

*In the opinion of Faegre & Benson LLP, Bond Counsel, under present laws, regulations, rulings and decisions, interest on the Series 2009A Bonds offered hereby is not included in gross income for federal income tax purposes and is not an item of tax preference included in the computation of the alternative minimum tax. Bond Counsel is also of the opinion that the interest on the Series 2009A Bonds is exempt from all income taxation by the State of North Dakota under the North Dakota Public Finance Authority Act. See "TAX EXEMPTION" herein.*

**NORTH DAKOTA PUBLIC FINANCE AUTHORITY**  
**\$1,500,000**  
**Industrial Development Program Bonds, Series 2009A**

Dated: March 31, 2009

Due: June 1, 2010/2034

The Industrial Development Program Bonds, Series 2009A (the "Series 2009A Bonds") offered hereby are being issued as a separate series pursuant to the North Dakota Public Finance Authority Act, Chapter 6-09.4, North Dakota Century Code, a General Bond Resolution adopted by the Industrial Commission of the State of North Dakota on August 29, 2006 and a Series Resolution adopted by the Industrial Commission of the State of North Dakota on February 27, 2009.

The Series 2009A Bonds will be issued as fully registered bonds without coupons, and when delivered, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository of the Series 2009A Bonds. Individual purchases may be made in book-entry form only, in the principal amount of \$5,000 and integral multiples thereof. Purchasers will not receive certificates representing their interest in the Series 2009A Bonds purchased.

Principal of the Series 2009A Bonds, payable annually on each June 1, beginning June 1, 2010, and interest, payable semiannually on each June 1 and December 1, commencing December 1, 2009, will be paid to DTC, which will in turn remit such principal and interest to its participants for subsequent dispersal to the beneficial owners of the Series 2009A Bonds as described herein.

Proceeds of the Series 2009A Bonds will be used by the North Dakota Public Finance Authority (the "Authority") to make a loan to Giant Snacks, Inc. (the "2009A Borrower") under a Loan Agreement as described herein. The Series 2009A Bonds are not in any way a debt or liability of the State of North Dakota, the Bank of North Dakota, the Industrial Commission or any political subdivision of the State, except as described herein. The Series 2009A Bonds are obligations of the Authority payable primarily from specific revenues and funds pledged therefor under the General Bond Resolution as described herein. The Authority has no taxing power.

The Series 2009A Bonds maturing on or after June 1, 2020 are subject to optional redemption prior to maturity on June 1, 2019 and on any date thereafter at a price of par plus accrued interest.

**Maturity Schedule**

<b><u>Due June 1</u></b>	<b><u>Amount</u></b>	<b><u>Interest Rate</u></b>	<b><u>Yield</u></b>	<b><u>CUSIP</u></b>
2010	\$20,000	4.70%	3.00%	65887P DZ 5
2011	35,000	4.75%	3.20%	65887P EA 9
2012	40,000	4.80%	3.40%	65887P EB 7
2013	40,000	4.80%	3.60%	65887P EC 5
2014	40,000	4.90%	3.80%	65887P ED 3
2015	40,000	4.90%	4.00%	65887P EE 1
2016	45,000	4.90%	4.20%	65887P EF 8
2017	45,000	4.90%	4.40%	65887P EG 6
2018	45,000	4.90%	4.50%	65887P EH 4
2019	50,000	4.90%	4.60%	65887P EJ 0
<b>\$155,000</b>	<b>5.00%</b>	<b>Term Bond due June 1, 2022</b>	<b>Priced at Par</b>	<b>CUSIP: 65887P EM 3</b>
<b>\$245,000</b>	<b>5.50%</b>	<b>Term Bond due June 1, 2026</b>	<b>Priced at Par</b>	<b>CUSIP: 65887P ER 2</b>
<b>\$700,000</b>	<b>6.00%</b>	<b>Term Bond due June 1, 2034</b>	<b>Priced at Par</b>	<b>CUSIP: 65887P EZ 4</b>

The Series 2009A Bonds are offered subject to receipt of the approving legal opinion of Faegre & Benson LLP, Minneapolis, Minnesota, as Bond Counsel. It is expected that delivery of the Series 2009A Bonds will be made on or about March 31, 2009.

THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR QUICK REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION.

**Dougherty & Company, LLC** has agreed to purchase the Series 2009A Bonds from the Authority for the purchase price of **\$1,485,006.60**. The Series 2009A Bonds will be available for delivery on or about March 31, 2009.

The date of this Official Statement is March 18, 2009.

**DOUGHERTY & COMPANY, LLC**

No dealer, broker, salesperson or other person has been authorized by the North Dakota Public Finance Authority, the Financial Advisor or the Underwriter to give any information or to make any representations other than those contained in this Official Statement and, if given or made, such information and representations must not be relied upon as having been authorized by the North Dakota Public Finance Authority, the Financial Advisor or the Underwriter.

This Official Statement does not constitute an offer to sell or solicitation of an offer to buy, nor shall there be any sale of the Series 2009A Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made thereafter shall, under any circumstances, create any implication that there has been no change in the affairs of the North Dakota Public Finance Authority since the date thereof.

Any statements made in this Official Statement involving matters of opinion or of estimates, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of the estimates will be realized.

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The Series 2009A Bonds are being offered pursuant to an exemption from registration under the Securities Act of 1933, as amended, and have not been registered with the Securities and Exchange Commission. The merits of these securities have not been passed upon by the Securities and Exchange Commission or any other federal or state regulatory body nor has any such body passed upon the accuracy or adequacy of this Official Statement.

**The North Dakota  
Public Finance Authority**

Tim C. Porter  
DeAnn Ament

*Executive Director  
Business Manager*

**The Industrial Commission  
of North Dakota**

John Hoeven  
Wayne Stenehjem  
Roger Johnson  
Karlene Fine

Governor, Chairman of the Commission  
Attorney General, Member  
Agriculture Commissioner, Member  
Executive Director and Secretary

**Counsel to Public Finance Authority**

Office of the Attorney General

**Bond Counsel**

Faegre & Benson LLP  
Minneapolis, Minnesota

**Financial Advisor**

Public Financial Management, Inc.  
Minneapolis, Minnesota

**Registrar and Paying Agent**

Bank of North Dakota  
Bismarck, North Dakota

## INTRODUCTION TO THE OFFICIAL STATEMENT

*The following information is furnished solely to provide limited introductory information regarding the North Dakota Public Finance Authority's \$1,500,000 Industrial Development Program Bonds, Series 2009A (the "Series 2009A Bonds") and does not purport to be comprehensive. All such information is qualified in its entirety by reference to the more detailed descriptions appearing in this Official Statement, including the appendices hereto.*

<b>Issuer:</b>	North Dakota Public Finance Authority (the "Authority").						
<b>Security:</b>	The Series 2009A Bonds are obligations of the Authority payable primarily from specific revenues and funds pledged therefor under the Resolutions as described herein. See "Source of Payment and Security" herein.						
<b>Credit Enhancement:</b>	None.						
<b>Purpose:</b>	The proceeds of the Series 2009A Bonds will be used to make a loan to Giant Snacks, Inc. (the "2009A Borrower"). The loan will be used to construct and equip a facility (the "2009A Project"). See "Source of Payment and Security" herein.						
<b>Optional Redemption:</b>	The Series 2009A Bonds maturing June 1, 2020 and thereafter are subject to optional redemption on June 1, 2019 and any date thereafter at a price of par plus accrued interest.						
<b>Denominations:</b>	\$5,000 or multiples thereof.						
<b>Dated:</b>	Date of Delivery						
<b>Principal Due:</b>	June 1, 2010-2034						
<b>Interest Due:</b>	Interest on the Series 2009A Bonds is due semiannually on each June 1 and December 1, commencing December 1, 2009.						
<b>Book-Entry Only:</b>	The Series 2009A Bonds will be issued as book-entry only securities through The Depository Trust Company.						
<b>Tax Status:</b>	The Series 2009A Bonds will be generally exempt from federal income taxes and North Dakota income taxes (See "TAX STATUS" herein).						
<b>Professional Consultants:</b>	<table><tr><td><i>Financial Advisor:</i></td><td>Public Financial Management, Inc. Minneapolis, Minnesota</td></tr><tr><td><i>Bond Counsel:</i></td><td>Faegre &amp; Benson LLP Minneapolis, Minnesota</td></tr><tr><td><i>Registrar/Paying Agent:</i></td><td>Bank of North Dakota Bismarck, North Dakota</td></tr></table>	<i>Financial Advisor:</i>	Public Financial Management, Inc. Minneapolis, Minnesota	<i>Bond Counsel:</i>	Faegre & Benson LLP Minneapolis, Minnesota	<i>Registrar/Paying Agent:</i>	Bank of North Dakota Bismarck, North Dakota
<i>Financial Advisor:</i>	Public Financial Management, Inc. Minneapolis, Minnesota						
<i>Bond Counsel:</i>	Faegre & Benson LLP Minneapolis, Minnesota						
<i>Registrar/Paying Agent:</i>	Bank of North Dakota Bismarck, North Dakota						

**Legal Matters:** Legal matters incident to the authorization and issuance of the Series 2009A Bonds are subject to the opinion of Faegre & Benson LLP, Bond Counsel, as to validity and the tax exempt status of the Series 2009A Bonds. The opinion will be substantially in the form set forth in Appendix B attached hereto.

