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I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2012 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Bill No. 535-31 (COR), "AN ACT TO *REPEAL* AND *REENACT* SECTION 18 OF PUBLIC LAW 31-229 TO AUTHORIZE THE UNIVERSITY OF GUAM TO PLEDGE CERTAIN REVENUES AND ENTER INTO INSTALLMENT PURCHASE AND SALE AGREEMENTS FOR THE PURPOSE OF REFINANCING THE JESUS AND EUGENIA LEON GUERRERO SCHOOL OF BUSINESS AND PUBLIC ADMINISTRATION BUILDING",** was on the 14th day of December, 2012, duly and regularly passed.

Benjamin J.F. Cruz
Acting Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 17 day of Nov, 2012, at 11:40 o'clock AM.

Rosa P. [illegible]
Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2012 (SECOND) Regular Session

Bill No. 535- 31 (COR)

Introduced by: V. C. Pangelinan
Judith P. Guthertz, DPA
Judith T. Won Pat, Ed.D.
T. C. Ada
V. Anthony Ada
F. F. Blas, Jr.
B. J.F. Cruz
Chris M. Dueñas
Sam A. Mabini, Ph.D.
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
R. J. Respicio
Dennis G. Rodriguez, Jr.
M. Silva Taijeron
Aline A. Yamashita, Ph.D.

AN ACT TO *REPEAL* AND *REENACT* SECTION 18 OF PUBLIC LAW 31-229 TO AUTHORIZE THE UNIVERSITY OF GUAM TO PLEDGE CERTAIN REVENUES AND ENTER INTO INSTALLMENT PURCHASE AND SALE AGREEMENTS FOR THE PURPOSE OF REFINANCING THE JESUS AND EUGENIA LEON GUERRERO SCHOOL OF BUSINESS AND PUBLIC ADMINISTRATION BUILDING.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. Subsequent to the enactment of Public Law 31-229, the University of Guam (University) and the United States Department of Agriculture (USDA) have identified an Installment Purchase and Sale

as the most desirable structure for the refinancing of the Jesus and Eugenia Leon Guerrero School of Business and Public Administration Building (JELG Building). The University has also requested the flexibility to pledge certain revenues to the payment of amounts owed under an Installment Sale Agreement in connection with the refinancing of the JELG Building.

I Liheslaturan Guåhan finds that the University will best be able to realize savings from the refinancing of the JELG Building with the ability to enter into an Installment Purchase Agreement and an Installment Sale Agreement, and to secure its payments under such documents by a pledge of certain appropriated revenues as further described below, and hereby authorizes the University to enter into such agreements and pledge such revenues.

Section 2. Section 18 of Public Law 31-229 is hereby *repealed* and *reenacted* as follows:

"**Section 18. University of Guam; Authorization to Enter Into Lease Agreements and Installment Purchase and Sale Agreements.**

(a) Exclusively for the purpose of facilitating the refinancing of the JELG Building, the University is hereby authorized to sell the JELG Building to, and to simultaneously repurchase the JELG Building from, the University of Guam Endowment Foundation (Foundation), by entering into a purchase agreement and a sale agreement with the Foundation as further provided in this Section.

(b) Exclusively for the purpose of facilitating the financing of the design, construction or renovation of the facilities described below, the University is hereby authorized to lease the site of the University of Guam Student Services Center and the site of the Engineering Annex facility onto the existing Agriculture and Life Sciences Building to the

Foundation, and, in that connection, the University is hereby authorized to lease those buildings and site, as improved, back from the Foundation, by entering into one (1) or more lease agreements and one (1) or more lease-back agreements as provided in this Section.

(c) The proceeds of such financing or refinancing are to be applied to the following purposes:

(1) Refinance existing USDA Community Facilities Loan for the JELG Building – approximately Twelve Million Four Hundred Eighty-One Thousand Five Hundred Fifteen Dollars (**$12,481,515**) as of May 31, 2012;

(2) Expansion and renovation of the University of Guam Student Services Center — approximately Eighteen Million Sixty-Five Thousand Six Hundred Twenty-Five Dollars (**$18,065,625**);

(3) Construction of an Engineering Annex facility onto the existing Agriculture and Life Sciences Building at the University for the School of Engineering — approximately Three Million Six Hundred Four Thousand Three Hundred Seventy-Five Dollars (**$3,604,375**);

(4) Funding of any appropriate or necessary debt service reserve; and

(5) Payment of expenses incurred in connection with such financing not already included in an existing appropriation for or the regular budget of any government agency or instrumentality or public corporation providing any service in connection with the issuance of such bonds.

To the extent the costs of completion of the project described in Subsection (c)(2) of this Section are *less than* the amount set forth in Subsection (c)(2), any excess financing proceeds for such project can be applied toward the costs of the project described in Subsection (c)(3) of this Section. To the extent the costs of completion of the project described in Subsection (c)(3) of this Section are *less than* the amount set forth in Subsection (c)(3) of this Section, any excess financing proceeds for such project can be applied toward the costs of the project described in Subsection (c)(2) of this Section.

(d) The lease and lease-back agreements *shall* have a term *not to exceed* forty (40) years. The lease-back agreement may be structured as an annually renewable lease with provision for automatic renewals to the extent that liquid fuel tax revenues, funds from the Guam Highway Fund or other available revenues in the amount of up to One Million Dollars (**$1,000,000**) per fiscal year beginning FY 2014 are appropriated to the University of Guam Capital Improvements Fund for the purpose of paying rental payments due under the lease-back agreement during such fiscal year. The lease-back agreement, and any loan, bonds or other obligations secured thereby, *shall not* be construed as a debt under any applicable debt limitation contained in the Guam Organic Act or Guam law.

(e) The lease-back agreement *shall* require that the University be responsible for the procurement and oversight of the design and construction associated with the project or projects authorized to be financed pursuant to this Section. The lease and lease-back agreements *shall* be valid and binding obligations of the University and the

Foundation enforceable in accordance with their respective terms, and there shall be no power to terminate or declare null and void any such agreement for procurement violations or any other reason or reasons.

(f) The lease and lease-back agreements *shall* provide rental provisions, term, payment, security, default, remedy, and other terms or provisions as may be specified in such agreements and *shall not* permit the substitution of other public buildings for the public buildings initially leased by the University and the Foundation pursuant to this Section. The lease agreement and lease-back agreement may provide that if sufficient funds are *not* appropriated or otherwise available for the payment of amounts due under the lease-back, the University will have the obligation to vacate the leased facility or facilities, and the lender or its trustee, as applicable, *shall* have the right of use and occupancy of the leased facility or facilities for the remainder of the term of the lease and lease-back agreements, unless new mutually satisfactory terms are entered into. For this purpose, the lease and lease-back agreements may each provide that its respective term *shall* be extended for a period *not to exceed* the shorter of ten (10) years beyond the original term of the agreement or such period of time as is necessary to repay in full any financing arranged pursuant to Subsection (f) of this Section.

(g) To facilitate the purposes of this Act and to provide security for the holders of any financing instruments issued pursuant to this Act, the lease and lease-back agreements may provide that the Foundation may assign, with the consent of the University, the lease and lease-back agreements to any lender, trustee or other party as appropriate to facilitate the financing and refinancing contemplated hereby.

(h) To facilitate the purposes of this Act and to provide security for the USDA, the Foundation may assign, with the consent of the University, the installment purchase and installment sale agreements to the USDA or other party as appropriate to facilitate the refinancing contemplated hereby.

(i) To minimize the financing cost to the University, the Foundation has applied to the USDA for a loan secured by the base rental payments to be made by the University pursuant to the lease-back agreement. Alternatively, in the event the Foundation is unable to secure funding through a USDA loan prior to December 31, 2012, the University and the Guam Economic Development Authority are hereby authorized to enter into the lease agreement and lease-back agreement described above, subject to the same terms, conditions and provisions set forth in this Section (substituting the Authority for the Foundation). *I Liheslaturan Guåhan*, pursuant to § 50103(k), Title 12 Guam Code Annotated, hereby approves either the USDA loan or loans and/or the issuance and sale by the Guam Economic Development Authority of Project Revenue Bonds pursuant to Chapter 64 of Title 12 of the Guam Code Annotated for the purposes set forth in Subsection (b) of this Section, such loans or such Project Revenue Bonds to be secured by the base rental payments to be made by the University pursuant to the lease–back agreement; provided, however, that the terms and conditions of such loan or bonds, and the related lease and lease-back agreements, *shall* be consistent with this Section, that any such USDA loan *shall* bear interest at a rate that *does not exceed* five percent (5%) per annum and with a term that *does not exceed* forty (40) years, and that any such bonds *shall*

mature *not later than* forty (40) years after their date of issuance and *shall* bear interest at such rates and be sold for such price or prices as *shall* result in a yield to the bondholders that *does not exceed* eight and one half percent (8.5%) per annum.

(j) To minimize the refinancing cost to the University, the Foundation has applied to the USDA for a loan secured by the sale payments to be made by the University pursuant to the installment sale agreement. *I Liheslaturan Guåhan*, pursuant to § 50103(k), Title 12 Guam Code Annotated, hereby approves the USDA loan for the purpose set forth in Subsection (a) of this Section, such loan to be secured by the sale payments to be made by the University pursuant to the installment sale agreement; provided, however, that the terms and conditions of such loan and the related purchase and sale agreements, *shall* be consistent with this Section, that any such USDA loan *shall* bear interest at a rate that *does not exceed* five percent (5%) per annum and with a term that *does not exceed* the remaining term of the existing USDA loan relating to the JELG Building. The obligation of the University to make sale payments may be secured by a pledge of the Five Hundred Thousand Dollars (**$500,000**) appropriation from the Guam Highway Fund to the University of Guam Capital Improvements Fund authorized by Section 20 hereof. The revenues pledged and thereafter received by the government, the University, or by any depository or custodian *shall* be deposited in a separate account and *shall* be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge *shall* be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the

government of Guam, the University or such depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge is created need not be recorded.

(k) The obligation of the University to make lease payments may be secured by a pledge or reservation of liquid fuel tax revenues, funds from the Guam Highway Fund or other available revenues. Any pledge or reservation pursuant to this Section *shall* be made on lease financing terms that *do not* cause the lease obligation of the College to be public indebtedness within the meaning of Section 11 of the Guam Organic Act or to violate or breach any existing bond covenant. The tax revenues pledged or reserved and thereafter received by the government, the University or by any trustee, depository or custodian *shall* be deposited in a separate account and *shall* be immediately subject to such reservation or the lien of such pledge without any physical delivery thereof or further act, and such reservation or the lien of such pledge *shall* be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the government of Guam, the University or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The instrument by which such pledge or reservation is created need not be recorded. Any amounts pledged as provided in this Section are hereby continuously appropriated for the purpose of making lease payments, but any amounts only reserved as provided in this Section and *not* pledged, *shall* be subject to annual appropriation for the purpose of making lease payments. In the event amounts are pledged as provided in this Section, any surplus tax revenues *shall* be released to the government on a monthly basis."

Section 3. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.