

THIS TOLL ROAD CONCESSION AGREEMENT (this "Agreement") is made and entered into as of this 27th day of June, 2011 (the "Effective Date") by and between:

(I) Puerto Rico Highways and Transportation Authority, a public corporation organized under the laws of the Commonwealth of Puerto Rico (the "Authority"); and

(II) Autopistas Metropolitanas de Puerto Rico, LLC, a limited liability company organized and existing under the laws of the Commonwealth of Puerto Rico (the "Concessionaire").

RECITALS

WHEREAS, pursuant to, and under the terms and conditions contained in, Act No. 29 of the Legislative Assembly of Puerto Rico enacted on June 8, 2009 (the "Act"), the Authority is authorized to execute and deliver this Agreement, perform its obligations hereunder and enter into the Transaction (as defined herein); and

WHEREAS, the Concessionaire desires to obtain a concession of the Toll Roads from the Authority and to provide the Toll Road Services in connection therewith, all as hereinafter provided; and

WHEREAS, the Authority desires to grant a concession of the Toll Roads to the Concessionaire to permit the Concessionaire to provide the Toll Road Services in connection therewith, all as hereinafter provided; and

WHEREAS, each of the Authority and the Concessionaire has reviewed and approved the terms and conditions of this Agreement and the transactions contemplated hereby and the GDB (as defined herein) has reviewed and approved the terms and conditions of the GDB Payment Guaranty (as defined herein) and the transactions contemplated thereby.

NOW THEREFORE, for and in consideration of the premises, the mutual covenants, representations, warranties and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties (as defined herein) covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

"1968 Resolution" means Resolution No 68-18 of the Authority, adopted by the Authority on June 13, 1968, as amended.

"1998 Resolution" means Resolution No. 98-06 of the Authority, adopted by the Authority on February 26, 1998, as amended.

“AA-Compensation” has the meaning ascribed thereto in Section 14.1(b).

“AA-Dispute Notice” has the meaning ascribed thereto in Section 14.1(c).

“AA-Notice” has the meaning ascribed thereto in Section 14.1(c).

“AA-Preliminary Notice” has the meaning ascribed thereto in Section 14.1(c).

“AA-Termination Damages” has the meaning ascribed thereto in Section 14.2(a).

“AAA” has the meaning ascribed thereto in Section 19.3(c).

“AAA Commercial Rules” has the meaning ascribed thereto in Section 19.4(a).

“AAA Technical Arbitration Rules” has the meaning ascribed thereto in Section 19.4(b).

“Accelerated Safety Upgrades” has the meaning ascribed thereto in Section 4.2(a).

“Act” has the meaning ascribed thereto in the Recitals of this Agreement.

“Act No. 18” means Act No. 18 of the Legislative Assembly of Puerto Rico, enacted on October 30, 1975, 2 P.R. Laws Ann. § 97 *et seq.*, as amended.

“Act No. 173” has the meaning ascribed thereto in Section 11.9.

“Act No. 237” means Act No. 237 of the Legislative Assembly of Puerto Rico, enacted on August 31, 2004 (“Act No. 237”), as amended from time to time.

“Act No. 458” means Act No. 458 of the Legislative Assembly of Puerto Rico, enacted on December 29, 2000, 3 P.R. Laws Ann. § 928 *et seq.* (“Act No. 458”), as amended from time to time.

“Act No. 458 Crime” means any crime specified in Act No. 458.

“AD-Termination Damages” has the meaning ascribed thereto in Section 16.2(b)(ii).

“Additional Lands” means any lands required for an Expansion.

“Adjusted for Inflation” means adjusted by the percentage increase, if any, in the Index during the applicable adjustment period.

“Adverse Action” has the meaning ascribed thereto in Section 14.1(a).

“Affected Property” means any public or private property, including a highway, street, road, roadway, railroad, rail or other transit way or bicycle or hiking path and any ancillary facilities related to any of the foregoing, under the jurisdiction and control of the Authority, any other Governmental Authority or any other Person (including any private road) that intersects, crosses over or under or is adjacent to the Toll Roads or any part thereof, but excluding any Toll Road Land.

“Affiliate” when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries has a 10% (or in the case of “majority-owned Affiliates,” 50%) or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with (which shall include, with respect to a managed fund or trust, the right to direct or cause the direction of the management and policies of such managed fund or trust as manager, advisor or trustee pursuant to relevant contractual arrangements) such specified Person, and a Person shall be deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person and any Person or Persons with whom that other Person is acting jointly or in concert, whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (it being understood and agreed that for purposes of this definition, a managed fund or trust shall be deemed to be an Affiliate of the Person managing such fund or trust and a limited partner in a managed fund or trust shall be deemed to be an Affiliate of such fund or trust and of the Person managing such fund or trust).

“Agreed Modification” has the meaning ascribed thereto in Section 5.1(b).

“Agreement” has the meaning ascribed thereto in the preamble to this Agreement (including all schedules referred to herein), as amended, modified or supplemented from time to time in accordance with the terms hereof.

“Approval,” “Approved,” “Approves,” “Approved by the Authority” and similar expressions mean approved or consented to by the Authority in accordance with the provisions of Section 1.16.

“Assumed Liabilities” has the meaning ascribed thereto in Section 3.2(c).

“Atlantic Standard Time” means time as measured in Puerto Rico by subtracting four hours from Greenwich Mean Time.

“Audit” and similar expressions mean, with respect to any matter or thing relating to the Toll Roads, the Toll Road Operations or this Agreement, including compliance with the terms of this Agreement, the performance by or on behalf of the Authority of such reviews, investigations, inspections and audits relating to such matter or thing as the Authority may determine, in its reasonable determination, to be necessary in the circumstances, conducted in each case in accordance with all applicable United States industry accepted practices and the terms of this Agreement.

“Authority” has the meaning ascribed thereto in the preamble of this Agreement.

“Authority Capital Improvement Contracts” has the meaning ascribed thereto in Section 4.1(b).

“Authority Capital Improvement Projects” has the meaning ascribed thereto in Section 4.1(b).

“Authority Default” has the meaning ascribed thereto in Section 16.2.

“Authority Employee” means each and any person set forth in Schedule 8.

“Authority Related Entity” has the meaning ascribed thereto in Section 3.7(a).

“Authority Vehicles” has the meaning ascribed thereto in Schedule 10.

“Authority’s Option” has the meaning ascribed thereto in Section 18.8.

“Authority’s Interface Representative” has the meaning ascribed thereto in Section 2(a)(ii) of Schedule 15.

“Authorization” means any approval, certificate of approval, franchise, final determination, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, permit, notarization, or other requirement of any Governmental Authority that applies to all or any part of the Toll Roads or the Toll Road Operations.

“Authorized Auditor” has the meaning ascribed thereto in Section 8.2(a).

“Bank” has the meaning ascribed thereto in the preamble of the Escrow Agreement.

“Bank Rate” means the prime rate of interest announced publicly by the *Wall Street Journal* (or its successors) as the so-called “prime rate.”

“Bid Date” means May 31, 2011.

“Breakage Costs” means any breakage costs, make-whole premium payments, termination payments or other prepayment amounts (including debt premiums) that are required to be paid pursuant to the financing agreements providing for Concession Mortgage Debt or Qualified Debt, including the costs that are required to be paid as a result of prepayment of Concession Mortgage Debt or Qualified Debt prior to its scheduled maturity date and the costs of early termination of hedging arrangements.

“BRT/DTL Completion Deadline” means August 31, 2013.

“BRT/DTL Handover” has the meaning ascribed thereto in Section 7.2(e).

“BRT/DTL Toll Revenues” means Toll Revenues (excluding Delinquent Non-Cash Tolls) paid or payable in respect of vehicles using the BRT/DTLs during the Term.

“BRT/DTL Project” has the meaning ascribed thereto in Section 4.1(b).

“BRT/DTL Project Contracts” has the meaning ascribed thereto in Section 4.1(b).

“BRT/DTL Revenue Share” has the meaning ascribed thereto in Section 7.2(e).

“BRT/DTL Work” means the construction and other activities necessary to complete the work required by any BRT/DTL Project Contracts or otherwise to complete the BRT/DTL Project.



“BRT/DTLs” means the BRT/DTL Project after acceptance thereof pursuant to Section 4.1(d)(ii).

“Business Day” means any day that is neither a Saturday, a Sunday nor a day observed as a holiday by either the Commonwealth or the United States government.

“Capital Costs Reserve” has the meaning ascribed thereto in Section 16.3(h)(ii).

“Cash Deposit” has the meaning ascribed thereto in Section 2.3.

“Casualty Cost” has the meaning ascribed thereto in Section 13.3(a).

“CE-Dispute Notice” has the meaning ascribed thereto in Section 15.1(a).

“CE-Notice” has the meaning ascribed thereto in Section 15.1(a).

“CE-Preliminary Notice” has the meaning ascribed thereto in Section 15.1(a).

“Change in Control” means, with respect to any Person, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, (i) a change in ownership so that 50% or more of the direct or indirect voting or economic interests in such Person is transferred to another Person or group of Persons acting in concert, (ii) the power directly or indirectly to direct or cause the direction of management and policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to another Person or group of Persons acting in concert or (iii) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person; *provided, however*, that notwithstanding anything to the contrary set forth in this definition, none of the following shall constitute a “Change in Control” for the purposes of this Agreement:

(A) Transfers of direct or indirect ownership interests in the Concessionaire or the Operator (as applicable) between or among Persons that are majority-owned Affiliates of each other or Persons who are under common control, whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise;

(B) Transfers of shares of the Concessionaire or the Operator or the direct or indirect shareholders of the Concessionaire or the Operator (as applicable) pursuant to *bona fide* open market transactions on the New York Stock Exchange, NASDAQ, London Stock Exchange or comparable United States or foreign securities exchange, including any such transactions involving an initial or “follow on” public offering; *provided* that no Person or group of Persons acting in concert (that is not the Concessionaire, the Operator or an Equity Participant) acquires securities such that such Person or group of Persons beneficially owns more than 50% of the publicly traded securities of the Concessionaire or the Operator (as applicable);

(C) Transfers of direct or indirect ownership interests in the Concessionaire by any Equity Participant or its beneficial owner(s) to any Person so long as the Equity Participants or their respective beneficial owner(s) having ownership interests in the Concessionaire as of the

Effective Date together retain, in the aggregate, 50% or more of the direct or indirect voting or economic interests in the Concessionaire or the power directly or indirectly to direct or cause the direction of management and policy of the Concessionaire, through ownership of voting securities or common directors, officers or trustees;

(D) Transfers of direct or indirect ownership interests in the Concessionaire by any Equity Participant or its direct or indirect beneficial owner(s) to any partners, members, shareholders, directors, officers, employees or investors who are distributees of investments held by such Equity Participant or beneficial owner(s) pursuant to any *bona fide* liquidation of such Equity Participant or beneficial owner(s) as a result of which securities held by such entity are distributed to such distributees;

(E) any change of ownership that is attributable to a lease, sublease, concession, management agreement, operating agreement or other similar arrangement that is subject and subordinate in all respects to the rights of the Authority under this Agreement so long as (1) no "Change in Control" occurs with respect to the Concessionaire, (2) the Concessionaire remains obligated under this Agreement and (3) such lease, sublease, concession, management agreement, operating agreement or other similar arrangement does not result in a "Change in Control" of the Operator (it being understood and agreed that the existence of a contractual relationship or management agreement between the Operator and a party to a lease or other contractual arrangement referred to in this clause (E) shall not constitute a "Change in Control" of the Operator);

(F) the creation of a trust or any other transaction or arrangement that is solely a transfer of all or part of the Concessionaire's economic interest under this Agreement to another entity so long as (1) no "Change in Control" occurs with respect to the Concessionaire, (2) the Concessionaire remains obligated under this Agreement and (3) such transaction does not result in a "Change in Control" of the Operator; and

(G) Transfers of direct or indirect ownership interests in the Concessionaire or the Operator (as applicable) (1) between or among investment funds, including infrastructure funds, and investors therein; *provided* that following such Transfer such direct or indirect ownership interests remain under common ownership, management or control or (2) from investment funds, including infrastructure funds, or investors therein, to any Person; *provided* that such direct or indirect ownership interests, following consummation of such Transfer, remain under the same management or control, it being understood that ownership interests shall be deemed to be controlled by a Person if controlled in any manner whatsoever that results in control in fact, whether directly or indirectly, and whether through share ownership, a trust, a contract or otherwise.

"Change of Law" means (i) the adoption of any Law after the date which is fifteen (15) days prior to the Bid Date, or (ii) any change in any Law or in the interpretation or application thereof by any Governmental Authority after the Bid Date.

"Claim" means any demand, action, cause of action, suit, proceeding, arbitration, claim, judgment or settlement or compromise relating thereto which may give rise to a right to indemnification under Section 12.1 or 12.2.



“Class 1 Vehicle” means an automotive vehicle with not more than two (2) axles and of a height measured between the axles of not more than seven feet and six inches (7’6”).

“Closing” has the meaning ascribed thereto in Section 2.2.

“Closing Agreement” has the meaning ascribed thereto in Section 2.4(a)(iii)(A).

“Closing Date” has the meaning ascribed thereto in Section 2.2.

“Closing LOC” has the meaning ascribed thereto in Section 2.3.

“Code of Ethics” has the meaning ascribed thereto in Section 9.2(i).

“Commonwealth” means the Commonwealth of Puerto Rico.

“Commonwealth Court” has the meaning ascribed thereto in Section 19.4(c).

“Commonwealth Contractor Requirements” means the representations and warranties set forth in Sections 9.2(i) and (j), the requirements set forth in Sections 9.3, 11.10 and 11.11 and the requirements of Act No. 458.

“Commonwealth Police” means the Commonwealth Police, its successors or any other public law enforcement service provider permitted to assume the responsibilities of the Commonwealth Police.

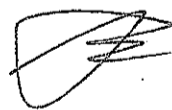
“Commonwealth Registry of Property” means the appropriate sections of the Registry of Property of the Commonwealth in which the Concession Agreement must be recorded.

“Commonwealth Retirement System” has the meaning ascribed thereto to Section 2.5(j)(ii).

“Comparable Highway” means a divided controlled access interstate grade highway having two or more lanes in each direction without traffic signals and with interchanges or bridges in each case of interstate grade.

“Compensation Date” has the meaning ascribed thereto in Section 15.1(b).

“Compensation Event” means (i) any applicable entry on, use, closure or other action taken with respect to, the Toll Roads by any Authority Related Entity pursuant to Section 3.7(a)(v) through Section 3.7(a)(x) (inclusive); *provided* that (1) the Concessionaire’s use of all or any part of the Toll Roads as a highway is materially impaired or (2) there is an adverse impact on the Toll Road Operations, traffic flow, the physical structure of the Toll Roads or the Concessionaire’s compliance with the Operating Standards and such impairment or adverse impact results in Losses or reduced Toll Road Revenues, (ii) the Concessionaire’s compliance with or the implementation of a Required Modification pursuant to Section 5.2, (iii) the Concessionaire’s compliance with or the implementation of any modified or changed Operating Standard (subject to Section 6.3(b)), (iv) the occurrence of an Adverse Action as contemplated in Article 14, (v) the circumstances described in each of Section 2.5(i)(iii), Section 4.1(e), Section



4.2(a), Section 5.2 and Section 15.2(c), (vi) any breach of the covenant set forth in Section 3.10(b), (vii) the occurrence of an Authority Default as contemplated in Article 16, (viii) the placement in service of a Competing Highway as contemplated in Section 14.1(e), or (ix) the circumstances contemplated in Section 2.3(d) of Schedule 10.

“Competing Highway” means:

(a) any newly-constructed Comparable Highway that is built by or on behalf of the Commonwealth during the Term, of which highway at least fifteen (15) continuous miles are within five (5) miles of the centerline of PR-22; and

(b) PR-2, but only if and to the extent that any continuous segment of five (5) or more miles of PR-2 between (i) the intersection of PR-2 with PR-20 and (ii) kilometer 82.8 (located at the intersection of PR-2 with PR-22 in Hatillo) is expanded or improved so that such segment becomes a Comparable Highway.

“Concession” has the meaning ascribed hereto in Section 2.1.

“Concession Compensation” means, with respect to a Compensation Event, compensation due from the Authority to the Concessionaire in the forms set forth in Sections 15.1(b) and (c) in order to restore the Concessionaire to the same after-Tax economic position that the Concessionaire would have been in if such Compensation Event had not occurred, calculated in accordance with Sections 15.1(d) and (e).

“Concession Fee” has the meaning ascribed thereto in Section 2.1(a)(i). For avoidance of doubt, the term “Concession Fee” includes (i) the fee for the grant of the Concession referred to in Section 2.1(a)(ii)(A) and (ii) consideration for the conveyance referred to in Section 2.1(a)(ii)(B).

“Concession Mortgage” means any pledge, mortgage, deed of trust or other security agreement or arrangement, including a securitization transaction with respect to Toll Revenues or other Toll Road Revenues, encumbering any or all of the Concessionaire Interest (including the Toll Road Assets) or the shares or equity interests in the capital of the Concessionaire and any cash reserves or deposits held in the name of the Concessionaire that, in each case, satisfies all of the conditions in Article 18.

“Concession Mortgage Debt” means any *bona fide* debt secured by a Concession Mortgage, including (i) principal (including accreted principal under interest rate hedges or bonds); (ii) accrued interest (including capitalized interest); (iii) customary fees, costs, premiums, expenses and reimbursement obligations with respect thereto owed to lenders, financial insurers, agents, trustees and similar service providers; (iv) all payment obligations under interest rate hedging agreements with respect thereto (including accreting interest rate hedging agreements); (v) reimbursement obligations with respect thereto to any financial insurer; (vi) any debt repayment obligations of the Lessor under a Leveraged Lease and (vii) an assignment in connection with a securitization transaction, in each case, pursuant to an agreement entered into prior to the delivery by the Concessionaire to the Authority of an AA-Preliminary Notice or a notice under Section 16.2(b) stating that an Authority Default has

occurred. For the purposes of determining Toll Road Concession Value, Concession Mortgage Debt shall not include: (A) debt from an Affiliate of the Concessionaire or the Operator (to the extent the Operator is an Affiliate of the Concessionaire), unless such debt is senior secured debt on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith, *provided* that the Concessionaire may request at any time during the Term that the Authority confirm in writing, and the Authority shall so confirm within a reasonable time following such request, whether any such debt is on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith; (B) any increase in debt to the extent such increase is the result of an agreement or other arrangement entered into after delivery by the Concessionaire to the Authority, with a copy to the Concession Mortgagee, of an AA-Preliminary Notice or a notice under Section 16.2(b) stating that an Authority Default has occurred; or (C) any debt with respect to which the Concession Mortgagee Notice Requirements apply and the Concession Mortgagee does not provide the Authority with notice in all material respects in accordance with the Concession Mortgagee Notice Requirements. Notwithstanding anything herein to the contrary, except with respect to any such *bona fide* secured debt which was incurred or committed on or prior to the Closing Date, all of which incurred or committed debt shall be deemed to be Concession Mortgage Debt (except to the extent excluded from Concession Mortgage Debt pursuant to clauses (A) or (B) above), Concession Mortgage Debt shall not include any new debt incurred or committed following the Closing Date (it being understood and agreed by the Parties that any capitalization of interest or accretion of principal or other committed increases on any debt incurred or committed on or prior to the Closing Date or any refinancing of any debt that has previously qualified as Concession Mortgage Debt up to the original principal amount thereof shall not constitute such new debt) that (together with the aggregate amount of Concession Mortgage Debt and any Qualified Debt after giving effect to the incurrence or commitment of any such new debt) *exceeds* eighty percent (80%) of the fair market value of the Concessionaire Interest set forth in an appraisal; *provided* that, in order for such new debt to qualify as Concession Mortgage Debt, such appraisal shall (X) be prepared at the Concessionaire's expense by an independent third party appraiser described under "Toll Road Concession Value" and delivered to the Authority prior to the incurrence or commitment of such new debt, (Y) be a written appraisal of the fair market value of the Concessionaire Interest as of the time of the incurrence or commitment of such new debt and (Z) identify the extent to which such new debt (together with the aggregate amount of Concession Mortgage Debt and any Qualified Debt after giving effect to the incurrence or commitment of any such new debt) *exceeds* eighty percent (80%) of the fair market value of the Concessionaire Interest set forth in such appraisal at the time of incurrence or commitment of such new debt; *provided* that any capitalization of interest or accretion of principal or other committed increases on any debt set forth in such appraisal shall constitute Concession Mortgage Debt to the extent such debt constitutes Concession Mortgage Debt on the date such appraisal is given; and *provided further* that the Parties agree that notwithstanding the requirements of the foregoing sub-clauses (X), (Y) and (Z), the amount of the Concession Fee paid at the Closing shall be deemed to constitute the fair market value of the Concessionaire Interest for a period of twelve (12) months after the Closing Date and, as such, no appraisal shall be required within such twelve (12)-month period. The appraisal requirement in the preceding sentence shall not apply to any protective advances made by any Concession Mortgagee or advances made by any Concession Mortgagee to cure Concessionaire defaults under the Concession Mortgage (regardless of whether entered into on or after the Closing Date) or other financing documents of such Concession Mortgagee.

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“Concession Mortgagee” means the holder or beneficiary of a Concession Mortgage, including a financial insurer or the Lessor in a lease or Leveraged Lease, or an agent, trustee or other representative or designee of such a holder or beneficiary.

“Concession Mortgagee Notice Requirements” means the delivery, by a Concession Mortgagee to the Authority and the GDB, not later than ten (10) Business Days after the execution and delivery of a Concession Mortgage by the Concessionaire, of a true and complete copy of the executed original of such Concession Mortgage, together with a notice containing the name and post office address of such Concession Mortgagee.

“Concession Mortgagee’s Notice” has the meaning ascribed thereto in Section 18.8.

“Concession Year” means (i) if the Closing Date occurs on the first day of a calendar month, the 12-month period beginning on the Closing Date or (ii) if the Closing Date does not occur on the first day of a calendar month, the period from the Closing Date through the 12-month anniversary of the end of the calendar month in which the Closing Date occurred and, in either case of clause (i) or (ii), each succeeding 12-month period and in any case ending as of the End Date.

“Concessionaire” has the meaning ascribed thereto in the preamble to this Agreement.

“Concessionaire Default” has the meaning ascribed thereto in Section 16.1(a).

“Concessionaire Interest” means the interest, benefits and rights of the Concessionaire in the Toll Roads and the Toll Road Assets created by this Agreement and the rights and obligations of the Concessionaire under this Agreement (including the right to receive Concession Compensation and the right to receive Termination Damages hereunder).

“Concessionaire’s Interface Representative” has the meaning ascribed thereto in Section 2(a)(ii) of Schedule 15.

“Consent” means any approval, consent, ratification, waiver, exemption, franchise, license, permit, novation, certificate of occupancy or other authorization, including any consent issued, granted, given, or otherwise made available by or under the authority of any Governmental Authority or pursuant to any applicable Law.

“Construction Committee” has the meaning ascribed thereto in Section 2(a)(ii) of Schedule 15.

“Contract Warranties” has the meaning ascribed thereto in Section 4.1(d)(iii).

“Contractor” means, with respect to a Person, any contractor, with whom such Person contracts to perform work or supply materials or labor in relation to the Toll Roads, including any subcontractor of any tier, supplier or materialman directly or indirectly employed pursuant to a subcontract with a Contractor but excluding, for the avoidance of doubt, any financial advisor retained by the Equity Participants or the Concessionaire to provide advice in relation to the financing of the Toll Roads. To the extent that the Operator is not the Concessionaire, the Operator shall be a Contractor of the Concessionaire.

“Contratante” means “Contratante” as defined in the Spanish version of the Act.

“Covered Party” has the meaning ascribed thereto in Section 9.2(j).

“CRIM” has the meaning ascribed thereto in Section 9.3.

“CSC” has the meaning ascribed thereto in Schedule 11.

“Data Room” means the virtual data room at www.imprimairooms.net used for the purposes of this Transaction.

“Defeasance Amount” means Eight Hundred Fifty Million U.S. Dollars (\$850,000,000).

“Defeased Bonds” has the meaning ascribed thereto in the Legal Opinion of Bond Counsel set forth in Schedule 7B.

“Defending Party” has the meaning ascribed thereto in Section 12.1(e).

“Delay Event” means any of the following events that results in or would result in a delay or interruption in the performance by the Concessionaire of any obligation under this Agreement: (i) an event of Force Majeure, (ii) a failure to obtain, or delay in obtaining, any Authorization from a Governmental Authority (*provided* that such failure or delay could not have been reasonably prevented by technical and scheduling measures of the Concessionaire), (iii) a Change of Law, (iv) a delay caused by the performance of works carried out by a Governmental Authority (including the activities authorized by Section 3.7) or any utility or railway operator or Person not acting under the authority or direction of, or pursuant to, a contract, sublease or any other agreement or arrangement with the Concessionaire or the Operator, (v) a failure by the Authority to perform or observe any of its covenants or obligations under this Agreement, (vi) a delay caused by the presence in, on, under or around the Toll Road Lands of Hazardous Substances, (vii) a delay caused by the implementation of Engineering or Institutional Controls related to the Toll Roads (*provided* that such failure or delay could not have been reasonably prevented by technical and scheduling measures of the Concessionaire), (viii) a delay caused by the relocation of utilities, (ix) a delay required by Law due to the discovery of protected plant or animal species, archeological, paleontological or cultural resources at or about a site of a construction required or permitted to be undertaken pursuant to this Agreement, or (x) a delay in the performance by the Concessionaire of any of the capital improvements set forth in Section 1 of Schedule 13 due to the postponement of such works by the Authority pursuant to Section 4.2(a); or (xi) the breach by the Authority of any of its obligations under any Other Authority Agreement; *provided* in each case that such delay or the cause thereof is neither otherwise specifically dealt with in this Agreement nor arises by reason of (A) the negligence or intentional misconduct of the Concessionaire or its Representatives, (B) any act or omission by the Concessionaire or its Representatives in breach of the provisions of this Agreement, (C) except as contemplated by Section 5.2, lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire, (D) except to the extent such events constitute an event of Force Majeure, any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Concessionaire or its Representatives to supply materials or services for or in connection with the Toll Road Operations or any strike,

labor dispute or labor protest caused by or attributable to any act (including any pricing or other price or method of operation) or omission of the Concessionaire or its Representatives, (E) except to the extent such events constitute an event of Force Majeure, any weather conditions or (F) the development, redevelopment, construction, maintenance, modification, change in operation, opening or introduction of any existing or new mode of transportation (including, without limitation, any Competing Highway, any managed lanes, any High-Occupancy Toll (HOT) lanes, any High-Occupancy Vehicle (HOV) lanes and any bus rapid transit (BRT) lanes).

“Delay Event Dispute Notice” has the meaning ascribed thereto in Section 15.2(c).

“Delay Event Notice” has the meaning ascribed thereto in Section 15.2(c).

“Delay Event Remedy” has the meaning ascribed thereto in Section 15.2(c).

“Delinquent Non-Cash Tolls” has the meaning ascribed thereto in Section 3.16(c).

“Delinquent Sum Overpayment” has the meaning ascribed thereto in Section 3.16(c)(v).

“Delinquent Sum Underpayment” has the meaning ascribed thereto in Section 3.16(c)(v).

“Dependent Business” means any Vendor, Contractor or other Person engaged in a business that depends for all or a substantial part of its revenues on the Toll Road Operations as of the Effective Date.

“Depository” means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by the Concessionaire and Approved by the Authority, to serve as depository pursuant to this Agreement; *provided, however*, that so long as a Concession Mortgage is in effect, the Depository contemplated under Section 13.3 shall be the institution acting as the collateral agent or depository under the financing secured by such Concession Mortgage.

“Designated Person” means each representative of a Party or the GDB who is designated as such for the purposes of Article 19.

“Document” has the meaning ascribed thereto in Section 1.16(b).

“DTOP Vehicles” has the meaning ascribed thereto in Schedule 10.

“Dynamic Message Sign” means an electronic sign whose display the Concessionaire controls and may change or cause to be changed automatically from a remote location.

“Effective Date” has the meaning ascribed thereto in the introductory paragraph of this Agreement.

“Eligible Investments” means any one or more of the following obligations or securities: (i) direct obligations of and obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America; (ii) demand or time deposits, federal



funds or bankers' acceptances issued by any Institutional Lender (*provided* that the commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such Institutional Lender at the time of such investment or contractual commitment providing for such investment have been rated "A" or higher by a Rating Agency or any other demand or time deposit or certificate of deposit fully insured by the Federal Deposit Insurance Corporation); (iii) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) which has been rated "A" or higher by a Rating Agency at the time of such investment; (iv) any money market funds, the investments of which consist of cash and obligations fully guaranteed by the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America and which have been rated "A" or higher by a Rating Agency; and (v) other investments then customarily accepted by the Authority in similar circumstances; *provided, however*, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

"Emergency Management Act" has the meaning ascribed thereto in Section 3.18(b).

"Emergency Personnel" has the meaning ascribed thereto in Section 3.18.

"Encumbrance" means any mortgage, lien, judgment, execution, pledge, charge, security interest, restriction, easement, claim, deficiency in title or chain of ownership, trust, deemed trust or encumbrance of any nature whatsoever, whether arising by operation of Law or otherwise created.

"End Date" means the date on which this Agreement expires or is terminated.

"Engineering or Institutional Controls" means those engineering, environmental or institutional controls required or approved by a Governmental Authority in relation to the remediation or avoidance of a release of a Hazardous Substance.

"Environment" means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air, plants and animals and other life forms.

✱ "Environmental Laws" means any Laws applicable to the Toll Roads regulating or imposing liability or standards of conduct concerning or relating to Hazardous Substances, natural resources, the protection of human health and safety based on environmental exposure or the Environment itself.

"EPC Specifications" means the design and construction specifications set forth in Schedule 22.

"Equity Participant" means any Person who holds any shares of capital stock or securities of, or any units, partnership interests, membership interests or other equity interests in, the Concessionaire.

“Escrow Agreement” means the agreement, substantially in the form attached hereto as Schedule 2.

“Escrow Fund” has the meaning ascribed thereto in the Escrow Agreement.

“ETC Service Contract” has the meaning ascribed thereto in Schedule 11.

“ETC Service Provider,” has the meaning ascribed thereto in Schedule 11.

“ETC Service Terms” means the terms and conditions set forth in Schedule 11.

“ETCS” has the meaning ascribed thereto in Schedule 11.

“Excluded Environmental Liabilities” has the meaning ascribed thereto in Section 3.2(c).

“Excluded Liabilities” has the meaning ascribed thereto in Section 3.2(c).

“Executive Vehicles” has the meaning ascribed thereto in Schedule 10.

“Exempt Vehicles” has the meaning ascribed thereto in Schedule 10.

“Existing Tolls” has the meaning ascribed thereto in Schedule 10.

“Expansion” means the building, erection, construction, installation, alteration, modification or replacement of any structure, facility or other improvement of any kind on the Toll Road Land or any part thereof or on Additional Lands acquired pursuant to Section 5.4 (excluding (a) any modifications or improvements made in the ordinary course of business and (b) any matters contemplated by the Operating Standards).

“FHWA” means the Federal Highway Administration, an agency of the United States Department of Transportation.

“Financing Costs” means any transaction costs and expenses (including legal fees), Taxes, and disbursements incurred by the Authority to finance, arrange for the financing of, or otherwise fund, the payment of any PIC-Termination Damages or any amount payable by the Authority pursuant to Section 16.6(e).

“First Anniversary Tolls” has the meaning ascribed thereto in Section 2.1(a)(i) of Schedule 10.

“Force Majeure” means any event beyond the reasonable control of the performing party that delays or interrupts the performance by such party of its obligations hereunder, including an intervening act of God or public enemy, war (whether or not declared), invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by civil or military authorities, condemnation or confiscation of property or equipment by any Governmental Authority, strike or labor disturbance (other than as set forth in clause (iv) below), aircraft crash or forced landing, nuclear or other explosion, radioactive or contamination or ionizing radiation, fire, flood, tornado, hurricane, storm (that is not an Ordinary Storm),



earthquake, riot or other public disorder, epidemic, quarantine restriction, stop-work order or injunction issued by a Governmental Authority, governmental embargo; *provided* that such event neither is otherwise specifically dealt with in this Agreement nor arises by reason of (i) the negligence or intentional misconduct of the performing party or its Representatives, (ii) any act or omission by the performing party or its Representatives in breach of the provisions of this Agreement, (iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the performing party, (iv) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the performing party or its Representatives to supply materials or services for or in connection with the Toll Road Operations or any strike, labor dispute or labor protest caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the performing party or its Representatives, (v) any weather conditions that are ordinarily or customarily encountered or experienced at or in the vicinity of the Toll Roads, including any Ordinary Storm, but excluding any tornado, hurricane or Named Windstorm or (vi) the development, redevelopment, construction, maintenance, modification, change in operation, opening or introduction of any existing or new mode of transportation (including, without limitation, any Competing Highway, any managed lanes, any High-Occupancy Toll (HOT) lanes, any High-Occupancy Vehicle (HOV) lanes and any bus rapid transit (BRT) lanes).

“Foreign Corrupt Practices Act” means the Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1, et seq., as amended.

“Free Flow Traffic Conditions” means a speed of fifty-five (55) miles per hour for all users of the BRT/DTLs after entry onto the BRT/DTLs.

“GDB” means the Government Development Bank for Puerto Rico, a government instrumentality of the Commonwealth.

“GDB Payment Guaranty” has the meaning ascribed thereto in Section 2.4(a)(iii)(B).

“Government Agreement” has the meaning ascribed thereto in Section 3.12.

“Governmental Authority” means the Commonwealth or any municipality, political subdivision, instrumentality or public corporation of or in the Commonwealth and any federal, state, commonwealth, county, local (including all municipalities, municipal authorities and districts) or foreign government, department, court, commission, board, bureau, agency or instrumentality or other regulatory, judicial, administrative, governmental or quasi-governmental authority.

“Governor” means the Governor of the Commonwealth or another official of the Commonwealth acting under the direction and pursuant to the authority of the Governor.

“Guarantor” means the GDB as guarantor under the GDB Payment Guaranty and any successor to the GDB thereunder.

“Hazardous Substance” means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant,

dangerous substance, toxic substance, regulated substance, hazardous waste, subject waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation).

“Highway Purposes” means the use of the Toll Roads for transportation in a manner consistent with the standard then in general use on Comparable Highways.

“Income Tax Regulations” means the income tax regulations, including temporary regulations, promulgated under the U.S. Code, as such regulations may be amended from time to time.

“Indemnified Party” means any Person entitled to the indemnification under this Agreement.

“Indemnifier” means any Party obligated to provide indemnification under this Agreement.

“Indemnity Payment” has the meaning ascribed thereto in Section 12.3(b).

“Independent Engineering Arbitrator” means an engineering firm with nationally recognized engineering experience related to Comparable Highways.

“Independent Operating Engineer” means the licensed professional consulting engineering firm reasonably acceptable to the Authority appointed pursuant to the Operating Standards.

“Index” means the “Consumer Price Index – United States City Averages for all Urban Consumers, All Items” (not seasonally adjusted) as published by the United States Department of Labor, Bureau of Labor Statistics; *provided, however*, that if the Index is changed so that the base year of the Index changes, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics; *provided further* that if the Index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised (*provided that* any such revision shall not result in the retroactive adjustment of any amounts paid or payable pursuant to this Agreement prior to such revision).

“Information” means any and all information relating to the Toll Road Operations, including (i) income statements, balance sheets, statements of cash flow and changes in financial position, details regarding Toll Road Revenues (including information regarding the collection thereof), operating income, expenses, capital expenditures and budgeted operating results relating to the Toll Road Operations, (ii) all certificates, correspondence, data (including test data), documents, facts, files, information, investigations, materials, notices, plans, projections, records, reports, requests, samples, schedules, statements, studies, surveys, tests, test results, traffic information (including volume counts, classification counts, origin and destination data,



speed and travel time information and vehicle jurisdiction data) analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by the Toll System, the Concessionaire or any of its Representatives in connection with the Toll Roads or the Toll Road Operations, and (iii) proper, complete and accurate books, records, reports, accounts and documents of the Concessionaire relating to the Toll Road Operations, including any Information that is stored electronically or on computer-related media; *provided, however*, that nothing in this Agreement shall require the disclosure by any Party of Information that is protected by attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to the other Party.

“Institutional Lender” means (i) the United States of America, any state or commonwealth thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects, (ii) any (A) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state or commonwealth thereof, (B) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States, (C) pension fund, foundation or university or college or other endowment fund, (D) real estate investment fund, infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm, (E) entity which is formed for the purpose of originating and causing the securitizing of mortgages, which securities are backed by such mortgages and are sold by public offering or to qualified investors under the Securities Act or (F) Person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the Securities Act within two (2) years of its making, (iii) any “qualified institutional buyer” under Rule 144(A) under the Securities Act or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms, (iv) conduit issuers established for the purpose of issuing private activity bonds authorized by Law for the benefit of the Concessionaire or (v) any other financial institution or entity designated by the Concessionaire and Approved by the Authority (*provided* that such institution or entity, in its activity under this Agreement, shall be acceptable under then current guidelines and practices of the Authority).

“Intellectual Property” means all books and records, toll-setting and traffic management algorithms and Software and associated documentation used in connection with the Toll Roads (including but not limited to any Software and associated documentation used for traffic management on the Toll Roads), copyrights (including moral rights), trade marks (registered, including applications and unregistered), designs (registered, including applications, and unregistered), patents (registered, including applications and unregistered), circuit layouts, plant varieties, business and domain names, inventions, trade secrets, proposals, copyrightable works, customer and supplier lists and information, and other results of intellectual activity, copies and tangible embodiments of all of the foregoing (in whatever form or medium) and licenses granting any rights with respect to any of the foregoing, in each case relating to the Toll Roads.

“Island Network” has the meaning ascribed thereto in Section 4.1 of Schedule 11.

“Law” means any constitution, order, writ, injunction, decree, judgment, law, directive, rule, regulation, ordinance, court decision, principle of common law, ruling that has the force of law, statute, code, rule or regulation of any Governmental Authority.

“Lessor” means a Concession Mortgagee that has purchased all or a portion of the Concessionaire Interest and leased that interest in the Concessionaire Interest to the Concessionaire.

“Letter of Credit” means an irrevocable, unconditional, commercial letter of credit, in favor of the Authority as payee (without dual or multiple beneficiaries), in form and content reasonably acceptable to the Authority payable immediately in United States dollars, conditioned only upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such letter of credit in the amount of such sight draft, without presentation of any other document, statement or authorization (including the original letter of credit), which letter of credit (i) is issued by a commercial bank or trust company that is a member of the New York Clearing House Association and that has and maintains a current credit rating of A+ or better by Standard & Poor’s Ratings Services and an equivalent credit rating by another Rating Agency (or an equivalent credit rating from at least two nationally recognized rating agencies if the named rating agency ceases to publish ratings) or by such other commercial bank, trust company or other issuer reasonably acceptable to the Authority prior to the submission of the letter of credit), (ii) is substantially in the form of Schedule 17 (or otherwise in form and content reasonably acceptable to the Authority prior to the submission of the letter of credit), and (iii) provides for the continuance of such letter of credit for a period of at least one year or as otherwise provided in this Agreement. The office for presentment of sight drafts specified in the Letter of Credit shall be located at a specified street address within the City of San Juan, Puerto Rico or the City of New York, New York or such other location within the continental United States as is reasonably acceptable to the Authority. For avoidance of doubt, the obligations of the account party during the Term to reimburse the issuer for draws under the Letter of Credit may be secured by a Concession Mortgage.

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“Level of Service” or “LOS” shall refer to the measurement system utilized by the Transportation Research Board of the National Academy of Sciences to measure traffic congestion in its most recently published current Highway Capacity Manual (or successor publication in which the Level of Service standard is published). Should the Level of Service or LOS measurement be discontinued or revised during the Term, such other measurement index with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if such revision or replacement had not occurred. The LOS shall be determined following the procedures set forth in the Highway Capacity Manual (or successor publication in which the Level of Service standard is published) during periods of usual travel-demand conditions (excluding non-recurring actions such as vehicle crash events, exceptional weather circumstances, and highway construction zones attributable to a Modification) on all elements of the Toll Roads (including mainline segments between interchanges, ramps, ramp junctions with the mainline and crossroad, and weave zones).

“Leveraged Lease” means a lease, sublease, concession, management agreement, operating agreement or other similar arrangement in which the Lessor has borrowed a portion of the purchase price of the interest in the Concessionaire Interest acquired by the Lessor and granted to the lenders of those funds a security interest in that interest.

“LIBOR” means the London Interbank Offered Rate as published in *The Wall Street Journal* (or its successors).

“Loss” or “Losses” means any loss, liability, damage, penalty, charge or out-of-pocket and documented cost or expense, excluding any punitive, special, indirect and consequential damages and any contingent liability until such liability becomes actual. For avoidance of doubt, all actual payments reasonably made by any Person to third parties or reasonable out-of-pocket and documented costs or expenses actually suffered or incurred by any Person in respect of Claims made by third parties shall constitute Losses of such Person whether or not such payments or such costs and expenses relate to punitive, special, indirect and consequential damages or contingent liabilities of such third parties.

“Main Line” means the Toll Roads excluding the BRT/DTLs.

“Mass Transit Vehicle” means any commuter bus or other vehicle providing scheduled transportation service to the general public over designated routes with specific stops.

“Material Adverse Effect” means a material adverse effect on the business, financial condition or results of operations of the Toll Roads taken as a whole or the rights of the Concessionaire under this Agreement; *provided, however*, that no effect arising out of or in connection with or resulting from any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein; (ii) financial, banking, currency or capital markets fluctuations or conditions (either in the United States or any international market and including changes in interest rates); (iii) conditions affecting any or all of the real estate, financial services, construction or toll road industries in the United States or internationally; (iv) any existing event, occurrence or circumstance of which the Concessionaire has actual knowledge as of the Bid Date; (v) any action, omission, change, effect, circumstance or condition contemplated by this Agreement or attributable to the execution, performance or announcement of this Agreement or the transactions contemplated hereby, with the exception of litigation related to the execution or delivery of this Agreement or related to the legislation referred to in Section 9.1(l); or (vi) any negligence, intentional misconduct or bad faith of the Concessionaire or its Representatives.

“Merchant Agreement” means that certain Merchant Agreement for Card Services made by and between the Authority and Banco Popular de Puerto Rico, and after the Closing, such Merchant Agreement, together with any related or successor agreement pursuant to which monies are deposited in the Escrow Fund in accordance with the Escrow Agreement.

“Merchant Agreement Tolls” has the meaning ascribed thereto in Section 2.5(k).

“Merchant Bank” means the “Bank” as defined in the Merchant Agreement.

“Minimum Level of Police Service” has the meaning ascribed thereto in Section 3.16(a)(i).

“Modification” means (i) a change in the services, obligations or work to be performed by, or rights of, the Concessionaire with respect to the Toll Roads from that provided for in this Agreement, including work related to the integration of the Toll Roads with any Expansion performed by or on behalf of the Authority and not otherwise required hereunder, (ii) deleting, dispensing with or changing the dimensions, character, quantity, quality, description, location or position of any part of the Toll Roads or the Toll Road Operations or making other changes to the Toll Roads or the Toll Road Operations, (iii) implementing an Expansion or (iv) implementing any change to the Tolling Limitations; *provided, however*, that no Modification may require the Concessionaire to do any act that could reasonably be expected to violate any applicable Law or cause the Concessionaire to fail to be in compliance with this Agreement; *provided further* that any changes or modifications to the Operating Standards shall be effected in accordance with Section 6.2 and Section 6.3, as applicable, and not pursuant to a Modification.

“Monthly Delinquent Amount” has the meaning ascribed thereto in Section 3.16(c).

“Monthly ETC Traffic Report” has the meaning ascribed thereto in Section 8.1(a).

“Municipal Police” means the police department of a municipality of the Commonwealth.

“Named Windstorm” is a storm or weather disturbance that is named by the National Oceanic and Atmospheric Administration’s National Hurricane Center or similar body until sustained wind speeds drop below the parameter for naming storms.

“Negotiation Period” has the meaning ascribed thereto in Section 19.3(c).

“Network Contract” means each of those agreements of the Authority set forth in Schedule 1 (and any replacement, extension or renewal thereof by the Authority prior to the Closing).

“New Agreement” has the meaning ascribed thereto in Section 18.5.

“New ETC Service Contract” has the meaning ascribed thereto in Section 4.1 of Schedule 11.

“New PR Code” means the “Puerto Rico Internal Revenue Code for a New Puerto Rico”, Act No. 1 of the Legislative Assembly of Puerto Rico, enacted on January 31, 2011.

“New Tolling Services” has the meaning ascribed thereto in Section 4.1 of Schedule 11.

“Non-Toll Revenues” has the meaning ascribed thereto in Section 7.2(a).

