon this Note shall bear interest at a fixed rate of 6.875% per annum.

The rates of interest hereon shall, notwithstanding the foregoing, be subject to adjustment to a rate equal to one percentage point (1%) per annum above the Reference Rate of the Bank of Guam, upon the occurrence of certain events as specified in paragraph 11 of the Loan Agreement with respect to the tax exempt status of the Loan. Upon the occurrence of any such events the effective rates of interest hereunder shall be adjusted as above provided and as provided in paragraph 10 of the Loan Agreement.

All interest hereunder shall be computed based upon a year of 360 days as the case may be and based upon a monthly average of principal disbursed and outstanding upon this Note.

2. **Payment.** This Note shall be paid as follows:

(a) The full principal and accrued interest hereunder then outstanding shall be paid on October 1, 2022.

**EXHIBIT A – Promissory Note**

(b) Until the payment specified in the preceding subparagraph, this Note shall be payable annually in fifteen (15) installments each of principal and interest beginning on October 1, 2007 in the amount of \$ \_\_\_\_\_. The amount of such installments shall be fixed notwithstanding adjustments to the applicable rate of interest on this Note, except that in the event such amount is as of the date any installment is due less than the amount of interest accrued and unpaid to such date since the date the preceding installment was due, then the amount of such accrued interest shall be paid as the amount of such installment.

(c) Such installments shall be due on October 1<sup>st</sup> of each calendar year provided that in the event in any calendar year the payment specified to be paid in such calendar year by the United States of America to the Government of Guam pursuant to Section 30 of the Organic Act, 48 U.S. Code §1421h, is paid on a date earlier than September 30<sup>th</sup> of such calendar year, then the installment hereunder in such year shall be due the date following the date such payment is made to or for the account of the Government of Guam by the United States of America.

(d) This Note may be prepaid at any time without penalty.

The principal and accrued interest outstanding under this Note shall, at the option of the Holders, become immediately due and payable should the Government default in the due and punctual payment of principal or of interest or both on this Note.

The principal and accrued interest hereunder may, under certain additional circumstances set forth in the Pledge (which provisions are by reference incorporated herein), be declared immediately due and payable.

If any payment hereunder shall become due and payable on a Saturday, Sunday or public holiday, then the payment date thereof shall be extended to the next succeeding business day and interest shall be payable at the above rate per annum during such extension.

The Government of Guam hereby waives presentment, demand for payment, protest and notice of dishonor and all other notices in connection with the delivery, acceptance, performance, default or enforcement of this Note, and authorizes the Holders without notice or further consent to grant extensions of time in the payment of all monies payable under this Note, to waive compliance with any of the provisions of this Note, and to release all or any part of money or other property held by Lender and for which a lien for the repayment of this indebtedness exists; and also agrees in the event of any default to pay all costs of collection including reasonable

#### **EXHIBIT A – Promissory Note**

attorneys' fees which may be incurred by the Holders in collecting any sums due hereunder, whether or not suit is brought.

This Note is given as a general and not as a special obligation of the Government. It is secured by the Pledge but is not limited as to repayment or recourse to pledged revenues.

This Note shall be governed by and construed in accordance with the laws of Guam.

Dated: \_\_\_\_\_.

**GOVERNMENT OF GUAM:**

By:  
Governor of Guam

**EXHIBIT A – Promissory Note**



## PLEDGE AND ASSIGNMENT

This Pledge and Assignment is made and entered into as of \_\_\_\_\_, between the **GOVERNMENT OF GUAM**, on the one hand, and the **BANK OF GUAM**, a Guam banking corporation organized under the laws of Guam, \_\_\_\_\_ Bank, \_\_\_\_\_ Bank, (collectively "Lender").

### WITNESSETH:

WHEREAS, pursuant to Public Law \_\_\_\_\_, the Legislature of Guam has authorized the Governor of Guam to borrow or arrange a line of credit in amount not to exceed One Hundred Twenty-Three Million Eight Hundred Thousand Dollars (\$123,800,000.00) and has further authorized a pledge of the Revenues payable to the Government of Guam by the United States of America under Section 30 of the Organic Act of Guam, 48 U.S. Code §1421h, as security for payment of the Loan,

AND WHEREAS, Lender has agreed to extend a loan ("the Loan") to the Government of Guam upon the terms and conditions set forth in a loan agreement ("the Loan Agreement") dated the date hereof,

AND WHEREAS, it is a condition to the grant of the Loan by Lender, among other things, that the Government of Guam make this Pledge,

AND WHEREAS, all acts, conditions and things required by the laws of the United States of America and the Government of Guam to exist, to have happened and to have been performed precedent to and in connection with the making of the Loan, and the making of this Pledge have happened and have been duly performed in regular and due time, form and manner as required by law and the Government of Guam is now authorized and empowered pursuant to each and every requirement of law to issue this Pledge for the purpose and the manner and upon the terms herein provided.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises and of the mutual covenants herein contained and contained in the Loan Agreement, and for other good and valuable consideration receipt whereof is hereby acknowledged the Government of Guam does hereby covenant and agree with Lender as follows:

- I. For the purposes of this Pledge the following definitions shall apply:

### **EXHIBIT B - Pledge and Assignment**

A. "Revenues" means all 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 the Congress on the inhabitants of Guam (including, but not limited to, compensation paid to members of the Armed Forces and pensions paid to retired civilians 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.

B. "Indenture" means the Indenture dated as of December 1, 2001 made between the Government of Guam and the Bank of Guam as Trustee and Depository and U.S. Bank Trust National Association as Co-Trustee with respect to the Government of Guam Limited Obligation (Section 30) Bonds including the \$76,895,000 Government of Guam Limited Obligation (Section 30) Bonds Series 2001A issued under authority of 12 GCA Chapter 51, and 5 GCA §1508.1, under which certain bonds were issued and are outstanding and are secured by a pledge and assignment of the Revenues under the Indenture.

C. The "Bonds" means the bonds issued and now outstanding under the Indenture.

D. The "Loan" means the Loan given by the Lender to the Government of Guam pursuant to Public Law \_\_\_\_\_.

E. "Loan Agreement" means the credit agreement given and made between Lender and the Government of Guam with respect to the Loan, and which together with any other documents or instruments made in connection therewith, document the terms, covenants and conditions of the Loan with respect to which given.

