

**TOLL ROAD
CONCESSION AGREEMENT**

dated as of

October 16, 2023

by and between

PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY

and

PUERTO RICO TOLLROADS, LLC

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THIS TOLL ROAD CONCESSION AGREEMENT (this "Agreement") is made and entered into as of this 16th day of October, 2023 (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) Puerto Rico Tollroads, 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, as amended (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, on June 30, 2016, the United States of America enacted the Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187, 130 Stat. 549 (2016), 48 U.S.C. 2101 *et seq.* ("PROMESA"); and

WHEREAS, the United States of America established the Financial Oversight and Management Board for Puerto Rico ("Oversight Board") pursuant to Section 101(b) of PROMESA; and

WHEREAS, the Oversight Board has approved this Agreement pursuant to Section 204 of PROMESA; 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.

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:

"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).

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"Accelerated Safety Upgrades" means the capital improvement projects described in Section 1 of Schedule 6.

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

"Act No. 2" means Act No. 2 of the Legislative Assembly of Puerto Rico, enacted on January 4, 2018, 3 P.R. Laws Ann. § 1881 *et seq.*, as amended from time to time, also known as the Anticorruption Code for the New Puerto Rico.

"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 from time to time.

"Act No. 106" means Act No. 106 of the Legislative Assembly of Puerto Rico, enacted on August 23, 2017, 3 P.R. Laws Ann. § 9531 *et seq.*, as amended from time to time.

"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, 3 P.R. Laws § 8611 *et seq.*, as amended from time to time.

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

"Additional Lands" means any lands required for an Expansion.


"Adjustment Period End Date" means the Closing Date.

"Adjustment Period Start Date" means 10:00 a.m. Atlantic Standard Time on August 14, 2023.

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

"Administrative Determination" means Administrative Determination No. 22-05 of the PR Department of Treasury, as supplemented by the Tax Matters Supplement.

"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.

"Amendments to the Escrow Documents" means, collectively, the Amendment to the New Escrow Agreement, the Amendment to the Original Escrow Agreement and the Amendment to the Disbursement Instructions.

"Amendment to the Disbursement Instructions" means an amendment to the Disbursement Instructions substantially in the form of Schedule 23 hereto.

"Amendment to the New Escrow Agreement" means an amendment to the New Escrow Agreement substantially in the form of Schedule 18 hereto.

"Amendment to the Original Escrow Agreement" means an amendment to the Original Escrow Agreement substantially in the form of Schedule 22 hereto.

"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.

"Assigned Contracts" means each of those agreements of the Authority set forth in Section I of Schedule 10.

"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. For the avoidance of doubt, audits, investigations or requests for information conducted by the Puerto Rico Public-Private Partnerships Authority pursuant to, and as required by, Act 29 are deemed Audits carried out on behalf of the Authority.

"Authority" has the meaning ascribed thereto in the preamble to this Agreement.

"Authority Capital Improvement Contracts" means (i) each of those agreements of the Authority set forth in Section III of Schedule 10 (and any replacement, extension or renewal thereof by the Authority) and (ii) any other agreement executed by the Authority in connection with the construction and other activities necessary to complete an Authority Capital Improvement Project.

"Authority Capital Improvement Projects" means the Retained Capital Improvement Projects, the ORT Improvement Project, the Canopy Demolition Project and, in each case if undertaken by the Authority, the CD Project and the DTL Extension Project.

"Authority Default" has the meaning ascribed thereto in Section 16.2(a).

"Authority Employees" has the meaning ascribed thereto in Section 2.5(j)(i).

"Authority Project Work" means the construction and other activities necessary to complete the work required by any applicable Authority Capital Improvement Contract or otherwise to complete the applicable Authority Capital Improvement Project.

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

“Authority’s Benchmark Interest Rate Adjustment” has the meaning ascribed thereto in Section 2.4(f)(ii)(C).

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

“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).

“Band” means the applicable amount set forth in the column entitled “Band” on Schedule 20.

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

“Benchmark Rates” means the benchmark rates for any private activity bonds, taxable bonds, private placement and bank debt (including associated hedging instruments) that have been approved by the Authority in accordance with Section 7.4.6 of the Request for Proposals for Puerto Rico Toll Roads Monetization Project, issued by the Authority on January 13, 2023, as subsequently amended, and assumed and indicated in the Financial Model as presented at the Bid Date and to be issued or raised, as applicable, on the Closing Date.

“Bid Date” means August 28, 2023.

“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.

“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; *provided* that a half-holiday shall be treated as a full holiday.

“Canopy Demolition Project” means the canopy demolition project described in Section 3 of Schedule 5.

“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(a).

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

"CD" means a new Caguas collector/distributor road starting at the intersection of PR-52 and PR-1, traveling south west for approximately 0.74 miles and south for approximately 1 mile before ending at the intersection connector with Jose Garrido Avenue in Caguas.

"CD MOT Plan" has the meaning ascribed thereto in Section 4.1(c)(i).

"CD Project" means design and construction of the CD.

"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, a transfer of ownership interests of such Person, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, including by way of merger, consolidation, amalgamation or business combination, such that (i) 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 or (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; *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, the Operator or any Equity Participant (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, the Operator or any Equity Participant, or the direct or indirect shareholders of the Concessionaire, the Operator or any Equity Participant (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, the Operator or any Equity Participant (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), or transfers of direct or indirect ownership interests in any Equity Participant by its direct or indirect beneficial owner(s), in each case to any partners, members, shareholders, directors, officers, employees or investors who are distributees of investments held by such Person(s) pursuant to any *bona fide* liquidation of such Person(s) as a result of which securities held by such Person(s) 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 or the Operator'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, the Operator or any Equity Participant (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) to or from investment funds, including infrastructure funds, or investors therein, to or from 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 date which is fifteen (15) days prior to 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.

"Closing" has the meaning ascribed thereto in Section 2.2(a).

"Closing Date" has the meaning ascribed thereto in Section 2.2(a).

"Closing LOC" has the meaning ascribed thereto in Section 2.3(a).

"Code of Ethics" has the meaning ascribed thereto in Section 9.2(g).

"Committed Investment" means (i) any form of direct investment by Equity Participants, including the purchase of equity shares in the Concessionaire; (ii) any bona fide indebtedness of the Concessionaire for funds borrowed that is (A) held by any Equity Participant and (B) subordinated in priority of payment and security to all Concessionaire debt held by Persons who are not Equity Participants; or (iii) an irrevocable on-demand letter of credit issued by or for the account of an Equity Participant naming the Concessionaire or the applicable collateral agent as beneficiary and guaranteeing the provision of the direct investment or loan referenced in clauses (i) or (ii) of this definition.

"Commonwealth" means the Commonwealth of Puerto Rico.

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

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"Commonwealth Contractor Requirements" means the representations and warranties set forth in Section 9.2(g), (h), (i) and (j), the requirements set forth in Sections 9.3, 11.10 and 11.11 and the requirements of Act No. 2.

"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.

"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 material part of PR-20, PR-52, PR-53 or PR-66 as a highway is materially impaired or (2) there is a material 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(d), Section 4.2(a), and Section 5.2, (vi) the occurrence of an Authority Default as contemplated in Article 16, (vii) the placement in service of a Competing Highway as contemplated in Section 14.1(e), (viii) the circumstances contemplated in Section 2.3(d) of Schedule 4, (ix) the enactment by any Governmental Authority of the Commonwealth of any law, ordinance, rule or regulation that has a material adverse impact on the tax treatment or the exemption from taxes granted to the Concessionaire pursuant to Section 3.10(b), (x) (1) failure by the Authority to obtain the NEPA Approval increasing the highest toll rate permitted under NEPA requirements with respect to the DTLs to a level of at least \$6 on or prior to January 1, 2025 or (2) the occurrence of a successful challenge to such NEPA Approval or to the NEPA authorization for the existing \$3.50 Toll Rate Cap with respect to the DTLs, which challenge either prevents or delays the implementation of such NEPA Approval or prevents the collection of toll rates up to such existing Toll Rate Cap or (xi) any failure by the Authority to implement the ORT Change in accordance with Section 2 of Schedule 5 in any material respect.

"Competing Highway" means

a. any newly-constructed Comparable Highway that is built by or on behalf of the Commonwealth and opens to traffic during the Term, of which highway (i) in the case of PR-52, at least ten (10) continuous miles are laterally adjacent to PR-52 and within five (5) miles of the centerline, (ii) in the case of PR-53, at least eight (8) continuous miles are laterally adjacent to PR-53 and within five (5) miles of the centerline, (iii) in the case of PR-66, at least four (4) continuous miles are laterally adjacent to PR-66 and within three (3) miles of the centerline, and (iv) in the case of PR-20, at least two (2) continuous miles are laterally adjacent to PR-20 and within one (1) mile of the centerline;

b. PR-1, but only if and to the extent that any continuous segment of five (5) or more miles of PR-1 between the intersection of PR-1 and Apolo Avenue and the intersection of PR-1 with PR-30 is expanded or improved so that such segment becomes a Comparable Highway; and

c. PR-3, but only if and to the extent that any continuous segment of five (5) or more miles of PR-3 between its intersection with PR-66 in the Municipality of Carolina and PR-187 in the Municipality of Rio Grande is expanded or improved so that such segment becomes a Comparable Highway;

provided, however, that no project identified in Schedule 13 shall constitute a Competing Highway, including, for the avoidance of doubt, PR-9 and any projects with respect thereto.

"Concession" has the meaning ascribed hereto in Section 2.1(a).

"Concession Compensation" means, with respect to a Compensation Event, compensation due from the Authority to the Concessionaire in the forms set forth in Section 15.1(b) and Section 15.1(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 Section 15.1(d) and Section 15.1(e). For the avoidance of doubt, such compensation in respect of an event described in clause (x) of the

definition of Compensation Event shall include all amounts contemplated to have been received by the Concessionaire in its base case financial model with respect to the DTLs (provided to the Authority on the Bid Date) but for the failure to obtain the NEPA Approval or the existence of any challenge thereto (or to the existing Toll Rate Cap), other than incremental amounts, if any, that were based on a contemplated toll rate above \$3.50 prior to January 1, 2025 or above \$6 on or after such date.

"Concession Fee" has the meaning ascribed thereto in Section 2.1(a)(i). For the 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). If the Final Concession Fee differs from the Concession Fee on the Closing Date, all references to Concession Fee herein shall be deemed to refer to the Final Concession Fee.

