

N1400001171

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

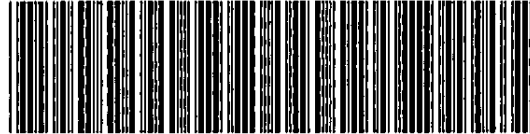
(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_

Special Instructions to Filing Officer:

Office Use Only



100267132541

12/05/14--01016--011 \*\*36.25

FILED  
14 DEC -5 PM 12:34  
RECEIVED  
FEB 11 2015  
FBI - ALBANY

12/08/14

**ARTICLES OF INCORPORATION**

**OF**

**CaPFA CAPITAL CORP. 2015A**

(A Corporation Not For Profit)

FILED  
14 DEC -5 PM 12:34  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**PREAMBLE**

Pursuant to the Florida Not For Profit Corporation Act, the undersigned incorporator hereby forms a corporation not for profit and files with the Secretary of State of the State of Florida these Articles of Incorporation of CaPFA CAPITAL CORP. 2015A, a corporation not for profit formed under the laws of the State of Florida.

**ARTICLE I**

**NAME**

The name of this Corporation is CaPFA CAPITAL CORP. 2015A

**ARTICLE II**

**PRINCIPAL OFFICE**

The principal office of this corporation shall be located at 99 Riverside Drive, Moore Haven, Florida 33471.

**ARTICLE III**

**PURPOSE**

**Section 1 - Purpose**

The purpose of this Corporation is to serve as an instrumentality of the City of Moore Haven, Florida, under and pursuant to Ordinance No. 214 enacted by the City on September 23, 1993, as amended by Ordinance No. 245 enacted by the City on May 26, 1998, as further amended from time to time; the Corporation is a special purpose corporation acting as an Instrumentality of the City under and pursuant to such Ordinance for purposes limited to participating in the transactions relating to the execution and delivery of the Certificates of Participation (CUC Power Project) Evidencing and Representing the Proportionate Interests of the Registered Owners thereof in Base Rental payments to be made by the Commonwealth Utilities Corporation of the Northern Mariana Islands, and Commonwealth of the Northern Mariana Islands, including Series 2015A and any additional Certificates (the "Certificates"), and more specifically for the purposes of (i) leasing from the Commonwealth of the Northern Mariana Islands (the Government) certain real property pursuant to a ground lease, (ii) subleasing to the Government such real property together with certain buildings constructed

thereon pursuant to a lease agreement, (iii) assigning to the trustee for the Certificates certain of this Corporation's rights under the ground lease and the lease agreement, including the rights to receive base rentals and additional rentals, and (iv) engaging in any ancillary or related activities in furtherance of the foregoing. This Corporation shall have the power to adopt and establish By-Laws, and make all rules and regulations deemed necessary for the management of its affairs, in accordance with law and not inconsistent with these Articles of Incorporation.

## **Section 2 – Separate From City**

A. This Corporation shall be separate from the City and shall maintain its financial statements, accounting records and other corporate documents separate from those of the City or any other entity and this Corporation shall be identified as a separate entity in such documents.

B. This Corporation shall prepare audited annual financial statements which may be included as a component unit of the City's financial statements, as long as such financial statements expressly state that this Corporation is an entity that is legally separate from the City and whose assets are not available to creditors of the City, and this Corporation's financial statements shall comply with generally accepted accounting principles for governments (except as noted in such financial statements).

C. This Corporation shall maintain its own separate bank accounts and correct, complete and separate books of account.

D. This Corporation shall at all times hold itself out to the public (including any City creditors) under this Corporation's own name and as a separate and distinct corporate entity. This Corporation shall correct any known misunderstanding regarding its status as a separate and distinct entity. This Corporation's name shall not be used by the City in the conduct of its business, nor shall this Corporation use the name of the City in the conduct of its business. This Corporation shall have a separate telephone number, tax identification number, stationary and other business forms.

E. All customary formalities regarding the corporate existence of this Corporation, including holding meetings of or obtaining the consent of its board of directors, as appropriate, and maintaining separate current and accurate minute books, shall be observed.

F. This Corporation shall retain as its accountants a nationally or regionally recognized firm of independent certified public accountant, provided that such accountants may also serve as accountants of the City.

G. Investments shall be made directly by this Corporation or on its behalf by brokers engaged and paid by this Corporation or its agents.

H. All business transactions entered into by this Corporation with the City shall be (1) on such terms and conditions (including terms relating to amounts paid thereunder) as would be generally available if such business transactions were with an entity that was not the City in comparable transactions, (2) pursuant to enforceable written agreements and (3) approved by a unanimous vote of the board of directors pursuant to Section 3 of this Article. Any such business transactions entered into by this Corporation with the City shall allocate and charge fairly and reasonably for any common employee or overhead shared with the City.

I. Except as provided in Section 1 of this Article with respect to the Certificates, this corporation shall not guarantee or assume or hold itself out or permit itself to be held out as having guaranteed or assumed any liabilities or obligations of the City or any other person or entity.