**Authority for Issuance:** The Series 2009A Bonds are issued pursuant to the North Dakota Public Finance Authority Act, Chapter 6-09.4, North Dakota Century Code, Chapter 40-57, North Dakota Century Code, a General Bond Resolution adopted by the Industrial Commission of the State of North Dakota on August 29, 2006 and a Series Resolution adopted by the Industrial Commission of the State of North Dakota on February 27, 2009.

**Conditions Affecting Issuance of Bonds:** The Series 2009A Bonds are offered when, as and if issued, subject to the approving legal opinion of Faegre & Benson LLP, Bond Counsel, Minneapolis, Minnesota.

**Delivery:** To the Authority's designated depository on or about March 31, 2009.

**No Litigation:** There is no litigation now pending or, to the knowledge of the Authority, threatened which questions the validity of the Series 2009A Bonds or of any proceedings of the Industrial Commission taken with respect to the issuance or sale thereof.

Questions regarding the Series 2009A Bonds or the Official Statement can be directed to and additional copies of the Official Statement and the Resolution may be obtained from Public Financial Management, Inc., 45 South Seventh Street, Suite 2800, Minneapolis, Minnesota 55402, (612/338-3535), the Authority's Financial Advisor, or the North Dakota Public Finance Authority, 1200 Memorial Highway, Bismarck, North Dakota 58504 (701/328-7100).

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## **OFFICIAL STATEMENT**

### **NORTH DAKOTA PUBLIC FINANCE AUTHORITY**

**\$1,500,000**

### **Industrial Development Program Bonds, Series 2009A**

## **GENERAL INFORMATION**

This Official Statement sets forth information concerning the issuance by the North Dakota Public Finance Authority (the "Authority"), of a series of its North Dakota Public Finance Authority Industrial Development Program Bonds designated as Series 2009A (the "Series 2009A Bonds"). The Series 2009A Bonds mature on the dates and in the amounts as set forth on the cover page of this Official Statement and contain other terms as set forth herein. See "Description of the Bonds" herein. The Series 2009A Bonds are issued pursuant to the General Bond Resolution (the "General Bond Resolution") adopted by the Industrial Commission of the State of North Dakota (the "Industrial Commission") on August 29, 2006 and a Series Resolution adopted on February 27, 2009. The Series 2009A Bonds and all other bonds issued pursuant to the General Bond Resolution are herein referred to as the "Bonds". All capitalized terms used in this Official Statement and not otherwise defined herein have the meanings set forth in the General Bond Resolution.

The General Bond Resolution establishes the Authority's Industrial Development Program under which the Authority will from time to time issue Bonds to provide funds to make loans to borrowers (the "Borrowers" or a "Borrower") to finance industrial development projects in the State of North Dakota. The loans will generally be effected through loan agreements to be entered into with the Borrowers. Pursuant to the General Bond Resolution, the Authority may also refund other obligations of the Authority. See "Description of the Industrial Development Program" herein for a description of the borrowers eligible to receive loans from the Authority under the Industrial Development Program. See "Description of the Bonds – Purpose and Authority" and "The Loan Agreement" herein for a description of the loan to be made with the proceeds of the Series 2009A Bonds. Certain information relating to Giant Snacks, Inc. (the "2009A Borrower") is contained in Appendix A herein. The Series 2009A Bonds are issued under the authority of the North Dakota Public Finance Authority Act, Chapter 6-09.4, North Dakota Century Code (the "Act") and Chapter 40-57, North Dakota Century Code. The Industrial Commission, the agency of the State of North Dakota having authority over all matters pertaining to the Authority, including the issuance of bonds, has authorized the issuance of the Series 2009A Bonds. The Series 2009A Bonds are obligations of the Authority payable primarily from the loan repayments by the 2009A Borrower and, along with other Bonds issued under the General Bond Resolution, the Reserve Fund hereinafter described and are not a debt or liability of the State or secured by the full faith and credit or taxing powers of the State. See "Source of Payment and Security" and "Summary of Certain Provisions of the General Bond Resolution" and "The Industrial Commission of North Dakota" herein.

The Authority is an instrumentality of the State, operated, managed and controlled by the Industrial Commission. The Bonds do not constitute a debt of the Industrial Commission and are not secured by or payable from any assets of the Industrial Commission. See "The North Dakota Public Finance Authority" herein.

The obligations of the Borrower under the Loan Agreement (the "Loan Agreement") are secured by a Mortgage to be provided to the Authority. Summaries of the Loan Agreement and Mortgage are provided in "Summary of Loan Agreements" herein.

## **DESCRIPTION OF THE BONDS**

### ***Purpose and Authority***

Proceeds of the Series 2009A Bonds will be used to make a loan to Giant Snacks, Inc. pursuant to the Loan Agreement.

The Series 2009A Bonds are issued pursuant to the General Bond Resolution adopted by the Industrial Commission on August 29, 2006 and the Series Resolution (the "Series Resolution") adopted by the Industrial Commission on February 27, 2009. (The General Bond Resolution and the Series Resolution are hereinafter collectively referred to as the "Resolutions".)

### ***Terms of the Bonds***

The Series 2009A Bonds will be dated the date of delivery, with principal payable annually on each June 1, beginning June 1, 2010, and with interest payable at the rates set forth on the cover page of this Official Statement on December 1, 2009 and semiannually thereafter on each June 1 and December 1.

### ***Book-Entry Only System***

*The information contained in the following paragraphs of this subsection "Book-Entry Only System" has been extracted from a schedule prepared by The Depository Trust Company entitled "SAMPLE OFFERING DOCUMENT LANGUAGE DESCRIBING BOOK-ENTRY ONLY ISSUANCE." The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Authority believes to be reliable, but the Authority takes no responsibility for the accuracy thereof.*

The Depository Trust Company, New York, New York will act as securities depository for the Series 2009A Bonds. The Series 2009A Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity, specified on the cover page hereof, in the aggregate principal amount of such maturity and will be deposited with DTC.

DTC, the world's largest depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Bonds Exchange Act of 1934. DTC holds and provides asset servicing for over two million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over eighty-five countries that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. Bonds brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Government Securities Clearing Corporation, MBS Clearing Corporation, and Emerging Markets Clearing Corporation, (NSCC, GSCC, MBSCC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC rules applicable to its Participants are

on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of the Series 2009A Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2009A Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interest in the Series 2009A Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2009A Bonds, except in the event that use of the book-entry system for the Series 2009A Bonds is discontinued or an entire maturity is transferred.

To facilitate subsequent transfers, all Series 2009A Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2009A Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2009A Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2009A Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2009A Bonds unless authorized by a Direct Participant in accordance with DTC's procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2009A Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal of, redemption premium, if any, and interest payments on the Series 2009A Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Authority or the Trustee, on payable date in accordance with their respective holding shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name", and will be the responsibility of such Participant and not of DTC, nor its nominee, the Trustee, or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payment to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Authority or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its service as depository with respect to the Series 2009A Bonds at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

**NEITHER THE AUTHORITY NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DIRECT PARTICIPANTS, TO INDIRECT PARTICIPANTS, OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (I) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT**

PARTICIPANT, OR ANY INDIRECT PARTICIPANT; (II) ANY NOTICE THAT IS PERMITTED OR REQUIRED TO BE GIVEN TO THE OWNERS OF THE SERIES 2009A BONDS UNDER THE RESOLUTION; (III) THE SELECTION BY DTC OR BY ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE SERIES 2009A BONDS OF A SERIES; (IV) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR REDEMPTION PREMIUM, IF ANY, OR INTEREST DUE WITH RESPECT TO THE SERIES 2009A BONDS; (V) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNER OF THE SERIES 2009A BONDS; OR (VI) ANY OTHER MATTER.

## ***Redemption of the Bonds***

### **Optional Redemption**

The Series 2009A Bonds maturing June 1, 2020 and thereafter are subject to optional redemption on June 1, 2019 and any date thereafter at a price of par plus accrued interest.