"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.

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"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 (including make-whole redemption premiums), expenses and reimbursement obligations with respect thereto owed to lenders, institutional investors, 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 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

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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 and any Refinanced Concession Mortgage Debt shall likewise be considered Concession Mortgage Debt and shall not constitute such new debt) the principal amount of which (together with the aggregate principal amount of any previously qualified Concession Mortgage Debt and Qualified Debt after giving effect to the incurrence or commitment of any such new debt) *exceeds* the greater of (I) the maximum principal amount specified on Schedule 9 hereto for the applicable period in which such new debt is incurred or committed to be incurred and (II) in the event that the Concessionaire elects to obtain an appraisal in order to qualify such new debt as Concession Mortgage Debt, eighty percent (80%) of the fair market value of the Concessionaire Interest as set forth in such appraisal; *provided that*, in order for such new debt to qualify as Concession Mortgage Debt in connection with any appraisal obtained pursuant to the foregoing sub-clause (II), 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 the principal amount of such new debt (together with the aggregate principal 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* 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 to establish the fair market value of the Concessionaire Interest 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. Further, except as provided above in this definition, any capitalization of interest or accretion of principal or other committed increases on any debt that has previously qualified as Concession Mortgage Debt shall constitute Concession Mortgage Debt.

"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, 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(a).

"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 Bidirectional Project" means the capital improvement project described in Section 3 of Schedule 6.

"Concessionaire Capital Improvement Projects" means the Accelerated Safety Upgrades, the Concessionaire Bidirectional Project, and the ITS Project.

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

"Concessionaire Escrow Subaccount" means a subaccount of the New Escrow Account to be held by the Escrow Agent for the exclusive benefit of the Concessionaire.

"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).

"Conduit Issuer" means the conduit issuer of any tax-exempt or taxable bonds for the benefit of the Concessionaire.

"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.

"Contract Review Policy" means the contract review policy, as adopted by the Oversight Board pursuant to Section 204(b)(2) of PROMESA, as may be amended from time to time.

"Contract Warranties" has the meaning ascribed thereto in Section 4.1(c)(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(h)(i).

"CRIM" has the meaning ascribed thereto in Section 9.3(a).

"Cumulative Toll Road Revenues" means, as of the end of any calendar year during the Term, the cumulative annual Toll Road Revenues actually collected by or on behalf of the Concessionaire (or, in the case of Delinquent Non-Cash Tolls, actually paid by the Authority to the Concessionaire) and disbursed to the Concessionaire pursuant to the Escrow Agreements, for each annual period to such date over the Term, excluding any revenues derived from (a) the Concessionaire's share of DTL Extension Revenues pursuant to Section 7.2(g), (b) the Concessionaire's share of the DTLs Incremental Toll Revenues set forth in Section 7.2(h), (c) any temporary increase in tolls pursuant to Section 3.16(d)(v) or (d) any increase in tolls or extension of the Term pursuant to Section 15.1(c).

"Data Room" means the virtual data room at www.ansarada.com used for the purposes of this Transaction.

"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) 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) the presence in, on, under or around the Toll Road Lands of Hazardous Substances, (vii) 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) 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 construction required or permitted to be undertaken pursuant to this Agreement, (x) a delay in the performance by the Concessionaire of any of the capital improvements set forth in Schedule 6 due to the postponement of such works by the Authority pursuant to Section 4.2(a), (xi) the breach by the Authority of any of its obligations under any Other Authority Agreement, (xii) the occurrence of an Adverse Action, (xiii) a delay caused by the performance of any Authority Capital Improvement Project pursuant to Section 4.1(d), or (xiv) the issuance by a court having jurisdiction of any injunction or other order enjoining or estopping the Concessionaire or the Authority from the exercise of its rights or performance of

its obligations pursuant to this Agreement (other than by any action of the Concessionaire); *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).

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“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 Amounts” means all amounts collected by or on behalf of the Authority related to any non-payment of any tolls in respect of PR-5, PR-22, PR-17, the Toll Roads, and all toll roads operated by the Municipality of Guaynabo, including (i) any amounts related to the non-payment of tolls which are not specifically attributable to a particular road (such amounts shall be allocated on a pro rata basis based on toll revenues processed unless otherwise required by law or regulation), (ii) all Delinquent Non-Cash Tolls, fines and related charges paid in respect of any violations on such roads and any base toll amounts related thereto (in whole or in part), and (iii) all delinquent tolls and fines from toll violators referred to in Section 3.16(b)(ii) of this Agreement that are not deposited and paid directly to the Concessionaire in accordance with the Original Escrow Agreement and the Disbursement Instructions.

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

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

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

“Dependent Business” means any Vendor, Contractor or other Person under contract with the Concessionaire and 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 who is designated as such for the purposes of Article 19.

"Disbursement Instructions" means the Amended and Restated Disbursement Instructions, dated as of December 6, 2022, attached as Exhibit A to Amendment No. 1 to the Original Escrow Agreement, as amended by the Amendment to the Disbursement Instructions.

"DTL Extension" means an extension of the DTLs along a new branch on PR-30.

"DTL Extension Project" means design and construction of the DTL Extension.

"DTL Extension Revenues" has the meaning ascribed thereto in Section 2.2(j) of Schedule 4.

 "DTLs" means the PR-52 dynamic toll lanes, which consist of a corridor that also extends through a portion of each of PR-18 and PR-1, as more particularly set forth in Schedule 3. For avoidance of doubt, the DTLs do not include the DTL Extension.

"DTLs Incremental Toll Revenues" means all incremental revenues attributable to toll rates applicable to the DTLs above \$6.00, if any, that are charged by or on behalf of the Concessionaire in accordance with Section 2.2(i) of Schedule 4 with respect of tolls paid or payable for use by vehicles of the DTLs during the Term.

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

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

"Effective Toll Enforcement System" means the employment by the Authority, the Commonwealth Police or any other Governmental Authority of all necessary efforts to collect Delinquent Non-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, in each case, as certified by the Authority pursuant to an Officer's Certificate delivered to the Concessionaire. For the avoidance of doubt, the implementation and enforcement of a system that provides for the recordation of delinquent tolls and related fines in the vehicle registrations of toll violators and the collection of such tolls and fines as well as a condition to vehicle registration renewal, as so certified by the Authority, shall be deemed an Effective Toll Enforcement System.

"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.

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

"Emovis Contract" means the Agreement for the Provision of Toll Collection Equipment and Service, dated November 5, 2022, between the Authority and Emovis Operations Puerto Rico, Inc.

"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.

"Enforcement Benefits" has the meaning ascribed thereto in Section 20.16.

"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 to be developed, in the case of a Major Project, in accordance with the guidelines set forth in Schedule 19.

“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 Agent” means Banco Popular de Puerto Rico, a Puerto Rico banking corporation, acting as escrow agent pursuant to the Escrow Agreements, and any successor thereto.

“Escrow Agreements” means, collectively, the Original Escrow Agreement and the New Escrow Agreement.

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

“Escrow Shortfall” has the meaning ascribed thereto in Section 3.16(d)(v).

“ETC Service Contract” has the meaning ascribed thereto in Schedule 12.

“ETC Service Provider” has the meaning ascribed thereto in Schedule 12.

“ETC Service Terms” means the terms and conditions set forth in Schedule 12.

“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 Director” means the Executive Director of the Authority.

“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 and (b) any matters contemplated by the Operating Standards).

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

“Final Acceptance” means the completion of an entire project pursuant to the General Provisions of the Authority’s Standard Specifications for Road and Bridge Construction, as the same may be amended, supplemented or replaced from time to time, as determined by the Engineer (as defined therein) in his or her discretion, subject in each case to satisfaction by the Authority of the conditions set forth in Section 4.1(c), if applicable.

“Final Concession Fee” means the amount resulting from the calculation set forth in either Section 2.4(f)(ii)(B) or (C), as applicable. If the Final Concession Fee differs from the

Concession Fee on the Closing Date, all references to Concession Fee herein shall be deemed to refer to the Final Concession Fee.

"Financial Model" means the financial model submitted by the Concessionaire as part of its proposal pursuant to Section 4 of Appendix 3C of the Request for Proposals for Puerto Rico Toll Roads Monetization Project, issued by the Authority on January 13, 2023, as subsequently amended.

"Financial Model Step 1" has the meaning ascribed thereto in Section 2.4(f)(ii)(A).

"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(f).

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"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, cyber-attack, 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, pandemic, 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.

"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.

"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 – All items in U.S. City Average, All Urban Consumers, Not Seasonally Adjusted" (Series ID: CUUR0000SA0) as published by the United States Department of Labor, Bureau of Labor Statistics for which the base year is 1982-84 = 100; *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).

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“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.

“Initial Base Case Financial Model” has the meaning ascribed thereto in Section 2.4(f).

“Initial Equity IRR” means the nominal post-tax Internal Rate of Return on the Committed Investment on a cash on cash basis over the full Term, as defined in the Initial Base Case Financial Model.

“Initial Funding Amount” means \$40,000,000.

“Initial MFN Notice” has the meaning ascribed thereto in Section 20.16.

“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 or (iv) 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).

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"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.

"Internal Rate of Return" or "IRR" means the discount rate that makes the net present value of all cash flows from an investment equal to zero.

"ITS Project" means the capital improvement projects described in Section 2 of Schedule 6.

"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 14 (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 the 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.

“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.

“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 the avoidance of doubt, all actual payments reasonably made by any Person to third parties (including payments made by the Concessionaire to its Equity Participant or other Affiliates pursuant to contracts entered into on an arm’s length basis) 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.

“Major Project” has the meaning ascribed thereto in Schedule 19.

“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

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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 (including, but not limited to, any matter disclosed in the Data Room on or before the Setting Date, of which Concessionaire shall be deemed to have actual knowledge); (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(h); (vi) any negligence, intentional misconduct or bad faith of the Concessionaire or its Representatives; (vii) any work performed on the Toll Roads by or on behalf of the Commonwealth or the Authority in accordance with the terms hereof; or (viii) any failure of the Authority to meet any internal or published projections, forecasts, estimates, or predictions in respect of revenues, or other financial or operating metrics for any period.

