

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re: ITR CONCESSION COMPANY LLC, <i>et al.</i> , ¹ Debtors.)))))))	Chapter 11 Case No. 14-34284 (PSH) (Jointly Administered)
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**PLAN SUPPLEMENT TO JOINT PREPACKAGED PLAN OF REORGANIZATION OF
ITR CONCESSION COMPANY LLC, ET AL., PURSUANT TO CHAPTER 11
OF THE BANKRUPTCY CODE (WITH TECHNICAL MODIFICATIONS)**

Exhibit A	Form of New Organizational Documents
	Exhibit A-1 Form of Reorganized Holdings LLC Agreement Exhibit A-2 Form of Reorganized Statewide LLC Agreement Exhibit A-3 Form of Reorganized Concessionaire LLC Agreement
Exhibit B	New Debt Documents
	Exhibit B-1 Form of New First Lien Credit Agreement Exhibit B-2 Form of New Second Lien Credit Agreement Exhibit B-3 Form of New Intercreditor Agreement
Exhibit C	Post-Confirmation Date Directors and Officers
Exhibit D	Form of Omnibus Services Agreement
Exhibit E	Form of New Security Documents
	Exhibit E-1 Form of New First Lien Security Agreement Exhibit E-2 Form of New First Lien Leasehold Mortgage Exhibit E-3 Form of New First Lien Pledge Agreement Exhibit E-4 Form of New Second Lien Security Agreement Exhibit E-5 Form of New Second Lien Leasehold Mortgage Exhibit E-6 Form of New Second Lien Pledge Agreement

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: ITR Concession Company LLC (0293); ITR Concession Company Holdings LLC (0285); and Statewide Mobility Partners LLC (1312). The location of the Debtors’ service address for the purposes of these chapter 11 cases is: c/o ITR Concession Company LLC, 205 North Michigan Avenue, Suite 2510, Chicago, Illinois 60601.



Exhibit E-7 Form of Depository Agreement	
Exhibit F	Confirmation Order Findings of Fact and Conclusions of Law
Exhibit G	Reorganization Transaction Steps Memorandum

Exhibit A

Form of New Organizational Documents

Exhibit A-1

Form of Reorganized Holdings LLC Agreement

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

OF

ITR CONCESSION COMPANY HOLDINGS LLC

Dated as of [____], 2014

**THE LIMITED LIABILITY COMPANY INTERESTS (THE “INTERESTS”)
REPRESENTED BY THIS AMENDED AND RESTATED LIMITED LIABILITY
COMPANY AGREEMENT WERE ISSUED IN RELIANCE UPON THE EXEMPTION
FROM THE REGISTRATION REQUIREMENTS OF THE UNITED STATES
SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) PROVIDED
BY SECTION 1145 OF THE UNITED STATES BANKRUPTCY CODE, AND HAVE
NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OR ANY STATE
SECURITIES LAWS.**

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
ITR CONCESSION COMPANY HOLDINGS LLC**

TABLE OF CONTENTS

	Page
ARTICLE 1. FORMATION OF THE COMPANY	2
Section 1.1 Formation of the Company	2
Section 1.2 Name	2
Section 1.3 Business of the Company.....	2
Section 1.4 Location of Principal Place of Business	2
Section 1.5 Registered Agent.....	2
Section 1.6 Term.....	2
ARTICLE 2. DEFINITIONS.....	2
Section 2.1 Definitions.....	2
Section 2.2 Rules of Interpretation	7
ARTICLE 3. UNITS; CAPITAL CONTRIBUTIONS.....	8
Section 3.1 Units.....	8
Section 3.2 Capital Contributions	10
Section 3.3 Interest on Capital Contributions	10
Section 3.4 Withdrawal and Return of Capital Contributions	10
Section 3.5 Form of Capital Contribution.....	10
Section 3.6 Additional Units; Additional Members	10
ARTICLE 4. ALLOCATION OF NET INCOME AND NET LOSS	11
Section 4.1 General.....	11
Section 4.2 Other Allocation Provisions.....	11
Section 4.3 Allocations for Income Tax Purposes.....	14
Section 4.4 Withholding	14
ARTICLE 5. DISTRIBUTIONS	14
Section 5.1 Distributions.....	14
Section 5.2 Tax Distributions	15
Section 5.3 Limitations on Distributions	15
Section 5.4 Reserves.....	16
ARTICLE 6. BOOKS OF ACCOUNT, RECORDS AND REPORTS, FISCAL YEAR	16
Section 6.1 Books and Records	16
Section 6.2 Annual Reports	16
Section 6.3 Financial Reports	16
Section 6.4 Fiscal Year	17
ARTICLE 7. POWERS, RIGHTS AND DUTIES OF THE MEMBERS.....	17

	Page
Section 7.1	Limitations 17
Section 7.2	Liability 17
Section 7.3	Priority 17
Section 7.4	Member Standard of Care 17
Section 7.5	Preemptive Rights 17
Section 7.6	Member Actions 19
Section 7.7	Special Member Approval Requirements 19
Section 7.8	Corporate Opportunity 20
Section 7.9	Change in Control Put and Call Rights 20
ARTICLE 8. POWERS, RIGHTS AND DUTIES OF THE BOARD OF DIRECTORS 21
Section 8.1	Establishment of the Board 21
Section 8.2	Authority 21
Section 8.3	Board of Directors 22
Section 8.4	Officers, Agents and Employees 23
Section 8.5	Company Funds 25
Section 8.6	Other Activities and Competition 25
Section 8.7	Exculpation 25
Section 8.8	Limits on the Power of the Board of Directors 25
Section 8.9	Tax Matters Partner 26
Section 8.10	Indemnification of the Board of Directors, Officers and Agents 26
Section 8.11	Expenses 27
Section 8.12	Permitted Reorganization 27
ARTICLE 9. TRANSFERS OF INTEREST BY MEMBERS 27
Section 9.1	General 27
Section 9.2	Requirements 28
Section 9.3	Transfer of Interest of Members 28
Section 9.4	Consequences of Transfers Generally 29
Section 9.5	Capital Account; Percentage Interest 30
Section 9.6	Additional Filings 30
Section 9.7	Indirect Transfers 30
Section 9.8	Tag-Along Rights 30
Section 9.9	Drag-Along Right 32
ARTICLE 10. RESIGNATION OF MEMBERS; TERMINATION OF COMPANY; LIQUIDATION AND DISTRIBUTION OF ASSETS 33
Section 10.1	Resignation of Members 33
Section 10.2	Dissolution of Company 34
Section 10.3	Distribution in Liquidation 34
Section 10.4	Final Reports 35
Section 10.5	Rights of Members 35
Section 10.6	Deficit Restoration 35
Section 10.7	Termination 36
ARTICLE 11. NOTICES 36
Section 11.1	Notices 36

	Page
ARTICLE 12. AMENDMENT OF AGREEMENT	36
Section 12.1 Amendments	36
Section 12.2 Amendment of Certificate.....	37
Section 12.3 Power of Attorney.....	37
ARTICLE 13. MISCELLANEOUS	37
Section 13.1 Confidentiality	37
Section 13.2 Entire Agreement	38
Section 13.3 Governing Law	38
Section 13.4 Severability	38
Section 13.5 Effect.....	38
Section 13.6 Captions	39
Section 13.7 Counterparts.....	39
Section 13.8 Waiver of Partition.....	39
Section 13.9 Waiver of Trial by Jury.....	39
Section 13.10 Jurisdiction.....	39

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

OF

ITR CONCESSION COMPANY HOLDINGS LLC**

This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT of ITR CONCESSION COMPANY HOLDINGS LLC (the “Company”), dated as of [____], 2014, is entered into by and among the Members listed on the signature pages hereto. Capitalized terms shall have the meanings set forth in Section 2.1.

RECITALS

WHEREAS, the Certificate of Formation of the Company was filed with the Office of the Secretary of State of Delaware on January 12, 2006;

WHEREAS, on January 19, 2006 the Member at such time entered into a limited liability company agreement in respect of the Company (the “Original Agreement”);

WHEREAS, on [____], 2014 the Company and certain of its Affiliates filed voluntary petitions in the United States Bankruptcy Court for the Northern District of Illinois initiating cases under chapter 11 of the United States Bankruptcy Code;

WHEREAS, pursuant to the Company’s Joint Prepackaged Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated [____], as amended through the date of this Agreement (the “Plan”), the Company is issuing new Interests to certain lenders (the “Lender Members”) in satisfaction of outstanding indebtedness to such lenders;

WHEREAS, it is intended that the issuance of Interests to the Lender Members pursuant to the Plan in satisfaction of that certain indebtedness described in the Plan be treated as a taxable transfer of a proportionate interest in the Company’s assets to the lenders in satisfaction of their debt, followed by the formation of the Company as a partnership for U.S. federal income tax purposes, as described in Revenue Ruling 99-5, 1991-1 CB 434, Situation 1; and

WHEREAS, in connection with the consummation of the transactions contemplated by the Plan, the parties hereto desire to enter into this Amended and Restated Limited Liability Company Agreement (this “Agreement”) to amend and restate the Original Agreement in its entirety and to continue the existence of the Company on the terms set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties hereto agree as follows:

ARTICLE 1. FORMATION OF THE COMPANY

Section 1.1 Formation of the CompanyThe Company was formed as a limited liability company under the Act by the filing of the Certificate with the Office of the Secretary of State of Delaware on January 12, 2006. The Company shall accomplish all filing, recording, publishing and other acts necessary or appropriate for compliance with all requirements for operation of the Company as a limited liability company under this Agreement and the Act and under all other laws of the State of Delaware and such other jurisdictions in which the Company determines that it may conduct business.

Section 1.2 NameThe name of the Company is “ITR Concession Company Holdings LLC”, as such name may be modified from time to time by the Board of Directors as it may deem advisable.

Section 1.3 Business of the CompanySubject to the limitations on the activities of the Company otherwise specified in this Agreement, the purpose and business of the Company shall be the conduct of any business or activity that may be conducted by a limited liability company organized pursuant to the Act.

Section 1.4 Location of Principal Place of BusinessThe location of the principal place of business of the Company shall be [] or such other location as may be determined by the Board of Directors. In addition, the Company may maintain such other offices as the Board of Directors may deem advisable at any other place or places within or without the State of Delaware.

Section 1.5 Registered AgentThe registered agent for the Company shall be The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 or such other registered agent as the Board of Directors may designate from time to time.

Section 1.6 TermThe term of the Company commenced on the date of filing of the Certificate, and shall be perpetual unless the Company is earlier dissolved and terminated in accordance with the provisions of this Agreement and the Act.

ARTICLE 2. DEFINITIONS

Section 2.1 DefinitionsThe following terms used in this Agreement shall have the following meanings.

“Acceptance Notice” has the meaning set forth in Section 9.8(b).

“Act” means the Delaware Limited Liability Company Act, 6 Del. Code §§ 18-101 *et seq.*, as in effect on the date hereof and as it may be amended hereafter from time to time.

“Acting in Concert” means: (a) knowing participation in a joint activity or interdependent conscious parallel action towards a common goal, whether or not pursuant to an express agreement, or (b) a combination or pooling of Interests for a common purpose pursuant

to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

“Additional Member” means a Person issued Units and admitted as a Member pursuant to Section 3.6.

“Adjusted Capital Account” has the meaning set forth in Section 4.2(b).

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by or under common Control with such Person. For purposes of the foregoing, “Control” means the possession, directly or indirectly, of the power to direct the management or policies of a Person, whether through ownership or voting of securities, by contract or otherwise. Notwithstanding the foregoing, in no event shall any Member or any of its Affiliates be deemed to be an Affiliate of any other Member or any of its Affiliates (other than the Company) solely by reason of such Member’s Control of the Company.

“Agreement” has the meaning set forth in the Recitals.

“Assignees” has the meaning set forth in Section 9.4(d).

“Available Cash” means at the time of any distribution the excess of (a) all cash then held by the Company to the extent not otherwise required to pay Company expenses over (b) the amount of reserves established by the Company in accordance with Section 5.4.

“Bankruptcy Code” shall mean title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

“Beneficially Own”, “Beneficially Owned” or “Beneficially Owning” means, with respect to any Person and any asset, that such Person is the “beneficial owner” (as such term is defined in Rule 13d-3 and Rule 13d-5 promulgated under the Exchange Act) of such asset.

“Board of Directors” means the board of directors of the Company established pursuant to Section 8.1.

“Business Day” means any day other than a Saturday, Sunday or a day on which commercial banks are authorized or required to close in New York City, New York.

“Buyer” has the meaning set forth in Section 9.8(a).

“Capital Account” means with respect to each Member the account established and maintained for such Member on the books of the Company in compliance with Regulation §§ 1.704-1(b)(2)(iv) and 1.704-2, as amended.

“Capital Contribution” means a contribution to the capital of the Company.

“Certificate” means the Certificate of Formation of the Company, as amended, modified or supplemented from time to time.

“Change in Control” means (a) any Person or group of Persons Acting in Concert acquiring Interests constituting a Percentage Interest of more than 50% or (b) the Company or its subsidiaries selling or transferring all or substantially all of the assets of the Company and its subsidiaries, determined on a consolidated basis.

“Cintra” means Cintra Infraestructuras, S.A. and its Affiliates.

“Code” means the Internal Revenue Code of 1986, as amended from time to time (or any succeeding law).

“Company” has the meaning set forth in the Preamble.

“Concession Agreement” means that certain Indiana Toll Road Concession and Lease Agreement, dated April 12, 2006, by and between the Indiana Finance Authority and the Concessionaire, as amended, supplemented or modified.

“Concessionaire” means ITR Concession Company LLC, a Delaware limited liability company and wholly owned subsidiary of the Company.

“Control” has the meaning set forth in the definition of “Affiliate” in this Article 2, and the terms “Controlling” and “Controlled” shall have correlative meanings.

“Drag-Along Notice” has the meaning set forth in Section 9.9(a).

“Drag-Along Sale” means (a) a transaction or series of related transactions pursuant to which a Buyer and its Affiliates have agreed to purchase or otherwise acquire all (but not less than all) of the outstanding Units (other than any Units already Beneficially Owned by such Buyer and its Affiliates), (b) any merger or consolidation of the Company with or into any other corporation or entity (other than transactions solely involving the merger or consolidation of a wholly owned subsidiary with or into the Company or another wholly owned subsidiary of the Company), or (c) the sale, transfer or other disposition of all or substantially all of the assets or business of the Company and its subsidiaries (determined on a consolidated basis) which is followed by the dissolution of the Company and the distribution to the Members of the net proceeds of such sale in accordance with Article 10.

“Drag-Along Seller” means a Member or group of Members that, together with the Buyer in the applicable Drag-Along Sale (to the extent such Buyer holds Units prior to such Drag-Along Sale), collectively Beneficially Own Units representing a Percentage Interest of more than 50%.

“Dragged Members” means collectively, with respect to any Drag-Along Sale, all of the Members to whom a Drag-Along Notice with respect to such Drag-Along Sale is given pursuant to Section 9.9(a).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended.

“Expiration Date” has the meaning set forth in Section 9.8(b).

“Family Members” means, with respect to any natural Person, such Person’s spouse, children, parents and lineal descendants of such Person’s parents (in each case, natural or adopted).

“Family Trusts” means, with respect to any natural Person, a trust, limited partnership or limited liability company benefiting solely such individual and/or the Family Members of such individual.

“Fiscal Year” has the meaning set forth in Section 6.4.

“Indemnified Party” has the meaning set forth in Section 8.10(a).

“Interest” means the entire ownership interest of a Member in the Company at any particular time, including such Member’s interest in the capital, profits, losses and distributions of the Company.

“Lender Members” has the meaning set forth in the Recitals.

“Liquidator” has the meaning set forth in Section 10.2(b).

“Macquarie” means Macquarie Infrastructure Partners and Macquarie Atlas Roads and their Affiliates.

“Majority-in-Interest of the Members” means, at any time, Members whose aggregate Percentage Interest at such time exceeds 50%.

“Member” means each of the Persons listed on the signature pages attached hereto, as well as each Substituted Member and each Additional Member.

“Net Income” and “Net Loss” mean, for any period, the income or loss of the Company, respectively, for such period as determined in accordance with the method of accounting followed by the Company for U.S. federal income tax purposes, including, for all purposes, any income exempt from tax and any expenditures of the Company which are described in Code Section 705(a)(2)(B); provided, however, that in determining Net Income and Net Loss and every item entering into the computation thereof, solely for the purpose of adjusting the Capital Accounts of the Members (and not for tax purposes), (a) any income, gain, loss or deduction attributable to the taxable disposition of any Company asset shall be computed as if the adjusted basis of such Company asset on the date of such disposition equaled its book value as of such date, (b) if any Company asset is distributed in-kind to a Member, the difference between its Value and its book value at the time of such distribution shall be treated as gain or loss, and (c) any depreciation, cost recovery and amortization as to any Company asset shall be computed by assuming that the adjusted basis of such Company asset equaled its book value determined under the methodology described in Regulation §1.704-1(b)(2)(iv)(g)(3); and

provided, further, that any item (computed with the adjustments in the preceding proviso) allocated under Section 4.2 shall be excluded from the computation of Net Income and Net Loss.

“Omnibus Services Agreement” means that certain Omnibus Services Agreement, dated as of the date of this Agreement, by and among the Company and the Sponsors.

“Original Agreement” has the meaning set forth in the Recitals.

“Other Member” has the meaning set forth in Section 9.8(a).

“Percentage Interest” means, with respect to each Member, a fraction, expressed as a percentage, the numerator of which is the number of Units held by such Member and the denominator of which is the aggregate number of Units held by all Members.

“Permitted Reorganization” has the meaning set forth in Section 8.12.

“Permitted Transferee” means (a) with respect to each Member, any Affiliate, Family Member or Family Trust of such Member, or the Company and (b) with respect to any Member that is an investment fund or vehicle of an investment fund (or investment funds), (i) any other investment vehicle or fund of which such Member or an Affiliate thereof serves as the general partner or discretionary manager or advisor and (ii) solely in connection with a pro rata distribution by such investment fund or vehicle, any general partner, limited partner or other investor in such investment fund or vehicle.

“Person” means any individual, partnership, limited liability company, association, corporation, trust or other entity.

“Plan” has the meaning set forth in the Recitals.

“Presumed Tax Rate” means, for any Fiscal Year, the highest effective combined U.S. federal, state and local income tax rate applicable during such Fiscal Year to a natural person residing in New York, NY, taxable at the highest marginal U.S. federal income tax rate and the highest marginal State of New York and City of New York income tax rates (after giving effect to the U.S. federal income tax deduction for such state and local income taxes and taking into account the effects of Code Sections 67 and 68).

“Regulation” means a Treasury Regulation promulgated under the Code.

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

“Seller” has the meaning set forth in Section 9.8(a).

“Sponsors” means Cintra and Macquarie.

“Statewide” means Statewide Mobility Partners LLC, a Delaware limited liability company, or other intermediate holding company through which the Sponsors hold their equity in the Company.

“Substituted Member” means any Person admitted to the Company as a substituted Member pursuant to the provisions of Section 9.3(a).

“Tag-Along Notice” has the meaning set forth in Section 9.8(a).

“Tag-Along Sale” has the meaning set forth in Section 9.8(a).

“Tax Matters Partner” has the meaning set forth in Section 8.9.

“Taxable Members” has the meaning set forth in Section 4.2(g).

“Third Party Purchaser” means any Person or group of Affiliated Persons other than a Member or any of its Affiliates, or an Affiliate of the Company.

“Transfer,” “Transferee” and “Transferor” have the respective meanings set forth in Section 9.1.

“Unit” or “Units” has the meaning set forth in Section 3.1(a).

“Unit Holders List” has the meaning set forth in Section 3.1(f).

“Value” means, with respect to any asset of the Company, the fair market value of such asset as of the date of determination, as determined by the Board of Directors in good faith.

“Void Transfer” has the meaning set forth in Section 9.1.

“Withdrawing Member” has the meaning set forth in Section 9.3(d).

Section 2.2 Rules of Interpretation Unless the context otherwise clearly requires: (a) a term has the meaning assigned to it; (b) “or” is not exclusive; (c) wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, feminine or neuter shall include the masculine, feminine and neuter; (d) provisions apply to successive events and transactions; (e) all references in this Agreement to “include” or “including” or similar expressions shall be deemed to mean “including without limitation”; (f) all references in this Agreement to designated “Articles,” “Sections,” “paragraphs,” “clauses” and other subdivisions are to the designated Articles, Sections, paragraphs, clauses and other subdivisions of this Agreement, and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph, clause or other subdivision; and (g) any definition of or reference to any agreement, instrument, document, statute or regulation herein shall be construed as referring to such agreement, instrument, document, statute or regulation as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein). This Agreement is among financially sophisticated and knowledgeable parties and is entered into by the parties in reliance upon the economic and legal bargains contained herein and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party who prepared, or cause the preparation of, this Agreement or the relative bargaining power of the parties. Wherever in this Agreement a Member is empowered to take or make a

decision, direction, consent, vote, determination, election, action or approval, such Member is entitled to consider, favor and further such interests and factors as it desires, including its own interests, and has no duty or obligation to consider, favor or further any other interest of the Company, any subsidiary of the Company or any other Member or Person.

ARTICLE 3. UNITS; CAPITAL CONTRIBUTIONS

Section 3.1 Units All Interests in the Company shall be represented by units (each, a “Unit” and collectively, the “Units”) that shall constitute limited liability company interests under the Act. Units may be issued in exchange for contributions of cash or property, the provision of services or such other consideration as may be determined by the Board of Directors. All Units shall be identical to each other and accord the holders thereof the same obligations, rights and privileges as are accorded to each other holder thereof, except for such specific obligations, rights and privileges as set forth in this Agreement.

(b) The Company is hereby authorized, but shall not be required, to issue certificates to represent any or all of the Units. In the event that the Board of Directors determines to issue certificates evidencing Units, all such certificates shall bear the following restrictive legend (or one to substantially similar effect):

“THIS CERTIFICATE CONSTITUTES A “SECURITY” FOR PURPOSES OF ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE. THE SALE, TRANSFER, PLEDGE OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS RESTRICTED BY THE TERMS OF, AND THE HOLDER HEREOF IS SUBJECT TO CERTAIN OTHER OBLIGATIONS PURSUANT TO, THE PROVISIONS OF THE AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF ITR CONCESSION COMPANY HOLDINGS LLC, DATED AS OF [_____], AS MAY BE AMENDED FROM TIME TO TIME IN ACCORDANCE WITH ITS TERMS.”

In addition, unless counsel to the Company has advised the Company that such legend is no longer necessary (either generally or for a specific certificate), each certificate evidencing Units originally issued under the Securities Act registration exemption provided by Section 1145 of the Bankruptcy Code shall bear the following restrictive legend (or one to substantially similar effect):

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ISSUED IN RELIANCE UPON THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), PROVIDED BY SECTION 1145 OF THE UNITED STATES BANKRUPTCY CODE, AND HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OR ANY STATE SECURITIES LAWS.”

In addition, unless counsel to the Company has advised the Company that such legend is no longer necessary, each certificate evidencing Units originally issued by the Company under any other Securities Act registration exemption shall bear the following restrictive legend (or one to substantially similar effect):

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ISSUED IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”). SUCH SECURITIES HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OR ANY STATE SECURITIES LAWS, AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF UNLESS THEY ARE REGISTERED AND QUALIFIED UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION AND QUALIFICATION SHALL APPLY.”

(c) Each Unit shall constitute a “security” within the meaning of, and be governed by, (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware and (ii) Article 8 of the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995, including, in each case, for purposes of the grant, pledge, attachment or perfection of a security interest in any Units. Each certificate that is issued by the Company to represent Units shall state on its face that it is a security for purposes of Article 8 of the Uniform Commercial Code. To the extent that any provision of this Agreement is inconsistent with any non-waivable provision of Article 8 of the Uniform Commercial Code as in effect in the State of Delaware (6 Del. C. §§ 8-101 *et seq.*), such provision of Article 8 of the Uniform Commercial Code shall control.

(d) The Company shall maintain books for the purpose of registering the Transfer of Units. If Units are represented by certificates, in connection with a Transfer in accordance with this Agreement of any certificated Units, the endorsed certificate(s) evidencing the Units shall be delivered to the Company for cancellation, and the Company shall thereupon issue a new certificate to the Transferee evidencing the Units that were Transferred and, if applicable, the Company shall issue a new certificate to the Transferor evidencing any Units registered in the name of the Transferor that were not Transferred.

(e) If any of the Units are represented by certificates, each such certificate shall be executed by manual or facsimile signature of a duly authorized officer on behalf of the Company.

(f) The number of Units held by, and the Percentage Interests of, each of the Members, as of the date hereof, is set forth opposite each Member’s name on Schedule 1 to this Agreement (the “Unit Holders List”). The Company shall update and maintain the Unit Holders List from time to time so as to accurately reflect the information contained therein to reflect

(i) the resignation of any Member, (ii) any Transfer of Units that is made in compliance with the terms and conditions set forth in this Agreement, (iii) the issuance of additional Units by the Company or (iv) the admission of any Additional Member. The Unit Holders List shall be maintained by the Company at its principal place of business.

Section 3.2 Capital ContributionsAs soon as possible after the Effective Date (as defined in the Plan), but in no event later than 30 calendar days thereafter, the Board of Directors will determine the Value of the underlying assets of the Company and its subsidiaries as of the Effective Date and the portions of such value which are allocable, respectively, to the Units. Such allocation will take into account the relative fair market values of the Units. The Board of Directors will apprise, in writing, all parties of such valuation and allocation and shall amend Schedule 1 to reflect each Member's initial Capital Account based upon such valuation and allocation. The Company and each Member shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment and no Member shall take any action inconsistent with such treatment.

(b) Any Additional Member admitted to the Company will be assigned such Percentage Interest (and the Percentage Interests of each other Member shall be reduced by the Percentage Interest of such Additional Member in proportion to their respective Percentage Interests) and will make such Capital Contributions, if any, as the Board of Directors determines.

(c) Except as otherwise required by law, no Member shall be required to make any additional Capital Contributions to the Company without the prior consent of such Member and the Board of Directors. Except as otherwise required by law or pursuant to Section 7.5, no Member shall be permitted to make any additional Capital Contributions to the Company without the prior consent of the Board of Directors.

Section 3.3 Interest on Capital ContributionsNo Member shall be entitled to interest on or with respect to any Capital Contribution.

Section 3.4 Withdrawal and Return of Capital ContributionsExcept as provided in this Agreement, no Member shall be entitled to withdraw any part of such Member's Capital Contribution or to receive distributions from the Company.

Section 3.5 Form of Capital ContributionUnless otherwise agreed to by the Board of Directors, all Capital Contributions shall be made in cash.

Section 3.6 Additional Units; Additional MembersSubject to Section 7.5, the Company may, at the discretion of the Board of Directors, issue additional Units at any time and from time to time to any Person for the amount of consideration, if any, as determined by the Board of Directors and, subject to paragraphs (b) and (c) of this Section 3.6, admit such Person as an Additional Member with all of the rights and obligations of a Member under this Agreement. Each Additional Member's Capital Account balance shall initially equal the amount of cash, or the Value of any property contributed by such Member and, if no cash or property is contributed to the Company by such Member, such Additional Member's Capital Account balance shall initially equal zero. Each Unit that is treated as a capital interest received by

Statewide in exchange for services provided by the Sponsors shall have a capital account equal, on a per Unit basis, with the other interests.

(b) Notwithstanding the provisions of Section 3.6(a), no Person may be admitted as an Additional Member if such admission would cause the Company to be treated as an association taxable as a corporation for U.S. federal income tax purposes, cause the Company to be treated as a “publicly traded partnership” within the meaning of Code Section 7704, violate or cause the Company to violate any applicable U.S. federal, state or foreign law, rule or regulation including, without limitation, the Securities Act or any other applicable U.S. federal, state or foreign securities laws, rules or regulations, cause the Company to be an investment company required to be registered under the Investment Company Act of 1940, as amended, or cause some or all of the Company’s assets to be “plan assets” or the trading and investment activity of the Company to be subject to ERISA and/or Section 4975 of the Code.

(c) Each Additional Member shall automatically be bound by all of the terms and conditions of this Agreement applicable to a Member. Each Additional Member and the Company shall execute such documentation as may be required by the Board of Directors pursuant to which such Additional Member agrees to be bound by the terms and provisions of this Agreement.

(d) Each Person desiring to become an Additional Member shall be admitted to the Company upon the approval of the Board of Directors and the delivery of a counterpart signature page to this Agreement that has been duly executed and delivered to the Company and any other documentation required by the Board of Directors. The Company shall reflect each admission authorized under this Section 3.6 by preparing an amendment to this Agreement, dated as of the date of such admission, to reflect such admission.

ARTICLE 4. ALLOCATION OF NET INCOME AND NET LOSS

Section 4.1 GeneralThe Members agree to treat the Company as a partnership and the Members as partners for U.S. federal income tax purposes and shall file all tax returns accordingly. Except as provided in Section 4.2, Net Income or Net Loss, as the case may be, and each item of income, gain, loss and deduction entering into the computation thereof, for each Fiscal Year (or any other period that the Board of Directors deems appropriate) shall be allocated to the Members in proportion to their Percentage Interests.

Section 4.2 Other Allocation ProvisionsIf during a Fiscal Year there is a net decrease in “partnership minimum gain” (within the meaning of Regulation § 1.704-2(d)) with respect to the Company, then there shall be allocated to each Member items of income and gain of the Company for such Fiscal Year (and, if necessary, for succeeding Fiscal Years) equal to such Member’s share of the net decrease in partnership minimum gain (within the meaning of Regulation § 1.704-2(g)(2)), subject to the exceptions set forth in Regulation § 1.704-2(f)(2) and (3), and to any exceptions provided by the Commissioner of the Internal Revenue Service pursuant to Regulation § 1.704-2(f)(5), provided, that if the Company has any discretion as to an exception provided pursuant to Regulation § 1.704-2(f)(5), the Board of Directors may exercise reasonable discretion on behalf of the Company. The foregoing is intended to be a “minimum

gain chargeback” provision as described in Regulation § 1.704-2(f) and shall be interpreted and applied in all respects in accordance with such Regulation.

If during a Fiscal Year there is a net decrease in partner nonrecourse debt minimum gain (as determined in accordance with Regulation § 1.704-2(i)(3)) with respect to the Company, then, in addition to the amounts, if any, allocated pursuant to the preceding paragraph, any Member with a share of such partner nonrecourse debt minimum gain (determined in accordance with Regulation § 1.704-2(i)(5)) as of the beginning of the Fiscal Year shall, subject to the exceptions set forth in Regulation § 1.704-2(i)(4), be allocated items of income and gain of such Fiscal Year for the Fiscal Year (and, if necessary, for succeeding Fiscal Years) equal to such Member’s share of the net decrease in the partner nonrecourse minimum gain. The foregoing is intended to be the “chargeback of partner nonrecourse debt minimum gain” required by Regulation § 1.704-2(i)(4) and shall be interpreted and applied in all respects in accordance with such Regulation.

(b) If during any Fiscal Year a Member unexpectedly receives an adjustment, allocation or distribution described in Regulation § 1.704-1(b)(2)(ii)(d)(4), (5) or (6) which causes or increases a deficit balance in such Member’s Adjusted Capital Account, there shall be allocated to such Member items of income and gain (consisting of a pro rata portion of each item of income, including gross income, and gain of the Company for such Fiscal Year) in an amount and manner sufficient to eliminate such deficit as quickly as possible. The foregoing is intended to be a “qualified income offset” provision as described in Regulation § 1.704-1(b)(2)(ii)(d) and shall be interpreted and applied in all respects in accordance with such Regulation.

A Member’s “Adjusted Capital Account”, at any time, shall equal the Member’s Capital Account at such time (x) increased by the sum of (A) the amount of the Member’s share of partnership minimum gain (as defined in Regulation § 1.704-2(g)(1) and (3)), (B) the amount of the Member’s share of partner nonrecourse debt minimum gain (as defined in Regulation § 1.704-2(i)(5)) and (C) any amount of the deficit balance in its Capital Account that the Member is treated as obligated to restore pursuant to Regulation § 1.704-1(b)(2)(ii)(c) and (y) decreased by reasonably expected adjustments, allocations and distributions described in Regulation §§ 1.704-1(b)(2)(ii)(d)(4), (5) and (6). This definition shall be interpreted consistently with Regulation § 1.704-1(b)(2)(ii)(d).

(c) Notwithstanding anything to the contrary in this Article 4,

(i) losses, deductions, or expenditures subject to Code Section 705(a)(2)(B) that are attributable to a particular partner nonrecourse liability shall be allocated to the Member that bears the economic risk of loss for the liability in accordance with the rules of Regulation § 1.704-2(i); and

(ii) losses, deductions, or expenditures subject to Code Section 705(a)(2)(B) that are attributable to partnership nonrecourse liabilities shall be allocated to the Members in proportion to their Percentage Interests.

(d) (i) Notwithstanding any provision of Section 4.1, no allocation of Net Loss shall be made to a Member if it would cause the Member to have a negative balance

in its Adjusted Capital Account. Allocations of Net Loss that would be made to a Member but for this Section 4.2(d)(i) shall instead be made to other Members pursuant to Section 4.1 to the extent not inconsistent with this Section 4.2(d)(i). To the extent allocations of Net Loss cannot be made to any Member because of this Section 4.2(d)(i), such allocations shall be made to the Members in accordance with Section 4.1 notwithstanding this Section 4.2(d)(i).

(ii) If any Member has a deficit in its Adjusted Capital Account, such Member shall be specially allocated items of Company income and gain in the amount of such deficit as rapidly as possible, provided, however, that an allocation pursuant to this Section 4.2(d)(ii) shall be made if and only to the extent that such Member would have a deficit in its Adjusted Capital Account after all other allocations provided for in this Agreement have been tentatively made as if this Section 4.2(d)(ii) were not in this Agreement.

(e) To the extent that any item of income, gain, loss or deduction has been specially allocated pursuant to paragraph (b) or (d) of this Section 4.2 and such allocation is inconsistent with the way in which the same amount otherwise would have been allocated under Section 4.1, subsequent allocations under Section 4.1 shall be made, to the extent possible and without duplication, in a manner consistent with paragraph (a), (b), (c) or (d) of this Section 4.2, which negate as rapidly as possible the effect of all such inconsistent allocations under said paragraph (b) or (d).

(f) Except to the extent otherwise required by the Code and Regulations, if any Interest in the Company or part thereof is transferred in any Fiscal Year, the items of income, gain, loss, deduction and credit allocable to such Interest for such Fiscal Year shall be apportioned between the transferor and the transferee in proportion to the number of days in such Fiscal Year the Interest is held by each of them, except that, if they agree between themselves and so notify the Board of Directors within thirty days after the transfer, then at their option and expense, (i) all items or (ii) extraordinary items, including capital gains and losses, may be allocated to the Person who held the Interest on the date such items were realized or incurred by the Company.

(g) If the Company is required to pay any amount of taxes (including withholding taxes) with respect to any of its income, such amount shall be allocated to the Members in the same manner as the income subject to such taxes is allocated, provided, however, that, to the extent that such amount is payable with respect to income allocable to some (but not all) of the Members (the "Taxable Members"), the Board of Directors shall (i) allocate such amount to the Taxable Members, and (ii) cause a distribution to be made to all Members other than the Taxable Members in a manner which takes into account the fact that their respective allocable shares of income are not subject to the same taxes.

(h) Any allocations made pursuant to this Article 4 shall be made in the following order:

- (i) Section 4.2(a);
- (ii) Section 4.2(b);

- (iii) Section 4.2(c);
- (iv) Section 4.2(e);
- (v) Section 4.2(g); and
- (vi) Section 4.1, as modified by Section 4.2(d).

These provisions shall be applied as if all distributions and allocations were made at the end of the Fiscal Year. Where any provision depends on the balance of a Capital Account of any Member, such Capital Account shall be determined after the operation of all preceding provisions for the year. These allocations shall be made consistently with the requirements of Regulation § 1.704-2(j).

Section 4.3 Allocations for Income Tax PurposesThe income, gains, losses, deduction and credits of the Company for any Fiscal Year shall be allocated to the Members in the same manner as Net Income and Net Loss were allocated to the Members for such Fiscal Year pursuant to Sections 4.1 and 4.2; provided, however, that solely for U.S. federal, state and local income and franchise tax purposes and not for book or Capital Account purposes, income, gain, loss and deduction with respect to any Company asset properly carried on the Company's books at a value other than the tax basis of such Company asset shall be allocated in a manner determined in the discretion of the Board of Directors, so as to take into account (consistently with Code Section 704(c) principles) the difference between such Company asset's book basis and its tax basis.

Section 4.4 WithholdingThe Company shall comply with withholding requirements under U.S. federal, state and local law and shall remit amounts withheld to and file required forms with the applicable jurisdictions. To the extent the Company is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Member, the amount withheld shall be deemed to be, at the option of the Tax Matters Partner, either a distribution to or a demand loan by the Company to such Member in the amount of the withholding. In the event of any claimed over-withholding, Members shall be limited to an action against the applicable jurisdiction. If the amount was deemed to be a demand loan, the Company may, at its option, (a) at any time require the Member to repay such loan in cash or (b) at any time reduce any subsequent distributions by the amount of such loan. Each Member agrees to furnish the Company with any representations and forms as shall reasonably be requested by the Company to assist it in determining the extent of, and in fulfilling, its withholding obligations.

ARTICLE 5. DISTRIBUTIONS

Section 5.1 DistributionsSubject to the provisions of Sections 5.3 and 5.4, the Company shall distribute Available Cash at the times and in amounts determined by the Board of Directors. Any distribution made to the Members pursuant to this Section 5.1 shall be made (a) to the Members of record on the applicable record date for such distribution established by the Board of Directors in proportion to their respective Percentage Interests on such record date or (b) if no record date is established, to the Members at the time of such distribution in proportion to their respective Percentage Interests at such time.

Section 5.2 Tax Distributions Subject to Section 5.3, the Company shall, at least ten days prior to the due date for the quarterly payment of estimated U.S. federal income taxes by individuals for any Fiscal Year, distribute Available Cash to the Members in proportion to their respective Percentage Interests, in an amount equal to the excess of (i) the product of (x) the taxable income of the Company attributable to such quarterly period and all prior quarterly periods in such Fiscal Year, based upon (I) the information returns filed by the Company, as amended or adjusted to date, and (II) estimated amounts, in the case of periods for which the Company has not yet filed information returns, multiplied by (y) the Presumed Tax Rate, over (ii) distributions previously made by the Company pursuant to this Section 5.2 with respect to such Fiscal Year; provided that, in no case shall there be any distribution of Available Cash under this Section 5.2 respecting any income or gain arising on or prior to the effective date of the Plan or attributable to the implementation of the Plan. The Tax Matters Partner shall use conventions similar to those adopted pursuant to Section 4.2(f) to determine the Percentage Interests of the Members with respect to a distribution pursuant to this Section 5.2. For purposes of the computations required by clause (i)(x) above, the taxable income of the Company shall be determined by disregarding any adjustment to the taxable income of any Member that arises under Code section 743(b) and is attributable to the acquisition by such Member of an interest in the Company in a transaction described in Code section 743(a). For the avoidance of doubt, distributions pursuant to this Section 5.2 shall be made pro rata to all Members in proportion to their Percentage Interests and based on the Presumed Tax Rate, and without regard to the actual amount of taxable income allocable to a Member or the Member's actual tax rate(s). Any amount distributed pursuant to this Section 5.2(a) shall be deemed to be an advance distribution of amounts otherwise distributable to the Members pursuant to Section 5.1 (including in accordance with Section 10.3) and shall reduce the amounts that would subsequently otherwise be distributed to the Members pursuant to Section 5.1 or Section 10.3 in the order in which they would otherwise have been distributable.

Section 5.3 Limitations on Distributions Anything to the contrary herein notwithstanding:

- (i) no distribution pursuant to this Agreement shall be made if such distribution would result in a violation of the Act;
- (ii) no distribution shall be made to any Member if, after giving effect to such distribution, such Member's Adjusted Capital Account (without regard to clause (y) of the definition thereof) would be less than zero; and
- (iii) no distribution shall be made to the extent that such distribution would violate the terms of any agreement or any other instrument to which the Company or any of its direct or indirect subsidiaries is a party.

(b) In the event that a distribution is not made as a result of the application of paragraph (a) of this Section 5.3, all amounts so retained by the Company shall continue to be subject to all of the debts and obligations of the Company. The Company shall make such distribution (with accrued interest actually earned thereon) as soon as such distribution would not be prohibited pursuant to this Section 5.3.

Section 5.4 Reserves. The Company may establish reserves in such amounts and for such time periods as the Board of Directors determines reasonably necessary for estimated accrued Company expenses and any contingent or unforeseen Company liabilities. When such reserves are no longer necessary, the balance may be distributed to the Members in accordance with this Article 5.

ARTICLE 6. BOOKS OF ACCOUNT, RECORDS AND REPORTS, FISCAL YEAR

Section 6.1 Books and Records The Company shall keep proper and complete records and books of account in which the Company shall enter fully and accurately all transactions and other matters relative to the Company's business as are usually entered into records and books of account maintained by Persons engaged in businesses of a like character, including the Capital Account established for each Member. The Company books and records shall be kept in a manner determined by the Board of Directors in its sole discretion to be most beneficial for the Company. The books and records shall at all times be maintained at the principal office of the Company and shall be open to the inspection and examination of the Members or their duly authorized representatives for a proper purpose as set forth in Section 18-305 of the Act during reasonable business hours and at the sole cost and expense of the inspecting or examining Member.

Section 6.2 Annual Reports Within 90 days after the end of each Fiscal Year, the Company shall send to each Person who was a Member at any time during such Fiscal Year a copy of Schedule K-1 to Internal Revenue Service Form 1065 (or any successor form) indicating such Member's share of the Company's income, loss, gain, expense and other items relevant for U.S. federal income tax purposes and corresponding analogous state and local tax forms; provided, however, that such 90-day period shall be reasonably extended to the extent it is not possible to provide the materials specified in this Section 6.2 within 90 days following the end of a Fiscal Year due to the failure of third parties (including Persons in which the Company has invested directly or indirectly) to provide information necessary to prepare such materials. Notwithstanding the foregoing, within 45 days following the end of a Fiscal Year, the Company shall provide each Member with an estimate of such Member's share of Company taxable income or loss and shall promptly provide each Member any other information reasonably requested in writing by the Member to allow such Member to fulfill its tax reporting and payment obligations.

Section 6.3 Financial Reports The Company shall deliver the following reports to each Member at the times specified below:

(a) as soon as available and in any event within 45 days after the end of each of the first three quarters of each Fiscal Year of the Company, consolidated balance sheets of the Company and its subsidiaries as of the end of such period, and consolidated statements of income and cash flows of the Company and its subsidiaries for the period then ended prepared in conformity with generally accepted accounting principles in the United States applied on a consistent basis, except as otherwise noted therein, and subject to the absence of footnotes and to year-end adjustments;

(b) as soon as available and in any event within 90 days after the end of each Fiscal Year of the Company, a consolidated balance sheet of the Company and its subsidiaries as of the end of such Fiscal Year, and consolidated statements of income and cash flows of the Company and its subsidiaries for the year then ended prepared in conformity with generally accepted accounting principles in the United States applied on a consistent basis, except as otherwise noted therein, together with an auditor's report thereon of a firm of established national reputation; and

(c) to the extent the Company is required by law or pursuant to the terms of any outstanding indebtedness of the Company to prepare such reports, any annual reports, quarterly reports and other periodic reports pursuant to Section 13 or 15(d) of the Exchange Act, as amended, actually prepared by the Company as soon as available.

Section 6.4 Fiscal YearThe fiscal year of the Company (the "Fiscal Year") shall be the calendar year; provided, however, that the last Fiscal Year of the Company shall end on the date on which the Company is terminated.

ARTICLE 7. POWERS, RIGHTS AND DUTIES OF THE MEMBERS

Section 7.1 Limitations

Other than as set forth in this Agreement, the Members shall not participate in the management or control of the Company's business nor shall they transact any business for the Company, nor shall they have the power to act for or bind the Company, said powers being vested solely and exclusively in the Board of Directors.

Section 7.2 LiabilitySubject to the provisions of the Act, no Member shall be liable for the repayment, satisfaction or discharge of any Company liabilities in excess of the balance of such Member's Capital Account. No Member shall be personally liable for the return of any portion of the Capital Contributions (or any return thereon) of any other Member.

Section 7.3 PriorityExcept as otherwise provided in this Agreement, no Member shall have priority over any other Member as to Company allocations or distributions.

Section 7.4 Member Standard of CareTo the fullest extent permitted by law, no Member shall have any fiduciary duties to the Company or to any other Member. To the extent that any Member has any liabilities or duties at law or in equity, including fiduciary duties or other standards of care, more expansive than those set forth in this Section 7.4, such liabilities and duties are hereby modified to the fullest extent permitted under the Act to those set forth in this Section 7.4.

Section 7.5 Preemptive RightsIn the event that (x) the Company shall sell or issue any Units or securities convertible into or exchangeable for Units of the Company or any other equity in the Company, including warrants or options to acquire Units of the Company, following the date hereof or (y) any subsidiary of the Company shall sell or issue equity to any Person other than to a wholly owned subsidiary of the Company, except in each case for (1) a public offering of the equity securities of the Company or such subsidiary or (2) an equity issuance to a Sponsor (either directly or indirectly through Statewide) pursuant to the terms of

the Omnibus Services Agreement, each Member shall have the right to purchase, subject to Section 7.5(c), all or any of such Units or securities or equity on the same terms and conditions as such Units or other securities or equity, as the case may be, as are being offered and sold, such subscription being conditioned upon the actual sale of such Units or other securities or equity, as the case may be; provided, however, that such preemptive right shall not extend to Units or other securities or equity, as the case may be, that are to be issued by the Company (i) by reason of a dividend, split, split-up or other distribution on Interests or equity of such subsidiary, (ii) to officers, employees or directors of, or consultants to, the Company or any of its subsidiaries pursuant to any purchase plan or arrangement, option plan, or other, incentive plan or agreement approved by the Board of Directors (provided that the aggregate amount of all such shares issued to officers, employees or directors does not exceed Units (or options, warrants or other rights to purchase Units) representing a ___% Percentage Interest in the aggregate for all such issuances), (iii) to any Person as direct purchase consideration in connection with strategic acquisitions approved by the Board of Directors or (iv) in exchange for debt securities or other indebtedness of the Company or any subsidiary of the Company, or otherwise in connection with any restructuring of the Company's or any of its subsidiaries' indebtedness (other than Units or other securities or equity issued for cash).

(b) The Company shall deliver written notice specifying the contemplated date the new Units or securities or equity are to be sold, the amount of new Units or securities or equity to be sold and the material terms thereof to each Member no later than 20 Business Days prior to such contemplated purchase date of the Units or securities or equity, and such Member shall have until ten Business Days prior to the contemplated purchase date specified in such notice to inform the Company of its intentions as to the exercise of the preemptive right provided under this Section 7.5, including the maximum number of Units or securities or equity for which it wishes to exercise its preemptive rights. If no written reply is received by the Company prior to the tenth Business Day before the contemplated purchase date specified in such notice, the Company may treat the preemptive right of such Member to have been waived for that, but only for that, transaction.

(c) If the aggregate amount of new Units or securities or equity for which the Members exercised their preemptive rights pursuant to this Section 7.5 is in excess of the number of new Units or securities or equity being sold or issued by the Company or its subsidiary, such new Units or securities shall be allocated to the exercising Members in proportion to their respective Percentage Interests, provided, that if the share of such new Units or securities allocated to any Member is in excess of the maximum amount of new Units or securities or equity for which such Member exercised its preemptive rights, such excess shall be allocated to the other exercising Members in proportion to their Percentage Interests until each such Member shall have been allocated the maximum amount of new Units or securities or equity for which such Member exercised its preemptive rights.

(d) Notwithstanding the other provisions of this Section 7.5, if the Board of Directors determines that it should, in the best interests of the Company, issue new Units that would otherwise be required to be offered to the Members pursuant to this Section 7.5 prior to their issuance, the Company may issue such new Units without first complying with the provisions of this Section 7.5; provided, however, that within 45 days after such issuance the Company shall offer to each Member the opportunity to purchase the number of new Units that

such Member would have otherwise been entitled to purchase pursuant to the terms of this Section 7.5.

Section 7.6 Member Actions For situations in which the approval of the Members is expressly required by this Agreement or by the Act, the Members shall act through meetings and written consents as described in this Section 7.6. Except as otherwise expressly provided herein and as otherwise expressly required by the Act, each Member shall be entitled to vote based upon such Member's Percentage Interest. Except as otherwise provided herein and as otherwise required by the Act, with respect to any matter in which the approval of the Members is required, the affirmative vote of the Members constituting a Majority-in-Interest of the Members at a meeting of Members at which a quorum is present shall be the act of the Members. A meeting of the Members may be called by the Board of Directors or by Members collectively holding a Percentage Interest equal to at least 25% on at least 20 days' prior written notice to the other Members, which notice shall state the purpose or purposes for which such meeting is called. A quorum shall be present at a meeting of Members if Members constituting a Majority-in-Interest of the Members are represented at the meeting in person or by proxy. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if (a) all Members are notified in writing and given the opportunity to grant or deny their consent and (b) subsequently a consent or consents in writing, setting forth the action so taken, is signed by the Members having not less than the minimum number of Units that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. Prompt notice of the action so taken without a meeting shall be given to those Members entitled to vote or consent who have not consented in writing. Any action taken pursuant to such written consent of the Members shall have the same force and effect as if taken by the Members at a meeting thereof.

Section 7.7 Special Member Approval Requirements Notwithstanding anything contained in this Agreement, the Company shall not, and shall cause its subsidiaries not to, directly or indirectly, take any of the following actions, whether by merger, consolidation or otherwise, without first obtaining the affirmative vote or written consent of a Majority-in-Interest of the Members:

- (a) amend this Agreement or the Certificate, except pursuant to Section 3.1(f), the last sentence of Section 3.6(d), or Sections 9.3(f), 10.1, 12.1 or 12.2;
- (b) exercise the Call Right pursuant to Section 7.9(b);
- (c) make any material change in the scope and nature of the business of the Company and its subsidiaries, including establishing or discontinuing any material line of business;
- (d) merge, consolidate, amalgamate or effect an arrangement or reorganization or similar transaction with or into any other Person or sell, assign, lease, license, transfer or otherwise dispose of (other than by a wholly owned subsidiary to another wholly owned subsidiary) all or substantially all of the assets of the Company and its subsidiaries, determined on a consolidated basis;

(e) effect any liquidation, dissolution or winding up of the Company; or

(f) commence any proceeding or file any petition seeking relief under Title 11 of the Bankruptcy Code, as now constituted or hereafter amended, or any other U.S. federal or state bankruptcy, insolvency or receivership or similar law; consent to the institution of or fail to contest in a timely manner any such proceeding or filing; apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any of its subsidiaries; file an answer admitting the material allegations of a petition filed against it in any such proceeding; make a general assignment for the benefit of creditors; admit in writing its inability to pay its debts as they become due; or take any action for the purpose of effecting any of the foregoing.

Section 7.8 Corporate Opportunity The Company and each Member hereby renounces any interest or expectancy of the Company or such Member in, or in being offered an opportunity to participate in, any matter, transaction or interest (including any matter, transaction or interest complementary to or competitive with the business of the Company or any of its subsidiaries) that is presented to, or acquired, created or developed by, or that otherwise comes into the possession of any Member, any Affiliate thereof or any of their respective partners, members, directors, stockholders, employees or agents.

Section 7.9 Change in Control Put and Call Rights

(a) **Put Right.** If at any time prior to the eighteen month anniversary of the date of this Agreement a Change in Control shall have occurred, then each holder of Interests in the Company that is either (x) Statewide or (y) other holder that, in each case, received a portion of the Statewide Interest Equity Distribution (as defined in the Plan) in whole or in part (each a "Statewide Interest Equity Distribution Holder") shall have the right, exercisable by written notice to the Company (the "Put Election Notice") within 30 days of the occurrence of such Change in Control, to require the Company to purchase all, but not less than all, of the exercising Statewide Interest Equity Distribution Holder's share of the Statewide Interest Equity Distribution then held by such Statewide Interest Equity Distribution Holder in exchange for the payment to such Statewide Interest Equity Distribution Holder of an amount equal to \$[] per Unit (the "Put Option Price").^[1] Within 30 days following receipt of a Put Election Notice pursuant to the preceding sentence, the Company shall pay to the exercising Statewide Interest Equity Distribution Holder the aggregate Put Option Price by wire transfer of immediately available funds to the account(s) specified by the exercising Statewide Interest Equity Distribution Holder and, immediately following such payment, the exercising Statewide Interest Equity Distribution Holder's share of the Statewide Interest Equity Distribution shall be deemed cancelled.

(b) **Call Right.** If at any time prior to the eighteen month anniversary of the date of this Agreement a Change in Control shall have occurred, then the Company, upon the approval of a Majority-in-Interest of the Members pursuant to Section 7.7(b), shall have the right, exercisable by written notice to the Statewide Interest Equity Distribution Holders (the

^[1] Note to Draft: the price shall be an amount per unit that equals \$80M in the aggregate based on the number of Units held by the Sponsors upon the closing of the post-effectiveness reorganization.

“Call Election Notice”) within 30 days of the occurrence of such Change in Control, to require a Statewide Interest Equity Distribution Holder to sell all, but not less than all, such Statewide Interest Equity Distribution Holder’s share of the Statewide Interest Equity Distribution to the Company in exchange for an amount equal to \$[] per Unit (the Call Option Price”).^[2] Within 30 days following receipt of a Call Election Notice pursuant to the preceding sentence, the Company shall pay to the Statewide Interest Equity Distribution Holder the aggregate Call Option Price by wire transfer of immediately available funds to the account(s) specified by the Statewide Interest Equity Distribution Holder and, immediately following such payment, the Statewide Interest Equity Distribution Holder’s share of the Statewide Interest Equity Distribution shall be deemed cancelled.

(c) Rights Upon Transfer. Except in connection with Transfers to the Permitted Transferees of the Sponsors, upon a Transfer by a Statewide Interest Equity Distribution Holder, the rights and obligations set forth in Section 7.9(a) shall be deemed terminated with respect to the Units so Transferred. Upon the direct or indirect transfer by any Sponsor of Statewide equity interests, the rights and obligations set forth in Section 7.9(a) shall be deemed terminated with respect to the number of Units held by Statewide equal to the pro rata share of all Units held by Statewide represented by such transferred Statewide equity interests. The rights and obligations set forth in Section 7.9(b) shall remain applicable to all of the Units held by the Statewide Interest Equity Distribution Holder on the date hereof, regardless of whether such Units, or any equity interests of Statewide, are directly or indirectly transferred to a third party.

ARTICLE 8. POWERS, RIGHTS AND DUTIES OF THE BOARD OF DIRECTORS

Section 8.1 Establishment of the BoardA Board of Directors of the Company is hereby established and shall be comprised of natural Persons who shall be appointed in accordance with the provisions of Section 8.3.

Section 8.2 AuthoritySubject to the limitations provided in this Agreement and except as specifically contemplated by this Agreement, including Sections 7.6 and 7.7, the Board of Directors shall have exclusive and complete authority and discretion to manage the operations and affairs of the Company and to make all decisions regarding the business of the Company. Any action authorized by the Board of Directors shall constitute the act of and serve to bind the Company. Persons dealing with the Company are entitled to rely conclusively on the power and authority of the Board of Directors as set forth in this Agreement. Except as otherwise specifically provided herein, the Board of Directors shall have all rights and powers of a “manager” under the Act, and shall have such authority, rights and powers in the management of the Company business to do any and all other acts and things necessary, proper, convenient or advisable to effectuate the purposes of this Agreement.

^[2] Note to Draft: the price shall be an amount per unit that equals \$100M in the aggregate based on the number of Units held by the Sponsors upon the closing of the post-effectiveness reorganization.

Section 8.3 Board of Directors Appointment and Term of Directors. The Board of Directors shall initially consist of seven directors and may consist of such other number of directors as may be determined from time to time by an action of the Majority-in-Interest of the Members pursuant to Section 7.6. The Board of Directors shall initially consist of (x) six individuals designated by the “Committee of Secured Parties Steering Group” with the consent of the “Required Consenting Secured Parties”, as each are defined in, and pursuant to, the Plan and (y) the Executive Chairman designated by such six initial directors. Each director shall hold office from the time of his or her appointment until his or her death, disability, retirement, resignation or removal.

(b) Removal. A Majority-in-Interest of the Members, by an action pursuant to Section 7.6, may at any time with or without cause remove any director.

(c) Resignation. A director may resign at any time from the Board of Directors by delivering his or her written resignation to the Board of Directors. Any such resignation shall be effective upon receipt thereof unless it is specified to be effective at some other time or upon the occurrence of some other event. The Board of Directors' acceptance of a resignation shall not be necessary to make it effective.

(d) Executive Chairman. To the extent that the Board of Directors appoints an Executive Chairman pursuant to Section 8.4, such Executive Chairman shall be a director for so long as he or she holds such office.

(e) Vacancy. In the event that a vacancy is created on the Board of Directors at any time due to the death, disability, retirement, resignation or removal of a director, then the Majority-in-Interest of the Members, acting pursuant to Section 7.6, may designate an individual to fill such vacancy.

(f) Chairman of the Board. The Board of Directors shall from time to time by majority vote elect a Chairman of the Board who shall preside at all meetings of the Board of Directors and shall have such other powers and duties as may be delegated to him or her by the Board of Directors.

(g) Meetings. Meetings of the Board of Directors, regular or special, may be held at any place within or without the State of Delaware. Members of the Board of Directors, or of any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. The Board of Directors may fix times and places for regular meetings of the Board of Directors and no notice of such meetings need be given. The Chairman of the Board at any time may, and upon the request of a majority of the directors then in office shall, call a special meeting of the Board of Directors. Notice of each special meeting shall be given by the Chairman of the Board to each director personally or by faxing and telephoning the same not later than the day before the meeting.

(h) Quorum and Voting. A number of directors equal to at least a majority of the entire Board of Directors, either present or represented by proxy, shall constitute a quorum for the transaction of business, but if there be less than a quorum at any meeting of the Board of Directors, a majority of the directors present may adjourn the meeting from time to time, provided that notice of adjournment and the time and place of the rescheduled meeting shall be given to all of the directors not then in attendance. Except as otherwise provided by this Agreement, the vote of a majority of the directors present at a meeting at which a quorum is present or at an adjourned meeting shall be the act of the Board of Directors.

(i) Proxies. Each director entitled to vote at a meeting of the Board of Directors may authorize another person or persons to act for him or her by proxy. Each proxy shall be signed by the director giving such proxy.

(j) Written Consent of Directors in Lieu of a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all of the members of the Board of Directors or of such committee, as the case may be, consent thereto in writing.

(k) Compensation. Unless otherwise approved by a Majority-in-Interest of the Members pursuant to Section 7.6, the members of the Board of Directors shall receive no compensation for serving in such capacity.

(l) Committees of the Board of Directors. The Board of Directors may from time to time designate one or more committees, each committee to consist of one or more directors of the Company. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The resolution of the Board of Directors may, in addition or alternatively, provide that in the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Company and may take any action required or permitted to be taken by the Board of Directors under this Agreement. Any such committee may adopt rules governing the method of calling and time and place of holding its meetings. Unless otherwise provided by the Board of Directors, a majority of any such committee, either present or represented by proxy, shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee at a meeting at which a quorum is present shall be the act of such committee. Each such committee shall keep a record of its acts and proceedings and shall report thereon to the Board of Directors whenever requested so to do. Any or all members of any such committee may be removed, with or without cause, by resolution of the Board of Directors, passed by a majority of the entire Board of Directors.

Section 8.4 Officers, Agents and Employees Appointment and Term of Office. Subject to Section 8.4(c), the Board of Directors may appoint, and may delegate power to appoint, such officers, agents and employees as it may deem necessary or proper, who shall hold

their offices or positions for such terms, have such authority and perform such duties as may from time to time be determined by or pursuant to authorization of the Board of Directors. Except as may be prescribed otherwise by the Board of Directors or a committee thereof in a particular case, all such officers shall hold their offices at the pleasure of the Board of Directors for an unlimited term and need not be reappointed annually or at any other periodic interval. Any action taken by an officer of the Company pursuant to authorization of the Board of Directors shall constitute the act of and serve to bind the Company. Persons dealing with the Company are entitled to rely conclusively on authority of such officers set forth in the authorization of the Board of Directors.

(b) Executive Chairman. If appointed by the Board of Directors, the Executive Chairman will be the senior-most officer of the Company. All other officers and employees will report, directly or indirectly, to the Executive Chairman. The Executive Chairman shall oversee the general and active management of the business of the Company, subject to the authority of the Board of Directors as set forth in this Agreement.

(c) Chief Executive Officer.

(i) For the term of the Omnibus Services Agreement, the Sponsors shall have the exclusive right to appoint a chief executive officer of the Company (the "Chief Executive Officer") and the right to fill any vacancy created by the death, termination, resignation or retirement of any such Chief Executive Officer.

(ii) The Chief Executive Officer shall manage the day-to-day operations of the Concessionaire in accordance with the terms of the Concession Agreement and past practices, and will have the right, subject to approval by the Board of Directors and the Executive Chairman, to (i) appoint all of the Concessionaire's personnel and/or (ii) retain, in accordance with the Omnibus Services Agreement, the services of personnel currently employed by a "Service Provider" (as defined in the Omnibus Services Agreement). The Chief Executive Officer shall report to the Executive Chairman.

(iii) For so long as it holds any Units, each of the Sponsors and the Board of Directors shall have the right to terminate any Chief Executive Officer appointed pursuant to clause (i) above for any or no reason.

(d) Resignation and Removal. Any officer may resign at any time upon written notice to the Company. Any officer, agent or employee of the Company may be removed by the Board of Directors, or by a duly authorized committee thereof, with or without cause at any time. The Board of Directors or such a committee thereof may delegate such power of removal as to officers, agents and employees not appointed by the Board of Directors or such a committee.

(e) Compensation. The compensation of the officers of the Company shall be fixed by the Board of Directors, but this power may be delegated to any officer in respect of other officers under his or her control.

Section 8.5 Company Funds Company funds shall be held in the name of the Company and shall not be commingled with those of any other Person. Company funds shall be used only for the business of the Company.

Section 8.6 Other Activities and Competition The members of the Board of Directors shall not be required to manage the Company as their sole and exclusive function. The members of the Board of Directors may engage in or possess any interests in business ventures and may engage in other activities of every kind and description independently or with others in addition to those relating to the Company. Each Member authorizes, consents to and approves of such present and future activities by such Persons. Neither the Company nor any Member shall have any right by virtue of this Agreement or the relationship created hereby in or to other ventures or activities of the members of the Board of Directors or to the income or proceeds derived therefrom. The Company and each Member hereby renounces any interest or expectancy of the Company or such Member in, or in being offered an opportunity to participate in, any matter, transaction or interest (including any matter, transaction or interest complementary to or competitive with the business of the Company or any of its subsidiaries) that is presented to, or acquired, created or developed by, or that otherwise comes into the possession of any director or any of their Affiliates.

Section 8.7 Exculpation No director, officer, agent or employee of the Company shall be personally liable for the return of any portion of the Capital Contributions (or any return thereon) of any Member. The return of such Capital Contributions (or any return thereon) shall be made solely from the Company's assets. No director, officer, agent or employee of the Company shall be required to pay to the Company or to any Member any deficit in the Capital Account of any Member upon dissolution of the Company or otherwise. No Member shall have the right to demand or receive property other than cash for its Interest in the Company. No director, officer, agent or employee of the Company shall be liable, responsible or accountable in damages or otherwise to the Company or any Member for any loss incurred as a result of any act or failure to act by such Person on behalf of the Company unless such loss is finally determined by a court of competent jurisdiction to have resulted solely from such Person's fraud, willful misconduct or gross negligence.

Section 8.8 Limits on the Power of the Board of Directors Anything in this Agreement to the contrary notwithstanding, no action shall be taken by the Board of Directors, or by any director, officer, agent or employee of the Company, without the written consent or ratification of the specific act by all of the Members given in this Agreement or by other written instrument executed and delivered by all the Members subsequent to the date of this Agreement, which would cause or permit the Company to:

- (a) knowingly make, do or perform any act, or knowingly cause any act to be made, done or performed, which would make it impossible to carry on the ordinary business of the Company;
- (b) possess Company property, or assign Company property, for other than a Company purpose;
- (c) admit a Person as a Member, except as provided in this Agreement;

- (d) make any loans to any Member or its Affiliates; or
- (e) knowingly perform any act that would subject any Member to personal liability in any jurisdiction.

Section 8.9 Tax Matters Partner For purposes of Code Section 6231(a)(7), the “Tax Matters Partner” shall be [_____] as long as it remains a Member of the Company and, thereafter, a Member designated by the Board of Directors. The Tax Matters Partner shall keep the Members fully informed of any inquiry, examination or proceeding, including, without limitation, promptly notifying Members of the beginning and completion of an administrative proceeding involving the Company promptly upon such notice being received by the Tax Matters Partner.

Section 8.10 Indemnification of the Board of Directors, Officers and Agents The Company shall indemnify and hold harmless the directors, officers, agents and employees of the Company (each, an “Indemnified Party”) from and against any loss, expense, damage or injury suffered or sustained by them, by reason of any acts, omissions or alleged acts or omissions arising out of their activities on behalf of the Company or in furtherance of the interests of the Company, including but not limited to any judgment, award, settlement, reasonable attorneys’ fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim if the acts, omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claims are based were not a result of fraud, gross negligence or willful misconduct by such Indemnified Party. Any indemnification pursuant to this Section 8.10 shall only be from the assets of the Company.

(b) Expenses (including attorneys’ fees) incurred by an Indemnified Party in a civil or criminal action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding; provided that if an Indemnified Party is advanced such expenses and it is later determined that such Indemnified Party was not entitled to indemnification with respect to such action, suit or proceeding, then such Indemnified Party shall reimburse the Company for such advances.

(c) No amendment, modification or deletion of this Section 8.10 will apply to or have any effect on the right of any Indemnified Party to indemnification for or with respect to any acts or omissions of such Indemnified Party occurring prior to such amendment, modification or deletion.

(d) Notwithstanding anything in this Section 8.10 to the contrary, the Company shall not indemnify any Indemnified Party:

- (i) in any circumstance where such indemnification is expressly prohibited by applicable law;
- (ii) where payment has already been made to such Indemnified Party under any insurance policy maintained by the Company or its subsidiaries, except with respect to any excess beyond the amount actually paid under any such insurance policy; or

(iii) in connection with any proceeding (or part thereof) initiated by the Indemnified Party, or any proceeding by the Indemnified Party against the Company or its directors, officers, employees or other Indemnified Parties, unless (A) such indemnification is expressly required to be made by law, (B) the proceeding was authorized by the Board of Directors of the Company, (C) such indemnification is provided by the Company in its sole discretion, pursuant to the powers vested in the Company under applicable law, (D) such proceeding is a counterclaim brought in connection with a proceeding initiated against the Indemnified Party and such counterclaim is either a mandatory counterclaim or is defensive in nature, or (E) such proceeding is to enforce the provisions of this Section 8.10.

(e) Nothing in this Agreement shall in any way prohibit or limit the Company from entering into indemnification agreements with one or more members of the Board of Directors.

Section 8.11 ExpensesThe Company shall pay for all expenses incurred in connection with the operation of the Company's business. The Members, directors, officers, agents or employees of the Company shall be entitled to receive out of Company funds reimbursement of all Company expenses expended by such Persons.

Section 8.12 Permitted ReorganizationIn connection with an initial public offering of any Interests of the Company, the Board of Directors shall have the power and authority to cause the Company to reorganize into a corporation, whether by conversion into a corporation, merger into a corporation, having all of the Members contribute their Interests to a corporation or otherwise (the "Permitted Reorganization") and the Members agree to do all things reasonably requested by the Board of Directors to effect such Permitted Reorganization. Upon the consummation of the Permitted Reorganization, each of the Interests shall be converted into a number of shares of common stock of such corporation as is determined by the Board of Directors in an equitable fashion to reflect the relative ownership of the Members.

ARTICLE 9. TRANSFERS OF INTEREST BY MEMBERS

Section 9.1 General.No Member may sell, assign, pledge or in any manner dispose of all or a portion of its Interest in the Company (the commission of any such act being referred to as a "Transfer," any person who effects a Transfer being referred to as a "Transferor" and any person to whom a Transfer is effected being referred to as a "Transferee") except in accordance with the terms and conditions set forth in this Article 9. No Transfer of an Interest in the Company shall be effective until such time as all requirements of this Article 9 in respect thereof have been satisfied and, if consents, approvals or waivers are required by the Board of Directors, all of same shall have been confirmed in writing by the Board of Directors. Any Transfer or purported Transfer of an Interest in the Company not made in accordance with this Agreement (a "Void Transfer") shall be null and void and of no force or effect whatsoever. Any amounts otherwise distributable under Article 5 or Article 10 in respect of an Interest in the Company that has been the subject of a Void Transfer may be withheld by the Company until the Void Transfer has been rescinded, whereupon the amount withheld (after reduction by any damages suffered by the Company attributable to such Void Transfer) shall be distributed

without interest. Until the Void Transfer has been rescinded, all voting rights hereunder attached to the Units subject to such Void Transfer shall be suspended and such Units shall be disregarded in the determination of “Percentage Interest” for all purposes hereunder.

Section 9.2 Requirements. Except for any Transfer by a Member exercising its tag-along rights pursuant to Section 9.8, in addition to the other requirements of this Article 9, and unless waived in whole or in part by the Board of Directors, no Transfer of all or any portion of an Interest in the Company may be made unless the following conditions are met:

(a) The Transferee shall have become a party to this Agreement (unless such Transferee is already a party to this Agreement) by executing and delivering an instrument of accession in the form attached hereto as Exhibit A and/or such other documents as may be necessary, in the reasonable determination of the Board of Directors, to make such Person a party.

(b) The Board of Directors shall have been reasonably satisfied, including, at its option, having received an opinion of counsel to the Company reasonably acceptable to the Board of Directors, that:

(i) the Transfer will not cause the Company to be treated as an association taxable as a corporation for U.S. federal income tax purposes;

(ii) the Transfer will not cause the Company to be treated as a “publicly traded partnership” within the meaning of Code Section 7704;

(iii) the Transfer will not violate the Securities Act or any other applicable U.S. federal, state or non-United States securities laws, rules or regulations;

(iv) the Transfer will not cause some or all of the assets of the Company to be “plan assets” or the investment activity of the Company to constitute “prohibited transactions” under ERISA or the Code;

(v) the Transfer will not cause the Company to be an investment company required to be registered under the Investment Company Act of 1940, as amended; and

(vi) the Transfer will not result in a “change in control” under any material contract to which the Company or any of its subsidiaries is a party, including the Concession Agreement or any finance agreement, or otherwise give any party to any such material contract the right to terminate, to accelerate, to be repaid, to cause the Company or any of its subsidiaries to make any repurchase, or otherwise give any such party any additional rights.

The form and content of all documentation delivered to the Board of Directors under this Section 9.2 shall be subject to the approval of the Board of Directors, which approval may be granted or withheld in the reasonable discretion of the Board of Directors.

Section 9.3 Transfer of Interest of Members.

(a) Unless the Board of Directors reasonably determines that a Transfer is not in compliance with this Article 9, the applicable Transferee shall be admitted to the Company as a Substituted Member.

(b) Unless and until a Transferee of a Member's Interest in the Company is admitted as a Substituted Member under this Section 9.3, it shall have none of the powers of a Member hereunder and shall have only such rights of an assignee under the Act as are consistent with this Agreement.

(c) Upon the Transfer of the entire Interest in the Company of a Member and effective upon the admission of its Transferee as a Substituted Member, the Transferor shall be deemed to have withdrawn from the Company as a Member.

(d) Upon the dissolution, resignation or withdrawal in contravention of Section 10.1 of a Member (the "Withdrawing Member"), the Company shall have the right to treat such Member's successor(s)-in-interest as assignee(s) of such Member's Interest in the Company, with none of the powers of a Member hereunder and with only such rights of an assignee under the Act as are consistent with this Agreement. For purposes of this Section 9.3(d), if a Withdrawing Member's Interest in the Company is held by more than one Person (for purposes of this clause (d), the "Assignees"), the Assignees shall appoint one Person with full authority to accept notices and distributions with respect to such Interest in the Company on behalf of the Assignees and to bind them with respect to all matters in connection with the Company or this Agreement.

(e) Upon request of the Company, each Member agrees to provide to the Company information regarding its adjusted tax basis in its Interests along with documentation substantiating such amount, and any other information, documentations and certifications necessary for the Company to comply with Section 743 of the Code and the Treasury Regulations thereunder.

(f) The Company shall reflect each Transfer and admission authorized under this Article 9 (including any terms and conditions imposed thereon by the Board of Directors) by preparing an amendment to this Agreement, dated as of the date of such Transfer, to reflect such Transfer or admission.

Section 9.4 Consequences of Transfers Generally. In the event of any Transfer or Transfers permitted under this Article 9, the Transferor and the Interest in the Company that is the subject of such Transfer shall remain subject to this Agreement, and the Transferee shall hold such Interest in the Company subject to all unperformed obligations of the Transferor. Any successor or Transferee hereunder shall be subject to and bound by this Agreement as if originally a party to this Agreement.

(b) Unless a Transferee of a Member's Interest becomes a Substituted Member, such Transferee shall have no right to obtain or require any information or account of Company transactions, or to inspect the Company's books or to vote on Company matters. Such a Transfer shall, subject to the last sentence of Section 9.1, merely entitle the Transferee to receive the share of distributions, Net Income, Net Loss and items of income, gain, deduction

and loss to which the Transferor otherwise would have been entitled. Each Member agrees that such Member will, upon request of the Board of Directors, execute such certificates or other documents and perform such acts as the Board of Directors deems appropriate after a Transfer of such Member's Interest in the Company (whether or not the Transferee becomes a Substituted Member) to preserve the limited liability of the Members under the laws of the jurisdictions in which the Company is doing business.

(c) The Transfer of a Member's Interest in the Company and the admission of a Substituted Member shall not be cause for dissolution of the Company.

Section 9.5 Capital Account; Percentage Interest. Any Transferee of a Member under this Article 9 shall, subject to the last sentence of Section 9.1, succeed to the portion of the Capital Account and Percentage Interest so Transferred to such Transferee.

Section 9.6 Additional Filings. Upon the admission of a Substituted Member under Section 9.3, the Company shall cause to be executed, filed and recorded with the appropriate governmental agencies such documents (including amendments to this Agreement) as are required to accomplish such substitution.

Section 9.7 Indirect Transfers. Notwithstanding anything to the contrary herein, if any Member is an entity that was formed solely for the purpose of acquiring an Interest or that has no substantial assets other than an Interest, such Member agrees that (a) its common stock, membership interests, partnership interests or other equity interests (and common stock, membership interests, partnership interests or other equity interests in any similar entities controlling such Member) will note the restrictions contained in this Article 9 and (b) no common stock, membership interests, partnership interests or other equity interests of such Member may be Transferred to any Person other than in accordance with the terms and provisions of this Article 9, as if such common stock, membership interests, partnership interests or other equity interests were Interests and the holders thereof were Members. For the avoidance of doubt, the provisions of this Section 9.7 shall apply to Statewide.

Section 9.8 Tag-Along Rights If any Member or group of Members (the "Seller") proposes a Transfer to any Person other than a Permitted Transferee of such Seller (such Person, the "Buyer"; such Transfer, the "Tag-Along Sale") of (i) Interests constituting a Percentage Interest of more than 50% or (ii) a number of Interests that would result in the Buyer and its Affiliates Beneficially Owning, immediately following such Transfer, a Percentage Interest of more than 50%, then, unless the Seller has elected to exercise its drag-along rights pursuant to Section 9.9, the Seller shall cause the Buyer to, and the Buyer (if it is already a Member prior to such Tag-Along Sale) shall, offer to purchase all of the Interests held by each other Member (each, an "Other Member") for per Unit consideration in cash that is at least equal to the highest price per Unit offered or paid by the Buyer, or by any Person Acting in Concert with the Buyer, in such Tag-Along Sale or in any acquisition of Interests during the twelve months preceding the date of such proposed Tag-Along Sale, and otherwise on the same terms and conditions as those applicable to the Seller pursuant to such Tag-Along Sale.

(b) Not less than 45 days prior to any Tag-Along Sale, the Seller shall provide to each Other Member a notice (a "Tag-Along Notice") specifying in reasonable detail (i) the

Percentage Interest represented by the Interest to be Transferred to the Buyer and the Percentage Interest that the Buyer will hold immediately following such proposed Tag-Along Sale, (ii) the per Unit purchase price (including an estimate, in the Seller's reasonable judgment, of the fair market value of any non-cash consideration) and form of consideration (including any potential purchase price adjustments) to be paid by the Buyer, (iii) the closing date of the Tag-Along Sale, (iv) the identity and address of the Buyer (and, to the extent material, the direct and indirect beneficial owners of such Buyer), and (v) all other relevant information as to such proposed transaction as may be reasonably necessary for each Other Member to determine whether or not to participate in the Tag-Along Sale.

(c) Each Other Member shall have the right to participate in the Tag-Along Sale by providing written notice (the "Acceptance Notice") to the Seller prior to the 10th Business Day after the day such Tag-Along Notice is delivered to such Other Member (the "Expiration Date"), which Acceptance Notice will include the maximum Percentage Interest which such Other Member desires to Transfer in such Tag-Along Sale. The Seller shall cause the Buyer, and the Buyer (if it is already a Member prior to such Tag-Along Sale) shall, purchase from each Other Member that has delivered an Acceptance Notice prior to the Expiration Date the Interests set forth in its Acceptance Notice; provided, however, that to the extent that any such Buyer that is not a Member prior to such Tag-Along Sale refuses to purchase such Interests from each such Other Member, the Seller shall not make any Transfer to such Buyer unless and until, simultaneously with such Transfer, the Seller purchases from each such Other Member the portion of such Other Member's Interest required to be purchased by such Buyer pursuant to the terms hereof at the price and upon other terms and conditions set forth in clause (a) above. At the time of consummation of the Tag-Along Sale, the Seller shall cause the Buyer to remit directly to each such Other Member that portion of the sale proceeds to which such Other Member is entitled by reason of its participation in the Tag-Along Sale.

(d) Any Other Member that has exercised its right to participate in the Tag-Along Sale shall deliver to the Buyer (or to the Seller for delivery to the Buyer) one or more instruments or certificates, properly endorsed for Transfer, free and clear of all liens whatsoever, representing the portion of its Interest to be Transferred in the Tag-Along Sale. Each Tag-Along Seller shall take all actions which the Seller deems reasonably necessary or desirable to consummate such transaction, including (i) entering into agreements with third parties which may include representations, indemnities, holdbacks and escrows, provided, that such agreements are on terms substantially identical or more favorable to such Other Member than those agreed to by the Seller; provided, further, that no Other Member shall be liable in respect of any indemnification obligation pursuant to any Tag-Along Sale in excess of the total consideration (net of broker fees and other selling expenses) paid to such Other Member in such Tag-Along Sale; and (ii) obtaining all consents and approvals reasonably necessary or desirable to consummate such transaction. The Other Members and the Seller shall each pay its pro rata share (based upon the portion of the proceeds from the Tag-Along Sale to which each is entitled) of any reasonable transaction costs associated with the sale other than the legal expenses and selling commissions of the other participants in the Tag-Along Sale.

(e) If an Acceptance Notice from any Tag-Along Seller is not received by the Seller prior to the Expiration Date, the Seller shall have 180 days after the Expiration Date to consummate the proposed transaction identified in the Tag-Along Notice at the price and on

terms that are not more favorable to the Buyer than those set forth in the Tag-Along Notice. If, at the end of such 180-day period, the Seller has not consummated the proposed transaction, the Seller shall again be obligated to comply with the provisions of this Section 9.8 with respect to the proposed Transfer.

Section 9.9 Drag-Along Right In the event that any Drag-Along Seller proposes to effect a Drag-Along Sale, and such Drag-Along sale is approved by the Board of Directors pursuant to Section 8.3(g) or 8.3(i), then such Drag-Along Seller shall give written notice of such Drag-Along Sale (a “Drag-Along Notice”) to each of the other Members at least 10 Business Days prior to the closing of such Drag-Along Sale, which notice shall state that such Drag-Along Seller desires the Dragged Members to enter into such Drag-Along Sale and shall include the following information with respect to the proposed Drag-Along Sale: (i) the names of all of the parties thereto, (ii) a summary of the material terms and conditions thereof and (iii) the proposed amount of cash consideration to be received by the Drag-Along Seller and Dragged Members (which consideration shall be distributed to the Members pro rata based on their respective Percentage Interests), whereupon all Drag-Along Sellers, Dragged Members and the Company (as applicable) shall consent to, cooperate with, and not object to or otherwise impede consummation of the Drag-Along Sale. In the event that the Drag-Along Sale is structured as a merger or consolidation, each Dragged Member shall, pursuant to Section 7.6, vote its Units to approve such merger or consolidation. In the event that the Drag-Along Sale is structured as a sale of all of the outstanding Units, then each Dragged Member shall agree to sell, and shall sell, all of its Units and any other Interests or rights to acquire any Interests on the terms and conditions set forth in the Drag-Along Notice. In the event that the Drag-Along Sale is structured as a sale, transfer or other disposition of all or substantially all of the assets or business of the Company, then each Dragged Member shall, pursuant to Section 7.6, vote its Units to approve such sale and any subsequent dissolution or winding up of the Company or other distribution of the proceeds therefrom, with respect to the sale, transfer or other disposition of assets. In furtherance of the foregoing, each Dragged Member shall (x) waive all dissenter’s rights, appraisal rights and similar rights in connection with such Drag-Along Sale and (y) take, with respect to its Units, all necessary or desirable actions reasonably requested by the Drag-Along Seller in connection with the consummation of the Drag-Along Sale, including voting all such Units to approve such transaction, not exercising any appraisal or similar rights with respect to such transaction, granting any consents required pursuant to the terms of this Agreement and executing the applicable purchase and sale agreement.

(b) No Dragged Member shall be required to sell any Units in a Drag-Along Sale pursuant to this Section 9.9 unless the total amount of such consideration per Unit payable to such Dragged Member is the same as that paid to each Drag-Along Seller. Each Dragged Member shall provide the same representations, warranties, covenants, indemnities and agreements as the Drag-Along Sellers make or provide in connection with the Drag-Along Sale (except that in the case of representations, warranties, covenants, indemnities and agreements pertaining specifically to a Drag-Along Seller, each Dragged Member shall make the comparable representations, warranties, covenants, indemnities and agreements pertaining specifically to itself); provided, that all representations, warranties, covenants and indemnities shall be made by each Drag-Along Seller and Dragged Member severally and not jointly; provided, further, that any indemnification obligation (including, if applicable, with respect to representations made by the Company) shall be *pro rata* based on the consideration received by each Drag-Along Seller

and Dragged Member for their respective Units (which consideration shall be distributed to the Members *pro rata* based on their respective Percentage Interests), in each case in an amount not to exceed the aggregate proceeds received by each Drag-Along Seller and Dragged Member in connection with the Drag-Along Sale; and provided, further, that in no event shall a Dragged Member be required to (i) make any representation regarding the Company (including with respect to its business or results of operations) or (ii) agree to any “non-competition”, “non-solicit” or other covenant or restriction with respect to competing with the Company or its business or soliciting or hiring its employees. Each Drag-Along Seller and Dragged Member shall pay its pro rata share (based upon the portion of the proceeds from the Drag-Along Sale to which each is entitled) of any reasonable transaction costs associated with the sale other than the legal expenses and selling commissions of the other participants in the Drag-Along Sale.

(c) At the closing of any Drag-Along Sale pursuant to this Section 9.9 (other than a transaction under clause (c) of the definition of “Drag-Along Sale”), each Drag-Along Seller and Dragged Member shall deliver, against payment of the purchase price therefor, certificates (or evidence thereof) representing its Units, duly endorsed for Transfer or accompanied by duly endorsed membership interest powers, evidence of good title to the Units, the absence of liens, encumbrances and adverse claims with respect thereto and such other documents as are reasonably requested by the Drag-Along Seller and the Company for the proper Transfer of such Units on the books of the Company.

(d) The provisions of Section 9.8 shall be subordinate to any Transfer or exercise of rights contemplated by this Section 9.9.

ARTICLE 10. RESIGNATION OF MEMBERS; TERMINATION OF COMPANY; LIQUIDATION AND DISTRIBUTION OF ASSETS

Section 10.1 Resignation of Members. Except as otherwise specifically permitted in this Agreement, a Member may not resign or withdraw from the Company unless unanimously agreed to in writing by all other Members. The Board of Directors shall reflect any such resignation or withdrawal by preparing an amendment to this Agreement, dated as of the date of such resignation or withdrawal, and the resigning or withdrawing Member (or such Member’s successors-in-interest) shall have none of the powers of a Member hereunder and shall only have such rights of an assignee of a limited liability company interest under the Act as are consistent with the other terms and provisions of this Agreement and with no other rights under this Agreement. The remaining Members may, in their sole discretion, cause the Company to distribute to the resigning or withdrawing Member the balance in its Capital Account on the date of such resignation or withdrawal. Upon the distribution to the resigning or withdrawing Member of the balance in its Capital Account, the resigning or withdrawing Member shall have no further rights with respect to the Company. Any Member resigning or withdrawing in contravention of this Section 10.1 shall indemnify, defend and hold harmless the Company, the Board of Directors and all other Members from and against any losses, expenses, judgments, fines, settlements or damages suffered or incurred by the Company or any such other Member arising out of or resulting from such resignation or withdrawal.

Section 10.2 Dissolution of Company. The Company shall be dissolved, wound up and terminated as provided herein upon the first to occur of the following:

- (i) a decree of dissolution of the Court of Chancery of the State of Delaware pursuant to Section 18-802 of the Act;
- (ii) the determination of the Board of Directors, and of a Majority-in-Interest of the Members pursuant to Section 7.7(d), to dissolve the Company; or
- (iii) the occurrence of any other event that would make it unlawful for the business of the Company to be continued.

Except as expressly provided herein or as otherwise required by the Act, the Members shall have no power to dissolve the Company.

(b) In the event of the dissolution of the Company for any reason, the Board of Directors or a liquidating agent or committee appointed by the Board of Directors shall act as a liquidating agent (the Board of Directors or such liquidating agent or committee, in such capacity, is hereinafter referred to as the "Liquidator") and shall commence to wind up the affairs of the Company and to liquidate the Company assets. The Members shall continue to share all income, losses and distributions during the period of liquidation in accordance with Articles 4 and 5. The Liquidator shall have full right and unlimited discretion to determine the time, manner and terms of any sale or sales of Company assets pursuant to such liquidation, giving due regard to the activity and condition of the relevant market and general financial and economic conditions.

(c) The Liquidator shall have all of the rights and powers with respect to the assets and liabilities of the Company in connection with the liquidation and termination of the Company that the Board of Directors would have with respect to the assets and liabilities of the Company during the term of the Company, and the Liquidator is hereby expressly authorized and empowered to execute any and all documents necessary or desirable to effectuate the liquidation and termination of the Company and the transfer of any Company assets.

(d) Notwithstanding the foregoing, a Liquidator which is not a Member shall not be deemed a Member and shall not have any of the economic interests in the Company of a Member; and such Liquidator shall be compensated for its services to the Company at normal, customary and competitive rates for its services to the Company, as reasonably determined by the Board of Directors.

Section 10.3 Distribution in Liquidation. The Company's assets shall be applied in the following order of priority:

(a) first, to pay the costs and expenses of the winding up, liquidation and termination of the Company;

(b) second, to creditors of the Company, including fees, indemnification payments and reimbursements payable to the Members or their Affiliates, but not including those liabilities (other than liabilities to the Members for any expenses of the Company paid by the

Members or their Affiliates, to the extent the Members are entitled to reimbursement hereunder) to the Members in their capacity as Members;

(c) third, to establish reserves reasonably adequate to meet any and all contingent or unforeseen liabilities or obligations of the Company; provided, however, that at the expiration of such period of time as the Liquidator may deem advisable, the balance of such reserves remaining after the payment of such contingencies or liabilities shall be distributed as hereinafter provided; and

(d) fourth, the remainder to the Members in accordance with Section 5.1 hereof.

If the Liquidator, in its sole discretion, determines that Company assets other than cash are to be distributed, then the Liquidator shall cause the Value of the assets not so liquidated to be determined (with any such determination normally made by the Board of Directors in accordance with the definition of "Value" being made instead by the Liquidator). Such assets shall be retained or distributed by the Liquidator as follows:

(i) the Liquidator shall retain assets having a value, net of any liability related thereto, equal to the amount by which the cash net proceeds of liquidated assets are insufficient to satisfy the requirements of clauses (a), (b), and (c) of this Section 10.3; and

(ii) the remaining assets shall be distributed to the Members in the manner specified in clause (d) of this Section 10.3.

If the Liquidator, in its sole discretion, deems it not feasible or desirable to distribute to each Member its allocable share of each asset, the Liquidator may allocate and distribute specific assets to one or more Members as the Liquidator shall reasonably determine to be fair and equitable, taking into consideration, *inter alia*, the Value of such assets and the tax consequences of the proposed distribution upon each of the Members (including both distributees and others, if any). Any distributions-in-kind shall be subject to such conditions relating to the disposition and management thereof as the Liquidator deems reasonable and equitable.

Section 10.4 Final Reports. Within a reasonable time following the completion of the liquidation of the Company's assets, the Liquidator shall deliver to each of the Members a statement which shall set forth the assets and liabilities of the Company as of the date of complete liquidation and each Member's portion of distributions pursuant to Section 10.3.

Section 10.5 Rights of Members. Each Member shall look solely to the Company's assets for all distributions with respect to the Company and such Member's Capital Contribution (including return thereof), and such Member's share of profits or losses thereon, and shall have no recourse therefor (upon dissolution or otherwise) against any other Member or the Board of Directors. No Member shall have any right to demand or receive property other than cash upon dissolution and termination of the Company.

Section 10.6 Deficit Restoration. Notwithstanding any other provision of this Agreement to the contrary, upon liquidation of a Member's Interest in the Company (whether or not in connection with a liquidation of the Company), no Member shall have any liability to

restore any deficit in its Capital Account. In addition, no allocation to any Member of any loss, whether attributable to depreciation or otherwise, shall create any asset of or obligation to the Company, even if such allocation reduces the Capital Account of any Member or creates or increases a deficit in such Capital Account; it is also the intent of the Members that no Member shall be obligated to pay any such amount to or for the account of the Company or any creditor of the Company. No creditor of the Company is intended as a third-party beneficiary of this Agreement nor shall any such creditor have any rights hereunder.

Section 10.7 Termination. The Company shall terminate when all property owned by the Company shall have been disposed of and the assets shall have been distributed as provided in Section 10.3. The Liquidator shall then execute and cause to be filed a Certificate of Cancellation of the Company.

ARTICLE 11. NOTICES

Section 11.1 Notices. All notices, demands or requests required or permitted under this Agreement must be in writing, and shall be made by hand delivery, certified mail, overnight courier service, electronic mail or facsimile to the address, electronic mail address or facsimile number set forth below such Member's name on the signature page hereto, but any party may designate a different address, electronic mail address or facsimile number by a notice similarly given to the Company. Any such notice or communication shall be deemed given when delivered by hand, if delivered on a Business Day; the next Business Day after delivery by hand, if delivered by hand on a day that is not a Business Day; four Business Days after being deposited in the United States mail, postage prepaid, return receipt requested, if mailed; on the next Business Day after being deposited for next day delivery with Federal Express or a similar overnight courier; when receipt is acknowledged, whether by facsimile confirmation or return electronic mail, if sent by facsimile or electronic mail on a Business Day; and the next Business Day following the day on which receipt is acknowledged, whether by facsimile confirmation or return electronic mail, if sent by facsimile or electronic mail on a day that is not a Business Day.

ARTICLE 12. AMENDMENT OF AGREEMENT

Section 12.1 Amendments. Amendments to this Agreement which do not adversely affect the right of any Member in any material respect may be made by the Board of Directors without the consent of any Member if those amendments are: (a) of an inconsequential nature (as reasonably determined by the Board of Directors); (b) for the purpose of admitting Substituted Members or Additional Members as permitted by this Agreement; (c) necessary to maintain the Company's status as a partnership according to Section 7701(a)(2) of the Code that is not a "publicly traded partnership" pursuant to Section 7704 of the Code; (d) necessary to preserve the validity of any and all allocations of income, gain, loss or deduction pursuant to Section 704(b) of the Code; or (e) contemplated by this Agreement. Amendments to this Agreement other than those described in the foregoing sentence may be made only if embodied in an instrument signed by a Majority-in-Interest of the Members pursuant to Section 7.7(a); provided, however, that, unless otherwise specifically contemplated by this Agreement, this Agreement shall not be amended in any manner that materially, adversely and disproportionately

affects the rights and obligations of one or more Members relative to the rights and obligations of the other Members without the prior written consent of each Member materially, adversely and disproportionately affected thereby; and provided, further, that the provisions of Sections 9.8 and 9.9 may not be amended unless approved by a Majority-in-Interest of all Members other than any Member that would be deemed a Seller, Buyer or Drag-Along Seller pursuant to such Sections in connection with any then pending or contemplated Transfer pursuant to either such Section. The Company shall send to each Member a copy of any amendment to this Agreement. The Company shall send to each Member a copy of any amendment to this Agreement.

Section 12.2 Amendment of CertificateIn the event that this Agreement shall be amended pursuant to this Article 12, the Board of Directors shall amend the Certificate to reflect such change if the Board of Directors deems such amendment of the Certificate to be necessary or appropriate.

Section 12.3 Power of Attorney.Each Member hereby irrevocably constitutes and appoints the Board of Directors as its true and lawful attorney-in-fact, with full power of substitution, in its name, place and stead to make, execute, sign, acknowledge (including swearing to), verify, deliver, record and file, on its behalf, the following: (a) any amendment to this Agreement which complies with the provisions of Section 12.1 of this Agreement; and (b) the Certificate and any amendment thereof required because this Agreement is amended, including an amendment to effectuate any change in the membership of the Company or in the Capital Contributions of the Members. This power-of-attorney is a special power-of-attorney and is coupled with an interest in favor of the Board of Directors and, as such: (i) shall be irrevocable and continue in full force and effect notwithstanding the subsequent death or incapacity of any party granting this power-of-attorney, regardless of whether the Company or the Board of Directors shall have had notice thereof; (ii) may be exercised for a Member by facsimile signature of the Board of Directors or, after listing all of the Members, including such Member, by a single signature of the Board of Directors acting as attorney-in-fact for all of them; and (iii) shall survive the delivery of an assignment by a Member of the whole or any portion of its Interest in the Company, except that where the assignee thereof has been approved by the Board of Directors for admission to the Company as a Substituted Member, this power-of-attorney given by the assignor shall survive the delivery of such assignment for the sole purpose of enabling the Board of Directors to execute, acknowledge, and file any instrument necessary to effect such substitution.

ARTICLE 13. MISCELLANEOUS

Section 13.1 ConfidentialityEach party hereto agrees that, except with the prior written consent of the Board of Directors, it shall at all times keep confidential and not divulge, furnish or make accessible to anyone any confidential information, knowledge or data concerning or relating to the business or financial affairs of the other parties, the Company or any direct or indirect subsidiary of the Company to which such party has been or shall become privy by reason of this Agreement, discussions or negotiations relating to this Agreement or the relationship of the parties contemplated hereby; provided, however, that confidential information may be disclosed to a party's directors, partners, officers, employees, advisors, financing sources or representatives (provided that (i) such directors, partners, officers, employees, advisors,

financing sources or representatives of any party will be informed by such party of the confidential nature of such information and shall be directed by such party to keep such information confidential in accordance with the contents of this Agreement and (ii) each party will be liable for any breaches of this Section 13.1 by any of its directors, partners, officers, employees, advisors, financing sources or representatives). The confidentiality obligations of this Section 13.1 do not apply to any information, knowledge or data (a) which is publicly available or becomes publicly available through no act or omission of the party wishing to disclose the information, knowledge or data; or (b) to the extent that it is required to be disclosed by any applicable law, regulation or legal process or by the rules of any stock exchange, regulatory body or governmental authority. The provisions of this Section 13.1 shall survive termination of this Agreement. Notwithstanding the foregoing, (1) in the case of a Member owned, directly or indirectly, by one or more funds or other pooled investment vehicles, such Member shall be entitled to disclose such confidential information to investors and limited partners of such fund or pooled investment vehicle, and to prospective investors or other Persons as part of fundraising or marketing activities undertaken by the manager of such fund or pooled investment vehicle or any of its affiliates, or prospective investors or other Persons as part of fundraising or marketing activities of such Member or its affiliates, or lenders or prospective lenders of such Member or its affiliates, provided such disclosures are made to Persons subject to an obligation of confidentiality with respect to such information, and (2) a Member may disclose confidential information to any bona fide potential purchaser of some or all of such Member's Units provided such potential purchaser agrees in writing to be bound by the terms of this Section 13.1.

Section 13.2 Entire AgreementThis Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof. It supersedes any prior agreement or understandings among them with respect to the subject matter hereof, and it may not be modified or amended in any manner other than as set forth herein.

Section 13.3 Governing LawThis Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the law of the State of Delaware, without giving effect to any choice of law or conflict of law rules, principles or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

Section 13.4 SeverabilityIf any term or other provision of this Agreement is invalid, illegal or incapable of being enforced as a result of any rule of law or public policy, all other terms and other provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated by this Agreement are fulfilled to the greatest extent possible.

Section 13.5 EffectExcept as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, successors and permitted assigns.

Section 13.6 CaptionsCaptions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provision hereof.

Section 13.7 CounterpartsThis Agreement may contain more than one counterpart of the signature page and this Agreement may be executed by the affixing of the signatures of each of the Members to one of such counterpart signature pages. All of such counterpart signatures pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

Section 13.8 Waiver of PartitionThe Members hereby agree that the Company assets are not and will not be suitable for partition. Accordingly, each of the Members hereby irrevocably waives any and all rights (if any) that such Member may have to maintain any action for partition of any of such assets.

Section 13.9 Waiver of Trial by Jury.TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY MATTER ARISING HEREUNDER.

Section 13.10 JurisdictionEach party hereto irrevocably agrees that any legal action, suit or proceeding arising out of or relating to this Agreement may be brought in the courts of the United States of America located in the State of Delaware or in the courts of the State of Delaware. By the execution of this Agreement, each such party irrevocably submits to the jurisdiction of any such court in any such action, suit or proceeding. Final judgment against any such party in any such action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the judgment, or in any other manner provided by law.

(b) Each of the parties hereto irrevocably waives to the fullest extent permitted by applicable law:

- (i) any objection which it may have now or in the future to the laying of the venue of any action, suit or proceeding in any court referred to in this Section 13.10; and
- (ii) any claim that any such action, suit or proceeding has been brought in an inconvenient forum.

[FORM SIGNATURE PAGE FOR INDIVIDUALS]

DATED AS OF: _____

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
ITR CONCESSION COMPANY HOLDINGS LLC

IN WITNESS WHEREOF, the undersigned Member has caused this counterpart signature page to the Amended and Restated Limited Liability Company Agreement of ITR Concession Company Holdings LLC, dated as of [____], 2014, to be duly executed as of the date first above written.

Name:

Address for Notices:

Attn: _____

Phone: _____

Fax: _____

e-mail: _____

Percentage Interest:

[FORM SIGNATURE PAGE FOR ENTITIES]

DATED AS OF: _____

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
ITR CONCESSION COMPANY HOLDINGS LLC

IN WITNESS WHEREOF, the undersigned Member has caused this counterpart signature page to the Amended and Restated Limited Liability Company Agreement of ITR Concession Company Holdings LLC, dated as of [_____], 2014, to be duly executed as of the date first above written.

[NAME OF MEMBER]

By: _____

Name:

Title:

Address for Notices:

Attn: _____

Phone: _____

Fax: _____

e-mail: _____

Percentage Interest:

SCHEDULE 1

[Equity Summary]

EXHIBIT A
FORM OF
INSTRUMENT OF ACCESSION

The undersigned, [NAME] (the “Transferee”), as a condition precedent to becoming the owner or holder of record of [NUMBER] ([NUMBER]) Units of ITR Concession Company Holdings LLC, a Delaware limited liability company (the “Company”), pursuant to a transfer from [_____] (“Transferor”), hereby agrees to become party to and bound by the Amended and Restated Limited Liability Company Agreement of the Company dated as of [_____] by and among the Members specified therein (the “LLC Agreement”; capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the LLC Agreement).

This Instrument of Accession shall take effect and shall become an integral part of the LLC Agreement in accordance with the terms thereof upon execution and delivery to the Company of this Instrument of Accession.

IN WITNESS WHEREOF, the undersigned has caused this INSTRUMENT OF ACCESSION to be signed as of the date below written.

Signature: [NAME]

Date: _____

Accepted: ITR Concession Company Holdings LLC

By: _____

Name:

Title:

Date: _____

Exhibit A-2

Form of Reorganized Statewide LLC Agreement

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

OF

STATEWIDE MOBILITY PARTNERS LLC

BY AND AMONG

INDIANA TOLL ROAD PARTNERSHIP,

MQA INDIANA HOLDINGS LLC,

CINTRA ITR LLC,

AND

CINTRA HOLDINGS US CORP.

originally dated as of January 19, 2006

amended and restated as of [_____]

TABLE OF CONTENTS

	<u>Page</u>
Section 1. Name	1
Section 2. Definitions; Construction.....	1
Section 3. Purpose of the Company.....	5
Section 4. Location of Principal Place of Business	5
Section 5. Registered Agent and Office.....	5
Section 6. Term; Filing	5
Section 7. Units; Capital Contributions	6
Section 8. Powers and Rights of the Members	7
Section 9. Powers; Rights and Duties of the Board of Directors.....	15
Section 10. Allocations, Distributions and Elections.....	20
Section 11. Loans.....	21
Section 12. Bankruptcy	21
Section 13. Property of the Company	21
Section 14. Bankruptcy of Member	21
Section 15. Actions Upon Dissolution.....	22
Section 16. Fiscal Year	22
Section 17. Disputes.....	22
Section 18. Defaults	22
Section 19. Exculpation of Members.....	23
Section 20. Indemnification of the Members, Directors, Officers and Agents; Liability.....	23
Section 21. Special Macquarie Parent Provisions.....	24
Section 22. Investment Representations	25
Section 23. Waiver of Action for Partition	25
Section 24. Assignment; Successors; Third-Party Rights.....	25
Section 25. Notices	26
Section 26. Amendments	26
Section 27. Amendment of Certificate.....	26
Section 28. Severability	26
Section 29. Governing Law	26
Section 30. Governing Language.....	26
Section 31. Counterparts.....	26
Section 32. Limitations on Company Powers.....	26
Section 33. No State-Law Partnership.....	26
Section 34. Put Right	27

EXHIBIT A	CERTIFICATE OF FORMATION
EXHIBIT B	FORM OF UNIT CERTIFICATE
SCHEDULE 7(a)	UNITS AND NOTICES

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT
OF
STATEWIDE MOBILITY PARTNERS LLC

This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this “Agreement”) of Statewide Mobility Partners LLC, a Delaware limited liability company (the “Company”), is made and entered into as of [_____], by and among MQA Indiana Holdings LLC (“MQA Indiana”), Indiana Toll Road Partnership (f/k/a MIG Indiana LLC) (“ITRP”), Cintra ITR LLC (“Cintra ITR”) and Cintra Holdings US Corp. (“Cintra US”).

Section 1. Name. The name of the Company is Statewide Mobility Partners LLC. All business of the Company shall be conducted under such name.

Section 2. Definitions; Construction.

(a) Definitions. As used in this Agreement, the following terms shall have the following meanings:

“Act” means the Delaware Limited Liability Company Act (currently Chapter 18 of Title 6 of the Delaware Code).

“Affiliate” means, with respect to any Person, (i) each entity that such Person Controls, (ii) each Person that Controls such Person, and (iii) each entity that is under common Control with such Person; provided, that, for purposes of this Agreement, the MIT Trusts, Macquarie Infrastructure Group International Limited, a public limited company registered in Bermuda, Macquarie Bank Limited and its subsidiaries (including any of their managed funds), and any holding company of Macquarie Infrastructure Group International Limited shall be Affiliates of MQA Indiana and ITRP.