### **Mandatory Redemption**

Term Bonds maturing on June 1, 2022, are required to be redeemed in part prior to maturity on June 1 at the principal amount thereof plus accrued interest to the redemption date, in the amounts set forth below:

<b><u>Year</u></b>	<b><u>Amount</u></b>
2020	\$50,000
2021	\$50,000
2022 (Final Maturity)	\$55,000

Term Bonds maturing on June 1, 2026, are required to be redeemed in part prior to maturity on June 1 at the principal amount thereof plus accrued interest to the redemption date, in the amounts set forth below:

<b><u>Year</u></b>	<b><u>Amount</u></b>
2023	\$55,000
2024	\$60,000
2025	\$65,000
2026 (Final Maturity)	\$65,000

Term Bonds maturing on June 1, 2033, are required to be redeemed in part prior to maturity on June 1 at the principal amount thereof plus accrued interest to the redemption date, in the amounts set forth below:

<b><u>Year</u></b>	<b><u>Amount</u></b>
2027	\$70,000
2028	\$75,000
2029	\$80,000
2030	\$85,000
2031	\$90,000
2032	\$95,000
2033	\$100,000
2034 (Final Maturity)	\$105,000

## ***Continuing Disclosure***

Under SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission, pursuant to the Securities Exchange Act of 1934 (the “Rule”), the Authority and the 2009A Borrower will covenant to enter into an undertaking (the “Undertaking”) for the benefit of holders of the Series 2009A Bonds to provide certain financial information and operating data relating to the issuer and the 2009A Borrower to certain information repositories annually, and to provide notices of the occurrence of certain events enumerated in the Rule to certain information repositories or the Municipal Securities Rulemaking Board and to any state information depository. That information will consist of (i) the financial statement covering the 2009A Borrower and (ii) the audited financial statements of the State of North Dakota. The details and terms of the Undertaking, as well as the information to be contained in the annual report or the notices of material events are set forth in the Continuing Disclosure Undertaking to be executed and delivered by the Authority and the 2009A Borrower at the time the Series 2009A Bonds are delivered. Such Undertaking will be in substantially the form attached hereto as Appendix C. The Authority has never failed to comply in all material respects with any previous undertakings under the Rule to provide annual reports or notices of materials events. A failure by the Authority or the 2009A Borrower to comply with the Undertaking will not constitute an event of default on the Series 2009A Bonds (although holders will have any available remedy at law or in equity). Nevertheless, such a failure must be reported in accordance with the Rule and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Series 2009A Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Series 2009A Bonds and their market price.

## **ESTIMATED SOURCES AND USES OF FUNDS**

The proceeds of the sale of the Series 2009A Bonds and additional funding for the 2009A Project will be applied approximately as follows:

### **Sources of Funds**

Par Amount of Bonds	\$1,500,000
Premium	15,007
SBA Loan	795,000
Borrower’s Contribution	405,000
North Dakota Development Fund	335,000
Dakota Valley Electric	<u>80,000</u>
Total Sources of Funds	<u>\$3,130,007</u>

### **Uses of Funds**

Project Cost	\$3,067,757
Cost of Issuance	28,500
Underwriter’s Discount Allowance	15,000
Bank of North Dakota Letter of Credit	15,000
Authority Fee	<u>3,750</u>
Total Uses of Funds	<u>\$3,130,007</u>

The Borrower will withdraw and use the proceeds of the Series 2009A Bonds deposited to the Loan Fund to pay or reimburse costs incurred to construct and equip a sunflower processing facility. The proceeds of the Series 2009A Bonds will be deposited in the Loan Fund on the delivery date. In addition, certain costs of issuance of the Series 2009A Bonds may be paid by the Authority from Bond proceeds deposited to the credit of the Costs of Issuance Fund.

The deposit to the Reserve Fund required by the Resolutions and the Act is the amount (“Series Reserve Requirement”) needed so that there is on hand in the related Series Account of the Reserve Fund upon the issuance of the Series 2009A Bonds an aggregate amount not less than the largest amount of principal and interest required to

be paid on of the Series 2009A Bonds and Reserve Obligations (if any) outstanding under the General Bond Resolution during any period of 24 consecutive months. The Authority will satisfy the Series Reserve Requirement for the Series 2009A Bonds through the purchase of a letter of credit from the Bank of North Dakota.

## SOURCE OF PAYMENT AND SECURITY

The principal sources of payment and security for the Series 2009A Bonds are the revenues derived from loan repayments by the 2009A Borrower under the Loan Agreement which are scheduled to be sufficient for the payment of principal of and interest on the Series 2009A Bonds. The obligations of the 2009A Borrower under the Loan Agreement are secured by a first mortgage on the 2009A Project (the "Mortgage"). The Series 2009A Bonds and all other Bonds issued under the General Bond Resolution are equally and ratably secured by any amounts on deposit in the Reserve Fund established under the General Bond Resolution.

The Series 2009A Bonds are not in any way a debt or liability of the State of North Dakota, the Industrial Commission or any political subdivision of the State. The Series 2009A Bonds are not obligations of the Authority and the Authority has no taxing power and no significant available assets other than the Funds and Accounts specifically pledged to the Series 2009A Bonds.

The amount on deposit in the Reserve Fund upon the issuance of the Series 2009A Bonds must be an aggregate amount equal to at least the largest amount of debt service due on the Series 2009A Bonds and certain subordinate obligations which may be obligations issued to fund the Reserve Requirement (the "Reserve Obligations") during any consecutive 24 month period. The Authority will not issue Reserve Obligations to fund the Reserve Requirements for the Series 2009A Bonds.

The Act mandates that a Reserve Fund be maintained in an amount at least equal to the largest amount of money required by the terms of all outstanding Bonds of the Authority, for the payment of interest on and maturing principal in the then current or any succeeding calendar year, including mandatory redemption deposits required by the terms of any such Bonds to be made to the Bond Fund for the payment or redemption of Term Bonds. Under the General Bond Resolution, the Authority has covenanted to establish and maintain the Reserve Fund in the amount set forth in the Series Resolution. The Series Resolution sets the Reserve Requirement equal to the maximum amount of principal of and interest of the Series 2009A Bonds coming due in any consecutive 24 month period (the "Reserve Requirement").

In the event the Reserve Fund shall, at any time, not aggregate the Reserve Requirement, the Executive Director of the Authority must forthwith give written notice to the Chairman and each member of the Industrial Commission, and the Industrial Commission must forthwith transfer other funds to the Reserve Fund as permitted under the Act or certify to the Legislative Assembly of the State of North Dakota the sum required to restore the Reserve Fund to an amount equal to or greater than the Reserve Requirement.

The Act provides:

"In order to assure the maintenance of the required debt service reserve, there shall be appropriated by the legislative assembly and paid to the public finance authority for deposit in the reserve fund, such sum, if any, as shall be certified by the industrial commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve."

In the written opinion of the Attorney General, such provision of the Act does not constitute a legally enforceable obligation of the State. In the opinion of Bond Counsel there is no applicable provision of law which would prohibit a future Legislative Assembly of the State from appropriating such sum, if any, as shall have been certified by the Industrial Commission as necessary to restore the Reserve Fund to an amount sufficient to meet the Reserve Requirement.

The Legislative Assembly of the State meets biennially in odd numbered years commencing on the first Tuesday after the third day in January or at another time prescribed by law, but not later than the eleventh day of January.

The scheduled payments under the loan agreements entered into in connection with each Series of Bonds are expected to be sufficient to pay principal of and interest on the Bonds of each Series. Therefore, the Authority estimates and expects that, as required by the Act, pledged revenues will be sufficient to meet principal and interest payments on all Series of Bonds issued pursuant to the General Bond Resolution, after the payment of costs and expenses of operation of the Authority.

## **SUMMARY OF CERTAIN PROVISIONS OF THE GENERAL BOND RESOLUTION**

The following is a brief summary of certain provisions of the General Bond Resolution and is not to be considered as a full statement of the provisions of the General Bond Resolution. The summary is qualified by reference to and is subject to the complete General Bond Resolution, copies of which may be examined at the offices of the Authority.

### ***Funds and Accounts***

#### **Creation of Funds and Accounts**

There are created in the General Bond Resolution the following Funds for the Industrial Development Program:

- (a) Loan Fund.
- (b) Costs of Issuance Fund.
- (c) Revenue Fund.
- (d) Bond Fund.
- (e) Redemption Fund.
- (f) Reserve Fund.
- (g) Operating Fund.

The General Bond Resolution requires that separate Accounts for each Series of Bonds be created within the Loan Fund, Revenue Fund, Bond Fund and Reserve Fund and permits the creation of separate Accounts within the Redemption Fund and Costs of Issuance Fund.