“Maximum Temporary Increase” means, in the event of an Escrow Shortfall that has not been replenished by the Authority within the cure period contemplated therefor in this Agreement, the temporary increase in the toll charges applicable to the Toll Roads from time to time, in respect of any calendar year, in an amount equal to ten cents of a dollar (\$0.10); *provided that*, (a) such amount will be increased on the first day of each calendar year by a percentage equal to the sum of (x) the percentage increase, if any, in the Index during the immediately preceding year and (y) one and one-half percent (1.5%). The Maximum Temporary Increase shall not be included in the calculation of, or in determining if toll levels exceed, the maximum toll levels set out in Schedule 4.

“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.

“MFN Benefits” has the meaning ascribed thereto in Section 20.16.

“MFN Benefits Notice” has the meaning ascribed thereto in Section 20.16.

“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.

“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).

“NEPA” means the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*

“NEPA Approval” means the NEPA approval the Authority shall seek, to increase the highest toll rate permitted under NEPA requirements with respect to the DTLs above the current \$3.50 level.

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

“New Escrow Account” means the new escrow account established pursuant to the terms of the New Escrow Agreement by the Authority, to be held by the Escrow Agent for the benefit of the Authority, the PR-22/5 Concessionaire and the Concessionaire.

“New Escrow Agreement” means the New Escrow Agreement, dated as of December 6, 2022, by and among the Authority, the PR-22/5 Concessionaire, the Concessionaire, the Escrow Agent and the Bank, as amended by the Amendment to the New Escrow Agreement.

“New Government Retirement Program” means the New Defined Contribution Plan created pursuant to Article 3.1 of Act No. 106.

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

“Noncompliance Event” means the events identified in Schedule 7.

“Noncompliance Points” has the meaning ascribed thereto in Schedule 7.

“Noncompliance Threshold” has the meaning ascribed thereto in Section 6.4(e).

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

“OFAC” means the U.S. Treasury Department’s Office of Foreign Assets Control.

“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).

"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 15A, 15B and 15C, 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 Course" means only the ordinary course of business customarily engaged in by a Person consistent with past practices in all material respects; *provided* that an action taken by a Person shall only be deemed to have been taken in the Ordinary Course if that action is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal operations of such Person.

"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.

"Original Escrow Agreement" means that certain Escrow Agreement by and among the Authority, the PR-22/5 Concessionaire, the Autonomous Municipality of Guaynabo, Banco Popular de Puerto Rico, and the Escrow Agent, dated as of September 22, 2011, as amended by that certain Amendment Agreement No. 1 to the Original Escrow Agreement and Disbursement Instructions, dated as of December 6, 2022 and the Amendment to the Original Escrow Agreement, and as supplemented by the Disbursement Instructions.

"ORT Change" has the meaning ascribed thereto in Section 2 of Schedule 5.

"ORT Improvement Project" means the open road tolling improvement project described in Section 2 of Schedule 5.

"ORT Improvement Project Contract" means the Services Agreement, dated as of July 29, 2022, as amended, by and between the Authority and Sice, Inc. (including, for the avoidance of doubt, as the same has been or will be amended to implement the ORT Change in accordance with this Agreement).

"Other Agreement" has the meaning ascribed thereto in Section 20.16.

"Other Authority Agreement" means the Escrow Agreements, the Tolling Services Agreement, the Merchant Agreement, and the Emovis Contract (and, in each case, any replacement, extension or renewal thereof by the Authority prior to the Closing).

"Outstanding Debt" means the Authority's (i) \$600,000,000 aggregate principal amount of Restructured Toll Revenue Senior Bonds, Series 2022A, (ii) \$237,955,868.13 aggregate initial accreted value of Restructured Toll Revenue Senior Bonds, Series 2022B, (iii) \$407,044,597.57 aggregate initial accreted value of Restructured Toll Revenue Senior Bonds, Series 2022C and (iv) \$359,635,806.68 aggregate principal amount of Restructured Toll Revenue Subordinated Indebtedness, Series 2022-1, issued by the Authority on December 6, 2022 pursuant to the Trust Agreement.

"Oversight Board" has the meaning ascribed thereto in the Recitals to this Agreement.

"Oversight Board Certification" has the meaning ascribed thereto in Section 9.2(i).

"Partial Acceptance" means the completion of a portion or unit of a project pursuant to the General Provisions of the Authority's Standard Specifications for Road and Bridge Construction, as the same may be amended, supplemented or replaced from time to time, as determined by the Engineer (as defined therein) in his or her discretion, subject in each case to satisfaction by the Authority of the conditions set forth in Section 4.1(c), if applicable.

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

"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 contest 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 with respect to 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 contest 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 (excluding for the avoidance of doubt, any Encumbrance securing any Outstanding Debt); (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, except to the extent limited pursuant to the terms hereof.

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"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 contest 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 with respect to 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 contest 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 with respect to 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 contest 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 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 Concessionaire Default" means (a) the assessment of (i) one hundred ten (110) Noncompliance Points in a 365-day period; or (ii) two hundred twenty (220) Noncompliance Points in a 1,095-day period; or (b) the Concessionaire's failure to satisfy (in each case, in accordance with the terms of Schedule 6) (i) the requirements relating to the Tier 1 Works of the Accelerated Safety Upgrades by the date that is ninety (90) days after the deadline set forth in Schedule 6, (ii) the requirements relating to the Tier 2 Works of the Accelerated Safety Upgrades by the date that is one hundred eighty (180) days after the deadline set forth in Schedule 6, (iii) the requirements relating to the Tier 3 Works of the Accelerated Safety Upgrades by the date that is two hundred seventy (270) days after the deadline set forth in Schedule 6 or (iv) the requirements relating to the ITS Project by the date that is two hundred seventy (270) days after the deadline set forth in Schedule 6.

"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, consortium or other entity or a Governmental Authority.

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

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

"PR-20" means the toll road commencing at the intersection with PR-2 in Guaynabo and extending for approximately 9.5 km (5.9 miles), ending with its convergence with PR-1 in Guaynabo, as more particularly set forth in Schedule 3.

"PR-22/5 Concessionaire" means Autopistas Metropolitanas de Puerto Rico, LLC, as concessionaire under that certain Toll Road Concession Agreement by and between the Authority and such concessionaire, dated as of June 27, 2011, as amended.

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"PR-52" means the toll road commencing at the intersection of PR-18 and PR-1 in San Juan (other than the DTLs, which extend onto both PR-18 and PR-1), extending southwest for approximately 108.3 km (67.3 miles), ending in Ponce, as more particularly set forth in Schedule 3, and including the DTLs and, in each case if and when completed, the CD and the DTL Extension.

"PR-53" means the toll road comprised of: (i) a segment commencing at the PR-3 intersection in Fajardo, and extending for approximately 43.7 km (27.15 miles) to the PR-9914 intersection in Yabucoa and (ii) a segment commencing at the intersection of PR-7711 and PR-54 in Guayama and extending for approximately 12.3 km (7.64 miles) to the PR-52 intersection in Salinas, as more particularly set forth in Schedule 3.

"PR-66" means the toll road commencing at the PR-3 intersection in Carolina and extending east-west for approximately 14.1 km (8.8 miles), ending in the municipality of Río Grande, as more particularly set forth in Schedule 3.

"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, as amended, 13 P.R. Laws Ann. §30013 *et seq.*

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

"PR Mortgage and Property Registry Law" means Act No. 210 of the Legislative Assembly of Puerto Rico, enacted on December 8, 2015, 30 P.R. Laws Ann. § 6001 *et seq.*, as of the date hereof.

"Project Interface Plan" has the meaning ascribed thereto in Schedule 11.

"PROMESA" has the meaning ascribed thereto in the Recitals to this Agreement.

"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 Specified Public Integrity Crime and any of the crimes described in Article 5(N) of Act No. 237, Articles 250 through 266 of the Puerto Rico Penal Code, or in other sections of such laws.

"Public-Private Partnerships Authority's Ethical Guidelines" means the *Puerto Rico 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.

"Public Safety Act" has the meaning ascribed thereto in Section 3.18(b).

"Puerto Rico Penal Code" means Act No. 146 of the Legislative Assembly of Puerto Rico, enacted on July 30, 2012, 33 P.R. Laws Ann. § 5001 *et seq.*, known as 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 by the Concessionaire to finance or refinance, directly or indirectly, the Concession Fee payable hereunder or otherwise finance or refinance costs associated with the Concessionaire's capital improvement obligations hereunder, including: (i) principal (including accreted principal included in interest rate hedges or bonds); (ii) accrued interest (including capitalized interest); (iii) customary and reasonable lender, institutional investors or financial insurer, agent and trustee fees, costs, premiums (including make-whole redemption 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 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

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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 and any Refinanced Qualified Debt shall likewise be considered Qualified Debt and shall not constitute such new debt) the principal amount of which (together with the aggregate principal amount of any previously qualified Concession Mortgage Debt and Qualified Debt after giving effect to the incurrence or commitment of any such new debt) *exceeds* the greater of (I) the maximum principal amount specified on Schedule 9 hereto for the applicable period in which such new debt is incurred or committed to be incurred and (II) in the event that the Concessionaire elects to obtain an appraisal in order to qualify such new debt as Qualified Debt, eighty percent (80%) of the fair market value of the Concessionaire Interest as set forth in such appraisal; *provided* that, in order for such new debt to qualify as Qualified Debt in connection with any appraisal obtained pursuant to the foregoing sub-clause (II), 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 the principal amount of such new debt (together with the aggregate principal 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 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 to establish the fair market value of the Concessionaire Interest 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. Further, except as provided above in this definition, any capitalization of interest or accretion of principal or other committed increases on any debt that has previously qualified as Qualified Debt shall constitute Qualified Debt.

"Rating Agency" means any nationally recognized statistical rating organization, such as Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Investors Service, Inc., DBRS Limited, Kroll Bond Rating Agency, Inc. or any of their respective successors, or any similar entity, as defined by the Securities and Exchange Commission in Section 15E of the Securities Exchange Act of 1934,

"Reasonable Change Order or Deviation" means any alteration in the design, specifications, work, delivery point, rate of delivery, period of performance, price, quantity or other provisions set forth in the applicable Authority Capital Improvement Contract that is determined by the Authority, in consultation with the Concessionaire pursuant to the Project Interface Plan, to be reasonably necessary or desirable to (a) complete any work pursuant to the

applicable Authority Capital Improvement Contract that is within the intended scope of the applicable Authority Capital Improvement Project or such Authority Capital Improvement Contract or (b) respond to an event described in Section 3.7(a)(iii).

“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.