F. "Pledge" means this Pledge and Assignment.

G. "Trustee" and "Depository" have the meanings provided by the Indenture.

II. There are hereby pledged and assigned by the Government of Guam to Lender, as security for the Loan:

- (i) all of the Revenues;
- (ii) so long as the Indenture has not been discharged, the Revenues and any other property pledged under the Indenture and held by any Trustee or Depository thereunder or by the Government of Guam;
- (iii) all interest, profits or other income derived from the investment of any property subject to this Pledge.

III. This Pledge shall extend to all property of the Government of Guam made subject hereto, regardless by whom held, existing as of the date of this Pledge, and all property subject to this Pledge acquired by the Government of Guam on or after the date hereof, regardless by whom held, including but not limited to in either such case property held by any Trustee or Depository under the Indenture, but so long as the Indenture has not been discharged, this Pledge shall be subordinate to the Indenture and to the rights of any Trustee or Depository or bondholders thereunder. So long as the Indenture has not been discharged, property pledged hereunder also subject to the Indenture shall be first paid to the Trustee or Depository provided by the Indenture in accordance with the provisions of the Indenture. At such time as any property subject to the Indenture becomes payable to the Government of Guam pursuant to the provisions of the Indenture, such amounts shall be payable and paid to Lender pursuant to this Pledge.

IV. Except to the extent limited or restricted by the requirements of the Indenture, the Government of Guam shall deposit all of the Revenues, and all other property pledged hereunder upon the receipt thereof in a special fund designated as the Revenue Fund which Lender hereunder shall establish, maintain and hold in trust. Lender shall be entitled to and shall collect and receive all of the Revenues and other property pledged hereunder collected or received by the Government of Guam and any such property collected or received by the Government of Guam shall be deemed to be held and to have been collected or received by the Government of Guam as the agent of Lender and shall forthwith be paid by the Government of Guam to Lender. The rights of Lender hereunder shall so long as the Indenture has not been discharged be subordinate to the rights of any Trustee or Depository acting under the Indenture and the provisions of the Indenture but only so long as the Indenture has not been discharged.

V. (a) Lender shall establish, maintain and hold in trust subject to this Pledge following the additional funds:

- (i) The Loan Fund; and
- (ii) The Surplus Fund.

(b) There shall be paid and transferred by Lender from the Revenue Fund not less frequently than monthly, in the following order of priority:

- (i) to the Loan Fund such amount, if any, as is necessary to maintain the required amount in such fund;
- (ii) the balance to the Surplus Fund;

(c) The required amount to be maintained in the Loan Fund shall be the amount that is as of any date the amount, if any, of principal, interest and other charges matured, upon

**EXHIBIT B - Pledge and Assignment**

originally scheduled maturity or otherwise, outstanding, but unpaid upon the Loan, together with the amounts of principal and interest estimated to accrue and to become due and payable within thirty (30) days after from such date.

(d) There may be disbursed from time to time by Lender from the Loan Fund or the Surplus Fund, in that order, such amount as is necessary to meet payments of principal, interest or other charges upon the Loan.

(e) The Government of Guam may requisition for transfer any available amounts in the Surplus Fund for any lawful purpose of the Government of Guam.

All moneys in the funds and accounts established pursuant to this Pledge shall be invested by Lender, solely in Investment Securities, as defined in the Indenture, to maximize investment income, with proper regard for the preservation of principal, subject to any Request of the Government of Guam as to such investment.

VI. There shall be punctually paid by the Government of Guam from revenues and other assets pledged hereunder, or other assets of the Government of Guam, the principal and interest to become due under the Loan in strict conformity with the terms of the Loan and this Pledge.

VII. The Government of Guam shall not create or permit the creation of any pledge, lien, charge or other encumbrance upon the Revenues, or other assets pledged or assigned under this Pledge while the Loan remains outstanding except this Pledge created by this instrument or any encumbrance subordinate to this Pledge. The Government of Guam shall not assert against such property any pledge, lien, charge or encumbrance which the Government of Guam itself may at any time hold. The Government of Guam shall not issue, while the Loan remains outstanding, under authority of the Indenture, any further bonds of equal rank to those issued and outstanding under the Indenture.

VIII. The Government of Guam represents and warrants that the Government of Guam is duly authorized pursuant to law to make the Loan, and that the Government of Guam is duly authorized pursuant to law to enter into this Pledge, and to pledge the Revenues and other assets purported to be pledged hereunder in the manner and to the extent provided hereunder. The Loan will be the valid, binding and enforceable general and not limited obligation of the Government of Guam in accordance with its terms, and this Pledge, the legal, valid and binding general and not limited obligation of the Government of Guam in accordance with its terms. The Government of Guam shall at all times to the extent permitted by law defend, preserve and protect this Pledge and all of the rights of Lender under this Pledge against all claims and demands of all persons whatsoever.

Pledge and Assignment - 1/2/2007

IX. The Government of Guam covenants and warrants that the payments, receipts, revenues and income to Lender from the Loan shall be free of any taxes imposed by or payable to the Government of Guam or any agency or instrumentality thereof.

X. The Government of Guam shall at all times use its best efforts to maintain the powers, functions, duties and obligations now reposed in it pursuant to law, and will not at any time voluntarily do, suffer or permit any act or thing the effect of which would be to hinder, delay or imperil either the payment of the indebtedness secured hereby or the observance of any of the covenants herein contained.

XI. (a) Subject to the requirements of the Indenture, all pledged revenues payable by the United States of America shall be paid directly to Lender for application as herein provided. The Government of Guam covenants and agrees that it shall do all things necessary to cause such Revenues to be so paid, including but not limited to maintaining in effect appropriate instructions to the relevant officials of the United States of America with respect to such payment. The Government of Guam covenants and warrants that any funds or property held by any Trustee or Depository under the indenture shall as and when the same become payable to the Government of Guam by such Trustee or Depository shall be paid directly to Lender. The Government of Guam covenants and agrees that it shall do all things necessary to cause such funds to be so paid, including giving and maintaining in effect any appropriate directions or instructions with respect to such payment.

(b) Without limitation of the foregoing, the Government of Guam concurrently with the execution of this Pledge, and prior to disbursement of any funds secured hereby by Lender, (1) shall give notice in the form attached hereto as **Exhibit A**, to each Trustee and Depository under the Indenture of the existence of this Pledge, and of the rights of Lender hereunder, and direction to pay funds or property held by such Trustee or Depository as and when the same become payable to the Government, to Lender, and shall furnish to Lender prior to disbursement of any loan funds secured by this Pledge of acknowledgment of receipt of such notice by each such Trustee or Depository, and (2) the Government of Guam shall give notice in the form of **Exhibits B and C** attached hereto to the Secretary of Treasury and to the Secretary of the Interior of the Government of the United States of America, of the existence of this Pledge and of the rights of Lender hereunder, and shall furnish to Lender prior to any disbursement of loan funds secured by this Pledge acknowledgment of receipt of such notice by the Secretary of the Treasury and the Secretary of the Interior of the Government of the United States.