#### **Loan Fund**

Amounts received from the sale of Bonds, except any portion of such proceeds deposited in the Costs of Issuance Fund, the Revenue Fund and the Reserve Fund, shall be credited to the Loan Fund. Moneys in the Loan Fund shall be used for loans to Borrowers as provided in the Act and the General Bond Resolution. All loans to Borrowers shall be in compliance with the applicable Series Resolution, Loan Agreement and Collateral Documents, if any, and the General Bond Resolution.

#### **Costs of Issuance Fund**

The amount specified in the applicable Series Resolution shall be deposited in the appropriate Series Account of the Costs of Issuance Fund, from proceeds of a Series of Bonds or other moneys designated by the Authority. Moneys in a Series Account of the Costs of Issuance Fund shall be used to pay costs of issuance of the respective Series of Bonds.

### **Revenue Fund**

All payments by the Borrowers to pay the principal of, premium (if any) on and interest on the related Series of Bonds and any proceeds from the sale of the loans shall be credited to the related Series Account of the Revenue Fund, except that interest in excess of interest payable on the related Series of Bonds and sale proceeds in excess of the amount necessary to be retained for future payments of principal and interest on the related Series of Bonds may be deposited in the Operating Fund or applied in such other manner as the Executive Director may direct. The moneys in each Series Account shall be transferred to the Bond Fund to pay all principal of, premium (if any) on and interest due and payable on the related Series of Bonds on the next interest payment date of the Bonds (including mandatory redemption of any Term Bonds).

### **Bond Fund**

On each Bond payment date, the Authority shall, with respect to each Series of Bonds for which a principal or interest payment is due, transfer to the related Series Account of the Bond Fund from each related Series Account of the Revenue Fund an amount sufficient to pay such principal and interest. If the moneys on deposit in the related Series Account of the Revenue Fund are insufficient for this purpose, the Authority shall withdraw sufficient moneys therefor, first from the related Series Account of the Reserve Fund, second, from the other Series Accounts of the Reserve Fund in such manner as the Executive Director may determine, and third to the extent permitted by the applicable Series Resolutions from the other Series Accounts of the Revenue Fund in such manner as the Executive Director may determine.

### **Redemption Fund**

Moneys deposited in the Redemption Fund shall be applied to the mandatory redemption of Bonds or the optional redemption or purchase of Bonds of a particular Series, as provided in the General Bond Resolution and the respective Series Resolution.

All Bonds retired by redemption, purchase or payment at maturity shall be canceled and shall not be reissued. The accrued interest to be paid on the redemption, purchase or payment at maturity of each Bond shall be paid from the Bond Fund.

### **Reserve Fund**

All moneys required to be deposited under the General Bond Resolution or any Series Resolution or investments deposited in or transferred to the Reserve Fund, together with all earnings and income on investment of such moneys, shall be credited to the extent needed to meet the Reserve Requirement. Moneys and investments in the Reserve Fund shall be used only in accordance with the requirements of the General Bond Resolution to pay principal of, premium (if any) on and interest on Bonds and Reserve Obligations due or to become due. To the extent amounts on deposit in the Reserve Fund exceed the Reserve Requirement, such amounts may be withdrawn by the Authority and used for any lawful purpose.

In the event the Reserve Fund shall at any time not aggregate the Reserve Requirement, the Executive Director must forthwith give written notice to the Chairman and each member of the Industrial Commission, and the Industrial Commission must forthwith transfer other funds to the Reserve Fund as permitted under the Act or must certify to the Legislative Assembly of the State of North Dakota the sum required to restore the Reserve Fund to an amount equal to or greater than the Reserve Requirement.

### **Operating Fund**

The Authority will deposit in the Operating Fund any fees received from a Borrower pursuant to any Loan Agreement and any amount in a Series Account of the Revenue Fund in excess of the amounts needed to pay principal and interest when due. The Authority may use moneys in the Operating Fund to pay administrative expenses of the Authority or for any other lawful purpose.

## **Investment of Funds**

Moneys on deposit to the credit of the Funds and Accounts under the General Bond Resolution shall be invested by the Authority in Investment Obligations permitted under the General Bond Resolution and the Act; provided, that no Investment Obligation shall have a maturity date beyond the date upon which the moneys in the respective Fund or Account are required or are likely to be needed for the purposes of the respective Fund or Account to which such Investment Obligation is credited. Investment Obligations so purchased shall be deemed at all times to be a part of the respective Fund or Account, but may from time to time be sold or otherwise converted into cash, whereupon the proceeds derived from such sale or conversion shall be credited to such Fund or Account. Any interest accruing or any profit realized from such investment shall be credited to the specific Fund or Account, except as otherwise specified in the General Bond Resolution.

## ***Additional Series of Bonds***

The Authority anticipates the issuance of additional Series of Bonds under the General Bond Resolution. The General Bond Resolution permits the issuance of additional Series of Bonds under the Act and the General Bond Resolution upon compliance with the requirements of the General Bond Resolution, including deposit of a sufficient amount in the Reserve Fund to satisfy the Reserve Requirement with respect to the Series of Bonds to be issued and all other Series of Bonds outstanding under the General Bond Resolution.

## ***Outstanding Bonds***

The Authority issued \$1,360,000 Industrial Development Program Bonds, Series 2006A on September 28, 2006 to make a loan to Prairie Gold Real Estate, LLC and \$2,000,000 Industrial Development Program Bonds, Series 2008A on May 28, 2008 to make a loan to North Dakota Natural Beef, LLC. The aggregate outstanding amount of these bonds as of February 1, 2009 was \$3,310,000.

## ***Default and Remedies***

The following are Events of Default under the General Bond Resolution:

- (a) Failure of the Authority to pay principal or the redemption price of any Bond when due.
- (b) Failure of the Authority to pay interest on any Bond when due.
- (c) A withdrawal shall be made from the Reserve Fund and the amount on deposit in the Reserve Fund shall be less than the Reserve Requirement for a period extending to the date of adjournment of the next regular session of the Legislative Assembly commencing after the date of withdrawal from the Reserve Fund.
- (d) Failure of the Authority to cure any other default under the General Bond Resolution within thirty days after notice thereof by the holders of at least 10% of the outstanding Bonds.

Upon an Event of Default, the Holder of any Bond affected thereby may bring a proceeding in law or in equity to enforce or compel performance of the duties of the Authority or the Industrial Commission required by the Bond, the Series Resolution, the General Bond Resolution or the Act.

If an Event of Default described in (a) or (b) above shall happen, the Authority shall forthwith give notice thereof by mail, postage prepaid, to the registered owners of all outstanding Bonds at their last addresses, if any, appearing upon the registry books. Such notice shall (A) specify the nature of the Event of Default, (B) state that accordingly the holders of 10% or more in unpaid principal amount of outstanding Bonds have the right to deliver or mail notice to the Authority declaring the unpaid principal amount of Bonds and accrued interest thereon immediately due and payable, and (C) state that if the holders do so, the unpaid principal amount of the Bonds and interest thereon shall

automatically become due the 30th day following receipt of such notices from the holders of 10% or more in unpaid principal amount of outstanding Bonds except as otherwise provided therein, unless the holders of 50% or more in unpaid principal amount of Bonds elect not to accelerate the Bonds or the Event of Default has been cured prior to that date. Forms of notice of acceleration or election not to accelerate may be obtained from the Authority on request.

Whenever such notice shall have been given, or should have been given, the holders of 10% or more in unpaid principal amount of outstanding Bonds shall have the right by notice delivered or mailed postage prepaid to the Authority to declare the unpaid principal of and accrued interest on all Bonds due and payable and on the 30th day thereafter all such principal of and interest on the outstanding Bonds shall become immediately due and payable, provided that if at any time prior to the receipt of notice of acceleration by the holders of 10% in unpaid principal amount of Bonds, the Event of Default shall be cured, notices of acceleration thereafter received shall not be effective and the principal of and interest on the Bonds shall be payable at the stated maturity and interest payment dates of such Bonds.

### ***Covenants and Miscellaneous***

The Authority covenants and agrees, so long as the Bonds of any Series shall be outstanding, and subject to the limitations on its obligations established in the General Bond Resolution, to the following requirements:

#### **Payment of Bonds**

The Authority will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in the General Bond Resolution and each Series Resolution and in each and every Bond executed, authenticated and delivered; will deposit in the Reserve Fund from amounts available and appropriated therefor amounts sufficient to maintain the Reserve Requirement; and will pay or cause to be paid, but solely from the sources specified in the General Bond Resolution and any Series Resolution, the principal of and interest on every Bond issued on the dates, at the places and in the manner prescribed in the Bonds.

#### **Authority of the Industrial Commission and Authority**

The Industrial Commission is duly authorized under the constitution and laws of the State to adopt the General Bond Resolution and the Series Resolution and to make the covenants as provided therein. The Bonds in the hands of the holders thereof are and will be valid and enforceable obligations of the Authority in accordance with their terms.