“Agreed Price” has the meaning set forth in Section 8(f)(i).

“Agreement” means this Amended and Restated Limited Liability Company Agreement, as amended from time to time.

“Board of Directors” has the meaning set forth in Section 9(a).

“CEO” means the Chief Executive Officer of the Company.

“Certificate” means the Certificate of Formation of the Company as filed with the Delaware Secretary of State, as the same may be amended from time to time. The Certificate as of the date hereof is attached hereto as Exhibit A.

“CFO” means the Chief Financial Officer of the Company.

“Cintra ITR” has the meaning set forth in the preamble to this Agreement.

“Cintra US” has the meaning set forth in the preamble to this Agreement.

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

“Company” has the meaning set forth in the preamble to this Agreement.

“Control” means, as applied to any Person (and including, with correlative meaning, the verb form of such term), the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise.

“Director” means a member of the Board of Directors.

“Dissolution” has the meaning set forth in Section 6(a).

“GAAP” means generally accepted accounting principles in the United States, consistently applied.

“Indemnified Party” has the meaning set forth in Section 20(a).

“ITR” means collectively Reorganized Holdings and ITR Concession Company LLC, both Delaware limited liability companies.

“ITRP” has the meaning set forth in the preamble to this Agreement.

“ITR LLC Agreements” means the Reorganized Holdings LLC Agreement and the Limited Liability Company Agreement for ITR Concession Company LLC, dated as of January 19, 2006.

“Macquarie Parent” means collectively (i) Macquarie Infrastructure Investment Management Limited, a company duly constituted and existing under the laws of Australia, as responsible entity for the MIT Trusts and (ii) Macquarie Infrastructure Group International Limited.

“Majority Approval” means that the number of Units voted in favor of an action, by Members or Directors, as the case may be, is equal to or exceeds 75% of the total Units owned by all Members.

“Material” means an amount equal to or greater than 10% of the value of the assets of the Company, as determined in the latest audited financial statement of the Company.

“Member” has the meaning set forth in Section 8(a).

“Member Group” means, in respect of a Member, that Member and its Affiliates, not including the Company or ITR.

“MIT Trusts” means the Macquarie Infrastructure Trust (I) and the Macquarie Infrastructure Trust (II), each an Australian trust.

“MQA Indiana” has the meaning set forth in the preamble to this Agreement.

“Non-electing Member” has the meaning set forth in Section 8(h).

“Non-selling Member” has the meaning set forth in Section 8(f).

“Offered Units” has the meaning set forth in Section 8(f).

“Offer Period” has the meaning set forth in Section 8(f).

“Panel Resolution Board” means the chief executive officers of each Member or Affiliate of such Member that Controls all of the Member Group involved in a dispute that is required to be resolved pursuant to Section 17. For the avoidance of doubt, the chief executive officer of the Affiliate of ITRP that Controls all of that Member Group shall be the chief executive officer of the Macquarie Parent.

“Participating Member” has the meaning set forth in Section 8(h).

“Percentage Interest” means the ratio of the number of Units owned by a Member Group to the total number of Units owned by all Members.

“Person” means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust, an unincorporated organization and any government or political subdivision thereof.

“Plan” means that certain *Joint Prepackaged Plan of Reorganization of ITR Concession Company LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* with respect to the Company, Reorganized Holdings and ITR Concession Company LLC.

“Put Option Units” has the meaning set forth in Section 8(h).

“Receiving Member” has the meaning set forth in Section 8(h).

“Regulations” means regulations of the United States Treasury.

“Reorganized Holdings” means ITR Concession Company Holdings LLC.

“Reorganized Holdings LLC Agreement” means the Amended and Restated Limited Liability Company Agreement for Reorganized Holdings originally dated as of January 19, 2006 and amended and restated as of [____].

“Reorganized Holdings Interests” means the entire ownership interest of a member pursuant to the terms and conditions of the Reorganized Holdings LLC Agreement in the Reorganized Holdings at any particular time, including such member’s interest in the capital, profits, losses and distributions of Reorganized Holdings.

“ROFR” has the meaning set forth in Section 8(f).

“Securities Acts” means the Securities Act of 1933 (currently 15 U.S.C. § 15b et seq., the Delaware Securities Act and any state securities laws.

“Selling Member” has the meaning set forth in Section 8(f).

“Simple Majority Approval” means that the number of Units voted in favor of an action, by Members or Directors, as the case may be, exceeds 50% of the total Units owned by all Members.

“Statewide Equity Distribution” means 4.25% of the Reorganized Holdings Interests, subject to adjustment as set forth in the Plan.

“Super Majority Approval” means that the number of Units voted in favor of an action, by Members or Directors, as the case may be, is equal to or exceeds 90% of the total Units owned by all Members.

“Tax Matters Partner” has the meaning set forth in Section 8(b).

“Third Party” has the meaning set forth in Section 8(f).

“Transfer” means (and including, with correlative meaning, other grammatical forms of such term), in respect of some or all Units or the economic interest represented by such Units, any direct or indirect sale, transfer, assignment, gift, bequest, donation, pledge, hypothecation, encumbrance, mortgaging, assignment as collateral, or disposition by any other means, whether for value or no value and whether voluntary or involuntary (including by realization upon any encumbrance, by operation of law or by judgment, levy, attachment, garnishment, bankruptcy or other legal or equitable proceedings).

“Transfer Terms” has the meaning set forth in Section 8(f).

“Unit” means a unit of ownership interest in the Company and need not be a whole number.

(b) Construction. The following rules of construction shall be applied to any interpretation of this Agreement:

- (i) Section headings are provided for convenience only and should not affect any construction or interpretation hereof;
- (ii) All defined terms used in this Agreement should be construed to be of such gender or number as the circumstances require;
- (iii) The terms “include” and “including” shall not be limiting;
- (iv) Any reference to a statute refers to the statute, any amendments or successor legislation, and all regulations promulgated under or implementing the statute, as in effect at the relevant time;

- (v) All references to Sections, Exhibits and Schedules are to sections of and exhibits and schedules to this Agreement, unless otherwise noted;
- (vi) Any reference to a written agreement as of a given date means the agreement as amended, supplemented and/or modified from time to time through such date; and
- (vii) All use of the symbol “\$” refers to United States dollars.

Section 3. Purpose of the Company. The sole purpose of the Company shall be to:

- (a) own membership interests in ITR pursuant to the ITR LLC Agreements;
- (b) engage in any lawful act or activity and to exercise any power permitted to limited liability companies organized under the Act that are incidental to and necessary, suitable or convenient for the accomplishment of the purposes specified in Section 3(a) and to implement the obligations set forth in Section 10.

Section 4. Location of Principal Place of Business. The location of the principal place of business of the Company shall be 1209 Orange Street, Wilmington, Delaware 19801. The Board of Directors may change the location of the Company’s principal place of business, on ten (10) days prior written notice to all Members if it deems it to be advisable and provided that such change does not result in adverse tax consequences to the Company or its Members as determined by the Board of Directors. In addition, the Company may maintain such other offices as the Board of Directors may deem advisable at any other place or places, provided that such place or places comply with the immediately preceding sentence.

Section 5. Registered Agent and Office. The Company shall maintain within the State of Delaware a registered agent for service of process on the Company and a registered office as set forth in the Certificate.

Section 6. Term; Filing.

(a) The Company was formed in accordance with the Act and shall continue in existence until dissolved and its affairs wound up pursuant to Section 15(a). The Company may only be dissolved in the event of (i) the Members voting in favor of such dissolution in accordance with the terms hereof; provided, that such dissolution does not violate any written agreement to which the Company or its assets are bound, or (ii) entry of a decree of judicial dissolution under Section 18-802 of the Act (in either case “Dissolution”). Notwithstanding Dissolution, prior to the cancellation of the Certificate as set forth in Section 15(b), the business of the Company and the affairs of the Members shall continue to be governed by this Agreement.

(b) The Certificate was filed with the Secretary of State of Delaware on January 12, 2006, by an “authorized person” within the meaning of the Act, and the Members hereby ratify and approve such filing. The Board of Directors shall use its reasonable best efforts to cause amendments to the Certificate to be executed and filed whenever required by the Act.

(c) The Board of Directors shall use its reasonable best efforts to take such other actions as may be reasonably necessary to perfect and maintain the status of the Company as a limited liability company under the laws of the State of Delaware.

(d) Subject to Section 33, the Board of Directors shall cause the Company to be qualified or registered, including under assumed or fictitious name statutes when such is deemed desirable by the Board of Directors, in any jurisdiction in which the Company transacts business when such qualification or registration is required or desirable. Subject to Section 33, the Board of Directors, shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

Section 7. Units; Capital Contributions.

(a) Units. The capital of the Company shall be represented by Units. The Units of the Members as well as their respective participation in the rights, benefits, obligations and liabilities within the Company is as is reflected on Schedule 7(a), as the same may be amended from time to time in accordance with this Agreement. The Members may make such rules and regulations as they may deem appropriate concerning the clerical requirements for issuance and registration of Units, including the issuance of certificates representing Units in the form set forth as Exhibit B; provided, that any certificate evidencing Units must be signed by the Secretary of the Company. Unless the Members resolve otherwise, Units shall be issued without certificates. In the event that Units are issued with certificates, Schedule 7(a) shall include a record of each certificate issued. In the event that an issued certificate is lost or stolen, a replacement certificate may only be issued to a Member if such Member indemnifies the Company in respect of such lost or stolen certificate.

(b) Contributions. Except as set forth in this Agreement, the Members shall not be required to make any capital contributions. Additional capital contributions shall require Majority Approval of the Directors.

(c) Return of Capital. Except as may be expressly provided otherwise herein, no Member shall have priority over any other Member, either as to the return of capital contributions or as to net profits, net losses or distributions; provided, that this Section 7(c) shall not apply to the repayment by the Company of loans (as distinguished from capital contributions) that a Member extends to the Company. No Member shall be entitled to interest on its capital contributions or to a withdrawal or return of its capital contributions. Other than as set forth herein, no Member shall be entitled to distributions from the Company. No Member shall be entitled to resign or withdraw from the Company except as expressly provided in this Agreement, and no Member shall be entitled to receive any distribution or otherwise receive the fair market value of its Units in compensation for any purported resignation or withdrawal not in accordance with the terms of this Agreement. Any return of capital contributions or distributions made in accordance with this Agreement shall be made in proportion to each Member's Percentage Interest.

(d) Redemption of Units. Subject to Section 34, the Company may not acquire, by purchase, redemption or otherwise, Units without the prior written approval of all of the Members.

(e) New Units.

(i) Restrictions. Except in accordance with Section 8(e)(ii) or Section 9(g)(ii)(G), the Company shall not (i) issue or sell additional Units, whether unissued or hereafter created; (ii) issue any obligations, evidences of indebtedness or other securities of the Company convertible into or exchangeable for, or carrying or accompanied by any rights to receive, purchase or subscribe to, any unissued Units; (iii) issue any right of; subscription to or right to receive, or any warrant or option for the purchase of; any of the foregoing securities; or (iv) issue or sell any other securities that may be issued or sold by the Company that represents an ownership interest in the Company.

(ii) Dilution. In the event that a capital contribution is approved pursuant to Section 9(g)(ii)(G), each Member's capital contribution shall be in the amount of the approved capital contribution multiplied by that Member's Percentage Interest and shall be made to the Company within 30 days of the approval of such capital contribution by the Board of Directors, and the number of Units issued to contributing Members for their contributions shall be as agreed among the Members.

A. In the event that a Member fails to make its capital contribution approved pursuant to Section 9(g)(ii)(G), the other Members may elect to make a capital contribution in the amount that such Member failed to contribute, and such contributing Members shall receive the number of newly issued Units for such contribution that the non-contributing Member would have received for such contribution had such contribution been made by such non-contributing Member.

B. In the event that the Members collectively do not make capital contributions in the amount approved pursuant to Section 9(g)(ii)(G), the Company shall, as determined by the Board of Directors by Simple Majority Approval, either take no action in respect of the resulting capital shortfall or cause the Company to become indebted, including to a Member or Members on terms no less favorable to the Company than could reasonably be expected to be obtained from a non-Member, in order to raise the resulting capital shortfall.

Section 8. Powers and Rights of the Members.

(a) Members. Any Person that owns Units shall be a member of the Company (“Member”).

(b) Tax Matters Partner. The Company shall elect in accord with the regulations promulgated pursuant to Section 6231 of the Code on its first tax return to be covered by the provisions of the Tax Equity and Fiscal Responsibility Tax Act of 1982. The Member identified as such on Schedule 7(a) shall be the “tax matters partner” of the Company within the meaning of Section 6231(a)(7) of the Code (the “Tax Matters Partner”) and shall act in a similar capacity under any applicable non-U.S., state or local tax law. In its capacity as Tax Matters Partner, the Tax Matters Partner shall have all the authority and powers afforded to a tax matters partner pursuant to Section 6231 of the Code and shall be deemed to be authorized in respect thereof pursuant to Section 8(c). All reasonable expenses incurred by the Tax Matters Partner while acting in the capacity of Tax Matters Partner shall be paid or reimbursed by the Company. The Tax Matters Partner shall consult with each Member in good faith with respect to any written, notice of any inquiries, claims, assessments, audits, controversies or similar events received from any taxing authority that impacts such Member. Subject to Section 10(d) and Section 10(e), any election to be made by the Tax Matters Partner in its capacity as Tax Matters Partner with a governmental agency (federal, state or local) shall require Majority Approval of the Board of Directors. The Tax Matters Partner may consult with legal counsel or accountants selected by it, and any action or omission suffered or taken in good faith in reliance and accordance with the written opinion or advice of any such counsel or accountants (provided such have been selected with reasonable care) shall be full protection and justification with respect to the action or omission so suffered or taken.

(c) Authority. No one Member may take or effect any action on behalf of the Company or otherwise bind the Company in the absence of a formal delegation of authority by the Company to that Member; provided, that:

- (i) any such delegation must be effected through a resolution or consent of the Members adopted by the majority required for such action if such action had been approved by the Board of Directors;
- (ii) the Members may not otherwise take any action in respect of the Company unless such action is approved through a resolution or consent of the Members adopted by the majority required for such action if such action had been approved by the Board of Directors; and
- (iii) if the Board of Directors duly takes any action by resolution or consent, the Members shall vote in accordance with such resolution or consent.

(d) Meetings.

- (i) Generally. A Member meeting, for any purpose, may be called by any Member or Director.
- (ii) Place. All Member meetings shall take place at the Company’s principal place of business identified in Section 4; provided, that through a written consent containing a Majority Approval of the Members, any other place

may be designated for a Member meeting; provided, further, if a place is designated for a Member meeting and if as a result of such meeting or series of meetings occurring in such place the management and control of the Company would, after giving effect to the meetings occurring in such place, be deemed to be in a place other than within the United States, then such meeting place shall not be permitted.

- (iii) Notice. Except as provided in Section 8(d)(iv), Section 8(d)(viii) and Section 8(d)(ix), notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be given as provided in Section 25 not less than 7 business days before the date of the meeting.
- (iv) No Notice. If the representatives of Members collectively holding 75% or more of all of the Units consent to the holding of a meeting at any time and place, such meeting shall be valid without prior call or notice.
- (v) Quorum. The presence of representatives of Members collectively holding 75% or more of all of the Units shall be required in order for business to be conducted at a Member meeting; provided, that if a Member meeting has been duly called pursuant to Section 8(d)(iii), but such a Percentage Interest is not present for such meeting, then such meeting shall be adjourned, and a new meeting shall be called for 15 days after the date of such meeting. At such second meeting, the presence of representatives of Members collectively owning a Percentage Interest of 50% or more shall be required in order for business to be conducted at such second meeting.
- (vi) Record Dates. For the purpose of determining Members entitled to notice of or to vote at any Member meeting or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is provided or the date on which the resolution declaring such distribution is adopted by the Board of Directors, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any Member meeting has been made as provided in this Section 8(d)(vi), such determination shall apply to any adjournment thereof.
- (vii) Electronic Conferences. Any Member shall be entitled to participate in a Member meeting by means of conference telephone or similar communications or video equipment by means of which all Persons participating in the meeting can hear each other, and participation in the meeting by means of such equipment shall constitute presence in person at such meeting, provided such attendance does not result in adverse tax consequences to the Company.

- (viii) Written Consent. Action required or permitted to be taken at a Member meeting may be taken without a meeting if the action is evidenced by a written consent describing the action taken, signed by Members holding the number of Units required to approve such action and delivered to the Board of Directors for inclusion in the minutes or for filing with the Company records. The Board of Directors shall promptly provide copies of any such written consent to all of the Members.
 - (ix) Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at or after the time stated therein, will be equivalent to the giving of such notice. A Member's presence at a meeting constitutes that Member's waiver of notice of the meeting unless prior to the commencement of the meeting the Member objects to the manner of notice of the meeting.
- (e) Percentage Interest Changes.
- (i) Changes. Subject to the obligations between the Members set forth in Section 8(f) and Section 8(h), a Person may become a Member or increase its Percentage Interest pursuant to a Transfer or for consideration paid to the Company, in each case pursuant to the provisions of Section 8(e)(i)(B) and Section 8(e)(i)(C).
 - A. Transfer to Affiliates. A Member may at any time freely effect a Transfer to its Affiliate and, in respect of such transfer, the ROFR and the obligations in Section 8(h) shall not apply; provided, that no such Transfer may be made if (i) the Units subject to such Transfer, when added to the total of all of the other Units subject to Transfers in the preceding 12 consecutive months, would result in the termination of the Company under Code Section 708 or (ii) in the case of any Transfer made on or before the six month anniversary of the date hereof, such Transfer would cause the total number of Members to be less than two.
 - B. Other Transfers. Subject to Section 8(f) and Section 8(h), a Member may at any time effect a Transfer if (i) such Transfer does not breach or violate (A) the provisions of this Agreement (and the rights and obligations of each Member hereunder) or (B) any law or regulation and (ii) in the case of any Transfer made on or before the six month anniversary of the date hereof, such Transfer does not cause the total number of Members to be less than two.
 - C. Conditions. No Transfer of Units to a new Member shall be effective: (A) without registration under applicable Securities Acts, unless the transferring Member delivers an opinion of counsel reasonably satisfactory to each other Member that registration

under such laws is not required; (B) without such new Member agreeing to be bound by this Agreement by executing a signature page hereto; and (C) without the new Member having delivered such additional documentation as the Board of Directors shall reasonably require to so admit such transferee into the Company as a Member.

D. Notwithstanding anything contained herein to the contrary, until such time as the Transfer of Units to a new Member shall have become effective, both the Company and the Members shall be entitled to treat the transferor of Units as the absolute owner thereof in all respects, and shall incur no liability for distributions of cash or other property made in good faith to it, until such time as a written assignment or other evidence of the consummation of a Transfer that conforms to the requirements of this Section 8(e) and is reasonably satisfactory to the Members has been received by the Company. The effective date of any Transfer permitted under this Agreement shall be the close of business on the day of receipt thereof by the Company.

(ii) New Units. The Members, through a Super Majority Approval, may approve the issuance of new Units to a Person not already a Member or an Affiliate of a Member, and such Super Majority Approval shall include (A) the price payable to the Company for such new Units and (B) the conditions, including any of the conditions set forth in Section 8(e)(i)(C), such Person must meet in order for the issuance of such Units to such Person to become effective.

(iii) New Member Allocations. No new Member shall be entitled to any retroactive allocation of any item of income, gain, loss, deduction or credit of the Company. Notwithstanding the preceding sentence, the Members may, at the time a new Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of items of income, gain, loss, deduction or credit to a new Member for that portion of the Company's tax year in which a new Member was admitted.

(f) Members' First Refusal Rights.

(i) Other than in respect of Section 8(h) or Section 34 hereof, if any Member or any Affiliate thereof (each such Person, a "Selling Member") obtains or receives a bona fide, all cash, binding offer from a Person that is not an Affiliate of such Selling Member (each such Person, a "Third Party") to purchase (directly or indirectly, through one transaction or a series of related transactions) some or all of the Units or the economic interest represented by such Units (together, the "Offered Units"), such Selling Member shall not Transfer its Offered Units, directly or indirectly, to such Third Party until it has first offered in writing the Offered Units for sale to

the remaining Members who are not Affiliates of the Selling Member (the “Non-selling Members”) for the same price and on the same terms offered by such Third Party (the foregoing right of first refusal, the “ROFR”). The ROFR offer to the Non-selling Members must identify the Third Party and specify all of the terms of the Third Party offer, including the total number of Offered Units to be Transferred, the nature and quantity of the economic interest to be Transferred, the cash price in US dollars, and the other terms and conditions related to such Transfer (collectively, the “Transfer Terms”). In case the bona fide, binding offer from a Third Party referred to above is not made directly in cash, the Selling Member and the Non-Selling Member shall negotiate in good faith in order to agree a valuation methodology, including, if necessary, the appointment of an investment bank to assist with such agreement. Once a cash price has been fixed pursuant to whatever valuation methodology has been agreed in accordance with the preceding sentence (the “Agreed Price”) the Non-Selling Member shall be entitled to exercise its ROFR at the Agreed Price in accordance with the procedures set forth herein.

- (ii) Notwithstanding the foregoing, the ROFR shall not apply to the sale of securities of any Person (i) whose securities are publicly traded as of the date hereof, and (ii) who is a direct or indirect holder of Units or the economic interest represented by Units as of the date hereof.
- (iii) Each Non-selling Member’s ROFR in respect of the Third Party offer to the Selling Member shall expire and be of no further force or effect if such Non-selling Member does not make a binding offer in writing to purchase either all or its pro rata share of the Offered Units on the same substantive terms as the Transfer Terms within 30 days of the date the Selling Member offered the Offered Units for sale to the Non-selling Members (the 30 day period beginning upon delivery of notice pursuant to Section 28 to the last Non-selling Member, the “Offer Period”). A Non-selling Member’s offer may include an offer to purchase the totality of the Offered Units to be Transferred. If the Non-selling Members collectively offer to purchase Units in excess of the Offered Units, each Non-selling Member who has offered to buy all of the Offered Units shall automatically be deemed to have offered to buy (A) the number of Offered Units remaining after subtracting from the Offered Units the number of Units represented by offers from all Non-selling Members who have offered to buy only their pro-rata share of the Offered Units multiplied by (B) that Non-selling Member’s Percentage Interest divided by the sum of the Percentage Interests of all such Non-selling Members who have offered to buy all of the Offered Units.
- (iv) The Selling Member shall have no obligation to accept the offer of the Non-selling Members unless the offer from such Non-selling Members (in the aggregate) is for at least the totality of the Offered Units offered by the Selling Member, and unless the offer from all of the Non-selling Members

is on the same substantive terms as the Transfer Terms, including in respect of the nature of the economic interest to be Transferred.

- (v) If the Non-selling Members, individually or in the aggregate, do not submit an offer that satisfies Section 8(f)(iii), the Selling Member shall have 90 days from the expiration of the Offer Period to conclude the Transfer to the identified Third Party of the Offered Units. The Selling Member may Transfer only to the identified Third Party and on the same Transfer Terms offered to the Non-selling Members, except for such immaterial differences not relating to the price, the number of Offered Units, or the nature or quantity of the economic interest to be sold.
- (vi) If a sale has not been completed within such 90 day period after the expiration of the Offer Period, or if the Selling Member wishes to sell to a different Third Party or on Transfer Terms different than those terms offered to the Non-selling Members, the Selling Member must restart the ROFR process.

(g) Tag Along Rights. Subject to the ROFR but excluding, for the avoidance of any doubt, any exercise of the put or call options described in Section 8(h) or Section 34, if a Member intends to enter into a binding agreement with a Third Party to Transfer Offered Units constituting or representing all of such Member's Units or representing more than 60% of the issued and outstanding Units, then:

- (i) One of such Selling Members shall promptly notify in writing all of the other Members of the Transfer Terms related to such Transfer;
- (ii) Within five days of receipt of such notice, any such other Member may notify in Writing the Selling Member providing such notice of its decision to sell all of its Units to the Third Party on the same Transfer Terms, and the Selling Member shall inform the Third Party of each such decision;
- (iii) Except as otherwise set forth herein, no Transfer pursuant to this Section 8 may be consummated unless the Third Party extends a purchase offer on the same Transfer Terms to all Members providing the notice to the Selling Member described in Section 8(g)(ii);
- (iv) The purchase offer described in Section 8(g)(iii) must (A) be an offer to buy 100% of the Units owned by each Member providing the notice to the Selling Member described in Section 8(g)(ii), (B) be made within 10 business days following the receipt of notice to the Selling Member described in Section 8(g)(ii), (C) remain open for 30 days following the date of such offer; and (D) be on the same Transfer Terms as those initially offered by the Third Party to the Selling Member. Such offer shall only apply to those Members who have given notice as described in Section 8(g)(ii) and relate solely to the Units owned by such Members; and

- (v) To the extent the Selling Member complies with Section 8(g)(ii) and the Third Party complies with Sections 8(g)(iii) and (iv), the proposed Transfer in respect of at least 60% of the issued and outstanding Units may be consummated.

(h) Put Option Purchase Right. To the extent that the put option described in Section 34 becomes available to the Members and, in conjunction therewith, any Member will elect to participate in the same, the following requirements shall apply. On or prior to the fifth day following the occurrence of a change in control of Reorganized Holdings as set forth and described in Section 7.9 of the Reorganized Holdings LLC Agreement, each Member that will put its pro rata portion of the Statewide Equity Distribution (the "Put Option Units") to Holdings in exchange for cash (each such Member, a "Participating Member") shall give notice of such election to all other Members outside of its Member Group (each such other Members, a "Receiving Member"). To the extent that such Receiving Members are not also Participating Members (each such non-Participating Member being, a "Non-electing Member"), such Non-electing Members shall have the right to notify the Participating Members in writing within five (5) days of the date of the above described notice of their election to purchase the Put Option Units from the Participating Member for the same price as such Participating Member would have received from Reorganized Holdings. The purchase price for any such purchase shall be paid in cash and any such sale shall be consummated by no later than 30 days following the occurrence of the change in control of Reorganized Holdings. To the extent that a Participating Member shall not have received written notification in accordance with the terms hereof from any Non-electing Member in respect of its decision to participate in the put option described in Section 34, such Participating Member shall have the right to put its pro rata portion of the Statewide Equity Distribution to Reorganized Holdings in accordance with the terms hereof and of the Reorganized Holdings LLC Agreement. For the avoidance of any doubt, no Participating Member shall have any right to participate in the put option described in Section 34 hereof unless and until it has first complied with the obligations set forth in this Section 8(h).

(i) CEO and CFO appointment.

- (i) Cintra ITR shall, for so long as the Cintra Member Group (as a whole) holds 30% or more of the Units, have the exclusive right to nominate candidates for the position of Chief Executive Officer (CEO), which appointment will have to be approved by the Board of Directors.
- (ii) ITRP shall, for so long as the ITRP Member Group (as a whole) holds 30% or more of all of the Units, have the exclusive right to nominate candidates for the position of Chief Financial Officer (CFO), which appointment will have to be approved by the Board of Directors.
- (iii) The employment agreements of the CEO and CFO entered into by the Company shall require such individuals to defend, represent and promote both the interests of the Company and its subsidiaries and those of the Members in an even manner.

- (iv) The right of Cintra ITR to nominate candidates for the position of CEO shall not be transferred or assigned to any third party (other than, Grupo Ferrovial, or to any entity managed by or Controlled by Grupo Ferrovial). The right of MQA to nominate candidates for the position of CFO shall not be transferred or assigned to any third party (other than to MQA Indiana, Macquarie Bank Limited or an entity managed by or Controlled by Macquarie Bank Limited).

Section 9. Powers; Rights and Duties of the Board of Directors.

(a) Management. A board of directors shall be established to manage the business, affairs and property of the Company (“Board of Directors”). Directors shall receive no remuneration from the Company, but shall be reimbursed for their reasonable and documented expenses incurred pursuant to fulfilling their duties as Directors.

(b) Authority. Subject to the limitations provided in, and except as specifically contemplated by, this Agreement, the Board of Directors shall have exclusive and complete authority and discretion to manage the day-to-day operations and affairs of the Company and to make all decisions regarding the business of the Company not otherwise reserved for the Members pursuant to the Act or Section 8. Any action authorized by the Board of Directors shall constitute the act of and serve to bind the Company. Persons dealing with the Company shall be entitled to rely conclusively on the power and authority of the Board of Directors as set forth in this Agreement. No one Director may take or effect any action on behalf of the Company or otherwise bind the Company in the absence of a formal delegation of authority by the Board of Directors to such Director.

(c) Powers and Duties. Except as otherwise specifically provided herein or in the Certificate, the Board of Directors shall have all rights and powers of a “manager” under the Act, and shall have such authority, rights and powers in the management of the Company business to do any and all other acts and things necessary, proper, convenient or advisable to effectuate the pm-poses of this Agreement and of the Company. In addition to its other duties, the Board of Directors shall authorize distributions to the Members in accordance with Section 10(b)(i).

(d) Composition.

- (i) Subject to Section 9(d)(ii), the number of Directors shall be fixed from time to time pursuant to a Member resolution adopted by Simple Majority Approval.
- (ii) Subject to Section 9(d)(iii), each of the Cintra Member Group and the ITRP Member Group shall be entitled to appoint at least one Director. As of the date hereof, there shall be four Directors, of whom two shall have been appointed by Cintra ITR and two shall have been appointed by ITRP.
- (iii) A Member may, at any time and for any reason, remove a Director that it or they have appointed by delivering written notice thereof to the Company. Any such resignation shall be deemed effective at the time

specified in such notice or, if no such time is specified, upon the Company's receipt of such notice.

- (iv) Directors may resign at any time by providing written notice thereof to the Company. Any such resignation shall be deemed effective at the time specified in such notice or, if no such time is specified, upon the Company's receipt of such notice.
- (v) Upon the removal or resignation of any Director, the Member that appointed such removed or resigned Director may appoint a replacement Director by delivering written notice thereof to the Company and each Member, and such appointment shall be deemed effective at the time specified in such notice or, if no such time is specified, upon the Company's receipt of such notice. In the case of a removal pursuant to clause (iii), the notice removing such Director and the notice appointing the new Director may be provided through a single instrument.
- (vi) In the event that any Member proposes to appoint a Director, and as a result of such appointment the management and control of the Company would, after giving effect to such appointment, be deemed to be in a place other than the United States, then such appointment shall not be permitted.

(e) Meeting. Board of Directors meetings, regular or special, shall be held at the Company's principal place of business identified in Section 4, unless the Directors agree by Majority Approval to meet in another place; provided, if a place is designated for a Board of Directors meeting and if as a result of such meeting or series of meetings occurring in such place the management and control of the Company would, after giving effect to the meetings occurring in such place, be deemed to be in a place other than the United States, then such meeting place shall not be permitted. Regular Board of Directors meetings shall take place quarterly, by prior written notice given to the Board of Directors. A special Board of Directors meeting shall be held whenever called by any Director, at such time and place (subject to the restriction above) as shall be specified in the notice or waiver thereof. Notice of each special meeting shall be given by the Director calling the meeting to each other Director not later than 7 business days before the meeting, and such notice shall identify items of business to be discussed at such special meeting, together with all reasonably available supporting documentation. Directors shall use commercially reasonable efforts to cooperate regarding the timing and place of all Board of Directors meetings. Directors shall be entitled to participate in a Board of Directors meeting in the same manner in which Members are entitled pursuant to Section 8(d)(vii).

(f) Quorum and Voting. The presence of Directors holding the power to vote no fewer than 75% of all issued and outstanding Units shall constitute a quorum for the transaction of business at the Board of Directors meeting, but if there be less than a quorum at any Board of Directors meeting, the meeting shall be adjourned; provided, that notice thereof shall be given to all Directors not then in attendance and that a new Board of Directors meeting shall take place one week later, and at such new meeting the presence of Directors holding the power to vote no fewer than 50% of all issued and outstanding Units shall constitute a quorum for the transaction

of business; provided, further, that no quorum shall be deemed to have been constituted unless at least one Director representing no fewer than 50% of all issued and outstanding Units is present.

In all voting, a single Director, to the extent applicable, can vote the aggregate number of Units represented by its appointing Member(s). If there is more than one Director appointed by the same Member(s) present at a meeting of the Board of Directors, then the Member(s) that appointed such Directors shall notify the other Directors present at such meeting of the Units that each such Director is entitled to vote. If a Member fails to notify the other Directors of such allocation, then each Director present at a meeting which is appointed by the same Member shall have the right to vote Units equal to the quotient of (x) the aggregate number of Units owned by such Member divided by (y) the aggregate number Directors present at the meeting which are appointed by such Member.

(g) Required Majorities. The Board of Directors may take the following actions only according to the following majorities:

- (i) Super Majority Approval. Super Majority Approval shall be required in order to approve:
 - A. any material amendment to the Certificate or this Agreement (without reference to the Schedules);
 - B. an Initial Public Offering of the Company;
 - C. a merger, consolidation, or Material acquisition by the Company; and
 - D. Material capital calls or Material increases in securities or indemnities to be provided (unless pursuant to a contractual arrangement, credit agreement or governmental directive where such action will require a Simple Majority) in relation to the Company.
- (ii) Majority Approval. Majority Approval shall be required in order to approve:
 - A. Transactions between an Affiliate of a Member and the Company;
 - B. senior manager appointments (including president, chief operating officer, treasurer, controller, and any vice presidents or individuals holding similar titles, it being understood that the president of the Company shall be nominated by the Member with the greater ownership interest in the Company or as otherwise agreed among the Members);
 - C. the replacement of the Tax Matters Partner with a new Tax Matters Partner;

- D. the insurance policy described in Section 20(b);
- E. sale by the Company of a Material portion of its assets;
- F. any transaction between the Company and a Member Group; provided, that any transaction by a Member with the Company shall be on terms no less favorable to the Company than the Company could be expected to receive in a comparable arm's length transaction from a third party that is not a Member;
- G. contributions to the capital of the Company; and
- H. the initiation of any bankruptcy or insolvency proceedings on the part of the Company.

(iii) Simple Majority Approval. Any action permitted by the Board of Directors to be taken pursuant to the Act, the Certificate or this Agreement that is not specifically identified in Section 9(g)(i) or Section 9(g)(ii) as requiring a different majority, shall be taken by Simple Majority Approval, including, without limitation:

- A. approving budgets;
- B. amending Schedule 7(a) to keep it consistent with duly authorized decisions of the Company, Transfers, and notices of changes in addresses;
- C. changing the principal place of business of the Company pursuant to Section 4;
- D. making of distributions to Members; and
- E. establish specialized committees of the Board of Directors, including but not limited to, an executive committee (the "Executive Committee") and such other committees as the Board of Directors deems appropriate. The Executive Committee shall have the power and authority to take and authorize actions on behalf of the Company which require Simple Majority Approval and such other power and authority to take and authorize action on behalf of the Company as may be delegated by the Board of Directors to the Executive Committee from time to time pursuant to the procedures set forth in the Executive Committee charter adopted or to be adopted by the Board of Directors.

(h) Written Consent. Action required or permitted to be taken at a Board of Directors meeting may be taken without a meeting if the action is evidenced by a written consent describing the action taken and signed by Directors possessing the right to vote the requisite number of Units; provided, that, in the event that one Member owns more than 50% of the total

number of Units owned by all Members, no Simple Majority Approval consent may be signed until the Directors appointed by the other Members are provided notice and a reasonable opportunity to comment on the contents of such consent (which, in any event, shall not be for a period longer than 5 business days).

(i) Appointment and Term of Office. The Board of Directors may appoint, and may delegate power to appoint, such officers, agents and employees as it may deem necessary or proper, who shall hold their offices or positions for such terms, have such authority and perform such duties as may from time to time be determined by or pursuant to authorization of the Board of Directors. Except as may be prescribed otherwise by the Board of Directors in a particular case, all such officers shall hold their offices in accordance with the requirements and discretion of the Board of Directors for an unlimited term and need not be reappointed annually or at any other periodic interval. Any action taken by an officer of the Company pursuant to authorization of the Board of Directors and not inconsistent with this Agreement shall constitute the act of and serve to bind the Company. Persons dealing with the Company are entitled to rely conclusively on the authority of such officers set forth in the authorization of the Board of Directors. The Board of Directors may delegate to such officers the implementation of any of its decisions hereunder, but in no case may it delegate to any officers any powers to take any action or make any decision in lieu of a resolution, waiver or consent of the Board of Directors.

(j) Audit. The Board of Directors shall appoint, or cause to be appointed, an external auditor on an annual basis to audit the books and records of the Company, and a copy of such audit shall be provided to all Members.

(k) Bank Accounts. The Board of Directors may from time to time authorize the opening of bank accounts in the name of the Company, and the Board of Directors shall determine who will have the signing power over such accounts. The Board of Directors will have the power and authority on behalf of the Company to borrow money for the Company on such terms as the Board of Directors deems appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums.

(l) Books and Records. The Board of Directors shall maintain and preserve, during the term of the Company, the accounts, books and other relevant Company documents, including (i) a current list of the full name and last known business or mailing address of each Member and Director; (ii) a copy of the Certificate and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed; (iii) copies of the Company's financial statements and federal, state and local income tax returns and reports, if any, for the three most recent years; and (iv) a copy of the Company's currently effective written version of this Agreement. Upon reasonable written request, any Member shall be provided, or cause to be provided, with copies of any of the records of the Company or be allowed, or cause to be allowed, during ordinary business hours, as reasonably determined by the Board of Directors, to inspect and copy such Company records (in each case at the requesting Member's expense).

(m) Monthly Report. The Board of Directors shall, with the assistance of the Company's management, promptly prepare and provide to each Member a monthly and detailed

report concerning the finances of the Company (including the Company's investment in ITR) any litigation or governmental notifications, orders or audits pending against the Company, any default, notice of default or prospective default of Borrower under any credit or loan agreement (which, in each case shall be deemed Material), and any other matters that a Member may request or that could reasonably be expected to have a Material impact on the Company; provided, that the Board of Directors shall promptly notify the Members of basic facts of any actual or threatened Material changes to the Company as they become known.

(n) Compliance with the Plan. Notwithstanding anything to the contrary contained in this Agreement, the Company and the Members shall at all times comply with the terms of the Plan to the extent it relates to such Members or the Company, and the Board of Directors and the Members shall not take any actions, or cause the Company to take any actions, except in compliance with such applicable requirements.

Section 10. Allocations, Distributions and Elections.

(a) Allocations. The Members agree to share in all profits, losses and other items of the Company according to their respective Percentage Interests.

(b) Distributions. All distributions shall be made according to the Members' Percentage Interests. Distributions shall be made as follows:

- (i) The Board of Directors shall, only to the extent in accordance with prudent reasonable management practices and any agreements with financial institutions binding the Company, no less often than annually, cause the Company to make interim distributions of available cash (in proportion to each Member's respective Percentage Interest) in amounts sufficient to pay the federal income tax liability of the Members attributable to Company operations.
- (ii) Upon Dissolution, distributions will be made in accordance with Section 15(a)(iii).
- (iii) The Company may offset damages for breach of this Agreement by a Member whose Units are liquidated against the amount otherwise distributable to such Member pursuant to this Section 10(b).
- (iv) A Member has no right to demand and receive a distribution in a form other than cash.
- (v) All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution, or allocation to the Company or the Members may be treated as amounts distributed to the Members under this Section 10(b). The Company shall withhold from distributions and allocations and pay over to any federal, state or local government any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state or local law, and will allocate

such amounts to the Members with respect to which such amount was withheld.

(c) Accounting Principles. The Company's financial statements shall be prepared and its profit and loss statement shall be determined in accordance with GAAP using the method of accounting determined by the Tax Matters Partner:

(d) Treatment as Partnership. Neither the Company nor any Member shall elect under Treasury Re. Section 301.7701-3, or any other section of the Code or Regulations, for the Company to be treated as a corporation for U.S. federal income tax purposes without the prior consent of all of the Members.

(e) Election Under Section 754. The Company shall make an election under Code Section 754 on its first tax return.

Section 11. Loans.

(a) Loans. Subject to approval by the Board of Directors pursuant to Section 9(g)(ii) or Section 7(e)(ii)(B), as the case may be, nothing in this Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.

Section 12. Bankruptcy. Notwithstanding anything to the contrary set forth herein, unless the Company has the affirmative vote of the requisite number of Directors, the Company shall not file a voluntary petition or otherwise initiate proceedings to have the Company adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company, or file a petition seeking or consenting to reorganization or relief of the Company as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Company; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequester, custodian, liquidator (or other similar official) of the Company or of all or any substantial part of the properties and assets of the Company, or make any general assignment for the benefit of creditors of the Company, or admit in writing the inability of the company to pay its debts generally as they become due or declare or effect a moratorium on the Company debt or take any action in furtherance of any such action.

Section 13. Property of the Company. All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, no Member shall have any ownership interest in any Company property in its individual name or right, and the Members' Units shall be personal property for all purposes.

Section 14. Bankruptcy of Member. The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of any Member shall not cause dissolution of the Company, and the business of the Company shall continue notwithstanding the occurrence of any such event. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of such Member shall have all rights of such Member for the purpose of setting or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute Member. Any Transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator shall be subject to all of the

restrictions set forth herein to which such Transfer would have been subject if such Transfer had been made by such bankrupt, deceased, dissolved, liquidated, terminated or incompetent Member.

Section 15. Actions Upon Dissolution.

(a) Winding Up. Upon Dissolution, an accounting shall be made by the Board of Directors of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of Dissolution, and the Members shall:

- (i) sell or otherwise liquidate all of the Company's assets as promptly as practicable;
- (ii) discharge all liabilities of the Company, including liabilities to the Members as creditors of the Company to the extent permitted by law; and
- (iii) distribute the remaining assets to Members in accordance with each Member's respective Percentage Interest.

(b) Certificate of Cancellation. When all debts, liabilities and obligations of the Company have been paid and discharged, or adequate provisions have been made for their payment or discharge, and all of the remaining property and assets of the Company have been distributed, a certificate of cancellation setting forth the information required by the Act shall be executed by one or more authorized persons of the Company and filed with the Delaware Secretary of State. Upon such filing, the existence of the Company shall be terminated, except for the purpose of lawsuits, other proceedings and appropriate action as provided in the Act.

Section 16. Fiscal Year. The fiscal year of the Company shall be the calendar year.

Section 17. Disputes. In the event of a dispute between any of the Members hereunder (including in respect of the interpretation of this Agreement), the Members shall attempt in good faith in the first instance to amicably settle such dispute. If an amicable settlement cannot be reached by such Members within 15 business days from the day a Member sends a written notice to any other Members describing the specific nature of the dispute, then the dispute shall be submitted to the Panel Resolution Board for resolution. If the Panel Resolution Board is unable to resolve the dispute within a further 10 business days, then any Member involved in such dispute shall be entitled to seek relief through initiating a lawsuit, action or proceeding in a court of competent jurisdiction as provided herein. With respect to the foregoing sentence, each Member hereby (a) consents to submit itself to the personal jurisdiction of the federal and state courts of competent jurisdiction in the State of Delaware, (b) agrees that all claims in respect of any such suit, action or proceeding may be heard and determined only in such courts, and (c) agrees that it will not attempt to deny or defeat the personal jurisdiction by motion or other request for leave from any such court.

Section 18. Defaults. A Member shall be in default hereunder if it (a) is in default under any material provision hereof and such default is not cured within 30 days after written notice by another Member shall have been provided to the defaulting Member, or (b) is insolvent. In addition to any remedy available at law or in equity, the non-defaulting Members

shall have the option to acquire all (but not part) of the defaulting Member's Units for 75% of fair market value (in the case of the event set forth in clause (a) of the preceding sentence) or fair market value (in the case of the event set forth in clause (b) of the preceding sentence). The fair market value shall be determined by a reputable internationally recognized investment bank selected by the Members pursuant to mutual accord; provided, that in the event that the Members do not mutually agree on an investment bank, the defaulting Member and the non-defaulting Members (as a whole) shall each designate a reputable internationally recognized investment bank and the fair market value shall be the average of the two valuations designated by each such investment bank so long the difference in such valuations does not exceed 10%. To the extent that the difference between the two valuations noted in the immediately preceding sentence is in excess of 10%, the defaulting Member and the non-defaulting Members shall elect, by mutual accord, a third reputable internationally recognized investment bank (or, in the absence of a mutual accord, a reputable internationally recognized investment bank shall be selected randomly from a list of the five largest (in terms of revenues) reputable internationally recognized investment banks operating in Indiana) to provide an additional valuation of the same and the fair market value shall be the average of such third valuation and the closest valuation out of the two valuations previously obtained and described in the immediately preceding sentence.

Section 19. Exculpation of Members. To the fullest extent permitted by law, no Member Group shall be liable, responsible or accountable in damages or otherwise to the Company for any act or omission performed or omitted (a) in good faith on behalf of the Company, (b) in a manner reasonably believed by the Member Group participant to be within the scope of the authority granted to it by this Agreement, and (c) in a manner not constituting willful misconduct, fraud, or breach of the duty of loyalty.

Section 20. Indemnification of the Members, Directors, Officers and Agents; Liability.

(a) To the fullest extent to which it is empowered to do so by the Act, any other applicable law, the Certificate and this Agreement, the Company shall indemnify and hold harmless the Members, Directors, officers, agents and employees of the Company (each, an "Indemnified Party"), from and against any loss, expense, damage or injury suffered or sustained by them, by reason of any acts, omissions or alleged acts or omissions arising out of their activities on behalf of the Company or in furtherance of the interests of the Company, including any judgment, award, settlement, attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim if the acts, omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claims are based were not a result of fraud or willful misconduct by such Indemnified Party. Any indemnification pursuant to this Section 20 shall only be paid from the assets of the Company.

(b) In order to provide coverage for certain losses, expenses, damages or injuries described in this Section 20, the Company shall procure and maintain standard policies of directors and officers insurance from insurance carriers authorized to do business in Delaware and Illinois, and who shall have an A.M. Best Financial Rating of A-VII or better.

(c) Expenses (including attorneys' fees) incurred by an Indemnified Party in a civil or criminal action, lawsuit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding; provided, that if an Indemnified Party has advanced such expenses and it is later determined that such Indemnified Party was not entitled to indemnification with respect to such action, lawsuit or proceeding, then such Indemnified Party shall reimburse the Company for such advances.

(d) The Directors may consult with legal counsel or accountants selected by them, the costs of which shall be paid by the Company (to the extent that the same shall have been approved by a Simple Majority of the Directors), and any action or omission suffered or taken in good faith in reliance and accordance with the written opinion or advice of any such counsel or accountants (provided such have been selected with reasonable care) shall be full protection and justification with respect to the action or omission so suffered or taken.

(e) Neither any other Member nor the Directors shall be personally liable for the return of all or any part of a Member's capital contribution, which return shall be made solely from, and to the extent of the Company's assets pursuant to the terms of this Agreement.

Section 21. Special Macquarie Parent Provisions. Except in the event of fraud, breach of trust or breach of duty by Macquarie Parent (in which case Macquarie Parent may be liable in both its personal capacity and in its capacity as trustee of the MIT Trusts) and with no intention to limit any rights that Macquarie Parent may have to be indemnified out of the assets of the MIT Trusts, for all purposes hereunder and in respect of any act or failure to act related to the business of the Company, Macquarie Parent shall be treated as acting or failing to act solely in its capacity as responsible entity/trustee of each of the MIT Trusts. Accordingly, except as aforesaid:

(a) Macquarie Parent shall not be liable to pay or satisfy any of its obligations hereunder or thereunder except out of the assets of the relevant MIT Trusts out of which it is entitled to be indemnified as trustee;

(b) none of the Company, any Member or any Director shall be entitled to enforce any of its respective rights against Macquarie Parent hereunder or thereunder except to the extent of Macquarie Parent's right of indemnity under the constitution of each of the MIT Trusts (or otherwise at law or in equity) out of the assets of the MIT Trusts;

(c) if, pursuant to Section 21(a) any of the Company, any Member or any Director does not recover all moneys owing to it hereunder or thereunder, such Person may not seek to recover the shortfall by:

- (i) bringing proceedings against Macquarie Parent in its personal capacity;
- (ii) filing an involuntary bankruptcy case against Macquarie Parent or seeking to have a receiver appointed as to its assets; or
- (iii) seeking to set off against Macquarie Parent the relevant amount; and

(d) each of the Company, the Members and the Directors waive their rights and release Macquarie Parent from any personal liability whatsoever, in respect of any loss or damage:

- (i) which it may suffer as a result of any breach or non-performance by Macquarie Parent hereunder or thereunder; or
- (ii) which cannot be paid or satisfied out of the assets of the relevant MIT Trust.

Section 22. Investment Representations. Each undersigned Member understands (a) that the Units have not been registered under the Securities Acts because the Company, in issuing the Units, is relying upon exemptions from the registrations requirements of the Securities Acts providing for the issuance of securities not involving a public offering, (b) that the Company has relied upon the fact that the Units are to be held by each Member for investment, and (c) that exemption from registrations under the Securities Acts would not be available if the Units were acquired by a Member with a view to distribution. Accordingly, each Member hereby confirms that it is acquiring Units for its own account, for investment and not with a view to the resale or distribution thereof without complying with an exemption from registration under the Securities Acts. Each Member agrees that any Transfer will comply with the provisions regulating Transfers hereunder. Each Member understands that the Company has no obligation to register the Units or to assist a Member to comply with any exemption from registration under the Securities Acts if such Member should at a later date wish to dispose of the Units. Each Member understands that the Units are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange Commission unless such Member is not an “affiliate” of the Company (as defined in Rule 144) and the Units have been beneficially owned and fully paid for by such Member for at least two years. Prior to acquiring Units, each Member has made an investigation of the Company and its business, and the Company has made available to it all information with respect thereto which it requested to make an informed decision to acquire Units. Each Member represents that it possesses experience and sophistication as an investor adequate for the evaluation of the merits and risks of such Member’s investment in Units and that it will actively participate in the business of the Company.

Section 23. Waiver of Action for Partition. Each Member irrevocably waives any right it may have to maintain any act for partition with respect to the property of the Company.

Section 24. Assignment; Successors; Third-Party Rights. Except as otherwise specifically set forth herein, no Member shall assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Members. Subject to the preceding sentence, this Agreement shall apply to, be binding in all respects upon, and inure to the benefit of each Member’s heirs, executors, administrators and permitted assigns. Nothing expressed or referenced in this Agreement will be construed to give any Person any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement except such rights as may inure to a successor or permitted assignee under this Section 24.

Section 25. Notices. All notices hereunder shall be in writing and be deemed given to a Member, Director or to the Company when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid), (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment, or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the addresses, facsimile numbers or e-mail address and marked to the attention of the individual (by name or title) (if any) as shown on Schedule 7(a) (or in the case of Directors, the other records of the Company) and to the Company at its principal office, or to such other address, facsimile number, e-mail address or individual as a Member or the Company may designate by notice to the other Members and the Company.

Section 26. Amendments. This Agreement may only be amended pursuant to Section 9(g)(i); provided, that Schedule 7(a) may be amended by the Board of Directors to keep it consistent with duly authorized decisions of the Company, Transfers, and notices of changes in addresses.

Section 27. Amendment of Certificate. In the event this Agreement shall be amended pursuant to Section 26 and the other provisions of this Agreement, the Board of Directors shall amend the Certificate to reflect such change if it deems such amendment of the Certificate to be necessary or appropriate.

Section 28. Severability. If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

Section 29. Governing Law. This Agreement shall be governed by and interpreted in accordance with the law of the State of Delaware, without regard to conflicts of laws principles that would require the application of any other law.

Section 30. Governing Language. All business and documentation of the Company and ITR shall, to the extent possible, be conducted in and memorialized in the English language. In the event of any conflict between any Company or ITR documents in English and another language, the English version shall control. The Board of Directors, in its exercise of the power of the Company as the sole member of ITR, shall cause the provisions of this Section 30 to be implemented by ITR.

Section 31. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

Section 32. Limitations on Company Powers. Notwithstanding anything contained herein to the contrary, the Company shall not do business in any jurisdiction that would jeopardize the limitation on liability afforded to the Members under the Act or this Agreement.

Section 33. No State-Law Partnership. The Members intend that the Company shall not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member shall be an agent, partner or joint venturer of any other Member for any

purposes other than U.S. federal and state tax purposes, and this Agreement shall not be construed to suggest otherwise.

Section 34. Put Right. Upon receipt by the Company of the Statewide Equity Distribution, the Company shall promptly distribute to each Member all or a portion of its pro rata portion of the Statewide Equity Distribution (based on such Member's Percentage Interest in the Company at such time) pursuant to instructions in respect of the same provided by such Member to the Company and, in each case, so long as in accordance with the requirements of the Plan. To the extent that the Company does not receive such instructions for a particular Member, the Company shall retain such pro rata portion of the Statewide Equity Distribution (for the benefit of such Member) until such Member either provides the relevant distribution instructions to the Company or, to the extent applicable, instructs the Company to put all or a portion of such pro rata portion of the Statewide Equity Distribution to Reorganized Holdings pursuant to the terms and conditions set forth in Section 7.9 of the Reorganized Holdings LLC Agreement (upon any exercise of such put option, the Company shall promptly distribute the cash proceeds received in respect of the same to the applicable Member pursuant to written instructions received from such Member). To the extent that each Member elects to exercise its put option as described in Section 7.9 of the Reorganized Holdings LLC Agreement and such Members constitute the only members in the Company at such time and such Reorganized Holdings Interests constitute the only Reorganized Holdings Interests held by the Company, such unanimous election shall be deemed a vote to dissolve the Company pursuant to Section 6(a) and the Company shall be dissolved and the Certificate cancelled pursuant to Section 15. To the extent that Reorganized Holdings exercises its right to call the Reorganized Interest Holdings held by the Members that were issued as part of the Statewide Equity Distribution, and at the time of the exercise of such call option the Reorganized Interest Holdings are held by the only members in the Company and constitute the only Reorganized Holdings Interests held by Company, such election shall be deemed a vote to dissolve the Company pursuant to Section 6(a) and the Company shall be dissolved and the Certificate cancelled pursuant to Section 15. If at the time of the exercise by Reorganized Holdings of such call right the Company holds all or any portion of the Statewide Equity Distribution, the Company shall distribute such Reorganized Holdings Interests to Reorganized Holdings and shall promptly distribute to the applicable Members their relevant portion of the cash proceeds received in return in respect thereof.

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IN WITNESS WHEREOF, the undersigned Initial Members have caused this counterpart signature page to the Amended and Restated Limited Liability Company Agreement of Statewide Mobility Partners LLC to be duly executed as of the date first set forth above.

CINTRA ITR LLC

By: _____
Name:
Title:

MQA INDIANA HOLDINGS LLC

By: _____
Name:
Title:

**INDIANA TOLL ROAD PARTNERSHIP,
by its General Partners**

MQA INDIANA HOLDINGS LLC

By: _____
Name:
Title:

MIP CANADA INDIANA HOLDINGS LLC

By: _____
Name:
Title:

CINTRA HOLDINGS US CORP.

By: _____
Name:
Title:

EXHIBIT A

CERTIFICATE OF FORMATION

See attached.

EXHIBIT B

FORM OF UNIT CERTIFICATE

THE INTERESTS REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) OR ANY STATE SECURITIES LAWS. ACCORDINGLY, SUCH INTERESTS MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF WITHOUT COMPLIANCE WITH THE SECURITIES ACT AND SUCH STATE SECURITIES LAWS, AND ITR CONCESSION COMPANY LLC REQUIRES AN OPINION OF COUNSEL SATISFACTORY TO IT THAT NO VIOLATION OF THE SECURITIES ACT AND SUCH STATE SECURITIES LAWS WILL RESULT FROM ANY PROPOSED SALE, TRANSFER, OR OTHER DISPOSITION OF SUCH INTERESTS.

THIS CERTIFICATE EVIDENCES A MEMBERSHIP INTEREST IN STATEWIDE MOBILITY PARTNERS LLC AND SHALL BE A SECURITY FOR THE PURPOSES OF AND BE GOVERNED BY ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF DELAWARE, INDIANA OR ANY OTHER APPLICABLE JURISDICTION.

No. 1

STATEWIDE MOBILITY PARTNERS LLC

A Limited Liability Company under the laws of the State of Delaware

Certificate of Interest

This certifies that _____ is the owner of ____% of the membership interests of STATEWIDE MOBILITY PARTNERS LLC (the “Company”), subject to the terms of the Limited Liability Company Agreement of STATEWIDE MOBILITY PARTNERS LLC dated as of January 19, 2006 and amended and restated as of [_____], as the same may be amended from time to time in accordance with its terms (the “Operating Agreement”).

This Certificate of Interest is subject to and may be transferred by the lawful holders hereof only in accordance with the provisions of the Operating Agreement and the Delaware Limited Liability Company Act.

IN WITNESS WHEREOF, the Company has caused this Certificate of Interest to be issued to _____ this ____ day of _____, 20_.

STATEWIDE MOBILITY PARTNERS LLC,
a Delaware limited liability company

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE 7(a)

UNITS AND NOTICES

<u>Name and Address of Member</u>	<u>Units</u>	<u>Percentage Interest</u>
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Cintra ITR LLC CT Corporation 1209 Orange St Wilmington, DE 19801	49	49%
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Fax No.:
Email:

With a copy to:
9600 Great Hills Trail, Suite 250E
Austin, TX 78759

Cintra Holdings US Corp. CT Corporation 1209 Orange St Wilmington, DE 19801	1	1%
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Fax No.:
Email:

With a copy to:
9600 Great Hills Trail, Suite 250E
Austin, TX 78759

Indiana Toll Road Partnership ¹ [125 West 55th Street, 22nd Floor New York, NY 10019]	49	49%
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Fax No.:
Email:

MQA Indiana Holdings LLC [125 West 55th Street, 22nd Floor New York, NY 10019]	1	1%
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¹ Tax Matters Partner

Fax No.:

Email:

Address of Company:

Statewide Mobility Partners LLC
1209 Orange Street
Wilmington, DE 19801

Exhibit A-3

Form of Reorganized Concessionaire LLC Agreement

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

OF

ITR CONCESSION COMPANY LLC

This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of ITR CONCESSION COMPANY LLC (the "Company") is made and entered into as of [●], 2014, by ITR CONCESSION COMPANY HOLDINGS LLC, a Delaware limited liability company, the sole member of the Company (the "Sole Member").

1. Name. The name of the Company is ITR CONCESSION COMPANY LLC.
2. Sole Purpose of the Company. The sole purpose of the Company shall be, and the Company shall have the power and authority, to undertake all activities with respect to the ownership of the concessionaire interest in, use, possession, leasing, improvement, operation, maintenance, tolling and to otherwise deal with the operation and management of the Indiana Toll Road located in the State of Indiana (and carrying out of any incidental activities thereto, including, without limitation, any financing and refinancing related thereto) and performance of all obligations under the concession and financing arrangements relating thereto, and to enter into, make and perform all contracts and other undertakings and engage in all activities that the Sole Member may reasonably deem necessary or advisable to the carrying out of the foregoing activities of the Company.
3. Registered Agent and Office. The Company shall maintain within the State of Delaware a registered agent for service of process on the Company and a registered office as set forth in its Certificate of Formation filed with the Secretary of State of the State of Delaware.
4. Location of Principal Place of Business. The location of the principal place of business of the Company shall be determined by the Sole Member. The Company may maintain such offices as the Sole Member may deem advisable at any place or places within or without the State of Delaware.
5. Term of Company. The Company is to begin as of the date hereof, and the Company is to terminate upon determination of the Sole Member as provided herein.
6. Authority, Rights and Powers of the Sole Member.
 - (a) Authority. Subject to the limitations provided in this Agreement and except as specifically contemplated by this Agreement, the Sole Member shall have exclusive and complete authority and discretion to manage the operations and affairs of the Company and to make all decisions regarding the business of the Company. Any action by the Sole Member on behalf of the Company shall constitute the act of and serve to bind the Company. Persons dealing with the Company are entitled to rely conclusively on the power and authority of the Sole Member as set forth in this Agreement.

(b) Rights and Powers. Except as otherwise specifically provided herein, the Sole Member shall have all rights and powers of a “manager” under the Delaware Limited Liability Company Act (the “Delaware Act”) and shall have such authority, rights and powers in the management of the Company business to do any and all other acts and things necessary, proper, convenient or advisable to effectuate the purposes of this Agreement.

7. Bankruptcy. Notwithstanding anything to the contrary herein, unless the Company has the vote of the Sole Member, the Company shall not file a voluntary petition or otherwise initiate proceedings to have the Company adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company, or file a petition seeking or consenting to reorganization or relief of the Company as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Company; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequester, custodian, liquidator (or other similar official) of the Company or of all or any substantial part of the properties and assets of the Company, or make any general assignment for the benefit of creditors of the Company, or admit in writing the inability of the Company to pay its debts generally as they become due or declare or effect a moratorium on the Company debt or take any action in furtherance of any such actions.

8. Election of Officers. Delegation of Authority. The Sole Member may, from time to time, designate one or more officers with such titles as may be designated by the Sole Member to act in the name of the Company with such authority as may be delegated to such officer(s) by the Sole Member. Any such officer shall act pursuant to such delegated authority until such officer is removed by the Sole Member. Any action taken by an officer designated by the Sole Member shall constitute the act of and serve to bind the Company. In dealing with the officers acting on behalf of the Company, no person or entity shall be required to inquire into the authority of the officers to bind the Company. Persons and entities dealing with the Company are entitled to rely conclusively on the power and authority of any officer set forth in this Agreement and any instrument designating such officer and the authority delegated to him or her.

9. Cash and Property Contributed to the Company. The Sole Member shall make an initial contribution of cash or property to the Company at such time and in such amounts as the Sole Member shall determine.

10. Property of the Company. All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, the Sole Member shall not have any ownership interest in any Company property in its individual name or right, and the Sole Member’s interest in the Company shall be personal property for all purposes.

11. Separateness. Notwithstanding any other provisions of this Agreement to the contrary, the affairs of the Company shall be conducted such that the Company:

(a) shall maintain its own separate 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 individual, sole proprietorship, corporation, partnership, joint venture, limited

liability partnership, limited liability company, trust, unincorporated association, institution or any other entity (including without limitation the Sole Member) (each, a “Person”); (provided, however, that the Company’s assets may be included in a consolidated financial statement of its parent if inclusion on such consolidated financial statement is required to comply with the requirements of generally accepted accounting principles (“GAAP”) of the relevant jurisdiction, but only if (x) such consolidated financial statement shall be appropriately footnoted to the effect that the Company’s assets are owned by the Company and that they are being included on the consolidated financial statement of its parent solely to comply with the requirements of GAAP, and (y) such assets shall be listed on the Company’s own separate balance sheet);

(b) shall hold itself out as being a Person, separate and apart from any other Person;

(c) shall not commingle its funds or assets with those of any other Person;

(d) shall conduct its own business in its own name;

(e) except as provided in clause (a) above, shall maintain separate financial statements and file its own tax returns (to the extent required by applicable law);

(f) shall pay its own debts and liabilities when they become due out of its own funds;

(g) shall observe all limited liability company formalities and do all things necessary to preserve its existence;

(h) shall maintain an arm’s length relationship with its affiliates;

(i) shall pay the salaries of its own employees from its own funds, if any, and maintain a sufficient number of employees in light of its contemplated business operations;

(j) shall not guarantee or otherwise obligate itself with respect to the debts of any other Person, or hold out its credit as being available to satisfy the obligations of any other Person;

(k) shall not acquire obligations of or securities issued by its Sole Member;

(l) shall allocate fairly and reasonably shared expenses, including any overhead for shared office space;

(m) shall use separate stationery, invoices and checks bearing the name of the Company;

(n) except as expressly permitted by any documents entered into in connection with the *Joint Prepackaged Plan of Reorganization of ITR Concession Company LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code (With Technical Modifications)*,

dated as of [●], 2014 (as amended, restated, supplemented, modified or otherwise changed from time to time, the “Plan”), including certain financing agreements entered into by the Company in connection with the Plan (as amended, restated, supplemented, modified or otherwise changed from time to time, the “Finance Agreements”) and that certain Indiana Toll Road Concession and Lease Agreement (as amended, restated, supplemented, modified or otherwise changed from time to time) by and between the Indiana Finance Authority and the Company (collectively, the “Transaction Documents”) or in connection with transactions in the ordinary course of business of the Company, shall not voluntarily pledge its assets for the benefit of any other Person or make any loans or advances to any other Person;

(o) shall correct any known misunderstanding regarding its separate identity; and

(p) shall maintain adequate capital in light of its contemplated business operations.

12. Interests.

(a) The Sole Member’s interests in the Company (the “Interests”) shall be “Certificated Securities” within the meaning of Section 8-102(a)(4) of the Uniform Commercial Code (the “UCC”) and shall be governed by Article 8 of the Indiana UCC, Article 8 of the Delaware UCC and Article 8 (or comparable provision) of the UCC as in effect in any applicable jurisdiction.

(b) The Interests shall be evidenced by a certificate that has been validly executed by the Company in the form of the attached Exhibit A.

(c) The Sole Member shall not assign or transfer its Interests in the Company in a manner that would result in a breach of or default under any Transaction Document. The Sole Member does not have the right or power to resign or withdraw from the Company as a member unless an additional member or members have been properly admitted under the Delaware Act and, to the extent required under any Finance Agreement, such additional member or members have entered into a pledge agreement whereby they have pledged and hypothecated their Interests in the Company in accordance therewith.

13. Register. The Company shall maintain a register indicating: (i) with respect to each issuance of a certificate of interest, the date of such issuance, the percentage of interests issued in connection with such certificate and the member to whom such certificate was issued and (ii) with respect to each transfer of interests permitted under the Delaware Act, the date of such transfer, the percentage of interests (represented by the certificate) transferred and the identity of the transferor and transferee(s) of such interests.

14. Bankruptcy of the Sole Member. The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of the Sole Member shall not cause the termination or dissolution of the Company and the business of the Company shall continue. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of

the Sole Member shall have all of the rights of the Sole Member for the purpose of setting or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute Sole Member. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any interest of the Company shall be subject to all of the restrictions, hereunder to which such transfer would have been subject if such transfer had been made by the Sole Member.

15. Additional Contributions. The Sole Member may make additional contributions of cash or property to the Company at such times and in such amounts as the Sole Member shall determine.

16. Share of Profits and Other Compensation to be Received by the Sole Member. The Sole Member shall be entitled to any and all of the profits, losses and distributions of the Company.

17. Fiscal Year. The fiscal year of the Company shall be the calendar year.

18. Exculpation of the Sole Member. To the fullest extent permitted by law, neither the Sole Member nor any of its affiliates, shall be liable, responsible or accountable in damages or otherwise to the Company for any act or omission performed or omitted (i) in good faith on behalf of the Company, (ii) in a manner reasonably believed by the Sole Member or its affiliates to be within the scope of the authority granted to it by this Agreement, and (iii) in a manner not constituting willful misconduct, fraud, or breach of fiduciary duty of loyalty.

19. Indemnification.

(a) The Company shall indemnify and hold harmless the Sole Member, officers, agents or employees of the Company (each, an “Indemnified Party”), from and against any loss, expense, damage or injury suffered or sustained by them, by reason of any acts, omissions or alleged acts or omissions arising out of their activities on behalf of the Company or in furtherance of the interests of the Company, including but not limited to any judgment, award, settlement, reasonable attorneys’ fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim if the acts, omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claims are based were not a result of fraud or willful misconduct by such Indemnified Party. Any indemnification pursuant to this Section 19 shall only be from the assets of the Company.

(b) Expenses (including attorneys’ fees) incurred by an Indemnified Party in a civil or criminal action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding; provided that if an Indemnified Party is advanced such expenses and it is later determined that such Indemnified Party was not entitled to indemnification with respect to such action, suit or proceeding, then such Indemnified Party shall reimburse the Company for such advances.

20. Amendments. Amendments to this Agreement may be made only if embodied in an instrument signed by the Sole Member.

21. Amendment of Certificate. In the event this Agreement shall be amended pursuant to Section 20 hereof and the other provisions of this Agreement, the Sole Member shall amend the Certificate of Formation of the Company to reflect such change if it deems such amendment of the Certificate of Formation of the Company to be necessary or appropriate.

22. Governing Law. This Agreement shall be governed by and interpreted in accordance with the law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date set forth above.

ITR CONCESSION COMPANY
HOLDINGS LLC

By: _____
Name:
Title:

Exhibit A

CERTIFICATE OF INTEREST

THE INTERESTS REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) OR ANY STATE SECURITIES LAWS. ACCORDINGLY, SUCH INTERESTS MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF WITHOUT COMPLIANCE WITH THE SECURITIES ACT AND SUCH STATE SECURITIES LAWS, AND ITR CONCESSION COMPANY LLC REQUIRES AN OPINION OF COUNSEL SATISFACTORY TO IT THAT NO VIOLATION OF THE SECURITIES ACT AND SUCH STATE SECURITIES LAWS WILL RESULT FROM ANY PROPOSED SALE, TRANSFER, OR OTHER DISPOSITION OF SUCH INTERESTS.

THIS CERTIFICATE EVIDENCES A MEMBERSHIP INTEREST IN ITR CONCESSION COMPANY LLC AND SHALL BE A SECURITY FOR THE PURPOSES OF AND BE GOVERNED BY ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF DELAWARE, INDIANA OR ANY OTHER APPLICABLE JURISDICTION.

No. 1

ITR CONCESSION COMPANY LLC

A Limited Liability Company under the laws of the State of Delaware

Certificate of Interest

This certifies that ITR CONCESSION COMPANY HOLDINGS LLC is the owner of 100% of the membership interests of ITR CONCESSION COMPANY LLC (the “Company”), subject to the terms of the Limited Liability Company Agreement of ITR CONCESSION COMPANY LLC dated as of January 19, 2006, and as amended and restated as of [●], 2014, as the same may be amended from time to time in accordance with its terms (the “Operating Agreement”).

This Certificate of Interest is subject to and may be transferred by the lawful holders hereof only in accordance with the provisions of the Operating Agreement and the Delaware Limited Liability Company Act.

IN WITNESS WHEREOF, the Company has caused this Certificate of Interest to be issued to ITR CONCESSION COMPANY HOLDINGS LLC this [●] day of [●], 2014.

ITR CONCESSION COMPANY LLC, a
Delaware limited liability company

By: _____
Name:
Title:

FOR VALUE RECEIVED, the undersigned does hereby sell, assign and transfer unto _____ (print or type name of assignee) the membership interest of evidenced by this Certificate of Interest, and does hereby irrevocably constitute and appoint _____ as attorney-in-fact with full power of substitution, to transfer said interest on the books of the Company.

Dated as of: _____

ITR CONCESSION COMPANY
HOLDINGS LLC, a Delaware limited
liability company

By: _____
Name:
Title:

Witnessed by: _____
Name:
Title:

Exhibit B

New Debt Documents

Exhibit B-1

Form of New First Lien Credit Agreement

FIRST LIEN FINANCING AGREEMENT

dated as of [_____, 20__]

among

ITR CONCESSION COMPANY LLC,
as Borrower,

THE LENDERS, as herein defined,

and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Administrative Agent

	<u>Page</u>
ARTICLE I INTERPRETATION	2
ARTICLE II THE CREDIT FACILITY.....	2
Section 2.1 Loans.....	2
Section 2.2 Interest.....	2
Section 2.3 Interest Periods.....	3
Section 2.4 Repayment of Loans	3
Section 2.5 Prepayments	4
Section 2.6 Fees	5
Section 2.7 Evidence of Indebtedness; Notes	5
Section 2.8 Payments Generally	6
Section 2.9 Sharing of Payments	6
ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY.....	7
Section 3.1 Taxes	7
Section 3.2 Alternate Rate of Interest	10
Section 3.3 Increased Costs	11
Section 3.4 Funding Losses	12
Section 3.5 Illegality	12
Section 3.6 Duty to Mitigate; Replacement of Lenders.....	12
Section 3.7 Survival.....	14
ARTICLE IV CONDITIONS PRECEDENT.....	14
Section 4.1 Conditions Precedent to Closing Date	14
ARTICLE V REPRESENTATIONS AND WARRANTIES.....	16
Section 5.1 Organization; Status.....	16
Section 5.2 Authorization; Enforceability	17
Section 5.3 No Conflict.....	17
Section 5.4 Compliance with Laws	17
Section 5.5 Governmental Approvals	18
Section 5.6 Litigation.....	18
Section 5.7 Title.....	18
Section 5.8 Environmental Matters.....	18
Section 5.9 Taxes; Tax Status	19
Section 5.10 ERISA.....	19
Section 5.11 Investment Company Status	19
Section 5.12 Financial Condition; Projections.....	19
Section 5.13 Insurance Coverage.....	19
Section 5.14 Status of Liens.....	20
Section 5.15 Concession Agreement; Omnibus Services Agreement; Material ITR Contracts.....	20

TABLE OF CONTENTS

(Continued)

	<u>Page</u>
Section 5.16 No Default or Event of Default.....	20
Section 5.17 Accuracy of Disclosure.....	20
ARTICLE VI AFFIRMATIVE COVENANTS	21
Section 6.1 Financial Statements; Financial Certifications and Other Information	21
Section 6.2 Notices of Material Events.....	22
Section 6.3 Quarterly Traffic and Operating Reports	24
Section 6.4 Annual Operating Budget	25
Section 6.5 [Reserved]	26
.	26
Section 6.6 Books and Records; Inspection of Property.....	26
Section 6.7 Operation and Maintenance	27
Section 6.8 Rights under the Material ITR Contracts.....	27
Section 6.9 Governmental Approvals	27
Section 6.10 Compliance with Laws	27
Section 6.11 Maintenance of Legal Status.....	28
Section 6.12 Insurance	28
Section 6.13 Taxes	28
Section 6.14 Hedging Transactions	29
Section 6.15 Project Accounts	29
Section 6.16 Preservation of Security Interests	29
Section 6.17 Material Event of Loss.....	30
Section 6.18 [Reserved]	31
Section 6.19 Additional Senior Loan Documentation	31
ARTICLE VII NEGATIVE COVENANTS.....	31
Section 7.1 Prohibition of Fundamental Changes; Sale of Assets, Etc	31
Section 7.2 Conduct of Business	32
Section 7.3 Indebtedness.....	32
Section 7.4 Liens.....	35
Section 7.5 Investments and Loans.....	35
Section 7.6 Distributions.....	35
Section 7.7 Transactions With Affiliates	35
Section 7.8 Concession Agreement	36
Section 7.9 Hazardous Materials	36
Section 7.10 No Subsidiary.....	36
.	36
Section 7.11 Replacement Operator	36
Section 7.12 Hedging Agreements.	37
Section 7.13 No Payments to Lenders.	37
Section 7.14 No Amendments.	37

TABLE OF CONTENTS

(Continued)

	<u>Page</u>
ARTICLE VIII EVENTS OF DEFAULT; REMEDIES	37
Section 8.1 Events of Default	37
Section 8.2 Remedies Upon Event of Default	40
ARTICLE IX ADMINISTRATIVE AGENT.....	40
Section 9.1 Appointment and Authorization of Administrative Agent	40
Section 9.2 Delegation of Duties	41
Section 9.3 Liability of Administrative Agent.....	41
Section 9.4 Reliance by Administrative Agent.....	41
Section 9.5 Notice of Default.....	42
Section 9.6 Credit Decision; Disclosure of Information.....	42
Section 9.7 Indemnification	43
Section 9.8 Administrative Agent in Its Individual Capacity	43
Section 9.9 Collateral Agency Agreement.....	43
Section 9.10 Successor Administrative Agent.....	44
Section 9.11 Swap Registry	44
. 44	
Section 9.12 Execution of Security Documents	46
Section 9.13 Collateral Release	46
ARTICLE X [INTENTIONALLY OMITTED.].....	46
ARTICLE XI MISCELLANEOUS	46
Section 11.1 Amendments; Waivers.....	46
Section 11.2 Notices	48
Section 11.3 Expenses; Indemnity; Damage Waiver.....	50
Section 11.4 Successors and Assigns.....	51
Section 11.5 Confidentiality	54
Section 11.6 Limitation on Interest.....	54
Section 11.7 Right of Setoff.....	55
Section 11.8 Advisers	55
Section 11.9 Nonliability of Lenders	55
Section 11.10 Limitation of Recourse	56
Section 11.11 Intentionally Omitted	56
Section 11.12 Integration	56
Section 11.13 Survival of Representations and Warranties.....	57
Section 11.14 Governing Law	57
Section 11.15 Submission To Jurisdiction; WAIVER OF JURY TRIAL.....	57
Section 11.16 Severability	58
Section 11.17 Headings	58
Section 11.18 Counterparts	58

TABLE OF CONTENTS

(Continued)

Page

APPENDIX A Definitions and Rules of Interpretation

SCHEDULES:

Schedule 2.1	Initial Loans and Pro Rata Shares
Schedule 5.4	Compliance with Laws
Schedule 5.6	Litigation and Proceedings
Schedule 5.8	Environmental Matters
Schedule 5.16	Defaults or Events of Default
Schedule 6.12	Insurance Requirements
Schedule 6.19	Transactions with Affiliates

EXHIBITS:

EXHIBIT A	Form of Confirmation of Interest Period
EXHIBIT B	Form of Note
EXHIBIT C	Form of Collateral Agency Agreement
EXHIBIT D	Form of Leasehold Mortgage
EXHIBIT E	Form of Security Agreement
EXHIBIT F	Form of Member Pledge Agreement
EXHIBIT G	Form of Depositary Agreement
EXHIBIT H	Form of Control Agreement
EXHIBIT I	Form of Consent of the IFA
EXHIBIT J	Form of Hedging Agreement
EXHIBIT K	Form of Acknowledgement of Conditions Precedent
EXHIBIT L	Form of Annual Operating Budget
EXHIBIT M	Form of Consent and Agreement
EXHIBIT N	Form of Assignment and Assumption Agreement
EXHIBIT O	Form of Hedging Claim Notice

FIRST LIEN FINANCING AGREEMENT

This FIRST LIEN FINANCING AGREEMENT (this “Agreement”), dated as of [_____], among ITR CONCESSION COMPANY LLC, a Delaware limited liability company (the “Borrower”), the Lenders from time to time parties hereto, and WILMINGTON TRUST, NATIONAL ASSOCIATION, as Administrative Agent for the Lenders (the “Administrative Agent”).

RECITALS

A. WHEREAS, the Borrower has entered into that certain Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006 (as amended pursuant to that certain First Amendment to Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006, that certain Second Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of June 29, 2006, that certain Third Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of August 10, 2007, that certain Fourth Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of February 5, 2008, that certain Fifth Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of November 1, 2010[, and [_____], dated as of the Closing Date,] as may be further amended, modified or supplemented, the “Concession Agreement”), by and between the Borrower and the Indiana Finance Authority, a public body politic and corporate of the State of Indiana (the “IFA”), pursuant to which the Borrower has agreed to lease the Indiana Toll Road from the IFA and to obtain the rights and privileges to operate the Indiana Toll Road in connection therewith, all as provided in the Concession Agreement.

B. WHEREAS, the Borrower had borrowed loans to finance a portion of the Rent (as defined in the Concession Agreement), and certain works required to be undertaken pursuant to the Concession Agreement, and for certain other purposes permitted under that certain Loan Agreement, dated as of June 26, 2006, by and among the Borrower, the Lenders as defined therein and the Royal Bank of Scotland plc, as administrative agent (as amended, modified or supplemented prior to the date hereof, the “Original Credit Facility”).

C. WHEREAS, on September 21, 2014, the Borrower, ITR Concession Company Holdings LLC, the direct parent of Borrower, and Statewide Mobility Partners LLC, the indirect parent of Borrower, commenced Chapter 11 Cases (the “Bankruptcy Cases”) by filing voluntary petitions for reorganization under the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”);

D. WHEREAS, in connection with the Bankruptcy Cases, the Borrower submitted the *Joint Prepackaged Plan of Reorganization of ITR Concession Company LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code*, including the Plan Supplement thereto (collectively, as amended, modified or supplemented, the “Plan”), for confirmation by the Bankruptcy Court;

E. WHEREAS, upon confirmation of the Plan, the holders of the secured claims under the Original Credit Facility (the “Original Holders”) are willing to enter into a new first-lien credit facility, subject to and upon the terms and conditions set forth herein and in the Financing Documents, and a new second-lien credit facility, subject to and upon the terms and

conditions set forth in the Second Lien Financing Agreement and Second Lien Financing Documents in satisfaction of the Original Credit Facility.

F. NOW, THEREFORE, the Borrower, the Original Holders as Lenders hereunder and the other parties hereto agree as follows:

ARTICLE I

INTERPRETATION

All capitalized terms used but not defined in this Agreement shall have the respective meanings specified in Appendix A. The rules of interpretation set forth in Appendix A shall apply to this Agreement.

ARTICLE II

THE CREDIT FACILITY

Section 2.1 Loans.

(a) Subject to the terms and conditions set forth herein, each Lender severally agrees to provide a term loan (each, a "Loan" and collectively, the "Loans") during the Loan Period in an aggregate principal amount not to exceed the amount opposite the name of such Lender on Schedule 2.1 to this Agreement.

(b) Upon satisfaction (or waiver) of the conditions of the Closing Date set forth in Section 4.1, the Loans shall be provided to the Borrower on the Closing Date in the aggregate amount of \$2,000,000,000.

(c) At least two (2) Business Days prior to the Closing Date, the Borrower shall specify to the Administrative Agent the initial Interest Period(s) to be applicable to the Loans in writing substantially in the form of Exhibit A, appropriately completed (a "Confirmation of Interest Period").

Section 2.2 Interest.

(a) Except as otherwise set forth in this Agreement, each Loan shall bear interest during each Interest Period at a rate per annum equal to the greater of (i) LIBOR for such Interest Period plus the Applicable Margin and (ii) 3.50%.

(b) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, from the expiration of the applicable grace period to the date until paid in full at a rate per annum equal to (i) in the case of overdue principal and interest with respect to any Loan, 2% plus the rate per annum equal to LIBOR for the Interest Period then applicable to such Loan plus the Applicable Margin or (ii) in the case of any other amount, 2% plus the Base Rate. In addition, if the Borrower fails to pay any principal of or interest on the Loans on the

date when due, such amount shall bear interest from the due date until the earlier to occur of payment in full or the expiration of the applicable grace period at the rate applicable to Loans during such period as provided in clause (a) of this Section 2.2.

(c) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date; provided that (i) interest accrued pursuant to paragraph (b) of this Section shall be payable on demand and (ii) upon any repayment or prepayment of any Loan in whole or in part, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(d) All interest hereunder shall be computed on the basis of a year of 360 days of twelve 30-day months, except that interest computed by reference to the Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Base Rate or LIBOR shall be determined by the Administrative Agent in accordance with the terms of this Agreement, and such determination shall be conclusive absent manifest error.

Section 2.3 Interest Periods.

(a) The Interest Period for each Loan shall be three months; provided, that the Borrower may select a one, two or three month Interest Period if it shall have notified the Administrative Agent in writing prior to such selection. The Borrower shall select the Interest Period referred to in the preceding proviso in an irrevocable Confirmation of Interest Period received by the Administrative Agent not later than 1:00 p.m., New York City time, three (3) Business Days before the commencement of such Interest Period.

(b) There shall not be more than twelve (12) Interest Periods in effect with respect to the Loans at any given time.

(c) No Interest Period shall extend beyond the Maturity Date.

(d) If the Borrower fails to select an Interest Period for an outstanding Loan under paragraph (a) above, it will be deemed to have selected an Interest Period of three months or, if the restriction set forth in paragraph (c) would be exceeded by such selection, on the last day of the current Interest Period with the shortest maturity.

(e) Promptly following receipt of a notice from the Borrower selecting an Interest Period, but no later than 1:00 p.m., New York City time, two (2) Business Days prior to the commencement of such Interest Period, the Administrative Agent shall advise each Lender of the details thereof.

Section 2.4 Repayment of Loans.

(a) On each Payment Date, the Cash Sweep shall be applied to repay the Loans then outstanding (together with accrued and unpaid interest on the amount repaid and any additional amounts required pursuant to Section 3.4).

(b) The Borrower shall repay to the Administrative Agent for the account of the Lenders on the Maturity Date the aggregate principal amount of the Loans then outstanding.

(c) Principal amounts repaid may not be reborrowed.

Section 2.5 Prepayments.

(a) Terms of All Prepayments. All partial prepayments of the Loans shall be allocated to prepay, on a pro rata basis, the aggregate outstanding Loans and, to the extent applicable, the aggregate outstanding Additional Senior Loans. Each prepayment of Loans shall be accompanied by accrued interest on the amount of Loans and, if applicable, Additional Senior Loans, prepaid, and any additional amounts required pursuant to Section 3.4. Principal amounts prepaid may not be reborrowed. There shall be no premium or penalty applicable to any prepayment of Loans or, if applicable, Additional Senior Loans, other than amounts payable under Section 3.4, if any.

(b) Optional Prepayments. The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 1:00 p.m., New York City time, at least three (3) days prior to any proposed date of prepayment, but no earlier than ten (10) Business Days prior to any proposed date of prepayment; (ii) any prepayment of Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof or, if less, the entire principal amount thereof then outstanding; and (iii) to the extent that such Loans are prepaid on a date other than on an Interest Payment Date, the Borrower shall have paid on the relevant date of such prepayment any amount required under Section 3.4. Each such notice shall be irrevocable and shall specify the date and amount of such prepayment; provided, however, that such notice may state that the prepayment is conditioned upon the effectiveness of other credit facilities or debt instruments in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof.

(c) Mandatory Prepayments.

(i) The Net Cash Proceeds of any payment by the IFA of Toll Road Concession Value, including any Toll Road Concession Value due and payable as a component of Termination Damages, under the Concession Agreement shall be applied to prepay the Loans pro rata with any Additional Senior Loans (to the extent applicable), either promptly upon receipt of such payment or on the immediately following Interest Payment Date (as elected by the Borrower). On such payment date, the entire unpaid principal amount of the Loans, all accrued and unpaid interest thereon, and all other amounts owing or payable hereunder or under any other Financing Document shall become immediately due and payable.

(ii) The Net Cash Proceeds of any portion of Concession Compensation (as defined in the Concession Agreement other than as

contemplated in clause (c)(i) of this Section above) paid by the IFA in respect of the actual and estimated loss of the Borrower's future Project Revenues shall be applied to prepay the Loans pro rata with any Additional Senior Loans (to the extent applicable), either promptly upon receipt of such payment or on the immediately following Interest Payment Date (as elected by the Borrower); provided, that in lieu of making such prepayment, the Borrower may elect, by providing written notice to the Administrative Agent prior to such prepayment date, to use (A) any Concession Compensation paid in respect of loss or damage to property of the Borrower or to the Toll Road to repair, restore, replace or remediate the affected property (which amounts shall be applied to such repair, restoration, replacement or remediation and ancillary costs), (B) any Concession Compensation paid in respect of any event which is reasonably determined by the Borrower to have resulted or will reasonably be expected to result in ongoing loss of Project Revenue during the following 18-month period or longer (which amounts shall be deposited in the Proceeds Account in accordance with Section 4.01(a) of the Depositary Agreement), (C) any Concession Compensation paid in respect of past, current or identifiable future costs arising from the relevant Compensation Event (as defined in the Concession Agreement) (which amounts shall be applied to meet such costs), and (D) to the extent otherwise required to be applied pursuant to the terms of the Concession Agreement.

(iii) To the extent permitted under the Concession Agreement, if the Borrower receives Net Cash Proceeds from insurance or condemnation in respect of an Event of Loss and (A) such Net Cash Proceeds exceed the amount required to repair, restore or rebuild the Indiana Toll Road to the condition existing prior to the happening of such Event of Loss (such an amount to be agreed upon after consultation with the Insurance Consultant and the Technical Adviser) and (B) the affected portion of the Indiana Toll Road cannot be repaired or restored or is not required pursuant to the terms of the Concession Agreement and this Agreement to be repaired or restored, and the Borrower elects not to do so, such excess proceeds or proceeds, as applicable, shall either promptly upon the determination of such circumstances and the calculation of the prepayment amount or on the immediately following Interest Payment Date (as elected by the Borrower) be applied to prepay the Loans pro rata with any Additional Senior Loans (to the extent applicable).

Section 2.6 Fees. The Borrower agrees to pay to the Administrative Agent for its own respective account such fees as may be separately agreed upon between the Borrower and the Administrative Agent in writing, which fees, to the extent payable pursuant to such other arrangements, shall be deemed to be payable hereunder.

Section 2.7 Evidence of Indebtedness; Notes.

The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be

conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments due with respect thereto. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to such Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

Section 2.8 Payments Generally.

(a) Each payment by the Borrower hereunder (whether of principal, interest, fees or any other amount) shall be made prior to 1:00 p.m., New York City time, on the date when due, in Dollars in immediately available funds, without condition or deduction for any counterclaim, defense, recoupment or setoff. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the account of the Administrative Agent ([_____]) or such other account as may hereafter be designated by the Administrative Agent in writing. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly upon receipt thereof, in like funds as received.

(b) If any payment to be made by the Borrower under any Financing Document becomes due and payable on a day other than a Business Day, the date for payment shall be extended to the next succeeding Business Day, and such extension of time shall be reflected in computing interest or fees; provided that, in the case of any payment of principal or interest, if such Business Day is not in the same calendar month as the original due date, the date for such payment shall be the preceding Business Day.

(c) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied, subject to the terms and conditions of the Depositary Agreement, (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

Section 2.9 Sharing of Payments.

If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on its Loans (including in accordance with Section 2.8(a) above) resulting in such Lender receiving payment of a greater proportion of the aggregate amount of such Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at

face value) participations in Loans of the other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the purchasing Lender ratably with each of such other Lenders; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or Participant, other than to the Borrower or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Governmental Rule, that any Lender acquiring a participation pursuant to the foregoing arrangement may exercise against the Borrower all of its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.1 Taxes.

(a) Except as required by applicable law, any and all payments by or on account of any Obligation shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the Borrower shall be required to deduct any Tax from such payments, then (i) if such Tax is an Indemnified Tax or Other Tax, the sum payable shall be increased as necessary so that after making all required deductions for such Indemnified Taxes or Other Taxes (including deductions applicable to additional sums payable under this Section 3.1) the intended Recipient of such payment receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions for Taxes and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, without duplication of payments under Section 3.1(a), the Borrower shall pay, or at the option of the Administrative Agent timely reimburse it for payment of, any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Without duplicating any obligation under Section 3.1(a), the Borrower shall indemnify each Recipient, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.1) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that the Borrower shall not be required to indemnify a Recipient pursuant to this Section 3.1(c) for any Indemnified Taxes or Other Taxes incurred, and of which such Recipient becomes aware, more than 120 days prior to the date that such Recipient notifies the Borrower of such Indemnified Taxes or Other Taxes and of such Recipient's

intention to claim compensation therefor. To claim any amount under this Section 3.1(c), a Recipient shall deliver to the Borrower a certificate as to the amount of such payment or liability, and such a certificate shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment.

(e)

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax under the laws of the United States or any treaty to which the United States is a party with respect to payments of any Obligations shall, at the Borrower's reasonable request, deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower as will permit those payments to be made without withholding or at a reduced rate of withholding. Notwithstanding anything to the contrary in the preceding sentence, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.1(e)(ii)(A), (e)(ii)(B) and (e)(ii)(C) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Financing Document,

executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Financing Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(C) if a payment made to a Lender under any Financing Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (C),

“FATCA” shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and Administrative Agent in writing of its legal inability to do so.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.1 (including by the payment of additional amounts pursuant to this Section 3.1), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.1 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Each party’s obligations under this Section 3.1 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender.

Section 3.2 Alternate Rate of Interest.

If prior to the commencement of any Interest Period, (a) the Administrative Agent determines, acting reasonably and taking into consideration the conditions in the bank credit markets generally, that adequate and reasonable means do not exist for ascertaining LIBOR for such Interest Period or (b) the Administrative Agent is advised by the Majority Lenders, acting reasonably and taking into consideration the conditions in the bank credit markets generally, that LIBOR determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans for such Interest Period, the Administrative Agent shall give notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, which it shall be obligated to do promptly, the Loans shall bear interest at the then applicable Base Rate, plus the Applicable Margin less 100 basis points.

Section 3.3 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (including any reserve established by the Federal Reserve Board);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Other Taxes, and (C) Excluded Taxes) on its loans, loan principal, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement and Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered; provided that this Section does not apply to matters covered by Section 3.1.

(b) If any Change in Law or directive from the Bank of International Settlements (“BIS”) or another regulatory authority that such Lender is regulated by regarding capital requirements has or would have the effect of reducing the rate of return on such Lender’s capital or on the capital of such Lender’s holding company, if any, as a consequence of this Agreement or the Loans made by such Lender, to a level below that which such Lender or such Lender’s holding company would have achieved but for such Change in Law or directive by an amount deemed by such Lender to be material, then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender’s holding company for any such reduction suffered.

(c) To claim any amount under this Section, a Lender shall deliver to the Borrower a certificate of such Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section, which certificate shall state in reasonable detail the basis for such claim, which certificate shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender’s right to demand such compensation; provided that the Borrower shall not be required to compensate any Lender pursuant to this Section for any increased costs or reductions incurred more than 120 days prior to the date on which such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender’s intention to claim compensation therefor;

and provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 120-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) Notwithstanding the foregoing, to the extent that (i) a Lender shall increase its level of capital above the level maintained by such Lender on the Closing Date and there has not been a Change in Law, or a directive from BIS or another regulatory authority or (i) there has been a Change in Law, a directive from BIS or another regulatory authority and a Lender shall increase its level of capital by an amount greater than the increase attributable thereto, the Borrower shall not be required to pay any amount or amounts pursuant to this Section with respect to such increase in capital above that required by the Change in Law, BIS or other regulatory authority.

Section 3.4 Funding Losses.

In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto, (b) the conversion of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto pursuant to Section 3.2 or 3.5, or (c) the failure to borrow, convert pursuant to Section 3.2 or Section 3.5, continue or prepay any Eurodollar Loan on the date specified in any irrevocable notice delivered pursuant hereto, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. Such loss, cost or expense to any Lender shall be deemed to include the amount of excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the LIBOR rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan) over (ii) the amount of interest that would accrue on such principal amount for that period at the interest rate that such Lender would bid were it to bid, at the commencement of that period, for Dollar deposits of a comparable amount and period from other banks in the London eurodollar market. To claim any amount under this Section, the Lender must deliver to the Borrower a certificate setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section, and stating in reasonable detail the basis for such claim. The Borrower shall pay such Lender the amount shown as due on any such certificate within fifteen (15) days after its receipt.

Section 3.5 Illegality.

In the event that it becomes unlawful or, by reason of a Change in Law, impossible for any Lender to comply with its obligation to make or maintain Eurodollar Loans, then such Lender will promptly notify the Borrower of such event (with a copy to the Administrative Agent), and such Lender's obligation to make or to continue, or to convert Loans of any other type into, Eurodollar Loans shall be suspended until such time as such Lender may again make and maintain Eurodollar Loans. During such period of suspension, the Loans of such Lender shall bear interest at the then applicable Base Rate, plus the Applicable Margin less 100 basis points.

Section 3.6 Duty to Mitigate; Replacement of Lenders.

(a) If the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.1, or if any Lender requests compensation under Section 3.3, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.1 or 3.3, as the case may be and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by any Lender in connection with only the first of any such designation or assignment by such Lender.

(b) If the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.1, or if any Lender requests compensation under Section 3.3, or if any Lender is subject to the matters contemplated by Section 3.5, or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its expense, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 11.4(b)), all of its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts to the extent then payable), (ii) in the case of any such assignment resulting from payments required to be made pursuant to Section 3.1 or a claim for compensation under Section 3.3, such assignment would reasonably be expected to result in a reduction in such compensation or payments and (iii) such assignment does not conflict with applicable law. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Notwithstanding anything to the contrary in this Section 3.6, Section 11.1(c) shall control with respect to the replacement of a non-consenting Lender whose consent is necessary in connection with any proposed change, waiver, consent or termination of or to any of the provisions of this Agreement but whose consent is not obtained.

(c) Each Lender agrees that it shall administer and shall make claims for compensation, reimbursement or indemnification under, the provisions of Sections 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6 in a manner that is consistent with such Lender's customary practices, procedures and policies consistently applied, and without any discrimination against the Borrower. Without limiting the generality of the foregoing, no Lender shall allocate any increased costs contemplated by Section 3.3 to the Borrower in a proportionately greater amount than such Lender would allocate such costs to its comparable borrowers of LIBOR-based loans to which such costs are applicable if the provisions of Section 3.3 applied to all such borrowers. All certifications and notices to be delivered to the Borrower by any Lender pursuant to Sections 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6 shall be made on the basis of calculations that are reasonable and made in good faith.

Section 3.7 Survival.

All of the Borrower's and the Lenders' and the Administrative Agent's obligations under Sections 3.1, 3.3 and 3.4 shall survive the payment in full of all Obligations.

ARTICLE IV

CONDITIONS PRECEDENT

Section 4.1 Conditions Precedent to Closing Date.

The effectiveness of the Closing Date hereunder is subject to the satisfaction or waiver in accordance with Section 11.1 of the following conditions precedent:

(a) Documents to Be Delivered. The following documents shall have been duly authorized, executed and delivered by the parties thereto (such parties shall include, but not be limited to, the Borrower, the Administrative Agent, the Collateral Agent and the Lenders) and, shall be in full force and effect:

- (i) this Agreement;
- (ii) if requested, a Note in favor of each Lender requesting a Note at least two (2) Business Days prior to the Closing Date, each in a principal amount equal to that Lender's respective Pro Rata Share of the Loans as of the Closing Date;
- (iii) the Collateral Agency Agreement, in substantially the form attached hereto as Exhibit C;
- (iv) the Leasehold Mortgage, in substantially the form attached hereto as Exhibit D;
- (v) the Security Agreement, in substantially the form attached hereto as Exhibit E;
- (vi) the Member Pledge Agreement, in substantially the form attached hereto as Exhibit F;
- (vii) the Depositary Agreement, in substantially the form attached hereto as Exhibit G; and
- (viii) the Control Agreement(s), in substantially the form attached hereto as Exhibit H.

(b) Base Case Model. The Administrative Agent shall have received the Base Case Model, including a proposed amortization schedule, certified as such by an Authorized Officer of the Borrower and showing a minimum annual projected Debt Service Coverage Ratio of at least 1.60 to 1.00 for each Payment Period ending on the last day of such Payment Period

(including the final Payment Period ending on the Maturity Date) in respect of the Loans on a current interest basis based on the Traffic Report.

(c) Initial Indiana Toll Road Budget. The Administrative Agent shall have received an operating budget for the 20[] fiscal year, showing in reasonable detail all projected Project Revenues and Operating Expenses (identifying, separately, Major Maintenance costs and costs incurred in connection with a Capital Project, if any), debt service and other related items for such period on a monthly basis.

(d) Concession Agreement; Omnibus Services Agreement; Material ITR Contracts; Governmental Approvals. The Administrative Agent shall have received a copy of the Concession Agreement, the Omnibus Services Agreement, each other Material ITR Contract, if any, and each material Governmental Approval required as of the Closing Date, if any.

(e) IFA Consent. The IFA shall have delivered to the Administrative Agent a consent, substantially in the form of Exhibit I hereto (the “IFA Consent”).

(f) Service Providers Consent. The Services Providers shall have delivered to the Administrative Agent a consent, substantially in the form of Exhibit M hereto (the “Service Providers Consent”).

(g) Security Interests. (i) All filings and recordings necessary to perfect the security interests in the Collateral contemplated to be granted to the Collateral Agent for the benefit of the Secured Parties by the Security Documents shall have been made. (ii) The Collateral Agent shall have received the original membership interest certificates, with blank transfer powers, representing all issued and outstanding membership interests in the Borrower, as required pursuant to the Member Pledge Agreement.

(h) Insurance. The Administrative Agent shall have received a certificate from the Insurance Adviser to the effect that all insurance policies require to be maintained by the Borrower under Section 6.12 are in full force and effect, the premiums due and payable thereon have been paid, such insurance shall not be subject to cancellation without prior notice to the Administrative Agent, and that such policies otherwise conform with the requirements specified on Schedule 6.12 and in Article 13 of the Concession Agreement.

(i) Project Accounts. The Project Accounts required to be established under the Depositary Agreement as of the Closing Date shall have been established, and the Borrower shall have executed and delivered all relevant documents to be entered into with the Collateral Agent with respect to the establishment of the Project Accounts, as contemplated by the Collateral Agency Agreement.

(j) Title Insurance. The Administrative Agent shall have received an ALTA form of Lender’s leasehold policy of title insurance with extended coverage over the general exceptions, together with such endorsements and reinsurance as required by the Administrative Agent, in an amount equal to the initial amount of the Loans and issued by the Title Company, fully paid and insuring that the Borrower holds a valid leasehold interest in the Toll Road, and that the Leasehold Mortgage is a valid first lien on such property in favor of the Collateral Agent,

in each case free and clear of exceptions to title whatsoever other than the Permitted Title Exceptions and free and clear of all Liens other than Permitted Liens.

(k) Certain Deliverables. To the extent previously requested by the Administrative Agent, the Administrative Agent shall have received prior to the Closing Date, all documentation and other information required by regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

(l) Representation and Warranties. The representations and warranties of the Borrower or the Member, as applicable, contained in Article V or any other Financing Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the Closing Date, except to the extent that such representations and warranties specifically refer to an earlier or specified date, in which case they shall be true and correct in all material respects as of such earlier or specified date.

(m) Confirmation. The Confirmation Order (as defined in the Plan) shall have been entered.

(n) Effective Date. The Effective Date (as defined in the Plan) shall have occurred.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants to the Administrative Agent and the Lenders, as of the Closing Date (except to the extent that any representation and warranty set forth below specifically refers to an earlier or specified date, in which case such representation and warranty shall be as of such earlier or specified date) that:

Section 5.1 Organization; Status.

(a) The Borrower (i) is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and (ii) is qualified to do business in the State of Indiana. The Borrower has full power and authority to conduct its business as now conducted and, subject to entry and the terms of the Confirmation Order, will have the full power and authority to assume and/or to execute, as applicable, deliver and perform its obligations under the Concession Agreement and any other Material ITR Contract to which it is a party and the Financing Documents to which it is a party.

(b) As of the Closing Date, the only member of the Borrower is ITR Concession Company Holdings LLC, a Delaware limited liability company, and all of the Membership Interests are beneficially owned by such entity free and clear of all Liens other than Permitted Liens.

(c) The Borrower has not engaged in any business other than the ownership of the Concessionaire Interest pursuant to the Concession Agreement and the activities related, ancillary, incidental or complementary thereto (including the financing thereof). The Borrower has no obligations or liabilities other than those directly related to the conduct of such business or activities related, ancillary, incidental or complementary thereto. The Borrower does not own any shares of stock or other ownership interests in any Person (other than pursuant to Permitted Investments or as permitted pursuant to this Agreement, including, without limitation, pursuant to Section 7.5 hereof).

Section 5.2 Authorization; Enforceability.

(a) All necessary limited liability company action on the part of the Borrower that was or is required to authorize the execution, delivery and performance of the Concession Agreement, any other Material ITR Contract to which it is a party and the Financing Documents to which it is a party has been duly and effectively taken at the time of the execution of the Concession Agreement, any other Material ITR Contract or Financing Document, as the case may be.

(b) Each of the Concession Agreement, any other Material ITR Contract to which it is a party and the Financing Documents to which it is a party has been duly authorized, executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with the terms thereof, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

Section 5.3 No Conflict.

None of the execution, delivery or performance by the Borrower of the Concession Agreement, the Omnibus Services Agreement, any other Material ITR Contract to which it is a party and the Financing Documents to which it is a party, violates or constitutes a default or requires consent or approval (except for such consents and approvals that have been obtained) by any other Person under any material Governmental Rule applicable to the Borrower or the Indiana Toll Road or any other material contractual obligation to which the Borrower is a party, except for any defaults or violations or consents that would not reasonably be expected to have a Material Adverse Effect. None of the execution, delivery or performance by the Borrower of the Concession Agreement, the Omnibus Services Agreement, any other Material ITR Contract to which it is a party and the Financing Documents to which it is or is required to become a party results or will result in, or requires, the creation or imposition of any Lien on any of the Collateral or any other properties or revenues of the Borrower except for Permitted Liens.