“Refinanced Concession Mortgage Debt” means any amount of debt incurred by the Concessionaire in connection with any refinancing of any debt that had previously qualified as Concession Mortgage Debt, up to the outstanding principal amount of such refinanced Concession Mortgage Debt, together with interest thereon, Breakage Costs and the amount of any required reserves, plus reasonable and customary transaction costs, fees, and expenses.

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“Refinanced Qualified Debt” means any amount of debt incurred by the Concessionaire in connection with any refinancing of any debt that had previously qualified as Qualified Debt, up to the outstanding principal amount of such refinanced Qualified Debt, together with interest thereon, Breakage Costs and the amount of any required reserves, plus reasonable and customary transaction costs, fees, and expenses.

“Remedial Plan” means a remedial plan setting forth a schedule and specific actions to be taken by the Concessionaire to remedy a Persistent Concessionaire Default or a Concessionaire Default and, if applicable, reduce the likelihood of such non-compliance or default from occurring in the future. Such actions may include improvements to the Concessionaire’s quality management practices, plans and procedures, changes in organizational and management structure, increased monitoring and inspections, changes in personnel, replacement of Contractors, and delivery of security to the Authority, which remedial plan has been Approved by the Authority in its discretion.

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

“Reporting Year” means each fiscal year ending December 31 during the Term, except that unless the Closing Date is the first day of January, the first Reporting Year shall be a partial year commencing on the Closing Date and ending on the next December 31 and the last Reporting Year shall be a partial Reporting Year commencing January 1 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 Balance" means (i) if the Authority has not implemented, or if implemented, does not continue to maintain, an Effective Toll Enforcement System, \$25,000,000, or (ii) if the Authority has implemented, and continues to maintain, an Effective Toll Enforcement System, \$15,000,000; *provided*, that, (a) the Required Balance will be increased on the first day of each calendar year by a percentage equal to the sum of (x) the percentage increase, if any, in the Index during the immediately preceding year and (y) one and one-half percent (1.5%); and (b) the reduction or increase (as applicable) of the Required Balance under clause (ii) or (i), respectively, of this definition shall become effective on the first day of the quarter immediately following the change in the status of implementation of the Effective Toll Enforcement System; *provided, further*, that once Final Acceptance of the ORT Improvement Project has occurred and an Effective Toll Enforcement System has been in effect for at least twenty-four (24) consecutive months, the Required Balance shall be decreased to an amount to be mutually agreed to by the Parties.

"Required Coverages" has the meaning ascribed thereto in Section 13.1.

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

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"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 Projects" means the capital improvement projects described in Section 1 of Schedule 5.

"Retained Contracts" means the contracts set forth in Section II of Schedule 10 (and any replacement, extension or renewal thereof by the Authority prior to the Closing).

"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.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered, or enforced by the United States (including OFAC) and the U.S. Department of State), European Union, United Kingdom, United Nations, or other relevant sanctions authority.

“Sanctioned Jurisdiction” means at any time a jurisdiction that is the target of comprehensive Sanctions. As of the date hereof, the following are “Sanctioned Jurisdictions”: Cuba, Iran, North Korea, Syria, and the Crimea, the so-called Donetsk People’s Republic, and the so-called Luhansk People’s Republic regions of Ukraine.

“Sanctioned Person” means any individual, entity, organization, or government: (a) designated on a Sanctions-related list maintained by the United States (including OFAC’s List of Specially Designated Nationals and Blocked Persons), European Union (including the Consolidated List of Persons, Groups and Entities subject to EU Financial Sanctions), United Kingdom (including the UK Sanctions List), United Nations, and any other relevant Sanctions authority; (b) subject to a blocking order by the United States or a relevant Sanctions authority; (c) located, organized, or ordinarily resident in a Sanctioned Jurisdiction; or (d) owned or controlled, directly or indirectly, individually or in aggregate, by any individual, entity, organization, or government described in clauses (a), (b), and (c).

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

“Setting Date” means August 17, 2023.

“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 or new releases of operating systems.

“Specified Public Integrity Crime” means any crime listed in Article 3.4 of Act. No. 2.

“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 the determination that a project has been substantially completed, as determined by the Authority in its discretion, pursuant to the General Provisions of the Authority's Standard Specifications for Road and Bridge Construction, as the same may be amended, supplemented or replaced from time to time, subject in each case to satisfaction by the Authority of the conditions set forth in Section 4.1(c), if applicable.

"Sworn Statement" means the sworn statement required by Act No. 2.

"Sworn Statement for Closing" means the sworn statement in the form of Schedule 16.

"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.

"Tax Matters Supplement" has the meaning ascribed thereto in Section 2.4(a)(x).

"Term" has the meaning ascribed thereto in Section 2.1(a).

"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.

"Tier 1 Works" means the work with respect to the Accelerated Safety Upgrades described in Section 1(a) of Schedule 6.

"Tier 2 Works" means the work with respect to the Accelerated Safety Upgrades described in Section 1(b) of Schedule 6.

"Tier 3 Works" means the work with respect to the Accelerated Safety Upgrades described in Section 1(c) of Schedule 6.

"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 Rate Cap" has the meaning ascribed thereto in Section 2.2(i) of Schedule 4.

“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 17.

“Toll Road Concession Value” means, as of any date, the fair market value of the Concessionaire Interest, 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 if the Toll Road Concession Value is being calculated as a result of an Adverse Action, Authority Default or Public Integrity Crime, it shall be determined without regard to the effect of any such Adverse Action, Authority Default or Public Integrity Crime, as applicable; and, *provided further*, 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(a), 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 3 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 4,

"Tolling Services Agreement" means that certain Master Services Agreement, dated February 4, 2015, as amended, by and between the Authority and Professional Account Management LLC, as assignee of Gila, LLC, for the operation and maintenance of the following elements of the electronic toll collection system for the Toll Roads: (i) the roadside system installed in the Toll Roads (other than the dynamic tolling lanes) and (ii) the commercial back-office software and services.

"Traffic Report" has the meaning ascribed thereto in Section 8.1(a).

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

"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(a).

"Trust Agreement" means the Master Trust Agreement, dated December 6, 2022 (as supplemented to date) by and between the Authority and the Trustee.

"Trustee" means the Bank of New York Mellon as the trustee under the Trust Agreement.

"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) the product of 365 multiplied by 40 (i.e., the number of years in the Term specified in Article 2).

"Uncured Noncompliance Points" means Noncompliance Points assessed on account of breaches or failures that remain uncured; *provided* that Uncured Noncompliance Points excludes Noncompliance Points assessed for breaches or failures identified as having no cure period on Schedule 7.

"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.

"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.

"Viability Event" means a determination by the Authority, in its reasonable discretion, based on the outputs of the Financial Model that the Authority's Benchmark Interest Rate Adjustment would decrease the Concession Fee to an amount less than one hundred ten percent (110%) of the Outstanding Debt (for such purpose, to be calculated using the accreted value of Restructured Toll Revenue Senior Bonds, Series 2022B and Restructured Toll Revenue Senior Bonds, Series 2022C as of the scheduled Closing Date, as such scheduled Closing Date may be adjusted from time to time pursuant to this Agreement).

"Windfall Revenue Sharing Payment" has the meaning ascribed thereto in Section 7.2(e)(i).

"Windfall Revenue Sharing Payment Amount" has the meaning ascribed thereto in Section 7.2(e)(iii).

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 and And/Or. 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. In addition, when used in this Agreement, "or" shall mean "and/or" unless the context otherwise requires.

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 Two Billion

Eight Hundred Fifty Million Dollars (\$2,850,000,000.00) in cash, as may be adjusted in accordance with Section 2.4(f) hereof (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 Assigned Contract 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 the Assigned Contracts pursuant to an assignment agreement, and the Concessionaire shall accept and assume such contracts, *provided* that, if in the Authority's reasonable opinion any Assigned Contract is not capable of being assigned and assumed in accordance with this Section 2.1(b), such Assigned Contract shall not be assigned at the Time of Closing, and the Authority shall maintain and enforce such Assigned Contract for the benefit of the Concessionaire subject to Section 12.1(a) until the earlier of: (i) the expiration of such Assigned Contract by its terms and (ii) the time that such Assigned Contract becomes capable of being assigned in accordance with this Section 2.1(b). Until any Assigned Contract is 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 Assigned Contract in accordance with Section 12.1(a).

(c) Except as otherwise expressly provided in Section 2.1(b) and Section 4.1(c)(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 December 14, 2023 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 O'Melveny & Myers LLP, 7 Times Square, 30th Floor, New York, NY 10036 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.

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(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 Depository, 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, 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;

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

(A) the estoppel certificates and any other deliverables required to be delivered by the Authority pursuant to Section 10.2(a);

(B) the consent agreement contemplated by Section 18.1(l), duly executed by the Authority, if such agreement is requested of the Authority in writing by the Concessionaire; and

(C) a legal opinion of counsel to the Authority, substantially in the form attached hereto as Schedule 1, together with all factual certificates delivered with respect to such opinion.

(iv) 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 discharged on the Closing Date and no longer treated as outstanding under the documents under which such obligations were issued;

(v) the Authority shall have delivered to the Concessionaire a certificate signed by the Trustee to the effect that the Outstanding Debt of the Authority has been paid or deemed paid in full in accordance with the Trust Agreement and is no longer outstanding thereunder, that the Trust Agreement and all obligations thereunder have been redeemed or legally defeased in full and that all liens or encumbrances under the Trust Agreement have been fully discharged and released;

(vi) 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;

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

(viii) 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;

(ix) the Authority shall have delivered to the Concessionaire counterparts of the Amendments to the Escrow Documents executed by the Authority and the other parties thereto (other than the Concessionaire);

(x) the PR Department of Treasury shall have issued an administrative determination or delivered a private letter ruling addressing the matters set forth in Schedule 21 of this Agreement (the "Tax Matters Supplement");

(xi) the Authority shall have granted to the Concessionaire a nonexclusive, nontransferable, royalty free sub-sublicense to use and modify the transportation management center computer programs, source code and software modules sublicensed by the Authority under that certain Activeits Software Sublicense Agreement with the Southwest Research Institute dated as of December 27, 2016; and

(xii) the Authority shall have delivered to the Concessionaire a certificate confirming that each of the conditions set forth in Section 2.4(a)(i) through (ix) 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 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 evidence of insurance policies required to be delivered by the last sentence of Section 2.5(e); and

(B) 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.