#### **Proper Books and Records**

The Authority shall keep or cause to be kept proper books of accounts and records, in which full, true and correct entries will be made of all dealings and transactions relating to the operation of the Industrial Development Program.

#### **Restrictions on Purchase and Redemption of Bonds**

The Authority will not redeem or purchase any Bonds in whole or in part at a cost or price (including any brokerage fee or commission and other charges) which (i) exceeds the Redemption Price then applicable on such Bonds plus accrued interest to the redemption date if such Bonds are then redeemable; or (ii) exceeds the Redemption Price of such Bonds on the date such Bonds are first redeemable at the option of the Authority, plus accrued interest to the date of redemption, if such Bonds are not then redeemable; or (iii) would adversely affect the ability of the Authority to pay any other Bonds of the same Series when due.

## **SUMMARY OF LOAN AGREEMENTS**

The Authority will enter into a loan agreement with each Borrower in connection with each Series of Bonds issued under the auspices of the Industrial Development Program, under which the Borrower will agree to pay certain amounts, including the Authority's administrative fee. The loan agreements also may contain certain covenants relating to the tax exempt status of interest on the related Series of Bonds and the provision of annual financial statements of the Borrower.

### ***Loan Agreement Related to Series 2009A Bonds***

The Loan Agreement requires the 2009A Borrower to apply the proceeds of the Series 2009A Bonds to the construction of the 2009A Project as a facility used for manufacturing within the meaning of Section 144(a)(12)(C) of the Internal Revenue Code and requires the 2009A Borrower to make monthly loan repayments sufficient to provide for the payment of principal and interest on the Series 2009A Bonds when due.

The 2009A Borrower is responsible for maintenance, taxes and insurance on the 2009A Project.

### ***Mortgage Related to Series 2009A Bonds***

The 2009A Borrower's obligations under the Loan Agreement are secured by the Mortgage which will constitute a shared first mortgage lien on the 2009A Project. The Borrower is also obtaining an SBA Loan in the amount of \$795,000 which is also to be secured by a mortgage lien on the 2009A Project. The Authority and the Lender are entering into an Intercreditor Agreement relating to these loans and the enforcement of remedies.

## **THE NORTH DAKOTA PUBLIC FINANCE AUTHORITY**

The North Dakota Public Finance Authority was established by the Authority Act on July 1, 1975, as an instrumentality of the State exercising essential public and governmental functions.

The Authority Act authorizes the Authority to lend money to Political Subdivisions of the State through the purchase of municipal securities of political subdivisions or other contracting party. To finance such purchases of municipal securities, the Authority is authorized by the Authority Act to issue its bonds, in any amount, payable pursuant to the Authority Act.

The Authority is empowered to sue and be sued; to make, enter into and enforce contracts; to acquire, hold, use and dispose of monies or other personal property; to carry out its functions by officers, agents or employees or by contract; and to make and enforce bylaws, rules and regulations. It is not, however, a body corporate.

Pursuant to North Dakota Century Code Chapters 6-09.4 and 54-17, the Authority is under the operation, control and management of the Industrial Commission, which oversees various enterprises of the State, and whose actions are the actions of the State acting in its sovereign capacity.

On June 26, 2001, the Industrial Commission appointed Mr. Tim Porter as Executive Director of the Authority effective August 1, 2001, to serve at its pleasure. Ms. DeAnn Ament is the Authority's Business Manager. Mr. Porter and Ms. Ament are the Authority's only employees.

The costs and expenses of operation of the Authority are financed from investment income and fees and charges imposed by the Authority. Pursuant to the loan agreements with the various borrowers participating in the Authority's financing programs, the Authority may collect an administrative fee from the respective political subdivision. The administrative fee may be used to pay costs and expenses of operation of the Authority.

Under the Authority Act, all property of the Authority, its transfer and the income therefrom, including any profits made on the sale thereof, are exempt from taxation within the State. In a written opinion of the Office of Attorney General, the income of the Authority, as an instrumentality of the State, is exempt under existing law from Federal income taxes. Under the Authority Act, all property of the Authority in the State is exempt from levy and sale by virtue of an execution and no execution or judicial process may issue from any state court against such property nor may any judgment of a state court against the Authority be a charge or lien upon its property. The foregoing does not limit the rights of the holder of any bond to pursue any remedy for the enforcement of any pledge or lien given by the Authority on its revenues or other monies to secure the bonds.

This legislation also permitted the Public Finance Authority to enter into administrative agreements with other state entities and to issue bonds on their behalf. Although the Public Finance Authority may be empowered to exercise the bonding authority of another state entity, any bonds issued would be an obligation of the other state entity and not an obligation of the Public Finance Authority.

The Authority's offices are located at 1200 Memorial Highway, Bismarck, North Dakota 58504. Its telephone number is 701/328-7100.

### ***Other Financings of the Authority***

Pursuant to a Trust Indenture dated March 1, 1989 and a Supplemental Trust Indenture dated December 1, 1995, the Authority issued its \$8,875,000 Taxable Insured Water System Refunding Revenue Bonds, 1999 Series A, due serially on April 1 in the years 2000 to 2014 and an additional \$1,410,000 of obligations due April 1, 2015. The aggregate outstanding principal amount of these bonds as of February 1, 2009 was \$3,520,000.

The Authority has issued a total of \$83,570,000 Capital Financing Program Bonds. The total includes \$3,750,000 Series 1990A through O Bonds; \$6,225,000 Series 1991A through I Bonds; \$12,150,000 Series 1992C through K Bonds; \$7,905,000 Series 1993A through F Bonds; \$6,305,000 Series 1994A through C Bonds; \$2,505,000 Series 1995A through C Bonds; \$3,365,000 Series 1996A through D Bonds; \$15,345,000 Series 1997A through H Bonds; \$9,695,000 Series 1998A through E Bonds; \$4,530,000 Series 1999A through F Bonds; \$4,215,000 Series 2000A and B Bonds; \$735,000 Series 2001A Bonds; \$1,700,000 Series 2002A Bonds; \$1,495,000 Series 2003A Bonds; \$880,000 Series 2004A Bonds; and \$1,385,000 Series 2005A Bonds. The aggregate outstanding principal amount of these bonds as of February 1, 2009 was \$12,665,000.

The Authority issued \$20,220,000 State Revolving Fund Program Bonds, Series 1993A on February 1, 1993, \$6,975,000 State Revolving Fund Program Bonds, Series 1995A on January 1, 1995, \$29,845,000 State Revolving Fund Program Bonds, Series 1996A on October 1, 1996, \$35,965,000 State Revolving Fund Program Bonds, Series 1998A on October 21, 1998, \$16,725,000 State Revolving Fund Program Bonds, Series 2000A on February 22, 2000, \$23,725,000 State Revolving Fund Programs Bonds, Series 2001A on August 1, 2001, \$26,795,000 State Revolving Fund Program Bonds, Series 2003A on June 19, 2003, \$20,455,000 State Revolving Fund Revenue Bonds, Series 2003B on December 16, 2003, \$11,790,000 State Revolving Fund Program Bonds on October 5, 2004, \$36,210,000 State Revolving Fund Program Bonds, Series 2005A on July 27, 2005 and \$46,100,000 State Revolving Fund Program Bonds, Series 2008A on December 19, 2008. A portion of the proceeds of the State Revolving Fund Program Bonds, Series 1993A were used to refund and defease the outstanding State Revolving Fund Program Bonds, Series 1990A in an aggregate principal amount of \$5,470,000. A portion of the State Revolving Fund Program Bonds, Series 2001A were used to refund the outstanding State Revolving Fund Program Bonds, Series 1993A in an aggregate principal amount of \$9,295,000 and the outstanding State Revolving Fund Program Bonds, Series 1995A in an aggregate principal amount of \$3,715,000. The proceeds of the State Revolving Fund Program Bonds, Series 2003B were used to advance refund a portion of the outstanding State Revolving Fund Program Bonds, Series 1996A in an aggregate principal amount of \$19,740,000. The proceeds of the State Revolving Fund Program Bonds, Series 2004A were used to advance refund a portion of the outstanding State Revolving Fund Program Bonds, Series 2000 in an aggregate principal amount of \$11,005,000. A portion of the proceeds of the State Revolving Fund Program Bonds, Series 2005A were used to refund the outstanding State Revolving Fund Program Bonds, Series 1993 in an aggregate principal amount of \$3,875,000 and the outstanding State Revolving Fund Program Bonds, Series 1998 in an aggregate principal amount of \$4,070,000. A portion of the proceeds of the State Revolving Fund Program Bonds, Series 2008A were used to refund the outstanding State Revolving Fund Program Bonds, Series 1998 in an aggregate principal amount of \$11,745,000. The remaining

proceeds of the State Revolving Fund Program Bonds, Series 1993A, Series 2001A, Series 2005A and Series 2008A and the proceeds of the State Revolving Fund Program Bonds, Series 1995A, Series 1996A, Series 1998A, Series 2000A and Series 2003A were used to make loans to certain Political Subdivisions participating in the State Revolving Fund Program and to have funds available to make other loans to Political Subdivisions whose wastewater treatment projects or public water system projects have been approved and are included in the Clean Water and Drinking Water Intended Use Plans of the North Dakota Health Department. The outstanding amount of the State Revolving Fund Program Bonds as of February 1, 2009 was \$155,605,000.