J. Other than organizational expenses, this corporation shall pay its own liabilities, indebtedness and obligations of any kind, including all administrative expenses, from its own separate assets. This corporation shall maintain adequate assets in light of its contemplated business operations.

K. Assets of this Corporation shall be separately identified, maintained and segregated. This Corporation's assets shall at all times be held by or on behalf of this Corporation and, if held on behalf of this Corporation by another entity including the City, shall at all times be kept identifiable (in accordance with customary usages) as assets owned by this Corporation.

L. Except as provided in Section 1 of this Article with respect to the Certificates, this Corporation shall not (1) incur any indebtedness, or assume or guarantee any indebtedness of any other entity, other than any indebtedness under trade accounts payable or accrued liabilities arising in the ordinary course of business; (2) pledge its assets for the benefit of any other person or entity or make any loans or advances to any person or entity; or (3) acquire obligations or securities of the City. This Corporation shall not enter into to any agreement or transaction permitted hereunder unless (x) it does so without the intent to defraud creditors and (y) such agreement or transactions and the performance of its obligations thereunder or in connection therewith will not render it insolvent.

M. Except as provided in Section 1 of this Article with respect to the Certificates or Section 3 of this Article, this Corporation shall not consolidate with or merge into any other entity or sell, convey or transfer all or substantially all of its properties and assets to any entity or acquire all or substantially all of the assets or capital stock or other ownership interest of any other entity.

N. This Corporation shall maintain complete records of all transactions (including all transactions with the City).

O. This Corporation shall comply with all requirements of applicable law regarding its operations.

P. This Corporation shall not engage in any business or activity other than those necessary to achieve the purposes set forth in Section 1 of this Article.

### **Section 3 – Unanimous Board Approval**

A. Notwithstanding any other provisions of these Articles of Incorporation and any provision of law that otherwise so empowers this Corporation, this Corporation shall not, without the affirmative vote of 100% of the board of directors (which shall include the vote of at least one director who is an Independent Director (as defined in Section 4 of this Article)), do any of the following:

(a) except for any action related to an involuntary dissolution under the Florida Not For Profit Corporation Act, dissolve or liquidate in whole or in part, unless this Corporation shall have had no obligation for borrowed money and no obligations related to the Certificates outstanding for a period of at least one calendar year plus one day;

(b) institute proceedings to be adjudicated bankrupt or insolvent; or consent to the institution of bankruptcy or insolvency proceedings against it; or file a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy; or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) or this Corporation or a substantial part of its property; or make any assignment for the benefit of creditors; or admit in writing its inability to pay its debts generally as they become due; or take any corporate action in furtherance of any such action;

(c) merge or consolidate with any other entity or, except in accordance with Section 1 of this Article, sell all or substantially all of its assets or acquire all or substantially all of the assets or capital stock or other ownership interests of any other entity;

(d) authorize any amendment to these Articles of Incorporation or the Bylaws of this Corporation; or

(E) authorize any business transactions entered into by this Corporation with the City, which transactions shall comply in all respects with Section 2(H) of this Article.

B. When voting on whether this Corporation will take in action described in this Section 3 of this Article, each director shall owe a fiduciary duty to this Corporation and also to the creditors of this Corporation, as authorized or required by applicable law.

#### **Section 4 – Independent Director**

A. At all times at least one of the directors serving on the board of directors of this Corporation and any Executive Committee of the board of directors shall be an Independent Director (as defined below) (except in the event of the resignation, death or removal of any such person, in which event the vacancy shall be filled with another Independent Director).

B. For the purposes hereof, the term “Independent Director” means a natural person who (A) certifies to this Corporation that he or she during the continuation of serving as Independent Director will not become, and that any member of his or her family will not become; (1) an employee, director, member of the City Council of the City, consultant, agent, attorney, accountant or officer of this Corporation or the City (other than his or her service as an Independent Director of this Corporation or any other special purpose entity that is substantially similar to this Corporation and that shall have been created for the limited purpose of facilitating discrete financing transactions); or (2) a creditor (other than being a creditor of the City by virtue of being a taxpayer or resident of the City) or customer of this Corporation or the City, and (B) agrees to immediately notify this Corporation of any changes to the facts underlying such certification. In the event of death, incapacity, resignation or removal of any Independent Director, the board of directors shall promptly elect a replacement Independent Director.

C. The board of directors shall not vote on any matter requiring the vote of an Independent Director under these Articles of Incorporation unless at least one Independent Director is then serving on the board of directors and participating in such vote.

D. To the extent permitted by law, each Independent Director shall consider the interests of this Corporation's creditors when voting on any matter described in Section 3(A) of this Article.

#### **ARTICLE IV**

##### **INITIAL REGISTERED OFFICE AND REGISTERED AGENT**

The initial registered office of this Corporation shall be located at 1533 Hendry Street, Suite 101, Fort Myers, Florida 33901 and the initial registered agent of this Corporation at that address is Steven A. Ramunni.