“Notice Period” has the meaning ascribed thereto in Section 12.1(d).



“Officer’s Certificate” means a certificate executed by a duly authorized officer of the Person providing such certificate having knowledge of the matters referred to therein.

“Offsets” has the meaning ascribed thereto in Section 12.5(a).

“Open Standard Change” means any change in standards required by the Authority concerning the interoperability, compatibility or other requirements or protocols applicable to non-cash tolling on all or substantially all of the toll roads operated by or on behalf of the Authority in the Commonwealth, which (a) change is consistent with established standards for a system of electronic toll collection in effect in other jurisdictions within the United States and (b) standards at least three (3) major tolling service providers would be capable of satisfying.

“Operating Agreement” means any material agreement, contract or commitment to which the Concessionaire is a party or otherwise relating to the Toll Road Operations as in force from time to time (including any warranties or guaranties), but excluding any Concession Mortgage and financing documents related thereto.

“Operating Standards” means the standards, specifications, policies, procedures and processes that apply to the operation, maintenance, rehabilitation and tolling of, and capital improvements to, the Toll Roads set forth in Schedules 9A, 9B and 9C, collectively, including any plans submitted by the Concessionaire to the Authority pursuant to the Operating Standards in each case as may be modified from time to time in accordance with Article 6.

“Operator” has the meaning ascribed thereto in Section 3.3(a).

“Ordinary Storm” means a storm that is comparable to any storm in length or severity of its effect on the Toll Roads that has occurred on or around the Toll Roads within ten (10) years prior to the Bid Date, *provided that* in no event shall a Named Windstorm be deemed an Ordinary Storm.

“Other Authority Agreement” means any of the Closing Agreement, the Tolling Services Agreement, the Escrow Agreement and the Merchant Agreement.

“Other Concessionaire Agreement” means each of the Closing Agreement and the Escrow Agreement.

“Outstanding Bonds” has the meaning ascribed thereto in the Legal Opinion of Bond Counsel set forth in Schedule 7A.

“Overpayment” has the meaning ascribed thereto in Section 7.2(e).

“Party” means a party to this Agreement and “Parties” means all of the parties to this Agreement.

“Peak Period” has the meaning ascribed thereto in Section 2(a)(i) of Schedule 15.

“Pending Toll Change” has the meaning ascribed thereto in Schedule 10.

“Performance Time Frame Requirement” means, notwithstanding anything to the contrary set forth herein, the express period of time, if any, within which the Operating Standards expressly require the Concessionaire to rectify non-compliance in respect of obligations expressly contained in the Operating Standards.

“Permitted Authority Encumbrance” means, with respect to the Toll Roads: (i) the rights and interests of the Concessionaire under this Agreement; (ii) any Encumbrance that is being contested by the Authority in accordance with Section 3.5(b) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen’s, mechanics’, workmen’s, repairmen’s, employees’, carriers’, warehousemen’s or other like Encumbrances arising in the ordinary course of business of the Toll Roads or the Authority’s performance of its obligations hereunder, and in respect of obligations that are either (A) not delinquent or (B) being contested by the Authority in accordance with Section 3.5(b) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iv) any easement, covenant, condition, right-of-way, servitude, or any zoning, building, environmental, health or safety Law (including any Engineering or Institutional Controls implemented thereunder) relating to the development, use or operation of the Toll Roads (or other similar reservation, right and restriction) encroachments, or other defects and irregularities in the title to the Toll Roads that do not materially interfere with the Toll Road Operations (in whole or in part) or the rights and benefits of the Concessionaire under this Agreement or materially impair the value of the Concessionaire Interest; (v) any right reserved to or vested in any Governmental Authority (other than the Authority) by any statutory provision (it being understood and agreed that nothing in this clause (v) shall limit or otherwise affect the Authority’s obligations or the Concessionaire’s rights hereunder); (vi) any other Encumbrance permitted hereunder; (vii) any Encumbrances created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it; (viii) any rights reserved to or vested in the Authority by any statutory provision (it being understood and agreed that nothing in this clause (viii) shall limit or otherwise affect the Authority’s obligations or the Concessionaire’s rights hereunder); and (ix) any amendment, extension, renewal or replacement of any of the foregoing Permitted Authority Encumbrances on substantially similar terms as such Permitted Authority Encumbrances.

“Permitted Concessionaire Encumbrance” means, with respect to the Toll Roads: (i) any Encumbrance that is being contested in accordance with Section 3.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (ii) any (A) lien or security interest for obligations not yet due and payable to a Contractor or other Person (including in respect of Taxes not yet due and payable), (B) any statutory lien, deposit or other non-service lien or (C) lien, deposit or pledge to secure mandatory statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature, any of which are incurred in the ordinary course of business of the Toll Road Operations and in respect of obligations that are either (1) not delinquent or (2) being contested by the Concessionaire in accordance with Section 3.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen’s, mechanics’, workmen’s, repairmen’s, employees’, carriers’, warehousemen’s, or other like Encumbrances arising in the ordinary course of business of the Toll Roads or the Concessionaire’s performance of its obligations hereunder, and in

respect of obligations that are either (1) not delinquent or (2) which are being contested by the Concessionaire in accordance with Section 3.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iv) any right reserved to or vested in any Governmental Authority by any provision of Law; (v) any other Encumbrance permitted hereunder (including any Concession Mortgage (and financing statements relating thereto) and any Encumbrance created in connection with any financing permitted hereunder and any Encumbrance granted in connection with an Expansion); (vi) liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance, social security and other governmental rules and that do not in the aggregate materially impair the use, value or operation of the Toll Roads; (vii) any Encumbrances created, incurred, assumed or suffered to exist by the Authority or any other Governmental Authority or any Person claiming through it except to the extent caused by an act or omission of the Concessionaire; (viii) any Encumbrance arising under Environmental Laws relating to the use or operation of the Toll Road Land by virtue of the implementation of Engineering or Institutional Controls; *provided* that such Encumbrance does not materially interfere with Toll Road Operations or materially impair the value of the Toll Roads and (ix) any amendment, extension, renewal or replacement of any of the foregoing.

"Persistent Breach Month" has the meaning ascribed thereto in Section 16.1(a)(ii).

"Person" means any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

"PIC-Termination Damages" has the meaning ascribed thereto in Section 16.6(c).

"Plans" has the meaning ascribed thereto in Section 3.14.

"PR-1" means Puerto Rico Highway 1.

"PR-2" means Puerto Rico Highway 2.

"PR-5" means Puerto Rico Highway 5.

"PR-20" means Puerto Rico Highway 20.

"PR-22" means Puerto Rico Highway 22.

"PR Code" means the Puerto Rico Internal Revenue Code of 1994, as amended, 13 P.R. Laws Ann. § 8001 *et seq.*

"PR Department of Treasury" means the Department of Treasury of the Commonwealth.

"PR Mortgage and Property Registry Law" means Act No. 198 of the Legislative Assembly of Puerto Rico, enacted on August 8, 1979, 30 P.R. Laws Ann. § 2001 *et seq.*, as of the date hereof.

“PR State Vehicle” has the meaning ascribed thereto in Schedule 10.

“Prepaid Tickets” means any negotiable voucher, coupon or scrip issued by the Authority to the public for purchase, bearing a face amount stated in dollars, that the holder thereof may tender in lieu of cash in payment of a toll on the toll roads in the Commonwealth, including the Toll Roads.

“Project Interface Plan” has the meaning ascribed thereto in Schedule 15.

“Proprietary Intellectual Property” means any Intellectual Property that is owned (or held in the case of licenses or similar rights granted by third parties) by the Concessionaire or any of its contractors, subcontractors, Affiliates or Representatives, but excluding any item of Intellectual Property of such Persons that is at no time produced for, used or applied to the Toll Roads.

“Public Integrity Crime” means any crime described in Section 5(p) of the Code of Ethics, Section 5(n) of Act No. 237 or in other sections of such laws.

“Public-Private Partnerships Authority’s Ethical Guidelines” means the *Public-Private Partnerships Authority’s Guidelines for the Evaluation of Conflicts of Interest and Unfair Advantages in the Procurement of Public-Private Partnership Contracts* promulgated by the Government of Puerto Rico Public-Private Partnerships Authority and dated as of December 19, 2009.

“Puerto Rico Penal Code” means the Penal Code of the Commonwealth.

“Qualified Debt” means any senior or subordinated *bona fide* debt not otherwise constituting Concession Mortgage Debt that is incurred at any time to finance or refinance, directly or indirectly, the Concession Fee payable hereunder or is otherwise expected to be paid exclusively from the Toll Road Revenues, including: (i) principal (including accreted principal included in interest rate hedges or bonds); (ii) accrued interest (including capitalized interest); (iii) customary and reasonable lender or financial insurer, agent and trustee fees, costs, premiums, expenses and reimbursement obligations with respect thereto; (iv) all payment obligations under interest rate hedging agreements with respect thereto (including accreting interest rate hedging agreements); (v) reimbursement obligations with respect thereto to any financial insurer; (vi) any debt repayment obligations of the Lessor under a Leveraged Lease; and (vii) an assignment in connection with a securitization transaction; *provided* that, in each case, the Concessionaire, promptly after the incurrence of any such debt, notifies the Authority of such debt and the material terms thereof. For the purposes of determining Toll Road Concession Value, Qualified Debt shall not include (A) debt from any Equity Participant or its Affiliate or (B) debt the holders of which have the benefit of a guaranty or payment from an Affiliate of the Concessionaire or the Operator (to the extent the Operator is an Affiliate of the Concessionaire), unless, in each case, such debt is senior debt on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith, *provided* that the Concessionaire may request at any time during the Term that the Authority confirm in writing, and the Authority shall so confirm within a reasonable time following such request, whether any such debt is on terms consistent with terms that would reasonably be expected from a non-



Affiliate lender acting in good faith. Notwithstanding anything herein to the contrary, except with respect to any such senior or subordinated *bona fide* debt incurred or committed on or prior to the Closing Date, all of which incurred or committed debt shall be deemed to be Qualified Debt (except to the extent excluded from Qualified Debt pursuant to clauses (A) or (B) above), Qualified Debt shall not include any new debt incurred or committed following the Closing Date (it being understood and agreed by the Parties that any capitalization of interest or accretion of principal or other committed increases on any debt incurred or committed on or prior to the Closing Date or any refinancing of any debt that has previously qualified as Qualified Debt up to the original principal amount thereof shall not constitute such new debt) that (together with the aggregate amount of Concession Mortgage Debt and any Qualified Debt after giving effect to the incurrence or commitment of any such new debt) *exceeds* eighty percent (80%) of the fair market value of the Concessionaire Interest set forth in an appraisal; *provided* that, in order for such new debt to qualify as Qualified Debt, such appraisal shall (X) be prepared at the Concessionaire's expense by an independent third party appraiser described under "Toll Road Concession Value" and delivered to the Authority prior to the incurrence or commitment of such new debt, (Y) be a written appraisal of the fair market value of the Concessionaire Interest as of the time of the incurrence or commitment of such new debt and (Z) identify the extent to which such new debt (together with the aggregate amount of Concession Mortgage Debt and any Qualified Debt after giving effect to the incurrence or commitment of any such new debt) *exceeds* eighty percent (80%) of the fair market value of the Concessionaire Interest set forth in such appraisal at the time of incurrence or commitment of such new debt; *provided* that any capitalization of interest or accretion of principal or other committed increases on any debt set forth in such appraisal shall constitute Qualified Debt to the extent such debt constitutes Qualified Debt on the date such appraisal is given; and *provided further* that the Parties agree that notwithstanding the requirements of the foregoing sub-clauses (Y) and (Z), the amount of the Concession Fee paid at the Closing shall be deemed to constitute the fair market value of the Concessionaire Interest for a period of twelve (12) months after the Closing Date and, as such, no appraisal shall be required within such twelve (12)-month period. The appraisal requirement in the preceding sentence shall not apply to any protective advances made by any provider of Qualified Debt or advances made by any provider of Qualified Debt to cure Concessionaire defaults under the agreements evidencing such Qualified Debt (regardless of whether entered into on or after the Closing Date) or other financing documents of such Qualified Debt.

"Qualified Employees" has the meaning ascribed thereto in Section 2.5(j)(ii).

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 "Rating Agency" means any of Standard & Poor's Rating Services, Moody's Investors Service, Inc. or Fitch Investors Service, Inc. or any similar entity or any of their respective successors.

"Reasonable Change Order or Deviation" means any design plans or work not expressly set forth in the EPC Specifications or any BRT/DTL Project Contract but determined by the Authority in consultation with the Concessionaire pursuant to the Project Interface Plan to be (a) reasonably necessary or desirable to complete any work, including any Unit, pursuant to such BRT/DTL Project Contract and (b) within the intended scope of the BRT/DTL Project, the EPC Specifications or such BRT/DTL Project Contract.

“Reasonable Efforts” means the taking of those steps in the power of the relevant Person that are capable of producing the desired result, being steps which a reasonable person desiring to achieve such result would take; *provided* that, subject to the relevant Person’s other express obligations under this Agreement, the relevant Person shall not be required to expend any funds other than those funds (A) necessary to meet the reasonable costs reasonably incidental or ancillary to the steps to be taken by the relevant Person and (B) the expenditure of which is not the obligation of another Person hereunder.

“Recitals” means the recitals of this Agreement.

“Replacement Letter of Credit” has the meaning ascribed thereto in Section 16.3(c).

“Reporting Year” means each fiscal year ending June 30 during the Term, except that unless the Closing Date is the first day of July, the first Reporting Year shall be a partial year commencing on the Closing Date and ending on the next June 30 and the last Reporting Year shall be a partial Reporting Year commencing July 1st of such Reporting Year and ending on the End Date.

“Representative” means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, or Contractor of such Person, any other Person for whom such Person is responsible at law, any other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

“Required Coverages” has the meaning ascribed thereto in Section 13.1.

“Required Modification” has the meaning ascribed thereto in Section 5.2(a).

“Resolutions” means, collectively, the 1968 Resolution and the 1998 Resolution.

“Restoration”, “Restore”, or “Restoring” means, with respect to any casualty loss, destruction or damage of the Toll Roads, to repair or rebuild the affected parts of the Toll Roads to restore them to at least the same condition in which they were before the occurrence of such casualty loss, destruction or damage.

“Restoration Funds” has the meaning ascribed thereto in Section 13.3(a).

“Retained Capital Improvement Contracts” has the meaning ascribed thereto in Section 4.1(a).

“Retained Capital Improvement Projects” has the meaning ascribed thereto in Section 4.1(a).

“Retained Contracts” means the contracts set forth in Schedule 16.

“Re-Tender Costs” means any costs, expenses (including legal fees), Taxes, fees, charges, disbursements and other Losses that are incurred by the Authority (or to the best of the

Authority's knowledge after due inquiry, are expected to be paid or incurred by the Authority) in connection with any Re-Tender of the Toll Roads.

"Re-Tender of the Toll Roads" means (a) any process by which the Authority (i) requests tenders from any Person interested in entering into a concession, lease or other transaction in respect of the Toll Roads, (ii) evaluates any response to such request from such Person or (iii) grants or enters into such concession, lease or other transaction with such Person, or (b) any financing, bonding or similar transaction undertaken by the Authority in respect of the Toll Roads.

"Reversion Date" means the day immediately following the End Date.

"Roadside Equipment" means any equipment or other related assets used or required to be used in connection with the electronic toll collection system on the Toll Roads that is located in the immediate vicinity of the Toll Roads.

"Second Anniversary Tolls" has the meaning ascribed thereto in Section 2.1(a)(ii) of Schedule 10.

"Secretary" means the Secretary of Transportation of the Commonwealth.

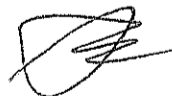
"Securities Act" means the United States Securities Act of 1933, as amended.

"Software" means (i) any computer instructions, including programs, routines and databases and applications supplied, procured or developed by the Concessionaire in connection with Toll Road Operations and (ii) all modifications, updates and revisions made to the matter described in clause (i) above, including those made to correct errors or to support new models of computer equipment and/or new releases of operating systems.

"Speed Detection System" means any equipment, including hardware and software, whether or not embedded in the pavement, used to detect the speed of vehicles at any given location on the Main Line or the BRT/DTLs.

"State" means any state in the United States of America or any possession or territory thereof.

"Statement of Estimated Liabilities" means a statement by the Authority setting forth (i) the relevant Concessionaire Default or other circumstances giving rise to its right to terminate this Agreement, (ii) all amounts that (A) are estimated to be due and payable by the Concessionaire to the Authority under this Agreement as of the date of such statement or (B) to the best of the Authority's knowledge after due inquiry, are expected to become due and payable by the Concessionaire under this Agreement on or prior to the date that is thirty (30) days after the date of such statement, (iii) to the extent not included in clause (ii) above, all other obligations of the Concessionaire under this Agreement known to the Authority that should have been, but have not been, performed as of the date of such statement and (iv) to the extent not included in clauses (ii) or (iii) above, all costs and expenses (including legal fees), Taxes, fees, charges and disbursements estimated to be paid or incurred by the Authority in connection with



any Concessionaire Default, the termination of this Agreement, the recovery of possession from the Concessionaire, and the preparation, execution and delivery of the New Agreement and related agreements and the Statement of Estimated Liabilities that (A) are estimated to have been paid or incurred by the Authority as of the date of such statement or (B) to the best of the Authority's knowledge after due inquiry, are expected to be paid or incurred by the Authority on or prior to the date that is thirty (30) days after the date of such statement.

"Substantial Completion" means that, with respect to the BRT/DTL Project, such project has been completed (except for "punch list" items), tested and operates as intended, including being capable of generating BRT/DTL Toll Revenues. For avoidance of doubt, whenever used in this Agreement, the term "Substantially Complete" shall refer to the Substantial Completion of the BRT/DTL Project.

"Sworn Statement" means the sworn statement required by Act No. 458.

"Sworn Statement for Closing" means the sworn statement in the form of Schedule 21.

"Tax" means any federal, state, Commonwealth, municipal, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, permit fees, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not.

"Term" means the term of the concession referred to in Article 2.

"Termination Damages" means AA-Termination Damages, AD-Termination Damages or PIC-Termination Damages.

"Third Party Claim" means any Claim asserted against an Indemnified Party by any Person who is not a Party or an Affiliate of such a Party.

"Time of Closing" means 10:00 a.m. on the Closing Date or such other time on such date as the Authority and the Concessionaire may agree to in writing.

"Toll Revenues" has the meaning ascribed thereto in Section 7.2(a).

"Toll Road Assets" means all personal property of the Authority set forth in Schedule 18.

"Toll Road Concession Value" means, as of any date, the fair market value of the Concessionaire Interest determined (without regard to the effect of the Adverse Action, Authority Default, Act 458 Crime or Public Integrity Crime giving rise to such determination) as of the time of the occurrence of the relevant Adverse Action or Authority Default (or as of the time of the conviction or guilty plea relating to the relevant Act No. 458 Crime or Public Integrity Crime, as the case may be) and taking into account the operations, traffic and revenues thereof, as determined pursuant to a written appraisal by an independent third party appraiser that



is nationally recognized in appraising similar assets and that is acceptable to the Authority and the Concessionaire; *provided, however*, that the Toll Road Concession Value shall in no event be less than the amount equal to the sum of (i) any Concession Mortgage Debt and any Qualified Debt (except that in the case such value is determined in connection with the rescission or termination of this Agreement pursuant to Section 16.6, such Qualified Debt shall exclude any Qualified Debt provided by any Affiliate of the Concessionaire) and (ii) any related Breakage Costs, in each case as of the End Date. If the Parties fail to agree upon such a single appraiser within thirty (30) days after a Party requests the appointment thereof, then the Authority and the Concessionaire shall each appoint an independent third party appraiser and both such appraisers shall be instructed jointly to select a third independent third party appraiser to make the appraisal referred to above. If either Party fails to appoint such independent third party appraiser or if the independent third party appraisers appointed by the Parties fail to select a third independent third party appraiser, in each case, within sixty (60) days after the request of the Authority or the Concessionaire, then either the Authority or the Concessionaire may request the appointment of an independent third party appraiser (which appraiser shall be appointed by a Person agreed to by the Concessionaire and the Authority or if the Parties fail to agree on such Person within thirty (30) days after a Party requests the appointment hereof, such appraiser shall be appointed by the AAA) to make the appraisal referred to above. The Parties shall each pay fifty percent (50%) of the costs and expenses of any appraisal.

“Toll Road Facilities” means any building, structure, facility, road or other improvement now located or hereinafter erected, constructed or placed on the Toll Road Land.

“Toll Road Land” means those parcels of real property described in Schedule 14 (and further described in Sections 2.6(b) and 2.6(c)) and any land used for an Expansion contemplated hereunder.

“Toll Road Operations” means (i) the operation, management, maintenance, construction, rehabilitation and tolling of the Toll Roads and (ii) all other actions relating to the operation of the Toll Roads or otherwise that are to be performed by or on behalf of the Concessionaire pursuant to this Agreement or the Operating Standards, including all actions relating to Vendors.

“Toll Road Revenues” has the meaning ascribed thereto in Section 7.2(a).

“Toll Road Services” means the services to be provided to the public by the Concessionaire in its capacity as grantee of the concession under this Agreement.

“Toll Roads” means (i) the Toll Road Land and (ii) the Toll Road Facilities.

“Toll System” means the toll structures, equipment and facilities related to the collection of Toll Revenues.

“Tolling Limitations” means the limitations with respect to the tolling of the Toll Roads set forth in Schedule 10.

“Tolling Services Agreement” means that certain New Toll Collection System Acquisition & Installation, NTCS Maintenance and Customer Service Center Management &

Operations, (Contract No. AC-800197), dated as of March 14, 2003, among the Puerto Rico Highway and Transportation Authority, TransCore Atlantic, Inc. and TransCore Holdings, Inc. (including, without limitation, the Master Agreement, the Contract Documents specified in Appendix II to the Master Agreement, the Special Provisions – Acquisition and Installation attached to the Master Agreement as Appendix III and the Special Provisions – System Maintenance and Customer Service Center Operation attached to the Master Agreement as Appendix IV), as amended pursuant to that certain Contract Amendment and Change Order Agreement, dated as of June 22, 2007 among the Puerto Rico Highway and Transportation Authority, TransCore Atlantic, Inc. and TransCore Holdings, Inc.

“Traffic Report” has the meaning ascribed thereto in Section 5(a) of the Escrow Agreement.

“Transaction” has the meaning ascribed thereto in Section 2.1(a).

“TransCore” has the meaning ascribed thereto in Schedule 11.

“TransCore Vehicles” has the meaning ascribed thereto in Schedule 10.

“Transfer” means to sell, convey, assign, delegate, sublease, mortgage, encumber, transfer or otherwise dispose of.

“Transferee” has the meaning ascribed thereto in Section 17.1.

“Trustee” means the fiscal agent under the Resolutions.

“Trustee’s Certificate” means the certificate in the form of Schedule 20.

“Unamortized Concession Fee” means, as of the End Date, the amount equal to the product of (a) the Concession Fee, multiplied by (b) one (1) less the quotient of: (i) the number of days elapsed from the Closing Date through and including the End Date, divided by (ii) fourteen thousand six hundred and ten (14,610).

“Underpayment” has the meaning ascribed thereto in Section 7.2(e).

“Uniform General Conditions” means the Uniform General Conditions for Public Works Contracts issued by the Puerto Rico Department of Transportation and Public Works and filed by such department as Regulation 7998 on March 3, 2011.

“U.S. Code” means the Internal Revenue Code of 1986, as amended.

“Unit” means the work for any segment or portion of the BRT/DTL Project described as a “unit” in Schedule 12 of the Agreement or as tendered in a procurement by the Authority.

“Unit 3 BRT/DTL Contract” means that certain agreement by and between the Authority and Del Valle Group, S.P., dated as of February 1, 2011, for Project AC-222187(T000222187)—Design/Build Project, Unit III, Exclusive Travel Lanes at Median for High Occupancy Toll and

Bus Rapid Transit (BRT), Jose De Diego Expressway (PR-22) from kilometer 16.10 to kilometer 10.20, Municipalities of Toa Baja, Catano and Bayamon, Puerto Rico.

“Unit 4B” has the meaning ascribed thereto in Section 2(f) of Schedule 12.

“Unit 5” has the meaning ascribed thereto in Section 2(g) of Schedule 12.

“Vendor” means (i) any third party or any Affiliate of the Concessionaire under contract or agreement (whether written or oral) with the Concessionaire to provide goods or services to the users of the Toll Roads on the Toll Roads, including at service areas or (ii) the Concessionaire to the extent that it provides such goods or services.

Section 1.2 Number and Gender. In this Agreement, terms defined in the singular have the corresponding plural meaning when used in the plural and vice versa and words in one gender include all genders.

Section 1.3 Headings. The division of this Agreement into articles, Sections and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

Section 1.4 References to this Agreement. The words “herein,” “hereby,” “hereof,” “hereto” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words “Article,” “Section,” “paragraph,” “sentence,” “clause” and “Schedule” mean and refer to the specified article, section, paragraph, sentence, clause or schedule of, or to, this Agreement.

Section 1.5 References to Any Person. A reference in this Agreement to any Person at any time refers to such Person’s permitted successors and assigns.

Section 1.6 Meaning of Including. In this Agreement, the words “include,” “includes” or “including” mean “include without limitation,” “includes without limitation” and “including, without limitation,” respectively, and the words following “include,” “includes” or “including” shall not be considered to set forth an exhaustive list.

Section 1.7 Meaning of Discretion. In this Agreement, unless otherwise qualified or limited, the word “discretion” with respect to any Person means the sole and absolute discretion of such Person.

Section 1.8 Meaning of Notice. In this Agreement, the word “notice” means “written notice” unless specified otherwise.

Section 1.9 Meaning of Promptly. In this Agreement, the word “promptly” means as soon as reasonably practicable in light of then-prevailing circumstances.

Section 1.10 Consents and Approvals. Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by either

Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

Section 1.11 Trade Meanings. Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

Section 1.12 Laws. Unless specified otherwise, a reference to a Law is considered to be a reference to (a) such Law as it may be amended, modified or supplemented from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Law, (c) the successor to the Law resulting from recodification or similar reorganizing of Laws and (d) all future Laws pertaining to the same or similar subject matter. Nothing in this Agreement shall fetter or otherwise interfere with the right and authority of any Governmental Authority to enact, administer, apply and enforce any Law. Except for Adverse Actions or if compensation or other relief is otherwise available or provided for pursuant to applicable Law or this Agreement, the Concessionaire shall not be entitled to claim or receive any compensation or other relief whatsoever as a result of the enactment, administration, application or enforcement of any Law by any Governmental Authority.

Section 1.13 Currency. Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

Section 1.14 Generally Accepted Accounting Principles. All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with then generally accepted accounting principles in the United States of America, consistently applied.

Section 1.15 Time.

(a) *References to Specific Time.* Unless specified otherwise, all statements of or references to a specific time in this Agreement are to Atlantic Standard Time.

(b) *Period of Days.* For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m. on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. on the next Business Day.

Section 1.16 Approvals, Consents and Performance by the Authority.

(a) *Procedures.* Wherever the provisions of this Agreement require or provide for or permit an approval or consent by the Authority of or to any action, Person, Document or other matter contemplated by this Agreement, the following provisions shall apply: (i) such request for approval or consent must (A) contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, (B) clearly set forth the matter in respect of which such approval or consent is being sought, (C) form the sole subject matter of the correspondence containing such request for

approval or consent and (D) state clearly that such approval or consent is being sought; (ii) such approval or consent shall not be unreasonably or arbitrarily withheld, conditioned or delayed (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or that it may be given or provided at the discretion of the Authority); (iii) the Authority shall within such time period set forth herein (or if no time period is provided, within forty-five (45) days, subject to the Authority's right to extend such period for an additional fifteen (15) days) after the giving of a notice by the Concessionaire requesting an approval or consent, advise the Concessionaire by notice either that it consents or approves or that it withholds its consent or approval, in which latter case it shall (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or is subject to the discretion of the Authority) set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by the Authority acting reasonably, of the information or documentation provided; (iv) if the responding notice mentioned in clause (iii) of this Section 1.16(a) indicates that the Authority does not approve or consent, the Concessionaire may take whatever steps may be necessary to satisfy the objections of the Authority set out in the responding notice and, thereupon, may submit a revised request for approval or consent from time to time and the provisions of this Section 1.16(a) shall again apply until such time as the approval or consent of the Authority is finally obtained; (v) if the disapproval or withholding of consent mentioned in clause (iv) of this Section 1.16(a) is subsequently determined pursuant to Article 19 to have been improperly withheld, conditioned or delayed by the Authority, such approval or consent shall, unless otherwise determined pursuant to Article 19, be deemed to have been given on the date on which such approval or consent was originally required; and (vi) any dispute as to whether or not a consent or approval has been unreasonably withheld, conditioned or delayed shall be resolved in accordance with the provisions of Article 19.

(b) *Approved Documents.* Subject to the other provisions hereof, wherever in this Agreement an approval or consent is required with respect to any document, proposal, certificate, plan, drawing, specification, contract, agreement, budget, schedule, report or other written instrument whatsoever (a "Document"), following such Approval such Document shall not be amended, supplemented, replaced, revised, modified, altered or changed in any material respect without first obtaining a further Approval in accordance with the provisions of this Section 1.16.

ARTICLE 2

THE TRANSACTION; CLOSING; CONDITIONS PRECEDENT; COVENANTS

Section 2.1 Grant of Concession.

(a) Upon the terms and subject to the conditions of this Agreement, effective at the Time of Closing, (i) the Concessionaire shall pay the Authority the amount of One Billion Eighty Million Dollars (\$1,080,000,000) in cash (as adjusted pursuant to Section 2.4(f)) (the "Concession Fee") and (ii) the Authority shall and does hereby (A) grant the Concessionaire an exclusive concession free and clear of Encumbrances other than Permitted Authority Encumbrances for and during the term (the "Term") commencing as of the Time of Closing and expiring at 11:59 p.m. on the fortieth (40th) anniversary of the Closing Date, unless terminated

earlier or extended in accordance with the terms of this Agreement, to operate, manage, maintain, rehabilitate, toll and expand the Toll Roads for Highway Purposes and provide the Toll Road Services in connection therewith and otherwise in accordance with and pursuant to this Agreement (the “Concession”) and (B) assign, transfer and otherwise convey to the Concessionaire each of the Toll Road Assets and each portion of any Network Contracts assignable in accordance with Section 2.1(b) (collectively, the “Transaction”); and the Concessionaire shall accept the Concession and each such assignment, transfer and conveyance. It is the intent of the Parties that the Concession be deemed an “administrative concession” under the Act and the applicable Laws of the Commonwealth.

(b) At the Time of Closing, the Authority shall assign to the Concessionaire that portion of each Network Contract that relates to the Toll Roads pursuant to an assignment agreement in respect of such Network Contract, and the Concessionaire shall accept and assume such portion; *provided* that if in the Authority’s reasonable opinion any portion of any Network Contract related to the Toll Roads is not capable of being assigned and assumed in accordance with this Section 2.1(b), such portion shall not be assigned at the Time of Closing, and the Authority shall maintain and enforce such portion of the Network Contract for the benefit of the Concessionaire subject to Section 12.1(a) until the earlier of: (i) the expiration of such Network Contract by its terms and (ii) the time that such portion of the Network Contract becomes capable of being assigned in accordance with this Section 2.1(b). Notwithstanding the preceding sentence, the Concessionaire may, no later than sixty (60) days after the Effective Date or such later date as the Concessionaire receives the Network Contracts for review, elect to exclude from such assignment and assumption any Network Contract, in which case the Authority covenants to terminate that portion of such Network Contract that relates solely to the Toll Roads, *provided* that, for avoidance of doubt, such termination shall not be a Compensation Event. Until any Network Contract is terminated or assigned in accordance with this Section 2.1(b), the Concessionaire shall promptly reimburse the Authority and hold the Authority harmless for and against any costs, payments or debts due or incurred by the Authority under such Network Contract in accordance with Section 12.1(a).

(c) Except as otherwise expressly provided in Section 2.1(b) and Section 4.1(d)(iii), no contracts of the Authority (or any interest therein), including, without limitation, the Retained Contracts, are or shall be assigned to the Concessionaire pursuant to this Agreement.

Section 2.2 Closing.

(a) The closing of the Transaction (the “Closing”) shall take place on the first (1st) Business Day after the date that is ninety (90) days after the Effective Date or such other date agreed to in writing by the Authority and the Concessionaire (the “Closing Date”). The Closing shall be held at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, 21st Floor, New York, NY 10020 or such other place agreed to in writing by the Authority and the Concessionaire. At the Time of Closing, the Concessionaire shall deliver or cause to be delivered to the Authority same-day funds by wire transfer in the amount of the Concession Fee (less the amount of any Cash Deposit (plus all interest thereon) that the Concessionaire previously paid pursuant to Section 2.3(a)) in full payment for the Concessionaire Interest, and upon receipt of such payment the Transaction shall be effective. Upon receipt of the funds

described in the preceding sentence, the Authority shall immediately cancel and return the Closing LOC, if any, in accordance with the Concessionaire's instructions.

(b) The Authority shall be entitled to all revenues relating to the Toll Roads and shall be responsible for all charges, costs and expenses with respect to the Toll Roads (including Assumed Liabilities) that shall have accrued as of 11:59 p.m. on the day immediately preceding the Closing Date. If the Parties are unable to determine if any such revenues or any charges, costs and expenses with respect to the Toll Roads (including Assumed Liabilities) actually accrued as of 11:59 p.m. on the day immediately preceding the Closing Date, such revenues, charges, costs and expenses shall be prorated between the Authority and the Concessionaire as of 11:59 p.m. on the day immediately preceding the Closing Date based upon the actual number of days in the month and a three-hundred sixty-five (365)-day year. Any amounts payable to or owed by the Authority pursuant to this Section 2.2(b) shall be added to or subtracted from the Concession Fee accordingly. If final amounts cannot be determined at the Closing for any items contemplated by this Section 2.2(b) (including any amounts associated with the prepayment of Toll Revenues), then the Authority and the Concessionaire shall allocate such items on a fair and equitable basis as soon as revenue statements, invoices or bills are available, with final adjustment to be made as soon as reasonably possible after the Closing Date. The Authority and the Concessionaire shall have reasonable access to, and the right to inspect and audit, the other's books to confirm such final determinations.

Section 2.3 Deposit.

(a) The Authority acknowledges receipt from the Concessionaire of cash (the "Cash Deposit") or one or more Letters of Credit with a term of at least one hundred twenty (120) days from the date hereof (the "Closing LOC"), in an aggregate amount equal to five percent (5%) of the Concession Fee as of the date hereof, to be held by the Authority for the sole purpose described in Section 2.3(b). The Authority shall deposit any Cash Deposit with a Depositary, which shall invest such amount in Eligible Investments described in clause (iii) of the definition of such term pending Closing. The Concessionaire may provide a combination of a Cash Deposit and Closing LOC to comply with the requirements of this Section 2.3, in which case the relevant provisions of this Agreement related to a Cash Deposit and to a Closing LOC, including the rights of the Parties related thereto, shall be construed to apply to both forms of security.

(b) If the Authority terminates this Agreement pursuant to Section 2.4(d)(iv)(A), then the Authority shall be entitled to (i) retain any Cash Deposit and all interest earned thereon or (ii) draw immediately, without notice to the Concessionaire, the full amount of the Closing LOC upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under the Closing LOC in the amount of such sight draft, and the Authority shall be entitled to retain all of the proceeds of the Cash Deposit or the Closing LOC, in either case, as the sole remedy or right of the Authority against the Concessionaire hereunder. If this Agreement is terminated for any other reason, the Authority shall return any Cash Deposit and all interest earned thereon or return the Closing LOC to the Concessionaire marked cancelled. The right of the Authority to retain any Cash Deposit and all interest earned thereon or draw the Closing LOC is intended to be, and shall constitute, liquidated damages to compensate the Authority for the cost of foregoing alternative opportunities and for other costs

incurred by the Authority in reliance on the Concessionaire's agreement to enter into the transaction contemplated hereunder, and full retention of any Cash Deposit and all interest earned thereon and full payment of the entire draw on the Closing LOC to the Authority shall terminate all other rights and remedies of the Authority with respect to the Concessionaire. The Parties acknowledge that the damages suffered by the Authority as a result of such termination would be impossible to ascertain and that the combined amount of any Cash Deposit and all interest earned thereon and the Closing LOC is a reasonable estimate thereof and is not intended as a penalty.

(c) At the Closing, upon satisfaction of the conditions set forth in Section 2.4(a), (b) and (c), the Authority shall be entitled to withdraw the Cash Deposit and all interest earned thereon as a credit against the Concession Fee.

Section 2.4 Conditions Precedent; Termination.

(a) *Conditions for the Benefit of the Concessionaire.* The Concessionaire shall be obliged to consummate the Closing in accordance with the terms hereof only if each of the following conditions has been satisfied in full at or before the Time of Closing, unless waived in writing by the Concessionaire:

(i) the representations and warranties of the Authority set forth in Section 9.1 shall be true and correct on and as of the date hereof and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except (A) that representations and warranties that by their terms are applicable only as of the Effective Date or some other date need be true and correct only as of such date and (B) for failures of representations and warranties to be true or correct that, individually or in the aggregate, do not have and are not reasonably likely to have a Material Adverse Effect (it being understood that, for purposes of determining whether such failures do not have and are not reasonably likely to have a Material Adverse Effect, all materiality qualifications and references to a Material Adverse Effect or a material adverse effect contained in such representations and warranties shall be disregarded); *provided, however*, that the existence of the actions described in Sections 2.4(c)(i) and (ii) shall not constitute a breach of representation for purposes of this Section 2.4(a)(i);

(ii) the Authority shall not be in material breach of any covenant on its part contained in this Agreement or any Other Authority Agreement that is to be performed or complied with by the Authority at or prior to the Time of Closing and the GDB shall not be in material breach of any covenant on its part contained in the GDB Payment Guaranty that is to be performed or complied with by the GDB at or prior to the Time of Closing;

(iii) the Authority shall have delivered to the Concessionaire:

(A) a closing agreement, substantially in the form attached hereto as Schedule 3 (the "Closing Agreement");

(B) a guaranty of the GDB, duly executed by the GDB and acknowledged by the Authority, in the form attached hereto as Schedule 4A (the "GDB

Payment Guaranty"), together with a legal opinion of the GDB's General Counsel in respect of the GDB Guaranty substantially in the form attached hereto as Schedule 4B;

- (C) the estoppel certificates contemplated by Section 10.2;
- (D) the consent agreement contemplated by Section 18.1(k), duly executed by the Authority and the GDB, if such agreement is requested of the Authority and the GDB in writing by the Concessionaire;
- (E) a legal opinion of the Authority's General Counsel, substantially in the form attached hereto as Schedule 5, together with all factual certificates delivered with respect to such opinion;
- (F) the Escrow Agreement;
- (G) the Merchant Agreement; and
- (H) each certificate signed by the Executive Director of the Authority in connection with the defeasance of the Defeased Bonds;

(iv) from the Bid Date to the Time of Closing, the Authority or any other Governmental Authority established under the Laws of the Commonwealth shall not have enacted any legislation or ordinance or promulgated any rule or regulation that would constitute an Adverse Action hereunder were such action to take place during the Term;

(v) the Authority shall have duly filed this Agreement with the Office of the Comptroller of the Commonwealth pursuant to Act. No. 18;

(vi) the Authority shall have duly filed the Partnership Committee Report with respect to this Agreement pursuant to Article 9(g)(ii) and (viii) of the Act; and

(vii) the Authority shall have delivered to the Concessionaire a certificate confirming that each of the conditions set forth in Sections 2.4(a)(i) through (vi) has been satisfied in full by the Authority (except for any such condition that has been waived in writing by the Concessionaire) at or before the Time of the Closing.

(b) *Conditions for the Benefit of the Authority.* The Authority shall be obliged to consummate the Closing in accordance with the terms hereof only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived in writing by the Authority:

(i) the representations and warranties of the Concessionaire in Section 9.2 shall be true and correct on and as of the date hereof at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except (A) that representations and warranties that by their terms are applicable only as of the Effective Date or some other date need be true and correct only as of such date and (B) for failures of representations and warranties to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have a material adverse effect on the ability of the

Concessionaire to consummate the transactions contemplated hereby or perform its obligations hereunder (it being understood that, for purposes of determining whether such failures have not had and are not reasonably likely to have a material adverse effect on the ability of the Concessionaire to consummate the transactions contemplated hereby or perform its obligations hereunder, all materiality qualifications and references to a Material Adverse Effect or a material adverse effect contained in such representations and warranties shall be disregarded); *provided, however*, that the existence of the actions described in Sections 2.4(c)(i) and (ii) shall not constitute a breach of representation for purposes of this Section 2.4(b)(i);

(ii) the Concessionaire shall not be in material breach of any covenant on its part contained in this Agreement or any Other Concessionaire Agreement that is to be performed or complied with by the Concessionaire at or prior to the Time of Closing;

(iii) the Concessionaire shall have delivered to the Authority:

(A) the Closing Agreement;

(B) the evidence of insurance policies required to be delivered by the last sentence of Section 2.5(e);

(C) if applicable, the Officer's Certificate, Sworn Statement for Closing (duly notarized as of the Closing Date), and other certificates of the Operator required to be delivered pursuant to Section 9.6; and

(D) the Escrow Agreement;

(iv) the Concessionaire shall have duly executed and delivered to the GDB the GDB Payment Guaranty;

(v) the Concessionaire shall have delivered to the Authority a legal opinion of counsel to the Concessionaire, substantially in the form attached hereto as Schedule 6;

(vi) the Concessionaire shall have delivered to the Authority a certificate confirming that each of the conditions set forth in Sections 2.4(b)(i) through (v) has been satisfied in full by the Concessionaire (except for any such condition that has been waived in writing by the Authority) at or before the Time of the Closing; and

(vii) the Concessionaire shall have delivered the certificates contemplated by Section 9.3(b) and the Sworn Statement for Closing duly notarized as of the Closing Date.

(c) *Mutual Conditions.* The Authority and the Concessionaire shall be obliged to consummate the Closing in accordance with the terms hereof only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived by both the Authority and the Concessionaire:

(i) there shall be no preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction or other legal restraint or prohibition enjoining or preventing the Transaction;

(ii) there shall be no action taken (including the pendency of any review or proceeding), or any Law enacted, entered, enforced or deemed applicable to the Transaction by any Governmental Authority of competent jurisdiction that, in any such case, has resulted or (in the case of any pending review or proceeding, if adversely determined) could reasonably be expected to result in such Governmental Authority conditioning or restricting the consummation of the Transaction in a manner that would impose a material impairment on the Transaction or make the consummation of the Transaction illegal;

(iii) the prescription period specified in the Act for the commencement of any action challenging the validity of this Agreement shall have expired and no such action shall be pending;

(iv) each of the Authority and the Concessionaire shall have received the opinions of counsel substantially in the forms attached hereto as Schedule 7A, Schedule 7B, Schedule 7C and Schedule 7D, together with all factual certificates delivered with respect to such opinions;

(v) the Authority shall have arranged for the deposit of funds from the Concession Fee or from other sources sufficient to provide for the payment, in full, of all obligations of the Authority payable from and secured by the Toll Road Revenues or the Toll Road Assets so that such obligations shall be legally defeased on the Closing Date and no longer treated as outstanding under the documents under which such obligations were issued and each of the Authority and the Concessionaire shall have received the Trustee's Certificate;

(vi) there shall have been written confirmation from both Standard & Poor's Rating Services and Moody's Investor's Services, Inc., that the rating on the remaining Outstanding Bonds shall not, solely as a result of the execution and delivery of this Agreement, be downgraded or withdrawn;

(vii) the Authority shall have delivered to counsel referred to in Section 2.4(c)(iv) a certificate stating that the toll reduction test contained in Section 614 of the 1998 Resolution has been satisfied;

(viii) the PR Department of Treasury shall have delivered the Closing Agreement; and

(ix) the Escrow Agent shall have delivered the Escrow Agreement.