(c) The notice above provided to the incumbent Trustee or Depository under the Indenture shall be binding upon any successor Trustee or Depository. Notwithstanding the

**EXHIBIT B - Pledge and Assignment**

foregoing, the Government of Guam shall not cause or permit or suffer to occur any change or substitution of any incumbent Trustee or Depository under the Indenture without thirty (30) days prior notice to Lender hereunder, and in any event without first giving such substitute or successor Trustee or Depository notice of this Pledge and instruction as to payment in substantially the form of **Exhibit A** hereto. The foregoing provision shall be without prejudice to the right hereby granted to Lender to give notice of this Pledge to any such successor Trustee or Depository, by furnishing a copy of this Pledge to such successor in which event the notice and instructions contained in the form of **Exhibit A** hereto shall be fully binding upon such successor as though such successor had been specifically identified in and given a similar notice executed by the Government of Guam.

(d) The Government shall furnish to Lender such information as to the projected amount of and date of payment in each year of revenues pursuant to Section 30 of the Organic Act. Not later than September 15<sup>th</sup> of each calendar year, or 15 days prior to any earlier date upon which revenues payable under Section 30 of the Organic Act in such calendar year are projected to be received, the Government shall advise Lender of the projected amount of revenues to be paid in such calendar year, and projected date of receipt by the Government or for its account of such revenues. Nothing contained herein shall limit the obligation of the Government under the Pledge with respect to payment of such revenues to a Depository or Trustee under the Indenture so long as the Indenture remains outstanding or to the Lender under the Pledge.

XII. The Government of Guam shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Pledge, and all benefit or advantage of any such law or laws is hereby expressly waived by the Government of Guam to the extent permitted by law. The Government of Guam shall not claim, and hereby waives any claim to, sovereign immunity from any suit or other action that may be brought under this Pledge.

XIII. The Government of Guam will make, execute and deliver any and all such further agreements, documents, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Pledge and for the better assuring and confirming unto the Lender of the rights and benefits provided in this Pledge.

XIV. The Government of Guam warrants that as of the date hereof, the Government of Guam is not in default of any material obligation, covenant, warranty or provision applicable to the Government of Guam under the Indenture, including but not limited to with respect to Pledge and Assignment - 1/2/2007

payment of principal, interest or premium, if any, upon the Bonds, with respect to receipt, collection and application of any property pledged under the Indenture or with respect to the funding or adequacy of funding of any accounts or funds maintained or established under the Indenture. The Government of Guam covenants and warrants that during the term of the Loan and until it has been paid and satisfied the Government of Guam will fully and faithfully comply with all provisions of the Indenture including without limitation those specifically above referred to. The Government of Guam shall promptly notify Lender in the event of receipt by the Government of Guam of any notice by any Trustee or Depository under the Indenture of default or of breach by the Government of Guam of any provision of the Indenture.

XV. In the event of default under this Pledge or under the Loan Agreement, the Government of Guam shall pay to Lender, all fees, costs and expenses including those of attorneys reasonably incurred in the enforcement of this Pledge and the Loan Agreement, and recovery of amounts secured by this Pledge. Revenues pledged hereunder may be applied to payment of and shall secure all the foregoing amounts.

XVI. Events of Defaults and Remedies of Lender. Any of the following shall constitute an event of default hereunder:

- (a) Default in the due and punctual payment of principal or interest when due and payable under the Loan.
- (b) Receipt of property subject to this Pledge by the Government of Guam, other than by a Trustee or Depository pursuant to the terms of the Indenture so long as the Indenture is in effect, or other than by Lender hereunder if the Indenture has been discharged, or receipt of any disbursements from any Trustee or Depository under the Indenture by the Government of Guam or any agency thereof, other than to Lender pursuant to the terms of this Pledge.
- (c) A failure by the Government of Guam to pay when due any bonded indebtedness of the Government of Guam, under the Indenture or otherwise, and whether or not secured by the property subject to this Pledge.
- (d) Any breach of the covenants contained in paragraphs VII, IX, or XI hereof.
- (e) Any breach of any other obligation on the part of the Government of Guam under this Pledge, if such breach is not cured within 60 days after notice of breach is given to the Government of Guam, and opportunity to cure.

#### **EXHIBIT B - Pledge and Assignment**

(f) The repeal of or amendment to Section 30 of the Organic Act, 48 U.S. Code §1421h, resulting in reduction of the Revenues payable thereunder to the Government of Guam.

Upon the occurrence of an event of default, Lender (i) may elect to accelerate all sums outstanding upon the Loan, and to demand the immediate payment of the full principal and interest thereof, and other amounts due and outstanding, and cease further disbursement of any undisbursed funds hereunder; (ii) Lender may with or without acceleration apply to payments of amounts due and secured hereby any funds pledged hereunder, and held by it hereunder, to amounts due under the Loan and secured hereby, including amounts due by acceleration; (iii) and may further exercise any remedies at law or in equity, including the initiation of proceedings in mandamus or for specific performance to compel the performance of this Agreement.

XVII. Remedies Not Exclusive. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

XVIII. No Waiver of Default. No delay or omission of Lender to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to Lender may be exercised from time to time and as often as may be deemed expedient.

XIX. Saturdays, Sundays and Legal Holidays. If any party hereto is required to perform, pursuant to a provision of this Pledge, any act on a date which falls on a Saturday, Sunday or legal holiday, the party required to perform such act shall be deemed to have performed it in a timely manner, and in conformance with such provision, if it shall perform such act on the next succeeding business day.

XX. Notices. Any notice or demand upon the Government of Guam, or Lender shall be deemed to have been sufficiently given or served for all purposes by being deposited, postage prepaid, in a post office letter box, addressed to the applicable address set forth below, or at such other address as may have been filed in writing by such party with each other party or by delivery to such place as may be designated herein. At the date of execution of this Indenture, the address of the Government of Guam and the principal office of the Lender are as follows:



Government of Guam:

Lender:

c/o Bank of Guam  
111 Chalan Santo Papa  
Hagåtña, Guam 96910

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**GOVERNMENT OF GUAM**

By:

**Governor of Guam**

APPROVED AS TO FORM:  
**Department of Law**

By: \_\_\_\_\_  
**Attorney General**

**EXHIBIT B - Pledge and Assignment**

Ladies and Gentlemen:

Hafa Adai!

This opinion is furnished in connection with a loan from the Bank of Guam and certain other Participating Banks as Lender to the Government of Guam ("the Government") in the amount of \$123,800,000.00 for principal ("the Loan"). In connection with this opinion and in reference to the Loan, we have examined the following documents and instruments: a Loan Agreement dated \_\_\_\_\_; a Promissory Note dated \_\_\_\_\_; a Pledge and Assignment dated \_\_\_\_\_; an Indenture dated as of December 1, 2001, between the Government of Guam and the Bank of Guam as trustee and depository and U.S. Bank Trust National Association ("the Indenture"). I have additionally reviewed the laws of Guam and as they relate to the Loan, the United States. In giving the opinion expressed below, I do not purport to be an expert in or generally familiar with or qualified to express legal opinions based on the laws of any jurisdiction other than the foregoing:

Based on the foregoing examination and review, we are of the opinion that:

- (i) The Issuer has full legal right, power and authority to enter into the Loan Agreement and to make, execute and deliver and to perform the Loan Agreement, the Promissory Note and the Pledge and Assignment, and to borrow in accordance with law and to perform the obligations of the Government under the foregoing documents.
- (ii) The Loan Agreement and the Note are valid, binding and enforceable upon the Government.
- (iii) The Loan Agreement and the Promissory Note are valid, binding and enforceable upon the Government. The Pledge is valid, binding and enforceable, subject only to the rights of any trustee or depository or co-trustee or of the bond holders under the Indenture, upon the Government of Guam, and upon the property subject thereto, and as to other parties who may claim interests in the property subject thereto, and is effective to create and perfect the lien it purports to create upon the property subject thereto. The Pledge is effective to grant a pledge in accordance with the terms of the Pledge upon the revenues and property described therein including but not limited to the revenues payable to the Government of Guam pursuant to Section 30 of the Organic Act of Guam from time to time, and is valid and enforceable subject to the prior pledge of such revenues pursuant to the Indenture.

**EXHIBIT C - Attorney General Opinion Letter**

- (iv) The Note, the Loan Agreement and the Pledge and Assignment have been duly and validly executed and delivered by the Governor of Guam on behalf of the Government of Guam.
- (v) The making of the Loan and performance thereof will not constitute or result in any violation of any applicable law or regulation.
- (vi) All consents, authorizations and approvals requisite for the execution, delivery and performance of the Loan Agreement, the Note and the Pledge have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by, and no notice or filing with, any governmental authority, regulatory body or any other entity is required for such execution, delivery or performance.
- (vii) All representations contained in the Loan Agreement, the Pledge and the Note and other documents required to be made to the Banks on the part of Government are true and correct.
- (viii) The Government is not entitled to claim immunity on the grounds of sovereignty or other similar grounds with respect to itself or its revenues or assets (irrespective of their use or intended use) from (a) suit, (b) jurisdiction from any court, (c) relief by way of injunction, order for specific performance or for recovery of property, (d) attachment of its assets (whether before or after judgment, or (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be made subject to in any suit, action or proceeding relating to the Note, the Loan Agreement or the Pledge, in the courts of any jurisdiction, and no such immunity (whether or not claimed) may be attributed to the Issuer or its revenues or assets.
- (ix) There are no actions, suits or proceedings pending or, to my knowledge threatened against or affecting the Government or any of its property, at law or in equity, which, if adversely determined, would substantially impair the ability of the Government to pay when due any amount which may become payable under the Loan.
- (x) The obligations of the Government of Guam under the Note and with respect to the Loan are general and not special obligations of the Government of Guam, and are subject to an benefit from the full faith and credit of the Government of Guam.

Dankolo Na Agradesimiento - Thank You Very Much!

Very Truly Yours,

Attorney General of Guam

**EXHIBIT C - Attorney General Opinion Letter**

## NOTICE OF PLEDGE AND ASSIGNMENT

To: Bank of Guam as Trustee and Depository and any successor Depository or Trustee under the Government of Guam Limited Obligation (Section 30) Bonds, including the \$76,895,000 Government of Guam Limited Obligation (Section 30) Bonds Series 2001A, issued under Indenture dated as of December 1, 2001, made between the Government of Guam and Bank of Guam as Trustee and Depository, and U.S. Bank Trust National Association as Co-Trustee.

1. Concurrently herewith or prior to the execution of this Notice, the Government of Guam (hereinafter "the Government") has made and entered into a Pledge and Assignment ("the Pledge") to and for the benefit of the Bank of Guam and certain other financial institutions (collectively "Lender"), as security for a loan made by Lender to the Government of Guam, which Pledge extends to the following described property:

(i) All 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 the Congress on the inhabitants of Guam (including, but not limited to, compensation paid to members of the Armed Forces and pensions paid to retired civilians 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 ("the Revenues").

(ii) So long as the Indenture has not been discharged, the Revenues and any other property pledged under the Indenture and held by any Trustee or Depository thereunder or by the Government of Guam;

(iii) all interest, profits or other income derived from the investment of any property subject to the Pledge.

2. Such Pledge is subordinate to the Indenture above described ("the Indenture") and extends to all property in your possession and control pursuant to the Indenture, subject to the provisions and requirements of the Indenture.

3. Under Section 5.05 of the Indenture all amounts in the Surplus Fund, as defined in the Indenture, on the fifth day of each month after certain deposits, as required in the Indenture, have been made are to be paid by you to the Government for any lawful purpose of the Government free and clear of the Pledge and lien of the Indenture.

4. Notice is hereby given to you of the rights of the Lender under the Pledge. The

**EXHIBIT D - Notice of Pledge and Assignment**

Government hereby instructs you to pay any amounts otherwise payable by you to the Government under the above referenced provisions of the Indenture, or which otherwise become payable by you to the Government by provision of law or upon discharge of the Indenture to the Lender under the Pledge instead of to the Government. These instructions shall be binding and irrevocable, until a certificate of release and discharge of the Pledge has been executed by Lender under the Loan.

4. The instructions and notice hereunder given shall be binding upon the Bank of Guam as Trustee and Depository under the Indenture, and upon any successor to the Bank of Guam in either of such capacities.

Executed: \_\_\_\_\_.

**GOVERNMENT OF GUAM**

By:

**Governor of Guam**

We acknowledge receipt of this Notice and a copy of the Pledge.

BANK OF GUAM as Trustee and Depository under the Government of Guam Limited Obligation (Section 30) Bonds, including the \$76,895,000 Government of Guam Limited Obligation (Section 30) Bonds Series 2001A, issued under Indenture dated as of December 1, 2001, made between the Government of Guam and Bank of Guam as Trustee and Depository, and U.S. Bank Trust National Association as Co-Trustee

By:

**EXHIBIT D - Notice of Pledge and Assignment**

**PLEDGE AND ASSIGNMENT**

This Pledge and Assignment is made and entered into as of \_\_\_\_\_, between the **GOVERNMENT OF GUAM**, on the one hand, and the **BANK OF GUAM**, a Guam banking corporation organized under the laws of Guam, \_\_\_\_\_ Bank, \_\_\_\_\_ Bank, (collectively "Lender").

**WITNESSETH:**

WHEREAS, pursuant to Public Law \_\_\_\_\_, the Legislature of Guam has authorized the Governor of Guam to borrow or arrange a line of credit in amount not to exceed One Hundred Twenty-Three Million Eight Hundred Thousand Dollars (\$123,800,000.00) and has further authorized a pledge of the Revenues payable to the Government of Guam by the United States of America under Section 30 of the Organic Act of Guam, 48 U.S. Code §1421h, as security for payment of the Loan,

AND WHEREAS, Lender has agreed to extend a loan ("the Loan") to the Government of Guam upon the terms and conditions set forth in a loan agreement ("the Loan Agreement") dated the date hereof,

AND WHEREAS, it is a condition to the grant of the Loan by Lender, among other things, that the Government of Guam make this Pledge,

AND WHEREAS, all acts, conditions and things required by the laws of the United States of America and the Government of Guam to exist, to have happened and to have been performed precedent to and in connection with the making of the Loan, and the making of this Pledge have happened and have been duly performed in regular and due time, form and manner as required by law and the Government of Guam is now authorized and empowered pursuant to each and every requirement of law to issue this Pledge for the purpose and the manner and upon the terms herein provided.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises and of the mutual covenants herein contained and contained in the Loan Agreement, and for other good and valuable consideration receipt whereof is hereby acknowledged the Government of Guam does hereby covenant and agree with Lender as follows:

- I. For the purposes of this Pledge the following definitions shall apply:

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A. "Revenues" means all 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 the Congress on the inhabitants of Guam (including, but not limited to, compensation paid to members of the Armed Forces and pensions paid to retired civilians 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.

B. "Indenture" means the Indenture dated as of December 1, 2001 made between the Government of Guam and the Bank of Guam as Trustee and Depository and U.S. Bank Trust National Association as Co-Trustee with respect to the Government of Guam Limited Obligation (Section 30) Bonds including the \$76,895,000 Government of Guam Limited Obligation (Section 30) Bonds Series 2001A issued under authority of 12 GCA Chapter 51, and 5 GCA §1508.1, under which certain bonds were issued and are outstanding and are secured by a pledge and assignment of the Revenues under the Indenture.

C. The "Bonds" means the bonds issued and now outstanding under the Indenture.

D. The "Loan" means the Loan given by the Lender to the Government of Guam pursuant to Public Law \_\_\_\_\_.

E. "Loan Agreement" means the credit agreement given and made between Lender and the Government of Guam with respect to the Loan, and which together with any other documents or instruments made in connection therewith, document the terms, covenants and conditions of the Loan with respect to which given.

F. "Pledge" means this Pledge and Assignment.

G. "Trustee" and "Depository" have the meanings provided by the Indenture.

II. There are hereby pledged and assigned by the Government of Guam to Lender, as security for the Loan:

- (i) all of the Revenues;
- (ii) so long as the Indenture has not been discharged, the Revenues and any other property pledged under the Indenture and held by any Trustee or Depository thereunder or by the Government of Guam;
- (iii) all interest, profits or other income derived from the investment of any property subject to this Pledge.

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III. This Pledge shall extend to all property of the Government of Guam made subject hereto, regardless by whom held, existing as of the date of this Pledge, and all property subject to this Pledge acquired by the Government of Guam on or after the date hereof, regardless by whom held, including but not limited to in either such case property held by any Trustee or Depository under the Indenture, but so long as the Indenture has not been discharged, this Pledge shall be subordinate to the Indenture and to the rights of any Trustee or Depository or bondholders thereunder. So long as the Indenture has not been discharged, property pledged hereunder also subject to the Indenture shall be first paid to the Trustee or Depository provided by the Indenture in accordance with the provisions of the Indenture. At such time as any property subject to the Indenture becomes payable to the Government of Guam pursuant to the provisions of the Indenture, such amounts shall be payable and paid to Lender pursuant to this Pledge.

IV. Except to the extent limited or restricted by the requirements of the Indenture, the Government of Guam shall deposit all of the Revenues, and all other property pledged hereunder upon the receipt thereof in a special fund designated as the Revenue Fund which Lender hereunder shall establish, maintain and hold in trust. Lender shall be entitled to and shall collect and receive all of the Revenues and other property pledged hereunder collected or received by the Government of Guam and any such property collected or received by the Government of Guam shall be deemed to be held and to have been collected or received by the Government of Guam as the agent of Lender and shall forthwith be paid by the Government of Guam to Lender. The rights of Lender hereunder shall so long as the Indenture has not been discharged be subordinate to the rights of any Trustee or Depository acting under the Indenture and the provisions of the Indenture but only so long as the Indenture has not been discharged.

V. (a) Lender shall establish, maintain and hold in trust subject to this Pledge following the additional funds:

- (i) The Loan Fund; and
- (ii) The Surplus Fund.

(b) There shall be paid and transferred by Lender from the Revenue Fund not less frequently than monthly, in the following order of priority:

- (i) to the Loan Fund such amount, if any, as is necessary to maintain the required amount in such fund;
- (ii) the balance to the Surplus Fund;

(c) The required amount to be maintained in the Loan Fund shall be the amount that is as of any date the amount, if any, of principal, interest and other charges matured, upon  
**Pledge and Assignment -1/2/2007**



originally scheduled maturity or otherwise, outstanding, but unpaid upon the Loan, together with the amounts of principal and interest estimated to accrue and to become due and payable within thirty (30) days after from such date.

(d) There may be disbursed from time to time by Lender from the Loan Fund or the Surplus Fund, in that order, such amount as is necessary to meet payments of principal, interest or other charges upon the Loan.

(e) The Government of Guam may requisition for transfer any available amounts in the Surplus Fund for any lawful purpose of the Government of Guam.