Section 5.4 Compliance with Laws.

Except as disclosed in Schedule 5.4, the Borrower and, to the Borrower's Actual Knowledge, the Indiana Toll Road, are in compliance with any Governmental Rule (including any Environmental Law) applicable to the Borrower or the Indiana Toll Road, and with the terms of all other Governmental Approvals obtained by the Borrower, except to the extent that any

failure to comply with any of the above would not reasonably be expected to result in a Material Adverse Effect. The Borrower is in compliance in with all terms and provisions of the Concession Agreement, except to the extent that any failure to comply with any of the above would not reasonably be expected to result in a Material Adverse Effect.

Section 5.5 Governmental Approvals.

Each Governmental Approval required to be in effect on the Closing Date is in full force and effect, is final and not subject to appeal. No other Governmental Approval is required to be obtained by the Borrower in connection with: (i) the execution and delivery of, and performance by, the Borrower of its respective obligations, and the exercise of its rights, under the Concession Agreement, the Omnibus Services Agreement, any other Material ITR Contract to which it is a party and the Financing Documents to which it is a party, (ii) the acquisition or assumption, as the case may be, after entry of the Confirmation Order of the Concessionaire Interest and the construction, use, lease, operation, rehabilitation or maintenance of the Indiana Toll Road in accordance with the applicable provisions of the Concession Agreement and in compliance, with all material Governmental Rules (including all applicable material Environmental Laws) or (iii) the validity and enforceability of the Concession Agreement, the Omnibus Services Agreement, and any other Material ITR Contract against the Borrower, in each case, except in any such case where any failure to obtain the same would not reasonably be expected to have a Material Adverse Effect.

Section 5.6 Litigation.

Except as set forth in Schedule 5.6, no action or other proceeding by or before any arbitrator, court or other Governmental Authority is pending or, to the Actual Knowledge of the Borrower, threatened in writing against the Borrower or any transactions contemplated by the Concession Agreement that, has a reasonable likelihood of adverse determination and if adversely determined, would reasonably be expected to have a Material Adverse Effect.

Section 5.7 Title.

On the Closing Date, after entry of the Confirmation Order and assumption of the Concession Agreement, the Borrower has a valid leasehold interest in the Indiana Toll Road pursuant to the Concession Agreement, and good title to, leasehold rights, or other rights to use all other material property that the Borrower purports to own, in each case, free and clear of all Liens other than the Permitted Liens.

Section 5.8 Environmental Matters.

Except as disclosed in Schedule 5.8, (i) the Indiana Toll Road is in compliance with Environmental Law and all Governmental Approvals issued pursuant to Environmental Law, except for any failure to comply that would not reasonably be expected to have a Material Adverse Effect; (ii) there are no pending or, to the Borrower's Actual Knowledge, threatened in writing Environmental Claims against the Borrower or the Indiana Toll Road that individually or in the aggregate would reasonably be expected to have a Material Adverse Effect, and (iii) except as would not reasonably be expected to have a Material Adverse Effect, neither the Borrower nor, to the Borrower's Actual Knowledge, any other Person, has used, Released,

discharged, generated or stored any Hazardous Material at, on or under the Indiana Toll Road, and to the Borrower's Actual Knowledge, there are no Hazardous Materials used or presently at, on or under the Indiana Toll Road.

Section 5.9 Taxes; Tax Status.

The Borrower has timely filed or caused to be filed all material income tax returns and reports that are required to have been filed by it and has paid or caused to be paid all material Taxes required to have been paid by it pursuant to such returns or pursuant to any assessment received by the Borrower, except for such Taxes, if any, as are being contested pursuant to Permitted Contest Conditions. The Borrower is and since its inception has been disregarded as separate from its owner for U.S. federal, state and local income tax purposes.

Section 5.10 ERISA.

No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability of the Borrower is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect.

Section 5.11 Investment Company Status.

The Borrower is not required to register as an "investment company" as within the meaning of the Investment Company Act of 1940, as amended.

Section 5.12 Financial Condition; Projections.

(a) To the extent applicable, the most recent financial statements of the Borrower delivered to the Administrative Agent, have been prepared in conformity with GAAP and present fairly, in all material respects, the financial condition of the Borrower as of the date thereof. All material liabilities, direct and contingent, of the Borrower are either disclosed in such balance sheets or have been disclosed in writing by the Borrower to the Administrative Agent and each of the Lenders prior to the execution and delivery of the Financing Documents, and there are no undisclosed material liabilities, direct or contingent, of the Borrower which have accrued since the date of such financial statements or such disclosure.

(b) The Base Case Model (including the proposed amortization schedule attached thereto) discloses all material assumptions made in the preparation thereof, was prepared in good faith, and represents reasonable projections as of the time such projections were made (it being understood and agreed that actual adjustments may vary from the pro forma adjustments, such projections and forecasts are not a guarantee of performance and actual results may vary from such projected results and, in each case, such variations may be material).

Section 5.13 Insurance Coverage.

On the Closing Date, all insurance required to be maintained by the Borrower under Section 6.12 of this Agreement and under Article 13 of the Concession Agreement, the Omnibus Services Agreement, and any other Material ITR Contract to which the Borrower is a

party has been obtained and is in full force and effect. On the Closing Date, all premiums due and payable in connection therewith have been paid.

Section 5.14 Status of Liens.

Upon the execution and delivery thereof, the Security Documents will be effective to create, in favor of the Collateral Agent, legally valid and enforceable Liens on the Collateral, subject to limitations as to enforceability which might result from bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and subject to limitations on the availability of equitable remedies. All necessary recordings and filings have been or are concurrently being recorded and filed on the Closing Date, and all required Control Agreements have been obtained, such that the Liens created by each of the Security Documents constitute first-priority perfected Liens on the Collateral, subject only to Permitted Liens.

Section 5.15 Concession Agreement; Omnibus Services Agreement; Material ITR Contracts.

As of the Closing Date, each of the Concession Agreement, the Omnibus Services Agreement and any other Material ITR Contract is in full force and effect, and has not been terminated or otherwise amended or modified except in accordance with the Financing Documents. Except as disclosed in Schedule 5.16, as of the Closing Date, the Borrower has not given or received any notice of default under the terms of the Concession Agreement, the Omnibus Services Agreement or any other Material ITR Contract to which it is a party and, to the Borrower's Actual Knowledge, no default exists thereunder, except for such defaults that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. As of the Closing Date, the Concession Agreement and the Omnibus Services Agreement are the only Material ITR Contracts.

Section 5.16 No Default or Event of Default.

Except as disclosed in Schedule 5.16, no Default or Event of Default has occurred and is continuing.

Section 5.17 Accuracy of Disclosure.

To the best of the Borrower's knowledge, the written information provided by the Borrower to the Administrative Agent regarding the Indiana Toll Road that was prepared by the Borrower or the Member (or, at the Borrower's or the Member's request, by their respective advisors), taken as a whole, is accurate in all material respects on and as of the Closing Date, except to the extent that such information specifically refers to an earlier or specified date, in which case such information shall be accurate in all material respects as of such earlier or specified date. Notwithstanding the foregoing, no representation or warranty is made as to any forecasts, projections, budgets or other forward-looking statements except that such forecasts, projections or other forward-looking statements that were prepared by the Borrower or the Member (or, at the Borrower's or the Member's request, by their respective advisors) were prepared in good faith and were based on assumptions believed by the Borrower to be reasonable at the time made (it being understood and agreed that actual adjustments may vary from the pro

forma adjustments, such projections and forecasts are not a guarantee of performance and actual results may vary from such projected results and, in each case, such variations may be material).

ARTICLE VI

AFFIRMATIVE COVENANTS

Section 6.1 Financial Statements; Financial Certifications and Other Information.

(a) The Borrower will furnish to the Administrative Agent:

(i) within 120 days after the end of each fiscal year of the Borrower, the audited balance sheet and related statements of operations, members' equity and cash flows of the Borrower as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year (commencing with the fiscal year ending after the Closing Date), all reported on by an independent public accountant of recognized national standing (without any qualification or exception, as to the scope of such audit) to the effect that such financial statements present fairly in all material respects the financial condition and results of operations of the Borrower in accordance with GAAP consistently applied; and

(ii) within 60 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, the unaudited balance sheet and related statements of operations, members' equity and cash flows of the Borrower as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods (if applicable) of (or, in the case of the balance sheet as of the end of) the previous fiscal year (commencing with the fiscal year ending after the Closing Date), all certified by one of its Authorized Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes; and

(iii) concurrently with any delivery of financial statements under clause (i) or (ii) above, a certificate of an Authorized Officer of the Borrower certifying whether such Authorized Officer's Actual Knowledge, a Default or Event of Default has occurred since the delivery of the prior certificate delivered pursuant to this sub- clause (iii)) and, if a Default or Event of Default has occurred, specifying the nature thereof and any action taken or proposed to be taken with respect thereto to remedy the same.

(b) Promptly after any request therefor, the Borrower shall provide such additional information regarding the Indiana Toll Road and the business affairs and financial condition of the Borrower, as the Administrative Agent (including at the direction of the Lenders) may reasonably request. Notwithstanding anything to the contrary, the Borrower will not be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) in respect of which disclosure to the Administrative Agent or any Lender (or

their respective representatives or contractors) is prohibited by Law or (ii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.2 Notices of Material Events.

(a) Notices Under the Concession Agreement. The Borrower shall promptly deliver to the Administrative Agent (i) notice of any of the following actions taken under the Concession Agreement and (ii) copies of any of the following written notices given or received by it under the Concession Agreement (capitalized terms used in paragraph (a) of this Section and not otherwise defined herein shall have the meanings set forth in the Concession Agreement):

- (i) notice of the occurrence of any IFA Default or Adverse Action;
- (ii) notice of any event giving rise to a definitive prospective payment of any Concession Compensation or any payment of Toll Road Concession Value by the IFA, promptly after the Borrower has determined to make a claim for such payment, or notice of submission of any claim for any such payment;
- (iii) notice of the receipt of payment of any Concession Compensation or any payment of Toll Road Concession Value by the IFA;
- (iv) notice of any IFA Directive issued by the IFA pursuant to the Concession Agreement;
- (v) copies of the annual operating plans provided to the IFA pursuant to the Concession Agreement;
- (vi) notice of the occurrence of any Delay Events in the event the Concessionaire intends to delay or be relieved of performing its obligations under the Concession Agreement (together with a description thereof and an estimate of its expected duration); and
- (vii) notice of adjustment to the Borrower's insurance coverage pursuant to Section 13.2(1) of the Concession Agreement.

(b) Other Notices. The Borrower shall, as soon as practicable and in any event, unless otherwise specified, within ten (10) Business Days after the Borrower obtains Actual Knowledge of any of the following, give written notice to the Administrative Agent of:

- (i) the occurrence of any Event of Default (with a description of any action being taken or proposed to be taken with respect thereto);
- (ii) the occurrence of any casualty, loss or damage with respect to the Toll Road Assets or Toll Road Facilities for which the aggregate cost of repair or restoration is expected to exceed \$25,000,000 or that is scheduled to result in any major section of the Indiana Toll Road being substantially unavailable to traffic for a period of seven (7) days, or any series of casualties losses or damages to the Toll Road Assets or

Toll Road Facilities (whether or not related) during any 12-month period in excess of \$100,000,000 in the aggregate.

(iii) the filing or commencement by the IFA or any other Governmental Authority of any action, suit or other proceeding for the condemnation or other taking (including by eminent domain) of the Indiana Toll Road or the Concessionaire Interest or any portion thereof having an estimated value in excess of \$25,000,000, or any series of such actions or proceedings during any 12-month period in excess of \$100,000,000 in value in the aggregate;

(iv) the filing or commencement of any action, suit or other proceeding by or before any arbitrator or Governmental Authority (i) involving claims against the Borrower or the Indiana Toll Road in excess of \$25,000,000, (ii) seeking any material injunctive, declaratory or other equitable relief that has a reasonable likelihood of adverse determination and, if adversely determined, would reasonably be expected to result in a Material Adverse Effect, or (iii) instituted for the purpose of revoking, terminating, suspending, withdrawing, modifying or withholding any Governmental Approval or Material ITR Contract which would reasonably be expected to result in a Material Adverse Effect;

(v) any dispute, litigation, investigation or proceeding which may exist at any time between any Governmental Authority and the Borrower or, to the Actual Knowledge of the Borrower, the IFA or any other party to a Material ITR Contract (including with respect to tax claims), to the extent such dispute, litigation, investigation or proceeding involves the Indiana Toll Road and would reasonably be expected to result in a Material Adverse Effect;

(vi) any notice of material event of default or termination or cancellation given or received under any Material ITR Contract, or any amendment of, supplement to or other modification of any Material ITR Contract;

(vii) any written notice of the occurrence of any event giving rise (or that could reasonably be expected to give rise) to a material claim under any insurance policy required to be maintained with respect to the Indiana Toll Road, with copies of any material documents relating thereto (including copies of any such claim) in the possession or control of the Borrower;

(viii) any written notice of any Environmental Claim or any material noncompliance with or a violation of any Environmental Law applicable to the Toll Road or the Borrower in which the amount involved would reasonably be expected to result in [losses by the Borrower in excess of \$25,000,000 or which, if adversely determined,] would have a Material Adverse Effect;

(ix) the appointment of a replacement Operator pursuant to Section 3.3 of the Concession Agreement;

(x) any event or circumstance that has occurred that could reasonably be expected to result in a material liability of the Borrower under ERISA or under the Code with respect to any ERISA Plan;

(xi) any Lien or claim against all or any material part of the Collateral known to the Borrower (other than Permitted Liens);

(xii) any written notice to the Borrower indicating that any material Governmental Approval required for the continued operation of the Indiana Toll Road will not be granted or will be terminated, revoked or suspended; and

(xiii) any event or circumstance affecting any of the Material Project Participants that could reasonably be expected to impair the ability of such Person to perform its obligations under the related Material ITR Contract and that would reasonably be expected to result in a Material Adverse Effect.

Section 6.3 Quarterly Traffic and Operating Reports; Capital Project Reports.

(a) Not later than ninety (90) days after the end of each fiscal quarter of the Borrower, the Borrower will deliver to the Administrative Agent a traffic and operating report showing (i) the operating data for the Indiana Toll Road for the previous quarter and for the year to date, including total Project Revenues for the Indiana Toll Road and total Operating Expenses incurred and total Major Maintenance costs incurred [(with material costs in each category identified in reasonable detail),] (ii) if applicable, the variances for such periods between the actual Project Revenues and the budgeted Project Revenues and the actual Operating Expenses and Major Maintenance costs incurred and the budgeted Operating Expenses and Major Maintenance costs (in each case as shown in the Annual Operating Budget), together with a brief narrative explanation of the reasons for any such variance of 15% or more, and (iii) if an Event of Default exists, such other operating and traffic information as the Administrative Agent may reasonably request.

(b) [To the extent a Capital Project is required to be completed pursuant to Sections 5.1 and 5.5 of the Concession Agreement, Section 6.17 or pursuant to the Borrower's reasonable discretion, the Borrower shall have provided to the Administrative Agent and the Technical Adviser a written description of such Capital Project setting forth the scope and schedule thereof and the anticipated budget therefor, in each case, in reasonable detail and providing such additional information relating thereto as reasonably requested by the Administrative Agent. The Technical Adviser, acting reasonably, shall have confirmed the reasonableness of such Capital Project and concluded that such Capital Project shall not adversely affect the projections in the Base Case Model and based on information provided by the Borrower, funds available, together with any other funds available for the implementation of such Capital Project (including funds payable by the State or the IFA or from Loss Proceeds), are sufficient to complete the Capital Project within the time schedules set forth. To the extent such Capital Project is approved by the Administrative Agent (acting reasonably, in consultation with the Technical Adviser, and within twenty (20) days of receipt of the written description of the Capital Project), the Borrower shall deliver monthly progress reports by each Monthly Funding Date (i) setting forth the amount expended with respect to such Capital Project in the preceding

calendar month and the amount estimated to be required to complete such Capital Project and (ii) providing an assessment of the overall construction progress of such Capital Project since the date of the last report, setting forth a reasonable estimate as to the completion date for the applicable work, and providing a description of any material problems encountered. To the extent applicable, Section 6.17(d) shall apply to any Capital Projects approved in this Section 6.3(b).]

Section 6.4 Annual Operating Budget.

(a) Not less than thirty (30) days before the end of each fiscal year, the Borrower shall submit to the Administrative Agent and the Technical Adviser for their review an operating plan and a budget in compliance with the Concession Agreement for the succeeding fiscal year (collectively, an “Annual Operating Budget”), in the form of Exhibit L or any other form reasonably acceptable to the Administrative Agent. Each Annual Operating Budget shall specify in reasonable detail all projected Project Revenues and Operating Expenses, as well as projected Major Maintenance costs and costs related to any approved Capital Projects, for such period on a monthly basis.

(b) (i) If the total budgeted amount (excluding expenses covered by insurance or paid with Distributable Cash, equity or proceeds of equity issuances) set forth in the proposed Annual Operating Budget exceeds the aggregate amount set forth in the current Annual Operating Budget (excluding expenses covered by insurance or paid with Distributable Cash, equity or proceeds of equity issuances) by 15%, the proposed Annual Operating Budget must be approved by the Administrative Agent acting on behalf of the Majority Lenders (in consultation with the Technical Adviser), which approval shall be granted or denied within twenty (20) days of receipt; (ii) subject to subclause (i) above, the Majority Lenders shall not disapprove the proposed Annual Operating Budget if the Technical Adviser has certified in writing that the proposed Annual Operating Budget is reasonable, (iii) if the Administrative Agent, acting on behalf of the Majority Lenders, disapproves of the proposed Annual Operating Budget, the Administrative Agent shall set forth in writing, specifying in reasonable detail, its reasons for such disapproval and (iv) if no such written disapproval in accordance with the foregoing is provided within the time period specified above, then the proposed Annual Operating Budget shall be deemed approved, to the extent applicable, in sub-clause (i) above.

(c) If the proposed Annual Operating Budget is disapproved by the Majority Lenders in accordance with the foregoing, then the Operating Expenses for the Annual Operating Budget shall equal the amount set forth for such costs in the most recent approved Annual Operating Budget multiplied by the Inflation Factor for the most recently available period (subject to a 15% permitted variance) (provided that if the GDP Index for any year is negative, then the Operating Expenses for the Annual Operating Budget shall equal the amount set forth for such costs in the most recent approved Annual Operating Budget); provided, that if there are Major Maintenance costs or costs in respect of a Capital Project scheduled for such period, the Technical Adviser shall provide in a certificate its estimate of costs for the Major Maintenance costs, or Capital Project costs, as applicable, and such Major Maintenance costs or Capital Project costs, as applicable, for such period shall equal the sum of the amount estimated by the Technical Adviser.

(d) The Borrower shall operate the Indiana Toll Road substantially in accordance with the Annual Operating Budget except in the event of emergencies or loss covered by Insurance Proceeds and except as reasonably necessary to comply with the requirements of the Concession Agreement or applicable Governmental Rules and in respect of any costs that are reimbursable by the IFA or Insurance Proceeds. The Borrower shall have the right to make expenditures in respect of Operating Expenses, as well as Major Maintenance costs, and to the extent specified in Section 6.3(b) above, Capital Projects (to the extent applicable), without any consent or approval of the Administrative Agent, the Technical Adviser or any other Person if such costs do not exceed an amount equal to 115% of the aggregate amount budgeted for such costs in the applicable Annual Operating Budget (excluding any expenses paid with Distributable Cash, equity proceeds or equity). Any expenditures in excess of such amount shall require the approval of the Administrative Agent, provided that no such approval shall in any event be required as to any expenditures that are required to comply with the Concession Agreement or applicable Governmental Rules.

Section 6.5 Payments.

The Borrower shall pay, or cause to be paid, all sums due under this Agreement and the other Financing Documents according to the terms hereof and thereof.

Section 6.6 Books and Records; Inspection of Property.

The Borrower shall maintain proper logs, books, records and accounts in which full, true and correct entries in accordance with GAAP consistently applied, shall be made of all of its material dealings and transactions in relation to its business and activities, and the Borrower shall permit designated representatives of the Administrative Agent, after reasonable pre-scheduling with and prior written notice to the Borrower, to, accompanied by personnel of the Borrower, visit and inspect its properties twice a year unless an Event of Default has occurred and is continuing, to examine all of the Borrower's logs, books, records and accounts, to take notes therefrom, and to discuss its affairs, finances and accounts with its principal officers, engineers and independent accountants, all at such times during business hours and at such intervals as previously coordinated with and notified to the Borrower and as the Administrative Agent or the Majority Lenders may reasonably request. Notwithstanding anything to the contrary, the Borrower will not be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or (ii) that is subject to attorney-client or similar privilege or constitutes attorney work product. The designated representatives of the Administrative Agent and the Majority Lenders (with prior notice to the Administrative Agent) shall have the right to inspect, accompanied by personnel of the Borrower, the Indiana Toll Road from time to time upon reasonable advance notice to the Borrower and during working hours. Each such inspection pursuant to this Section 6.6 shall be conducted so as not to interfere with the operation or maintenance of the Indiana Toll Road and shall be subject to the Borrower's safety and insurance programs, and any such party making an inspection shall comply with (i) the reasonable request of the Borrower to maintain the confidentiality of any information identified by the Borrower in writing to the recipient thereof as confidential and received as a result of such inspection, and (ii) the provisions concerning confidentiality in the Financing Documents. The Borrower shall be given the opportunity to

participate in any discussions involving its accountants and the Administrative Agent and the Majority Lenders (or their respective designated representatives).

Section 6.7 Operation and Maintenance.

The Borrower shall maintain and keep, or cause to be maintained and kept, the Indiana Toll Road and its other material properties in good repair, working order and condition in accordance in all material respects with the Concession Agreement and in compliance in all material respects with applicable Governmental Rules and Governmental Approvals, except, in each case, where any failure to so comply would not reasonably be expected to have a Material Adverse Effect and except that the Borrower may, in good faith and by appropriate proceedings, diligently contest the validity or application of any Governmental Rules pursuant to the Permitted Contest Conditions and terms of required insurance policies, so that the business carried on in connection therewith may be properly conducted at all times (in each case excluding ordinary wear and tear, casualty and condemnation).

Section 6.8 Rights under the Material ITR Contracts.

The Borrower shall (a) perform and observe in all material respects all of its covenants and obligations contained in the Concession Agreement, the Omnibus Services Agreement and each other Material ITR Contract to which it is a party, (b) take all reasonable and necessary action to prevent the termination or cancellation of the Concession Agreement, the Omnibus Services Agreement or any other Material ITR Contract in accordance with the terms of the Concession Agreement, the Omnibus Services Agreement or such other Material ITR Contract or otherwise (except for (i) the expiration of the Concession Agreement, the Omnibus Services Agreement or any other Material ITR Contract in accordance with its respective terms and not as a result of a breach or default thereunder and (ii) the termination of the initial Omnibus Services Agreement so long as the Borrower obtains replacement services on commercially reasonable terms and a replacement Operator, to the extent required, is approved by the IFA) and (c) enforce against the relevant Material Project Participant each material covenant or obligation of the Concession Agreement, the Omnibus Services Agreement or such other Material ITR Contract, as applicable, in accordance with its respective terms, in each case under clauses (a) through (c) above, except to the extent that failure to do any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

Section 6.9 Governmental Approvals.

The Borrower shall obtain, as and when needed, and maintain in full force and effect all Governmental Approvals necessary for the leasing, operation, and maintenance of the Indiana Toll Road, except where the failure to obtain or maintain such Governmental Approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and except that the Borrower may, in good faith and by appropriate proceedings, diligently contest the validity or application of any Governmental Rules pursuant to the Permitted Contest Conditions.

Section 6.10 Compliance with Laws.

The Borrower shall comply or cause compliance with, and shall ensure that the Indiana Toll Road is operated in compliance with, all Governmental Rules, including Environmental Laws, and Governmental Approvals, except, in each case, where any failure to so comply would not reasonably be expected to have a Material Adverse Effect and except that the Borrower may, in good faith and by appropriate proceedings, diligently contest the validity or application of any Governmental Rules pursuant to the Permitted Contest Conditions.

Section 6.11 Maintenance of Legal Status.

The Borrower shall at all times preserve and maintain in full force and effect (a) its legal existence as a limited liability company and its good standing under the laws of the State of Delaware; (b) its qualification to do business in the State of Indiana; and (c) all material rights, franchises, privileges and consents necessary for the maintenance of its existence and the leasing, licensing, operation, tolling, rehabilitation, and maintenance of the Indiana Toll Road except where the failure to comply with the requirements of this clause (c) would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.12 Insurance.

(a) The Borrower shall maintain at its own expense, or cause any Operator to maintain at its own expense, the insurance policies required to be maintained pursuant to Schedule 6.12 hereto and furnish to the Administrative Agent (with copies to the Collateral Agent) certificates of all such insurance when and as available and, promptly upon becoming available, certified copies of the insurance policies.

(b) The Borrower shall comply in all material respects with all insurance requirements set forth in the Concession Agreement, the Omnibus Services Agreement and any other Material ITR Contract to which it is a party and enforce, to the extent possible, the obligations of all Persons to such Material ITR Contracts with respect to the insurance requirements set forth in such agreements.

(c) Without limiting Section 6.17, all Proceeds of the insurance policies provided or obtained by the Borrower for the Indiana Toll Road (other than in respect of business interruption or anticipated loss in revenue, which are to be paid into the Proceeds Account, and excluding coverage for workers' compensation, employees' liability and general liability) (the "Insurance Proceeds"), shall be paid by the respective insurers directly to or, to the extent applicable, deposited by the Borrower into, the Loss Proceeds Account unless the Borrower is required to apply such Insurance Proceeds to a prepayment of the Loans pursuant to Section 2.5(c)(iii). Subject to the foregoing, if any Insurance Proceeds are received by the Borrower or any other Person controlled by the Borrower, such Insurance Proceeds shall be received in trust for the Collateral Agent, shall be segregated from other funds of the recipient, and shall be promptly paid into the Loss Proceeds Account or, in the case of the Proceeds of any business interruption insurance or anticipated loss in revenue, to the Proceeds Account in the same form as received (with any necessary endorsement).

Section 6.13 Taxes.

The Borrower shall timely pay and discharge all material Taxes and other assessments and governmental charges or levies imposed upon it or the Indiana Toll Road for which it is responsible prior to the date on which penalties, fines or interest attach thereto; provided that the Borrower may permit any such Tax, assessment, charge or levy to remain unpaid if it meets the Permitted Contest Conditions. The Borrower will maintain its status as a disregarded entity for federal, state and local tax purposes.

Section 6.14 Hedging Transactions.

(a) (i) Within one (1) year after the Closing Date, the Borrower shall enter into and maintain until the Maturity Date Hedging Agreements with any Hedging Bank, implementing a swap for at least 50% but no more than 100% of the notional amount of the Loans for non-speculative reasons. (ii) Subject to clause (i) above, the Borrower shall not enter into any other Hedging Transactions other than Hedging Transactions implementing a swap for no more than 100% of the notional amount of any unswapped Additional Senior Loans for non-speculative reasons in compliance with Section 7.12.

(b) The Hedging Transactions shall be secured on a pari passu basis with the Loans; provided that to be entitled to the benefits of such security, each Hedging Bank must agree in the applicable Hedging Agreement for the benefit of the Lenders to be bound by the provisions set forth in the Financing Documents applicable to the Hedging Banks and the other Financing Parties.

(c) Notwithstanding anything to the contrary in the other Financing Documents, the Hedging Banks shall have the benefit of the netting provisions of Section 2(c) of the ISDA Master Agreement.

Section 6.15 Project Accounts.

(a) The Borrower shall at all times maintain the Project Accounts in accordance with the Depositary Agreement. The Borrower shall not maintain any securities accounts or bank accounts other than the Project Accounts or other deposit accounts or securities accounts established pursuant to Permitted Liens.

(b) The Borrower shall take all commercially reasonable actions to cause all Project Revenues received to be deposited into the Proceeds Account.

Section 6.16 Preservation of Security Interests.

(a) Subject to the terms and conditions of the Financing Documents, the Borrower shall preserve and maintain the security interests granted under the Security Documents in full force and effect, and take all action reasonably necessary to collaterally assign to the Collateral Agent all right, title and interest in and to any additional Material ITR Contracts to which it is a party or Collateral of the Borrower and perfect the security interest therein (to the extent necessary) and, promptly after acquiring any leasehold interest in real property not covered by the Leasehold Mortgage, to execute and record a supplement to the Leasehold Mortgage subjecting such real property interest to the Leasehold Mortgage.

(b) With respect to any additional Material ITR Contracts entered into by the Borrower after the Closing Date, the Borrower shall notify the other parties of such Material ITR Contracts of the security interests granted to the Collateral Agent under the Security Documents and shall use commercially reasonable efforts to cause such parties thereto to execute and deliver to Administrative Agent a consent in substantially the form of Exhibit M; provided, however, that the failure of Borrower to obtain such a consent shall not constitute a Default or Event of Default hereunder.

Section 6.17 Material Event of Loss.

(a) If any loss or damage to the Indiana Toll Road occurs that is reasonably estimated by the Borrower to cost more than \$5,000,000 to restore, repair, replace or rebuild, unless the Borrower elects not to restore such property and such restoration is not required under the Concession Agreement to operate and maintain the Indiana Toll Road, the Borrower shall promptly (and in any event within 60 days after the occurrence of the Event of Loss) deliver to the Administrative Agent and the Technical Adviser a written description of the restoration plan with respect to such loss or damage, setting forth the scope and schedule thereof and the anticipated budget therefor thereof, in each case in reasonable detail and providing such information relating thereto as reasonably requested by the Administrative Agent. The Technical Adviser, acting reasonably, shall confirm the reasonableness of such restoration plan.

(b) The Borrower shall deliver to the Administrative Agent and the Technical Adviser (i) complete and correct copies of each construction, procurement and other contract to which the Borrower is a party relating to the Capital Project carrying out such restoration plan; (ii) a certificate of the Insurance Consultant to the effect that all insurance policies maintained by the Borrower with respect to such Capital Project conform with the requirements specified on Schedule 6.12 and in the Concession Agreement; and (iii) reasonable evidence that each of the Governmental Approvals that is required to be obtained for such Capital Project has been obtained or can be obtained in the normal course of business as and when required. The Borrower shall also provide such additional information or documentation with respect to such Capital Project as may be reasonably requested by the Administrative Agent.

(c) With respect to any withdrawals proposed to be made by the Borrower from the Loss Proceeds Account for the purposes of paying any cost contemplated in this Section 6.17, the Borrower shall provide to the Administrative Agent and the Technical Adviser (i) copies of invoice(s) as appropriate, as to such payments, (ii) financial information demonstrating compliance with the budget therefor such Capital Project (subject to a 15% permitted variance), and (iii) a certificate of an Authorized Officer of the Borrower certifying that there are no cost overruns (other than the variance permitted in clause (ii) above) or, if there are cost overruns, summarizing such overruns in reasonable detail, and that the funds available to the Borrower in the Loss Proceeds Account are sufficient to complete construction of such Capital Project or, if such funds are insufficient, describing the estimated deficiency (and in the case of any such estimated deficiency, the Borrower shall on the immediately succeeding Monthly Funding Date, transfer funds sufficient to cover such deficiency from the Proceeds Account to the Loss Proceeds Account).

(d) The Collateral Agent shall receive a perfected security interest in the Borrower's rights, title and interest in and to all construction, procurement and other contracts relating to the Capital Project for such restoration and the assets and work constituting such Capital Project, in each case, to the extent constituting Collateral, subject only to Permitted Liens. If reasonably requested by the Administrative Agent, the Borrower shall use its commercially reasonable efforts to cause contractors, subcontractors and suppliers in relation to such Capital Project to provide to the Administrative Agent mechanic's lien waivers in connection with payments made or to be made with respect to such Capital Project.

(e) Notwithstanding anything to the contrary set forth in this Section 6.17, any restoration, repair, replacement or rebuilding that is required to be made in accordance with the terms of the Concession Agreement shall be made in accordance with the terms of the Concession Agreement, including, without limitation, with respect to the place of deposit of any Insurance Proceeds and the restoration plan and schedule with respect thereof.

Section 6.18 Separateness.

[The Borrower shall comply with the separateness covenant as set forth in Section 3.6 of the Concession Agreement.]

Section 6.19 Additional Senior Loan Documentation.

The Borrower shall provide to each of the Lenders promptly following request or execution, as applicable, (i) copies of any Additional Senior Loan Documents, (ii) any notice of default received or given by the Borrower pursuant to any Additional Senior Loan Documents, and (iii) such other information relating thereto as the Administrative Agent may reasonably request. Notwithstanding anything to the contrary, the Borrower will not be required to provide any such documents or information specified in clauses (i) through (iii) above (a) in respect of which disclosure to any Lender (or their respective representatives or contractors) is prohibited by Law or (b) that is subject to attorney-client or similar privilege or constitutes attorney work product.

ARTICLE VII

NEGATIVE COVENANTS

Section 7.1 Prohibition of Fundamental Changes; Sale of Assets, Etc.

(a) The Borrower shall not (i) enter into any transaction of merger or consolidation, change its form of organization or its business, or liquidate, wind up or dissolve itself, or suffer any liquidation or dissolution, (ii) convey, sell, lease, assign, transfer or otherwise dispose of all or substantially all of its property, assets or business, whether now owned or hereafter acquired, other than in accordance with the Concession Agreement and the Financing Documents, (iii) purchase, lease or acquire any assets other than assets required in connection with the operation and maintenance of the Indiana Toll Road, or (iv) acquire any equity interest in any Person.

(b) The Borrower shall not convey, sell, lease, transfer, assign or otherwise dispose of, in one transaction or a series of related transactions, any of its properties or assets in excess of \$5,000,000 per year in the aggregate except for:

(i) sales or other dispositions of obsolete, uneconomical, worn out or defective assets;

(ii) sales or other dispositions of equipment or other property in the ordinary course of the business of the Borrower in accordance with the Concession Agreement and the Material ITR Contracts;

(iii) sales, transfers or other dispositions of Permitted Investments or Permitted Liens;

(iv) sales of equipment to the extent that such equipment is exchanged for credit against the purchase price of other equipment used in connection with the Borrower's business, or the proceeds of such sale are applied with reasonable promptness to the purchase price of such other equipment;

(v) dispositions or transfers of property subject to accidental casualty or condemnation; and

(vi) dispositions of cash and cash equivalents in the ordinary course of business.

(c) The Borrower (i) shall not change its name or its fiscal year without the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) and (ii) shall comply with and shall not amend or modify any of its organizational documents if any such amendment or modification materially and adversely affects any material rights or remedies of the Secured Parties under any Security Documents.

Section 7.2 Conduct of Business.

The Borrower shall not engage at any time in any business other than the ownership of the Concessionaire Interest pursuant to the Concession Agreement and the activities related, incidental, ancillary or complementary thereto, including but not limited to tolling, operating, maintaining and financing the Indiana Toll Road.

Section 7.3 Indebtedness.

The Borrower shall not create, incur, assume or permit to exist any Indebtedness, except:

(a) Indebtedness incurred or created under the Financing Documents and any replacement, renewal, refinancing, restructuring or extensions of such Indebtedness;

(b) Hedging Transactions incurred for non-speculative reasons as permitted under Section 6.14;

(c) purchase money obligations and Capital Leases secured only by Liens on the property, except for accessions to such property other than the property financed by such Indebtedness and the proceeds and the products thereof and security deposits (provided that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender), being financed and shall not require payments by the Borrower in any calendar year in excess of \$40,000,000 so long as such Indebtedness does not exceed the purchase price paid for such property and such Indebtedness is incurred within two hundred seventy (270) days of the acquisition or construction of such equipment;

(d) unsecured Indebtedness or Additional Senior Loans (defined below) incurred to finance (i) Capital Expenditures under Section 5.5(c) of the Concession Agreement, or (ii) contributions in respect of IFA Directives under Section 5.5(c) of the Concession Agreement, so long as, after giving effect to such incurrence of Indebtedness, the minimum projected Debt Service Coverage Ratio shall be equal to or greater than 1.60 to 1.00;

(e) Indebtedness approved by the Majority Lenders, subject to the following requirements (any such Indebtedness, the "Additional Senior Loans"):

(i) [the Borrower shall have certified in writing to the Administrative Agent that the minimum projected Debt Service Coverage Ratio for each Payment Period from the then current Payment Period through the Maturity Date, after giving effect to such incurrence of Indebtedness, shall not be less than 1.60 to 1.00 (for purposes of the calculation of the Debt Service Coverage Ratio pursuant to this sub-clause (i));

(ii) the Additional Senior Loan Documents shall provide that the Additional Senior Loans shall be payable on a parity basis with the Loans, except that if the full amount of the Indebtedness under the Additional Senior Loan Documents (including principal, accrued interest, fees, costs, indemnities and all payment obligations under interest rate hedging agreements with respect thereto) is not entitled to the benefits of "Leasehold Mortgage Debt" under the Concession Agreement, to the extent that any payment of Toll Road Concession Value under the Concession Agreement is increased pursuant to the proviso of the definition thereof in the Concession Agreement on account of the amount of Leasehold Mortgage Debt, the Indebtedness under the Financing Documents, to the exclusion of such Indebtedness under the Additional Senior Loan Documents, shall be entitled to receive any prepayment resulting from such increase;

(iii) the Additional Senior Loan Documents shall provide that the Borrower may incur additional Indebtedness to refinance the Loans payable on a parity basis with the Additional Senior Loans, the incurrence of which shall not be subject to any restrictions that are more restrictive in any material respect than those set forth in this clause (e);

(iv) each Additional Senior Lender (or an agent or trustee acting on their behalf) shall become subject to and a party to the Collateral Agency

Agreement or an intercreditor agreement reasonably satisfactory to the Majority Lenders in accordance with Section 11.1(d);

(v) as of the funding of the Additional Senior Loans, there shall not exist any Liens upon the Collateral that rank senior to the Liens securing such Additional Senior Loans other than Permitted Liens;

(vi) the Additional Senior Loans shall not benefit from any Liens other than Liens upon the Collateral, unless the benefits of any such other Liens have been granted to the Secured Parties on a pari passu basis with the Additional Senior Lenders;

(vii) the Additional Senior Loan Documents shall provide that, until the repayment in full of the Loans, (A) interest accrued on the Additional Senior Loans shall only be payable on an Interest Payment Date, (B) principal of the Additional Senior Loans shall be payable only on a date on which principal of the Loans is due and payable and on any such due date in an amount not greater than pro rata with amounts then due and payable hereunder (calculated in accordance with the respective amounts then outstanding among the Loans and the Additional Senior Loans), (C) if any cash sweep of principal of the Additional Senior Loans is required pursuant to the relevant Additional Senior Loan Documents, such cash sweep shall only be payable as of a Payment Date from Excess Cash in an amount not greater than pro rata with the Applicable Cash Sweep Payment then due and payable hereunder; provided that the Applicable Cash Sweep Percentage as of such Payment Date shall be increased in accordance with the proviso in the definition of "Applicable Cash Sweep Percentage", and (D) the scheduled maturity of the Additional Senior Loan shall not occur prior to the end of the Loan Period for the Loans.

(f) trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business which are payable in accordance with customary practices that are not overdue by more than ninety (90) days of the date the respective goods are delivered or the respective services are rendered (unless subject to Permitted Contest Conditions);

(g) amounts payable under the Concession Agreement and the Toll Road Contracts (to the extent the same constitute Indebtedness);

(h) Permitted Investments (to the same constitute Indebtedness);

(i) Loans or advances from the Member or another Affiliate of the Borrower (which loans or advances from the Member or another Affiliate of the Borrower shall be unsecured only), fully subordinated in right of payment and liquidation to the prior payment in full of the Obligations (other than contingent Obligations) and the obligations under any Additional Senior Loan Documents;

(j) Indebtedness created in connection with any sale-leaseback transaction permitted by the terms of the Concession Agreement;

(k) (i) Indebtedness in respect of surety bonds or similar instruments required to be maintained under and pursuant to any Material ITR Contract, (ii) Indebtedness for financing working capital and (iii) other Indebtedness not exceeding \$40,000,000 at any one time outstanding;

(l) the issuance of senior unsecured fixed rate loans to Statewide or one or more designated third parties to satisfy the terms of or to fund the Put Election, as defined under and in accordance with the Plan (the “Put Election Loans”), which shall mature on or before the first anniversary of the Closing Date and accrue interest at 10% per annum; and

(m) the Second Lien Loans and debt incurred under the Second Lien Financing Documents and any replacement, restructuring, renewal, refinancing or extensions of such Indebtedness in accordance with the Collateral Agency Agreement.

Section 7.4 Liens.

The Borrower shall not create, incur, assume or permit to exist any Lien upon or with respect to any of its property, assets or revenues, whether now owned or hereafter acquired, except for Permitted Liens.

Section 7.5 Investments and Loans.

The Borrower shall not make any investment or capital contribution to, or purchase stocks, bonds, notes or other securities of, or advance any extension of credit to, or make any other investment in, any other Person, other than Permitted Investments, expenditures permitted by the Annual Operating Budget and investments permitted under the Concession Agreement.

Section 7.6 Distributions.

The Borrower shall not, directly or indirectly, (a) make or declare any dividend or other distribution (in cash, property or obligation) to the Member or otherwise on account of, any Membership Interest, or (b) make any purchase, redemption, retirement or acquisition of, any Membership Interest, (c) make any voluntary prepayment on, redeem, repurchase or defease any Indebtedness subordinated in right of payment of the Borrower except at its stated maturity or otherwise in accordance with the terms of the Collateral Agency Agreement governing such debt, or (d) make investments not otherwise permitted by the Financing Documents (clauses (a) - (d), collectively, “Restricted Payments”) other than (i) Permitted Tax Distributions, (ii) Restricted Payments made with Distributable Cash so long as the Distribution Conditions have been met (or waived) and (iii) such sales or issuances of Capital Stock from the Borrower to Member.

Section 7.7 Transactions With Affiliates.

The Borrower shall not enter into any agreement or arrangement with a Statewide Entity or any Affiliate of the Borrower or a Statewide Entity unless (a) such transaction is entered into in the ordinary course of business, on terms no materially less favorable to the Borrower than the Borrower would obtain in a comparable arm’s-length transaction with a Person that is not an Affiliate of the Borrower, (b) such arrangement is otherwise permitted hereby, (c) such

transaction is between the Borrower and the Member; (d) at any time when the Operator is not the Borrower, but is an Affiliate of the Borrower, such transaction is between the Operator and the Borrower; (e) such transaction is described on Schedule 6.19 (including any amendments, restatements, supplements, replacements, extensions or other modifications thereof which are not materially adverse to the interests of the Lenders); and (f) such transaction is a Restructuring Transaction (including the payment of fees, costs and expenses in connection with the consummation thereof).

Section 7.8 Concession Agreement.

The Borrower shall not terminate, or assign, or materially amend or modify, or waive timely performance by the IFA of material covenants under, the Concession Agreement except:

(a) if the Borrower receives and applies a termination payment sufficient to prepay the Loans in full plus accrued and unpaid interest pursuant to Section 2.5(c)(i); or

(b) for any such termination, assignment, amendment, modification or waiver that would not reasonably be expected to result in a Material Adverse Effect; provided that notwithstanding anything to the contrary set forth in this clause (b), the Borrower shall be required to obtain the prior written consent of the Leasehold Mortgagee (as defined in the Concession Agreement) with respect to any such amendment or modification that would reasonably be expected to have a material adverse effect on the rights or interests of the Leasehold Mortgagee or with respect to any voluntary surrender or termination of the Concession Agreement by the Borrower); or

(c) for any such termination, assignment, amendment, modification or waiver that is reasonably approved in writing by the Administrative Agent prior to its effective date.

Section 7.9 Hazardous Materials.

The Borrower shall not cause any Releases of Hazardous Materials at, on or under the Indiana Toll Road, except in compliance in all material respects with all Governmental Rules and required insurance policies, except to the extent that any failure to comply with any Governmental Rules and required insurance policies cannot reasonably be expected to result in a Material Adverse Effect.

Section 7.10 No Subsidiary.

The Borrower shall not create or acquire any subsidiary other than an Operator under the Concession Agreement (if necessary); provided that all of the membership interests and assets of the Operator shall be pledged to the Collateral Agent on behalf of the Secured Parties and the Operator has no outstanding Indebtedness or any Liens encumbering it, its membership interests or any of its material assets.

Section 7.11 Replacement Operator.

The Borrower shall not at any time following the Closing Date appoint a replacement Operator except pursuant to Section 3.3 of the Concession Agreement.

Section 7.12 Hedging Agreements.

Without the consent of the Majority Lenders (not to be unreasonably withheld, conditioned or delayed), the Borrower shall not enter into any Hedging Arrangements or other speculative transactions, except as otherwise required or permitted under Section 6.14.

Section 7.13 No Payments to Lenders.

The Borrower shall not make any payments to procure consents from any Lender hereunder, unless the same consideration is offered to all such Lenders, as applicable, and paid to all such Lenders on a pro rata basis, as applicable, that so consent.

Section 7.14 No Amendments.

The Borrower shall not (a) enter into additional Material ITR Contracts or amend or otherwise modify, or grant any waiver or consent under, replace or supplement, any Material ITR Contract if taking any such actions would reasonably be expected to result in a Material Adverse Effect; provided, that, other than as contemplated in Article XIII of the Omnibus Services Agreement, Borrower shall not enter into any new Material ITR Contracts with an Affiliate or amend or otherwise modify, or grant any waiver or consent under, replace or supplement, any Material ITR Contract with an Affiliate, other than in accordance with the limited liability company agreement of the Member and Section 7.7, or (b) amend or modify any Annual Operating Budget other than as permitted in Section 6.4 or as may be approved with Administrative Agent's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, and in such event the Borrower shall operate and maintain the Indiana Toll Road, or cause the Indiana Toll Road to be operated and maintained, within such Annual Operating Budget as so amended (subject to permitted variance).

ARTICLE VIII

EVENTS OF DEFAULT; REMEDIES

Section 8.1 Events of Default.

Any one or more of the following events shall constitute an Event of Default hereunder:

(a) the Borrower shall fail to (i) pay any principal or interest under any Financing Document on the date when due (whether by scheduled maturity, acceleration or otherwise), or (ii) pay any interest, fees or other amounts payable under any Financing Document when due, and in each case, such failure is not remedied within five (5) Business Days after the applicable due date therefor; or

(b) (i) the Borrower fails to comply with any covenant or agreement contained in Article 7 (other than those specified in sub-clauses (ii) and (iii) below); (ii) the Borrower fails to comply with any covenant or agreement contained in Section 7.3 or 7.4, unless such failure is remedied within fifteen (15) days after the Administrative Agent shall have provided written notice thereof to the Borrower; or (iii) the Borrower fails to comply with any covenant contained in Section 6.15, 7.5, 7.9, 7.12, 7.13, or 7.14, unless such failure is remedied within thirty

(30) days after the Administrative Agent shall have provided written notice thereof to the Borrower;

(c) the Borrower shall fail to comply with any covenant or agreement under this Agreement or under any other Financing Document (other than those specified in subsections (a) or (b) above), unless such failure is remedied within thirty (30) days after the Administrative Agent shall have provided written notice thereof to the Borrower; provided, however, that so long as the Borrower as promptly as practicable commences action reasonably designed to cure such default and continues diligently to pursue such action and such default is cured within ninety (90) days after the expiration of the initial thirty (30) day grace period, no Event of Default shall result therefrom; or

(d) any representation or warranty made by the Borrower in any Financing Document to which it is a party, or in any certificate or document delivered to the Administrative Agent or Collateral Agent by the Borrower pursuant to any Financing Document, proves to have been incorrect or untrue in any material respect when made, unless the adverse effect of such misrepresentation is capable of remedy and is remedied within thirty (30) days after the Administrative Agent provides written notice thereof to the Borrower; or

(e) a Bankruptcy occurs with respect to the Borrower; or

(f) the Borrower abandons all or a material part of the Indiana Toll Road or its activities to operate or maintain the Indiana Toll Road, which abandonment shall be deemed to have occurred if the Borrower fails, without reasonable cause, to operate the Indiana Toll Road for ninety (90) consecutive days; or

(g) a final judgment or order is entered against the Borrower for the payment of money which is reasonably likely to result in a Material Adverse Effect and such judgment remains unpaid or unsatisfied without any procurement of a stay of execution within sixty (60) calendar days after the date of entry of judgment or is not adequately covered by insurance or a performance bond for a period of sixty (60) consecutive days after the date of entry of judgment; or

(h) any Financing Document to which the Borrower is a party ceases to be in full force and effect, except in accordance with its terms, or declared void by any Governmental Authority and such event continues for thirty (30) days after the Administrative Agent provides written notice thereof to the Borrower; or

(i) any of the Security Documents shall, except as the result solely of the acts or omissions of Administrative Agent or the Lenders or in accordance with its terms thereunder, cease to be in full force and effect or fail to provide the Collateral Agent for the benefit of the Secured Parties the Liens, or the priority and perfection thereof, intended to be created thereby, or the validity thereof or the applicability thereof to the Loans, the Notes or any other obligations purported to be secured or guaranteed thereby or any part thereof, shall be void or terminated, and such event continues for thirty (30) days after the earlier of the Administrative Agent giving written notice thereof to the Borrower and the Borrower obtaining Actual Knowledge of such event; or

(j) an ERISA Event has occurred which, when taken together with all other such ERISA Events for which liability of the Borrower is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect; or

(k) a “Concessionaire Default” shall have occurred under, and as defined in, the Concession Agreement or the Concession Agreement is terminated for any reason, unless Termination Damages or any other payment by IFA of the Toll Road Concession Value paid to Borrower sufficient to prepay the Loans in full plus accrued and unpaid interest are applied pursuant to Section 2.5(c) of this Agreement; or

(l) funds on deposit in any Project Account are used or withdrawn other than for the purposes specified or as expressly permitted in the Financing Documents, unless such is caused by an administrative error and is remedied within fifteen (15) Business Days; or

(m) a casualty, loss or damage event or a condemnation or nationalization event, in each case, with respect to all or substantially all of the Indiana Toll Road shall have occurred and any insurance or condemnation proceeds received by the Borrower are insufficient to repair, restore or replace such property and/or prepay the Loans in full plus accrued and unpaid interest as applied pursuant to Section 2.5(c) of this Agreement; or

(n) Borrower shall default for a period beyond any applicable grace period (i) in the payment of any principal, interest or other amount due under any agreement (other than the Financing Documents and the Second Lien Financing Agreement) for borrowed money and the outstanding amounts payable under such defaulted agreements equals or exceeds \$40,000,000 in the aggregate, or (ii) in the performance of any obligation (other than a payment obligation) under any agreement (other than the Financing Documents and the Second Lien Financing Agreement) for borrowed money, the outstanding amounts payable under such defaulted agreement equals or exceeds \$40,000,000 in the aggregate, and, solely with respect to this clause (ii), the holder of the obligations concerned has delivered to the Borrower a written notice accelerating such obligation; provided that this clause (n) shall not apply to (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; provided further that this clause (n) shall not apply if such failure is remedied or waived by the holders of such Indebtedness prior to any acceleration of the Loans pursuant to Section 8.2; or

(o) (i) (A) a Material ITR Contract ceases to be valid and binding and in full force and effect or is terminated prior to its expiration date or as otherwise permitted thereunder; or (B) any Governmental Approval necessary for operation and maintenance of the Indiana Toll Road in accordance with the Financing Documents, the Concession Agreement and any other Material ITR Contract is terminated, revoked or withdrawn or is not obtained, maintained, or complied with, and (ii) such failure, termination or non-compliance would reasonably be expected to result in a Material Adverse Effect; provided that such failure, termination or non-compliance is remedied within thirty (30) days after the earlier of the Administrative Agent giving written notice thereof to the Borrower and the Borrower obtaining Actual Knowledge of such event; provided, further, that so long as the Borrower as promptly as practicable commences action reasonably designed to cure such default and continues diligently to pursue

such action and such default is cured within one hundred and fifty (150) days after the expiration of the initial thirty (30) day grace period, no Event of Default shall result therefrom.

Section 8.2 Remedies Upon Event of Default.

(a) If any Event of Default occurs and is continuing, then at the direction of the Majority Lenders, the Administrative Agent shall have the right to: (i) declare the entire unpaid principal amount of the Loans (together with all accrued and unpaid interest thereon and any other amount then due under the Financing Documents) and all other Secured Obligations to be forthwith due and payable, whereupon such amounts shall become and be forthwith due and payable, without presentment, demand, protest, or notice of any kind except as expressly provided herein, all of which are hereby expressly waived by the Borrower; and/or (ii) instruct the Collateral Agent to foreclose on any or all of the Collateral and/or proceed to enforce all remedies available to the Administrative Agent (or Collateral Agent) pursuant to the Financing Documents or otherwise as a matter of law. Notwithstanding the foregoing, if an Event of Default referred to in Section 8.1(e) shall occur with respect to the Borrower, automatically and without notice the actions described in clauses (i) and (ii) above shall be deemed to have occurred.

(b) No Financing Party may, except with the prior consent of the Majority Lenders, (i) enforce any security interest created or evidenced by any Security Document or require the Administrative Agent to enforce any such security interest; (ii) sue for or institute any creditor's process (including an injunction, garnishment, execution or levy, whether before or after judgment) in respect of any Secured Obligation (whether or not for the payment of money) owing to it under or in respect of any Financing Document or Hedging Agreement; (iii) take any step for the winding-up, administration of or dissolution of, or any insolvency proceeding in relation to, the Borrower, or for a voluntary arrangement, scheme of arrangement or other analogous step in relation to the Borrower; or (iv) apply for any order for an injunction or specific performance in respect of the Borrower in relation to any of the Financing Documents or any Hedging Agreement.

ARTICLE IX

ADMINISTRATIVE AGENT

Section 9.1 Appointment and Authorization of Administrative Agent.

Each Financing Party hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Financing Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Financing Document, together with such powers as are reasonably incidental thereto. The Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein and in any other Financing Documents. The Administrative Agent shall not be deemed to have any fiduciary relationship with any Financing Party or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Financing Document or otherwise exist against the Administrative Agent. Without limiting the

generality of the foregoing sentence, the use of the term “agent” herein and in the other Financing Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Governmental Rule. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

Section 9.2 Delegation of Duties.

The Administrative Agent may execute any of its duties under this Agreement or any other Financing Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

Section 9.3 Liability of Administrative Agent.

None of the Administrative Agent, its officers, directors, employees, agents, attorneys-in-fact and Affiliates shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Financing Document or the transactions contemplated hereby (except for its own gross negligence, bad faith or willful misconduct in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Financing Party or Participant for any recital, statement, representation or warranty made by the Borrower or the Member or any officer thereof, contained herein or in any other Financing Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Financing Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Financing Document, or for any failure of the Borrower or the Member or any other party to any Financing Document to perform its obligations hereunder or thereunder. None of the Administrative Agent and any of its officers, directors, employees, agents, attorneys-in-fact and Affiliates shall be under any obligation to any Financing Party or Participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of this Agreement or any other Financing Document, or to inspect the properties, books or records of the Borrower or the Member or any Affiliate thereof.

Section 9.4 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Member), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under any Financing Document

unless it shall first receive such advice or concurrence of the Majority Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Financing Parties against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Financing Document in accordance with a request or consent of the Majority Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

Section 9.5 Notice of Default.

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Financing Parties, unless the Administrative Agent shall have received written notice from a Financing Party or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default” or “notice of event of default.” The Administrative Agent will promptly notify the Financing Parties of its receipt of any such notice. The Administrative Agent shall take such action with respect to such Default or Event of Default as may be directed by the Majority Lenders (or such other number or percentage of Lenders as shall be necessary under the circumstances as provided in Section 11.1) in accordance with the terms hereof; provided that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default of Event of Default as it shall deem advisable or in the best interest of the Financing Parties.

Section 9.6 Credit Decision; Disclosure of Information.

Each Financing Party acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representation or warranty to it, and that no act by the Administrative Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of the Borrower or the Member or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates to any Financing Party as to any matter, including whether the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates have disclosed material information in their possession. Each Financing Party represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Financing Party also represents that it will, independently and without reliance upon the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis,

appraisals and decisions in taking or not taking action under this Agreement and the other Financing Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower. Except for notices, reports and other documents expressly required to be furnished to the Financing Parties by the Administrative Agent herein or provided by the Borrower to the Administrative Agent for the behalf of the Financing Parties, the Administrative Agent shall not have any duty or responsibility to provide any Financing Party with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Borrower or any of its Affiliates which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

The Borrower irrevocably authorizes the Administrative Agent to disclose any information received from the Borrower in its capacity as agent to the Financing Parties.

Section 9.7 Indemnification.

To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent or any Indemnitee, each Financing Party severally agrees to pay to the Administrative Agent or such Indemnitee such Financing Party's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount. The undertaking in this Section shall survive the payment of all Secured Obligations and the resignation of the Administrative Agent in accordance with the terms hereof.

Section 9.8 Administrative Agent in Its Individual Capacity.

The Administrative Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrower and its Affiliates as though the Administrative Agent were not the Administrative Agent hereunder and without notice to or consent of the Financing Parties. The Financing Parties acknowledge that, pursuant to such activities, the Administrative Agent or its Affiliates may receive information regarding the Borrower or the Member or its respective Affiliates (including information that may be subject to confidentiality obligations in favor of the Borrower or the Member or such Affiliate) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them. With respect to its Loans or any interest under the Hedging Agreements, the Administrative Agent shall have the same rights and powers under this Agreement as any other Financing Party and may exercise such rights and powers as though it were not the Administrative Agent.

Section 9.9 Collateral Agency Agreement; Depositary Agreement.

Each Financing Party hereby authorizes the Administrative Agent and the Collateral Agent to execute and deliver the Collateral Agency Agreement and Depositary Agreement on behalf of such Financing Party and agrees that, upon such execution and delivery, such Financing Party shall be bound by the terms and provisions thereof as if such Financing Party

was a signatory thereto. Each Financing Party further authorizes the Administrative Agent to exercise such powers and discretion under each such agreement as are delegated to the Administrative Agent by the terms thereof, together with such powers and discretion as are reasonably incidental or related thereto. As to matters not expressly provided for in the Collateral Agency Agreement and the Depositary Agreement, the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Majority Lenders; provided that the Administrative Agent shall not be required to take any action that exposes it to personal liability or that is contrary to the Financing Documents or applicable Governmental Rules. Upon request by the Borrower in writing, the Administrative Agent hereby agrees to provide promptly the notices contemplated in Section 2.05 of the Membership Pledge Agreement, Section 2.08 of the Security Agreement and the last paragraph of the section entitled "The Mortgaged Property" in the Leasehold Mortgage, and similar notices required under the Financing Documents.

Section 9.10 Successor Administrative Agent.

The Administrative Agent may resign as Administrative Agent upon 30 days' notice to the Lenders and the Borrower and may be removed with or without cause by the Majority Lenders upon 30 days' notice to the Administrative Agent, the Lenders and the Borrower; provided that such resignation or removal shall not be effective until a successor Administrative Agent is appointed as provided below or as otherwise provided below). If the Administrative Agent resigns or is removed under this Agreement, the Majority Lenders shall appoint a successor Administrative Agent hereunder who shall be a commercial bank or trust company reasonably acceptable to the Borrower (which acceptance of the Borrower shall not be unreasonably withheld or delayed and which acceptance shall not be required if an Event of Default shall have occurred and is then continuing). If no successor administrative agent is appointed prior to the effective date of the resignation or removal of the Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders and with the approval of the Borrower (to the extent required above), a successor administrative agent from among the Lenders. Upon the acceptance of its appointment as successor administrative agent hereunder the Person acting as such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term "Administrative Agent" shall mean such successor administrative agent, and the retiring Administrative Agent's appointment, powers and duties as Administrative Agent shall be terminated. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of Article IX and Section 11.3 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement. If no successor administrative agent has accepted appointment as Administrative Agent by the date which is 30 days following a retiring Administrative Agent's notice of resignation or the Majority Lenders' notice of removal, the retiring Administrative Agent's resignation or removal shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Majority Lenders appoint a successor agent as provided for above.

Section 9.11 Swap Registry.

The Administrative Agent agrees to maintain at one of its offices a record (as updated, the “Swap Register”) identifying (i) each Hedging Bank and the Hedging Agreement(s) to which each Hedging Bank is a party thereto, and (ii) the initial notional amount of exposure held by each Hedging Bank under each Hedging Agreement or to the extent any Hedging Agreement has been terminated, the Hedging Termination Obligations under each of such Hedging Agreement, of which the Administrative Agent has actual knowledge. The entries in the Swap Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent, the Lenders and each other Financing Party may treat each Person whose name is recorded in the Swap Register pursuant to the terms hereof as a Hedging Bank for all purposes of the Financing Documents. The Swap Register shall be available for inspection by the Borrower and any Financing Party, at any reasonable time and from time to time upon reasonable prior notice.

The Administrative Agent shall be deemed to have “actual knowledge” of the existence of a Hedging Agreement only if (a) such Hedging Agreement is listed in the Swap Register or (b) thereafter, it receives a notice substantially in the form of Exhibit Q hereto (the “Hedging Claim Notice”) that is executed and delivered by the applicable Hedging Bank and its assignees identifying the Hedging Agreement in reasonable detail, and either (i) setting forth the amount of any Hedging Termination Obligations then due to such Hedging Bank or (ii) as to any Hedging Bank that has not declared an “Early Termination Date” (within the meaning of the ISDA Master Agreement) and terminated all outstanding transactions under the applicable Hedge Agreement, the amount of any Hedging Termination Obligations that would become due to such Hedging Bank if such action were taken. The amounts set forth in the Hedging Claim Notice or in the Swap Register shall be referred to as the “Hedging Claims.” Upon receipt of any properly completed Hedging Claim Notice, the amounts contained in the Swap Register shall be updated as soon as practical by the Administrative Agent. The information concerning the holder of record of a Hedging Claim as set forth in the Swap Register shall be conclusive and binding on the Financing Parties (absent manifest error) for purposes of (a) determining direction or instruction by Majority Lenders to the Administrative Agent under this Agreement and (b) having the Paying Agent (as defined below) make any distributions to holders of Hedging Claims.

If a Hedging Bank assigns or otherwise transfers any part of its rights or obligations under a Hedging Agreement, then promptly following such transfer, the assignee of such transaction shall provide the Administrative Agent (with a copy to the Borrower) with a Hedging Claim Notice before the Administrative Agent shall be deemed to have actual knowledge of the current parties to a Hedging Agreement. The Administrative Agent and the Paying Agent (as defined below) shall be entitled to rely upon the Hedging Claim amounts set forth in the foregoing Hedging Claim Notice as the amount of the outstanding Hedging Claims owed to such assignee in respect of the applicable Hedging Agreement. The Administrative Agent will update the names, amounts and other details in the Swap Register in accordance with such Hedging Claim Notice and act as a paying agent (the “Paying Agent”) in respect of the Hedging Claims due to the applicable Hedging Bank on the Swap Register. Any funds, proceeds or amounts due in respect of any Hedging Claims shall be paid to the Paying Agent, which shall be distributed by the Paying Agent as soon as practical in accordance with the Swap Register and the applicable “waterfall” and indemnification and reimbursement rights provided to the Administrative Agent under this Agreement. Unless it has actual knowledge to the contrary pursuant to receipt of a duly executed Hedging Claim Notice, the Administrative Agent in acting

in such capacity as Paying Agent under the Financing Documents shall be entitled to assume that no Hedging Agreements are in existence or outstanding between any Financing Party and the Borrower other than as listed in the Swap Register.

The Administrative Agent shall have no liability to any Person for any information in connection with the status of any Hedging Agreement, the parties that are owed amounts thereunder, or the amounts then due or owing under a Hedging Agreement (other than, to the extent applicable, if any, as set forth in Section 9.3). The Administrative Agent is not required to perform any diligence or ascertain the correctness of any information given to it pursuant to this Section 9.11, and the Administrative Agent shall not have or be deemed to have any fiduciary relationship with any Financing Party or assignee thereof, and no implied covenants, functions, responsibilities, duties, obligations or liabilities in connection with the maintenance of the Swap Register. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon the statement of facts presented to it in any Hedging Claim Notice delivered to it under this Section. For avoidance of doubt, nothing contain in this Section shall impair any of the protections provided to the Administrative Agent under Sections 9.3 and 9.4.

Section 9.12 Execution of Security Documents. The Lenders hereby empower and authorize the Administrative Agent to execute and deliver, and to instruct the Collateral Agent to execute and deliver, to the Borrower on their behalf the Security Documents, all related financing statements and any financing statements, agreements, documents or instruments that are necessary or appropriate to effect the purposes of the Security Documents.

Section 9.13 Collateral Release.

(a) Upon the payment and performance in full of the all Secured Obligations (other than contingent Obligations) to be paid under the Financing Documents, the Administrative Agent shall deliver a written signed notice in accordance with the second sentence of Section 2.08 of the Security Agreement and the second sentence of Section 2.05 of the Member Pledge Agreement.

(b) The Lenders hereby empower and authorize the Administrative Agent to execute and deliver, and to instruct the Collateral Agent to execute and deliver, to the Borrower on their behalf any agreements, documents or instruments that are necessary or appropriate to effect any releases of Collateral (i) sold, leased or disposed of in compliance Section 7.1 or any other Financing Document, or (ii) that the Majority Lenders have approved in writing by the terms hereof or of any other Financing Document or otherwise.

ARTICLE X

[INTENTIONALLY OMITTED.]

ARTICLE XI

MISCELLANEOUS

Section 11.1 Amendments; Waivers.

(a) Subject to Section 5.03 of the Collateral Agency Agreement, no amendment or waiver of any provision of this Agreement or any other Financing Document, and no consent to any departure by the Borrower or the Member therefrom, shall be effective unless in writing signed by the Majority Lenders and the Borrower or the Member, as the case may be; provided, that no such amendment, waiver or consent shall change any provision of this Section or the definition of “Majority Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; provided, further that (i) no amendment, waiver or consent shall, without the written consent of the Administrative Agent in addition to the Lenders required above, adversely affect the rights or duties of the Administrative Agent under this Agreement or any other Financing Document, (ii) no separate fee agreement between the Borrower and the Administrative Agent in its capacity as such may be amended or modified by such parties except in accordance with the terms thereof; (iii) neither the Collateral Agency Agreement nor the Depositary Agreement may be amended or modified except in accordance with the terms thereof; (iv) no amendment, waiver or consent, solely after an Event of Default has occurred is continuing under Section 8.1(a)(ii), shall, without the consent of each Hedging Bank directly affected thereby, in addition to the Lenders above, affect the rights or duties of such Hedging Bank under the Security Documents with respect to Collateral.

(b) No failure or delay by the Administrative Agent, or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall have been provided in accordance with paragraph (a) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time.

(c) If, in connection with any proposed change, waiver, consent or termination of or to any of the provisions of this Agreement as contemplated by clauses (i) through (vi), inclusive, of the first proviso to Section 11.1(a), the consent of the Majority Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then the Borrower shall have the right, so long as all non-consenting Lenders whose individual consent is required are treated as described in either clause (A) or (B) below, to either (A) replace each such non-consenting Lender or Lenders with one or more Eligible Assignees approved by the Administrative Agent (such approval not to be unreasonably withheld) so long as at the time of such replacement, each such Eligible Assignee consents to the proposed change, waiver, consent or termination or (B) repay the relevant Loans of such Lender which gave rise to the need to obtain such Lender’s consent; provided that, unless the Loans which are repaid pursuant to the preceding clause (B) are immediately replaced in full at such time through the addition of new Lenders and/or outstanding Loans of existing Lenders (who in

each case must specifically consent thereto), then in the case of any action pursuant to preceding clause (B), the Majority Lenders (determined after giving effect to the proposed action) shall specifically consent thereto.

(d) Notwithstanding anything in this Agreement or any other Finance Document to the contrary, (i) no Lender consent is required to effect any amendment or supplement to the Collateral Agency Agreement or other intercreditor agreement or arrangement permitted under this Agreement that is for the purpose of adding the holders of any permitted Indebtedness as expressly contemplated by the terms of the Collateral Agency Agreement or such other intercreditor agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent in consultation with the Borrower, are required to effectuate the foregoing; provided that such other changes are not adverse, in any material respect, to the interests of the Lenders taken as a whole) and as otherwise permitted under this Agreement; (ii) any provision of this Agreement or any other Finance Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent to (A) cure any ambiguity, omission, mistake, defect or inconsistency (as reasonably determined by the Administrative Agent and the Borrower) or (B) to effect administrative changes of a technical or immaterial nature and such amendment shall be deemed approved by the Lenders if the Lenders shall have received at least five Business Days' prior written notice of such change and the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Majority Lenders stating that the Majority Lenders object to such amendment; and (iii) guarantees, collateral documents and related documents executed by the Borrower or the Member in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with any other Finance Document, entered into, amended, supplemented or waived, without the consent of any other Person, by the Borrower or Member, as applicable, and the Administrative Agent or the Collateral Agent in its or their respective sole discretion, to (A) effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Finance Parties, (B) as required by local law or advice of counsel to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable requirements of law, or (C) to cure ambiguities, omissions, mistakes or defects (as reasonably determined by the Administrative Agent and the Borrower) or to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Finance Documents.

Section 11.2 Notices.

(a) Unless otherwise expressly provided herein, (and subject to paragraphs (b) and (c) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

- (i) if to the Borrower:

[ITR Concession Company LLC],
205 North Michigan Avenue, Suite 2510
Chicago, Illinois 60601
Attention: Chief Executive Officer]
Telephone: [_____]]
Facsimile: [_____]]

(ii) if to the Administrative Agent:

[_____]]
[_____]]
[_____]]
Attention: [_____]]
Telephone: [_____]]
Facsimile: [_____]]

(iii) if to any Lender, to it at the address set forth opposite its name on the signature pages hereto.

(b) Financing Documents may be transmitted and/or signed by facsimile or other electronic means, including by “.pdf” attached to an email. The effectiveness of any such documents and signatures shall, subject to applicable Governmental Rules, have the same force and effect as manually-signed originals and shall be binding on the parties thereto. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document, “.pdf” or signature.

(c) [Reserved.]

(d) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and, if given in accordance with this Section, shall be effective (i) on the date of personal delivery (if by personal delivery), (ii) on the date of transmission, as confirmed by a printed confirmation of successful transmission if by facsimile transmission or if by electronic transmission, as confirmed by sender’s receipt of acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), (iii) if sent from and to the United States, on the Business Day following deposit with a nationally recognized overnight courier or shipping service (if by nationally recognized overnight courier or shipping service), (iv) if sent from the United States abroad or if sent from outside the United States to the United States, on the third (3rd) Business Day following deposit with an internationally recognized overnight courier or shipping service (if by internationally recognized courier or shipping service), (v) if sent from and to the United States, on the third (3rd) Business Day after mailing (if by registered mail) or (vi) if sent from the United States abroad or if sent from outside the United States to the United States, on the fifth (5th) Business Day (if by registered mail).

Section 11.3 Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay all reasonable invoiced costs (including the previously agreed fees of any independent advisors and the agreed fees, charges and disbursements (and limited thereto) of one counsel acting for the Administrative Agent and of one counsel acting for the Collateral Agent) and reasonable invoiced out-of-pocket expenses incurred by the Administrative Agent and the Collateral Agent in connection with (i) the preparation, negotiation and execution of this Agreement and the other Financing Documents and any amendment, modification or waiver of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) in connection with the enforcement of the rights and remedies of the Secured Parties under this Agreement or the other Financing Documents, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Secured Obligations. Other than the fees and expenses of any independent advisors of the Lenders for which the Borrower shall be responsible as described in this clause (a) and under any other Financing Document, the Borrower shall not be responsible for any other costs relating to the independent advisors, experts and consultants of the Secured Parties.

(b) Subject to the limits set forth in clause (a) above and Section 3.6, the Borrower shall indemnify the Administrative Agent and each Lender, and each of the officers, directors, employees, agents, and advisors of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable and documented fees, charges and disbursements of any counsel for any Indemnatee, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (i) the execution or delivery of any Financing Document or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the transactions contemplated thereby, (ii) any Loan, (iii) any actual or alleged presence or Release of Hazardous Materials on or from the Indiana Toll Road or any property owned or operated by the Borrower, any actual or alleged violation of Environmental Law by the Borrower related to the Indiana Toll Road or any Environmental Claim related to the Indiana Toll Road, or (iv) any actual claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnatee, and provided, further, that this Section shall not apply to matters covered by Section 3.1 or 3.3.

(c) To the extent permitted by applicable law, no party to this Agreement shall assert, and hereby waives, any claim against any other party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Financing Document, or any agreement or instrument contemplated hereby or arising out of the activities in connection herewith or therewith.

(d) All amounts due under this Section shall be payable not later than thirty (30) Business Days after written demand therefor.

(e) The agreements in this Section shall survive the repayment of all other Secured Obligations.

Section 11.4 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Indemnitees referred to in Section 11.3(b)) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Any Lender may assign to one or more Eligible Assignees with the prior written consents of the Borrower and the Administrative Agent (such consents not to be unreasonably withheld) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it); provided that (A) no approval shall be required for any assignment to an assignee that is a Lender immediately prior to giving effect to such assignment, (B) no approval of the Borrower shall be required if an Event of Default has occurred and is continuing, (C) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Loans, the amount of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption Agreement with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$10,000,000 and shall be an integral multiple of \$1,000,000; unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents; (D) each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Lender's rights and obligations under this Agreement; (E) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption Agreement, together with a processing and recordation fee of \$3,500; (F) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and (G) the Borrower shall not be liable for the payment of any of the costs described in Section 3.1 or 3.3 that result from any such assignment to the extent that such costs, as of the date on which the assignment is made to such assignee, are in excess of the comparable costs that were required to be paid by the Borrower to the assigning Lender as of such date (prior to giving effect to such assignment).

(ii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption Agreement the assignee thereunder shall be a party hereto and, to the extent of the interest assigned pursuant to such Assignment and

Assumption Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned pursuant to such Assignment and Assumption Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.1, 3.3 (each only as to costs relating to the period prior to such assignment) and 11.3). Upon request, the Borrower (at its expense) shall promptly execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iii) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders and principal amount and stated interest of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. This Section shall be construed so that the Loans and Obligations are at all times maintained in registered form within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any successor provisions).

(iv) Upon its receipt of a duly completed Assignment and Assumption Agreement executed by an assigning Lender and an Eligible Assignee, the assignee's completed Administrative Questionnaire (unless the assignee is already a Lender hereunder) and the processing and recordation fee referred to in paragraph (b)(i) of this Section, the Administrative Agent shall accept such Assignment and Assumption Agreement and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(v) To the extent that an assignment of all or any portion of the Loans of any Lender pursuant to this Agreement shall, at the time of such assignment, result in an increase in costs from those being charged by the assigning Lender prior to such assignment, then the Borrower shall not be required to pay such increased costs.

(vi) Any Lender may, without the consent of or notice to the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (each, a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 11.1(a) that affects such Participant.

(vii) Subject to Section 11.4(b)(vii), a Participant shall be entitled to the benefits of Section 3.1 and 3.3 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.4(b), except that a Participant shall not be entitled to receive any greater payment under Section 3.1 or 3.3 with respect to any participation than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

(viii) Such Participant agrees to be subject to the provisions of Section 3.6 and Section 11.1(c) as if it were an assignee under paragraph (b) of this Section. Each Lender that sells a participation agrees, at the Borrower’s request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.6 and Section 11.1(c) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.9 as though it were a Lender.

(ix) Each Lender that sells a participation, acting solely for this purpose as an agent of the Borrower, shall maintain a register on which it records the name and address of each Participant and the principal amounts (and any stated interest) of each Participant’s interest in the Loans (each, a “Participant Register” and as may be updated from time to time to reflect any subsequent sales of participations). The entries in the Participant Register shall be conclusive absent manifest error, and any Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. Any such Participant Register shall be available for inspection by the Borrower and any Agent at any reasonable time and from time to time upon reasonable prior notice. This Section shall be construed so that a Participant’s interest in any Loans or other

Obligations is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(c) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 11.5 Confidentiality.

Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors on a "need to know" basis (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (in which case the Administrative Agent or Lender shall give the Borrower prompt notice thereof to the extent permitted by the applicable laws), (d) to any other party to this Agreement or any other Financing Document, (e) in connection with the exercise of any remedies hereunder or under any other Financing Document or any suit, action or proceeding relating to this Agreement or any other Financing Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section (in favor of the Borrower), to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or its advisers, or (ii) any actual or prospective counterparty (or its advisers) to any swap or derivative transaction relating to the Borrower and its obligations permitted hereunder, (g) with the written consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or other confidential obligations owed to the Borrower or (ii) becomes available to the Administrative Agent, or any Lender on a nonconfidential basis from a source other than the Borrower not subject to any confidentiality obligation owed to the Borrower. For the purposes of this Section, "Information" means all information received from, or on behalf of, the Borrower or its related parties relating to the Borrower or its business. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 11.6 Limitation on Interest.

Notwithstanding anything to the contrary contained in any Financing Document, the interest and fees paid or agreed to be paid under the Financing Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Governmental Rule (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest or a fee in an amount that exceeds the Maximum Rate, the excessive interest or fee shall be applied to the

principal of the outstanding Secured Obligations or, if it exceeds the unpaid principal, refunded to Borrower. In determining whether the interest or a fee contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Governmental Rule, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Secured Obligations.

Section 11.7 Right of Setoff.

If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final (other than payroll, tax or escrow accounts) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower (but excluding all payroll, trust and tax withholding accounts) against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

Section 11.8 Advisers.

(a) Any agreement or arrangement by the Administrative Agent with an Adviser for services that are to be paid by the Borrower in accordance with the provisions hereof shall, unless an Event of Default has occurred and is continuing, be subject to the prior approval of the Borrower (such approval not to be unreasonably withheld). Unless an Event of Default has occurred and is continuing, the Administrative Agent shall request each such Adviser to provide the Borrower with its proposed scope of work and proposed budget therefor.

(b) The Administrative Agent (acting at the direction of the Majority Lenders) may, in their discretion, remove from time to time any one or more of the Advisers and appoint replacements therefor, subject, unless an Event of Default has occurred and is continuing, to the prior approval of the Borrower (such approval not to be unreasonably withheld).

Section 11.9 Nonliability of Lenders.

The Borrower acknowledges and agrees that:

(a) Any inspections of any property of the Borrower made by or through the Administrative Agent or Lenders are for purposes of administration of the Financing Documents only, and the Borrower is not entitled to rely upon the same (whether or not such inspections are at the expense of Borrower);

(b) By accepting or approving anything required to be observed, performed, fulfilled or given to the Administrative Agent or Lenders pursuant to the Financing Documents, neither the Administrative Agent nor any Lender shall be deemed to have warranted or represented the commercial merits or technical feasibility of the Indiana Toll Road, and such

acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by the Administrative Agent or any Lender;

(c) The relationship between the Borrower and the Administrative Agent and Lenders is, and shall at all times remain, solely that of borrowers and lenders; neither the Administrative Agent nor any Lender shall under any circumstance be construed to be partners or joint venturers of the Borrower or its Affiliates; neither the Administrative Agent nor any Lender shall under any circumstance be deemed to be in a relationship of confidence or trust or a fiduciary relationship with the Borrower or its Affiliates, or to owe any fiduciary duty to Borrower or its Affiliates; neither the Administrative Agent nor the Lenders undertake or assume any responsibility or duty to the Borrower or its Affiliates to select, review, inspect, supervise, pass judgment upon or inform the Borrower or its Affiliates of any matter in connection with the Indiana Toll Road or the operations of the Borrower or its Affiliates; the Borrower and its Affiliates shall rely entirely upon their own judgment with respect to such matters; and any review, inspection, supervision, exercise of judgment or supply or information undertaken or assumed by the Administrative Agent or any Lender in connection with such matters is solely for the protection of the Administrative Agent and each Lender and neither the Borrower nor any other Person is entitled to rely thereon; and

(d) Neither the Administrative Agent nor any Lender shall be responsible or liable to any Person for any loss, damage, liability or claim of any kind relating to injury or death to Persons or damage to property caused by the actions, inaction or negligence of the Borrower and/or its Affiliates.

Section 11.10 Limitation of Recourse.

There shall be full recourse to the Borrower and all of the assets and properties for the liabilities of the Borrower under this Agreement, any Notes and the other Financing Documents, but, subject to the provisions of the following sentence, in no event shall any Affiliates of the Borrower (collectively, the “Non-Recourse Parties”), or any officer, director or holder of any interest in the Borrower or any Non-Recourse Party, be personally liable or obligated for such liabilities and obligations of the Borrower, except that the forgoing shall not limit the obligations or liabilities of the Member under the Member Pledge Agreement. Nothing herein contained shall limit or be construed to (i) release any Non-Recourse Party from liability for its fraudulent actions or misappropriation of funds or willful misconduct, or from any of its obligations or liabilities under any agreement executed by such Non-Recourse Party in its individual capacity in connection with any Financing Document, (ii) limit or impair the exercise of remedies with respect to any Membership Interests or other Collateral, or (iii) require the Administrative Agent or any Lender to indemnify the Non-Recourse Parties for liabilities or claims that may be independently asserted by third parties against them. The provisions of this Section shall survive the termination of this Agreement.

Section 11.11 Intentionally Omitted.

Section 11.12 Integration.

This Agreement, together with the other Financing Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Financing Document, the provisions of this Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of the Administrative Agent or the Lenders in any other Financing Document shall not be deemed a conflict with this Agreement. Each Financing Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

Section 11.13 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and any Notes.

Section 11.14 Governing Law.

This Agreement shall be governed by and construed in accordance with the law of the State of New York applicable to contracts made and to be performed in the State of New York.

Section 11.15 Submission To Jurisdiction; WAIVER OF JURY TRIAL.

(a) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or its properties in the courts of any jurisdiction.

(b) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (a) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 11.2. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(d) EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES TO THE EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY FINANCING DOCUMENT OR THE TRANSACTION CONTEMPLATED HEREBY OR THEREBY (WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE). EACH PARTY HERETO ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

Section 11.16 Severability.

If any provision of this Agreement or the other Financing Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Financing Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 11.17 Headings.

The table of contents and the headings of Articles, Sections, Exhibits and Schedules have been included herein for convenience of reference only, are not part of this Agreement, and shall not be taken into consideration in interpreting this Agreement.

Section 11.18 Counterparts.

This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be maintained by the Borrower and the Administrative Agent. This Agreement may be executed and delivered by electronic transmission with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

[ITR CONCESSION COMPANY LLC]

By: _____
Name:
Title:

By: _____
Name:
Title:

[_____] ,
as the Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

[_____], as Lender

By: _____

Name:

Title:

By: _____

Name:

Title:

Notice Address:

[_____]

[_____]

Attn: [_____]

Phone: [_____]

Fax: [_____]

[_____], as Lender

By: _____

Name:

Title:

By: _____

Name:

Title:

Notice Address:

[_____]

[_____]

Attn: [_____]

Phone: [_____]

Fax: [_____]

[_____], as Lender

By: _____

Name:

Title:

By: _____

Name:

Title:

Notice Address:

[_____]

[_____]

Attn: [_____]

Phone: [_____]

Fax: [_____]

[_____], as Lender

By: _____

Name:

Title:

By: _____

Name:

Title:

Notice Address:

[_____]

[_____]

Attn: [_____]

Phone: [_____]

Fax: [_____]

[_____], as Lender

By: _____

Name:

Title:

By: _____

Name:

Title:

Notice Address:

[_____]

[_____]

Attn: [_____]

Phone: [_____]

Fax: [_____]

[_____], as Lender

By: _____

Name:

Title:

By: _____

Name:

Title:

Notice Address:

[_____]

[_____]

Attn: [_____]

Phone: [_____]

Fax: [_____]

APPENDIX A

DEFINITIONS AND RULES OF INTERPRETATION

Defined Terms

“Actual Knowledge” means, with respect to any Person and any matter, the earlier of actual knowledge of, or receipt of written notice by, an officer of such Person whose responsibilities include the administration of the specific transaction contemplated by the Financing Documents or the Concession Agreement for which this definition is referenced.

“Additional Senior Lenders” means those Persons that have extended the Additional Senior Loans to the Borrower pursuant to Additional Senior Loan Documents and their respective successors and assigns, in each case, as such parties may be represented by one or more agents or trustees pursuant to the terms of their respective Additional Senior Loan Document.

“Additional Senior Loan Documents” means any agreements hereafter entered into by the Borrower with one or more lending institutions providing for Additional Senior Loans (an “Additional Senior Loan Agreement”), and any other documents and/or instruments evidencing, documenting, securing or otherwise relating to any or all of the obligations relating to the applicable Additional Senior Loans, all as the same may from time to time be amended, modified, extended, renewed and/or restated.

“Additional Senior Loans” has the meaning specified in Section 7.3(e) of this Agreement.

“Administrative Agent” means Wilmington Trust, National Association, in its capacity as administrative agent for the Lenders under the Financing Documents, and any successor or replacement administrative agent appointed pursuant to the terms of this Agreement.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Advisers” means, collectively, the Insurance Consultant, the Legal Adviser, the Model Auditor, the Technical Adviser, the Traffic Adviser, and any other adviser to the Administrative Agent and the Lenders as may be appointed in accordance with the provisions of this Agreement.

“Affiliate” of a particular Person means, at any time, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person. For purposes of this definition, “control” when used with respect to any particular Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities or partnership or other ownership interests, or by contract, and the terms “controlling” “controlled by” and “under common control with” have meanings correlative to the foregoing.

“Agreement” has the meaning specified in the preamble hereto.

“Annual Operating Budget” means the annual operating budget submitted by the Borrower to the Administrative Agent pursuant to Section 6.4(a) of this Agreement and approved in accordance with the terms thereof.

“Applicable Cash Sweep Percentage” means, as of any Payment Date:

(a) if such Payment Date occurs during the period from the Closing Date to and including the second (2nd) anniversary of the Closing Date, 25%; and

(b) if such Payment Date occurs during the period from but excluding the second (2nd) anniversary of the Closing Date until the Loans have been paid in full, including accrued interest and fees, 50%;

provided that if the Cash Sweep in respect of a Payment Date is being paid pro rata to the prepayment of Loans and Additional Senior Loans, the Applicable Cash Sweep Percentage as of such Payment Date shall be (i) the applicable percentage specified above multiplied by (ii) a fraction the numerator of which is the aggregate amount of the Loans outstanding and Additional Senior Loans outstanding and the denominator of which is the aggregate amount of the Loans outstanding.

“Applicable Margin” means, for each day, the following rate per annum with respect to a Loan: 2.50%.

“Applicable Percentage” means, at any time, an amount expressed as a percentage equal to a Financing Party’s Outstanding Exposure divided by the aggregate then Outstanding Exposure of all Financing Parties.

“Assignment and Assumption Agreement” means an Assignment and Assumption Agreement in the form of Exhibit N hereto appropriately completed.

“Authorized Officer” means, (a) when used with respect to the Borrower, the president, the chief executive officer, the controller, the secretary, the treasurer, the chief operating officer or the chief financial officer of the Borrower (or an officer of the Member or the Borrower’s manager with the same authority to act on behalf of the Borrower), a list of whom shall be provided by the Borrower to the Administrative Agent prior to the Closing Date (which list may be amended by the Borrower from time to time in writing); and (b) when used with respect to the Collateral Agent, any officer within the corporate trust department of the Collateral Agent, including any vice president, assistant vice president, treasurer, assistant treasurer, trust officer or any other officer of the Collateral Agent who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of the Collateral Agency Agreement. Any document or certificate delivered under the Financing Documents that is signed by an Authorized Officer shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company or other action on the part of the relevant Person, and such Authorized Officer shall be conclusively presumed to have acted on behalf of such Person.

“Bankruptcy” means (a) commencement by the Borrower of any case or other proceeding (i) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (ii) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or seeking to make a general assignment for the benefit of its creditors; or (b) commencement against the Borrower of any case or other proceeding of a nature referred to in clause (a) above which (i) results in the entry of an order for relief or any such adjudication or appointment or (ii) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (c) commencement against the Borrower of any case or other proceeding seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (d) the Borrower shall take any corporate action to effectuate any of the acts set forth in clause (a), (b) or (c) above; or (e) the Borrower shall admit in writing its general inability to pay its debts as they become due.

“Bankruptcy Cases” has the meaning specified in the recitals hereto.

“Bankruptcy Court” has the meaning specified in the recitals hereto.

“Base Case Model” means the financial model approved by the Model Auditor forecasting the revenues and expenses relating to the Indiana Toll Road for time periods and based upon assumptions and methodology provided by the Borrower to the Administrative Agent prior to the Closing Date.

“Base Rate” means, for any day, a rate per annum equal to the greater of (a) the Prime Rate or (b) the Federal Funds Rate in effect on such day plus 1/2 of 1%. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Rate, respectively.

“Borrower” has the meaning specified in the preamble to this Agreement.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that when used in connection with a Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Capital Expenditures” means expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one year which are capitalized in accordance with GAAP.

“Capital Lease” means any lease which in accordance with GAAP is required to be capitalized on the balance sheet of the Borrower, and the amount of these obligations shall be the amount so capitalized.

“Capital Project” means (a) any capital improvements, including, without limitation, Major Maintenance and rehabilitation work relating to the Indiana Toll Road proposed by the Borrower and, to the extent required pursuant to Section 6.3(b), reasonably approved by the Administrative Agent (upon consultation with the Technical Adviser) or (b) any project to repair or restore any loss or damage to the Indiana Toll Road pursuant to Section 6.17 of this Agreement for which the aggregate cost is expected to exceed \$5,000,000.

“Cash Sweep” means, as of any Payment Date, the Applicable Cash Sweep Percentage for such Payment Date multiplied by the applicable Excess Cash as of such Payment Date.

“Change in Law” means (a) the adoption of any Governmental Rule after the date of this Agreement, (b) any change in any Governmental Rule or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 3.3(b) of this Agreement, by any lending office of such Lender or by such Lender’s holding company, if any) with any request, guideline or directive of any applicable Governmental Authority made or issued after the date of this Agreement; provided, that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (A) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change of Law” in all instances under this Agreement and the other Financing Documents, regardless of the date enacted, adopted or issued (even if such date is prior to the date hereof).

“Cintra” means Cintra Infraestructuras, S.A.U.

“Closing Date” means the date on which (a) the conditions set forth in Section 4.1 of this Agreement have been satisfied or waived, and (b) the Borrower has assumed the Concession Agreement with the IFA’s written consent.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

“Collateral” means all real and personal property which is subject to the security interests or Liens granted by the Borrower under any of the Security Documents, including (a) the “Collateral”, as defined in Section 2.01 of the Security Agreement; (b) the Membership Interests, including the Proceeds thereof; and (c) the “Property”, as defined in the Leasehold Mortgage.

“Collateral Agency Agreement” means that certain Collateral Agency and Intercreditor Agreement, dated as of the Closing Date, among the Borrower, the Administrative Agent, the Second Lien Administrative Agent, the Collateral Agent and the Second Lien Collateral Agent.

“Collateral Agent” means [_____], or any Person appointed to replace such Person with the authority to exercise the rights and duties of the Collateral Agent under the Security Documents. The Collateral Agent shall at all times be an “Institutional Lender” as such term is defined in the Concession Agreement.

“Collections Account” means bank account no. [_____] established by the Borrower with [_____] or any replacement Account therefor established pursuant to the applicable Control Agreement.

“Concession Agreement” has the meaning assigned to such term in Recital A of this Agreement.

“Concessionaire Interest” has the meaning specified in the Concession Agreement.

“Confirmation of Interest Period” has the meaning specified in Section 2.1(c) of this Agreement.

“Consent and Agreement” means each of (a) the IFA Consent, (b) the Service Providers Consent, and (c) any consent and agreement entered into by any Material Project Participant with respect to a Material ITR Contract pursuant to the requirements of this Agreement.

“Contest Claim” means any Tax, assessment, fee, government charge or levy or any Lien or other claim or payment of any nature.

“Control Account Bank” means [_____] or any successor or assign.

“Control Agreement” means each of (a) the control agreement, dated [_____], among the Borrower, the Collateral Agent and [_____], with respect to the Collections Account, (b) the control agreement, dated [_____], among the Borrower, the Collateral Agent and [_____] with respect to the Reimbursement Account and (c) each control agreement substantially in the form of Exhibit H of this Agreement, with a successor Control Account Bank.

“Debt Service Coverage Ratio” means, on each Payment Date commencing as of the first Payment Date after the Closing Date, the ratio of (a) Net Cash Flow for the Payment Period ending on such Payment Date (or any shorter period commencing on the Closing Date and ending on such Payment Date), to (b) Mandatory Debt Service for such period.

“Debt Service Reserve Account” means the “Debt Service Reserve Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(v) of the Depositary Agreement.

“Default” means any event or occurrence, which, with the passage of time or the giving of notice or both, would become an Event of Default.

“Depositary Agreement” means that certain Depositary Agreement, dated as of the Closing Date, by and among the Borrower, the Administrative Agent, the Second Lien

Administrative Agent, the Collateral Agent, the Second Lien Collateral Agent and the Depository Bank.

“Depository Bank” means [_____] and any Person appointed to replace such Person pursuant to Section 2.01(a) of the Depository Agreement.

“Distributable Cash” has the meaning specified in the Depository Agreement.

“Distribution Account” means the “Distribution Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(vii) of the Depository Agreement.

“Distribution Conditions” has the meaning specified in the Depository Agreement.

“Dollars” or the sign “\$” mean United States dollars or other lawful currency of the United States.

“Eligible Assignee” means (a) a Lender; (b) a commercial bank, finance company, insurance company, pension fund, or other financial institution; or (c) a fund or entity that is regularly engaged in making, purchasing or investing in loans.

“Environmental Claim” means any notice, claim or demand (collectively, a “claim”) by any Person pursuant to any Environmental Law or otherwise related to (a) the presence, or Release into the environment, of, or exposure to, any Hazardous Material, or (b) any violation of, or liability arising under any Environmental Law or any Governmental Approval issued under such Environmental Law.

“Environmental Law” means all Governmental Rules with respect to pollution or the protection of the environment or human health or safety due to exposure to [Hazardous Materials,] as now are, or may at any time hereafter be, in effect.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a ERISA Plan (other than an event for which the 30- day notice period is waived); (b) the existence with respect to any ERISA Plan of a failure to satisfy the “minimum funding standards” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any ERISA Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any ERISA Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any ERISA Plan or ERISA Plans

or to appoint a trustee to administer any ERISA Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any ERISA Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“ERISA Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Eurodollar Loan” means a Loan that bears interest at a rate based on LIBOR.

“Event of Default” means any of the events specified in Section 8.1 of this Agreement.

“Event of Loss” means (a) any loss or destruction of, damage to or casualty relating to all or any part of the Indiana Toll Road or (b) any condemnation or other taking (including by eminent domain) of all or any part of the Indiana Toll Road or the Concessionaire Interest.

“Excess Cash” means, as of any Payment Date, amounts remaining, on deposit in the Proceeds Account after giving effect to the payment, in full, of the amounts, or establishment of reserves for payment of the amounts, described in clauses First through Fifth of Section 4.01(b) of the Depositary Agreement.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient of any payment to be made by or on account of any obligation of the Borrower under any Financing Document or any of the following Taxes required to be withheld or deducted from such a payment, (a) income or franchise Taxes imposed on (or measured by) its net income or gross receipts by the jurisdiction under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, or by any jurisdiction as a result of a present or former connection between such Recipient of any payment and such jurisdiction (other than a connection resulting solely from negotiating, executing, delivering or performing its obligations or receiving a payment under, or enforcing, this Agreement, any Note or any other Financing Document), (b) any branch profits Taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Recipient is located, (c) in the case of a Lender, any withholding Tax that is imposed on amounts payable to such Lender pursuant to a law in effect at the time such Lender becomes a party to this Agreement or such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.1 of this Agreement, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (d) Taxes attributable to a Lender’s failure to comply with Section 3.1(e) of this Agreement and (e) any U.S. withholding Taxes imposed under FATCA.

“Expert” means, with respect to a matter under dispute, a Person having appropriate expertise with respect to, but no interest in the outcome of, such matter selected in accordance with Section 11.11 of this Agreement.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any applicable intergovernmental agreement with respect thereto.

“Federal Funds Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for such next succeeding Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Financing Documents” means this Agreement, any Notes, the Security Documents, any Hedging Agreements and each other document or instrument required to be executed and delivered by the aforementioned agreements, including any modifications, extensions, renewals, or replacements of any such agreements whether related to financing or refinancing.

“Financing Parties” means, collectively, the Lenders, individually, and acting by and through the Administrative Agent, and any Hedging Banks.

“First Lien Debt Service Payment Account” means the “First Lien Debt Service Payment Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(iii) of the Depositary Agreement.

“Foreign Lender” means a Lender that is not a U.S. Person.

“GAAP” means generally accepted accounting principles in the United States in effect from time to time.

“GDP Index” means the Gross Domestic Product Implicit Price Deflator as presently issued by the U.S. Department of Commerce Bureau of Economic Analysis in the publication entitled “Economic Indicators” published by the Government Printing Office, or, if said historical index is no longer available or is converted to a different standard reference base or is otherwise revised, such historical index as the Borrower and the Administrative Agent may mutually select that measures all goods and services in the economy adjusted for real price change.

“Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority, including siting and operating permits and licenses and any of the foregoing under any applicable Environmental Law, that are required for the leasing, operation, improvement, tolling or maintenance of the Indiana Toll Road.

“Governmental Authority” means any nation, state, sovereign or government, any federal, regional, state or local government or political subdivision thereof or any other entity exercising executive, legislative, judicial, regulatory or administrative powers or functions of or pertaining to government and having jurisdiction over the Person or matters in question.

“Governmental Rule” means any statute, law, treaty, regulation, ordinance, code, rule, judgment, order, decree, concession or other governmental restriction having the force of law, which is applicable to any Person, whether now or hereafter in effect; provided that for purposes of this Agreement, the Concession Agreement shall not be a Government Rule.

“Guarantee Obligations” means, for any Person, without duplication, any financial obligation, contingent or otherwise, of such Person guaranteeing or otherwise supporting any Indebtedness of any other Person in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (b) to purchase property, securities or services for the purposes of assuring the owner of such Indebtedness of the payment of such Indebtedness, (c) to maintain working capital, equity capital, available cash or other financial statement condition or the primary obligor so as to enable the primary obligor to pay such Indebtedness, (d) to provide equity capital under or in the respect of equity subscription arrangements (to the extent that such obligation to provide equity capital does not otherwise constitute Indebtedness), or (e) to perform, or arrange for the performance of, any obligations of the primary obligor; provided, that the term “Guarantee Obligations” shall not include endorsements for collection or deposit, in each case in the ordinary course of business. For purposes of this Agreement, the amount of any Guarantee Obligations shall be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

“Hazardous Material” means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, and polychlorinated biphenyls (PCBs) or transformers or other equipment that contain dielectric fluid, and (b) any wastes, materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants”, “pollutants” or words of similar import under any Environmental Law.

“Hedging Agreement” means (a) each ISDA Master Agreement, dated within one year of the Closing Date, together with the Schedule thereto, and each confirmation, with a trade date within one year of the Closing Date, entered into between the Borrower and each Hedging Bank, each, in substantially the forms attached hereto as Exhibit J, and (b) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, for a Hedging Transaction permitted in accordance with Section 6.14 of this Agreement.

“Hedging Bank” means any party (other than the Borrower) to a Hedging Agreement or any successor or permitted assign of such party.

“Hedging Claim Notice” means a notice substantially in the form of Exhibit O hereto appropriately completed.

“Hedging Claims” has the meaning specified in Section 9.11 of this Agreement.

“Hedging Obligations” means, collectively, (a) all scheduled amounts payable to the Hedging Banks by the Borrower, as the fixed-rate payor, under the Hedging Agreements (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), net of all scheduled amounts payable to the Borrower by such Hedging Banks as floating-rate payor, under such Hedging Agreements, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Borrower to the Hedging Banks under such Hedging Agreements; provided that Hedging Obligations shall not include Hedging Termination Obligations. For avoidance of doubt, the calculations of Hedging Obligations payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Termination Obligations” means the aggregate amount of (a) Hedging Obligations payable to the Hedging Banks by the Borrower under the Hedging Agreements, as the fixed rate payor, upon the early unwind of all or a portion of the Hedging Agreements, net of all amounts payable to the Borrower by such Hedging Banks, as floating-rate payor thereunder, plus (b) any penalty payments or other payments in the form of unwind fees payable in connection with an early unwind under the Hedging Agreements. For avoidance of doubt, the calculations of Hedging Termination Obligations payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Transaction” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” or “collar” transaction, interest rate future, interest rate option or hedging transaction.

“IFA” means the Indiana Finance Authority, a public body politic and corporate of the State of Indiana.

“IFA Consent” has the meaning specified in Section 4.1(e) of this Agreement.

“Indebtedness” of any Person means (a) indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (e) any Capital Lease (and the amount of these obligations shall be the amount so capitalized), (f) all obligations, contingent or otherwise, of such Person under banker’s acceptances issued or created for the account of such Person, (g) all unconditional obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock or other equity interests of such Person or any warrants, rights or options to acquire such capital stock or other equity interests, (h) all net

obligations of such Person pursuant to Hedging Transactions, (i) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (h) above, and (j) all Indebtedness of the type referred to in clauses (a) through (h) above secured by any Lien on property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. For all purposes hereof, the Indebtedness of any Person shall exclude trade accounts and accrued expenses payable in the ordinary course of business. For purposes of this Agreement, the amount of Indebtedness of any Person for purposes of clause (h) shall be deemed to be equal to the lesser of (x) the aggregate unpaid amount of such Indebtedness and (y) the fair market value of the property encumbered thereby as determined by such Person in good faith. Except as expressly specified in this Agreement, the amount of any Indebtedness for purposes of this Agreement shall equal the amount thereof that would appear on a balance sheet (excluding any notes thereto) of such Person prepared on the basis of GAAP.

“Indemnified Taxes” means Taxes other than Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Financing Document to the extent not otherwise described in Other Taxes.

“Indemnitee” has the meaning specified in Section 11.3(b) of this Agreement.

“Indiana Toll Road” means (a) the Toll Road Land and (b) the Toll Road Facilities.

“Inflation Factor” means, for any calendar year (the “test year”), the quotient obtained by dividing (a) the GDP Index for the test year minus the GDP Index for the calendar year immediately preceding the test year, by (b) the GDP Index for the calendar year immediately preceding the test year.

“Insurance Consultant” means [_____] or any other nationally recognized insurance consultant as the Administrative Agent (acting at the direction of the Majority Lenders) shall designate in consultation with the Borrower.

“Insurance Proceeds” has the meaning set forth in Section 6.12(c) of this Agreement.

“Interest Payment Date” means (a) each March 31, June 30, September 30 and December 31 occurring after the Closing Date, (b) with respect to each Interest Period of less than three months selected by the Borrower pursuant to Section 2.3(a) of this Agreement, the last day of such Interest Period, and (c) the Maturity Date.

“Interest Period” means, for each Loan, (a) the period commencing on the Closing Date and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter and (b) thereafter, each period commencing on the last day of such one, two, three or six-month period and ending the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as such interest period is determined pursuant to Section 2.3 of this Agreement; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day

falls in another calendar month, in which case, such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period which begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) if Interest Periods pertaining to more than one Loan begin on the same day and end on the same day, such Interest Periods shall be consolidated and shall be treated for all purposes hereof as a single Interest Period.

“Leasehold Mortgage” means that certain Leasehold Mortgage, Security Agreement and Financing Statement (Fixture Filing) dated as of the Closing Date by the Borrower in favor of the Collateral Agent for the benefit of the Secured Parties.

“Legal Adviser” means [_____] or such other law firm as the Administrative Agent (acting at the direction of the Majority Lenders) shall designate.

“Lender” means each bank, financial institution, finance company, insurance company, pension fund, fund or entity that is regularly engaged in making, purchasing or investing in loans, or other person that holds a Loan.