(d) *Termination.* This Agreement may be terminated at any time prior to the Closing:

(i) by mutual consent of the Authority and the Concessionaire in a written instrument;

(ii) by either the Authority or the Concessionaire, upon notice to the other Party, if (A) any Governmental Authority of competent jurisdiction shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the Transaction, and such order, decree, ruling or other action has become final and nonappealable; *provided, however*, that the right to terminate this Agreement under this Section 2.4(d)(ii) shall not be available to any Party whose failure to comply with any provision of this Agreement has been the cause of, or resulted in, any order, decree, ruling or other action being imposed or becoming final and nonappealable or, in the case of clause (B) hereof, whose actions or failure to act caused the Closing not to occur, or (B) the Closing shall not have occurred as of 11:59 p.m. on the first (1st) Business Day after the date that is ninety (90) days after the Effective Date, unless such date is extended by mutual written agreement of the Parties;

(iii) by the Concessionaire, upon notice to the Authority, if any condition set forth in (A) Section 2.4(a) or (B) Section 2.4(c), remains unsatisfied as of the Time of Closing; *provided, however*, that the Concessionaire shall not have the right to terminate this Agreement under this Section 2.4(d)(iii) if the Concessionaire's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied;

(iv) by the Authority, upon notice to the Concessionaire, if any condition set forth in (A) Section 2.4(b) or (B) Section 2.4(c), remains unsatisfied as of the Time of Closing; *provided, however*, that the Authority shall not have the right to terminate this Agreement under this Section 2.4(d)(iv) if the Authority's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied; or

(v) by the Authority, upon notice to the Concessionaire, if any material casualty loss, destruction of or damage to any part of the Toll Roads has occurred and such casualty loss, destruction or damage would permit the Concessionaire, before giving effect to Section 2.5(i)(iii)(A), to reduce the Concession Fee to an amount that is less than one hundred ten percent (110%) of the Defeasance Amount pursuant to Section 2.5(i)(ii)(B).

(e) *Effect of Termination.*

(i) In the event of termination of this Agreement by either the Authority or the Concessionaire as provided in Section 2.4(d), this Agreement shall forthwith become void and there shall be no liability or obligation on the part of the Authority or the Concessionaire or their respective Representatives, except as set forth in Section 2.3(b), this Section 2.4(e) and Article 12 and subject to and in accordance with Article 19 and Article 20.

(ii) In the event that the Concessionaire terminates this Agreement pursuant to Section 2.4(d)(iii)(A) or either the Concessionaire, acting pursuant to Section 2.4(d)(iii)(B), or the Authority, acting pursuant to Section 2.4(d)(iv)(B), terminates this Agreement solely as a result of the failure to comply with any of Sections 2.4(c)(v), (vi), (vii) or (viii), the Authority will compensate the Concessionaire for up to two million dollars (\$2,000,000) of the actual documented and reasonable out-of-pocket costs incurred by the Concessionaire or any of its Affiliates in connection with the Transaction, including the

transactions contemplated by this Agreement after the date on which the Authority publicly announced the selection of the Concessionaire as the winning bidder with respect to the Transaction and in connection with its due diligence and preparation of a proposal to act as the Concessionaire under this Agreement but excluding the costs associated with the unwinding of any hedging arrangements entered into in connection with the prospective financing of the Concession Fee.

(iii) In the event that the Authority terminates this Agreement pursuant to Section 2.4(d)(v), the Authority will compensate the Concessionaire for up to four million dollars (\$4,000,000) of the actual documented and reasonable out-of-pocket costs incurred by the Concessionaire or any of its Affiliates in connection with the Transaction, including the transactions contemplated by this Agreement after the date on which the Authority publicly announced the selection of the Concessionaire as the winning bidder with respect to the Transaction and in connection with its due diligence and preparation of a proposal to act as the Concessionaire under this Agreement but excluding the costs associated with the unwinding of any hedging arrangements entered into in connection with the prospective financing of the Concession Fee.

(iv) Any Cash Deposit and all interest earned thereon may be retained or returned, and the Closing LOC may be drawn upon or returned cancelled under the circumstances described in and in accordance with Section 2.3(b).

(f) *Change in Interest Rate.* Using the 30-year, mid-market LIBOR swap rate in the "Money & Investing, Borrowing Benchmarks" Section of the *Wall Street Journal*, from the close of business on the Business Day immediately prior to the Bid Date (published as 3.99% on the Bid Date) through the close of business two (2) Business Days prior to the Closing Date (as published on the Business Day immediately prior to the Closing Date), the amount of the Concession Fee will either be (i) decreased by 1/20 of one percent (1%) for every one (1) basis point increase in the 30-year, mid-market LIBOR swap rate or (ii) increased by 1/20 of one percent (1%) for every one (1) basis point decrease in the 30-year, mid-market LIBOR swap rate.

Section 2.5 Covenants.

(a) *Cooperation.* The Parties shall cooperate with each other in order to permit the Closing to be consummated on the Closing Date.

(b) *Reasonable Efforts.* Each Party shall use all Reasonable Efforts to (i) take, or cause to be taken, all actions necessary to comply promptly with all requirements of Law that may be imposed on such Party to consummate the Transaction promptly and (ii) obtain (and to cooperate with the other Party to obtain) any Consent of any Governmental Authority or any other public or private third party that is required to be obtained or made by such Party in connection with the consummation of the Transaction. Each Party shall promptly cooperate with and furnish information to the other Party at such other Party's reasonable request in connection with any such efforts by, or requirement imposed upon, any of them in connection with the foregoing.

(c) *Injunctions.* If any Governmental Authority of competent jurisdiction issues a preliminary or permanent injunction or temporary restraining order or other order before the Time of Closing that would prohibit or materially restrict, hinder or adversely affect the Closing, each Party shall use all Reasonable Efforts to have such injunction, decree or order dissolved or otherwise eliminated or to eliminate the condition that formed the basis for such injunction or order, in each case promptly and, in any event, prior to the Time of Closing. Subject to Section 2.4(e), any and all costs incurred by any Party pursuant to any action taken in accordance with this Section 2.5(c) shall be borne by the Party against whom such injunction, restraining order or other order has been entered or whose alleged action or inaction in violation of applicable Law is the basis for the issuance of such injunction, restraining order or other order.

(d) *Operation of the Toll Roads.* From the date hereof up to the Time of Closing, the Authority shall cause the Toll Roads to be operated in the ordinary course in a manner consistent with past practice and shall use all Reasonable Efforts to preserve the goodwill of the Toll Roads and to maintain good business relationships with customers, suppliers and others having business dealings with the Toll Roads, to maintain the Toll Road Assets in normal operating condition and repair in accordance with past practice (ordinary wear and tear excepted) and not to dispose of the Toll Road Assets other than in the ordinary course of business, to perform in all material respects all of its obligations under the Network Contracts and the Tolling Services Agreement and not to enter into any other contracts related to the Toll Roads other than in the ordinary course of business, not to incur any Encumbrances on the Toll Roads (other than Permitted Authority Encumbrances) that are not satisfied by the Closing Date (or retained by the Authority as an Excluded Liability after the Closing Date), and to cause the Toll Roads to be operated in all material respects in accordance with all applicable Laws (except to the extent any non-compliance is being contested in good faith by appropriate proceedings), all with the purpose that the Toll Roads as a going concern shall be unimpaired and concessioned to the Concessionaire at the Closing in a condition not materially worse than the condition as of the date hereof. It is understood and agreed that the Authority shall, up to and including 11:59 p.m. on the day immediately preceding the Closing Date, be entitled to all of the cash or cash equivalents in or generated by the Toll Roads. Without limiting the foregoing, the Authority shall not terminate, amend, modify or agree to a waiver of the terms of any Network Contract, any Authority Capital Improvement Contract, the Tolling Services Agreement or any Authorization related to the Toll Roads after the Effective Date and before the Time of Closing (or in the case of any portion of any Network Contract that has not been assigned or transferred to the Concessionaire in accordance with Section 2.1(b) after the Closing Date, before such assignment or transfer is completed) without the Concessionaire's consent.

(e) *Policies of Insurance.* The Authority shall cause all applicable policies of insurance maintained in respect of the Toll Roads to be continued in force from the date hereof up to the Time of Closing. During the Term, the Concessionaire shall be responsible for maintaining insurance for the Toll Roads in accordance with the terms of this Agreement. The Concessionaire shall provide evidence of such insurance policies to the Authority as a condition precedent to Closing.

(f) *Disclosure of Changes.*

(i) From the date hereof up to the Time of Closing, each Party shall immediately disclose to the other Party any matter which becomes known to it that is inconsistent in any material respect with any of the representations or warranties contained in Article 9. No such disclosure shall be deemed to change any representation and warranty, cure any breach thereof or affect any inability to make such a representation and warranty for purposes of Section 2.4 or for any other purpose.

(ii) From the date hereof up to the Time of Closing, the Authority may supplement or amend any schedule hereto, including one or more supplements or amendments to correct any matter that would constitute a breach of any representation, warranty, covenant or obligation contained herein. No such supplement or amendment shall be deemed to change any representation and warranty, cure any breach thereof or affect any inability to make such a representation and warranty for purposes of Section 2.4(a) or for any other purpose.

(g) *Access to Information.* From the date hereof up to the Time of Closing, the Authority shall (i) give the Concessionaire and its Representatives reasonable access during normal business hours and on reasonable notice to the Toll Roads, subject to the Authority's policies and regulations regarding safety and security, (ii) permit the Concessionaire and its Representatives to make such inspections of the Toll Roads and such related documents and information as they may reasonably request (including such information as may be necessary for the Concessionaire to satisfy the conditions set forth in Section 2.4 and to comply with its obligations under this Section 2.5) and (iii) furnish the Concessionaire and its Representatives with such financial and operating data and other information as is available with respect to the Toll Roads as they may from time to time reasonably request. The Authority's obligations in the preceding sentence are subject to all confidentiality obligations binding on the Authority with respect to any Person; *provided* that the Authority has disclosed to the Concessionaire the applicable Law, applicable agreement or other document in which such confidentiality obligations are set out in order to enable the Concessionaire to evaluate the materiality and significance of not disclosing the information that is subject to such confidentiality obligations. The Concessionaire shall hold and will cause its Representatives to hold in strict confidence all documents and information concerning the Toll Roads to the extent and in accordance with the terms and conditions of the confidentiality agreement governing the Authority and the Concessionaire entered into prior to the Effective Date. After the Closing Date, the Concessionaire shall, at the request of the Authority, provide reasonable assistance with respect to claims or actions brought by or against third parties based upon events or circumstances concerning the Toll Roads and in that regard the Concessionaire shall (A) provide reasonable assistance in the collection of information or documents and (B) make the Concessionaire's employees available when reasonably requested by the Authority.

(h) *Transition.* From the date hereof up to the Time of Closing, the Parties shall cooperate with each other to ensure the orderly transition of control, custody, operation, management, maintenance, rehabilitation and tolling of the Toll Roads at the Time of Closing. At the request of the Concessionaire, the Authority shall provide the Concessionaire, for up to six (6) months following the Closing Date, services of the Authority Employees who do not become employees of the Concessionaire and remain with the Authority and the services of employees of Authority who are assigned for such purpose. All such services shall be provided

for in an amount equal to the Authority's cost therefor, including *pro rata* employment costs and related reasonable expenses allocable to such employees, for the relevant period of time for services being rendered to the Concessionaire, as reasonably determined by the Authority, which amount shall be billed to the Concessionaire as soon as reasonably practicable following the end of each month and shall be payable by the Concessionaire within thirty (30) days of receipt of any such statement, and upon such other reasonable terms and conditions as the Authority and the Concessionaire shall agree.

(i) Casualty Loss Prior to Closing.

(i) Restoration. If, following the Bid Date and prior to the Time of Closing, there has occurred any material casualty loss destruction or damage to any part of the Toll Roads and this Agreement has not been terminated under Section 2.4(d), then the Authority shall promptly and diligently Restore the affected portion of the Toll Roads; *provided* that if the affected portion of the Toll Roads cannot prior to the Closing Date be Restored, then the Authority shall make or cause to be made such Restoration as can reasonably be completed prior to the Closing Date and in its discretion either (A) prior to the Closing Date, provide to the Concessionaire a plan for the completion of such Restoration efforts by the Authority or its agents following the Time of Closing at the Authority's sole expense and subject to the Concessionaire's reasonable approval and shall then complete such Restoration in substantial accordance with such plan or (B) authorize the Concessionaire to Restore the remaining affected portion of the Toll Roads.

(ii) Compensation. If the Authority authorizes the Concessionaire to Restore the remaining affected portion of the Toll Roads as described in Section 2.5(i)(i)(B), then (A) the Authority shall assign to the Concessionaire all available insurance and other proceeds payable by third-party insurers or other third parties to the Authority in respect of such casualty loss, destruction or damage and enforce (with the cooperation of the Concessionaire) all of its rights, remedies and privileges under any applicable insurance policies with third-party insurers and (B) the Concessionaire shall have the right, subject to Section 2.5(i)(iii)(A), to reduce the Concession Fee by any expected deficiency between the amount of such insurance and other proceeds and the projected cost to the Concessionaire of Restoring the affected portion of the Toll Roads.

(iii) Adjustments.

(A) In no event shall the Concession Fee be reduced in accordance with Section 2.5(i)(ii)(B) to an amount that is less than one hundred ten percent (110%) of the Defeasance Amount.

(B) In the event the cost of Restoring the affected portion of the Toll Roads pursuant to Section 2.5(i)(i)(B) is greater than the net amount of insurance proceeds received by the Concessionaire from the Authority therefor plus the amount deducted from the Concession Fee in accordance with Section 2.5(i)(ii), such event shall be a Compensation Event, and the Authority shall pay to the Concessionaire Concession Compensation in accordance with Section 15.1(b) with respect to any Restoration required to be undertaken pursuant to this Section 2.5(i).

(C) If the cost of Restoring the affected portion of the Toll Roads pursuant to Section 2.5(i)(i)(B) is less than the net amount of insurance proceeds received by the Concessionaire as aforesaid plus the amount deducted from the Concession Fee as aforesaid, then such excess shall be the property of the Authority and shall be paid by the Concessionaire to the Authority upon the Restoration of the affected portion of the Toll Roads.

(j) *Toll Road Employees.*

(i) Employees. Prior to the Time of Closing, the Concessionaire shall use its best efforts to interview all Authority Employees as of the date hereof who apply to the Concessionaire for employment and offer employment to commence following the Closing Date to such Authority Employees who meet the Concessionaire's stated requirements for employment; *provided, however,* that the Concessionaire shall have no obligation to offer employment to any such Authority Employee.

(ii) With respect to any Authority Employee hired by the Concessionaire who, on the Closing Date, has ten (10) years or more of accumulated service under the Commonwealth Employee Retirement System (the "Commonwealth Retirement System") and elects to continue participating in the Commonwealth Retirement System (each such Authority Employee, a "Qualified Employee"), the Concessionaire agrees to make the employer contributions that government employers are required to make pursuant to Sections 2-116, 3-105 and 4-113 of Act No. 447, approved by the Legislative Assembly of Puerto Rico on May 15, 1951, as amended, that would become due and payable after the Closing Date for all Qualified Employees hired by the Concessionaire.

(k) *Amendment of Merchant Agreement.* The Authority and the Concessionaire agree and acknowledge that all electronic tolls paid or payable for use by vehicles of toll roads in the Commonwealth (including the Toll Roads) during the Term pursuant to any agreement by the Authority with any ETC Service Provider and processed as provided in the Merchant Agreement (the "Merchant Agreement Tolls") shall be deposited and distributed as provided in the Escrow Agreement (and the Authority shall amend the Merchant Agreement to the extent required to give effect to the foregoing). Unless the Authority receives the prior written consent of the Concessionaire, which consent shall not be unreasonably withheld, delayed or conditioned, the Authority will not amend, modify, assign or consent to the assignment of the Merchant Agreement, cause the termination, cancellation or non-renewal of the Merchant Agreement or take any action that would result in the redirection of any Merchant Agreement Tolls, except as otherwise provided in the Escrow Agreement; *provided further* that the Authority, acting for itself and the Concessionaire (and without the consent of the Concessionaire), may agree to amend the Merchant Agreement to provide that fees payable to the Merchant Bank thereunder conform with then-current market terms.

(l) *Defects in Title to Real Property and Toll Revenues.* The Authority covenants promptly to cure, including by exercising powers of condemnation, any breach of the representations and warranties contained in Section 9.1(d) that interferes or could reasonably interfere with the Toll Road Operations, including the ability of the Concessionaire to generate and collect Toll Road Revenues.

(m) *ETC Service Terms and Tolling Agreement.* Each of the Concessionaire and the Authority acknowledges that the Tolling Services Agreement is in force and effect and shall comply with, perform and observe the ETC Service Terms.

(n) *Prepaid Tickets.* The Authority shall:

(i) cease to sell or otherwise issue any Prepaid Tickets for travel on any toll roads in the Commonwealth, including the Toll Roads, on or before June 30, 2011; and

(ii) until June 30, 2012, pay to the Concessionaire in cash the face amount of any Prepaid Tickets validly tendered to the Concessionaire for travel on the Toll Roads and presented by the Concessionaire to the Authority for payment thereon, such payment to be made within thirty (30) days after such presentment.

Section 2.6 Recordation of Concession. (a) At the Time of Closing, the Parties shall execute such documents as are necessary to enable the Concessionaire, at its expense, to record this Agreement in the appropriate Commonwealth Registry of Property (including, but not limited to, a *deed of protocolization* of this Agreement). To the extent that changes are made to this Agreement with respect to the Term or other material matters, the Parties shall execute, deliver and record, at the Concessionaire's expense, an amendment to the recorded Agreement reflecting such changes.

(b) For purposes of the recordation of the Concession related to PR-22 pursuant to this Agreement in the Commonwealth Registry of Property, the point of commencement (*punto de arranque*) shall be kilometer 0.0, which is located in the Santurce ward of the Municipality of San Juan and shown in Schedule 14, and the portion of the Concession Fee attributable to PR-22 and the legal description of the extent of the Concession related to PR-22 shall be as set forth in the document elevating this Agreement to public deed status under Puerto Rico Law.

(c) For purposes of the recordation of the Concession related to PR-5 pursuant to this Agreement in the Commonwealth Registry of Property, the point of commencement (*punto de arranque*) shall be kilometer 5.75, which is located in the Guaraguao Abajo ward of the Municipality of Bayamón and shown in Schedule 14, and the portion of the Concession Fee attributable to PR-5 and the legal description of the extent of the Concession related to PR-5 shall be as set forth in the document elevating this Agreement to public deed status under Puerto Rico Law.

(d) If any Registrar of the Commonwealth Registry of Property requires that the allocation of the Concession Fee and/or the legal description of the lands be included in this Agreement, the Parties will execute an amendment to this Agreement to include the same in this Agreement.

Section 2.7 Closing Deliveries. At the Time of Closing, each Party shall execute and deliver all assets, agreements, bills of sale, assignments, endorsements, instruments, affidavits and documents as are reasonably necessary in the opinion of the other Party to effect the Transaction (and in form and substance that are reasonably satisfactory to such other Party).

Section 2.8 Intended Treatment for Federal Income Tax Purposes. This Agreement is intended for United States federal income tax purposes to be (a) with respect to the Concession, the grant of a "Section 197 intangible" within the meaning of Sections 197(d)(1)(D) and (F) of the U.S. Code, and Sections 1.197-2(b)(8) and (10) of the Income Tax Regulations thereunder, and (b) with respect to the transfer of Toll Road Assets, a sale of the Toll Road Assets to the Concessionaire.

Section 2.9 Intended Treatment for Commonwealth Income Tax Purposes. This Agreement is intended for Commonwealth income tax purposes to be considered an intangible asset acquired by purchase by the Concessionaire consisting of an exclusive administrative concession (*contrato de alianza*) granting the right to administer and operate the Toll Roads during the Term pursuant to the Act and amortizable under the provisions of Section 1033.08 of the New PR Code. It is the intention that the Concessionaire shall be subject to the provisions of Article 12 of the Act and the Closing Agreement.

ARTICLE 3

TERMS OF THE CONCESSION

Section 3.1 Right to Operate; Present Condition.

(a) *Right to Operate.* The Authority agrees that the Concessionaire shall, at all times during the Term, be entitled to and shall have the exclusive right to conduct Toll Road Operations and the rights and privileges granted to the Concessionaire hereunder, subject to the provisions contained in this Agreement. The Authority acknowledges and agrees that the exclusive right to conduct Toll Road Operations includes the Authority and any other Governmental Authority established under the Laws of the Commonwealth refraining from taking any action with respect to any of the ingress and egress ramps and roadways along the Toll Roads that would materially adversely affect Toll Road Operations, except in accordance with Section 3.7 and subject to the provisions of Section 3.16(d). The Authority and the Concessionaire acknowledge that the Concessionaire's rights to operate the Toll Roads as a public highway and charge tolls thereon are subject to the right of the Authority, in accordance with the terms of this Agreement, to monitor compliance with this Agreement to ensure that the Toll Roads are used and operated as required by this Agreement. The Authority shall, at its sole cost and expense and at all times during the Term, defend its title to the Toll Roads and the rights granted to the Concessionaire hereunder, or any portion thereof, against any Person claiming any interest adverse to the Authority or the Concessionaire in the Toll Roads, or any portion thereof except where such adverse interest arises as a result of the act, omission, negligence, misconduct or violation of Law of the Concessionaire, its Affiliates or their respective Representatives.

(b) *Present Condition.* Except with respect to the completion of any repairs or restoration by the Authority pursuant to Section 2.5(i) and except as specifically set forth in Section 4.1 and Article 9, the Concessionaire understands, agrees and acknowledges that the Concessionaire (i) by the execution of this Agreement, agrees to accept the Toll Roads "AS IS" at the Time of Closing (subject to the Excluded Liabilities) and (ii) has inspected the Toll Roads and is aware of their condition and acknowledges that the Authority neither has made nor is

making any representation or warranty, express or implied, regarding the condition of the Toll Roads (or any part thereof) or their suitability for the Concessionaire's proposed use.

Section 3.2 Toll Road Operations.

(a) *Use.* Except as otherwise specifically provided herein, the Concessionaire shall, at all times during the Term, (i) be responsible for all aspects of the Toll Road Operations and (ii) cause the Toll Road Operations to be performed in accordance with the provisions of this Agreement (including the Operating Standards) and applicable Law. The Concessionaire shall, at all times during the Term, cause the Toll Roads to be continuously open and operational for use by all members of the public for Highway Purposes as a controlled access highway, 24 hours a day, every day, except only for (A) closures (1) specifically permitted under this Agreement, (2) required by applicable Law, (3) necessary to comply with any other requirement of this Agreement or (4) contemplated pursuant to the Operating Standards or (B) temporary closures required to address emergencies and temporary events.

(b) *Costs and Expenses.* Except as otherwise specifically provided herein, the Concessionaire shall, at all times during the Term, pay or cause to be paid all costs and expenses relating to the Toll Road Operations as and when the same are due and payable.

(c) *Assumed Liabilities.* The Concessionaire agrees to assume and discharge, or perform when due, all debts, liabilities and obligations whatsoever relating to the Toll Roads or the Toll Road Operations that occur, arise out of or relate to, or are based on facts or actions occurring, during the Term (including, without limitation, any liabilities to the extent arising (A) under any portion of any Network Contract maintained by the Authority for the benefit of the Concessionaire pursuant to Section 2.1(b); *provided* that the Concessionaire has not expressly elected to exclude such Network Contract from the assignment and assumption set forth in such Section 2.1(b), (B) any Environmental Law and (C) any employer contributions to the Commonwealth Retirement System described in Section 2.5(j)(ii)), but only to the extent such debts, liabilities or obligations do not arise from or relate to any breach by the Authority of any covenant, representation or warranty set forth in this Agreement (collectively, the "Assumed Liabilities"); and *provided further* that the Assumed Liabilities shall not include, and the Authority shall perform and discharge as and when due all Excluded Liabilities. The "Excluded Liabilities" shall consist of any debts, liabilities and obligations (i) with respect to the Authority's (or any of its Representatives') obligations under this Agreement, (ii) arising out of or under (A) the operation, management, maintenance, construction, rehabilitation and tolling of the Toll Roads prior to the Time of Closing, (B) the work undertaken by the Authority (or any of its Representatives) related to the Authority Capital Improvement Projects or (C) any act or omission by or obligation or liability of the Authority (or any of its Representatives) under Commonwealth employment and labor laws related to the period prior to the Time of Closing with respect to any Authority Employee hired by the Concessionaire, (iii) relating to the defeasance or retirement of any debt or obligations related to the Toll Roads that are secured by the Toll Roads, the Toll Road Revenues or the Toll Road Assets, (iv) with respect to any portion of any Network Contract neither assigned to nor held for the benefit of the Concessionaire pursuant to Section 2.1(b), any Authority Capital Improvement Contract, the Tolling Services Agreement (except as otherwise expressly provided by the ETC Service Terms) and any other contract of the Authority not expressly assigned to the Concessionaire hereunder, or (v) under

any Environmental Law to the extent arising out of or relating to (A) the Authority Capital Improvement Projects, (B) any Additional Lands required by any Required Modification, (C) any Additional Lands required by any Agreed Modification in accordance with the terms thereof, or (D) the ownership, operation or condition of the Toll Roads or the Toll Road Assets at any time prior to the Time of Closing or any Hazardous Substance to the extent released or threatened to be released from the Toll Roads or the Toll Road Assets at any time prior to the Time of Closing, including any material environmental conditions existing prior to the Time of Closing, whether or not the manifestation of which occurs at or following the Time of Closing (collectively, the "Excluded Environmental Liabilities"). Notwithstanding the foregoing, the Assumed Liabilities shall include any liabilities and obligations arising due to the Concessionaire's failure to comply with established Engineering or Institutional Controls for such environmental conditions on the Toll Roads; *provided* that, prior to having any obligation to comply therewith, the Concessionaire shall have (i) received written notice of such Engineering or Institutional Controls from the Authority and (ii) a reasonable period of time in which to implement such controls (which period shall not exceed sixty (60) days unless such implementation reasonably requires a longer period, and the Concessionaire has demonstrated to the satisfaction of the Authority, acting reasonably, that it is proceeding with all due diligence during such period to implement such compliance); and *provided further* that the Concessionaire may submit any dispute with respect to such obligation to dispute resolution in accordance with Article 19.

(d) *Operating Agreements.* The Concessionaire may not enter into any Operating Agreement that extends beyond the Term (unless such agreement is assignable to the Authority and subject to a right by the Authority to terminate such agreement without penalty within three (3) Business Days' notice or less effective upon such extension).

Section 3.3 Operator.

(a) *Engagement.* The Toll Road Operations shall, at all times during the Term, be under the direction and supervision of an active operator that has (or if the Concessionaire is the Operator, an Equity Participant then owning at least ten percent (10%) of the Concessionaire shall have) the expertise, qualifications, experience, competence, skills and know-how to perform the Toll Road Operations in accordance with this Agreement (an "Operator"). The Operator on the first day of the Term shall be the Concessionaire. The Concessionaire shall not engage or appoint a replacement Operator, unless (A) the Authority has Approved such Operator (based upon a determination in accordance with Section 3.3(b)) or such replacement Operator is the Concessionaire or a majority-owned Affiliate of the Concessionaire, in which case no such Approval shall be required, and (B) the replacement Operator has delivered the Sworn Statement to the Authority. The Operator shall at all times be subject to the direction, supervision and control (by ownership, contract or otherwise) of the Concessionaire, and any delegation to an Operator shall not relieve the Concessionaire of any obligations, duties or liabilities hereunder. The contract or other arrangement with the Operator must be subject to and consistent with this Agreement. In the event the Operator takes any action described in Section 16.1(a)(iv), or suffers any action described in Section 16.1(a)(v), or is convicted (or enters a plea of guilty) in respect of an Act 458 Crime or a Public Integrity Crime, the Authority may demand that the Operator be replaced. Upon such demand, the Concessionaire shall

immediately replace the Operator in accordance with Section 3.3(b). For purposes of this Agreement, any and all acts or omissions of the Operator shall be deemed the acts or omissions of the Concessionaire, even if such acts or omissions were not reasonably foreseeable or were grossly negligent or willful or made in bad faith on the part of the Operator. The Concessionaire shall immediately notify the Authority upon the termination or resignation of an Operator. The Operator shall have no interest in or rights under this Agreement or the Toll Roads unless the Operator is the Concessionaire itself. The Operator shall comply at all times with the Commonwealth Contractor Requirements.

(b) *Approval*. The Authority's Approval of a replacement Operator may be withheld only if the Authority reasonably determines that the engagement of such proposed Operator is prohibited by applicable Law, such proposed Operator is unable to make the representations set forth in Section 9.6 or deliver the Sworn Statement or such proposed Operator is not capable of performing the Toll Road Operations in accordance with this Agreement, which determination shall be based upon and take into account the following factors: (i) the financial strength and integrity of the proposed Operator, its direct or indirect beneficial owners and each of their respective Affiliates; (ii) the experience of the proposed Operator in operating Comparable Highways that are toll roads and performing other relevant projects; (iii) the background and reputation of the proposed Operator, its direct or indirect beneficial owners, their respective Affiliates and of each of their respective officers, directors and employees (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects); (iv) the material terms of the proposed agreement between the Concessionaire and the Operator that would reasonably be expected to impact the ability of the Concessionaire to comply with the terms of this Agreement; and (v) such other factors, if any, as the Authority reasonably determines to be relevant, *provided* that, to the extent reasonably requested by the Concessionaire, the Authority shall notify the Concessionaire of such other factors. Any proposed replacement Operator also shall be required to deliver to the Authority (A) the Sworn Statement and (B) an Officer's Certificate in which the replacement Operator makes representations and warranties covering the matters set forth in Section 9.6. Any disputes between the Authority and the Concessionaire with respect to the appointment or replacement of the Operator shall be settled in accordance with the provisions of Article 19. Notwithstanding the foregoing, in the event that, upon termination or resignation of the Operator, a replacement Operator has not been Approved by the Authority, the Concessionaire shall have the right to appoint, for a period not to exceed one year, an interim Operator to operate the Toll Roads until a replacement Operator can be selected pursuant to this Agreement. This interim Operator may be selected without Approval by the Authority under the terms described above so long as the interim Operator meets the following criteria: (A) the interim Operator has experience in operating Comparable Highways that are toll roads; (B) the interim Operator (or any guarantor of its obligations) has a tangible net worth reasonably sufficient to carry out its obligations and responsibilities as Operator; and (C) the interim Operator delivers to the Authority (1) the Sworn Statement and (2) an Officer's Certificate covering the matters set forth in clauses (i), (iii), (v), (vi), (vii) and (viii) of Section 9.6. The Concessionaire shall not extend the term of any interim Operator beyond six consecutive months or appoint a successor interim Operator after such six-month period, unless the qualification of the replacement Operator is subject to a dispute, in which case the six-month period shall be extended until the conclusion of the dispute resolution.

process. For avoidance of doubt, no Approval shall be required pursuant to this Section 3.3(b) in the event that the Concessionaire or a majority-owned Affiliate thereof is the Operator and an Equity Participant then owning at least ten percent (10%) of the Concessionaire has the expertise, qualifications, experience, competence, skills and know-how to perform the Toll Road Operations in accordance with this Agreement.

(c) *Change in Control.* A Change in Control of an Operator shall be subject to the Authority's Approval based on a determination using the factors set forth for the approval of a replacement Operator in Section 3.3(b); *provided, however*, that if the operations of the Operator are not materially changed by the proposed Change in Control of the Operator, the factors described in clauses (ii) and (iv) of Section 3.3(b) shall be deemed satisfied. The Authority's judgment as to such Approval shall be based upon the Change in Control and the party or parties obtaining control and not upon considerations that do not arise out of the Change in Control.

Section 3.4 Authorizations; Qualifications.

(a) *Compliance.* The Concessionaire shall obtain, comply with, promptly renew and maintain in good standing all Authorizations necessary to perform its obligations hereunder; *provided, however*, that if (i) the Concessionaire is, at any time during the Term, required to obtain any Authorization from a Governmental Authority that the Authority was not required to obtain in connection with its operation of the Toll Roads prior to the Time of Closing or (ii) any such Authorization can be obtained only by the Authority or some other Governmental Authority, then the Authority shall (x) use its Reasonable Efforts to assist the Concessionaire in obtaining such Authorization and (y) subject to Law, promptly deliver to the Concessionaire a copy of any notice, summons, letter or other communication in respect of any Authorization obtained, renewed or maintained in the Authority's name following the Authority's receipt thereof.

(b) *Qualifications.* The Concessionaire shall, at all times during the Term, maintain in full force and effect its existence and all qualifications necessary to carry on its business pertaining to the Toll Road Operations, including all rights, franchises, licenses, privileges and qualifications required in connection with the Toll Road Operations. Nothing contained in the foregoing shall be deemed to prohibit or limit the Concessionaire from changing its organizational form or status (including a change from a limited liability company to a corporation or a limited partnership), subject to the terms of Section 17.1(e).

Section 3.5 No Encumbrances.

(a) *By the Concessionaire.* The Concessionaire shall not do any act or thing that will create any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the Toll Roads and shall promptly remove any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the Toll Roads, unless the Encumbrance came into existence as a result of an act, omission, negligence, misconduct or violation of Law by the Authority or any other Governmental Authority or a Person claiming through any of them which in turn was not caused by an act or omission of the Concessionaire or its Representatives. The Concessionaire shall not be deemed to be in default hereunder if the Concessionaire

continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; *provided* that the Concessionaire (i) has given advance notification to the Authority that it is the intent of the Concessionaire to contest the validity or collection thereof or cause such contest and (ii) has given a satisfactory indemnity to the Authority or has deposited with the Authority a Letter of Credit, surety bond (consistent (including as to form and credit quality of issuer) with the requirements set forth herein for Letters of Credit), cash or Eligible Investment reasonably satisfactory to the Authority in an amount equal to the amount of the claim or Encumbrance, plus such interest and penalties, court costs, or other charges as the Authority may reasonably estimate to be payable by the Concessionaire at the conclusion of such contest or as is required to provide insurance over any potential Encumbrance; *provided, however*, that in the event such Letter of Credit, surety bond, cash or Eligible Investment shall be so deposited, the same shall be held until such claim or other Encumbrance shall have been released and discharged and shall thereupon be returned to the Concessionaire, less any amounts expended by the Authority, if any, to procure such release or discharge, or any loss, cost, damage, reasonable attorneys' fees or expense incurred by the Authority, if any, by virtue of the contest of such Encumbrance.

(b) *By the Authority.* Neither the Authority nor any Governmental Authority of or in the Commonwealth shall do any act or thing that will create or permit to exist any Encumbrance (other than a Permitted Authority Encumbrance) against the Toll Roads and shall promptly remove any Encumbrance (other than a Permitted Authority Encumbrance) against the Toll Roads that came into existence as a result of an act of or omission by the Authority or a Person claiming through any of them. The Authority shall not be deemed to be in default hereunder if the Authority continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof, by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; *provided* that the Authority has given advance notification to the Concessionaire that it is the intent of the Authority to contest the validity or collection thereof.

(c) *Removal.* Each Party, at the reasonable request of the other Party, shall use its Reasonable Efforts to assist such other Party in attempting to remove any Encumbrance that has come into existence as a result of an act of or omission by such other Party; *provided* that the costs and expenses incurred by any Party in connection with such efforts shall be borne by the Party whose act or omission has given rise to such Encumbrance.

Section 3.6 Single Purpose Covenants. The Concessionaire shall, at all times during the Term, (i) be formed and organized solely for the purpose of owning the Concessionaire Interest, carrying out Toll Road Operations and collecting Toll Road Revenues with respect to and otherwise dealing with the Toll Roads and performing the Toll Road Services (and carrying out other activities permitted pursuant to this Agreement (and any activities reasonably incidental thereto (including the financing thereof and of the Transaction))), (ii) not engage in any business unrelated to clause (i) above, (iii) not have any assets other than those related to its activities in accordance with clauses (i) and (ii) above, (iv) maintain its own separate full and complete books and records and its own accounts, in each case which are separate and apart from the books and records and accounts of any other Person; *provided, however*, that, subject to clause (viii) below,

the Concessionaire's assets may be included in a consolidated financial statement of a direct or indirect shareholder or other owner of a beneficial interest of the Concessionaire if inclusion on such consolidated financial statement is required to comply with the requirement of generally accepted accounting principles of the relevant jurisdiction, but only if (A) such consolidated financial statement shall be appropriately footnoted to the effect that the Concessionaire's assets are owned by the Concessionaire and that they are being included on the consolidated financial statement of such shareholder or other owner of a beneficial interest only to comply with the requirements of generally accepted accounting principles of the relevant jurisdiction and (B) such assets shall be listed on the Concessionaire's own separate balance sheet, (v) hold itself out as being a Person, separate and apart from any other Person, (vi) not commingle its funds or assets with those of any other Person, (vii) conduct its own business in its own name independently and through its own authorized officers and agents, (viii) maintain separate audited financial statements and file its own tax returns (to the extent required by applicable Law), (ix) pay its own debts and liabilities when they become due out of its own funds, (x) observe all corporate, limited partnership or limited liability company, as applicable, formalities and do all things necessary to preserve its existence, (xi) have sufficient officers and personnel to run its business operations or to supervise an Operator pursuant to one or more contractual arrangements, (xii) pay the salaries of its own employees, if any, and maintain a sufficient number of employees in light of its contemplated business operations, (xiii) not guarantee or otherwise obligate itself with respect to the debts or obligations of any other Person, or hold out its credit as being available to satisfy the debts or obligations of any other Person, (xiv) not acquire obligations of or securities issued by its shareholders, partners or members, as applicable, (xv) allocate fairly and reasonably shared expenses, including any overhead for shared office space (xvi) use separate stationery, invoices and checks bearing its own name, (xvii) except as expressly permitted hereby or by any Concession Mortgage or in connection with the ordinary course of business of the Toll Roads, not pledge its assets for the benefit of any other Person or make any loans or advances to any other Person, (xviii) correct any known misunderstanding regarding its separate identity, (xix) maintain adequate capital in light of its contemplated business operations, (xx) observe all customary organizational and operational formalities, including the taking and maintaining of complete minutes of all member, manager, shareholder, board or similar meetings, (xxi) maintain an arm's length relationship with its Affiliates and enter into transactions with Affiliates only on a commercially reasonable basis and pursuant to enforceable agreements and (xxii) have organizational documents that comply with the requirements set forth in this Section 3.6.

Section 3.7 Rights of the Authority to Access and Perform Work on the Toll Roads.

(a) *Reservation of Rights.* The Authority reserves (for itself, its Representatives and any other Governmental Authority of competent jurisdiction, as well as grantees, tenants, mortgagees, licensees, and others claiming or acting by, through or under the Authority (each, an "Authority Related Entity")) the right and shall, at all times during the Term, have the right to enter the Toll Roads and each and every part thereof in response to any event, circumstance or purpose (x) described in Section 3.7(a)(i)(A) and Section 3.7(a)(ii), such right to be exercised at all reasonable times upon reasonable prior notice to the Concessionaire, (y) described in Section 3.7(a)(i)(B) and (C) and Section 3.7(a)(iii) and (iv), such right to be

exercised at all reasonable times with notice to be provided as set forth in such subclauses (iii) and (iv), and (z) described in Section 3.7(a)(v) through (viii) (inclusive) and Section 3.7(a)(x), such right to be exercised at all reasonable times with the Authority to request, with reasonable prior written notice, the Concessionaire's consent to the exercise of such right, such consent not to be unreasonably withheld, delayed or conditioned:

(i) (A) to inspect the Toll Roads or determine whether or not the Concessionaire is in compliance with its obligations under this Agreement or applicable Law pursuant to Section 8.3, (B) to perform on the Toll Roads (1) any work related to the BRT/DTL Project in accordance with the Project Interface Plan and this Agreement or (2) any other Authority Capital Improvement Project, and (C) to perform any work pursuant to the Tolling Services Agreement;

(ii) if a Concessionaire Default then exists, to make any necessary repairs to the Toll Roads, perform any work therein and take any reasonable actions in connection therewith, including remediation of Hazardous Substances, and pursuant to Section 16.1(b)(iii);

(iii) in the event of an actual or reported emergency, danger, threat, circumstance or event that is reasonably believed by the Authority or its designee (including relevant Emergency Personnel in accordance with Section 3.18) to have caused (or to present the imminent potential to cause) injury to individuals, damage to property, or threat to the Environment or to public safety, to take, at such times as the Authority determines necessary in its discretion and with notice to the Concessionaire if practicable under the circumstances, such actions as the Authority or such designee reasonably determines necessary to respond to or to rectify such emergency, danger, threat, circumstance or event;

(iv) in the event of any circumstance or event that is reasonably believed by the Authority to have caused a material impairment to the continuous operation of the Toll Roads as a public highway (and the Authority shall provide written notice to the Concessionaire of such event or circumstances as soon as is reasonably practicable after first becoming aware of such event or circumstance), and if the Authority in its discretion reasonably determines that the Concessionaire is not then taking all necessary steps to respond to or to rectify such circumstance or event, to take, at such times as the Authority determines necessary in its discretion and with notice to the Concessionaire if practicable under the circumstances, such actions as the Authority determines may be reasonably necessary to respond to or to rectify such circumstance or event or to restore the operation of the Toll Roads;

A (v) at its own cost and expense, to design, construct, operate, manage, maintain, repair and rehabilitate any existing or future roads, streets or highways (other than the Toll Roads) adjacent to, above or under the Toll Roads in accordance with the terms set forth in this Agreement;

(vi) at its own cost and expense, to use the Toll Roads for all purposes not inconsistent with the rights granted to the Concessionaire in this Agreement (including any purpose related to the generation and collection of revenues described in Section 7.2(b) and any other purpose not reasonably related to the generation of Toll Road Revenues);

(vii) at its own cost and expense, to (A) install, design, manage, maintain, inspect, repair and rehabilitate any existing or future utilities or similar services or safety measures related to such utilities or services (whether provided by the Authority or third parties) in, on, along, under, adjacent to, across, over or through the Toll Roads (including water and sewer lines, aqueducts, natural gas pipelines, oil pipelines, power transmission lines, surveillance equipment and other communications); *provided* that the Authority shall not be required to compensate the Concessionaire with respect to the use of Toll Road Facilities for such services or measures unless they materially impair the Concessionaire's use of the Toll Road Facilities for the Toll Road Operations and such impairment results in Losses or reduced Toll Road Revenues, (B) grant easements and rights on the Toll Roads for the benefit of suppliers or owners of any such utilities, services or measures and (C) use the Toll Roads in connection with any such installation, design, management, maintenance, repair or rehabilitation (*provided* that notwithstanding the foregoing, the Concessionaire shall have the right, but not the obligation, at all times during the Term, and subject to applicable Law, to install, design, manage, maintain, repair and rehabilitate utilities or other services for its own account (and not for lease, resale or service to third parties) to the extent that the said utilities or services are necessary or desirable for the Toll Road Operations);

(viii) at its own cost and expense, to take any reasonable actions required to be taken, including remediation of Hazardous Substances, in connection with the Authority's satisfaction and remediation of any Excluded Environmental Liabilities;

(ix) at its own cost and expense, for the purposes described in Act No. 83 of the Legislative Assembly of Puerto Rico, enacted on May 2, 1941 § 14; and

(x) at its own cost and expense (except as otherwise expressly set out in this Agreement) and solely in accordance with the terms hereof, to do any other act or thing that the Authority or any Authority Related Entity may be obligated to do pursuant to Law or the terms of this Agreement or have a right to do under this Agreement;

provided that, in each case, such right to enter the Toll Roads shall not include any of the private business offices of the Concessionaire or the Operator (to the extent that the Operator is not the Concessionaire) that may be located on the Toll Roads; *provided further*, notwithstanding Sections 3.7(a)(v) through (x) (inclusive), any cost or expense related to any exercise by the Authority of its rights under Section 3.7(a)(ii) shall be borne by the Parties according to Section 16.1(b)(iii).

4 In connection with any entry made pursuant to this Section 3.7, the Authority (A) shall, and shall use its Reasonable Efforts to cause any Authority Related Entity effecting any such entry or action to, use Reasonable Efforts to minimize interference with the Toll Roads and Toll Road Operations (including with respect to traffic flow, the physical structure of the Toll Roads and the Concessionaire's compliance with the Operating Standards), and (B) provide to the Concessionaire the Concession Compensation, upon demand by the Concessionaire, resulting from (x) any entry or action with respect to the Toll Roads or Toll Road Operations that qualifies as a Compensation Event pursuant to subsection (i) of the definition thereof or (y) as a result of any liability or obligation of or to the Concessionaire under any Environmental Law directly

caused by any entry or action with respect to the Toll Roads or Toll Road Operations pursuant to this Section 3.7(a).

(b) *Access Rights.* The Authority, its Representatives and any Governmental Authority of or in the Commonwealth, during the progress of any work referred to in this Section 3.7, at no additional cost to the Authority, its Representatives or any Governmental Authority of or in the Commonwealth, shall have all necessary or appropriate access rights and may keep and store at the Toll Roads all necessary or appropriate materials, tools, supplies, equipment, sheds, mobile trailers and other vehicles, in a reasonably neat and orderly fashion, in material compliance with all Laws (including Environmental Laws), and the Operating Standards; *provided* that such access and storage shall not unreasonably interfere with the Concessionaire's conduct of the Toll Road Operations. The Concessionaire shall not have any liability for theft or damage of such materials and other items or with respect to any acts or omissions of the Authority, its Representatives, or any Governmental Authority of the Commonwealth or any person acting on behalf of any such entity. To the extent that the Authority, its Representatives or any Governmental Authority of or in the Commonwealth or any other person on the Authority's behalf undertakes work or repairs under this Section 3.7 or any other provision of this Agreement, such work or repairs shall be commenced and diligently completed in a good and workmanlike manner, in accordance with any applicable Operating Standards and in such a manner as not to materially interfere with the Concessionaire's conduct of business in or use of such space to the extent reasonably possible without incurring any additional cost.

