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 & Finance Ltd., Joaquin C. Arriola, and
 Douglas F. Cushnie

IN THE SUPERIOR COURT OF GUAM

GOVERNMENT OF GUAM,)	CIVIL CASE NO. CV0084-08
)	
Plaintiff,)	
)	
vs.)	
)	
1,382,428 SQUARE METERS, MORE OR)	JOINT STIPULATION OF FACTS
LESS, SITUATED IN THE)	AND EXHIBITS FOR TRIAL
MUNICIPALITY OF INARAJANGUAM,)	
et al.,)	
)	
Defendants.)	
)	

ARRIOLA, COWAN & ARRIOLA, AGANA, GUAM 96910

Plaintiff Government of Guam (“GovGuam”) and Defendants Oxford Properties & Finance Ltd., Joaquin C. Arriola, Douglas F. Cushnie, Young Chull Kim, Calvo’s Insurance Underwriters, Inc., Valencia Investment Corporation, Jones & Guerrero Company, Alfred and Diana Ysrael, and Lee Holmes (collectively “the Parties”) here stipulate and agree, by and through undersigned counsel to the following matters for the trial of the above-captioned action:

I. STIPULATED FACTS. The Parties stipulate and agree to the following facts for trial:

1. This eminent domain action involves the condemnation of 1,382,428 square meters of certain land located in Dandan, Inarajan, Guam (“Subject Property”) for the new solid waste municipal landfill. Title to the Subject Property being condemned was held by the defendants named in this action (collectively referred to herein as “Property Owners”). The only issue to be adjudicated in the instant case is the determination of “just compensation” to be paid to the Property Owners.

2. GovGuam filed its Complaint to Acquire Property Through Eminent Domain (“2008 Complaint”), Notice of Condemnation, and Declaration of Taking on January 24, 2008.

3. In the 2008 Complaint, GovGuam sought to acquire by eminent domain a portion of basic Lot B-3 and basic Lot B-3REM, Dandan, Inarajan, Guam in fee simple, slope easements, right of entry and temporary access road permit.

4. The Clerk of the Superior Court of Guam filed a Receipt of Deposit of \$1,200,000.00 received from GovGuam on January 24, 2008.

5. The Clerk of the Superior Court of Guam filed a Supplemental Clerk’s Receipt of Deposit on June 24, 2008 of \$2,190,000.00 received from GovGuam.

6. GovGuam filed an Amended Complaint to Acquire Property Through Eminent Domain (“2009 Complaint”), Notice of Condemnation, and Declaration of Taking on March 31, 2009.

7. In the 2009 Complaint, GovGuam sought to acquire by eminent domain portions of basic Lot B-3 and basic Lot B-3 REM, Dandan, Inarajan, Guam in fee simple and easements. In the 2009 Complaint, GovGuam sought to realign its right-of-way along the northern border of Lot B-3REM, shown as Lot B-3REM-1R/W in an attachment to the 2009 Complaint.

8. GovGuam filed a Second Amended Complaint to Acquire Property Through Eminent Domain (“2010 Complaint”), Notice of Condemnation, and Declaration of Taking on April 1, 2010. In addition to the property described in the previous complaints, the 2010 Complaint, GovGuam included an additional 232 square meters or 0.057 acres for a new pumping station.

9. GovGuam’s entire acquisition is reflected in the 2010 Complaint, where GovGuam sought to acquire by eminent domain 1,382,428 square meters or 341.6 acres of portions of basic Lot B-3 and basic Lot B-3 REM, Dandan, Inarajan, Guam in fee simple and easements. This area constitutes the Subject Property for which just compensation must be established.

10. The Clerk of the Superior Court of Guam filed a Second Supplemental Clerk’s Receipt of Deposit on April 1, 2010 of \$20,000.00 received from GovGuam.

11. A summary of GovGuam’s entire acquisition in the case consisting of 1,382,428 square meters or 341.6 acres is as follows:

- (1) Fee simple interest in one parcel for proposed landfill footprint parcel with buffer area (317.457 acres);
- (2) Fee simple interest in one parcel for new access right-of-way connecting to the landfill footprint from GovGuam’s existing right-of-way (15.083 acres);
- (3) 11 slope easement parcels along the existing right-of-way (9.008 acres); and
- (4) Two rights of entry and temporary access roads for specified time periods.