“LIBOR” means, for any Interest Period with respect to a Loan:

(a) the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate that appears on the page of the Telerate Screen that displays an average British Bankers Association Interest Settlement Rate (such page currently being page number 3750) for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period; provided that in the case of any period for the accrual of interest upon interest in accordance with Section 2.2 of this Agreement that has a term which is not equivalent to any of the terms for which rates appear on such page, the Administrative Agent shall determine a rate using the linear interpolation of the rates appearing on such page for the next shorter and next longer time periods; or

(b) in the event the rate referenced in the preceding subsection (a) does not appear on such page or service or such page or service shall cease to be available, the rate per annum (carried out to the fifth decimal place) equal to the rate determined by Administrative Agent (after consultation with the Borrower and the Lenders) to be the offered rate on such other page or other service that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period; or

(c) in the event the rates referenced in the preceding subsections (a) and (b) are not available, the rate per annum determined by the Administrative Agent as the rate of interest at which dollar deposits (for delivery on the first day of such Interest Period) in same day funds in the approximate amount of the applicable Loan and with a term equivalent to such Interest Period would be offered by its London Branch to major banks in the offshore dollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period.

“Lien” means any mortgage, pledge, hypothecation, collateral assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other) or other security interest, any conditional sale or other title retention agreement or any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or comparable Governmental Rule.

“Loan Period” means the period from and including the Closing Date to the earlier to occur of (a) the date upon which the entire outstanding principal balance of the Loans, together with all accrued and unpaid interest, becomes due and payable under this Agreement, and (b) the Maturity Date.

“Loans” means the loans provided pursuant to Section 2.1 of this Agreement.

“Loss Proceeds Account” means the “Loss Proceeds Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(vi) of the Depositary Agreement.

“Major Maintenance” means all reasonably necessary periodic major overhaul and repair (*i.e.*, excluding any maintenance or repair of a routine or ordinary course nature) of any of the Toll Road Facilities, equipment and systems (a) required to be performed in accordance with the Concession Agreement and (b) categorized as Capital Expenditures.

“Majority Lenders” means, at any time, Lenders holding a majority of the aggregate of the then Outstanding Exposure.

“Mandatory Debt Service” has the meaning specified in the Depositary Agreement.

“Material Adverse Effect” means a materially adverse effect on one or more of the following:

(a) the business, financial condition, operations, performance or property of the Borrower and the Toll Road (taken as a whole),

(b) the ability of the Borrower to pay or perform its payment obligations under any of the Financing Documents or the Concession Agreement,

(c) the legality, validity, binding effect or enforceability of the Financing Documents or the Concession Agreement, or

(d) the ability of the Collateral Agent, the Administrative Agent or any Lender to enforce their rights and remedies under the Financing Documents or any related document,

instrument or agreement. Notwithstanding anything to the contrary, in no event shall any of the events, conditions or circumstances arising in connection with or prior to the Restructuring Transactions constitute (or otherwise form a basis to create) a Material Adverse Effect.

“Material ITR Contracts” means (a) the Concession Agreement, (b) the Omnibus Services Agreement, (c) any contract for the operation and maintenance of the Indiana Toll Road requiring payments by the Borrower in excess of \$25,000,000 per annum, and (d) any contract for capital improvements requiring payments by the Borrower in excess of \$100,000,000 per annum. As of the Closing Date, the Concession Agreement and the Omnibus Services Agreement are the only Material ITR Contracts.

“Material Project Participant” means each of the Borrower, the IFA and the Service Providers.

“Maturity Date” means the date that is five (5) years after the Closing Date; provided that if such date is a day other than a Business Day, the Maturity Date shall be the next succeeding Business Day unless such next succeeding Business Day falls in the next calendar month, in which case the Maturity Date shall be the immediately preceding Business Day; provided that if either such date is a day other than a Business Day, such Maturity Date shall be the next succeeding Business Day unless such next succeeding Business Day falls in the next calendar month, in which case such Maturity Date shall be the immediately preceding Business Day.

“Member” means ITR Concession Company Holdings LLC, a Delaware limited liability company, and any other holder of Membership Interests.

“Member Pledge Agreement” means that certain Membership Interest Pledge Agreement, dated as of the Closing Date, by the Member in favor of the Collateral Agent granting a first-priority security interest in its Membership Interests.

“Membership Interests” means the limited liability company interests of the Borrower.

“MIG” means collectively, Macquarie Atlas Roads, Macquarie Infrastructure Partners, Inc., Indiana Toll Road Partnership, and MQA Indiana Holdings LLC.

“Model Auditor” means [_____] or any replacement auditor as the Administrative Agent (acting at the direction of the Majority Lenders) shall designate in consultation with the Borrower.

“Monthly Funding Date” means the last Business Day of each calendar month.

“Moody’s” means Moody’s Investor Service, Inc. and any successor thereto which is a nationally recognized rating agency.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Cash Flow” means, in respect of any period, (a) aggregate Project Revenues received during such period, less (b) the Operating Expenses and other amounts paid in cash

pursuant to clauses First through Fourth of Section 4.01(b) of the Depositary Agreement during such period.

“Net Cash Proceeds” means 100% of the cash proceeds actually received by the Borrower (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and including casualty insurance settlements and condemnation awards, but in each case only as and when received) from any payment by the IFA of the Toll Road Concession Value or Concession Compensation, in each case, pursuant to the Concession Agreement, or from an Event of Loss, net of amounts applied to repair, restore or rebuild the Indiana Toll Road pursuant to Section 2.5(b) or (c) of this Agreement, as applicable, or as may otherwise be applied pursuant to Section 2.5(b).

“Note” means a promissory note issued by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit B hereto.

“Obligations” means, as at any date, the sum, computed without duplication, of the following: (a) the aggregate outstanding principal amount of the Loans plus all accrued interest (whether arising or incurred before or after any bankruptcy of the Borrower) on such amount, plus (b) all other amounts from time to time payable by the Borrower under the Financing Documents plus accrued interest, if applicable, on such amounts, plus (c) amounts (including, without limitation, insurance, insurance premiums, licensing fees, recording and filing fees, and Taxes) the Administrative Agent, the Collateral Agent, or the Lenders expend on behalf of the Borrower because the Borrower fails to make any such payment when required under the terms of any Financing Document, plus (d) all amounts required to be paid under an indemnification, cost reimbursement or similar provision owing to the Administrative Agent, the Collateral Agent, the Depositary Bank or the Lenders or the Hedging Banks in their capacity as such.

“Omnibus Services Agreement” means that certain Omnibus Services Agreement, dated as of the Closing Date, by and among the Borrower and the Service Providers party thereto.

“Operating Account” means the “Operating Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(ii) of the Depositary Agreement.

“Operating Expenses” means any and all expenses paid in cash by the Borrower in connection with the Indiana Toll Road, including, without limitation: all operation and maintenance costs incurred in relation to the Indiana Toll Road, consumables, payments under any operating lease, payments pursuant to the agreements for the management, operation and maintenance of the Indiana Toll Road, taxes, insurance, management fees, police services, payments under the Concession Agreement for services of the IFA or the State, Major Maintenance costs, Capital Expenditures and costs of any approved Capital Projects. Operating Expenses do not include non-cash charges, such as depreciation, amortization or other bookkeeping entries of a similar nature.

“Operator” means (a) the Borrower and/or (b) any other Person that becomes an Operator pursuant to Section 3.3 of the Concession Agreement.

“Original Holders” has the meaning specified in the recitals hereto.

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes arising from any payment made under this Agreement or any other Financing Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Financing Document, except for such Taxes, with respect to any Recipient, that are imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loan or Financing Document) with respect to an assignment (other than an assignment made pursuant to Section 3.6).

“Outstanding Exposure” means, at any time, the sum of the aggregate then outstanding principal amount of the Loans.

“Participant” has the meaning assigned to such term in Section 11.4(b)(vi) of this Agreement.

“Payment Date” means (a) each March 31, June 30, September 30 and December 31 occurring during the Loan Period, and (b) the Maturity Date.

“Payment Period” means (a) a period commencing on the first Payment Date after the Closing Date and ending on the Payment Date that is twelve (12) months after such initial date and (b) thereafter, each period commencing on the last day of a Payment Date and ending on a Payment Date that is twelve (12) months after such Payment Date.

“PBGC” means the Pension Benefit Guaranty Corporation, or any entity succeeding to any or all of its functions, established pursuant to Subtitle A of Title IV at ERISA.

“Permitted Concessionaire Encumbrance” has the meaning specified in the Concession Agreement.

“Permitted Contest Conditions” means a contest, pursued in good faith, challenging the enforceability, validity, interpretation, amount or application of any Governmental Rule, Contest Claim, Tax or other matter (legal, contractual or other) by appropriate proceedings timely instituted if (a) the Borrower diligently pursues such contest, (b) the Borrower establishes adequate reserves with respect to the contested claim to the extent required by GAAP, and (c) such contest (i) would not reasonably be expected to have a Material Adverse Effect, and (ii) does not involve any material risk or danger of any foreclosure, sale, forfeiture or loss of the Indiana Toll Road or the Concessionaire Interest or any material portion thereof, or the loss of the Liens granted under any of the Security Documents in respect of a material part of the Collateral or any criminal or unindemnified civil liability being incurred by the Administrative Agent, the Collateral Agent or any of the Lenders.

“Permitted IFA Encumbrance” has the meaning specified in the Concession Agreement.

“Permitted Investments” means: (a) marketable direct obligations of the United States of America; (b) marketable obligations directly and fully guaranteed as to interest and principal by

the United States of America; (c) demand deposits with the Depository Bank, and time deposits, certificates of deposit and banker's acceptances issued by (i) the Depository Bank, so long as its long-term debt securities are rated "A" or better by S&P and "A2" or better by Moody's, or (ii) any member bank of the Federal Reserve System which is organized under the laws of the United States of America or any political subdivision thereof having a combined capital and surplus of at least \$500 million and having long-term unsecured debt securities rated "A" or better by S&P and "A2" or better by Moody's; (d) commercial paper or tax-exempt obligations given the highest rating by S&P and Moody's; (e) obligations of the Depository Bank meeting the requirements of clause (c) above or any other bank meeting the requirements of clause (c) above, in respect of the repurchase of obligations of the type as described in clauses (a) and (b) above, provided, that such repurchase obligations shall be fully secured by obligations of the type described in said clauses (a) and (b) above, and the possession of such obligations shall be transferred to, and segregated from other obligations owned by, the Depository Bank or such other bank; (f) a money market fund or a qualified investment fund (including any such fund for which the Depository Bank or any Affiliate thereof acts as an advisor or manager) given one of the two highest long-term ratings available from S&P and Moody's; (g) eurodollar certificates of deposit issued by the Depository Bank meeting the requirements of clause (c) above or any other bank meeting the requirements of clause (c) above; and (h) any investment permitted under the Concession Agreement. In no event shall any cash be invested in any obligation, certificate of deposit, acceptance, commercial paper or instrument which by its terms matures more than ninety (90) days after the date of investment, unless the Depository Bank or a bank meeting the requirements of clause (c) above shall have agreed to repurchase such obligation, certificate of deposit, acceptance, commercial paper or instrument at its purchase price plus earned interest within no more than ninety (90) days after its purchase hereunder. With respect to any rating requirement set forth above, if the relevant issuer is rated by either S&P or Moody's, but not both, then only the rating of such rating agency shall be utilized for the purpose of this definition.

"Permitted Liens" means (a) Liens created pursuant to or contemplated by the Financing Documents; (b) Liens, deposits or pledges incurred or created in the ordinary course of business or under applicable Governmental Rules in connection with or to secure the performance of bids, tenders, contracts, statutory obligations, surety bonds or appeal bonds; (c) statutory Liens, mechanics', materialmen's, workers', repairmen's, employees', warehousemen's, carriers' or other like Liens arising in the ordinary course of business, relating to the construction of the improvements or in connection with any modifications or under applicable Governmental Rules securing obligations incurred in connection with the Indiana Toll Road for amounts that are either (i) not more than forty-five (45) days past due or (ii) which are being contested pursuant to the Permitted Contest Conditions and for which adequate reserves have been established or which have been bonded for not less than the full amount in dispute (or as to which other security arrangements reasonably satisfactory to the Collateral Agent have been made), which bonding (or arrangements) shall comply with applicable law; (d) Liens for taxes, assessments or governmental charges either secured by a bond reasonably acceptable to the Administrative Agent or which are not yet due or which are being contested pursuant to the Permitted Contest Conditions; (e) Liens arising out of judgments or awards to the extent not constituting an Event of Default; (f) Permitted Concessionaire Encumbrances and Permitted IFA Encumbrances; (g) Permitted Title Exceptions; (h) (i) Liens created by capitalized leases; provided that the Liens created by any such capitalized lease attach only to the property leased (and any attachments, accessions or proceeds thereof) and provided further that such capital lease obligations are

Permitted Debt, (ii) purchase money Liens securing Permitted Debt (including such Liens securing Permitted Debt incurred within nine (9) months of the date on which such property was acquired) and (iii) any Liens created to secure Indebtedness permitted pursuant to Sections 7.3(e) and (k); provided that, for purposes of this clause (h), Permitted Debt shall not include any Permitted Debt described in Section 7.3(l) of the definition thereof; (i) second priority Liens in respect of the Collateral subject to the terms of the Second Lien Loans and the Collateral Agency Agreement; (j) inchoate Liens arising under ERISA for amounts which are not yet due; (k) refinancing, replacement and extensions of the Permitted Liens; (l) Liens created with the consent of the Majority Lenders; (m) liens securing insurance premium financing by the Borrower; provided that such Liens do not extend to any property or assets other than the insurance policies and proceeds thereof; (n) utility and similar deposits of the Borrower in the ordinary course of business; (o) Liens arising from precautionary UCC financing statements against the Borrower (as debtor/lessee) regarding operating leases not constituting Indebtedness or consignments; (p) leases, subleases, licenses and sublicenses which (A) have been granted by the Borrower to a third party in the ordinary course of business and as contemplated under the Concession Agreement; (q) such minor defects, easements and rights of way, restrictions, irregularities, encumbrances, clouds on title and statutory Liens, zoning restrictions, servitudes, permits, reservations, encroachments, exceptions, conditions, covenants and any other restrictions on the use of real property, any obligations or duties affecting any of the property of any Person to any municipality or public authority with respect to any franchise, grant, license or permit, none of which materially impairs the use of such property for the purposes for which it is held or the operation and maintenance of the Toll Road and the ability of the Secured Parties to realize on the Collateral; and (r) any other Liens not otherwise permitted herein so long as the aggregate principal amount of the Permitted Debt and other obligations secured thereby does not exceed \$15,000,000 at any time outstanding; provided that any Liens securing any additional Indebtedness in accordance with Section 7.3(e) of this Agreement shall be subject to the terms of the intercreditor arrangements pursuant to Section 7.3(e)(iv) of this Agreement.

“Permitted Title Exceptions” means (a) current real property taxes not delinquent, (b) such exceptions to title with respect to the Indiana Toll Road appearing in the Title Policy, and (c) such exceptions to title as are otherwise approved in writing by the Administrative Agent.

“Permitted Tax Distribution” has the meaning specified in the Depositary Agreement.

“Person” means any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited liability company, other entity, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

“Plan” has the meaning specified in the recitals hereto.

“Pledge Agreements” means, collectively, (a) the Member Pledge Agreement, and (b) any pledge agreements executed and delivered after the Closing Date by any additional or substituted Member of the Borrower in substantially the form of Exhibit F pursuant to which such Person shall grant to the Collateral Agent for the benefit of the Secured Parties a security interest in the Membership Interests held at any time by such Person.

“Prime Rate” means the rate of interest per annum announced from time to time by the Administrative Agent as its “prime rate” or “base rate” in effect on such day at its principal office in New York City or such other office as the Administrative Agent may designate in writing; any change in the Prime Rate announced by Administrative Agent shall take effect on the day specified in the public announcement of such change.

“Pro Rata Share” means, with respect to each Lender at any time, a fraction (expressed as a percentage), the numerator of which is the amount of the Loans held by such Lender at such time and the denominator of which is the amount of the aggregate amount of Loans held by all Lenders at such time. The initial Pro Rata Share of each Lender as to each of its respective Loans is set forth opposite the name of such Lender on Schedule 2.1 to this Agreement or in the Assignment and Assumption Agreement pursuant to which such Lender become a party to this Agreement, as applicable.

“Proceeds” means “proceeds” as such term is defined in the UCC or under other relevant law and, in any event, shall include, but should not be limited to, (a) any and all proceeds of, or amounts (in whatsoever form, whether cash, securities, property or other assets) received under or with respect to, any insurance, indemnity, warranty or guaranty payable to the Borrower from time to time, and claims for insurance, indemnity, warranty or guaranty effected or held for the benefit of the Borrower, in each case with respect to any of the Collateral, (b) any and all payments (in any form whatsoever, whether cash, securities, property or other assets) made or due and payable to the Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any person acting under color of Governmental Authority), and (c) any and all other amounts (in any form whatsoever, whether cash, securities, property or other assets) from time to time paid or payable under or in connection with any of the Collateral (whether or not in connection with the sale, lease or other disposition of the Collateral).

“Proceeds Account” means the “Proceeds Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(i) of the Depositary Agreement.

“Project Accounts” means, collectively, (1) the Proceeds Account, (2) the Operating Account, (3) the First Lien Debt Service Payment Account, (4) the Second Lien Debt Service Payment Account, (5) the Debt Service Reserve Account, (6) the Loss Proceeds Account, (7) the Distribution Account, (8) the Collections Account, and (9) the Reimbursement Account.

“Project Revenues” means, for any period (without duplication), all revenue received by or on behalf of the Borrower during such period, including but not limited to Toll Revenues, interest paid in respect of any Project Accounts, proceeds from any business interruption insurance, revenue derived from any third-party concession, lease or contract, and any other receipts otherwise arising or derived from or paid or payable in respect of the Indiana Toll Road, excluding equity contributions to the Borrower, proceeds of condemnation proceedings and asset sales to the extent that such proceeds are not reinvested in replacement property, and insurance payments other than proceeds from business interruption insurance.

“Put Election Loans” has the meaning specified in Section 7.3(1) of this Agreement.

“Recipient” means the Administrative Agent or any Lender, as applicable.

“Reimbursement Account” means bank account no. [_____] established by the Borrower with [_____] or any replacement Account therefor established pursuant to the applicable Control Agreement.

“Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, leaching or migration into the environment, except emissions from the engine exhaust of a motor vehicle in compliance with Environmental Laws.

“Rent” has the meaning specified in the Concession Agreement.

“Required Lenders” has the meaning specified in the Collateral Agency Agreement.

“Restricted Payments” has the meaning specified in Section 7.6 of this Agreement.

“Restructuring Support Agreement” means that certain Restructuring Support Agreement, effective as of or prior to September 21, 2014, among the Borrower, Member, Statewide and lenders to the Borrower, Cintra and MIG.

“Restructuring Transactions” means all the transactions contemplated by, or otherwise consummated in accordance with, the Restructuring Support Agreement.

“Second Lien Administrative Agent” has the meaning specified in the Collateral Agency Agreement.

“Second Lien Collateral Agent” has the meaning specified in the Collateral Agency Agreement.

“Second Lien Debt Service Payment Account” means the “Second Lien Debt Service Payment Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(iv) of the Depositary Agreement.

“Second Lien Financing Agreement” has the meaning specified in the Collateral Agency Agreement.

“Second Lien Financing Documents” has the meaning specified in the Collateral Agency Agreement.

“Second Lien Loans” has the meaning specified in the Collateral Agency Agreement.

“Secured Obligations” means, as at any date, the sum, computed without duplication, of the following: (a) the aggregate outstanding principal amount of the Loans plus all accrued interest (whether arising or incurred before or after any bankruptcy of the Borrower) on such amount, plus (b) all other amounts from time to time payable by the Borrower under the Financing Documents plus, if applicable, accrued interest on such amounts, plus (c) amounts (including, without limitation, insurance, insurance premiums, licensing fees, recording and filing fees, and Taxes) the Administrative Agent, the Collateral Agent, the Lenders or Hedging

Banks expend on behalf of the Borrower because the Borrower fails to make any such payment when required under the terms of any Financing Document, plus (d) all amounts required to be paid under an indemnification, cost reimbursement or similar provision owing to the Administrative Agent, the Collateral Agent, the Depositary Bank, the Lenders or Hedging Banks in their capacity as such.

“Secured Parties” means, collectively, the Collateral Agent, the Administrative Agent, the Depositary Bank, the Lenders and the Hedging Banks.

“Security Agreement” means that certain Security Agreement, dated as of the Closing Date, between the Borrower and the Collateral Agent for its benefit and the benefit of the Secured Parties.

“Security Documents” means the Collateral Agency Agreement, the Security Agreement, the Leasehold Mortgage, the Pledge Agreements, each Consent and Agreement, the Depositary Agreement, each Control Agreement, and each other document or instrument from time to time pursuant to which a lien or security interest is granted or perfected.

“Service Providers” has the meaning specified in the Omnibus Services Agreement.

“Service Providers Consent” has the meaning specified in Section 4.1(f) of this Agreement.

“State” means the State of Indiana.

“Statewide” means Statewide Mobility Partners LLC, a Delaware limited liability company.”

“Statewide Entity” means Statewide, Cintra, or MIG, as applicable.

“Swap Registry” has the meaning specified in Section 9.11 of this Agreement.

“S&P” or “Standard & Poor’s” means Standard & Poor’s Corporation or any successor thereto.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Technical Adviser” means [_____] or any other nationally recognized engineering firm as the Administrative Agent (acting at the direction of the Majority Lenders) shall designate in consultation with the Borrower.

“Termination Damages” has the meaning ascribed thereto in Section 14.2(a) of the Concession Agreement.

“Title Company” means [_____] or such other title insurance company approved by the Administrative Agent, in consultation with the Borrower, to insure the priority of the Mortgage Lien under the Leasehold Mortgage.

“Title Policy” means, individually and collectively, each policy of title insurance delivered to the Administrative Agent pursuant to Section 4.1(j) of this Agreement, any additional policy of title insurance issued for any subsequently acquired Toll Road Land.

“Toll Revenues” has the meaning specified in the Concession Agreement.

“Toll Road Assets” means the personal property of the IFA used in connection with the operations at the Indiana Toll Road set forth on Schedule 2.1(a) of the Concession Agreement.

“Toll Road Concession Value” has the meaning specified in the Concession Agreement.

“Toll Road Contracts” has the meaning specified in the Concession Agreement.

“Toll Road Facilities” has the meaning specified in the Concession Agreement.

“Toll Road Land” has the meaning specified in the Concession Agreement.

“Toll Road Operations” has the meaning specified in the Concession Agreement.

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

“Traffic Adviser” means [the Halcrow Group] or such other firm of traffic consultants as the Administrative Agent (acting at the direction of the Majority Lenders) shall designate in consultation with the Borrower.

“Traffic Report” means that certain [_____] , dated as of [_____] , by the Traffic Adviser.

“Uniform Commercial Code” or “UCC” means the New York Uniform Commercial Code, as in effect from time to time.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

Rules of Interpretation

1. Definitions of terms shall apply equally to the singular and plural forms of the terms defined.

2. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.
3. The word “will” shall be construed to have the same meaning and effect as the word “shall”.
4. A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.
5. A reference to a Person shall be construed to include its successors and permitted assigns.
6. Except as otherwise expressly specified, all accounting terms have the meanings assigned to them by GAAP, as in effect from time to time.
7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document.
8. Any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, modified, renewed, extended, refinanced or replaced (subject to any restrictions on such amendments, supplements, modifications, renewals, extensions, refinancings and replacements, if any, set forth in the Financing Documents).
9. The words “hereof,” “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
10. References to “day” means calendar days, unless the term “Business Days” shall be used. References to a time of day means such time in New York, New York, unless otherwise specified.
11. Except as otherwise provided herein, when the payment of any obligation or the performance of any covenant, duty, or obligation is stated to be due or performance required on (or before) a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding day that is a Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.
12. All certifications to be made hereunder by an officer or representative of the Borrower shall be made by such a Person in his or her capacity solely as an officer or a representative of such person, on such person’s behalf, and not in such person’s individual capacity.

13. In the event that any Lien, investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), disposition, Restricted Payment, Affiliate transaction, contractual requirement, or prepayment of indebtedness meets the criteria of one, or more than one, of the categories of transactions than permitted pursuant to any clause or subsection of this Agreement, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses at the time of such transaction or any later time from time to time, in each case as determined by the Borrower in its sole discretion.
14. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, as in effect from time to time, except as otherwise specifically prescribed herein.
15. If at any time any change in GAAP would affect the computation of any financial ratio set forth in any Financing Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent and the Borrower shall negotiate in good faith to amend such ratio to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Majority Lenders and Borrower); provided that, until so amended, (i) such ratio shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders a written reconciliation in form and substance reasonably satisfactory to the Administrative Agent, between calculations of such ratio made before and after giving effect to such change in GAAP.
16. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Exhibit B-2

Form of New Second Lien Credit Agreement

SECOND LIEN FINANCING AGREEMENT

dated as of [_____, 20__]

among

ITR CONCESSION COMPANY LLC,
as Borrower,

THE LENDERS, as herein defined,

and

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Administrative Agent

	<u>Page</u>
ARTICLE I INTERPRETATION	2
ARTICLE II THE CREDIT FACILITY.....	2
Section 2.1 Loans.....	2
Section 2.2 Interest.....	2
Section 2.3 Interest Periods.....	4
Section 2.4 Repayment of Loans	4
Section 2.5 Prepayments	4
Section 2.6 Fees	6
Section 2.7 Evidence of Indebtedness; Notes	6
Section 2.8 Payments Generally	6
Section 2.9 Sharing of Payments	7
ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY.....	8
Section 3.1 Taxes	8
Section 3.2 Alternate Rate of Interest	11
Section 3.3 Increased Costs	11
Section 3.4 Funding Losses	13
Section 3.5 Illegality	13
Section 3.6 Duty to Mitigate; Replacement of Lenders.....	13
Section 3.7 Survival.....	14
ARTICLE IV CONDITIONS PRECEDENT.....	15
Section 4.1 Conditions Precedent to Closing Date	15
ARTICLE V REPRESENTATIONS AND WARRANTIES.....	17
Section 5.1 Organization; Status.....	17
Section 5.2 Authorization; Enforceability	18
Section 5.3 No Conflict.....	18
Section 5.4 Compliance with Laws	18
Section 5.5 Governmental Approvals	19
Section 5.6 Litigation.....	19
Section 5.7 Title.....	19
Section 5.8 Environmental Matters.....	19
Section 5.9 Taxes; Tax Status	19
Section 5.10 ERISA.....	20
Section 5.11 Investment Company Status	20
Section 5.12 Financial Condition; Projections.....	20
Section 5.13 Insurance Coverage.....	20
Section 5.14 Status of Liens.....	20
Section 5.15 Concession Agreement; Omnibus Services Agreement; Material ITR Contracts.....	21

TABLE OF CONTENTS

(Continued)

	<u>Page</u>
Section 5.16 No Default or Event of Default.....	21
Section 5.17 Accuracy of Disclosure.....	21
ARTICLE VI AFFIRMATIVE COVENANTS	21
Section 6.1 Financial Statements; Financial Certifications and Other Information	22
Section 6.2 Notices of Material Events.....	22
Section 6.3 Quarterly Traffic and Operating Reports	25
Section 6.4 Annual Operating Budget	26
Section 6.5 Payments	27
Section 6.6 Books and Records; Inspection of Property.....	27
Section 6.7 Operation and Maintenance	27
Section 6.8 Rights under the Material ITR Contracts.....	28
Section 6.9 Governmental Approvals	28
Section 6.10 Compliance with Laws	28
Section 6.11 Maintenance of Legal Status.....	29
Section 6.12 Insurance	29
Section 6.13 Taxes	29
Section 6.14 Project Accounts	30
Section 6.15 Preservation of Security Interests	30
Section 6.16 Material Event of Loss.....	30
Section 6.17 Separateness.....	31
Section 6.18 Additional Subordinated Loan Documentation	31
ARTICLE VII NEGATIVE COVENANTS.....	32
Section 7.1 Prohibition of Fundamental Changes; Sale of Assets, Etc	32
Section 7.2 Conduct of Business	33
Section 7.3 Indebtedness.....	33
Section 7.4 Liens.....	35
Section 7.5 Investments and Loans.....	35
Section 7.6 Distributions.....	36
Section 7.7 Transactions With Affiliates	36
Section 7.8 Concession Agreement	36
Section 7.9 Hazardous Materials	37
Section 7.10 No Subsidiary.....	37
Section 7.11 Replacement Operator	37
Section 7.12 Hedging Agreements.	37
Section 7.13 No Payments to Lenders.	37
Section 7.14 No Amendments.	37
ARTICLE VIII EVENTS OF DEFAULT; REMEDIES	38
Section 8.1 Events of Default	38

TABLE OF CONTENTS

(Continued)

	<u>Page</u>
Section 8.2 Remedies Upon Event of Default	40
ARTICLE IX ADMINISTRATIVE AGENT.....	41
Section 9.1 Appointment and Authorization of Administrative Agent	41
Section 9.2 Delegation of Duties	41
Section 9.3 Liability of Administrative Agent.....	41
Section 9.4 Reliance by Administrative Agent.....	42
Section 9.5 Notice of Default.....	42
Section 9.6 Credit Decision; Disclosure of Information.....	43
Section 9.7 Indemnification	43
Section 9.8 Administrative Agent in Its Individual Capacity	44
Section 9.9 Collateral Agency Agreement.....	44
Section 9.10 Successor Administrative Agent.....	44
Section 9.11 Swap Registry	45
Section 9.12 Execution of Security Documents	47
Section 9.13 Collateral Release	47
ARTICLE X [INTENTIONALLY OMITTED.].....	47
ARTICLE XI MISCELLANEOUS	47
Section 11.1 Amendments; Waivers.....	47
Section 11.2 Notices	49
Section 11.3 Expenses; Indemnity; Damage Waiver.....	50
Section 11.4 Successors and Assigns.....	51
Section 11.5 Confidentiality	54
Section 11.6 Limitation on Interest.....	55
Section 11.7 Right of Setoff.....	55
Section 11.8 Advisers	56
Section 11.9 Nonliability of Lenders	56
Section 11.10 Limitation of Recourse	57
Section 11.11 Intentionally Omitted	57
Section 11.12 Integration	57
Section 11.13 Survival of Representations and Warranties.....	57
Section 11.14 Governing Law	58
Section 11.15 Submission To Jurisdiction; WAIVER OF JURY TRIAL.....	58
Section 11.16 Severability	58
Section 11.17 Headings	59
Section 11.18 Counterparts.....	59
<u>APPENDIX A</u> Definitions and Rules of Interpretation	
<u>SCHEDULES:</u>	
Schedule 2.1 Initial Loans and Pro Rata Shares	

TABLE OF CONTENTS

(Continued)

Page

Schedule 5.4	Compliance with Laws
Schedule 5.6	Litigation and Proceedings
Schedule 5.8	Environmental Matters
Schedule 5.16	Defaults or Events of Default
Schedule 6.12	Insurance Requirements
Schedule 6.19	Transactions with Affiliates

EXHIBITS:

EXHIBIT A	Form of Confirmation of Interest Period
EXHIBIT B	Form of Note
EXHIBIT C	Form of Collateral Agency Agreement
EXHIBIT D	Form of Leasehold Mortgage
EXHIBIT E	Form of Security Agreement
EXHIBIT F	Form of Member Pledge Agreement
EXHIBIT G	Form of Depositary Agreement
EXHIBIT H	Form of Control Agreement
EXHIBIT I	Form of Consent of the IFA
EXHIBIT J	[Reserved]
EXHIBIT K	Form of Acknowledgement of Conditions Precedent
EXHIBIT L	Form of Annual Operating Budget
EXHIBIT M	Form of Consent and Agreement
EXHIBIT N	Form of Assignment and Assumption Agreement
EXHIBIT O	Form of Hedging Claim Notice

SECOND LIEN FINANCING AGREEMENT

This SECOND LIEN FINANCING AGREEMENT (this “Agreement”), dated as of [_____], among ITR CONCESSION COMPANY LLC, a Delaware limited liability company (the “Borrower”), the Lenders from time to time parties hereto, and WILMINGTON TRUST, NATIONAL ASSOCIATION, as Administrative Agent for the Lenders (the “Administrative Agent”).

RECITALS

A. WHEREAS, the Borrower has entered into that certain Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006 (as amended pursuant to that certain First Amendment to Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006, that certain Second Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of June 29, 2006, that certain Third Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of August 10, 2007, that certain Fourth Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of February 5, 2008, that certain Fifth Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of November 1, 2010[, and [_____], dated as of the Closing Date,] as may be further amended, modified or supplemented, the “Concession Agreement”), by and between the Borrower and the Indiana Finance Authority, a public body politic and corporate of the State of Indiana (the “IFA”), pursuant to which the Borrower has agreed to lease the Indiana Toll Road from the IFA and to obtain the rights and privileges to operate the Indiana Toll Road in connection therewith, all as provided in the Concession Agreement.

B. WHEREAS, the Borrower had borrowed loans to finance a portion of the Rent (as defined in the Concession Agreement), and certain works required to be undertaken pursuant to the Concession Agreement, and for certain other purposes permitted under that certain Loan Agreement, dated as of June 26, 2006, by and among the Borrower, the Lenders as defined therein and the Royal Bank of Scotland plc, as administrative agent (as amended, modified or supplemented prior to the date hereof, the “Original Credit Facility”).

C. WHEREAS, on September 21, 2014, the Borrower, ITR Concession Company Holdings LLC, the direct parent of Borrower, and Statewide Mobility Partners LLC, the indirect parent of Borrower, commenced Chapter 11 Cases (the “Bankruptcy Cases”) by filing voluntary petitions for reorganization under the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”);

D. WHEREAS, in connection with the Bankruptcy Cases, the Borrower submitted the *Joint Prepackaged Plan of Reorganization of ITR Concession Company LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code*, including the Plan Supplement thereto (collectively, as amended, modified or supplemented, the “Plan”), for confirmation by the Bankruptcy Court;

E. WHEREAS, upon confirmation of the Plan, the holders of the secured claims under the Original Credit Facility (the “Original Holders”) are willing to enter into a new second-lien credit facility, subject to and upon the terms and conditions set forth herein and in the Financing Documents, and a new first-lien credit facility, subject to and upon the terms and

conditions set forth in the First Lien Financing Agreement and First Lien Financing Documents in satisfaction of the Original Credit Facility.

F. NOW, THEREFORE, the Borrower, the Original Holders as Lenders hereunder and the other parties hereto agree as follows:

ARTICLE I

INTERPRETATION

All capitalized terms used but not defined in this Agreement shall have the respective meanings specified in Appendix A. The rules of interpretation set forth in Appendix A shall apply to this Agreement.

ARTICLE II

THE CREDIT FACILITY

Section 2.1 Loans.

(a) Subject to the terms and conditions set forth herein, each Lender severally agrees to provide a term loan (each, a "Loan" and collectively, the "Loans") during the Loan Period in an aggregate principal amount not to exceed the amount opposite the name of such Lender on Schedule 2.1 to this Agreement.

(b) Upon satisfaction (or waiver) of the conditions of the Closing Date set forth in Section 4.1, the Loans shall be provided to the Borrower on the Closing Date in the aggregate amount of \$750,000,000.

(c) At least two (2) Business Days prior to the Closing Date, the Borrower shall specify to the Administrative Agent the initial Interest Period(s) to be applicable to the Loans in writing substantially in the form of Exhibit A, appropriately completed (a "Confirmation of Interest Period").

Section 2.2 Interest.

(a) Except as otherwise set forth in this Agreement, each Loan shall bear interest during each Interest Period at a rate per annum equal to the LIBOR for such Interest Period plus either (i) the Applicable Cash Rate or (ii) the Applicable PIK Rate pursuant to Section 2.2(b), as applicable; *provided*, that, if LIBOR for such Interest Period is less than 1.00% (the absolute value of the difference between LIBOR for such Interest Period and 1.00%, the "LIBOR Floor"), the Applicable Cash Rate or Applicable PIK Rate, as applicable, shall be increased by the LIBOR Floor.

(b) At the Borrower's option (determined at least one (1) Business Day prior to the beginning of each Interest Period by written notice to the Administrative Agent) (a "PIK Designation"), the Borrower may elect to increase the interest rate applicable to the Loans for the next Fiscal Quarter in an amount equal to the Applicable PIK Margin which amount shall be

payable in kind by increasing the outstanding principal amount of Loans through the issuance of additional Notes (the “PIK Notes”) issued by the Borrower on each Interest Payment Date during the Fiscal Quarter with respect to which the PIK Designation was received.

(c) Accrued Applicable PIK Margin shall be payable on the applicable Interest Payment Dates in kind, capitalized and added to the unpaid principal amount of the Loans on the applicable Interest Payment Dates (the “PIK Loans”) and thereafter, such PIK Loans shall be treated as Loans for all purposes of this Agreement (other than the definitions of “Majority Lenders” and “Outstanding Exposure”) and shall bear interest in accordance with Section 2.2(a). The obligation of the Borrower to pay all such PIK Loans so added shall be automatically evidenced by the PIK Notes. Any assignment by a Lender pursuant to Section 11.4 of a portion of its Loans shall include a corresponding assignment of the PIK Loans accrued on such Lender’s Loans, and no Lender shall assign a portion of its PIK Loans, other than in connection with an assignment of a uniform, and not a varying, percentage of all of the rights and obligations of such Lender under this Agreement. In the event of a repayment or prepayment of any Loan during a period, accrued (but not capitalized) Applicable PIK Margin on the amount repaid or prepaid shall capitalize on the next Payment Date in an amount equal to the amount owed from the beginning of such period to the date of such prepayment or repayment. The outstanding principal amount of the PIK Loans shall be paid on the Maturity Date for such Term Loan. Except where the context expressly suggests otherwise, all references to “interest” herein shall be deemed to include such Applicable PIK Margin.

(d) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, from the expiration of the applicable grace period to the date until paid in full at a rate per annum equal to (i) in the case of overdue principal and interest with respect to any Loan, 2% plus the rate per annum equal to LIBOR for the Interest Period then applicable to such Loan plus the Applicable Margin or (ii) in the case of any other amount, 2% plus the Base Rate. In addition, if the Borrower fails to pay any principal of or interest on the Loans on the date when due, such amount shall bear interest from the due date until the earlier to occur of payment in full or the expiration of the applicable grace period at the rate applicable to Loans during such period as provided in clause (a) of this Section 2.2.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date; provided that (i) interest accrued pursuant to paragraph (b) of this Section shall be payable on demand and (ii) upon any repayment or prepayment of any Loan in whole or in part, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(f) All interest hereunder shall be computed on the basis of a year of 360 days of twelve 30-day months, except that interest computed by reference to the Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Base Rate or LIBOR shall be determined by the Administrative Agent in accordance with the terms of this Agreement, and such determination shall be conclusive absent manifest error.

(g) Unless expressly provided for herein, all payments required to be made under this Agreement shall be payable in cash (other than with respect to the Applicable PIK Margin).

Section 2.3 Interest Periods.

(a) The Interest Period for each Loan shall be three months; provided, that the Borrower may select a one, two or three month Interest Period if it shall have notified the Administrative Agent in writing prior to such selection. The Borrower shall select the Interest Period referred to in the preceding proviso in an irrevocable Confirmation of Interest Period received by the Administrative Agent not later than 1:00 p.m., New York City time, three (3) Business Days before the commencement of such Interest Period.

(b) There shall not be more than twelve (12) Interest Periods in effect with respect to the Loans at any given time.

(c) No Interest Period shall extend beyond the Maturity Date.

(d) If the Borrower fails to select an Interest Period for an outstanding Loan under paragraph (a) above, it will be deemed to have selected an Interest Period of three months or, if the restriction set forth in paragraph (c) would be exceeded by such selection, on the last day of the current Interest Period with the shortest maturity.

(e) Promptly following receipt of a notice from the Borrower selecting an Interest Period, but no later than 1:00 p.m., New York City time, two (2) Business Days prior to the commencement of such Interest Period, the Administrative Agent shall advise each Lender of the details thereof.

Section 2.4 Repayment of Loans.

(a) On each Payment Date after the Discharge of First Lien Obligations, the Cash Sweep shall be applied to repay the Loans then outstanding (together with accrued and unpaid interest on the amount repaid and any additional amounts required pursuant to Section 3.4).

(b) The Borrower shall repay to the Administrative Agent for the account of the Lenders on the Maturity Date the aggregate principal amount of the Loans then outstanding.

(c) Principal amounts repaid may not be reborrowed.

Section 2.5 Prepayments.

(a) Terms of All Prepayments. All partial prepayments of the Loans shall be allocated to prepay, on a pro rata basis, the aggregate outstanding Loans and, to the extent applicable, the aggregate outstanding Additional Subordinated Loans. Each prepayment of Loans shall be accompanied by accrued interest on the amount of Loans and, if applicable, Additional Subordinated Loans, prepaid, and any additional amounts required pursuant to Section 3.4. Principal amounts prepaid may not be reborrowed. There shall be no premium or

penalty applicable to any prepayment of Loans or, if applicable, Additional Subordinated Loans, other than amounts payable under Section 3.4, if any.

(b) Optional Prepayments. The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 1:00 p.m., New York City time, at least three (3) days prior to any proposed date of prepayment, but no earlier than ten (10) Business Days prior to any proposed date of prepayment; (ii) any prepayment of Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof or, if less, the entire principal amount thereof then outstanding; and (iii) to the extent that such Loans are prepaid on a date other than on an Interest Payment Date, the Borrower shall have paid on the relevant date of such prepayment any amount required under Section 3.4. Each such notice shall be irrevocable and shall specify the date and amount of such prepayment, provided, however, that such notice may state that the prepayment is conditioned upon the effectiveness of other credit facilities or debt instruments in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof.

(c) Mandatory Prepayments. After the Discharge of First Lien Obligations:

(i) The Net Cash Proceeds of any payment by the IFA of Toll Road Concession Value, including any Toll Road Concession Value due and payable as a component of Termination Damages, under the Concession Agreement shall be applied to prepay the Loans, pro rata with any Additional Subordinated Loans (to the extent applicable), either promptly upon receipt of such payment or on the immediately following Interest Payment Date (as elected by the Borrower). On such payment date, the entire unpaid principal amount of the Loans, all accrued and unpaid interest thereon, and all other amounts owing or payable hereunder or under any other Financing Document shall become immediately due and payable.

(ii) The Net Cash Proceeds of any portion of Concession Compensation (as defined in the Concession Agreement other than as contemplated in clause (c)(i) of this Section above) paid by the IFA in respect of the actual and estimated loss of the Borrower's future Project Revenues shall be applied to prepay the Loans, pro rata with any Additional Subordinated Loans (to the extent applicable), either promptly upon receipt of such payment or on the immediately following Interest Payment Date (as elected by the Borrower); provided, that in lieu of making such prepayment, the Borrower may elect, by providing written notice to the Administrative Agent prior to such prepayment date, to use (A) any Concession Compensation paid in respect of loss or damage to property of the Borrower or to the Toll Road to repair, restore, replace or remediate the affected property (which amounts shall be applied to such repair, restoration, replacement or remediation and ancillary costs), (B) any Concession Compensation paid in respect of any event which is reasonably determined by the Borrower to have resulted or will reasonably be expected to

result in ongoing loss of Project Revenue during the following 18-month period or longer (which amounts shall be deposited in the Proceeds Account in accordance with Section 4.01(a) of the Depositary Agreement), (C) any Concession Compensation paid in respect of past, current or identifiable future costs arising from the relevant Compensation Event (as defined in the Concession Agreement) (which amounts shall be applied to meet such costs), and (D) to the extent otherwise required to be applied pursuant to the terms of the Concession Agreement.

(iii) To the extent permitted under the Concession Agreement, if the Borrower receives Net Cash Proceeds from insurance or condemnation in respect of an Event of Loss and (A) such Net Cash Proceeds exceed the amount required to repair, restore or rebuild the Indiana Toll Road to the condition existing prior to the happening of such Event of Loss (such an amount to be agreed upon after consultation with the Insurance Consultant and the Technical Adviser) and (B) the affected portion of the Indiana Toll Road cannot be repaired or restored or is not required pursuant to the terms of the Concession Agreement and this Agreement to be repaired or restored, and the Borrower elects not to do so, such excess proceeds or proceeds, as applicable, shall either promptly upon the determination of such circumstances and the calculation of the prepayment amount or on the immediately following Interest Payment Date (as elected by the Borrower) be applied to prepay the Loans, pro rata with any Additional Subordinated Loans (to the extent applicable).

Section 2.6 Fees. The Borrower agrees to pay to the Administrative Agent for its own respective account such fees as may be separately agreed upon between the Borrower and the Administrative Agent in writing, which fees, to the extent payable pursuant to such other arrangements, shall be deemed to be payable hereunder.

Section 2.7 Evidence of Indebtedness; Notes.

The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments due with respect thereto. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to such Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

Section 2.8 Payments Generally.

(a) Each payment by the Borrower hereunder (whether of principal, interest, fees or any other amount) shall be made prior to 1:00 p.m., New York City time, on the date when due, in Dollars in immediately available funds, without condition or deduction for any counterclaim, defense, recoupment or setoff. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the account of the Administrative Agent ([_____]) or such other account as may hereafter be designated by the Administrative Agent in writing. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly upon receipt thereof, in like funds as received.

(b) If any payment to be made by the Borrower under any Financing Document becomes due and payable on a day other than a Business Day, the date for payment shall be extended to the next succeeding Business Day, and such extension of time shall be reflected in computing interest or fees; provided that, in the case of any payment of principal or interest, if such Business Day is not in the same calendar month as the original due date, the date for such payment shall be the preceding Business Day.

(c) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied, subject to the terms and conditions of the Depositary Agreement, (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

Section 2.9 Sharing of Payments.

If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on its Loans (including in accordance with Section 2.8(a) above) resulting in such Lender receiving payment of a greater proportion of the aggregate amount of such Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in Loans of the other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the purchasing Lender ratably with each of such other Lenders; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or Participant, other than to the Borrower or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Governmental Rule, that any Lender acquiring a participation pursuant to the foregoing arrangement may exercise against the Borrower all of its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 2.10 Priority.

Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent pursuant to the Security Documents and the exercise of any right or remedy by the Administrative Agent and Collateral Agent under the Financing Documents are subject to the provisions of the Collateral Agency Agreement. In the event of any conflict between the terms of the Collateral Agency Agreement and this Agreement, the terms of the Collateral Agency Agreement shall govern and control.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.1 Taxes.

(a) Except as required by applicable law, any and all payments by or on account of any Obligation shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the Borrower shall be required to deduct any Tax from such payments, then (i) if such Tax is an Indemnified Tax or Other Tax, the sum payable shall be increased as necessary so that after making all required deductions for such Indemnified Taxes or Other Taxes (including deductions applicable to additional sums payable under this Section 3.1) the intended Recipient of such payment receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions for Taxes and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, without duplication of payments under Section 3.1(a), the Borrower shall pay, or at the option of the Administrative Agent timely reimburse it for payment of, any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Without duplicating any obligation under Section 3.1(a), the Borrower shall indemnify each Recipient, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.1) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that the Borrower shall not be required to indemnify a Recipient pursuant to this Section 3.1(c) for any Indemnified Taxes or Other Taxes incurred, and of which such Recipient becomes aware, more than 120 days prior to the date that such Recipient notifies the Borrower of such Indemnified Taxes or Other Taxes and of such Recipient's intention to claim compensation therefor. To claim any amount under this Section 3.1(c), a Recipient shall deliver to the Borrower a certificate as to the amount of such payment or liability, and such a certificate shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the

Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment.

(e)

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax under the laws of the United States or any treaty to which the United States is a party with respect to payments of any Obligations shall, at the Borrower's reasonable request, deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower as will permit those payments to be made without withholding or at a reduced rate of withholding. Notwithstanding anything to the contrary in the preceding sentence, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.1(e)(ii)(A), (e)(ii)(B) and (e)(ii)(C) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Financing Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Financing Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption

from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(C) if a payment made to a Lender under any Financing Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (C), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and Administrative Agent in writing of its legal inability to do so.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.1 (including by the payment of additional amounts pursuant to this Section 3.1), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.1 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Each party's obligations under this Section 3.1 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender.

Section 3.2 Alternate Rate of Interest.

If prior to the commencement of any Interest Period, (a) the Administrative Agent determines, acting reasonably and taking into consideration the conditions in the bank credit markets generally, that adequate and reasonable means do not exist for ascertaining LIBOR for such Interest Period or (b) the Administrative Agent is advised by the Majority Lenders, acting reasonably and taking into consideration the conditions in the bank credit markets generally, that LIBOR determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans for such Interest Period, the Administrative Agent shall give notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, which it shall be obligated to do promptly, the Loans shall bear interest at the then applicable Base Rate, plus the Applicable Margin less 100 basis points.

Section 3.3 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit

extended by, any Lender (including any reserve established by the Federal Reserve Board);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Other Taxes, and (C) Excluded Taxes) on its loans, loan principal, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement and Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered; provided that this Section does not apply to matters covered by Section 3.1.

(b) If any Change in Law or directive from the Bank of International Settlements (“BIS”) or another regulatory authority that such Lender is regulated by regarding capital requirements has or would have the effect of reducing the rate of return on such Lender’s capital or on the capital of such Lender’s holding company, if any, as a consequence of this Agreement or the Loans made by such Lender, to a level below that which such Lender or such Lender’s holding company would have achieved but for such Change in Law or directive by an amount deemed by such Lender to be material, then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender’s holding company for any such reduction suffered.

(c) To claim any amount under this Section, a Lender shall deliver to the Borrower a certificate of such Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section, which certificate shall state in reasonable detail the basis for such claim, which certificate shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender’s right to demand such compensation; provided that the Borrower shall not be required to compensate any Lender pursuant to this Section for any increased costs or reductions incurred more than 120 days prior to the date on which such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender’s intention to claim compensation therefor; and provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 120-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) Notwithstanding the foregoing, to the extent that (i) a Lender shall increase its level of capital above the level maintained by such Lender on the Closing Date and there has not been a Change in Law, or a directive from BIS or another regulatory authority or (i) there has been a Change in Law, a directive from BIS or another regulatory authority and a Lender shall increase its level of capital by an amount greater than the increase attributable thereto, the Borrower shall not be required to pay any amount or amounts pursuant to this Section with respect to such increase in capital above that required by the Change in Law, BIS or other regulatory authority.

Section 3.4 Funding Losses.

In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto, (b) the conversion of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto pursuant to Section 3.2 or 3.5, or (c) the failure to borrow, convert pursuant to Section 3.2 or Section 3.5, continue or prepay any Eurodollar Loan on the date specified in any irrevocable notice delivered pursuant hereto, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. Such loss, cost or expense to any Lender shall be deemed to include the amount of excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the LIBOR rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan) over (ii) the amount of interest that would accrue on such principal amount for that period at the interest rate that such Lender would bid were it to bid, at the commencement of that period, for Dollar deposits of a comparable amount and period from other banks in the London eurodollar market. To claim any amount under this Section, the Lender must deliver to the Borrower a certificate setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section, and stating in reasonable detail the basis for such claim. The Borrower shall pay such Lender the amount shown as due on any such certificate within fifteen (15) days after its receipt.

Section 3.5 Illegality.

In the event that it becomes unlawful or, by reason of a Change in Law, impossible for any Lender to comply with its obligation to make or maintain Eurodollar Loans, then such Lender will promptly notify the Borrower of such event (with a copy to the Administrative Agent), and such Lender's obligation to make or to continue, or to convert Loans of any other type into, Eurodollar Loans shall be suspended until such time as such Lender may again make and maintain Eurodollar Loans. During such period of suspension, the Loans of such Lender shall bear interest at the then applicable Base Rate, plus the Applicable Margin less 100 basis points.

Section 3.6 Duty to Mitigate; Replacement of Lenders.

(a) If the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.1, or if any Lender requests compensation under Section 3.3, then such Lender shall use reasonable efforts to

designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.1 or 3.3, as the case may be and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by any Lender in connection with only the first of any such designation or assignment by such Lender.

(b) If the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.1, or if any Lender requests compensation under Section 3.3, or if any Lender is subject to the matters contemplated by Section 3.5, or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its expense, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 11.4(b)), all of its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts to the extent then payable), (ii) in the case of any such assignment resulting from payments required to be made pursuant to Section 3.1 or a claim for compensation under Section 3.3, such assignment would reasonably be expected to result in a reduction in such compensation or payments and (iii) such assignment does not conflict with applicable law. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Notwithstanding anything to the contrary in this Section 3.6, Section 11.1(c) shall control with respect to the replacement of a non-consenting Lender whose consent is necessary in connection with any proposed change, waiver, consent or termination of or to any of the provisions of this Agreement but whose consent is not obtained.

(c) Each Lender agrees that it shall administer and shall make claims for compensation, reimbursement or indemnification under, the provisions of Sections 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6 in a manner that is consistent with such Lender's customary practices, procedures and policies consistently applied, and without any discrimination against the Borrower. Without limiting the generality of the foregoing, no Lender shall allocate any increased costs contemplated by Section 3.3 to the Borrower in a proportionately greater amount than such Lender would allocate such costs to its comparable borrowers of LIBOR-based loans to which such costs are applicable if the provisions of Section 3.3 applied to all such borrowers. All certifications and notices to be delivered to the Borrower by any Lender pursuant to Sections 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6 shall be made on the basis of calculations that are reasonable and made in good faith.

Section 3.7 Survival.

All of the Borrower's and the Lenders' and the Administrative Agent's obligations under Sections 3.1, 3.3 and 3.4 shall survive the payment in full of all Obligations.

ARTICLE IV

CONDITIONS PRECEDENT

Section 4.1 Conditions Precedent to Closing Date.

The effectiveness of the Closing Date hereunder is subject to the satisfaction or waiver in accordance with Section 11.1 of the following conditions precedent:

(a) Documents to Be Delivered. The following documents shall have been duly authorized, executed and delivered by the parties thereto (such parties shall include, but not be limited to, the Borrower, the Administrative Agent, the Collateral Agent and the Lenders) and, shall be in full force and effect:

- (i) this Agreement;
- (ii) if requested, a Note in favor of each Lender requesting a Note at least two (2) Business Days prior to the Closing Date, each in a principal amount equal to that Lender's respective Pro Rata Share of the Loans as of the Closing Date;
- (iii) the Collateral Agency Agreement, in substantially the form attached hereto as Exhibit C;
- (iv) the Leasehold Mortgage, in substantially the form attached hereto as Exhibit D;
- (v) the Security Agreement, in substantially the form attached hereto as Exhibit E;
- (vi) the Member Pledge Agreement, in substantially the form attached hereto as Exhibit F;
- (vii) the Depository Agreement, in substantially the form attached hereto as Exhibit G; and
- (viii) the Control Agreement(s), in substantially the form attached hereto as Exhibit H.

(b) Base Case Model. The Administrative Agent shall have received the Base Case Model, including a proposed amortization schedule, certified as such by an Authorized Officer of the Borrower and showing a minimum annual projected Debt Service Coverage Ratio of at least 1.30 to 1.00 for each Payment Period ending on the last day of such Payment Period (including the final Payment Period ending on the Maturity Date) in respect of the Loans on a current interest basis based on the Traffic Report.

(c) Initial Indiana Toll Road Budget. The Administrative Agent shall have received an operating budget for the 20[___] fiscal year, showing in reasonable detail all projected Project Revenues and Operating Expenses (identifying, separately, Major Maintenance costs and costs incurred in connection with a Capital Project, if any), debt service and other related items for such period on a monthly basis.

(d) Concession Agreement; Omnibus Services Agreement; Material ITR Contracts; Governmental Approvals. The Administrative Agent shall have received a copy of the Concession Agreement, the Omnibus Services Agreement, each other Material ITR Contract, if any, and each material Governmental Approval required as of the Closing Date, if any.

(e) IFA Consent. The IFA shall have delivered to the Administrative Agent a consent, substantially in the form of Exhibit I hereto (the “IFA Consent”).

(f) Service Providers Consent. The Services Providers shall have delivered to the Administrative Agent a consent, substantially in the form of Exhibit M hereto (the “Service Providers Consent”).

(g) Security Interests. (i) All filings and recordings necessary to perfect the security interests in the Collateral contemplated to be granted to the Collateral Agent for the benefit of the Secured Parties by the Security Documents shall have been made. (ii) The Collateral Agent shall have received the original membership interest certificates, with blank transfer powers, representing all issued and outstanding membership interests in the Borrower, as required pursuant to the Member Pledge Agreement.

(h) Insurance. The Administrative Agent shall have received a certificate from the Insurance Adviser to the effect that all insurance policies required to be maintained by the Borrower under Section 6.12 are in full force and effect, the premiums due and payable thereon have been paid, such insurance shall not be subject to cancellation without prior notice to the Administrative Agent, and that such policies otherwise conform with the requirements specified on Schedule 6.12 and in Article 13 of the Concession Agreement.

(i) Project Accounts. The Project Accounts required to be established under the Depositary Agreement as of the Closing Date shall have been established, and the Borrower shall have executed and delivered all relevant documents to be entered into with the Collateral Agent with respect to the establishment of the Project Accounts, as contemplated by the Collateral Agency Agreement.

(j) Title Insurance. The Administrative Agent shall have received an ALTA form of Lender’s leasehold policy of title insurance with extended coverage over the general exceptions, together with such endorsements and reinsurance as required by the Administrative Agent, in an amount equal to the initial amount of the Loans and issued by the Title Company, fully paid and insuring that the Borrower holds a valid leasehold interest in the Toll Road, and that the Leasehold Mortgage is a valid first lien on such property in favor of the Collateral Agent, in each case free and clear of exceptions to title whatsoever other than the Permitted Title Exceptions and free and clear of all Liens other than Permitted Liens.

(k) Certain Deliverables. To the extent previously requested by the Administrative Agent, the Administrative Agent shall have received prior to the Closing Date, all documentation and other information required by regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

(l) Representation and Warranties. The representations and warranties of the Borrower or the Member, as applicable, contained in Article V or any other Financing Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the Closing Date, except to the extent that such representations and warranties specifically refer to an earlier or specified date, in which case they shall be true and correct in all material respects as of such earlier or specified date.

(m) Confirmation. The Confirmation Order (as defined in the Plan) shall have been entered.

(n) Effective Date. The Effective Date (as defined in the Plan) shall have occurred.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants to the Administrative Agent and the Lenders, as of the Closing Date (except to the extent that any representation and warranty set forth below specifically refers to an earlier or specified date, in which case such representation and warranty shall be as of such earlier or specified date) that:

Section 5.1 Organization; Status.

(a) The Borrower (i) is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and (ii) is qualified to do business in the State of Indiana. The Borrower has full power and authority to conduct its business as now conducted and, subject to entry and the terms of the Confirmation Order, will have the full power and authority to assume and/or to execute, as applicable, deliver and perform its obligations under the Concession Agreement and any other Material ITR Contract to which it is a party and the Financing Documents to which it is a party.

(b) As of the Closing Date, the only member of the Borrower is ITR Concession Company Holdings LLC, a Delaware limited liability company, and all of the Membership Interests are beneficially owned by such entity free and clear of all Liens other than Permitted Liens.

(c) The Borrower has not engaged in any business other than the ownership of the Concessionaire Interest pursuant to the Concession Agreement and the activities related, ancillary, incidental or complementary thereto (including the financing thereof). The Borrower has no obligations or liabilities other than those directly related to the conduct of such business

or activities related, ancillary, incidental or complementary thereto. The Borrower does not own any shares of stock or other ownership interests in any Person (other than pursuant to Permitted Investments or as permitted pursuant to this Agreement, including, without limitation, pursuant to Section 7.5 hereof).

Section 5.2 Authorization; Enforceability.

(a) All necessary limited liability company action on the part of the Borrower that was or is required to authorize the execution, delivery and performance of the Concession Agreement, any other Material ITR Contract to which it is a party and the Financing Documents to which it is a party has been duly and effectively taken at the time of the execution of the Concession Agreement, any other Material ITR Contract or Financing Document, as the case may be.

(b) Each of the Concession Agreement, any other Material ITR Contract to which it is a party and the Financing Documents to which it is a party has been duly authorized, executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with the terms thereof, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

Section 5.3 No Conflict.

None of the execution, delivery or performance by the Borrower of the Concession Agreement, the Omnibus Services Agreement, any other Material ITR Contract to which it is a party and the Financing Documents to which it is a party, violates or constitutes a default or requires consent or approval (except for such consents and approvals that have been obtained) by any other Person under any material Governmental Rule applicable to the Borrower or the Indiana Toll Road or any other material contractual obligation to which the Borrower is a party, except for any defaults or violations or consents that would not reasonably be expected to have a Material Adverse Effect. None of the execution, delivery or performance by the Borrower of the Concession Agreement, the Omnibus Services Agreement, any other Material ITR Contract to which it is a party and the Financing Documents to which it is or is required to become a party results or will result in, or requires, the creation or imposition of any Lien on any of the Collateral or any other properties or revenues of the Borrower except for Permitted Liens.

Section 5.4 Compliance with Laws.

Except as disclosed in Schedule 5.4, the Borrower and, to the Borrower's Actual Knowledge, the Indiana Toll Road, are in compliance with any Governmental Rule (including any Environmental Law) applicable to the Borrower or the Indiana Toll Road, and with the terms of all other Governmental Approvals obtained by the Borrower, except to the extent that any failure to comply with any of the above would not reasonably be expected to result in a Material Adverse Effect. The Borrower is in compliance in with all terms and provisions of the Concession Agreement, except to the extent that any failure to comply with any of the above would not reasonably be expected to result in a Material Adverse Effect.

Section 5.5 Governmental Approvals.

Each Governmental Approval required to be in effect on the Closing Date is in full force and effect, is final and not subject to appeal. No other Governmental Approval is required to be obtained by the Borrower in connection with: (i) the execution and delivery of, and performance by, the Borrower of its respective obligations, and the exercise of its rights, under the Concession Agreement, the Omnibus Services Agreement, any other Material ITR Contract to which it is a party and the Financing Documents to which it is a party, (ii) the acquisition or assumption, as the case may be, after entry of the Confirmation Order of the Concessionaire Interest and the construction, use, lease, operation, rehabilitation or maintenance of the Indiana Toll Road in accordance with the applicable provisions of the Concession Agreement and in compliance, with all material Governmental Rules (including all applicable material Environmental Laws) or (iii) the validity and enforceability of the Concession Agreement, the Omnibus Services Agreement, and any other Material ITR Contract against the Borrower, in each case, except in any such case where any failure to obtain the same would not reasonably be expected to have a Material Adverse Effect.

Section 5.6 Litigation.

Except as set forth in Schedule 5.6, no action or other proceeding by or before any arbitrator, court or other Governmental Authority is pending or, to the Actual Knowledge of the Borrower, threatened in writing against the Borrower or any transactions contemplated by the Concession Agreement that, has a reasonable likelihood of adverse determination and if adversely determined, would reasonably be expected to have a Material Adverse Effect.

Section 5.7 Title.

On the Closing Date, after entry of the Confirmation Order and assumption of the Concession Agreement, the Borrower has a valid leasehold interest in the Indiana Toll Road pursuant to the Concession Agreement, and good title to leasehold rights or other rights to use all other material property that the Borrower purports to own, in each case, free and clear of all Liens other than the Permitted Liens.

Section 5.8 Environmental Matters.

Except as disclosed in Schedule 5.8, (i) the Indiana Toll Road is in compliance with Environmental Law and all Governmental Approvals issued pursuant to Environmental Law, except for any failure to comply that would not reasonably be expected to have a Material Adverse Effect; (ii) there are no pending or, to the Borrower's Actual Knowledge, threatened in writing Environmental Claims against the Borrower or the Indiana Toll Road that individually or in the aggregate would reasonably be expected to have a Material Adverse Effect, and (iii) except as would not reasonably be expected to have a Material Adverse Effect, neither the Borrower nor, to the Borrower's Actual Knowledge, any other Person, has used, Released, discharged, generated or stored any Hazardous Material at, on or under the Indiana Toll Road, and to the Borrower's Actual Knowledge, there are no Hazardous Materials used or presently at, on or under the Indiana Toll Road.

Section 5.9 Taxes; Tax Status.

The Borrower has timely filed or caused to be filed all material income tax returns and reports that are required to have been filed by it and has paid or caused to be paid all material Taxes required to have been paid by it pursuant to such returns or pursuant to any assessment received by the Borrower, except for such Taxes, if any, as are being contested pursuant to Permitted Contest Conditions. The Borrower is and since its inception has been disregarded as separate from its owner for U.S. federal, state and local income tax purposes.

Section 5.10 ERISA.

No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability of the Borrower is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect.

Section 5.11 Investment Company Status.

The Borrower is not required to register as an “investment company” as within the meaning of the Investment Company Act of 1940, as amended.

Section 5.12 Financial Condition; Projections.

(a) To the extent applicable, the most recent financial statements of the Borrower delivered to the Administrative Agent, have been prepared in conformity with GAAP and present fairly, in all material respects, the financial condition of the Borrower as of the date thereof. All material liabilities, direct and contingent, of the Borrower are either disclosed in such balance sheets or have been disclosed in writing by the Borrower to the Administrative Agent and each of the Lenders prior to the execution and delivery of the Financing Documents, and there are no undisclosed material liabilities, direct or contingent, of the Borrower which have accrued since the date of such financial statements or such disclosure.

(b) The Base Case Model (including the proposed amortization schedule attached thereto) discloses all material assumptions made in the preparation thereof, was prepared in good faith, and represents reasonable projections as of the time such projections were made (it being understood and agreed that actual adjustments may vary from the pro forma adjustments, such projections and forecasts are not a guarantee of performance and actual results may vary from such projected results and, in each case, such variations may be material).

Section 5.13 Insurance Coverage.

On the Closing Date, all insurance required to be maintained by the Borrower under Section 6.12 of this Agreement and under Article 13 of the Concession Agreement, the Omnibus Services Agreement, and any other Material ITR Contract to which the Borrower is a party has been obtained and is in full force and effect. On the Closing Date, all premiums due and payable in connection therewith have been paid.

Section 5.14 Status of Liens.

Upon the execution and delivery thereof, the Security Documents will be effective to create, in favor of the Collateral Agent, legally valid and enforceable Liens on the Collateral,

subject to limitations as to enforceability which might result from bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and subject to limitations on the availability of equitable remedies. All necessary recordings and filings have been or are concurrently being recorded and filed on the Closing Date, and all required Control Agreements have been obtained, such that the Liens created by each of the Security Documents constitute first-priority perfected Liens on the Collateral, subject only to Permitted Liens.

Section 5.15 Concession Agreement; Omnibus Services Agreement; Material ITR Contracts.

As of the Closing Date, each of the Concession Agreement, the Omnibus Services Agreement and any other Material ITR Contract is in full force and effect, and has not been terminated or otherwise amended or modified except in accordance with the Financing Documents. Except as disclosed in Schedule 5.16, as of the Closing Date, the Borrower has not given or received any notice of default under the terms of the Concession Agreement, the Omnibus Services Agreement or any other Material ITR Contract to which it is a party and, to the Borrower's Actual Knowledge, no default exists thereunder, except for such defaults that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. As of the Closing Date, the Concession Agreement and the Omnibus Services Agreement are the only Material ITR Contracts.

Section 5.16 No Default or Event of Default.

Except as disclosed in Schedule 5.16, no Default or Event of Default has occurred and is continuing.

Section 5.17 Accuracy of Disclosure.

To the best of the Borrower's knowledge, the written information provided by the Borrower to the Administrative Agent regarding the Indiana Toll Road that was prepared by the Borrower or the Member (or, at the Borrower's or the Member's request, by their respective advisors), taken as a whole, is accurate in all material respects on and as of the Closing Date, except to the extent that such information specifically refers to an earlier or specified date, in which case such information shall be accurate in all material respects as of such earlier or specified date. Notwithstanding the foregoing, no representation or warranty is made as to any forecasts, projections, budgets or other forward-looking statements except that such forecasts, projections or other forward-looking statements that were prepared by the Borrower or the Member (or, at the Borrower's or the Member's request, by their respective advisors) were prepared in good faith and were based on assumptions believed by the Borrower to be reasonable at the time made (it being understood and agreed that actual adjustments may vary from the pro forma adjustments, such projections and forecasts are not a guarantee of performance and actual results may vary from such projected results and, in each case, such variations may be material).

ARTICLE VI

AFFIRMATIVE COVENANTS

Subject to the terms of the Collateral Agency Agreement:

Section 6.1 Financial Statements; Financial Certifications and Other Information.

(a) The Borrower will furnish to the Administrative Agent:

(i) within 120 days after the end of each fiscal year of the Borrower, the audited balance sheet and related statements of operations, members' equity and cash flows of the Borrower as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year (commencing with the fiscal year ending after the Closing Date), all reported on by an independent public accountant of recognized national standing (without any qualification or exception, as to the scope of such audit) to the effect that such financial statements present fairly in all material respects the financial condition and results of operations of the Borrower in accordance with GAAP consistently applied; and

(ii) within 60 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, the unaudited balance sheet and related statements of operations, members' equity and cash flows of the Borrower as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form¹ the figures for the corresponding period or periods (if applicable) of (or, in the case of the balance sheet as of the end of) the previous fiscal year (commencing with the fiscal year ending after the Closing Date), all certified by one of its Authorized Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes; and

(iii) concurrently with any delivery of financial statements under clause (i) or (ii) above, a certificate of an Authorized Officer of the Borrower certifying whether such Authorized Officer's Actual Knowledge, a Default or Event of Default has occurred since the delivery of the prior certificate delivered pursuant to this sub- clause (iii) and, if a Default or Event of Default has occurred, specifying the nature thereof and any action taken or proposed to be taken with respect thereto to remedy the same.

(b) Promptly after any request therefor, the Borrower shall provide such additional information regarding the Indiana Toll Road and the business affairs and financial condition of the Borrower, as the Administrative Agent (including at the direction of the Lenders) may reasonably request. Notwithstanding anything to the contrary, the Borrower will not be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or (ii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

Section 6.2 Notices of Material Events.

(a) Notices Under the Concession Agreement. The Borrower shall promptly deliver to the Administrative Agent (i) notice of any of the following actions taken under the

¹ TBD. Will pre-filing and post-reorganization financials be "comparable? Fresh start accounting?"

Concession Agreement and (ii) copies of any of the following written notices given or received by it under the Concession Agreement (capitalized terms used in paragraph (a) of this Section and not otherwise defined herein shall have the meanings set forth in the Concession Agreement):

- (i) notice of the occurrence of any IFA Default or Adverse Action;
- (ii) notice of any event giving rise to a definitive prospective payment of any Concession Compensation or any payment of Toll Road Concession Value by the IFA, promptly after the Borrower has determined to make a claim for such payment, or notice of submission of any claim for any such payment;
- (iii) notice of the receipt of payment of any Concession Compensation or any payment of Toll Road Concession Value by the IFA;
- (iv) notice of any IFA Directive issued by the IFA pursuant to the Concession Agreement;
- (v) copies of the annual operating plans provided to the IFA pursuant to the Concession Agreement;
- (vi) notice of the occurrence of any Delay Events in the event the Concessionaire intends to delay or be relieved of performing its obligations under the Concession Agreement (together with a description thereof and an estimate of its expected duration); and
- (vii) notice of adjustment to the Borrower's insurance coverage pursuant to Section 13.2(1) of the Concession Agreement.

(b) Other Notices. The Borrower shall, as soon as practicable and in any event, unless otherwise specified, within ten (10) Business Days after the Borrower obtains Actual Knowledge of any of the following, give written notice to the Administrative Agent of:

- (i) the occurrence of any Event of Default (with a description of any action being taken or proposed to be taken with respect thereto);
- (ii) the occurrence of any casualty, loss or damage with respect to the Toll Road Assets or Toll Road Facilities for which the aggregate cost of repair or restoration is expected to exceed \$25,000,000 or that is scheduled to result in any major section of the Indiana Toll Road being substantially unavailable to traffic for a period of seven (7) days, or any series of casualties losses or damages to the Toll Road Assets or Toll Road Facilities (whether or not related) during any 12-month period in excess of \$100,000,000 in the aggregate.
- (iii) the filing or commencement by the IFA or any other Governmental Authority of any action, suit or other proceeding for the condemnation or other taking (including by eminent domain) of the Indiana Toll Road or the Concessionaire Interest or any portion thereof having an estimated value in excess of \$25,000,000, or any series of

such actions or proceedings during any 12-month period in excess of \$100,000,000 in value in the aggregate;

(iv) the filing or commencement of any action, suit or other proceeding by or before any arbitrator or Governmental Authority (i) involving claims against the Borrower or the Indiana Toll Road in excess of \$25,000,000, (ii) seeking any material injunctive, declaratory or other equitable relief that has a reasonable likelihood of adverse determination and, if adversely determined, would reasonably be expected to result in a Material Adverse Effect, or (iii) instituted for the purpose of revoking, terminating, suspending, withdrawing, modifying or withholding any Governmental Approval or Material ITR Contract which would reasonably be expected to result in a Material Adverse Effect;

(v) any dispute, litigation, investigation or proceeding which may exist at any time between any Governmental Authority and the Borrower or, to the Actual Knowledge of the Borrower, the IFA or any other party to a Material ITR Contract (including with respect to tax claims), to the extent such dispute, litigation, investigation or proceeding involves the Indiana Toll Road and would reasonably be expected to result in a Material Adverse Effect;

(vi) any notice of material event of default or termination or cancellation given or received under any Material ITR Contract, or any amendment of, supplement to or other modification of any Material ITR Contract;

(vii) any written notice of the occurrence of any event giving rise (or that could reasonably be expected to give rise) to a material claim under any insurance policy required to be maintained with respect to the Indiana Toll Road, with copies of any material documents relating thereto (including copies of any such claim) in the possession or control of the Borrower;

(viii) any written notice of any Environmental Claim or any material noncompliance with or a violation of any Environmental Law applicable to the Toll Road or the Borrower in which the amount involved would reasonably be expected to result in [losses by the Borrower in excess of \$25,000,000 or which, if adversely determined,] would have a Material Adverse Effect;

(ix) the appointment of a replacement Operator pursuant to Section 3.3 of the Concession Agreement;

(x) any event or circumstance that has occurred that could reasonably be expected to result in a material liability of the Borrower under ERISA or under the Code with respect to any ERISA Plan;

(xi) any Lien or claim against all or any material part of the Collateral known to the Borrower (other than Permitted Liens);

(xii) any written notice to the Borrower indicating that any material Governmental Approval required for the continued operation of the Indiana Toll Road will not be granted or will be terminated, revoked or suspended; and

(xiii) any event or circumstance affecting any of the Material Project Participants that could reasonably be expected to impair the ability of such Person to perform its obligations under the related Material ITR Contract and that would reasonably be expected to result in a Material Adverse Effect.

Section 6.3 Quarterly Traffic and Operating Reports; Capital Project Reports.

(a) Not later than ninety (90) days after the end of each fiscal quarter of the Borrower, the Borrower will deliver to the Administrative Agent a traffic and operating report showing (i) the operating data for the Indiana Toll Road for the previous quarter and for the year to date, including total Project Revenues for the Indiana Toll Road and total Operating Expenses incurred and total Major Maintenance costs incurred [(with material costs in each category identified in reasonable detail),] (ii) if applicable, the variances for such periods between the actual Project Revenues and the budgeted Project Revenues and the actual Operating Expenses and Major Maintenance costs incurred and the budgeted Operating Expenses and Major Maintenance costs (in each case as shown in the Annual Operating Budget), together with a brief narrative explanation of the reasons for any such variance of 15% or more, and (iii) if an Event of Default exists, such other operating and traffic information as the Administrative Agent may reasonably request.

(b) [To the extent a Capital Project is required to be completed pursuant to Sections 5.1 and 5.5 of the Concession Agreement, Section 6.16 or pursuant to the Borrower's reasonable discretion, the Borrower shall have provided to the Administrative Agent and the Technical Adviser a written description of such Capital Project setting forth the scope and schedule thereof and the anticipated budget therefor, in each case, in reasonable detail and providing such additional information relating thereto as reasonably requested by the Administrative Agent. The Technical Adviser, acting reasonably, shall have confirmed the reasonableness of such Capital Project and concluded that such Capital Project shall not adversely affect the projections in the Base Case Model and based on information provided by the Borrower, funds available, together with any other funds available for the implementation of such Capital Project (including funds payable by the State or the IFA or from Loss Proceeds), are sufficient to complete the Capital Project within the time schedules set forth. To the extent such Capital Project is approved by the Administrative Agent (acting reasonably, in consultation with the Technical Adviser, and within twenty (20) days of receipt of the written description of the Capital Project), the Borrower shall deliver monthly progress reports by each Monthly Funding Date (i) setting forth the amount expended with respect to such Capital Project in the preceding calendar month and the amount estimated to be required to complete such Capital Project and (ii) providing an assessment of the overall construction progress of such Capital Project since the date of the last report, setting forth a reasonable estimate as to the completion date for the applicable work, and providing a description of any material problems encountered. To the extent applicable, Section 6.16(d) shall apply to any Capital Projects approved in this Section 6.3(b).]

Section 6.4 Annual Operating Budget.

(a) Not less than thirty (30) days before the end of each fiscal year, the Borrower shall submit to the Administrative Agent and the Technical Adviser for their review an operating plan and a budget in compliance with the Concession Agreement for the succeeding fiscal year (collectively, an “Annual Operating Budget”), in the form of Exhibit L or any other form reasonably acceptable to the Administrative Agent. Each Annual Operating Budget shall specify in reasonable detail all projected Project Revenues and Operating Expenses, as well as projected Major Maintenance costs and costs related to any approved Capital Projects, for such period on a monthly basis.

(b) (i) If the total budgeted amount (excluding expenses covered by insurance or paid with Distributable Cash, equity or proceeds of equity issuances) set forth in the proposed Annual Operating Budget exceeds the aggregate amount set forth in the current Annual Operating Budget (excluding expenses covered by insurance or paid with Distributable Cash, equity or proceeds of equity issuances) by 15%, the proposed Annual Operating Budget must be approved by the applicable Agent under the Collateral Agency Agreement acting on behalf of the Required Lenders (in consultation with the Technical Adviser), which approval shall be granted or denied within twenty (20) days of receipt; (ii) subject to subclause (i) above, the Required Lenders shall not disapprove the proposed Annual Operating Budget if the Technical Adviser has certified in writing that the proposed Annual Operating Budget is reasonable, (iii) if the applicable Agent under the Collateral Agency Agreement, acting on behalf of the Required Lenders, disapproves of the proposed Annual Operating Budget, the applicable Agent under the Collateral Agency Agreement shall set forth in writing, specifying in reasonable detail, its reasons for such disapproval and (iv) if no such written disapproval in accordance with the foregoing is provided within the time period specified above, then the proposed Annual Operating Budget shall be deemed approved, to the extent applicable, in sub-clause (i) above.

(c) If the proposed Annual Operating Budget is disapproved by the Required Lenders in accordance with the foregoing, then the Operating Expenses for the Annual Operating Budget shall equal the amount set forth for such costs in the most recent approved Annual Operating Budget multiplied by the Inflation Factor for the most recently available period (subject to a 15% permitted variance) (provided that if the GDP Index for any year is negative, then the Operating Expenses for the Annual Operating Budget shall equal the amount set forth for such costs in the most recent approved Annual Operating Budget); provided, that if there are Major Maintenance costs or costs in respect of a Capital Project scheduled for such period, the Technical Adviser shall provide in a certificate its estimate of costs for the Major Maintenance costs or Capital Project costs, as applicable, and such Major Maintenance costs or Capital Project costs, as applicable, for such period shall equal the sum of the amount estimated by the Technical Adviser.

(d) The Borrower shall operate the Indiana Toll Road substantially in accordance with the Annual Operating Budget except in the event of emergencies or loss covered by Insurance Proceeds and except as reasonably necessary to comply with the requirements of the Concession Agreement or applicable Governmental Rules and in respect of any costs that are reimbursable by the IFA or Insurance Proceeds. The Borrower shall have the right to make expenditures in respect of Operating Expenses, as well as Major Maintenance costs, and to the

extent specified in Section 6.3(b) above, Capital Projects (to the extent applicable), without any consent or approval of the Administrative Agent, the Technical Adviser or any other Person if such costs do not exceed an amount equal to 115% of the aggregate amount budgeted for such costs in the applicable Annual Operating Budget (excluding any expenses paid with Distributable Cash, equity proceeds or equity). Any expenditures in excess of such amount shall require the approval of the Administrative Agent, provided that no such approval shall in any event be required as to any expenditures that are required to comply with the Concession Agreement or applicable Governmental Rules.

Section 6.5 Payments.

The Borrower shall pay, or cause to be paid, all sums due under this Agreement and the other Financing Documents according to the terms hereof and thereof.

Section 6.6 Books and Records; Inspection of Property.

The Borrower shall maintain proper logs, books, records and accounts in which full, true and correct entries in accordance with GAAP consistently applied, shall be made of all of its material dealings and transactions in relation to its business and activities, and the Borrower shall permit designated representatives of the Administrative Agent, after reasonable pre-scheduling with and prior written notice to the Borrower, to, accompanied by personnel of the Borrower, visit and inspect its properties twice a year unless an Event of Default has occurred and is continuing, to examine all of the Borrower's logs, books, records and accounts, to take notes therefrom, and to discuss its affairs, finances and accounts with its principal officers, engineers and independent accountants, all at such times during business hours and at such intervals as previously coordinated with and notified to the Borrower and as the Administrative Agent or the Majority Lenders may reasonably request. Notwithstanding anything to the contrary, the Borrower will not be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or (ii) that is subject to attorney-client or similar privilege or constitutes attorney work product. The designated representatives of the Administrative Agent and the Majority Lenders (with prior notice to the Administrative Agent) shall have the right to inspect, accompanied by personnel of the Borrower, the Indiana Toll Road from time to time upon reasonable advance notice to the Borrower and during working hours. Each such inspection pursuant to this Section 6.6 shall be conducted so as not to interfere with the operation or maintenance of the Indiana Toll Road and shall be subject to the Borrower's safety and insurance programs, and any such party making an inspection shall comply with (i) the reasonable request of the Borrower to maintain the confidentiality of any information identified by the Borrower in writing to the recipient thereof as confidential and received as a result of such inspection, and (ii) the provisions concerning confidentiality in the Financing Documents. The Borrower shall be given the opportunity to participate in any discussions involving its accountants and the Administrative Agent and the Majority Lenders (or their respective designated representatives).

Section 6.7 Operation and Maintenance.

The Borrower shall maintain and keep, or cause to be maintained and kept, the Indiana Toll Road and its other material properties in good repair, working order and condition in accordance in all material respects with the Concession Agreement and in compliance in all material respects with applicable Governmental Rules and Governmental Approvals, except, in each case, where any failure to so comply would not reasonably be expected to have a Material Adverse Effect and except that the Borrower may, in good faith and by appropriate proceedings, diligently contest the validity or application of any Governmental Rules pursuant to the Permitted Contest Conditions and terms of required insurance policies, so that the business carried on in connection therewith may be properly conducted at all times (in each case excluding ordinary wear and tear, casualty and condemnation).

Section 6.8 Rights under the Material ITR Contracts.

The Borrower shall (a) perform and observe in all material respects all of its covenants and obligations contained in the Concession Agreement, the Omnibus Services Agreement and each other Material ITR Contract to which it is a party, (b) take all reasonable and necessary action to prevent the termination or cancellation of the Concession Agreement, the Omnibus Services Agreement or any other Material ITR Contract in accordance with the terms of the Concession Agreement, the Omnibus Services Agreement or such other Material ITR Contract or otherwise (except for (i) the expiration of the Concession Agreement, the Omnibus Services Agreement or any other Material ITR Contract in accordance with its respective terms and not as a result of a breach or default thereunder and (ii) the termination of the initial Omnibus Services Agreement so long as the Borrower obtains replacement services on commercially reasonable terms and a replacement Operator, to the extent required, is approved by the IFA) and (c) enforce against the relevant Material Project Participant each material covenant or obligation of the Concession Agreement, the Omnibus Services Agreement or such other Material ITR Contract, as applicable, in accordance with its respective terms, in each case under clauses (a) through (c) above, except to the extent that failure to do any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

Section 6.9 Governmental Approvals.

The Borrower shall obtain, as and when needed, and maintain in full force and effect all Governmental Approvals necessary for the leasing, operation, and maintenance of the Indiana Toll Road, except where the failure to obtain or maintain such Governmental Approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and except that the Borrower may, in good faith and by appropriate proceedings, diligently contest the validity or application of any Governmental Rules pursuant to the Permitted Contest Conditions.

Section 6.10 Compliance with Laws.

The Borrower shall comply or cause compliance with, and shall ensure that the Indiana Toll Road is operated in compliance with, all Governmental Rules, including Environmental Laws, and Governmental Approvals, except, in each case, where any failure to so comply would not reasonably be expected to have a Material Adverse Effect and except that the Borrower may,

in good faith and by appropriate proceedings, diligently contest the validity or application of any Governmental Rules pursuant to the Permitted Contest Conditions.

Section 6.11 Maintenance of Legal Status.

The Borrower shall at all times preserve and maintain in full force and effect (a) its legal existence as a limited liability company and its good standing under the laws of the State of Delaware; (b) its qualification to do business in the State of Indiana and (c) all material rights, franchises, privileges and consents necessary for the maintenance of its existence and the leasing, licensing, operation, tolling, rehabilitation, and maintenance of the Indiana Toll Road except where the failure to comply with the requirements of this clause (c) would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.12 Insurance.

(a) The Borrower shall maintain at its own expense, or cause any Operator to maintain at its own expense, the insurance policies required to be maintained pursuant to Schedule 6.12 hereto and furnish to the Administrative Agent (with copies to the Collateral Agent) certificates of all such insurance when and as available and, promptly upon becoming available, certified copies of the insurance policies.

(b) The Borrower shall comply in all material respects with all insurance requirements set forth in the Concession Agreement, the Omnibus Services Agreement and any other Material ITR Contract to which it is a party and enforce, to the extent possible, the obligations of all Persons to such Material ITR Contracts with respect to the insurance requirements set forth in such agreements.

(c) Without limiting Section 6.16, all Proceeds of the insurance policies provided or obtained by the Borrower for the Indiana Toll Road (other than in respect of business interruption or anticipated loss in revenue, which are to be paid into the Proceeds Account, and excluding coverage for workers' compensation, employees' liability and general liability) (the "Insurance Proceeds"), shall be paid by the respective insurers directly to or, to the extent applicable, deposited by the Borrower into, the Loss Proceeds Account unless the Borrower is required to apply such Insurance Proceeds to a prepayment of the Loans pursuant to Section 2.5(c)(iii). Subject to the foregoing, if any Insurance Proceeds are received by the Borrower or any other Person controlled by the Borrower, such Insurance Proceeds shall be received in trust for the Collateral Agent, shall be segregated from other funds of the recipient, and shall be promptly paid into the Loss Proceeds Account or, in the case of the Proceeds of any business interruption insurance or anticipated loss in revenue, to the Proceeds Account in the same form as received (with any necessary endorsement).

Section 6.13 Taxes.

The Borrower shall timely pay and discharge all material Taxes and other assessments and governmental charges or levies imposed upon it or the Indiana Toll Road for which it is responsible prior to the date on which penalties, fines or interest attach thereto; provided that the Borrower may permit any such Tax, assessment, charge or levy to remain unpaid if it meets the

Permitted Contest Conditions. The Borrower will maintain its status as a disregarded entity for federal, state and local tax purposes.

Section 6.14 Project Accounts.

(a) The Borrower shall at all times maintain the Project Accounts in accordance with the Depositary Agreement. The Borrower shall not maintain any securities accounts or bank accounts other than the Project Accounts or other deposit accounts or securities accounts established pursuant to Permitted Liens.

(b) The Borrower shall take all commercially reasonable actions to cause all Project Revenues received to be deposited into the Proceeds Account.

Section 6.15 Preservation of Security Interests.

(a) Subject to the terms and conditions of the Financing Documents, the Borrower shall preserve and maintain the security interests granted under the Security Documents in full force and effect, and take all action reasonably necessary to collaterally assign to the Collateral Agent all right, title and interest in and to any additional Material ITR Contracts to which it is a party or Collateral of the Borrower and perfect the security interest therein (to the extent necessary) and, promptly after acquiring any leasehold interest in real property not covered by the Leasehold Mortgage, to execute and record a supplement to the Leasehold Mortgage subjecting such real property interest to the Leasehold Mortgage.

(b) With respect to any additional Material ITR Contracts entered into by the Borrower after the Closing Date, the Borrower shall notify the other parties of such Material ITR Contracts of the security interests granted to the Collateral Agent under the Security Documents and shall use commercially reasonable efforts to cause such parties thereto to execute and deliver to Administrative Agent a consent in substantially the form of Exhibit M; provided, however, that the failure of Borrower to obtain such a consent shall not constitute a Default or Event of Default hereunder.

Section 6.16 Material Event of Loss.

(a) If any loss or damage to the Indiana Toll Road occurs that is reasonably estimated by the Borrower to cost more than \$5,000,000 to restore, repair, replace or rebuild, unless the Borrower elects not to restore such property and such restoration is not required under the Concession Agreement to operate and maintain the Indiana Toll Road, the Borrower shall promptly (and in any event within 60 days after the occurrence of the Event of Loss) deliver to the Administrative Agent and the Technical Adviser a written description of the restoration plan with respect to such loss or damage, setting forth the scope and schedule thereof and the anticipated budget therefor thereof, in each case in reasonable detail and providing such information relating thereto as reasonably requested by the Administrative Agent. The Technical Adviser, acting reasonably, shall confirm the reasonableness of such restoration plan.

(b) The Borrower shall deliver to the Administrative Agent and the Technical Adviser (i) complete and correct copies of each construction, procurement and other contract to which the Borrower is a party relating to the Capital Project carrying out such restoration plan;

(ii) a certificate of the Insurance Consultant to the effect that all insurance policies maintained by the Borrower with respect to such Capital Project conform with the requirements specified on Schedule 6.12 and in the Concession Agreement; and (iii) reasonable evidence that each of the Governmental Approvals that is required to be obtained for such Capital Project has been obtained or can be obtained in the normal course of business as and when required. The Borrower shall also provide such additional information or documentation with respect to such Capital Project as may be reasonably requested by the Administrative Agent.

(c) With respect to any withdrawals proposed to be made by the Borrower from the Loss Proceeds Account for the purposes of paying any cost contemplated in this Section 6.16, the Borrower shall provide to the Administrative Agent and the Technical Adviser (i) copies of invoice(s) as appropriate, as to such payments, (ii) financial information demonstrating compliance with the budget therefor such Capital Project (subject to a 15% permitted variance), and (iii) a certificate of an Authorized Officer of the Borrower certifying that there are no cost overruns (other than the variance permitted in clause (ii) above) or, if there are cost overruns, summarizing such overruns in reasonable detail, and that the funds available to the Borrower in the Loss Proceeds Account are sufficient to complete construction of such Capital Project or, if such funds are insufficient, describing the estimated deficiency (and in the case of any such estimated deficiency, the Borrower shall on the immediately succeeding Monthly Funding Date, transfer funds sufficient to cover such deficiency from the Proceeds Account to the Loss Proceeds Account).

(d) The Collateral Agent shall receive a perfected security interest in the Borrower's rights, title and interest in and to all construction, procurement and other contracts relating to the Capital Project for such restoration and the assets and work constituting such Capital Project, in each case, to the extent constituting Collateral, subject only to Permitted Liens. If reasonably requested by the Administrative Agent, the Borrower shall use its commercially reasonable efforts to cause contractors, subcontractors and suppliers in relation to such Capital Project to provide to the Administrative Agent mechanic's lien waivers in connection with payments made or to be made with respect to such Capital Project.

(e) Notwithstanding anything to the contrary set forth in this Section 6.16, any restoration, repair, replacement or rebuilding that is required to be made in accordance with the terms of the Concession Agreement shall be made in accordance with the terms of the Concession Agreement, including, without limitation, with respect to the place of deposit of any Insurance Proceeds and the restoration plan and schedule with respect thereof.

Section 6.17 Separateness.

[The Borrower shall comply with the separateness covenant as set forth in Section 3.6 of the Concession Agreement.]

Section 6.18 Additional Subordinated Loan Documentation.

The Borrower shall provide to each of the Lenders promptly following request or execution, as applicable, (i) copies of any Additional Subordinated Loan Documents, (ii) any notice of default received or given by the Borrower pursuant to any Additional Subordinated

Loan Documents, and (iii) such other information relating thereto as the Administrative Agent may reasonably request. Notwithstanding anything to the contrary, the Borrower will not be required to provide any such documents or information specified in clauses (i) through (iii) above (a) in respect of which disclosure to any Lender (or their respective representatives or contractors) is prohibited by Law or (b) that is subject to attorney-client or similar privilege or constitutes attorney work product.

ARTICLE VII

NEGATIVE COVENANTS

Subject to the terms of the Collateral Agency Agreement:

Section 7.1 Prohibition of Fundamental Changes; Sale of Assets, Etc.

(a) The Borrower shall not (i) enter into any transaction of merger or consolidation, change its form of organization or its business, or liquidate, wind up or dissolve itself, or suffer any liquidation or dissolution, (ii) convey, sell, lease, assign, transfer or otherwise dispose of all or substantially all of its property, assets or business, whether now owned or hereafter acquired, other than in accordance with the Concession Agreement and the Financing Documents, (iii) purchase, lease or acquire any assets other than assets required in connection with the operation and maintenance of the Indiana Toll Road, or (iv) acquire any equity interest in any Person.

(b) The Borrower shall not convey, sell, lease, transfer, assign or otherwise dispose of, in one transaction or a series of related transactions, any of its properties or assets in excess of \$5,000,000 per year in the aggregate except for:

(i) sales or other dispositions of obsolete, uneconomical, worn out or defective assets;

(ii) sales or other dispositions of equipment or other property in the ordinary course of the business of the Borrower in accordance with the Concession Agreement and the Material ITR Contracts;

(iii) sales, transfers or other dispositions of Permitted Investments or Permitted Liens;

(iv) sales of equipment to the extent that such equipment is exchanged for credit against the purchase price of other equipment used in connection with the Borrower's business, or the proceeds of such sale are applied with reasonable promptness to the purchase price of such other equipment;

(v) dispositions or transfers of property subject to accidental casualty or condemnation; and

(vi) dispositions of cash and cash equivalents in the ordinary course of business.

(c) The Borrower (i) shall not change its name or its fiscal year without the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) and (ii) shall comply with and shall not amend or modify any of its organizational documents if any such amendment or modification materially and adversely affects any material rights or remedies of the Secured Parties under any Security Documents.

Section 7.2 Conduct of Business.

The Borrower shall not engage at any time in any business other than the ownership of the Concessionaire Interest pursuant to the Concession Agreement and the activities related, incidental, ancillary or complementary thereto, including but not limited to tolling, operating, maintaining and financing the Indiana Toll Road.

Section 7.3 Indebtedness.

The Borrower shall not create, incur, assume or permit to exist any Indebtedness except:

(a) Indebtedness incurred or created under the Financing Documents and any replacement, renewal, refinancing, restructuring or extensions of such Indebtedness;

(b) Hedging Transactions incurred for non-speculative transactions that comply with Section 7.12.

(c) purchase money obligations and Capital Leases secured only by Liens on the property, except for accessions to such property other than the property financed by such Indebtedness and the proceeds and the products thereof and security deposits (provided that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender), being financed and shall not require payments by the Borrower in any calendar year in excess of \$40,000,000 so long as such Indebtedness does not exceed the purchase price paid for such property and such Indebtedness is incurred within two hundred seventy (270) days of the acquisition or construction of such equipment;

(d) unsecured Indebtedness or Additional Subordinated Loans (defined below) incurred to finance (i) Capital Expenditures under Section 5.5(c) of the Concession Agreement, or (ii) contributions in respect of IFA Directives under Section 5.5(c) of the Concession Agreement, so long as, after giving effect to such incurrence of Indebtedness, the minimum projected Debt Service Coverage Ratio shall be equal to or greater than 1.60 to 1.00;

(e) Indebtedness approved by the Majority Lenders, subject to the following requirements and the terms of the Collateral Agency Agreement (any such Indebtedness, the "Additional Subordinated Loans"):

(i) the Borrower shall have certified in writing to the Administrative Agent that the minimum projected Debt Service Coverage Ratio for each Payment Period from the then current Payment Period through the Maturity Date, after giving effect to such incurrence of Indebtedness, shall not be less than 1.30 to 1.00 (for purposes of the calculation of the Debt Service Coverage Ratio pursuant to this sub-clause (i));

(ii) the Additional Subordinated Loan Documents shall provide that the Additional Subordinated Loans shall be payable on a parity basis with the Loans, except that if the full amount of the Indebtedness under the Additional Subordinated Loan Documents (including principal, accrued interest, fees, costs, indemnities and all payment obligations under interest rate hedging agreements with respect thereto) is not entitled to the benefits of "Leasehold Mortgage Debt" under the Concession Agreement, to the extent that any payment of Toll Road Concession Value under the Concession Agreement is increased pursuant to the proviso of the definition thereof in the Concession Agreement on account of the amount of Leasehold Mortgage Debt, the Indebtedness under the Financing Documents, to the exclusion of such Indebtedness under the Additional Subordinated Loan Documents, shall be entitled to receive any prepayment resulting from such increase;

(iii) the Additional Subordinated Loan Documents shall provide that the Borrower may incur additional Indebtedness to refinance the Loans payable on a parity basis with the Additional Subordinated Loans, the incurrence of which shall not be subject to any restrictions that are more restrictive in any material respect than those set forth in this clause (e);

(iv) each Additional Subordinated Lender (or an agent or trustee acting on their behalf) shall become subject to and a party to the Collateral Agency Agreement or an intercreditor agreement reasonably satisfactory to the Majority Lenders in accordance with Section 11.1(d);

(v) as of the funding of the Additional Subordinated Loans, there shall not exist any Liens upon the Collateral that rank senior to the Liens securing such Additional Subordinated Loans other than Permitted Liens;

(vi) the Additional Subordinated Loans shall not benefit from any Liens other than Liens upon the Collateral, unless the benefits of any such other Liens have been granted to the Secured Parties on a pari passu basis with the Additional Subordinated Lenders;

(vii) the Additional Subordinated Loan Documents shall provide that, until the repayment in full of the Loans, (A) interest accrued on the Additional Subordinated Loans shall only be payable on an Interest Payment Date, (B) principal of the Additional Subordinated Loans shall be payable only on a date on which principal of the Loans is due and payable and on any such due date in an amount not greater than pro rata with amounts then due and payable hereunder (calculated in accordance with the respective amounts then outstanding among the Loans and the Additional Subordinated Loans), (C) if any cash sweep of principal of the Additional Subordinated Loans is required pursuant to the relevant Additional Subordinated Loan Documents, such cash sweep shall only be payable as of a Payment Date from Excess Cash in an amount not greater than pro rata with the Applicable Cash Sweep Payment then due and payable hereunder; provided that the Applicable Cash Sweep Percentage as of such Payment Date

shall be increased in accordance with the proviso in the definition of “Applicable Cash Sweep Percentage”, and (D) the scheduled maturity of the Additional Subordinated Loan shall not occur prior to the end of the Loan Period for the Loans.]

(f) trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business which are payable in accordance with customary practices that are not overdue by more than ninety (90) days of the date the respective goods are delivered or the respective services are rendered (unless subject to Permitted Contest Conditions);

(g) amounts payable under the Concession Agreement and the Toll Road Contracts (to the extent the same constitute Indebtedness);

(h) Permitted Investments (to the same constitute Indebtedness);

(i) Loans or advances from the Member or another Affiliate of the Borrower (which loans or advances from the Member or another Affiliate of the Borrower shall be unsecured only), fully subordinated in right of payment and liquidation to the prior payment in full of the Obligations (other than contingent Obligations) and the obligations under any Additional Subordinated Loan Documents;

(j) Indebtedness created in connection with any sale-leaseback transaction permitted by the terms of the Concession Agreement;

(k) (i) Indebtedness in respect of surety bonds or similar instruments required to be maintained under and pursuant to any Material ITR Contract, (ii) Indebtedness for financing working capital and (iii) other Indebtedness not exceeding \$40,000,000 at any one time outstanding;

(l) the issuance of senior unsecured fixed rate loans to Statewide or one or more designated third parties to satisfy the terms of or to fund the Put Election, as defined under and in accordance with the Plan (the “Put Election Loans”), which shall mature on or before the first anniversary of the Closing Date and accrue interest at 10% per annum; and

(m) the First Lien Loans and debt incurred under the First Lien Financing Documents and any replacement, restructuring, renewal, refinancing or extensions of such Indebtedness in accordance with the Collateral Agency Agreement.

Section 7.4 Liens.

The Borrower shall not create, incur, assume or permit to exist any Lien upon or with respect to any of its property, assets or revenues, whether now owned or hereafter acquired, except for Permitted Liens.

Section 7.5 Investments and Loans.

The Borrower shall not make any investment or capital contribution to, or purchase stocks, bonds, notes or other securities of, or advance any extension of credit to, or make any other investment in, any other Person, other than Permitted Investments, expenditures permitted by the Annual Operating Budget and investments permitted under the Concession Agreement.

Section 7.6 Distributions.

The Borrower shall not, directly or indirectly, (a) make or declare any dividend or other distribution (in cash, property or obligation) to the Member or otherwise on account of, any Membership Interest, or (b) make any purchase, redemption, retirement or acquisition of, any Membership Interest, (c) make any voluntary prepayment on, redeem, repurchase or defease any Indebtedness subordinated in right of payment of the Borrower except at its stated maturity or otherwise in accordance with the terms of the Collateral Agency Agreement governing such debt, or (d) make investments not otherwise permitted by the Financing Documents (clauses (a) - (d), collectively, "Restricted Payments") other than (i) Permitted Tax Distributions, (ii) Restricted Payments made with Distributable Cash so long as the Distribution Conditions have been met (or waived) and (iii) such sales or issuances of Capital Stock from the Borrower to Member.

Section 7.7 Transactions With Affiliates.

The Borrower shall not enter into any agreement or arrangement with a Statewide Entity or any Affiliate of the Borrower or a Statewide Entity unless (a) such transaction is entered into in the ordinary course of business, on terms no materially less favorable to the Borrower than the Borrower would obtain in a comparable arm's-length transaction with a Person that is not an Affiliate of the Borrower, (b) such arrangement is otherwise permitted hereby, (c) such transaction is between the Borrower and the Member; (d) at any time when the Operator is not the Borrower, but is an Affiliate of the Borrower, such transaction is between the Operator and the Borrower; (e) such transaction is described on Schedule 6.19 (including any amendments, restatements, supplements, replacements, extensions or other modifications thereof which are not materially adverse to the interests of the Lenders); and (f) such transaction is a Restructuring Transaction (including the payment of fees, costs and expenses in connection with the consummation thereof).

Section 7.8 Concession Agreement.

The Borrower shall not terminate, or assign, or materially amend or modify, or waive timely performance by the IFA of material covenants under, the Concession Agreement except:

(a) if the Borrower receives and applies a termination payment sufficient to prepay the Loans in full plus accrued and unpaid interest pursuant to Section 2.5(c)(i); or

(b) for any such termination, assignment, amendment, modification or waiver that would not reasonably be expected to result in a Material Adverse Effect; provided that notwithstanding anything to the contrary set forth in this clause (b), the Borrower shall be required to obtain the prior written consent of the Leasehold Mortgagee (as defined in the Concession Agreement) with respect to any such amendment or modification that would reasonably be expected to have a material adverse effect on the rights or interests of the

Leasehold Mortgagee or with respect to any voluntary surrender or termination of the Concession Agreement by the Borrower); or

(c) for any such termination, assignment, amendment, modification or waiver that is reasonably approved in writing by the Administrative Agent prior to its effective date.

Section 7.9 Hazardous Materials.

The Borrower shall not cause any Releases of Hazardous Materials at, on or under the Indiana Toll Road, except in compliance in all material respects with all Governmental Rules and required insurance policies, except to the extent that any failure to comply with any Governmental Rules and required insurance policies cannot reasonably be expected to result in a Material Adverse Effect.

Section 7.10 No Subsidiary.

The Borrower shall not create or acquire any subsidiary other than an Operator under the Concession Agreement (if necessary); provided that all of the membership interests and assets of the Operator shall be pledged to the Collateral Agent on behalf of the Secured Parties and the Operator has no outstanding Indebtedness or any Liens encumbering it, its membership interests or any of its material assets.

Section 7.11 Replacement Operator.

The Borrower shall not at any time following the Closing Date appoint a replacement Operator except pursuant to Section 3.3 of the Concession Agreement.

Section 7.12 Hedging Agreements.

Without the consent of the Majority Lenders (not to be unreasonably withheld, conditioned or delayed), the Borrower shall not enter into any Hedging Arrangements or other speculative transactions for more than 100% of the notional amount of any unswapped Loans or Additional Subordinated Loans for non-speculative reasons.

Section 7.13 No Payments to Lenders.

The Borrower shall not make any payments to procure consents from any Lender hereunder, unless the same consideration is offered to all such Lenders, as applicable, and paid to all such Lenders on a pro rata basis, as applicable, that so consent.

Section 7.14 No Amendments.

The Borrower shall not (a) enter into additional Material ITR Contracts or amend or otherwise modify, or grant any waiver or consent under, replace or supplement, any Material ITR Contract if taking any such actions would reasonably be expected to result in a Material Adverse Effect; provided, that, other than as contemplated in Article XIII of the Omnibus Services Agreement, Borrower shall not enter into any new Material ITR Contracts with an Affiliate or amend or otherwise modify, or grant any waiver or consent under, replace or

supplement, any Material ITR Contract with an Affiliate, other than in accordance with the limited liability company agreement of the Member and Section 7.7, or (b) amend or modify any Annual Operating Budget other than as permitted in Section 6.4 or as may be approved with Administrative Agent's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, and in such event the Borrower shall operate and maintain the Indiana Toll Road, or cause the Indiana Toll Road to be operated and maintained, within such Annual Operating Budget as so amended (subject to permitted variance).

ARTICLE VIII

EVENTS OF DEFAULT; REMEDIES

Section 8.1 Events of Default.

Any one or more of the following events shall constitute an Event of Default hereunder:

(a) the Borrower shall fail to (i) pay any principal or interest under any Financing Document on the date when due (whether by scheduled maturity, acceleration or otherwise), or (ii) pay any interest, fees or other amounts payable under any Financing Document when due, and in each case, such failure is not remedied within five (5) Business Days after the applicable due date therefor; or

(b) (i) the Borrower fails to comply with any covenant or agreement contained in Article 7 (other than those specified in sub-clauses (ii) and (iii) below); (ii) the Borrower fails to comply with any covenant or agreement contained in Section 7.3 or 7.4, unless such failure is remedied within fifteen (15) days after the Administrative Agent shall have provided written notice thereof to the Borrower; or (iii) the Borrower fails to comply with any covenant contained in Section 6.14, 7.5, 7.9, 7.12, 7.13, or 7.14, unless such failure is remedied within thirty (30) days after the Administrative Agent shall have provided written notice thereof to the Borrower;

(c) the Borrower shall fail to comply with any covenant or agreement under this Agreement or under any other Financing Document (other than those specified in subsections (a) or (b) above), unless such failure is remedied within thirty (30) days after the Administrative Agent shall have provided written notice thereof to the Borrower; provided, however, that so long as the Borrower as promptly as practicable commences action reasonably designed to cure such default and continues diligently to pursue such action and such default is cured within ninety (90) days after the expiration of the initial thirty (30) day grace period, no Event of Default shall result therefrom; or

(d) any representation or warranty made by the Borrower in any Financing Document to which it is a party, or in any certificate or document delivered to the Administrative Agent or Collateral Agent by the Borrower pursuant to any Financing Document, proves to have been incorrect or untrue in any material respect when made, unless the adverse effect of such misrepresentation is capable of remedy and is remedied within thirty (30) days after the Administrative Agent provides written notice thereof to the Borrower; or

(e) a Bankruptcy occurs with respect to the Borrower; or

(f) the Borrower abandons all or a material part of the Indiana Toll Road or its activities to operate or maintain the Indiana Toll Road, which abandonment shall be deemed to have occurred if the Borrower fails, without reasonable cause, to operate the Indiana Toll Road for ninety (90) consecutive days; or

(g) a final judgment or order is entered against the Borrower for the payment of money which is reasonably likely to result in a Material Adverse Effect and such judgment remains unpaid or unsatisfied without any procurement of a stay of execution within sixty (60) calendar days after the date of entry of judgment or is not adequately covered by insurance or a performance bond for a period of sixty (60) consecutive days after the date of entry of judgment; or

(h) any Financing Document to which the Borrower is a party ceases to be in full force and effect, except in accordance with its terms, or declared void by any Governmental Authority and such event continues for thirty (30) days after the Administrative Agent provides written notice thereof to the Borrower; or

(i) any of the Security Documents shall, except as the result solely of the acts or omissions of Administrative Agent or the Lenders or in accordance with its terms thereunder, cease to be in full force and effect or fail to provide the Collateral Agent for the benefit of the Secured Parties the Liens, or the priority and perfection thereof, intended to be created thereby, or the validity thereof or the applicability thereof to the Loans, the Notes or any other obligations purported to be secured or guaranteed thereby or any part thereof, shall be void or terminated, and such event continues for thirty (30) days after the earlier of the Administrative Agent giving written notice thereof to the Borrower and the Borrower obtaining Actual Knowledge of such event; or

(j) an ERISA Event has occurred which, when taken together with all other such ERISA Events for which liability of the Borrower is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect; or

(k) a "Concessionaire Default" shall have occurred under, and as defined in, the Concession Agreement or the Concession Agreement is terminated for any reason, unless Termination Damages or any other payment by IFA of the Toll Road Concession Value paid to Borrower sufficient to prepay the Loans in full plus accrued and unpaid interest are applied pursuant to Section 2.5(c) of this Agreement; or

(l) funds on deposit in any Project Account are used or withdrawn other than for the purposes specified or as expressly permitted in the Financing Documents, unless such is caused by an administrative error and is remedied within fifteen (15) Business Days; or

(m) a casualty, loss or damage event or a condemnation or nationalization event, in each case, with respect to all or substantially all of the Indiana Toll Road shall have occurred and any insurance or condemnation proceeds received by the Borrower are insufficient to repair, restore or replace such property and/or prepay the Loans in full plus accrued and unpaid interest as applied pursuant to Section 2.5(c) of this Agreement; or

(n) Borrower shall default for a period beyond any applicable grace period (i) in the payment of any principal, interest or other amount due under any agreement (other than the Financing Documents and the First Lien Financing Agreement) for borrowed money and the outstanding amounts payable under such defaulted agreements equals or exceeds \$40,000,000 in the aggregate, or (ii) in the performance of any obligation (other than a payment obligation) under any agreement (other than the Financing Documents and the First Lien Financing Agreement) for borrowed money, the outstanding amounts payable under such defaulted agreement equals or exceeds \$40,000,000 in the aggregate, and, solely with respect to this clause (ii), the holder of the obligations concerned has delivered to the Borrower a written notice accelerating such obligation; provided that this clause (n) shall not apply to (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; provided further that this clause (n) shall not apply if such failure is remedied or waived by the holders of such Indebtedness prior to any acceleration of the Loans pursuant to Section 8.2; or

(o) (i) (A) a Material ITR Contract ceases to be valid and binding and in full force and effect or is terminated prior to its expiration date or as otherwise permitted thereunder; or (B) any Governmental Approval necessary for operation and maintenance of the Indiana Toll Road in accordance with the Financing Documents, the Concession Agreement and any other Material ITR Contract is terminated, revoked or withdrawn or is not obtained, maintained, or complied with, and (ii) such failure, termination or non-compliance would reasonably be expected to result in a Material Adverse Effect; provided that such failure, termination or non-compliance is remedied within thirty (30) days after the earlier of the Administrative Agent giving written notice thereof to the Borrower and the Borrower obtaining Actual Knowledge of such event; provided, further, that so long as the Borrower as promptly as practicable commences action reasonably designed to cure such default and continues diligently to pursue such action and such default is cured within one hundred and fifty (150) days after the expiration of the initial thirty (30) day grace period, no Event of Default shall result therefrom.

Section 8.2 Remedies Upon Event of Default.

(a) If any Event of Default occurs and is continuing, then at the direction of the Majority Lenders and subject to the terms of the Collateral Agency Agreement, the Administrative Agent shall have the right to: (i) declare the entire unpaid principal amount of the Loans (together with all accrued and unpaid interest thereon and any other amount then due under the Financing Documents) and all other Secured Obligations to be forthwith due and payable, whereupon such amounts shall become and be forthwith due and payable, without presentment, demand, protest, or notice of any kind except as expressly provided herein, all of which are hereby expressly waived by the Borrower; and/or (ii) instruct the Collateral Agent to foreclose on any or all of the Collateral and/or proceed to enforce all remedies available to the Administrative Agent (or Collateral Agent) pursuant to the Financing Documents or otherwise as a matter of law. Notwithstanding the foregoing, if an Event of Default referred to in Section 8.1(e) shall occur with respect to the Borrower, automatically and without notice the actions described in clauses (i) and (ii) above shall be deemed to have occurred.

(b) No Financing Party may, except with the prior consent of the Majority Lenders and subject to the terms of the Collateral Agency Agreement, (i) enforce any security interest created or evidenced by any Security Document or require the Administrative Agent to enforce any such security interest; (ii) sue for or institute any creditor's process (including an injunction, garnishment, execution or levy, whether before or after judgment) in respect of any Secured Obligation (whether or not for the payment of money) owing to it under or in respect of any Financing Document or Hedging Agreement; (iii) take any step for the winding-up, administration of or dissolution of, or any insolvency proceeding in relation to, the Borrower, or for a voluntary arrangement, scheme of arrangement or other analogous step in relation to the Borrower; or (iv) apply for any order for an injunction or specific performance in respect of the Borrower in relation to any of the Financing Documents or any Hedging Agreement.

ARTICLE IX

ADMINISTRATIVE AGENT

Section 9.1 Appointment and Authorization of Administrative Agent.

Each Financing Party hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Financing Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Financing Document, together with such powers as are reasonably incidental thereto. The Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein and in any other Financing Documents. The Administrative Agent shall not be deemed to have any fiduciary relationship with any Financing Party or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Financing Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Financing Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Governmental Rule. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

Section 9.2 Delegation of Duties.

The Administrative Agent may execute any of its duties under this Agreement or any other Financing Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

Section 9.3 Liability of Administrative Agent.

None of the Administrative Agent, its officers, directors, employees, agents, attorneys-in-fact and Affiliates shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Financing Document or the transactions contemplated hereby (except for its own gross negligence, bad faith or willful misconduct in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Financing Party or Participant for any recital, statement, representation or warranty made by the Borrower or the Member or any officer thereof, contained herein or in any other Financing Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Financing Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Financing Document, or for any failure of the Borrower or the Member or any other party to any Financing Document to perform its obligations hereunder or thereunder. None of the Administrative Agent and any of its officers, directors, employees, agents, attorneys-in-fact and Affiliates shall be under any obligation to any Financing Party or Participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of this Agreement or any other Financing Document, or to inspect the properties, books or records of the Borrower or the Member or any Affiliate thereof.

Section 9.4 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Member), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under any Financing Document unless it shall first receive such advice or concurrence of the Majority Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Financing Parties against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Financing Document in accordance with a request or consent of the Majority Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

Section 9.5 Notice of Default.

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Financing Parties, unless the Administrative Agent shall have received written notice from a Financing Party or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default” or “notice of event of default.” The Administrative Agent will promptly notify the Financing Parties of its receipt of any such notice.

The Administrative Agent shall take such action with respect to such Default or Event of Default as may be directed by the Majority Lenders (or such other number or percentage of Lenders as shall be necessary under the circumstances as provided in Section 11.1) in accordance with the terms hereof; provided that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default of Event of Default as it shall deem advisable or in the best interest of the Financing Parties.

Section 9.6 Credit Decision; Disclosure of Information.

Each Financing Party acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representation or warranty to it, and that no act by the Administrative Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of the Borrower or the Member or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates to any Financing Party as to any matter, including whether the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates have disclosed material information in their possession. Each Financing Party represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Financing Party also represents that it will, independently and without reliance upon the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Financing Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower. Except for notices, reports and other documents expressly required to be furnished to the Financing Parties by the Administrative Agent herein or provided by the Borrower to the Administrative Agent for the behalf of the Financing Parties, the Administrative Agent shall not have any duty or responsibility to provide any Financing Party with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Borrower or any of its Affiliates which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

The Borrower irrevocably authorizes the Administrative Agent to disclose any information received from the Borrower in its capacity as agent to the Financing Parties.

Section 9.7 Indemnification.

To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent or any Indemnitee, each Financing Party severally agrees to pay to the Administrative Agent or such Indemnitee such Financing Party's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount. The undertaking in this Section shall survive the payment of all Secured Obligations and the resignation of the Administrative Agent in accordance with the terms hereof.

Section 9.8 Administrative Agent in Its Individual Capacity.

The Administrative Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrower and its Affiliates as though the Administrative Agent were not the Administrative Agent hereunder and without notice to or consent of the Financing Parties. The Financing Parties acknowledge that, pursuant to such activities, the Administrative Agent or its Affiliates may receive information regarding the Borrower or the Member or its respective Affiliates (including information that may be subject to confidentiality obligations in favor of the Borrower or the Member or such Affiliate) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them. With respect to its Loans or any interest under the Hedging Agreements, the Administrative Agent shall have the same rights and powers under this Agreement as any other Financing Party and may exercise such rights and powers as though it were not the Administrative Agent.

Section 9.9 Collateral Agency Agreement; Depositary Agreement.

Each Financing Party hereby authorizes the Administrative Agent and the Collateral Agent to execute and deliver the Collateral Agency Agreement and Depositary Agreement on behalf of such Financing Party and agrees that, upon such execution and delivery, such Financing Party shall be bound by the terms and provisions thereof as if such Financing Party was a signatory thereto. Each Financing Party further authorizes the Administrative Agent to exercise such powers and discretion under each such agreement as are delegated to the Administrative Agent by the terms thereof, together with such powers and discretion as are reasonably incidental or related thereto. As to matters not expressly provided for in the Collateral Agency Agreement and the Depositary Agreement, the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Majority Lenders; provided that the Administrative Agent shall not be required to take any action that exposes it to personal liability or that is contrary to the Financing Documents or applicable Governmental Rules. Upon request by the Borrower in writing, the Administrative Agent hereby agrees to provide promptly the notices contemplated in Section 2.05 of the Membership Pledge Agreement, Section 2.08 of the Security Agreement and the last paragraph of the section entitled "The Mortgaged Property" in the Leasehold Mortgage, and similar notices required under the Financing Documents.

Section 9.10 Successor Administrative Agent.

The Administrative Agent may resign as Administrative Agent upon 30 days' notice to the Lenders and the Borrower and may be removed with or without cause by the Majority Lenders upon 30 days' notice to the Administrative Agent, the Lenders and the Borrower; provided that such resignation or removal shall not be effective until a successor Administrative Agent is appointed as provided below or as otherwise provided below). If the Administrative Agent resigns or is removed under this Agreement, the Majority Lenders shall appoint a successor Administrative Agent hereunder who shall be a commercial bank or trust company reasonably acceptable to the Borrower (which acceptance of the Borrower shall not be unreasonably withheld or delayed and which acceptance shall not be required if an Event of Default shall have occurred and is then continuing). If no successor administrative agent is appointed prior to the effective date of the resignation or removal of the Administrative Agent, the Administrative Agent may appoint, after consulting with the Lenders and with the approval of the Borrower (to the extent required above), a successor administrative agent from among the Lenders. Upon the acceptance of its appointment as successor administrative agent hereunder the Person acting as such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term "Administrative Agent" shall mean such successor administrative agent, and the retiring Administrative Agent's appointment, powers and duties as Administrative Agent shall be terminated. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of Article IX and Section 11.3 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement. If no successor administrative agent has accepted appointment as Administrative Agent by the date which is 30 days following a retiring Administrative Agent's notice of resignation or the Majority Lenders' notice of removal, the retiring Administrative Agent's resignation or removal shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Majority Lenders appoint a successor agent as provided for above.

Section 9.11 Swap Registry.

The Administrative Agent agrees to maintain at one of its offices a record (as updated, the "Swap Register") identifying (i) each Hedging Bank and the Hedging Agreement(s) to which each Hedging Bank is a party thereto, and (ii) the initial notional amount of exposure held by each Hedging Bank under each Hedging Agreement or to the extent any Hedging Agreement has been terminated, the Hedging Termination Obligations under each of such Hedging Agreement, of which the Administrative Agent has actual knowledge. The entries in the Swap Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent, the Lenders and each other Financing Party may treat each Person whose name is recorded in the Swap Register pursuant to the terms hereof as a Hedging Bank for all purposes of the Financing Documents. The Swap Register shall be available for inspection by the Borrower and any Financing Party, at any reasonable time and from time to time upon reasonable prior notice.

The Administrative Agent shall be deemed to have "actual knowledge" of the existence of a Hedging Agreement only if (a) such Hedging Agreement is listed in the Swap Register or (b) thereafter, it receives a notice substantially in the form of Exhibit O hereto (the "Hedging Claim Notice") that is executed and delivered by the applicable Hedging Bank and its assignees identifying the Hedging Agreement in reasonable detail, and either (i) setting forth the amount of

any Hedging Termination Obligations then due to such Hedging Bank or (ii) as to any Hedging Bank that has not declared an “Early Termination Date” (within the meaning of the ISDA Master Agreement) and terminated all outstanding transactions under the applicable Hedge Agreement, the amount of any Hedging Termination Obligations that would become due to such Hedging Bank if such action were taken. The amounts set forth in the Hedging Claim Notice or in the Swap Register shall be referred to as the “Hedging Claims.” Upon receipt of any properly completed Hedging Claim Notice, the amounts contained in the Swap Register shall be updated as soon as practical by the Administrative Agent. The information concerning the holder of record of a Hedging Claim as set forth in the Swap Register shall be conclusive and binding on the Financing Parties (absent manifest error) for purposes of (a) determining direction or instruction by Majority Lenders to the Administrative Agent under this Agreement and (b) having the Paying Agent (as defined below) make any distributions to holders of Hedging Claims.

If a Hedging Bank assigns or otherwise transfers any part of its rights or obligations under a Hedging Agreement, then promptly following such transfer, the assignee of such transaction shall provide the Administrative Agent (with a copy to the Borrower) with a Hedging Claim Notice before the Administrative Agent shall be deemed to have actual knowledge of the current parties to a Hedging Agreement. The Administrative Agent and the Paying Agent (as defined below) shall be entitled to rely upon the Hedging Claim amounts set forth in the foregoing Hedging Claim Notice as the amount of the outstanding Hedging Claims owed to such assignee in respect of the applicable Hedging Agreement. The Administrative Agent will update the names, amounts and other details in the Swap Register in accordance with such Hedging Claim Notice and act as a paying agent (the “Paying Agent”) in respect of the Hedging Claims due to the applicable Hedging Bank on the Swap Register. Any funds, proceeds or amounts due in respect of any Hedging Claims shall be paid to the Paying Agent, which shall be distributed by the Paying Agent as soon as practical in accordance with the Swap Register and the applicable “waterfall” and indemnification and reimbursement rights provided to the Administrative Agent under this Agreement. Unless it has actual knowledge to the contrary pursuant to receipt of a duly executed Hedging Claim Notice, the Administrative Agent in acting in such capacity as Paying Agent under the Financing Documents shall be entitled to assume that no Hedging Agreements are in existence or outstanding between any Financing Party and the Borrower other than as listed in the Swap Register.

The Administrative Agent shall have no liability to any Person for any information in connection with the status of any Hedging Agreement, the parties that are owed amounts thereunder, or the amounts then due or owing under a Hedging Agreement (other than, to the extent applicable, if any, as set forth in Section 9.3). The Administrative Agent is not required to perform any diligence or ascertain the correctness of any information given to it pursuant to this Section 9.11, and the Administrative Agent shall not have or be deemed to have any fiduciary relationship with any Financing Party or assignee thereof, and no implied covenants, functions, responsibilities, duties, obligations or liabilities in connection with the maintenance of the Swap Register. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon the statement of facts presented to it in any Hedging Claim Notice delivered to it under this Section. For avoidance of doubt, nothing contain in this Section shall impair any of the protections provided to the Administrative Agent under Sections 9.3 and 9.4.

Section 9.12 Execution of Security Documents. The Lenders hereby empower and authorize the Administrative Agent to execute and deliver, and to instruct the Collateral Agent to execute and deliver, to the Borrower on their behalf the Security Documents, all related financing statements and any financing statements, agreements, documents or instruments that are necessary or appropriate to effect the purposes of the Security Documents.

Section 9.13 Collateral Release.

(a) Upon the payment and performance in full of the all Secured Obligations (other than contingent Obligations) to be paid under the Financing Documents, the Administrative Agent shall deliver a written signed notice in accordance with the second sentence of Section 2.08 of the Security Agreement and the second sentence of Section 2.05 of the Member Pledge Agreement.

(b) The Lenders hereby empower and authorize the Administrative Agent to execute and deliver, and to instruct the Collateral Agent to execute and deliver, to the Borrower on their behalf any agreements, documents or instruments that are necessary or appropriate to effect any releases of Collateral (i) sold, leased or disposed of in compliance Section 7.1 or any other Financing Document, or (ii) that the Majority Lenders have approved in writing by the terms hereof or of any other Financing Document or otherwise.

ARTICLE X

[INTENTIONALLY OMITTED.]

ARTICLE XI

MISCELLANEOUS

Section 11.1 Amendments; Waivers.

(a) Subject to Section 5.03 of the Collateral Agency Agreement, no amendment or waiver of any provision of this Agreement or any other Financing Document, and no consent to any departure by the Borrower or the Member therefrom, shall be effective unless in writing signed by the Majority Lenders and the Borrower or the Member, as the case may be; provided, that no such amendment, waiver or consent shall change any provision of this Section or the definition of "Majority Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; provided, further that (i) no amendment, waiver or consent shall, without the written consent of the Administrative Agent in addition to the Lenders required above, adversely affect the rights or duties of the Administrative Agent under this Agreement or any other Financing Document, (ii) no separate fee agreement between the Borrower and the Administrative Agent in its capacity as such may be amended or modified by such parties except in accordance with the terms thereof, (iii) neither the Collateral Agency Agreement nor the Depositary Agreement may be amended or modified except in accordance with the terms thereof and (iv) no amendment, waiver or consent, solely after an Event of Default has occurred is continuing under Section

8.1(a)(ii), shall, without the consent of each Hedging Bank (to the extent there exists any Hedging Agreements) directly affected thereby, in addition to the Lenders above, affect the rights or duties of such Hedging Bank under the Security Documents with respect to Collateral.

(b) No failure or delay by the Administrative Agent, or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall have been provided in accordance with paragraph (a) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time.

(c) If, in connection with any proposed change, waiver, consent or termination of or to any of the provisions of this Agreement as contemplated by clauses (i) through (vi), inclusive, of the first proviso to Section 11.1(a), the consent of the Majority Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then the Borrower shall have the right, so long as all non-consenting Lenders whose individual consent is required are treated as described in either clause (A) or (B) below, to either (A) replace each such non-consenting Lender or Lenders with one or more Eligible Assignees approved by the Administrative Agent (such approval not to be unreasonably withheld) so long as at the time of such replacement, each such Eligible Assignee consents to the proposed change, waiver, consent or termination or (B) repay the relevant Loans of such Lender which gave rise to the need to obtain such Lender's consent; provided that, unless the Loans which are repaid pursuant to the preceding clause (B) are immediately replaced in full at such time through the addition of new Lenders and/or outstanding Loans of existing Lenders (who in each case must specifically consent thereto), then in the case of any action pursuant to preceding clause (B), the Majority Lenders (determined after giving effect to the proposed action) shall specifically consent thereto.

(d) Notwithstanding anything in this Agreement or any other Finance Document to the contrary, (i) no Lender consent is required to effect any amendment or supplement to the Collateral Agency Agreement or other intercreditor agreement or arrangement permitted under this Agreement that is for the purpose of adding the holders of any permitted Indebtedness as expressly contemplated by the terms of the Collateral Agency Agreement or such other intercreditor agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent in consultation with the Borrower, are required to effectuate the foregoing; provided that such other changes are not adverse, in any material respect, to the interests of the Lenders taken as a whole) and as otherwise permitted under this Agreement; (ii) any provision of this Agreement or any other Finance Document may be amended by an agreement in writing entered

into by the Borrower and the Administrative Agent to (A) cure any ambiguity, omission, mistake, defect or inconsistency (as reasonably determined by the Administrative Agent and the Borrower) or (B) to effect administrative changes of a technical or immaterial nature and such amendment shall be deemed approved by the Lenders if the Lenders shall have received at least five Business Days' prior written notice of such change and the Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Majority Lenders stating that the Majority Lenders object to such amendment; and (iii) guarantees, collateral documents and related documents executed by the Borrower or the Member in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with any other Finance Document, entered into, amended, supplemented or waived, without the consent of any other Person, by the Borrower or Member, as applicable, and the Administrative Agent or the Collateral Agent in its or their respective sole discretion, to (A) effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Finance Parties, (B) as required by local law or advice of counsel to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable requirements of law, or (C) to cure ambiguities, omissions, mistakes or defects (as reasonably determined by the Administrative Agent and the Borrower) or to cause such guarantee, collateral security document or other document to be consistent with this Agreement and the other Finance Documents.

Section 11.2 Notices.

(a) Unless otherwise expressly provided herein, (and subject to paragraphs (b) and (c) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower:

[ITR Concession Company LLC],
205 North Michigan Avenue, Suite 2510
Chicago, Illinois 60601
Attention: Chief Executive Officer]
Telephone: [_____]]
Facsimile: [_____]]

(ii) if to the Administrative Agent:

[_____]]
[_____]]
[_____]]
Attention: [_____]]
Telephone: [_____]]
Facsimile: [_____]]

(iii) if to any Lender, to it at the address set forth opposite its name on the signature pages hereto.

(b) Financing Documents may be transmitted and/or signed by facsimile or other electronic means, including by “.pdf” attached to an email. The effectiveness of any such documents and signatures shall, subject to applicable Governmental Rules, have the same force and effect as manually-signed originals and shall be binding on the parties thereto. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document, “.pdf” or signature.

(c) [Reserved.]

(d) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and, if given in accordance with this Section, shall be effective (i) on the date of personal delivery (if by personal delivery), (ii) on the date of transmission, as confirmed by a printed confirmation of successful transmission if by facsimile transmission or if by electronic transmission, as confirmed by sender’s receipt of acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), (iii) if sent from and to the United States, on the Business Day following deposit with a nationally recognized overnight courier or shipping service (if by nationally recognized overnight courier or shipping service), (iv) if sent from the United States abroad or if sent from outside the United States to the United States, on the third (3rd) Business Day following deposit with an internationally recognized overnight courier or shipping service (if by internationally recognized courier or shipping service), (v) if sent from and to the United States, on the third (3rd) Business Day after mailing (if by registered mail) or (vi) if sent from the United States abroad or if sent from outside the United States to the United States, on the fifth (5th) Business Day (if by registered mail).

Section 11.3 Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay all reasonable invoiced costs (including the previously agreed fees of any independent advisors and the agreed fees, charges and disbursements (and limited thereto) of one counsel acting for the Administrative Agent and of one counsel acting for the Collateral Agent) and reasonable invoiced out-of-pocket expenses incurred by the Administrative Agent and the Collateral Agent in connection with (i) the preparation, negotiation and execution of this Agreement and the other Financing Documents and any amendment, modification or waiver of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) in connection with the enforcement of the rights and remedies of the Secured Parties under this Agreement or the other Financing Documents, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Secured Obligations. Other than the fees and expenses of any independent advisors of the Lenders for which the Borrower shall be responsible as described in this clause (a) and under any other Financing Document, the

Borrower shall not be responsible for any other costs relating to the independent advisors, experts and consultants of the Secured Parties.

(b) Subject to the limits set forth in clause (a) above and Section 3.6, the Borrower shall indemnify the Administrative Agent and each Lender, and each of the officers, directors, employees, agents, and advisors of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable and documented fees, charges and disbursements of any counsel for any Indemnatee, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (i) the execution or delivery of any Financing Document or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the transactions contemplated thereby, (ii) any Loan, (iii) any actual or alleged presence or Release of Hazardous Materials on or from the Indiana Toll Road or any property owned or operated by the Borrower, any actual or alleged violation of Environmental Law by the Borrower related to the Indiana Toll Road or any Environmental Claim related to the Indiana Toll Road, or (iv) any actual claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnatee, and provided, further, that this Section shall not apply to matters covered by Section 3.1 or 3.3.

(c) To the extent permitted by applicable law, no party to this Agreement shall assert, and hereby waives, any claim against any other party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Financing Document, or any agreement or instrument contemplated hereby or arising out of the activities in connection herewith or therewith.

(d) All amounts due under this Section shall be payable not later than thirty (30) Business Days after written demand therefor.

(e) The agreements in this Section shall survive the repayment of all other Secured Obligations.

Section 11.4 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby,

Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Indemnitees referred to in Section 11.3(b) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Any Lender may assign to one or more Eligible Assignees with the prior written consents of the Borrower and the Administrative Agent (such consents not to be unreasonably withheld) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it); provided that (A) no approval shall be required for any assignment to an assignee that is a Lender immediately prior to giving effect to such assignment, (B) no approval of the Borrower shall be required if an of Default has occurred and is continuing, (C) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Loans, the amount of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption Agreement with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$10,000,000 and shall be an integral multiple of \$1,000,000; unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents; (D) each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Lender's rights and obligations under this Agreement; (E) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption Agreement, together with a processing and recordation fee of \$3,500; (F) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and (G) the Borrower shall not be liable for the payment of any of the costs described in Section 3.1 or 3.3 that result from any such assignment to the extent that such costs, as of the date on which the assignment is made to such assignee, are in excess of the comparable costs that were required to be paid by the Borrower to the assigning Lender as of such date (prior to giving effect to such assignment).

(ii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption Agreement the assignee thereunder shall be a party hereto and, to the extent of the interest assigned pursuant to such Assignment and Assumption Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned pursuant to such Assignment and Assumption Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.1, 3.3 (each only as to costs relating to the period prior to such assignment) and 11.3). Upon request, the Borrower (at its expense) shall promptly execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iii) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each

Assignment and Assumption Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders and principal amount and stated interest of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. This Section shall be construed so that the Loans and Obligations are at all times maintained in registered form within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any successor provisions).

(iv) Upon its receipt of a duly completed Assignment and Assumption Agreement executed by an assigning Lender and an Eligible Assignee, the assignee’s completed Administrative Questionnaire (unless the assignee is already a Lender hereunder) and the processing and recordation fee referred to in paragraph (b)(i) of this Section, the Administrative Agent shall accept such Assignment and Assumption Agreement and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(v) To the extent that an assignment of all or any portion of the Loans of any Lender pursuant to this Agreement shall, at the time of such assignment, result in an increase in costs from those being charged by the assigning Lender prior to such assignment, then the Borrower shall not be required to pay such increased costs.

(vi) Any Lender may, without the consent of or notice to the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (each, a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 11.1(a) that affects such Participant.

(vii) Subject to Section 11.4(b)(vii), a Participant shall be entitled to the benefits of Section 3.1 and 3.3 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.4(b), except that a Participant shall not be entitled to receive any greater payment under Section 3.1 or 3.3 with respect to any participation than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

(viii) Such Participant agrees to be subject to the provisions of Section 3.6 and Section 11.1(c) as if it were an assignee under paragraph (b) of this Section. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.6 and Section 11.1(c) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.9 as though it were a Lender.

(ix) Each Lender that sells a participation, acting solely for this purpose as an agent of the Borrower, shall maintain a register on which it records the name and address of each Participant and the principal amounts (and any stated interest) of each Participant's interest in the Loans (each, a "Participant Register" and as may be updated from time to time to reflect any subsequent sales of participations). The entries in the Participant Register shall be conclusive absent manifest error, and any Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. Any such Participant Register shall be available for inspection by the Borrower and any Agent at any reasonable time and from time to time upon reasonable prior notice. This Section shall be construed so that a Participant's interest in any Loans or other Obligations is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(c) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 11.5 Confidentiality.

Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors on a "need to know" basis (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed

to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (in which case the Administrative Agent or Lender shall give the Borrower prompt notice thereof to the extent permitted by the applicable laws), (d) to any other party to this Agreement or any other Financing Document, (e) in connection with the exercise of any remedies hereunder or under any other Financing Document or any suit, action or proceeding relating to this Agreement or any other Financing Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section (in favor of the Borrower), to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or its advisers, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations permitted hereunder, (g) with the written consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or other confidential obligations owed to the Borrower or (ii) becomes available to the Administrative Agent, or any Lender on a nonconfidential basis from a source other than the Borrower not subject to any confidentiality obligation owed to the Borrower. For the purposes of this Section, “Information” means all information received from, or on behalf of, the Borrower or its related parties relating to the Borrower or its business. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 11.6 Limitation on Interest.

Notwithstanding anything to the contrary contained in any Financing Document, the interest and fees paid or agreed to be paid under the Financing Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Governmental Rule (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest or a fee in an amount that exceeds the Maximum Rate, the excessive interest or fee shall be applied to the principal of the outstanding Secured Obligations or, if it exceeds the unpaid principal, refunded to Borrower. In determining whether the interest or a fee contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Governmental Rule, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Secured Obligations.

Section 11.7 Right of Setoff.

If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final (other than payroll, tax or escrow accounts) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower (but excluding all payroll, trust and tax withholding accounts) against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective

of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmaturred. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

Section 11.8 Advisers.

(a) Any agreement or arrangement by the Administrative Agent with an Adviser for services that are to be paid by the Borrower in accordance with the provisions hereof shall, unless an Event of Default has occurred and is continuing, be subject to the prior approval of the Borrower (such approval not to be unreasonably withheld). Unless an Event of Default has occurred and is continuing, the Administrative Agent shall request each such Adviser to provide the Borrower with its proposed scope of work and proposed budget therefor.

(b) The Administrative Agent (acting at the direction of the Majority Lenders) may, in their discretion, remove from time to time any one or more of the Advisers and appoint replacements therefor, subject, unless an Event of Default has occurred and is continuing, to the prior approval of the Borrower (such approval not to be unreasonably withheld).

Section 11.9 Nonliability of Lenders.

The Borrower acknowledges and agrees that:

(a) Any inspections of any property of the Borrower made by or through the Administrative Agent or Lenders are for purposes of administration of the Financing Documents only, and the Borrower is not entitled to rely upon the same (whether or not such inspections are at the expense of Borrower);

(b) By accepting or approving anything required to be observed, performed, fulfilled or given to the Administrative Agent or Lenders pursuant to the Financing Documents, neither the Administrative Agent nor any Lender shall be deemed to have warranted or represented the commercial merits or technical feasibility of the Indiana Toll Road, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by the Administrative Agent or any Lender;

(c) The relationship between the Borrower and the Administrative Agent and Lenders is, and shall at all times remain, solely that of borrowers and lenders; neither the Administrative Agent nor any Lender shall under any circumstance be construed to be partners or joint venturers of the Borrower or its Affiliates; neither the Administrative Agent nor any Lender shall under any circumstance be deemed to be in a relationship of confidence or trust or a fiduciary relationship with the Borrower or its Affiliates, or to owe any fiduciary duty to Borrower or its Affiliates; neither the Administrative Agent nor the Lenders undertake or assume any responsibility or duty to the Borrower or its Affiliates to select, review, inspect, supervise, pass judgment upon or inform the Borrower or its Affiliates of any matter in connection with the Indiana Toll Road or the operations of the Borrower or its Affiliates; the Borrower and its Affiliates shall rely entirely upon their own judgment with respect to such matters; and any review, inspection, supervision, exercise of judgment or supply or information undertaken or assumed by the Administrative Agent or any Lender in connection with such matters is solely for

the protection of the Administrative Agent and each Lender and neither the Borrower nor any other Person is entitled to rely thereon; and

(d) Neither the Administrative Agent nor any Lender shall be responsible or liable to any Person for any loss, damage, liability or claim of any kind relating to injury or death to Persons or damage to property caused by the actions, inaction or negligence of the Borrower and/or its Affiliates.

Section 11.10 Limitation of Recourse.

There shall be full recourse to the Borrower and all of the assets and properties for the liabilities of the Borrower under this Agreement, any Notes and the other Financing Documents, but, subject to the provisions of the following sentence, in no event shall any Affiliates of the Borrower (collectively, the “Non-Recourse Parties”), or any officer, director or holder of any interest in the Borrower or any Non-Recourse Party, be personally liable or obligated for such liabilities and obligations of the Borrower, except that the forgoing shall not limit the obligations or liabilities of the Member under the Member Pledge Agreement. Nothing herein contained shall limit or be construed to (i) release any Non-Recourse Party from liability for its fraudulent actions or misappropriation of funds or willful misconduct, or from any of its obligations or liabilities under any agreement executed by such Non-Recourse Party in its individual capacity in connection with any Financing Document, (ii) limit or impair the exercise of remedies with respect to any Membership Interests or other Collateral, or (iii) require the Administrative Agent or any Lender to indemnify the Non-Recourse Parties for liabilities or claims that may be independently asserted by third parties against them. The provisions of this Section shall survive the termination of this Agreement.

Section 11.11 Intentionally Omitted.

Section 11.12 Integration.

This Agreement, together with the other Financing Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict between the provisions of this Agreement and those of any other Financing Document, the provisions of this Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of the Administrative Agent or the Lenders in any other Financing Document shall not be deemed a conflict with this Agreement. Each Financing Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

Section 11.13 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and any Notes.

Section 11.14 Governing Law.

This Agreement shall be governed by and construed in accordance with the law of the State of New York applicable to contracts made and to be performed in the State of New York.

Section 11.15 Submission To Jurisdiction; WAIVER OF JURY TRIAL.

(a) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or its properties in the courts of any jurisdiction.

(b) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (a) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 11.2. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(d) EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES TO THE EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY FINANCING DOCUMENT OR THE TRANSACTION CONTEMPLATED HEREBY OR THEREBY (WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE). EACH PARTY HERETO ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

Section 11.16 Severability.

If any provision of this Agreement or the other Financing Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Financing Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or

unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 11.17 Headings.

The table of contents and the headings of Articles, Sections, Exhibits and Schedules have been included herein for convenience of reference only, are not part of this Agreement, and shall not be taken into consideration in interpreting this Agreement.

Section 11.18 Counterparts.

This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be maintained by the Borrower and the Administrative Agent. This Agreement may be executed and delivered by electronic transmission with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

[ITR CONCESSION COMPANY LLC]

By: _____
Name:
Title:

By: _____
Name:
Title:

[_____] ,
as the Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

[_____], as Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

Notice Address:

[_____]
[_____]
Attn: [_____]
Phone: [_____]
Fax: [_____]

[_____], as Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

Notice Address:

[_____]
[_____]
Attn: [_____]
Phone: [_____]
Fax: [_____]

[_____], as Lender

By: _____

Name:

Title:

By: _____

Name:

Title:

Notice Address:

[_____]

[_____]

Attn: [_____]

Phone: [_____]

Fax: [_____]

[_____], as Lender

By: _____

Name:

Title:

By: _____

Name:

Title:

Notice Address:

[_____]

[_____]

Attn: [_____]

Phone: [_____]

Fax: [_____]

[_____], as Lender

By: _____

Name:

Title:

By: _____

Name:

Title:

Notice Address:

[_____]

[_____]

Attn: [_____]

Phone: [_____]

Fax: [_____]

[_____], as Lender

By: _____

Name:

Title:

By: _____

Name:

Title:

Notice Address:

[_____]

[_____]

Attn: [_____]

Phone: [_____]

Fax: [_____]

APPENDIX A

DEFINITIONS AND RULES OF INTERPRETATION

Defined Terms

“Actual Knowledge” means, with respect to any Person and any matter, the earlier of actual knowledge of, or receipt of written notice by, an officer of such Person whose responsibilities include the administration of the specific transaction contemplated by the Financing Documents or the Concession Agreement for which this definition is referenced.

“Additional Subordinated Lenders” means those Persons that have extended the Additional Subordinated Loans to the Borrower pursuant to Additional Subordinated Loan Documents and their respective successors and assigns, in each case, as such parties may be represented by one or more agents or trustees pursuant to the terms of their respective Additional Subordinated Loan Document.

“Additional Subordinated Loan Documents” means any agreements hereafter entered into by the Borrower with one or more lending institutions providing for Additional Subordinated Loans (an “Additional Subordinated Loan Agreement”), and any other documents and/or instruments evidencing, documenting, securing or otherwise relating to any or all of the obligations relating to the applicable Additional Subordinated Loans, all as the same may from time to time be amended, modified, extended, renewed and/or restated.

“Additional Subordinated Loans” has the meaning specified in Section 7.3(e) of this Agreement.

“Administrative Agent” means [_____], in its capacity as administrative agent for the Lenders under the Financing Documents, and any successor or replacement administrative agent appointed pursuant to the terms of this Agreement.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Advisers” means, collectively, the Insurance Consultant, the Legal Adviser, the Model Auditor, the Technical Adviser, the Traffic Adviser, and any other adviser to the Administrative Agent and the Lenders as may be appointed in accordance with the provisions of this Agreement.

“Affiliate” of a particular Person means, at any time, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person. For purposes of this definition, “control” when used with respect to any particular Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities or partnership or other ownership interests, or by contract, and the terms “controlling” “controlled by” and “under common control with” have meanings correlative to the foregoing.

“Agreement” has the meaning specified in the preamble hereto.

“Annual Operating Budget” means the annual operating budget submitted by the Borrower to the Administrative Agent pursuant to Section 6.4(a) of this Agreement and approved in accordance with the terms thereof.

“Applicable Cash Rate” means, for each day, the following rate per annum with respect to a Loan: 6.00%.

“Applicable Cash Sweep Percentage” means, as of any Payment Date:

(a) if such Payment Date occurs during the period from the Closing Date to and including the second (2nd) anniversary of the Closing Date, 25%; and

(b) if such Payment Date occurs during the period from but excluding the second (2nd) anniversary of the Closing Date until the Loans have been paid in full, including accrued interest and fees, 50%;

provided that if the Cash Sweep in respect of a Payment Date is being paid pro rata to the prepayment of Loans and Additional Subordinated Loans, the Applicable Cash Sweep Percentage as of such Payment Date shall be (i) the applicable percentage specified above multiplied by (ii) a fraction the numerator of which is the aggregate amount of the Loans outstanding and Additional Subordinated Loans outstanding and the denominator of which is the aggregate amount of the Loans outstanding.

“Applicable Percentage” means, at any time, an amount expressed as a percentage equal to a Financing Party’s Outstanding Exposure divided by the aggregate then Outstanding Exposure of all Financing Parties.

“Applicable PIK Rate” means, for each day, the following rate per annum with respect to a Loan: 8.00%.

“Assignment and Assumption Agreement” means an Assignment and Assumption Agreement in the form of Exhibit N hereto appropriately completed.

“Authorized Officer” means, (a) when used with respect to the Borrower, the president, the chief executive officer, the controller, the secretary, the treasurer, the chief operating officer or the chief financial officer of the Borrower (or an officer of the Member or the Borrower’s manager with the same authority to act on behalf of the Borrower), a list of whom shall be provided by the Borrower to the Administrative Agent prior to the Closing Date (which list may be amended by the Borrower from time to time in writing); and (b) when used with respect to the Collateral Agent, any officer within the corporate trust department of the Collateral Agent, including any vice president, assistant vice president, treasurer, assistant treasurer, trust officer or any other officer of the Collateral Agent who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of the Collateral Agency Agreement. Any document or certificate delivered under the Financing Documents that is signed by an Authorized Officer shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company or other action on the part of the relevant Person,

and such Authorized Officer shall be conclusively presumed to have acted on behalf of such Person.

“Bankruptcy” means (a) commencement by the Borrower of any case or other proceeding (i) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (ii) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or seeking to make a general assignment for the benefit of its creditors; or (b) commencement against the Borrower of any case or other proceeding of a nature referred to in clause (a) above which (i) results in the entry of an order for relief or any such adjudication or appointment or (ii) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (c) commencement against the Borrower of any case or other proceeding seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (d) the Borrower shall take any corporate action to effectuate any of the acts set forth in clause (a), (b) or (c) above; or (e) the Borrower shall admit in writing its general inability to pay its debts as they become due.

“Bankruptcy Cases” has the meaning specified in the recitals hereto.

“Bankruptcy Court” has the meaning specified in the recitals hereto.

“Base Case Model” means the financial model approved by the Model Auditor forecasting the revenues and expenses relating to the Indiana Toll Road for time periods and based upon assumptions and methodology provided by the Borrower to the Administrative Agent prior to the Closing Date.

“Base Rate” means, for any day, a rate per annum equal to the greater of (a) the Prime Rate or (b) the Federal Funds Rate in effect on such day plus 1/2 of 1%. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Rate, respectively.

“Borrower” has the meaning specified in the preamble to this Agreement.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that when used in connection with a Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Capital Expenditures” means expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one year which are capitalized in accordance with GAAP.

“Capital Lease” means any lease which in accordance with GAAP is required to be capitalized on the balance sheet of the Borrower, and the amount of these obligations shall be the amount so capitalized.

“Capital Project” means (a) any capital improvements, including, without limitation, Major Maintenance and rehabilitation work relating to the Indiana Toll Road proposed by the Borrower and, to the extent required pursuant to Section 6.3(b), reasonably approved by the Administrative Agent (upon consultation with the Technical Adviser) or (b) any project to repair or restore any loss or damage to the Indiana Toll Road pursuant to Section 6.17 of this Agreement for which the aggregate cost is expected to exceed \$5,000,000.

“Cash Sweep” means, as of any Payment Date, the Applicable Cash Sweep Percentage for such Payment Date multiplied by the applicable Excess Cash as of such Payment Date.

“Change in Law” means (a) the adoption of any Governmental Rule after the date of this Agreement, (b) any change in any Governmental Rule or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 3.3(b) of this Agreement, by any lending office of such Lender or by such Lender’s holding company, if any) with any request, guideline or directive of any applicable Governmental Authority made or issued after the date of this Agreement; provided, that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (A) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change of Law” in all instances under this Agreement and the other Financing Documents, regardless of the date enacted, adopted or issued (even if such date is prior to the date hereof).

“Cintra” means Cintra Infraestructuras, S.A.U.

“Closing Date” means the date on which (a) the conditions set forth in Section 4.1 of this Agreement have been satisfied or waived, and (b) the Borrower has assumed the Concession Agreement with the IFA’s written consent.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

“Collateral” means all real and personal property which is subject to the security interests or Liens granted by the Borrower under any of the Security Documents, including (a) the “Collateral”, as defined in Section 2.01 of the Security Agreement; (b) the Membership Interests, including the Proceeds thereof; and (c) the “Property”, as defined in the Leasehold Mortgage.

“Collateral Agency Agreement” means that certain Collateral Agency and Intercreditor Agreement, dated as of the Closing Date, among the Borrower, the Administrative Agent, the First Lien Administrative Agent, the Collateral Agent and the First Lien Collateral Agent.

“Collateral Agent” means [_____], or any Person appointed to replace such Person with the authority to exercise the rights and duties of the Collateral Agent under the Security Documents. The Collateral Agent shall at all times be an “Institutional Lender” as such term is defined in the Concession Agreement.

“Collections Account” means bank account no. [_____] established by the Borrower with [_____] or any replacement Account therefor established pursuant to the applicable Control Agreement.

“Concession Agreement” has the meaning assigned to such term in Recital A of this Agreement.

“Concessionaire Interest” has the meaning specified in the Concession Agreement.

“Confirmation of Interest Period” has the meaning specified in Section 2.1(c) of this Agreement.

“Consent and Agreement” means each of (a) the IFA Consent, (b) the Service Providers Consent, and (c) any consent and agreement entered into by any Material Project Participant with respect to a Material ITR Contract pursuant to the requirements of this Agreement.

“Contest Claim” means any Tax, assessment, fee, government charge or levy or any Lien or other claim or payment of any nature.

“Control Account Bank” means [_____] or any successor or assign.

“Control Agreement” means each of (a) the control agreement, dated [_____], among the Borrower, the Collateral Agent and [_____], with respect to the Collections Account, (b) the control agreement, dated [_____], among the Borrower, the Collateral Agent and [_____] with respect to the Reimbursement Account and (c) each control agreement substantially in the form of Exhibit H of this Agreement, with a successor Control Account Bank.

“Debt Service Coverage Ratio” means, on each Payment Date commencing as of the first Payment Date after the Closing Date, the ratio of (a) Net Cash Flow for the Payment Period ending on such Payment Date (or any shorter period commencing on the Closing Date and ending on such Payment Date), to (b) Mandatory Debt Service for such period.

“Debt Service Reserve Account” means the “Debt Service Reserve Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(v) of the Depositary Agreement.

“Default” means any event or occurrence, which, with the passage of time or the giving of notice or both, would become an Event of Default.

“Depositary Agreement” means that certain Depositary Agreement, dated as of the Closing Date, by and among the Borrower, the Administrative Agent, the First Lien

Administrative Agent, the Collateral Agent, the First Lien Collateral Agent and the Depository Bank.

“Depository Bank” means [_____] and any Person appointed to replace such Person pursuant to Section 2.01(a) of the Depository Agreement.

“Discharge of First Lien Obligations” has the meaning specified in the Collateral Agency Agreement.

“Distributable Cash” has the meaning specified in the Depository Agreement.

“Distribution Account” means the “Distribution Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(vii) of the Depository Agreement.

“Distribution Conditions” has the meaning specified in the Depository Agreement.

“Dollars” or the sign “\$” mean United States dollars or other lawful currency of the United States.

“Eligible Assignee” means (a) a Lender; (b) a commercial bank, finance company, insurance company, pension fund, or other financial institution; or (c) a fund or entity that is regularly engaged in making, purchasing or investing in loans.

“Environmental Claim” means any notice, claim or demand (collectively, a “claim”) by any Person pursuant to any Environmental Law or otherwise related to (a) the presence, or Release into the environment, of, or exposure to, any Hazardous Material, or (b) any violation of, or liability arising under any Environmental Law or any Governmental Approval issued under such Environmental Law.

“Environmental Law” means all Governmental Rules with respect to pollution or the protection of the environment or human health or safety due to exposure to [Hazardous Materials,] as now are, or may at any time hereafter be, in effect.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a ERISA Plan (other than an event for which the 30- day notice period is waived); (b) the existence with respect to any ERISA Plan of a failure to satisfy the “minimum funding standards” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any ERISA Plan; (d) the incurrence by the Borrower or any of its

ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any ERISA Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any ERISA Plan or ERISA Plans or to appoint a trustee to administer any ERISA Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any ERISA Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“ERISA Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Eurodollar Loan” means a Loan that bears interest at a rate based on LIBOR.

“Event of Default” means any of the events specified in Section 8.1 of this Agreement.

“Event of Loss” means (a) any loss or destruction of, damage to or casualty relating to all or any part of the Indiana Toll Road or (b) any condemnation or other taking (including by eminent domain) of all or any part of the Indiana Toll Road or the Concessionaire Interest.

“Excess Cash” means, as of any Payment Date, amounts remaining, on deposit in the Proceeds Account after giving effect to the payment, in full, of the amounts, or establishment of reserves for payment of the amounts, described in clauses First through Sixth of Section 4.01(b) of the Depositary Agreement.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient of any payment to be made by or on account of any obligation of the Borrower under any Financing Document or any of the following Taxes required to be withheld or deducted from such a payment, (a) income or franchise Taxes imposed on (or measured by) its net income or gross receipts by the jurisdiction under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, or by any jurisdiction as a result of a present or former connection between such Recipient of any payment and such jurisdiction (other than a connection resulting solely from negotiating, executing, delivering or performing its obligations or receiving a payment under, or enforcing, this Agreement, any Note or any other Financing Document), (b) any branch profits Taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Recipient is located, (c) in the case of a Lender, any withholding Tax that is imposed on amounts payable to such Lender pursuant to a law in effect at the time such Lender becomes a party to this Agreement or such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.1 of this Agreement, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (d)

Taxes attributable to a Lender's failure to comply with Section 3.1(e) of this Agreement and (e) any U.S. withholding Taxes imposed under FATCA.

“Expert” means, with respect to a matter under dispute, a Person having appropriate expertise with respect to, but no interest in the outcome of, such matter selected in accordance with Section 11.11 of this Agreement.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any applicable intergovernmental agreement with respect thereto.

“Federal Funds Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for such next succeeding Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Financing Documents” means this Agreement, any Notes, the Security Documents, any Hedging Agreements, and each other document or instrument required to be executed and delivered by the aforementioned agreements, including any modifications, extensions, renewals, or replacements of any such agreements whether related to financing or refinancing.

“Financing Parties” means, collectively, the Lenders, individually, and acting by and through the Administrative Agent, and any Hedging Banks.

“First Lien Administrative Agent” has the meaning specified in the Collateral Agency Agreement.

“First Lien Collateral Agent” has the meaning specified in the Collateral Agency Agreement.

“First Lien Debt Service Payment Account” means the “First Lien Debt Service Payment Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(iii) of the Depositary Agreement.

“First Lien Financing Agreement” has the meaning specified in the Collateral Agency Agreement.

“First Lien Financing Documents” has the meaning specified in the Collateral Agency Agreement.

“First Lien Loans” has the meaning specified in the Collateral Agency Agreement.

“Fiscal Quarter” means a quarter ending on the last day of March, June, September or December.

“Foreign Lender” means a Lender that is not a U.S. Person.

“GAAP” means generally accepted accounting principles in the United States in effect from time to time.

“GDP Index” means the Gross Domestic Product Implicit Price Deflator as presently issued by the U.S. Department of Commerce Bureau of Economic Analysis in the publication entitled “Economic Indicators” published by the Government Printing Office, or, if said historical index is no longer available or is converted to a different standard reference base or is otherwise revised, such historical index as the Borrower and the Administrative Agent may mutually select that measures all goods and services in the economy adjusted for real price change.

“Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority, including siting and operating permits and licenses and any of the foregoing under any applicable Environmental Law, that are required for the leasing, operation, improvement, tolling or maintenance of the Indiana Toll Road.

“Governmental Authority” means any nation, state, sovereign or government, any federal, regional, state or local government or political subdivision thereof or any other entity exercising executive, legislative, judicial, regulatory or administrative powers or functions of or pertaining to government and having jurisdiction over the Person or matters in question.

“Governmental Rule” means any statute, law, treaty, regulation, ordinance, code, rule, judgment, order, decree, concession or other governmental restriction having the force of law, which is applicable to any Person, whether now or hereafter in effect; provided that for purposes of this Agreement, the Concession Agreement shall not be a Government Rule.

“Guarantee Obligations” means, for any Person, without duplication, any financial obligation, contingent or otherwise, of such Person guaranteeing or otherwise supporting any Indebtedness of any other Person in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (b) to purchase property, securities or services for the purposes of assuring the owner of such Indebtedness of the payment of such Indebtedness, (c) to maintain working capital, equity capital, available cash or other financial statement condition or the primary obligor so as to enable the primary obligor to pay such Indebtedness, (d) to provide equity capital under or in the respect of equity subscription arrangements (to the extent that such obligation to provide equity capital does not otherwise constitute Indebtedness), or (e) to perform, or arrange for the performance of, any obligations of the primary obligor; provided, that the term “Guarantee Obligations” shall not include endorsements for collection or deposit, in each case in the ordinary course of business. For purposes of this Agreement, the amount of any Guarantee Obligations shall be an amount equal

to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

“Hazardous Material” means (a) any petroleum or petroleum products, , radioactive materials, asbestos in any form that is or could become friable, and polychlorinated biphenyls (PCBs) or transformers or other equipment that contain dielectric fluid, and (b) any wastes, materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants”, “pollutants” or words of similar import under any Environmental Law.

“Hedging Agreement” means (a) each ISDA Master Agreement, together with the Schedule thereto, and each confirmation, with a trade date as of the same date as the ISDA Master Agreement and the Schedule, entered into between the Borrower and each Hedging Bank, each, in substantially the forms attached hereto as Exhibit J, and (b) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, for a Hedging Transaction not prohibited by Section 7.12 of this Agreement.

“Hedging Bank” means any party (other than the Borrower) to a Hedging Agreement or any successor or permitted assign of such party.

“Hedging Claim Notice” means a notice substantially in the form of Exhibit O hereto appropriately completed.

“Hedging Claims” has the meaning specified in Section 9.11 of this Agreement.

“Hedging Obligations” means, collectively, (a) all scheduled amounts payable to the Hedging Banks by the Borrower, as the fixed-rate payor, under the Hedging Agreements (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), net of all scheduled amounts payable to the Borrower by such Hedging Banks as floating-rate payor, under such Hedging Agreements, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Borrower to the Hedging Banks under such Hedging Agreements; provided that Hedging Obligations shall not include Hedging Termination Obligations. For avoidance of doubt, the calculations of Hedging Obligations payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Termination Obligations” means the aggregate amount of (a) Hedging Obligations payable to the Hedging Banks by the Borrower under the Hedging Agreements, as the fixed rate payor, upon the early unwind of all or a portion of the Hedging Agreements, net of all amounts payable to the Borrower by such Hedging Banks, as floating-rate payor thereunder, plus (b) any penalty payments or other payments in the form of unwind fees payable in connection with an early unwind under the Hedging Agreements. For avoidance of doubt, the

calculations of Hedging Termination Obligations payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Transaction” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” or “collar” transaction, interest rate future, interest rate option or hedging transaction.

“IFA” means the Indiana Finance Authority, a public body politic and corporate of the State of Indiana.

“IFA Consent” has the meaning specified in Section 4.1(e) of this Agreement.

“Indebtedness” of any Person means (a) indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (e) any Capital Lease (and the amount of these obligations shall be the amount so capitalized), (f) all obligations, contingent or otherwise, of such Person under banker’s acceptances issued or created for the account of such Person, (g) all unconditional obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock or other equity interests of such Person or any warrants, rights or options to acquire such capital stock or other equity interests, (h) all net obligations of such Person pursuant to Hedging Transactions, (i) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (h) above, and (j) all Indebtedness of the type referred to in clauses (a) through (h) above secured by any Lien on property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. For all purposes hereof, the Indebtedness of any Person shall exclude trade accounts and accrued expenses payable in the ordinary course of business. For purposes of this Agreement, the amount of Indebtedness of any Person for purposes of clause (h) shall be deemed to be equal to the lesser of (x) the aggregate unpaid amount of such Indebtedness and (y) the fair market value of the property encumbered thereby as determined by such Person in good faith. Except as expressly specified in this Agreement, the amount of any Indebtedness for purposes of this Agreement shall equal the amount thereof that would appear on a balance sheet (excluding any notes thereto) of such Person prepared on the basis of GAAP.

“Indemnified Taxes” means Taxes other than Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Financing Document to the extent not otherwise described in Other Taxes.

“Indemnitee” has the meaning specified in Section 11.3(b) of this Agreement.

“Indiana Toll Road” means (a) the Toll Road Land and (b) the Toll Road Facilities.

“Inflation Factor” means, for any calendar year (the “test year”), the quotient obtained by dividing (a) the GDP Index for the test year minus the GDP Index for the calendar year immediately preceding the test year, by (b) the GDP Index for the calendar year immediately preceding the test year.

“Insurance Consultant” means [_____] or any other nationally recognized insurance consultant as the Administrative Agent (acting at the direction of the Required Lenders) shall designate in consultation with the Borrower.

“Insurance Proceeds” has the meaning set forth in Section 6.12(c) of this Agreement.

“Interest Payment Date” means (a) with respect to any Loan, each March 31, June 30, September 30 and December 31 occurring after the Closing Date, (b) with respect any Loan with an Interest Period of less than three months selected by the Borrower pursuant to Section 2.3(a) of this Agreement, the last day of such Interest Period (other than with respect to any Applicable PIK Margin attributable to any Loan), (c) with respect to any Applicable PIK Margin payable with respect to a Loan, the last Business Day at the end of each Fiscal Quarter for which a PIK Designation has been submitted, and (d) the Maturity Date.

“Interest Period” means, for each Loan, (a) the period commencing on the Closing Date and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter and (b) thereafter, each period commencing on the last day of such one, two, three or six-month period and ending the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as such interest period is determined pursuant to Section 2.3 of this Agreement; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case, such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period which begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) if Interest Periods pertaining to more than one Loan begin on the same day and end on the same day, such Interest Periods shall be consolidated and shall be treated for all purposes hereof as a single Interest Period.

“Leasehold Mortgage” means that certain Leasehold Mortgage, Security Agreement and Financing Statement (Fixture Filing) dated as of the Closing Date by the Borrower in favor of the Collateral Agent for the benefit of the Secured Parties.

“Legal Adviser” means [_____] or such other law firm as the Administrative Agent (acting at the direction of the Required Lenders) shall designate.

“Lender” means each bank, financial institution, finance company, insurance company, pension fund, fund or entity that is regularly engaged in making, purchasing or investing in loans, or other person that holds a Loan.

“LIBOR” means, for any Interest Period with respect to a Loan:

(a) the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate that appears on the page of the Telerate Screen that displays an average British Bankers Association Interest Settlement Rate (such page currently being page number 3750) for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period; provided that in the case of any period for the accrual of interest upon interest in accordance with Section 2.2 of this Agreement that has a term which is not equivalent to any of the terms for which rates appear on such page, the Administrative Agent shall determine a rate using the linear interpolation of the rates appearing on such page for the next shorter and next longer time periods; or

(b) in the event the rate referenced in the preceding subsection (a) does not appear on such page or service or such page or service shall cease to be available, the rate per annum (carried out to the fifth decimal place) equal to the rate determined by Administrative Agent (after consultation with the Borrower and the Lenders) to be the offered rate on such other page or other service that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period; or

(c) in the event the rates referenced in the preceding subsections (a) and (b) are not available, the rate per annum determined by the Administrative Agent as the rate of interest at which dollar deposits (for delivery on the first day of such Interest Period) in same day funds in the approximate amount of the applicable Loan and with a term equivalent to such Interest Period would be offered by its London Branch to major banks in the offshore dollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period.

“LIBOR Floor” shall have the meaning specified in Section 2.2(a) of this Agreement.

“Lien” means any mortgage, pledge, hypothecation, collateral assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other) or other security interest, any conditional sale or other title retention agreement or any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or comparable Governmental Rule.

“Loan Period” means the period from and including the Closing Date to the earlier to occur of (a) the date upon which the entire outstanding principal balance of the Loans, together with all accrued and unpaid interest, becomes due and payable under this Agreement, and (b) the Maturity Date.

“Loans” means the loans provided pursuant to Section 2.1 of this Agreement.

“Loss Proceeds Account” means the “Loss Proceeds Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(vi) of the Depositary Agreement.

“Major Maintenance” means all reasonably necessary periodic major overhaul and repair (i.e., excluding any maintenance or repair of a routine or ordinary course nature) of any of the Toll Road Facilities, equipment and systems (a) required to be performed in accordance with the Concession Agreement and (b) categorized as Capital Expenditures.

“Majority Lenders” means, at any time, Lenders holding a majority of the aggregate of the then Outstanding Exposure.

“Mandatory Debt Service” has the meaning specified in the Depositary Agreement.

“Material Adverse Effect” means a materially adverse effect on one or more of the following:

(a) the business, financial condition, operations, performance or property of the Borrower and the Toll Road (taken as a whole),

(b) the ability of the Borrower to pay or perform its payment obligations under any of the Financing Documents or the Concession Agreement,

(c) the legality, validity, binding effect or enforceability of the Financing Documents or the Concession Agreement, or

(d) the ability of the Collateral Agent, the Administrative Agent or any Lender to enforce their rights and remedies under the Financing Documents or any related document, instrument or agreement. Notwithstanding anything to the contrary, in no event shall any of the events, conditions or circumstances arising in connection with or prior to the Restructuring Transactions constitute (or otherwise form a basis to create) a Material Adverse Effect.

“Material ITR Contracts” means (a) the Concession Agreement, (b) the Omnibus Services Agreement, (c) any contract for the operation and maintenance of the Indiana Toll Road requiring payments by the Borrower in excess of \$25,000,000 per annum, and (d) any contract for capital improvements requiring payments by the Borrower in excess of \$100,000,000 per annum. As of the Closing Date, the Concession Agreement and the Omnibus Services Agreement are the only Material ITR Contracts.

“Material Project Participant” means each of the Borrower, the IFA and the Service Providers.

“Maturity Date” means the date that is five years and six months after the Closing Date; provided that if such date is a day other than a Business Day, the Maturity Date shall be the next succeeding Business Day unless such next succeeding Business Day falls in the next calendar month, in which case the Maturity Date shall be the immediately preceding Business Day; *provided* that if either such date is a day other than a Business Day, such Maturity Date shall be the next succeeding Business Day unless such next succeeding Business Day falls in the next calendar month, in which case such Maturity Date shall be the immediately preceding Business Day.

“Member” means ITR Concession Company Holdings LLC, a Delaware limited liability company, and any other holder of Membership Interests.

“Member Pledge Agreement” means that certain Membership Interest Pledge Agreement, dated as of the Closing Date, by the Member in favor of the Collateral Agent granting a first-priority security interest in its Membership Interests.

“Membership Interests” means the limited liability company interests of the Borrower.

“MIG” means collectively, Macquarie Atlas Roads, Macquarie Infrastructure Partners, Inc., Indiana Toll Road Partnership, and MQA Indiana Holdings LLC.

“Model Auditor” means [_____] or any replacement auditor as the Administrative Agent (acting at the direction of the Required Lenders) shall designate in consultation with the Borrower.

“Monthly Funding Date” means the last Business Day of each calendar month.

“Moody’s” means Moody’s Investor Service, Inc. and any successor thereto which is a nationally recognized rating agency.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Cash Flow” means, in respect of any period, (a) aggregate Project Revenues received during such period, less (b) the Operating Expenses and other amounts paid in cash pursuant to clauses First through Sixth of Section 4.01(b) of the Depositary Agreement during such period.

“Net Cash Proceeds” means 100% of the cash proceeds actually received by the Borrower (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and including casualty insurance settlements and condemnation awards, but in each case only as and when received) from any payment by the IFA of the Toll Road Concession Value or Concession Compensation, in each case, pursuant to the Concession Agreement, or from an Event of Loss, net of amounts applied to repair, restore or rebuild the Indiana Toll Road pursuant to Section 2.5(b) or (c) of this Agreement, as applicable, or as may otherwise be applied pursuant to Section 2.5(b).

“Note” means a promissory note issued by the Borrower in favor of a Lender evidencing Loans (or PIK Notes, applicable) made by such Lender, substantially in the form of Exhibit B hereto.

“Obligations” means, as at any date, the sum, computed without duplication, of the following: (a) the aggregate outstanding principal amount of the Loans plus all accrued interest (whether arising or incurred before or after any bankruptcy of the Borrower) on such amount, plus (b) all other amounts from time to time payable by the Borrower under the Financing Documents plus accrued interest, if applicable, on such amounts, plus (c) amounts (including, without limitation, insurance, insurance premiums, licensing fees, recording and

filing fees, and Taxes) the Administrative Agent, the Collateral Agent, or the Lenders expend on behalf of the Borrower because the Borrower fails to make any such payment when required under the terms of any Financing Document, plus (d) all amounts required to be paid under an indemnification, cost reimbursement or similar provision owing to the Administrative Agent, the Collateral Agent, the Depository Bank or the Lenders or the Hedging Banks in their capacity as such.

“Omnibus Services Agreement” means that certain Omnibus Services Agreement, dated as of the Closing Date, by and among the Borrower and the Service Providers party thereto.

“Operating Account” means the “Operating Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(ii) of the Depository Agreement.

“Operating Expenses” means any and all expenses paid in cash by the Borrower in connection with the Indiana Toll Road, including, without limitation: all operation and maintenance costs incurred in relation to the Indiana Toll Road, consumables, payments under any operating lease, payments pursuant to the agreements for the management, operation and maintenance of the Indiana Toll Road, taxes, insurance, management fees, police services, payments under the Concession Agreement for services of the IFA or the State, Major Maintenance costs, Capital Expenditures and costs of any approved Capital Projects. Operating Expenses do not include non-cash charges, such as depreciation, amortization or other bookkeeping entries of a similar nature.

“Operator” means (a) the Borrower and/or (b) any other Person that becomes an Operator pursuant to Section 3.3 of the Concession Agreement.

“Original Holders” has the meaning specified in the recitals hereto.

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes arising from any payment made under this Agreement or any other Financing Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Financing Document, except for such Taxes, with respect to any Recipient, that are imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loan or Financing Document) with respect to an assignment (other than an assignment made pursuant to Section 3.6).

“Outstanding Exposure” means, at any time the sum of the aggregate then outstanding principal amount of the Loans (other than PIK Loans).

“Participant” has the meaning assigned to such term in Section 11.4(b)(vi) of this Agreement.

“Payment Date” means (a) each March 31, June 30, September 30 and December 31 occurring during the Loan Period, and (b) the Maturity Date.

“Payment Period” means (a) a period commencing on the first Payment Date after the Closing Date and ending on the Payment Date that is twelve (12) months after such initial date and (b) thereafter, each period commencing on the last day of a Payment Date and ending on a Payment Date that is twelve (12) months after such Payment Date.

“PBGC” means the Pension Benefit Guaranty Corporation, or any entity succeeding to any or all of its functions, established pursuant to Subtitle A of Title IV at ERISA.

“Permitted Concessionaire Encumbrance” has the meaning specified in the Concession Agreement.

“Permitted Contest Conditions” means a contest, pursued in good faith, challenging the enforceability, validity, interpretation, amount or application of any Governmental Rule, Contest Claim, Tax or other matter (legal, contractual or other) by appropriate proceedings timely instituted if (a) the Borrower diligently pursues such contest, (b) the Borrower establishes adequate reserves with respect to the contested claim to the extent required by GAAP, and (c) such contest (i) would not reasonably be expected to have a Material Adverse Effect, and (ii) does not involve any material risk or danger of any foreclosure, sale, forfeiture or loss of the Indiana Toll Road or the Concessionaire Interest or any material portion thereof, or the loss of the Liens granted under any of the Security Documents in respect of a material part of the Collateral or any criminal or unindemnified civil liability being incurred by the Administrative Agent, the Collateral Agent or any of the Lenders.

“Permitted IFA Encumbrance” has the meaning specified in the Concession Agreement.

“Permitted Investments” means: (a) marketable direct obligations of the United States of America; (b) marketable obligations directly and fully guaranteed as to interest and principal by the United States of America; (c) demand deposits with the Depositary Bank, and time deposits, certificates of deposit and banker’s acceptances issued by (i) the Depositary Bank, so long as its long-term debt securities are rated “A” or better by S&P and “A2” or better by Moody’s, or (ii) any member bank of the Federal Reserve System which is organized under the laws of the United States of America or any political subdivision thereof having a combined capital and surplus of at least \$500 million and having long-term unsecured debt securities rated “A” or better by S&P and “A2” or better by Moody’s; (d) commercial paper or tax-exempt obligations given the highest rating by S&P and Moody’s; (e) obligations of the Depositary Bank meeting the requirements of clause (c) above or any other bank meeting the requirements of clause (c) above, in respect of the repurchase of obligations of the type as described in clauses (a) and (b) above, provided, that such repurchase obligations shall be fully secured by obligations of the type described in said clauses (a) and (b) above, and the possession of such obligations shall be transferred to, and segregated from other obligations owned by, the Depositary Bank or such other bank; (f) a money market fund or a qualified investment fund (including any such fund for which the Depositary Bank or any Affiliate thereof acts as an advisor or manager) given one of the two highest long-term ratings available from S&P and Moody’s; (g) eurodollar certificates of deposit issued by the Depositary Bank meeting the requirements of clause (c) above or any other bank meeting the requirements of clause (c) above; and (h) any investment permitted under the Concession Agreement. In no event shall any cash be invested in any obligation, certificate of deposit, acceptance, commercial paper or instrument which by its terms matures more than

ninety (90) days after the date of investment, unless the Depository Bank or a bank meeting the requirements of clause (c) above shall have agreed to repurchase such obligation, certificate of deposit, acceptance, commercial paper or instrument at its purchase price plus earned interest within no more than ninety (90) days after its purchase hereunder. With respect to any rating requirement set forth above, if the relevant issuer is rated by either S&P or Moody's, but not both, then only the rating of such rating agency shall be utilized for the purpose of this definition.

“Permitted Liens” means (a) Liens created pursuant to or contemplated by the Financing Documents; (b) Liens, deposits or pledges incurred or created in the ordinary course of business or under applicable Governmental Rules in connection with or to secure the performance of bids, tenders, contracts, statutory obligations, surety bonds or appeal bonds; (c) statutory Liens, mechanics', materialmen's, workers', repairmen's, employees', warehousemen's, carriers' or other like Liens arising in the ordinary course of business, relating to the construction of the improvements or in connection with any modifications or under applicable Governmental Rules securing obligations incurred in connection with the Indiana Toll Road for amounts that are either (i) not more than forty-five (45) days past due or (ii) which are being contested pursuant to the Permitted Contest Conditions and for which adequate reserves have been established or which have been bonded for not less than the full amount in dispute (or as to which other security arrangements reasonably satisfactory to the Collateral Agent have been made), which bonding (or arrangements) shall comply with applicable law; (d) Liens for taxes, assessments or governmental charges either secured by a bond reasonably acceptable to the Administrative Agent or which are not yet due or which are being contested pursuant to the Permitted Contest Conditions; (e) Liens arising out of judgments or awards to the extent not constituting an Event of Default; (f) Permitted Concessionaire Encumbrances and Permitted IFA Encumbrances; (g) Permitted Title Exceptions; (h) (i) Liens created by capitalized leases; provided that the Liens created by any such capitalized lease attach only to the property leased (and any attachments, accessions or proceeds thereof) and provided further that such capital lease obligations are Permitted Debt, (ii) purchase money Liens securing Permitted Debt (including such Liens securing Permitted Debt incurred within nine (9) months of the date on which such property was acquired) and (iii) any Liens created to secure Indebtedness permitted pursuant to Sections 7.3(e) and (k)(ii); provided that, for purposes of this clause (h), Permitted Debt shall not include any Permitted Debt described in Section 7.3(l) of the definition thereof; (i) first priority Liens in respect of the Collateral subject to the terms of the First Lien Loans and the Collateral Agency Agreement; (j) inchoate Liens arising under ERISA for amounts which are not yet due; (k) refinancing, replacement and extensions of the Permitted Liens; (l) Liens created with the consent of the Required Lenders; (m) liens securing insurance premium financing by the Borrower; provided that such Liens do not extend to any property or assets other than the insurance policies and proceeds thereof; (n) utility and similar deposits of the Borrower in the ordinary course of business; (o) Liens arising from precautionary UCC financing statements against the Borrower (as debtor/lessee) regarding operating leases not constituting Indebtedness or consignments; (p) leases, subleases, licenses and sublicenses which (A) have been granted by the Borrower to a third party in the ordinary course of business and as contemplated under the Concession Agreement; (q) such minor defects, easements and rights of way, restrictions, irregularities, encumbrances, clouds on title and statutory Liens, zoning restrictions, servitudes, permits, reservations, encroachments, exceptions, conditions, covenants and any other restrictions on the use of real property, any obligations or duties affecting any of the property of any Person to any municipality or public authority with respect to any franchise, grant, license or

permit, none of which materially impairs the use of such property for the purposes for which it is held or the operation and maintenance of the Toll Road and the ability of the Secured Parties to realize on the Collateral; and (r) any other Liens not otherwise permitted herein so long as the aggregate principal amount of the Permitted Debt and other obligations secured thereby does not exceed \$15,000,000 at any time outstanding; provided that any Liens securing any additional Indebtedness in accordance with Section 7.3(e) of this Agreement shall be subject to the terms of the intercreditor arrangements pursuant to Section 7.3(e)(iv) of this Agreement.

“Permitted Title Exceptions” means (a) current real property taxes not delinquent, (b) such exceptions to title with respect to the Indiana Toll Road appearing in the Title Policy, and (c) such exceptions to title as are otherwise approved in writing by the Administrative Agent.

“Permitted Tax Distribution” has the meaning specified in the Depositary Agreement.

“Person” means any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited liability company, other entity, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

“PIK Loans” has the meaning specified in Section 2.2(b).

“PIK Designation” has the meaning specified in Section 2.2(b).

“PIK Note” means those additional Notes issued by the Borrower and payable to any Lender, evidencing the aggregate Indebtedness to such Lender resulting from the Applicable PIK Margin.

“Plan” has the meaning specified in the recitals hereto.

“Pledge Agreements” means, collectively, (a) the Member Pledge Agreement, and (b) any pledge agreements executed and delivered after the Closing Date by any additional or substituted Member of the Borrower in substantially the form of Exhibit F pursuant to which such Person shall grant to the Collateral Agent for the benefit of the Secured Parties a security interest in the Membership Interests held at any time by such Person.

“Prime Rate” means the rate of interest per annum announced from time to time by the Administrative Agent as its “prime rate” or “base rate” in effect on such day at its principal office in New York City or such other office as the Administrative Agent may designate in writing; any change in the Prime Rate announced by Administrative Agent shall take effect on the day specified in the public announcement of such change.

“Pro Rata Share” means, with respect to each Lender at any time, a fraction (expressed as a percentage), the numerator of which is the amount of the Loans held by such Lender at such time and the denominator of which is the amount of the aggregate amount of Loans held by all Lenders at such time. The initial Pro Rata Share of each Lender as to each of its respective Loans is set forth opposite the name of such Lender on Schedule 2.1 to this Agreement or in the Assignment and Assumption Agreement pursuant to which such Lender become a party to this Agreement, as applicable.

“Proceeds” means “proceeds” as such term is defined in the UCC or under other relevant law and, in any event, shall include, but should not be limited to, (a) any and all proceeds of, or amounts (in whatsoever form, whether cash, securities, property or other assets) received under or with respect to, any insurance, indemnity, warranty or guaranty payable to the Borrower from time to time, and claims for insurance, indemnity, warranty or guaranty effected or held for the benefit of the Borrower, in each case with respect to any of the Collateral, (b) any and all payments (in any form whatsoever, whether cash, securities, property or other assets) made or due and payable to the Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any person acting under color of Governmental Authority), and (c) any and all other amounts (in any form whatsoever, whether cash, securities, property or other assets) from time to time paid or payable under or in connection with any of the Collateral (whether or not in connection with the sale, lease or other disposition of the Collateral).

“Proceeds Account” means the “Proceeds Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(i) of the Depositary Agreement.

“Project Accounts” means, collectively, (1) the Proceeds Account, (2) the Operating Account, (3) the First Lien Debt Service Payment Account, (4) the Second Lien Debt Service Payment Account, (5) the Debt Service Reserve Account, (6) the Loss Proceeds Account, (7) the Distribution Account, (8) the Collections Account, and (9) the Reimbursement Account.

“Project Revenues” means, for any period (without duplication), all revenue received by or on behalf of the Borrower during such period, including but not limited to Toll Revenues, interest paid in respect of any Project Accounts, proceeds from any business interruption insurance, revenue derived from any third-party concession, lease or contract, and any other receipts otherwise arising or derived from or paid or payable in respect of the Indiana Toll Road, excluding equity contributions to the Borrower, proceeds of condemnation proceedings and asset sales to the extent that such proceeds are not reinvested in replacement property, and insurance payments other than proceeds from business interruption insurance.

“Put Election Loans” has the meaning specified in Section 7.3(l) of this Agreement.

“Recipient” means the Administrative Agent or any Lender, as applicable.

“Reimbursement Account” means bank account no. [_____] established by the Borrower with [_____] or any replacement Account therefor established pursuant to the applicable Control Agreement.

“Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, leaching or migration into the environment, except emissions from the engine exhaust of a motor vehicle in compliance with Environmental Laws.

“Rent” has the meaning specified in the Concession Agreement.

“Required Lenders” has the meaning specified in the Collateral Agency Agreement.

“Restricted Payments” has the meaning specified in Section 7.6 of this Agreement.

“Restructuring Support Agreement” means that certain Restructuring Support Agreement, effective as of or prior to September 21, 2014, among the Borrower, Member, Statewide and lenders to the Borrower, Cintra and MIG.

“Restructuring Transactions” means all the transactions contemplated by, or otherwise consummated in accordance with, the Restructuring Support Agreement.

“Second Lien Debt Service Payment Account” means the “Second Lien Debt Service Payment Account” established and created in the name of the Borrower pursuant to Section 2.02(a)(iv) of the Depositary Agreement.

“Secured Obligations” means, as at any date, the sum, computed without duplication, of the following: (a) the aggregate outstanding principal amount of the Loans plus all accrued interest (whether arising or incurred before or after any bankruptcy of the Borrower) on such amount, plus (b) all other amounts from time to time payable by the Borrower under the Financing Documents plus, if applicable, accrued interest on such amounts, plus (c) amounts (including, without limitation, insurance, insurance premiums, licensing fees, recording and filing fees, and Taxes) the Administrative Agent, the Collateral Agent, the Lenders or Hedging Banks expend on behalf of the Borrower because the Borrower fails to make any such payment when required under the terms of any Financing Document, plus (d) all amounts required to be paid under an indemnification, cost reimbursement or similar provision owing to the Administrative Agent, the Collateral Agent, the Depositary Bank, the Lenders or Hedging Banks in their capacity as such.

“Secured Parties” means, collectively, the Collateral Agent, the Administrative Agent, the Depositary Bank, the Lenders and the Hedging Banks.

“Security Agreement” means that certain Security Agreement, dated as of [the Closing Date], between the Borrower and the Collateral Agent for its benefit and the benefit of the Secured Parties.

“Security Documents” means the Collateral Agency Agreement, the Security Agreement, the Leasehold Mortgage, the Pledge Agreements, each Consent and Agreement, the Depositary Agreement, each Control Agreement, and each other document or instrument from time to time pursuant to which a lien or security interest is granted or perfected.

“Service Providers” has the meaning specified in the Omnibus Services Agreement.

“Service Providers Consent” has the meaning specified in Section 4.1(f) of this Agreement.

“State” means the State of Indiana.

“Statewide” means Statewide Mobility Partners LLC, a Delaware limited liability company.”

“Statewide Entity” means Statewide, Cintra, or MIG, as applicable.

“Swap Registry” has the meaning specified in Section 9.11 of this Agreement.

“S&P” or “Standard & Poor’s” means Standard & Poor’s Corporation or any successor thereto.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Technical Adviser” means [_____] or any other nationally recognized engineering firm as the Administrative Agent (acting at the direction of the Required Lenders) shall designate in consultation with the Borrower.

“Termination Damages” has the meaning ascribed thereto in Section 14.2(a) of the Concession Agreement.

“Title Company” means [_____] or such other title insurance company approved by the Administrative Agent, in consultation with the Borrower, to insure the priority of the Mortgage Lien under the Leasehold Mortgage.

“Title Policy” means, individually and collectively, each policy of title insurance delivered to the Administrative Agent pursuant to Section 4.1(j) of this Agreement, any additional policy of title insurance issued for any subsequently acquired Toll Road Land.

“Toll Revenues” has the meaning specified in the Concession Agreement.

“Toll Road Assets” means the personal property of the IFA used in connection with the operations at the Indiana Toll Road set forth on Schedule 2.1(a) of the Concession Agreement.

“Toll Road Concession Value” has the meaning specified in the Concession Agreement.

“Toll Road Contracts” has the meaning specified in the Concession Agreement.

“Toll Road Facilities” has the meaning specified in the Concession Agreement.

“Toll Road Land” has the meaning specified in the Concession Agreement.

“Toll Road Operations” has the meaning specified in the Concession Agreement.

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

“Traffic Adviser” means [the Halcrow Group] or such other firm of traffic consultants as the Administrative Agent (acting at the direction of the Required Lenders) shall designate in consultation with the Borrower.

“Traffic Report” means that certain [_____] , dated as of [_____] , by the Traffic Adviser.

“Uniform Commercial Code” or “UCC” means the New York Uniform Commercial Code, as in effect from time to time.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

Rules of Interpretation

1. Definitions of terms shall apply equally to the singular and plural forms of the terms defined.
2. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.
3. The word “will” shall be construed to have the same meaning and effect as the word “shall”.
4. A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.
5. A reference to a Person shall be construed to include its successors and permitted assigns.
6. Except as otherwise expressly specified, all accounting terms have the meanings assigned to them by GAAP, as in effect from time to time.
7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document.
8. Any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, modified, renewed, extended, refinanced or replaced (subject to any restrictions on such amendments, supplements, modifications, renewals, extensions, refinancings and replacements, if any, set forth in the Financing Documents).
9. The words “hereof,” “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

10. References to “day” means calendar days, unless the term “Business Days” shall be used. References to a time of day means such time in New York, New York, unless otherwise specified.
11. Except as otherwise provided herein, when the payment of any obligation or the performance of any covenant, duty, or obligation is stated to be due or performance required on (or before) a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding day that is a Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.
12. All certifications to be made hereunder by an officer or representative of the Borrower shall be made by such a Person in his or her capacity solely as an officer or a representative of such person, on such person’s behalf, and not in such person’s individual capacity.
13. In the event that any Lien, investment, Indebtedness (whether at the time of incurrence or upon application of all or a portion of the proceeds thereof), disposition, Restricted Payment, Affiliate transaction, contractual requirement, or prepayment of indebtedness meets the criteria of one, or more than one, of the categories of transactions than permitted pursuant to any clause or subsection of this Agreement, such transaction (or portion thereof) at any time shall be permitted under one or more of such clauses at the time of such transaction or any later time from time to time, in each case as determined by the Borrower in its sole discretion.
14. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, as in effect from time to time, except as otherwise specifically prescribed herein.
15. If at any time any change in GAAP would affect the computation of any financial ratio set forth in any Financing Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent and the Borrower shall negotiate in good faith to amend such ratio to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders and Borrower); provided that, until so amended, (i) such ratio shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders a written reconciliation in form and substance reasonably satisfactory to the Administrative Agent, between calculations of such ratio made before and after giving effect to such change in GAAP.
16. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the

number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Exhibit B-3

Form of New Intercreditor Agreement

COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT

Dated as of [_____]

by and among

ITR CONCESSION COMPANY LLC,
as the Borrower,

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as the First Lien Administrative Agent on behalf of
the First Lien Lenders,

[_____],
as the Second Lien Administrative Agent on behalf of
the Second Lien Lenders,

[_____],
as the First Lien Collateral Agent on behalf of
the First Lien Secured Parties,

and

[_____],
as the Second Lien Collateral Agent on behalf of
the Second Lien Secured Parties,

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS	2
Section 1.01 Certain Defined Terms.....	2
Section 1.02 First Lien Financing Agreement and UCC Definitions	13
Section 1.03 Principles of Construction.....	14
Section 1.04 Certifications, Etc.	15
ARTICLE II Lien Priorities	15
Section 2.01 Relative Priorities.....	15
Section 2.02 Prohibition on Contesting Liens	17
Section 2.03 No New Liens	17
Section 2.04 Similar Liens and Agreements.....	17
Section 2.05 Discharge of First Lien Obligations.....	18
ARTICLE III Enforcement.....	18
Section 3.01 Exercise of Remedies.....	18
Section 3.02 Enforcement of Liens.....	20
Section 3.03 Consents	22
Section 3.04 Reserved Second Lien Lender Rights.....	22
ARTICLE IV Payments.....	23
Section 4.01 Application of Proceeds.....	23
Section 4.02 Determination of Payments.....	24
Section 4.03 Payments Over	24
Section 4.04 Debt Balances	24
ARTICLE V Other Agreements	25
Section 5.01 Releases.....	25
Section 5.02 Amendments to Second Lien Collateral Documents; Refinancing of Second Lien Loans	25
Section 5.03 Amendments to First Lien Documents; Refinancing of Second Lien Loans	26
Section 5.04 Purchase Right	27
Section 5.05 Injunctive Relief.....	27
Section 5.06 Certain Actions	28
Section 5.07 Bailee for Perfection; Representative; Relationship.....	29
ARTICLE VI Insolvency or Liquidation Proceedings	30
Section 6.01 Finance and Sale Issues	30
Section 6.02 Relief from the Automatic Stay	31
Section 6.03 Adequate Protection.....	31
Section 6.04 No Waiver.....	32

TABLE OF CONTENTS

(continued)

	Page
Section 6.05 Avoidance Issues	32
Section 6.06 Reorganization Securities	32
Section 6.07 Post-Petition Interest.....	33
Section 6.08 Waiver.....	33
ARTICLE VII Reliance; Waivers; Etc.	33
Section 7.01 Reliance.....	33
Section 7.02 No Warranties or Liability	33
Section 7.03 No Waiver of Lien Priorities.....	34
Section 7.04 Obligations Unconditional	36
ARTICLE VIII THE FIRST LIEN COLLATERAL AGENT	36
Section 8.01 Appointment	36
Section 8.02 Duties and Responsibilities.....	37
Section 8.03 Authorization	38
Section 8.04 Administrative Actions	39
Section 8.05 Determination of Amounts and Obligations	39
Section 8.06 Employment of Agents	40
Section 8.07 Reliance of First Lien Collateral Agent	40
Section 8.08 Knowledge	40
Section 8.09 Non-Reliance on First Lien Collateral Agent and Other Financing Party	40
Section 8.10 First Lien Collateral Agent in Individual Capacity.....	41
Section 8.11 First Lien Collateral Agent Under No Obligation	41
Section 8.12 Resignation and Removal; Successor Collateral Agent; Individual Collateral Agent	42
Section 8.13 [Intentionally Omitted]	42
Section 8.14 Indemnification of Collateral Agent by Financing Parties	43
Section 8.15 No Consequential Damages	43
Section 8.16 Force Majeure	43
Section 8.17 Additional Protections	43
Section 8.18 No Liability for Clean-up of Hazardous Materials	43
Section 8.19 Merger of the Collateral Agent	44
Section 8.20 Transfer to an Affiliate.....	44
Section 8.21 Institutional Lender.....	44
ARTICLE IX THE SECOND LIEN COLLATERAL AGENT.....	44
Section 9.01 Appointment	44
Section 9.02 Duties and Responsibilities.....	45
Section 9.03 Authorization	46
Section 9.04 Administrative Actions	47
Section 9.05 Determination of Amounts and Obligations	47

TABLE OF CONTENTS

(continued)

	Page
Section 9.06 Employment of Agents	48
Section 9.07 Reliance of Second Lien Collateral Agent.....	48
Section 9.08 Knowledge	48
Section 9.09 Non-Reliance on Second Lien Collateral Agent and Other Financing Party	49
Section 9.10 Second Lien Collateral Agent in Individual Capacity	49
Section 9.11 Second Lien Collateral Agent Under No Obligation.....	50
Section 9.12 Resignation and Removal; Successor Collateral Agent; Individual Collateral Agent	50
Section 9.13 [Intentionally Omitted]	51
Section 9.14 Indemnification of Collateral Agent by Financing Parties	51
Section 9.15 No Consequential Damages	51
Section 9.16 Force Majeure	51
Section 9.17 Additional Protections	51
Section 9.18 No Liability for Clean-up of Hazardous Materials.....	51
Section 9.19 Merger of the Collateral Agent	52
Section 9.20 Transfer to an Affiliate.....	52
Section 9.21 Institutional Lender	52
ARTICLE X BORROWER REMAINS LIABLE	52
ARTICLE XI REASONABLE CARE	53
Section 11.01 First Lien Collateral Agent.	53
Section 11.02 Second Lien Collateral Agent.....	53
ARTICLE XII COLLATERAL AND REMEDIES	54
Section 12.01 Administration of Collateral	54
Section 12.02 Notice of Event of Default.....	54
Section 12.03 Enforcement of Remedies.....	54
Section 12.04 Remedies of the Lenders.....	55
Section 12.05 Payments to Secured Parties	56
ARTICLE XIII COMPENSATION, INDEMNITY AND EXPENSES	56
Section 13.01 Compensation; Fees and Expenses	56
Section 13.02 Borrower Indemnification.....	57
ARTICLE XIV TERMINATION.....	58
ARTICLE XV MISCELLANEOUS PROVISIONS	58
Section 15.01 Amendments	58
Section 15.02 Successors and Assigns.....	58
Section 15.03 Notices	59
Section 15.04 Counterparts	61

TABLE OF CONTENTS

(continued)

	Page
Section 15.05 Governing Law; Consent to Jurisdiction; WAIVER OF JURY TRIAL.....	61
Section 15.06 Captions	62
Section 15.07 Severability	62
Section 15.08 Collateral Agent’s Rights.....	62
Exhibit A Incumbency Certificate	

COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT

This COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT (this “Agreement”), dated as of [____], is made by and among ITR CONCESSION COMPANY LLC, a Delaware limited liability company (the “Borrower”); WILMINGTON TRUST, NATIONAL ASSOCIATION, in its capacity as administrative agent on behalf of the First Lien Lenders (in such capacity, the “First Lien Administrative Agent”); [____], in its capacity as administrative agent on behalf of the Second Lien Lenders (in such capacity, the “Second Lien Administrative Agent”); [____], in its capacity as collateral agent on behalf of the First Lien Secured Parties (in such capacity, the “First Lien Collateral Agent”); and [____], in its capacity as collateral agent on behalf of the Second Lien Secured Parties (in such capacity, the “Second Lien Collateral Agent”).

RECITALS

A. Pursuant to the First Lien Financing Agreement, dated as of the date hereof (as amended, amended and restated, supplemented, Refinanced or otherwise modified from time to time, the “First Lien Financing Agreement”) among the Borrower, the financial institutions party thereto from time to time (the “First Lien Lenders”) and the First Lien Administrative Agent, the First Lien Lenders have agreed to make certain loans to the Borrower on the terms and subject to the conditions set forth therein.

B. The obligations of the Borrower in respect of the First Lien Financing Agreement will be secured on a first priority basis by Liens on the Collateral pursuant to the terms of the First Lien Collateral Documents.

C. Pursuant to the Second Lien Financing Agreement, dated as of the date hereof (as amended, amended and restated, supplemented, Refinanced or otherwise modified from time to time, the “Second Lien Financing Agreement”) among the Borrower, the financial institutions party thereto from time to time (the “Second Lien Lenders”) and the Second Lien Administrative Agent, the Second Lien Lenders have agreed to make certain loans to the Borrower on the terms and subject to the conditions set forth therein.

D. The obligations of the Borrower in respect of the Second Lien Financing Agreement will be secured on a second priority basis (subject to Permitted Liens) by Liens on the Collateral pursuant to the terms of the Second Lien Collateral Documents.

E. The First Lien Administrative Agent, for and on behalf of the First Lien Lenders, wishes to appoint [____] as First Lien Collateral Agent under the First Lien Collateral Documents, and the First Lien Collateral Agent wishes to set forth the terms on which it shall accept such appointment and shall undertake to perform certain duties on behalf of the First Lien Secured Parties with respect thereto.

F. The Second Lien Administrative Agent, for and on behalf of the Second Lien Lenders, wishes to appoint [____] as Second Lien Collateral Agent under the Second Lien Collateral Documents, and the Second Lien Collateral Agent wishes to set forth the terms on which it shall accept such appointment and shall undertake to perform certain duties on behalf of the Second Lien Secured Parties with respect thereto.

G. The First Lien Documents and the Second Lien Documents provide, among other things, that the parties thereto shall set forth in this Agreement their respective rights and remedies with respect to the Collateral and certain other matters.

H. In order to induce the First Lien Secured Parties and the Second Lien Secured Parties to enter into the transactions contemplated by the First Lien Documents and the Second Lien Documents, respectively, each of the parties hereto has agreed to the agency, intercreditor and other provisions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Certain Defined Terms

As used in this Agreement (including the preamble and recitals to this Agreement), the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and the plural forms of the term defined):

“Affiliate” of a particular Person means, at any time, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person. For purposes of this definition, “control” when used with respect to any particular Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “controlling” “controlled by” and “under common control with” have meanings correlative to the foregoing.

“Agent” means the First Lien Administrative Agent, the First Lien Collateral Agent, the Second Lien Administrative Agent and/or the Second Lien Collateral Agent, as the context requires.

“Agreement” has the meaning assigned to such term in the preamble to this Agreement.

“Annual Operating Budget” means the annual operating budget submitted by the Borrower pursuant to the Financing Agreements.

“Authorized Officer” means, (a) when used with respect to the Borrower, the president, the chief executive officer, the controller, the secretary, the treasurer, the chief operating officer, general counsel or the chief financial officer of the Borrower (or an officer of the Member or the Borrower’s manager with the same authority to act on behalf of the Borrower), a list of whom shall be provided by the Borrower to the First Lien Administrative Agent and Second Lien Administrative Agent prior to the Closing Date (which list may be amended by the Borrower from time to time in writing); and (b) when used with respect to the Collateral Agent, any officer within the corporate trust department of the Collateral Agent, including any vice president, assistant vice president, treasurer, assistant treasurer, trust officer or any other officer of the

Collateral Agent who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement. Any document or certificate delivered under the Secured Obligations Documents that is signed by an Authorized Officer shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company or other action on the part of the relevant Person, and such Authorized Officer shall be conclusively presumed to have acted on behalf of such Person.

"Bankruptcy Law" means Title 11, United States Code, and any other state or federal insolvency, reorganization, moratorium or similar law for the relief of debtors, or any successor statute.

"Borrower" has the meaning specified in the preamble hereto.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; *provided* that when used in connection with a Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"Capital Expenditures" means expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one year which are capitalized in accordance with GAAP.

"Capital Project" means (a) prior to the Discharge of the First Lien Obligations, a "Capital Project" as defined in and under the First Lien Financing Agreement, and (b) after the Discharge of the First Lien Obligations, a "Capital Project" as defined in and under the Second Lien Financing Agreement.

"Cash Sweep" has the meaning specified in the Depositary Agreement.

"Closing Date" means the date on which the conditions set forth in Section 4.1 of each of the First Lien Financing Agreement and the Second Lien Financing Agreement have been satisfied or waived in accordance with the terms thereof, and the Borrower has assumed the Concession Agreement with the IFA's written consent.

"Collateral" means all First Lien Collateral and all Second Lien Collateral.

"Collateral Documents" means the First Lien Collateral Documents or the Second Lien Collateral Documents, as the context may require.

"Concession Agreement" means that certain Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006, by and between the IFA and the Borrower, as amended by that certain First Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006, that certain Second Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of June 29, 2006, that certain Third Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of August 10, 2007, that certain Fourth

Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of February 5, 2008, and that certain Fifth Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of November 1, 2010.

“Consent and Agreement” means (a) each consent and agreement entered into for the benefit of the First Lien Secured Parties in respect of the contracts and agreements of the Borrower and (b) each consent and agreement entered into for the benefit of the Second Lien Secured Parties in respect of the contracts and agreements of the Borrower.

“Debt Service Coverage Ratio” means, on each Payment Date commencing as of the first Payment Date after the Closing Date, the ratio of (a) Net Cash Flow for the Payment Period ending on such Payment Date (or any shorter period commencing on the Closing Date and ending on such Payment Date) to (b) Mandatory Debt Service for such period.

“Depository Agreement” means that certain Depository Agreement, dated as of the Closing Date, by and among the Borrower, the Administrative Agent, the Second Lien Administrative Agent, the Collateral Agent, the Second Lien Collateral Agent and the Depository Bank.

“Depository Bank” means [_____] and any Person appointed to replace such Person pursuant to Section 6.04 of the Depository Agreement.

“DIP Financing” has the meaning specified in Section 6.01.

“DIP Financing Cap Amount” means an amount equal to one hundred twenty percent (120%) of the initial amount of the Second Lien Loans under the Second Lien Financing Agreement.

“Discharge of First Lien Obligations” means, except to the extent otherwise expressly provided in Section 6.05 or in connection with any Refinancing pursuant to which any First Lien Obligations are replaced with new First Lien Obligations:

(a) payment in full in cash (or other satisfaction in full) of (i) the outstanding principal amount of all First Lien Loans and (ii) interest (including interest accruing (or which would, absent the commencement of an Insolvency or Liquidation Proceeding, accrue) on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all amounts then outstanding in connection with First Lien Obligations; and

(b) payment in full in cash (or other satisfaction in full) of all other First Lien Obligations (other than unasserted contingent obligations that are intended to survive the termination of the First Lien Financing Agreement) that are then due and payable or otherwise accrued.

“Discharge of Second Lien Obligations” means, except to the extent otherwise expressly provided in Section 6.05 or in connection with any Refinancing pursuant to which any Second Lien Obligations are replaced with new Second Lien Obligations:

(a) the Discharge of First Lien Obligations has occurred;

(b) payment in full in cash (or other satisfaction in full to the extent permitted by the Second Lien Financing Agreement) of (i) the outstanding principal amount of all Second Lien Loans and (ii) interest (including interest accruing (or which would, absent the commencement of an Insolvency or Liquidation Proceeding, accrue) on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all amounts then outstanding in connection with Second Lien Obligations; and

(c) payment in full in cash (or other satisfaction in full to the extent permitted by the Second Lien Financing Agreement) of all other Second Lien Obligations (other than unasserted contingent obligations that are intended to survive the termination of the Second Lien Financing Agreement) that are then due and payable or otherwise accrued.

“Enforcement Action” means an action following an Event of Default under applicable law or the applicable Collateral Documents to:

(a) foreclose, execute, levy or collect on, take possession or control of, sell or otherwise realize upon (judicially or non-judicially), or lease, license or otherwise dispose of (whether publicly or privately) the Collateral or otherwise exercise or enforce remedial rights with respect to the Collateral under the First Lien Collateral Documents or the Second Lien Collateral Documents, as applicable (including by way of set-off, credit bid, recoupment notification of a public or private sale or other disposition pursuant to the UCC or other applicable law, notification to account debtors, notification to depository banks under depository and deposit account control agreements, or exercise of rights under landlord consents, if applicable);

(b) solicit bids from third Persons to conduct the liquidation or disposition of Collateral or to engage or retain sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third Persons for the purposes of valuing, marketing, promoting and selling the Collateral;

(c) receive a transfer of Collateral in satisfaction of Indebtedness or any other Secured Obligation secured thereby;

(d) effect the sale, lease, exchange, transfer or other disposition of the Collateral after the occurrence and during the continuation of an Event of Default with the consent of the First Lien Collateral Agent or the Second Lien Collateral Agent, as applicable; or

(e) the commencement of, or joinder in filing of a petition for commencement of, an involuntary Insolvency or Liquidation Proceeding against the Borrower.

“Event of Default” means a First Lien Event of Default or Second Lien Event of Default, as the context may require.

“Fee Agreements” means any fee letters between Borrower and any Agent in respect of such Agent’s services under and pursuant to the Secured Obligations Documents.

“Financing Agreements” means, collectively, the First Lien Financing Agreement and the Second Lien Financing Agreement.

“Financing Documents” means the First Lien Documents and the Second Lien Documents, as the context requires.

“First Lien” means a first priority Lien granted pursuant to the First Lien Collateral Documents to the First Lien Collateral Agent (for the benefit of the First Lien Secured Parties) on the First Lien Collateral to secure the First Lien Secured Obligations.

“First Lien Administrative Agent” has the meaning specified in the preamble hereto.

“First Lien Collateral” means the “Collateral” under and as defined in the First Lien Financing Agreement with respect to which a Lien is granted as security for any of the First Lien Secured Obligations pursuant to the First Lien Collateral Documents.

“First Lien Collateral Agent” has the meaning specified in the preamble hereto.

“First Lien Collateral Documents” means this Agreement, the Depositary Agreement, the First Lien Security Agreement, the First Lien Pledge Agreement, the First Lien Leasehold Mortgage, each Consent and Agreement for the benefit of the First Lien Secured Parties, each Control Agreement, and each other agreement that creates a Lien in favor of the First Lien Collateral Agent for the benefit of the First Lien Secured Parties, in each case as amended; *provided* that the First Lien Financing Agreement shall not be considered a First Lien Collateral Document.

“First Lien Debt Service Payment Account” has the meaning specified in the Depositary Agreement.

“First Lien Direction Notice” has the meaning specified in Section 12.03(a).

“First Lien Documents” means, collectively, the First Lien Financing Agreement, the First Lien Notes, the First Lien Collateral Documents, any First Lien Hedging Agreements and any other document or instrument executed or delivered at any time in connection with the aforementioned agreements and any First Lien Obligation, including any modifications, extensions, renewals, or replacements of any such agreements whether related to financing or refinancing.

“First Lien Event of Default” means any “Event of Default” under and as defined in the First Lien Financing Agreement.

“First Lien Financing Agreement” has the meaning specified in the recitals to this Agreement.

“First Lien Hedging Bank” means any party to a First Lien Hedging Agreement (other than the Borrower) or its successor or permitted assign bound by the provisions of the First Lien Documents.