(c) *Effect of Reservation.* Any exercise or reservation of a right by the Authority to enter upon the Toll Roads and to make or perform any repairs, alterations, Restoration or other work in, to, or about the Toll Roads that is the Concessionaire's obligation pursuant to this Agreement shall not be deemed to (i) impose any obligation on the Authority to do so, (ii) render the Authority responsible to the Concessionaire or any other Person for the failure to do so or (iii) relieve the Concessionaire from any obligation to indemnify the Authority as otherwise provided in this Agreement. Nothing in this Agreement shall impose upon the Authority any duty to do any work required to be performed by the Concessionaire hereunder and performance of any such work by the Authority shall not constitute a waiver of the Concessionaire's default in failing to perform the same.

Section 3.8 Coordination.

(a) *Utility Coordination.* Subject to Section 3.7(a)(vii), the Concessionaire shall be responsible for coordinating or ensuring the coordination of all Toll Road Operations with utilities and Persons having service lines, pipelines, transmission lines and other equipment, cables, systems and other apparatus in, on, under, over or adjacent to the Toll Roads, in each case at the sole cost and expense of such utilities or Persons or the Concessionaire. The Concessionaire shall cause provision to be made for the removal or temporary or permanent relocation and restoration of utilities and other services and any lines, equipment, cables, systems and other apparatus that intersect, interfere with, interface with or otherwise affect the Toll Road Operations and shall arrange for temporary rights of entry and access to utilities and other services to be made available that are necessary in connection with the Toll Road Operations or as may exist under this Agreement or applicable Law, in each case at the sole cost and expense

of such utilities or other Persons or the Concessionaire. The Authority shall cooperate with the Concessionaire with respect to its obligations under this Section 3.8(a).

(b) *Affected Property Coordination.* The Concessionaire shall be responsible for coordinating or ensuring the coordination of all Toll Road Operations with Affected Property. The Concessionaire shall cause provision to be made for the temporary or permanent relocation or closure of roadways that intersect, interfere with, interface with or otherwise affect the Toll Road Operations and shall arrange for temporary right-of-entry and access to the property of all relevant Governmental Authorities or other Persons as may be necessary in connection with the Toll Road Operations or as may exist under this Agreement or applicable Law. The Authority shall cooperate with the Concessionaire with respect to its obligations under this Section 3.8(b).

(c) *Excavations; Landfills.* The Concessionaire shall notify the Authority in writing of any excavations, land fillings or other similar work that the Concessionaire shall undertake, such notice to be provided by the Concessionaire at least ten (10) Business Days prior to the commencement of such excavations, land fillings or other work.

(d) *No Interference.* The Parties understand and agree that nothing in the foregoing clauses (a) and (b) is in any way intended to interfere with the normal operation of the Toll Roads by the Concessionaire, and the Authority shall cooperate with the Concessionaire in minimizing any effect that the obligations of the Concessionaire under such clauses (a) and (b) may have on the Toll Road Operations and the Toll Road Revenues.

Section 3.9 No Entry on Authority Property. Except in the case of an emergency (and then only to the extent necessary to avoid injury or death to individuals or damage to property) and except for limited access necessary for the Concessionaire's performance of its obligations hereunder or its compliance with applicable Laws that does not interfere with the Authority's use or operation of such other properties in any material respect, the Concessionaire shall not enter upon any property of the Authority adjacent to, above or under the Toll Roads in connection with the Toll Road Operations without the prior Approval of the Authority, other than property that is open to the public.

Section 3.10 Taxes.

(a) *Payment of Taxes.* Except as otherwise provided herein, the Concessionaire shall pay when due all Taxes that are or become payable in respect of periods during the Term in respect of the operations at, occupancy of, or conduct of business in or from the Toll Roads and personal property included in the Toll Road Facilities, except personal property used exclusively in the Toll Road Facilities or for the operations conducted therein belonging to the Authority, which shall be exempt from personal property taxes pursuant to Article 12(d) of the Act as provided in subsection (b) below. The Authority reserves the right, without being obligated to do so, to pay the amount of any such Taxes not timely paid by the Concessionaire, and the amount so paid by the Authority shall be due and payable by the Concessionaire immediately upon written demand by the Authority. The Concessionaire shall have the right to contest in good faith the validity or amount of any Taxes which it is responsible to pay under this Section 3.10(a); *provided* that (i) the Concessionaire has given prior notice to the Authority of each such contest, (ii) no contest by the Concessionaire may involve, in the

reasonable opinion of the Authority, a possibility of forfeiture or sale of the Toll Roads and (iii) upon the final determination of any contest by the Concessionaire, if the Concessionaire has not already done so, the Concessionaire shall pay the amount found to be due, if any, together with any costs, penalties and interest. If the Concessionaire is contesting in good faith the validity or amount of any Taxes in accordance with the immediately preceding sentence, the Authority shall not have the right to pay the amount of such Taxes until there is a final determination of such contest.

(b) *Exemption from Taxes.* The Authority covenants that during the Term the Concessionaire shall not be responsible for, and the Concessionaire and the Toll Roads shall not be subject to, (i) any real property Tax imposed on or measured by the value of the Toll Roads that is imposed by the Authority or any other Governmental Authority of the Commonwealth, (ii) any personal property tax on personal property owned by the Authority and used by the Concessionaire exclusively in the Toll Road Facilities or in the operations conducted therein that is imposed by the Authority or any Governmental Authority of the Commonwealth, or (iii) any sales or use Tax imposed by the Commonwealth on the tolls charged by or on behalf of the Concessionaire pursuant to Section 2301(s) and (pp) of the PR Code and Section 4010.01 (p) and (nn) of the New PR Code. The Authority shall provide Concession Compensation to the Concessionaire resulting from any breach of the covenant set forth in this Section 3.10(b).

Section 3.11 Utilities. The Concessionaire shall pay when due all charges (including all applicable Taxes and fees) for gas, electricity, light, heat, power, telephone, water and all other utilities and services used in the Toll Road Operations or supplied to the Toll Roads during the Term. Upon request of the Authority, the Concessionaire shall forward to the Authority, within fifteen (15) days following the respective due dates, official receipts, photocopies thereof, or other evidence satisfactory to the Authority, acting reasonably, of the payment required to be made by the Concessionaire in accordance with this Section 3.11. The Authority does not warrant that any utility services will be free from interruptions caused by war, insurrection, civil commotion, riots, acts of God, government action, terrorism, repairs, renewals, improvements, alterations, strikes, lockouts, picketing, whether legal or illegal, accidents, inability to obtain fuel or supplies or any other causes, and any such interruption of utility services shall never be deemed an Adverse Action or an eviction or disturbance of the Concessionaire's use and possession of the Toll Roads or any part thereof (unless resulting from an intentional act or omission of the Authority), render the Authority responsible to the Concessionaire for damages or, unless the same constitutes a Delay Event, relieve the Concessionaire from performance of the Concessionaire's obligations under this Agreement. The Authority shall hold and preserve, for the length of the Term, all legal rights and easements in its possession related to utility services to the extent necessary for the Concessionaire to operate the Toll Roads.

Section 3.12 Negotiations with Governmental Authorities. Prior to entering into any agreement with any Governmental Authority in connection with the Toll Road Operations (a "Government Agreement"), the Concessionaire shall submit such Government Agreement for Approval by the Authority, which Approval may be withheld, delayed or otherwise conditioned in the discretion of the Authority in the case of Government Agreements that extend or could extend beyond the Term (unless such agreement is assignable and subject to a right by the Authority to terminate such agreement without penalty within three (3) Business Days' notice or

less effective upon such extension) or pursuant to which the Authority may incur any liability whatsoever. Notwithstanding the foregoing, if the absence of such Government Agreement may cause the Concessionaire or Toll Road Operations to fail to be in compliance with applicable Law or the terms of this Agreement, the Concessionaire may enter into such Government Agreement upon notice to the Authority; *provided* that the Concessionaire indemnifies the Authority for any Losses relating thereto. If the Concessionaire wishes the Authority to be a party to a Government Agreement in the place and stead of, or in addition to, the Concessionaire, then the Concessionaire must provide notice of the proposed terms of such Government Agreement to the Authority for the Authority's Approval, which Approval will be in the Authority's sole discretion, and all costs and expenses incurred by the Authority in connection with or related to such Government Agreement shall be borne by the Concessionaire.

Section 3.13 Notices of Defaults and Claims. The Concessionaire shall promptly give notice to the Authority (i) if a Concessionaire Default occurs under this Agreement and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation pertaining to the Toll Roads or the Concessionaire or the Toll Road Operations (whether or not such claim, proceeding or litigation is covered by insurance) of which the Concessionaire is aware. The Concessionaire shall provide the Authority with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation. The Authority shall promptly give notice to the Concessionaire (i) if an Authority Default occurs under this Agreement and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation pertaining to the Toll Roads or the Toll Road Operations (whether or not such claim, proceeding or litigation is covered by insurance) of which the Authority is aware. The Authority shall provide the Concessionaire with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

Section 3.14 Assignment of Operating Agreements and Plans. At the request of the Authority, the Concessionaire shall collaterally assign to the Authority, in form and substance satisfactory to the Authority, acting reasonably, all of the right, title and interest of the Concessionaire in, to and under all or any of the Operating Agreements and all present and future specifications, plans, software (including source code) to the extent that such software is subject to a non-exclusive license permitting collateral assignment, drawings, information and documentation in relation to the Toll Road Operations (the "Plans") as collateral security to the Authority for the observance and performance by the Concessionaire of its covenants and obligations under this Agreement. The Concessionaire covenants that all of the right, title and interest of the Concessionaire in, to and under all Operating Agreements and the Plans entered into or created after the Time of Closing shall be collaterally assignable to the Authority for the purposes of this Section 3.14. The Authority acknowledges that the Operating Agreements and the Plans may also be assigned as security to a Concession Mortgagee and that each of the Authority and such Concession Mortgagee shall be entitled to use the Operating Agreements or the Plans in enforcing their respective security as hereinafter provided. Without limiting the generality of the foregoing, but subject to the Authority's assumption of liabilities under the Operating Agreements accruing after such time as the Authority exercises its rights under this Section 3.14 and, subject to Article 18, the Authority shall be entitled to use the Operating Agreements and the Plans in each of the following events: (i) if the Authority terminates this Agreement without a concession agreement being granted to the Concession Mortgagee or

nominee thereof pursuant to the provisions of Article 18 and (ii) if the Authority elects to use the Operating Agreements or the Plans to remedy a Concessionaire Default under this Agreement. Notwithstanding the foregoing, in the event that the Concession Mortgagee has entered into possession or is diligently enforcing and continues to diligently enforce its security, whether by way of appointment of a receiver or receiver and manager, foreclosure or power of sale in accordance with Article 18, or otherwise, and is using or reasonably expects to be using the Operating Agreements or the Plans in respect of the Toll Road Operations, the Authority shall not be entitled to use the Operating Agreements or the Plans in enforcing its security, it being acknowledged that any assignment of the Operating Agreements or the Plans to a Concession Mortgagee shall have priority over any assignment of the Operating Agreements or the Plans to the Authority and the Authority shall cooperate with the Concessionaire and the Concession Mortgagee in connection with ensuring such priority, including that the Authority shall execute and deliver to the Concession Mortgagee an intercreditor and subordination agreement in form and substance satisfactory to such Concession Mortgagee, acting reasonably, acknowledging such priority. The Concessionaire shall promptly deliver to the Authority, at the sole cost and expense of the Concessionaire, forthwith after completion or execution and delivery, a copy of each item of the Operating Agreements and the Plans.

Section 3.15 Names.

(a) The names designated for the Toll Roads shall be the names thereof as designated by the Authority as of the Effective Date and such names may not be changed by the Concessionaire without the prior Approval of the Authority, which Approval may be withheld, delayed or otherwise conditioned in the discretion of the Authority.

(b) The Authority, in its discretion, shall have the right to change the names of the Toll Roads (and to cause the Concessionaire to change, at the Authority's expense, any signage on the Toll Roads in connection therewith) at any time during the Term upon ninety (90) days' prior notice to the Concessionaire; *provided, however*, that the Authority shall grant a license of the names together with all related logos and marks to the Concessionaire upon terms substantially similar to those contained in Section 3.15(c); *provided further* that any change in the names of the Toll Roads by the Authority in accordance with this Section 3.15 shall not result in a name of a Toll Road being odious or offensive or otherwise likely to result in a negative association by the public. The exercise of such right by the Authority shall not constitute an Adverse Action. The Authority shall have the right to all proceeds and other consideration received in connection with any such name change and shall reimburse the Concessionaire for all out-of-pocket and documented costs and expenses reasonably incurred by the Concessionaire in connection with any such name change.

(c) The Authority grants to the Concessionaire a non-exclusive, non-transferable, royalty-free license during the Term to use the names "Expreso Río Hondo" (for PR-5) and "Autopista José De Diego" (for PR-22) together with all existing and future developed logos and marks used in connection with the Toll Road Operations, solely in connection with the performance of the Concessionaire's obligations and exercise of rights under this Agreement. The Concessionaire may grant sublicenses of the same to the Operator and to Vendors.

Section 3.16 Enforcement.

(a) *Required Level of Police Service.*

(i) The Authority shall use its Reasonable Efforts to cause the Commonwealth Police to provide traffic patrol and traffic law enforcement services on the Toll Roads at substantially the same level as those provided on the Toll Roads as of the Bid Date (the "Minimum Level of Police Service"), *provided that* in the event the Concessionaire (x) is in breach of any of its obligations under Section 3.16(e)(i) or (y) enters into any agreement with the Commonwealth Police for the provision of not less than the Minimum Level of Police Service pursuant to Section 3.16(a)(ii)(x), then for so long as such breach is continuing or such agreement is in effect, the Authority shall not be subject to the requirements of this Section 3.16(a)(i).

(ii) To the extent permitted by Law, the Concessionaire may contract directly with the Commonwealth Police for (x) traffic patrol and law enforcement services on the Toll Roads at a level not less than the Minimum Level of Police Service and (y) for enhanced levels of police services for the control of traffic for special events, construction or maintenance activities, predicted peak traffic patterns or as otherwise needed (in each case of (x) and (y), at the Concessionaire's expense).

(iii) The Concessionaire acknowledges that during the Term, Commonwealth Police officers serving the Toll Roads may provide other police services in the general vicinity of the Toll Roads pursuant to Commonwealth Police direction; *provided that* such other services do not unreasonably interfere with provision of the Minimum Level of Police Service. Without prejudice to any other provision of this Agreement, the Concessionaire acknowledges that the Authority, at its own expense, may engage the Commonwealth Police to provide additional patrol and law enforcement services on the Toll Roads at such times and for as long as it determines in its discretion.

(b) *Enforcement Activities.*

(i) Concessionaire. The Concessionaire shall not engage, or otherwise permit the engagement of, private security services to provide traffic patrol or traffic law enforcement services on the Toll Roads; *provided, however,* that the Concessionaire may utilize passive devices, including videotapes, photographs, microphotographs, other recorded images, written records, reports or facsimiles to identify toll violators and passive devices and private security forces to protect Toll Revenues collected, accumulated and transferred for deposit. To the extent permitted by Law, the Concessionaire may, at the Concessionaire's expense, contract with entities other than the Commonwealth Police for toll enforcement services (excluding the apprehension of toll violators). The Concessionaire may enforce all private rights and civil remedies permitted by Law, and the Authority shall (at the Concessionaire's expense) assist in the establishment of fines, fees and charges and similar remedies at the Commonwealth and local level, including enacting or maintaining Laws for toll violations, trespass upon the Toll Roads and other infringements upon the Concessionaire's rights or benefits under this Agreement that are at least as restrictive or severe as the remedies for such matters set out in the applicable Law as of the Bid Date.

(ii) Delinquent Cash Tolls. The Authority shall use its Reasonable Efforts to (A) collect delinquent cash tolls from toll violators, including the enforcement of the remedies and procedures available to the Authority, the Commonwealth Police or any Governmental Authority under applicable Law and any agreement of reciprocity with any jurisdiction consistent with the operations of the Toll Roads as of the Bid Date (including recordation of delinquent tolls and related fines in the vehicle registrations of toll violators and the collection of such tolls and fines as a condition to vehicle registration renewal), (B) assist the Concessionaire in its effort to comply with the obligations set forth in Schedule 10, and (C) facilitate the implementation of the rights granted by the Authority under Article 7 and Schedule 10, including payment or reimbursement to the Concessionaire of any Toll Revenues (other than Delinquent Non-Cash Tolls) collected by or on behalf of the Concessionaire through such enforcement process. Except for delinquent cash tolls collected from toll violators, which tolls the Authority agrees to remit to the Concessionaire promptly after collection, the Concessionaire shall not be entitled to any revenues associated with the enforcement of any Law on the Toll Roads.

(c) Delinquent Non-Cash Tolls.

(i) From the Closing Date until the end of the Term, the Authority shall pay to the Concessionaire in accordance with this Section 3.16(c) an amount equal to all electronic, video and other non-cash tolls payable on the Toll Roads that are not paid in violation of applicable Law or this Agreement (collectively, "Delinquent Non-Cash Tolls"), regardless of whether the Authority collects such Delinquent Non-Cash Tolls. Delinquent Non-Cash Tolls shall exclude, for avoidance of doubt, any tolls not paid:

(A) in accordance with Section 1(b) of Schedule 10;

(B) as the result of any defect or operating failure of the tolling system used on the Toll Roads during the Term;

(C) as the result of any failure by the Concessionaire to comply with this Agreement (including, without limitation, the ETC Service Terms) or any failure by the Concessionaire or any of its Contractors to comply with any agreement executed by it for the provision of tolling services on the Toll Roads (unless, in each case, such failure is the direct result of any act or omission of the Authority or any of its Representatives in breach of this Agreement); and

(D) in respect of the BRT/DTLs to the extent excluded by Section 3.16(c)(ii).

(ii) Within thirty (30) days following its receipt from the Concessionaire of each Monthly ETC Traffic Report pursuant to Section 8.1(a), the Authority shall pay to the Concessionaire an amount equal to the Delinquent Non-Cash Tolls recorded during the immediately preceding calendar month (or partial calendar month); *provided that*, if such Delinquent Non-Cash Tolls are payable in respect of vehicles using the BRT/DTLs, then the Authority shall be obligated to pay only fifty percent (50%) of such amount (such amount, a "Monthly Delinquent Amount");

(iii) Within one hundred twenty (120) days after the end of each Reporting Year during the Term, the Concessionaire shall deliver to the Authority, together with the amended statement of income delivered for such year pursuant to Section 8.1(e), a statement that:

(A) calculates the sum of each Monthly Delinquent Amount paid during such Reporting Year, and

(B) in comparison to such Monthly Delinquent Amount, sets forth the amount of any overpayment or underpayment in respect of the amounts actually paid to the Concessionaire pursuant to Section 3.16(c)(ii) during such year, and

(C) is accompanied by an opinion thereon of the independent public accountant who audited such statement of income;

(iv) The Parties shall have up to one hundred twenty (120) days after receipt of the materials described in Section 3.16(c)(iii) to dispute the computation of any amounts set forth therein pursuant to Article 19. The Concessionaire (or, if any ETC Service Contract and the Escrow Agreement are then in effect, the Authority) shall cause its Contractor that maintains the electronic toll collection system for the Toll Roads to deliver to the Parties materials reasonably requested by either Party in connection with such dispute.

(v) If by agreement of the Parties or pursuant to the directive of a final decision in accordance with Article 19, the Monthly Delinquent Amount due and payable for any calendar month of any Reporting Year pursuant to Section 3.16(c)(ii):

(A) was less than the amount actually paid thereunder (a "Delinquent Sum Overpayment"), the Concessionaire shall promptly pay to the Authority the amount of the Delinquent Sum Overpayment; and

(B) was more than the amount actually paid thereunder (a "Delinquent Sum Underpayment"), the Authority shall promptly pay to the Concessionaire the amount of the Delinquent Sum Underpayment,

in each case, together with interest thereon, commencing ninety (90) days after the end of the period of time for which it was due until the date paid, calculated at the rate set forth in Section 20.9.

(d) *Police Powers.* The Concessionaire acknowledges that the Commonwealth Police are empowered to enforce all applicable Laws on the Toll Roads and all officers authorized by Law to make arrests for violations of Law in the Commonwealth and each affected jurisdiction shall have the same powers, duties and jurisdiction within the limits of the Toll Roads as they have in their respective areas of jurisdiction, and law enforcement officers shall have access to the Toll Roads at any time for the purpose of exercising their law enforcement powers and jurisdiction (without, for the avoidance of doubt, the obligation to provide Concession Compensation to the Concessionaire). No provision of this Agreement is intended to

surrender or waive any police powers of the Authority or any Governmental Authority (including the Commonwealth Police), and all such police powers are hereby expressly reserved.

(e) *Payment for Benefit of Commonwealth Police.*

(i) Subject to Section 3.16(e)(ii), during the Term the Concessionaire shall pay to the Authority the following amounts (in each case Adjusted for Inflation plus one and one-half percent (1.5%) annually) for the purpose of providing the Commonwealth Police with capital improvements and equipment and paying operating expenses, in each case relating to the Commonwealth Police's provision of law enforcement services on the Toll Roads as described in this Section 3.16: (i) Four Hundred Fifty Thousand Dollars (\$450,000) payable on or before the fourteenth (14th) Business Day after the Closing and on each anniversary of the Closing Date, and (ii) in addition to the amount payable pursuant to the preceding subclause (i), Four Hundred Fifty Thousand Dollars (\$450,000) payable on each seventh (7th) anniversary of the Closing Date.

(ii) In the event that the Concessionaire enters into any agreement with the Commonwealth Police for the provision of at least the Minimum Level of Police Service pursuant to Section 3.16(a)(ii)(x), then for so long as such agreement is in force and effect, neither the Concessionaire nor the Authority shall be subject to the requirements of Section 3.16(e)(i).

Section 3.17 Engagement of Other Emergency Services. The Concessionaire shall (at the Concessionaire's expense) contract for emergency services on the Toll Roads and areas adjacent thereto that are integral to its function. The form and amount of emergency services shall be as agreed between the Concessionaire and the providers of such services in the specific areas of the Commonwealth in which the services are to be provided from time to time but, at a minimum, shall be reasonably adequate for the protection of the public and in compliance with all applicable provisions of this Agreement.

Section 3.18 Police, Fire, Emergency and Public Safety Access Rights.

(a) *Emergency Access.* Notwithstanding any other provision of this Agreement, at all times during the Term and with reasonable prior notice to the Concessionaire if practical under the circumstances, any police, fire and emergency services (including armed forces), and any other security or emergency personnel, acting at the direction of the Authority or any other Governmental Authority with jurisdiction over the Toll Roads (collectively, "Emergency Personnel"), shall have access to the Toll Roads to the extent and for the period only as necessary for emergency management and homeland security purposes, including the prevention of, practice drills for (and in the event of practice drills, prior written notice of such drills shall be provided to the Concessionaire by the Authority), or response to, a public safety emergency; *provided* that the Authority shall cause the Emergency Personnel to minimize the duration, scope or other adverse effect of any such access. The Concessionaire shall cooperate with the Emergency Personnel in respect of such emergency management and homeland security purposes.

(b) *Emergency Suspension of Tolls.* In connection with the declaration of a state of emergency by the Governor pursuant to Article 15 of the Emergency Management and Disaster Administration Agency Act, Act No. 211 of August 2, 1999, as amended (25 LPRA 172m), or any Law succeeding thereto (the “Emergency Management Act”), the Authority may designate the Toll Roads a toll-free public highway to facilitate evacuations or for any other emergency purpose contemplated by the Emergency Management Act. In addition, the Secretary or the Secretary’s designee may designate the Toll Roads a toll-free public highway to address circumstances that create a direct and imminent danger to the safety of the users of the Toll Roads. The Authority shall use its Reasonable Efforts to minimize the scope and duration of any designation made pursuant to this Section 3.18(b); *provided* that the Authority shall have no obligation to provide Concession Compensation to the Concessionaire therefor.

ARTICLE 4

CAPITAL IMPROVEMENTS

Section 4.1 Authority Capital Improvements.

(a) *Retained Capital Improvements.* The Authority, at its sole cost and expense, shall with reasonable diligence complete (or cause the completion of) those capital improvement projects described in Section 1 of Schedule 12 (collectively, the “Retained Capital Improvement Projects”) in accordance with the contracts related to such Retained Capital Improvements Projects, if any (the “Retained Capital Improvements Contracts”).

(b) *BRT/DTL Project.* The Authority, at its sole cost and expense, shall Substantially Complete (or cause the Substantial Completion of) the project described in Sections 2 and 3 of Schedule 12 (the “BRT/DTL Project” and, together with the Retained Capital Improvement Projects, the “Authority Capital Improvement Projects”) in accordance with one or more contracts for the procurement of the BRT/DTL Project, the terms of which with respect to the design plans and specifications for the BRT/DTL Project shall not materially deviate from the EPC Specifications (*provided that* the Authority and the applicable Contractor may agree to execute Reasonable Change Orders or Deviations with respect to the EPC Specifications following consultation with the Concessionaire pursuant to the Project Interface Plan) (such contracts collectively, the “BRT/DTL Project Contracts” and, together with the Retained Capital Improvement Contracts, the “Authority Capital Improvement Contracts”).

(c) *Cooperation.* The Concessionaire shall use its Reasonable Efforts to cooperate with the Authority in connection with the completion of the Authority Capital Improvement Projects; it being understood and agreed that such cooperation shall be in the form of logistical planning rather than the payment of monies or undertaking of services. The Authority shall perform and cause its Contractors to perform any work with respect to the Authority Capital Improvement Projects at times and in a manner that shall (i) not unreasonably interfere with Toll Road Operations or the ability of the Concessionaire to generate Toll Road Revenues, (ii) comply with the Project Interface Plan and (iii) otherwise comply with the terms of this Agreement.

(d) *Control of Authority Capital Improvement Projects.*

(i) Subject to this Section 4.1(d), the Authority shall have complete control and management of the Authority Capital Improvement Projects, shall effectively direct and supervise the Authority Capital Improvement Projects and shall promptly enforce all the Authority Capital Improvement Contracts in accordance with their respective terms (including the completion of all "punch list" items and other work in accordance therewith).

(ii) Promptly following the execution of any Authority Capital Improvement Contract by the Authority after the Effective Date, the Authority shall provide a copy of such Authority Capital Improvement Contract to the Concessionaire. Prior to acknowledging, consenting to or accepting the completion or substantial completion (or Substantial Completion in the case of the BRT/DTL Project) of any work to be performed in respect of, any Authority Capital Improvement Project under such Authority Capital Improvement Contract, the Authority shall (A) provide the Concessionaire with an opportunity to inspect the work performed under such Authority Capital Improvement Contract and (B) have received from the Concessionaire the Concessionaire's prior written approval consenting to acceptance by the Authority of the work performed pursuant to such Authority Capital Improvement Contract, which approval may be withheld only if the work performed under such Authority Capital Improvement Contract does not comply with (Y) the Operating Standards or (Z) such Authority Capital Improvement Contract. No approval, review or inspection by the Concessionaire of any BRT/DTL Work pursuant to this Section 4.1(d)(ii) or the Project Interface Plan will result in the assumption of any liability by the Concessionaire in connection with the construction or completion of the BRT/DTL Project. For avoidance of doubt, any determination made by the Concessionaire with respect to compliance with the Operating Standards pursuant to this Section 4.1(d)(ii) shall take into account the flexible construction of the Operating Standards and the other provisions relating to compliance with the Operating Standards set forth in Section 6.1.

(iii) Upon acceptance by the Concessionaire of any Authority Capital Improvement Project pursuant to Section 4.1(d)(ii), the Authority shall assign, transfer and otherwise convey to the Concessionaire (and shall consent to the Concessionaire assigning, transferring or otherwise conveying to any Concession Mortgagee) all of the Authority's right, title and interest in, to and under any warranty or any other provision that inures to the Authority's benefit under the related Authority Capital Improvement Contracts except to the extent that the Authority retains any liabilities related thereto pursuant to Section 3.2(c) (such warranties and other provisions, collectively, the "Contract Warranties"), and the Authority shall use its Reasonable Efforts to assist the Concessionaire with the enforcement of such Contract Warranties so assigned, transferred or otherwise conveyed; *provided that* the Authority shall retain, and nothing in this Section 4.1(d)(iii) or otherwise shall entitle the Concessionaire to receive, any liquidated damages paid to the Authority by the related Contractor pursuant to such BRT/DTL Project Contract. For avoidance of doubt, upon acceptance of the BRT/DTL Project pursuant to Section 4.1(d)(ii), the BRT/DTL Project shall be part of the Toll Roads for all purposes under this Agreement, and the Concessionaire shall possess, on an exclusive basis, the same rights and obligations with respect to the BRT/DTL Project as the Concessionaire possesses with respect to the Toll Roads (including, without limitation, the rights set forth under

Article 7 and the obligations set forth under Article 6) except as otherwise provided in Section 7.2(e).

(e) *Concession Compensation.* Notwithstanding anything in this Agreement to the contrary, (i) neither the late completion or non-completion of any Authority Capital Improvement Project by or on behalf of the Authority, nor (ii) any failure of any work covered by any Contract Warranties to comply with the related Authority Capital Improvement Contract, shall be a Compensation Event, and the Authority shall not be obligated to provide Concession Compensation with respect to such late completion or non-completion or such failure; *provided that* there shall be a Compensation Event, and the Authority shall provide Concession Compensation to the Concessionaire pursuant to Section 15.1, to the extent that (x) such work is conducted in a manner that materially interferes with Toll Road Operations (other than as contemplated by or approved in accordance with the Project Interface Plan or otherwise set forth in the EPC Specifications or any Authority Capital Improvement Contract) and (y) such material interference results in Losses or reduced Toll Road Revenues and shall not have been the result of a Concessionaire Default. For avoidance of doubt (but without prejudice to clause (f) of this Section 4.1), no Concession Compensation shall be payable as a result of the late completion or non-completion of the BRT/DTL Project.

(f) *Liquidated Damages.* The Authority shall Substantially Complete the BRT/DTL Project (other than Unit 4B and Unit 5) by the BRT/DTL Substantial Completion Deadline. The Authority shall pay the Concessionaire as liquidated damages and not as a penalty, the amount of ten thousand dollars (\$10,000) for each day after the BRT/DTL Completion Deadline that the BRT/DTL Project (other than Unit 4B and Unit 5) has not been Substantially Completed by the Authority in accordance with Section 4.1(b); *provided that* no such damages shall be payable by the Authority to the extent such failure to Substantially Complete the BRT/DTL Project on or before the BRT/DTL Completion Deadline is the result of (i) the negligence or intentional misconduct of the Concessionaire or its Representatives, (ii) any act or omission by the Concessionaire or its Representatives in breach of the provisions of this Agreement or (iii) any event of "force majeure" as defined in the related BRT/DTL Project Contract; *provided further* that the BRT/DTL Substantial Completion Deadline shall be extended by each day that the Substantial Completion of the BRT/DTL Project is delayed by such negligence, intentional misconduct, act, omission or force majeure. Such damages shall be the sole and exclusive remedy of the Concessionaire for failure by the Authority to Substantially Complete the BRT/DTL Project (other than Unit 4B and Unit 5) in accordance with Section 4.1(b) by the BRT/DTL Completion Deadline.

(g) *Change in Project Interface Plan.* The Authority may propose a change to the Project Interface Plan as it relates to the procurement of the BRT/DTL Project; *provided that* (i) such change would not materially interfere with the Toll Road Operations and (ii) such change shall be subject to the Concessionaire's prior approval, not to be unreasonably withheld, conditioned or delayed. If such change would materially interfere with the Toll Road Operations, the Parties will, at the request of either Party, work together in good faith to modify the Project Interface Plan as it relates to the procurement of the BRT/DTL Project to accommodate the Authority while minimizing any interference with Toll Road Operations to the fullest extent reasonably practicable.

(h) *Quality and Enforcement of Warranties.* Any Contract Warranties assigned by the Authority pursuant to Section 4.1(d)(iii) shall be at least as protective of the Authority as the terms and conditions concerning warranties, performance security and payment security set forth in the Unit 3 BRT/DTL Project Contract, except to the extent such terms are inconsistent with, or modified or superseded by, the Uniform General Conditions.

Section 4.2 Concessionaire Capital Improvements.

(a) *Accelerated Safety Upgrades.* The Concessionaire's capital improvement obligations shall comprise the capital improvement projects set forth in Section 1 of Schedule 13 (the "Accelerated Safety Upgrades") and the capital improvement projects required to be completed by the Concessionaire during the Term in accordance with the terms of this Agreement, including the Operating Standards. The Concessionaire, with reasonable diligence, and at its sole cost and expense, shall complete or cause the completion of all such capital improvement projects in a good and workmanlike manner in accordance with the terms of this Agreement. Each Accelerated Safety Upgrade set forth in Section 1 of Schedule 13 shall be substantially completed by the Concessionaire on or before the deadline for completion set forth in Section 1 of Schedule 13. The Authority at its option may cancel or postpone the commencement of any Accelerated Safety Upgrade by giving prior notice to the Concessionaire; *provided that* (i) to the extent that (A) any notice of cancellation shall have been provided to the Concessionaire following the date on which the Concessionaire shall have incurred any liabilities or commitments with respect to such project, (B) the Concessionaire cannot otherwise undertake the project as a Modification agreed to by the Parties, and (C) the cancellation of such project has a material adverse effect on future Toll Road Revenues, the Authority shall be required to provide Concession Compensation to the Concessionaire upon demand, the calculation of which shall, for the avoidance of doubt, take into account the Concessionaire's out-of-pocket costs in connection therewith and any cost savings to the Concessionaire as a result of the cancellation of such project and (ii) the Authority shall provide Concession Compensation to the Concessionaire in connection with the cancellation or postponement of any such project. The Authority shall consult with the Concessionaire prior to the postponement of any such projects concerning revised timing and scheduling for implementation and shall use its Reasonable Efforts to ensure that the revised schedule does not unduly interfere with the Toll Road Operations. The Concessionaire's obligation to perform the Accelerated Safety Upgrades shall be subject to the timely issuance by the Authority or any other applicable Governmental Authority of any and all Authorizations with respect thereto, without unanticipated material expense or burdensome conditions, and the Authority agrees not to withhold, condition or delay unreasonably the issuance of any such Authorizations issued by the Authority and to use its Reasonable Efforts to assist the Concessionaire in obtaining Authorizations from other applicable Governmental Authorities. The Concessionaire shall not be in breach of this Section 4.2(a) for failure to substantially complete any Accelerated Safety Upgrade by the deadline for completion thereof as set forth in Schedule 13 if such failure is caused directly by (i) the postponement or cancellation of such project by the Authority in accordance with this Section 4.2(a) (unless such postponement, cancellation or failure is the result of a Concessionaire Default) or (ii) the discovery of protected plant or animal species, archaeological, paleontological or cultural resources at or about the site of the lands required by any Accelerated Safety Upgrade.

(b) *Condition of Toll Roads During Work.* The Authority acknowledges that the Concessionaire shall not be in default under the terms of this Agreement, including for failure to comply with the Operating Standards, in relation to the condition of the portions of the Toll Roads that are subject to the Accelerated Safety Upgrades or the capital improvement projects required to be completed by the Concessionaire during the Term in accordance with the terms of this Agreement, including the Operating Standards, at any time during which work on any such project and the planning therefor is diligently being undertaken by the Concessionaire in accordance with its obligations hereunder; *provided that*, with respect to the Accelerated Safety Upgrades, the Concessionaire complies with the requirements of Schedule 13 other than with the deadlines provided therein and, with respect to all other projects, the Concessionaire complies with all obligations related to such Accelerated Safety Upgrades arising under the Operating Standards, including the scope of work and construction documents Approved by the Authority; *and provided further* that the Concessionaire complies with all other terms of this Agreement, including the Concessionaire's general maintenance obligations pursuant to the Operating Standards related to the portions of the Toll Roads subject to an Accelerated Safety Upgrade or other capital improvement project prior to the commencement of work on any such portion of the Toll Roads.

(c) *Liquidated Damages.* In the event that any Accelerated Safety Upgrade is not substantially completed by the Concessionaire on or before its respective deadline for completion set forth in Section 1 of Schedule 13, then the Concessionaire shall pay the Authority as liquidated damages and not as a penalty, the amounts set forth in Section 3 of Schedule 13 for each day after such deadline that each such Accelerated Safety Upgrade has not been substantially completed. Such damages shall be the exclusive remedy of the Authority for the failure substantially to complete any Accelerated Safety Upgrade in accordance with the terms of Schedule 13; *provided that* such damages shall not limit the Authority's remedies with respect to any other breach hereunder or any other Concessionaire Default that relates to any Accelerated Safety Upgrade (including, without limitation, the remedies of the Authority set forth in Section 16.1(b)).

ARTICLE 5

MODIFICATIONS

Section 5.1 Agreed Modifications.

(a) Either the Authority or the Concessionaire may propose a Modification. Promptly after any proposal of a Modification by the Authority or the Concessionaire, the Concessionaire shall prepare and deliver to the Authority a written statement setting forth (i) a description of the Modification and any services, obligations, rights or work related to the Modification, (ii) if applicable, a schedule for the implementation of the Modification, (iii) if applicable, a firm price for implementing the Modification and (iv) the impact the Modification would have on (A) Level of Service, (B) Toll Road Operations, (C) Toll Road Revenues both during any related construction or work and after implementation or completion of the Modification, (D) related changes to the Operating Standards, if any, and increases or decreases to the forecasted cost of operation and maintenance of the Toll Roads following completion of the Modification, (E) any requirement to acquire Additional Lands and (F) any other obligations

of either Party under this Agreement related to the proposed Modification. The costs of preparing such written statement shall be borne by the Party proposing the Modification.

(b) Upon receipt by the Authority of the Concessionaire's written statement of the Modification, the Authority and the Concessionaire will negotiate in good faith to determine the following, while having no obligation to agree with respect thereto: (i) the final scope of the Modification and any work related to the Modification, (ii) if applicable, the contribution to the cost of implementing the Modification to be made by each of the Authority and the Concessionaire, (iii) if applicable, the schedule for implementing the Modification, (iv) if applicable with respect to Modifications proposed by the Authority, the compensation for any decrease in Toll Road Revenues projected to be incurred during the implementation of the Modification to be paid to the Concessionaire by the Authority, (v) any change to the Tolling Limitations, (vi) any additional concession fee or share of additional Toll Road Revenues to be paid to the Authority following implementation of the Modification, (vii) related changes to the Operating Standards, if any, (viii) any requirement for the Authority to acquire Additional Lands and (ix) any other related changes in the Parties' obligations under this Agreement (including any obligation to pay monies with respect to such Modification or any of the matters contemplated in these clauses (i) through (ix)). If the Parties agree on the terms of the Modification, they shall memorialize their agreements in a written document (an "Agreed Modification") that shall take effect when executed by the Parties or as otherwise agreed to by the Parties. To the extent applicable, an Agreed Modification shall provide for the receipt of all necessary Authorizations by the Concessionaire and the acquisition of Additional Lands by the Authority as a condition precedent to the commencement of any such Modification.

(c) Notwithstanding Section 5.1(b) and subject to Section 2.3(d) of Schedule 10, in the case of a Modification proposed by the Concessionaire to implement (i) open road tolling, (ii) video tolling or (iii) other similar structural or technological enhancements pertaining to tolling on the Toll Roads (including the decommissioning of any facilities, including toll lanes and toll plazas, made obsolete by such Modifications, but excluding, for avoidance of doubt, any Modification proposed by the Concessionaire to change the location of toll plazas or equivalent toll collection facilities (whether electronic or cash)), the Authority will not withhold its consent to such reasonable terms as may be proposed by the Concessionaire to the extent such terms are (x) consistent with this Agreement and applicable Law and (y) interoperable and otherwise compatible with the structural and technological aspects of electronic or video tolling used on Comparable Highways operated by or behalf of the Authority in the Commonwealth; *provided that* in the event of any Modification to implement video tolling, the Concessionaire shall have the right, to the extent permitted by Law, to charge users of the Toll Roads reasonable video tolling fees; and *provided further* that such fees in no event shall exceed the Concessionaire's cost per video toll transaction.

Section 5.2. Required Modifications.

(a) If the Authority and the Concessionaire cannot agree on the terms of a Modification proposed pursuant to Section 5.1, then the Authority shall have the right to require the Concessionaire to implement the Modification under terms set forth by the Authority, and the Authority shall provide the Concessionaire with Concession Compensation related thereto pursuant to Section 15.1(b) (a "Required Modification"); *provided* that the Concessionaire shall

not be required to commence any work related to the Required Modification, until (i) the Authority has provided to the Concessionaire evidence reasonably satisfactory to the Concessionaire of the Authority's ability to finance such Required Modification and, if the Concessionaire has requested the Authority to advance funds necessary to implement the Required Modification, the Concessionaire has received such funds from the Authority, (ii) the Concessionaire has obtained all Authorizations and the Authority has acquired all Additional Lands required to begin work on the Required Modification and the Concessionaire has no reason to believe that other required Authorizations that cannot be obtained until a later date will not be obtained when needed and (iii) the Concessionaire and the Authority have agreed to the terms of the Required Modification (including, as applicable, the amount of Concession Compensation payable pursuant to this Section 5.2(a) and any additional concession fee or share of additional Toll Road Revenues to be paid to the Authority following implementation of such Required Modification), or if not, the terms of the Required Modification and the amount of such Concession Compensation payable pursuant to this Section 5.2(a) (or additional concession fee or share of additional Toll Road Revenues to be paid to the Authority) have been resolved pursuant to Article 19; *provided further*, that, for avoidance of doubt, the implementation of Section 2.2 of Schedule 10 as of the Effective Date shall not be deemed to be a Required Modification and no additional concession fee or share of additional Toll Road Revenues (other than as provided in Section 7.2(e)) shall be payable to the Authority as a result of such implementation. Any Concession Compensation provided pursuant to this Section 5.2 shall include any costs incurred by the Concessionaire in connection with the preparation of the written statement described in Section 5.1 and shall be payable pursuant to Section 15.1(b).

(b) If a Compensation Event necessitates a Modification, the Parties shall first proceed under this Article 5 to attempt in good faith to negotiate an Agreed Modification that resolves the effects of the Compensation Event. If the Parties are unable to agree on an Agreed Modification within sixty (60) days (or such longer period of time as the Parties may agree) the Concessionaire shall be entitled to complete the necessary Modification and receive Concession Compensation and shall not be required to pay an additional concession fee or to provide any other compensation related thereto.

Section 5.3 Implementation of Modifications. The Concessionaire shall (a) ensure that any work or construction performed in connection with a Modification is performed in a good and workmanlike manner, (b) ensure the terms of an Agreed Modification or a Required Modification are diligently complied with and implemented in such manner that the costs and delays relating to a Modification are minimized and (c) conduct a competitive procurement for the services of any Contractor to be engaged in connection with a Modification based on commercially reasonable criteria for contract award (including such Contractor's technical qualifications, bid price and relevant experience). Without limiting the generality of the foregoing, the Concessionaire shall comply with applicable Law, applicable codes, good industry practice and, to the extent not superseded by the terms of the relevant Agreed Modification or Required Modification, the provisions of the Operating Standards with respect to the manner in which Modifications are implemented.

Section 5.4 Acquisition or Condemnation by Authority of Additional Lands.

(a) *Pursuant to an Agreed Modification.* In the case of an Agreed Modification requiring acquisition of Additional Lands, the Authority shall take such actions as may be reasonably necessary to initiate and diligently pursue to completion the proceedings necessary for the acquisition or condemnation of such Additional Lands. In such event, the costs and expenses, including all judgments and settlements in condemnation, all awards of compensation, costs and litigation expenses, all awards of damages, all costs incurred in prosecuting the condemnation action, including the cost of all legal and support services and the fees of all witnesses, shall be borne as provided in the related Agreed Modification; *provided, however,* that any payment by the Concessionaire of any of the costs or expenses in relation to such acquisition shall not, by itself, entitle the Concessionaire to any real property interest in the Additional Lands so acquired except as provided in Section 5.4(c).

(b) *Pursuant to a Required Modification.* In the case of a Required Modification pursuant to Section 5.2, the Authority shall take such actions as may be reasonably necessary to initiate and diligently pursue to completion the proceedings necessary for the acquisition or condemnation of Additional Lands for such Required Modification. The Concessionaire's obligation to implement any such Required Modification shall be subject to the prior completion of the proceedings described in the preceding sentence. In such event, all costs and expenses in respect of such acquisition or condemnation of Additional Lands for such Required Modification, including all judgments and settlements in condemnation, all awards of compensation, costs and litigation expenses, all awards of damages, all costs incurred in prosecuting the condemnation action, including the cost of all legal and support services and the fees of all witnesses, shall be borne by the Authority.