#### **ARTICLE V**

##### **INITIAL BOARD OF DIRECTORS**

The Board of Directors of this Corporation shall be composed of the governing body of the City of Moore Haven, Florida acting ex-officio as the Board of Directors, initially comprised of five (5) Directors, together with one (1) Independent Director, for a Board of six (6) Directors. The method of election of the Board of Directors shall be regulated, and the Board of Directors may be increased or decreased from time to time, as provided in the By-Laws, provided that there shall always be one (1) Independent Director in accordance with these Articles of Incorporation, and provided, further, that there shall never be less than the minimum number of Directors as required by law. The name and street address of each initial Director of this Corporation who shall serve until a successor is duly elected and qualified is:

<b>Name:</b>	<b>Address:</b>	<b>Title:</b>
Patricia Lucas	843 Yacht Club Way Moore Haven, Florida 33471	Director
Dave McGhee	300 Railroad Avenue Moore Haven, Florida 33471	Director
Harry H. Ogletree	242 Avenue K Moore Haven, Florida 33471	Director
Bret Whidden	657 Avenue O Moore Haven, Florida 33471	Director
Marcus Decker	529 Avenue O Moore Haven, Florida 33471	Director
John R. Ahern	343 Avenue L Moore Haven, Florida 33471	Independent Director

FILED  
14 DEC -5 PM 12:34  
SECRETARY OF STATE  
FLORIDA

## **ARTICLE VI**

### **QUALIFICATION OF MEMBERS**

The sole members of this Corporation shall be the governing body of the City of Moore Haven, Florida, and an Independent Director as defined in Article III above, and shall be regulated by the By-Laws.

## **ARTICLE VII**

### **TERMS OF EXISTENCE**

This Corporation shall exist perpetually.

## **ARTICLE VIII**

### **MANAGEMENT**

The affairs of this Corporation shall be managed by the Board of Directors in accordance with the By-Laws, subject to the requirements of these Articles of Incorporation. The officers of this Corporation shall be a president, one or more vice president, a secretary, a treasurer, and such other officers as may be provided in the By-Laws. The officers shall be elected or appointed at least annually by the Board of Directors in accordance with the By-Laws.

## **ARTICLE IX**

### **BY-LAWS**

The Board of Directors may provide such By-Laws for the conduct of its business and carrying out of its purposes as may be necessary from time to time, subject to the requirements of these Articles of Incorporation. The By-Laws may be amended, restated, altered or rescinded by a unanimous vote of the Board of Directors present at any regular meeting or any special meeting called for that purpose at which a quorum is present, subject to the requirements of these Articles of Incorporation (including Section 3(A)(d) of Article III).

## **ARTICLE X**

### **AMENDMENTS**

These Articles of Incorporation may be amended at any meeting of the Board of Directors called for the purpose of considering amendments to the Articles of Incorporation, and such amendments shall become effective upon a unanimous vote of the Directors present at any regular or special meeting at which a quorum is present, subject to the requirements of these Articles of Incorporation (including Section 3(A)(d) of Article III).

FILED  
14 DEC -5 PM 12:34  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

## ARTICLE XI

### NOT FOR PROFIT STATUS

(A) This Corporation is organized exclusively for public municipal purposes as established in the Ordinance described in the purpose clause hereof, including the making of distributions for any public municipal purpose to the City of Moore Haven, Florida, its Capital Projects Finance Authority or organizations that qualify as a public agency under such Ordinance and which are exempt from federal income tax under section 115 of the Internal Revenue Code or corresponding section of any future federal tax code,

(B) No part of the net earnings of this Corporation shall inure to the benefit of, or be distributed to, its directors, officers, or other private persons, except that this Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make distributions for public municipal purposes as described herein.

(C) Upon the dissolution of this Corporation, all assets of this Corporation remaining after payment of all costs and expenses of such dissolution shall be distributed to the City of Moore Haven, Florida, for any public municipal purpose.

## ARTICLE XII

### INCORPORATOR

The name and address of the incorporator signing these Articles of Incorporation is:

**Name:**

**Address:**

Steven A. Ramunni

1533 Hendry Street, Suite 101  
Fort Myers, Florida 33901

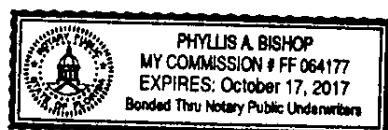
IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation this 3<sup>rd</sup> day of December, 2014.

Steven A. Ramunni

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of DECEMBER, 2014 by Steven A. Ramunni who ☒ is personally known or ☐ has produced a driver's license as identification.

[Notary Seal]



Phyllis A. Bishop



Notary Public  
**CERTIFICATE OF REGISTERED AGENT**

The undersigned, Steven A. Ramunni, having been named Registered Agent and designated to accept service of process for CaPFA CAPITAL CORP. 2015A, at the registered office for said Corporation at 1533 Hendry Street, Suite 101, Fort Myers, Florida 33901, is familiar with and hereby accepts the appointment as registered agent for said Corporation, and hereby accepts the obligations of that position, all pursuant to Section 617.0501, Florida Statutes.

Date

12/3/14

Steven A. Ramunni

FILED

14 DEC -5 PM 12:34

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA