

LOAN AGREEMENT

BY AND BETWEEN

THE REPUBLIC OF GUATEMALA

AND

THE EXPORT-IMPORT BANK OF THE REPUBLIC OF CHINA

LOAN NUMBER: 6020357009

PROJECT "THE CONSTRUCTION OF HIGHWAY CA-9 NORTH,  
TRANCHE GUATEMALA-EL RANCHO, SUBSECTION III: SANARATE-EL  
RANCHO"

DATED AS OF November 12<sup>th</sup>, 2015

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THIS LOAN AGREEMENT (the "Agreement") is made as of November 12th, 2015 between the Republic of Guatemala, acting by and through its Ministry of Public Finance (the "Borrower") and The Export-Import Bank of the Republic of China, a banking institution organized and existing under the laws of the Republic of China (the "Lender").

WHEREAS, the Borrower wishes to obtain from the Lender a facility in the maximum aggregate principal amount of not exceeding Fifty Million United States Dollars (50,000,000.00) to finance partially the construction of highway CA-9 North, Tranche Guatemala – El Rancho, Subsection III: Sanarate - El Rancho (the "Project"); and

WHEREAS, the Lender is willing to make available the facility to the Borrower on the terms and subject to the conditions set forth in this Agreement.

IT IS AGREED as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATION

### 1.01 Definitions

- (a) "Disbursement" means a Disbursement to be made by the Lender to the Borrower under this Agreement or, as the context may require, the principal amount thereof from time to time outstanding.
- (b) "Banking Day" means a day (not being Saturday or Sunday) on which banks in Taipei, New York or London, as may be the case, are open for business of the kind contemplated by this Agreement; for the purpose of making a Disbursement by the Lender, it means a day in Taipei, Taiwan, Republic of China, for the purpose of making repayment of Loan, payment of interest or other payment obligations by the Borrower, it means a day in New York City, New York State, United States of America, and for the purpose of determining the applicable interest rate, it means a day in London, England, United Kingdom.
- (c) "Commitment" means the commitment of the Lender to make Disbursements on the terms and conditions of this Agreement in the aggregate principal amount not to exceed Fifty Million United States Dollars (US\$50,000,000.00).
- (d) "Commitment Period", unless otherwise agreed to by the Lender in writing, means the period commencing on the date of this Agreement and ending on (i) the date which is the third (3<sup>rd</sup>) anniversary of the date of this Agreement; (ii) the date at which the full amount of the Commitment has been drawn down or (iii) the termination of the obligation of the Lender to make any Disbursement under this Agreement, whichever shall first occur. If any of (i), (ii) or (iii) above should fall on a day that is not a Banking Day, then the Commitment Period shall end on the preceding Banking Day.

- (e) "Default" or an "Event of Default" means any of the events specified in Section 7.01, whether or not any requirement of notice, lapsed of time, or both, contained in that Section, shall have been satisfied.
- (f) "Dollars" and "\$" means the lawful currency of the United States of America.
- (g) "External Indebtedness" means any Indebtedness contracted and guaranteed by the Republic of Guatemala that is denominated in a currency other than the lawful currency of the Republic of Guatemala and is payable to any person who is resident outside the Republic of Guatemala or who is organized under the laws of a jurisdiction other than the Republic of Guatemala.
- (h) "Executing Agency" means the Ministerio de Comunicaciones, Infraestructura y Vivienda de la República de Guatemala (Ministry of Communications, Infrastructure and Housing of the Borrower) as the executing agency of the Project.
- (i) "Facility" means the facility the terms and conditions of which are set out in this Agreement.
- (j) "Indebtedness" means any obligation for the payment or repayment of money, whether present or future, actual or contingent, sole or joint, including, without limitation, (i) all indebtedness and obligations of the Borrower for borrowed money or for the deferred purchase price of property or services, and all rental obligations of the Borrower and (ii) all such indebtedness and other such obligations the payment or collection of which the Borrower has guaranteed, directly or indirectly (other than by endorsement of negotiable instruments for deposit or collection in the ordinary course of business), excluding, however, accounts payable (other than for borrowed money) and accrued expenses incurred in the ordinary course of business; provided, however, that the same are not overdue in a material amount.
- (k) "Interest Payment Date" has its meaning set forth in Section 2.03 (a).
- (l) "Interest Period" has its meaning set forth in and to be determined in accordance with Section 2.03 (b).
- (m) "Lending Office" except as otherwise notified by the Lender of a change of address, means the office of the Lender at 8th Floor, 3 Nan Hai Road, Taipei, Taiwan, Republic of China.
- (n) "LIBOR" means, for any Interest Period or other period and in relation to any Disbursement or unpaid principal sum, the rate per annum which appears on Reuters Page LIBOR01 at or about 11:00 a.m. (London time) for the offering of deposit in Dollars on the second Banking Day before the first day of such Interest Period in the London interbank markets for a term of six months. For the purposes of this definition, the term "Reuters Page LIBOR01" shall mean

the screen display designated as Page "LIBOR01" (ICE BENCHMARK ADMINISTRATION LTD INTEREST SETTLEMENT RATES) or such other screen display or other service as may replace such Page LIBOR01 on the Reuters Terminal or replace Reuters Terminal, as the case may be, for the purpose of displaying ICE Benchmark Administration Ltd Interest Settlement Rates for deposits in the currency concerned on the second Banking Day before the first day of such Interest Period.

- (o) "Loan" means the aggregate principal amount of all Disbursements from time to time made to the Borrower pursuant to this Agreement or where the context may require, the aggregate principal amount of the Disbursements for the time being outstanding under this Agreement.
- (p) "Note" means the promissory note of the Borrower in the form and substance as set forth in Appendix "A" hereto, or any promissory note hereafter delivered by the Borrower to the Lender in extension or renewal thereof or in substitution therefor and evidencing all or a part of the Loan.
- (q) "ODA" means the Official Development Assistance or Official Development Aid as commonly used by the Organization for Economic Cooperation and Development in its literature when referring to loans provided by a donor country to a recipient developing or less developed country.
- (r) "Process Agent", except as otherwise agreed upon in writing by the parties hereto, means Consul General of Guatemala in New York, with an official address on the date hereof at 276 Park Avenue South 2FL, New York, NY 10010, United States of America, telephone +212 686-3837 and fax +212 271-3503.
- (s) "Project" means the construction of highway CA-9 North, Tranche Guatemala – El Rancho, Subsection III: Sanarate - El Rancho and has its meaning given in the Preamble.
- (t) "Request for a Disbursement" means a notice in the form set out in Appendix "B".
- (u) "Taxes" and "Transaction Taxes" have their respective meaning set forth in Article III.
- (v) "Yearly Commitment" shall mean the available commitment in each of the calendar years set forth in Section 2.01(b) hereof.

#### 1.02 Interpretation

- (1) In this Agreement, unless otherwise expressly provided, any reference to:
  - (a) the Borrower and the Lender shall be construed so as to include their respective successors and assigns from time to time;

- (b) a "person" shall be construed as a reference to any individual, firm, company, body, corporate, government, state or state entity or any association or partnership (whether or not having separate legal personality) or any two or more of the foregoing;
  - (c) a "consent" shall be construed so as to include without limitation any approval, authorization, consent, ratification, exemption, license, permission or registration by of or from any governmental, legislative or other authority or any other person;
  - (d) fees costs and expenses shall be exclusive of any value added tax or similar tax chargeable on them, which shall accordingly be payable in addition;
  - (e) any other document or instrument is a reference to that other document or instrument as the same may have been, or may from time to time be, amended or supplemented; and
  - (f) an Appendix is a reference to an appendix to this Agreement illustrating the type of documents the Borrower is required to deliver to the Lender under this Agreement; when delivering a document, the Borrower shall ensure that such document is in the form and substance of a relevant Appendix.
- (2) In this Agreement, words importing the singular shall include the plural and vice versa.
- (3) Headings in and the list of contents of this Agreement are for ease of reference only and shall not affect its interpretation.

## **ARTICLE II THE LOAN**

### **2.01 Purpose of the Loan and Agreement to Lend**

- (a) The Loan is for the Borrower to finance the costs and expenses to be incurred for carrying out the Project; provided, however, that the Lender or any person designated by the Lender in connection with the administration of the Loan shall in no event be responsible for monitoring or ensuring the actual use of the proceeds (or any part thereof) of any Disbursement. The Project will be executed by the Executing Agency.
- (b) Subject to the terms and conditions of this Agreement and so long as no Default or Event of Default shall have occurred or be continuing, the Lender hereby agrees to make available to the Borrower during the Commitment Period in an aggregate principal amount not to exceed the amount of the Commitment for the use by the Executing Agency of

the Borrower to finance the Project, in accordance with the following schedule ("Yearly Commitment"):

- (i) From the date of January 1, 2016 through (and including) December 31, 2016: The principal amount not exceeding Twenty Five Million Dollars (\$25,000,000.00);
- (ii) From the date of January 1, 2017 through (and including) December 31, 2017: The principal amount not exceeding Twenty Five Million Dollars (\$25,000,000.00).

Provided, however, that any portion of the Yearly Commitment is not drawn down by the Borrower in the relevant calendar year may be drawn down in one or more succeeding calendar years during the Commitment Period and any aforesaid portion not drawn down by the Borrower in the relevant calendar year shall not be counted as a part of the Yearly Commitment in the succeeding calendar years.

## 2.02 Disbursement Procedure

- (a) Any request by the Borrower for a Disbursement hereunder shall be preceded by the Borrower's delivery to the Lender a prior Request for a Disbursement in the form and substance set out in Appendix "B" hereto, by registered airmail or international courier. The Lender shall, subject to the Borrower's fulfillment of all conditions precedent set out in Article VI hereof, and within ten (10) Banking Days from the date when such Request, and the accompanying certificates, opinions and all other documents required to be given under this Agreement, each in form and substance satisfactory to the Lender, shall have reached the Lender, credit the amount of the requested Disbursement to the Borrower's account with a bank in New York City, State of New York, United States of America, or to such other account in New York City in such manner as designated by the Borrower in said Request and acceptable to the Lender. For the purpose of receiving the Disbursements, the Borrower hereby designates the following account in accordance with this Agreement :

Name of Account Holder:	Banco de Guatemala
SWIFT Code:	BAGUGTGC
Account Number:	1800515
Account Name:	Cuenta Unica de Préstamos-Tes-Nac-USDolares
Name of Bank:	Federal Reserve Bank of New York
SWIFT Code:	FRNYUS33
Address:	33 Liberty Street New York, NY 10045-001 United States of America



- (b) Any and all Disbursements so made under the preceding paragraph shall constitute an absolute and unconditional obligation of the Borrower under this Agreement.

### 2.03 Interest

- (a) Interest shall accrue hereunder on each Disbursement from the date when it is made and in respect of each Interest Period relating to such Disbursement, at the rate equal to LIBOR plus one percent (1%) per annum. The Borrower agrees to pay interest on the amount of an Disbursement outstanding from time to time semi-annually on the last day of each Interest Period relating to such Disbursement ("Interest Payment Date"). When the Commitment is fully drawn or in any event on and after the expiry of the Commitment Period, interest shall accrue on the Loan and be payable with reference to the outstanding amount of the Loan semi-annually.
- (b) For the purpose of determining the duration of any Interest Period, (i) the first Interest Period relating to the first Disbursement under this Agreement shall be for a duration of six months from the date the first Disbursement is made by the Lender, and the subsequent Interest Period shall commence on the expiry of the preceding Interest Period; (ii) the first Interest Period relating to a Disbursement other than the first Disbursement shall commence on the date that Disbursement is made by the Lender and shall expire on the same date of the Interest Period relating to the first Disbursement, and subsequent Interest Period for such Disbursement shall commence on the expiry of the preceding Interest Period for such Disbursement with a duration of six months.
- (c) Default interest shall accrue on each installment payment of the principal amount of a Disbursement or the Loan, as the case may be, which is overdue, from and including the date due (as scheduled or by acceleration hereunder or otherwise) to the date of its full payment, before as well as after judgment, at the rate of ten percent (10%) per annum or six-month LIBOR plus five percent (5%), whichever is higher.
- (d) Interest shall accrue on the basis of the number of days actually elapsed and a year of 360 days.
- (e) If any Interest Period would end on a day which is not a Banking Day, such Interest Period shall be extended to the next Banking Day unless that would extend that Interest Period into the next following calendar month, in which event that Interest Period shall be shortened so as to end on the immediately preceding Banking Day.
- (f) if any Interest Period commences on the last Banking Day in a calendar month or if there is no corresponding date in the calendar month in which an Interest Period is due to end, then such Interest Period shall end on the last Banking Day in the relevant month.

## 2.04 Market Disruption

### (a) Mandatory Suspension

The Lender's obligation to make any Disbursement or maintain the Loan hereunder shall be suspended until an alternative basis is agreed by the parties hereto in accordance with Section 2.04(b) below, if

- (i) the Lender determines that adequate and fair means do not exist for ascertaining the relevant LIBOR; or
- (ii) the Lender determines that the relevant LIBOR, as determined by the Lender pursuant to Section 2.03(a) hereof, would not accurately reflect the cost to the Lender of making that Disbursement requested by the Borrower or of maintaining the Loan.

### (b) Alternative Basis

The Lender shall promptly notify the Borrower of the existence or occurrence of any circumstances specified in Section 2.04(a) above. During the period in which the circumstance described in Section 2.04(a) above shall exist (the "Suspension Period"), but only for so long as such circumstances shall continue to exist, the Loan shall bear interest at a rate per annum equal to the sum of (i) one percent (1%) per annum and (ii) the Lender's cost (rounded upward, if necessary, to the nearest 1/16<sup>th</sup> of 1%) of obtaining (in good faith and using the best efforts to minimize the interest cost to the Borrower) funds for funding or maintaining the Loan during such Suspension Period. The Lender shall notify the Borrower of such cost of funds for such Suspension Period, and any such notification shall, absent manifest error, be conclusive and binding on the Borrower. Immediately upon the circumstance that gave rise to such Suspension Period ceasing to exist, the Loan shall bear interest at the rate of interest determined pursuant to Section 2.03(a) hereof.

## 2.05 Repayment of Loan

- (a) The Loan shall be repaid by the Borrower in Dollars in fifty (50) consecutive equal (or as nearly equal as possible) semi-annual installments, the first of which shall be made on the last day of sixty six (66) months' period from the date of the first Disbursement under this Agreement is made by the Lender, and thereafter on the last day of each successive six-month period, each installment to be in the amount of One Million Dollars (\$1,000,000) each. In order to plan and schedule the payment, the Lender shall give notice at the request of the Borrower. Likewise, the Lender shall issue the payment receipt to the Borrower, as proof of each repayment at the request of the Borrower.

- (b) To evidence the Borrower's obligation to repay the present Loan, the Borrower shall execute and deliver to the Lender the Note, in the form and substance satisfactory to the Lender, for the full Commitment amount, before the Lender makes the first Disbursement under the Commitment. In the event that the Borrower does not draw down the entire amount of the Commitment, the amount of each installment shall be adjusted so that it bears the same relationship to the amount of each installment set forth in the sub-paragraph (a) of this Section as the aggregate amount actually draw down bears to the amount of the Commitment.
- (c) Statement of account: the Lender may deliver the statement of account at request of the Borrower.

#### 2.06 Payment in Dollars

This is an international loan transaction in which the specifications of Dollars and the Borrower's obligation to make payment of interest and repayment of principal in New York City, New York State, United States of America are of the essence. All payments to be made by the Borrower under this Agreement, the Note, any judgment, or otherwise, shall be made in full, without any set-off or counterclaim whatsoever and free and clear of any deductions or withholdings, in immediately available, freely transferable, cleared funds in Dollars not later than 11:00 a.m. (New York time) on the due date to the account of the Lender being Account No 36999645 with Citibank N.A., 111, Wall Street, New York, NY10005, United States of America, or such other account of the Lender as it may from time to time notify to the Borrower. In the event that any payment to the Lender, whether pursuant to any judgment or otherwise, does not, upon conversion and transfer, result in payment of such amount of Dollars in New York City upon the Lender's receipt thereof, the Borrower shall pay such additional amount as shall be necessary to yield the full amount due to the Lender under this provision.

#### 2.07 Partial Payment

In the case of a partial payment by the Borrower, the Lender may appropriate such payment towards any of the payment obligations of the Borrower under this Agreement as the Lender may decide at its full discretion. The Borrower waives any right to make an appropriation in respect of a partial payment. Any appropriation by the Lender shall apply to the exclusion of any actual or purported appropriation by the Borrower.

### **ARTICLE III TAXES EXPENSES AND CHANGE OF LAW**

#### 3.01 Taxes and Transaction Taxes

- (1) All sums payable by the Borrower hereunder or under the Note shall be paid in full, without set-offs or counter-claims and free and clear of and without deductions of any kind whatsoever. All present and future income and other taxes, levies, duties, charges, fees, deductions and withholdings of any nature now or hereafter imposed, levied, collected, withheld or assessed by the Republic of Guatemala or by any political subdivision or taxing authority thereof on any amount payable or paid to the Lender hereunder or under the Note (hereinafter collectively referred to as "Taxes") shall be the sole responsibility of and shall be paid by the Borrower.
- (2) In the event that the Borrower is prohibited by law from making payments hereunder completely free and clear of the Taxes, the Borrower shall pay such additional amount to the Lender as may be necessary in order that the net amount received by the Lender after such payment of the Taxes shall equal the amount that would have been received if the Taxes were not required, after allowance for any increase in the Taxes by virtue of the Lender's receipt of such additional amount.
- (3) The Borrower shall be responsible for and shall pay directly to the appropriate taxing authority, and in any event, upon the Lender's written demand, reimburse the Lender, any and all present and future taxes, levies, stamp and other duties, filing and other fees or charges (including, without limitation, any interest equalization tax, capital transaction tax, foreign exchange tax or charge, however named) imposed by law or by any taxing authority on or with regard to any aspect of the transaction contemplated by this Agreement or the execution, formalization or perfection of documentation delivered under this Agreement at any time during the term of this Agreement (hereinafter collectively referred to as "Transaction Taxes"). The Borrower shall indemnify and hold the Lender harmless from and against all liabilities and claims with respect to the delay or failure of the Borrower to pay any Transaction Taxes.
- (4) Upon the Borrower's payment of any and all Taxes and Transaction Taxes, or of making any deductions or withholdings from any amount payable or paid to the Lender hereunder, the Borrower shall forward to the Lender official receipts or other evidence acceptable to the Lender establishing payment of such amount.
- (5) If the Lender is required to pay any Taxes or Transaction Taxes for which it is entitled to reimbursement as provided herein, the Lender shall forward to the Borrower official receipts or other evidence establishing payment of such amounts to be reimbursed by the Borrower.

### 3.02 Fees and Expenses

- (1) The Borrower shall pay, on demand and on a full indemnity basis, to the Lender the amount of all reasonable costs and expenses (including legal and out-of-pocket expenses and any Value Added Tax or similar Taxes on such costs and expenses) which the Lender properly incurs in connection with the preparation, negotiation, execution and delivery of this Agreement and the Note. Such fees and expenses shall be reimbursed whether or not they arise during the term of this Agreement and whether or not the Lender has given notice in respect of any Event of Default, demanded acceleration of the Loan or has taken any other action to enforce the provisions hereof.
- (2) The Lender shall be entitled to effect payment (to the extent not already discharged) of all Taxes, Transaction Taxes, fees, expenses and other sums due and payable by the Borrower under this Article III out of and by deduction from any Disbursement and the Borrower hereby irrevocably authorizes the Lender to do so.

### 3.03 Change of Law

- (1) Notwithstanding any other provision herein, in the event that any change in any applicable law, rule or regulation or in the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof shall make it unlawful for the Lender to make any Disbursement to the Borrower hereunder, then the obligation of the Lender to make any Disbursement hereunder shall terminate, and if such change shall make it unlawful for the Lender to maintain the Loan then outstanding or for the Borrower to perform any of its obligations hereunder, then the Borrower shall on the Lender's demand prepay the Loan then outstanding.
- (2) Any prepayment which is required under this Section 3.03 shall be made, together with interest accrued thereon to the date of prepayment and any and all additional amounts payable to the Lender under this Agreement, as soon as practicable but in any event within thirty (30) days of being so notified.

## ARTICLE IV REPRESENTATIONS AND WARRANTIES

### 4.01 Representations and Warranties of the Borrower

The Borrower represents and warrants to the Lender that:

- (1) Binding Obligations of Borrower: it has full power, authority and legal right to execute, deliver and make, and to perform its obligations under, this Agreement and the Note; and this Agreement constitutes, and the Note is or when executed and delivered will constitute, its valid and legally binding obligation enforceable in accordance with their respective terms;

- (2) Due Authorization: all necessary action, whether governmental, legislative, statutory, judicial or otherwise, as required by the constitution, laws, and regulations of the Borrower in all respects has been taken or will be taken (and not revoked) to authorize the execution, delivery and performance of this Agreement and the Note; and the execution and delivery of this Agreement and the Note required under or in connection with this Agreement by an authorized signatory or signatories in the name and on behalf of the Borrower have been duly authorized by the Borrower under the laws of the Borrower in all respects;
- (3) Absence of Conflicts: the execution, delivery and performance of this Agreement and the Note do not and will not contravene any constitutional provision, law, regulation, directive, judgment or order to which it is subject; or result in any conflict with, actual or potential breach of, or default under, any obligation agreement instrument or consent to which it is a party or by which it is bound or which it requires to carry on its functions; or result in any limitation on its powers to borrow or incur Indebtedness being exceeded;
- (4) Governing Law: The choice of the laws of the State of New York, United States of America as the governing law of the Agreement and the Note, and any judgment obtained in New York in relation to the Agreement and/or the Note, will be recognized and enforced in the Republic of Guatemala;
- (5) Ranking: its obligations under this Agreement and the Note are its direct, general and unconditional obligations and rank and will at all times rank in right of payment and collateral security and otherwise at least pari passu with all other External Indebtedness and similar external obligations of the Borrower (whether direct or contingent) outstanding from time to time;
- (6) No Pending Dispute: no litigation, arbitration or administrative proceeding and without limitation no dispute with international lending agency is pending or to its knowledge threatened against it or any of its assets which might/would have a material adverse effect on its assets or financial condition or its ability to observe or perform its obligations under this Agreement or the Note;
- (7) No Default: no Default or Event of Default has occurred and is continuing;
- (8) Government Authorization: all consents and authorizations from all authorities required by the laws of the Republic of Guatemala for the Borrower (i) to incur the Indebtedness and other obligations provided for in this Agreement and the Note, (ii) to execute and deliver this Agreement and the Note by such persons authorized by the Borrower, (iii) to perform and observe the terms and conditions of this Agreement

and the Note, and (iv) to make all payments in Dollars as required under this Agreement and the Note, have been duly obtained and are in full force and effect;

- (9) Commercial Obligations: it is subject to civil and commercial law with respect to its obligations under this Agreement and the Note, the provisions of the Loan by the Lender are not and do not constitute ODA and the making and performance by the Borrower of this Agreement and the Note constitute private and commercial acts rather than governmental or public acts. Neither the Borrower nor any property owned by the Borrower or held for its account by any person (including the central banking authority of the Borrower) enjoys any right of immunity, on the ground of sovereignty or otherwise, from suit, or any legal process, jurisdiction of any court, attachment (prior to or in aid of judgment), or set-off, in respect of its obligations under this Agreement or under the Note, and to the extent that the Borrower or its property now or hereafter may acquire such right of immunity, the Borrower hereby irrevocably waives (and shall cause any person holding any property for the account of the Borrower to waive) such right of immunity for itself and any property owned by it or held for its account, and the waiver by the Borrower herein and in Sections 8.03 and 8.04 is irrevocable and binding;
- (10) Taxes and Transaction Taxes: there are no Taxes of the Republic of Guatemala or of any political subdivision or taxing authority thereof, imposed by withholding or otherwise applicable to any payment to be made by the Borrower pursuant to the terms of the Agreement or the Note, nor any Transaction Taxes imposed on or by virtue of the execution and delivery of the Agreement or the Note under the laws of the Republic of Guatemala; and
- (11) True and Accurate Information: all factual information supplied to the Lender in contemplation or for the purpose of this Agreement was complete, true and accurate in all material respects as at its date and did not omit anything material, no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any material respect, and all projections and statements of belief and opinion given by the Borrower to the Lender were made honestly and in good faith after due and careful enquiry and remain valid and not misleading.

#### 4.02 Repetition

The representations and warranties in Section 4.01 will be in force by the Borrower on and as of each date on which a Request for a Disbursement is issued and on which a Disbursement is made and each Interest Payment Date as if made with reference to the facts and circumstances existing at such respective date.

#### 4.03 Effect of Investigation

The rights and remedies of the Lender in respect of any misrepresentation or breach of warranty on the part of the Borrower shall not be prejudiced or affected by any investigation of the Borrower or any other person by or on behalf of the Lender or without limitation of any other act or matter which, but for this provision, would or might prejudice or affect any such rights or remedies.

## **ARTICLE V COVENANTS**

### **5.01 Affirmative Covenants of the Borrower**

So long as the Loan (or any part thereof) shall remain outstanding and until payment in Dollars in full of the principal amount of the Loan and the Note and performance by the Borrower of all its other obligations under this Agreement, the Borrower hereby agrees and covenants that it will:

- (a) ensure that its obligations under this Agreement shall at all times rank at least pari passu with all its other External Indebtedness and similar external obligations of the Borrower (whether direct or contingent) outstanding from time to time;
- (b) obtain and maintain in full force and effect and comply with all consents and any conditions thereof necessary from time to time for the Borrower to execute, deliver and perform this Agreement and the Note;
- (c) promptly inform the Lender in writing, upon becoming aware of any occurrence or circumstance of, including, without limitation, any substantial dispute which may exist between the Borrower and any international agency, which might adversely affect its ability to perform its obligations under this Agreement or the Note and of any Event of Default; and
- (d) promptly furnish or cause to be furnished to the Lender all such information and documents as the Lender will reasonably request in connection with the Borrower's obligations under this Agreement and the Note.

### **5.02 Negative Covenants of the Borrower**

The Borrower covenants and agrees that, until this Agreement and the Note have been paid in full, it will not, without the prior written consent of the Lender:

- (a) make any prepayment of any External Indebtedness unless (i) such prepayment is made in conjunction with a refinancing of such External Indebtedness and (ii) concurrently therewith the Borrower makes a prepayment of the Loan in an amount having the same proportion to



the principal amount of the Loan as the prepayment of such other External Indebtedness would have to the principal amount then owing on such other External Indebtedness; or

- (b) except relating to any security agreement effective on or before the date of this Agreement, permit any obligation of, or loan, financing and credit available to, the Borrower to have any priority or to be entitled to any preferential arrangement, whether or not constituting a security agreement, in favor of any creditor or class of creditors, as to security, the payment of interest or repayment of principal or the right to receive income or revenue.

## ARTICLE VI CONDITIONS PRECEDENTS

### 6.01 Conditions for First Disbursement

- (1) Unless the Lender otherwise agrees in writing, the first Request for a Disbursement may not be issued, and the Lender shall not be obliged to make any Disbursement: (i) until it shall have received, in each case in form and substance satisfactory to it, the documents items and evidence specified below, each in form and substance satisfactory to the Lender, and (ii) no Default or an Event of Default shall have occurred and be continuing at the time of, or otherwise would result from, the giving of the Request for a Disbursement, the making of a Disbursement by the Lender, or the receipt of such Disbursement by the Borrower:
  - (a) The Note, duly executed by the Borrower's Minister of Public Finance on behalf of the Borrower in the form and substance of Appendix "A";
  - (b) Certificate of Incumbency and Specimen Signatures for the Borrower, issued by the General Secretary of the Republic of Guatemala, substantially in the form and substance of Appendix "C", and authenticated by an authorized officer of the Embassy of the Republic of China in the Republic of Guatemala;
  - (c) A certified copy of the written appointment of Process Agent in the form and substance of Appendix "D";
  - (d) A certified copy of the Process Agent's irrevocable acceptance of such appointment in the form and substance of Appendix "E";
  - (e) A favorable opinion, appropriately dated, in the form and substance of Appendix "F", from the Attorney General of the Republic of Guatemala and authenticated by an authorized officer of the Embassy of the Republic of China in the Republic of Guatemala; and

- (f) All consents and authorizations of whatever description and nature with regard to the Borrower's execution, delivery and performance of this Agreement and the Note, shall have been duly obtained by the Borrower and remain in full force and effect, which consents and authorizations shall be properly opined in the Legal Opinion referred to in paragraph (e) above.

#### 6.02 Conditions for All Disbursements

The obligation of the Lender to make each and every Disbursement is subject to the further conditions precedent that:

- (a) at the time of the giving of the relevant Request for a Disbursement and at the time of such Disbursement, the representations and warranties of the Borrower set out in this Agreement are complete, true and accurate on and as of each such time as if each were made with reference to the facts and circumstances existing at such time; and
- (b) at the time of giving of the relevant Request for a Disbursement and at the time of such Disbursement, no Event of Default shall have occurred and be continuing or would result from the making of such Disbursement.

### ARTICLE VII EVENTS OF DEFAULT

#### 7.01 Events of Default

The following are Events of Default under this Agreement:

- (a) Representation, Warranty, Covenant, Payment and Performance Default: Any representation, warranty, covenant, statement or opinion made or deemed made under or in connection with this Agreement and the Note by the Borrower or any other party shall prove to have been untrue when made, or shall subsequently become untrue; or the Borrower shall fail to perform any obligation hereunder, including its obligation to pay any amount hereunder or under the Note; or the Borrower shall default in the payment of any amount due under any other agreement for the borrowing of money or extension of credit, whether or not the Lender is a party thereto, and such default shall continue beyond any grace period specified for such payment; or if any instrument, certificate, opinion, corporate authorization, government consent, license or approval or other document or condition described in Article VI hereof shall cease to be fully valid and effective for any reason whatsoever.
- (b) Status of Borrower: The legislation from which the Borrower obtains its basic authority to make the borrowing under this Agreement is repealed

or modified resulting in a diminution of the right of the Lender under this Agreement.

- (c) Material Adverse Change: Any event or series of events or any circumstances whether related or not (including but without limitation any adverse change in the economic or financial condition of the Borrower) occur(s) or arise(s) which, in the reasonable opinion of the Lender, may or would have a material adverse effect on the Borrower or its ability or willingness to perform or comply with any of its respective obligations under this Agreement.
- (d) Moratorium Default: The Borrower or any competent authority of the Republic of Guatemala shall declare a moratorium on the payment of any External Indebtedness incurred or guaranteed by the Borrower.
- (e) Illegality Default: It becomes unlawful, or in the Lender's opinion is contrary to any applicable official statement, guideline or policy of any authority (not having the force of law but is recommended for voluntary observance) of the country of any party hereto, for the Loan to be made or maintained by the Lender or for the Borrower to perform any obligation hereunder, or there occurs such a change of circumstances which the Lender determines as having materially changed the basis of this Agreement or would materially affect the Lender's continuing administration of the Loan or this Agreement or any part thereof.

#### 7.02 Consequences of Default

If an Event of Default shall occur under this Agreement and be continuing, the Lender may by written notice to the Borrower cancel any part or all of the Commitment and/or declare the entire Loan and interest thereon and other sums payable under this Agreement and under the Note to be immediately due and payable and the Loan and interest thereon and such other sums shall thereupon become due and payable without presentment, demand, protest or notice of any kind (other than the notice specifically required by this Section), all of which are hereby expressly waived by the Borrower.

### ARTICLE VIII GOVERNING LAW AND DISPUTES RESOLUTION

#### 8.01 Governing Law

This Agreement and the Note, and each and every part of each thereof, shall be governed by the laws of the State of New York, the United States of America (without, however, giving effect to the conflict of law rules thereof).

#### 8.02 Legal proceedings

To induce the Lender to agree, and in consideration of the Lender's agreement, to enter into this Agreement and to make the Commitment and

Disbursements to the Borrower on the terms and conditions set forth in this Agreement and the Note, the Borrower hereby specifically agrees with the Lender as follows until all of its obligations under this Agreement and under the Note are paid in full:

- (a) The Borrower irrevocably agrees (i) to submit to the non-exclusive jurisdiction of the Supreme Court of the State of New York, County of New York and the United States District Court for the Southern District of New York, the United States of America, and any appellate court from any thereof, in any dispute, suit, action or proceeding arising out of or related to this Agreement and/or the Note, (ii) to waive (A) any objection with respect to the laying of venue of any suit, action or proceeding in any of the foregoing courts, and (B) any claim that any suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- (b) The Borrower irrevocably agrees to maintain the Borrower's Process Agent or his substitute (as approved by the Lender) to accept service of any and all notices and processes in or in connection with any suit, legal action or proceeding under paragraph (a) above, and will advise the Lender of any change of the Borrower's Process Agent (or his substitute) or his address (or the address of such substitute). The Borrower further irrevocably consents to the service of all said notices and processes in any suit, action or proceeding in any of the said courts by the mailing of copies thereof by the Lender by registered or certified mail, postage prepaid, to the Borrower, at its address set forth in Section 9.06, such services to be conclusively deemed to have been received fifteen (15) calendar days following posting.
- (c) The Borrower further agrees that nothing in this Section 8.02 will affect the Lender's right to serve notices and/or processes on the Borrower in any other manner permitted by applicable law or preclude the Lender from instituting proceedings against the Borrower in any other competent court in any jurisdiction other than in the courts provided in paragraph (a) above.

### 8.03 Commercial Obligations and Waiver of Immunity

The Borrower is subject to civil and commercial law with respect to its obligations under this Agreement and the Note, the provisions of the Loan and the Disbursements by the Lender are not and do not constitute ODA and the making and performance by the Borrower of this Agreement and the Note constitute private and commercial acts rather than governmental or public acts. Neither the Borrower nor any property owned by the Borrower or held for its account by any person including by the central banking authority of the Borrower enjoys any right of immunity, on the ground of sovereignty or otherwise, from suit, or any legal process, jurisdiction of any court, attachment (prior to or in aid of judgment), or set-off, in respect of its obligations under this Agreement or under the Note, and to the extent that the Borrower or any property owned by it or any property held for its account

has or hereafter may acquire any right of immunity from legal process, legal proceedings, attachment prior to judgment, attachments in aid of execution of a judgment, set-off, or execution of judgment, on the ground of sovereignty or otherwise, the Borrower hereby irrevocably and unconditionally waives (and shall cause any person holding any property for the account of the Borrower to waive) such right to immunity for itself and the aforesaid property in any legal process or proceeding irrespective of jurisdiction in which the Borrower is involved in respect of the Borrower's obligations arising under or related to this Agreement and the Note. The waiver of any such rights to immunity in this Section 8.03 is irrevocably binding on the Borrower and any property owned by it or any property held for its account.

#### 8.04 Enforceability of Judgment

The Borrower hereby expressly and irrevocably consents and submits to any court of competent jurisdiction with respect to the enforcement of any judgment obtained by the Lender against the Borrower in connection with this Agreement or the Note and for the purpose of any proceedings taken by the Lender to enforce a judgment, the Borrower irrevocably waives its immunity for itself and property (and shall cause any person holding any property of the Borrower to waive any immunity) to the extent as provided in Section 8.03; and the Borrower further irrevocably consents that any proceedings for the enforcement of a judgment by the Lender shall be deemed effectively served by the mailing of the copies of the process by the Lender by registered mail or certified mail, postage prepaid, to the Borrower at its address given in Section 9.06, such service shall be deemed to have been received fifteen (15) calendar days following posting.

### ARTICLE IX GENERAL

#### 9.01 Entire Agreement

This Agreement and the Note constitute the entire understanding of the parties hereto with respect to the subject matter hereof, and represent the full and exhaustive implementation of the respective rights and obligations of the parties hereto. This Agreement may be amended only by an instrument in writing signed by the parties hereto.

#### 9.02 Waiver

No failure or delay by the Lender to exercise any right, power or privilege under this Agreement and no course of dealing between the Borrower and the Lender shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or privilege shall operate as a waiver thereof.

#### 9.03 Assignment

This Agreement shall be binding upon and shall be enforceable by the Borrower and the Lender and their respective successors and assigns, except that the Borrower shall not have any right to assign or transfer its respective rights or obligations hereunder without the prior written consent of the Lender. The Lender, however, may assign, sell or transfer in whole or in part its obligations under and/or its rights and interest in and to this Agreement and the Note and all collateral therefor, if any, provided that no assignment, sale or transfer shall be effective until written notice thereof shall have been given to the Borrower.

9.04 English Language

All notices, communications, evidence, reports, statements, opinions and other documents referred to herein or to be delivered hereunder, unless submitted in the English language, shall be accompanied by one English translation thereof certified as complete, true and accurate. In the event of any conflict between the English version and the non-English version thereof, the English version shall in all cases prevail. Notwithstanding the above, any and all documents which are required of Article VI (Conditions Precedents) under this Agreement to be given in the form and substance set out in Appendixes hereto must be in form and substance satisfactory to the Lender and shall be in English.

9.05 Set-off

The Lender may set-off against any obligation of the Borrower due and payable by it hereunder any money held by the Lender for the account of the Borrower at any office of the Lender anywhere and in any currency, and shall notify the Borrower in writing of any such set-off.

9.06 Notices

- (a) Except otherwise notified by the party of a change of address, any notice required or permitted to be given hereunder shall be in writing and shall be (i) personally delivered, (ii) transmitted by postage prepaid registered mail (airmail if international), or (iii) transmitted by swift to the parties as follows (as selected by the party giving such notice):

To the Borrower:

Ministerio de Finanzas Públicas of The Republic of Guatemala

Address: 8<sup>th</sup> Ave. 20-59 zone 1, Guatemala City

Attention: Director of Public Credit Office

Telephone No: +502-2322-9160

Facsimile No: +502-2322-9163

To the Lender:

The Export-Import Bank of the Republic of China

Address: 8th Fl., 3 Nan Hai Road, Taipei, Taiwan  
Republic of China

SWIFT CODE: EROCTWTP

Attention: Senior Vice President and General Manager,  
Loan & Guarantee Department

Telephone No: +886-2-2321-0511

Facsimile No: +886-2-2341-5297

- (b) Each notice and communication and any material to be given or delivered pursuant to this Agreement shall be effective or deemed delivered or furnished (i) if sent by mail, on the tenth calendar day after such notice, communication or material is deposited in the mail, addressed as above provided, (ii) if sent by swift, when such notice, communication or material is transmitted to the appropriate number as above provided and the appropriate answerback is received or receipt is otherwise acknowledged, and (iii) if sent by hand delivery, when left at the address of the addressee addressed as above provided, except that notices of a change of address, swift number or individual or department to whose attention notices, communications and materials are to be given or delivered, and notices to the Lender under Section 2.02, shall not be effective, and materials to be furnished to the Lender pursuant to Article VI shall not be deemed furnished, until received, and such notices to the Lender shall not be deemed received until received by the officer of the Lender responsible, at the time, for the administration of this Agreement.
- (c) Any requirement under any applicable law of reasonable notice by the Lender to the Borrower of any event in connection with, or in any way related to, this Agreement or the Note, or the exercise by the Lender of its rights hereunder and thereunder shall be met if notice of such event is given to the Borrower in the manner prescribed above at least ten (10) days before (i) the date of such event or (ii) the date after which such event will occur.

#### 9.07 Severability

The invalidity or unenforceability of any part or any provision of this Agreement or the Note or of any right, privilege or obligation hereunder or thereunder or under any document executed in connection herewith or therewith shall not affect the validity or enforceability of any other part or provision of this Agreement or the Note or any other right, privilege or obligation hereunder or thereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be

executed by their respective duly authorized representatives as of the day and year first written above.

The Export-Import Bank  
of the Republic of China

The Republic of Guatemala

By: Lin, Shui-yung  
Shui-Yung Lin  
President

By: Dorval Carias  
Dorval Carias  
Minister of Public Finance



**APPENDIX "A"**

**PROMISSORY NOTE**

## PROMISSORY NOTE

Amount: US\$50,000,000.00

Date: \_\_\_\_\_

FOR VALUE RECEIVED, the Republic of Guatemala, acting by and through its Ministry of Public Finance (the "Borrower") hereby unconditionally promises to pay to The Export-Import Bank of the Republic of China (the "Lender"), to the Lender's account, No. 36999645, maintained at Citibank N.A. 111, Wall Street, New York, N.Y. 10005, U.S.A., or to the Lender's order, the principal sum of Fifty Million Dollars (US\$50,000,000.00) disbursed by the Lender pursuant to the Loan Agreement dated as of \_\_\_\_\_, 2015, by and between the Lender and the Borrower (the "Agreement"), Lender's Loan Number: 6020357009, to which reference is hereby made.

The Loan shall be repaid by the Borrower in Dollars in fifty (50) consecutive equal (or as nearly equal as possible) semi-annual installments, the first of which shall be made on the last day of sixty six (66) months' period from the date on which the first Disbursement under the Agreement is made by the Lender, and thereafter on the last day of each successive six-month period, each installment to be in the amount of One Million Dollars (US\$1,000,000) each. If the aggregate of the amounts from time to time disbursed by the Lender to the Borrower pursuant to the Agreement is less than the amount of this Note, the amount of each installment payment shall be adjusted so that it bears the same relationship to the amount of each installment set forth hereabove as the aggregate amount actually disbursed to the Borrower bears to principal amount of this Note.

Interest shall accrue on each Disbursement from the time when it is made and in respect of each Interest Period relating to such Disbursement, at the rate equal to LIBOR plus one percent (1%) per annum and the Borrower shall pay interest on the amount of a Disbursement or as the case may be on the Loan outstanding from time to time semi-annually on the last day of each Interest Payment Date in the manner specified in the Agreement. If the Borrower fails to repay any installment payment on the date due for payment, the Borrower shall pay interest on the amount of overdue payment at the rate of ten percent (10%) per annum or LIBOR plus five percent (5%), whichever is higher, until and including the day immediately preceding the actual payment date of that Disbursement, all in accordance with the provisions of the Agreement.

The principal amount of this Note and all interest accrued thereon shall be payable in lawful money of the United States of America in freely transferable same day funds in New York City, the State of New York, United States of America, without set-offs or counterclaims and free and clear of and without deductions for the Taxes or Transaction Taxes. If the Borrower is required to make any deduction of the Taxes or Transaction Taxes from any such payment, the Borrower shall pay such additional amounts as are provided in the Agreement. This Note shall be entitled to the benefits of the Agreement and be governed and construed by the laws of New York State, United States of America, to the exclusion of its conflict of law rules. In case an Event of Default shall occur, the principal amount of this Note may be declared to become immediately due and payable in the manner and with the effect provided in the Agreement, presentment, demand, protest and notice of any kind being hereby expressly waived by the Borrower.

All terms used herein shall have the meanings set out in the Agreement, unless the context otherwise requires.

The Borrower hereby authorizes and empowers the Lender to acknowledge on its behalf by endorsement below the Borrower's receipt of the Disbursement.

For the Republic of Guatemala  
By and through the Ministry of Public Finance

By: \_\_\_\_\_  
Name: Dorval Carias  
Title: Minister of Public Finance

Date of Disbursement	Amount of Disbursement	Outstanding Principal of Note to Date	Acknowledgment of Borrower
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_____	_____	_____	_____
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**APPENDIX "B"**

**REQUEST FOR A DISBURSEMENT**

## REQUEST FOR A DISBURSEMENT

Date: \_\_\_\_\_

The Export-Import Bank  
of the Republic of China  
8th Floor, 3, Nan Hai Road  
Taipei, Taiwan  
Republic of China

Attention: Senior Vice President and General Manager  
Loan and Guarantee Department

Re: US\$50,000,000.00 Loan Agreement dated as of \_\_\_\_\_, 2015 by and  
between the Republic of Guatemala, as Borrower, and The Export-Import Bank of  
the Republic of China, as Lender, Lender's Loan Number: 6020357009

Dear Sirs:

1. In accordance with Section 2.02 of the captioned Loan Agreement, we hereby request that a Disbursement in the amount of US\$ \_\_\_\_\_ be made to our New York account as designated below:

Name of Account Holder:	Banco de Guatemala
Account Number:	1800515
Account Name:	Cuenta Unica de Préstamos-Tes-Nac-USDolares
SWIFT Code:	BAGUGTGC
Name of Bank:	Federal Reserve Bank of New York
SWIFT Code:	FRNYUS33
Address:	33 Liberty Street, New York NY 10045-001, United States of America

2. Such Disbursement shall be made by you within ten (10) Banking Days from the day of your receipt of this Request for a Disbursement and all certificates, opinion and all other documents to be given under the Loan Agreement each in form and substance satisfactory to you.
3. We hereby certify that on the date hereof and the date on which the amount of the Disbursement requested herein shall be made, all representations, warranties, covenants and statements made in the Loan Agreement and in all certificates, opinion and other documents given under the Loan Agreement remain complete, true and accurate, and no Default or Event of Default has occurred and is continuing, or will occur, by the giving of this Request for a Disbursement, the making of such Disbursement or the receipt of such Disbursement by us.

Yours faithfully,  
For the Republic of Guatemala  
By and through the Ministry of Public Finance

By: \_\_\_\_\_  
Name: Dorval Carias  
Title: Minister of Public Finance

**APPENDIX "C"**

**CERTIFICATE OF INCUMBENCY  
AND SPECIMEN SIGNATURES**

**CERTIFICATE OF INCUMBENCY AND SPECIMEN SIGNATURES**

I, \_\_\_\_\_ (Name) \_\_\_\_\_, General Secretary of the Republic of Guatemala, in connection with the execution, delivery and performance by the Republic of Guatemala, through its Ministry of Public Finance ("Borrower"), of the Loan Agreement entered into between the Borrower and The Export-Import Bank of the Republic of China dated as of \_\_\_\_\_, 2015 for the amount of US\$50,000,000.00, Loan No. 6020357009 (" Agreement"), do hereby certify that (I) the persons named in Group A below are signatories duly authorized by the Borrower for the purposes of entering into and performing the Agreement including the execution and delivery of the Agreement and any amendment thereto, the execution and delivery of the Note, all Requests for a Disbursement and other notices and that the specimen signature and authority set against the name of each such signature is the true signature of such person; and (II) the persons named in Group B below are signatories duly authorized by the Minister of Public Finance of the Republic of Guatemala in writing to execute and deliver all instruments and notices other than the Agreement, the Note, and the first Request for a Disbursement, in connection with the loan and that the specimen signature and authority set against the name of each such signature is the true signature of such person.

Group A:

Name	Title Minister of Public Finance	Signature
Dorval Carias		_____

Group B:

Name	Title	Signature
_____	_____	_____
_____	_____	_____

Unless otherwise specifically defined herein or the context shall require otherwise, all the terms used herein as defined terms shall have the meanings ascribed to them in the Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
 Name:  
 Title: General Secretary of the Republic of Guatemala



**APPENDIX "D"**

**APPOINTMENT OF AGENT**

## APPOINTMENT OF AGENT

Date: \_\_\_\_\_

Consulado General de Guatemala  
in New York  
276 Park Avenue South 2FL  
New York, NY 10010  
U. S. A.

Re: Loan Agreement dated as of \_\_\_\_\_, 2015 for the amount of US\$50,000,000.00 by and between The Export-Import Bank of the Republic of China, as the Lender, and the Republic of Guatemala, through its Ministry of Public Finance, as the Borrower, Loan Number: 6020357009 ("Loan Agreement")

Gentlemen:

Under the Loan Agreement dated as of \_\_\_\_\_, 2015 for the amount of US\$50,000,000.00 by and between The Export-Import Bank of the Republic of China, as the Lender, and the Republic of Guatemala, through its Ministry of Public Finance, as the Borrower, Loan Number: 6020357009, the Borrower is required to appoint you in your official capacity as the Process Agent in New York City to receive and accept on our behalf service of processes in any suit, action or proceeding brought in the State of New York in connection with said Loan Agreement, any promissory note(s) given by the Borrower to the Lender thereunder.

We, the Borrower, hereby irrevocably appoint you to accept on our behalf any of service of processes in any suit, action or proceeding brought in any state or federal court in the State of New York and any appellate courts thereof, arising or purporting to arise under said Loan Agreement and/or said promissory note(s).

Until the obligations of ours under the Loan Agreement and the said promissory note(s) are fully performed and/or discharged, your duties under this appointment will be as follows:

1. Upon receipt of any such notice or process addressed to us, you will on our behalf accept service thereof and will without delay notify us by courier, cable or facsimile to the effect that you have received service of notice or process on our behalf; and
2. You will without delay confirm such receipt in writing to us by courier or registered air-mail, enclosing the documents which you have received in connection with service of such process.

Other than as stated herein, you shall have no other duties under the terms of this letter.

If the foregoing is agreeable and acceptable to you, please sign the written acceptance, which is enclosed herewith, and return it to us at your earliest convenience.

Sincerely,  
For the Republic of Guatemala

By: \_\_\_\_\_  
Name:  
Title:

-----

I, \_\_\_\_\_, certify that this document is a true copy of the original.\*

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
\* Certification is required on the copy to the Lender.

**APPENDIX "E"**

**ACCEPTANCE OF APPOINTMENT**

## ACCEPTANCE OF APPOINTMENT

Date: \_\_\_\_\_

The Republic of Guatemala

Address:

Re: Loan Agreement dated as of \_\_\_\_\_, 2015 for the amount of US\$50,000,000.00 by and between The Export-Import Bank of the Republic of China, as the Lender, and the Republic of Guatemala, through its Ministry of Public Finance, as the Borrower, Loan Number: 6020357009 ("Loan Agreement")

Gentlemen:

Receipt of your letter dated \_\_\_\_\_, is hereby made to your appointment of the undersigned, in [his/her] official capacity as the Consul General of the Republic of Guatemala in New York, and not in [his/her] personal capacity), as your duly authorized agent in New York City, the State of New York, United States of America, to receive and accept on your behalf and in your name service of all processes in any legal action or proceeding brought in the State of New York, U.S.A. in connection with the captioned Loan Agreement and/or any promissory note issued thereunder by you to the Lender. Until the obligations of the Borrower under the Loan Agreement are fully performed and/or discharged, the undersigned, and [his/her] successor in [his/her] official capacity as such Consul General of the Republic of Guatemala in New York, hereby irrevocably agrees to receive or to accept and not to raise diplomatic, sovereign or other immunity as defense or ground for refusal to receive or to accept the service on [him/her] in such official capacity as your such agent of any and all legal process.

A copy of this written acceptance is hereby sent to The Export-Import Bank of the Republic of China at 8th Floor, 3 Nan Hai Road, Taipei, Taiwan, Republic of China for its reference and record.

Very truly yours,  
The Consul General of the  
Republic of Guatemala in New  
York

By: \_\_\_\_\_  
Name:  
Title: Consul General

cc: The Export-Import Bank of the Republic of China  
8th Floor, 3 Nan Hai Road

Taipei, Taiwan  
Republic of China  
Attn: Senior Vice President & General Manager  
Loan & Guarantee Department

I, \_\_\_\_\_ (Name) \_\_\_\_\_, hereby certify that this is a true copy of the original.\*

By: \_\_\_\_\_  
Name:  
Title:

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\* Certification is required on the copy to the Lender.

APPENDIX "F"

LEGAL OPINION

## LEGAL OPINION

Date: \_\_\_\_\_

The Export-Import Bank  
of the Republic of China  
8th Floor, 3 Nan Hai Road  
Taipei, Taiwan  
Republic of China

Re: Loan Agreement dated as of \_\_\_\_\_, 2015 for the amount of US\$50,000,000.00 by and between The Export-Import Bank of the Republic of China, as the Lender, and the Republic of Guatemala, through its Ministry of Public Finance, as the Borrower, Loan Number: 6020357009 ("Loan Agreement")

Dear Sirs:

I, the Attorney General of the Republic of Guatemala, am requested to provide legal opinion in connection with the Loan Agreement (the "Agreement") dated as of \_\_\_\_\_, 2015 Loan Number: 6020357009, by and between the Republic of Guatemala, acting by and through its Ministry of Public Finance (the "Borrower") and The Export-Import Bank of the Republic of China (the "Lender"), providing for the making of loans to the Borrower not exceeding US\$50,000,000.00.

All terms used herein shall have the meanings defined in the Agreement unless the context requires otherwise. In connection herewith, I have examined the following:

- (a) An executed copy of the Agreement with all Appendixes attached hereto, including, without limitation, the form of the Note;
- (b) The Borrower's constitution and other laws relevant to the Borrower's borrowing authorizing the Republic of Guatemala to borrow from the Lender.
- (c) Borrower's execution, delivery and performance of the Agreement and the Note, and the authority and specimen signatures of authorized officials of the Borrower;
- (d) Execution and delivery of the Agreement and the Note by the Republic of Guatemala;



- (e) A Certificate of Incumbency and Specimen Signature for the Borrower given by the General Secretary of the Republic of Guatemala;
- (f) Any other evidence of consents required under the constitution, laws and regulations of the Republic of Guatemala for the Borrower to enter into, deliver and perform its obligations under the Agreement and to make the Agreement and the Note legal valid and effective.

I have also reviewed such matters of law and examined the original, certified, confirmed or photographic copies of such other documents, records, agreements and certificates as I considered relevant thereto.

Based upon the foregoing, I am of the following opinion that:

1. Binding obligations of Borrower: The Borrower has full power, authority and legal right to execute deliver and make, and to perform its obligations under, the Agreement and the Note and the Agreement does, and the Note when duly executed and delivered will, constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms.
2. Due Authorization: All necessary action, whether governmental, legislative, statutory, judicial or otherwise, as required by the constitution, constitutional convention, laws, and regulations of the Borrower in all respects has been taken (and has not been revoked) to authorize the execution delivery and performance of the Agreement and the Note; and the execution and delivery of the Agreement and the Note required under or in connection with the Agreement by an authorized signatory or signatories in the name and on behalf of the Borrower have been duly authorized by the Borrower under the laws of the Borrower in all respects.
3. Absence of Conflicts: the execution, delivery and performance of the Agreement and the Note do not and will not contravene any constitutional provision, law, regulation, directive, judgment or order to which the Borrower is subject; or result in any actual or potential breach of or default under any obligation, agreement, instrument or consent to which it is a party or by which it is bound or which it requires to carry on its business; or result in any limitation on its powers to borrow or incur Indebtedness being exceeded.
4. Ranking: The Borrower's obligations under the Agreement constitute and will at all times constitute, and its obligations under the Note once duly executed and delivered by the Borrower will at all times constitute, unconditional general obligations of the Borrower, and rank and will at all times rank in right of payment and collateral security and otherwise at least *pari passu* with all other External Indebtedness and similar external obligations of the Borrower (whether direct or contingent) outstanding from time to time.

5. Absence of dispute: No litigation, arbitration or administrative proceeding and without limitation, no dispute with any international lending agency is pending or to its knowledge threatened against it or any of its assets which might have a material adverse effect on its assets or financial condition or its ability to observe or perform its obligations under the Agreement or the Note.
6. No Default: No Default or Event of Default has occurred and is continuing.
7. Government Authorization: The Borrower has obtained all consents and authorizations from all authorities required by the laws of the Republic of Guatemala for the Borrower (i) to incur the Indebtedness and other obligations provided for in the Agreement and the Note, (ii) to execute and deliver the Agreement and the Note by such persons authorized by the Borrower, (iii) to perform and observe the terms and conditions of the Agreement and the Note, and (iv) to make all payments in Dollars as required under the Agreement and the Note, and all such consents and authorizations have been duly obtained and are in full force and effect. It is not necessary in order to ensure the legality, validity, enforceability or admissibility in evidence in proceedings of the obligations of the Borrower under the Agreement or the Note that the Agreement or the Note be filed, registered or recorded in the Republic of Guatemala.
8. Commercial Obligations: The Borrower is subject to civil and commercial law with respect to its obligations under the Agreement and the Note, the provisions of the Loan and the Disbursements by the Lender are not and do not constitute ODA and the making and performance by the Borrower of the Agreement and the Note constitute private and commercial acts rather than governmental or public acts. Neither the Borrower nor any property owned by the Borrower or held for its account by any person including the central banking authority of the Borrower enjoys any right of immunity in any jurisdiction, on the ground of sovereignty or otherwise, from suit, jurisdiction of any court, attachment prior to judgment, attachment in aid of execution of a judgment, set-off, execution of a judgment, or from any other legal process in respect of its obligations under the Agreement or under the Note, and the waiver by the Borrower (and any person holding for the Borrower's account) set forth in the Agreement is legal, valid, enforceable, irrevocable and binding.
9. Under the laws of the Republic of Guatemala, the Lender will not be deemed to be a resident, domiciled or carrying on any commercial activity in the Republic of Guatemala or subject to any tax in the Republic of Guatemala by reason only of the execution, delivery and performance of the Agreement.
10. Taxes and Transaction Taxes: There are no Taxes of the Republic of Guatemala or of any political subdivision or taxing authority thereof, imposed by way of withholding, deduction or otherwise, applicable to

any payment to be made by the Borrower pursuant to the terms of the Agreement or the Note, nor any Transaction Taxes imposed on or by virtue of the execution and delivery of the Agreement or the Note under the laws of the Republic of Guatemala.

11. New York Law: The choice of the law of New York as the governing law of the Agreement and the Note would be recognized by the courts of the Republic of Guatemala.
12. Enforceability of Judgments: Any final and conclusive monetary judgment for a definite sum obtained against the Borrower in the courts of New York in respect of the Agreement or the Note will be recognized and enforceable in the Republic of Guatemala without further review of its merits.

By: \_\_\_\_\_

Name:

Attorney General of the Republic of Guatemala