(c) *Transfer.* Any lands acquired pursuant to this Section 5.4 shall be deemed to be part of the Toll Road Land subject to this Agreement. In connection with the foregoing, the Concessionaire shall, and shall cause any Concession Mortgagee to, execute such instruments as may be reasonably requested or required by the Authority to give effect to the foregoing. The applicable costs and expenses with respect to Additional Lands contemplated in this Section 5.4 shall be borne as provided in the related Agreed Modification and the applicable costs and expenses with respect to Additional Lands contemplated by Section 5.4(b) shall be borne by the Authority.

(d) *Pre-existing Environmental Conditions.* If a Party proposes a Modification that requires the acquisition of Additional Lands, that Party (or in the case of Required Modifications, the Authority) shall assume and discharge any liabilities and obligations whatsoever arising under any Environmental Law relating to the ownership, operation or condition of the Additional Lands and shall be responsible for any environmental conditions existing prior to the time of acquisition, whether or not the manifestation of which occurs following acquisition (including any Hazardous Substance to the extent released or threatened to be released on or from the Additional Lands at any time prior to the time of acquisition). Notwithstanding the foregoing, in all circumstances, the Concessionaire shall be responsible for complying with Engineering or Institutional Controls associated with such Additional Lands; *provided* that, in the case of environmental conditions for which the Authority is responsible pursuant to the preceding sentence, the Concessionaire receives notice of such Engineering or Institutional Controls from the Authority prior to any obligation to comply therewith and *provided further* that the Concessionaire may submit any dispute with respect to such obligation to dispute resolution in accordance with Article 19. Notwithstanding any obligation to assume and discharge any liabilities arising under any Environmental Laws contained in this Section 5.4(d), to the extent the Concessionaire is obligated to assume such liabilities, the Concessionaire shall not acquire or be entitled to any real property interest in the Additional Lands associated with such liabilities, except as provided in Section 5.4(c).

ARTICLE 6

OPERATING STANDARDS

Section 6.1 Compliance with Operating Standards. The Concessionaire shall, and shall cause the Toll Road Operations to, comply with and implement the Operating Standards in all material respects at all times during the Term (including any changes or modifications to the Operating Standards made pursuant to the terms of this Agreement); *provided* that the Concessionaire shall have a reasonable period of time (a) following the Closing Date to carry out any changes to the operations of the Toll Roads in order to cause the Toll Roads to comply with the Operating Standards in effect as of the Closing Date and (b) from time to time to comply with the introduction of changes or modifications to the Operating Standards that are made in accordance with the terms of this Agreement. The Concessionaire shall have in place procedures that are reasonably designed to achieve compliance with the Operating Standards. The Authority and the Concessionaire agree that the Operating Standards shall be construed flexibly in light of their objectives. The Operating Standards shall not be deemed to be violated by occasional or incidental acts or omissions, including any occasional or incidental failure to comply with specific requirements set forth therein. Without limiting the generality of the foregoing or the terms of Section 16.1(a)(ii), any occasional failure to meet specific time limits, durations or frequencies set forth in the Operating Standards shall not constitute a violation; *provided* that any such failure is not inconsistent with procedures that are designed to achieve compliance with the requirements set forth in the Operating Standards. Except as specifically set forth in this Agreement (including the Operating Standards), the Concessionaire shall perform all work required to comply with and implement the Operating Standards in all material respects (including the capital improvements described therein) as part of the Toll Road Operations and at its sole cost and expense. To the extent that any term or provision of the Operating Standards conflicts with any term or provision otherwise specified in this Agreement, then such term or

provision of this Agreement shall govern and shall supersede any such conflicting term or provision in the Operating Standards.

Section 6.2 Proposed Operating Standards. If the Concessionaire, at its sole cost and expense, wishes to implement and use operating standards other than the Operating Standards, the Concessionaire must provide notice of such proposed operating standards to the Authority for the Authority's Approval. The Concessionaire's proposed operating standards must be accompanied by an explanation of the Concessionaire's rationale for making its proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that the Concessionaire's proposed operating standards are reasonably designed to achieve the objectives of the applicable Operating Standards. The Authority may request any additional supporting information, certificates, reports, studies, investigations and other materials as are reasonably required by the Authority to determine if the Concessionaire's proposed operating standards are reasonably designed to achieve the objectives of the applicable Operating Standards. Until the Authority provides its Approval for the implementation of the Concessionaire's proposed operating standards, the Concessionaire shall not implement the proposed operating standards and shall continue to implement and comply with then existing Operating Standards. The Concessionaire's proposed operating standards shall be deemed incorporated into the Operating Standards upon Approval by the Authority in accordance with the terms hereof. If the Authority refuses to Approve any proposed operating standards and the Concessionaire disagrees with such refusal, the Concessionaire may submit the matter to dispute resolution pursuant to Article 19.

Section 6.3 Modified Operating Standards.

(a) The Authority shall have the right, at any time during the Term, to modify or change the Operating Standards upon notice to the Concessionaire to (i) comply with any new Law applicable to the Toll Road Operations that is not being applied to the Concessionaire in a discriminatory or arbitrary manner, (ii) conform the Operating Standards to standards or practices generally adopted and implemented by the Authority with respect to all other Comparable Highways under the jurisdiction of the Authority or (iii) conform the Operating Standards to standards or practices generally adopted and implemented by other Governmental Authorities in the United States having jurisdiction over Comparable Highways. In the event that the Authority modifies or changes the Operating Standards in accordance with the immediately preceding sentence, the Concessionaire, at its cost and expense, shall perform all work required to implement such modifications or changes and shall comply with all such modifications or changes and in no event shall the Concessionaire be excused from compliance with any such modification or change. For avoidance of doubt, the Concessionaire will have the right to challenge any modified Operating Standard pursuant to Article 19 on the basis that it does not meet the requirements set forth above.

(b) If, during the Term, the Authority is of the opinion that a modification or change to the Operating Standards is necessary or desirable but such modification or change is not subject to Section 6.3(a), the Authority may upon notice to the Concessionaire modify or change the Operating Standards; *provided, however*, that the Authority shall provide Concession Compensation to the Concessionaire with respect thereto at the time such modification or change is to be implemented. At the Authority's request, the Concessionaire shall perform all work

required to implement and shall comply with all such modifications and changes, and in no event shall the Concessionaire be excused from compliance with any such modification or change. The Authority shall have the right to undertake the work necessary to ensure implementation of and compliance with any modification or change to the Operating Standards referred to in this Section 6.3(b) to the extent that the Concessionaire fails to do so within a reasonable period of time following the notice specified above and the provision of any applicable Concession Compensation in accordance herewith; *provided, however*, that to the extent that such work is undertaken by the Authority, the Concessionaire shall provide to the Authority within thirty (30) days following written demand therefor, or the Authority may offset from amounts owing to the Concessionaire in connection with such modification or change, the costs of the portion of the work performed in order to comply with the Operating Standards existing immediately prior to such modification or change, and the Authority shall be responsible only for the incremental costs of the additional work required in order to implement such proposed modification or change to the Operating Standards and, without duplication with the foregoing, the Concession Compensation with respect to such modification or change.

ARTICLE 7

TOLLING; REVENUES

Section 7.1 Tolling Limitations. The Concessionaire shall comply with the Tolling Limitations set forth in Schedule 10. For avoidance of doubt, no consent or approval of the Authority or any other Person shall be required for any change in tolls that falls within the toll levels specified in Schedule 10.

Section 7.2 Revenues.

(a) *Toll Road Revenues.* The Concessionaire shall, at all times during the Term, have the right, title, entitlement and interest (subject to Section 7.2(e)) in and to all revenues (i) (A) charged by or on behalf of the Concessionaire in respect of tolls paid or payable for use by vehicles of the Toll Roads during the Term, and (B) after the expiry of the Tolling Services Agreement, from reasonable purchase prices, fees and security deposits related to the sale or rental of electronic tolling transponders and any other equipment for use by vehicles using the Toll Roads during the Term ("Toll Revenues"), and (ii) (A) generated from Vendors in accordance with any leases or agreements existing at any time during the Term or pursuant to any of portion of any Network Contract assigned to the Concessionaire or (B) generated by the Concessionaire itself as a Vendor (collectively, "Non-Toll Revenues" and together with Toll Revenues, the "Toll Road Revenues"). For avoidance of doubt, the revenues referred to in clause (i)(A) of this Section 7.2(a) shall include all tolls collected by the Concessionaire or the Authority on behalf of the Concessionaire from toll violators in enforcement proceedings or by other means in accordance with Section 3.16(b); *provided* that the Concessionaire hereby transfers and assigns to the Authority all of its right, title, entitlement and interest in and to all Delinquent Non-Cash Tolls in respect of which it shall have received payment from the Authority pursuant to Section 3.16(c), such transfer and assignment to become automatically effective upon such payment by the Authority without the need of any further documentation or action by any Party.

(b) *Other Revenues.* All sources of revenues and activities generating revenues other than Toll Road Revenues, including revenues from (i) toll violation enforcement fines, fees, charges, restitution, collection and penalty payments in excess of any unpaid toll authorized by Law, (ii) public transportation services, (iii) the installation of utilities or similar services and safety measures (including water and sewer lines, power transmission lines, surveillance equipment and other communications) and (iv) the erection of billboards and other forms of advertisement, shall be controlled by, and be the property of, the Authority and, subject to Section 3.7, the Concessionaire shall have no right, title, entitlement or interest therein whatsoever, *provided* that such billboards and other forms of advertising shall not contain or convey an implied or declared rejection, opinion or other reference concerning any of the Concessionaire, its Equity Participants, the Toll Roads, the Toll Road Operations and the Toll Road Services without, in each case, the Approval of the Concessionaire.

(c) *Use of Toll Road Revenues.* The Concessionaire shall use all Toll Road Revenues to pay for the costs necessary for the proper operation and maintenance of the Toll Roads (including reconstruction, resurfacing, restoration and rehabilitation of the Toll Roads in compliance with the requirements of this Agreement) and to pay debt service on Concession Mortgage Debt and Qualified Debt when due prior to making any distribution of such Toll Revenues to any Equity Participant.

(d) *Vendors.*

(i) The operation of any Vendor shall be a part of the Toll Road Operations. All revenues earned by the Concessionaire attributable to the operation of any Vendor shall be the property of, and controlled by, the Concessionaire.

(ii) The Concessionaire shall not enter into any material agreement or contract with a Vendor or provide goods or services as a Vendor without the prior Approval of the Authority (which Approval shall not be unreasonably or arbitrarily withheld, conditioned or delayed); *provided, however*, that the Approval of the Authority shall not be required to the extent that such agreement or contract is for goods or services of the type provided on the Toll Roads as of the Bid Date. In requesting Approval of the Authority, in addition to the requirements of Section 1.16, the Concessionaire shall inform the Authority in writing about the identity of the Vendor, confirm that the Vendor has not been debarred from bidding on or participating in Authority supervised or funded highway construction work and the exact nature of the goods or services to be provided by the Vendor and that the Vendor complies with the Commonwealth Contractor Requirements, to the extent applicable. No such agreement or contract with a Vendor shall extend beyond the Term unless (A) such extension has been Approved by the Authority, (B) such agreement is assignable to the Authority and (C) the Authority can terminate such agreement within three (3) Business Days without penalty after the end of the Term. Each such agreement shall include the terms and conditions required to be included by Act No. 458 and the Code of Ethics in any contract to which the Authority is a party, and such agreement shall be subject to rescission or termination under such laws to the same extent as if the Vendor had entered into such agreement directly with the Authority. Additionally, each Vendor shall comply with the requirements set forth in Section 9.3.

(iii) Any addition to or modification of facilities for Vendors shall require an Agreed Modification pursuant to Article 5.

(e) *BRT/DTL Revenue Share*. From the time of acceptance of the BRT/DTL Project pursuant to Section 4.1(d)(ii) (the "BRT/DTL Handover") until the end of the Term, the Authority shall have all right, title, entitlement and interest in and to fifty percent (50%) of the BRT/DTL Toll Revenues (the "BRT/DTL Revenue Share"). The BRT/DTL Revenue Share shall be payable to the Authority as follows:

(i) Within fifteen (15) days after the end of each calendar month, the Concessionaire shall pay to the Authority fifty percent (50%) of the BRT/DTL Toll Revenues received during the immediately preceding calendar month (or partial calendar month) as set forth in the Monthly ETC Traffic Report for such month;

(ii) Within one hundred twenty (120) days after the end of each Reporting Year during the Term following the BRT/DTL Handover, the Concessionaire shall deliver to the Authority, together with the audited statement of income delivered for such year, pursuant to Section 8.1(e), a statement that:

(A) calculates the BRT/DTL Revenue Share for such year;

(B) in comparison to such BRT/DTL Revenue Share, sets forth the amount of any overpayment or underpayment in respect of the amounts actually paid by the Concessionaire pursuant to Section 7.2(e)(i) during such year, and

(C) is accompanied by an opinion thereon from the independent public accountant who audited such statement of income.

(iii) The Parties shall have up to one hundred twenty (120) days after receipt of the statement described in Section 7.2(e)(ii) to dispute the computation of any amounts set forth therein pursuant to Article 19. The Concessionaire (or, if the Tolling Services Agreement and the Escrow Agreement are then in effect, the Authority) shall cause the ETC Service Provider to deliver to the Parties any information reasonably requested by either Party in connection with such dispute.

(iv) If by agreement of the Parties or pursuant to the directive of a final decision in accordance with Article 19, the BRT/DTL Revenue Share due and payable during any Reporting Year pursuant to Section 7.2(e)(i):

(A) was less than the amount actually paid under Section 7.2(e)(i) (an "Overpayment"), the Authority shall promptly pay to the Concessionaire the amount of the Overpayment, and

(B) was more than the amount actually paid under Section 7.2(e)(i) (an "Underpayment"), the Concessionaire shall promptly pay to the Authority the amount of the Underpayment;

in each case, together with interest thereon, commencing the day that is the end of the period of time for which such amount was due until the date paid, calculated at the rate set forth in Section 20.9.

ARTICLE 8

REPORTS; AUDITS; INSPECTIONS

Section 8.1 Reports.

(a) *Monthly ETC Traffic Report.* Within fifteen (15) days after the end of each calendar month, the Concessionaire shall deliver to the Authority a report substantially in the form of Schedule 19 (each such report, a "Monthly ETC Traffic Report"), accompanied by a detailed estimate of the amount of Delinquent Non-Cash Tolls for such calendar month prepared in good faith by the Concessionaire. For so long as any ETC Service Contract and Escrow Agreement remain in effect, each Monthly ETC Traffic Report shall be based upon the Traffic Reports furnished by the ETC Service Provider under such ETC Service Contract.

(b) *Traffic Characteristics Reports.* In addition to the Monthly ETC Traffic Reports and any other traffic or traffic-related reports required pursuant to this Agreement, the Concessionaire shall provide to the Authority a quarterly traffic characteristics report providing the following details in a format agreed to by the Authority prior to the Closing Date: (i) traffic volume forecasts for each type of classification of vehicle for the next three months; (ii) the current Level of Service for each mile of the Toll Roads as well as the projected changes in the Levels of Service during the coming twelve (12) months; (iii) traffic volume forecasts for the entire Reporting Year; and (iv) actual traffic counts for each month in the preceding quarterly period. The Concessionaire shall provide such reports to the Authority within twenty (20) Business Days following the end of each calendar quarter of each Reporting Year.

(c) *Incident Management, Notifications and Reports.* The Concessionaire shall promptly notify the Authority of all incidents, including emergencies and accidents for which a report must be filed pursuant to Article 4.07 of the Vehicle and Traffic Law of 2000, Act No. 22 of January 7, 2000, as amended (9 L.P.R.A. 5107), occurring on or at the Toll Roads, and of all claims made by or against the Concessionaire, or potential claims that the Concessionaire reasonably expects to make against, or to be made against it by, third parties. In addition, the Concessionaire shall provide to the Authority a quarterly report of all such incidents, including the following details in a format agreed to by the Authority prior to the Closing Date: (i) type of incident (e.g., human bodily injury, human death or property damage) and summary of each such incident; (ii) classification of incident (e.g., road-related, barrier hit, right-of-way or other); (iii) number of incidents by type and classification; (iv) costs to correct incidents by type and classification; (v) claims made by the Concessionaire and revenue received by type and classification; and (vi) claims made against the Concessionaire and losses incurred or losses claimed by type and classification. The Concessionaire shall provide such report to the Authority within twenty (20) Business Days following the end of each calendar quarter of each Reporting Year.

(d) *Environmental Incident Report.* The Concessionaire shall report to the Authority, on a per occurrence basis, the release, discharge, dumping, spilling (accidental or otherwise) of any reportable quantity, as defined under applicable Environmental Law, of Hazardous Substances occurring on or at the Toll Roads and the location at which the incident has occurred, the time, the agencies involved, the damage that has occurred and, if applicable, the remedial action taken. The Concessionaire shall provide such report to the Authority within seven (7) Business Days following the occurrence of each incident or such shorter time period as may be required pursuant to applicable Law. This reporting obligation shall be in addition to any other reporting obligation required by Environmental Laws.

(e) *Financial Reports.* Until the End Date, the Concessionaire shall deliver to the Authority (i) within sixty (60) days after the end of each six-month period following the first day of each Reporting Year, a copy of the unaudited balance sheets of the Concessionaire at the end of each such six-month period and the related unaudited statements of income, changes in equity and cash flows for such six-month period, in a manner and containing information consistent with the Concessionaire's current practices and (ii) within one hundred twenty (120) days after the end of each Reporting Year a copy of the audited balance sheets of the Concessionaire at the end of each such Reporting Year, and the related audited statements of income, changes in equity and cash flows for such Reporting Year, including in each case the notes thereto, in each case prepared in accordance with generally accepted accounting principles consistently applied in the United States and certified by the Concessionaire's chief financial officer that such financial statements fairly present the financial condition and the results of operations, changes in equity and cash flows of the Concessionaire as at the respective dates of and for the periods referred to in such financial statements, all in accordance with generally accepted accounting principles in the United States consistently applied. Such financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. In addition to the foregoing, together with the financial statements identified in clause (ii) of this Section 8.1(e), the Concessionaire shall provide an opinion thereon of an independent public accountant of national stature in the United States of America engaged by the Concessionaire.

Section 8.2 Information.

(a) *Furnish Information.* At the request of the Authority or any other Governmental Authority of competent jurisdiction (each, an "Authorized Auditor"), the Concessionaire shall, at the Concessionaire's cost and expense and at any and all reasonable times during the Term: (i) make available or cause to be made available (and, if requested by such Authorized Auditor, furnish or cause to be furnished) to such Authorized Auditor all Information relating to the Toll Road Operations, this Agreement or the Toll Roads as may be specified in such request and as shall be in the possession or control of the Concessionaire or its Representatives; and (ii) permit such Authorized Auditor, after having provided ten (10) Business Days' prior notice to the Concessionaire (which notice shall identify the persons such Authorized Auditor requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview), to discuss the obligations of the Concessionaire under this Agreement with any of the directors, chief executive officer and chief financial officer of the Concessionaire, the Operator or their respective Representatives, for the

purpose of enabling such Authorized Auditor to determine whether the Concessionaire is in compliance with this Agreement and applicable Law.

(b) *Confidentiality.* Unless disclosure is required by applicable Law, the Authority shall keep confidential any Information obtained from the Concessionaire or its Representatives that (i) constitutes trade secrets or commercial or financial information (A) where the trade secrets or commercial or financial information are proprietary, privileged or confidential or (B) where disclosure of the trade secrets or commercial or financial information may cause competitive harm and (ii) is designated as confidential by the Concessionaire in writing to the Authority. In the event that the Concessionaire requests the Authority to defend an action seeking the disclosure of Information that the Authority determines to be confidential pursuant to this Section 8.2(b), the Concessionaire shall reimburse the Authority for the reasonable costs and expenses incurred by the Authority in defending any such action.

Section 8.3 Inspection, Audit and Review Rights of the Authority.

(a) *Audit Right.* In addition to the rights set out in Section 8.2, any Authorized Auditor may, at all reasonable times, upon forty-eight (48) hours' prior notice, or may cause a Representative designated by it to, carry out subject to Section 8.2(b): (i) an Audit of the Information required to be maintained or delivered by the Concessionaire under this Agreement in connection with the performance of the Toll Road Operations for the purpose of verifying the information contained therein; and (ii) any Audit required by the Act. The Concessionaire, at the cost and expense of the Concessionaire, shall, at reasonable times, make available or cause to be made available to such Authorized Auditor or its designated Representative such reasonable information and material as may reasonably be required by such Authorized Auditor or its designated Representative for purposes of such Audit and otherwise provide such cooperation as may be reasonably required by such Authorized Auditor in connection with the same. Such Authorized Auditor shall be entitled to make copies of the Information related to the conduct of such Audit and to take extracts therefrom at such Authorized Auditor's expense.

(b) *Inspection Right.* Each Authorized Auditor and its Representatives shall, at all times, have access to the Toll Roads and every part thereof and the Concessionaire, at the reasonable cost and expense of the Concessionaire, shall and shall cause its Representatives to, furnish each Authorized Auditor with every reasonable assistance for inspecting the Toll Roads and the Toll Road Operations for the purpose of Auditing the Information or ascertaining compliance with this Agreement and applicable Law.

(c) *Tests.* Any Authorized Auditor and its Representatives shall, with the prior consent of the Concessionaire (which shall not be unreasonably withheld, conditioned or delayed) be entitled, at the sole cost and expense of such Authorized Auditor, and at any time and from time to time, to perform or cause to be performed any test, study or investigation in connection with the Toll Roads or the Toll Road Operations as such Authorized Auditor may determine to be reasonably necessary in the circumstances and the Concessionaire, at the cost and expense of the Concessionaire, shall, and shall cause its Representatives to, furnish such Authorized Auditor or its Representatives with every reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations. In connection with the



foregoing, such Authorized Auditor and its Representatives shall, with the prior consent of the Concessionaire (which shall not be unreasonably withheld, conditioned or delayed), be entitled to install machines, equipment, systems, monitors, counters and other devices in, on, under, over or adjacent to the Toll Roads to permit and facilitate any test, study, monitor, review or investigation of or relating to the Toll Road Operations to the extent that the same does not materially interfere with the Toll Road Operations or damage the Toll Roads.

(d) *No Waiver.* Failure by any Authorized Auditor or its Representatives to inspect, review, test or Audit the Concessionaire's responsibilities under this Agreement or any part thereof or the Information, shall not constitute a waiver of any of the rights of any Authorized Auditor hereunder or any of the obligations or liabilities of the Concessionaire hereunder. Inspection, review, testing or Audit not followed by a notice of Concessionaire Default shall not constitute a waiver of any Concessionaire Default or constitute an acknowledgement that there has been or will be compliance with this Agreement and applicable Law.

(e) *No Undue Interference.* In the course of performing its inspections, reviews, tests and audits hereunder, each Authorized Auditor shall use its Reasonable Efforts to minimize the effect and duration of any disruption to or impairment of the Toll Road Operations or the Concessionaire's rights or responsibilities under this Agreement, having regard to the nature of the inspections, reviews, tests and audits being performed.

Section 8.4 Audits, Assistance, Inspections and Approvals. Wherever in this Agreement reference is made to any Authorized Auditor or its Representatives providing assistance, services, Approvals or Consents to or on behalf of the Concessionaire or its Representatives or to any Authorized Auditor or its Representatives performing an Audit or inspecting, testing, reviewing or examining the Toll Roads, the Toll Road Operations or any part thereof or the books, records, documents, budgets, proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of the Concessionaire or its Representatives, such undertaking by such Authorized Auditor or its Representatives shall not relieve or exempt the Concessionaire from, or represent a waiver of, any requirement, liability, Concessionaire Default, covenant, agreement or obligation under this Agreement or at law or in equity and shall not create or impose any requirement, liability, covenant, agreement or obligation (including an obligation to provide other assistance, services or Approvals) on any Authorized Auditor or its Representatives not otherwise created or imposed pursuant to the express provisions of this Agreement.

Section 8.5 Reimbursement of Costs. Except as otherwise provided herein, the Concessionaire shall reimburse each Authorized Auditor for all documented costs and expenses reasonably incurred by such Authorized Auditor during the Term (including employment costs and related overhead expenses allocable thereto, as reasonably determined by such Authorized Auditor based on the time expended by the employees who render such services to such Authorized Auditor) in monitoring the Toll Road Operations and the Concessionaire's compliance with its obligations and duties hereunder (including any Audits, tests, reviews or exams of the Toll Roads, the Toll Road Operations (or any part thereof), any information or the proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of the Concessionaire or its

Representatives required or permitted to be provided or undertaken hereunder); *provided, however*, that the aggregate amount payable by the Concessionaire pursuant to this Section 8.5 and any other provision set forth in this Agreement that requires the Concessionaire to reimburse such Authorized Auditor for costs and expenses incurred in connection with the matters set forth in this Agreement (including Section 8.3(b), but excluding payments described in Section 3.7(a)(ii) and (iii), Section 3.16, Section 8.2(b), and Section 18.5(c)) shall not exceed \$100,000 per calendar year, Adjusted for Inflation.

ARTICLE 9

REPRESENTATIONS AND WARRANTIES

Section 9.1 Representations and Warranties of the Authority. The Authority makes the following representations and warranties to the Concessionaire and acknowledges that the Concessionaire and its Representatives are relying upon such representations and warranties in entering into this Agreement:

(a) *Organization.* The Authority is an instrumentality of the Commonwealth.

(b) *Power and Authority.* The Authority has the power and authority to enter into this Agreement and each of the Other Authority Agreements and to do all acts and things and execute and deliver all other documents as are required hereunder and thereunder to be done, observed or performed by it in accordance with the terms hereof or thereof. The Authority has approved the execution and delivery of this Agreement and each of the Other Authority Agreements and authorized the performance of its obligations hereunder and thereunder.

(c) *Enforceability.* This Agreement and each of the Other Authority Agreements has been duly authorized, executed and delivered by the Authority and constitutes a valid and legally binding obligation of the Authority, enforceable against the Authority in accordance with the terms hereof or thereof, subject only to (i) the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar requirements of Law and judicial decisions now or hereafter in effect affecting, generally, the enforcement of creditor's rights and remedies; (ii) the effect of requirements of Law governing equitable remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies, including the doctrine of sovereign immunity (except to the extent waived by the Act or other applicable Law); and (iii) the effect of requirements of Law governing enforcement and collection of damages against the Authority; *provided, however*, that the enforcement of any Claims presented in accordance with this Agreement shall be resolved as provided herein.

4 (d) *Title.* The Authority has good and sufficient title (either in fee, leasehold or valid easement) to the Toll Roads and good title to the Toll Road Assets necessary to fulfill its obligations under Article 2 and for the Toll Road Operations pursuant to this Agreement, subject only to Permitted Authority Encumbrances and Permitted Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (vii) of the definition of the term "Permitted Concessionaire Encumbrance"). The Toll Road Land described in Schedule 14 constitutes, as of the Time of Closing, all parcels of real property necessary for the Toll Road Operations as conducted on the Bid Date. Subject to any and all Permitted Authority

Encumbrances and Permitted Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (vii) of the definition of the term “Permitted Concessionaire Encumbrance”) existing at the Time of Closing, there is no recorded or unrecorded agreement, contract, option, commitment, right, privilege or other right of another binding upon, or which at any time in the future may become binding upon, the Authority to sell, transfer, convey, subject to lien, charge, grant a security interest in, or in any other way dispose of or materially encumber the Toll Roads or the Toll Road Assets or any material portion thereof. The recorded or unrecorded restrictions, exceptions, easements, rights of way, reservations, limitations, interests and other matters that affect title to the Toll Roads, the Toll Road Assets or any portion thereof do not and will not materially adversely affect the Concessionaire’s ability to operate the Toll Roads and use the Toll Road Assets (in whole or in part) in accordance with the terms hereof. Following defeasance or retirement of the bonds identified in the certificates signed by the Executive Director of the Authority as referenced in Section 2.4(a)(iii)(H) and such other actions taken pursuant to Section 2.4(c)(v), no indebtedness for borrowed money or any other obligation of the Authority or any Governmental Authority will be secured by any interest in the Toll Roads or the Toll Road Assets and no Person will have any claim or right to, or interest in, any income, profits, rents, tolls or revenue derived from or generated with respect to the Toll Roads or the Toll Road Assets (other than the Authority pursuant to Section 7.2(e) and the Concessionaire under this Agreement and any claims, rights or interests granted by or otherwise relating to the Concessionaire). For purposes of this Section 9.1(d), the term “Toll Roads” excludes any land used for an Expansion contemplated hereunder and includes only those parcels of real property described in Schedule 14.

(e) *No Conflicts.* The execution and delivery of this Agreement and each of the Other Authority Agreements by the Authority, the consummation of the transactions contemplated hereby and thereby (including the operation of the Toll Roads in accordance with the terms of this Agreement) and the performance by the Authority of the terms, conditions and provisions hereof and thereof has not and will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Authority under (i) any applicable Law or (ii) any agreement, instrument or document to which the Authority is a party or by which the Authority is bound.

(f) *Certain Consents; Notice.* No Consent is required to be obtained by the Authority from, and, except for the filings described in Section 2.4(a)(v) and (vi), no notice or filing is required to be given by the Authority to or made by the Authority with, any Person (including any Governmental Authority) in connection with the execution or delivery of this Agreement and each of the Other Authority Agreements.

(g) *Compliance with Law; Litigation.*

(i) The Authority is operating the Toll Roads and each of the Toll Road Assets in compliance, in all material respects, with all applicable Laws and the Authority is not in breach of any applicable Law that would have a Material Adverse Effect. The Authority possesses all Authorizations from any Governmental Authority necessary, in all material respects, for the operation of the Toll Roads or the Toll Road Assets as currently being operated.

(ii) There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Authority's knowledge, threatened against the Authority, which would (A) have a Material Adverse Effect or (B) materially affect the validity or enforceability of this Agreement or any of the Other Authority Agreements.

(iii) The legislation described in Section 9.1(l) is not subject to any preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction challenging its legality, constitutionality or effectiveness.

(iv) The Authority has complied with all applicable Laws related to the negotiation, authorization and execution of the Concession Agreement.

(h) *Contracts.* Each of the Network Contracts as of the Effective Date and the Tolling Services Agreement is in full force and effect and, to the extent any portion of any Network Contract is not assignable in accordance with Section 2.1(b), the failure to assign such portion will not have a Material Adverse Effect. The Authority is not in material breach of its obligations under any Network Contract as of the Effective Date or the Tolling Services Agreement and no act or event has occurred which, with notice or lapse of time, or both, would constitute a material breach thereof by the Authority, and to the knowledge of the Authority no other party to any Network Contract as of the Effective Date or the Tolling Services Agreement is in material breach of its obligations under such contract, and to the knowledge of the Authority, no act or event has occurred with respect to any such party, which with notice or lapse of time, or both, would constitute a material breach thereof. The Network Contracts and the Tolling Services Agreement (together with the Merchant Agreement, agreements providing for the availability of Authority Employees and arrangements for the provision of the utility services described in Section 3.11) are those agreements reasonably necessary to conduct the Toll Road Operations as conducted as of the Bid Date.

(i) *Insurance Policies.* All insurance policies in effect as of the Bid Date are in full force and effect with respect to the period between the Bid Date and the Time of Closing.

(j) *Brokers.* Except for Macquarie Capital (USA) Inc., whose fee shall not be paid by the Concessionaire, there is no investment banker, broker, finder or other intermediary who has been retained by or is authorized to act on behalf of the Authority who might be entitled to any fee or commission from Authority in connection with the transactions contemplated by this Agreement.

4 (k) *Accuracy of Information.* To the knowledge of the Authority, the factual and past historical information regarding the Toll Roads, its operations and the Toll Road Assets that the Authority provided to the Concessionaire in the virtual data room at www.imprimairooms.net established for the Transaction was accurate in all material respects at the time such information was provided and continues to be accurate in all material respects as of the Effective Date, and the Authority makes no additional representation or warranty with respect to such information.

(l) *Public Private Partnerships Act.* The Legislative Assembly of Puerto Rico has duly enacted into law the Act which remains in full force and effect. The Act (i) authorizes the Authority to enter into this Agreement and grant the Concession, (ii) authorizes the exemption from Taxes contemplated by Section 3.10(b)(i) and (ii), and (iii) provides that the Concessionaire shall have the authority to establish tolls or other user fees in connection with the Toll Roads, pursuant to this Agreement. This Agreement is a "Partnership Contract" under the Act and a recordable "administrative concession" under the PR Mortgage and Property Registry Law.

(m) *Material Adverse Effect.* Since March 31, 2011 through and including the Closing Date, no transaction or occurrence has taken place that has resulted or is reasonably likely to result in a Material Adverse Effect.

Section 9.2 Representations and Warranties of the Concessionaire. The Concessionaire makes the following representations and warranties to the Authority (and acknowledges that the Authority is relying upon such representations and warranties in entering into this Agreement):

(a) *Organization.* The Concessionaire is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to conduct business in the Commonwealth. Except as disclosed in the written certification that the Concessionaire delivered to the Authority prior to the Bid Date (or, to the extent changes in ownership of the Concessionaire are made prior to Closing that would be permitted under the definition of "Change in Control," the Closing Date), no Person owns, directly or indirectly, 10% or more of the capital stock, units, partnership or membership interests and other equity interests or securities of the Concessionaire or the Operator (including options, warrants and other rights to acquire any such equity interests).

(b) *Power and Authority.* The Concessionaire has the power and authority to enter into this Agreement and each of the Other Concessionaire Agreements and to do all acts and things and execute and deliver all other documents as are required hereunder or thereunder to be done, observed or performed by it in accordance with the terms hereof or thereof.

(c) *Enforceability.* This Agreement and each of the Other Concessionaire Agreements has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof or thereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

✶ (d) *No Conflicts.* The execution and delivery of this Agreement and each of the Other Concessionaire Agreements by the Concessionaire, the consummation of the transactions contemplated hereby and thereby and the performance by the Concessionaire of the terms, conditions and provisions hereof and thereof has not and will not contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Concessionaire under (i) any applicable Law, (ii) any material agreement, instrument or document to which the Concessionaire or any Equity

Participant is a party or by which it is bound or (iii) the articles, bylaws or governing documents of the Concessionaire and each of the Equity Participants.

(e) *Consents.* No Consent is required to be obtained by the Concessionaire or any Equity Participant from, and no notice or filing is required to be given by the Concessionaire or any Equity Participant to or made by the Concessionaire or any Equity Participant with, any Person (including any Governmental Authority) in connection with the execution and delivery by the Concessionaire of this Agreement and each of the Other Concessionaire Agreements or the consummation of the transactions contemplated hereby or thereby, except for such consents which have been obtained and notices of filings which have been given as of the date hereof or such other consents which are not required to be obtained as at the date hereof and are expected to be obtainable following the date hereof.

(f) *Compliance with Law; Litigation.* The Concessionaire is not in breach of any applicable Law that could have a material adverse effect on the ability of the Concessionaire to comply with its obligations under this Agreement or any of the Other Concessionaire Agreements. Neither the Concessionaire nor, to its knowledge, any Affiliate of the Concessionaire or Equity Participant is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List or the Debarred List, or on any other list of Persons with which the Authority may not do business under applicable Law. There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Concessionaire's knowledge, threatened against the Concessionaire or any Equity Participant, that would have a material adverse effect on (i) the Transactions contemplated by this Agreement or any of the Other Concessionaire Agreements or (ii) the validity or enforceability of this Agreement or any of the Other Concessionaire Agreements.

(g) *Brokers.* Except for any broker or advisor whose fees will be paid by the Concessionaire or its Affiliates, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Concessionaire, any Equity Participant or any of their respective Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

(h) *Accuracy of Information.* To the knowledge of the Concessionaire, all information regarding the Concessionaire and the Operator provided to the Authority by the Concessionaire or on behalf of the Concessionaire or the Operator was accurate in all material respects at the time such information was provided and continues to be accurate in all material respects as of the Effective Date.

(i) *Code of Ethics.* The Concessionaire acknowledges, represents and warrants that no official or employee of the Authority has a direct or indirect economic interest in the Concessionaire's rights under this Agreement or any of the Other Concessionaire Agreements in accordance with the provisions of Act No. 84 of the Legislative Assembly of Puerto Rico, enacted on June 18, 2002, 3 P.R. Laws Ann. § 1755 *et seq.*, as amended, also known as the Code of Ethics for Contractors ("Code of Ethics"), which Code of Ethics the

Concessionaire herein certifies it has received a copy of, read, understood and complied with at all times previous to the execution of this Agreement and each of the Other Concessionaire Agreements and will subsequently comply with it in its entirety.

(j) *Criminal Proceedings.*

(i) The Concessionaire warrants and certifies that as of the Effective Date and for the preceding twenty (20) years, (A) neither it nor its President, any of its Vice Presidents or Directors, Executive Director or Member of a Board of Officials or Board of Directors (or any person that holds a position with the Concessionaire equivalent to any of the foregoing), nor any of its subsidiaries (each, a "Covered Party") nor any of its Equity Participants, has been convicted, has entered a plea of guilty or *nolo contendere* or has been indicted in any criminal procedure in any State, Commonwealth or federal court or in any foreign country for criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property, or for the felonies or misdemeanors mentioned in Act No. 458, and (B) each Covered Party is complying and shall continue to comply at all times with laws that prohibit corruption and regulate criminal acts involving public functions or public funds applicable to the Concessionaire under State or federal Law, including the Foreign Corrupt Practices Act. If a Covered Party after the Effective Date becomes indicted or convicted in a criminal procedure for any type of offense described in this Section 9.2(j), the Concessionaire shall immediately notify the Authority thereof in writing as required by Act No. 458.

(ii) Neither the Concessionaire nor, to the knowledge of the Concessionaire, any of its officers, directors or Equity Participants has been convicted of offenses against public integrity, as defined in the Puerto Rico Penal Code, or of embezzlement of public funds, and neither the Concessionaire nor any of its officers, directors or Equity Participants has been found guilty of any such type of offense in the Courts of the Commonwealth of Puerto Rico, the federal courts or any court of any jurisdiction of the United States of America.

Section 9.3 Tax Filings.

(a) The Concessionaire for itself and each of its Equity Participants (if the Concessionaire is a partnership under the New PR Code) represents that as of the date of this Agreement (x) neither it nor any of its Equity Participants has any outstanding debts for unemployment insurance, temporary disability (workmen's compensation), chauffeur's social security with the Puerto Rico Department of Labor and Human Resources, income taxes with the PR Department of Treasury, or real or personal property taxes with the Municipal Revenues Collection Center (the "CRIM") or (y) it or its Equity Participants have a payment plan in place with respect to any outstanding debt for the foregoing items and have complied therewith.

(b) The Concessionaire acknowledges and agrees that it shall obtain and deliver to the Authority, in each case dated not earlier than sixty (60) days prior to the Closing Date, the following:

(i) A certification of filing of income tax return, issued by the Internal Revenue Division of the PR Department of the Treasury or a certification by the Concessionaire and each of its Equity Participants (if the Concessionaire is a partnership under the PR Code) that as of the date of this Agreement it does not have and has not had to submit income tax returns and pay taxes in the Commonwealth during the past five (5) years.

(ii) A no taxes debt due certificate, or payment plan and compliance therewith, issued by the Internal Revenue Division of the PR Department of the Treasury.

(iii) A certificate of no debt, or payment plan and compliance therewith, with respect to real and personal property taxes issued by the CRIM.

(iv) A certificate of no debt, or payment plan and compliance therewith, for unemployment insurance, temporary disability (workmen's compensation) and chauffeur's social security issued by the Puerto Rico Department of Labor and Human Resources.

Section 9.4 Non-Waiver. No investigations made by or on behalf of any Party at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the other Party in this Agreement or pursuant to this Agreement. No waiver by a Party of any condition, in whole or in part, shall operate as a waiver of any other condition.

Section 9.5 Survival.

(a) *Authority's Representations and Warranties.* The representations and warranties of the Authority contained in Article 9 shall survive and continue in full force and effect for the benefit of the Concessionaire as follows: (i) as to the representations and warranties contained in Sections 9.1(a) through 9.1(g) (inclusive) and in Section 9.1(l), without time limit; and (ii) as to all other matters, for the period that runs from the Closing Date until the second anniversary of the Closing, unless a *bona fide* notice of a Claim under Section 12.2 shall have been given, in writing in accordance with Article 20, prior to the expiry of such period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim; *provided* such determination or settlement is being pursued diligently and in good faith by the applicable Party.

(b) *Concessionaire's Representations and Warranties.* The representations and warranties of the Concessionaire contained in Section 9.2 shall survive and continue in full force and effect for the benefit of the Authority as follows: (i) as to the representations and warranties contained in Sections 9.2(a) through 9.2(f), inclusive, and in Section 9.2(i) and (j) without time limit; and (ii) as to all other matters, for a period that runs from the Closing Date until the second anniversary of the Closing unless a *bona fide* notice of a Claim under Section 12.2 shall have been given, in writing in accordance with Article 20, prior to the expiry of such period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim; *provided* such determination or settlement is being pursued diligently and in good faith by the applicable Party.



Section 9.6 Operator. To the extent the Operator is not the Concessionaire, the Concessionaire shall cause the Operator to deliver to the Authority at the Closing a certificate executed by an officer of the Operator with knowledge of the matters contained therein in form and substance acceptable to the Authority in which the Operator represents and warrants as follows: (i) the Operator is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to conduct business in the Commonwealth; (ii) except as disclosed in the written certification that the Concessionaire delivered to the Authority prior to the Bid Date (or, to the extent changes in ownership of the Operator are made prior to Closing that would be permitted under the definition of "Change in Control," the Closing Date), no Person owns, directly or indirectly, ten percent (10%) or more of the capital stock, units, partnership or membership interests and other equity interests or securities of the Operator (including options, warrants and other rights to acquire any such equity interests); (iii) the Operator has the power and authority to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in connection with its engagement by the Concessionaire; (iv) the Operator has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the Toll Road Operations in accordance with this Agreement; (v) the Operator is not in breach of any applicable Law that could have a Material Adverse Effect on its ability to operate the Toll Roads; (vi) neither the Operator nor, to its knowledge, any Affiliate of the Operator nor any other Person who holds any shares of capital stock or securities of, or units, partnership, membership interests or other equity interest in the Operator is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List or the Debarred List, or on any other list of Persons with which the Authority may not do business under applicable Law; (vii) there is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Operator's knowledge, threatened against the Operator, that would have a Material Adverse Effect on the Operator's ability to operate the Toll Roads; and (viii) the Operator is in compliance with the Commonwealth Contractor Requirements and provides to the Authority the sworn statements and certificates required thereby. The same officer of the Operator shall also deliver to the Authority at the Closing the Sworn Statement for Closing.

ARTICLE 10

FINANCE OBLIGATIONS

Section 10.1 Concessionaire's Obligations. Except in those instances where the Authority is required to provide the funding of costs and expenses related to the Authority's obligations under Section 2.5(i), Article 4 or Modifications as contemplated by Article 5, the Concessionaire shall be responsible for obtaining any financing for the performance of its obligations under this Agreement, which financing shall comply with all requirements of this Agreement.

Section 10.2 Authority's Obligations.

(a) The Authority shall, to the extent consistent with applicable Law and at the sole cost and expense of the Concessionaire, cooperate with the Concessionaire with respect to documentation reasonably necessary to obtain, maintain and replace financing for the performance of the obligations of the Concessionaire hereunder. The Authority's cooperation may include reviewing, approving and executing documents which substantiate the terms of this Agreement (including any consents and agreements necessary to confirm that the debt evidenced by the relevant financing constitutes Concession Mortgage Debt) and responding to reasonable requests for available information and material to furnish to any proposed Concession Mortgagee to facilitate financing to the extent permitted by applicable Law and contractual obligations with third parties and to the extent the Authority considers reasonable in the circumstances; *provided, however,* that nothing herein shall obligate the Authority to consent to service of process, to become subject to any legal process in any jurisdiction other than in the Commonwealth, or to enter into any agreement not governed by the Laws of the Commonwealth. Any agreement entered into under this Section 10.2 shall be subject to review for form and legality by the General Counsel of the Authority. If requested to do so by the Concessionaire, the Authority shall, at the sole cost and expense of the Concessionaire, use its Reasonable Efforts to cause the Authority's then independent public accountants to consent to the use and inclusion of certain financial information regarding the Toll Roads in connection with the Concessionaire's public or private offering of securities, as the case may be. In addition, the Authority shall, promptly upon the request of the Concessionaire or any Concession Mortgagee, execute, acknowledge and deliver to the Concessionaire, or any of the parties specified by the Concessionaire, standard consents and estoppel certificates with respect to this Agreement which may be qualified to the best of the knowledge and belief of a designated representative of the Authority. Nothing herein shall require the Authority to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with or in violation of any applicable Law or the provisions of this Agreement. Nothing in this Agreement shall prohibit or prevent the Authority from issuing bonds or entering into additional obligations to finance Modifications (*provided* that any and all works or improvements resulting from such Modification shall be for the sole use of the Concessionaire in accordance with this Agreement). The Authority acknowledges and agrees that any new debt or other obligations undertaken by the Authority after the Effective Date may not be secured by any of the Toll Road Land, the Toll Road Facilities or the Toll Road Assets or the Toll Road Revenues.