“First Lien Hedging Agreement” means any “Hedging Agreement” as defined in and permitted under the First Lien Financing Agreement.

“First Lien Leasehold Mortgage” means that certain Leasehold Mortgage, Security Agreement and Financing Statement (Fixture Filing), dated as of the date hereof, by the Borrower in favor of the First Lien Collateral Agent.

“First Lien Lenders” has the meaning specified in the recitals to this Agreement.

“First Lien Loan” means (without duplication) any loan or similar extension of credit under the First Lien Financing Agreement.

“First Lien Notes” means any “Note” (as defined in the First Lien Financing Agreement) issued to evidence the First Lien Loans.

“First Lien Obligations” means all “Obligations” (as defined in the First Lien Financing Agreement) outstanding under the First Lien Documents.

“First Lien Pledge Agreement” means the Pledge and Security Agreement by and between the Member and the First Lien Collateral Agent, dated as of the date hereof.

“First Lien Recovery” shall have the meaning set forth in Section 6.05(b).

“First Lien Secured Obligations” means all “Secured Obligations” (as defined in the First Lien Financing Agreement) outstanding under the First Lien Documents.

“First Lien Secured Parties” means, collectively, the First Lien Administrative Agent, the First Lien Collateral Agent, the First Lien Lenders and the First Lien Hedging Banks.

“First Lien Security Agreement” means the Security Agreement dated as of the date hereof by and between the Borrower and the First Lien Collateral Agent.

“GAAP” means generally accepted accounting principles in the United States in effect from time to time.

“Governmental Authority” means any nation, state, sovereign or government, any federal, regional, state or local government or political subdivision thereof or any other entity exercising executive, legislative, judicial, regulatory or administrative powers or functions of or pertaining to government and having jurisdiction over the Person or matters in question.

“Governmental Rule” means any statute, law, treaty, regulation, ordinance, code, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing, in each case, having the force of law by, any Governmental Authority, which is applicable to any Person, whether now or hereafter in effect; provided that for purposes of this Agreement, the Concession Agreement shall not be a Governmental Rule.

“Grantor” means each of the Borrower and the Member.

“IFA” means the Indiana Finance Authority, a public body politic and corporate of the State of Indiana.

“IFA Consent” means the Consent and Agreement dated on or about the date hereof among the IFA, the Borrower, the First Lien Collateral Agent and the Second Lien Collateral Agent, substantially in the form of Exhibit I to each of the First Lien Financing Agreement and the Second Lien Financing Agreement.

“Indemnified Person” means each of the Agents and their respective officers, directors, agents, advisors, Affiliates and employees.

“Indiana Toll Road” means (a) the Toll Road Land and (b) the Toll Road Facilities.

“Insolvency or Liquidation Proceeding” means:

(a) any voluntary case or proceeding by any Grantor under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, (i) seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (ii) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets;

(b) any involuntary case or proceeding commenced against Grantor (i) of a nature referred to in clause (a) above which results in the entry of an order for relief or any such adjudication or appointment or remains undismissed, undischarged or unbonded for a period of sixty (60) consecutive days or (ii) seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) consecutive days from the entry thereof;

(c) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy except, in each case, as expressly permitted pursuant to the First Lien Documents at any time prior to the Discharge of First Lien Obligations and/or to the Second Lien Documents at any time after the Discharge of First Lien Obligations, as applicable;

(d) any general assignment for the benefit of creditors; or

(e) any written admission by any Grantor of its general inability to pay its debts as they become due.

“Interest Expense” means, for any period, all interest (including default interest) and any fees payable, if any, pursuant to any of the Fee Agreements, participation fees and liquidation costs in respect of outstanding First Lien Secured Obligations and Second Lien Secured

Obligations accrued, capitalized or payable during such period (whether or not actually paid during such period).

“Leasehold Mortgages” means collectively, the First Lien Leasehold Mortgage and the Second Lien Leasehold Mortgage.

“Lien” means any mortgage, pledge, hypothecation, collateral assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other) or other security interest, any conditional sale or other title retention agreement or any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or comparable Governmental Rule.

“Loan Period” means the “Loan Period” (as defined in the First Lien Financing Agreement) and the “Loan Period” (as defined in the Second Lien Financing Agreement), as applicable.

“Loans” means the First Lien Loans and the Second Lien Loans.

“Major Maintenance” means all reasonably necessary periodic major overhaul and repair (i.e., excluding any maintenance or repair of a routine or ordinary course nature) of any of the Toll Road Facilities, equipment and systems (a) required to be performed in accordance with the Concession Agreement and (b) categorized as Capital Expenditures.

“Mandatory Debt Service” means, on any Payment Date, (a) prior to the Discharge of First Lien Obligations, an amount equal to the interest and principal in respect of the First Lien Loans projected to become due by the first anniversary of such Payment Date (excluding, for the avoidance of doubt, (i) any balloon payment of principal with respect to the First Lien Loans due on the Maturity Date of such First Lien Loans, and (ii) any projected payment of the First Lien Loans from a Cash Sweep); and (b) after the Discharge of First Lien Obligations, an amount equal to interest and principal in respect of the Second Lien Loans projected to become due by the first anniversary of such Payment Date (excluding, for the avoidance of doubt, (i) any balloon payment of principal with respect to the Second Lien Loans due on the Maturity Date of such Second Lien Loans, and (ii) any projected payment of the Second Lien Loans from a Cash Sweep).

“Maturity Date” means (a) with respect to the First Lien Loans, the date that is five (5) years after the Closing Date and (b) with respect to the Second Lien Loans, the date that is five and a half (5.5) years after the Closing Date; *provided* that if either such date is a day other than a Business Day, such Maturity Date shall be the next succeeding Business Day unless such next succeeding Business Day falls in the next calendar month, in which case such Maturity Date shall be the immediately preceding Business Day.¹

“Member” means ITR Concession Company Holdings LLC, a Delaware limited liability company, and any other holder of Membership Interests.

“Membership Interests” means the limited liability company interests of the Borrower.

¹ NOTE: To be adjusted in Financing Agreements.

“Net Cash Flow” means, in respect of any period, (a) aggregate Project Revenues received during such period, less (b) the Operating Expenses and other amounts paid in cash pursuant to clauses First through Fourth of Section 4.01(b) of the Depositary Agreement during such period.

“Operating Expenses” means any and all expenses actually paid by the Borrower in connection with the Indiana Toll Road, including, without limitation: all operation and maintenance costs incurred in relation to the Indiana Toll Road, consumables, payments under any operating lease, payments pursuant to the agreements for the management, operation and maintenance of the Indiana Toll Road, taxes, insurance, management fees, police services, payments under the Concession Agreement for services of the IFA or the State, Major Maintenance costs, and costs of any Capital Projects. Operating Expenses do not include non-cash charges, such as depreciation, amortization or other bookkeeping entries of a similar nature.

“Outstanding Amount” means, (a) with respect to the First Lien Financing Agreement, at any time, an amount equal to the sum (without duplication) of the aggregate principal amount of the First Lien Loans outstanding at such time and (b) with respect to the Second Lien Financing Agreement, at any time, an amount equal to the sum (without duplication) of the aggregate principal amount of the Second Lien Loans outstanding at such time.

“Payment Date” means (a) each March 31, June 30, September 30 and December 31 occurring during the Loan Period, and (b) the Maturity Date.

“Payment Period” means the “Payment Period” (as defined in the First Lien Financing Agreement) and the “Payment Period” (as defined in the Second Lien Financing Agreement), as applicable.

“Permitted Liens” means (a) prior to the Discharge of the First Lien Obligations, “Permitted Liens” as defined in and under the First Lien Financing Agreement, and (b) after the Discharge of the First Lien Obligations, “Permitted Liens” as defined in and under the Second Lien Financing Agreement.

“Person” means any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited liability company, other entity, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

“Pledged Collateral” means, as the context may require, (a) any Collateral, to the extent that possession or control thereof perfects a Lien thereon under the UCC, including any deposit account or securities account (as such terms are defined in the UCC) and/or (b) any rights to receive payments under any insurance policy that constitute Collateral and with respect to which a Secured Party is required to be named as an additional insured or a loss payee in order to perfect a Lien thereon.

“Project Accounts” has the meaning specified in the Depositary Agreement.

“Project Revenues” means, for any period (without duplication), all revenue received by or on behalf of the Borrower during such period, including but not limited to Toll Revenues, interest paid in respect of any Project Accounts, proceeds from any business interruption

insurance, revenue derived from any third-party concession, lease or contract, and any other receipts otherwise arising or derived from or paid or payable in respect of the Indiana Toll Road, excluding equity contributions to the Borrower, proceeds of condemnation proceedings and asset sales to the extent that such proceeds are not reinvested in replacement property, and insurance payments other than proceeds from business interruption insurance.

“Property” means any right or interest in or to any asset or property of any kind whatsoever (including Membership Interests), whether real, personal or mixed and whether tangible or intangible.

“Put Election Loans” has the meaning specified in the First Lien Financing Agreement.

“Refinance” shall mean, in respect of any indebtedness under the First Lien Documents or the Second Lien Documents, as applicable, to refinance, extend, renew, restructure, defease, amend, modify, supplement, restructure, replace, refund or repay, or to issue other indebtedness, in exchange or replacement for, such indebtedness in whole or in part. “Refinanced” and “Refinancing” shall have correlative meanings.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents, sub-agents and advisors (including, without limitation, attorneys, accountants, appraisers or experts) of such Person and such Person’s Affiliates.

“Required First Lien Secured Parties” means, as to any matter on any date, First Lien Secured Parties holding a majority of the aggregate of the “Outstanding Exposure” as defined in and under the First Lien Financing Agreement at such time (or such other corresponding definition as may be amended from time to time).

“Required Lenders” means (a) prior to the Discharge of First Lien Obligations, the Required First Lien Secured Parties, and (b) after the Discharge of First Lien Obligations, the Required Second Lien Secured Parties.

“Required Second Lien Secured Parties” means, as to any matter on any date, Second Lien Secured Parties holding a majority of the aggregate of the “Outstanding Exposure” as defined in and under the Second Lien Financing Agreement at such time (or such other corresponding definition as may be amended from time to time).

“Second Lien” means a second priority Lien granted pursuant to the Second Lien Collateral Documents to the Second Lien Collateral Agent (for the benefit of the Second Lien Secured Parties) on the Second Lien Collateral to secure the Second Lien Secured Obligations, which Lien is subordinate to the First Lien as contemplated herein.

“Second Lien Administrative Agent” has the meaning specified in the preamble hereto.

“Second Lien Collateral” means the “Collateral” under and as defined in the Second Lien Financing Agreement with respect to which a Lien is granted as security for any Second Lien Secured Obligations pursuant to the Second Lien Collateral Documents.

“Second Lien Collateral Agent” has the meaning specified in the preamble hereto.

“Second Lien Collateral Documents” means this Agreement, the Depositary Agreement, the Second Lien Security Agreement, the Second Lien Pledge Agreement, the Second Lien Leasehold Mortgage, each Consent and Agreement for the benefit of the Second Lien Secured Parties, each Control Agreement for the benefit of the Second Lien Secured Parties, and each other agreement that creates a Lien in favor of the Second Lien Collateral Agent for the benefit of the Second Lien Secured Parties, in each case as amended; *provided* that the Second Lien Financing Agreement shall not be considered a Second Lien Collateral Document.

“Second Lien Debt Service Payment Account” has the meaning specified in the Depositary Agreement.

“Second Lien Direction Notice” has the meaning specified in Section 12.03(b).

“Second Lien Documents” means, collectively, the Second Lien Financing Agreement, the Second Lien Notes, the Second Lien Collateral Documents, any Second Lien Hedging Agreements and any other document or instrument executed or delivered at any time in connection with the aforementioned agreements and any Second Lien Obligation, including any modifications, extensions, renewals, or replacements of any such agreements whether related to financing or refinancing.

“Second Lien Event of Default” means the occurrence of any “Event of Default” under and as defined in the Second Lien Financing Agreement.

“Second Lien Financing Agreement” has the meaning specified in the recitals to this Agreement.

“Second Lien Hedging Bank” means any party to a Second Lien Hedging Agreement (other than the Borrower) or its successor or permitted assign bound by the provisions of the Second Lien Documents.

“Second Lien Hedging Agreement” means any “Hedging Agreement” as defined in and permitted under the Second Lien Financing Agreement.

“Second Lien Leasehold Mortgage” means certain Leasehold Mortgage, Security Agreement and Financing Statement (Fixture Filing), dated as of the Closing Date, by the Borrower in favor of the Second Lien Collateral Agent.

“Second Lien Lenders” has the meaning specified in the recitals to this Agreement.

“Second Lien Loan” means (without duplication) any loan or similar extension of credit under the Second Lien Financing Agreement.

“Second Lien Notes” means any “Notes” (as defined in the Second Lien Financing Agreement) issued to evidence the Second Lien Loans.

“Second Lien Obligations” means all “Obligations” (as defined in the Second Lien Financing Agreement) outstanding under the Second Lien Documents.

“Second Lien Pledge Agreement” means the Second Lien Pledge and Security Agreement by and between the Member and the Second Lien Collateral Agent, dated as of the date hereof.

“Second Lien Recovery” shall have the meaning set forth in Section 6.05(b).

“Second Lien Secured Obligations” means all “Secured Obligations” (as defined in the Second Lien Financing Agreement) outstanding under the Second Lien Documents.

“Second Lien Secured Parties” means, collectively, the Second Lien Administrative Agent, the Second Lien Collateral Agent, the Second Lien Lenders and the Second Lien Hedging Banks (to the extent applicable).

“Second Lien Security Agreement” means the Second Lien Security Agreement dated as of the Closing Date by and between the Borrower and the Second Lien Collateral Agent.

“Secured Obligations” means, collectively, the First Lien Secured Obligations and the Second Lien Secured Obligations.

“Secured Obligations Documents” means, collectively, the First Lien Documents and the Second Lien Documents.

“Secured Parties” means the First Lien Secured Parties, the Second Lien Secured Parties and the Depository Bank, as the context may require.

“Secured Parties Representatives” means, collectively, the First Lien Administrative Agent and the Second Lien Administrative Agent.

“State” means (a) any state of the United States of America or (b) the District of Columbia.

“Toll Revenues” has the meaning specified in the Concession Agreement.

“Toll Road Facilities” has the meaning specified in the Concession Agreement.

“Toll Road Land” has the meaning specified in the Concession Agreement.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

Section 1.02 First Lien Financing Agreement and UCC Definitions. Unless otherwise defined herein, all capitalized terms used in this Agreement but not defined in this Agreement (as well as all capitalized terms used herein that are defined by reference to the First Lien Financing Agreement) shall have the respective meanings provided in the First Lien Financing Agreement

as in effect on the date hereof, or, if any such capitalized term is not defined in the First Lien Financing Agreement, shall have the meanings provided in Articles 8 and 9 of the UCC.

Section 1.03 Principles of Construction.

- (a) The singular includes the plural and the plural includes the singular.
- (b) The word “or” is not exclusive. Thus, if a party “may do (a) or (b)”, then the party may do either or both. The party is not limited to a mutually exclusive choice between the two alternatives.
- (c) A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.
- (d) A reference to a Person includes its successors and permitted assigns to the extent permitted and in accordance with the terms of the Secured Obligations Documents.
- (e) Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.
- (f) The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.
- (g) A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document.
- (h) References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time (to the extent permitted and in accordance with the terms of the Secured Obligations Documents) and in effect at any given time.
- (i) The words “hereof,” “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
- (j) References to “days” mean calendar days, unless the term “Business Days” shall be used. References to a time of day mean such time in New York, New York, unless otherwise specified. If the Borrower or any Affiliate of the Borrower is required to perform an action, deliver a document or take such other action by a calendar day and such day is not a Business Day, then the Borrower or such Affiliate shall take such action by the next succeeding “Business Day”.

(k) The word “will” shall be construed to have the same meaning and effect as the word “shall”.

(l) The Secured Obligations Documents are the result of negotiations between, and have been reviewed by, the Grantors, the Agents, and each Lender and their respective counsel. Accordingly, the Secured Obligations Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against the Grantors, the Agents, or any Lender.

Section 1.04 Certifications, Etc. All certifications, notices, declarations, representations, warrants and statements made by any officer, director or employee of the Borrower pursuant to or in connection with the Agreement shall be made in such person’s capacity as officer, director or employee on behalf of the Borrower and not in such person’s individual capacity.

ARTICLE II LIEN PRIORITIES

Section 2.01 Relative Priorities.

(a) Each of the parties hereto hereby acknowledges and agrees that:

(i) the grant of the Liens pursuant to the Collateral Documents creates two separate and distinct Liens over the Collateral: the First Lien securing the payment and performance of the First Lien Secured Obligations and the Second Lien securing the payment and performance of the Second Lien Secured Obligations;

(ii) the Liens granted pursuant to the Second Lien Collateral Documents securing the Second Lien Secured Obligations are subject and subordinate on the terms contained in this Agreement and the Depositary Agreement to the Liens granted pursuant to the First Lien Collateral Documents securing the First Lien Secured Obligations; and

(iii) because of, among other things, their differing rights in the Collateral, the Second Lien Secured Obligations are fundamentally different from the First Lien Secured Obligations and, in each case, must be separately classified in any plan of reorganization proposed or adopted in an Insolvency or Liquidation Proceeding.

To further effectuate the intent of the parties as provided in the immediately preceding clauses (i), (ii) and (iii), if a court in any Insolvency or Liquidation Proceeding or otherwise holds that the claims of more than one class of Secured Parties in respect of the Collateral constitute only one secured claim (rather than two separate classes of secured claims), then each of the parties hereto hereby acknowledges and agrees that, subject to this Section 2.01 and Sections 4.01, all distributions in such Insolvency or Liquidation Proceeding or otherwise shall be made as if there were two separate classes of secured claims against the Grantors in respect of the Collateral with the effect being that the First Lien Secured Parties shall be entitled to receive for distribution in accordance with Section 4.01 all amounts owing (including, principal, pre-petition interest, all amounts owing in respect of post-petition interest and/or additional interest payable pursuant to the First Lien Documents arising from a default, even if

disallowed as a claim in any Insolvency or Liquidation Proceeding and any other claims constituting First Lien Secured Obligations) to such First Lien Secured Parties under the First Lien Documents before any distribution is made in respect of the claims arising from the Second Lien Secured Obligations held by the Second Lien Collateral Agent (on behalf of the Second Lien Secured Parties), with the Second Lien Collateral Agent hereby acknowledging and agreeing to turn over to the First Lien Collateral Agent for distribution in accordance with Section 4.01 amounts received or receivable by it as a result of any court holding in any Insolvency or Liquidation Proceeding or otherwise to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Second Lien Collateral Agent and the Second Lien Secured Parties.

(b) Notwithstanding (i) the date, time, method, manner or order of grant, attachment or perfection of (A) any Liens securing the Second Lien Secured Obligations granted on the Collateral or (B) any Liens securing the First Lien Secured Obligations granted on the Collateral, (ii) anything contained in any filing or agreement to which any Agent or other Secured Party (either individually or collectively) or in the case of any Agent, for its own behalf or on behalf of any of the Secured Parties, now or hereafter may be a party, (iii) the perfection of or avoidability of such Liens or claims securing the First Lien Secured Obligations or the Second Lien Secured Obligations, as the case may be, (iv) any provision of the UCC, (v) any other applicable law or any provision set forth in the Second Lien Documents, (vi) any defect or deficiencies in, or failure to perfect, the Liens securing the First Lien Secured Obligations or the Second Lien Secured Obligations or (vii) any other circumstances whatsoever, the Second Lien Collateral Agent (on behalf of itself and the Second Lien Secured Parties) hereby agrees that, subject to Sections 4.01:

(i) any Lien on the Collateral granted pursuant to the First Lien Collateral Documents securing any First Lien Secured Obligations now or hereafter held by or on behalf of, or created for the benefit of the First Lien Collateral Agent or any of the First Lien Secured Parties or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the Collateral securing any Second Lien Secured Obligations; and

(ii) any Lien on the Collateral granted pursuant to the Second Lien Collateral Documents or any other collateral securing any Second Lien Secured Obligations now or hereafter held by or on behalf of, or created for the benefit of the Second Lien Collateral Agent or any of the Second Lien Secured Parties or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Collateral granted pursuant to the First Lien Collateral Documents or any other collateral securing any First Lien Secured Obligations. All such Liens on the Collateral securing any First Lien Secured Obligations shall be and remain senior in all respects and prior to all such Liens on the Collateral or any other collateral securing any Second Lien Secured Obligations for all purposes, whether or not such Liens securing any First Lien Secured Obligations are subordinated to any Lien securing any other obligation of the Borrower or any other Person.

Section 2.02 Prohibition on Contesting Liens. Each of the First Lien Collateral Agent (on behalf of itself and each First Lien Secured Party) and the Second Lien Collateral Agent (on behalf of itself and each Second Lien Secured Party) agrees that it will not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity, perfection or enforceability of a Lien held by or on behalf of any of the First Lien Secured Parties in the First Lien Collateral or, by or on behalf of the Second Lien Secured Parties in the Second Lien Collateral, as the case may be, or the provisions of this Agreement; *provided* that nothing in this Agreement shall be construed to prevent or impair the rights of the First Lien Collateral Agent, any First Lien Secured Party, the Second Lien Collateral Agent or any Second Lien Secured Party, to enforce this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the First Lien Secured Obligations and the Second Lien Secured Obligations as provided in Sections 2.01, 3.01, 3.02, 4.01 and 4.02.

Section 2.03 No New Liens. So long as the Discharge of First Lien Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against any Grantor, the parties hereto agree that:

(a) no First Lien Secured Party will accept, or otherwise be the beneficiary of, any additional collateral or credit support (howsoever defined) with respect to any First Lien Secured Obligations owed to such First Lien Secured Party unless such additional collateral or credit support (howsoever defined) is concurrently granted on a *pro rata* and *pari passu* basis to all First Lien Secured Parties to secure the First Lien Secured Obligations (in a manner reasonably satisfactory to each First Lien Secured Party, in each such First Lien Secured Party's sole discretion); or

(b) no Grantor shall: (i) grant any additional Liens on any of its Property to secure any Second Lien Secured Obligations unless it has granted or concurrently grants a Lien on such Property to secure the First Lien Secured Obligations; or (ii) grant or any additional Liens on any of its Property to secure any of the First Lien Secured Obligations unless it has granted or concurrently grants a Lien on such Property to secure the Second Lien Secured Obligations.

To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available, any amounts received or distributed pursuant to or as a result of Liens or other collateral or credit support (howsoever defined) granted in contravention of this Section 2.03 shall be subject to Sections 4.01 and 4.02.

Section 2.04 Similar Liens and Agreements. The parties hereto agree that it is their intention that the First Lien Collateral and the Second Lien Collateral be identical, subject to Section 5.07. In furtherance of the foregoing and of Section 5.06(d), the parties hereto agree, subject to the other provisions of this Agreement:

(a) upon request by any of the parties hereto, the parties hereto shall cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the First Lien Collateral and the Second Lien Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the Secured Obligations Documents; and

(b) that the documents, agreements and instruments creating or evidencing the Liens on the First Lien Collateral and the Liens on the Second Lien Collateral shall be in all material respects the same forms of documents other than with respect to the first lien or second lien nature of the obligations thereunder.

Section 2.05 Discharge of First Lien Obligations. Upon the Discharge of First Lien Obligations, without further action of any party, the Second Lien Secured Obligations shall be secured on a first-priority basis (subject to the Permitted Liens as defined in the Second Lien Financing Agreement) by Liens on the Collateral pursuant to the terms of the applicable Second Lien Collateral Documents.

ARTICLE III ENFORCEMENT

Section 3.01 Exercise of Remedies.

(a) At all times prior to the Discharge of First Lien Obligations, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Borrower or any other Grantor, the Second Lien Collateral Agent:

(i) will not take any Enforcement Action, exercise or seek to exercise any rights or remedies with respect to any Collateral (including the exercise of any right of setoff or any right under any Second Lien Collateral Document) or institute any action or proceeding with respect to such rights or remedies (including any action of foreclosure on Collateral) and, without limiting the foregoing, the Second Lien Collateral Agent shall not commence or join with any other creditors (other than the First Lien Secured Parties) in filing any involuntary bankruptcy proceeding against the Borrower or any other Grantor;

(ii) will not contest, protest or object to any Enforcement Action or other remedial action brought by the First Lien Collateral Agent or any First Lien Secured Party;

(iii) will not object to (and waives any and all claims with respect to) the forbearance by the First Lien Collateral Agent or any First Lien Secured Party from bringing or pursuing any Enforcement Action or other remedial action or any other exercise of any rights or remedies relating to the Collateral;

(iv) will not oppose or otherwise contest any claim with respect to the First Lien Obligations (including the amount, validity, enforceability or priority of such claim) by the First Lien Collateral Agent (on behalf of itself or any First Lien Secured Party) or any First Lien Secured Party in connection with any of the First Lien Documents; and

(v) will not challenge the validity, enforceability, perfection or priority of the Liens held by the First Lien Collateral Agent or any First Lien Secured Party;

provided, that in each case of clauses (i) through (v), the Liens granted to secure the Second Lien Obligations shall attach to any proceeds resulting from actions taken by the First Lien Collateral Agent or any First Lien Secured Party for distribution in accordance with this Agreement.

(b) Until the Discharge of First Lien Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Borrower, subject to Section 6.03(b), the First Lien Collateral Agent, at the written direction of the Required First Lien Secured Parties, shall have the exclusive right to commence and maintain Enforcement Actions (including set off) and make determinations regarding the release, sale, disposition or restrictions with respect to the Collateral to the extent not in violation of this Agreement; *provided*, that the Lien securing the Second Lien Secured Obligations shall remain on the proceeds of such Collateral until released or disposed of for distribution in accordance with this Agreement, including Section 4.01. In exercising rights and remedies with respect to the Collateral, the First Lien Collateral Agent, at the written direction of the Required First Lien Secured Parties, may enforce the provisions of the First Lien Collateral Documents and exercise remedies thereunder as provided therein, all in such order and in such manner as it may determine in the exercise of its sole discretion.

(c) After the Discharge of First Lien Obligations, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Borrower, the Second Lien Collateral Agent shall have the exclusive right to commence and maintain Enforcement Actions with respect to the Collateral. In exercising rights and remedies with respect to the Collateral, the Second Lien Collateral Agent may enforce the provisions of the Second Lien Collateral Documents and exercise remedies thereunder as provided therein, all in such order and in such manner as it may determine in the exercise of its sole discretion subject to compliance with the terms and conditions of the Second Lien Collateral Documents and applicable law. Such exercise of remedies shall include the rights of the Second Lien Collateral Agent to sell or otherwise dispose of Collateral upon foreclosure as set forth in the Second Lien Collateral Documents, to incur expenses in connection with such sale or disposition and to exercise all of the rights and remedies of a secured creditor under the UCC and the Second Lien Collateral Documents and, to the extent that any Collateral is subject to a case or proceeding under any Bankruptcy Laws, of a secured creditor under the Bankruptcy Laws of any applicable jurisdiction.

(d) The Second Lien Collateral Agent agrees that it will not take or receive any Collateral or any proceeds of Collateral in connection with the exercise of any right or remedy (including set off (but subject to Section 5.07(a) or any Enforcement Action) with respect to any Collateral under the Second Lien Collateral Documents unless and until the Discharge of First Lien Obligations has occurred, except as provided in Sections 4.01 and 6.03(b).

(e) Subject to Sections 4.01 and 6.03(b):

(i) the Second Lien Collateral Agent hereby waives any and all rights it may have as a second lien creditor to object to the manner in which the First Lien Collateral Agent, the First Lien Administrative Agent or the First Lien Secured Parties seek to enforce or collect the First Lien Secured Obligations or the Liens securing the First Lien Secured Obligations granted in any of the First Lien Collateral undertaken in accordance

with this Agreement, regardless of whether any action or failure to act by or on behalf of the First Lien Collateral Agent, the First Lien Administrative Agent or the First Lien Secured Parties is adverse to the interest of the Second Lien Collateral Agent; and

(ii) the Second Lien Collateral Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in the Second Lien Documents (other than this Agreement and the Depositary Agreement) shall be deemed to restrict in any way the rights and remedies of the First Lien Collateral Agent, the First Lien Administrative Agent or any First Lien Secured Party with respect to the Collateral as set forth in this Agreement or any First Lien Document.

provided, that in the case of clauses (i) and (ii), the Liens granted to secure the Second Lien Secured Obligations shall attach to any proceeds resulting from actions taken by the First Lien Collateral Agent or any First Lien Secured Party for distribution in accordance with this Agreement and *provided further* that any actions taken by the First Lien Collateral Agent or any First Lien Secured Party are in accordance with the First Lien Documents.

Section 3.02 Enforcement of Liens.

(a) At all times prior to the Discharge of First Lien Obligations, the Required First Lien Secured Parties will have, subject to applicable law and the terms of this Agreement and the other First Lien Documents, the right to authorize and direct the First Lien Collateral Agent with respect to the First Lien Collateral Documents and the Collateral, including the exclusive right to authorize or direct the First Lien Collateral Agent to enforce, collect or realize on any Collateral or exercise any other right or remedy with respect to the Collateral in accordance with the First Lien Collateral Documents.

(b) At all times prior to the Discharge of First Lien Obligations, except to the extent directed or consented to in writing by the Required First Lien Secured Parties, none of the First Lien Collateral Agent, the First Lien Administrative Agent or any other First Lien Secured Party will:

(i) request judicial relief, in any Insolvency or Liquidation Proceeding or in any other court, that would hinder, delay, limit or prohibit the lawful exercise or enforcement of any right or remedy otherwise available to the First Lien Secured Parties in respect of the Liens granted to the First Lien Collateral Agent, for the benefit of the First Lien Secured Parties;

(ii) oppose or otherwise contest any motion for relief from the automatic stay or for any injunction against foreclosure or enforcement of Liens granted to the First Lien Collateral Agent, for the benefit of the First Lien Secured Parties, made by the First Lien Collateral Agent, acting at the direction of, or as consented to by, the Required First Lien Secured Parties, in any Insolvency or Liquidation Proceeding;

(iii) oppose or otherwise contest any lawful exercise by the First Lien Collateral Agent, acting at the direction of, or as consented to by, the Required First Lien Secured Parties, of the right to credit bid the First Lien Secured Obligations at any sale in

foreclosure of the Liens granted to the First Lien Collateral Agent, for the benefit of the First Lien Secured Parties; or

(iv) oppose or otherwise contest any other request for judicial relief made in any court by the First Lien Collateral Agent, acting at the direction of, or as consented to by, the Required First Lien Secured Parties, relating to the lawful enforcement of any First Lien;

provided, however, that the First Lien Collateral Agent may take such actions as it deems desirable to create, prove, preserve or protect the Liens upon any Collateral.

(c) Prior to the Discharge of First Lien Obligations, in exercising rights and remedies with respect to the Collateral after the occurrence and during the continuation of any First Lien Event of Default, the First Lien Collateral Agent may, at the written direction of the Required First Lien Secured Parties, enforce (or to refrain from enforcing) the provisions of the First Lien Collateral Documents in respect of the First Lien Secured Obligations and exercise (or refrain from exercising) rights and remedies thereunder and in accordance therewith, including:

(i) the exercise or forbearance from exercise of all rights and remedies in respect of the First Lien Collateral and/or the First Lien Secured Obligations, including the taking of any Enforcement Action;

(ii) the enforcement or forbearance from enforcement of any Lien in respect of the First Lien Collateral;

(iii) the exercise or forbearance from exercise of rights and powers of a holder of Membership Interests or any other form of securities included in the Collateral to the extent provided in the First Lien Collateral Documents;

(iv) the credit bidding of First Lien Secured Obligations; and

(v) the exercise or forbearance from exercise of all rights and remedies of a secured lender under the UCC or any similar law of any applicable jurisdiction or in equity.

(d) Notwithstanding anything herein to the contrary, during the continuation of any First Lien Event of Default, any First Lien Lender shall be entitled in its reasonable discretion to make payments or advances to the First Lien Collateral Agent, the Borrower or any other Person for the purpose of protecting, preserving or defending the value of the Collateral; *provided,* that any such payment or advance shall be deemed to constitute part of the First Lien Secured Obligations hereunder.

Prior to the Discharge of First Lien Obligations and following notice of any First Lien Event of Default received pursuant to Section 12.02(a), any First Lien Administrative Agent may request in writing that the First Lien Collateral Agent pursue any lawful action in respect of the First Lien Collateral in accordance with the terms of the First Lien Collateral Documents. Upon any such written request, the First Lien Collateral Agent shall seek the consent of the Required First Lien Secured Parties to pursue such action (it being understood that the First Lien Collateral

Agent shall not be required to advise the Required First Lien Secured Parties to pursue any such action). Prior to the Discharge of First Lien Obligations and following receipt of any written notice that a First Lien Event of Default has occurred, the First Lien Collateral Agent may await the written direction from the Required First Lien Secured Parties and, subject to the provisions of Section 12 herein, will act, or decline to act, as so directed by the Required First Lien Secured Parties, in the exercise and enforcement of the First Lien Collateral Agent's interests, rights, powers and remedies in respect of the First Lien Collateral or under the First Lien Collateral Documents or applicable law and, following the initiation of such exercise of remedies, the First Lien Collateral Agent will act, or decline to act, subject to the provisions of Section 12 herein, with respect to the manner of such exercise of remedies as directed by the Required First Lien Secured Parties.

Section 3.03 Consents. Notwithstanding anything to the contrary contained herein or in any of the other Collateral Documents, with respect to the exercise of any rights or remedies of any of the Secured Parties under any of the Consents and Agreements for the benefit of the First Lien Secured Parties, (a) until the Discharge of First Lien Obligations, the First Lien Collateral Agent shall have the sole right to exercise rights or remedies under any Consent and Agreement, and (b) following the Discharge of First Lien Obligations and prior to the Discharge of the Second Lien Obligations, the Second Lien Collateral Agent shall have the sole right to exercise rights and remedies under any Consent and Agreement for the benefit of the Second Lien Secured Parties.

Section 3.04 Reserved Second Lien Lender Rights. Notwithstanding anything to the contrary contained herein or in any of the other Collateral Documents, the Second Lien Lenders shall be permitted to:

- (a) file a claim or statement of interest in a Bankruptcy of a Grantor;
- (b) take any action (not adverse to the priority status of the Liens on the Collateral securing the First Lien Secured Obligations or the rights of the First Lien Collateral Agent (on behalf of the First Lien Secured Parties) or any First Lien Secured Party to exercise remedies in respect thereof) in order to create, perfect, preserve or protect (but not enforce) its second-priority Lien on the Second Lien Collateral;
- (c) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of any of the Second Lien Lenders, including any claims secured by the Second Lien Collateral, if any, in each case in accordance with the terms of this Agreement;
- (d) vote on any plan of reorganization, file any proof of claim, make other filings and make any arguments and motions that are, in each case, in accordance with the terms of this Agreement, with respect to the Second Lien Secured Obligations and the Second Lien Collateral; and
- (e) exercise any of its rights or remedies with respect to the Collateral after the Discharge of the First Lien Obligations to the extent permitted under Section 3.01(a).

ARTICLE IV
PAYMENTS

Section 4.01 Application of Proceeds. Regardless of any Insolvency or Liquidation Proceeding which has been commenced by or against the Borrower or any other Grantor, any Collateral or any proceeds thereof received in connection with any Enforcement Action shall be applied, in each case, to the extent consistent with the terms of this Agreement, in the following order (it being agreed that the First Lien Collateral Agent or, following the Discharge of First Lien Obligations, the Second Lien Collateral Agent, as applicable, shall apply such amounts in the following order as promptly as is reasonably practicable after the receipt thereof; *provided* that such amounts shall not be so applied until such time as the amount of the First Lien Secured Obligations and, solely in respect of agent fees in respect of the Second Lien Documents pursuant to priority first and second below, the Second Lien Secured Obligations have been determined in accordance with the terms hereof and under the terms of the relevant Financing Document):

(a) *first*, on a *pro rata* basis, to the payment of all reasonable fees and other out-of-pocket costs, expenses, indemnities and/or other amounts due to the Agents and any other agents under the First Lien Documents or the Second Lien Documents in their capacities as such (including, costs and expenses incurred in connection with any realization or enforcement of the Collateral taken in accordance with the terms of this Agreement or any other Collateral Documents), in each case to the extent reimbursable under the applicable First Lien Documents or Second Lien Documents;

(b) *second*, (i) on a *pro rata* basis, to any Secured Party which has theretofore advanced or paid any fees to any Agent or other agent referred to in priority first above (other than any amounts paid under priority first above) an amount equal to the amount thereof so advanced or paid by such Secured Party and for which such Secured Party has not been previously reimbursed, and (ii) to the payment of the Put Election Loans (if any amounts remain outstanding under such Put Election Loans);

(c) *third*, on a *pro rata* basis, to the payment of, without duplication, all amounts then due and payable in respect of the First Lien Secured Obligations until the Discharge of First Lien Obligations;

(d) *fourth*, after the Discharge of First Lien Obligations, on a *pro rata* basis, to the payment of all amounts, without duplication, then due and payable in respect of the Second Lien Secured Obligations until the Discharge of Second Lien Obligations; and

(e) *last*, the balance, if any, after all of the First Lien Secured Obligations and Second Lien Secured Obligations, in each case, other than unasserted contingent obligations, have been paid in full in cash (or otherwise satisfied in full), to the Borrower or as otherwise a court of competent jurisdiction may direct;

provided, however, that the foregoing order of application above shall not be altered as a result of any Liens under any of the Collateral Documents, failing to secure all of the Secured

Obligations, and the Secured Parties agree that proceeds from all sources shall be applied to ensure that the foregoing order of application is maintained.

Section 4.02 Determination of Payments

(a) For purposes of applying payments received in accordance with this Agreement, the First Lien Collateral Agent shall be entitled to rely upon any information or documents received by First Lien Administrative Agent or any other Secured Party, as set forth in Section 8.07. In the event that the First Lien Collateral Agent, in its sole discretion, determines that it is unable to determine the amount or order of payments that should be made hereunder, the parties hereto agree that the First Lien Collateral Agent shall have the right, at its option, to deposit with, or commence an interpleader proceeding in respect of, such funds in a court of competent jurisdiction for a determination by such court as to the correct application of such funds hereunder.

(b) For purposes of applying payments received in accordance with this Agreement, the Second Lien Collateral Agent shall be entitled to rely upon any information or documents received by Second Lien Administrative Agent or any other Secured Party, as set forth in Section 9.07. In the event that the Second Lien Collateral Agent, in its sole discretion, determines that it is unable to determine the amount or order of payments that should be made hereunder, the parties hereto agree that the Second Lien Collateral Agent shall have the right, at its option, to deposit with, or commence an interpleader proceeding in respect of, such funds in a court of competent jurisdiction for a determination by such court as to the correct application of such funds hereunder.

Section 4.03 Payments Over. At all times prior to the Discharge of First Lien Obligations, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Borrower or any other Grantor, any Collateral, other collateral or proceeds thereof received by the Second Lien Collateral Agent or the Second Lien Secured Parties in connection with the exercise of any right or remedy (including set off relating to the Collateral) in contravention of this Agreement shall be segregated and held in trust and forthwith paid over to the First Lien Collateral Agent for distribution in accordance with the terms of this Agreement in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The First Lien Collateral Agent is hereby authorized to make any such endorsements as agent for the Second Lien Collateral Agent. This authorization is coupled with an interest and is irrevocable.

Section 4.04 Debt Balances. (a) Upon the written request of the First Lien Collateral Agent or the Second Lien Collateral Agent, the applicable Secured Parties Representative shall promptly (and, in any event, within five (5) Business Days) give the First Lien Collateral Agent or the Second Lien Collateral Agent, as applicable, written notice of the aggregate amount of the Secured Obligations then outstanding and owed by the Borrower or any other Grantor to the Secured Parties represented by such Secured Parties Representative under the applicable Secured Obligations Documents and any other information that such Person may reasonably request, including Outstanding Amounts and, if applicable, the amounts referenced in the definitions of "Required First Lien Secured Parties" and "Required Second Lien Secured Parties", for the

purpose of permitting the First Lien Collateral Agent to determine the Required First Lien Secured Parties and Required Second Lien Secured Parties.

(b) Without limiting the foregoing, upon receipt of any of the monies referred to in Section 4.01 above, the First Lien Collateral Agent or the Second Lien Collateral Agent receiving such monies shall promptly provide notice to each Secured Parties Representative of the receipt of such monies. Within ten (10) Business Days of the receipt of such notice, each Secured Parties Representative shall give the First Lien Collateral Agent written certification by an authorized officer or representative thereof of the aggregate amount of the Secured Obligations then outstanding owed by the Borrower to the Secured Parties represented by such Secured Parties Representative under the applicable First Lien Documents to be certified to as presently due and owing (and, promptly upon receipt thereof, the First Lien Collateral Agent shall provide a copy of each such certification to each other Secured Parties Representative). Unless otherwise directed by a court of competent jurisdiction or each Secured Parties Representative, the First Lien Collateral Agent shall use the information provided for in such notices as the basis for applying such monies in accordance with Section 4.01 above.

ARTICLE V OTHER AGREEMENTS

Section 5.01 Releases. If, in connection with the exercise of the First Lien Collateral Agent's rights and remedies in respect of the Collateral as provided for in Section 3.01 or otherwise in accordance with provisions in the First Lien Documents relating to permitted dispositions, transfers and other permitted releases of Collateral, the First Lien Collateral Agent releases its Liens on any part of the Collateral, whether in connection with any foreclosure (judicial or nonjudicial) under the UCC, sale under the Bankruptcy Laws (whether by credit bid or otherwise), Enforcement Action, other judicial or judicially ordered foreclosure proceeding and involving any Collateral or otherwise in accordance with the terms and conditions of the First Lien Documents, then the Second Lien Collateral Agent shall be deemed to have released automatically and without further action the corresponding Liens, if any, of the Second Lien Collateral Agent on such Collateral under the Second Lien Collateral Documents in respect of the Second Lien Secured Obligations. The Second Lien Collateral Agent shall promptly execute and deliver to the First Lien Collateral Agent such termination statements, releases and other documents as the First Lien Collateral Agent or the Borrower may request to effectively confirm such release.

Section 5.02 Amendments to Second Lien Collateral Documents; Refinancing of Second Lien Loans.

(a) Until the Discharge of First Lien Obligations has occurred, without the prior written consent of the First Lien Collateral Agent, acting at the written direction of the Required First Lien Secured Parties, the Second Lien Collateral Agent shall not amend, supplement or otherwise modify any Second Lien Collateral Document other than in accordance with a Refinancing as set forth in Section 5.02(b). Each Grantor agrees that each Second Lien Collateral Document shall include the following language (or language to similar effect approved by the First Lien Collateral Agent):

“Notwithstanding anything herein to the contrary, the lien and security interest granted to the Second Lien Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Second Lien Collateral Agent hereunder are subject to the provisions of the Collateral Agency and Intercreditor Agreement, dated as of [____], (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Collateral Agency Agreement”), among ITR Concession Company LLC, a Delaware limited liability company; [____], as First Lien Administrative Agent; [____], as Second Lien Administrative Agent; [____], as First Lien Collateral Agent; and [____], as Second Lien Collateral Agent, and each other Person party or that may become party thereto from time to time. In the event of any conflict between the terms of the Collateral Agency Agreement and this Agreement, the terms of the Collateral Agency Agreement shall govern and control.”

(b) The Second Lien Loans may be Refinanced at any time, without notice to, or the consent of any of the other Secured Parties; *provided*, that the lien priority as set forth herein and subordination or other provisions of this Agreement shall remain unchanged and unaffected; *provided*, further, that until the Discharge of First Lien Obligations has occurred, the Required First Lien Secured Parties’ prior written consent shall be required to:

(i) increase the applicable margins payable by any Grantor by more than one hundred percent (100%) of the amount of such applicable margins payable in connection with the existing Second Lien Loans;

(ii) increase the Outstanding Amount of the existing Second Lien Loans if, after giving effect to such increase, the Borrower’s Debt Service Coverage Ratio in respect of the First Lien Loans and Refinanced Second Lien Loans, together, would be less than 1.3:1.0; or

(iii) if the Refinanced Second Lien debt has a weighted average life to maturity (excluding any prepayments) and a final maturity date less than that of the existing Second Lien Loans.

Section 5.03 Amendments to First Lien Documents; Refinancing of Second Lien Loans.

(a) The First Lien Financing Agreement and any other First Lien Document may be amended, supplemented or otherwise modified in accordance with their terms, in each case, without notice to, or the consent of the Second Lien Collateral Agent, without affecting the lien subordination or other provisions of this Agreement, subject to Section 5.03(b).

(b) The First Lien Loans may be Refinanced at any time, without notice to, or the consent of any of the other Secured Parties, all without affecting the lien priority and subordination or other provisions of this Agreement; *provided*, that until the Discharge of First Lien Obligations has occurred, the Required Second Lien Secured Parties’ consent shall be required for:

- (i) increase the applicable margins payable by any Grantor by more than one hundred percent (100%) of the amount of such applicable margins payable in connection with the existing First Lien Loans;
- (ii) increase the Outstanding Amount of the existing First Lien Loans if, after giving effect to such increase, the Borrower's Debt Service Coverage Ratio in respect of the Refinanced First Lien Loans would be less than 1.6:1.0 or the Refinanced First Lien Loans and the Second Lien Loans, together, would be less than 1.3:1.0; or
- (iii) if the Refinanced First Lien debt has a weighted average life to maturity (excluding any prepayments) and a final maturity date less than that of the existing First Lien Loans.

Section 5.04 Purchase Right. Without prejudice to the enforcement of the First Lien Secured Parties' remedies, the First Lien Secured Parties agree that, prior to the Discharge of First Lien Obligations, following an acceleration of any First Lien Secured Obligations in accordance with the terms of the First Lien Documents, the First Lien Secured Parties will offer the Second Lien Collateral Agent a one-time option to purchase the entire aggregate amount of (but not less than the entire amount of) outstanding First Lien Secured Obligations, at par plus any accrued and unpaid Interest Expense, due and payable to the First Lien Secured Parties under the First Lien Documents, and the corresponding rights under the First Lien Documents, without warranty or representation or recourse (other than representation and warranty of title, the amount of the First Lien Secured Obligations and that no action has been taken to release the Borrower or the Collateral except in accordance with the terms hereof), on a pro rata basis across the First Lien Secured Parties. The Second Lien Collateral Agent shall irrevocably accept or reject such offer within fifteen (15) days of the receipt thereof and the parties shall use their commercially reasonable efforts to close promptly thereafter (and, in any event, shall close within thirty (30) days of the receipt thereof unless otherwise agreed to by the First Lien Administrative Agent). If the Second Lien Collateral Agent accepts such offer, it shall be exercised pursuant to documentation mutually acceptable to each of the other Agents. If the Second Lien Collateral Agent rejects such offer (or does not so irrevocably accept such offer within the required timeframe), the First Lien Secured Parties shall have no further obligations pursuant to this Section 5.04.

Section 5.05 Injunctive Relief. Should the Second Lien Collateral Agent, contrary to this Agreement, in any way take, attempt to or threaten to take any action with respect to the Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement), or fail to take any action required by this Agreement, the First Lien Collateral Agent (at the prior written direction of the First Lien Administrative Agent) or the First Lien Administrative Agent (in its or their own name or in the name of the Borrower) or the Borrower may obtain relief against the Second Lien Collateral Agent by injunction, specific performance and/or other appropriate equitable relief, it being understood and agreed by the Second Lien Collateral Agent that (i) the First Lien Secured Parties' damages from its actions may at that time be difficult to ascertain and may be irreparable, and (ii) the Second Lien Collateral Agent waives any defense that the Borrower and/or the First Lien Secured Parties cannot demonstrate damages and/or be made whole by the awarding of damages.

Section 5.06 Certain Actions. So long as any Secured Obligations remain outstanding in respect of more than one class of Secured Parties, the following provisions shall apply:

(a) Each Secured Parties Representative hereby agrees to give, pursuant to the terms set forth in the Secured Obligations Documents, as the case may be, the First Lien Collateral Agent prompt written notice of the occurrence of (i) any Event of Default, as applicable, of which such Person has written notice, and (ii) acceleration of the maturity of any Secured Obligations under any of the First Lien Documents for which it acts as a Secured Parties Representative wherein such Secured Obligations have been declared to be or have automatically become due and payable earlier than the scheduled maturity thereof (or similar remedial actions including demands for cash collateral and setting forth the aggregate amount of Secured Obligations that have been so accelerated under such First Lien Documents, in each case, as soon as practicable after the occurrence thereof (and, in any event, within five (5) Business Days after the occurrence thereof); *provided, however*, that the failure to provide such notice shall not limit or impair the rights of the Secured Parties, or the obligations of any Grantor hereunder or under the other First Lien Documents. No Agent shall be deemed to have knowledge or notice of the occurrence of an Event of Default under the Secured Obligations Documents to which it is a party until such Agent has received a written notice of such Event of Default from any other Agent, the Borrower or any other Secured Party for whom such Agent is acting as agent or trustee.

(b) The First Lien Collateral Agent hereby agrees to give each Secured Parties Representative written notice of the occurrence of an Event of Default following receipt thereof of written notice to it and provide a copy of all other information provided to it by the Borrower under the Collateral Documents upon request.

(c) Until the Discharge of First Lien Obligations, the First Lien Collateral Agent, acting solely at the written instruction of the Required First Lien Secured Parties, shall have during the occurrence and continuation of an Event of Default the exclusive right and obligation, as between the First Lien Collateral Agent and the Second Lien Collateral Agent, to give notices and instructions under the Depositary Agreement to the Depositary Bank to take action thereunder (in accordance with the terms thereof) and after the Discharge of First Lien Obligations, the Second Lien Collateral Agent shall have during the occurrence and continuation of an Event of Default the exclusive right and obligation to give notices and instructions under the Depositary Agreement to the Depositary Bank to take action thereunder (in accordance with the terms thereof).

(d) Each Grantor hereby agrees that, at any time and from time to time, at its sole cost and expense, at the reasonable request of the First Lien Collateral Agent or the Second Lien Collateral Agent, but subject to the terms and conditions of the Financing Documents, it shall promptly execute and deliver all further agreements, instruments, documents and certificates and take all further action that may be reasonably necessary in order to provide, perfect and maintain the First Lien and Second Lien on the Collateral as contemplated on the date hereof and to fully effect the purposes of this Agreement and to enable the First Lien Collateral Agent or the Second Lien Collateral Agent to exercise and enforce their respective rights and remedies under the Collateral Documents with respect to the Collateral or any part thereof.

Section 5.07 Bailee for Perfection; Representative; Relationship.

(a) The First Lien Collateral Agent agrees to hold the Pledged Collateral that is in its possession or control (or in the possession or control of its agents or bailees) as collateral agent for the First Lien Secured Parties and, prior to the Discharge of the First Lien Obligations, as bailee for the Second Lien Collateral Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2) and 9-313(c) of the UCC) and any assignee solely for the purpose of perfecting the security interest granted under the First Lien Collateral Documents and the Second Lien Collateral Documents, respectively, subject to the terms and conditions of this Section 5.07.

(b) Subject to applicable law and the terms of this Agreement, until the Discharge of First Lien Obligations has occurred, the First Lien Collateral Agent shall be entitled to deal with the Pledged Collateral or Collateral within its “*control*” in accordance with the terms of this Agreement and the other First Lien Documents as if the Liens of the Second Lien Collateral Agent did not exist. The rights of the Second Lien Collateral Agent with respect to the Collateral shall at all times be subject to the terms of this Agreement.

(c) The First Lien Collateral Agent shall have no obligations whatsoever to the First Lien Secured Parties, the Second Lien Collateral Agent or the Second Lien Secured Parties to ensure that the Pledged Collateral is genuine or owned by any Grantor or to preserve the rights or benefits of any Person except as expressly set forth in this Section 5.07. The duties or responsibilities of the First Lien Collateral Agent under this Section 5.07 shall be limited solely to holding the Pledged Collateral as bailee in accordance with this Section 5.07 and delivering the Pledged Collateral upon a Discharge of First Lien Obligations as provided in clause (e) below.

(d) The First Lien Collateral Agent acting pursuant to this Section 5.07 shall not have by reason of the First Lien Collateral Documents or the Second Lien Collateral Documents, this Agreement or any other document a fiduciary relationship in respect of any Secured Parties Representative, First Lien Secured Party, Second Lien Secured Party or the Second Lien Collateral Agent.

(e) Upon the Discharge of First Lien Obligations, to the extent notified in writing of such Discharge of First Lien Obligations by the First Lien Administrative Agent, the First Lien Collateral Agent shall deliver the remaining Pledged Collateral (if any) together with any necessary endorsements, *first*, if the Discharge of Second Lien Obligations has not occurred, to the Second Lien Collateral Agent, and all such Pledged Collateral and other Collateral, as applicable, delivered to the Second Lien Collateral Agent shall be automatically deemed to be within the Second Lien Collateral Agent’s “*control*” in accordance with the terms of the Second Lien Documents, and *second*, if the Discharge of Second Lien Obligations has occurred, to the Borrower (in each case, so as to allow such Person to obtain possession or control of such Pledged Collateral). After the Discharge of First Lien Obligations, to the extent notified in writing of such Discharge by the First Lien Administrative Agent and solely to the extent the Discharge of Second Lien Obligations has not occurred, the First Lien Collateral Agent further agrees to take all other action reasonably requested by the Second Lien Collateral Agent in

connection with the Second Lien Collateral Agent obtaining a first-priority interest in the Collateral or as a court of competent jurisdiction may otherwise direct.

ARTICLE VI
INSOLVENCY OR LIQUIDATION PROCEEDINGS

Section 6.01 Finance and Sale Issues.

(a) At any time prior to the Discharge of First Lien Obligations, if the Borrower shall be subject to any Insolvency or Liquidation Proceeding and (i) the First Lien Collateral Agent (acting at the direction of the Required First Lien Secured Parties) shall desire to permit the use of “Cash Collateral” (as such term is defined in Section 363(a) of the Bankruptcy Code), on which the First Lien Collateral Agent or any other creditor has a Lien or (ii) the First Lien Collateral Agent (acting at the direction of the Required First Lien Secured Parties) shall desire to permit the Borrower to obtain financing, whether from the First Lien Secured Parties or any other Person under Section 364 of the Bankruptcy Code or any similar Bankruptcy Laws (“DIP Financing”), then First Lien Collateral Agent, the First Lien Administrative Agent (on behalf of itself and the First Lien Lenders), and each other Secured Party agrees that it will raise no objection to such Cash Collateral use or DIP Financing so long as (1) the DIP Financing does not compel the Borrower to seek confirmation of a specific plan of reorganization for which all or substantially all of the material terms are set forth in the DIP Financing documentation or a related document, (2) the DIP Financing documentation or Cash Collateral order does not expressly require the liquidation of the Collateral prior to a default under the DIP Financing documentation, and (3) the DIP Financing plus all amounts outstanding under the Second Lien Documents do not exceed the DIP Financing Cap Amount. To the extent the Liens securing the First Lien Secured Obligations are subordinated to or *pari passu* with such DIP Financing which meets the requirements of the previous sentence, the Second Lien Collateral Agent will subordinate its Liens in the Collateral to the Liens securing such DIP Financing (and all Secured Obligations relating thereto) and any “carve-out” approved by the First Lien Collateral Agent, and will not request adequate protection or any other relief in connection therewith (except as expressly agreed by the First Lien Collateral Agent or to the extent permitted by Section 6.03).

(b) At any time prior to the Discharge of First Lien Obligations, if the Borrower shall be subject to any Insolvency or Liquidation Proceeding and the Second Lien Collateral Agent (acting at the direction of the Required Second Lien Secured Parties) shall desire to permit the Borrower to obtain DIP Financing, then the First Lien Collateral Agent, the First Lien Administrative Agent (on behalf of itself and the First Lien Lenders), the Second Lien Administrative Agent (on behalf of itself and the Second Lien Lenders) and each other Secured Party agrees that it will raise no objection to such DIP Financing so long as (1) the DIP Financing does not compel the Borrower to seek confirmation of a specific plan of reorganization for which all or substantially all of the material terms are set forth in the DIP Financing documentation or a related document, (2) the DIP Financing documentation or Cash Collateral order does not expressly require the liquidation of the Collateral prior to a default under the DIP Financing documentation, and (3) the DIP Financing plus all amounts outstanding under the Second Lien Documents do not exceed the DIP Financing Cap Amount. To the extent the Liens securing the Second Lien Obligations are subordinated to or *pari passu* with such DIP

Financing which meets the requirements of the previous sentence, the Second Lien Collateral Agent will subordinate its Liens in the Collateral to the Liens securing such DIP Financing (and all Secured Obligations relating thereto) and will not request adequate protection or any other relief in connection therewith (except as expressly agreed by the First Lien Collateral Agent or to the extent permitted by Section 6.03).

Section 6.02 Relief from the Automatic Stay. Until the Discharge of First Lien Obligations occurs, the Second Lien Collateral Agent agrees that it shall not seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral, without the prior written consent of the First Lien Collateral Agent, unless the Second Lien Collateral Agent's request for adequate protection permitted under Section 6.03 has been denied by the Bankruptcy Court.

Section 6.03 Adequate Protection.

(a) The Second Lien Collateral Agent agrees that it shall not contest (or support any other Person contesting):

(i) any request by the First Lien Collateral Agent or the First Lien Secured Parties for adequate protection; or

(ii) any objection by the First Lien Collateral Agent or the First Lien Secured Parties to any motion, relief, action or proceeding based on the First Lien Collateral Agent or the First Lien Secured Parties claiming a lack of adequate protection.

(b) Notwithstanding the foregoing provision in this Section 6.03, in any Insolvency or Liquidation Proceeding prior to the Discharge of First Lien Obligations:

(i) if the First Lien Secured Parties (or any subset thereof) are seeking adequate protection in the form of additional or replacement collateral in connection with any use of Cash Collateral or DIP Financing or for any other purpose, then the Second Lien Collateral Agent may, concurrently with such First Lien Secured Parties, seek or request adequate protection in the form of a Lien on such additional or replacement collateral, which Lien will be subordinated to each of (A) the Liens securing the First Lien Secured Obligations and (B) the Liens granted to the First Lien Collateral Agent and/or First Lien Secured Parties as adequate protection in connection with such Cash Collateral use or such DIP Financing (and all Secured Obligations relating thereto) and any "carve-out" approved by the First Lien Collateral Agent, on the same basis as the other Liens securing the Second Lien Secured Obligations are so subordinated to the First Lien Secured Obligations under this Agreement; and

(ii) in the event the Second Lien Collateral Agent seeks or requests adequate protection in respect of the Second Lien Secured Obligations and such adequate protection is granted in the form of additional or replacement collateral, then the Second Lien Collateral Agent agrees that the First Lien Collateral Agent shall also be granted a senior Lien on such additional or replacement collateral as security for the First Lien Secured Obligations and for any Cash Collateral use or DIP Financing provided by the First Lien Secured Parties and that any Lien on such additional or replacement collateral

securing the Second Lien Secured Obligations shall be subordinated to the Lien on such collateral securing the First Lien Secured Obligations and any such DIP Financing provided by the First Lien Secured Parties (and all Secured Obligations relating thereto) and to any other Liens granted to the First Lien Secured Parties as adequate protection on the same basis as the other Liens securing the Second Lien Secured Obligations are so subordinated to such First Lien Secured Obligations under this Agreement. Except as otherwise expressly set forth in Section 6.01 or this Section 6.03, nothing herein shall limit the rights of the Second Lien Collateral Agent from seeking adequate protection with respect to their rights in the Collateral in any Insolvency or Liquidation Proceeding (including adequate protection in the form of a cash payment, periodic cash payments, cash payments of interest or otherwise).

Section 6.04 No Waiver. Subject to Sections 3.01(a), 6.02 and 6.03, nothing contained herein shall prohibit or in any way limit the First Lien Collateral Agent or any First Lien Secured Party from objecting in any Insolvency or Liquidation Proceeding or otherwise to any action taken by the Second Lien Collateral Agent, including the seeking by the Second Lien Collateral Agent of adequate protection or the asserting by the Second Lien Collateral Agent of any of its rights and remedies under the Second Lien Documents or otherwise.

Section 6.05 Avoidance Issues.

(a) If any First Lien Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Borrower any amount paid in respect of the First Lien Secured Obligations (a "First Lien Recovery"), then such First Lien Secured Party shall be entitled to a reinstatement of First Lien Secured Obligations with respect to all such recovered amounts. In such event (a) the Discharge of First Lien Obligations shall be deemed not to have occurred and (b) if this Agreement shall have been terminated prior to such First Lien Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement.

(b) If any Second Lien Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Borrower any amount paid in respect of the Second Lien Secured Obligations (a "Second Lien Recovery"), then such Second Lien Secured Party shall be entitled to a reinstatement of Second Lien Secured Obligations with respect to all such recovered amounts. In such event (a) the Discharge of Second Lien Obligations shall be deemed not to have occurred and (b) if this Agreement shall have been terminated prior to such Second Lien Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement.

Section 6.06 Reorganization Securities. If, in any Insolvency or Liquidation Proceeding prior to the Discharge of First Lien Obligations, debt obligations of the reorganized debtor secured by Liens upon any Property of the reorganized debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, on account of the First Lien Secured Obligations and on account of the Second Lien Secured Obligations, then, to the extent the debt obligations distributed on account of the First Lien Secured Obligations and on account

of the Second Lien Secured Obligations are secured by Liens upon the same Property and to the extent such distribution did not at the time thereof take into account this Agreement and the priorities set forth herein, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

Section 6.07 Post-Petition Interest. (a) Neither the Second Lien Collateral Agent nor any Secured Lien Secured Party shall oppose or seek to challenge any claim by the First Lien Collateral Agent or any First Lien Secured Party, for allowance in any Insolvency or Liquidation Proceeding of First Lien Secured Obligations consisting of post-petition interest (including at the contractual default rate under the First Lien Documents), fees or expenses in accordance with the First Lien Documents.

(b) Neither the First Lien Collateral Agent nor any First Lien Secured Party shall oppose or seek to challenge any claim by the Second Lien Collateral Agent or any Second Lien Secured Party for allowance in any Insolvency or Liquidation Proceeding of Second Lien Secured Obligations consisting of post-petition interest (including at the contractual default rate under the First Lien Documents), fees or expenses in accordance with the Second Lien Documents.

Section 6.08 Waiver. The Second Lien Collateral Agent waives any claim it may hereafter have against any First Lien Secured Party, arising out of the election of any First Lien Secured Party of the application of Section 1111(b)(2) of the Bankruptcy Code with respect to any cash collateral or financing arrangement or any grant of a security interest in connection with the Collateral in any Insolvency or Liquidation Proceeding.

ARTICLE VII RELIANCE; WAIVERS; ETC.

Section 7.01 Reliance. Other than any reliance on the terms of this Agreement, the First Lien Administrative Agent acknowledges that it and each other First Lien Secured Party has, independently and without reliance on the First Lien Collateral Agent or the Second Lien Collateral Agent or any other Secured Party and based on documents and information deemed by it appropriate, made its own credit analysis and decision to enter into each First Lien Document to which it is a party and be bound by the terms of this Agreement and it will continue to make its own credit decision in taking or not taking any action under this Agreement or any other First Lien Document. The Second Lien Administrative Agent acknowledges that it and each other Second Lien Secured Party has independently and without reliance on the First Lien Collateral Agent, the Second Lien Collateral Agent or any other Secured Party, and based on documents and information deemed by it appropriate, made its own credit analysis and decision to enter into each Second Lien Document to which it is a party and be bound by the terms of this Agreement and it will continue to make its own credit decision in taking or not taking any action under this Agreement or any other Second Lien Document.

Section 7.02 No Warranties or Liability.

(a) Except as otherwise provided herein, the First Lien Collateral Agent (on behalf of the First Lien Secured Parties) acknowledges and agrees that the Second Lien Collateral Agent has not made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Second Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise expressly provided herein, the First Lien Secured Parties will be entitled to manage and supervise their respective loans and extensions of credit under the First Lien Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate.

(b) Except as otherwise provided herein, the Second Lien Collateral Agent (on behalf of the Second Lien Secured Parties) acknowledges and agrees that none of the First Lien Collateral Agent nor any First Lien Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the First Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise expressly provided herein, the Second Lien Secured Parties will be entitled to manage and supervise their respective extensions of credit under the Second Lien Documents in accordance with law and as they may otherwise, in its sole discretion, deem appropriate.

(c) Except as otherwise provided herein, the Second Lien Collateral Agent shall not have any duty to the First Lien Collateral Agent or any First Lien Secured Party and none of the First Lien Collateral Agent or any First Lien Secured Party shall have any duty to the Second Lien Collateral Agent or any Second Lien Secured Party, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuation of an event of default or default under any agreements with the Borrower (including the Secured Obligations Documents), regardless of any knowledge thereof which they may have or be charged with.

Section 7.03 No Waiver of Lien Priorities.

(a) No right of the First Lien Secured Parties to enforce any provision of this Agreement or any First Lien Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Borrower or by any act or failure to act by any First Lien Secured Party, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any First Lien Document or any Second Lien Document, regardless of any knowledge thereof which such First Lien Secured Party may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph (but subject to the rights of the Borrower under the First Lien Documents and subject to the provisions of Section 5.03(a)), the First Lien Administrative Agent may, at any time and from time to time in accordance with the First Lien Documents to which the First Lien Lenders are a party and/or applicable law, without the consent of or notice to the Second Lien Collateral Agent, without incurring any liabilities to the Second Lien Collateral Agent or any Second Lien Secured Party and without impairing or releasing the Lien priorities and other benefits provided in this Agreement, except in accordance with the terms hereof, do any one or more of the following:

(i) change the manner, place or terms of payment, change or extend the time of payment of or amend, renew, exchange, increase or alter the terms of any of the First Lien Secured Obligations or any Lien on any First Lien Collateral or any liability of the Borrower, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the First Lien Secured Obligations, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by the First Lien Collateral Agent or any of the First Lien Secured Parties, the First Lien Secured Obligations or any of the First Lien Documents;

(ii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the First Lien Collateral or any liability of the Borrower to any First Lien Secured Party or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any First Lien Secured Obligation or any other liability of the Borrower or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the First Lien Secured Obligations) in any manner or order; and

(iv) exercise or delay in or refrain from exercising any right or remedy against the Borrower or any security or any other Person, elect any remedy and otherwise deal freely with the Borrower or the First Lien Collateral and any security and any guarantor or any liability of the Borrower to the First Lien Secured Parties or any liability incurred directly or indirectly in respect thereof.

(c) Except as otherwise provided herein, the Second Lien Collateral Agent agrees that none of the First Lien Secured Parties shall have any liability to the Second Lien Collateral Agent or any Second Lien Secured Party with respect to and the Second Lien Collateral Agent hereby waives any claim against any First Lien Secured Party, arising out of any and all actions which the First Lien Secured Parties and the First Lien Collateral Agent may take or permit or omit to take in compliance with this Agreement and the First Lien Collateral Documents with respect to:

(i) the First Lien Documents;

(ii) the collection of the First Lien Secured Obligations; or

(iii) the foreclosure upon, or sale, liquidation or other disposition sale of, or the failure to foreclose upon, or sell, liquidate or otherwise dispose of, the First Lien Collateral.

The Second Lien Collateral Agent agrees that none of the First Lien Secured Parties has any duty to it in respect of the maintenance or preservation of the Collateral, the First Lien Secured Obligations or otherwise, except to the extent expressly set forth in this Agreement and the First Lien Collateral Documents.

(d) Until the Discharge of First Lien Obligations, the Second Lien Collateral Agent agrees not to assert and hereby waives, to the fullest extent permitted by law and except as otherwise permitted by this Agreement, any right to demand, request, plead or otherwise assert, or otherwise claim the benefit of, any marshaling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Collateral or any other similar rights a junior secured creditor may have under applicable law.

Section 7.04 Obligations Unconditional. All rights, interests, agreements and obligations of each of the First Lien Collateral Agent, the First Lien Secured Parties, the Second Lien Collateral Agent or the Second Lien Secured Parties, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any First Lien Documents or any Second Lien Documents;

(b) except as otherwise expressly set forth in this Agreement and the First Lien Collateral Documents, any change in the time, manner or place of payment of, or in any other terms of, all or any of the First Lien Secured Obligations or Second Lien Secured Obligations or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any First Lien Document or any Second Lien Document;

(c) except as otherwise expressly set forth in this Agreement and the First Lien Collateral Documents, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the First Lien Secured Obligations or Second Lien Secured Obligations or any guarantee thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of any Grantor; or

(e) any other circumstances that otherwise might constitute a defense available to, or a discharge of, any Grantor in respect of the First Lien Collateral Agent, the First Lien Secured Obligations, any First Lien Secured Party, the Second Lien Collateral Agent, any Second Lien Secured Party or the Second Lien Secured Obligations in respect of this Agreement and the First Lien Collateral Documents.

ARTICLE VIII THE FIRST LIEN COLLATERAL AGENT

Section 8.01 Appointment. [_____] is hereby appointed as First Lien Collateral Agent for the benefit of the First Lien Secured Parties with respect to the Liens on the Collateral and the rights and remedies granted pursuant to the First Lien Collateral Documents. The First Lien Collateral Agent accepts such appointment and agrees to act as First Lien Collateral Agent. The First Lien Administrative Agent, on behalf of each First Lien Secured Party, hereby authorizes and directs the First Lien Collateral Agent to act in strict accordance with the terms of this Agreement notwithstanding any contrary provision in the other Collateral Documents with respect to Enforcement Actions and the application of any First Lien Collateral or proceeds

thereof. The First Lien Collateral Agent hereby accepts and agrees to, and the Borrower hereby acknowledges and consents to, the foregoing authorization and direction of the First Lien Administrative Agent, on behalf of the First Lien Secured Parties.

Section 8.02 Duties and Responsibilities.

(a) Subject to the terms hereof, the First Lien Collateral Agent agrees to administer and enforce this Agreement and the other First Lien Collateral Documents to which it is a party as First Lien Collateral Agent, and to foreclose upon, collect and dispose of the First Lien Collateral and to apply the proceeds therefrom, for the benefit of the Secured Parties, as provided herein, and otherwise to perform its duties and obligations as the First Lien Collateral Agent hereunder in accordance with the terms hereof; provided, however, that the First Lien Collateral Agent shall have no duties or responsibilities except those expressly set forth in the First Lien Collateral Documents to which it is a party as First Lien Collateral Agent, and no implied covenants or obligations shall be read into any such First Lien Collateral Documents against the First Lien Collateral Agent.

(b) Notwithstanding anything contained herein to the contrary, the First Lien Collateral Agent shall not be required to exercise any discretion or take any action but shall only be required to act or refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the First Lien Administrative Agent or the Required First Lien Secured Parties, as applicable, and in each case, as specified therein, and such instructions shall be binding upon First Lien the Collateral Agent and each of the First Lien Secured Parties; provided, however, that the written instructions of all of the First Lien Secured Parties shall be required where expressly provided for herein; provided, further, that the First Lien Collateral Agent shall not be required to take any action which is contrary to any provision of the First Lien Collateral Documents or applicable law.

(c) Notwithstanding any other provision of the First Lien Collateral Documents, in no event shall the First Lien Collateral Agent be required to foreclose on, or take possession of, the First Lien Collateral, if, in the judgment of the First Lien Collateral Agent, such action would be in violation of any applicable law, rule or regulation pertaining thereto, or if the First Lien Collateral Agent reasonably believes that such action would result in the incurrence of liability by the First Lien Collateral Agent for which it is not fully indemnified by the First Lien Secured Parties.

(d) The First Lien Collateral Agent shall not be responsible to the other First Lien Secured Parties for (i) any recitals, statements, representations or warranties by the Borrower or any of the First Lien Secured Parties (other than the First Lien Collateral Agent) contained in this Agreement or the First Lien Documents, or any certificate or other document delivered by the Borrower or any of the other First Lien Secured Parties thereunder, (ii) the value, validity, effectiveness, genuineness, enforceability (other than as to the First Lien Collateral Agent with respect to such documents to which the First Lien Collateral Agent is a party) or sufficiency of this Agreement or any other document referred to or provided for herein or therein or of the First Lien Collateral held by the First Lien Collateral Agent hereunder, (iii) the performance or observance by the Borrower or any of the First Lien Secured Parties (other than as to itself) of any of their respective agreements contained herein or therein, nor

shall the First Lien Collateral Agent be liable because of the invalidity or unenforceability of any provisions of this Agreement (other than as to itself) or (iv) the validity, perfection, priority or enforceability of the Liens in any of the First Lien Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder (except to the extent such action or omission constitutes bad faith, gross negligence or willful misconduct on the part of the First Lien Collateral Agent), the validity of the title of the Borrower to the First Lien Collateral, insuring the First Lien Collateral or the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the First Lien Collateral.

(e) The First Lien Collateral Agent may at any time request instructions from the First Lien Administrative Agent as to a course of action to be taken by it hereunder and under any of the First Lien Collateral Documents or in connection herewith and therewith or any other matters relating hereto and thereto, and the First Lien Administrative Agent shall promptly reply to any such request.

(f) Neither the First Lien Collateral Agent nor any of its directors, officers, employees or agents shall be liable or responsible for any action taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own bad faith, gross negligence or willful misconduct.

Section 8.03 Authorization. The First Lien Administrative Agent, on behalf of each First Lien Secured Party, hereby authorizes the First Lien Collateral Agent to (a) execute, deliver and perform in such capacity under this Agreement and each other First Lien Document to which the First Lien Collateral Agent is or is intended to be a party, (b) exercise and enforce any and all rights, powers and remedies provided to the First Lien Collateral Agent or any First Lien Secured Party by this Agreement and each other First Lien Document to which the First Lien Collateral Agent is or is intended to be a party, any applicable law, or any other document, instrument, or agreement, and (c) take any other action under this Agreement and each other First Lien Document to which the First Lien Collateral Agent is or is intended to be a party which the First Lien Administrative Agent shall deem advisable in the best interests of the First Lien Secured Parties. Notwithstanding the foregoing, the First Lien Collateral Agent shall not commence an Enforcement Action except in accordance with instructions given by the First Lien Administrative Agent (acting at the direction of the Required First Lien Secured Parties) or the written direction of the Required First Lien Secured Parties; *provided*, that if the First Lien Collateral Agent is prohibited by any court order or applicable law from commencing any Enforcement Action, the First Lien Collateral Agent shall seek the requisite authority from the First Lien Administrative Agent or the Required First Lien Secured Parties, as applicable, to commence such Enforcement Action but shall not be obligated to commence such Enforcement Action until such authority is obtained. All decisions with respect to the type of Enforcement Action which is to be commenced shall be made by, and all actions with respect to prosecution and settlement of such Enforcement Action shall require the written consent of, the First Lien Administrative Agent (acting at the direction of the Required First Lien Secured Parties), and the First Lien Collateral Agent shall not be required to take any Enforcement Action in the absence of any such written consent. The First Lien Collateral Agent will use its reasonable efforts to pursue diligently the prosecution of any Enforcement Action, which the First Lien Collateral Agent is so authorized or directed to initiate pursuant to this Agreement. The First Lien Collateral Agent shall deliver copies of all notices it receives on behalf of the First Lien Secured

Parties or in connection with the First Lien Documents or the Indiana Toll Road to the First Lien Administrative Agent promptly upon receipt.

Section 8.04 Administrative Actions. The First Lien Collateral Agent may, but shall not be obligated, to take such action as it deems necessary to perfect or continue the perfection of the Liens on the First Lien Collateral held for the benefit of the First Lien Secured Parties. The First Lien Collateral Agent shall not release any of the First Lien Collateral held for the benefit of the First Lien Secured Parties, or any Liens on the First Lien Collateral held for the benefit of the First Lien Secured Parties, except: (a) upon the written direction of the First Lien Administrative Agent for any release that is permitted pursuant to the terms of the First Lien Documents or otherwise acting at the direction of the Required First Lien Secured Parties; (b) upon the Discharge of the First Lien Obligations, as certified to the First Lien Collateral Agent by the First Lien Administrative Agent; (c) for First Lien Collateral consisting of a debt instrument if the indebtedness evidenced thereby has been paid in full, as certified to the First Lien Collateral Agent by the First Lien Administrative Agent; or (d) where such release is expressly permitted under the First Lien Collateral Documents to which it is a party. Upon the written request by the First Lien Collateral Agent or the Borrower at any time, the First Lien Administrative Agent will confirm in writing the First Lien Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section and the First Lien Administrative Agent hereby agrees to provide such confirmations promptly.

Section 8.05 Determination of Amounts and Obligations. Upon the written request by the First Lien Collateral Agent or the Borrower, the First Lien Administrative Agent (on behalf of the First Lien Secured Parties) shall promptly deliver to the First Lien Collateral Agent a certificate, dated the date of delivery thereof and signed by such party, as to (a) the identity and address of each First Lien Secured Party, (b) the principal amount of the First Lien Secured Obligations then outstanding held by such First Lien Secured Party, (c) in the case of any such certificate being delivered in contemplation of the application of amounts received by the First Lien Collateral Agent in respect of the First Lien Collateral pursuant to Article VI hereof, the amount of interest on the First Lien Secured Obligations owing and any other amounts in respect of the First Lien Secured Obligations owing to such First Lien Secured Party, as the case may be (in the case of any such other amounts, accompanied by appropriate evidence thereof), (d) in the event any of the Loans shall have become or been declared to be due and payable, the principal amount of First Lien Loans then due and payable to such First Lien Secured Party, as the case may be, and/or (e) in any information reasonably requested in respect of the First Lien Hedging Agreements recorded in the Swap Registry implemented under the First Lien Financing Agreement. For the purposes of determining the amount of the First Lien Secured Obligations then outstanding held by any First Lien Secured Party, absent notice from such First Lien Secured Party, as applicable, or other actual knowledge of an Authorized Officer to the contrary, the First Lien Collateral Agent shall be entitled to rely on certifications received by it from the First Lien Administrative Agent for such purpose in accordance with the preceding sentence (in each case, which certificates shall be given substantially contemporaneously with the action being taken); provided that in the absence of the First Lien Collateral Agent's receipt of any certification requested by it pursuant to this sentence, the First Lien Collateral Agent shall be entitled (but not obligated) to take such action if the First Lien Collateral Agent shall have sufficient knowledge to make any determination required to be made in connection with such action.

Section 8.06 Employment of Agents. The First Lien Collateral Agent may employ or retain such counsel, accountants, appraisers or other experts or advisers as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and, in the absence of the First Lien Collateral Agent's bad faith, gross negligence or willful misconduct in employing or retaining any such counsel, accountants, appraisers, experts or advisers, may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the Borrower or by the First Lien Collateral Agent, in relation to any matter arising in the administration hereof, and shall not be responsible to the Secured Parties for any act or omission on the part of any of them. In addition, the First Lien Collateral Agent shall not be liable for any acts or omissions of its nominees, correspondents, designees, agents, subagents or subcustodians except to the extent of its bad faith, gross negligence or willful misconduct in nominating or appointing such Persons and so long as such Persons are permitted to act hereunder.

Section 8.07 Reliance of First Lien Collateral Agent. In connection with the performance of its duties hereunder, the First Lien Collateral Agent shall be entitled to rely conclusively upon, and shall be fully protected in acting or refraining from acting in accordance with, any certification, notice, instrument, opinion, request, consent, order, approval, direction or other communication (including any thereof by fax) of the First Lien Administrative Agent or of any other Secured Party, which the First Lien Collateral Agent in good faith reasonably believes to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons, and it shall be entitled to rely conclusively upon the due execution, validity and effectiveness, and the truth, correctness and acceptability of, any provisions contained therein. The First Lien Collateral Agent shall not have any responsibility to make any investigation into the facts or matters stated in any notice, certificate, instrument, demand, request, direction, instruction, or other communication furnished to it. Whenever this Agreement specifies that any instruction or consent by the First Lien Administrative Agent is to be given at the direction of the Required First Lien Secured Parties, the First Lien Collateral Agent shall be entitled to rely upon any such instruction or consent by the First Lien Administrative Agent (which instruction or consent need not state that it is given at the direction of the Required First Lien Secured Parties), and the First Lien Collateral Agent may presume without investigation that any such instruction or consent by the First Lien Administrative Agent has been given at the direction of the Required First Lien Secured Parties.

Section 8.08 Knowledge. The First Lien Collateral Agent shall not be charged with any knowledge held by or imputed to any of the other First Lien Secured Parties or the Borrower. The First Lien Collateral Agent shall not be deemed to have knowledge of any First Lien Event of Default under the First Lien Financing Agreement unless an Authorized Officer of the First Lien Collateral Agent has actual knowledge thereof or received notice from the First Lien Administrative Agent or the appropriate First Lien Lender or the Borrower specifying such First Lien Event of Default. In the event that the First Lien Collateral Agent, in its capacity as such, receives such a notice, the First Lien Collateral Agent shall give prompt notice thereof to the First Lien Administrative Agent and each other First Lien Secured Party.

Section 8.09 Non-Reliance on First Lien Collateral Agent and Other Financing Party. Each First Lien Secured Party expressly acknowledges that neither the First Lien Collateral

Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the First Lien Collateral Agent hereafter taken shall be deemed to constitute any representation or warranty by the First Lien Collateral Agent to any First Lien Secured Party. Each First Lien Secured Party represents to the First Lien Collateral Agent that it has, independently and without reliance upon the First Lien Collateral Agent or any other First Lien Secured Party, and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, operations, property, financial and other condition and creditworthiness of the Borrower, the Member and the Indiana Toll Road, and made its own decision to extend credit under the First Lien Financing Agreement and enter into this Agreement. Each First Lien Secured Party also represents that it will, independently and without reliance upon the First Lien Collateral Agent or any other First Lien Secured Party, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement or any other First Lien Document, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Borrower, the Member and any other Person. Except for any notices, reports and other documents expressly required to be furnished to the First Lien Secured Parties by the First Lien Collateral Agent hereunder and the other First Lien Collateral Documents, the First Lien Collateral Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or other), prospects or creditworthiness of the Borrower, the Member or any other Person which may come into the possession of the First Lien Collateral Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates. [_____] is entering into this Agreement and the other First Lien Collateral Documents to which it is a party solely in its capacity as First Lien Collateral Agent and not in its individual capacity and in no case shall [_____] (or any Person acting as successor First Lien Collateral Agent under this Agreement) be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of the Borrower hereunder or thereunder, all such liability, if any, being expressly waived by the parties hereto and any Person claiming by, through or under such party. This Section shall survive the payment of the First Lien Loans and all other First Lien Secured Obligations payable to the First Lien Secured Parties. The First Lien Collateral Agent shall have no obligation and shall incur no obligation for its failure to monitor or verify the filing of financing statements (or amendments thereto) and the information contained therein.

Section 8.10 First Lien Collateral Agent in Individual Capacity. The First Lien Collateral Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrower, the Member and their respective Affiliates as though the First Lien Collateral Agent were not the First Lien Collateral Agent hereunder and under the First Lien Collateral Documents. With respect to First Lien Loans made or renewed by it and any First Lien Note issued to it, if any, the First Lien Collateral Agent shall have the same rights and powers under this Agreement and the First Lien Documents as any First Lien Lender and may exercise the same as though it were not the First Lien Collateral Agent, and the term "First Lien Lender" shall include the First Lien Collateral Agent in its individual capacity.

Section 8.11 First Lien Collateral Agent Under No Obligation. None of the provisions of the First Lien Collateral Documents shall be construed to require the First Lien Collateral

Agent to expend or risk its own funds or otherwise to incur any personal liability, financial or otherwise, in the performance of any of its duties hereunder or thereunder. The First Lien Collateral Agent shall be under no obligation to exercise any of the rights or powers vested in it by the First Lien Collateral Documents unless the First Lien Collateral Agent shall have been offered security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction (including interest thereon from the time incurred until reimbursed).

Section 8.12 Resignation and Removal; Successor Collateral Agent; Individual Collateral Agent. Subject to the appointment and acceptance of a successor First Lien Collateral Agent as provided below, the First Lien Collateral Agent may resign at any time by giving at least thirty (30) days' prior written notice thereof to the First Lien Administrative Agent, each other First Lien Secured Party and the Borrower, and the First Lien Collateral Agent may be removed at any time with or without cause by the First Lien Administrative Agent (acting at the written direction of the Required First Lien Secured Parties) upon thirty (30) days' written notice thereof to the First Lien Administrative Agent, the other First Lien Secured Parties and the Borrower. Upon any such resignation or removal, the First Lien Administrative Agent (acting at the written direction of the Required First Lien Secured Parties) shall have the right to appoint a successor First Lien Collateral Agent to the extent such successor First Lien Collateral Agent is an "Institutional Lender" pursuant to the Concession Agreement. Such successor First Lien Collateral Agent, so long as no First Lien Event of Default has occurred and is continuing, shall be reasonably acceptable to the Borrower. If no successor First Lien Collateral Agent shall have been so appointed by the First Lien Administrative Agent within thirty (30) days after the retiring First Lien Collateral Agent's giving of notice of resignation or the removal of the retiring First Lien Collateral Agent by the First Lien Administrative Agent, then the retiring First Lien Collateral Agent may, on behalf of the First Lien Secured Parties, apply to a court of competent jurisdiction for the appointment of a successor or appoint a successor First Lien Collateral Agent, which shall be a bank organized under the laws of the United States of America or any state thereof that has an office in the State of New York and which agrees to administer the First Lien Collateral in accordance with the terms of the First Lien Collateral Documents and the unsecured long-term debt of which shall be rated "A" or better by S&P or "A2" or better by Moody's and shall have a total capital stock and unimpaired surplus of not less than \$500,000,000 and shall be approved by the First Lien Administrative Agent (such approval not to be unreasonably withheld) and complies with the provisions of the Concession Agreement and, so long as no First Lien Event of Default has occurred and is continuing, shall be reasonably acceptable to the Borrower. Upon the acceptance of any appointment as First Lien Collateral Agent hereunder by a successor First Lien Collateral Agent, such successor First Lien Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring First Lien Collateral Agent, and the retiring First Lien Collateral Agent shall be discharged from its duties and responsibilities hereunder. After any retiring First Lien Collateral Agent's resignation or removal hereunder as First Lien Collateral Agent, the provisions of this Agreement shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the First Lien Collateral Agent.

Section 8.13 [Intentionally Omitted].

Section 8.14 Indemnification of Collateral Agent by Financing Parties. To the extent that the Borrower fails to pay any amount required to be paid by it to the First Lien Collateral Agent pursuant to Sections 13.01 and 13.02 hereof, each First Lien Secured Party severally agrees to pay to the First Lien Collateral Agent such First Lien Secured Party's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount. The provisions of this Section shall survive the termination of the First Lien Documents and the resignation or removal of the First Lien Collateral Agent.

Section 8.15 No Consequential Damages. In no event shall the First Lien Collateral Agent be liable under or in connection with the First Lien Documents for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever, including but not limited to lost profits, whether or not foreseeable, even if the First Lien Collateral Agent has been advised of the possibility thereof and regardless of the form of action in which such damages are sought.

Section 8.16 Force Majeure. In no event shall the First Lien Collateral Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of god, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility; it being understood that the First Lien Collateral Agent shall use reasonable efforts with are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 8.17 Additional Protections. The rights, privileges, protections and benefits given to the First Lien Collateral Agent, including, without limitation, its rights to be indemnified, are extended to, and shall be enforceable by, the First Lien Collateral Agent in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

Section 8.18 No Liability for Clean-up of Hazardous Materials. In the event that the First Lien Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which in the First Lien Collateral Agent's sole discretion may cause the First Lien Collateral Agent to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., or otherwise cause the First Lien Collateral Agent to incur liability under CERCLA or any other federal, state or local law, the First Lien Collateral Agent reserves the right, instead of taking such action, to either resign as the First Lien Collateral Agent or arrange for the transfer of the title or control of the asset to a court-appointed receiver. Except for such claims or actions arising directly from the bad faith, gross negligence or willful misconduct of the First Lien Collateral Agent, the First Lien Collateral Agent shall not be liable to any Person for any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the First Lien Collateral Agent's actions and conduct as

authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of hazardous materials into the environment. If at any time after any foreclosure on the First Lien Collateral (or a transfer in lieu of foreclosure) upon the exercise of remedies in accordance with the First Lien Collateral Documents it is necessary or advisable for the Indiana Toll Road to be operated or managed by any Person (including the First Lien Collateral Agent) other than the Borrower, the First Lien Administrative Agent shall appoint an appropriately qualified Person (excluding the First Lien Collateral Agent) to operate or manage the Indiana Toll Road.

Section 8.19 Merger of the Collateral Agent. Any corporation or company into which the First Lien Collateral Agent shall be merged, or with which it shall be consolidated, or any corporation or company resulting from any merger or consolidation to which the First Lien Collateral Agent shall be a party, shall be the First Lien Collateral Agent under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, provided that such corporation or company shall meet the requirements of Section 8.12.

Section 8.20 Transfer to an Affiliate. In addition to any rights it may have under Section 8.19 hereof or under any other provision of this Agreement or any other First Lien Collateral Document, the First Lien Collateral Agent may assign or transfer its rights under this Agreement and the other First Lien Collateral Documents to which it is a party to any affiliate that is a "Leasehold Mortgagee" (as defined in the Concession Agreement), subject to the prior written consent of the Borrower and the First Lien Administrative Agent, which consents shall not be unreasonably withheld. For purposes of this Section, "affiliate" means any Person that directly or indirectly controls, or is under common control with, or is controlled by, the First Lien Collateral Agent, provided that "control" (including its correlative meanings – "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

Section 8.21 Institutional Lender. First Lien The Collateral Agent hereby represents and agrees that the First Lien Collateral Agent is an Institutional Lender as set forth in subparagraph (B)(i) of the definition of "Institutional Lender" in the Concession Agreement.

ARTICLE IX THE SECOND LIEN COLLATERAL AGENT

Section 9.01 Appointment. [_____] is hereby appointed as Second Lien Collateral Agent for the benefit of the Second Lien Secured Parties with respect to the Liens on the Collateral and the rights and remedies granted pursuant to the Second Lien Collateral Documents. The Second Lien Collateral Agent accepts such appointment and agrees to act as Second Lien Collateral Agent. The Second Lien Administrative Agent, on behalf of each Second Lien Secured Party, hereby authorizes and directs the Second Lien Collateral Agent to act in strict accordance with the terms of this Agreement notwithstanding any contrary provision in the other Collateral Documents with respect to Enforcement Actions and the application of any Second Lien Collateral or proceeds thereof. The Second Lien Collateral Agent hereby accepts and agrees to, and the Borrower hereby acknowledges and consents to, the foregoing

authorization and direction of the Second Lien Administrative Agent, on behalf of the Second Lien Secured Parties.

Section 9.02 Duties and Responsibilities.

(a) Subject to the terms hereof, the Second Lien Collateral Agent agrees to administer and enforce this Agreement and the other Second Lien Collateral Documents to which it is a party as Second Lien Collateral Agent, and to foreclose upon, collect and dispose of the Second Lien Collateral and to apply the proceeds therefrom, for the benefit of the Secured Parties, as provided herein, and otherwise to perform its duties and obligations as the Second Lien Collateral Agent hereunder in accordance with the terms hereof; provided, however, that the Second Lien Collateral Agent shall have no duties or responsibilities except those expressly set forth in the Second Lien Collateral Documents to which it is a party as Second Lien Collateral Agent, and no implied covenants or obligations shall be read into any such Second Lien Collateral Documents against the Second Lien Collateral Agent.

(b) Notwithstanding anything contained herein to the contrary, the Second Lien Collateral Agent shall not be required to exercise any discretion or take any action but shall only be required to act or refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Second Lien Administrative Agent or the Required Second Lien Secured Parties, as applicable, and in each case, as specified therein, and such instructions shall be binding upon Second Lien the Collateral Agent and each of the Second Lien Secured Parties; provided, however, that the written instructions of all of the Second Lien Secured Parties shall be required where expressly provided for herein; provided, further, that the Second Lien Collateral Agent shall not be required to take any action which is contrary to any provision of the Second Lien Collateral Documents or applicable law.

(c) Notwithstanding any other provision of the Second Lien Collateral Documents, in no event shall the Second Lien Collateral Agent be required to foreclose on, or take possession of, the Second Lien Collateral, if, in the judgment of the Second Lien Collateral Agent, such action would be in violation of any applicable law, rule or regulation pertaining thereto, or if the Second Lien Collateral Agent reasonably believes that such action would result in the incurrence of liability by the Second Lien Collateral Agent for which it is not fully indemnified by the Second Lien Secured Parties.

(d) The Second Lien Collateral Agent shall not be responsible to the other Second Lien Secured Parties for (i) any recitals, statements, representations or warranties by the Borrower or any of the Second Lien Secured Parties (other than the Second Lien Collateral Agent) contained in this Agreement or the Second Lien Documents, or any certificate or other document delivered by the Borrower or any of the other Second Lien Secured Parties thereunder, (ii) the value, validity, effectiveness, genuineness, enforceability (other than as to the Second Lien Collateral Agent with respect to such documents to which the Second Lien Collateral Agent is a party) or sufficiency of this Agreement or any other document referred to or provided for herein or therein or of the Second Lien Collateral held by the Second Lien Collateral Agent hereunder, (iii) the performance or observance by the Borrower or any of the Second Lien Secured Parties (other than as to itself) of any of their respective agreements contained herein or

therein, nor shall the Second Lien Collateral Agent be liable because of the invalidity or unenforceability of any provisions of this Agreement (other than as to itself) or (iv) the validity, perfection, priority or enforceability of the Liens in any of the Second Lien Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder (except to the extent such action or omission constitutes bad faith, gross negligence or willful misconduct on the part of the Second Lien Collateral Agent), the validity of the title of the Borrower to the Second Lien Collateral, insuring the Second Lien Collateral or the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Second Lien Collateral.

(e) The Second Lien Collateral Agent may at any time request instructions from the Second Lien Administrative Agent as to a course of action to be taken by it hereunder and under any of the Second Lien Collateral Documents or in connection herewith and therewith or any other matters relating hereto and thereto, and the Second Lien Administrative Agent shall promptly reply to any such request.

(f) Neither the Second Lien Collateral Agent nor any of its directors, officers, employees or agents shall be liable or responsible for any action taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own bad faith, gross negligence or willful misconduct.

Section 9.03 Authorization. The Second Lien Administrative Agent, on behalf of each Second Lien Secured Party, hereby authorizes the Second Lien Collateral Agent to (a) execute, deliver and perform in such capacity under this Agreement and each other Second Lien Document to which the Second Lien Collateral Agent is or is intended to be a party, (b) exercise and enforce any and all rights, powers and remedies provided to the Second Lien Collateral Agent or any Second Lien Secured Party by this Agreement and each other Second Lien Document to which the Second Lien Collateral Agent is or is intended to be a party, any applicable law, or any other document, instrument, or agreement, and (c) take any other action under this Agreement and each other Second Lien Document to which the Second Lien Collateral Agent is or is intended to be a party which the Second Lien Administrative Agent shall deem advisable in the best interests of the Second Lien Secured Parties. Notwithstanding the foregoing, the Second Lien Collateral Agent shall not commence an Enforcement Action except in accordance with instructions given by the Second Lien Administrative Agent (acting at the direction of the Required Second Lien Secured Parties) or at the written direction of the Required Second Lien Secured Parties; *provided*, that if the Second Lien Collateral Agent is prohibited by any court order or applicable law from commencing any Enforcement Action, the Second Lien Collateral Agent shall seek the requisite authority from the Second Lien Administrative Agent or the Required Second Lien Secured Parties to commence such Enforcement Action but shall not be obligated to commence such Enforcement Action until such authority is obtained. All decisions with respect to the type of Enforcement Action which is to be commenced shall be made by, and all actions with respect to prosecution and settlement of such Enforcement Action shall require the written consent of, the Second Lien Administrative Agent (acting at the direction of the Required Second Lien Secured Parties), and the Second Lien Collateral Agent shall not be required to take any Enforcement Action in the absence of any such written consent. The Second Lien Collateral Agent will use its reasonable efforts to pursue diligently the prosecution of any Enforcement Action, which the Second Lien Collateral Agent is so authorized

or directed to initiate pursuant to this Agreement. The Second Lien Collateral Agent shall deliver copies of all notices it receives on behalf of the Second Lien Secured Parties or in connection with the Second Lien Documents or the Indian Toll Road to the Second Lien Administrative Agent promptly upon receipt.

Section 9.04 Administrative Actions. The Second Lien Collateral Agent may, but shall not be obligated, to take such action as it deems necessary to perfect or continue the perfection of the Liens on the Second Lien Collateral held for the benefit of the Second Lien Secured Parties. The Second Lien Collateral Agent shall not release any of the Second Lien Collateral held for the benefit of the Second Lien Secured Parties, or any Liens on the Second Lien Collateral held for the benefit of the Second Lien Secured Parties, except: (a) upon the written direction of the Second Lien Administrative Agent for any release that is permitted pursuant to the terms of the First Lien Documents or otherwise acting at the direction of the Required Second Lien Secured Parties or the Required Second Lien Secured Parties; (b) upon the Discharge of the Second Lien Obligations, as certified to the Second Lien Collateral Agent by the Second Lien Administrative Agent; (c) for Second Lien Collateral consisting of a debt instrument if the indebtedness evidenced thereby has been paid in full, as certified to the Second Lien Collateral Agent by the Second Lien Administrative Agent; or (d) where such release is expressly permitted under the Second Lien Collateral Documents to which it is a party. Upon the written request by the Second Lien Collateral Agent or the Borrower at any time, the Second Lien Administrative Agent will confirm in writing the Second Lien Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section and the Second Lien Administrative Agent hereby agrees to provide such confirmations promptly.

Section 9.05 Determination of Amounts and Obligations. Upon the written request by the Second Lien Collateral Agent or the Borrower, the Second Lien Administrative Agent (on behalf of the Second Lien Secured Parties) shall promptly deliver to the Second Lien Collateral Agent a certificate, dated the date of delivery thereof and signed by such party, as to (a) the identity and address of each Second Lien Secured Party, (b) the principal amount of the Second Lien Obligations then outstanding held by such Second Lien Secured Party, (c) in the case of any such certificate being delivered in contemplation of the application of amounts received by the Second Lien Collateral Agent in respect of the Second Lien Collateral pursuant to Article VI hereof, the amount of interest on the Second Lien Obligations owing and any other amounts in respect of the Second Lien Obligations owing to such Second Lien Secured Party, as the case may be (in the case of any such other amounts, accompanied by appropriate evidence thereof), (d) in the event any of the Loans shall have become or been declared to be due and payable, the principal amount of Loans then due and payable to such Second Lien Secured Party, as the case may be and/or (e) in any information reasonably requested in respect of the Second Lien Hedging Agreements recorded in the Swap Registry implemented under the Second Lien Financing Agreement. For the purposes of determining the amount of the Second Lien Secured Obligations then outstanding held by any Second Lien Secured Party, absent notice from such Second Lien Secured Party, as applicable, or other actual knowledge of an Authorized Officer to the contrary, the Second Lien Collateral Agent shall be entitled to rely on certifications received by it from the Second Lien Administrative Agent for such purpose in accordance with the preceding sentence (in each case, which certificates shall be given substantially contemporaneously with the action being taken); provided that in the absence of the Second Lien Collateral Agent's receipt of any certification requested by it pursuant to this sentence, the

Second Lien Collateral Agent shall be entitled (but not obligated) to take such action if the Second Lien Collateral Agent shall have sufficient knowledge to make any determination required to be made in connection with such action.

Section 9.06 Employment of Agents. The Second Lien Collateral Agent may employ or retain such counsel, accountants, appraisers or other experts or advisers as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and, in the absence of the Second Lien Collateral Agent's bad faith, gross negligence or willful misconduct in employing or retaining any such counsel, accountants, appraisers, experts or advisers, may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or advisor, whether retained or employed by the Borrower or by the Second Lien Collateral Agent, in relation to any matter arising in the administration hereof, and shall not be responsible to the Secured Parties for any act or omission on the part of any of them. In addition, the Second Lien Collateral Agent shall not be liable for any acts or omissions of its nominees, correspondents, designees, agents, subagents or subcustodians except to the extent of its bad faith, gross negligence or willful misconduct in nominating or appointing such Persons and so long as such Persons are permitted to act hereunder.

Section 9.07 Reliance of Second Lien Collateral Agent. In connection with the performance of its duties hereunder, the Second Lien Collateral Agent shall be entitled to rely conclusively upon, and shall be fully protected in acting or refraining from acting in accordance with, any certification, notice, instrument, opinion, request, consent, order, approval, direction or other communication (including any thereof by fax) of the Second Lien Administrative Agent or of any other Secured Party, which the Second Lien Collateral Agent in good faith reasonably believes to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons, and it shall be entitled to rely conclusively upon the due execution, validity and effectiveness, and the truth, correctness and acceptability of, any provisions contained therein. The Second Lien Collateral Agent shall not have any responsibility to make any investigation into the facts or matters stated in any notice, certificate, instrument, demand, request, direction, instruction, or other communication furnished to it. Whenever this Agreement specifies that any instruction or consent by the Second Lien Administrative Agent is to be given at the direction of the Required Second Lien Secured Parties, the Second Lien Collateral Agent shall be entitled to rely upon any such instruction or consent by the Second Lien Administrative Agent (which instruction or consent need not state that it is given at the direction of the Required Second Lien Secured Parties), and the Second Lien Collateral Agent may presume without investigation that any such instruction or consent by the Second Lien Administrative Agent has been given at the direction of the Required Second Lien Secured Parties.

Section 9.08 Knowledge. The Second Lien Collateral Agent shall not be charged with any knowledge held by or imputed to any of the other Second Lien Secured Parties or the Borrower. The Second Lien Collateral Agent shall not be deemed to have knowledge of any Second Lien Event of Default under the Second Lien Financing Agreement unless an Authorized Officer of the Second Lien Collateral Agent has actual knowledge thereof or received notice from the Second Lien Administrative Agent or the appropriate Second Lien Lender or the Borrower specifying such Second Lien Event of Default. In the event that the Second Lien Collateral Agent, in its capacity as such, receives such a notice, the Second Lien Collateral Agent

shall give prompt notice thereof to the Second Lien Administrative Agent and each other Second Lien Secured Party.

Section 9.09 Non-Reliance on Second Lien Collateral Agent and Other Financing Party. Each Second Lien Secured Party expressly acknowledges that neither the Second Lien Collateral Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Second Lien Collateral Agent hereafter taken shall be deemed to constitute any representation or warranty by the Second Lien Collateral Agent to any Second Lien Secured Party. Each Second Lien Secured Party represents to the Second Lien Collateral Agent that it has, independently and without reliance upon the Second Lien Collateral Agent or any other Second Lien Secured Party, and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, operations, property, financial and other condition and creditworthiness of the Borrower, the Member, and the Indiana Toll Road, and made its own decision to extend credit under the Second Lien Financing Agreement and enter into this Agreement. Each Second Lien Secured Party also represents that it will, independently and without reliance upon the Second Lien Collateral Agent or any other Second Lien Secured Party, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement or any other Second Lien Document, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Borrower, the Member, and any other Person. Except for any notices, reports and other documents expressly required to be furnished to the Second Lien Secured Parties by the Second Lien Collateral Agent hereunder and the other Second Lien Collateral Documents, the Second Lien Collateral Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or other), prospects or creditworthiness of the Borrower, the Member, or any other Person which may come into the possession of the Second Lien Collateral Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates. [_____] is entering into this Agreement and the other Second Lien Collateral Documents to which it is a party solely in its capacity as Second Lien Collateral Agent and not in its individual capacity and in no case shall [_____] (or any Person acting as successor Second Lien Collateral Agent under this Agreement) be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of the Borrower hereunder or thereunder, all such liability, if any, being expressly waived by the parties hereto and any Person claiming by, through or under such party. This Section shall survive the payment of the Second Lien Loans and all other Second Lien Secured Obligations payable to the Second Lien Secured Parties. The Second Lien Collateral Agent shall have no obligation and shall incur no obligation for its failure to monitor or verify the filing of financing statements (or amendments thereto) and the information contained therein.