(iv) the Concessionaire shall have delivered to the Authority a legal opinion of counsel to the Concessionaire, substantially in the form attached hereto as Schedule 2, together with all factual certificates delivered with respect to such opinion;

(v) the Concessionaire shall have delivered to the Authority executed counterparts of the Amendments to the Escrow Documents executed by the Concessionaire;

(vi) 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;

(vii) the Concessionaire shall have delivered to the Authority a certificate confirming that each of the conditions set forth in Section 2.4(b)(i) through (vi) 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.

(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 (or a material portion thereof);

(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 (or a material portion thereof) in a manner that would impose a material impairment on the Transaction or make the consummation of the Transaction illegal (or, in each case, a material portion of the Transaction); and

(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.

(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 (or a material portion thereof), 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;

(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 Outstanding Debt (for such purpose, to be calculated using the accreted value of Restructured Toll Revenue Senior Bonds, Series 2022B and Restructured Toll Revenue Senior Bonds, Series 2022C as of the scheduled Closing Date, as such scheduled Closing Date may be adjusted from time to time pursuant to this Agreement) pursuant to Section 2.5(i)(ii)(B); or

(vi) by the Authority, upon notice to the Concessionaire, if a Viability Event has occurred and is continuing as of the scheduled Closing Date and the Parties have been unable to mitigate such Viability Event in accordance with Section 2.4(f)(iii).

(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 pursuant to Section 2.4(d)(iii)(B), in each case unless a Viability Event or Force Majeure event has occurred and is continuing, 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 (including payments made by the Concessionaire to its Equity Participant or other Affiliates pursuant to contracts entered into on an arm's-length basis) 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 shall be retained or returned, and the Closing LOC shall be drawn upon or returned cancelled pursuant to and in accordance with Section 2.3(b).

(f) *Closing Adjustment Protocol.* The Concessionaire and the Authority shall adjust the Financial Model as presented at the Bid Date, which is referred to herein as the "Initial Base Case Financial Model", to reflect only those changes to financial terms permitted under this Section 2.4(f). The updated Financial Model shall be used to calculate the change, positive or negative, in the Concession Fee. For the avoidance of doubt, except as provided in this Section 2.4(f), the Financial Model shall not be adjusted for any terms and conditions included in the Concession Mortgage Debt financing agreements or security document issued on the Closing Date (except as provided in this Section 2.4(f)) or to correct for any potential errors. The Concessionaire shall bear 100% of the risk, and receive 100% of the benefit, of any differences between coverage ratios, coupon rates, payment provisions, refinancing assumptions, and other terms of its financing stated or assumed in Initial Base Case Financial Model and those same terms actually achieved on the Closing Date. Not later than fifteen (15) Business Days before the Closing Date, the Concessionaire shall prepare, and submit to the Authority for the Authority's Approval, a protocol for performing the updates, calculations, and adjustments pursuant to this Section 2.4(f).

(i) *Changes in Market Interest Rates.* The Authority will bear 100% of the risk and have the benefit of 100% of the impact on the Concession Fee (either positive or negative) arising from changes in Benchmark Rates assumed and indicated in the Initial Base Case Financial Model, for the period beginning on the Adjustment Period Start Date and ending on the Adjustment Period End Date; *provided, however*, that such protection will be extended only to the amount of proceeds of bonds, private placement debt and bank debt assumed and indicated in the Initial Base Case Financial Model.

(ii) *Calculation of Changes in Financing Terms.* On the Closing Date, the Concessionaire and the Authority shall adjust the Initial Base Case Financial Model to reflect only those changes to financial terms permitted under Section 2.4(f)(i) and any other revisions approved by both the Concessionaire and the Authority. In addition, the closing adjustment protocol analysis set forth in this Section 2.4(f) will be based on the Initial Equity IRR. The Concessionaire and the Authority shall make such calculation and update the Initial Base Case Financial Model and the Initial Equity IRR on the Closing Date as follows:


(A) Holding the Initial Equity IRR and amount of debt proceeds as calculated based on the approach described in Section 2.4(f)(i), constant, update the Benchmark Rates with respect to bonds, private placement and bank debt. The

model shall be run to solve for the nominal Concession Fee. The resulting financial model will become the "Financial Model Step 1".

(B) If the nominal Concession Fee resulting from the Financial Model Step 1 is higher than the nominal Concession Fee from the Initial Base Case Financial Model, the nominal Concession Fee resulting from the Initial Base Case Financial Model will be subtracted from the nominal Concession Fee from the Financial Model Step 1, and the resulting amount shall be added to the Concession Fee and become the Final Concession Fee.

(C) If the nominal Concession Fee resulting from the Financial Model Step 1 is lower than the nominal Concession Fee from the Initial Base Case Financial Model, the nominal Concession Fee resulting from the Financial Model Step 1 will be subtracted from the nominal Concession Fee from the Initial Base Case Financial Model, and the resulting amount (the "Authority's Benchmark Interest Rate Adjustment") shall, subject to clause (iii) below, be subtracted from the Concession Fee and become the Final Concession Fee.

(D) Update the Concession Fee in the Financial Model Step 1 to the Final Concession Fee and update the amount of proceeds of bonds, private placement debt and bank debt to be issued or incurred on the Closing Date. The Financial Model Step 1 will be solved and the resulting equity IRR shall become the Base Case Equity IRR. The resulting model shall become the Base Case Financial Model.

 (iii) *Mitigation of Viability Events.* Subject to the Authority's right in Section 2.4(d)(vi), if a Viability Event occurs between the Adjustment Period Start Date and the Adjustment Period End Date, the Concessionaire and the Authority shall engage in good faith discussions to determine potential appropriate means by which to mitigate the actual or anticipated impacts of any such Viability Event, which may include:

(A) Extension of the scheduled Closing Date (subject to the Concessionaire extending the validity of its Closing LOC);

(B) Negotiations by the Concessionaire with any or all of the Concessionaire's existing lenders to increase, renew, or extend their commitments, as applicable; *provided* that any material deviations from the terms and conditions of the original commitments set forth in the Concessionaire's proposal as of the Bid Date may be accepted by Concessionaire only with the Authority's Approval; and

(C) Other mitigation actions subject to mutual agreement of both Parties.

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 with all requirements of Law that may be imposed on such Party to consummate the Transaction promptly and (ii) 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.

(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.

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(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, to perform in all material respects all of its obligations under the Assigned Contracts and the Other Authority Agreements and not to enter into any other contracts related to the Toll Roads other than in the Ordinary Course, not to incur any Encumbrances on the Toll Roads (other than Permitted Authority Encumbrances) that are not satisfied, and if applicable, removed or discharged 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, except as otherwise permitted pursuant to this Agreement, the Authority shall not (i) terminate, amend, modify or agree to a waiver of the terms of any Assigned Contract, the Other Authority Agreements or any Authorization related to the Toll Roads, or (ii) except in the Ordinary Course, enter into any other agreements in respect of the Toll Roads, in each case, after the Effective Date and before the Time of Closing (or in the case of any Assigned 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 is completed) without the Concessionaire's prior written 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.* Each Party shall immediately disclose to the other Party any matter which becomes known to it at or before the Time of Closing 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 made as of the Effective Date, cure any breach thereof or affect any inability to make such a representation and warranty as of the Closing Date for purposes of Section 2.4 or for any other purpose.

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(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 to be provided by those Authority Employees who do not become employees of the Concessionaire. Nothing contained in this Agreement shall be construed in any way as creating any employment relationship between

Concessionaire and such employees rendering services for the relevant period of time. 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 documented showing in reasonable detail all charges and 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 (x) the amount of such insurance and other proceeds and (y) the projected cost to the Concessionaire of Restoring the affected portion of the Toll Roads plus the projected lost Toll Road Revenues, if any, during the period of such repairs; *provided* that the Concessionaire must provide written notice to the Authority of the amount of such deficiency no later than fifteen (15) Business Days prior to the Closing Date.

(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 Outstanding Debt (for such purpose, to be calculated using the accreted value of Restructured Toll Revenue Senior Bonds, Series 2022B and Restructured Toll Revenue Senior Bonds, Series 2022C as of the scheduled Closing Date).

(B) In the event the projected cost (including projected lost Toll Road Revenues) 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 the remaining amount of such projected cost to the Concessionaire as 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 projected cost (including projected lost Toll Road Revenues) 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 completion of the Restoration of the affected portion of the Toll Roads.

(j) *Toll Road Employees.*

(i) Employees. Within 20 days after the Effective Date, the Authority shall provide the Concessionaire with a list of the Authority's employees as of such date (the "Authority Employees"). After the Effective Date and prior to the Time of Closing, the Concessionaire shall use its Reasonable Efforts to interview all Authority Employees who apply to the Concessionaire for employment and, pursuant to the latter's operational needs, to offer, on terms and conditions designated by the Concessionaire taking into account applicable Law, employment to commence following the Closing Date to such Authority Employees who, as determined by the Concessionaire, 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 but will give preference to such Authority Employees over other applicants with otherwise similar qualifications. For the avoidance of doubt, the protections offered to Authority Employees pursuant to Section 3.19(a) of this Agreement shall not be a basis for distinguishing Authority Employees from other applicants with otherwise similar qualifications. The Concessionaire shall not be liable for severance or other pay or benefits for Authority Employees who are not hired by Concessionaire, including those to whom an offer of employment is made but who do not accept such offer. The Authority shall waive any non-competition, confidentiality or other obligation arising under any employment contract between the Authority and any Authority Employee that may otherwise restrict any of the Authority Employee's rights to be employed by the Concessionaire. The Concessionaire commits to offer competitive and attractive benefits to the Authority Employees who receive a job offer. On the Closing Date, the Concessionaire shall deliver to the Authority a list of all Authority Employees hired by the Concessionaire as of the Time of Closing.

(ii) Pursuant to Act No. 106, since July 1, 2017 (x) all Authority Employees participate in the New Government Retirement Program and (y) any pension benefits accumulated by an Authority Employee under any former government defined benefit plan are payable by the Commonwealth pursuant to the "pay-as-you-go" mechanism established under Act No. 106 (if and when any such benefit becomes payable pursuant to applicable Law) and

reimbursed by the Authority to the Commonwealth through the "Pay-Go Charge" imposed under Act No. 106. The Authority is not required to make employer contributions to any retirement plan with respect to any Authority Employee (other than, for the avoidance of doubt, through the payment of the "Pay-Go Charge" imposed on the Authority pursuant to Act No. 106).

(iii) With respect to any Authority Employee hired by the Concessionaire, the Authority Employee may elect, and the Concessionaire shall not object to and will facilitate, the rollover of the balance of the Authority Employee's individual retirement account under the New Government Retirement Program to any defined contribution individual retirement account program established by the Concessionaire, in its discretion, *provided* that such rollover does not adversely affect the tax-qualification under the PR Code and its regulations of the defined contribution individual retirement account program established by the Concessionaire. The Concessionaire does not assume any obligations, liabilities or debts of the Authority with respect to (A) the payment of the "Pay Go Charge" imposed on the Authority under Act No. 106 in relation to any Authority Employees or (B) otherwise related to any pension benefits accrued under any governmental retirement plan by any Authority Employee; *provided, however*, that the Concessionaire acknowledges that, as permitted by the Act, the Concession Fee may be used by the Authority in part for the payment of "Pay Go Charges" imposed on the Authority under Act No. 106.

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(iv) Failure of the Concessionaire to comply with any of the covenants included in this Section 2.5(j) will constitute a material breach of this Agreement.

(k) *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.

(l) *ETC Service Terms and Tolling Agreement.* Each of the Concessionaire and the Authority acknowledges that the Tolling Services Agreement is in force and effect.

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) If any Registrar of the Commonwealth Registry of Property requires that an allocation of the Concession Fee or the legal description of the lands be included in this Agreement, the Parties will promptly execute an amendment to this Agreement to include the same in this Agreement, *provided* that if any such request is made prior to the Time of Closing, the Parties will execute the amendment on or prior to the Time of Closing.

(c) Upon Substantial Completion of the ORT Improvement Project, the CD Project (if applicable) or the DTL Extension Project (if applicable), each Party shall execute deliver, and record, at the Concessionaire's expense, such further deed or other instrument as either Party may reasonably request to conform the inscription of this Agreement in the appropriate Commonwealth Registry of Property, as it relates to such project, to include the final land area and characteristics of such project (in the case of the ORT Improvement Project, for the avoidance of doubt, in order to reflect the ORT Change).

Section 2.7 Closing Deliveries. At the Time of Closing, each Party shall execute and deliver all assets, approvals, 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), *provided* that no such additional deliverables shall be deemed to create or constitute independent, additional conditions precedent under Section 2.4 hereof.

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. Notwithstanding the foregoing, the Concessionaire and each of its Affiliates may (i) utilize its own properly determined allocation of the Concession Fee between the Concession and the Toll Road Assets, or (ii) utilize its own properly determined allocation of the portion of the Concession Fee it has allocated to the Toll Road Assets among such assets, in the preparation of any Tax return or in any Tax audit or other Tax proceeding before any Governmental Authority.

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 1033.07(a)(1)(D) of the PR Code. It is the intention that the Concessionaire shall be subject to the provisions of Article 12 of the Act and the Administrative Determination.

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(e). 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 under any (A) Assigned Contract maintained by the Authority for the benefit of the Concessionaire pursuant to Section 2.1(b) and (B) Environmental Law, 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

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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) an Assigned Contract prior to the Time of Closing, (C) the work undertaken by the Authority (or any of its Representatives) related to the Authority Capital Improvement Projects or (D) 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 refunding 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 Authority Capital Improvement Contract, the Tolling Services Agreement, each Other Authority Agreement (except for the Emovis Contract and except as otherwise expressly provided by the ETC Service Terms) and any other contract of the Authority not expressly assigned to the Concessionaire hereunder, (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, (D) any violation of Environmental Laws arising as a result of the exercise by the Authority of its rights under Section 3.7, subparagraphs (a)(i), (iii), and (v) through (x) or (E) 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 existing, 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, following such assignment to the Authority, terminate such agreement without penalty within three (3) Business Days' notice or less effective upon such extension).

Section 3.3 Operator.

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(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 MP Operator, LLC. 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 a Public Integrity Crime, the Authority may demand that the Operator be replaced. Upon such demand, the Concessionaire shall promptly 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 notify the Authority upon the termination or resignation of an Operator within two (2) Business Days of such termination or resignation. 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

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Concessionaire, the Authority shall notify the Concessionaire of such other factors. Any proposed replacement Operator also shall be required to deliver to the Authority the Sworn Statement and 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 (subject to extension as described below in this Section 3.3(b)), 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 the 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).


 (c) *Increases to Toll Rate Cap.* The Authority shall seek to obtain the NEPA Approval and shall promptly advise and update the Concessionaire of any developments in respect thereof. Upon receipt of the NEPA Approval, the Toll Rate Cap with respect to the DTLs may be adjusted by the Concessionaire as set forth in Schedule 4. If the Authority Approves any other increase to the maximum toll rate with respect to the DTLs or if applicable, the DTL Extension) pursuant to Schedule 4 but such increase is not permitted at such time pursuant to applicable Law (including but not limited to any NEPA or similar restrictions), upon the request of the Concessionaire, the Authority shall coordinate and cooperate with the Concessionaire in an effort to obtain the necessary approvals required under applicable Law in connection with the same in order to increase the applicable Toll Rate Cap (as defined in Schedule 4). Such coordination and cooperation shall include the Authority undertaking and filing, at the expense of the Concessionaire, any required NEPA or similar documentation and shall include the Authority promptly advising and updating the Concessionaire of any developments in respect of the same.

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 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, 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 or otherwise Approved by the Authority (and any activities that in the Authority's discretion are reasonably incidental thereto, including the financing thereof and of the Transaction and the commercialization of Toll Road related infrastructure installed on the Toll Road Lands)), (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) 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)(iii) and Section 3.7(a)(iv), such right to be exercised at all reasonable times with notice to be provided as set forth in such sub-clauses (iii) and (iv), and (z) described in Section 3.7(a)(v) through Section 3.7(a)(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 any work related to any 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;

(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, 22 L.P.R.A. § 191 *et seq.*, as amended; 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 Section 3.7(a)(v) through Section 3.7(a)(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).

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. The Concessionaire shall not have any liability for any environmental condition arising as a result of any violation of Environmental Law that may be caused by the 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 under this Section 3.7. 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.* Pursuant to Article 12 of the Act and the Administrative Determination, it is hereby established that 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 4010.01 (p) and (nn) of the PR Code.

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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; *provided* that to the extent utility charges that do not correspond to the Toll Roads or Toll Road Operations are charged to the Concessionaire, the Concessionaire shall be required to cover such utility charge until the assets have been disaggregated through the installation of separate meters. Promptly after the Effective Date, the Authority shall provide the Concessionaire sufficient information to enable it to register such utility accounts in the name of the Concessionaire, which registration shall occur promptly following receipt of such information; *provided* that to the extent any utility account registered to the Concessionaire covers service other than to the Toll Roads or Toll Road Operations, the Concessionaire shall be required to continue to allow such utility services to be provided under its account until the Concessionaire is able to disaggregate such utilities by installing, or causing the installation of, separate meters for the Toll Roads or Toll Road Operations and the other aggregated assets without affecting service. 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 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.

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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 with respect to the Toll Roads 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 or to name any road delivered to the Concessionaire after the Closing Date pursuant to this Agreement; *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 new name or change in name by the Authority in accordance with this Section 3.15 shall not result in such name 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 new name or change in name and shall reimburse the Concessionaire for all out-of-pocket and documented costs and expenses reasonably incurred by the Concessionaire in connection therewith.

(c) The Authority grants to the Concessionaire a non-exclusive, non-transferable, royalty-free license during the Term to use the names "Expreso Rafael Martínez Nadal" (for PR-20), "Autopista Luis A. Ferré" (for PR-52), "Autopista José Celso Barbosa Puerto Rico Highway 53" (for PR-53) and "Expreso Roberto Sánchez Vilella Expressway" (for PR-66) 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(f)(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, as applicable, 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.

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(ii) Delinquent Tolls. The Authority shall use its Reasonable Efforts to (A) collect delinquent 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 4, and (C) facilitate the implementation of the rights granted by the Authority under Article 7 and Schedule 4, including payment or reimbursement to the Concessionaire of any Toll Revenues (other than any Delinquent Non-Cash Tolls previously paid by the Authority to the Concessionaire) collected by or on behalf of the Concessionaire through such enforcement process. Delinquent tolls collected from toll violators in the Toll Roads promptly after the occurrence of the violation will be paid to the Concessionaire in accordance with the Disbursement Instructions. 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 the avoidance of doubt, any tolls not paid:

(A) in accordance with Section 1(b) of Schedule 4;

(B) as the result of any defect or operating failure of the RSS/BO (as defined in Schedule 12 to this Agreement) 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 (including the ETC Service Provider) 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);

(D) corresponding to the Authority's share of the DTL Extension Revenues pursuant to Section 7.2(g); and

(E) corresponding to the Authority's share of the DTLs Incremental Toll Revenues pursuant to Section 7.2(h).

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(ii) The Authority shall (a) pay any and all Delinquent Non-Cash Tolls in accordance with the Disbursement Instructions and the Escrow Agreements, and (b) should there be any deficiency in any payment made under subsection (a), pay any such deficiency (or cause any such deficiency to be paid) from funds on deposit in the Concessionaire Escrow Subaccount in accordance with and subject to Section 3.16(d)(iii) below and the terms of the New Escrow Agreement; *provided, however*, that to the extent that there are insufficient funds in the New Escrow Account or Concessionaire Escrow Subaccount, the Authority shall otherwise make such required payments in full, and such insufficiency of funds shall not in any way excuse the Authority of its obligation to pay in full any Delinquent Non-Cash Tolls (or reduce or modify such obligation).

(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 all Delinquent Non-Cash Tolls accrued during such Reporting Year, and

(B) in comparison to such Delinquent Non-Cash Tolls, 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.

(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 Parties shall cause each Contractor that maintains the electronic toll collection system for the Toll Roads (including the ETC Service Provider) to deliver such 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 Delinquent Non-Cash Tolls due and payable for any calendar month of any Reporting Year pursuant to Section 3.16(c)(iii):

(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) *New Escrow Account and Concessionaire Escrow Subaccount.*

(i) The Authority shall maintain (including in respect of the Required Balance and any other required minimum balance), at all times, the New Escrow Account and the Concessionaire Escrow Subaccount, in each case, in accordance with the terms of the New Escrow Agreement and this Agreement.