(b) If the Authority and the Concessionaire agree that the Concessionaire is eligible for federal financing assistance in the performance of its obligations under this Agreement, the Authority, upon the request of the Concessionaire, shall use Reasonable Efforts to cooperate with the Concessionaire to obtain such financing assistance; *provided* that the Concessionaire shall reimburse the Authority for all costs and expenses incurred by the Authority in connection therewith. For purposes of this Section 10.2(b), "federal financing assistance" shall mean (i) assistance under the Transportation Infrastructure Finance and Innovation Act of 1988, as amended, or any similar federal program, and (ii) allocation of federal volume ceiling for tax-exempt private activity bonds for surface transportation projects by the United States Department of Transportation under Section 142(m)(2)(C) of the U.S. Code. Nothing in this Section 10.2(b) shall obligate the Authority (1) to advocate or recommend the enactment or adoption of any federal or Commonwealth legislation or regulations, (2) to make or recommend an allocation of the Commonwealth's private activity bond ceiling under Section

146 of the U.S. Code, or any similar provision, including provisions related to tax credit bonds or (3) to cooperate with the Concessionaire in connection with obtaining any federal financing assistance if the Authority (A) has, or reasonably expects to have, a competing application for such federal financing assistance, (B) is required to commit to the expenditure or allocation of Authority highway funds or other funds in connection with such request, or (C) such financing would have a material adverse effect on the credit rating of the Authority.

Section 10.3 Concessionaire's Obligation for Estoppel Certificates. The Concessionaire shall, promptly upon the request of the Authority, execute and deliver to the Authority, or any of the parties specified by the Authority, standard consents and estoppel certificates with respect to this Agreement which may be qualified to the best of the knowledge and belief of a designated representative of the Concessionaire. Nothing herein shall require the Concessionaire to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with applicable Law and the provisions of this Agreement.

ARTICLE 11

COMPLIANCE WITH LAWS

Section 11.1 Compliance with Laws.

(a) The Concessionaire shall, at all times and at its own cost and expense, observe and comply, in all material respects, and cause the Toll Road Operations to observe and comply, in all material respects, with all applicable Laws now existing or later in effect that are applicable to it or such Toll Road Operations, including those Laws expressly enumerated in this Article 11, and those that may in any manner apply with respect to the performance of the Concessionaire's obligations under this Agreement. The Concessionaire shall notify the Authority in writing within seven (7) days after receiving notice from a Governmental Authority that the Concessionaire may have violated any of the above.

(b) If, at any time during the Term, the FHWA promulgates or enforces a rule, regulation, requirement, standard, or recommendation that is not a Law but induces compliance through a program of financial incentives for compliance or financial disincentives for non-compliance, the Concessionaire shall not be obligated to observe or comply with such FHWA action. However, if the Concessionaire elects not to comply with any such FHWA action applicable to the Toll Roads the cost of which the Authority has elected to pay and the Authority suffers a financial disincentive as a result thereof with regard to any program, road, or highway within the Commonwealth other than the Toll Roads, the Concessionaire shall reimburse the Authority, within forty-five (45) days after the Concessionaire's receipt of a detailed invoice therefor, for the amount actually lost or suffered by the Authority as a result of such non-compliance. If the Concessionaire elects to comply with such FHWA action applicable to the Toll Roads and the Authority receives a financial incentive as a result thereof, the Authority shall pay to the Concessionaire, within forty-five (45) days thereafter, an amount equal to such incentive (or, if applicable, the fair share of such incentive attributable to the Toll Roads if any other program, road, or highway other than the Toll Roads is involved), to the fullest extent permitted by Law.

Section 11.2 Non-Discrimination Laws.

(a) The Concessionaire shall comply with all applicable Commonwealth and federal Laws regarding non-discrimination, including: (i) the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq. (1981); (ii) the Civil Rights Act of 1991, P.L. 102-166; (iii) Executive Order Number 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000(e) note, as amended by Executive Order Number 11375, 32 Fed. Reg. 14,303 (1967) and by Executive Order Number 12086, 43 Fed. Reg. 46,501 (1978); (iv) the Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); (v) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 (1967); (vi) the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); (vii) the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (1990); (viii) Act No. 100 of June 30, 1959, 29 P.R. Laws Ann. § 146 *et seq.*, as amended; (ix) Act No. 17 of April 22, 1988, 29 P.R. Laws Ann. § 155 *et seq.*, as amended; and (x) Act No. 69 of June 6, 1985, 29 P.R. Laws Ann. § 1321 *et seq.*, as amended.

(b) Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Concessionaire understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Agreement or from activities provided for under this Agreement on the basis of the disability. The Concessionaire agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of the Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Authority through contracts with outside contractors. The Concessionaire shall be responsible for and agrees to indemnify and hold harmless the Authority from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Authority as a result of the Concessionaire's failure to comply with the provisions of this Section 11.2(b).

Section 11.3 Commonwealth Non-Discrimination/Sexual Harassment Clause. Pursuant to Act No. 100 of June 30, 1959, 29 P.R. Laws Ann. § 146 *et seq.*, as amended (Non-Discrimination Act), Act No. 17 of April 22, 1988, 29 P.R. Laws Ann. § 155 *et seq.*, as amended (Sexual Harassment Act), and Act No. 69 of June 6, 1985, 29 P.R. Laws Ann. § 1321 *et seq.*, as amended (Sexual Discrimination Act), the Concessionaire agrees as follows during the Term:

(a) In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under this Agreement or any subcontract, the Concessionaire, any Contractor or any Person acting on behalf of the Concessionaire or a Contractor shall not by reason of gender, race, creed, or color discriminate against any person who is qualified and available to perform the work to which the employment relates.

(b) Neither the Concessionaire nor any Contractor nor any Person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under this Agreement on account of gender, race, creed, or color.

(c) The Concessionaire and all Contractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy

must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

(d) The Concessionaire shall not discriminate by reason of gender, race, creed, or color against any Contractor or supplier who is qualified to perform the work to which the contract relates.

(e) The Concessionaire shall include the provisions of this Section 11.3 in every subcontract so that such provisions will be binding upon each Contractor.

(f) In the event that any Concessionaire Default results from a violation of the terms and conditions of this Section 11.3 as described in Section 16.1(b)(i), the Authority may cancel or terminate this Agreement in accordance with Section 16.1(b)(i). In addition, the Authority may proceed with debarment or suspension and may place the Concessionaire in any contractor responsibility file maintained by the Authority in accordance with the Authority's normal practice in matters of suspension and debarment.

Section 11.4 Non-Collusion and Acceptance. The Concessionaire attests, subject to the penalties for perjury, that no Representative of the Concessionaire, directly or indirectly, to the best of the Concessionaire's knowledge, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement other than that which is expressly set forth in this Agreement.

Section 11.5 Local Goods and Services. As required by Article 10 of Act No. 14 of January 8, 2004, 3 P.R. Laws Ann. § 930 *et seq.*, the Concessionaire shall use, to the extent available and applicable to the services provided hereunder, goods extracted, produced, assembled, packaged, bottled or distributed in the Commonwealth by businesses operating in the Commonwealth or distributed by agents established in the Commonwealth.

Section 11.6 Concessionaire Integrity.

(a) The Concessionaire shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of Commonwealth or federal Laws, regulations, or other requirements that govern contracting with the Authority. The Concessionaire certifies that it does not represent particular interests in cases or matters that would imply a conflict of interest or public policy between the Authority and the interests it represents.

(b) The Concessionaire shall not disclose to others any confidential information gained by virtue of this Agreement in violation of the confidentiality agreement described in Section 2.5(g).

(c) The Concessionaire shall not, in connection with this Agreement or any other agreement with the Authority, directly, or indirectly, offer, confer or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote,

other exercise of discretion or violation of a known legal duty by any officer or employee of the Authority.

(d) The Concessionaire shall not, in connection with this Agreement or any other agreement with the Authority, directly or indirectly, offer, give or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Authority.

(e) The Concessionaire shall not accept or agree to accept from, or give or agree to give to, any Representative of the Authority, any gratuity from any person in connection with this Agreement that is intended by the provider thereof to be a material inducement to enter into this Agreement or any other agreement.

(f) The Concessionaire, upon being informed that any violation of the provisions of this Section 11.6 has occurred or may occur, shall immediately notify the Authority in writing.

(g) The Concessionaire, by execution of this Agreement and any request for compensation pursuant hereto, certifies and represents that it has not violated any of the provisions of this Section 11.6.

(h) The Concessionaire, upon the inquiry or request of the Comptroller of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Comptroller of the Commonwealth. Such information may include the Concessionaire's business or financial records, documents or files of any type or form that refers to or concerns this Agreement. Such information shall be retained by the Concessionaire for a period of five (5) years unless otherwise provided by Law.

(i) In the event that any Concessionaire Default results from a violation of any of the provisions of this Section 11.6, the Authority may terminate this Agreement in accordance with Section 16.1(b)(i) (for avoidance of doubt, subject to the cure periods set forth in Section 16.1(a)(i) and Section 16.1(b)(i)) and any other agreement with the Concessionaire, claim liquidated damages in an amount equal to the value of anything received by the Concessionaire in breach of these provisions, claim damages for all expenses incurred in obtaining another Concessionaire to complete performance hereunder and debar and suspend the Concessionaire from doing business with the Authority. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Authority may have under Law, statute, regulation, or otherwise.

f (j) For purposes of this Section 11.6 only, the words "confidential information," "consent," "Concessionaire" and "gratuity" shall have the following definitions:

(i) "confidential information" means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Authority;

(ii) "consent" means written permission signed by a duly authorized officer or employee of the Authority; *provided that* where the material facts have been disclosed, in writing, by prequalification, bid, proposal or contractual terms, the Authority shall be deemed to have consented by virtue of execution of this Agreement;

(iii) "Concessionaire" means the entity that has entered into this Agreement with the Authority; and

(iv) "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment or contracts of any kind.

Section 11.7 Commonwealth Tax Liabilities. The Concessionaire shall inform the Authority if, at any time during the Term, it becomes delinquent in the payment of Taxes imposed by any Governmental Authority of the Commonwealth (other than Commonwealth Tax liabilities for which the Concessionaire is not responsible under Section 3.10(b)).

Section 11.8 Contractor and Supplier Contracts. The Concessionaire shall include the provisions of this Article 11 and Section 9.3 in every subcontract and supply contract so that they shall be binding on each Contractor.

Section 11.9 Practice of Engineering, Architecture and Other Professions in the Commonwealth. To the extent that performance of the Toll Road Operations involves performance of architectural, engineering, land surveying, and landscape architecture services governed by Act No. 173 of the Legislative Assembly of Puerto Rico, enacted on August 12, 1988, 20 P.R. Laws Ann. § 711 *et seq.*, as amended ("Act No. 173"), then (A) the Concessionaire shall comply (and shall require its subcontractors or agents, if any, to comply) with Act No. 173 and (B) the Concessionaire shall monitor compliance by its subcontractors and agents with Act No. 173.

Section 11.10 Governmental Contractor Code of Ethics. Concessionaire and the Operator shall comply with the requirements of the Code of Ethics.

Section 11.11 Certifications Required by Commonwealth Contractor Requirements. The Concessionaire has (i) certified that it has complied and is in compliance with the provisions of the Public-Private Partnerships Authority's Ethical Guidelines and (ii) delivered the Sworn Statement herewith.

Section 11.12 Duty to Inform of Criminal Investigations. The Concessionaire shall inform the Authority if, at any time during the Term, it becomes subject to investigation in connection with criminal charges related to acts of corruption, the public treasury, the public trust, a public function, or charges involving public funds or property.



ARTICLE 12

INDEMNIFICATION

Section 12.1 Indemnification with Regard to Third Party Claims.

(a) *Indemnification by the Concessionaire.* To the fullest extent permitted by Law, the Concessionaire shall indemnify and hold harmless the Authority and each of its Representatives from and against any Losses actually suffered or incurred by the Authority or any such Representative as a result of any Third Party Claims arising from (i) any Assumed Liabilities; (ii) any tax or mortgage recording charge attributable to any Transfer of the Concessionaire Interest or any part thereof; or (iii) any liabilities borne by the Concessionaire pursuant to Section 5.4(d); *provided, however*, that such Third Party Claims are made in writing within a period of three (3) years from the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations.

(b) *Indemnification by the Authority.* To the fullest extent permitted by Law, the Authority shall indemnify and hold harmless the Concessionaire and each of its Representatives from and against any Losses actually suffered or incurred by the Concessionaire or any such Representative as a result of any Third Party Claims arising from (i) any Excluded Liabilities or (ii) pre-existing environmental conditions on Additional Lands described in Section 5.4 to the extent that the Authority requires the acquisition of Additional Lands under Section 5.2; *provided, however*, that such Third Party Claims are made in writing within a period of three (3) years of the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations.

(c) *Notice of Third Party Claim.* If an Indemnified Party receives notice of the commencement or assertion of any Third Party Claim, the Indemnified Party shall give the Indemnifier reasonably prompt notice thereof, but in any event no later than thirty (30) days after receipt of such notice of such Third Party Claim. Such notice to the Indemnifier shall describe the Third Party Claim in reasonable detail (and include a copy of any complaint or related documents) and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Indemnified Party. If the Third Party Claim involves an Excluded Environmental Liability, then the Authority shall have the right, in its discretion, to undertake any remediation or other action required to be made in connection with such Third Party Claim, the costs of such remediation or other action to be borne solely by the Authority.

(d) *Defense of Third Party Claim.* The Indemnifier may participate in or assume the defense of any Third Party Claim by giving notice to that effect to the Indemnified Party not later than thirty (30) days after receiving notice of that Third Party Claim (the "Notice Period"); *provided, however*, that the Indemnifier shall not be permitted to assume the defense of such Third Party Claim to the extent such assumption would adversely impact any defense asserted by the Indemnified Party. The Indemnifier's right to do so shall be subject to the rights of any insurer or other Party who has potential responsibility with respect of that Third Party Claim. The Indemnifier agrees to pay all of its own expenses of participating in or assuming

each defense. The Indemnified Party shall cooperate in good faith in the defense of each Third Party Claim, even if the defense has been assumed by the Indemnifier and may participate in such defense assisted by counsel of its own choice at its own expense. If the Indemnified Party has not received notice within the Notice Period that the Indemnifier has elected to assume the defense of such Third Party Claim, the Indemnified Party may assume such defense, assisted by counsel of its own choosing and the Indemnifier shall be responsible for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Indemnified Party with respect to such Third Party Claim.

(e) *Assistance for Third Party Claims.* The Indemnifier and the Indemnified Party will use all Reasonable Efforts to make available to the Party which is undertaking and controlling the defense of any Third Party Claim (the "Defending Party") (i) those employees whose assistance, testimony and presence is necessary to assist the Defending Party in evaluating and in defending any Third Party Claim and (ii) to the extent permitted by Law, all documents, records and other materials in the possession of such Party reasonably required by the Defending Party for its use in defending any Third Party Claim, and shall otherwise co-operate with the Defending Party. The Indemnifier shall be responsible for all reasonable expenses associated with making such documents, records and materials available and for all expenses of any employees made available by the Indemnified Party to the Indemnifier hereunder, which expense shall not exceed the actual cost to the Indemnified Party associated with such employees.

(f) *Settlement of Third Party Claims.* If an Indemnifier elects to assume the defense of any Third Party Claim in accordance with Section 12.1(d), the Indemnifier shall not be responsible for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense of such Third Party Claim. However, if the Indemnifier fails to take reasonable steps necessary to defend diligently such Third Party Claim within thirty (30) days after receiving notice from the Indemnified Party that the Indemnified Party *bona fide* believes on reasonable grounds that the Indemnifier has failed to take such steps, the Indemnified Party may, at its option, elect to assume the defense of and to compromise or settle the Third Party Claim assisted by counsel of its own choosing and the Indemnifier shall be responsible for all reasonable costs and expenses paid or incurred in connection therewith. The Indemnified Party shall not settle or compromise any Third Party Claim without obtaining the prior written consent of the Indemnifier unless such settlement or compromise is made without any responsibility to, and does not require any action on the part of, the Indemnifier and does not in any way adversely affect the Indemnifier.

Section 12.2 Indemnification with Regard to Breaches of Covenants, Representations or Warranties.

(a) *Indemnification by the Concessionaire.* The Concessionaire shall indemnify and hold harmless the Authority and each of its Representatives from and against any Losses actually suffered or incurred by the Authority or any such Representative arising from (i) any failure by the Concessionaire, its Affiliates or their respective Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or (ii) any breach by the Concessionaire of its representations or warranties set forth in Section 9.2; *provided, however*, that such representations and warranties continue to survive at such time as provided in Section 9.5(b) and a notice of a Claim shall have been given,

in writing in accordance with Article 20, prior to the expiry of such survival period as provided in Section 9.5(b).

(b) *Indemnification by the Authority.*

(i) The Authority shall indemnify and hold harmless the Concessionaire and each of its Representatives from and against any Losses actually suffered or incurred by the Concessionaire or any such Representative arising from (A) any failure by the Authority or its Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or any Other Authority Agreement or (B) any breach by the Authority of its representations or warranties set forth in Article 9 or in any Other Authority Agreement; *provided, however*, that such representations and warranties continue to survive at such time as provided in Section 9.5(a) or such Other Authority Agreement, as the case may be, and a notice of a Claim shall have been given, in writing in accordance with Article 20, prior to the expiry of such survival period as provided in Section 9.5(a) or such Other Authority Agreement, as the case may be.

(ii) No Claim may be made by the Concessionaire or the Concessionaire's Representatives against the Authority under Section 12.2(b)(i) for the breach of any representation or warranty made or given by the Authority in Article 9 or any Other Authority Agreement unless (A) the Loss suffered or incurred by the Concessionaire or its Representatives in connection with such breach is in excess of \$500,000 and (B) the aggregate of all Losses suffered or incurred by the Concessionaire or its Representatives exceeds \$10,000,000, in which event the amount of all such Losses in excess of such amount may be recovered by the Concessionaire or its Representatives; *provided, however*, that the maximum aggregate liability of the Authority to the Concessionaire or its Representatives in respect of such Losses in connection with breaches of the Authority's representations and warranties in Article 9 or any Other Authority Agreement shall not exceed fifteen percent (15%) of the Concession Fee and *provided further* that this Section 12.2(b)(ii) shall not apply to Claims for a breach of representation or warranties in Sections 9.1(a), (b), (c), (d), (e), (f), (g) or (l) or to claims for fraud, intentional misrepresentation or intentional breach of the representations or warranties in Article 9 or any Other Authority Agreement.

Section 12.3 Losses Net of Insurance; Reductions and Subrogation.

(a) For purposes of this Article 12, the amount of any Losses for which indemnification is provided hereunder shall be reduced by any amounts actually recovered by the Indemnified Party under insurance policies with respect to such Losses, it being understood that the obligations of the Indemnifier hereunder shall not be so reduced to the extent that any such recovery results in an increase in the Indemnified Party's insurance premiums, or results in any other additional cost or expense to any such Indemnified Party.

(b) If the amount of any Loss incurred by an Indemnified Party at any time subsequent to the making of a payment required under this Article 12 on account of such Losses (an "Indemnity Payment") is reduced by any subsequent recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including

Taxes) or premiums incurred or increased in connection therewith), together with interest thereon from the date of such recovery, settlement or reduction at the Bank Rate, shall promptly be repaid by the Indemnified Party to the Indemnifier.

(c) Upon making a full Indemnity Payment, the Indemnifier shall, to the extent of such Indemnity Payment, be subrogated to all rights of the Indemnified Party against any third party in respect of the Loss to which the Indemnity Payment relates. Until the Indemnified Party recovers full payment of its Loss, any and all claims of the Indemnifier against any such third party on account of such Indemnity Payment shall be postponed and subordinated in right of payment to the Indemnified Party's rights against such third party.

Section 12.4 Payment and Interest. All amounts to be paid by an Indemnifier hereunder shall bear interest at a rate per annum equal to the Bank Rate, calculated annually and payable monthly, both before and after judgment, from the date that the Indemnified Party disbursed funds, suffered damages or losses or incurred a loss or expense in respect of a Loss for which the Indemnifier is responsible to make payment pursuant to this Article 12, to the date of payment by the Indemnifier to the Indemnified Party.

Section 12.5 Offset Rights; Limitations on Certain Damages.

(a) Any other provision herein notwithstanding, each Party's obligations under this Agreement are subject to, and each Party shall have the benefit of, all defenses, counterclaims, rights of offset or recoupment or other claims and rights, including the right to deduct payments due to the other Party hereunder (collectively, "Offsets") which such Party may have at any time against such other Party (or any of their respective successors and assigns) or any transferee or assignee of any such other Party's rights hereunder (to the extent permitted hereunder) as against such Party or any part thereof or interest therein, whether the claim or right of such Party relied upon for such purpose is matured or unmatured, contingent or otherwise, and no transfer or assignment of this Agreement or any other obligation of such other Party, or of any rights in respect thereof, pursuant to any plan of reorganization or liquidation or otherwise shall affect or impair the availability to each Party of the Offsets; *provided that* in no event shall any Party's right to Offsets permit such Party to exercise such right in a manner that would reduce the Toll Road Concession Value to an amount that is less than the Concession Mortgage Debt.

(b) In no event shall any Party be responsible to the other Party under this Agreement for consequential, indirect, exemplary or punitive damages (except for claims by the Authority against the Concessionaire for fraud or for intentional misrepresentation or intentional breach), nor shall a Party be obligated to indemnify any other Party or any other Person with respect to any Losses or damages caused by the fraud of such other Party or Person. The Parties agree that payment for lost Toll Road Revenues as part of Concession Compensation or the Toll Road Concession Value shall not constitute consequential, indirect, exemplary or punitive damages under the Act or otherwise.

(c) Except (i) in the event of a termination of this Agreement pursuant to Section 2.4(d), Section 14.2 or Section 16.2, (ii) in cases involving fraud or intentional misrepresentation subject to all of the terms and conditions hereof or (iii) with respect to any Compensation Event, the provisions of this Article 12 shall constitute the sole and exclusive

right and remedy available to any Party hereto for any Third Party Claim or for any actual or threatened breach of any representation, warranty, covenant or agreement contained herein.

Section 12.6 Survival. This Article 12 shall remain in full force and effect in accordance with its terms and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by any termination or rescission of this Agreement by any Party.

Section 12.7 Agency for Representatives. Each of the Authority and the Concessionaire agrees that it accepts each indemnity under the terms of this Agreement in favor of any of its Representatives and/or Affiliates, as applicable, as agent and trustee of such Representative and/or Affiliate, as applicable, and agrees that each of the Authority and the Concessionaire may enforce any such indemnity in favor of its Representatives and/or Affiliates, as applicable, on behalf of such Representative and/or Affiliate.

ARTICLE 13

INSURANCE

Section 13.1 Insurance Coverage Required. The Concessionaire shall maintain at the Concessionaire's own expense, or cause to be maintained, insurance of the types and limits required pursuant to this Section 13.1 and Section 13.2 throughout the Term and any period in which the Concessionaire is required to return and perform any additional work after the Term (the "Required Coverages").

(a) *Commercial General Liability Insurance.* The Concessionaire shall maintain Insurance Services Office occurrence version Commercial General Liability Insurance, or equivalent coverage, in a limit of not less than \$12,000,000 per occurrence and \$12,000,000 annual aggregate. This insurance policy shall (i) name the Authority and its officers, employees, elected officials, agents and Representatives as insureds; (ii) be primary to any insurance or self-insurance programs otherwise covering the Persons described in clause (i) above and (iii) include coverage for certified acts of terrorism (if available on commercially reasonable terms). Any part of the required limit may be provided through umbrella or excess liability insurance.

(b) *Business Automobile Liability Insurance.* The Concessionaire shall maintain Insurance Services Office Business Automobile Policy or equivalent coverage with a limit of not less than \$2,000,000 each accident. Such insurance shall include coverage for owned, non-owned and hired automobiles. Any part of the required limit may be provided through umbrella or excess liability insurance.

Workers Compensation Insurance. The Concessionaire shall maintain the required workers compensation insurance with the Corporación del Fondo del Seguro del Estado.

(d) *Professional Liability.* The Concessionaire shall maintain professional liability with limits of not less than \$2,000,000 per occurrence when any architect, engineer, construction manager or other professional consultant performs work in connection with this Agreement. Any retroactive date on the professional liability policy shall be the date the

professional work commences or a date prior to the date the professional work commences. All claims-made policies shall remain in force for at least three (3) years beyond the date the consultant's professional work in connection with this Agreement terminates, through extended coverage, purchase of a tail or otherwise.

(e) *Pollution Legal Liability.* The Concessionaire shall maintain pollution legal liability or equivalent coverage (including clean-up) with limits of not less than \$5,000,000 per occurrence for pollution conditions arising during the Term. If claims-made forms are used, such insurance shall remain in force for at least three (3) years beyond the date work in connection with this Agreement terminates, through extended coverage, purchase of a tail or otherwise.

(f) *Directors and Officers Liability.* The Concessionaire shall maintain directors and officers liability in a limit of not less than \$5,000,000 per occurrence. Any retroactive date on the policy shall be on or before the Effective Date. Policies written on a claims-made basis shall remain in force for at least three (3) years beyond the date this Agreement terminates, through extended coverage, purchase of a tail or otherwise.

(g) *Employment Practices Liability.* The Concessionaire shall maintain employment practices liability in a limit of not less than \$5,000,000 per occurrence. Any retroactive date on the policy shall be on or before the Effective Date. Policies written on a claims-made basis shall remain in force for at least three (3) years beyond the date this Agreement terminates, through extended coverage, purchase of a tail or otherwise.

(h) *Fiduciary Liability.* The Concessionaire shall maintain fiduciary liability in a limit of not less than \$3,000,000 per occurrence. Any retroactive date on the policy shall be on or before the Effective Date. Policies written on a claims-made basis shall remain in force for at least three (3) years beyond the date this Agreement terminates, through extended coverage, purchase of a tail or otherwise.

(i) *Builders Risk Insurance.* During construction, the Concessionaire shall maintain builders risk or equivalent insurance for any work with a completed value of \$100,000 or more. Such insurance shall (i) be at least as broad in scope as the Insurance Services Office Causes-of-Loss: Special Form; (ii) apply to the full cost of construction, including foundations, footings and excavation costs; (iii) provide soft cost expense coverage, including coverage for (A) finance costs, loan interest and fees and (B) real estate fees, accounting fees, legal fees and any other increase in expense incurred as a result of covered damage; (iv) provide loss of income/ rents coverage in an amount acceptable to the Authority; (v) have no coinsurance limitation; (vi) name the Authority and all Contractors as insureds; (vii) include no deductible greater than \$50,000 without the Authority's Approval; (viii) include coverage for earthquake and flood; (ix) include full collapse coverage; (x) include coverage for temporary offsite storage; (xi) include coverage for pollutant cleanup; (xii) include coverage for debris removal; (xiii) include law and ordinance coverage; (xiv) include equipment breakdown coverage during testing; (xv) include terrorism coverage (if available on commercially reasonable terms) and (xvi) provide coverage for partial occupancy.

(j) *Property Insurance.* The Concessionaire shall maintain property insurance for all buildings, bridges, tunnels, towers and other structures on the Toll Road Land; *provided* that, for such buildings, bridges, tunnels, towers and other structures erected, constructed or placed on the Toll Road Land after the Time of Closing, the Concessionaire shall only be required to maintain such insurance at such time as such structure is no longer covered by builder's risk insurance and *provided further* that the limits of such coverage may be based on a probable maximum loss analysis, subject to the Authority's Approval of such probable maximum loss analysis by an independent insurance consultant that is reasonably acceptable to the Authority. Such insurance shall (i) cover the full replacement cost of the property subject to the probable maximum loss analysis permitted above; (ii) provide loss of income/rents coverage in an amount reasonably acceptable to the Authority; (iii) have no coinsurance limitation; (iv) name the Authority as an insured; (v) include waiver of subrogation in favor of the Authority; (vi) include coverage for fiber optic cable located below the ground surface; (vii) include coverage for tunnels and bridges; (viii) include coverage for communications towers; (ix) include coverage for electronic data procession equipment, data and media; (x) include coverage for earthquake and flood; (xi) include coverage for Hazardous Substance cleanup; (xii) include coverage for debris removal; (xiii) include valuable papers coverage; (xiv) include law and ordinance coverage and (xv) include terrorism coverage (if available on commercially reasonable terms). With regard to property insurance related to bridges, Concessionaire need not maintain coverage for any bridge whose replacement value is less than five hundred thousand dollars (\$500,000).

(k) *Boiler & Machinery Insurance.* The Concessionaire shall maintain comprehensive boiler and machinery coverage or equipment breakdown coverage for completed structures housing pressure vessels, machinery, equipment and electrical systems with a total replacement value of \$25,000 or more. Such insurance shall (i) include a limit at least equal to the total replacement cost of the equipment, plus 10%; (ii) include business interruption insurance in an amount reasonably acceptable to the Authority; (iii) include the Authority as an insured and (iv) include law and ordinance coverage.

(l) *Business Interruption Insurance.* The Concessionaire shall obtain business insurance against interruption or loss of projected Toll Revenues for at least six (6) months from the occurrence of the risk, resulting from physical damage to the Toll Roads and any relevant feeder roads; *provided*, that the limits of such coverage may be based on a maximum foreseeable loss analysis, subject to the Authority's approval of such maximum foreseeable loss analysis by an independent third party that is reasonably acceptable to the Authority, with such approval of the Authority not to be unreasonably withheld; and *provided further*, that the Authority and each Dependent Business shall be named as additional insureds thereunder.

4 (m) *Owners' Contractors Protective Liability Insurance.* The Concessionaire shall obtain owners' contractors protective liability insurance or equivalent coverage with a limit of not less than \$2,000,000 per occurrence. Such insurance shall include coverage against any negligent acts or omissions of independent contractors or subcontractors of the Concessionaire, whether resulting in bodily injury or injury to property of third parties.

Section 13.2 Additional Requirements.

(a) *Evidence of Insurance.* The Concessionaire shall, at the Time of Closing and throughout the Term:

(i) deliver or cause to be delivered to the Authority, or Representatives of the Authority, properly executed certificates of insurance that (A) clearly evidence all Required Coverages and provide that such insurance shall not be cancelled without ninety (90) days' notice to the Authority and (B) disclose all self-insured retentions;

(ii) at the request of the Authority, provide certified copies of policies and all policy endorsements;

(iii) provide a copy of endorsements adding any Person as an insured in accordance with Section 13.1(a)(i).

(iv) notify the Authority of any deductibles and self-insured retentions that exceed two hundred fifty thousand dollars (\$250,000); *provided* that (A) the Concessionaire shall not utilize deductibles or self-insured retentions in excess of two hundred fifty thousand dollars (\$250,000) without the Approval of the Authority and (B) the payment of all deductibles and self-insured retentions shall be the sole responsibility of the Concessionaire;

(v) place insurance with insurers that have an A.M. Best (or equivalent) rating of no less than "A, VII" and are authorized to do business in the Commonwealth;

(vi) except as otherwise stated in Section 13.1, maintain aggregate liability limits no less than the required "per occurrence" limit if aggregate liability limits apply to the insurance policy; and

(vii) notify the Authority of any proposed change in the provider of insurance required hereunder ninety (90) days in advance of the date of such proposed change.

(b) *Other Insurance.* The Authority shall have the right to require additional types of insurance and adjust limits of insurance to reflect changes in exposure or changes in available coverage. The Concessionaire shall have the right to agree to such change or to request the Authority to provide the opinion of an independent insurance consultant on the need for such additional coverages or adjusted limits. The Concessionaire shall obtain such additional coverages or adjusted limits if, after the request of the Concessionaire, the Authority provides an opinion of an independent insurance consultant on the need for such additional coverages or adjusted limits. The Authority's failure to require additional coverages or adjust limits shall not relieve the Concessionaire of the Concessionaire's obligation to maintain reasonably prudent coverages and limits.

(c) *Insurance Requirements of Contractors.* The Concessionaire shall require each Contractor, tenant or subtenant to maintain coverages reasonably appropriate for its operations at limits sufficient to protect the Concessionaire, the Authority and the public at large.

Such limits shall not be less than one million dollars (\$1,000,000) per occurrence. Such insurance shall insure the interests of the Authority (and its officers, employees, elected officials and Representatives), the Concessionaire and any applicable tenants or subtenants with respect to the operations being performed. When requested by the Authority, the Concessionaire shall furnish certificates of insurance evidencing coverage that is reasonably acceptable in form and content to the Authority.

(d) *Cooperation.* The Authority and the Concessionaire shall do all acts, matters and things as may be reasonably necessary or required to expedite the adjustment of any loss or damage covered by insurance required hereunder so as to expedite the release and dedication of proceeds of such insurance in a manner and for the purposes herein contemplated.

(e) *Inflation Adjustment.* The amounts of coverage required by Section 13.1 shall be Adjusted for Inflation each succeeding fifth (5th) anniversary of the Closing Date.

(f) *Commercial Availability.* The Concessionaire shall have the right to request the Authority to provide the opinion of an independent insurance consultant on the availability of any insurance required hereunder (including the limits or deductibles thereof) at commercially reasonable rates. If such independent insurance consultant determines that such insurance is not available at commercially reasonable rates, the Concessionaire shall not be required to maintain such insurance so long as such insurance shall not be available at commercially reasonable rates; *provided* that during such period, the Concessionaire maintains the maximum amount of such insurance otherwise available at commercially reasonable rates.

Section 13.3 Damage and Destruction.

(a) *Obligations of Concessionaire.* If all or any part of any of the Toll Roads shall be destroyed or damaged during the Term in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen, the Concessionaire shall: (i) give the Authority notice thereof promptly after the Concessionaire receives actual notice of such casualty; (ii) at its sole cost and expense (subject to Section 15.2(c)) whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restorations, replacement and rebuilding (the "Casualty Cost"), proceed diligently to Restore the same and (iii) deposit all insurance proceeds received by the Concessionaire in connection with any Restoration with a Depository; *provided, however,* that if at any time the Casualty Cost exceeds the net insurance proceeds actually deposited with the Depository, then the Concessionaire shall also deposit with the Depository such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds (such net insurance proceeds and such additional cash, together with any interest earned thereon, the "Restoration Funds"); *provided further* that the procedures of this clause (iii) of this Section 13.3(a) shall only apply to casualty events in which the cost of Restoration exceeds \$500,000 Adjusted for Inflation.

(b) *Rights of Authority.* If (i) the Concessionaire shall fail or neglect to commence the diligent Restoration of the Toll Roads or the portion thereof so damaged or destroyed, (ii) having so commenced such Restoration, the Concessionaire shall fail to diligently complete the same in accordance with the terms of this Agreement or (iii) prior to the completion

of any such Restoration by the Concessionaire, this Agreement shall expire or be terminated in accordance with the terms of this Agreement, the Authority may, but shall not be required to, complete such Restoration at the Concessionaire's expense and shall be entitled to be paid out of the Restoration Funds for the relevant Restoration costs incurred by the Authority. In any case where this Agreement shall expire or be terminated prior to the completion of the Restoration, the Concessionaire shall (A) account to the Authority for all amounts spent in connection with any Restoration which was undertaken, (B) immediately pay over or cause the Depository to pay over to the Authority the remainder, if any, of the Restoration Funds received by the Concessionaire prior to such termination or cancellation and (C) pay over or cause the Depository to pay over to the Authority, within five (5) Business Days after receipt thereof, any Restoration Funds received by the Concessionaire or the Depository subsequent to such termination or cancellation. The Concessionaire's obligations under this Section 13.3(b) shall survive the expiration or termination of this Agreement.

(c) *Payment of Restoration Funds to Concessionaire.* Subject to the satisfaction by the Concessionaire of all of the terms and conditions of this Section 13.3, the Depository shall pay to the Concessionaire from time to time, any Restoration Funds, but not more than the amount actually collected by the Depository upon the loss, together with any interest earned thereon, after reimbursing itself therefrom, as well as the Authority, to the extent, if any, of the reasonable expenses paid or incurred by the Depository and the Authority in the collection of such monies, to be utilized by the Concessionaire solely for the Restoration, such payments to be made as follows:

(i) prior to commencing any Restoration, the Concessionaire shall furnish to the Authority for its Approval the estimated cost, estimated schedule and detailed plan for the completion of the Restoration, each prepared by an architect or engineer;

(ii) the Restoration Funds shall be paid to the Concessionaire in installments as the Restoration progresses, subject to Section 13.3(c)(iii), based upon requisitions to be submitted by the Concessionaire to the Depository and the Authority in compliance with Section 13.3(d), showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by the Concessionaire; *provided, however*, that if any lien (other than a Permitted Concessionaire Encumbrance described in clause (ii) and in clauses (iv) through (ix) of the definition thereof) is filed against the Toll Roads or any part thereof in connection with the Restoration, the Concessionaire shall not be entitled to receive any further installment until such lien is satisfied or discharged (by bonding or otherwise); *provided further* that notwithstanding the foregoing, but subject to the provisions of Section 13.3(c)(iii), the existence of any such lien shall not preclude the Concessionaire from receiving any installment of Restoration Funds so long as such lien will be discharged with funds from such installment and at the time the Concessionaire receives such installment the Concessionaire delivers to the Authority and the Depository a release of such lien executed by the holder of such lien or and in recordable form;

(iii) the amount of each installment to be paid to the Concessionaire shall be the aggregate amount of Casualty Costs theretofor incurred by the Concessionaire minus the aggregate amount of Restoration Funds theretofor paid to the Concessionaire in connection therewith, less ten percent (10%) of such amount as a retainage (which ten percent (10%)

retainage shall be released to the Concessionaire upon completion of the Restoration work), except that such retainage shall not include any amounts for architects' or engineers' fees or permitting or other governmental fees in connection with the Restoration or with respect to each Contractor upon the final completion of each such Contractor's respective work; *provided* that the unapplied portion of the funds held by the Depository are sufficient to complete the Restoration; *provided, further*, that all disbursements to the Concessionaire shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for materials and Contractors to the extent that such disbursements are customary in the industry and that the unapplied portion of the funds held by the Depository are sufficient to complete the Restoration; and

(iv) except as provided in Section 13.3(b), upon completion of and payment for the Restoration by the Concessionaire, subject to the rights of any Concession Mortgagee, the Depository shall pay the balance of the Restoration Funds, if any, to the Concessionaire; *provided, however*, that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), the Concessionaire shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 13.3(a)(iii).

(d) *Conditions of Payment.* The following shall be conditions precedent to each payment made to the Concessionaire as provided in Section 13.3(c):

(i) the Concessionaire shall have furnished the Authority with estimates of costs and schedule and a detailed plan for the completion of the Restoration, as provided for in Section 13.3(c)(i);

(ii) at the time of making such payment, there exists no Concessionaire Default that caused the casualty loss, destruction or damage addressed by such plan;

(iii) the Restoration shall be carried out under the supervision of the relevant architect or engineer (which has been Approved by the Authority), and there shall be submitted to the Depository and the Authority the certificate of such architect or engineer stating that (A) the materials and other items which are the subject of the requisition have been delivered to the Toll Roads (except with respect to requisitions for advance deposits permitted under Section 13.3(c)(iii)), free and clear of all Encumbrances (other than a Permitted Concessionaire Encumbrance described in clause (ii) and in clauses (iv) through (ix) of the definition thereof), and no unsatisfied or unbonded mechanic's or other liens have been claimed, except for any mechanic's lien for claims that will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (*provided* that a release of such lien is delivered to the Depository in accordance with Section 13.3(c)(ii)), (B) the sum then requested to be withdrawn either has been paid by the Concessionaire or is due and payable to Contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (C) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Restoration Funds or

has been made out of the Restoration Funds received by the Concessionaire, (D) the sum then requested does not exceed the value of the services and materials described in the certificate, (E) the work relating to such requisition has been performed in accordance with this Agreement, (F) the balance of the Restoration Funds held by the Depository or available from other sources will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion and (G) in the case of the final payment to the Concessionaire, the Restoration has been completed in accordance with this Agreement.

(e) *Payment and Performance Bonds.* If the Concessionaire obtains payment or performance bonds related to a Restoration (which the Concessionaire may or may not obtain in its discretion), the Concessionaire shall name the Authority and the Concessionaire and the Concession Mortgagee, as their interests may appear, as additional indemnified parties, and shall deliver copies of any such bonds to the Authority promptly upon obtaining them.

(f) *Benefit of Authority.* The requirements of this Section 13.3 are for the benefit only of the Authority, and no Contractor or other Person shall have or acquire any claim against the Authority as a result of any failure of the Authority actually to undertake or complete any Restoration as provided in this Section 13.3 or to obtain the evidence, certifications and other documentation provided for herein.

(g) *Investment of Restoration Funds.* Restoration Funds deposited with a Depository shall be invested and reinvested in Eligible Investments, and all interest earned on such investments shall be added to the Restoration Funds.

(h) *Rights of Concession Mortgagee.* The Authority acknowledges and agrees that any Restoration Funds not applied to a Restoration as provided in this Section 13.3 shall be subject to the lien or liens of any Concession Mortgagee.

ARTICLE 14

ADVERSE ACTIONS

Section 14.1 Adverse Action.

(a) An "Adverse Action" shall occur if the Authority or any Governmental Authority established under the Laws of the Commonwealth takes action at any time during the Term (including enacting any legislation or ordinance or promulgating any rule or regulation) and the effect of such action is reasonably expected (i) to be principally borne by (A) the Concessionaire, (B) private operators of toll roads in the Commonwealth or (C) Contratantes and (ii) to have a material adverse effect on the fair market value of the Concessionaire Interest, except where such action (A) is in response to any act or omission on the part of the Concessionaire or its Representatives that (1) is illegal (other than an act or omission rendered illegal by virtue of the Adverse Action) or (2) constitutes nonperformance by the Concessionaire, (B) is otherwise permitted under this Agreement or (C) is mandated by action of the United States government (or any agency thereof); *provided, however*, that none of the following shall constitute an Adverse Action: (w) the exercise of law enforcement, subpoena or investigatory

powers of the Authority or any Governmental Authority as permitted under this Agreement or applicable Law; (x) an increase in Taxes not directed solely at the Concessionaire, the Toll Roads, the users of the Toll Roads, private operators of toll roads in the Commonwealth or their users or Contratantes; (y) Taxes for which the Concessionaire is not responsible pursuant to Section 3.10(b), and (z) the development, redevelopment, construction, maintenance, modification, change in operation, opening or introduction of any existing or new mode of transportation (including, without limitation, any Competing Highway, any managed lanes, any High-Occupancy Toll (HOT) lanes, any High-Occupancy Vehicle (HOV) lanes and any bus rapid transit (BRT) lanes).

(b) If an Adverse Action occurs, the Concessionaire shall have the right to receive from the Authority Concession Compensation with respect thereto (such Concession Compensation, the "AA-Compensation"); *provided, however*, that if the Adverse Action constitutes an expropriation, sequestration or requisition of all or a material part of the Toll Roads, the Toll Road Assets, the Toll Road Revenues and the Concessionaire Interest (or any of them) or materially impedes, substantially frustrates or renders impossible the Concessionaire's ability to perform its obligations hereunder continuously for ninety (90) days, then the Concessionaire shall have the right either (i) to be paid the AA-Compensation with respect thereto or (ii) to terminate this Agreement and be paid by the Authority any AA-Termination Damages, in each case by giving notice in the manner described in Section 14.1(c).

(c) Within thirty (30) days following the date on which the Concessionaire first became aware of the Adverse Action, the Concessionaire shall give notice (the "AA-Preliminary Notice") to the Authority stating that an Adverse Action has occurred. Within one hundred eighty (180) days following the date of delivery of the AA-Preliminary Notice, the Concessionaire shall give the Authority another notice (the "AA-Notice") setting forth (i) details of the effect of said occurrence that is principally borne by the Concessionaire generally or principally borne by private operators of toll roads in the Commonwealth or Contratantes and not by others, (ii) details of the material adverse effect of said occurrence on the fair market value of the Concessionaire Interest, (iii) a statement as to which right referred to in Section 14.1(b) the Concessionaire has exercised and (iv) if the Concessionaire elects to exercise the right to Concession Compensation under Section 14.1(b), the amount claimed as AA-Compensation and details of the calculation thereof. The Authority shall, after receipt of the AA-Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Authority may reasonably consider necessary. If the Authority or the Guarantor, as the case may be, wishes to dispute the occurrence of an Adverse Action or the amount of AA-Compensation, if any, claimed in the AA-Notice, it shall give notice of dispute (the "AA-Dispute Notice") to the Concessionaire within thirty (30) days following the date of receipt by it of the AA-Notice stating in reasonable detail the grounds for such dispute. If neither the AA-Notice nor the AA-Dispute Notice has been withdrawn within thirty (30) days following the date of receipt of the AA-Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 19.