The Authority has entered into a Standby Refunding Bond Purchase Agreement with the Central Dakota Irrigation District (the "District") under which the Authority has committed to purchase through the Capital Financing Program or its successor, or from other available funds, refunding improvement bonds of the District at the times and in the amounts needed to refund any of the District's \$3,270,000 Taxable Improvement Warrants (the "Warrants") which the District is unable to pay when due. The Warrants are dated April 1, 1997, and have a final maturity date of February 1, 2012. The Warrants were issued by the District to acquire, construct, and install irrigation facilities within the District.

## **DESCRIPTION OF THE INDUSTRIAL REVENUE PROGRAM**

### ***General***

The Act declares it to be the policy of the State to foster and promote the provision of adequate capital markets and facilities for borrowing money by Borrowers for the financing of their respective projects. In pursuance of this policy the Authority initiated the Industrial Development Program to make funds available to Borrowers at reduced interest costs, especially during periods of restricted credit or money supply.

The Act limits entities which may participate in the Authority's programs to Political Subdivisions of the State or other contracting parties. Projects eligible for inclusion in the Authority's programs are defined in the Act and Chapter 40-57 of the Century Code. Chapter 40-57 of the Century Code authorizes the financing of industrial development for such activities including assembling, fabricating, manufacturing, mixing or processing of any agricultural, mining, manufactured products or any combination thereof. Such financings are limited to \$2,000,000 per Borrower and \$20,000,000 in total for the Industrial Development Program.

Participation by a Borrower in the Industrial Development Program is entirely voluntary. The Authority is authorized to take applications from Borrowers to participate in the Industrial Development Program; to require such information in the application as the Executive Director of the Authority deems necessary or material; to consider the need and desirability of the financing, the ability of such applicant to secure borrowed money from other sources and the cost thereof, and the particular project or purpose to be financed; to impose upon and collect charges from the applicant for its costs and services in review or consideration; to accept or reject such application for any reason or for no reason; to negotiate and enter into agreements with Borrowers; and to fix any and all terms, conditions and provisions of any such financing.

Loans to Borrowers are primarily expected to be secured by a Mortgage of the project to be financed.

### ***Loan Criteria***

All potential participants in an Authority program are reviewed by a special Advisory Committee, appointed by the Industrial Commission, for the purpose of making a recommendation to the Industrial Commission on the suitability of including a particular Borrower in a financing. The credit analysis procedures of the Authority include a review of financial information of the Borrower. The Authority has further established criteria which Borrowers must meet in order for a project to be approved for financing through the Industrial Development Program. The criteria include:

- (i) Projects will be recommended from the local level by such entities as local banks, developers and economic development agencies;
- (ii) The Borrower or its related Guarantor must have been in a similar or related business for no less than three years prior to the application;
- (iii) The Borrower must obtain a legal opinion from qualified bond counsel that the Borrower or its Guarantor meets the definition of a small issuer and the project is qualified for tax-exempt financing under Section 144(a) of the Internal Revenue Code, if applicable;
- (iv) The Borrower or its related Guarantor must provide the three most recent years of annual financial statements and a business plan including a minimum of three years of pro-forma projections;
- (v) The Authority will maintain a first lien on the assets to be funded by the project;
- (vi) The Borrower must fund a minimum of 15% of the project from other funds available; and
- (vii) The term of the Loan will not exceed the useful life of the project being financed.

The Act requires the Commission, for the issuance of bonds in an amount over \$200,000, to state in its approving resolution, if it appears that the financing can be obtained through private bond markets without the involvement of the Authority, the reasons for the involvement of the Authority. Authority policy requires the Industrial Commission to conduct a review and comparison of the financing requested. The Authority asks the Borrower to provide information on other financing options, if any, the Borrower has already examined. The financing requested through the Authority financing program is compared to the same or a similar financing completed through other sources, including other available government financing programs.

The Commission approves of Authority involvement through its Industrial Development Program when three findings are made resulting from the comparisons required through the application of the policy. The findings are:

- (a) The net borrowing costs to the Borrower are expected to be lower under the Industrial Development Program than they would be under any other borrowing method available to the Borrower;
- (b) Issuance costs and reserves required to be funded by the Borrower are lower than would be the case under other methods so that the aggregate amount required to be borrowed by the Borrower is less than other competitive means of borrowing; and,
- (c) The Borrower voluntarily requested financing through the Authority's Industrial Development Program.

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## THE INDUSTRIAL COMMISSION OF NORTH DAKOTA

The State Legislature created the Industrial Commission in 1919 to conduct and manage, on behalf of the State, certain utilities, industries, enterprises and business projects established by State law. North Dakota law provides that the acts of the Industrial Commission constitute acts of the State functioning in its sovereign capacity. The members of the Industrial Commission are the Governor, the Attorney General and the Agriculture Commissioner and a quorum for the transaction of Industrial Commission business consists of the Governor and one additional member. The present members of the Industrial Commission, all of whom have been elected to their respective offices for terms expiring December 14, 2012 (with respect to the Governor) and December 31, 2010 (with respect to the Attorney General and Agriculture Commissioner) are:

John Hoeven, Governor  
Wayne Stenehjem, Attorney General  
Roger Johnson, Agriculture Commissioner

The utilities, industries, enterprises and business projects conducted and managed by the Industrial Commission include (in addition to the Authority): the Bank of North Dakota, the State Mill and Elevator, the North Dakota Geological Survey, and the North Dakota Housing Finance Agency. Additionally, the Industrial Commission exercises regulatory authority through its Oil and Gas Division. The Industrial Commission is also responsible for administering the North Dakota Building Authority and the State's secondary market for student loans through its Student Loan Trust.

The Industrial Commission may employ staff or consultants and fix the salaries or conditions of such employment. Each State enterprise under the control of the Industrial Commission employs and is operated by a separate staff under the supervision of the Industrial Commission. The Attorney General of the State serves as the attorney for the Industrial Commission.

The Industrial Commission's offices are located at, and its mailing address is: Industrial Commission of North Dakota, State Capitol, Fourteenth Floor, 600 East Boulevard Avenue, Bismarck, North Dakota 58505. Its telephone number is 701/328-3722.

The Authority Act provides that bonds of the Authority be authorized by resolution of the Industrial Commission. The Authority Act further authorizes the Industrial Commission to pledge assets of the Bank of North Dakota as security for the Authority's bonds. No such assets have been pledged to the Bonds.

## TAX STATUS

The interest to be paid on the Series 2009A Bonds is excludable from the "gross income" of the owners thereof for purposes of the United States income taxation and of the State of North Dakota income taxation (other than privilege tax measured by net income imposed on certain financial institutions by North Dakota Century Code, Chapter 57-35.3).

**Pursuant to the Act, the interest on the Series 2009A Bonds is exempt from all income taxation by the State of North Dakota.**

The form of legal opinion to be rendered with respect to the Series 2009A Bonds offered hereby is presented in Appendix B.

## **ORIGINAL ISSUE PREMIUM**

Certain of the Series 2009A Bonds (Premium Bonds) may be offered and sold to the public at a price in excess of their stated redemption price (the principal amount) at maturity. That excess constitutes bond premium. For federal income tax purposes, bond premium is amortized over the period to maturity of a Premium Bond, based on the yield to maturity of such Premium Bond (or, in the case of a Premium Bond callable prior to its stated maturity, the amortization period and yield may be determined on the basis of the earliest call date that results in the lowest yield on that Premium Bond), compounded semiannually. No portion of such bond premium is deductible by the owner of a Premium Bond. For purposes of determining the owner's gain or loss on the sale, redemption (including redemption at maturity) or other disposition of a Premium Bond, the owner's tax basis in the Premium Bond is reduced by the amount of bond premium that accrues during the period of ownership. As a result, an owner may realize taxable gain for federal income tax purposes upon the sale or other disposition of a Premium Bond for an amount equal to or less than the amount paid by that owner for that Series 2009A Bond. A purchaser of a Premium Bond at its issue price in the initial offering who holds that Series 2009A Bond to maturity will realize no gain or loss upon the retirement of that Series 2009A Bond.