(ii) The Authority shall comply with all its obligations under the New Escrow Agreement, including, without limitation, the following:

(A) deposit or cause to be deposited into the New Escrow Account all Delinquent Amounts;

(B) as of the date hereof, allocate and transfer or cause to be allocated and transferred from the New Escrow Account in accordance with the New Escrow Agreement (or otherwise deposit or cause to be deposited from other sources of funds available at any time to the Authority) to the Concessionaire Escrow Subaccount an initial amount equal to the Initial Funding Amount; and

(C) hereinafter, subject to the provisions of Section 3.16(d)(v) below regarding the replenishment of the Concessionaire Escrow Subaccount to an amount equal to the Required Balance, at all times, cause to be maintained in the Concessionaire Escrow Subaccount a minimum cash balance at least equal to the Required Balance.

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(iii) The Parties confirm that the Escrow Agent is hereby authorized (and pursuant to the New Escrow Agreement) by the Authority and the Concessionaire to apply the funds on deposit in the Concessionaire Escrow Subaccount for the immediate payment of any Delinquent Non-Cash Tolls due from the Authority to the Concessionaire under this Agreement. If, at any time (including following an application of funds pursuant to this Section 3.16(d)(iii)), the funds on deposit in the Concessionaire Escrow Subaccount shall be less than the Required Balance, the Authority confirms that the Escrow Agent is authorized by the Authority to immediately transfer (and the Authority shall otherwise cause to be transferred) from the New Escrow Account to the Concessionaire Escrow Subaccount any Delinquent Amounts in respect of the Toll Roads in accordance with the New Escrow Agreement (or the Authority shall otherwise deposit or cause to be deposited from other sources of funds) until, after giving effect to such transfer or deposit, (x) there shall be no outstanding Delinquent Non-Cash Tolls or other amounts owed by the Authority to the Concessionaire, and (y) after giving effect to any such payment, the amount on deposit in the Concessionaire Escrow Subaccount shall be equal to the Required Balance.

(iv) The Authority shall not create (or permit the creation of) any Encumbrance over the New Escrow Account or the Concessionaire Escrow Subaccount.

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(v) Notwithstanding any provision to the contrary set forth herein and without prejudice to the other rights and remedies of the Concessionaire under this Agreement or the obligations of the Authority with respect to this Agreement, the Concessionaire Escrow Subaccount and the payment of Delinquent Non-Cash Tolls as required under this Agreement, in the event that, at any time, (x) there is a shortfall in the Required Balance on deposit in the Concessionaire Escrow Subaccount that has not been covered or replenished in full within ninety (90) days of the occurrence of such shortfall, or (y) any portion of Delinquent Non-Cash Tolls due and payable pursuant to this Agreement remains outstanding (the matters contemplated in clauses (x) and (y), collectively, the "Escrow Shortfall"), and such Escrow Shortfall shall not have been cured within ninety (90) days from the occurrence thereof, the Concessionaire shall be entitled, in its sole and absolute discretion, to increase temporarily the toll charges applicable to the Toll Roads to the extent required in order to recover the Escrow Shortfall; *provided that*, (1) such temporary increase in tolls shall (a) not exceed the Maximum Temporary Increase and (b) be excluded for purposes of determining the amount of any Delinquent Non-Cash Tolls payable to the Concessionaire while the Maximum Temporary Increase is in effect, and (2) the Concessionaire shall comply with the notice requirements set forth in Section 2.1(c) of Schedule 4. Any amounts collected as a result of this temporary increase in toll levels shall be deposited in the New Escrow Account and distributed in accordance with the New Escrow Agreement provisions (such provisions include the funding of the Concessionaire Escrow Subaccount to cover the Escrow Shortfall). For the avoidance of doubt, an Authority Default due to the existence of an Escrow Shortfall shall be deemed immediately and automatically cured once the deficiency in the Required Balance on deposit in the Concessionaire Escrow Subaccount has been covered or replenished in full and no Delinquent Non-Cash Tolls due and payable remain outstanding, either from a Maximum Temporary Increase or by some other payment by the Authority.

(e) *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. The Concessionaire shall provide the Commonwealth Police and other emergency service providers with (i) office space (including use of office furniture and equipment), parking space and other space (such as space for crashed or abandoned vehicles, if applicable) at the Toll Road Facilities and (ii) maintenance and upkeep services relating to such space, office furniture and equipment, in each case as and to the extent provided to such emergency service providers by the Authority prior to the Closing Date and at no cost to such emergency service providers (except out-of-pocket expense reimbursements to the Concessionaire from an emergency service provider, as the same may be agreed upon between the Concessionaire and such emergency service provider).

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

(i) Subject to Section 3.16(f)(ii), during the Term the Concessionaire shall pay to the Authority the following amounts 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: (x) six hundred thousand dollars (\$600,000) payable on or before the fourteenth (14th) Business Day after the Closing and on each anniversary of the Closing Date, and (y) in addition to the amount payable pursuant to the preceding subclause (i), six hundred thousand dollars (\$600,000) payable on each seventh (7th) anniversary of the Closing Date. The amount payable described in Section 3.16(f)(i)(x) shall be adjusted annually on each anniversary of the Closing Date by one and one-half percent (1.5%) plus the greater of (A) zero and (B) the percentage equal to the percentage increase in the Index between the Index for the month that is two months prior to the same month of the Closing Date for the anniversary period under review and the Index for the equivalent month of the immediately preceding year; *provided* that the amount to be adjusted shall be based on the results of the calculation from the preceding review period. The amount payable described in Section 3.16(f)(i)(y) shall be adjusted on each seventh (7th) anniversary of the Closing Date by 10.98% plus the greater of (Y) zero and (Z) the percentage equal to the percentage increase in the Index between the Index for the month that is two months prior to the seventh (7th) anniversary of the Closing Date under review and the Index for the equivalent month of the seventh (7th) preceding year; *provided* that the amount to be adjusted shall be based on the results of the calculation from the preceding review period.

(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(f)(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 5.10 of Act No. 20 of the Legislative Assembly of Puerto Rico, enacted on April 10, 2017, 25 P.R. Laws Ann. § 3650, as amended, also known as the Puerto Rico Department of Public Safety Act, or any Law succeeding thereto (the "Public Safety 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 Public Safety Act. In addition, the Executive Director, the Secretary of the Department of Transportation and Public Works or their respective designees, 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.

Section 3.19 Toll Road Employees Hired by the Concessionaire.

(a) The Concessionaire agrees that the Authority Employees hired by it pursuant to Section 2.5(j) shall enjoy the following additional protections: (A) such Authority Employee's job will be guaranteed for a minimum period of two (2) years, and (B) an Authority Employee may only be separated from the position during the aforesaid period of two (2) years if such Authority Employee engages in behavior that warrants dismissal or constitutes just cause under Act 80 of May 30, 1970, as amended.

(b) Failure of the Concessionaire to comply with any of the covenants included in this Section 3.19 will constitute a material breach of this Agreement.

Section 3.20 ETC Service Terms. The Concessionaire and the Authority shall comply with, perform and observe the ETC Service Terms.

ARTICLE 4

CAPITAL IMPROVEMENTS

Section 4.1 Authority Capital Improvements.

(a) *Authority Capital Improvement Projects.* The Authority, at its sole cost and expense, shall with reasonable diligence complete (or cause the completion of) (i) the Retained Capital Improvement Projects, (ii) the ORT Improvement Project (including the ORT Change), (iii) the Canopy Demolition Project, (iv) if and when undertaken by the Authority, the CD Project and (v) if and when undertaken by the Authority, the DTL Extension Project. The

Authority shall complete (or cause the completion of) each Authority Capital Improvement Project in accordance with the applicable Authority Capital Improvement Contract. The design plans and specifications for each Authority Capital Improvement Project shall not materially deviate from the applicable specifications set forth in such Authority Capital Improvement Contract (*provided* that the Authority and the applicable Contractor may agree to execute Reasonable Change Orders or Deviations with respect to the applicable specifications following consultation with the Concessionaire pursuant to the Project Interface Plan). For the avoidance of doubt, (x) nothing in this Agreement shall require the Authority to undertake the CD Project or the DTL Extension Project and (y) amendments to the ORT Improvement Project Contract necessary or desirable (in the reasonable discretion of the Authority) in order to implement the ORT Change shall constitute a pre-agreed-upon Reasonable Change Order or Deviation. In the event the Authority, in its discretion, determines it will undertake the CD Project or the DTL Extension Project, or both such projects, it shall do so in accordance with the applicable Authority Capital Improvement Contract, the applicable EPC Specifications, the CD MOT Plan (in the case of the CD Project) and Schedule 4 (in the case of the DTL Extension Project) and the other requirements set forth in this Agreement, which requirements may be amended by the Parties to reflect any additional rights or obligations of the Parties with respect to the CD Project or the DTL Extension Project, as applicable.

(b) *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 the Authority Project Work 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.

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

(i) Subject to this Section 4.1(c), the Authority shall have complete control and management of the Authority Capital Improvement Projects, shall effectively direct and supervise the Authority Project Work and shall promptly enforce all the Authority Capital Improvement Contracts in accordance with their respective terms (including the completion of all "punch list" items following Substantial Completion of the applicable Authority Project Work, if applicable, and other work in accordance therewith). Upon the execution of any Authority Capital Improvement Contract by the Authority or amendment thereto, the Authority shall promptly provide a copy of such Authority Capital Improvement Contract and thereafter shall promptly provide a copy of any amendment thereto to the Concessionaire. In the case of the CD Project (if applicable), prior to the Authority undertaking any Authority Project Work with respect thereto, the Authority shall provide the Concessionaire with a maintenance of traffic plan (the "CD MOT Plan"), setting forth information with respect to the coordination, sequencing, construction and implementation of such project, which plan shall be subject to the Concessionaire's written approval prior to commencement of such Authority Project Work, such approval not to be unreasonably withheld, conditioned or delayed; *provided, however*, that the Parties acknowledge and agree that the CD Project could materially interfere with Toll Road

Operations during the course of construction and that therefore the Concessionaire's general concern or conclusion that such material interference will or might occur shall not, in and of itself, constitute a reasonable basis upon which to withhold such approval, in light of the CD Project's anticipated benefits to the Concessionaire and Toll Road Operations upon completion thereof.