(d) If the Concessionaire has the right to receive AA-Compensation, the Authority shall provide the AA-Compensation claimed by the Concessionaire within sixty (60) days following the date of receipt of the AA-Notice, or if an AA-Dispute Notice has been given,

then not later than sixty (60) days following the date of determination of the AA-Compensation (together with interest at the rate set forth in Section 20.9 from the date of receipt of the AA-Dispute Notice to the date on which payment is made); *provided* that the Authority shall provide the AA-Compensation in accordance with Section 15.1(b) as if the related AA-Notice were a CE-Notice; and *provided further* that subject to the right of the Concessionaire to receive interest thereon at the rate set forth in Section 20.9 from the date of receipt of the AA-Dispute Notice to the date on which payment is made, the Authority may defer any such payment for an additional one hundred twenty (120) days if the Authority determines, in its discretion, that such additional period is necessary in order to obtain financing or otherwise to obtain the necessary funds to make such a payment.

(e) The placement in service of a Competing Highway shall constitute a Compensation Event with respect to which Concession Compensation shall be provided by the Authority to the Concessionaire on or before March 15 of each year thereafter pursuant to Section 15.1; *provided* that such Concession Compensation shall be provided only to the extent of the actual, reasonably documented decrease in net income suffered by the Concessionaire during the preceding calendar year as the sole and direct result of such Competing Highway. For avoidance of doubt, the BRT/DTL Project shall not be considered a Competing Highway.

Section 14.2 Termination.

(a) If the Concessionaire has the right to terminate this Agreement in connection with an Adverse Action pursuant to Section 14.1(b) and the Concessionaire has exercised such right, this Agreement, subject to Section 14.3, shall terminate one hundred twenty (120) days following the date of receipt of the AA-Notice by the Authority, and on the Reversion Date the Authority shall pay to the Concessionaire pursuant to Section 14.1(b) compensation equal to the aggregate, without duplication, of (i) the Toll Road Concession Value as of the date of termination, plus (ii) the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a direct result of such termination, plus (iii) the Concession Compensation calculated for the period between the date of the Adverse Action and the date of termination less (iv) any insurance or condemnation proceeds payable (or that should have been payable but for (x) the breach of an obligation to take out or maintain insurance by the Concessionaire under this Agreement or (y) the invalidity or breach of any insurance policy caused by the Concessionaire under which policy such proceeds would have been paid) with respect to all or any portion of the Toll Roads as a result of the occurrence of such Adverse Action (collectively, the "AA-Termination Damages") or, if the AA-Termination Damages are determined on a date subsequent to the Reversion Date, then not later than sixty (60) days following the date of determination of the AA-Termination Damages (together with interest at the rate set forth in Section 20.9 from the Reversion Date to the date on which payment is made); *provided* that, subject to the right of the Concessionaire to receive interest at the rate set forth in Section 20.9 on the payment owed by the Authority from the Reversion Date to the date on which payment is made, the Authority may defer any such payment for an additional one hundred twenty (120) days if the Authority reasonably determines that such additional period is necessary to obtain financing or required approvals to make such a payment; *provided, however*, that any amounts received by the Concessionaire or any Concession Mortgagee from any insurance policies payable as a result of damage or destruction to the Toll Roads that has not

been remedied prior to the Reversion Date shall, to the extent not used to remedy such effects, be deducted from the amount payable by the Authority to the Concessionaire so long as the Authority has not received any such amounts pursuant to Article 13.

(b) Any dispute arising out of the determination of the AA-Termination Damages shall be submitted to the dispute resolution procedure in Article 19.

(c) No AA-Notice given by the Concessionaire to the Authority in which the Concessionaire states that it elects to exercise its right of termination of this Agreement shall be valid for any purpose unless, if any Concession Mortgage Debt remains outstanding and if and to the extent required by the terms of any Concession Mortgage, the Concessionaire has first obtained and delivered to the Authority the written consent of the Concession Mortgagee to such AA-Notice.

Section 14.3 Right of the Authority to Remedy an Adverse Action. If the Authority wishes to remedy the occurrence or effects of an Adverse Action, the Authority shall give notice thereof to the Concessionaire within thirty (30) days following the date of receipt of the AA-Notice. If the Authority gives such notice, then the Authority must remedy the Adverse Action or the effects thereof within one hundred eighty (180) days following the date of receipt of the AA-Notice or, if a AA-Dispute Notice has been given, within one hundred eighty (180) days following the final decision pursuant to Article 19 to the effect that an Adverse Action occurred or, in either case, within such longer period as may be agreed to by the Concessionaire. If the Authority remedies the occurrence or effects of an Adverse Action within the applicable period of time, the right of the Concessionaire shall be limited to a claim for AA-Compensation with respect to such Adverse Action.

Section 14.4 Discharge of Liability. Notwithstanding anything in this Agreement to the contrary, payment of the entire sum of AA-Termination Damages by the Authority pursuant to Section 14.2(a), or provision by the Authority of AA-Compensation pursuant to Section 14.1(b), shall constitute full and final satisfaction of all amounts that may be claimed by the Concessionaire for and with respect to the occurrence of the Adverse Action and, upon such payment or provision, as applicable, the Authority shall be released and forever discharged by the Concessionaire from any and all liability with respect to such Adverse Action.

ARTICLE 15

CONCESSION COMPENSATION; DELAY EVENTS

Section 15.1 Payment of Concession Compensation.

(a) *Notice.* Except as otherwise provided herein, if a Compensation Event occurs, the Concessionaire shall give notice (the "CE-Preliminary Notice") to the Authority within thirty (30) days following the date on which the Concessionaire first became aware of the Compensation Event stating that a Compensation Event has occurred. Within thirty (30) days following the date of delivery of the CE-Preliminary Notice, the Concessionaire shall give the Authority another notice (the "CE-Notice") setting forth (i) details of the Compensation Event, including a specific explanation of the reasons that the event constitutes a Compensation Event

under the terms of this Agreement and (ii) the amount claimed as Concession Compensation and details of the calculation thereof. If the Authority or the Guarantor, as the case may be, wishes to dispute the occurrence of a Compensation Event or the amount of the Concession Compensation claimed in the CE-Notice, it shall give notice of dispute (the "CE-Dispute Notice") to the Concessionaire within sixty (60) days following the date of receipt by it of the CE-Notice stating the grounds for such dispute. If neither the CE-Notice nor the CE-Dispute Notice has been withdrawn within thirty (30) days following the date of receipt of the CE-Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 19.

(b) *Payment.* Within sixty (60) days following the date of receipt of a CE-Notice, or if a CE-Dispute Notice has been given as provided in Section 15.1(a) and not withdrawn (and the CE-Notice is not otherwise withdrawn by the Concessionaire), then not later than sixty (60) days following the date of determination of the related Concession Compensation (the later of such dates being referred to herein as a "Compensation Date"), the Authority (except to the extent the Authority elects to provide the related Concession Compensation in accordance with Section 15.1(c)), shall pay the related Concession Compensation to the Concessionaire in cash, which Concession Compensation shall be then due and payable to the Concessionaire (except as otherwise provided in Section 15.1(e)); *provided* that, subject to the right of the Concessionaire to receive interest at the rate set forth in Section 20.9 on the Concession Compensation owed by the Authority from the date of receipt of the CE-Notice to the date on which Concession Compensation is provided to the Concessionaire, the Authority may defer the provision of any such Concession Compensation for an additional one hundred twenty (120) days if the Authority reasonably determines that such additional period is necessary to obtain financing or required approvals to provide such Concession Compensation to the Concessionaire; *provided further* that, notwithstanding the foregoing, in the event of a dispute regarding the amount of Concession Compensation which the Authority is required to pay to the Concessionaire in accordance with this Section 15.1(b), the Authority shall provide to the Concessionaire any undisputed portion of such Concession Compensation and any portion of such Concession Compensation that is subsequently agreed between the Parties, in each case not later than sixty (60) days following the date that the Parties have agreed to such portion (together with interest at the rate set forth in Section 20.9 from the date of receipt of the CE-Dispute Notice to the date on which Concession Compensation is provided) (even if a dispute regarding a portion of the amount claimed by the Concessionaire is still pending); *provided* that the Authority shall have the right to defer providing such Concession Compensation for an additional one hundred twenty (120) days under the terms set forth in the first preceding proviso.

(c) *Term or Toll Option.* Notwithstanding anything to the contrary in Article 2, Article 7 or Schedule 10, and to the extent such Concession Compensation is not payable as part of Termination Damages and is not otherwise paid pursuant to Section 15.1(b), the Authority may elect (subject to the proviso below) to provide any Concession Compensation due to the Concessionaire hereunder by:

(i) extending the Term for a period of time that would be sufficient to restore the Concessionaire to the same economic position in which it would have been had such Compensation Event not occurred (subject to the prior receipt of any approval or Authorization

necessary to extend the Term under the Act and otherwise in compliance with applicable Law); and/or

(ii) authorizing the Concessionaire to increase tolls on the Toll Roads for a period of time that would be sufficient to restore the Concessionaire to the same economic position in which it would have been had such Compensation Event not occurred (in which case Schedule 10 shall be amended to permit such increase in tolls on the Toll Roads for such period of time);

provided that, in each case:

(A) the Authority shall make such election by notice delivered to the Concessionaire not later than the related Compensation Date, such notice shall specify the amount of Concession Compensation to be provided pursuant to this Section 15.1(c) and the Authority's preference as to whether such compensation shall be provided pursuant to such clause (i) or (ii) above (which preference shall be binding subject to clause (B) below);

(B) notwithstanding the preference of the Authority specified by notice pursuant to such clause (A) above, the Concessionaire shall have the right within fifteen (15) days after its receipt of such notice to specify its own preference as to whether such compensation shall be provided pursuant to such clause (i) or (ii) above, and such preference shall be binding if different from that specified by the Authority;

(C) the Authority may not provide Concession Compensation pursuant to this Section 15.1(c) in an amount that: (1) cumulatively with all other amounts of Concession Compensation previously provided pursuant to this Section 15.1(c), would exceed twenty-five million dollars (\$25,000,000) during the Term; (2) cumulatively with all other amounts of Concession Compensation previously provided pursuant to this Section 15.1(c), would exceed ten million dollars (\$10,000,000) prior to the fifth (5th) anniversary of the Closing; or (3) in any year after the fifth (5th) anniversary of the Closing, cumulatively with all other amounts of Concession Compensation previously provided in such year pursuant to this Section 15.1(c), would exceed one million dollars (\$1,000,000) in such year; in each case Adjusted for Inflation plus one and one-half percent (1.5%) on each anniversary of the Closing during the Term;

(D) the Authority may not provide Concession Compensation pursuant to this Section 15.1(c) in respect of the Compensation Events contemplated by Section 2.5(i)(iii)(B) or Section 5.2(a); and

(E) if such Concession Compensation is due pursuant to a Delay Event Remedy, the Authority may elect to provide such Concession Compensation without regard to the limitations set forth in subclause (C) above.

(d) *Calculation.* Concession Compensation shall be sufficient to compensate the Concessionaire for (i) all documented Losses (including increased operating, financing and

capital and maintenance costs but excluding any costs and expenses that the Concessionaire would otherwise expend or incur in order to comply with this Agreement or in the ordinary course of the performance of the Toll Road Operations or the carrying on of business in the ordinary course) that are reasonably attributable to such Compensation Event and (ii) any documented Losses of the Concessionaire's present and future Toll Road Revenues that are reasonably attributable to such Compensation Event, after taking into account (A) any insurance proceeds payable (or that should have been payable but for (x) the insurer's inability to pay, (y) the breach of an obligation to take out or maintain insurance by the Concessionaire under this Agreement or (z) the invalidity or breach of any insurance policy caused by the Concessionaire under which policy such proceeds would have been paid) in connection with the Compensation Event, if applicable, and (B) any increases in future Toll Road Revenues that are reasonably attributable to such Compensation Event, if applicable. If the Concessionaire is required to expend its own funds (whether from operating cash flows or the proceeds of any debt or equity financing or otherwise) with respect to any Compensation Event prior to receipt or financing of the corresponding Concession Compensation or if the payment of Concession Compensation is deferred under Section 15.1(b), then the determination of Concession Compensation shall, in addition to the components described above, include such additional amounts as may be necessary to permit the Concessionaire to earn an after-Tax rate of return thereon at the then-applicable market-based rate of return to be agreed by the Concessionaire and the Authority.

(e) *Future Losses.* Any Concession Compensation payable pursuant to Section 15.1(b) with respect to lost Toll Road Revenues or documented Losses (including increased operating, financing, capital and maintenance costs) that will not occur until the future shall be due solely when such lost Toll Road Revenues would otherwise become due or such Losses are actually incurred or suffered or promptly thereafter.

(f) *Minimum Claim.* Notwithstanding the foregoing provisions of this Section 15.1, the Concessionaire may not make a claim for Concession Compensation unless the amount of such claim exceeds \$25,000.

Section 15.2 Delay Events.

(a) *Notice.* If the Concessionaire is affected by a Delay Event, it shall give notice as soon as practicable and in no event later than ten (10) days following the date on which it first became aware of such Delay Event to the Authority (*provided* that in the case of the same Delay Event being a continuing cause of delay, only one notice shall be necessary), which notice shall include (i) a statement of which Delay Event the claim is based upon, (ii) details of the circumstances from which the delay arises and (iii) an estimate of the delay in the performance of obligations under this Agreement attributable to said Delay Event and information in support thereof, if known at that time. The Authority shall, after receipt of said notice, be entitled by notice to require the Concessionaire to provide such further supporting information or details as the Authority may reasonably consider necessary. The Concessionaire shall notify the Authority as soon as practicable and in no event later than ten (10) days following the date on which it first became aware that a Delay Event has ceased.

(b) *Excuse.* Subject to the Concessionaire giving the notice required in Section 15.2(a), a Delay Event shall excuse the Concessionaire from whatever performance is

prevented by the Delay Event referred to in such notice for such appropriate number of days as the Authority and the Concessionaire jointly determine. If the Authority and the Concessionaire cannot agree upon the period of delay, then either Party shall be entitled to refer the matter to the dispute resolution procedure set forth in Article 19. This Section 15.2(b) shall neither (i) excuse the Concessionaire from the performance and observance under this Agreement of any obligations and covenants not affected by the Delay Event nor (ii) prevent any of the Authority or its Representatives (or their respective designee) from exercising its rights under Section 3.7. Notwithstanding the occurrence of a Delay Event, the Concessionaire shall continue its performance and observance under this Agreement of all of its obligations and covenants to the extent that it is reasonably able to do so and shall use its Reasonable Efforts to minimize the effect and duration of the Delay Event. Nothing herein shall permit or excuse noncompliance with a change to applicable Laws.

(c) *Compensation*. If a Delay Event occurs that has the effect of (i) causing physical damage or destruction to the Toll Roads that results in the Toll Roads or any material portion thereof being substantially unavailable for Highway Purposes or (ii) suspending toll collection on the Toll Roads or any material portion thereof, and, in either case, such effect continues for a period in excess of ninety (90) consecutive days and has a material adverse effect on the fair market value of the Concessionaire Interest, and insurance proceeds payable (or that should have been payable but for (x) the insurer's inability to pay, (y) the breach of an obligation to take out or maintain insurance by the Concessionaire under this Agreement or (z) the invalidity or breach of any insurance policy caused by the Concessionaire under which policy such proceeds would have been paid) or condemnation or other similar proceeds are insufficient to restore the Concessionaire to the same economic position in which it would have been had such event not occurred, then the Delay Event shall be a Compensation Event, and the Concessionaire, without in any way limiting its obligations pursuant to Section 13.3, shall be entitled to Concession Compensation (a "Delay Event Remedy"); *provided* that the Concessionaire shall give notice (a "Delay Event Notice") to the Authority within thirty (30) days following the date on which the Concessionaire first became aware of its right to the Delay Event Remedy occurring setting forth (i) the details of the Delay Event and its effect on either causing physical damage or destruction to the Toll Roads that results in the Toll Roads being substantially unavailable for Highway Purposes or suspending toll collection on the Toll Roads, (ii) the relief claimed as compensation to restore the Concessionaire to the same economic position in which it would have been had such Delay Event not occurred (including the details of the calculation thereof) and (iii) the details of the relationship between such compensation and the Delay Event Remedy that it proposes. The Authority shall, after receipt of the Delay Event Notice, be entitled by notice to require the Concessionaire to provide such further supporting information and details as the Authority may reasonably consider necessary. If the Authority wishes to dispute the occurrence of a Delay Event or the Delay Event Remedy claimed in the Delay Event Notice, the Authority shall give notice of dispute (the "Delay Event Dispute Notice") to the Concessionaire within thirty (30) days following the date of receipt of the Delay Event Notice stating the grounds for such dispute, and if neither the Delay Event Notice nor the Delay Event Dispute Notice has been withdrawn within thirty (30) days following the date of receipt of the Delay Event Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 19.

ARTICLE 16

DEFAULTS; HANDBACK LETTERS OF CREDIT

Section 16.1 Default by the Concessionaire.

(a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute a "Concessionaire Default" under this Agreement:

(i) if the Concessionaire fails to comply with, perform or observe (A) any material obligation, covenant, agreement, term or condition in this Agreement, or (B) the requirements or directives of a final decision in a matter submitted to dispute resolution in accordance with Article 19, and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Authority to the Concessionaire or for such longer period as may be reasonably necessary to cure such failure; *provided that*, in the latter case, the Concessionaire has demonstrated to the satisfaction of the Authority, acting reasonably, that (x) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (y) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Authority, acting reasonably and (z) such failure is in fact cured within such period of time;

(ii) if (x) the Concessionaire fails to comply with any of the Performance Time Frame Requirements three (3) times or more within any calendar month, (y) notwithstanding the cure periods provided in Section 16.1(a)(i), any three (3) such failures continue unremedied for a period of thirty (30) days (or such longer period as may be reasonably necessary to cure such failure to the extent that the Concessionaire is diligently pursuing such cure) following notice thereof (giving particulars of the failure in reasonable detail) from the Authority to the Concessionaire and the Concessionaire has not provided to the Authority a remediation plan therefor reasonably acceptable to the Authority (each calendar month during which such three (3) failures shall have continued unremedied or unaddressed by a remediation plan, as aforesaid, a "Persistent Breach Month"), and (z) twelve (12) Persistent Breach Months shall have occurred during any period of twenty-four (24) calendar months; *provided that* no Persistent Breach Month shall result from the failure by the Concessionaire to comply with the Performance Time Frame Requirements with respect to:

(A) any Unit of the BRT/DTL Project (or operation of the Toll Roads immediately adjacent to such Unit) if such failure occurs prior to the first anniversary of the Concessionaire's acceptance of the BRT/DTL Project pursuant to Section 4.1(d)(ii); and

(B) any other matter if such failure occurs prior to the first anniversary of the Closing,



provided further that, for the avoidance of doubt, any cure of any Concessionaire Default under this Section 16.1(a)(ii) shall require the cure of each failure that has occurred during any Persistent Breach Month;

(iii) if this Agreement or all or any portion of the Concessionaire Interest is Transferred in contravention of Article 17;

(iv) if the Concessionaire (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 11 of the United States Code, or if the Concessionaire files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire, or of all or any substantial part of its properties or of the Toll Roads or any interest therein, or (D) takes any corporate action in furtherance of any action described in this Section 16.1(a)(iv);

(v) if within sixty (60) days after the commencement of any proceeding against the Concessionaire seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within sixty (60) days after the appointment, without the consent or acquiescence of the Concessionaire, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties or of the Toll Roads or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or if within ninety (90) days after the expiration of any such stay, such appointment has not been vacated; and

(vi) if a levy under execution or attachment has been made against all or any material part of the Toll Roads or any interest therein as a result of any Encumbrance (other than a Permitted Concessionaire Encumbrance) created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of sixty (60) days, unless such levy resulted from actions or omissions of the Authority or its Representatives.

(b) Remedies of the Authority Upon Concessionaire Default. Upon the occurrence and during the continuance of a Concessionaire Default, the Authority may, by notice to the Concessionaire with a copy to the Concession Mortgagee in accordance with the terms hereof, declare the Concessionaire to be in default and may, subject to rights of the Concession Mortgagee pursuant to Sections 18.3 and 18.4 and the provisions set forth in Articles 18, 19 and 20, do any or all of the following as the Authority, in its discretion, shall determine:

(i) the Authority may terminate this Agreement (without the need for reentry or any other action on behalf of the Authority) by giving sixty (60) days' prior notice to the Concessionaire upon the occurrence of (A) a Concessionaire Default that consists of a failure



to comply with, perform or observe any Operating Standard if such Concessionaire Default creates a material danger to the safety of Toll Road Operations or a material impairment to the Toll Roads or to the continuing use of the Toll Roads for transportation purposes, or (B) any other Concessionaire Default (including a Concessionaire Default under Section 16.1(a)(ii)); *provided, however*, that the Concessionaire shall be entitled to cure a Concessionaire Default pursuant to Section 16.1(a)(i) by providing the Authority with a written work plan within such 60-day period outlining the actions by which the Concessionaire will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final decision in accordance with Article 19 that the Concessionaire failed to perform or observe, which work plan is Approved by the Authority, but any failure of the Concessionaire to comply in any material respect with such Approved work plan following sixty (60) days' notice of such failure from the Authority to the Concessionaire shall be deemed to be a Concessionaire Default described in Section 16.1(a)(i) and the entitlement of the Concessionaire to cure such Concessionaire Default by the delivery of an Approved work plan shall not apply thereto; *provided further* that the Authority shall not exercise the remedy provided in this clause (i) if the Concessionaire Default consists solely of a violation of any of the provisions of Section 11.2 through Section 11.12 (inclusive) unless such violation is systematic or persistent or the exercise of such remedy is required by law; *provided further* that remedies for rescission or termination of this Agreement required by Act No. 458, Act No. 237 and Act No. 84 shall be exclusively as provided in Section 16.6; *provided further* that violation of Sections 11.2 through 11.12 (inclusive) shall subject the Concessionaire to such fines or penalties otherwise applicable to such violation as they be imposed by the appropriate Governmental Authority or to the imposition of a requirement on the Concessionaire to demonstrate to the Authority that the Concessionaire has or will implement all actions considered necessary by the Authority (which may include a remedial plan) to remedy such violation;

(ii) if the Concessionaire Default is by reason of the failure to pay any monies, the Authority may (without obligation to do so) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the Authority shall be payable by the Concessionaire to the Authority within three (3) Business Days after written demand therefor;

(iii) the Authority may cure the Concessionaire Default (but this shall not obligate the Authority to cure or attempt to cure a Concessionaire Default or, after having commenced to cure or attempted to cure a Concessionaire Default, to continue to do so), and all costs and expenses reasonably incurred by the Authority in curing or attempting to cure the Concessionaire Default, together with an administrative fee equal to fifteen percent (15%) of such costs and expenses, shall be payable by the Concessionaire to the Authority within three (3) Business Days after written demand therefor; *provided, however*, that (A) the Authority shall not incur any liability to the Concessionaire for any act or omission of the Authority or any other Person in the course of remedying or attempting to remedy any Concessionaire Default (other than as a result of negligence or willful misconduct) and (B) the Authority's cure of any Concessionaire Default shall not affect the Authority's rights against the Concessionaire by reason of the Concessionaire Default;

(iv) the Authority may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concessionaire Default;

(v) the Authority may seek to recover its Losses arising from such Concessionaire Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;

(vi) the Authority may, subject to applicable Law, distrain against any of the Concessionaire's goods situated on the Toll Roads and the Concessionaire waives any statutory protections and exemptions in connection therewith;

(vii) subject to the rights of the Concession Mortgagee under the Concession Mortgage and this Agreement, the Authority may close any and all portions of the Toll Roads;

(viii) the Concessionaire may be debarred or suspended for ten (10) years in accordance with Section 10(a)(xv)(C) of the Act; and

(ix) the Authority may exercise any of its other rights and remedies provided for hereunder or at law or equity.

Section 16.2 Defaults by the Authority.

(a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute an "Authority Default" under this Agreement:

(i) if the Authority fails to comply with or observe (1) any material obligation, covenant, agreement, term or condition in this Agreement (other than an Adverse Action) or (2) the requirements or directives of a final decision in a matter submitted to dispute resolution in accordance with Article 19; and such failure or breach continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the Authority or for such longer period as may be reasonably necessary to cure such failure; *provided* that, in the latter case, the Authority has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (x) it is proceeding with all due diligence to cure or cause to be cured such failure, (y) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably and (z) such failure is in fact cured within such period of time;

(ii) if a levy under execution or attachment has been made against all or any material part of the Toll Roads or the Concessionaire Interest as a result of any Encumbrance (other than a Permitted Authority Encumbrance) created, incurred, assumed or suffered to exist by the Authority or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of sixty (60) days, unless such levy resulted from actions or omissions of the Concessionaire or its Representatives or if all or any material part of the Toll Roads shall be

subject to a condemnation or similar taking by the Authority or any Governmental Authority; and

(iii) if the Authority Transfers any or all of its interest in the Toll Roads or this Agreement other than in compliance with Section 17.2.

(b) *Remedies of Concessionaire Upon Authority Default.* Upon the occurrence and during the continuance of an Authority Default, the Concessionaire may by notice to the Authority declare the Authority to be in default and may, subject to the provisions of Article 19, do any or all of the following as the Concessionaire, in its discretion, shall determine:

(i) the Concessionaire is entitled to receive from the Authority the Concession Compensation with respect thereto;

(ii) the Concessionaire is entitled to terminate this Agreement by giving sixty (60) days' prior notice to the Authority; *provided, however*, that the Authority shall be entitled to cure an Authority Default pursuant to Section 16.2(a)(i) by providing the Concessionaire with a written work plan within such sixty (60)-day period outlining the actions by which the Authority will ensure future compliance with either (A) the obligation, covenant, agreement, term or condition in this Agreement or (B) the requirement or directive of the final decision in accordance with Article 19 that the Authority failed to perform or observe, which work plan is approved by the Concessionaire (which approval shall not be unreasonably withheld, delayed or conditioned), but any failure of the Authority to comply in any material respect with such approved work plan following sixty (60) days' notice of such failure from the Concessionaire to the Authority shall be deemed to be an Authority Default described in Section 16.2(a)(i) and the entitlement of the Authority to cure such Authority Default by the delivery of an approved work plan shall not apply thereto; and upon such termination by the Concessionaire, the Authority shall be obligated to pay on the Reversion Date to the Concessionaire in cash an amount equal to the aggregate, without duplication, of (w) the Toll Road Concession Value as of the date of termination, plus (x) the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a direct result of such termination, plus (y) the Concession Compensation calculated for the period between the date of the Authority Default and the date of termination, less (z) any insurance proceeds payable (or that should have been payable but for (1) the breach of an obligation to take out or maintain insurance by the Concessionaire under this Agreement or (2) the invalidity or breach of any insurance policy caused by the Concessionaire under which policy such proceeds would have been paid) to the Concessionaire or condemnation or similar proceeds with respect to all or any portion of the Toll Roads as a result of the occurrence of such Authority Default (collectively, the "AD-Termination Damages") or, if the AD-Termination Damages are determined on a date subsequent to the Reversion Date, then not later than sixty (60) days following the date of determination of the AD-Termination Damages (together with interest at the rate set forth in Section 20.9 from the Reversion Date to the date on which payment is made); *provided* that, subject to the right of the Concessionaire to receive interest at the rate set forth in Section 20.9 on the payment owed by the Authority from the Reversion Date to the date on which payment is made, the Authority may defer any such payment for an additional one hundred twenty (120) days if the Authority reasonably determines that such additional period is necessary to obtain financing or required approvals to make such a

have been earned on such balance if invested for the next 12-month period at the Bank Rate. The required amount of any Letter of Credit may be adjusted from time to time (at intervals that may be shorter than one Concession Year) by the amount that the Independent Operating Engineer reasonably determines is appropriate (taking into account progress by the Concessionaire made toward the completion of capital improvements and changes in costs of remaining capital improvements) such that the amount of the Letter of Credit after such adjustment remains sufficient to cover all costs of capital improvements for the remainder of the Term as required by the Operating Standards. Upon the occurrence of a Concessionaire Default (or if there is a dispute as to the occurrence of a Concessionaire Default, upon a final decision pursuant to Article 19 that a Concessionaire Default has occurred), the Authority shall have the right (in addition to all other rights and remedies provided in this Agreement, but with the understanding that any other monetary damages that the Authority may recover will be reduced by the amount so drawn, and without the Authority's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform and whether or not this Agreement is thereby terminated), with three (3) Business Days' prior notice to the Concessionaire, to draw against such Letter of Credit or any replacement thereof, upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the Authority with respect to such Concessionaire Default.

(c) The Concessionaire shall replace each Letter of Credit with a replacement Letter of Credit (the "Replacement Letter of Credit") at least sixty (60) days prior to the expiry date of a Letter of Credit which is expiring. If the Concessionaire does not deliver to the Authority a Replacement Letter of Credit within such time period, the Authority shall have the right (in addition to all other rights and remedies provided in this Agreement and without the Authority's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform and whether or not this Agreement is thereby terminated) to draw immediately the full amount of the Letter of Credit upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such Letter of Credit in the amount of such sight draft. After the Concessionaire delivers to the Authority a Replacement Letter of Credit complying with the provisions of this Agreement, the Authority shall deliver in accordance with the Concessionaire's reasonable instructions the Letter of Credit being replaced (*provided* that at such time no sight draft under such Letter of Credit is outstanding and unpaid). Any Replacement Letter of Credit shall be upon the same terms and conditions as the Letter of Credit replaced and satisfy the requirements for a Letter of Credit, but in any event (i) the amount of each Replacement Letter of Credit, except as provided in Section 16.3(b), shall equal or exceed the amount of the Letter of Credit being replaced at the time of replacement and (ii) the date of the Replacement Letter of Credit shall be its date of issuance. The expiry date of the Replacement Letter of Credit, as referred to in the opening paragraph of such Replacement Letter of Credit, shall be not earlier than one year later than the expiry date of the Letter of Credit being replaced or such other period acceptable to the Authority.

(d) If this Agreement is terminated by the Authority prior to the expiration of the Term as a result of a Concessionaire Default in accordance with the terms hereof, the Authority shall have the right (in addition to all other rights and remedies provided in this Agreement and without the Authority's exercise of such right being deemed a waiver or a cure of

the Concessionaire's failure to perform), with three (3) Business Days' prior notice to the Concessionaire, to draw against any Letter of Credit, upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the Authority pursuant to the terms of this Agreement. The Parties acknowledge that the damages suffered by the Authority as a result of such termination would be impossible to ascertain and that the amount of the Letter of Credit posted in accordance with this Section 16.3 is a reasonable estimate thereof and is not intended as a penalty.

(e) The Authority will accept the Letters of Credit to be delivered pursuant to this Section 16.3 (and pursuant to Section 2.3) as security for the Concessionaire's obligations under this Agreement, in place of a cash deposit in the same amount. The Concessionaire's sole remedy in connection with the improper presentment or payment of sight drafts drawn under the Letter of Credit shall be the right to obtain from the Authority a refund of the amount of any sight draft the proceeds of which were drawn inappropriately or misapplied and the reasonable costs incurred by the Concessionaire as a result of such draw or misapplication (including, for the avoidance of doubt, interest thereupon); *provided, however*, that at the time of such refund, the Concessionaire increases the amount of the Letter of Credit to the amount (if any) then required under the applicable provisions of this Agreement. The Concessionaire acknowledges that the presentment of sight drafts drawn under the Letter of Credit could not under any circumstances cause the Concessionaire injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy therefor. The Concessionaire shall not request or instruct the issuer of the Letter of Credit to refrain from paying any sight draft drawn under a Letter of Credit.

(f) If the Authority desires to assign its rights and obligations in accordance with Section 17.2 of this Agreement, the Concessionaire shall cooperate so that concurrently with the effectiveness of such assignment, either Replacement Letters of Credit as described in Section 16.3(c) for, or appropriate amendments to, the Letters of Credit then held by the Authority, in either case identifying as beneficiary the appropriate party after the assignment becomes effective, shall be delivered to the Authority, at no cost to the Concessionaire.

(g) The Concessionaire shall obtain and furnish all Letters of Credit and Replacement Letters of Credit at its sole cost and expense and shall pay all charges imposed in connection with the Authority's presentation of sight drafts and drawing against the Letters of Credit or Replacement Letters of Credit.

(h) In lieu of any Letter of Credit to be provided by the Concessionaire pursuant to the terms of this Section 16.3, whether in whole or in part, the Concessionaire shall, at the Concessionaire's discretion, have the option:

(i) to provide a surety bond or other similar form of security (in each case, consistent (including as to form and credit quality of issuer) with the requirements set forth herein for Letters of Credit) or to deposit with a Depository for the benefit of the Authority, as collateral security, cash or Eligible Investments in an amount equal to the amount of such Letter of Credit, or relevant part thereof, at the time of such deposit, or

(ii) to create and maintain a reserve account (the "Capital Costs Reserve") in such amount as may be required by, and under the control of, the Concession Mortgagee for the purpose of providing for the payment, whether in whole or in part, of the costs of capital improvements required by the Operating Standards for the remainder of the Term; *provided* that the terms under which such Capital Costs Reserve is established and maintained under the applicable financing agreements will ensure its availability to the Authority in the case of a Concessionaire Default, subject only to the rights of the Concession Mortgagee under Section 18.3. In the event the Concessionaire opts to establish a deposit pursuant to Section 16.3(h)(i), the Depository shall invest and reinvest such amounts in Eligible Investments at the discretion of the Authority; *provided* that earnings thereon shall be paid to the Concessionaire. If, at any time during the Term, the Authority would have the right to draw any amount on a Letter of Credit for which the Concessionaire has substituted cash or Eligible Investments or the Capital Costs Reserve pursuant to this Section 16.3(h)(ii), the Concessionaire shall cause the Depository to pay such amount to the Authority from such cash deposit or Eligible Investments or the Concessionaire shall cause the Concession Mortgagee to pay such amount to the Authority from the Capital Costs Reserve, as the case may be, in accordance with the terms of this Section 16.3, and all rights and remedies of the Authority and the Concessionaire with respect to such cash deposits or, Eligible Investments, if any, and Capital Costs Reserve (subject to the rights of the Concession Mortgagee in the Capital Costs Reserve) shall be the same as those provided in this Section 16.3 with respect to any Letter of Credit; *provided, however*, that the certification that would have been provided by the Authority with the sight draft had cash or Eligible Investments not been so substituted shall be made to the Depository and delivered to the Depository together with the Authority's written demand for payment.

(i) If Letters of Credit shall not in the future be available at commercially reasonable terms and rates or shall not be a commercially reasonable form of security in similar transactions, the Concessionaire shall furnish the Authority with comparable security instruments or Eligible Investments that then are commonly used in similar transactions and which are Approved by the Authority; and if no such security instruments shall be available, the Concessionaire shall deposit with the Authority cash as security.

(j) In the event that the issuer of a Letter of Credit, a Replacement Letter of Credit, a surety bond or any other form of security delivered pursuant to Section 16.3(h) no longer meets the credit rating requirements for such issuer set forth in this Agreement, then the Concessionaire shall have the obligation to replace such Letter of Credit, Replacement Letter of Credit, surety bond or other security with an instrument that meets the requirements set forth in this Agreement. If the Concessionaire shall not have replaced such Letter of Credit, Replacement Letter of Credit, surety bond or other security with an instrument that meets the requirements set forth in this Agreement within thirty (30) days, the Authority shall have the right (in addition to all other rights and remedies provided for in this Agreement, without the Authority's exercise of such right to be deemed a waiver or cure of the Concessionaire's failure to perform and whether or not this Agreement is thereby terminated), with two (2) Business Days' prior notice to the Concessionaire, to draw against such Letter of Credit, Replacement Letter of Credit, surety bond or other security in accordance with its terms in the full amount available thereunder, but with the understanding that any other monetary damages that the Authority may recover will be reduced by the amount so drawn.

(k) Any Letter of Credit, Replacement Letter of Credit, surety bond or other form of security delivered pursuant to Section 16.3(h) shall provide that the Authority may draw on such Letter of Credit, Replacement Letter of Credit, surety bond or other security in accordance with its terms in the circumstances set forth in Section 16.3(j).

Section 16.4 Consequences of Termination or Reversion. Upon the termination of this Agreement and, in the event of termination pursuant to Section 14.2, Section 16.2(b)(ii), Section 16.6 or Section 16.5, concurrently with the payment to the Concessionaire of all Termination Damages due as a result of such termination (notwithstanding any claims the Parties may have against each other and subject to Section 16.2(b)(iv), Section 9.5 and Article 18), the following provisions shall apply:

(a) the Concessionaire shall, without action whatsoever being necessary on the part of the Authority, well and truly surrender and deliver to the Authority the Toll Roads (including all improvements on the Toll Road Land comprising the Toll Road Facilities), the Toll Road Assets and all tangible and intangible personal property (including inventories) located on the Toll Roads or used in connection with the Toll Road Operations (except in the case of a termination in the circumstances contemplated by Section 13.3(b)) in good order, condition and repair (reasonable wear and tear excepted), determined reasonably in accordance with then applicable Operating Standards, free and clear of all Encumbrances other than (A) Permitted Concessionaire Encumbrances set forth in clause (iv) of the definition of that term, (B) Permitted Authority Encumbrances affecting title to the Toll Roads existing at the Time of Closing, (C) those created by or suffered to exist or consented to by the Authority or any Person claiming through it, and (D) with respect to any property added to the Toll Roads after the Time of Closing, title defects affecting such property in existence on the date such property is added to the Toll Roads;

(b) the Concessionaire hereby waives any notice now or hereafter required by Law with respect to vacating the Toll Roads on the Reversion Date;

(c) the Authority shall, as of the Reversion Date, assume full responsibility for the Toll Road Operations, and as of such date, the Concessionaire shall have no liability or responsibility for the provision of Toll Road Services or the performance of Toll Road Operations occurring after such date;

(d) the Concessionaire shall be responsible for all costs, expenses and other amounts for which it is responsible hereunder incurred or arising up to but not including the Reversion Date, and the Authority shall be responsible for all costs, expenses and amounts incurred or arising in connection with the Toll Road Operations on and after the Reversion Date;

(e) the Authority shall have the option by providing notice to the Concessionaire of requiring that the Concessionaire assign (to the extent assignable), without warranty or recourse to the Concessionaire, all of its right, title and interest in, to and under all or any of the Operating Agreements then in effect (including any portion of any Network Contract assigned to the Concessionaire then in effect) and all Authorizations to the Authority or its designee for the remainder of their respective terms; *provided, however*, that if the Authority exercises such option, the right, title and interest of the Concessionaire in, to and under such

Operating Agreements and Authorizations shall be assigned to the Authority or its nominee as of the Reversion Date and the Concessionaire shall surrender the Toll Roads to the Authority and shall cause all Persons claiming under or through the Concessionaire to do likewise, and the Authority shall assume in writing, pursuant to an assumption agreement reasonably satisfactory to the Concessionaire, the Concessionaire's obligations under the Operating Agreements that arise in respect of, or relate to, any period of time falling on and after the Reversion Date; *provided further* that if the Authority does not exercise such option, the Concessionaire shall, unless the Authority has granted to a Concession Mortgagee or its nominee a new concession agreement containing the same provisions as are contained in this Agreement, take such steps as are necessary to terminate the Operating Agreements;

(f) all plans, drawings, specifications and models prepared in connection with construction of the Toll Roads and in the Concessionaire's possession and all "as-built" drawings shall become the sole and absolute property of the Authority, and the Concessionaire shall promptly deliver to the Authority all such plans, drawings, specifications and models and all such "as-built" drawings (but may keep copies of those plans, drawings, specifications and models that were developed by the Concessionaire or its Representatives);

(g) the Concessionaire, at its sole cost and expense, shall promptly deliver to the Authority copies of all records and other documents relating to the Toll Road Revenues that are in the possession of the Concessionaire or its Representatives and all other then existing records and information relating to the Toll Roads as the Authority, acting reasonably, may request;

(h) the Concessionaire shall execute and deliver to the Authority a release or other instrument reasonably required by the Authority to evidence such expiration or termination;

(i) the Concessionaire shall assist the Authority in such manner as the Authority may reasonably require to ensure the orderly transition of control, operation, management, maintenance, rehabilitation and tolling of the Toll Roads, and shall, if appropriate and if requested by the Authority, take all steps as may be necessary to enforce the provisions of the Operating Agreement pertaining to the surrender of the Toll Roads;

(j) the Authority and the Concessionaire shall make appropriate adjustments, including adjustments relating to any Operating Agreements assigned to the Authority, tolls, fees and other similar charges collected on and after the Reversion Date that are incurred prior to the Reversion Date, and utilities, and any adjustments and payment therefor shall be made by the appropriate Party on the Reversion Date, but shall be subject to readjustment if necessary because of error in matters such as information, calculation, payments and omissions that are identified within the period of one hundred eighty 180 days following the Reversion Date; *provided, however*, that the Authority and the Concessionaire acknowledge that certain adjustments or readjustments may have to be made when a third party provides to the Authority or the Concessionaire a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended;



(k) if this Agreement is terminated as a result of an Adverse Action, the payment by the Authority to the Concessionaire of the amounts required under Article 14 or Article 19 shall constitute full and final settlement of any and all Claims the Concessionaire may have against the Authority for and in respect of the termination of this Agreement and upon such payment, the Concessionaire shall execute and deliver all such releases and discharges as the Authority may reasonably require to give effect to the foregoing; and

(l) the Authority shall have the right to purchase from the Concessionaire, for fair market value determined pursuant to a written appraisal (at the Authority's expense and by an independent third party appraiser described under "Toll Road Concession Value"), a nonexclusive, irrevocable, fully transferable and fully paid up license in respect of any Proprietary Intellectual Property developed by the Concessionaire, its contractors, subcontractors, Affiliates or Representatives after the Closing Date for use in connection with the operation of the Toll Roads.

This Section 16.4 shall survive the expiration or any earlier termination of this Agreement.

Section 16.5 Termination Other Than Pursuant to Agreement. If this Agreement is terminated by the Authority other than pursuant to this Article 16, or is canceled, rescinded or voided during the Term for any reason over the objection or without action by the Concessionaire, any Concession Mortgagee or their respective Affiliates (other than by reason of the application of Section 16.6), the Authority shall pay to the Concessionaire the AD-Termination Damages in accordance with Section 16.2 unless such payment is contrary to Law. The Authority hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof and shall not, in any event, have the right to terminate this Agreement for convenience.

Section 16.6 Termination Required by Act No. 458 and Public Integrity Crimes.

(a) This Agreement shall automatically be rescinded by operation of Act No. 458 if the Concessionaire or any subsidiary or *alter ego* thereof is convicted or enters a plea of guilty in respect of any Act No. 458 Crime, or if any other Covered Party is convicted or enters a plea of guilty in respect of any Act No. 458 Crime while in the employ of the Concessionaire.

(b) This Agreement shall terminate as required by Act No. 237 or the Code of Ethics, if the Concessionaire is convicted of a Public Integrity Crime that is not an Act No. 458 Crime.

(c) If this Agreement is rescinded or terminated during the Term pursuant to clause (a) or (b) of this Section 16.6 and, in the case of a rescission caused by the conviction or the entering of a plea of guilty for an Act 458 Crime, such crime was not committed in connection with the procurement of this Agreement, then the Authority shall be obligated to pay to the Concessionaire an amount equal to the lesser of (i) the Toll Road Concession Value and (ii) the Unamortized Concession Fee, in each case calculated as of the End Date (the "PIC-Termination Damages"); *provided that*, (x) subject to the right of the Concessionaire to receive

interest at the rate set forth in Section 20.9 on the payment owed by the Authority from the End Date to the date on which payment is made, the Authority may defer any such payment for an additional one hundred twenty (120) days if the Authority reasonably determines that such additional period is necessary to obtain financing or required approvals to make such payment and (y) if the amount of the PIC-Termination Damages is less than or equal to the sum of the Concession Mortgage Debt and any related Breakage Costs as of the End Date, then the Authority shall enter into a New Agreement with the Concession Mortgagee, or its designee or nominee, subject to and in accordance with Section 18.5 (and subject to clause (e) of this Section 16.6), and the Authority shall be released from any obligation to pay PIC-Termination Damages or any other compensation to the Concessionaire in connection with such rescission or termination.

(d) If this Agreement is rescinded during the Term pursuant to clause (a) of this Section 16.6 as a result of an Act 458 Crime committed in connection with the procurement of this Agreement, then the Authority shall enter into a New Agreement with the Concession Mortgagee, or its designee or nominee, subject to and in accordance with Section 18.5 (and subject to clause (e) of this Section 16.6), and the Concessionaire shall not be entitled to receive any PIC-Termination Damages or other compensation of any form or amount from the Authority in connection with such rescission.