All moneys in the funds and accounts established pursuant to this Pledge shall be invested by Lender, solely in Investment Securities, as defined in the Indenture, to maximize investment income, with proper regard for the preservation of principal, subject to any Request of the Government of Guam as to such investment.

VI. There shall be punctually paid by the Government of Guam from revenues and other assets pledged hereunder, or other assets of the Government of Guam, the principal and interest to become due under the Loan in strict conformity with the terms of the Loan and this Pledge.

VII. The Government of Guam shall not create or permit the creation of any pledge, lien, charge or other encumbrance upon the Revenues, or other assets pledged or assigned under this Pledge while the Loan remains outstanding except this Pledge created by this instrument or any encumbrance subordinate to this Pledge. The Government of Guam shall not assert against such property any pledge, lien, charge or encumbrance which the Government of Guam itself may at any time hold. The Government of Guam shall not issue, while the Loan remains outstanding, under authority of the Indenture, any further bonds of equal rank to those issued and outstanding under the Indenture.

VIII. The Government of Guam represents and warrants that the Government of Guam is duly authorized pursuant to law to make the Loan, and that the Government of Guam is duly authorized pursuant to law to enter into this Pledge, and to pledge the Revenues and other assets purported to be pledged hereunder in the manner and to the extent provided hereunder. The Loan will be the valid, binding and enforceable general and not limited obligation of the Government of Guam in accordance with its terms, and this Pledge, the legal, valid and binding general and not limited obligation of the Government of Guam in accordance with its terms. The Government of Guam shall at all times to the extent permitted by law defend, preserve and protect this Pledge and all of the rights of Lender under this Pledge against all claims and demands of all persons whatsoever.

Pledge and Assignment - 1/2/2007

IX. The Government of Guam covenants and warrants that the payments, receipts, revenues and income to Lender from the Loan shall be free of any taxes imposed by or payable to the Government of Guam or any agency or instrumentality thereof.

X. The Government of Guam shall at all times use its best efforts to maintain the powers, functions, duties and obligations now reposed in it pursuant to law, and will not at any time voluntarily do, suffer or permit any act or thing the effect of which would be to hinder, delay or imperil either the payment of the indebtedness secured hereby or the observance of any of the covenants herein contained.

XI. (a) Subject to the requirements of the Indenture, all pledged revenues payable by the United States of America shall be paid directly to Lender for application as herein provided. The Government of Guam covenants and agrees that it shall do all things necessary to cause such Revenues to be so paid, including but not limited to maintaining in effect appropriate instructions to the relevant officials of the United States of America with respect to such payment. The Government of Guam covenants and warrants that any funds or property held by any Trustee or Depository under the indenture shall as and when the same become payable to the Government of Guam by such Trustee or Depository shall be paid directly to Lender. The Government of Guam covenants and agrees that it shall do all things necessary to cause such funds to be so paid, including giving and maintaining in effect any appropriate directions or instructions with respect to such payment.

(b) Without limitation of the foregoing, the Government of Guam concurrently with the execution of this Pledge, and prior to disbursement of any funds secured hereby by Lender, (1) shall give notice in the form attached hereto as **Exhibit A**, to each Trustee and Depository under the Indenture of the existence of this Pledge, and of the rights of Lender hereunder, and direction to pay funds or property held by such Trustee or Depository as and when the same become payable to the Government, to Lender, and shall furnish to Lender prior to disbursement of any loan funds secured by this Pledge of acknowledgment of receipt of such notice by each such Trustee or Depository, and (2) the Government of Guam shall give notice in the form of **Exhibits B and C** attached hereto to the Secretary of Treasury and to the Secretary of the Interior of the Government of the United States of America, of the existence of this Pledge and of the rights of Lender hereunder, and shall furnish to Lender prior to any disbursement of loan funds secured by this Pledge acknowledgment of receipt of such notice by the Secretary of the Treasury and the Secretary of the Interior of the Government of the United States.

(c) The notice above provided to the incumbent Trustee or Depository under the Indenture shall be binding upon any successor Trustee or Depository. Notwithstanding the **Pledge and Assignment -1/2/2007**

foregoing, the Government of Guam shall not cause or permit or suffer to occur any change or substitution of any incumbent Trustee or Depository under the Indenture without thirty (30) days prior notice to Lender hereunder, and in any event without first giving such substitute or successor Trustee or Depository notice of this Pledge and instruction as to payment in substantially the form of **Exhibit A** hereto. The foregoing provision shall be without prejudice to the right hereby granted to Lender to give notice of this Pledge to any such successor Trustee or Depository, by furnishing a copy of this Pledge to such successor in which event the notice and instructions contained in the form of **Exhibit A** hereto shall be fully binding upon such successor as though such successor had been specifically identified in and given a similar notice executed by the Government of Guam.

(d) The Government shall furnish to Lender such information as to the projected amount of and date of payment in each year of revenues pursuant to Section 30 of the Organic Act. Not later than September 15<sup>th</sup> of each calendar year, or 15 days prior to any earlier date upon which revenues payable under Section 30 of the Organic Act in such calendar year are projected to be received, the Government shall advise Lender of the projected amount of revenues to be paid in such calendar year, and projected date of receipt by the Government or for its account of such revenues. Nothing contained herein shall limit the obligation of the Government under the Pledge with respect to payment of such revenues to a Depository or Trustee under the Indenture so long as the Indenture remains outstanding or to the Lender under the Pledge.

XII. The Government of Guam shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Pledge, and all benefit or advantage of any such law or laws is hereby expressly waived by the Government of Guam to the extent permitted by law. The Government of Guam shall not claim, and hereby waives any claim to, sovereign immunity from any suit or other action that may be brought under this Pledge.

XIII. The Government of Guam will make, execute and deliver any and all such further agreements, documents, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Pledge and for the better assuring and confirming unto the Lender of the rights and benefits provided in this Pledge.

XIV. The Government of Guam warrants that as of the date hereof, the Government of Guam is not in default of any material obligation, covenant, warranty or provision applicable to the Government of Guam under the Indenture, including but not limited to with respect to Pledge and Assignment - 1/2/2007

payment of principal, interest or premium, if any, upon the Bonds, with respect to receipt, collection and application of any property pledged under the Indenture or with respect to the funding or adequacy of funding of any accounts or funds maintained or established under the Indenture. The Government of Guam covenants and warrants that during the term of the Loan and until it has been paid and satisfied the Government of Guam will fully and faithfully comply with all provisions of the Indenture including without limitation those specifically above referred to. The Government of Guam shall promptly notify Lender in the event of receipt by the Government of Guam of any notice by any Trustee or Depository under the Indenture of default or of breach by the Government of Guam of any provision of the Indenture.