Section 9.10 Second Lien Collateral Agent in Individual Capacity. The Second Lien Collateral Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrower, the Member and their respective Affiliates as though the Second Lien Collateral Agent were not the Second Lien Collateral Agent hereunder and under the Second Lien Collateral Documents. With respect to Second Lien Loans made or renewed by it and any Second Lien Note issued to it, if any, the Second Lien Collateral Agent

shall have the same rights and powers under this Agreement and the Second Lien Documents as any Second Lien Lender and may exercise the same as though it were not the Second Lien Collateral Agent, and the term "Second Lien Lender" shall include the Second Lien Collateral Agent in its individual capacity.

Section 9.11 Second Lien Collateral Agent Under No Obligation. None of the provisions of the Second Lien Collateral Documents shall be construed to require the Second Lien Collateral Agent to expend or risk its own funds or otherwise to incur any personal liability, financial or otherwise, in the performance of any of its duties hereunder or thereunder. The Second Lien Collateral Agent shall be under no obligation to exercise any of the rights or powers vested in it by the Second Lien Collateral Documents unless the Second Lien Collateral Agent shall have been offered security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction (including interest thereon from the time incurred until reimbursed).

Section 9.12 Resignation and Removal; Successor Collateral Agent; Individual Collateral Agent. Subject to the appointment and acceptance of a successor Second Lien Collateral Agent as provided below, the Second Lien Collateral Agent may resign at any time by giving at least thirty (30) days' prior written notice thereof to the Second Lien Administrative Agent, each other Second Lien Secured Party and the Borrower, and the Collateral Agent may be removed at any time with or without cause by the Administrative Agent (acting at the written direction of the Required Second Lien Secured Parties) upon thirty (30) days' written notice thereof to the Second Lien Administrative Agent, the other Second Lien Secured Parties and the Borrower. Upon any such resignation or removal, the Second Lien Administrative Agent (acting at the written direction of the Required Second Lien Secured Parties) shall have the right to appoint a successor Second Lien Collateral Agent to the extent such successor Second Lien Collateral Agent is an "Institutional Lender" pursuant to the Concession Agreement. Such successor, so long as no Second Lien Event of Default has occurred and is continuing, shall be reasonably acceptable to the Borrower. If no successor Second Lien Collateral Agent shall have been so appointed by the Second Lien Administrative Agent within thirty (30) days after the retiring Second Lien Collateral Agent's giving of notice of resignation or the removal of the retiring Second Lien Collateral Agent by the Second Lien Administrative Agent, then the retiring Second Lien Collateral Agent may, on behalf of the Second Lien Secured Parties, apply to a court of competent jurisdiction for the appointment of a successor or appoint a successor Second Lien Collateral Agent, which shall be a bank organized under the laws of the United States of America or any state thereof that has an office in the State of New York and which agrees to administer the Second Lien Collateral in accordance with the terms of the Second Lien Collateral Documents and the unsecured long-term debt of which shall be rated "A" or better by S&P or "A2" or better by Moody's and shall have a total capital stock and unimpaired surplus of not less than \$500,000,000 and shall be approved by the Second Lien Administrative Agent (such approval not to be unreasonably withheld) and complies with the provisions of the Concession Agreement and, so long as no Second Lien Event of Default has occurred and is continuing, shall be reasonably acceptable to the Borrower. Upon the acceptance of any appointment as Second Lien Collateral Agent hereunder by a successor Second Lien Collateral Agent, such successor Second Lien Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Second Lien Collateral Agent, and the retiring Second Lien Collateral Agent shall be discharged from its duties and responsibilities hereunder.

After any retiring Second Lien Collateral Agent's resignation or removal hereunder as Second Lien Collateral Agent, the provisions of this Agreement shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Second Lien Collateral Agent.

Section 9.13 [Intentionally Omitted].

Section 9.14 Indemnification of Collateral Agent by Financing Parties. To the extent that the Borrower fails to pay any amount required to be paid by it to the Second Lien Collateral Agent pursuant to Sections 13.01 and 13.02 hereof, each Second Lien Secured Party severally agrees to pay to the Second Lien Collateral Agent such Second Lien Secured Party's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount. The provisions of this Section shall survive the termination of the Second Lien Documents and the resignation or removal of the Second Lien Collateral Agent.

Section 9.15 No Consequential Damages. In no event shall the Second Lien Collateral Agent be liable under or in connection with the Second Lien Documents for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever, including but not limited to lost profits, whether or not foreseeable, even if the Second Lien Collateral Agent has been advised of the possibility thereof and regardless of the form of action in which such damages are sought.

Section 9.16 Force Majeure. In no event shall the Second Lien Collateral Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of god, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility; it being understood that the Second Lien Collateral Agent shall use reasonable efforts with are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 9.17 Additional Protections. The rights, privileges, protections and benefits given to the Second Lien Collateral Agent, including, without limitation, its rights to be indemnified, are extended to, and shall be enforceable by, the Second Lien Collateral Agent in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

Section 9.18 No Liability for Clean-up of Hazardous Materials. In the event that the Second Lien Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which in the Second Lien Collateral Agent's sole discretion may cause the Second Lien Collateral Agent to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., or otherwise cause the Second Lien Collateral Agent to

incur liability under CERCLA or any other federal, state or local law, the Second Lien Collateral Agent reserves the right, instead of taking such action, to either resign as the Second Lien Collateral Agent or arrange for the transfer of the title or control of the asset to a court-appointed receiver. Except for such claims or actions arising directly from the bad faith, gross negligence or willful misconduct of the Second Lien Collateral Agent, the Second Lien Collateral Agent shall not be liable to any Person for any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Second Lien Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of hazardous materials into the environment. If at any time after any foreclosure on the Second Lien Collateral (or a transfer in lieu of foreclosure) upon the exercise of remedies in accordance with the Second Lien Collateral Documents it is necessary or advisable for the Indiana Toll Road to be operated or managed by any Person (including the Second Lien Collateral Agent) other than the Borrower, the Second Lien Administrative Agent shall appoint an appropriately qualified Person (excluding the Second Lien Collateral Agent) to operate or manage the Indiana Toll Road.

Section 9.19 Merger of the Collateral Agent. Any corporation or company into which the Second Lien Collateral Agent shall be merged, or with which it shall be consolidated, or any corporation or company resulting from any merger or consolidation to which the Second Lien Collateral Agent shall be a party, shall be the Second Lien Collateral Agent under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, provided that such corporation or company shall meet the requirements of Section 8.12.

Section 9.20 Transfer to an Affiliate. In addition to any rights it may have under Section 8.19 hereof or under any other provision of this Agreement or any other Second Lien Collateral Document, the Second Lien Collateral Agent may assign or transfer its rights under this Agreement and the other Second Lien Collateral Documents to which it is a party to any affiliate that is a "Leasehold Mortgagee" (as defined in the Concession Agreement), subject to the prior written consent of the Borrower and the Second Lien Administrative Agent, which consents shall not be unreasonably withheld. For purposes of this Section, "affiliate" means any Person that directly or indirectly controls, or is under common control with, or is controlled by, the Second Lien Collateral Agent, provided that "control" (including its correlative meanings – "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

Section 9.21 Institutional Lender. Second Lien The Collateral Agent hereby represents and agrees that the Second Lien Collateral Agent is an Institutional Lender as set forth in subparagraph (B)(i) of the definition of "Institutional Lender" in the Concession Agreement.

ARTICLE X BORROWER REMAINS LIABLE

Anything herein to the contrary notwithstanding, (a) the Borrower shall remain liable under its contracts and agreements (including the First Lien Documents and the Second Lien Documents) to the extent set forth therein to perform all of its duties and obligations thereunder,

(b) the exercise by the First Lien Collateral Agent or the Second Lien Collateral Agent of any of their respective rights hereunder shall not release the Borrower from any of its duties or obligations under its contracts and agreements unless the Borrower is expressly released from such duties or obligations, and (c) neither the First Lien Collateral Agent, the Second Lien Collateral Agent nor any of the other Secured Parties shall have any obligation or liability under the contracts and agreements of the Borrower by reason of this Agreement, nor shall the First Lien Collateral Agent or the Second Lien Collateral Agent be obligated to perform any of the obligations or duties of the Borrower thereunder or to take any action to collect or enforce any claim for payment assigned under any Collateral Document. Notwithstanding the foregoing, upon the occurrence and during the continuation of an Event of Default and upon receipt by the Borrower of prior written notice from the First Lien Collateral Agent or the Second Lien Collateral Agent, as applicable, such Agent, without releasing the Borrower from any obligation, covenant or condition hereof, itself may (but shall not be obligated to) make any payment or perform, or cause the performance of, any such obligation, covenant, condition or agreement or any other action in such manner and to such extent as may be necessary to protect, perfect or continue the perfection of the security interest granted under the Secured Obligations Documents. Any reasonable out-of-pocket costs or expenses incurred by such Agent in connection with the foregoing shall be payable by the Borrower to such Agent in accordance to Article XIII hereof.

ARTICLE XI REASONABLE CARE

Section 11.01 First Lien Collateral Agent. The powers conferred on the First Lien Collateral Agent hereunder are solely to protect its interest in the First Lien Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody and preservation of the First Lien Collateral in its possession and the accounting for monies actually received by it hereunder, the First Lien Collateral Agent shall have no other duty as to the First Lien Collateral, whether or not the First Lien Collateral Agent or any of the other First Lien Secured Parties has or is deemed to have knowledge of any matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to the First Lien Collateral. The First Lien Collateral Agent hereby agrees to exercise reasonable care in respect of the custody and preservation of the First Lien Collateral. The First Lien Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the First Lien Collateral in its possession if such First Lien Collateral is accorded treatment substantially equal to that which the First Lien Collateral Agent accords its own property.

Section 11.02 Second Lien Collateral Agent. The powers conferred on the Second Lien Collateral Agent hereunder are solely to protect its interest in the Second Lien Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody and preservation of the Second Lien Collateral in its possession and the accounting for monies actually received by it hereunder, the Second Lien Collateral Agent shall have no other duty as to the Second Lien Collateral, whether or not the Second Lien Collateral Agent or any of the other Second Lien Secured Parties has or is deemed to have knowledge of any matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to the First Lien Collateral. The Second Lien Collateral Agent hereby agrees to exercise reasonable care in respect of the custody and preservation of the Second Lien Collateral. The

Second Lien Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Second Lien Collateral in its possession if such Second Lien Collateral is accorded treatment substantially equal to that which the Second Lien Collateral Agent accords its own property.

ARTICLE XII
COLLATERAL AND REMEDIES

Section 12.01 Administration of Collateral.

(a) The First Lien Collateral shall be held by the First Lien Collateral Agent for the benefit of the First Lien Secured Parties pursuant to the terms hereof and shall be administered by the First Lien Collateral Agent in the manner contemplated hereby and in accordance with the First Lien Collateral Documents.

(b) The Second Lien Collateral shall be held by the Second Lien Collateral Agent for the benefit of the Second Lien Secured Parties pursuant to the terms hereof and shall be administered by the Second Lien Collateral Agent in the manner contemplated hereby and in accordance with the Second Lien Collateral Documents.

Section 12.02 Notice of Event of Default.

(a) Notwithstanding anything to the contrary contained in this Agreement or any document executed in connection with any of the First Lien Secured Obligations, the First Lien Collateral Agent, unless an Authorized Officer thereof shall have actual knowledge thereof, shall not be deemed to have any knowledge of any First Lien Event of Default unless and until it shall have received written notice from the Borrower, the First Lien Administrative Agent, or any First Lien Lender describing such First Lien Event of Default in reasonable detail and stating that such notice is a "Notice of Event of Default". If the First Lien Collateral Agent receives any such notice from a Person other than the First Lien Administrative Agent, the First Lien Collateral Agent shall deliver a copy thereof to the First Lien Administrative Agent.

(b) Notwithstanding anything to the contrary contained in this Agreement or any document executed in connection with any of the Second Lien Secured Obligations, the Second Lien Collateral Agent, unless an Authorized Officer thereof shall have actual knowledge thereof, shall not be deemed to have any knowledge of any Second Lien Event of Default unless and until it shall have received written notice from the Borrower, the Second Lien Administrative Agent, or any Second Lien Lender describing such Second Lien Event of Default in reasonable detail and stating that such notice is a "Notice of Event of Default". If the Second Lien Collateral Agent receives any such notice from a Person other than the Second Lien Administrative Agent, the Second Lien Collateral Agent shall deliver a copy thereof to the Second Lien Administrative Agent.

Section 12.03 Enforcement of Remedies.

(a) Upon the occurrence and during the continuation of any First Lien Event of Default, the First Lien Collateral Agent shall, subject to the other provisions of this Agreement and the First Lien Documents, take such Enforcement Action with respect to such

First Lien Event of Default as shall be directed by the First Lien Administrative Agent acting at the direction of the Required First Lien Secured Parties in accordance with the First Lien Documents (a "First Lien Direction Notice"). Upon receipt by the First Lien Collateral Agent of a First Lien Direction Notice, the First Lien Collateral Agent shall seek to enforce the First Lien Collateral Documents and to realize upon the Collateral in accordance with such First Lien Direction Notice; *provided*, however, that the First Lien Collateral Agent shall not be obligated to follow any First Lien Direction Notice if the First Lien Collateral Agent reasonably determines that such First Lien Direction Notice is in conflict with any provisions of any applicable law, this Agreement or any First Lien Collateral Document, and the First Lien Collateral Agent shall not, under any circumstances, be liable to any First Lien Secured Party, the Borrower or any other Person for following a First Lien Direction Notice; *provided* that the First Lien Collateral Agent shall promptly notify the First Lien Administrative Agent and the First Lien Secured Lenders if it does not comply with such First Lien Direction Notice. At all times, if the First Lien Administrative Agent (acting at the direction of the First Lien Secured Parties) advises the First Lien Secured Parties that it wishes to proceed in good faith with respect to any Enforcement Action, each of the First Lien Secured Parties will cooperate in good faith with respect to such Enforcement Action and will not unreasonably delay the enforcement of the First Lien Collateral Documents

(b) Upon the occurrence and during the continuation of any Second Lien Event of Default, the Second Lien Collateral Agent shall, subject to the other provisions of this Agreement and the Second Lien Documents, take such Enforcement Action with respect to such Second Lien Event of Default as shall be directed by the Second Lien Administrative Agent acting at the direction of the Required Second Lien Secured Parties in accordance with the Second Lien Documents (a "Second Lien Direction Notice"). Upon receipt by the Second Lien Collateral Agent of a Second Lien Direction Notice, the Second Lien Collateral Agent shall seek to enforce the Second Lien Collateral Documents and to realize upon the Collateral in accordance with such Second Lien Direction Notice; *provided*, however, that the Second Lien Collateral Agent shall not be obligated to follow any Second Lien Direction Notice if the Second Lien Collateral Agent reasonably determines that such Second Lien Direction Notice is in conflict with any provisions of any applicable law, this Agreement or any Second Lien Collateral Document, and the Second Lien Collateral Agent shall not, under any circumstances, be liable to any Second Lien Secured Party, the Borrower or any other Person for following a Second Lien Direction Notice; *provided* that the Second Lien Collateral Agent shall promptly notify the Second Lien Administrative Agent and the Second Lien Secured Lenders if it does not comply with such Second Lien Direction Notice. At all times, if the Second Lien Administrative Agent (acting at the direction of the Second Lien Secured Parties) advises the Second Lien Secured Parties that it wishes to proceed in good faith with respect to any Enforcement Action, each of the Second Lien Secured Parties will cooperate in good faith with respect to such Enforcement Action and will not unreasonably delay the enforcement of the Second Lien Collateral Documents.

Section 12.04 Remedies of the Lenders.

(a) Unless otherwise consented to in writing by the First Lien Administrative Agent (acting at the direction of the First Lien Lenders), no First Lien Lender, individually or together with any other First Lien Lender, shall have the right, nor shall it, exercise or enforce

any of the rights, powers or remedies which the First Lien Collateral Agent is authorized to exercise or enforce under this Agreement or any of the other First Lien Collateral Documents.

(b) Unless otherwise consented to in writing by the Second Lien Administrative Agent (acting at the direction of the Second Lien Lenders), no Second Lien Lender, individually or together with any other Second Lien Lenders, shall have the right, nor shall it, exercise or enforce any of the rights, powers or remedies which the Second Lien Collateral Agent is authorized to exercise or enforce under this Agreement or any of the other Second Lien Collateral Documents.

Section 12.05 Payments to Secured Parties. All payments required to be made hereunder to the First Lien Secured Parties shall be made to the First Lien Administrative Agent for distribution to the First Lien Lenders, and all payments required to be made hereunder to the Second Lien Secured Parties shall be made to the Second Lien Administrative Agent for distribution to the Second Lien Lenders.

ARTICLE XIII COMPENSATION, INDEMNITY AND EXPENSES

Section 13.01 Compensation; Fees and Expenses.

(a) The Borrower hereby agrees to pay to the First Lien Collateral Agent for its own account compensation in such amount as separately agreed upon in writing between the Borrower and the First Lien Collateral Agent. In addition, but without duplication of the Borrower's obligations under Section 11.3(a) of the First Lien Financing Agreement, the Borrower shall pay on the next Monthly Funding Date falling no later than thirty (30) Business Days after written demand from the First Lien Collateral Agent the amount of any and all other reasonable out-of-pocket expenses incurred by the First Lien Collateral Agent, including (but otherwise limited to) the reasonable fees, charges and disbursements of one counsel for the First Lien Collateral Agent, in connection with (a) the preparation of amendments and waivers hereunder and under the other First Lien Collateral Documents; (b) the enforcement of the rights or remedies of the First Lien Collateral Agent under this Agreement or any other First Lien Collateral Document, including all reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the First Lien Secured Obligations; (c) the sale of, collection from or other realization upon, the First Lien Collateral; and (d) lien and security interest searches and filings in connection with this Agreement or any other First Lien Collateral Document. If any amounts required to be paid by the Borrower to the First Lien Collateral Agent under this Agreement or any other First Lien Collateral Document remain unpaid after such amounts are due, the Borrower shall pay interest on the aggregate, outstanding balance of such amounts from the date due until those amounts are paid in full at a per annum rate equal to the highest interest rate then applicable to any outstanding First Lien Loan under the First Lien Financing Agreement, such rate to change from time to time as interest rates on First Lien Loan change. Interest shall be calculated in accordance with the First Lien Financing Agreement.

(b) The Borrower hereby agrees to pay to the Second Lien Collateral Agent for its own account compensation in such amount as separately agreed upon in writing between

the Borrower and the Second Lien Collateral Agent. In addition, but without duplication of the Borrower's obligations under Section 11.3(a) of the Second Lien Financing Agreement, the Borrower shall pay on the next Monthly Funding Date falling no later than thirty (30) Business Days after written demand from the Second Lien Collateral Agent the amount of any and all other reasonable out-of-pocket expenses incurred by the Second Lien Collateral Agent, including (but otherwise limited to) the reasonable fees, charges and disbursements of one counsel for the Second Lien Collateral Agent (to the extent the Person serving as the First Lien Collateral Agent and the Second Lien Collateral Agent differ), in connection with (a) the preparation of amendments and waivers hereunder and under the other Second Lien Collateral Documents; (b) the enforcement of the rights or remedies of the Second Lien Collateral Agent under this Agreement or any other Second Lien Collateral Document, including all reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Second Lien Secured Obligations; (c) the sale of, collection from or other realization upon, the Second Lien Collateral; and (d) lien and security interest searches and filings in connection with this Agreement or any other Second Lien Collateral Document. If any amounts required to be paid by the Borrower to the Second Lien Collateral Agent under this Agreement or any other Second Lien Collateral Document remain unpaid after such amounts are due, the Borrower shall pay interest on the aggregate, outstanding balance of such amounts from the date due until those amounts are paid in full at a per annum rate equal to the highest interest rate then applicable to any outstanding Second Lien Loan under the Second Lien Financing Agreement, such rate to change from time to time as interest rates on Second Lien Loan change. Interest shall be calculated in accordance with the Second Lien Financing Agreement.

Section 13.02 Borrower Indemnification.

Without duplication of the Borrower's obligations under Section 11.3(b) of the First Lien Financing Agreement and Section 11.3(b) of the Second Lien Financing Agreement, the Borrower shall indemnify each of the First Lien Collateral Agent and the Second Lien Collateral Agent, and each of its officers, directors, employees, agents and attorneys-in-fact (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable and documented fees, charges and disbursements of one counsel acting on behalf of the First Lien Collateral Agent and one counsel acting on behalf of the Second Lien Collateral Agent, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of any applicable Collateral Document or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the transactions contemplated thereby, (ii) any actual or alleged presence or Release (as defined in the Secured Obligations Documents) of Hazardous Materials (as defined in the Secured Obligations Documents) on or from the Indiana Toll Road or any property owned or operated by the Borrower, or in respect of any Environmental Claim (as defined in the Secured Obligations Documents) related in any way to the Indiana Toll Road, or (iii) any actual claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee. The obligations of the Borrower

under this Section shall survive the payment in full of the Secured Obligations, any resignation or removal of the First Lien Collateral Agent pursuant to Section 8.12, any resignation or removal of the Second Lien Collateral Agent pursuant to Section 9.12, and the termination of this Agreement pursuant to Article XIV.

ARTICLE XIV TERMINATION

(a) This Agreement shall terminate upon the earlier of the Discharge of First Lien Obligations and the Discharge of Second Lien Obligations.

(b) Upon the cash payment in full of all of the Secured Obligations (other than unasserted contingent obligations that are intended to survive the termination of the applicable Financing Agreement) and termination of each of the Collateral Documents, all rights to the Collateral as shall not have been sold or otherwise applied, in each case, pursuant to the terms hereof shall automatically revert to the Borrower, its successors or assigns, or otherwise as a court of competent jurisdiction may direct. Upon any such termination, the First Lien Collateral Agent and the Second Lien Collateral Agent will, at the Borrower's expense, execute and deliver to the Borrower such documents as the Borrower shall reasonably request to evidence such termination.

(c) [The First Lien Administrative Agent shall notify the First Lien Collateral Agent at the time of any such termination that, under Section [3.4] of the IFA Consent, it may deliver written notice to the IFA that all First Lien Secured Obligations of the Borrower under the First Lien Financing Agreement and the other First Lien Documents have been paid in full and the First Lien Collateral Documents have been discharged, including the rights to enforce directly against the IFA all obligations of the IFA under the Concession Agreement and otherwise to exercise all remedies thereunder available to a Leasehold Mortgagee (as defined in the Concession Agreement).

(d) The Second Lien Administrative Agent shall notify the Second Lien Collateral Agent at the time of any such termination that, under Section [3.4] of the IFA Consent, it may deliver written notice to the IFA that all Second Lien Secured Obligations of the Borrower under the Second Lien Financing Agreement and the other Second Lien Documents have been paid in full and the Second Lien Collateral Documents have been discharged, including the rights to enforce directly against the IFA all obligations of the IFA under the Concession Agreement and otherwise to exercise all remedies thereunder available to a Leasehold Mortgagee (as defined in the Concession Agreement).]

ARTICLE XV MISCELLANEOUS PROVISIONS

Section 15.01 Amendments. Any term, covenant, agreement or condition of this Agreement may be amended or waived only by an instrument in writing signed by the Borrower and each Agent and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 15.02 Successors and Assigns.

(a) This Agreement and the other Collateral Documents shall be binding upon and inure to the benefit of the First Lien Collateral Agent, the Second Lien Collateral Agent, the Borrower, the First Lien Administrative Agent, the Second Lien Administrative Agent, the other Secured Parties and their respective successors and permitted assigns.

(b) Upon the acceptance of any appointment of a successor First Lien Administrative Agent in accordance with the First Lien Financing Agreement, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the First Lien Administrative Agent hereunder. The successor First Lien Administrative Agent shall promptly provide written notice to the First Lien Collateral Agent and the Borrower of its appointment as successor First Lien Administrative Agent.

(c) Upon the acceptance of any appointment of a successor Second Lien Administrative Agent in accordance with the Second Lien Financing Agreement, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the Second Lien Administrative Agent hereunder. The successor Second Lien Administrative Agent shall promptly provide written notice to the Second Lien Collateral Agent and the Borrower of its appointment as successor Second Lien Administrative Agent.

(d) Nothing contained in this Agreement or any other Collateral Document is intended to limit the right of any Secured Party to assign, transfer or grant participations in its rights in its respective Secured Obligations and First Lien Documents or Second Lien Documents, as applicable, in each case, in accordance with the applicable Financing Documents.

Section 15.03 Notices. Unless otherwise expressly provided herein, all notices, instructions, consents, requests, directions and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy or other electronic means, as follows:

(a) if to the Borrower:

ITR Concession Company LLC

[_____]

Attention: [_____]

Telephone: [_____]

Facsimile: [_____]

With a copy (which shall not constitute notice) to:

Kirkland & Ellis LLP

300 North LaSalle Street

Chicago, IL 60654

Attention: Michelle Kilkenney, Esc.

Telephone: 312-862-2000

Facsimile: 312-862-2200

(b) if to the First Lien Administrative Agent:

Wilmington Trust, National Association

Attention: []

Telephone: []

Facsimile: []

(c) if to the Second Lien Administrative Agent:

[]

Attention: []

Telephone: []

Facsimile: []

(d) if to the First Lien Collateral Agent:

[]

Attention: []

Telephone: []

Facsimile: []

(e) if to the Second Lien Collateral Agent:

[]

Attention: []

Telephone: []

Facsimile: []

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the Borrower and the Secured Parties Representatives. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and, if given in accordance with this Section, shall be effective (i) on the date of personal delivery (if by personal delivery), (ii) on the date of transmission, as confirmed by a printed confirmation of successful transmission if by facsimile transmission or if by electronic transmission, as confirmed by sender's receipt of acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), (iii) if sent from and to the United States, on the Business Day following deposit with a nationally recognized overnight courier or shipping service (if by nationally recognized overnight courier or shipping service), (iv) if sent from the United States abroad or if sent from outside the United States to the United States, on the third (3rd) Business Day following deposit with an internationally recognized overnight courier or shipping service (if by internationally recognized courier or shipping service), (v) if sent from and to the United States, on the third (3rd) Business Day after mailing (if by registered mail) or (vi) if sent from the United States abroad or if sent from outside the United States to the United States, on the fifth (5th) Business Day (if by registered mail).

Notwithstanding anything to the contrary contained herein, all instructions required under this Agreement will be delivered to the First Lien Collateral Agent or the Second Lien Collateral Agent, as applicable, in writing, as set forth in the preceding paragraph, and executed by an Authorized Officer. The identity of such Authorized Officers, as well as their specimen

signatures, will be delivered to the First Lien Collateral Agent or the Second Lien Collateral Agent, as applicable, substantially in the form of an Incumbency Certificate in the form of Exhibit A and will remain in effect until such party notifies the First Lien Collateral Agent or the Second Lien Collateral Agent, as applicable, of any change. In its capacity as First Lien Collateral Agent, the First Lien Collateral Agent will accept all instructions and documents complying with the above under the indemnities provided in this Agreement, and reserves the right to refuse to accept any instructions or documents which fail, or appear to fail, to comply with the terms hereof; provided that in the event of any such refusal, the First Lien Collateral Agent shall promptly notify the relevant Authorized Officer executing the instructions or delivering the documents of such non-compliance and provide a reasonable time period for the correction thereof. In its capacity as Second Lien Collateral Agent, the Second Lien Collateral Agent will accept all instructions and documents complying with the above under the indemnities provided in this Agreement, and reserves the right to refuse to accept any instructions or documents which fail, or appear to fail, to comply with the terms hereof; provided that in the event of any such refusal, the Second Lien Collateral Agent shall promptly notify the relevant Authorized Officer executing the instructions or delivering the documents of such non-compliance and provide a reasonable time period for the correction thereof. Further to this procedure, the First Lien Collateral Agent or Second Lien Collateral Agent, as applicable, reserves the right to telephone an Authorized Officer of the First Lien Administrative Agent or the Second Lien Administrative Agent, as applicable, or the Borrower to confirm the details of such instructions or documents if they are not already on file with it as standing instructions, and the First Lien Collateral Agent or Second Lien Collateral Agent, as applicable, agrees that it will promptly telephone an Authorized Officer of the First Lien Administrative Agent, the Second Lien Administrative Agent or the Borrower, as applicable, if the First Lien Collateral Agent or Second Lien Collateral Agent, as applicable, has determined that it will refuse to accept any instructions or documents which fail, or appear to fail, to comply. The First Lien Collateral Agent, the Second Lien Collateral Agent and the other parties hereto agree that the above constitutes a commercially reasonable security procedure.

Section 15.04 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

Section 15.05 Governing Law; Consent to Jurisdiction; WAIVER OF JURY TRIAL. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New York applicable to contracts made and to be performed in the State of New York. Each of the parties hereto hereby irrevocably (a) consents and submits to the non-exclusive jurisdiction of any New York state court sitting in New York County, New York or any federal court of the United States sitting in the Southern District of New York, as any party may elect, in any suit, action or proceeding arising out of or relating to this Agreement and (b) WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH ANY OF THE PARTIES HERETO ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

Section 15.06 Captions. The headings of the several articles and sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 15.07 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

Section 15.08 Collateral Agent's Rights.

(a) No printed or other material in any language, including prospectuses, reports, and promotional material which mentions "[_____]" by name in its role as First Lien Collateral Agent or the rights, powers, or duties of the First Lien Collateral Agent shall be issued by any other parties hereto, or on such party's behalf, without the prior written consent of the First Lien Collateral Agent. No printed or other material in any language, including prospectuses, reports, and promotional material which mentions "[_____]" by name in its role as Second Lien Collateral Agent or the rights, powers, or duties of the Second Lien Collateral Agent shall be issued by any other parties hereto, or on such party's behalf, without the prior written consent of the Second Lien Collateral Agent.

(b) If at any time the First Lien Collateral Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the First Lien Collateral (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of such property), the First Lien Collateral Agent is authorized by the Secured Parties to comply therewith in any manner it or legal counsel of its own choosing reasonably deems appropriate; and if the First Lien Collateral Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the First Lien Collateral Agent shall not be liable to the Secured Parties even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If at any time the Second Lien Collateral Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Second Lien Collateral (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of such property), the Second Lien Collateral Agent is authorized by the Secured Parties to comply therewith in any manner it or legal counsel of its own choosing reasonably deems appropriate; and if the Second Lien Collateral Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Second Lien Collateral Agent shall not be liable to the Secured Parties even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

(c) To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an account. When any account or subaccount

is opened, the First Lien Collateral Agent or Second Lien Collateral Agent, as applicable, will ask for information that will allow it to identify relevant parties.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first written above.

ITR CONCESSION COMPANY LLC,
as the Borrower

By: _____
Name:
Title:

[By: _____
Name:
Title:]

[____],
as First Lien Administrative Agent

By: _____
Name:
Title:

[____],
as Second Lien Administrative Agent

By: _____
Name:
Title:

[____],
as First Lien Collateral Agent

By: _____
Name:
Title:

[____],
as Second Lien Collateral Agent

By: _____
Name:
Title:

EXHIBIT A
to Collateral Agency Agreement

INCUMBENCY CERTIFICATE

The undersigned certifies that s/he is the [**INSERT TITLE**] of ITR CONCESSION COMPANY LLC, a Delaware limited liability company (the “Company”), and as such s/he is authorized to execute this Certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers of the Company in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. S/he further certifies that any of the persons listed below is authorized [**CHOOSE ONE: individually or jointly with one other person**] to sign agreements and give written instructions with regard to any matters pertaining to the [**AGREEMENT**]:

<u>Name</u>	<u>Title / Phone</u>	<u>Signature</u>
_____	_____/_____	_____
_____	_____/_____	_____
_____	_____/_____	_____

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Company this ____ day of _____, 20[___].

Name:²
Title:

² _____
This certificate should be signed by someone whose name is not included in the above list.

Exhibit C

Post-Confirmation Date Directors and Officers

Post-Confirmation Date Directors and Officers

Name	Title
Francisco Clemente	Director
Enrique Díaz-Rato	Director
David Frick	Director
William Johnson	Director
Peter Trent	Director
Ilia Kay	Chief Financial Officer
Karl Kuchel	Director
Garrett Phipps	Secretary and General Counsel
Fernando Redondo	Chief Executive Officer, Director
Nicolas Rubio	Director
Tom Sines	Director
Alan Carr	Independent Director
Cezar Froelich	Independent Director
Robert Manzo	Independent Director

Exhibit D

Form of Omnibus Services Agreement

OMNIBUS SERVICES AGREEMENT

by and among

ITR CONCESSION COMPANY LLC

and

THE SERVICE PROVIDERS PARTY HERETO

Dated as of [●]

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
Section 1.01 <u>Defined Terms</u>	1
Section 1.02 <u>Interpretation</u>	9
ARTICLE II ENGAGEMENT OF THE MANAGER	10
Section 2.01 <u>Engagement</u>	10
Section 2.02 <u>Term</u>	10
Section 2.03 <u>Board Control and Authority</u>	10
Section 2.04 <u>Standards of Performance</u>	10
ARTICLE III SERVICES	11
Section 3.01 <u>Services</u>	11
Section 3.02 <u>Ratification</u>	12
Section 3.03 <u>Bank Accounts</u>	12
Section 3.04 <u>Project Ownership</u>	12
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE COMPANY	12
Section 4.01 <u>Organization</u>	12
Section 4.02 <u>Power and Authority</u>	12
Section 4.03 <u>No Conflict</u>	13
Section 4.04 <u>No Litigation</u>	13
Section 4.05 <u>Consents and Approvals</u>	13
Section 4.06 <u>Intellectual Property</u>	13
ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE SERVICE PROVIDERS 14	
Section 5.01 <u>Organization</u>	14
Section 5.02 <u>Power and Authority</u>	14
Section 5.03 <u>No Conflict</u>	14
Section 5.04 <u>No Litigation</u>	14
Section 5.05 <u>Consents and Approvals</u>	15
Section 5.06 <u>No Defaults</u>	15
Section 5.07 <u>No Amendments</u>	15
Section 5.08 <u>Professional Skills</u>	15
Section 5.09 <u>Intellectual Property</u>	15
Section 5.10 <u>Business and Professional Licenses</u>	15
Section 5.11 <u>Representations and Warranties</u>	16
ARTICLE VI PERSONNEL	16
Section 6.01 <u>Company Personnel</u>	16
Section 6.02 <u>No Other Services</u>	16
ARTICLE VII PAYMENTS FOR SERVICES AND OTHER EXPENSES	17

Section 7.01	<u>Remuneration Fee</u>	17
Section 7.02	<u>Other Fee</u>	18
Section 7.03	<u>No Other Fee</u>	18
ARTICLE VIII BOOKS AND RECORDS		18
ARTICLE IX CONFIDENTIALITY		18
Section 9.01	<u>Confidential Information</u>	18
Section 9.02	<u>Applicable Law Disclosures</u>	19
Section 9.03	<u>Remedies</u>	19
ARTICLE X COMPANY PROPERTY; LICENSES.....		20
Section 10.01	<u>Company Property</u>	20
Section 10.02	<u>Service Provider IP</u>	20
Section 10.03	<u>Intellectual P</u>	20
ARTICLE XI EVENTS OF DEFAULT; REMEDIES.....		21
Section 11.01	<u>Events of Default</u>	21
Section 11.02	<u>Service Provider Remedies</u>	22
Section 11.03	<u>Company Remedies</u>	22
ARTICLE XII TERMINATION		23
Section 12.01	<u>Termination Rights</u>	23
Section 12.02	<u>Termination Obligations</u>	23
Section 12.03	<u>Effect of Termination</u>	24
Section 12.04	<u>No Damages</u>	24
ARTICLE XIII SUBSTITUTION		25
Section 13.01	<u>Substitution of Service Providers</u>	25
Section 13.02	<u>Substitute Service Provider Requirements</u>	25
Section 13.03	<u>Substitute Skyway Concessionaire Personnel Requirements</u>	25
Section 13.04	<u>Terms of Material Operator Agreement</u>	25
ARTICLE XIV INDEMNIFICATION.....		26
Section 14.01	<u>Indemnification</u>	26
ARTICLE XV DELAY EVENT		26
Section 15.01	<u>Excused Performance</u>	26
Section 15.02	<u>Notice of Delay Event</u>	26
Section 15.03	<u>Scope</u>	26
ARTICLE XVI INSURANCE.....		27
Section 16.01	<u>Insurance</u>	27
Section 16.02	<u>Insurance Generally</u>	27
ARTICLE XVII		27
Section 17.01	<u>Limitation of Liability</u>	27
Section 17.02	<u>Waiver of Consequential Damages</u>	27

ARTICLE XVIII MISCELLANEOUS..... 27

Section 18.01 Mitigation..... 28

Section 18.02 Independent Contractor; No Fiduciary Duties..... 28

Section 18.03 Notices 28

Section 18.04 Counterpart Execution 28

Section 18.05 Further Assurances..... 29

Section 18.06 Governing Law 29

Section 18.07 Submission to Jurisdiction; WAIVER OF JURY TRIAL 29

Section 18.08 Amendment..... 30

Section 18.09 Waiver..... 30

Section 18.10 Severability 30

Section 18.11 Assignment 30

Section 18.12 Financing Matters 30

Section 18.13 Entire Agreement 31

Section 18.14 Construction 31

Section 18.15 Third Party Beneficiaries 31

Section 18.16 Electronic Transmission..... 31

Section 18.17 31

EXHIBITS AND ANNEXES

- Exhibit A - Scope of Manager Responsibilities
- Exhibit B-1 - Material Operator Agreements
- Exhibit B-2 - Cost Sharing Agreement
- Exhibit B-3 - BOS Contract
- Exhibit B-4 - Cintra Spain TSA
- Exhibit B-5 - Cintra Spain E&F Services Agreement
- Exhibit B-6 - ITRP TSA and FSA

- Annex I - Service Providers
- Annex II - Shared Personnel
- Annex III - Company Personnel

OMNIBUS SERVICES AGREEMENT

This Omnibus Services Agreement (this “**Agreement**”), dated as of [●] (the “**Effective Date**”), is entered into by and between **ITR CONCESSION COMPANY LLC**, a Delaware limited liability company (the “**Company**”) and each of the **SERVICE PROVIDERS** listed in Annex I (the “**Service Providers**”). Individually, each party hereto shall be referred to as a “**Party**” and the parties hereto shall be collectively referred to as the “**Parties**”.

RECITALS

WHEREAS, the Company has been operating and maintaining the Toll Road (as defined below) pursuant to a concession agreement, dated as of April 12, 2006 (the “**Concession Agreement**”), by and between the Company and the Indiana Finance Authority (“**IFA**”), since June 29, 2006 (“**Original Closing Date**”);

WHEREAS, the Company has entered into various service agreements and arrangements listed in Exhibit B-1 and attached hereto in Exhibits B-2 to B-6 (collectively, the “**Material Operator Agreements**”) with the Service Providers to fulfill certain of its obligations under the Concession Agreement;

WHEREAS, the Manager (as defined herein) of the Company has been coordinating the various personnel, whether employed, shared or seconded, and implementing the Material Operator Agreements;

WHEREAS, the Company and the Service Providers desire to enter into this Agreement to amend certain provisions of the Material Operator Agreements, as needed, to standardize certain provisions therein as described herein (solely to the extent expressly set forth herein);

WHEREAS, the Company wishes to set forth and elaborate the scope of responsibilities of the Manager to be provided to the Company pursuant to the Cost Sharing Agreement which the Manager shall implement as part of its responsibilities under the Cost Sharing Agreement (such scope responsibilities being, the “**Scope of Manager Responsibilities**”); and

WHEREAS, the execution and delivery of this Agreement is a condition precedent to the closing of the Financing Agreements (as defined below).

NOW, THEREFORE, in consideration of the mutual agreements, covenants and conditions hereinafter set forth, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Defined Terms. Capitalized terms used in this Agreement are defined as follows:

“**AAA**” has the meaning set forth in Section 17.01(b).

“**Accounting Standards**” means such standards as applied in accordance with GAAP and consistent with such standards as applied under the Financing Agreements (except to the extent inconsistent therewith, in which case the standard applied in accordance with GAAP shall prevail).

“**Action**” has the meaning set forth in Section 15.01.

“**Affiliate**” has the meaning given to such term in the Collateral Agency Agreement.

“**Agreement**” has the meaning set forth in the preamble to this Agreement.

“**Annual Operating Budget**” has the meaning given to such term in the Collateral Agency Agreement.

“**Arbitration Notice**” has the meaning set forth in Section 17.01(c).

“**Board**” means the board of directors of Holdings, or any committee that has been duly authorized by the board of directors of Holdings to make a decision on the matter in question or bind Holdings as to the matter in question.

“**BOS Contract**” has the meaning set forth in Exhibit B-1.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in the State of Indiana are authorized or required by law to remain closed.

“**Change in Control**” means (a) a change in ownership such that Cintra Infraestructuras, S.A. or Macquarie Infrastructure Partners and Macquarie Atlas Roads, as applicable, fails to own no less than 50% of the direct or indirect voting or economic interests in the applicable Service Provider (other than Skyway Concessionaire), whether such change in ownership is accomplished through a single transaction or a series of related or unrelated transactions; (b) a change in ownership such that (i) Cintra Infraestructuras, S.A. fails to own no less than 50% of the direct or indirect voting or economic interests in Skyway Concessionaire, (ii) Macquarie Infrastructure Partners and Macquarie Atlas Roads, collectively, fail to own no less than 45% of the direct or indirect voting or economic interests in Skyway Concessionaire or, (iii) any party other than Cintra Infraestructuras, S.A. owns more than 50% of the direct or indirect voting or economic interests in Skyway Concessionaire, in each case, whether such change in ownership is accomplished through a single transaction or a series of related or unrelated transactions; or (c) the resignation of any Service Provider prior to the Termination Date.

“**Cintra Spain**” has the meaning set forth in Exhibit B-1.

“**Cintra Spain E&F Services Agreement**” has the meaning set forth in Exhibit B-1.

“**Cintra Spain TSA**” has the meaning set forth in Exhibit B-1.

“**Collateral Agency Agreement**” means that certain Collateral Agency and Intercreditor Agreement, dated as of the date hereof, by and among the Company, the First Lien

Administrative Agent, the Second Lien Administrative Agent, the First Lien Collateral Agent, and the Second Lien Collateral Agent.

“**Company**” has the meaning set forth in the preamble to this Agreement.

“**Company Indemnified Parties**” has the meaning set forth in Section 10.03(a).

“**Company LLC Agreement**” means that certain Limited Liability Company Agreement of the Company, dated as of January 19, 2006, to which Holdings is a party.

“**Company Personnel**” means such personnel of the Company as listed in Annex III.

“**Company Property**” has the meaning set forth in Section 10.01.

“**Company Resources**” means the Company Property and any other resource or item provided to the Service Providers by the Company.

“**Compensation Costs**” mean all salary, incentive compensation, if any, the employer portion of employment taxes, workers’ compensation insurance, unemployment insurance contributions, benefit costs and any other related costs.

“**Concession Agreement**” has the meaning set forth in the recitals to this Agreement.

“**Concessionaire Default**” has the meaning given to such term in the Concession Agreement.

“**Confidential Information**” means information, ideas or materials now or hereafter owned by or otherwise in the possession or control of, or otherwise relating to, the Company or any of its Affiliates, including proprietary or non-public information concerning the Company’s or its Affiliates’ business, operations, financial condition, projections, assets, historical information, inventions, business or trade secrets, know-how, techniques, data, reports, drawings, specifications, blueprints, flow sheets, designs, or engineering, environmental, operations, marketing or other information, together with all copies, summaries, analyses, or extracts thereof, based thereon or derived therefrom, or any such information identified in writing or reasonably understood as “Confidential” by the Company at the time of disclosure; and for the avoidance of doubt, “**Confidential Information**” of the Company will also mean information, ideas or materials related to services discussed or contemplated hereby (including the Services) or the Toll Road that are obtained, developed or created by or for the Manager, any Company Personnel or any Service Provider that contain, reflect or are based upon, in whole or in part, any of the Company’s Confidential Information. Confidential Information will not include any information that: (a) is already in the public knowledge or that becomes public knowledge absent any violation of the terms of this Agreement or such other obligation owed to the Disclosing Party, (b) a Service Provider obtains from a Person (other than the Service Provider or its Affiliates, officers, employees, directors, agents and Representatives) that the Service Provider reasonably believes was not under an obligation of confidentiality to the Disclosing Party or (c) is independently developed by the Service Provider or any of its Affiliates without the use or knowledge of any Confidential Information.

“**Consent**” has the meaning set forth in Section 4.05.

“**Copyrights**” means any and all U.S. and foreign copyrights, mask works and all other rights with respect to Works of Authorship and all registrations thereof and applications therefor (including moral and economic rights, however denominated).

“**Cost Sharing Agreement**” has the meaning set forth in Exhibit B-1.

“**CPI**” means the Consumer Price Index, “All Urban Consumers; U.S. City Average,” as published by the Bureau of Labor Statistics, or if such index shall cease to be published, such other index as shall be reasonably selected by the Company and reasonably agreed to by the Service Providers.

“**Databases**” means databases and other compilations and collections of data or information.

“**Delay Event**” has the meaning given to such term in the Concession Agreement.

“**Depository Agreement**” means that certain Depository Agreement, dated as of [●], by and among the Company, the First Lien Collateral Agent, the Second Lien Collateral Agent, and the Depository Bank.

“**Depository Bank**” means the entity appointed as the depository bank under the Depository Agreement.

“**Disclosing Party**” has the meaning set forth in Section 9.01.

“**Dispute**” means any dispute, controversy or claim arising out of or in connection with this Agreement, whether based on contract, tort, statute, regulations or otherwise, including any question regarding the existence, negotiation, breach, performance, non-performance, construction, validity, enforceability, interpretation, performance or termination of this Agreement.

“**Domain Names**” means domain names, uniform resource locators and other names and locators associated with the Internet.

“**Effective Date**” has the meaning set forth in the preamble to this Agreement.

“**Events of Default**” has the meaning set forth in Section 11.01.

“**Executive Chairman**” has the meaning given to such term in the Holdings LLC Agreement.

“**Expiration Date**” means the tenth (10th) anniversary of the Effective Date.

“**First Adjustment**” has the meaning set forth in Exhibit B-1.

“**First Lien Administrative Agent**” means the “Administrative Agent” under the First Lien Financing Agreement.

“First Lien Collateral Agent” means the “Collateral Agent” under the First Lien Financing Agreement.

“First Lien Financing Agreement” means that certain First Lien Financing Agreement, dated as of [●], by and among the Company, the First Lien Administrative Agent and the lenders party thereto from time to time.

“Financial Model” means any financial model required to be delivered by the Company under the Financing Agreements.

“Financing Agreements” means, collectively, the First Lien Financing Agreement and the Second Lien Financing Agreement.

“Financing Documents” has the meaning given to such term in the Collateral Agency Agreement.

“Financing Entities” means the “Secured Parties” as defined under the Collateral Agency Agreement.

“Governmental Entity” means any court, federal, state, local or foreign government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority.

“Holdings” means ITR Concession Company Holdings LLC.

“Holdings Interest” means the “Interest” as such term is defined in the Holdings LLC Agreement.

“Holdings LLC Agreement” means that certain Amended and Restated Limited Liability Company Agreement of ITR Concession Company Holdings LLC, dated as of [●], 2014, entered into by and among the members party thereto.

“IFA” has the meaning set forth in the recitals to this Agreement.

“Intellectual Property” means any and all (i) formulae, algorithms, procedures, processes, methods, techniques, know-how, ideas, creations, inventions, discoveries, and improvements (whether patentable or unpatentable and whether or not reduced to practice); (ii) technical, engineering, manufacturing, product, marketing, servicing, financial, supplier, and other information and materials; (iii) customer, vendor, and distributor lists, contact and registration information, and correspondence; (iv) specifications, designs, models, devices, prototypes, schematics and development tools; (v) Works of Authorship; (vi) Databases; (vii) Trademarks; (viii) Domain Names; and (ix) Trade Secrets.

“Intellectual Property Rights” means any and all rights (anywhere in the world, whether statutory, common law or otherwise) relating to, arising from, or associated with Intellectual Property, including (i) Patents; (ii) Copyrights; (iii) other rights with respect to Software, including registrations thereof and applications therefor; (iv) industrial design rights and registrations thereof and applications therefor; (v) rights with respect to Trademarks, and all

registrations thereof and applications therefor; (vi) rights with respect to Domain Names, including registrations thereof and applications therefor; (vii) rights with respect to Trade Secrets, including rights to limit the use or disclosure thereof by any Person; (viii) rights with respect to Databases and/or compilations, including registrations thereof and applications therefor; (ix) publicity and privacy rights, including all rights with respect to use of a Person's name, signature, likeness, image, photograph, voice, identity, personality, and biographical and personal information and materials; and (x) any rights equivalent or similar to any of the foregoing.

“**ITRP**” has the meaning set forth in Exhibit B-1.

“**ITRP TSA and FSA**” has the meaning set forth in Exhibit B-1.

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

“**Lien**” has the meaning given to such term in the Collateral Agency Agreement.

“**Losses**” means losses, claims, damages or liabilities.

“**Management Cash Consideration**” means the cash compensation payable by the Company to each Service Provider during the Term as set forth in each of their respective Material Operator Agreements; *provided, that* such Management Cash Consideration paid to all the Service Providers shall not exceed an aggregate amount equal to \$2.3 million in any calendar year during which the Services are being provided and so long as the Services being provided hereunder are consistent with Past Practices; *provided, further* that such Management Cash Consideration shall be adjusted in accordance with the difference in CPI for each calendar year (commencing with the calendar year ended December 31, 2015), against the calendar year immediately preceding (but in no event less than zero).

“**Management Equity Consideration**” means compensation in the form of Holdings Interests representing in the aggregate 3% of Holdings Interests, on a fully diluted basis as determined from time to time, vesting and payable over a period of ten (10) years on a straight line and pro rata basis (issuable on a monthly basis). For the avoidance of doubt, such Management Equity Consideration is in lieu of any fees and expenses to be paid to the relevant Service Providers pursuant to their respective Material Operator Agreement for the Services provided thereunder and in respect of which the election to receive Management Equity Consideration has been made as contemplated herein; provided, that, any further vesting thereof shall cease upon the termination of this Agreement in accordance with the terms hereof whether or not the full 3% of Holdings Interests has vested.

“**Manager**” means the Person appointed as “manager” (or designated as chief executive officer under the Cost Sharing Agreement) of the Company, from time to time, during the Term of this Agreement in accordance with the terms of the Cost Sharing Agreement and consistent with the Holdings LLC Agreement.

“**Material Operator Agreements**” has the meaning set forth in the recitals to this Agreement.

“**Operating Expenses**” has the meaning given to such term in the Collateral Agency Agreement.

“**Original Closing Date**” has the meaning set forth in the recitals to this Agreement.

“**Organizational Documents**” means, as applicable (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) the articles or certificate of formation and regulations or company agreement of a limited liability company; (c) the partnership agreement and any statement of partnership of a general or limited liability partnership; (d) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (e) except as contemplated above, any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person and (f) any amendment to any of the foregoing.

“**Parent Parties**” has the meaning set forth in Section 7.01(a).

“**Party**” or “**Parties**” has the meaning set forth in the preamble to this Agreement.

“**Past Practices**” means the historical performance standards and levels of service, time commitments and personnel commitments by which (a) each Service Provider has provided its Services in respect of the Toll Road since the Original Closing Date (or such date as when such Service Provider commenced providing its Services) and in effect as of the Petition Date in accordance with the respective Material Operator Agreement and (b) in respect of the Company Personnel, such personnel has provided its services in respect of the Toll Road since the Original Closing Date (or such date as when the position that such personnel occupies first became a position at the Company) and in effect as of the Petition Date.

“**Patents**” means any and all U.S. and foreign patent rights, including all (i) patents, (ii) pending patent applications, including all provisional applications, substitutions, continuations, continuations-in-part, divisions, renewals, and all patents granted thereon, (iii) all patents-of-addition, reissues, reexaminations, confirmations, re-registrations, invalidations, and extensions or restorations by existing or future extension or restoration mechanisms, including supplementary protection certificates or the equivalent thereof, and (iv) all foreign counterparts of any of the foregoing.

“**Person**” means any individual, company (whether general or limited), limited liability company, corporation, trust, estate, association, Governmental Entity or other entity.

“**Petition Date**” means the filing date of the Plan.

“**Plan**” means that certain *Joint Prepackaged Plan of Reorganization of ITR Concession Company LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code*, including the Plan Supplement thereto.

“Project Documents” means this Agreement, the Company LLC Agreement, the Holdings LLC Agreement, the Financing Documents and any other documents or instruments entered into by the Company or any of their respective Affiliates in connection with the Toll Road.

“Receiving Party” has the meaning set forth in Section 9.01.

“Remuneration Fee” means either (a) the Management Cash Consideration or (b) the Management Equity Consideration.

“Representatives” means directors, officers, employees, contractors, subcontractors and their subcontractors and Affiliates, agents, investors or advisors (including attorneys, accountants, consultants, bankers, financial advisors, lenders and, with respect to the Company, the Financing Entities).

“Resigning Service Provider” has the meaning set forth in Section 14.01.

“Rules” has the meaning set forth in Section 17.01(b).

“Scope of Manager Responsibilities” has the meaning set forth in the recitals to this Agreement.

“Second Lien Administrative Agent” means the “Administrative Agent” under the Second Lien Financing Agreement.

“Second Lien Collateral Agent” means the “Collateral Agent” under the Second Lien Financing Agreement.

“Second Lien Financing Agreement” means that certain Second Lien Financing Agreement, dated as of [●], by and among the Company, the Second Lien Administrative Agent and the lenders party thereto from time to time.

“Service Provider IP” has the meaning set forth in Section 5.09.

“Service Provider Indemnified Party” has the meaning set forth in Section 15.01.

“Service Provider Obligations” has the meaning set forth in Section 3.01(a).

“Service Provider Termination for Convenience” has the meaning set forth in Section 13.01(c).

“Service Provider Termination for Cause” has the meaning set forth in Section 13.01(d).

“Service Providers” has the meaning set forth in the preamble to this Agreement.

“Services” means with respect to the Service Providers and, as applicable, through their respective personnel, the services contemplated as of the date hereof in the Material Operator Agreement.

“**Skyway Concessionaire**” means Skyway Concession Company LLC, a Delaware limited liability company.

“**Software**” means all (i) computer programs and other software, including software implementations of algorithms, models and methodologies, whether in source code, object code or other form, including libraries, subroutines and other components thereof; (ii) computerized Databases and other computerized compilations and collections of data or information, including all data and information included in such databases, compilations or collections; (iii) screens, user interfaces, command structures, report formats, templates, menus, buttons and icons; (iv) descriptions, flow-charts, architectures, development tools and other materials used to design, plan, organize and develop any of the foregoing; and (v) all documentation, including development, diagnostic, support, user and training documentation related to any of the foregoing.

“**Standards of Performance**” has the meaning set forth in Section 2.04(a)(iv).

“**Substitute Service Provider**” has the meaning set forth in Section 14.01.

“**Term**” has the meaning set forth in Section 2.02.

“**Termination Date**” means the earliest of the date of (a) a Termination for Cause, (b) a Termination for Convenience, (c) a Service Provider Termination for Cause, (d) a Service Provider Termination for Convenience, and (e) the Expiration Date.

“**Termination for Cause**” has the meaning set forth in Section 13.01(b).

“**Termination for Convenience**” has the meaning set forth in Section 13.01(a).

“**Termination Rights**” means the right of a Party to terminate pursuant to Sections 13.01(a), (b), (c) and (d), as applicable.

“**Toll Road**” has the meaning specified in the Concession Agreement.

“**Trade Secrets**” means information and materials not generally known to the public, including trade secrets and other confidential and proprietary information, which, in each case, derives economic value from not being generally known to the public but excluding any Copyrights or Patents that cover or protect any of the foregoing.

“**Trademarks**” means trademarks, service marks, logos and design marks, trade dress, trade names, fictitious and other business names, and brand names, together with all goodwill associated with any of the foregoing.

“**Works of Authorship**” means Software, websites, content, images, graphics, text, photographs, artwork, audiovisual works, sound recordings, graphs, drawings, reports, analyses, writings, designs, mask works, and other works of authorship and copyrightable subject matter.

Section 1.02 Interpretation.

The Rules of Interpretation as set forth in the Collateral Agency Agreement are hereby incorporated by reference herein, *mutatis mutandis*.

ARTICLE II ENGAGEMENT OF THE MANAGER

Section 2.01 Engagement. As of the Effective Date, the Company has confirmed in accordance with the Cost Sharing Agreement the position of the Manager and the Manager has agreed to such appointment and hereby confirms (and agrees to implement the duties that form part of) the Scope of Manager Responsibilities, subject to the terms and conditions of this Agreement and the Cost Sharing Agreement. Each of the Service Providers consents to the appointment of the Manager and the performance of its duties hereunder.

Section 2.02 Term. This Agreement shall be effective on the Effective Date upon execution and delivery by all parties hereto of their signatures and will continue in full force and effect until the Termination Date (the “**Term**”).

Section 2.03 Board Control and Authority. The Manager will always act in accordance with the prior written direction of the Board and the Executive Chairman in implementing the requirements that are part of the Scope of Manager Responsibilities under this Agreement unless otherwise specified herein or in the Holdings LLC Agreement. No authority of the Board or the Executive Chairman is delegated to the Manager by this Agreement and the Board and the Executive Chairman expressly retain all authority over the Manager and the Company (including authority over the Manager and other officers, agents or employees of the Company pursuant to Sections 8.4(c)(iii) and 8.4(d) of the Holdings LLC Agreement) unless expressly delegated pursuant to a written resolutions in accordance with the Holdings LLC Agreement; *provided, however*, that nothing in this Section 2.03 shall be construed to alter, change or modify the obligations of the Manager hereunder or under the Cost Sharing Agreement.

Section 2.04 Standards of Performance.

(a) Company. The Manager will, in performing its duties hereunder, serve the Company in good faith and to the extent the Manager is an individual person, acting in its capacity as Manager hereunder, it shall not, without limiting its obligations hereunder or under any relevant Project Documents to which it is bound, assume any personal liability with respect to its own assets and monetary claims other than criminal liability or any other actions for which separate recourse to the Manager is available at law (and not pursuant to (or derivative of) this Agreement). The Manager shall cause the Company to:

(i) comply with all safety rules and regulations issued by IFA pursuant to the Concession Agreement, if any;

(ii) comply, in all material respects, with all provisions of the Concession Agreement applicable to the Company, including the Operating Standards, and all applicable laws, regulations, codes, permits and licenses, Material Operator Agreements and Financing Documents;

(iii) maintain all authorizations required to operate the Toll Road; and

(iv) perform the portion of the Services undertaken by the Manager (or at its direction) to enable the Toll Road to operate as a business and to the standards required of it under the Concession Agreement and in a good and workmanlike manner with due skill and care and in accordance with current standards of care and diligence reasonably expected of a skilled and experienced operator performing services of a similar nature on projects of a similar size and nature (subclauses (i) to (iv), collectively, the “**Standards of Performance**”).

(b) Service Providers. The Manager shall cause the Service Providers to (by instructing them to comply with the terms of their applicable Material Operator Agreement):

(i) perform their respective Services under the relevant Material Operator Agreements in a manner that shall result in compliance with the Standard of Performance (to the extent applicable to the Services being provided thereunder); and

(ii) not cause the Company to breach its obligations under the Concession Agreement, any applicable laws and the Financing Documents.

ARTICLE III SERVICES

Section 3.01 Services.

(a) In furtherance of ARTICLE II, each of the Service Providers hereby acknowledges and agrees to the appointment of the Manager to instruct and coordinate each such Service Provider in respect of its express obligations under its respective Material Operator Agreement (“**Service Provider Obligations**”). Each of the Service Providers also acknowledges and agrees that its respective Material Operator Agreement is amended by the express terms hereof, as applicable; *provided, however*, that, for the avoidance of any doubt, such Material Operator Agreements shall solely be modified to the extent expressly set forth herein and, in the event of any inconsistency or ambiguity, between the terms of a Material Operator Agreement and the terms hereof, the terms of this Agreement shall prevail.

(b) Each Service Provider shall provide the personnel and services set forth in its respective Material Operator Agreement for the duration of the Term in a manner consistent with Past Practices, including, for the avoidance of doubt, any personnel (subject to the replacement provisions (and other applicable provisions) contemplated herein) under the Cost Sharing Agreement.

(c) The Services provided by the Service Providers, when taken together with all of the services provided by the Company Personnel to the Company on the Effective Date (and the limited services of temporary personnel hired by the Company from time to time in accordance with the Company’s historical performance standards and levels of service, time commitments and personnel commitments) constitute all the services required or contemplated for the continuing operation of the Company in accordance with the Concession Agreement and Past Practices. To the extent that any other services are required after the Effective Date for the continuing operation of the Company according to the terms hereof, the Manager may procure the services of additional service providers with the approval of the Board and subject to the

terms and covenants of the Financing Documents and subject to such payment arrangements and definitive documentation that are agreed to in respect thereof in accordance with the Financing Documents.

Section 3.02 Ratification. With respect to the Cost Sharing Agreement, the Company and the Skyway Concessionaire hereby ratify and confirm the cost sharing allocations (that constitute a portion of the Remuneration Fee) in respect of:

(a) the sharing of personnel, in respect of which the Compensation Costs are shared in accordance with the percentages and amounts set forth opposite the respective names of the relevant personnel as set forth in Annex II hereto (subject to the replacement of any such personnel in the ordinary course in accordance with the Cost Sharing Agreement and this Agreement); and

(b) among other similar expenses (and consistent with Past Practices), overhead, in respect of which the Company currently is responsible for the payment of fifty percent (50%) of the rent, telephone, e-mail, telecopier, utilities, repairs and maintenance, office supplies, and other costs of maintaining and operating the Skyway Concessionaire's offices as set forth in Exhibit A.2 of the Second Adjustment attached as Exhibit B-2.

Section 3.03 Bank Accounts.

In connection with the Services, the Manager will, and will instruct the Company Personnel and the Service Providers, to promptly deposit all amounts received by it that are payable to the Company in accordance with the Depositary Agreement.

Section 3.04 Project Ownership.

The rights and interest in the Toll Road granted to the Company pursuant to the Concession Agreement are and will continue to be held by the Company throughout the Term. Neither the Manager nor any Service Provider (in their capacity as such) will have any legal, equitable, tax, beneficial or other ownership or leasehold interest in the Toll Road.

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES
OF THE COMPANY**

The Company represents and warrants as of the Effective Date that:

Section 4.01 Organization. The Company (i) is duly organized, validly existing and in good standing under the laws of Delaware, (ii) has full corporate power and authority to carry on its business as it is now being conducted and (iii) where appropriate, is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities make such qualification necessary.

Section 4.02 Power and Authority. The Company has full authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly

executed by the Company and, assuming the due authorization, execution and delivery by the Manager, constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency or other similar Laws affecting the enforcement of creditors' right generally and general principles of equity.

Section 4.03 No Conflict. Neither the execution nor delivery by the Company of this Agreement, nor the performance by the Company of its obligations hereunder, will: (a) violate any provision of the Company's Organizational Documents, (b) violate any Law applicable to the Company, or any of its properties or assets except as would not reasonably be expected to prevent or materially impair or materially delay the ability of the Company to perform its obligations under this Agreement or (c) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by the Company or result in the creation of any Lien (other than Liens created by this Agreement) upon any of the properties or assets of the Company, any of the terms, conditions or provisions of any material contract, note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Company is a party, or by which the Company or any of its properties or assets may be bound or affected except as would not reasonably be expected to prevent or materially impair or materially delay the ability of the Company to perform its obligations under this Agreement.

Section 4.04 No Litigation. There are no claims, actions, proceedings or investigations (including condemnation proceedings) pending or, to the knowledge of the Company, threatened against the Company before any Governmental Entity, except as would not reasonably be expected to prevent or materially impair or materially delay the ability of the Company to perform its obligations under this Agreement. The Company is not subject to any outstanding judgment, order, writ, injunction or decree of any Governmental Entity, except as would not, individually or in the aggregate, reasonably be expected to prevent or materially impair or materially delay the ability of the Company to perform its obligations under this Agreement.

Section 4.05 Consents and Approvals. No consent, waiver, approval, authorization, exemption, registration or declaration ("**Consent**") is required to be obtained by the Company from, and no notice or filing is required to be given by the Company to, or made by the Company with, any Governmental Entity or other Person in connection with the execution, delivery and performance by the Company of this Agreement except any such Consent which is not required as of the Effective Date for the execution, delivery and performance by the Company of this Agreement as of such date.

Section 4.06 Intellectual Property. The Company owns or has the right to use all Company Resources. The Company has not and will not, during the Term, infringe, misappropriate or otherwise violate any Intellectual Property Rights of any Person and has obtained the right to license to the Service Providers all Intellectual Property Rights in the Company Resources. The Service Provider IP (and each element thereof) does not infringe, misappropriate or otherwise violate any Intellectual Property Right of any Person.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES OF
THE SERVICE PROVIDERS**

Each of the Service Providers represents and warrants as of the Effective Date (unless otherwise expressly noted) that:

Section 5.01 Organization. The Service Provider (a) is duly organized, validly existing and in good standing under the laws of the state or country of its formation or incorporation, (b) has full corporate power and authority to carry on its business as it is now being conducted and (c) where appropriate, is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities make such qualification necessary.

Section 5.02 Power and Authority. The Service Provider has full authority to execute, deliver and perform its obligations under this Agreement and the applicable Material Operator Agreement. This Agreement and the applicable Material Operator Agreement have been duly and validly executed by the Service Provider and, assuming the due authorization, execution and delivery by the Company, constitute the legal, valid and binding obligation of the Service Provider enforceable in accordance with each agreement's terms, except as enforcement may be limited by bankruptcy, insolvency or other similar Laws affecting the enforcement of creditors' right generally and general principles of equity.

Section 5.03 No Conflict. Neither the execution nor delivery by the Service Provider of this Agreement or the applicable Material Operator Agreement, nor the performance by the Service Provider of its obligations hereunder and thereunder, will: (a) violate any provision of the Service Provider's Organizational Documents, (b) violate any Law applicable to the Service Provider, or any of its properties or assets except as would not reasonably be expected to prevent or materially impair or materially delay the ability of the Service Provider to perform its obligations under this Agreement and the applicable Material Operator Agreement or (c) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by the Service Provider or result in the creation of any Lien (other than Lien created by this Agreement) upon any of the properties or assets of the Service Provider, any of the terms, conditions or provisions of any material contract, note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Service Provider is a party, or by which the Service Provider or any of its properties or assets may be bound or affected except as would not reasonably be expected to prevent or materially impair or materially delay the ability of the Service Provider to perform its obligations under this Agreement and the applicable Material Operator Agreement .

Section 5.04 No Litigation. There are no claims, actions, proceedings or investigations (including condemnation proceedings) pending or, to the knowledge of the Service Provider, threatened against the Service Provider before any Governmental Entity, except as would not reasonably be expected to prevent or materially impair or materially delay the ability of the Service Provider to perform its obligations under this Agreement and the applicable Material

Operator Agreement. The Service Provider is not subject to any outstanding judgment, order, writ, injunction or decree of any Governmental Entity, except as would not, individually or in the aggregate, reasonably be expected to prevent or materially impair or materially delay the ability of the Service Provider to perform its obligations under this Agreement and the applicable Material Operator Agreement.

Section 5.05 Consents and Approvals. No Consent is required to be obtained by the Service Provider from, and no notice or filing is required to be given by the Service Provider to, or made by the Service Provider with, any Governmental Entity or other Person in connection with the execution, delivery and performance by the Service Provider of this Agreement and the applicable Material Operator Agreement except any such Consent which is not required as of the Effective Date for the execution, delivery and performance by the applicable Service Provider of this Agreement and the related Material Operator Agreement as of such date.

Section 5.06 No Defaults. The relevant Service Provider is not in default under its Material Operator Agreement. The Service Provider has fulfilled all of its obligations under the applicable Material Operator Agreement, and there are no breaches, defaults or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice), and there are no amounts currently due and payable to the Service Provider under such Material Operator Agreement which have not been paid.

Section 5.07 No Amendments. The applicable Material Operator Agreement is in full force and effect and has not been amended, supplemented or modified since the Original Closing Date, except as set forth in Exhibit B-1. The applicable Material Operator Agreement and this Agreement are the only agreements between the Company and the corresponding Service Provider.

Section 5.08 Professional Skills. The Service Provider and all Persons who will perform any portion of the Services have all the required ability, skills, experience and capacity necessary to diligently perform the relevant Services in a timely and professional manner, utilizing sound management principles and supervisory procedures, all in accordance with good and prudent industry practice.

Section 5.09 Intellectual Property. The Service Provider owns or has the right to use all Intellectual Property Rights necessary to provide its Services (all such Intellectual Property Rights owned or otherwise licensed by all the Service Providers, collectively, the “**Service Provider IP**”). The Service Provider has not and will not, in the course of performing the Services or any other obligation hereunder, infringe, misappropriate or otherwise violate any Intellectual Property Rights of any Person and has obtained the right to license to the Company or use in relation to the Toll Road all Intellectual Property Rights necessary to provide the Services.

Section 5.10 Business and Professional Licenses. The Service Provider and all Persons who will perform any portion of the Services have all business and professional certifications required by applicable Law to perform the Services under this Agreement and the applicable Material Operator Agreement.

Section 5.11 Representations and Warranties. The representations and warranties of the Service Provider contained in the applicable Material Operator Agreement are true and correct in all material respects as of the date hereof except for any such representations and warranties that relate to a specified date in which case such representations and warranties shall be true and correct in all material respect as of such specified date.

ARTICLE VI PERSONNEL

Section 6.01 Company Personnel.

(a) The Company Personnel listed in Annex III constitutes all the personnel of the Company as of the Effective Date. All such Company Personnel listed as of the Effective Date has remained substantially the same since [July 1], 2014, and each employee has the requisite skills and is required for the continuing operation of the Company in accordance with the Concession Agreement and Past Practices.

(b) The Manager will ensure that all of the Company Personnel are hired and employed in accordance with applicable Law and the Concession Agreement, including ensuring that all such Company Personnel will be at all times in possession of all such documents, status or credentials (including visas, driver's and professional licenses, training certificates and work permits) as may be required for the provision of the applicable services and under applicable Laws except as would not reasonably be expected to prevent or materially impair or materially delay the ability of the Company to perform its obligations under this Agreement.

(c) The Manager, acting at the direction of the Board or the Executive Chairman, will implement the principals contemplated in Exhibit A as part of the day-to-day operations of the Company.

(d) Pursuant to the Holdings LLC Agreement, the Executive Chairman is the senior-most officer of Holdings and the Manager shall report to the Executive Chairman and the Board.

(e) The Company may require the Manager to remove (or cause to be removed) any Company Personnel employed to perform services to the Company in accordance with Past Practices who (i) persists in any misconduct or lack of care, (ii) carries out duties incompetently or negligently, (iii) fails to materially conform with any provisions of this Agreement or (iv) persists in any conduct which is prejudicial to safety, health or the protection of the environment.

Section 6.02 No Other Services.

Other than the Services provided hereunder by the Service Providers and services provided hereunder by the Company Personnel (as consistent with Past Practices), no services of personnel (other than certain limited temporary personnel hired by the Company from time to time in accordance with the Company's historical performance standards and levels of service, time commitments and personnel commitments) are required or contemplated for the continuing operation of the Company and its activities in accordance with the Concession Agreement and Past Practices as of the Effective Date.

**ARTICLE VII
PAYMENTS FOR SERVICES AND OTHER EXPENSES**

Section 7.01 Remuneration Fee.

(a) Prior to the Effective Date, Cintra Infraestructuras, S.A. or Macquarie Infrastructure Partners and Macquarie Atlas Roads, as applicable (collectively, the “**Parent Parties**”), shall each elect in a written notice provided to the Company on their own behalf and on behalf of the applicable Service Providers, in exchange for all of the Services provided under the Material Operator Agreements (including those provided pursuant to the Cost Sharing Agreement) and as payment for all amounts (including Compensation Costs of all Service Providers and their personnel) payable pursuant to the Material Operator Agreements to which its Affiliate(s) is/are a party during the Term, (i) the Management Cash Consideration or (ii) the Management Equity Consideration (either (i) or (ii), the “**Remuneration Fee**”). Any such notice shall set forth the election made by each Parent Party and (x) in the case of a Remuneration Fee contemplated in clause (i) above, the allocation of the aggregate Remuneration Fee payable to each of the applicable Service Providers or (y) in the case of the Remuneration Fee contemplated in clause (ii) above, the relevant proportion of the Holdings Interests (and the percentage of the total) payable to such Person. To the extent that any of Cintra Infraestructuras, S.A. or Macquarie Infrastructure Partners and Macquarie Atlas Roads shall fail to provide the notice contemplated by this clause (a), such entity shall be deemed to have elected to receive its Remuneration Fee in the form of the Management Cash Consideration.

(b) If the Management Cash Consideration is elected under clause (a) above as the Remuneration Fee, such Remuneration Fee shall be paid, subject to Section 7.02(b), in arrears within thirty (30) days after receipt of the above described notice from the Effective Date until the Termination Date to each Service Provider (or an Affiliate thereof as designated by the applicable Service Provider) in proportion to such Service Provider’s monthly share and consistent with the allocation set forth in the notice described in clause (a) above pursuant to Section 4.01(b) of the Depositary Agreement (it being understood that nothing herein shall diminish the obligation of the Company to make payments required to be paid hereunder).

(c) If the Management Equity Consideration is elected under clause (a) above as the Remuneration Fee, such Remuneration Fee shall be paid, subject to Section 7.02(b), each month within thirty (30) days of receipt of the above described notice by the actual issuance and delivery of the Holdings Interests on a monthly basis from the Effective Date until the Termination Date to the Person and in the percentages set forth in the notice contemplated in clause (a) above.

(d) Subject to clause (e) below and Sections 12.02 and 12.03 hereof, following the Termination Date, no further fees, amounts or compensation shall be due or shall accrue to any Service Provider pursuant to the terms hereof or under any Material Operator Agreement and no further Services shall be required to be provided by the Service Providers.

(e) Each of the Service Providers hereby acknowledges and agrees that this ARTICLE VII replaces and supersedes any provisions under its respective Material Operator Agreement governing its fees and any reimbursable expenses under such Material Operator

Agreement in its entirety so long as the Services to be provided by such Service Providers hereunder are consistent with Past Practices. To the extent that the Company requests services in addition to the Services required to be provided by the Service Providers hereunder (as such Services are performed consistent with Past Practices), any fees and reimbursable expenses due and payable in connection with any such additional services approved with the prior written consent of the Company shall be in excess of the compensation set forth in this Agreement and agreed to in writing by both the Company and the relevant Service Provider.

Section 7.02 Other Fees and Amounts.

(a) The Company shall pay (or cause to be paid) the costs and expenses (and related remuneration) of the Company Personnel (to the extent such Company Personnel is not also a Service Provider), in arrears in accordance with Section 4.01(b) of the Depositary Agreement. The Company hereby certifies that it shall be responsible for all Operating Expenses and capital expenditures of the Company other than any amounts expressly payable to any Service Provider pursuant to any Material Operator Agreements.

(b) The Company shall not be responsible for any delay or omission in payment or performance to a particular Service Provider hereunder directly caused by any act or omission by such Service Provider.

Section 7.03 No Other Fees.

Except as expressly provided in this ARTICLE VII, no other compensation and fees (including reimbursement for costs, expenses, insurance and other amounts) are to be paid to the Service Providers (including their respective personnel) pursuant to this Agreement or the Material Operator Agreements.

**ARTICLE VIII
BOOKS AND RECORDS**

Each Service Provider shall maintain books and records in connection with all aspects of their performance hereunder reasonably necessary in accordance with good and prudent industry standards and consistent with Past Practices. Each Service Provider understands the Company has the right to, upon reasonable notice, have access to and inspect such books and records and may make copies of that limited portion of books and records that directly pertain to the actual costs (excluding, for the avoidance of any doubt, any information related to margins or profits) incurred by such Service Provider in complying with its obligations under this Agreement or the respective Material Operator Agreement for the sole and limited purpose of confirming such amounts and such compliance. Such books and records (and right to access, inspect, audit and copy) shall be retained for a period of at least two (2) years after the expiration or termination of this Agreement.

**ARTICLE IX
CONFIDENTIALITY**

Section 9.01 Confidential Information. Except as required by applicable Law or regulations, any Confidential Information disclosed by the Company, its Representatives or any

of its Affiliates or their respective Representatives (each, a “**Disclosing Party**”) to any Service Provider is disclosed in confidence, and each Service Provider (on its own behalf and that of its Representatives (other than the Company or any of the Financing Parties)), (each, a “**Receiving Party**”) will restrict its use of such Confidential Information solely to uses related to the Toll Road or performance of this Agreement or its Material Operator Agreement. Subject to Section 9.03, and except as required by applicable Law or regulations, by judicial process or any legal proceeding or by any Regulatory Authority, a Receiving Party will not, for a period beginning on the Effective Date and ending five years from the Termination Date, publish or otherwise disclose any Confidential Information received by it hereunder to others without the prior written approval of the Disclosing Party, including the fact that the Confidential Information has been made available to the Receiving Party, that it has entered into this Agreement, or any of the terms, conditions, or other facts with respect to this Agreement. Each Receiving Party will disclose only such Confidential Information to those of its Representatives as is necessary to carry out the purposes of this Agreement and will inform its Representatives of the confidential nature of the Confidential Information and instruct each such Representative to abide by the terms and conditions relating to Confidential Information contained herein. Each Service Provider will be responsible for any breach of this ARTICLE IX by its Receiving Party and such Service Provider agrees, to take all reasonable measures (including initiating court proceedings) to restrain such Receiving Party from prohibited or unauthorized disclosure or use of any Confidential Information and to the extent applicable, the relevant Service Provider will indemnify the Company for any Losses incurred as a result of such acts of the relevant Receiving Party in violation of this ARTICLE IX with respect to the Confidential Information received.

Section 9.02 Applicable Law Disclosures. In the event that the Receiving Party is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, or by a subpoena, civil investigative demand or other similar process) to disclose any Confidential Information, the Receiving Party will, to the extent permitted by applicable law and otherwise practicable, provide the Disclosing Party with prompt written notice of any such request or requirement so that the Disclosing Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement (to the extent required). If, in the absence of a protective order or other remedy or the receipt of a waiver by the Disclosing Party, the Receiving Party is nonetheless legally compelled to make any such disclosure of Confidential Information, the Receiving Party may, without liability hereunder, disclose to such Person only that portion of the Confidential Information that on the advice of counsel is legally required or permitted hereunder to be disclosed, provided that the Receiving Party uses its reasonable efforts to assist the Disclosing Party in obtaining an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information (at the sole expense of the Disclosing Party).

Section 9.03 Remedies. Each Party recognizes and acknowledges the competitive and confidential nature of the Confidential Information and each Party agrees that irreparable damage will result to the Company and its business if Confidential Information of the Company and its business is disclosed to any third party except as herein permitted or is used for any purpose other than the purposes of this Agreement, the Material Operator Agreements and/or the Project Documents. The Parties agree that money damages may not be a sufficient remedy for any breach of this ARTICLE IX. Accordingly, the Parties agree that an impermissible disclosure of such Confidential Information to a third party is a breach of this ARTICLE IX and the Company

is entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to prevent breaches or threatened breaches of this ARTICLE IX, and to specific performance of this ARTICLE IX, and that neither the other Party nor its Affiliates will oppose the granting of such relief. Such remedies will not be deemed to be the exclusive remedies for a breach of this ARTICLE IX, but will be in addition to all other remedies available at law or equity.

ARTICLE X COMPANY PROPERTY; LICENSES

Section 10.01 Company Property. The Service Providers hereby acknowledge and agree that the Company shall hold free and clear title to (a) all specialized equipment and tools, if any, reports, records, books, plans, designs, reports, papers, print outs, other information and all Intellectual Property developed or supplied by the Company and (b) made available by the Company to the Service Providers pursuant to this Section 10.01 to enable the Service Providers to perform their obligations hereunder (“**Company Property**”); provided, however, that in no event shall the Company Property include the Service Provider IP; provided, further, that Company Property shall not exclude such property (nor any portion thereof) belonging to the Company pursuant to the above even after being utilized by Service Provider or combined with any Service Provider IP. The Company hereby grants the Service Providers a fully-paid, royalty-free, world-wide, non-exclusive license to use the Company Property in the performance of such Service Provider’s obligations under this Agreement. Such license shall automatically expire immediately upon the Termination Date. A Service Provider may sublicense such license to its subcontractors to the extent necessary for such subcontractors to provide the Services. Any such sublicenses shall also automatically expire immediately upon the Termination Date. The Service Providers shall deliver to the Company all the Company Property (including any copies thereof) upon request of the Company from time to time and automatically on the Termination Date.

Section 10.02 Service Provider IP. The Company hereby acknowledges and agrees that, as between the Parties, the Service Provider retains and shall have exclusive ownership of any and all rights to the Service Provider IP. The Service Providers hereby grant to the Company a fully-paid, royalty-free, irrevocable, world-wide, non-exclusive license to use the Service Provider IP embedded in or practiced by any deliverables provided to the Company by the Service Providers and solely for use in connection with the operation and maintenance of the Toll Road to the extent and in the manner (if any) contemplated in the relevant Material Operator Agreement (“**Service Provider License**”) during the term of this Agreement or after the expiration of or termination of this Agreement to the extent used in connection with the operation and maintenance of the Toll Road (excluding for the avoidance of doubt, any third party licensed Service Provider License or any accounting systems and related Service Provider License under the Cintra Spain E&F Services Agreement). Such Service Provider License is part of the Remuneration Fee and the granting of such Service Provider License shall not alter the Remuneration Fee payable hereunder.

Section 10.03 Intellectual Property Indemnification. The applicable Service Provider shall indemnify, defend and hold the Company and its Representatives and Affiliates (collectively, the “**Company Indemnified Parties**”) harmless from and against any and all Losses arising out of or resulting from a claim by a third party against the Company Indemnified

Parties alleging (a) infringement or misappropriation of such third party's Intellectual Property Rights by the Company Indemnified Parties in connection with the applicable Service Provider IP or the Services provided by such Service Provider to the Company hereunder, and (b) the relevant Service Provider's violation of any third party license to use Intellectual Property arising from use by the Company Indemnified Parties of the Services provided by such Service Provider to the Company hereunder, in each case, except to the extent such infringement or misappropriation is a result of: (i) use of the Service Provider IP or Services by the Company Indemnified Parties in contravention of the related documentation or license granted to the Company hereunder; (ii) unauthorized modifications made by the Company Indemnified Parties; (iii) the Service Providers complying with instructions or designs required or provided by the Company Indemnified Parties where such compliance necessarily would give rise to such infringement; or (iv) combination of the Service Provider IP or Services with products or systems other than those provided to the extent the Service Provider IP or Services does not contribute to the infringement or misappropriation.

ARTICLE XI EVENTS OF DEFAULT; REMEDIES

Section 11.01 Events of Default. The following events will constitute events of default (“**Events of Default**”) under this Agreement (i) with respect to Sections 12.01(a), (b), (d), (h) or (j), upon expiration of the grace periods provided thereunder and (ii) with respect to Sections 12.01(c), (e), (f), (g) or (i) upon the occurrence thereof:

(a) Any failure by the Company to pay or provide the monthly portion of the Remuneration Fee as it becomes due, if such failure continues for thirty (30) Business Days after such payment has become due and payable, subject to any extensions to make any such payments for any delay in payment due to any act or omission set forth in Section 7.02(b), and written notice thereof has been given to the Company;

(b) Any failure by a Service Provider or the Manager to perform or comply in any respect with or any violation of any material obligation, term, provision or condition of this Agreement (other than as set forth in Sections 12(c) to (j), as applicable to such Service Provider or the Manager), if such failure continues for 30 (thirty) calendar days after written notice thereof has been given by the Company to the non-performing or defaulting Party; *provided, however*, that if written notice pursuant to this Section 11.01(b) has been given to the non-performing or defaulting Party in respect of two or more similar failures, then such 30 (thirty) day cure period will not be applicable with respect to any subsequent failure;

(c) Any Service Provider (i) fails to pay its debts as they become due; (ii) admits in writing its inability to pay its debts as they mature; (iii) makes a general assignment for the benefit of creditors; or (iv) voluntarily commences any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of its debts under any law relating to bankruptcy, insolvency, or reorganization, or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its property;

(d) (i) Insolvency, receivership, reorganization or bankruptcy or similar proceedings are commenced against any Service Provider and such proceedings remain undismissed or unstayed for an aggregate period of sixty (60) calendar days; or (ii) any trustee, receiver, conservator or liquidator of any Service Provider or of all or any substantial part its properties is appointed with or without the consent of or acquiescence of such Service Provider and such appointment remains unvacated and unstayed for an aggregate period of sixty (60) calendar days; provided that there shall be no Event of Default if any relevant Service Provider is timely replaced in accordance with ARTICLE XIV;

(e) Any of the Service Provider's representations or warranties hereunder are false or breached in any material respect at the time made;

(f) There is a Change in Control of any Service Provider (to the extent applicable) that does not comply with ARTICLE XIV;

(g) Any assignment of a Service Provider's rights and obligations under this Agreement to a third party which is not an Affiliate of such Service Provider unless approved by the Manager (in consultation with the Board) in accordance with the terms hereunder;

(h) Any Service Provider or the Manager abandons the provision of the Services or the performance of its obligations under this Agreement, as applicable, for more than 30 (thirty) calendar days after written notice thereof by the Company has been given to the defaulting Party;

(i) Any Material Operator Agreement is or becomes unenforceable, invalidated, terminated or illegal or for any reason ceases to be in full force and effect; or

(j) Any Service Provider or the Manager takes any action or fails to take actions that result in the Company failing to comply with the Standards of Performance, if such default results in a Concessionaire Default or such failure is not cured within 30 (thirty) calendar days after written notice thereof has been given to the defaulting Party, whichever is earlier.

Section 11.02 Service Provider Remedies. If an Event of Default occurs and is continuing with respect to the Company under Section 11.01(a), then, in addition to any rights to termination under Section 12.01(c), the relevant Service Provider will also have the right to pursue all rights and remedies allowed at law or in equity (subject to the specific limitations of liability set forth herein), seek equitable relief or at law to enforce the provisions of this Agreement.

Section 11.03 Company Remedies. If an Event of Default occurs and is continuing with respect to the Manager or any Service Provider, as applicable, under any Section 12(b) through (i), then, in addition to any rights to termination under Section 12.01(b), the Company will also have the right to suspend all payment or compensation obligations due hereunder in respect of the relevant Service Provider (including the Remuneration Fee) that have not yet accrued as of the date of such Event of Default for the duration and continuance of such Event of Default, pursue all rights and remedies allowed at law or in equity (subject to the specific limitations of liability set forth herein), seek equitable relief or at law to enforce the provisions of this Agreement or make such payments or perform such obligations as are required to cure any Event of Default of the Manager or any Service Provider and offset the reasonable cost of such

payment or performance against payments otherwise due to the Manager or applicable Service Provider under this Agreement.

ARTICLE XII TERMINATION

Section 12.01 Termination Rights.

(a) *Company Termination for Convenience.* The Company (at the instruction of the Board or the Executive Chairman) may in its sole discretion terminate this Agreement and all management arrangements contemplated herein (including any and all Services and the Material Operator Agreements) for convenience at any time by providing the Manager, who shall notify the Service Providers, with six (6) months' prior written notice, with such termination becoming effective automatically upon the expiration of such six (6) months' notice period (such termination, a "**Termination for Convenience**").

(b) *Company Termination for Cause.* If an Event of Default occurs and is continuing with respect to the Manager or any Service Provider under any Section 12(b) through (j), then the Company may pursuant to written notice terminate this Agreement (including any and all Services and the Material Operator Agreements) effective upon receipt of such notice (such termination, a "**Termination for Cause**").

(c) *Service Provider Termination for Convenience.* The Service Providers may, solely with the consent of each Service Provider hereunder, terminate this Agreement and all management arrangements contemplated herein (including any and all Services and the Material Operator Agreements) for convenience at any time by providing the Company (through the Manager) with six (6) months' prior written notice, with such termination becoming automatically effective upon the expiration of such six (6) months' notice period (such termination, a "**Service Provider Termination for Convenience**").

(d) *Service Provider Termination for Cause.* If an Event of Default occurs and is continuing with respect to the Company under Section 11.01(a), then the Service Providers may terminate this Agreement and all management arrangements contemplated herein (including any and all Services and the Material Operator Agreements) upon written notice to the Company (through the Manager) (such termination, a "**Service Provider Termination for Cause**") effective immediately upon receipt of such notice by the Company .

(e) Each of the Service Providers and the Company hereby acknowledges and agrees that the Termination Rights hereunder replace and supersede any existing discretionary termination right in each of the Material Operator Agreements to the extent such right provides for termination by either party thereto upon notice of shorter duration than the applicable Termination Right or conflicts with any Termination right hereunder. Each of the Service Providers and the Company further acknowledges and agrees that any termination of this Agreement shall automatically result in the concurrent termination of all Material Operator Agreements. The Company and the Service Providers hereby agree and acknowledge that each of the Material Operator Agreements is amended according to this ARTICLE 13.

Section 12.02 Termination Obligations. Upon the Termination Date:

(a) unless otherwise agreed to by the Company, the Manager and the Service Providers, the Manager and all directors, executives, employees, representatives, assignees and delegates of the Service Providers (including all their personnel but excluding, for the avoidance of doubt, any Company Personnel) will cease performing the Services; *provided, however*, that it is understood and agreed that the Company will be permitted to offer employment to such personnel upon such terms as the Company will determine in its sole discretion; *provided, further, however*, that for a period of six months following the date of any termination of this Agreement, the Company agrees that it shall not actively solicit for employment (including as an independent contractor) any officer, employee or personnel of any of the Service Providers; *provided, however*, any officer, employee or personnel of any Service Provider shall not be restricted from (i) responding to a general solicitation by the Company or Holdings or any parent company or (ii) seeking employment with Company or Holdings on its own. Such offers of employment, if accepted, will be effective as of the day following the Termination Date (unless a later date is specified);

(b) the Manager and Service Providers will promptly deliver to the Company any documents or books or records kept by the Manager and Service Providers in connection with all aspects of its performance of the Services hereunder to the extent so required under the relevant Material Operator Agreement;

(c) the Manager and any applicable Service Providers shall deliver to the Company all of the Company Property (including any copies thereof); and

(d) During the Term (in connection with a Termination for Convenience by the Company) or for a reasonable period following such termination (in connection with a Termination for Cause by the Company), the Manager and each of the Service Providers will provide all reasonable and necessary transition assistance to any replacement service providers to ensure that the provision of the Services and the operation and maintenance of the Toll Road continues uninterrupted and in accordance with the Operating Standards (as defined in the Concession Agreement) and all safety and performance standards as set forth in the Concession Agreement and to transfer to such replacement operator all reports, records and documents related to the operation, maintenance and performance of the Toll Road held by such Manager or Service Provider and as contemplated in the relevant Material Operator Agreement.

Section 12.03 Effect of Termination. Termination of this Agreement will not affect ARTICLE IX, ARTICLE X, Section 11.02, Section 11.03, ARTICLE XII, ARTICLE XIV, ARTICLE XVI, ARTICLE XVIII, which will survive the termination of this Agreement for the period of time expressly set forth herein or, absent such express time limitation, indefinitely.

Section 12.04 No Damages. Because of the unique nature and setup of the Remuneration Fee, no Party shall receive any damages or losses for the termination of this Agreement prior to the Expiration Date except (a) as may be determined pursuant to Sections 12.02 and 12.03 and (b) for such damages or losses, if any, incurred by a Party for failure by any another Party to fulfill the obligations under Section 13.02.

ARTICLE XIII SUBSTITUTION

Section 13.01 Substitution of Service Providers. Any Change in Control in any Service Provider shall be deemed an Event of Default under Section 12.01(f) unless a substitute Service Provider (“**Substitute Service Provider**”) has been appointed in accordance with this ARTICLE XIV to replace such defaulting Service Provider (“**Resigning Service Provider**”).

Section 13.02 Substitute Service Provider Requirements. A proposed Substitute Replacement Provider may assume the Resigning Service Provider’s Material Operator Agreement or enter into a revised Material Operator Agreement, in each case, pursuant to Section 14.03, upon satisfaction of the following conditions:

(a) Such Substitute Service Provider shall have the same (or better) capability as the Resigning Service Provider to perform the Services under the relevant Material Operator Agreement;

(b) The replacement of a Resigning Service Provider by such Substitute Service Provider shall not (i) result in an interruption or change in scope of Services being provided under the relevant Material Operator Agreement; (ii) result in a default or Event of Default under this Agreement other than the one caused by the relevant Change of Control; or (iii) change the Remuneration Fee under this Agreement; and

(c) The Substitute Service Provider shall certify to the Company in writing that the representations in Sections 14.02(a) and (b) are true and correct in respect of such Substitute Service Provider as of the date the Substitute Service Provider is to assume the applicable Material Operator Agreement or is to enter into a revised Material Operator Agreement; *provided further* such written certificate shall be signed by an Authorized Officer of such Substitute Service Provider; and

Section 13.03 Substitute Skyway Concessionaire Personnel Requirements. In respect of any of the shared personnel listed in Annex II hereof, such personnel may only be replaced by the Skyway Concessionaire upon satisfaction of the following conditions: (a) such replacement personnel shall have the same (or better) capability as the applicable resigning personnel to perform the Services required for the applicable position and (b) the replacement of such personnel shall not result in an interruption or change in the scope of Services being provided; result in a default or Event of Default under this Agreement or change the Remuneration Fee under this Agreement.

Section 13.04 Terms of Material Operator Agreement. In the event a Substitute Service Provider is appointed pursuant to this ARTICLE XIV, such Substitute Service Provider may assume the Resigning Service Provider’s Material Operator Agreement or enter into a revised Material Operator Agreement; *provided that*, in each case, the terms of such assumed or revised Material Operator Agreement shall be on the same terms and conditions as the original Material Operator Agreement for the remaining term of and for the remaining amounts payable to such Resigning Service Provider in the original Material Operator Agreement; *provided further* to the extent the Management Equity Consideration was elected as the Remuneration Fee

on the Effective Date, any compensation payable to the Substitute Service Provider shall be paid in accordance with Section 7.01(c) in the same portion as received by the Resigning Service Provider.

ARTICLE XIV INDEMNIFICATION

Section 14.01 Indemnification. To the extent the Service Providers or any their current affiliates, directors, officers, partners, managers, agents, representatives or employees (each, a “**Service Provider Indemnified Party**”) become involved in any capacity in any actual or threatened action, claim, suit, investigation, or proceeding (an “**Action**”) arising out of, related to or in connection with this Agreement, the Material Operator Agreements or any of the transactions or management arrangements contemplated or referred to herein, the Company will reimburse such Service Provider Indemnified Party for the reasonable and documented out-of-pocket costs and expenses of investigating, preparing for, and responding to such Action as they are incurred to the extent that such Action is not due to the gross negligence or willful misconduct of such Service Provider Indemnified Parties. The Company will also indemnify and hold harmless any Service Provider Indemnified Party from and against, and the Company agrees that no Service Provider Indemnified Party shall have any liability to the Company or its Affiliates, or their respective owners, directors, officers, employees, security holders, or creditors for, any Losses (a) related to or arising out of the Company’s actions or failures to act or (b) otherwise arising out of, related to or in connection with the management arrangements contemplated herein (other than Losses incurred due to the gross negligence or willful misconduct of such Service Provider Indemnified Parties).

ARTICLE XV DELAY EVENT

Section 15.01 Excused Performance. If any Party’s performance is delayed, hindered or prevented due to a Delay Event and there are no commercially reasonable steps that such Party could take to avoid or mitigate the Delay Event or its consequence, such Party will be excused from performance of its obligations under this Agreement and will not be considered to be in default in respect of any obligation hereunder (other than any obligation to pay money incurred prior to such Delay Event).

Section 15.02 Notice of Delay Event. If a Party’s ability to perform its obligations hereunder is affected by Delay Event, such Party will give notice to the other Party within five (5) Business Days of learning of such Delay Event and ascertaining that it will affect its performance hereunder. Such notice will state the nature of the event, its anticipated duration and any action being taken to avoid or minimize its effect.

Section 15.03 Scope. The suspension of performance due to a Delay Event will be of no greater scope and no longer duration than what is afforded to the Company pursuant to ARTICLE 15 of the Concession Agreement.

ARTICLE XVI INSURANCE

Section 16.01 Insurance. The Company agrees to procure and maintain throughout the term of this Agreement insurance with solvent insurers and insurers acceptable to the Company, including professional indemnity (including customary professional liability insurance and other reasonable insurance covering the Manager in carrying out the Scope of Manager Responsibilities), liability and other insurance as reasonable having regard to the nature and extent of the Company's obligations under this Agreement. The Service Providers agrees to procure and maintain throughout the term of this Agreement insurance consistent with the insurance requirements of its respective Material Operator Agreement.

Section 16.02 Insurance Generally. The parties agree that any insurance procured under or consistent with this Agreement is intended to assure that certain minimum standards of insurance protection are afforded by the Company and to the extent applicable under any Material Operator Agreement, the relevant Service Providers.

ARTICLE XVII LIMITATION OF LIABILITY

Section 17.01 Limitation of Liability. Each Party's total liability during the Term of this Agreement to the other Party in any calendar year on all claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all Losses or damages arising out of, connected with, or resulting from this Agreement or from the performance or breach thereof, or from any services covered by or furnished during the term of this Agreement, shall in no case exceed the aggregate value of the Remuneration Fee for such calendar year; *provided*, however, the foregoing limitation on liability shall not apply to (i) damage to a Party caused by the gross negligence or willful misconduct of the other Party with respect to the subject matter of this Agreement, (ii) amounts owed to third parties for which one Party is obligated to indemnify the other Party under this Agreement or (iii) any amounts recoverable by a Party as an insurance payment. The Company shall have absolutely no recourse to, and the Service Providers and their respective affiliates shall have absolutely no liability for, any claims, causes of action, liabilities or other obligations relating to the Services contemplated herein (other than the express obligations of any such parties under this Agreement and the relevant Material Operator Agreement).

Section 17.02 Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, shall any Party be liable for special, incidental, exemplary, indirect or consequential damages including, but not limited to, loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, costs in excess of estimates, cost of substitute equipment, facilities or services, downtime costs or claims of customers and/or lenders of the Company for such damages.

ARTICLE XVIII MISCELLANEOUS

Section 18.01 Mitigation. Each Party will use commercially reasonable efforts to mitigate any damages incurred or suffered by the relevant Party hereunder.

Section 18.02 Independent Contractor; No Fiduciary Duties. Each of the Parties hereunder is as an independent contractor. Nothing herein will be construed to create a joint venture, partnership or an employee/employer relationship between the Company or the Manager and any of the Service Providers. Nothing in this Agreement will be deemed or construed to impose on the Company or the Manager an express or implied fiduciary duty to any of the Service Providers. Nothing herein shall be construed to impose on the Manager any obligation in its personal capacity (nor shall the Manager be liable in any such personal capacity for any liability hereunder to the Company or any other Person). Each of the Parties hereto hereby acknowledges and agrees that the Manager shall have absolutely no liability for any payments or causes of action hereunder.

Section 18.03 Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when delivered by hand (with written confirmation of receipt), sent by electronic mail (with written confirmation of receipt, including any automatic confirmation that is received) or when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and email addresses set forth below (or to such other addresses and email addresses as a Party may designate by notice to the other Parties):

If to the Company:

ITR Concession Company LLC

[•]

Attn: [•]

Title: [•]

Email: [•]

with a copy to:

[Manager]

[•]

Attn: [•]

Title: [•]

Email: [•]

If to the Service Providers:

[•]

Attn: [•]

Title: [•]

Email: [•]

Section 18.04 Counterpart Execution. This Agreement may be executed in any number of counterparts with the same effect as if all of the Parties had signed the same document. All counterparts will be construed together and will constitute one instrument.

Section 18.05 Further Assurances. Each of the Parties will execute and deliver all such future instruments and take such other and further action as may be reasonably necessary or appropriate to carry out the provisions of this Agreement and the intention of the Parties expressed herein. In case at any time after the Effective Date any further action is necessary or desirable to carry out the purposes of this Agreement, each Party and, in the event a Party is a legal organization, the proper officers, managers, partners and directors of such Party and its respective subsidiaries, if any, or, in the event a Party is a natural person, then the personal representatives, heirs and assigns of such Party, will take all such necessary action as may be reasonably requested by any of the other Parties.

Section 18.06 Governing Law. This Agreement, and all claims, disputes, actions or other litigation that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement, will be construed in accordance and be governed by the Laws of the State of New York.

Section 18.07 Submission to Jurisdiction; WAIVER OF JURY TRIAL.

(a) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment related thereto, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (a) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 18.03. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(d) EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES TO THE EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE TRANSACTION CONTEMPLATED HEREBY (WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE). EACH PARTY HERETO ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

Section 18.08 Amendment. This Agreement may only be amended in a writing signed by all of the Parties.

Section 18.09 Waiver. No extension of the time for performance of any obligation hereunder or waiver of any condition or breach of any representation, warranty, covenant or agreement or failure to insist on strict compliance with an obligation, covenant, agreement or condition will operate as an extension, waiver of, or estoppel with respect to, any subsequent or other breach or failure. The single or partial exercise of any right, power or remedy provided under this Agreement will not preclude any other or further exercise thereof or the exercise of any other right, power or remedy except where expressly stated in this Agreement. Any waiver, indulgence, permit, consent or approval of any kind or character on the part of the Company of any Event of Default or other breach or default under this Agreement or any waiver on the part of the Company of any provision or condition of this Agreement must be in a writing expressly referencing this Agreement and shall be effective only to the extent in such writing specifically set forth.

Section 18.10 Severability. Each provision of this Agreement is intended to be severable from the others so that if any provision or term hereof is illegal or invalid for any reason whatsoever, then such illegality or invalidity will not affect the validity of the remaining provisions and terms hereof.

Section 18.11 Assignment; Successors and Assigns.

(a) The Company may, without the Manager's or the Service Providers' prior consent but upon five (5) days' prior notice to the Manager and the Service Providers, make a collateral assignment of all or part of its right, title, and interest in this Agreement to any Financing Entity. Any Financing Entity may, in connection with any default under any Financing Document, assign any rights assigned to it hereunder to any Person without the consent of the Manager, the Service Providers or the Company; *provided, however*, that no such assignment shall affect or alter or increase the obligation of any Service Provider hereunder or under any Material Operator Agreement and any such assignment shall include any and all of the Company's obligations hereunder by executing a counterpart hereof solely upon which such assignment may be effective (otherwise any such assignment shall be void and without effect). The Manager and the Service Providers agree that, upon receipt of written notice of such permitted assignment and the effectiveness thereof as contemplated herein, they will deliver all documents, data, notices, and other communications required to be delivered to the Company hereunder to the Company and to the Financing Entities or to any other permitted assignee at such address as such Persons will designate to the Manager in writing.

(b) Except as set forth in Section 18.11(a), this Agreement will not be assignable by any Party without the prior written consent of the other Parties hereto. This Agreement will be binding upon and will inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 18.12 Financing Matters. The Service Providers understand that the Company may obtain financing or refinancing for the operation and maintenance of the Toll Road. In connection therewith, the Service Providers will promptly execute any customary consents to

collateral assignments reasonably requested by the Financing Entities, which consents may, among other things, include provisions whereby the Service Providers agrees to: (i) provide such Financing Entities reasonable notice of and opportunity to cure the defaults hereunder; (ii) allow such Financing Entities (as security for the Company's financing or refinancing) to be assigned all of the Company's rights hereunder in the event of the Company's Event of Default; *provided, however*, that the Company will keep the relevant Service Providers currently informed of such assignment or reassignment; and (iii) provide for other customary and reasonable investor or lender protection provisions that are not in violation of applicable Law and are consistent with market practice for agreements such as this Agreement.

Section 18.13 Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with regards to the subject matter of this Agreement, and any written or oral agreements, statements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

Section 18.14 Construction. If any claim is made by any Party relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion will be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Party or its counsel.

Section 18.15 Third Party Beneficiaries. The provisions of this Agreement are for the sole benefit of the Company and the Manager and there are no third-party beneficiaries except the Financing Entities where expressly provided and assignees as contemplated by the terms of Section 18.11 and (c) any Company Indemnified Party or Service Provider Indemnified Party as provided in ARTICLE XIV.