(e) Notwithstanding anything to the contrary herein, in the event the Authority is required to enter into any New Agreement pursuant to Section 16.6(c) or (d), the Authority may elect, in its sole option by notice to the Concessionaire at any time prior to the execution and delivery of such New Agreement, to pay to the Concessionaire a sum equal to the Concession Mortgage Debt and any related Breakage Costs, and upon such notice the Authority shall be (i) released from the obligation to enter into such New Agreement and (ii) obligated to pay such sum to the Concessionaire in cash; *provided that*, subject to the right of the Concessionaire to receive interest at the rate set forth in Section 20.9 on the payment owed by the Authority from the End Date to the date on which payment is made, the Authority may defer any such payment for an additional one hundred twenty (120) days if the Authority reasonably determines that such additional period is necessary to obtain financing or required approvals to make such payment.

(f) If this Agreement is rescinded or terminated during the Term pursuant to this Section 16.6, then the Authority shall recover from the Concessionaire all of the Authority's reasonable out-of-pocket expenses and Financing Costs, if any, arising in connection with such rescission or termination, together with any reasonable Re-Tender Costs relating to any Re-Tender of the Toll Roads following such rescission or termination.

(g) Without limiting the obligation of the Concessionaire to make any payment in accordance with clause (f) of this Section 16.6 or any other payment then expressly due under any other provision of this Agreement, the Authority and the Concessionaire acknowledge and agree that if this Agreement is rescinded or terminated pursuant to this Section 16.6, the Concessionaire shall not be liable as a result of such rescission or termination to return any Toll Road Revenues or other amounts received by it in accordance with this Agreement during the Term (other than any share thereof then payable to the Authority pursuant to Section 7.2(e)). The provisions of this Section 16.6 shall survive the termination of this Agreement and

shall continue in full force and effect thereafter to the same extent as if this Section 16.6 were a separate and independent contract made by the Authority with each of the Concession Mortgagee and the Concessionaire.

ARTICLE 17

RESTRICTIONS ON TRANSFERS

Section 17.1 Transfers by the Concessionaire.

(a) The Concessionaire shall not Transfer, or otherwise permit the Transfer of, any or all of the Concessionaire Interest to or in favor of any Person (a "Transferee"), unless (i) the Authority has Approved (based upon a determination in accordance with Section 17.1(b)) such proposed Transferee (unless it is the Concession Mortgagee or its designee or nominee permitted under Article 18) and (ii) the proposed Transferee (unless it is the Concession Mortgagee or its designee or nominee permitted under Article 18) enters into an agreement with the Authority in form and substance reasonably satisfactory to the Authority wherein the Transferee acquires the rights and assumes the obligations of the Concessionaire and agrees to perform and observe all of the obligations and covenants of the Concessionaire under this Agreement. Any Transfer made in violation of the foregoing provision shall be null and void *ab initio* and of no force and effect; *provided that*, while any Concession Mortgage is outstanding, the Authority shall not agree to any Transfer of any or all of the Concessionaire Interest to or in favor of any Person without the previous written confirmation from the Concession Mortgagee that such Transfer is permitted under all outstanding Concession Mortgages.

(b) The Authority's Approval of a proposed Transferee may be withheld only if the Authority reasonably determines that (i) the proposed Transfer is prohibited by applicable Law, (ii) such proposed Transferee's entering into this Agreement with the Authority is prohibited by Law, (iii) such proposed Transfer would result in a violation of Law, (iv) such proposed Transfer would result in a Tax obligation of the Authority (unless the Authority shall have received an obligation of payment from the Concessionaire or such proposed Transferee, as determined in the Authority's reasonable discretion with respect thereto), (v) such proposed Transferee fails to satisfy any requirements set forth in Article 11 or (vi) such proposed Transferee is not capable of performing the obligations and covenants of the Concessionaire under this Agreement, which determination shall be based upon and take into account the following factors: (A) the financial strength and integrity of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (B) the experience of the proposed Transferee or the Operator to be engaged by the proposed Transferee in operating Comparable Highways that are toll roads and performing other relevant projects; (C) the background and reputation of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects), and (D) the Operator engaged by the proposed Transferee (based upon a determination in accordance with Section 3.3(b)).

(c) No Transfer of all or any of the Concessionaire Interest (except a Transfer to a Concession Mortgagee or its nominee upon the Concession Mortgagee's exercise of remedies under its Concession Mortgage as provided in Article 18 and any subsequent Transfer to the Transferee of the Concession Mortgagee or its nominee that has been Approved under Section 17.1(b)) shall be made or have any force or effect if, at the time of such Transfer there has occurred and is continuing a Concessionaire Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute a Concessionaire Default.

(d) A Change in Control of the Concessionaire or the Operator (other than a Change of Control occasioned by the exercise by any Concession Mortgagee or any holder of Qualified Debt of its remedies under any pledge of shares, limited liability company interests or partnership interests) shall be deemed to be a Transfer of the Concessionaire Interest for purposes of the foregoing provisions; *provided that* Section 17.1(a)(ii) shall not apply to a deemed Transfer under this Section 17.1(d) and *provided further that* clauses (v) and (vi) of Section 17.1(b) shall apply (i) to the entity exercising control after the Change in Control and (ii) with respect to the Operator if the Change in Control results in a change of the Operator or a material change in the operations of the Operator. The Authority's judgment as to such Approval shall be based upon the Change in Control and the party or parties obtaining control and not upon considerations that do not arise out of the Change of Control.

(e) Nothing contained in the foregoing shall be deemed to prohibit or limit the Concessionaire from changing its organizational form or status (including a change from a limited liability company to a corporation or limited partnership); *provided* in each case that such change in organizational form or status does not result in a Change in Control of the Concessionaire.

(f) Neither (i) a change of ownership that is attributable to a lease, sublease, concession, management agreement, operating agreement or other similar arrangement that is subject and subordinate in all respects to the rights of the Authority under this Agreement nor (ii) the creation of a trust or any other transaction or arrangement that is solely a transfer of all or part of the Concessionaire's economic interest under this Agreement to another entity shall be deemed to be a Transfer of the Concessionaire Interest for purposes of this Section 17.1.

Section 17.2 Assignment by the Authority. The Authority shall have the right to Transfer any or all of the Authority's interest in the Toll Roads and this Agreement; *provided that* (a) it shall be jointly and severally obligated with the Transferee (unless the Transferee is the Authority's successor) for the performance and observance of the obligations and covenants of the Authority under this Agreement, each Other Authority Agreement and any other agreement entered into by the Authority under this Agreement (including agreeing directly with any Concession Mortgagee to be bound by the agreement entered into in accordance with Section 18.3), (b) that any such Transfer by the Authority shall not materially limit or reduce any of the Concessionaire's other rights, benefits, remedies or privileges under this Agreement or negatively affect the fair market value of the Concessionaire Interest, and (c) the GDB Payment Guaranty shall continue in full force and effect after giving effect to such Transfer. Without limiting the generality of the foregoing, the Concessionaire acknowledges and agrees that any action that may be taken under this Agreement by the Authority may be taken by the Authority

or any other department, instrumentality or agency of any Governmental Authority of or in the Commonwealth and that any action taken by the Authority or any other department, instrumentality or agency of any Governmental Authority of or in the Commonwealth shall be deemed to have been taken by the Authority for purposes of this Agreement; *provided that* the Authority or any such other department, instrumentality or agency shall comply with the obligations of the Authority as set forth in this Agreement and under applicable Law.

ARTICLE 18

LENDER'S RIGHTS AND REMEDIES

Section 18.1 Concession Mortgages. The Concessionaire shall have the right, at its sole cost and expense, to grant one or more (subject to Section 18.7) Concession Mortgages, if at the time any such Concession Mortgage is executed and delivered to the Concession Mortgagee, no Concessionaire Default exists unless any such Concessionaire Default will be cured pursuant to Section 18.3 in connection with entering into such Concession Mortgage, and upon and subject to the following terms and conditions:

(a) a Concession Mortgage may not cover any property of, or secure any debt issued or guaranteed by, any Person other than the Concessionaire or a Lessor in connection with a Leveraged Lease (or a financial institution providing a financial guaranty or similar credit enhancement in respect of any debt of the Concessionaire); *provided that* it may cover shares or equity interests in the capital of the Concessionaire or any cash reserves or deposits held in the name of the Concessionaire;

(b) no Person other than an Institutional Lender shall be entitled to the benefits and protections accorded to a Concession Mortgagee in this Agreement; *provided, however,* that lenders to the Concessionaire, including any financial insurers, shall be entitled to the benefits and protections accorded to a Concession Mortgagee in this Agreement so long as any Concession Mortgage securing the relevant debt or financial insurance provided by such Persons is held by an Institutional Lender acting as collateral agent or trustee with the customary powers given collateral agents or trustees in similar commercial financing transactions;

(c) no Concession Mortgage or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against any or all of the Concessionaire Interest shall extend to or affect the fee simple interest in the Toll Roads or the Authority's interest hereunder (other than a Permitted Concessionaire Encumbrance);

(d) the Authority shall have no liability whatsoever for payment of the principal sum secured by any Concession Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and, except for violation by the Authority of the express obligations to the Concession Mortgagee set forth in this Article 18 and for any remedies of the Concession Mortgagee provided by Law, the Concession Mortgagee shall not be entitled to seek any damages or other amounts against the Authority for any or all of the same;

(e) the Authority shall have no obligation to any Concession Mortgagee in the enforcement of the Authority's rights and remedies herein and by Law provided, except as

expressly set forth in this Agreement and unless such Concession Mortgagee has provided the Authority with notice of its Concession Mortgage in accordance with the Concession Mortgage Notice Requirements;

(f) each Concession Mortgage shall provide that if an event of default under the Concession Mortgage has occurred and is continuing and the Concession Mortgagee gives notice of such event of default to the Concessionaire, then the Concession Mortgagee shall give notice of such event of default to the Authority;

(g) subject to the terms of this Agreement and except as specified herein, all rights acquired by a Concession Mortgagee under any Concession Mortgage shall be subject and subordinate to all of the provisions of this Agreement and to all of the rights of the Authority hereunder;

(h) while any Concession Mortgage is outstanding, the Authority shall not agree to any amendment to or modification of this Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Concession Mortgagee or agree to a voluntary surrender or termination of this Agreement by the Concessionaire without the consent of the Concession Mortgagee;

(i) notwithstanding any enforcement of the security of any Concession Mortgage, the Concessionaire shall remain responsible to the Authority for the payment of all sums owing to the Authority under this Agreement and the performance and observance of all of the Concessionaire's covenants and obligations under this Agreement;

(j) a Concession Mortgagee shall not, by virtue of its Concession Mortgage, acquire any greater rights or interest in the Toll Roads than the Concessionaire has at any applicable time under this Agreement, other than such rights or interest as may be granted or acquired in accordance with Sections 18.2, 18.3, 18.4 or 18.5; and

(k) each Concession Mortgagee, the Authority, the Concessionaire and the Guarantor shall enter into a consent agreement in a form acceptable to all parties whereby all parties consent to the assignment of this Agreement to an agent in connection with the financing of the Concession Mortgage; *provided that* such consent agreement shall be in a customary form and shall include only the rights and protections provided to the Concession Mortgagee in this Agreement (including, but not limited to, those provided in Section 16.6 and this Article 18). Nothing herein shall obligate the Authority to consent to service of process, become subject to any legal process in any jurisdiction other than in the Commonwealth, or enter into any agreement not governed by the Laws of the Commonwealth.

Section 18.2 Notices and Payments to Concession Mortgagees. Whenever a Concession Mortgage exists as to which the Authority has been provided notice by the holder thereof in accordance with the Concession Mortgagee Notice Requirements, the Authority shall, simultaneously with providing the Concessionaire any required notice under this Agreement, provide a copy of such notice to such Concession Mortgagee, and no such notice to the Concessionaire shall be effective against the Concession Mortgagee until a copy thereof is duly provided to such Concession Mortgagee at its address specified in its notice given to the

Authority in accordance with the Concession Mortgage Notice Requirements (or any subsequent change of address notice given to the Authority pursuant to the requirements of Article 20). With respect to a Concession Mortgage regarding which the Authority has been provided notice in accordance with the Concession Mortgage Notice Requirements, unless the Concession Mortgagee recognized by the Authority pursuant to Section 18.7 has otherwise advised the Authority in writing, and solely to the extent so required pursuant to the terms of the financing secured by such Concession Mortgage, all payments to the Concessionaire to be made by the Authority under this Agreement shall be made to the Concession Mortgagee or to the institution acting as the collateral agent or depository under the financing provided by such Concession Mortgagee.

Section 18.3 Concession Mortgagee's Right to Cure. The Concession Mortgagee shall have a period of sixty (60) days with respect to any Concessionaire Default beyond any cure period expressly provided to the Concessionaire pursuant to the first proviso in Section 16.1(b)(i), in which to cure or cause to be cured any such Concessionaire Default; *provided, however,* that such 60-day period shall be extended if the Concessionaire Default is nonmonetary, is not a Concessionaire Default described in Section 16.1(a)(iv) or Section 16.1(a)(v) and may be cured but cannot reasonably be cured within such period of sixty (60) days, and the Concession Mortgagee begins to cure such default within such 60-day period (or if possession is necessary in order to effect such cure, the Concession Mortgagee, within such 60-day period, files the appropriate legal action to commence foreclosure on the liens of the Concession Mortgage) and thereafter proceeds with all due diligence to cure such Concessionaire Default (including by proceeding with all due diligence to affect such foreclosure and during such foreclosure action (to the extent practicable) and thereafter to effect such a cure) within a reasonable period of time acceptable to the Authority, acting reasonably. If a Concession Mortgagee is acting to cure a Concessionaire Default in accordance with this Section 18.3, then the Authority shall not exercise its right to terminate this Agreement by reason of such Concessionaire Default; *provided, however,* that the Authority may exercise any of its other rights and remedies provided for hereunder at law or in equity so long as the exercise of such rights does not interfere with the Concession Mortgagee's rights hereunder. In furtherance of the foregoing, the Authority shall permit the Concession Mortgagee and its Representatives the same access to the Toll Roads as is permitted to the Concessionaire hereunder; *provided that* any actions taken by a Concession Mortgagee or its Representatives pursuant to this Section 18.3 shall be undertaken in accordance with the provisions of this Agreement that would be applicable to the Concessionaire were it taking such actions. The Authority shall accept any such performance by a Concession Mortgagee or its nominee as though the same had been done or performed by the Concessionaire. Any payment to be made or action to be taken by a Concession Mortgagee hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Concession Mortgagee if such payment is made or action is taken by a nominee, agent or assignee of the rights of such Concession Mortgagee. Any exercise of the Concession Mortgagee's rights to cure hereunder shall not result in the assumption by such Concession Mortgagee of the Concessionaire's obligations hereunder.

Section 18.4 Rights of the Concession Mortgagee.

(a) Subject to the provisions of this Agreement, a Concession Mortgagee may (i) enforce any Concession Mortgage in any lawful way, (ii) acquire the Concessionaire Interest in any lawful way or (iii) take possession of in any lawful way and manage the Toll Roads and conduct Toll Road Operations. Upon foreclosure of the Concession Mortgage (or without foreclosure upon exercise of any contractual or statutory power of sale under such Concession Mortgage or an assignment in lieu) and subject to the provisions of Article 17 (applied to the Concession Mortgagee as if it were the Concessionaire), a Concession Mortgagee may Transfer the Concessionaire Interest; *provided, however*, that no Transfer by a Concession Mortgagee shall be effective unless the Transfer is made in accordance with Article 17. Any Person to whom the Concession Mortgagee Transfers the Concessionaire Interest (including such Concession Mortgagee) shall take the Concessionaire Interest subject to any of the Concessionaire's obligations under this Agreement. The Concession Mortgagee is not permitted in connection with its enforcement of its lien to do anything that would materially and adversely affect the Toll Roads or the Toll Road Operations.

(b) Except as provided in Section 18.3, unless and until a Concession Mortgagee (other than a Lessor, so long as the Concessionaire, as the lessee of the Lessor, remains responsible for all of the obligations of the Concessionaire under this Agreement as its lessee) (i) forecloses or has otherwise taken ownership of the Concessionaire Interest or (ii) has taken possession or control of the Concessionaire Interest, whether directly or by an agent or a receiver or receiver and manager has taken possession or control of the Concessionaire Interest by reference to the Concession Mortgage, the Concession Mortgagee shall not be responsible for any of the Concessionaire's obligations under this Agreement or be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except by way of security. During any period in which the Concession Mortgagee itself or by an agent or a receiver or a receiver and manager is the owner (other than a Lessor, so long as the Concessionaire, as the lessee of the Lessor, remains responsible for all of the obligations of the Concessionaire under this Agreement as its lessee), or is in control or possession of, the Concessionaire Interest, it shall be bound by all liabilities and obligations of the Concessionaire accruing under this Agreement during such period (including the obligation to engage an Operator). Once the Concession Mortgagee goes out of ownership or control of the Concessionaire Interest or Transfers the Concessionaire Interest to another Person in accordance with the provisions of this Agreement, the Concession Mortgagee shall cease to be responsible for any of the Concessionaire's obligations under this Agreement accruing thereafter, and to the extent assumed by any Transferee or any other Person acceptable to the Authority, for any of the Concessionaire's obligations under this Agreement accrued during the period in which the Concession Mortgagee itself or by an agent or a receiver and manager was the owner, or was in control of, the Concessionaire Interest, and shall cease to be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except, if the Concession Mortgage remains outstanding, by way of security.

4 **Section 18.5 Authority's Termination of this Agreement; New Agreement.**

(a) Without prejudice to the rights of a Concession Mortgagee under Section 18.3, if this Agreement is (x) terminated prior to the expiration of the Term due to a Concessionaire Default (in which case the Authority shall notify the Concession Mortgagee of

such termination and deliver to the Concession Mortgagee, together with such notice, a Statement of Estimated Liabilities), (y) rejected or disaffirmed pursuant to any bankruptcy Law or proceeding or other similar Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Concessionaire or otherwise, or (z) is rescinded or terminated pursuant to Section 16.6 as the result of a Public Integrity Crime or an Act 458 Crime in circumstances where the provisions of Section 16.6(c) or Section 16.6(d) are applicable, then the Authority agrees, if there are outstanding obligations to a Concession Mortgagee (but subject, in the case of clause (z), to Section 16.6(e)), upon the written request of the Concession Mortgagee to enter into a new concession agreement of the Toll Roads with the Concession Mortgagee (or its designee or nominee; *provided that* such designee or nominee either is controlled by the Concession Mortgagee or is Approved by the Authority as Transferee under Article 17) for the remainder of the Term upon all of the covenants, agreements, terms, provisions and limitations of this Agreement, including all of the agreements, terms, provisions and limitations relating to the engagement of an Operator (the "New Agreement"), effective as of the date of such termination. The Authority's obligation to enter into a new concession agreement of the Toll Roads pursuant to the preceding sentence is subject to the satisfaction of all of the following requirements and conditions: (i) such Concession Mortgagee commits in writing to the Authority, in a notice delivered to the Authority, within thirty (30) days after the Authority delivers the termination notice and Statement of Estimated Liabilities to the Concession Mortgagee (or, if later, upon the termination of any cure period granted to the Concession Mortgagee pursuant to Section 18.3) or within ten (10) days after the effective date of such rejection or disaffirmance referred to in clause (y) or such rescission or termination referred to clause (z) of this Section 18.5(a), as the case may be, that the Concession Mortgagee (or its designee or nominee) will enter into the New Agreement, which notice is accompanied by a copy of such New Agreement, duly executed and acknowledged by the Concession Mortgagee (or its designee or nominee); (ii) reasonably in advance of the execution of any New Agreement pursuant to clause (x) of this Section 18.5(a), the Concession Mortgagee (or its designee or nominee) pays or causes to be paid to the Authority, at the time of the execution and delivery of such New Agreement, (A) all amounts set forth in the Statement of Estimated Liabilities which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Agreement but for such termination and (B) all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements set forth in the Statement of Estimated Liabilities paid or incurred by the Authority in connection with such defaults and termination, the recovery of possession from the Concessionaire, and the preparation, execution and delivery of the New Agreement and related agreements; and (iii) in the case of any New Agreement pursuant to clause (x), such Concession Mortgagee (or its designee or nominee), at the time of such written request, cures all Concessionaire Defaults under this Agreement (curable by the payment of money) that are existing immediately prior to the termination of this Agreement set forth in the Statement of Estimated Liabilities, or, if such defaults cannot be cured by the payment of money, such Concession Mortgagee (or its designee or nominee) commits to the Authority in the New Agreement to proceed both promptly and diligently, upon the execution of the New Agreement, to cure all such other Concessionaire Defaults (to the extent curable) set forth in the Statement of Estimated Liabilities and, if possession is necessary in order to cure such other Concessionaire Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other defaults to the extent curable (and such cure shall be a covenant of the Concession Mortgagee in the New

Agreement). The omission from a Statement of Estimated Liabilities of (i) any amounts payable to the Authority under this Agreement, (ii) any unperformed obligations of the Concessionaire hereunder or (iii) any other costs of the Authority shall not excuse the payment of such amounts or costs or the performance of such unperformed obligations.

(b) Nothing contained in this Section 18.5 shall be deemed to limit or affect the Authority's interest in and to the Toll Roads upon the expiration of the Term of the New Agreement. The provisions of this Section 18.5 shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 18.5 were a separate and independent contract made by the Authority, the Concessionaire and the Concession Mortgagee and, if the Concession Mortgagee satisfies the conditions to a New Agreement from the effective date of such termination of this Agreement to the date of execution and delivery of the New Agreement, the Concession Mortgagee may use and enjoy the exclusive concession created by this Agreement (and all other rights and benefits provided to the Concessionaire hereunder) without hindrance by the Authority, but only on and subject to the terms and provisions of this Agreement.

(c) The Concession Mortgagee shall be entitled to request that the Authority pre-qualify pursuant to Article 17 one or more potential transferees of the Concessionaire Interest in connection with any prospective exercise of the Concession Mortgagee's rights hereunder; *provided that* the Concession Mortgagee reimburses the Authority for the reasonable cost and expense of such pre-qualification. Any such approval by the Authority of such a potential transferee shall be valid for one year after approval, *provided that* the Concession Mortgagee shall be obligated to notify the Authority if the Concession Mortgagee becomes aware during such one-year period of a reasonable basis for the Authority to withhold its approval under Section 17.1(b) and *provided further* that the Authority may rescind such approval if the Authority becomes aware during such one-year period (through the Concession Mortgagee or otherwise) of a reasonable basis for the Authority to withhold its approval under Section 17.1(b).

Section 18.6 Right to Dispute Resolution. In each case specified in this Agreement in which resort to dispute resolution is authorized, the Concession Mortgagee shall have the right and privilege if an event of default under the Concession Mortgage then exists and notice has been given to the Authority as contemplated by Section 18.1(f), in the Concessionaire's name, place and stead, to obtain and participate in such dispute resolution upon notice to the Authority in accordance with Article 19; *provided that* the Concession Mortgagee agrees to be bound by the outcome of the dispute resolution process.

Section 18.7 Recognition by the Authority of Concession Mortgagee. Notwithstanding anything in this Agreement to the contrary, if there is more than one Concession Mortgagee, only that Concession Mortgagee, to the exclusion of all other Concession Mortgagees, whose notice was earliest received by the Authority pursuant to the Concession Mortgagee Notice Requirements, shall have the rights as a Concession Mortgagee under this Article 18, or otherwise under this Agreement, unless such Concession Mortgagee has designated in writing another Concession Mortgagee to exercise such rights; *provided, however*, that such notice may name more than one Concession Mortgagee and the rights referred to in this Section 18.7 may extend to all Concession Mortgagees named therein if such notice is submitted

by a representative of all such Concession Mortgagees (which representative may itself be a Concession Mortgagee). Any references in this Agreement to the "Concession Mortgagee" shall be references to the Concession Mortgagee or representative of more than one Concession Mortgagee, acting on behalf of such Concession Mortgagees, whose notice was earliest received by the Authority pursuant to the Concession Mortgagee Notice Requirements unless the context otherwise requires.

Section 18.8 Authority's Right to Purchase Concession Mortgage.

(a) If (i) any event of default by the Concessionaire has occurred under a Concession Mortgage and is continuing and (ii) the Concession Mortgagee recognized by the Authority pursuant to Section 18.7 is entitled, pursuant to the intercreditor arrangements then in force and effect, to declare all or part of the indebtedness secured by such Concession Mortgage to be immediately due and payable, then for thirty (30) days commencing on the date that is ten (10) days after the date on which such Concession Mortgagee shall serve notice upon the Authority in writing with a copy to all other Concession Mortgagees ("Concession Mortgagee's Notice") that such Concession Mortgagee intends and is entitled, pursuant to the intercreditor arrangements then in force and effect, to commence proceedings to foreclose the Concession Mortgage (stating the calculation of the purchase price pursuant to Section 18.8(c)) during such thirty (30)-day period, the Authority shall have the right and option (the "Authority's Option") to purchase from all Concession Mortgagees their Concession Mortgages, upon the terms and subject to the conditions contained in this Section 18.8.

(b) The Authority's Option shall be exercised by written notice served upon the Concessionaire and all Concession Mortgagees within such thirty (30)-day period. Time shall be of the essence as to the exercise of the Authority's Option. If the Authority's Option is duly and timely exercised, the Authority shall purchase all Concession Mortgages and all Concession Mortgagees shall assign their Concession Mortgages to the Authority (or its designee) on the date which is sixty (60) days after the date on which a Concession Mortgagee's Notice is served upon the Authority. The closing shall take place at a mutually convenient time and place.

(c) The purchase price payable by the Authority shall be one hundred percent (100%) of the aggregate amounts secured by or due under such Concession Mortgages (including principal, interest, fees, premiums, Breakage Costs, termination value or similar obligations (with respect to a Leveraged Lease) and other costs, expenses (including attorneys' fees) and any other amounts secured thereby or due thereunder) as of the closing date of the purchase. The purchase price shall be paid in full in cash at closing by wire transfer or other immediately available funds. The purchase price shall be paid by the Authority to each respective Concession Mortgagee, to be applied by the Concession Mortgagee to the amounts secured by the Concession Mortgage owed to such Concession Mortgagee, subject to the priorities of lien of such Concession Mortgages.

(d) At the closing and upon payment in full of the purchase price, each Concession Mortgagee shall assign its Concession Mortgage to the Authority, together with any security interest held by it in the Concessionaire's interest in the Toll Roads, without recourse, representations, covenants or warranties of any kind; *provided that* such Concession Mortgages

and security interests shall be deemed modified to secure the amount of the aggregate purchase price paid by the Authority to all Concession Mortgagees (rather than the indebtedness therefor secured thereby) payable on written demand, with interest and upon the other items referred to in this Section 18.8(d). Each such assignment shall be in form for recordation or filing, as the case may be. The Authority shall be responsible for paying any Taxes payable to any Governmental Authority upon such assignment. Such assignment shall be made subject to such state of title of the Toll Roads as shall exist at the date of exercise of the Authority's Option.

(e) Any Concession Mortgage shall contain an agreement of the Concession Mortgagee to be bound by the provisions of this Section 18.8.

(f) The Authority shall have the right to receive (and each Concession Mortgage shall contain an agreement of the Concession Mortgagee to deliver) all notices of default under any Concession Mortgage contemporaneously with the delivery of such notices to the Concessionaire (with a copy of such notice to be delivered to the GDB), but the Authority shall not have the right to cure any default under any Concession Mortgage, except to the extent provided in this Section 18.8.

ARTICLE 19

DISPUTE RESOLUTION

Section 19.1 Scope. Any dispute between the Parties arising out of, relating to, or in connection with this Agreement, including any question regarding its existence, validity or termination or any question as to whether such dispute is subject to the provisions contained in this Article 19, shall be resolved as set forth in this Article 19. The Concessionaire acknowledges and agrees that the GDB (or any Designated Person appointed by it) shall be authorized to participate in or act for and on behalf of the Authority in any dispute resolution proceeding contemplated by this Article 19 from and after the Concessionaire's receipt of notice from the Authority and the GDB confirming such participation or authority.

Section 19.2 Informal Dispute Resolution Procedures. The Parties agree that, at all times, they will attempt in good faith to resolve all disputes that may arise under this Agreement. The Parties further agree that, upon receipt of written notice of a dispute from a Party, the Parties shall refer the dispute to the Designated Person of each Party. The Designated Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary, and shall gather and in good faith furnish to each other the information pertinent to the dispute. Statements made by Representatives of the Parties during the dispute resolution mechanisms set forth in this Section 19.2 and documents specifically created for such dispute resolution mechanisms shall be considered part of settlement negotiations and shall not be admissible in evidence in any proceeding without the mutual written consent of the Parties.

→ **Section 19.3 Mediation.**

(a) If either Party believes that it has a claim against the other under this Agreement, such Party shall notify the other of the same within six (6) months of the date that it became aware of facts giving rise to the claim. The notice given pursuant to the preceding

sentence shall state the general nature of the claim, the estimated relief (if any) owed to the Party making the claim, and the nature of the remedies sought by such Party.

(b) Each Party to this Agreement agrees that it may not initiate a civil action as provided in Section 19.5 and Section 19.6 (other than provisional remedies sought on an expedited basis) unless (i) the matter in question has been submitted to mediation in accordance with the provisions of Section 19.3(c) or (ii) such Party would be barred from asserting its claim in a civil action if it were required to submit to mediation pursuant to Section 19.3(c).

(c) Mediation of a dispute under this Agreement may not be commenced until the earlier of: (i) such time as both of the Designated Persons, after following the procedures set forth in Section 19.2, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) thirty (30) days after the notice referring the dispute to the Designated Persons, pursuant to Article 19 (the "Negotiation Period"). If, after such time period, the dispute remains unresolved, either Party shall refer the dispute to a mediator, who shall be an attorney in good standing with the Puerto Rico Supreme Court or, if the matter in dispute is an engineering or technical dispute, the Parties shall refer the dispute to the Independent Operating Engineer, subject to the rights of the Parties pursuant to Section 19.4. With respect to the selection of a mediator, the Parties, through their respective Designated Persons, shall attempt in good faith to agree on a mediator. If the Parties cannot so agree within thirty (30) days after it is determined that the Designated Persons cannot resolve the dispute or after the end of the Negotiation Period, the Parties shall promptly apply to the American Arbitration Association ("AAA") for appointment of a single mediator in accordance with the Commercial Mediation Procedures of the AAA without there being a requirement of previously filing a request for mediation thereunder. The mediator selected by the AAA shall be an attorney authorized to practice law in the United States or the Commonwealth. The mediator or the Independent Operating Engineer, as the case may be, shall be paid for the mediation services, and shall be reimbursed for all reasonable out-of-pocket costs incurred in carrying out the mediation duties hereunder, including the costs of consultants. All fees and costs of the mediation (including payment for the services of the mediator or the Independent Operating Engineer and reimbursement of all reasonable out-of-pocket costs (including the costs of consultants) of the mediator or the Independent Operating Engineer) shall be shared equally by the Parties. The Parties shall request that the mediator schedule the mediation within thirty (30) days of the mediator's appointment (or in the case of the Independent Operating Engineer, within thirty (30) days after the Parties refer the dispute to the Independent Operating Engineer), and shall comply with all procedures the mediator or the Independent Operating Engineer establishes for the conduct of the mediation.

Section 19.4 Arbitration.

(a) *Arbitration of Required Modifications.* If the procedures described in Sections 19.2 and 19.3 do not result in resolution of a dispute arising under Section 5.2 within thirty (30) Business Days from a reference to mediation, the dispute shall be exclusively and finally settled by arbitration in accordance with the Commercial Arbitration Rules for the AAA then in effect (the "AAA Commercial Rules"). Either Party may initiate the arbitration, as provided in the AAA Commercial Rules. The place of arbitration shall be San Juan, Puerto Rico, unless the Parties otherwise agree. Pursuant to Section 20.6, the arbitral panel shall

determine the rights and obligations of the Parties in accordance with the substantive laws of the Commonwealth and without regard to the conflict of laws principles thereof. Except as agreed by the Parties, the arbitral panel shall have no power to alter or modify any terms or provisions of this Agreement or to render any award that, by its terms or effects, would alter or modify any term or provision of this Agreement. The arbitral panel shall be composed of three arbitrators, one to be selected by the Authority, one to be selected by the Concessionaire and the third to be selected by the two previously-selected arbitrators. If the two previously-selected arbitrators cannot agree on the selection of the third arbitrator, within thirty (30) days from their appointment by the Parties, either Party may file an action in the Puerto Rico Court of First Instance in San Juan, Puerto Rico, pursuant to 32 L.P.R.A. § 3205, and request that said Court appoint the third arbitrator. Once the arbitral panel has been composed, the arbitrators shall act as neutrals and not as party arbitrators, and no Party shall engage in any *ex parte* communication with any member of the arbitral panel. Each Party shall bear equally the costs of the arbitral panel and attorneys' fees as determined by the arbitral panel. The award shall include interest pursuant to Section 20.9 from the date of any breach or violation of this Agreement or the incurring of any obligation as determined in the arbitral award until paid in full. The award shall be in writing and state the reasons upon which it is based. The award shall be final and binding on the Parties. Judgment on the award may be entered by any court of competent jurisdiction.

(b) *Technical Arbitration.* Any engineering or technical dispute arising under or related to this Agreement shall be exclusively and finally settled in accordance with the Construction Industry Arbitration Rules for the AAA then in effect (the "AAA Technical Arbitration Rules") without submitting such dispute to mediation by the Independent Operating Engineer pursuant to Section 19.3 and without submitting the dispute to arbitration pursuant to Section 19.4(a). Either Party may initiate the arbitration as provided in the AAA Technical Rules. Such engineering arbitration shall be conducted by an Independent Engineering Arbitrator that is acceptable to the Authority and the Concessionaire. If the Parties fail to agree upon the Independent Engineering Arbitrator within five (5) Business Days after the Parties agree to submit the dispute to engineering arbitration, then the Authority and the Concessionaire shall each appoint an Independent Engineering Arbitrator and both such arbitrators shall be instructed to select a third Independent Engineering Arbitrator to conduct the engineering arbitration (unless the Parties agree in writing for the dispute to be heard by one Independent Engineering Arbitrator, who will then be selected by the AAA). If the two previously selected Independent Engineering Arbitrators cannot agree on the selection of the third Independent Engineering Arbitrator, the third Independent Engineering Arbitrator shall be selected by the AAA. The Parties shall each bear their own costs with respect to the arbitration of any such engineering dispute and shall bear equally the cost of retaining such Independent Engineering Arbitrator(s). The award of the Independent Engineering Arbitrator(s) shall be in writing and state the reasons upon which it is based. The award of the Independent Engineering Arbitrator(s) shall be final and binding on the Parties.

(c) *Disputes Regarding Arbitability.* Any dispute between the Parties as to whether a dispute shall be submitted to arbitration under Sections 19.4(a) or (b) shall be resolved by initiation of an action in the Commonwealth Court of First Instance, San Juan Part (the "Commonwealth Court") pursuant to Section 19.5.

Section 19.5 Court Action. In the event that the Parties fail to resolve the dispute within ninety (90) days after the date the mediator is selected pursuant to the procedures set forth in Section 19.3 (or such longer period as the Parties may mutually agree), either Party may initiate a civil action in Commonwealth Court and in accordance with all applicable rules of civil procedure; *provided* that any engineering or technical dispute or claim regarding any Required Modification that is not resolved by mediation pursuant to Section 19.3 within the time period described in this Section 19.5 shall be submitted to arbitration pursuant to Section 19.4. The Parties acknowledge and understand that, to resolve any and all claims arising out of this Agreement (other than any engineering or technical claim or claim regarding any Required Modification), they may file a civil action, including actions in equity, in Commonwealth Court.

Section 19.6 Provisional Remedies. No Party shall be precluded from initiating a proceeding in Commonwealth Court for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief, restraining orders, and the appointment of a receiver or manager in connection with the collection and retention of Toll Road Revenues.

Section 19.7 Tolling. If a Party receiving a notice of default under this Agreement contests, disputes or challenges the propriety of such notice by making application to the dispute resolution procedure in this Article 19, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final decision.

Section 19.8 Submission to Jurisdiction. Subject to Section 19.3 and Section 19.4, any judicial action or proceeding against the Concessionaire or the Authority relating in any way to this Agreement shall be brought and enforced in Commonwealth Court, and each of the Concessionaire and the Authority hereby irrevocably submits to the jurisdiction of such courts with regard to any such action or proceeding, and irrevocably waives, to the fullest extent permitted by applicable Law, any objection it may have now or hereafter have to the jurisdiction and venue of any such action or proceeding therein and any claim that any such action or proceeding brought therein has been brought in an inconvenient forum. Service of process on the Authority shall be made in accordance with the Laws of the Commonwealth on the Secretary of the Authority at the address specified in Article 20 and the Attorney General of the Commonwealth. The foregoing shall not constitute the consent by the Authority to receive service of process for actions or proceedings brought and enforced in any court other than the Commonwealth Court. Service of process on the Concessionaire may be made either by registered or certified mail addressed as provided for in Article 20 or by delivery to the Concessionaire's registered agent for service of process in the Commonwealth.

Section 19.9 Request for Documents; Subpoena *Duces Tecum*. If the Concessionaire is presented with a request for documents by any administrative agency or with a subpoena *duces tecum* regarding any documents that may be in its possession by reason of this Agreement, the Concessionaire shall, to the extent permitted by Law, give prompt notice to the Authority at the addresses specified for the Authority in Article 20. The Authority may contest such process by any means available to it before such records or documents are submitted to a court or other third party; *provided, however*, that the Concessionaire shall not be obligated to withhold such

delivery beyond that time as may be ordered by the court or administrative agency or required by Law, unless the subpoena or request is quashed or the time to produce is otherwise extended.

ARTICLE 20

MISCELLANEOUS

Section 20.1 Notice. All notices, requests for approvals, approvals and other communications, required or permitted by this Agreement shall be in English and in writing and shall be delivered, sent by courier or sent by certified or registered mail (return receipt requested and postage prepaid), addressed as follows:

(a) in the case of the Authority:

Puerto Rico Highways and Transportation Authority
Roberto Sánchez Vilella Government Center
De Diego Avenue, Stop 22
Santurce, Puerto Rico 00940
Attention: Executive Director
Telephone: (787) 721-8787
Facsimile: (787) 727-5456

with a copy to:

Puerto Rico Highways and Transportation Authority
Roberto Sánchez Vilella Government Center
De Diego Avenue, Stop 22
Santurce, Puerto Rico 00940
Attention: General Counsel
Telephone: (787) 721-8787
Facsimile: (787) 727-5456

and a copy to:

Government Development Bank for Puerto Rico
Roberto Sánchez Vilella Government Center
De Diego Avenue, Stop 22
Santurce, Puerto Rico 00940
Attention: President
Telephone: (787) 722-8460
Facsimile: (787) 721-1443

and a copy to:

Public-Private Partnerships Authority
c/o Government Development Bank
Roberto Sánchez Vilella Government Center
De Diego Avenue, Stop 22
Santurce, Puerto Rico 00940
Attention: Executive Director
Telephone: (787) 722-2525
Facsimile: (787) 728-0963

(b) in the case of the Concessionaire:

Autopistas Metropolitanas de Puerto Rico, LLC
c/o Autopistas de Puerto Rico S.E.
P.O. Box 29227
San Juan, Puerto Rico 00929-0227
Attention: Luis Palazzi
Telephone: (787) 767-9191
Facsimile: (787) 767-9199

with a copy to:

Abertis Infraestructuras, S.A.
Av. Parc Logístic 12-20
08040 Barcelona, Spain
Attention: David Díaz Almazán
Telephone: 34 93 230 5114
Facsimile: 34 93 230 5858

and a copy to:

GS Global Infrastructure Partners II, L.P.
c/o Goldman Sachs & Co.
200 West Street
New York, New York 10282
Attention: Steven Feldman and Jonathan Hunt
Telephone: (212) 902-1000
Facsimile: (212) 902-3000

and a copy to:

GS International Infrastructure Partners II, L.P.
c/o Goldman Sachs & Co.
200 West Street
New York, New York 10282
Attention: Steven Feldman and Jonathan Hunt



Telephone: (212) 902-1000
Facsimile: (212) 902-3000

and a copy to:

Freshfields Bruckhaus Deringer US LLP
601 Lexington Avenue, 31st Floor
New York, New York 10022
Attention: Dolly Mirchandani, Esq.
Telephone: (212) 277-4000
Facsimile: (212) 277-4001

or such other persons or addresses as either Party may from time to time designate by notice to the other. A notice, other communication or approval shall be deemed to have been sent and received (i) on the day it is delivered, or if such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or approval shall be deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by United States registered or certified mail.

Section 20.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties acknowledge and agree (i) that each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) that the provisions and language of this Agreement have been fully negotiated and (iii) that no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other.

Section 20.3 Amendment. This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties.

Section 20.4 Waiver of Rights. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

Section 20.5 Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law. The invalidity of any one or more phrases, sentences, clauses or Sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof. If any provision of this Agreement or the

application thereof to any Person or circumstances is held or deemed to be or determined to be invalid, inoperative or unenforceable in any particular case in any particular jurisdiction or jurisdictions because it conflicts with any other provision or provisions hereof or of any applicable Law, or public policy, or for any other reason, (i) such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever, and (ii) the Parties shall negotiate in good faith to amend this Agreement to implement the provisions set forth herein. If the Parties cannot agree on an appropriate amendment, either Party may refer the matter for determination pursuant to the dispute resolution procedure in Article 19. If, by means of the dispute resolution procedure, the Parties are unable, as a result of applicable Law, to resolve the matter in a manner that effectively entitles the Authority to have the same rights, after the aforesaid determination of invalidity or unenforceability as before, the Authority shall have the right to enact, and cause to come into force, any Law to provide for the same or substantially the same rights as were determined to be invalid or unenforceable; *provided* that the rights of the Concessionaire shall in no event be diminished by any such Law.

Section 20.6 Governing Law. This Agreement shall be governed by, and interpreted and enforced in accordance with, the Commonwealth Laws in force (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).

Section 20.7 Further Acts. The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement, including, without limitation, submission of this Agreement for filing with the Office of the Comptroller of the Commonwealth, pursuant to the provisions of Act. No. 18. The obligations pursuant to this Agreement shall not be enforceable until it shall have been submitted for filing with the Office of the Comptroller of the Commonwealth as provided by Act No. 18. Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution or delivery of this Agreement.

Section 20.8 Costs. Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

Section 20.9 Interest. Any amount payable under this Agreement and not paid when due under this Agreement shall bear interest both before and after judgment at the legal rate of interest provided for under Regulation No. 78-1 (Puerto Rico Regulation No. 3702 of October 25, 1988) of the Office of the Commissioner of Financial Institutions, from the date such payment is due until payment.

Section 20.10 Inurement and Binding Effect. This Agreement shall inure to the benefit of the Parties and their respective permitted successors and assigns and be binding upon the Parties and their respective successors and assigns.

Section 20.11 No Partnership or Third Party Beneficiaries. Nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the Authority and the Concessionaire. Except as expressly provided herein to the contrary (including with respect to such rights as are expressly granted to each Concession Mortgagee or any Indemnified Party pursuant to this Agreement), no term or provision hereof shall be construed in any way to grant, convey or create any rights or interests to or in any Person not a Party to this Agreement.

Section 20.12 Cumulative Remedies. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Section 20.13 Counterparts; Facsimile Execution. This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each Party and delivered to all Parties. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission. Such Party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

Section 20.14 Waiver of Sovereign Immunity. The Authority acknowledges that under its enabling act, it is not entitled to raise the defense of sovereign immunity with respect to claims arising out of this Agreement. Under its enabling act, the Authority does not have sovereign immunity (and any defense based thereon) as to it and its property in respect of the enforcement and execution of any award or other relief (pecuniary or otherwise) rendered against it in accordance with the provisions of this Agreement.

Section 20.15 Commonwealth Obligations. THE OBLIGATIONS OF THE AUTHORITY UNDER THIS AGREEMENT SHALL NOT BE DEEMED OBLIGATIONS OF THE COMMONWEALTH OR OF ANY INSTRUMENTALITY OF THE COMMONWEALTH OTHER THAN THE AUTHORITY.

[Signature Page Follows.]



IN WITNESS WHEREOF, the Authority and the Concessionaire each has caused this Agreement to be duly executed as of the day and year first above written.

Autopistas Metropolitanas de Puerto Rico, LLC

Puerto Rico Highways and Transportation Authority

By: 

By: 

Name: Jorge Graells Ferrández

Name: Ruben A. Hernández Gregorat, MEM, PE

Title: Authorized Representative

Title: Secretary of Transportation and Public Works and Executive Director PRHTA

Federal Employer ID #: 66-0766212

Federal Employer ID #: 660-43-3808