## **FINANCIAL ADVISOR**

Public Financial Management, Inc., Minneapolis, Minnesota, has acted as Financial Advisor to the Authority in connection with the issuance of the Series 2009A Bonds. Requests for information concerning the Authority should be addressed to Public Financial Management, Inc., 45 South Seventh Street, Suite 2800, Minneapolis, Minnesota 55402 (612/338-3535).

## **RATING**

Standard & Poor's Ratings Group has assigned the Series 2009A Bonds a rating of "A+", primarily in reliance upon its evaluation of the requirement that the Industrial Commission request an appropriation from the Legislative Assembly to make up any deficiencies in the Reserve Fund. The rating is likely to be affected by any changes in the rating assigned to general obligations of the State of North Dakota. Therefore, changes in the financial condition of the State of North Dakota may affect the rating on the Series 2009A Bonds. S&P has not been requested to evaluate the ability of any Borrower to pay debt service on any Municipal Securities. The rating reflects only the view of such rating agency, and an explanation of the significance of such rating may be obtained only from S&P. Generally, rating agencies base their ratings on the information and materials furnished to them and on investigations, studies and assumptions by the rating agencies. A securities rating is not a recommendation to buy, sell or hold securities. The rating of the Series 2009A Bonds represent judgments as to the likelihood of timely payment of the Series 2009A Bonds according to their respective terms, but does not address the likelihood of redemption or acceleration prior to maturity. There is no assurance that such rating will remain in effect for any given period of time or that it may not be lowered, suspended or withdrawn entirely if, in the judgment of the rating agency, circumstances (including particularly the financial condition of the State of North Dakota) so warrant. Any such downward change in or suspension or withdrawal of either such rating may have an adverse effect on the market price and marketability of the Series 2009A Bonds.

## **ABSENCE OF LITIGATION**

There is no controversy or litigation of any nature now pending or threatened restraining or enjoining the issuance, sale, execution or delivery of the Series 2009A Bonds, or prohibiting the Authority from making a loan to the 2009A Borrower with the proceeds of the Series 2009A Bonds, or in any way contesting or affecting the validity of any Series 2009A Bonds or any proceedings of the Authority or the Industrial Commission taken with respect to the issuance or sale thereof, or the pledge or application of any moneys or security provided for the payment of the Series 2009A Bonds or the existence or necessary powers of the Authority or the Industrial Commission.

## **LEGALITY**

The Series 2009A Bonds offered hereby are subject to the approving legal opinion of Faegre & Benson LLP, Minneapolis, Minnesota, as Bond Counsel. Such opinion, as to certain tax matters is given in reliance on the opinion of the special tax counsel to the 2009A Borrower. The opinion of Bond Counsel will be printed on the Series 2009A Bonds of the Series in substantially the forms attached to this Official Statement as Appendix B. Bond Counsel will also pass upon certain additional matters for the Authority by separate opinion.

## **MISCELLANEOUS**

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the Authority, the Industrial Commission and the purchasers or holders of any of the Series 2009A Bonds.

The Appendices attached hereto are a part of this Official Statement.

The distribution of this Official Statement and its execution has been duly authorized by the North Dakota Public Finance Authority.

**NORTH DAKOTA PUBLIC FINANCE AUTHORITY**

By: /s/ Tim C. Porter  
Executive Director

**APPENDIX A**

**Selected Financial Information  
About the 2009A Borrower**

## GIANT SNACKS, INC.

Giant Snacks, Inc. contracts to purchase sunflower crops from farmers and then roasts, packages, and sells the premium sunflower seeds under the Giant brand. Giant sells the finished product through distributors and wholesalers that market the product through retail outlets. Giant markets its products as the highest quality alternative in the sunflower seed market, and therefore has been able to sell its products at a premium price. Giant Snacks, Inc. is headquartered in Wahpeton, North Dakota. Giant Snacks, Inc. will be using the proceeds of the loan to construct and equip a facility to house the roasting, packaging, and warehousing functions for Giant Snacks, Inc.

### *Statements of Income for the Years ended December 31:*

	<u>2008</u>	<u>2007</u>
Sales - Retail	\$5,949,120	\$4,095,721
Cost of Goods Sold	3,465,192	2,250,825
Gross Profit	<u>\$2,483,928</u>	<u>\$1,844,895</u>
Operating Expenses		
Marketing and Selling	\$1,720,672	\$1,364,204
General and Administrative	<u>194,112</u>	<u>103,604</u>
Total Operating Expenses	<u>1,914,784</u>	<u>1,467,808</u>
Income from Operations	569,144	377,087
Other Income (Expense)	<u>(22,870)</u>	<u>(684)</u>
Net Income	<u>\$ 546,274</u>	<u>\$ 376,403</u>

### *Outstanding Debt*

As of December 31, 2008, the 2009A Borrower had \$620,080 of outstanding lease obligations.

**APPENDIX B**

**Form of Legal Opinion**

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\$1,500,000  
Industrial Development Program Bonds, Series 2009A  
North Dakota Public Finance Authority

We have acted as bond counsel in connection with the issuance by the North Dakota Public Finance Authority of its Industrial Development Program Bonds, Series 2009A (the “Bonds”) in the aggregate principal amount of \$1,500,000, dated \_\_\_\_\_, 2009, consisting of fully registered Bonds in the denomination of \$5,000 each or any integral multiple thereof, payable at the main office of The Bank of North Dakota, in Bismarck, North Dakota. The Bonds are being issued pursuant to a General Bond Resolution adopted by the Industrial Commission of North Dakota on August 29, 2006 (the “General Bond Resolution”) and a Series Resolution adopted by the Industrial Commission of North Dakota on February 27, 2009 (the “Series Resolution”), to finance a sunflower processing facility (the “Project”) to be owned by Giant Snacks, LLC (the “Borrower”).

We have examined such certified proceedings, documents and certifications of public officials as we deem necessary to render this opinion, including the form of the Bonds and a Loan Agreement dated as of March 1, 2009 (the “Loan Agreement”), between the Authority and the Borrower. As to questions of fact material to our opinion we have relied upon certified proceedings, documents and certifications furnished to us without undertaking to verify such facts by independent investigation.

With respect to the opinions expressed in paragraph 6 below, we have relied without independent investigation on the opinion of Arntson & Stewart, P.C. to the effect that the Bonds are a “qualified small issue” within the meaning of Section 144(a) of the Internal Revenue Code of 1986 (the “Code”).

We have not been engaged or undertaken as bond counsel to verify the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Bonds (except to the extent, if any, stated in the Official Statement), and we express no opinion relating thereto (excepting only matters set forth as our opinion in the Official Statement).

Based on our examination, we are of the opinion, as of the date hereof, as follows:

1. The Bonds are valid and binding special obligations of the Authority issued under the authority of Chapter 6-09.4, North Dakota Century Code.

2. The Bonds are payable primarily from loan repayments to be made by the Borrower under the Loan Agreement and any moneys on deposit in the Reserve Fund established under the General Bond Resolution for the Bonds and other obligations hereafter issued under the General Bond Resolution.

3. The Authority is authorized and under the General Bond Resolution has covenanted and is obligated to certify to the Legislative Assembly of the State the amount, if any, required to restore the Reserve Fund to the amount of the required debt service reserve established under the General Bond Resolution.

4. Chapter 6-09.4, North Dakota Century Code, does not bind or obligate the Legislative Assembly to appropriate and pay to the Authority in any future year the amount so certified as necessary to restore the Reserve Fund to the required debt service reserve, the language of such Chapter being permissive only, but there is no applicable constitutional provision which would prohibit a Legislative Assembly of the State from making such appropriations for such purposes if it elects to do so.

5. The Bonds do not create an indebtedness on part of the State of North Dakota in violation of any constitutional or statutory provision.

6. Assuming compliance with the covenants in the Loan Agreement, General Bond Resolution and Series Resolution, the interest on the Bonds is exempt from inclusion in gross income for purposes of federal income taxation under present laws and rulings, except for any Bond during the period it is owned by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code. Interest on the Bonds is not an item of tax preference required to be included in the computation of "alternative minimum taxable income" for purposes of the federal alternative minimum tax under Section 55 of the Code. Interest on the Bonds may be included in the income of the recipient for certain purposes under the Code, including, among others, foreign corporations subject to the branch profits tax, S Corporations and recipients of social security benefits. Also, the receipt of interest on the Bonds may affect certain deductions such as deductions for "losses incurred" by property and casualty insurance companies. The Bonds are not designated as "qualified tax-exempt obligations" under Section 265(b) of the Code. The Bonds are exempt from income taxation by the State of North Dakota.

It is to be understood that the rights of the holders of the Bonds and the enforceability thereof may be subject to bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and that their enforcement may be subject to the exercise of judicial discretion in accordance with general principles of law.