XV. In the event of default under this Pledge or under the Loan Agreement, the Government of Guam shall pay to Lender, all fees, costs and expenses including those of attorneys reasonably incurred in the enforcement of this Pledge and the Loan Agreement, and recovery of amounts secured by this Pledge. Revenues pledged hereunder may be applied to payment of and shall secure all the foregoing amounts.

XVI. Events of Defaults and Remedies of Lender. Any of the following shall constitute an event of default hereunder:

- (a) Default in the due and punctual payment of principal or interest when due and payable under the Loan.
- (b) Receipt of property subject to this Pledge by the Government of Guam, other than by a Trustee or Depository pursuant to the terms of the Indenture so long as the Indenture is in effect, or other than by Lender hereunder if the Indenture has been discharged, or receipt of any disbursements from any Trustee or Depository under the Indenture by the Government of Guam or any agency thereof, other than to Lender pursuant to the terms of this Pledge.
- (c) A failure by the Government of Guam to pay when due any bonded indebtedness of the Government of Guam, under the Indenture or otherwise, and whether or not secured by the property subject to this Pledge.
- (d) Any breach of the covenants contained in paragraphs VII, IX, or XI hereof.
- (e) Any breach of any other obligation on the part of the Government of Guam under this Pledge, if such breach is not cured within 60 days after notice of breach is given to the Government of Guam, and opportunity to cure.

(f) The repeal of or amendment to Section 30 of the Organic Act, 48 U.S. Code §1421h, resulting in reduction of the Revenues payable thereunder to the Government of Guam.

Upon the occurrence of an event of default, Lender (i) may elect to accelerate all sums outstanding upon the Loan, and to demand the immediate payment of the full principal and interest thereof, and other amounts due and outstanding, and cease further disbursement of any undisbursed funds hereunder; (ii) Lender may with or without acceleration apply to payments of amounts due and secured hereby any funds pledged hereunder, and held by it hereunder, to amounts due under the Loan and secured hereby, including amounts due by acceleration; (iii) and may further exercise any remedies at law or in equity, including the initiation of proceedings in mandamus or for specific performance to compel the performance of this Agreement.

XVII. Remedies Not Exclusive. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

XVIII. No Waiver of Default. No delay or omission of Lender to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to Lender may be exercised from time to time and as often as may be deemed expedient.

XIX. Saturdays, Sundays and Legal Holidays. If any party hereto is required to perform, pursuant to a provision of this Pledge, any act on a date which falls on a Saturday, Sunday or legal holiday, the party required to perform such act shall be deemed to have performed it in a timely manner, and in conformance with such provision, if it shall perform such act on the next succeeding business day.

XX. Notices. Any notice or demand upon the Government of Guam, or Lender shall be deemed to have been sufficiently given or served for all purposes by being deposited, postage prepaid, in a post office letter box, addressed to the applicable address set forth below, or at such other address as may have been filed in writing by such party with each other party or by delivery to such place as may be designated herein. At the date of execution of this Indenture, the address of the Government of Guam and the principal office of the Lender are as follows:

Government of Guam:

Lender: c/o Bank of Guam  
111 Chalan Santo Papa  
Hagåtña, Guam 96910

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**GOVERNMENT OF GUAM**

By: **Governor of Guam**

APPROVED AS TO FORM:  
**Department of Law**

By: \_\_\_\_\_  
**Attorney General**

ARRIOLA, COWAN & ARRIOLA, HAGATNA, GUAM 96910

## NOTICE OF PLEDGE AND ASSIGNMENT

To: Bank of Guam as Trustee and Depository and any successor Depository or Trustee under the Government of Guam Limited Obligation (Section 30) Bonds, including the \$76,895,000 Government of Guam Limited Obligation (Section 30) Bonds Series 2001A, issued under Indenture dated as of December 1, 2001, made between the Government of Guam and Bank of Guam as Trustee and Depository, and U.S. Bank Trust National Association as Co-Trustee.

1. Concurrently herewith or prior to the execution of this Notice, the Government of Guam (hereinafter "the Government") has made and entered into a Pledge and Assignment ("the Pledge") to and for the benefit of the Bank of Guam and certain other financial institutions (collectively "Lender"), as security for a loan made by Lender to the Government of Guam, which Pledge extends to the following described property:

(i) All 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 the Congress on the inhabitants of Guam (including, but not limited to, compensation paid to members of the Armed Forces and pensions paid to retired civilians 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 ("the Revenues").

(ii) So long as the Indenture has not been discharged, the Revenues and any other property pledged under the Indenture and held by any Trustee or Depository thereunder or by the Government of Guam;

(iii) all interest, profits or other income derived from the investment of any property subject to the Pledge.

2. Such Pledge is subordinate to the Indenture above described ("the Indenture") and extends to all property in your possession and control pursuant to the Indenture, subject to the provisions and requirements of the Indenture.

3. Under Section 5.05 of the Indenture all amounts in the Surplus Fund, as defined in the Indenture, on the fifth day of each month after certain deposits, as required in the Indenture, have been made are to be paid by you to the Government for any lawful purpose of the Government free and clear of the Pledge and lien of the Indenture.

4. Notice is hereby given to you of the rights of the Lender under the Pledge. The

### EXHIBIT A - Notice of Pledge and Assignment

Government hereby instructs you to pay any amounts otherwise payable by you to the Government under the above referenced provisions of the Indenture, or which otherwise become payable by you to the Government by provision of law or upon discharge of the Indenture to the Lender under the Pledge instead of to the Government. These instructions shall be binding and irrevocable, until a certificate of release and discharge of the Pledge has been executed by Lender under the Loan.

4. The instructions and notice hereunder given shall be binding upon the Bank of Guam as Trustee and Depository under the Indenture, and upon any successor to the Bank of Guam in either of such capacities.

Executed: \_\_\_\_\_.

**GOVERNMENT OF GUAM**

By:

**Governor of Guam**

We acknowledge receipt of this Notice and a copy of the Pledge.

BANK OF GUAM as Trustee and Depository under the Government of Guam Limited Obligation (Section 30) Bonds, including the \$76,895,000 Government of Guam Limited Obligation (Section 30) Bonds Series 2001A, issued under Indenture dated as of December 1, 2001, made between the Government of Guam and Bank of Guam as Trustee and Depository, and U.S. Bank Trust National Association as Co-Trustee

By:

**EXHIBIT A - Notice of Pledge and Assignment**



Secretary of Treasury

Reference is made to the amounts payable annually to the Government of Guam, by the United States of America pursuant to Section 30 of the Organic Act 48 U.S. Code §1421h.