12. The total amount deposited in the Superior Court by GovGuam to the benefit of the Property Owners was \$3,410,000.00 .

13. The Property Owners entitled to compensation in this action are listed below. Next to the name of each landowner is listed their percentage ownership interest in the Subject Property and the amount received by each after the Court granted Defendants’ Motions to

Release of Funds, ordering distribution of the fund deposited by GovGuam in the court's registry as follows:

<u>LANDOWNER</u>	<u>AMOUNT</u>	<u>OWNERSHIP INTEREST</u>
Oxford Properties & Finance, Ltd.	\$1,700,938.10	50%
Calvo's Insurance Underwriters, Inc.	\$ 850,469.31	25%
Valencia Investments Corporation	\$ 272,150.22	8%
Jones and Guerrero Company, Inc.	\$ 272,150.22	8%
Alfred and Diana Ysrael	\$ 170,093.91	5%
Lee and Joan Holmes	\$ 51,028.21	1.5%
Douglas F. Cushnie	\$ 42,285.39	1.243%
Joaquin C. Arriola	\$ 28,320.68	0.8325%
Young Chull Kim	\$ 14,441.05	0.4245%
TOTAL:	\$3,401,877.09	100%

ARRIOLA, COWAN & ARRIOLA, AGANA, GUAM 96910

14. The \$20,000.00 deposited with the Clerk of Court on April 1, 2010 remains undistributed.

15. At trial, the value of just compensation will be stated as an undivided 100% ownership.

16. At the conclusion of trial, judgment against GovGuam will be entered in the amount, if any, of the court's award over and above the amount already deposited in court (\$3,410,000.00). GovGuam will not take any position in the division of the proceeds to the Property Owners (whether that division is made by agreement between the Property Owners or at the conclusion of an apportionment hearing).

17. The date on which the Subject Property will be valued is January 24, 2008 and may be referred to as the "Date of Take".

18. The Subject Property was vacant land on the Date of Take.

19. The zoning of the Subject Property on the Date of Take was "A" Agricultural Zone.

20. The Court shall view the Subject Property and the surrounding parcels owned by the Property Owners at such times and in such manner as set forth in the Proposed Order filed with the Government of Guam's Motion for Order For Site Visit (View) which motion was unopposed by the Property Owners. The parties may suggest details, witnesses, conditions, and other matters about the logistics of the Subject Property viewings by the Court.

21. The Land Purchase Agreement dated October 1, 2010 by GKI Corp. will not be introduced in evidence or mentioned at trial.

22. GovGuam shall offer no expert opinion or evidence under Rules 702, 703, or 705 of the Guam Rules of Evidence to rebut or contradict evidence offered by the Property Owners.

23. The Stipulated and Conditional Stipulated Exhibits shall be numbered "Joint Stipulated Exhibits 1-54"; GovGuam's Exhibits shall be numbered "GovGuam Exhibits 100-___"; Defendants' Exhibits shall be numbered "Defendants' Exhibits 200-___."

II. STIPULATED EXHIBITS. The Parties stipulate and agree to the authenticity and admissibility of the exhibits set forth on Attachment 1.

III. CONDITIONAL STIPULATED EXHIBITS. Without waiving their right to cross-examine the expert witnesses or to challenge the expert witnesses' conclusions or supporting material, the Parties stipulate to the admissibility of the exhibits listed on Attachment 2, provided, however, that notwithstanding the foregoing, the Parties reserve the right to

challenge the admissibility of any expert opinion solely on the basis that it does not meet the standard set forth in Rule 702 of the Guam Rules of Evidence and in *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579, 113 S.Ct. 2786, 145 L.#d. 2d 469 (1993). The documents listed in Attachments 1 and 2 shall be contained in the Joint Stipulated Exhibit binders. The Parties stipulate and agree to the authenticity and admissibility of the exhibits set forth on Attachment 3. Such exhibits shall be contained in the Defendants' Exhibit binder.

Dated this 20th day of March, 2011.