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(ii) Prior to acknowledging, consenting to or accepting Substantial Completion, Partial Acceptance or Final Acceptance, as the case may be, of any Authority Project Work, the Authority shall (A) provide the Concessionaire with an opportunity to inspect such Authority Project Work and (B) have received from the Concessionaire the Concessionaire's prior written approval consenting to acceptance by the Authority of the work as having satisfied the requirements for Substantial Completion, Partial Acceptance or Final Acceptance, as applicable, which approval may be withheld only if such work does not comply with any of (w) the Operating Standards, (x) the applicable Authority Capital Improvement Contract, (y) the CD MOT Plan (in the case of the CD Project) or Schedule 4 (in the case of the DTL Extension Project) or (z) the applicable EPC Specifications (in the case of the CD Project or the DTL Extension Project). No approval, review or inspection by the Concessionaire of any Authority Project Work pursuant to this Section 4.1(c)(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 any Authority Capital Improvement Project or with respect to the applicable Authority Capital Improvement Contract. For the avoidance of doubt, any determination made by the Concessionaire with respect to compliance with the Operating Standards pursuant to this Section 4.1(c)(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 Final Acceptance of an Authority Capital Improvement Project (or Partial Acceptance of a portion thereof (in the case of the ORT Improvement Project, Partial Acceptance shall be on a gantry-by-gantry basis and, with respect to the gantry to be installed in the southbound direction in connection with the ORT Change, shall also include Partial Acceptance of the new loop ramp described in Schedule 5 and the change with respect to the existing diamond ramp described therein)), pursuant to Section 4.1(c)(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) (A) all of the Authority's right, title and interest in, to and under any applicable warranty or any other provision that inures to the Authority's benefit under the applicable Authority Capital Improvement Contract (or portion thereof) 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"), (B) with respect to the ORT Improvement Project, such portions of the ORT Improvement Project Contract relating to operations and maintenance of such gantry and (C) any other provisions of the applicable Authority Capital Improvement Contract pursuant to which a Contractor is required to provide services related to the applicable Authority Capital Improvement Project (or portion thereof) following such Final Acceptance (or Partial Acceptance of a portion thereof). The Authority shall also use its Reasonable Efforts to assist the Concessionaire with the enforcement of the Contract Warranties so assigned, transferred or otherwise conveyed; *provided* that the Authority shall retain, and nothing in this Section 4.1(c)(iii) or otherwise shall entitle the Concessionaire to receive, any liquidated

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damages paid or payable to the Authority by a Contractor pursuant to any Authority Capital Improvement Contract. From and after Partial Acceptance of a gantry with respect to the ORT Improvement Project, Substantial Completion of the CD Project, if applicable, or Substantial Completion of the DTL Extension Project, if applicable, (x) the applicable project (or, in the case of the ORT Improvement Project, the applicable gantry) shall constitute a part of the Toll Roads for all purposes under this Agreement and (y) the Concessionaire shall possess, on an exclusive basis, the same rights and obligations with respect to such project (or, in the case of the ORT Improvement Project, such gantry) 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 that the Authority and its contractors shall have the right to access and perform work with respect to the punch list and otherwise as necessary to achieve Final Acceptance of the applicable project. Further, from and after Final Acceptance of the ORT Improvement Project, the CD Project, if applicable, or the DTL Extension Project, if applicable (or Partial Acceptance of a portion thereof) pursuant to Section 4.1(c)(ii), the Authority shall not have any further rights or obligations under Section 4.1(d)(i) or (ii) with respect thereto (or with respect to such portion thereof, as applicable). From and after Final Acceptance of any Retained Capital Improvement Project or the Canopy Demolition Project (or Partial Acceptance of a portion thereof) pursuant to Section 4.1(c)(ii), the Authority shall not have any further rights or obligations under Section 4.1(d)(i) or (ii) with respect thereto (or with respect to such portion thereof, as applicable); *provided*, for the avoidance of doubt, that the areas upon which such work is located shall constitute part of the Toll Roads at all times, including prior to any such Final Acceptance (and, if applicable, prior to any such Partial Acceptance).

(d) *Concession Compensation.* Notwithstanding anything in this Agreement to the contrary, neither (i) 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 Authority Project Work (including any such work covered by any Contract Warranties) to comply with the applicable 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 Concessionaire shall be entitled to Concession Compensation as and to the extent set forth in Section 15.1) in either of the following cases: (1) if and to the extent that (x) such Authority Project 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, the applicable Authority Capital Improvement Contract, Section 2 of Schedule 5 (in the case of the ORT Change) or the CD MOT Plan (in the case of the CD Project)) and (y) such material interference results in Losses or reduced Toll Road Revenues and shall not have been the result of a Concessionaire Default, (2) under the circumstances described under clause (xi) of the definition of "Compensation Event" with respect to the ORT Change or (3) if Substantial Completion of the entire ORT Improvement Project (including the ORT Change) has not been achieved on or before November 30, 2025. For the avoidance of doubt, no Concession Compensation shall be payable as a result of the late completion or non-completion of any Authority Capital Improvement Project, except as described in clause (3) of the foregoing sentence.

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(e) *Change in Project Interface Plan.* The Authority may propose changes to the Project Interface Plan from time to time, with written notice to the Concessionaire at least twenty (20) Business Days prior to the date such changes are to take effect, which notice shall include details regarding the changes to be made and the effective date of such changes. The Concessionaire shall provide notice to the Authority not later than ten (10) Business Days after receipt of notice from the Authority, informing the Authority whether, in the Concessionaire's reasonable discretion, the Concessionaire has determined that any such proposed change would materially interfere with Toll Road Operations and, if so, providing information supporting such conclusion (and failure to deliver such notice shall be deemed to be a determination by the Concessionaire that the proposed change would not materially interfere with Toll Road Operations). Any proposed change that would not materially interfere with Toll Road Operations shall take effect on the effective date identified by the Authority in its written notice. If, however, any such proposed change would materially interfere with Toll Road Operations, such change shall be subject to the Concessionaire's prior written approval before becoming effective, such approval not to be unreasonably withheld, conditioned or delayed; *provided* that, if such approval is not granted, the Parties shall, at the request of either Party, work together in good faith to modify the Project Interface Plan to accommodate the Authority while minimizing any interference with Toll Road Operations to the fullest extent reasonably practicable.

Section 4.2 Concessionaire Capital Improvements.

(a) *Concessionaire Capital Improvement Projects.* The Concessionaire's capital improvement obligations shall be comprised of (i) the Accelerated Safety Upgrades, (ii) the Concessionaire Bidirectional Project, (iii) the ITS Project, and (iv) any additional capital improvement projects required to be completed by the Concessionaire during the Term in accordance with the provisions 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 Concessionaire Capital Improvement Projects and any additional capital improvement projects required to be completed by the Concessionaire during the Term in accordance with the provisions of this Agreement, in a good and workmanlike manner. The requirements with respect to each tier of the Accelerated Safety Upgrades and of the ITS Project shall be satisfied by the Concessionaire on or before the applicable deadline set forth in Schedule 6. The Authority at its option may cancel or postpone the commencement of any Concessionaire Capital Improvement Project (or with respect to the Accelerated Safety Upgrades, tier thereof) by giving prior written notice to the Concessionaire; *provided* that (i) to the extent that (A) any such 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 project concerning revised timing and

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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 shall not be in breach of this Section 4.2(a) for failure to satisfy the requirements with respect to a tier of the Accelerated Safety Upgrades or of the ITS Project by the applicable deadline set forth in Schedule 6 if such failure is caused directly by (i) the postponement or cancellation of such project (or with respect to the Accelerated Safety Upgrades, tier thereof) 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 occurrence of a Delay Event. The Concessionaire's obligation to satisfy the requirements of each Concessionaire Capital Improvement Project (or with respect to the Accelerated Safety Upgrades, tier thereof) 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 any failure of the Authority or any other applicable Governmental Authority to issue in a timely fashion any such Authorization may give rise to a Delay Event hereunder), and the Authority agrees not to withhold, condition or delay unreasonably the issuance of any such Authorizations to be issued by the Authority and to use its Reasonable Efforts to assist the Concessionaire in obtaining Authorizations from other applicable Governmental Authorities.

(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, with respect to the Concessionaire's non-compliance with the following requirements: (i) ratings or standards as they apply to guardrails or other elements of the Tolls Roads, (ii) with respect to pavement, the operating ratings set forth in Volume I, Chapter B of the Operating Standards for both concrete and bituminous roadway wearing surfaces, including pavement international roughness index, rutting, faulting and cracking and (iii) with respect to bridges, the requirements set forth in Table G.3.4 in Section G.3.4 of Schedule 15A, in each case, (x) if such non-compliance exists as of the Closing Date and is to be addressed by the work contemplated in the Tier 1 Works (with respect to (i) above) or the Tier 2 Works or the Tier 3 Works, as applicable (with respect to (ii) and (iii) above) and (y) so long as the Concessionaire complies with the requirements of Schedule 6 other than with any deadlines provided therein. Such non-compliance shall only be excused until the requirements of the applicable tier of the Accelerated Safety Upgrades have been satisfied by the Concessionaire, as determined by the Authority pursuant to this Agreement, after which time compliance with such Operating Standards shall be required (taking into account, with respect to Tier 2 Works and Tier 3 Works, respectively, the percentage compliance thresholds set forth in Schedule 6). For the avoidance of doubt, except as described in this Section 4.2(b), the Concessionaire shall be required to comply with all other Operating Standards prior to, during and following performance of the work related to the Concessionaire Capital Improvement Projects.

(c) *Liquidated Damages.* In the event that the requirements with respect to any tier of the Accelerated Safety Upgrades or with respect to the ITS Project are not satisfied by the Concessionaire on or before the applicable deadline set forth in Schedule 6, then the Concessionaire shall pay the Authority, as liquidated damages and not as a penalty, the applicable amount set forth in Section 5 of Schedule 6 for each day after such deadline that such requirements have not been satisfied. Such liquidated damages shall be the exclusive remedy of


the Authority for the failure of the Concessionaire to comply by the applicable deadline with the requirements set forth in Schedule 6; *provided* that such damages shall not limit the Authority's remedies with respect to (i) a Persistent Concessionaire Default with respect to such failure or (ii) any other breach hereunder or any other Concessionaire Default that relates to any Concessionaire Capital Improvement Project, including in each case, without limitation, the remedies of the Authority set forth in Section 16.1(b).

(d) *Cooperation.* The Authority shall use its Reasonable Efforts to cooperate with the Concessionaire in connection with the completion of the Concessionaire 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.

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 4, 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 the 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 (including, in the case of a Major Project, the guidelines set forth in Schedule 19) 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.

2/9/2020
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(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 the