Dated at Minneapolis, Minnesota, \_\_\_\_\_, 2009.

**APPENDIX C**

**Form of Continuing Disclosure Certificate**

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## CONTINUING DISCLOSURE UNDERTAKING

This Continuing Disclosure Undertaking (the “Undertaking”), is executed and delivered by GIANT SNACKS, INC., a North Dakota corporation (the “Company”), and NORTH DAKOTA PUBLIC FINANCE AUTHORITY (the “Issuer”).

### RECITALS

A. Pursuant to a Series Resolution adopted February 27, 2009 (the “Series Resolution”), the Issuer is issuing \$1,500,000 in aggregate principal amount of its Industrial Development Program Bonds, Series 2009A (the “Bonds”). The Bonds are being offered for sale pursuant to an Official Statement, dated March \_\_\_\_\_, 2009 (together with any preliminary official statement, amendments thereof or supplements thereto, the “Final Official Statement”).

B. Proceeds of the Bonds are being loaned to the Company pursuant to a Loan Agreement between the Issuer and the Company (the “Loan Agreement”), with all principal of and interest on the Bonds intended to be repaid from Loan Repayments as defined in the Loan Agreement.

C. This Undertaking is being entered into in response to promulgation by the Securities and Exchange Commission (the “Commission”) of certain amendments to Rule 15c2-12 under the Securities Exchange Act of 1934, as amended, restricting participating underwriters from purchasing municipal securities unless an agreement has been entered into to provide certain continuing disclosure concerning the municipal securities after their issuance.

NOW THEREFORE, in consideration of the purchase of the Bonds by the Purchaser, and other good and valuable consideration, the parties hereto agree as follows:

SECTION 1. Definitions. In addition to the definitions set forth in the Series Resolution, which apply to any capitalized term used in this Agreement unless otherwise defined in this Section or the foregoing Recitals, the following capitalized terms shall have the following meanings:

“Annual Report” means, with respect to the Reporting Party, a document or set of documents which contains (or includes by reference as provided in Section 2 hereof) financial and operating data with respect to the Reporting Party described in Exhibit A hereto.

“Annual Report Date” means, with respect to each Annual Report, the date so designated in Exhibit A hereto.

“Disclosure USA” means the central post office website [www.disclosureusa.org](http://www.disclosureusa.org) operated by the Municipal Advisory Council of Texas and

authorized for use by issuers of municipal securities by the U.S. Securities and Exchange Commission on September 7, 2004.

“EMMA” means the Electronic Municipal Market Access System created by the MSRB.

“Listed Events” shall mean any of the events listed in Section 3(a) of this Undertaking.

“MSRB” shall mean the Municipal Securities Rulemaking Board.

“National Repository” shall mean, as of the date of determination, any Nationally Recognized Municipal Securities Information Repository for purposes of the Rule.

“Participating Underwriters” shall mean \_\_\_\_\_.

“Reporting Party” shall mean the Issuer and the Company, as applicable, together with any successors or assigns as provided in Section 4 hereof.

“Repository” shall mean each National Repository and each State Repository, if any.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Commission under the Securities Exchange Act of 1934, as in effect on the date hereof.

“State Repository” shall mean any public or private repository or entity designated by the State of North Dakota as a state repository for the purpose of the Rule. As of the date of this Agreement, there is no State Repository.

## SECTION 2. Provision of Annual Report.

(a) On or before the Annual Report Date, the Company shall deliver its Annual Report to the Issuer and the Issuer shall deliver to the MSRB in an electronic format as prescribed by the MSRB (currently under its EMMA system) its Annual Report along with any Annual Report received by it from the Company.

(b) To the extent included in an Annual Report, financial statements shall be audited and prepared in accordance with generally accepted accounting principles, as in effect from time to time.

(c) Each Annual Report may incorporate by reference any information on file with each Repository or the Commission, instead of setting forth such information in the Annual Report.

### SECTION 3. Reporting of Listed Events.

(a) Each Reporting Party shall give notice of any of the following occurrences (each, a “Listed Event”) to the other Reporting Party, to the MSRB in an electronic format as prescribed by the MSRB, and, if prior to July 1, 2009, to either Disclosure USA (unless the Commission has withdrawn the interpretive advice in its letter dated September 7, 2004) or to each Repository in each case as provided in paragraph (b):

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties (this is not applicable to the Bonds);
- (v) Substitution of credit or liquidity providers, or their failure to perform (this is not applicable to the Bonds);
- (vi) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (vii) Modifications to rights of security holders;
- (viii) The giving of notice to redeem any Bonds other than for a sinking fund redemption;
- (ix) Defeasances;
- (x) Release, substitution, or sale of property securing repayment of the securities; and
- (xi) Rating changes.

(b) Promptly after the occurrence thereof.

SECTION 4. Termination of Reporting Obligation. The Reporting Parties obligations under this Undertaking shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. The obligations hereunder of the Company shall also terminate upon the release of the obligation of such party to pay any amounts due or to become due under the Loan Agreement; provided that if such release occurs because of any transfer of assets or the merger of the Company and the transferee or resultant organization assumes such obligations of the Company, the Company shall first require such transferee or resultant organization to assume the obligations of the Company hereunder.

SECTION 5. Amendment. Notwithstanding any other provision of this Undertaking, the Issuer may amend any provision of this Undertaking, subject to the following conditions:

(a) the amendment is in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of the Company or type of business conducted;

(b) this Undertaking, after giving effect to the amendments, would have complied with the requirements of the Rule as of the date of the Official Statement, after taking into account any subsequent amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the Issuer either determines, in its discretion, that the amendment does not materially impair the interest of the Holders of the Bonds or obtains the consent of Holders of at least 51% in aggregate principal amount of the Bonds then outstanding.

In addition, any Annual Report containing amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information.

SECTION 6. Additional Information. Nothing in this Agreement shall be deemed to prevent either Reporting Party from disseminating any other information, using the means of dissemination set forth in this Undertaking or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Undertaking. If the Reporting Party chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Reporting Party shall have no obligation under this Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 7. Default. In the event of a failure of a Reporting Party to provide a timely Annual Report or to report the occurrence of a Listed Event, the Purchaser or any Holder of Bonds may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Reporting Party to provide the reports. In the event of a failure of the Reporting Party to comply with provisions (other than Sections 2 and 3 of this Undertaking) or a challenge to the adequacy of any report under Sections 2 and 3, the Purchaser may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Reporting Party to comply with its obligations under this Undertaking. A default under this Undertaking shall not be deemed an Event of Default under the Bonds, the Series Resolution or the Loan Agreement, and the sole remedy under this Undertaking in the event of any failure of a Reporting Party to comply with this Undertaking shall be an action to compel performance. Direct, indirect, consequential and punitive damages shall not be

recoverable by any person for any default hereunder and are hereby waived to the extent permitted by law.

SECTION 8. Beneficiaries. This Undertaking shall inure solely to the benefit of the parties hereto, the Participating Underwriters and the Holders from time to time of the Bonds, and shall create no rights in any other person or entity. As used in this Undertaking, the term “Holders” shall mean beneficial owners of Bonds so long as such Bonds are in book-entry form.

SECTION 9. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 10. Notices. All notice, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been duly given or made when delivered personally or by mail to the party to which such notice, request, demand or other communication is required or permitted to be given or made under this Undertaking and addressed as set forth below or telecopied to the telecopier number of the recipient, with confirmation of transmission, indicated below:

SECTION 11. Reserved Rights. The Reporting Parties reserve the right to discontinue providing any information required under this Undertaking or the Rule, if a final determination should be made by a court of competent jurisdiction that the Rule is invalid or otherwise unlawful, and to modify the undertaking under this Undertaking, if a court of competent jurisdiction or the Reporting Parties determine that such modification is required by the Rule.

SECTION 12. Dissemination Agent. The Reporting Parties each may, from time to time, appoint or engage an agent to assist it in carrying out its obligations under this Undertaking, and may discharge any such agent, with or without appointing a successor agent, but the appointment of any agent shall in no way relieve the principal of its obligations hereunder.

IN WITNESS WHEREOF, the parties have caused this Undertaking to be executed as of the \_\_\_\_\_ day of \_\_\_\_\_ 2009.

GIANT SNACKS, INC.

By \_\_\_\_\_  
Its President

NORTH DAKOTA PUBLIC FINANCE  
AUTHORITY

By \_\_\_\_\_  
Its Executive Director

## **EXHIBIT A**

### **ANNUAL REPORT INFORMATION**

The Annual Report Date will be the first day of \_\_\_\_\_ following each fiscal year end, commencing with the fiscal year ending \_\_\_\_\_, \_\_\_\_.

1. Audited financial statements for the most recent complete fiscal year.
2. The financial and operating data contained in the Final Official Statement:

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