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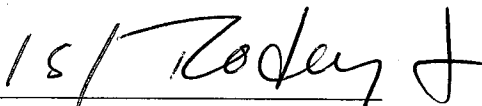
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By: 
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**OFFICE OF THE ATTORNEY
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Counsel for Government of Guam

By: 
KATHY A. FOKAS

CALVO, FISHER & JACOB
Counsel for Calvo's Insurance Underwriters,
Inc., Valencia Investments Corp., Henry Sy,
Jones & Guerrero Comp., Inc., Alfred C. and
Diana Z. Ysrael, and Lee M. and Joan S.
Holmes

By: 
KATHLEEN V. FISHER

IT IS SO ORDERED.

HONORABLE ALBERTO C. LAMORENA, III

ATTACHMENT 1

Joint Stipulated Exhibits

I. Attachment 1 Joint Exhibits

A. (The parties agree to the authenticity and admissibility of the following exhibits)

1. Map of Basic Lot B Dandan, Inarajan recorded under Document No. 413560
2. Final Supplemental Environmental impact Statement for the Siting of a Municipal Solid Waste Landfill Facility, Guam for Guam Department of Public Works dated July 15, 2005 (AG 00870-00883)
3. Consent Decree dated February 11, 2004 in United States of America v. Government of Guam, Civil Case No. 02-00022 (U.S. District Court of Guam)

(Lot 275 Documents)

4. Letter from W. Flores to Felix Benavente dated April 25, 1989 re Dandan Estates and Country Club and attachments filed at the Territorial Land Use Commission, Dept of Land Management (00441-00546)
5. Topo Map of Lot 275 prepared by Perry Associates, Inc. dated January 1989

(Yates Exhibits)

6. Company Brochure of Model-Technic (Yates Depo. Exh.2)
7. Photo of Costa Rica Project (Yates Depo. Exh.3)
8. Project Proposal for a Resort in Saipan (Yates Depo. Exh.4)
9. Photo of a city in California (Yates Depo. Exh.5)
10. Photo of Lake Las Vegas (Yates Depo. Exh.6)
11. Letter dated June 20, 2010 to A. Arriola re Model Proposal for the Dandan litigation submitted by Douglas Yates (Yates Depo. Exh.7)
12. Topo map, Bate Stamped 00426 (Yates Depo. Exh.8)
13. Topo map, Bate Stamped 00437 (Yates Depo. Exh.9)
14. Topo map, Bate Stamped 00438 (Yates Depo. Exh.10)
15. Topo map, Bate Stamped 00439 (Yates Depo. Exh.11)
16. General Soil Map, Territory of Guam (Yates Depo. Exh.12)
17. NASA Satellite Photo of Project Site (Yates Depo. Exh.13)
18. USGS Topo Map (Yates Depo. Exh.14)
19. USGS Map Inarajan Quadrangle (Yates Depo. Exh.15)
20. Photo of Apollo Tracking Station (Yates Depo. Exh.16)

21. Photo of Apollo Tracking Station (Yates Depo. Exh.17)
22. W. Flores Concept Development Plan (Yates Depo. Exh.20)
23. Heights and Elevations Document sent by W. Flores to Anita (Yates Depo. Exh.21)
24. Condominium and Hotel Layout prepared by W.B. Flores (Yates Depo. Exh.22)
25. Parcel Map (Yates Depo. Exh.23)
26. Disclosure of Expert Witness by Douglas Yates dated August 22, 2010 (Yates Depo. Exh.24)
27. Google Map of the Site (Yates Depo. Exh.25)
28. Yates Invoice dated 8/20/10 for \$6,000 (Yates Depo. Exh.27)
29. Invoice dated 9/15/10 for \$6,000 (Yates Depo. Exh.28)

(Flores and Ventura Documents)