You are hereby notified and advised that the Government of Guam has entered into a Pledge and Assignment of such revenues to the Bank of Guam and certain Participant Banks (collectively "the Banks") as security for a loan extended by the Banks. The loan and such Pledge were duly authorized by Public Law \_\_\_\_\_.

Such Pledge is subordinate to a prior pledge of such revenues pursuant to an Indenture dated as of December 1, 2001, made between the Government of Guam and Bank of Guam as Trustee and Depository and U.S. Bank Trust National Association as Co-Trustee ("the Indenture").

You have previously been instructed to make payment of §30 Revenues to the Trustee and Depository under the Indenture and should continue to do so, until such instructions are revoked. At such time as the Indenture is discharged and §30 Revenues no longer payable to a Trustee or Depository under the Indenture and prior instructions revoked, such revenues shall become payable to the Banks pursuant to the Pledge above-referred to.

**Governor of Guam**

Receipt Acknowledged

**EXHIBIT B - Secretary of the Treasury Letter**

Secretary of the Interior

Reference is made to the amounts payable annually to the Government of Guam, by the United States of America pursuant to Section 30 of the Organic Act 48 U.S. Code §1421h.

You are hereby notified and advised that the Government of Guam has entered into a Pledge and Assignment of such revenues to the Bank of Guam as security for a loan extended by the Bank of Guam to the Government of Guam. The loan and such Pledge were duly authorized by Public Law \_\_\_\_\_.

Such Pledge is subordinate to a prior pledge of such revenues pursuant to an Indenture dated as of December 1, 2001, made between the Government of Guam and Bank of Guam as Trustee and Depository and U.S. Bank Trust National Association as Co-Trustee ("the Indenture").

You have previously been instructed to make payment of §30 Revenues to the Trustee and Depository under the Indenture and should continue to do so, until such instructions are revoked. At such time as the Indenture is discharged and §30 Revenues no longer payable to a Trustee or Depository under the Indenture and prior instructions revoked, such revenues shall become payable to the Bank of Guam pursuant to the Pledge above-referred to.

**Governor of Guam**

Receipt Acknowledged

**EXHIBIT C - Secretary of the Interior Letter**

## PROMISSORY NOTE

The **GOVERNMENT OF GUAM**, (the "Government") promises to pay to the **BANK OF GUAM**, a Guam banking corporation, and to \_\_\_\_\_ Bank, \_\_\_\_\_ Bank, and \_\_\_\_\_ Bank (collectively "Lender"), or to their order, the principal sum of ONE HUNDRED TWENTY-THREE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$123,800,000.00) with interest as hereafter provided. This Note is made under a Loan extended by Lender to the Government pursuant to a certain Loan Agreement (the "Loan Agreement") and is given to evidence the obligation of the Government to Lender for repayment of the Loan as provided by the Loan Agreement. This Note is secured by a Pledge and Assignment ("the Pledge") of revenues payable to the Government of Guam by the Government of the United States pursuant to Section 30 of the Organic Act, 48 U.S. Code §1421h.

1. **Interest.** Bank of Guam's pro rata share of the principal outstanding upon this Note shall bear interest at a fixed rate of seven percent (7%) per annum. Each other lending institution's pro rata share of the principal outstanding upon this Note shall bear interest at a fixed rate of 6.875% per annum.

The rates of interest hereon shall, notwithstanding the foregoing, be subject to adjustment to a rate equal to one percentage point (1%) per annum above the Reference Rate of the Bank of Guam, upon the occurrence of certain events as specified in paragraph 11 of the Loan Agreement with respect to the tax exempt status of the Loan. Upon the occurrence of any such events the effective rates of interest hereunder shall be adjusted as above provided and as provided in paragraph 10 of the Loan Agreement.

All interest hereunder shall be computed based upon a year of 360 days as the case may be and based upon a monthly average of principal disbursed and outstanding upon this Note.

2. **Payment.** This Note shall be paid as follows:

(a) The full principal and accrued interest hereunder then outstanding shall be paid on October 1, 2022.

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(b) Until the payment specified in the preceding subparagraph, this Note shall be payable annually in fifteen (15) installments each of principal and interest beginning on October 1, 2007 in the amount of \$\_\_\_\_\_. The amount of such installments shall be fixed notwithstanding adjustments to the applicable rate of interest on this Note, except that in the event such amount is as of the date any installment is due less than the amount of interest accrued and unpaid to such date since the date the preceding installment was due, then the amount of such accrued interest shall be paid as the amount of such installment.

(c) Such installments shall be due on October 1<sup>st</sup> of each calendar year provided that in the event in any calendar year the payment specified to be paid in such calendar year by the United States of America to the Government of Guam pursuant to Section 30 of the Organic Act, 48 U.S. Code §1421h, is paid on a date earlier than September 30<sup>th</sup> of such calendar year, then the installment hereunder in such year shall be due the date following the date such payment is made to or for the account of the Government of Guam by the United States of America.

(d) This Note may be prepaid at any time without penalty.

The principal and accrued interest outstanding under this Note shall, at the option of the Holders, become immediately due and payable should the Government default in the due and punctual payment of principal or of interest or both on this Note.

The principal and accrued interest hereunder may, under certain additional circumstances set forth in the Pledge (which provisions are by reference incorporated herein), be declared immediately due and payable.

If any payment hereunder shall become due and payable on a Saturday, Sunday or public holiday, then the payment date thereof shall be extended to the next succeeding business day and interest shall be payable at the above rate per annum during such extension.

The Government of Guam hereby waives presentment, demand for payment, protest and notice of dishonor and all other notices in connection with the delivery, acceptance, performance, default or enforcement of this Note, and authorizes the Holders without notice or further consent to grant extensions of time in the payment of all monies payable under this Note, to waive compliance with any of the provisions of this Note, and to release all or any part of money or other property held by Lender and for which a lien for the repayment of this indebtedness exists; and also agrees in the event of any default to pay all costs of collection including reasonable

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attorneys' fees which may be incurred by the Holders in collecting any sums due hereunder, whether or not suit is brought.

This Note is given as a general and not as a special obligation of the Government. It is secured by the Pledge but is not limited as to repayment or recourse to pledged revenues.

This Note shall be governed by and construed in accordance with the laws of Guam.

Dated: \_\_\_\_\_.

**GOVERNMENT OF GUAM:**

By:  
Governor of Guam

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