30. Lot B-1: Calculations and Maps (00673-00674)
31. Lot B: Calculations and Maps (00675-00679)
32. Lot A-1-R3: Calculations and Maps (00680-00681)
33. Lot 10076-1-3: Calculations and Maps (00682)
34. Lot 401-1-9NEW-R2: Calculations and Maps (00683-00684)
35. Lot 275: Calculations and Maps (00685-00686)
36. Lot 177-4-R2-1 & Lot 177-4-R2: Calculations and Maps R1 (00687-00689)
37. Lot 177-4-1NEW: Calculations and Maps (00690-00692)
38. Lot 176: Calculations and Maps (00693-00694)
39. Lot 154-2-4R-NEW-2R: Calculations and Maps (00695-00698)
40. Lot 100-2-R1NEW-R1: Calculations and Maps (00699-00701)
41. Lot 90-6-1: Calculations and Maps (00702-00703)
42. Lot 58: Calculations and Maps (00704-00707)
43. Lot 50A-3NEW: Calculations and Maps (00708-00711)
44. Lot 11-1, Tract 293: Calculations and Maps (00712-00714)
45. Lot 6-R3, Tract 37103: Calculations and Maps (00715-00716)
46. Lot 4-R28, Tract 2913: Calculations and Maps (00717-00719)
47. Map from William B. Flores (00720)

Attachment 2

Conditional Stipulated Exhibits

48. Expert report of Dr. Ron McNinch
49. Expert report of Douglas Yates (if offered during testimony of Douglas Yates)
50. Scale Model of Douglas Yates (if offered during testimony of Douglas Yates)
51. Expert appraisal report of Randall Bell
52. Expert appraisal report of Micronesian Appraisal Associates dated July 2010
53. Errata sheet for Expert appraisal report of Micronesian Appraisal Associates dated July 2010
54. Expert appraisal report of Captain Hutapea & Associates dated July 2010.

ATTACHMENT 3

The parties agree to the authenticity and admissibility of the following of Defendants' exhibits:

- (14) Ground Lease between Calvo's Insurance Underwriters, Inc, First Island Industry, Inc. and Hamilton Tourist Development, Inc. dated December 17, 1976, recorded under Document No. 275657 (00260-00287)
- (21) Letter dated June 7, 1991 from Joaquin C. Arriola to Office of Real Property, Dept. of State, U.S. Government re Offer to Convey NASA Tracking Station (00574-00582)
- (22) Letter dated June 17, 1991 from Richard D. Gibson to Joaquin C. Arriola re Offer dated June 7, 1991 (000573)
- (31) Warranty Deed dated July 26, 1991 recorded under Document No. 460110.
- (36) Agricultural Subdivision Map showing Tract 3531 recorded under Document No. 280800.
- (37) Decree of Registration with Map attached, recorded December 17, 1964 under Document No. 58631 (00324-00337)
- (38) Amended Decree of Registration recorded under Document No. 58836 (00338-00340)
- (39) Warranty Deed dated January 28, 1972, recorded under Document No. 111772 (00341)
- (40) Deed from James S. Lee & Company (Guam) Ltd. to First Island Industry, Inc. recorded September 5, 1974 under Document No. 239729
- (41) Grant Deed from First Island Industry, Inc. to Oxford Properties & Finance, Ltd. dated August 5, 1980 and recorded August 26, 1980 under Document No. 315185 (00351-00353; more legible copy at 00348-00350)
- (51) Promissory Note in favor of Mitchell Stevens dated December 17, 1974 executed by Douglas F. Cushnie and Young Chul Kim (00291-00293)
- (52) Notice of Right of First Refusal dated March 31, 1974 executed by Mitchell A. Stevens (000294)

- (53) Memorandum of Agreement between Joaquin C. Arriola, Mitchell A. Stevens and Douglas F. Cushnie (00295)
- (54) Memorandum of Agreement between Calvo's Insurance Underwriters, Inc. and Joaquin C. Arriola dated February 10, 1972 for 5% interest in Dandan for \$25,000, recorded under Document No. 293666 (00315-00318)
- (55) Landowners of Tract 3531 spreadsheet (Calvo's 00079-00087)
- (61) Design Narrative Layon Municipal Solid Waste Landfill Layon, Inarajan, Guam dated May 22, 2009 for Guam Department of Public Works (AG 00055- AG 00110)
- (62) Layon Municipal Sanitary Landfill Entrance Area Facilities and Cells #1 and #2 Layon, Inarajan, Guam Project No. SWMD-09-02 Book 4 dated May 22, 2009 (AG 00112-AG 00265)
- (63) Letter from Tor Gudmundsen, P.E. to Lorilee T. Crisostomo dated October 22, 2008 and Attachments A and B (Exh. F to T. Gudmundsen Depo.)