Section 18.16 Electronic Transmission. Each of the Parties agrees that (a) any signed document transmitted by electronic transmission will be treated in all manner and respects as an original written document, (b) any such document will be considered to have the same binding and legal effect as an original document and (c) at the request of any Party, any such document will be re-delivered or re-executed, as appropriate, by the relevant party or parties in its original form. Each of the parties further agrees that they will not raise the transmission of a document by electronic transmission as a defense in any proceeding or action in which the validity of such document is at issue and hereby forever waives such defense. For purposes of this Agreement, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

COMPANY:

ITR CONCESSION COMPANY LLC

By: _____
Name:
Title:

SERVICE PROVIDERS:

[Insert each Service Provider]

By: _____
Name:
Title:

EXHIBIT A

SCOPE OF MANAGER RESPONSIBILITIES

- The Manager shall manage and supervise the day-to-day operations of the Company in accordance with the terms of the Concession Agreement and Past Practices;
- The Manager shall coordinate and supervise the Services provided under the Material Operator Agreements;
- The Manager shall cause the Company and the Company Personnel or other relevant personnel to carry out the Project Documents, including but not limited to: (i) all of the Company's operations, including planning, project managing, operating, monitoring, maintaining, replacing, repairing, upgrading and project reporting relating to the Toll Road in accordance with the Concession Agreement and the Financing Agreements; and (ii) all of the Company's operations and general and administrative management functions, including accounting, tax, reporting functions (financial, environmental or otherwise), accounts receivable, accounts payable, insurance, invoicing, payroll, cash management, maintenance of books and records, regulatory compliance, contracts management, property management, corporate marketing, human resources, and information technology functions;
- With the approval of the Board and the Executive Chairman, the Manager shall appoint all of the Company Personnel (provided that no consent of the Board or the Executive Chairman will be required in respect of replacement of such Company Personnel in order to fill vacancies with similarly qualified personnel) and ensure at all times all Company Personnel are capable and qualified to properly, adequately, safely and economically manage, operate, maintain and account for the Toll Road;
- The Manager shall appoint, in accordance with ARTICLE XIV of this Agreement, a Substitute Service Provider with respect to the Services of a Resigning Service Provider to the extent the Manager (in consultation with and with the approval of the Board) is reasonably satisfied that such Substitute Service Provider has the same capability as the Resigning Service Provider to perform such Material Operator Agreement and that such substitution is in accordance with this Agreement;
- The Manager shall ensure all notices received by it, including but not limited to notices in respect of any Event of Default and any Termination Right and notices from any Governmental Entity, are promptly delivered to the Executive Chairman and the Service Providers, as applicable;
- The Manager shall promptly provide written notice to the Executive Chairman, all in commercially reasonable detail and promptly upon learning of the event requiring notice, of (i) any actual or potential violation of any applicable Law, including a requirement of any permit, (ii) all events, occurrences, conditions, and issues that the Manager reasonably considers are material to, or are likely to have a material adverse effect on, the operation, maintenance, or results of operations, including notices of liens and claims of

liens and any and all notices under Project Documents of defaults, events or other conditions required to be reported to the counterparties thereunder and (iii) any breach under a Project Documents by any party thereto, in each case to the extent that the Manager has actual knowledge of any such event;

- The Manager shall liaise with the Service Providers and schedule and coordinate Services as between the Service Providers to ensure the Toll Road is operated and maintained in an efficient manner with no interruption of services to Toll Road customers;
- The Manager shall comply, and ensure compliance by the Company Personnel and the Service Providers, with Section 2.04 of this Agreement;
- The Manager shall instruct the Company and Company Personnel to manage, operate, maintain and account for the Toll Road, including the plaza and site facilities on a 24 hour, seven day a week basis, including, without limitation, plaza operations, supervision of employees, toll collection, toll accounting, administration, public interface, roadside cleaning, facility maintenance and data center operations;
- The Manager shall instruct the Company to perform all surface, architectural and structural and other applicable maintenance and repairs to the Toll Road, including the road, the toll plazas, ramp buildings, tunnels, canopies, islands, lanes booths and the interior and exterior of buildings that form part of it;
- The Manager shall instruct the Company to keep secure all toll collection facilities;
- The Manager shall instruct the Company to provide all management and supervision with respect to labor, materials, supplies, repair parts, tools, and equipment, and will plan, schedule, coordinate and ensure the effective and economical operation, maintenance, and repair of the Toll Road;
- The Manager shall instruct the Company to collect, count and report all tolls payable for the use of the Toll Road and any other relevant data;
- The Manager shall instruct the Company to prepare documentation, procedures, forms and manuals necessary for the operation of the Company's toll collection locations;
- The Manager shall instruct the Company to charge toll rates in accordance with approved toll schedule under the Concession Agreement;
- The Manager shall instruct the Company to account for and audit all funds that have been collected by the traffic traversing the Toll Road;
- The Manager shall instruct the Company to deposit into the proper bank account, each day, all cash tolls collected;
- The Manager shall instruct the Company to prepare operational reports and reports required under the Financing Documents and the Concession Agreement;

- The Manager shall instruct the Company to maintain a shift incident report form and log (including of personal injuries and property damage) and shift schedules;
- In the event of any emergency involving the Toll Road that endangers life or property, the Manager shall instruct the Company to take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as practicable, report any such material incident, including the Manager or Company Personnel's response thereto, to the Company;
- The Manager shall instruct the Company to conduct and document investigations into all incidents of theft, fraud and activities of a suspicious nature;
- The Manager shall instruct the Company to maintain all authorizations required to operate the Toll Road;
- The Manager shall assist in the Company's public relations pursuits and shall instruct the Company to maintain cordial relations with the IFA and community;
- The Manager shall instruct the Company to liaise with the Indiana State Police in connection with the operation of the Toll Road as contemplated in the Concession Agreement;
- The Manager shall advise the Board as to the Company's liquidity and projected cash requirements (including cash operating expenses, reserves for future operations and capital expenditures of the business) and contingencies;
- The Manager shall instruct the Company to keep books and records in accordance with Accounting Standards;
- The Manager shall prepare annual budgets, and any proposed amendments thereto, covering the collective operations of the Company for submission to the Board for approval (in the case of each annual budget, in accordance with the Financing Agreements);
- The Manager shall cause the annual audited consolidated financial statements of the Company for each fiscal year to be prepared and quarterly unaudited interim financial statements to be prepared in accordance with the Financing Agreements for review and audit (as applicable) at least to such extent and with such frequency as may be required by Law and the Company LLC Agreement;
- With the approval of the Board, the Manager shall manage any and all litigation or arbitration in which any Company is a party (other than litigation or arbitration involving the Manager or any of the Service Providers);
- The Manager shall instruct the Company to procure and manage commercially reasonable insurance relating to the Company and its property and assets, as directed by the Board, including liability and directors and officers insurance and periodically consult

with qualified insurance brokers in order to obtain information and recommendations for the types, limits and terms of insurance that are standard in the industry in which the Company operates and in compliance with Law and the Financing Agreements;

- The Manager shall instruct the Company to comply with their reporting obligations under any Financing Documents and any of their Organizational Documents;
- The Manager will instruct the Company to not take any action, and to cause any Company Personnel and the Service Providers to not take any action, that would cause any other Lien other than the Liens of the Financing Entities to attach to the Toll Road;
- The Manager shall provide the Board with all information related to the performance of the Manager's and/or the Service Provider's obligations under this Agreement as the Board may request from time to time;
- The Manager shall consult and cooperate with the Board with respect to the management of the Toll Road; and
- The Manager shall instruct the Company to comply with its obligations under the Financing Agreements.

EXHIBIT B-1

MATERIAL OPERATOR AGREEMENTS

1. Amended and Restated Cost Sharing Agreement, dated as of July 13, 2010 (as modified by the First Adjustment and the Second Adjustment, the “**Cost Sharing Agreement**”), between Company and the Skyway Concessionaire, as modified by (i) the First Adjustment to Amended and Restated Cost Sharing Agreement, dated as of November 1, 2012 (the “**First Adjustment**”), by and between the Skyway Concessionaire and the Company and (ii) the Second Adjustment to Amended and Restated Cost Sharing Agreement, dated as of December 2, 2013 (the “**Second Adjustment**”), by and between the Skyway Concessionaire and the Company, in each case set forth in Exhibit B-2 hereto;
2. Agreement for the Maintenance of Back Office System, dated as of July 12, 2011 (the “**BOS Contract**”), originally between the Company and Cintra Infraestructuras, S.A. and subsequently assumed by Cintra Spain (as defined below), as modified by the Extension Agreement – BOS Contract with respect to the BOS Contract executed by the Company and Cintra Infraestructuras, S.A., in each case set forth in Exhibit B-3 hereto;
3. Technical Services Agreement & Financial Services Agreement, dated as of April 24, 2014 (“**Cintra Spain TSA**”), between the Company and Cintra Servicios de Infraestructuras, S.L. (“**Cintra Spain**”), as modified by that certain Termination of Financial Services Agreement, dated as of April 23, 2014, effective January 1, 2014, between the Company and Cintra Spain, in each case set forth in Exhibit B-4 hereto;
4. Agreement for the Provision of Economical and Financial IT Systems Services, dated as of April 17, 2012 (“**Cintra Spain E&F Services Agreement**”), between the Company and Cintra Spain, set forth in Exhibit B-5 hereto;
5. Technical Services Agreement & Financial Services Agreement, dated as of April 24, 2014 (“**ITRP TSA and FSA**”), between the Company and the Indiana Toll Road Partnership (“**ITRP**”), set forth in Exhibit B-6 hereto; and

EXHIBIT B-2

COST SHARING AGREEMENT

[Cost Sharing Agreement, First Adjustment and Second Adjustment attached]

EXHIBIT B-3

BOS CONTRACT

[BOS Contract and Extension Agreement attached]

EXHIBIT B-4

CINTRA SPAIN TSA

[TSA with Cintra Spain and corresponding Termination of FSA attached]

EXHIBIT B-5

CINTRA SPAIN E&F SERVICES AGREEMENT

[IT Services Agreement with Cintra Spain attached]

EXHIBIT B-6

ITRP TSA and FSA

[TSA & FSA with ITRP attached]

ANNEX I

SERVICE PROVIDERS

1. Skyway Concessionaire
2. Cintra Servicios de Infraestructuras, S.L.
3. Indiana Toll Road Partnership
4. Cintra Infraestructuras, S.A.

ANNEX II

SHARED PERSONNEL

1. Skyway Concessionaire personnel for whom the Company pays the percentage set forth opposite such personnel's name:

Name	Title	Percentage paid by the Company
Fernando Redondo*	Manager	50%
Iñaki Alonso	Reporting Manager	50%
Garrett Phipps	General Counsel	50%
Tamiko Casteel	Procurement Manager	50%
Lindsey Heys	Executive Assistant	50%
Kristina Thorsten	Quality Coordinator	50%
Ilia Kay	Finance Director	50%
Inger Robertson	Treasurer	50%
Sylvia Cedenó	Accounting Manager	50%
Stephanie Donlan	Staff Accountant	50%
Michael Lowrey	Director of Operations**	50%
Vacant	Financial Analyst	50%

* Seconded to Skyway Concessionaire from Cintra or Cintra Spain.

** Serves as Director of Operations of Skyway Concessionaire and Operations Manager of Sections 1 & 2 of the Company.

2. Company personnel for whom Skyway Concessionaire pays the remaining percentage set forth opposite such personnel's name:

Name	Title	Percentage paid by the Company
Richard Fedder	Director of Human Resources	80%
Rob Ladson	Infrastructure Manager	80%
Juan Ignacio Gómez-Lobo	IT Manager	80%
Tanya Zent	Buyer	80%
Amber Kettring	Public Relations Manager	95%
Ray Hoover	Safety Manager	80%
Joyce Cieleilski	Audit Manager	80%
Toll Audit Department Personnel	Audit Personnel	As needed

ANNEX III

COMPANY PERSONNEL

[List/table to be provided]

Exhibit E

Form of New Security Documents

Exhibit E-1

Form of New First Lien Security Agreement

SECURITY AGREEMENT

Dated as of [_____],

between

ITR CONCESSION COMPANY LLC,
as Borrower

and

[_____],
as Collateral Agent, on behalf of the
Secured Parties

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS	1
Section 1.01. Certain Defined Terms.....	1
ARTICLE II THE COLLATERAL	5
Section 2.01. Collateral.....	5
Section 2.02. Grant	7
Section 2.03. Intellectual Property.....	7
Section 2.04. Perfection	7
Section 2.05. Instruments.....	8
Section 2.06. Use of Collateral	8
Section 2.07. Rights and Obligations.....	8
Section 2.08. Termination.....	9
ARTICLE III REPRESENTATIONS AND WARRANTIES.....	10
Section 3.01. Name; Jurisdiction of Organization; Chief Executive Office.....	10
Section 3.02. Title.....	10
Section 3.03. Intellectual Property.....	10
Section 3.04. Deposit Accounts; Securities Accounts	11
Section 3.05. Commercial Tort Claims.....	11
Section 3.06. Inventory and Equipment.....	11
ARTICLE IV COVENANTS	11
Section 4.01. No Transfer Restriction.....	11
Section 4.02. Preservation and Protection of Security Interests	11
Section 4.03. Maintenance of Perfected Security Interest; Further Documentation.....	13
Section 4.04. Changes in Jurisdiction of Organization, Name, Etc	13
Section 4.05. Further Assurances.....	13
ARTICLE V REMEDIES.....	14
Section 5.01. Events of Default, Etc	14
Section 5.02. Private Sale	15
Section 5.03. Application of Proceeds	15
Section 5.04. Deficiency	16
Section 5.05. Assignment of Governmental Approvals.....	16
ARTICLE VI THE COLLATERAL AGENT	16
Section 6.01. Appointment as Attorney-in-Fact	16
Section 6.02. Performance in Lieu of Borrower	17
Section 6.03. Duty of the Collateral Agent.....	17

Section 6.04. Authority of the Collateral Agent	18
Section 6.05. Agreements as to Concession Agreement.....	18
Section 6.06. Role of the Collateral Agent	18
ARTICLE VII MISCELLANEOUS PROVISIONS	18
Section 7.01. Amendments	18
Section 7.02. Waivers	19
Section 7.03. Notices	19
Section 7.04. Successors and Assigns.....	20
Section 7.05. Counterparts	20
Section 7.06. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial	20
Section 7.07. Captions	21
Section 7.08. Severability	21
Section 7.09. Entire Agreement	21
Section 7.10. Expenses	21
Section 7.11. Limitation of Recourse	21

Schedules

Schedule 1	Organization and Chief Executive Office of Borrower
Schedule 2	Assigned Agreements
Schedule 3	[Intentionally Omitted]
Schedule 4	Material Intellectual Property
Schedule 5	Deposit Accounts and Securities Accounts
Schedule 6	Commercial Tort Claims
Schedule 7	Location of Inventory and Equipment

SECURITY AGREEMENT

This SECURITY AGREEMENT (this “Agreement”), dated as of [____], is made by and between ITR CONCESSION COMPANY LLC, a Delaware limited liability company (the “Borrower”), and [____], in its capacity as collateral agent for the benefit of and as representative of the Secured Parties (in such capacity, the “Collateral Agent”).

RECITALS

A. The Lenders (as defined below) have agreed to enter into the First Lien Financing Agreement, dated as of the date hereof (the “First Lien Financing Agreement”), by and among the Borrower, certain lenders party thereto (the “Lenders”), and Wilmington Trust, National Association, as the Administrative Agent, on the terms and subject to the conditions set forth therein.

B. Simultaneously with the execution of this Agreement, the Borrower, the Administrative Agent for and on behalf of the Financing Parties, the second lien administrative agent thereunder, the Collateral Agent and the second lien collateral agent thereunder have entered into that certain Collateral Agency and Intercreditor Agreement, dated as of the date hereof, pursuant to which [____] has been appointed Collateral Agent with respect to this Agreement and the other Security Documents.

C. It is a condition precedent to the Closing Date under the First Lien Financing Agreement that the Borrower shall have executed and delivered this Agreement to the Collateral Agent.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Borrower hereby agrees with the Collateral Agent as follows:

ARTICLE I DEFINITIONS

Section 1.01. Certain Defined Terms.

(a) All capitalized terms used herein but not otherwise defined herein shall have the respective meanings given to such terms in Appendix A to the First Lien Financing Agreement. The Rules of Interpretation set forth in Appendix A to the First Lien Financing Agreement shall govern this Agreement.

(b) In addition to the terms defined in the First Lien Financing Agreement, the preamble and the recitals, the following terms used herein shall have the respective meanings set forth below:

“Accounts” has the meaning assigned to the term “accounts” in the Uniform Commercial Code.

“Assigned Agreements” has the meaning assigned to such term in Section 2.01(p), hereof.

“Bank” has the meaning assigned to the term “bank” in the Uniform Commercial Code.

“Chattel Paper” has the meaning assigned to the term “chattel paper” in the Uniform Commercial Code.

“Certificated Security” has the meaning assigned to the term “certificated security” in the Uniform Commercial Code.

“Collateral” has the meaning assigned to that term in Section 2.01 hereof.

“Commercial Tort Claim” has the meaning assigned to the term “commercial tort claim” in the Uniform Commercial Code.

“Control” has, with respect to Deposit Accounts, Investment Property, Electronic Chattel Paper and Letter-of-Credit Rights, the respective meaning assigned to the term “control” in the Uniform Commercial Code.

“Copyright Collateral” shall mean all Copyrights, whether now owned or hereafter acquired by the Borrower.

“Copyrights” shall mean, collectively, (a) all copyrights, copyright registrations and applications for copyright registrations, (b) all renewals and extensions of all copyrights, copyright registrations and applications for copyright registration and (c) all rights, now existing or hereafter coming into existence, (i) to all income royalties, damages and other payments (including in respect of all past, present or future infringements) now or hereafter due or payable under or with respect to any of the foregoing, (ii) to sue for all past, present and future infringements with respect to any of the foregoing and (iii) otherwise accruing under or pertaining to any of the foregoing throughout the world.

“Deposit Accounts” has the meaning assigned to the term “deposit accounts” in the Uniform Commercial Code.

“Documents” has the meaning assigned to the term “documents” in the Uniform Commercial Code.

“Electronic Chattel Paper” has the meaning assigned to the term “electronic chattel paper” in the Uniform Commercial Code.

“Equipment” has the meaning assigned to the term “equipment” in the Uniform Commercial Code.

“Excluded Asset” shall mean (a) any property of the Borrower (i) to the extent that the terms of any contract, license, agreement, instrument or other document constituting, evidencing, governing or giving rise to such property validly prohibits the creation by the Borrower of a security interest therein, (ii) to the extent that any Governmental Rule prohibits the creation by

the Borrower of a security interest therein, or (iii) that would be rendered invalid, abandoned, void or unenforceable by reason of its being included as part of the Collateral (in each case, other than to the extent that any such term or restriction would be rendered ineffective pursuant to applicable law, including Section 9-406, 9-407, 9-408 or 9-409 of the UCC), (b) any and all amounts paid or distributed by the Borrower in accordance with Section 7.6 of the First Lien Financing Agreement and Sections 4.01 and 4.06(b) of the Depositary Agreement shall be free of the Lien of this Agreement, (c) any and all assets or property sold, conveyed, transferred, assigned or otherwise disposed of by the Borrower to the extent permitted under Section 7.1(b) of the First Lien Financing Agreement or any other provision of the Financing Documents, (d) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant, attachment or enforcement of a security interest therein would, under applicable federal law, impair the registrability of such applications or the validity or enforceability of registrations issuing from such applications, (e) any Equipment that is subject to a purchase money Liens securing Permitted Debt or Liens under a Capital Lease permitted under the First Lien Financing Agreement to the extent the documents relating to such purchase money lien or Capital Lease would not permit such Equipment to be subject to the Security Interests created hereby; (f) Motor Vehicles and other assets subject to certificates of title (other than to the extent a Lien thereon can be perfected by the filing of a financing statement under the UCC); and (g) any Deposit Account holding accounts that are specifically and exclusively payroll accounts and escrow, trust or employee benefit accounts (including but not limited to 401(k) trust accounts and pension accounts).

“Fixtures” has the meaning assigned to the term “fixtures” in the Uniform Commercial Code.

“General Intangibles” has the meaning assigned to the term “general intangibles” in the Uniform Commercial Code.

“Goods” has the meaning assigned to the term “goods” in the Uniform Commercial Code.

“Instruments” has the meaning assigned to the term “instruments” in the Uniform Commercial Code.

“Intellectual Property” shall mean all Copyright Collateral, all Patent Collateral and all Trademark Collateral, together with (a) all inventions, processes, production methods, proprietary information, know-how and trade secrets; (b) all licenses or user or other agreements granted to the Borrower with respect to any of the foregoing, in each case whether now or hereafter owned or used (to the extent assignable); (c) all information, customer lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, recorded knowledge, surveys, engineering reports, test reports, manuals, materials standards, processing standards, performance standards, catalogs, computer and automatic machinery software and programs; (d) all field repair data, sales data and other information relating to sales or service of products now or hereafter manufactured; (e) all accounting information and all media in which or on which any information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data; (f) all Governmental Approvals now held or hereafter obtained by the Borrower in

respect of any of the foregoing (to the extent assignable); and (g) all causes of action, claims and warranties now owned or hereafter acquired by the Borrower in respect of any of the foregoing. It is understood that Intellectual Property shall include all of the foregoing owned or acquired by the Borrower.

“Inventory” has the meaning assigned to the term “inventory” in the Uniform Commercial Code.

“Investment Property” has the meaning assigned to the term “investment property” in the Uniform Commercial Code.

“Letter-of-Credit Rights” has the meaning assigned to the term “letter-of-credit rights” in the Uniform Commercial Code.

“Material Intellectual Property” shall mean Intellectual Property owned by or licensed by the Borrower and material to the Borrower’s business.

“Motor Vehicles” shall mean motor vehicles, tractors, trailers and other like property, whether or not the title to any such property is governed by a certificate of title or ownership.

“Patent Collateral” shall mean all Patents, whether now owned or hereafter acquired by the Borrower.

“Patents” shall mean, collectively, (a) all patents and patent applications, (b) all reissues, divisions, continuations, renewals, extensions and continuations-in-part of all patents or patent applications and (c) all rights, now existing or hereafter coming into existence, (i) to all income, royalties, damages, and other payments (including in respect of all past, present and future infringements) now or hereafter due or payable under or with respect to any of the foregoing, (ii) to sue for all past, present and future infringements with respect to any of the foregoing and (iii) otherwise accruing under or pertaining to any of the foregoing throughout the world, including all inventions and improvements described or discussed in all such patents and patent applications.

“Payment Intangible” has the meaning assigned to the term “payment intangible” in the Uniform Commercial Code.

“Proceeds” has the meaning assigned to the term “proceeds” in the Uniform Commercial Code.

“Securities Accounts” has the meaning assigned to the term “securities accounts” in the Uniform Commercial Code.

“Securities Intermediary” has the meaning assigned to the term “securities intermediary” in the Uniform Commercial Code.

“Security” has the meaning assigned to the term “security” in the Uniform Commercial Code.

“Security Entitlement” has the meaning assigned to the term “security entitlement” in the Uniform Commercial Code.

“Software” has the meaning assigned to the term “software” in the Uniform Commercial Code.

“Trademark Collateral” shall mean all Trademarks, whether now owned or hereafter acquired by the Borrower. Notwithstanding the foregoing, Trademark Collateral shall not include any Trademark which would be rendered invalid, abandoned, void or unenforceable by reason of its being included as part of the Trademark Collateral.

“Trademarks” shall mean, collectively, (a) all trade names, trademarks and service marks, logos, trademark and service mark registrations and applications for trademark and service mark registrations, (b) all renewals and extensions of any of the foregoing and (c) all rights, now existing or hereafter coming into existence, (i) to all income, royalties, damages and other payments (including in respect of all past, present and future infringements) now or hereafter due or payable under or with respect to any of the foregoing, (ii) to sue for all past, present and future infringements with respect to any of the foregoing and (iii) otherwise accruing under or pertaining to any of the foregoing throughout the world, together, in each case, with the product lines and goodwill of the business connected with the use of, or otherwise symbolized by, each such trade name, trademark and service mark.

“Uniform Commercial Code” or “UCC” shall mean the Uniform Commercial Code as in effect in any applicable jurisdiction from time to time.

ARTICLE II THE COLLATERAL

Section 2.01. Collateral. For the purposes of this Agreement, all rights, title and interest of Borrower in, to and under all assets of Borrower, wherever located, whether now owned or at any time hereafter acquired by the Borrower or in which the Borrower now has or at any time in the future may acquire any right, title or interest, including all rights, title and interest of Borrower in, to and under the following, is collectively referred to as the “Collateral”:

- (a) all Accounts (including all Project Accounts);
- (b) all Deposit Accounts;
- (c) all Instruments;
- (d) all Documents;
- (e) all Chattel Paper, including all Electronic Chattel Paper;
- (f) all Inventory;
- (g) all Equipment;

- (h) all Fixtures;
- (i) all Goods not covered the preceding clauses of this Section 2.01;
- (j) all Letter-of Credit Rights;
- (k) all Intellectual Property;
- (l) all Investment Property (including all Securities Accounts);
- (m) all Commercial Tort Claims described on Schedule 6;

(n) all Payment Intangibles, Software and General Intangibles (including the Concession Agreement, the Omnibus Services Agreement and the other Material ITR Contracts, if any, and the other agreements and documents specified on the attached Schedule 2) and all other contracts, agreements, leases and other similar instruments related to the Indiana Toll Road or the business and operations of the Borrower and all amounts payable to the Borrower under any material agreement (such material agreements, including the Concession Agreement, the Omnibus Services Agreement, the other Material ITR Contracts, if any, and all other contracts, agreements, leases and other similar instruments, collectively, the “Assigned Agreements”) not covered by the preceding clauses (a) through (m) of this Section 2.01;

(o) to the extent assignable, all Governmental Approvals required or obtained in connection with the use, rehabilitation, operation or maintenance of the Indiana Toll Road and/or in connection with any transactions contemplated by the Financing Documents;

(p) to the extent assignable, any present or future right, title or interest of the Borrower under any insurance, indemnity, warranty or guaranty in respect of the Indiana Toll Road or the business and operations of the Borrower and any rents, revenues, incomes, profits, proceeds of insurance or other rights to compensation in respect of the Indiana Toll Road;

(q) all Proceeds and products in whatever form of all or any part of the other Collateral, including all rents, profits, income and benefits and all proceeds of insurance and all condemnation awards and all other compensation for any event of loss with respect to all or any part of the other Collateral (together with all rights to recover and proceed with respect to the same), and all accessions to, substitutions for and replacements of all or any part of the other Collateral; and

(r) all other personal property and fixtures of the Borrower, whether now owned or hereafter existing or hereafter acquired or arising, or in which the Borrower may have an interest, and wheresoever located, whether or not of a type which may be subject to a security interest under the UCC, and any replacements, renewals, or substitutions for any of the foregoing or additional tangible or intangible personal property hereafter acquired by the Borrower.

Notwithstanding anything to the contrary in the foregoing, to the extent that any property of the Borrower is, at any time, an Excluded Asset, and only at such time, this Agreement shall not constitute a grant of a Lien on, such Excluded Assets and such Excluded Assets shall not

constitute Collateral for any purpose hereunder and shall be excluded from all defined terms used in “Collateral”.

Section 2.02. Grant.

(a) Grant to Collateral Agent. The Borrower, as collateral security for the prompt payment in full when due (whether at stated maturity, upon acceleration, on any optional or mandatory prepayment date or otherwise) and performance of any and all of the Secured Obligations (as defined below), hereby collaterally assigns, mortgages, pledges and grants to the Collateral Agent, for the benefit of the Secured Parties, a continuing first priority security interest (subject to Permitted Liens) in, all of the Borrower’s right, title and interest in, to and under the Collateral.

(b) Obligations Secured. The security interests of the Collateral Agent on behalf of the Secured Parties under this Agreement secure (i) the Secured Obligations under the Financing Documents and Hedging Agreements (if any); (ii) all payments made or expenses reasonably incurred by the Collateral Agent or any other Secured Party under this Agreement, the First Lien Financing Agreement or the other Financing Documents and the Hedging Agreements, including reasonable attorneys’ fees and legal expenses, in the exercise, preservation or enforcement of any of the rights, powers or remedies of the Collateral Agent or any other Secured Party, or in the enforcement of the obligations of the Borrower, hereunder, to the extent reimbursable under the Financing Documents, in each case, in accordance with the terms of the Financing Documents; and (iii) any renewals, continuations or extensions of any of the foregoing under the Financing Documents (all of which are referred to herein as the “Secured Obligations”).

Section 2.03. Intellectual Property. For the purpose of enabling the Collateral Agent to exercise its rights, remedies, powers and privileges under Section 6.01 hereof at such time or times as the Collateral Agent is lawfully entitled to exercise those rights, remedies, powers and privileges, and for no other purpose, the Borrower hereby grants to the Collateral Agent, to the extent assignable, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to the Borrower) to use, assign, license or sublicense any of the Intellectual Property of the Borrower, together with reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout of those items.

Section 2.04. Perfection.

(a) Subject to the terms of the Financing Documents, the Borrower authorizes the Administrative Agent to prepare for execution by the Collateral Agent and/or cause the filing of such financing statements, continuation statements and other documents in such offices as are or shall be necessary or as the Administrative Agent reasonably may determine to be appropriate to create, perfect and establish the priority of the Liens granted by this Agreement in any and all of the Collateral, to preserve the validity, perfection or priority of the Liens granted by this Agreement in any and all of the Collateral, or to enable the Collateral Agent to exercise its remedies, rights, powers and privileges under this Agreement. Concurrently with the execution and delivery of this Agreement, the Borrower shall (i) deliver to the Collateral Agent any and all

Instruments, endorsed or accompanied by such instruments of assignment and transfer in such form and substance as the Administrative Agent may reasonably request, (ii) cooperate with the Administrative Agent in obtaining, and take such other actions as are necessary or that the Administrative Agent may reasonably request in order for the Collateral Agent to obtain Control with respect to all Deposit Accounts, Investment Property, Electronic Chattel Paper (other than Electronic Chattel Paper representing amounts in the aggregate for the Borrower of less than \$2,500,000), and Letter-of-Credit Rights (other than Letter-of-Credit Rights representing amounts in the aggregate for the Borrower of less than \$2,500,000) included in the Collateral, including (to the extent requested by the Collateral Agent) (A) in the case of any Deposit Account for which the Collateral Agent is not the Bank at which such Deposit Account is maintained, causing the relevant Bank to enter into a Control Agreement or such other similar agreement that the Administrative Agent may reasonably accept and (B) in the case of any Security Entitlement, causing the relevant Securities Intermediary to enter into a Control Agreement or such other similar agreement that the Administrative Agent may reasonably accept and (iv) take all such other actions, and authenticate or sign and file or record such other records or instruments, as are necessary or as the Administrative Agent may reasonably request to perfect and establish the priority of the Liens granted by this Agreement in any and all of the Collateral or to enable the Collateral Agent to exercise its remedies, rights, powers and privileges under this Agreement. Notwithstanding the foregoing, nothing contained herein shall require Borrower to take any action to challenge the validity or priority of any Permitted Lien or to grant a security interest in any Excluded Asset.

(b) The Borrower acknowledges that it is not authorized to file any amendment or termination statement with respect to any financing statement relating to any security interest granted hereunder without the prior written consent of the Collateral Agent and agrees that it will not do so without the prior written consent of the Administrative Agent, subject to the Borrower's rights under Section 9-509(d)(2) of the UCC; provided that, the Borrower shall be so entitled to file such amendments or termination statements following the termination hereof.

Section 2.05. Instruments. So long as no Event of Default has occurred and is continuing and the Borrower has not received prior written notice from the Collateral Agent including details of the Event of Default, the Borrower may retain for collection in the ordinary course of business any Instruments obtained by it in the ordinary course of business, and the Collateral Agent shall, promptly upon the request, and at the expense of the Borrower, make appropriate arrangements for making any Instruments pledged by the Borrower available to the Borrower for purposes of presentation, collection or renewal. Any such arrangement shall be effected, to the extent deemed appropriate by the Collateral Agent, against a trust receipt or like document.

Section 2.06. Use of Collateral. So long as no Event of Default is occurred and is continuing, the Borrower shall be entitled to use and possess the Collateral subject to the terms of the First Lien Financing Agreement and the rights, remedies, powers and privileges of the Collateral Agent under Articles V and VI hereof.

Section 2.07. Rights and Obligations.

(a) No reference in this Agreement to proceeds or to the sale or other disposition of the Collateral shall authorize the Borrower to sell or otherwise dispose of any Collateral except to the extent otherwise expressly permitted by the terms of the First Lien Financing Agreement and the other Financing Documents. The Collateral Agent shall not be required to take steps necessary to preserve any rights against prior parties to any part of the Collateral.

(b) Notwithstanding anything to the contrary herein, the Borrower shall remain liable to perform its duties and obligations under each of the Assigned Agreements and, unless expressly assumed by the Collateral Agent, its permitted assigns or designee, any other agreements included in the Collateral in accordance with their respective terms to the same extent as if this Agreement had not been executed and delivered. The exercise by the Collateral Agent of any right, remedy, power or privilege in respect of this Agreement shall not release the Borrower from any of its duties and obligations under such Assigned Agreements, unless expressly assumed by the Collateral Agent, its permitted assigns or designee, and any other agreements unless expressly assumed by the Collateral Agent in writing. The Collateral Agent shall not have any duty, obligation or liability under such Assigned Agreement, unless expressly assumed by the Collateral Agent, its permitted assigns or designee, or other agreement or in respect of any Governmental Approval included in the Collateral by reason of this Agreement or any other Financing Document, nor shall the Collateral Agent be obligated to perform any of the duties or obligations of the Borrower under any such Assigned Agreement or other agreement or any such Governmental Approval or to take any action to collect or enforce any claim (for payment) under any such Assigned Agreement or agreement or Governmental Approval.

(c) No Lien granted by this Agreement in the Borrower's right, title and interest in and to any Assigned Agreement, other agreement, or Governmental Approval shall be deemed to be a consent by the Collateral Agent to any such Assigned Agreement, other agreement or Governmental Approval.

Section 2.08. Termination. This Agreement shall create continuing security interests in the Collateral and shall remain in full force and effect for the benefit of the Secured Parties until all Secured Obligations (other than contingent Obligations) to be paid or performed under the Financing Documents have been paid and performed in full. Upon the happening of all of such events, the security interests granted hereby shall automatically terminate and upon the Collateral Agent's receipt of the Administrative Agent's¹ written signed notice (the "Lien Termination Notice") that the events set forth in the first sentence of this Section 2.08 have occurred, the Collateral Agent shall forthwith cause to be assigned, transferred and delivered, against receipt but without any recourse, warranty or representation whatsoever, other than as to the release of the Collateral Agent's Lien thereon and the absence of any continuing Lien arising by, through or under the Collateral Agent, any remaining Collateral and moneys received in respect of the Collateral, to or on the order of the Borrower. Provided the Collateral Agent has received the Lien Termination Notice, the Collateral Agent, upon payment of its fees and expenses, if any, then due and payable (including reasonable attorney's fees and expenses to which it is entitled under the Financing Documents), shall execute and deliver to the Borrower, at the Borrower's

¹ NTD: First Lien Financing Agreement should include provision requiring Administrative Agent to deliver such notice.

expense, such documentation as the Borrower shall prepare and reasonably request to evidence such termination or expiration and release the Liens created under this Agreement, including termination statement(s) for any financing statement on file with respect to the Collateral. The security interests created hereby shall be released with respect to any portion of the Collateral that is sold, transferred or otherwise disposed of in compliance with the terms and conditions of the Financing Documents. Notwithstanding the foregoing, this Agreement shall continue to be effective or be reinstated and relate back to such time as though this Agreement had always been in effect, as the case may be, if at any time any amount received by the Collateral Agent or any other Secured Party in respect of the Secured Obligations is rescinded or must otherwise be restored or returned by the Collateral Agent or other Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any other Person or upon the appointment of any intervenor or conservator of, or trustee or similar official for the Borrower or any other Person or any substantial part of its properties, or otherwise, all as though such payments had not been made.

ARTICLE III REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants each of the following to the Secured Parties as of the date hereof:

Section 3.01. Name; Jurisdiction of Organization; Chief Executive Office.

(a) Schedule 1 attached hereto correctly sets forth the Borrower's full and correct legal name, type of organization, jurisdiction of organization, organizational identification number, if any, chief executive office and principal place of business and mailing address as of the date of this Agreement.

(b) The Borrower has not (except as permitted hereunder) (i) changed its location (as defined in Section 9-307 of the Uniform Commercial Code); (ii) previously changed its name except as set forth on Schedule 1 or (iii) previously become a "new debtor" (as defined in the Uniform Commercial Code) with respect to a currently effective security agreement entered into by another Person except as set forth on Schedule 1.

Section 3.02. Title. The Borrower has legal title to, leasehold interest in or rights to use the Collateral in which it purports to grant a lien pursuant to this Agreement, and the Borrower has full organizational power and authority to grant the security interests in and to the Collateral under this Agreement.

Section 3.03. Intellectual Property.

(a) Schedule 4 attached hereto sets forth all Material Intellectual Property of the Borrower on the date hereof. As of the date hereof, the Material Intellectual Property set forth on such schedule constitutes all of the intellectual property rights necessary to conduct its business.

(b) On the date hereof, all Material Intellectual Property owned by the Borrower is valid, subsisting, unexpired and enforceable (except as enforceability may be limited

by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law), has not been adjudged invalid and has not been abandoned and, to the best knowledge of the Borrower, the use thereof in the business of the Borrower does not infringe, in any material respect, the intellectual property rights of any other Person.

Section 3.04. Deposit Accounts; Securities Accounts. The only Deposit Accounts or Securities Accounts maintained by the Borrower on the date hereof are those set forth on Schedule 5 attached hereto and no additional Deposit Accounts or Securities Accounts shall be established by the Borrower without the prior written consent of the Collateral Agent (acting at the direction of the Administrative Agent) or otherwise in accordance with the terms of the Financing Documents.

Section 3.05. Commercial Tort Claims. To the best of the Borrower's knowledge, the only existing or potential Commercial Tort Claims of the Borrower existing on the date hereof (regardless of whether the amount, defendant, or other material facts can be determined and regardless of whether such Commercial Tort Claim has been asserted, threatened, or has otherwise been made known to the obligee thereof or whether litigation has been commenced for such claims) are those for which a claim reasonably valued in excess of \$2,500,000 has been made.

Section 3.06. Inventory and Equipment. On the date hereof, the Borrower's material Inventory and Equipment (other than mobile goods, Inventory or Equipment in transit in the ordinary course of business, in possession of employees in the ordinary course of business or out for repair or refurbishment) are kept at the locations specified on Schedule 7 attached hereto.

ARTICLE IV COVENANTS

So long as any Secured Obligations are outstanding, the Borrower covenants and agrees as follows, unless otherwise consented to in writing by the Collateral Agent (acting pursuant to the Collateral Agency Agreement):

Section 4.01. No Transfer Restriction. The Borrower shall not enter into any agreement or undertaking restricting the right or ability of the Borrower or the Collateral Agent to sell, assign, or transfer any Collateral except to the extent not prohibited by the Financing Documents.

Section 4.02. Preservation and Protection of Security Interests. The Borrower shall:

(a) upon the acquisition, following the date of this Agreement, by the Borrower of any Certificated Securities, Instruments, Deposit Accounts, other Investment Property, Electronic Chattel Paper, or Letter-of Credit Rights promptly (x) take such action with respect to that Collateral as is specified for that type of Collateral in Section 2.04 hereof and (y) take all such other actions, and authenticate or sign and file or record such other records or instruments, as are necessary or as the Collateral Agent may reasonably request to create, perfect and establish the priority of the liens granted by this Agreement in any and all such Collateral, to preserve the validity, perfection or priority of the liens granted by this Agreement in any and all

of such Collateral or to enable the Collateral Agent to exercise its remedies, rights, powers and privileges under this Agreement, including using commercially reasonable efforts to obtain such material agreements from third parties as the Administrative Agent shall deem necessary in connection with the preservation, perfection, or enforcement of any of its rights hereunder;

(b) upon the Borrower's acquiring, or otherwise becoming entitled to the benefits of, any Copyright (or copyrightable material), Patent (or patentable invention), Trademark (or associated goodwill) or other Intellectual Property or upon or prior to the Borrower's filing, either directly or through the Collateral Agent, any licensee or any other designee, of any application with any Governmental Authority for any Copyright, Patent, Trademark or other Intellectual Property, in each case after the date of this Agreement, execute and deliver on or before the first Business Day of the month following the first full month after any such acquisition, such contracts, agreements and other instruments as the Administrative Agent may reasonably request to create, perfect and establish the priority of the liens granted by this Agreement in that and any related Intellectual Property (provided that no filing shall be required with respect to Intellectual Property that does not constitute Material Intellectual Property);

(c) promptly give notice to the Collateral Agent upon the initiation of any Commercial Tort Claim valued in excess of \$2,500,000 and authorize the Collateral Agent to amend Schedule 6 hereto, without any further action or consent from the Borrower, to include any such Commercial Tort Claim as Collateral hereunder; and

(d) whether with respect to Collateral as of the date of this Agreement or Collateral in which the Borrower acquires rights in the future, from time to time at the Borrower's expense, authorize, give, authenticate, execute, deliver, file or record any and all financing statements, notices, contracts, agreements or other records or instruments, obtain any and all Governmental Approvals, and third party consents in accordance with the First Lien Financing Agreement (including any consent of any licensor, lessor or other Person obligated on any Collateral), obtain waivers from mortgagees and landlords in form and substance reasonably satisfactory to the Administrative Agent in accordance with the First Lien Financing Agreement, execute any agreement, or deliver any Collateral to the Collateral Agent, in form and substance reasonably satisfactory to the Administrative Agent, in each case, in order to provide the Collateral Agent with control with respect to Collateral in order for the Collateral Agent to obtain, for the benefit of the Secured Parties, a perfected security interest in such Collateral, and take all such other actions, as are necessary or as the Administrative Agent may reasonably request to create, perfect and establish the priority of the liens granted by this Agreement in any and all of the Collateral, to preserve the validity, perfection or priority of the liens granted by this Agreement in any and all of the Collateral or to enable the Collateral Agent to exercise its remedies, rights, powers and privileges under this Agreement, including (to the extent required in order to effect the creation or the perfection of the security interests required to the granted hereunder with respect to the Collateral or to enable the Collateral Agent to exercise its remedies, rights, powers and privileges under this Agreement) causing any or all Securities to be transferred into the name of the Collateral Agent or its nominee upon the request of the Collateral Agent (and the Collateral Agent agrees that if any Security is transferred into its name or the name of its nominee, the Collateral Agent shall thereafter promptly give to the Borrower copies of any notices and communications received by it with respect to such Security);

provided that nothing contained in this Section 4.02 shall require Borrower to take any action to challenge the validity or priority of any Permitted Lien or to grant a security interest in any Excluded Asset.

Section 4.03. Maintenance of Perfected Security Interest; Further Documentation.

(a) The Borrower shall maintain the security interests created by this Agreement as perfected security interests and shall defend such security interests against the claims and demands of all Persons that have instituted, or made a non-frivolous threat in writing of, any proceeding, judicial or otherwise, claiming an interest therein adverse to the Secured Parties in any material respect unless such interest is subject to any Permitted Liens.

(b) Within thirty (30) days following the end of each fiscal year, the Borrower shall furnish to the Collateral Agent, upon request, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral, all in reasonable detail; provided, however, that if an Event of Default has occurred and is continuing then the Borrower shall furnish such statements and reports to the Collateral Agent from time to time as the Collateral Agent may reasonably request.

(c) At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of the Borrower, the Borrower shall promptly and duly record, or cause to be recorded, such further instruments and documents and take such further action as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including the filing of any financing or continuation statement under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby in each case to the extent the Borrower is permitted to do so.

Section 4.04. Changes in Jurisdiction of Organization, Name, Etc. Except upon fifteen (15) days' prior written notice to the Collateral Agent and delivery to the Collateral Agent and the Administrative Agent of copies of all additional executed and filed financing statements and other documents as are necessary or reasonably requested by the Administrative Agent to maintain the validity, perfection and priority of the security interests provided for herein, the Borrower shall not change its jurisdiction of organization or change its name, identity, or organizational structure to such an extent that any financing statement filed in connection with this Agreement would become misleading under the UCC.

Section 4.05. Further Assurances. The Borrower, at its own cost and expense, and from time to time promptly following the reasonable written request of the Administrative Agent, shall execute and deliver such further documents and do such other acts and things as may be necessary or the Administrative Agent may reasonably request in order fully to effect the purposes of this Agreement and the other Security Documents, and the transactions contemplated hereby and thereby; provided that nothing contained in this Section 4.05 shall require Borrower to take any action to challenge the validity or priority of any Permitted Lien or to grant a security interest in any Excluded Asset.

ARTICLE V
REMEDIES

Section 5.01. Events of Default, Etc. Subject to Article VIII of the First Lien Financing Agreement and the terms of the Collateral Agency Agreement:

Upon the occurrence and during the continuation of an Event of Default, the Collateral Agent may, upon prior written notice, exercise, for the benefit of and on behalf of the Secured Parties, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing, or relating to the Secured Obligations, all rights and remedies with respect to the Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where such rights, remedies, powers and privileges are asserted) and such additional rights, remedies, powers and privileges to which a secured party is entitled under the laws in effect in any jurisdiction where any rights, remedies, powers and privileges in respect of this Agreement or the Collateral may be asserted, including the right, to the maximum extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral as if the Collateral Agent were the sole and absolute owner of the Collateral (and the Borrower agrees to take all such action as may be appropriate to give effect to such right). Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement, or notice of any kind (except any notice required by law referred to below) to or upon the Borrower or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith do any of the following:

(a) require Borrower to, and Borrower shall, assemble the Collateral owned by it at such place or places, reasonably convenient to both the Collateral Agent and the Borrower, designated in the Collateral Agent's request;

(b) make any reasonable compromise or settlement it deems desirable with respect to any of the Collateral and may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, all or any part of the Collateral;

(c) in its name or in the name of the Borrower or otherwise, demand, sue for, collect and receive any money or property at any time payable or receivable on account of or in exchange for all or any part of the Collateral, but shall be under no obligation to do so; and

(d) upon thirty (30) days' prior written notice to the Borrower of the time and place, with respect to all or any part of the Collateral which shall then be or shall thereafter come into the possession, custody or control of the Collateral Agent or any of its respective agents, sell, lease, assign, give option or options to purchase, or otherwise dispose of all or any part of such Collateral (or contract to do any of the foregoing), at such place or places as the Collateral Agent deems best, for cash, for credit or for future delivery (without thereby assuming any credit risk) and at public or private sale (except such notice as is required above or by applicable statute and cannot be waived), and the Collateral Agent or any other Person may be the purchaser, lessee or recipient of any or all of the Collateral so disposed of at any public sale (or, to the extent permitted by law, at any private sale) and thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or

otherwise) of the Borrower, any such demand notice and right or equity being hereby expressly waived and released. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned.

The proceeds of, and other realization upon, the Collateral by virtue of the exercise of remedies under this Section 5.01 shall be applied in accordance with Section 5.03.

Section 5.02. Private Sale.

(a) The Collateral Agent shall incur no liability as a result of the sale, lease or other disposition of all or any part of the Collateral at any private sale pursuant to Section 5.01 conducted in a commercially reasonable manner. The Borrower hereby waives (to the extent permitted by applicable law) any claims against the Collateral Agent arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Collateral Agent accepts the first offer received and does not offer the Collateral to more than one offeree.

(b) The Borrower recognizes that, by reason of certain prohibitions contained in the Securities Act of 1933 and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Collateral, to limit purchasers to those who will agree, among other things, to acquire the Collateral for their own account, for investment and not with a view to distribution or resale. The Borrower acknowledges that any such private sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Collateral for the period of time necessary to permit the respective issuer of such Collateral to register it for public sale. To the extent permitted by applicable law, the Borrower hereby specifically waives all rights of redemption, stay or appraisal which it has or may have under any applicable law now existing or hereafter enacted in connection with such sale. The Borrower authorizes the Collateral Agent, at any time and from time to time, to execute, in connection with a disposition of any Collateral pursuant to the provisions of this Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to such Collateral.

Section 5.03. Application of Proceeds. Except as otherwise expressly provided in this Agreement, the Collateral Agent shall apply all Proceeds received by the Collateral Agent in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the safekeeping or care of any Collateral or in any way relating to the Collateral or the rights of the Collateral Agent and any other Secured Party hereunder (including reasonable fees and disbursements, in each case to the extent permissible under the Financing Documents) as provided in Section 4.01 of the Collateral Agency Agreement.

Section 5.04. Deficiency. If the proceeds of, or other realization upon, the Collateral by virtue of the exercise of remedies under Section 5.01 hereof are insufficient to cover the costs and expenses of such exercise and the payment in full of the Secured Obligations, the Borrower shall, subject to Section 11.10 of the First Lien Financing Agreement, remain liable for any deficiency.

Section 5.05. Assignment of Governmental Approvals. Subject to the Concession Agreement, the Borrower shall, upon the occurrence and during the continuation of an Event of Default and upon receipt by the Borrower of prior written notice from the Collateral Agent, at the request of the Collateral Agent, contemporaneously with and at any other time following any foreclosure by the Collateral Agent on any part of the Collateral, assign, transfer or otherwise furnish to the Collateral Agent or to any transferee of the interest of the Collateral Agent (solely to the extent so assignable or transferable), all of the Borrower's rights and interest in, to and under all Governmental Approvals, including all offsets (including environmental credits and offsets), allowances and similar rights issued under or in connection with applicable law. At the request of the Collateral Agent upon the occurrence and during the continuance of an Event of Default following collection, enforcement, foreclosure, sale, lease, license or other disposition by the Collateral Agent on or with respect to the Collateral, the Borrower agrees to use all commercially reasonable efforts to assist, to the extent possible and in compliance with the Concession Agreement, the Collateral Agent in renewing or extending in the name of the Collateral Agent (or any other Person) or otherwise obtaining the benefits of all of the Governmental Approvals and other rights referred to in the immediately preceding sentence to the extent that such Governmental Approvals and other rights shall not be assignable or transferable.

ARTICLE VI THE COLLATERAL AGENT

Section 6.01. Appointment as Attorney-in-Fact. The Borrower hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact for the purpose of carrying out the provisions of this Agreement and taking any action and executing any documents or instruments as may be necessary or is reasonably required by the Administrative Agent to accomplish the purposes of this Agreement, to perfect, preserve the validity, perfection and priority of, and enforce any lien granted by this Agreement and, after the occurrence and during the continuance of an Event of Default, and upon receipt by the Borrower of prior written notice from the Collateral Agent, to exercise its rights, remedies, powers and privileges under this Agreement. This appointment as attorney-in-fact is irrevocable and coupled with an interest until this Agreement is terminated and the security interests created hereby are released. Without limiting the generality of the foregoing, the Collateral Agent shall be entitled under this Section 6.01 to do any of the following upon the occurrence of and during the continuation of any Event of Default and, except where noted otherwise, upon receipt by the Borrower of prior written notice from the Collateral Agent:

(a) ask, demand, collect, sue for, recover, receive and give receipt and discharge for amounts due and to become due under and in respect of all or any part of the Collateral;

(b) receive, endorse and collect any Accounts, Chattel Paper, Instruments or General Intangibles;

(c) file any claims or take any action or proceeding in any court of law or equity as may be necessary or is reasonably required by the Administrative Agent for the collection of all or any part of the Collateral;

(d) execute, in connection with any sale or disposition of the Collateral pursuant to Section 5.01 or Section 5.02 hereof, any endorsements, assignments, bills of sale or other instruments of conveyance or transfer with respect to all or any part of the Collateral;

(e) enforce the rights of the Borrower under any provision of any Assigned Agreement to the extent permitted thereunder and under the terms of this Agreement;

(f) pay or discharge Taxes and Liens levied or placed on the Collateral upon receipt by the Borrower of five (5) Business Days' prior written notice from the Collateral Agent;

(g) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes; and

(h) do, at the Collateral Agent's option and at the Borrower's expense, at any time, from time to time, all acts and things as are necessary to protect, preserve, or realize upon the Collateral and the Collateral Agent's and the other Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as the Borrower might do.

Anything in this Section 6.01 to the contrary notwithstanding, the Collateral Agent agrees that it shall not exercise any right under the power of attorney provided for in this Section 6.01 unless an Event of Default shall have occurred and be continuing and upon receipt by the Borrower of prior written notice from the Collateral Agent.

Section 6.02. Performance in Lieu of Borrower. Upon the occurrence and during the continuation of an Event of Default and upon receipt by the Borrower of prior written notice from the Collateral Agent, the Collateral Agent, without releasing the Borrower from any obligation, covenant or condition hereof, itself may (but shall not be obligated to) make any payment or perform, or cause the performance of, any such obligation, covenant, condition or agreement or any other action in such manner and to such extent as may be necessary to protect, perfect or continue the perfection of the security interest granted under this Agreement. Any reasonable out-of-pocket costs or expenses incurred by the Collateral Agent in connection with the foregoing shall be payable by the Borrower to the Collateral Agent promptly following demand therefor in writing.

Section 6.03. Duty of the Collateral Agent. The Collateral Agent shall be accountable only for amounts that it receives as a result of the exercise of such powers granted to it by this Agreement. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as it deals with similar property for its own account and as otherwise required by

Article 9 of the UCC. None of the Collateral Agent, the Financing Parties or any of their respective officers, directors, employees, or agents shall be liable for failure to demand, collect, or realize upon any Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of the Borrower or any other Person or to take any other action whatsoever with regard to any Collateral except as specifically provided hereunder. The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral on behalf of the Secured Parties, as to a first-priority security interest in such Collateral (subject to Permitted Liens), and shall not impose any duty upon the Collateral Agent or any Financing Party to exercise any such powers. The Collateral Agent and the Financing Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their respective officers, directors, employees, or agents shall be responsible to the Borrower for any act or failure to act hereunder, except for their own gross negligence, bad faith or willful misconduct. Nothing contained in this Agreement shall create an obligation on the part of the Collateral Agent to verify the accuracy or continued accuracy of the representations or warranties, or compliance or continued compliance with, the covenants contained in Articles III or IV hereof. The Collateral Agent shall have no obligation to give any notice pursuant to any of the terms of this Agreement unless the relevant Authorized Officer of the Collateral Agent has actual knowledge of facts that would permit the giving of such notice.

Section 6.04. Authority of the Collateral Agent. The Borrower acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment, or other right or remedy provided for hereunder or resulting or arising out of this Agreement shall, as between the Collateral Agent and the other Secured Parties, be governed by the provisions contained in this Agreement and the other Financing Documents.

Section 6.05. Agreements as to Concession Agreement.

(a) The Collateral Agent shall, simultaneously with the providing of any notice of the occurrence of an Event of Default under this Agreement to the Borrower, provide a copy of such notice to the IFA pursuant to the IFA Consent.

(b) The Collateral Agent acknowledges that it has received a true and complete copy of the Concession Agreement and hereby agrees to be bound by the terms and provisions in Section 18.8 thereof.

Section 6.06. Role of the Collateral Agent. The rights, duties, liabilities and immunities of the Collateral Agent and its appointment and replacement hereunder shall be governed by the provisions contained in this Agreement and the Collateral Agency Agreement.

ARTICLE VII MISCELLANEOUS PROVISIONS

Section 7.01. Amendments. Any term, covenant, agreement or condition of this Agreement may be amended or waived only by an instrument in writing signed by the Borrower

and the Collateral Agent (acting pursuant to the Collateral Agency Agreement); provided, however, that only the Collateral Agent, as provided herein, may waive any of its rights under any provisions of this Agreement, and no consent to any departure by the Borrower therefrom shall be effective unless in writing signed by the Collateral Agent (acting pursuant to the Collateral Agency Agreement), and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 7.02. Waivers.

(a) The waiver (whether expressed or implied) by the Collateral Agent of any breach of the terms or conditions of this Agreement, and the consent (whether expressed or implied) of any Secured Party shall not prejudice any remedy of the Collateral Agent or any Financing Party in respect of any continuing or other breach of the terms and conditions hereof, and shall not be construed as a bar to any right or remedy which the Collateral Agent or any Financing Party would otherwise have on any future occasion under this Agreement.

(b) No failure to exercise nor any delay in exercising, on the part of the Collateral Agent or any Financing Party of any right, power or privilege under this Agreement shall operate as a waiver thereof; further, no single or partial exercise of any right, power or privilege under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. All remedies hereunder and under the other Security Documents are cumulative and are not exclusive of any other remedies that may be available to a party, whether at law, in equity, or otherwise. The application of the Collateral to satisfy the Secured Obligations pursuant to the terms hereof shall not operate to release the Borrower from its obligations until payment in full of any deficiency has been made in cash.

Section 7.03. Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or by electronic means (i.e., “pdf” or “tif”)), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, when delivered by electronic transmission, when confirmed by sender’s receipt of acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement) or, in the case of notice given by mail, private courier, overnight delivery service or facsimile, when received, addressed as follows, or to such other address as may be hereafter notified in accordance with this Section 7.03 by the respective parties hereto:

The Borrower:

ITR Concession Company LLC

[_____]

[_____]

Attention: [_____]

Telephone: [_____]

Facsimile: [_____]

The Collateral Agent:

[_____]
[_____]
[_____]
[_____]
Attention: [_____]
Telephone: [_____]
Facsimile: [_____]

The IFA:

Indiana Finance Authority
One North Capital, Suite 900
Indianapolis, Indiana 46204
Attention: Public Finance Director

with a copy to:

[_____]

Notwithstanding anything to the contrary contained herein, each such notice, instruction, direction, request or other communication so given to the Collateral Agent shall be effective only upon actual receipt.

Section 7.04. Successors and Assigns.

(a) This Agreement shall be binding upon and inure to the benefit of the Collateral Agent and the Borrower and their respective successors and permitted assigns.

(b) Nothing contained in this Agreement or any other Security Document is intended to limit the right of any Secured Party to assign, transfer, or grant participations in its rights in its Obligations and Financing Documents in accordance with Section 11.4 of the First Lien Financing Agreement.

Section 7.05. Counterparts. This Agreement may be executed in any number of counterparts by facsimile or other electronic means, including by “.pdf” attached to an email, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

Section 7.06. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed in the State of New York. Each of the parties hereto hereby irrevocably (a) consents and submits to the non-exclusive jurisdiction of any New York state court sitting in New York County, New York or any federal court of the United States sitting in the Southern District of New York, as any party may elect in any suit, action or proceeding arising out of or relating to this Agreement and (b) WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) THE RIGHT TO TRIAL BY JURY WITH

RESPECT TO ANY ACTION IN WHICH ANY OF THE PARTIES HERETO ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

Section 7.07. Captions. The headings of the several articles and sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 7.08. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

Section 7.09. Entire Agreement. This Agreement, together with any other agreement executed in connection with this Agreement (including the Collateral Agency Agreement), is intended by the parties as a final expression of their agreement as to the matters covered by this Agreement and such other agreements and is intended as a complete and exclusive statement of the terms and conditions of such agreement.

Section 7.10. Expenses. The Borrower agrees to pay or to reimburse the Collateral Agent promptly but no later than thirty (30) days' after written notice (including a reasonable level of detail) for all reasonable out-of-pocket costs and expenses (including reasonable attorney's fees and expenses of one counsel) that may be incurred by the Collateral Agent in accordance with this Agreement in any effort to enforce any of the obligations of the Borrower in respect of the Collateral or in connection with (a) the preservation of the liens on, or the rights of the Secured Parties to the Collateral pursuant to this Agreement or (b) any actual or attempted sale, lease, disposition, exchange, collection, compromise, settlement or other realization in respect of, or care of the Collateral, including all such reasonable costs and expenses (and reasonable attorney's fees and expenses) incurred in any bankruptcy, reorganization, workout or other similar proceedings made in accordance with the terms hereof.

Section 7.11. Limitation of Recourse. These shall be full recourse to the Borrower and all of its assets and properties for the liabilities of the Borrower under this Agreement and the other Financing Documents, but, subject to the provisions of the following sentence, in no event shall any Affiliate of the Borrower (collectively, the "Non-Recourse Parties"), or any officer, director or holder of any interest in the Borrower or any other Non-Recourse Party, be personally liable or obligated for such liabilities and obligations of the Borrower, except as may be specifically provided in any other Financing Document to which such Non-Recourse Party is a party. Nothing herein contained shall limit or be construed to (i) release any Non-Recourse Party from liability for its fraudulent actions or misappropriation of funds by it or its willful misconduct, or from any of its obligations or liabilities under any Financing Document executed by such Non-Recourse Party in its individual capacity in connection with any Financing Document, (ii) limit or impair the exercise of remedies with respect to any Collateral or (iii) require the Collateral Agent or any other Secured Party to indemnify the Non-Recourse Parties for liabilities or claims that may be independently asserted by third parties against them. The provisions of this Section 7.11 shall survive the termination of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first written above.

ITR CONCESSION COMPANY LLC, as Borrower

By: _____
Name:
Title:

By: _____
Name:
Title:

[_____], as Collateral Agent

By: _____
Name:
Title:

Schedule 1

Organization and Chief Executive Office of Borrower

Borrower's Legal Name, Type and Jurisdiction of Organization, and Organizational Identification Number:

ITR Concession Company LLC, a Delaware limited liability company

Organizational Number: 4092779

Borrower's Chief Executive Office and Mailing Address:

[_____]
[_____]

Schedule 2

Assigned Agreements

[_____]

Schedule 3

[Intentionally Omitted]

Schedule 4

Material Intellectual Property

To the extent that the term or phrase “Material Intellectual Property” includes permits and/or Governmental Approvals, such permits and Governmental Approvals are incorporated into this Schedule 4 by reference.

[_____]

Schedule 5

Deposit Accounts And Securities Accounts

Securities Accounts

- (1) Proceeds Account
- (2) Operating Account
- (3) First Lien Debt Service Payment Account
- (4) Second Lien Debt Service Payment Account
- (5) Debt Service Reserve Account
- (6) Loss Proceeds Account
- (7) Distribution Account
- (8) Collections Account
- (9) Reimbursement Account

Schedule 6

Commercial Tort Claims

None.

Schedule 7

[Location of Inventory and Equipment²]³

INDIANA A TOLL ROAD BUILDING REPLACEMENT COST – 2005							
RQAW Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS			
Bldg. No	MP	Description	Qty.	Unit	Unit Price	Total	
45-1	4.6	Lake Maintenance	6385	SF	33.47	213,714	
45-2	0.3	Small Storage Building	301	SF	12.56	3,782	
45-3	1.1	"A" New 291' Tunnel Toll Plaza Utility Building	1st	2450	SF	115.78	283,662
			B	1640	SF	61.37	100,649
			M.Pit	525	SF	46.03	24,163
45-4	1.1	Toll Booth "D"	50	SF	666.38	33,319	
45-5	1.1	Toll Booth "D"	50	SF	666.38	33,319	
45-6	1.1	Toll Booth "D"	50	SF	666.38	33,319	
45-7	1.1	Toll Booth "D"	50	SF	666.38	33,319	
45-8	1.1	Toll Booth "D"	50	SF	666.38	33,319	
45-9	1.1	Stairwell Cover	200	SF	50.14	10,029	
45-10	1.1	Toll Booth "D"	50	SF	666.38	33,319	
45-11	1.1	Toll Booth "C"	75	SF	538.48	40,386	
45-12	1.1	Toll Booth "D"	50	SF	666.38	33,319	
45-13	1.1	Toll Booth "D"	50	SF	666.38	33,319	
45-14	1.1	Toll Booth "D"	50	SF	666.38	33,319	
45-15	1.1	Stairwell Cover	200	SF	50.14	10,029	
45-16	1.1	Plaza Canopy	2360	SF	69.72	164,546	
45-17	4.6	Maintenance Building	3050	SF	86.47	263,731	
45-17B	4.6	Lake Maintenance	5000	SF	86.47	432,346	
45-18	4.6	Gas Shanty	11	SF	70.12	771	
45-19	4.7	150 Tunnel Toll Plaza Utility Building	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
45-20	4.7	Toll Booth #1 - Old	35	SF	1,123.82	39,334	
45-21	4.7	Toll Booth #2 - Old	35	SF	1,123.82	39,334	
45-22	4.7	Canopy	1133	SF	46.03	52,147	
45-23	4.7	Small Storage	155	SF	12.56	1,948	
45-24	4.7	Toll Plaza Utility Building (Will be replaced 2004)	301	SF	122.73	36,942	
45-25	4.7	Toll Booth "A"	75	SF	534.75	40,107	
45-26	4.7	Toll Booth "C"	75	SF	534.75	40,107	
45-27	4.7	Toll Plaza Canopy	440	SF	69.72	30,678	
45-28	10.1	"B" 190' Tunnel Toll Plaza Utility Building Toll Plaza Utility Building	1st	2100	SF	115.78	243,139
			B	1431	SF	61.37	87,822
			1.PH	525	SF	46.03	24,163
45-29	10.1	Toll Booth "D"	50	SF	666.38	33,319	
45-30	10.1	Toll Booth "D"	50	SF	666.38	33,319	
45-31	10.1	Toll Booth "D"	50	SF	666.38	33,319	
45-32	10.1	Stair Covering	103	SF	101.85	10,490	
45-33	10.1	Toll Booth "D"	50	SF	666.38	33,319	
45-34	10.1	Toll Booth "D"	50	SF	666.38	33,319	
45-35	10.1	Toll Booth "D"	50	SF	666.38	33,319	

² Identification of Buildings Based upon the Estimate of Replacement Cost of Building - 2005, Prepared by RQAW for the Indiana Department of Transportation Toll Road Division.

³ ITR to review and update as necessary.

INDIANA A TOLL ROAD BUILDING REPLACEMENT COST – 2005						
RQAW Corporation						
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS		
Bldg. No	MP	Description	Qty.	Unit	Unit Price	Total
45-36	10.1	Stair Covering	89	SF	117.87	10,491
45-37	10.1	East Canopy @ MP 10	2375	SF	69.72	165,592
45-38	10.1	West Canopy @ MP 10	1890	SF	69.72	131,776
45-39	13.5	Old (79' Tunnel) 1st	1312	SF	131.10	172,009
		Toll Plaza Utility Building B	437	SF	76.71	33,520
45-40	13.5	Toll Booth Type "D" (Closed and Removed)	50	SF	0.00	0
45-41	13.5	Toll Booth Type "A" (Closed and Removed)	75	SF	0.00	0
45-42	13.5	Toll Booth Type "D" (Closed and Removed]	50	SF	0.00	0
45-43	13.5	Toll Booth Type "D" (Closed and Removed)	50	SF	0.00	0
45-44	13.5	Small Storage Building	144	SF	12.56	1,809
45-45	13.5	Enclosed -Walkway (New) (Closed and Removed)	1496	SF	0.00	0
45-46	13.5	New E.B. Exit Toll Plaza Canopy (Closed and Removed)	2600	SF	0.00	0
45-47	13.5	New E.B. Entry Toll Plaza Canopy (Closed and Removed)	2600	SF	0.00	0
45-48	16.7	New (387' Tunnel) "B" 1st	2205	SF	115.78	255,296
		Toll Plaza Utility Building B	1503	SF	61.37	92,241
		M.Pit	552	SF	46.03	25,406
45-49	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-50	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-51	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-52	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-53	16.7	Stair Cover W.B.	103	SF	109.33	11,261
45-54	16.7	Stair Cover E.B.	89	SF	126.53	11,261
45-55	16.7	Toll Booth "C"	75	SF	534.75	40,107
45-56	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-57	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-58	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-59	16.7	Stair Cover E.B.	115	SF	97.91	11,260
45-60	16.7	New Toll Plaza Canopy W.B.	5200	SF	69.72	362,559
45-61	16.7	New Toll Plaza Canopy E.B.	5200	SF	69.72	362,559
45-62	16.7	Old Toll Plaza 1st	1312	SF	131.10	172,009
		Utility Building (98' Tunnel) B	437	SF	76.71	33,520
45-63	16.7	Trailer (Garage Style Storage)	576	SF	20.00	11,520
45-64	20.8	"B" New Toll Plaza 1st	2100	SF	115.78	243,139
		Utility Building (312 Tunnel) B	1431	SF	61.37	87,822
		M.Pit	525	SF	46.03	24,163
45-65	20.8	Toll Booth "D"	50	SF	666.38	33,319
45-66	20.8	Toll Booth "D"	50	SF	666.38	33,319
45-67	20.8	Toll Booth "D"	50	SF	666.38	33,319
45-68	20.8	Stairwell Cover	91	SF	122.04	11,106
45-69	20.8	Stairwell Cover	98	SF	113.32	11,105
45-70	20.8	Toll Booth "D"	50	SF	666.38	33,319
45-71	20.8	Toll Booth "A"	75	SF	534.54	40,091
45-72	20.8	Toll Booth "D"	50	SF	666.38	33,319
45-73	20.8	Stairwell Cover	89	SF	124.78	11,105
45-74	20.8	E.B. Canopy (New)	3300	SF	69.72	264,947
45-75	20.8	W.B. Canopy (New)	3800	SF	69.72	264,947
45-76	20.8	Old Abandoned-Utility Building (98' Tunnel)			0.00	0
Toll Plaza	1.0	Communication Tower	1	SF	13,735.41	13,735
Toll Plaza	10.0	Communication Tower	1	SF	18,012.80	18,013
Toll Plaza	13.0	Communication Tower	1	SF	21,439.75	21,440

INDIANA A TOLL ROAD BUILDING REPLACEMENT COST – 2005						
RQAW Corporation						
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS		
Bldg. No	MP	Description	Qty.	Unit	Unit Price	Total
Toll Plaza	17.0	Communication Tower	1	SF	26,589.39	26,589
Toll Plaza	21.0	Communication Tower	1	SF	21,875.31	21,875
					Subtotal	6,263,435

INDIAN A TOLL ROAD BUILDING REPLACEMENT COST – 2005							
RQAW Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS			
Bldg. No	MP	Description		Qty.	Unit	Unit Price	Total
64-1	21.7	Old Service Area* Restaurant 1-S	1st	19054	SF	115.78	2,206,080
			B	7000	SF	61.37	429,597
64-2	21.7	New Service Area Fuel 1-S		900	SF	35.00	31,500
64-3	21.7	New Service Area Fuel Canopy 1-S		2472	SF	23.70	58,580
64-4	21.7	New Service Area Fuel Canopy 1-S		1392	SF	23.70	32,987
64-5	21.7	Old Service Area Restaurant 1-N*	1st	19054	SF	115.78	2,206,080
			B	7000	SF	61.37	429,597
64-6	21.7	Service Area Fuel		1	EA	28,537.31	28,537
				9	EA	693.99	6,246
64-7	21.7	Service Area Canopy		2472	SF	23.70	58,580
64-8	21.7	Service Area Canopy		1392	SF	23.70	32,987
64-8	21.7	Salt Storage		7850	SF	33.47	262,749
64-9	21.7	litel Hut		198	SF	122.73	24,301
64-10	21.7	Small Storage Building (Replaces an existing building)		768	SF	15.35	11,785
64-11	23.5	Maintenance Building M-I		15019	SF	86.47	1,298,681
64-12	23.5	Large Storage Building		5000	SF	15.35	76,727
64-12B	23.5	Storage Pole Building		5000	SF	15.35	76,727
64-13	23.5	Gas Shanty		11	SF	70.12	771
64-14	23.8	Toll Plaza Utility Building Type "C"	1st	1650	SF	115.78	191,038
			B	927	SF	61.37	56,891
			M.pit	300	SF	46.03	13,808
64-15	23.8	Toll Booth "B"		75	SF	534.75	40,107
64-16	23.8	Toll Booth "B"		75	SF	534.75	40,107
64-17	23.8	Toll Plaza Canopy		2625	SF	69.72	183,023
64-18	24.1	"A" Utility Building	1st	2450	SF	115.78	283,662
			M.Pit	1640	SF	61.37	100,649
				525	SF	46.03	24,163
64-19	24.1	Toil Booth "D"		50	SF	666.38	33,319
64-20	24.1	Toll Booth "D"		50	SF	666.38	33,319
64-21	24.1	Toll Booth "B"		75	SF	534.75	40,107
64-22	24.1	Toll Booth "B"		75	SF	534.75	40,107
64-23	24.1	Toll Booth "B"		75	SF	534.75	40,107
64-24	24.1	Stairwell Cover		70	SF	141.03	9,872
64-25	24.1	Toll Booth "C"		75	SF	534.75	40,107
64-26	21.7	Toll Booth "D"		50	SF	666.17	33,308
64-27	24.1	Toll Booth "D"		50	SF	666.38	33,319
64-28	24.1	Toll Booth "D"		50	SF	666.38	33319
64-29	24.1	Toll Booth "D"		50	SF	666.38	33319
64-30	24.1	Toll Booth "D"		50	SF	666.38	33,319
64-31	24.1	Stairwell Cover		88	SF	112.18	9,872
64-32	24.1	New Toll Plaza Canopy E.B.		3600	SF	69.72	251,003
64-33	24.1	New Toll Plaza Canopy W.B.		6800	SF	69.72	474,116
64-	24.1	Portage Toll Plaza Ticket Storage Building		480	SF	40.00	19,200
64-34	30.9	Old Toll Plaza Utility Building	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
64-35	30.9	Old Toll Booth		41	SF	959.36	39,334
64-36	30.9	Old Toll Booth		41	SF	959.36	39,334
64-37	30.9	Small Storage Building		132	SF	12.56	1,659
64-38	30.9	Old Toll Plaza Canopy		1133	SF	46.03	52,147

INDIAN A TOLL ROAD BUILDING REPLACEMENT COST – 2005						
RQAW Corporation						
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS		
Bldg. No	MP	Description	Qty.	Unit	Unit Price	Total
64-39	30.9	Old Toll Plaza	41	SF	928.36	38,063
64-40	30.9	Old Toll Plaza	41	SF	928.36	38,063
SA-1	21.7	Communication Tower	1	EA	55,532.36	55,532
MB-1	23.5	Communication Tower	1	EA	19,374.61	19,375
MB-1	23.5	Communication Tower	1	EA	31,776.93	31,777
Toll Plaza	31.0	Communication Tower	1	EA	37,067.93	37,068
Toll Plaza	23.8	Communication Tower	1	EA	30,749.00	30,749
					Subtotal	9,952,299

INDIANA TOLL ROAD BUILDING REPLACEMENT COST – 2005							
RQAW Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS			
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total	
46-1	37.1	Large Storage Building	5018	SF	15.35	77,003	
46-1B	37.2	Offices (Former House)	1926	SF	50,00	96,300	
46-2	37.5	Salt Storage SA-2S	6720	SF	33.59	225,711	
46-2B	37.5	Three (3) Double Vault Toilet Units (N, 2S)	3	SF	19,000.00	57,000	
46-3	37.5	Large Storage Building SA-2S	900	SF	15.35	13,811	
46-4	37.5	Litel Hut (New) Fiber Optic Building	197	SF	122.73	24,178	
46-5	38.9	Toll Plaza Utility Building & Tunnel 62.5'	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
46-6	38.9	Toll Booth (Old)	41	SF	959.36	39,334	
46-7	38.9	Toll Booth (Old)	41	SF	956.18	39,203	
46-8	38.9	Canopy (Old)	1133	SF	46.03	52,147	
46-9	38.9	Small Storage Building	132	SF	12.56	1,659	
46-10	37.5	Gas Shanty	14	SF	55.08	771	
46-11	41.6	Telecommunications Relay "A"	161	SF	122.73	19,760	
46-12	49.2	Toll Plaza Utility Building (Old)	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
46-13	49.2	Toll Booth (Old)	41	SF	959.36	39,334	
46-14	49.2	Toll Booth (Old)	41	SF	959.36	39,334	
46-15	49.2	Toll Booth (Old)	41	SF	959.36	39,334	
46-16	49.2	Small Storage Building	132	SF	12.56	1,659	
46-17	49.2	Canopy (Old)	1607	SF	46.03	73,963	
46-18	51.9	Maintenance Building M-2	20219	SF	86.47	1,748,320	
46-19	51.9	Pole Barn @ M-2 Large Storage Building	5148	SF	15.35	78,998	
46-19B	51.9	Pole Barn @ M-2 Large Storage Building	5000	SF	15.00	75,000	
46-20	51.9	Well House @ M-2 (Should be demolished)	68	SF	11.34	771	
46-21	51.9	Salt Storage @ M-2	7850	SF	33.47	262,749	
46-22	51.9	Gas Shanty @ M-2	19	SF	40.59	771	
46-23	51.9	Small Storage @ M-2	23	SF	12.54	289	
46-23B	51.9	Paint Booth Building	1440	SF	120.00	172,800	
46-24	55.9	Service Area Restaurant SA-3S	1st	15823	SF	96.56	1,527,893
			B	9626	SF	44.62	429,558
46-25	55.9	Sewage Treatment Plant @ SA-3S	1158	SF	166.51	192,815	
46-26	55.9	Trickling Filter @SA-3S	4140	SF	18.64	77,150	
46-27	55.9	Water Treatment Plant "B" Well @ SA-3S	92	SF	419.18	38,564	
46-28	55.9	Small Storage @SA-3S	71	SF	12.56	892	
46-29	55.9	Litel Hut @ SA-3S Fiber Optic Building	197	SF	122.73	24,178	
46-30	55.9	Service Area Fuel @ SA-3S	750	SF	40.00	30,000	
46-31	55.9	Gas Canopy @ SA-3S	2472	SF	23.70	58,580	
46-32	55.9	Diesel Canopy @ SA-3S	1392	SF	23.70	32,987	
46-33	55.9	Service Area Restaurant @ SA-3N'	1st	14578	SF	94.92	1,383,694
			B	9626	SF	44.62	429,558
46-34	55.9	Water Treatment Plant Well House "A" @ SA-3N	743	SF	207.63	154,269	
46-35	55.9	Service Area Fuel Building @ SA-3N	750	SF	40.00	30,000	
46-36	55.9	Service Area Canopy @ SA-3N Gas Island	2472	SF	23.70	58,580	
46-37	55.9	Service Area Canopy Diesel @ SA-3N	1392	SF	23.70	32,987	
46-38	55.9	Small Storage @ SA-3N	71	SF	12.56	892	
Toll Plaza	39.0	Communication Tower	1	EA	21,875.31	21,875	
Toll Plaza	49.0	Communication Tower	1	EA	7,382.56	7,383	
	51.9	Communication Tower (State Police)	1	EA	30,000.00	30,000	

INDIANA TOLL ROAD BUILDING REPLACEMENT COST – 2005						
RQAW Corporation						
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS		
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total
MB-2	51.9	Communication Tower	1	EA	78,054.68	78,055
SA-3	55.9	Communication Tower	1	EA	48,127.96	48,128
Subtotal						8,279,297

INDIANA TOLL ROAD BUILDING REPLACEMENT COST -2005							
RQAW Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS			
Bldg. No	MP	Description	Qty.	Unit	Unit Price	Total	
71-1	71.6	Telecommunications Relay "B"	161	SF	122.73	19,760	
71-2	72.4	Old Toll Plaza Utility Building S.B. WX	1st	1425	SF	131.10	186,824
			B	475	SF	76.71	36,435
71-3	72.4	Toll Booth #1 (Old) @ S.B. WX	37	SF	1,063.09	39,334	
71-4	72.4	Toll Booth #1 (Old) @ S.B. WX	37	SF	1,063.09	39,334	
71-5	72.4	Toll Booth #1 (Old) @ S.B. WX	37	SF	1,063.09	39,334	
71-5B	72.4	Toll Booth Old South Bend West	37	SF	1,063.09	39,334	
71-6	72.4	Canopy @ S.B. WX (Old)	1250	SF	46.03	57,532	
71-7	72.9	State Police ISP - Dist. 11	5953	SF	115.78	689,241	
71-7B	72.9	S. P. Evidence Storage Building	576	SF	40.00	23,040	
71-8	72.9	Gas Shanty @ ISP - Dist. 11	18	SF	42.84	771	
71-9	72.9	Loader Storage Building SA-4N	500	SF	15.35	7,673	
71-10	72.9	Litel Hut @SA-4N Fiber Optic Building	197	SF	122.73	24,178	
71-11	72.9	Salt Storage @SA-4N/Gas Shanty @SA-4N	7850	SF	33.47	262,749	
71-12	72.9	Gas Shanty @SA-4N	5	SF	154.23	771	
71-13	72.9	Engineering Trailer @SA-4N	125	SF	123.40	15,425	
71-14	76.6	Toll Plaza Utility Building (Old)	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
71-15	76.6	Toll Booth SB/ND	41	SF	959.36	39,334	
71-16	76.6	Toll Booth SB/ND	41	SF	959.36	39,334	
71-17	76.6	Toll Booth Canopy	1133	SF	46.03	52,147	
71-18	76.6	Small Storage Building	132	SF	12.56	1,659	
71-19	76.6	Toll Booth SB/ND	41	SF	928.36	38,063	
71-20	76.6	Temporary Toll Booth	17	SF	90.71	1,542	
71-21	76.6	Temporary Toll Booth	17	SF	90.71	1,542	
71-22	76.6	Temporary Toll Booth	17	SF	90.71	1,542	
71-23	76.6	Temporary Toil Booth	17	SF	90.71	1,542	
71-24	82.9	Toll Plaza Utility Building (New) "C"	1st	1650	SF	115.78	191,038
			B	927	SF	61.37	56,891
			M.Pit	300	SF	46.03	13,808
71-25	82.9	Toll Booth Type "B"	75	SF	534.75	40,107	
71-26	82.9	Toll Booth Type "B"	75	SF	534.75	40,107	
71-26B	82.9	Toll Booth Type "B"	75	SF	534.75	40,107	
71-27	82.9	Toll Booth Canopy	2625	SF	69.72	183,023	
71-28	87.0	Administration Building	51803	SF	115.78	5,997,772	
71-29	87.0	Large Storage Building (Closed and Removed)	0	SF	0.00	0	
71-30	87.0	Gas Shanty	17	SF	45.36	771	
71-31	87.0	Small Storage Building	132	SF	12.56	1,659	
ISP #11	72.9	Communication Tower	1	EA	7,712.38	7,712	
Toll Plaza	77.0	Communication Tower	1	EA	26,153.83	26,154	
Toll Plaza	83.0	Communication Tower	1	EA	13,735.41	13,735	
Admin.	87.0	Communication Tower Admin. Bldg	1	EA	75,000.00	75,000	
71-34	87.0	Toll Ticket Storage Building	2048	SF	15.35	31,427	
Subtotal						8,583,281	

INDIANA TOLL ROAD BUILDING REPLACEMENT COST – 2005						
RQAW Corporation						
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205 IV				By: JF5		
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total
20-1	87.1	Maintenance Building M 3 Central Facility	13149	SF	129.30	1,700,166
20-2	87.1	Salt Storage @ M 3 Salt Dome	7850	SF	33.47	262,749
20-3	87.1	Pole-Barn large Storage Bldg Pole Barn West	5148	SF	15.35	78,998
20-4	87.1	Gas Shanty @ M 3 Fuel	19	SF	40.59	771
20-5	87.1	Engineering Trailing M 3 Pole Barn East	4900	SF	73.86	361,923
20-5B	87.1	Haz-Mat Storage Shed	100	SF	35.00	3,500
20-6	87.2	Sign Shop	5418	SF	86.47	468,490
20-7	87.8	Outbuilding @ Lake Albert Paint Booth	1440	SF	75.00	108,000
20-7B	87.8	New Structure is Open Pavilion	576	SF	30.00	17,280
20-8	90.0	Service Area Restaurant SA 5S* Toll Maintenance 1st	1500	SF	130.00	195,000
		B	0	SF	0.00	0
20-9	90.0	Service Area Fuel @ SA 5S Elkhart Maint.	18600	SF	210.00	3,906,000
20-9B	90.0	Fuel Building	1000	SF	40.00	40,000
20-10	90.0	Service Area Canopy @ Gas Island SA-5S Shed Behind Sign Shop	150	SF	30.00	4,500
20-11	90.0	Service Area Canopy & Diesel Canopy SA-5S	1392	SF	23.70	32,987
20-12	90.0	Water Treatment Plant "A" Well House @ SA-5S (Closed & Rem.)	743	SF	0.00	0
20-13	90.0	Sewage-Treatment Plant Lift Station @SA 5S (No longer exists)			0.00	0
20-14	90.0	Incinerator @ SA 5S (Closed and Removed)	297	SF	0.00	0
20-15	90.0	Service Area Restaurant @ SA-5N 1st	16246	SF	97.06	1,576,841
		B	9626	SF	44.62	429,558
20-16	90.0	Service Area Fuel @ SA-5N	11000	SF	50.00	50,000
20-17	90.0	Service Area Canopy @ SA-5N Gas Pumps	2472	SF	23.70	58,580
20-18	90.0	Service Area Canopy @ SA-5N Diesel Pumps	1392	SF	23.70	32,987
20-19	90.0	Water-Treatment Plant "B" Well @ SA 5N (Closed and removed)	92	SF	0.00	0
20-20	90.0	Litel Building @ SA-5N Fiber Optic Building	197	SF	122.73	24,178
20-21	90.0	Incinerator @ SA 5N (Closed and Removed)	297	EA	0.00	0
20-22	91.8	Toll Plaza Utility Building (old) 1st	1312	SF	131.10	172,009
		B	437	SF	7671	33,520
20-23	91.8	Toll Booth (Old)	41	SF	959.36	39,334
20-23B	91.8	Toll Booth (Old)	41	SF	959.36	39,334
20-24	91.8	Toll Booth (Old)	41	SF	959.36	39,334
20-25	91.8	Toll Booth Canopy	133	SF	46.03	52,147
20-26	91.8	Small Storage Building	132	SF	12.56	1,659
	96.0	Main Utility Building		SF		
	96.0	Toll Booth Type "B"	75	SF	517.47	38,810
	96.0	Toll Booth Type "B"	75	SF	517.47	38,810
	96.0	Toll Booth Type "B"	75	SF	517.47	38,810
	96.0	Toll Booth Type "B"	75	SF	517.47	38,810
	96.0	Generator and Storage Building (20 x 24)	480	SF	110.00	52,800
	96.0	Small Communication Tower	1	EA	24,317.00	24,317
20-27	99.0	Salt Storage Building	6386	SF	33.47	213,747
20-28	99.0	Small Storage Building (Replaces existing bldg.)	768	SF	15.35	11,785
20-29	99.0	Gas Shanty	25	SF	30.84	771
20-30	101.2	Toll Plaza Utility Building New "B" 1st	1650	SF	115.78	191,038
		B	927	SF	61.37	56,891
		M.Pit	300	SF	46.03	13,808

INDIANA TOLL ROAD BUILDING REPLACEMENT COST – 2005							
RQAW Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205 IV				By: JF5			
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total	
20-31	101.2	Toll Booth Type "B"	75	SF	534.75	40,107	
20-32	101.2	Toll Booth Type "B"	75	SF	534.75	40,107	
20-33	101.2	Toll Booth Canopy (New)	2625	SF	69.72	183,023	
20-34	107.1	Toll Plaza Utility Building (Old)	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
20-35	107.1	Toll Booth (Old)	41	SF	959.36	39,334	
20-36	107.1	Toll Booth (Old)	41	SF	959.36	39,334	
20-37	107.1	Toll Booth (Old)	1133	SF	46.03	52,147	
20-38	107.1	Small Storage Building	132	SF	12.56	1,659	
20-39	108.0	Large Storage Building Vault Toilet Unit	1	SF	19,000.00	19,000	
20-40	108.0	Large Storage Building Vault Toilet Unit	1	SF	19,000.00	19,000	
20-41	108.0	Litel Hut Building @ 6N Fiber Optic Building	197	SF	122.73	24,178	
SA-5	90.0	Communication Tower	1	EA	72,808.51	72,809	
Toll Plaza	92.0	Communication Tower	1	EA	25,129.88	25,130	
Toll Plaza	101.0	Communication Tower	1	EA	25,129.88	25,130	
Toll Plaza	107.0	Communication Tower	1	EA	17,117.55	17,118	
Subtotal						11,253,846	

Indiana Toll road building replacement cost - 2005							
RQAW Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS			
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total	
44-1	114.4	Storage Pole Bam	5200	SF	0.00	0	
44-2	114.4	Pole Building Large Storage Building	4992	SF	15.35	76,604	
44-3	114.4	Salt Storage Building	7850	SF	33.47	262,749	
44-4	114.4	Gas Shanty @ M-4	19	SF	40.59	771	
	114.4	Pain Booth Structure (Closed)	1440	SF	0.00	0	
44-5	120.5	Toll Plaza Utility Building (Old)	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
44-6	120.5	Toll Booth (Old)	41	SF	959.36	39,334	
44-7	120.5	Toll Booth Old	41	SF	959.36	39334	
44-8	120.5	Toll Booth Canopy (Old)	1133	SF	46.03	52,147	
44-9	120.5	Small Storage Building	132	SF	12.56	1,659	
44-9B	125.6	Travel Plaza 7S East bound Building Maint. Pole Bldg.	5000	SF	14.85	74,250	
44-9C	125.6	Travel Plaza 7S Eastbound Large Commun. Tower	1	EA	70,455.00	70,455	
44-9D	125.6	Travel Plaza 7N Westbound 2 ea. Env. Rented. Equip. Sheds	240	SF	50.00	12,000	
44-10	123.7	Small Storage Building (Demolished)	337	SF	0.00	0	
44-11	125.8	Service Area Restaurant SA-75 *	1st	15216	SF	95.78	1,457,330
			B	9626	SF	44.62	429,558
44-12	125.8	Service Area Fuel Building	900	SF	50.00	45,000	
44-13	125.8	Service Area Gas Canopy	2472	SF	23.70	58,580	
44-14	125.8	Service Area Diesel Canopy	1392	SF	23.70	32,987	
44-15	125.8	Incinerator (Floor and roof) (Demolished)	786	SF	0.00	0	
44-16	125.8	Litel Hut @SA-7S Fiber Optic Building	197	SF	122.73	24,178	
44-17	125.8	Water Treatment Plant "A" Well @ SA-7S	725	SF	76.71	55,612	
44-18	125.8	Sewage Treatment Plant @ SA-7S	1158	SF	166.51	192,815	
44-19	125.8	Tridding Filler @ SA-7S	4140	SF	18.64	77,150	
44-20	125.8	Sand Filter Building @ SA-7S (demolished)	101	EA	0.00	0	
44-21	125.8	Sand Filter Rings @ SA-7S (demolished)	5185	EA	0.00	0	
44-22	125.8	Service Area Restaurant @SA-7N*	1st	15216	SF	95.78	1,457,330
			B	9626	SF	44.62	429,558
44-23	125.8	Service Area Fuel @ SA-7N		SF	50.00	45,000	
44-24	125.8	Service Area Canopy & Gas Island SA-7N		SF	23.70	58,580	
44-25	125.8	Service Area Canopy @ Diesel Island SA-7N		SF	2370	32,987	
44-26	125.8	"B" Well House @ SA-7N	92	SF	76.71	7,057	
44-27	125.8	Incinerator @SA-7N (Demolished)	297	SF	0.00	0	
MS-4	114.4	Communication lower		EA	85,457.91	85,458	
Toll Plaza	121.0	Communication Tower	1	EA	12,240.29	12,240	
					Subtotal	5,336,251	

INDIAN TOLL ROAD BUILDING REPLACEMENT COST- 2005							
RQAWC Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS			
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total	
76-1	137.5	Maintenance Building M-5	15019	SF	86.47	1,298,681	
76-2	137.5	Large Storage Building #1 @ M-5 Pole Building	2220	SF	63.82	141,686	
76-3	137.5	Salt Storage Building	7850	SF	33.47	262,749	
76-4	137.5	Gas Shanty #1 @M-5	18	SF	42.84	771	
76-5	137.5	Gas-Shanty (Demolished)	20	SF	0.00	0	
76-6	137.5	Large-Storage-#2-@M-5 (Demolished)	5148	SF	0.00	0	
76-6B	137.5	Storage Pole Barn	5000	SF	14.85	74,250	
76-6C	137.5	Storage Pole Barn	5000	SF	14.85	74,250	
76-6D	137.5	Steuben Maint Paint Booth Structure	1440	SF	75.00	108,000	
76-7	143.9	Toll Plaza Utility Building (Old)	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
76-8	143.9	Toll Booth #1 (Old)	41	SF	959.36	39,334	
76-9	143.9	Toll Booth #2	41	SF	959.36	39,334	
76-9B	143.9	Toll Booth	41	SF	928.36	38,063	
76-9C	143.9	Toll Booth	41	SF	928.36	38,063	
76-10	143.9	Toll Booth Canopy (Demolished)	1607	SF	0.00	0	
76-11	143.9	Small Storage Building	132	SF	12.56	1,659	
	143.9	Communication Tower Structure	1	EA	24,317.00	24,317	
76-12	145.7	Service Area Restaurant @ SA-8S*	1st	16918	SF	97.79	1,654,454
			B	7000	SF	61.37	429,597
76-13	145.7	Service Area Fuel Building @ SA-8S	900	SF	50.00	45,000	
76-14	145.7	Service Area Canopy @ Gas Island SA-8S	2472	SF	23.70	58,580	
76-15	145.7	Service Area Canopy @ Diesel Island SA-8S	1392	SF	23.70	32,987	
76-16	145.7	Lift Station	1	EA	409,497.44	409,497	
76-17	145.7	Trickling Filter @ SA-8S (No longer exists)			0.00	0	
76-18	145.7	Water Treatment Plant "B" Well (abandoned) SA-8S (Demolished)	92	SF	0.00	0	
76-19	145.7	Service Area Restaurant @ SA-8N*	1st	1608	SF	96.90	1,560,883
			B	7000	SF	61.37	429,597
76-20	145.7	Service Area Fuel Building @SA-8N	900	SF	50.00	45,000	
76-21	145.7	Service Area Canopy @ Gas Island SA-8N	2472	SF	23.70	58,580	
76-22	145.7	Service Area Canopy @ Diesel Island SA-8N	1392	SF	23.70	32,987	
76-23	145.7	Litel Hut Building Fiber Optic Building	197	SF	122.73	24,178	
76-24	145.7	Water Treatment Plant "A" Well House SA-8N	725	SF	76.71	55,612	
76-24B	145.7	Addition to Bldg. is a Pole Barn to Enclose Drinking Water Tanks	700	SF	14.84	10,388	
76-25	145.7	Water Treatment Plant "C" Well House SA-8N	160	SF	192.82	30,850	
76-26	153.0	Toll Plaza Utility Building (Old)	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
76-26B	153.0	Ticket Storage Garage Style	480	SF	40.00	19,200	
76-27	153.0	Toll Booth #1	41	SF	959.36	39,334	
76-28	153.0	Toll Booth #2	41	SF	959.36	39,334	
76-29	153.0	Toll Booth #3	41	SF	959.36	39,334	
76-30	153.0	Toll Booth #4	41	SF	959.36	39,334	
76-31	153.0	Toll Booth #5	41	SF	959.36	39,334	
76-32	153.0	Toil Booth #6	41	SF	959.36	39,334	
76-33	153.0	Toll Booth #7	41	SF	959.36	39,334	
76-33B	153.0	Toll Booth #8	41	SF	928.36	38,063	
76-33C	153.0	Toll Booth #9	41	SF	928.36	38,063	
76-34	153.0	Toll Booth Canopy	3455	SF	46.03	159,019	

INDIAN TOLL ROAD BUILDING REPLACEMENT COST- 2005						
RQAWC Corporation						
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS		
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total
76-35	153.0	Small Storage Building	132	SF	12.56	1,659
76-36	156.4	Salt Storage Building	6385	SF	33.47	213,714
76-37	156.4	Small Storage Building	302	SF	12.56	3,795
MB-5	137.5	Communication Tower	1	EA	48,127.96	48,128
Toll Plaza	144.0	Communication Tower	1	EA	48,969.20	48,969
Toll Plaza	153.0	Communication Tower	1	EA	31,782.69	31,783
foil Plaza	156.4	Communication Tower	1	EA	97,067.28	97,067
Subtotal						8,405,201

INDIANA TOLL ROAD BUILDING REPLACEMENT COST – 2005				
RQAW Corporation				
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS
County	Milepost to Milepost	Description	Subtotal	Grand Total
Lake	0.3 - 21	Buildings and Communication Towers	\$6,263,435	
Porter	21.7-30.9	Buildings and Communication Towers	\$9,952,299	
LaPorte	37.5 - 55.9	Buildings and Communication Towers	\$8,279,297	
St. Joseph	71.6-87	Buildings and Communication Towers	\$8,583,281	
Elkhart	87.1 -108	Buildings and Communication Towers	\$11,253,846	
LaGrange	114.4 -125.8	Buildings and Communication Towers	\$5,336,254	
Steuben	137.5-156.4	Buildings and Communication Towers	\$8,405,201	
				\$58,073,612

Exhibit E-2

Form of New First Lien Leasehold Mortgage

ITR CONCESSION COMPANY LLC,
as Mortgagor

to

[_____], as Collateral Agent
for the benefit of the Secured Parties,

as Mortgagee

**LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND
FINANCING STATEMENT (FIXTURE FILING)**

Date: [_____],

PROPERTY LOCATION:

State of Indiana
Counties of Lake, Porter, LaPorte, St. Joseph, Elkhart,
LaGrange, and Steuben

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL PROPERTY RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF UCC FINANCING STATEMENTS (FIXTURE FILINGS) UNDER THE NAMES OF MORTGAGOR, AS “DEBTOR”, AND MORTGAGEE, AS “SECURED PARTY”.

This Instrument Was Prepared By and After Recording Return To:

[_____]

[_____]

[_____]

Attention: [_____], Esq.

**LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND
FINANCING STATEMENT (FIXTURE FILING)**

THIS LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (FIXTURE FILING) (this "Mortgage") is made as of this [____] day of [____], by ITR CONCESSION COMPANY LLC, a Delaware limited liability company (the "Mortgagor"), whose address is [____], in favor of [____] (the "Mortgagee"), in its capacity as Collateral Agent on behalf of those certain "Lenders" and other "Secured Parties", as such terms are defined in that certain First Lien Financing Agreement (defined below), whose address is [____]. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the First Lien Financing Agreement. The Rules of Interpretation set forth in Appendix A to the First Lien Financing Agreement shall govern this Mortgage.

WITNESSETH:

WHEREAS, this Mortgage secures the Secured Obligations under that certain First Lien Financing Agreement, dated as of [____], among the Mortgagor, as the Borrower, certain lenders party thereto from time to time, and [____], as the Administrative Agent (as amended, supplemented and/or otherwise modified from time to time, the "First Lien Financing Agreement"), and all other Secured Obligations (as defined in the Security Agreement) under the Security Agreement and the other Financing Documents, and pursuant to which First Lien Financing Agreement, the Lenders have, subject to the conditions and provisions therein contained, agreed to provide the Loans.

NOW, THEREFORE, (a) to secure the performance by Mortgagor of all Secured Obligations and (b) for and in consideration of the sum of One and No/100 (\$1.00) Dollar paid by Mortgagee to Mortgagor this date, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor, subject to the Permitted Liens, mortgages and warrants unto Mortgagee, its successors and permitted assigns, for the benefit of itself and the Lenders and the other Secured Parties all right, title and interest of Mortgagor in, to and under the Mortgaged Property (as defined below):

THE MORTGAGED PROPERTY

(A) THE LEASEHOLD ESTATE. All of Mortgagor's leasehold estates, leasehold interests and rights in and to that certain real property situated in the counties of Lake, Porter, LaPorte, St. Joseph, Elkhart, LaGrange and Steuben in the State of Indiana, more particularly described on Exhibit A attached hereto (the "Land"), and referred to as the "Toll Road Land" in that certain Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006, between the Indiana Finance Authority and Mortgagor, as amended by that certain First Amendment to Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006, that certain Second Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of June 29, 2006, that certain Third Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of August 10, 2007, that certain Fourth Amendment

to the Indiana Toll Road Concession and Lease Agreement, dated as of February 5, 2008, that certain Fifth Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of November 1, 2010, and [_____] (as may be further amended, amended and restated, supplemented and/or modified, collectively, the “Concession Agreement”) (such leasehold estates, interests and rights, collectively, the “Leasehold Estate”), together with all rights, benefits, privileges, and interests of Mortgagor as Concessionaire under the Concession Agreement (such rights, benefits, privileges, and interests of Mortgagor referred to in the Concession Agreement as the “Concessionaire Interest”), together with all additions to and modifications, extensions and renewals of the Concession Agreement, all credits, deposits, options, privileges, and rights thereunder or thereto, and all other further, additional or greater estate, right, title or interest of Mortgagor in, to, and under or derived from the Land, the Concession Agreement and the Leasehold Estate. Certain of the terms of the Concession Agreement are set forth in a Memorandum of Lease, dated as of even date herewith, and recorded immediately prior to the recording of this Mortgage in each of the counties of Lake, Porter, LaPorte, St. Joseph, Elkhart, LaGrange, and Steuben in the State of Indiana.

(B) THE IMPROVEMENTS. TOGETHER WITH (i) all buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Land and leased to the Mortgagor, including the Toll Road Facilities and the Toll System (collectively, the “Toll Road Facilities”), and (ii) all fixtures, machinery and equipment of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Toll Road Facilities, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing (the “Improvements”).

(C) EASEMENTS OR OTHER INTERESTS. TOGETHER WITH all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Land, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same, including all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B) and (C) hereof or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in paragraphs (A), (B) and (C) hereof or any part thereof, and all refunds of taxes or assessments levied against all or any portion of the Mortgaged Property (as defined below).

(D) ASSIGNMENT OF RENTS. TOGETHER WITH all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof, including the Toll Revenues, to be applied against the Secured Obligations pursuant to the terms of the Collateral Agency Agreement and the Depositary Agreement; provided, however, that permission is hereby given to Mortgagor so long as no

Event of Default has occurred and is continuing, to collect and receive and use such rents, royalties, issues, profits, revenue (including the Toll Revenues), income and other benefits as they become due and payable. The foregoing assignment shall be fully operative without any further action on the part of either party and specifically Mortgagee shall be entitled, at its option upon the occurrence and during the continuation of an Event of Default, to all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof for application in accordance with the terms of the Collateral Agency Agreement and the Depositary Agreement, whether or not Mortgagee takes possession of the property described in paragraphs (A), (B) and (C) hereof. Upon any such Event of Default and so long such Event of Default is continuing, the permission given to Mortgagor to collect, receive and use such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable shall terminate upon prior written notice and such permission shall not be reinstated until such Event of Default shall have been cured or waived. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, royalties, issues, profits, revenue, income or other benefits to the indebtedness and other sums secured hereby, shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

(E) ASSIGNMENT OF LEASES. TOGETHER WITH all right, title and interest of Mortgagor in and to any and all leases, subleases, licenses and occupancy agreements now or hereafter on or affecting the property described in paragraphs (A), (B) and (C) hereof, together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals, royalties, profits, revenue, income, rights and other benefits under any such lease, sublease, license or occupancy agreement, and all licenses and agreements relating to the management, leasing or operation of the Mortgaged Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Mortgaged Property or any portion thereof, whether such licenses or agreements are now existing or entered into after the date hereof (collectively, the "Leases" or each a "Lease"). The foregoing assignment of any Lease shall not be deemed to impose upon Mortgagee any of the obligations or duties of Mortgagor provided in any such Lease, and Mortgagor agrees to fully perform all obligations of the lessor under all such Leases, except where the failure to so perform would not reasonably be expected to result in a Material Adverse Effect. Upon Mortgagee's reasonable request, Mortgagor agrees to send to Mortgagee a list of all material Leases covered by the foregoing assignment. Mortgagee shall have the right, at any time and from time to time, to notify any lessee under a Lease in writing, with a copy to Mortgagor, of the rights of Mortgagee as provided by this paragraph. From time to time, upon request of Mortgagee, Mortgagor shall specifically assign to Mortgagee as additional security hereunder, by an instrument in writing in such form as may be approved by Mortgagee, all right, title and interest of Mortgagor in and to any and all Leases now or hereafter on or affecting the Mortgaged Property, together with all security therefor and all monies payable thereunder, subject to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Lease.

This instrument constitutes an absolute and present assignment of the rents, royalties, issues, profits, revenue, income and other benefits, including the Toll Revenues, from the Mortgaged Property, subject, however, to the conditional permission given to Mortgagor to

collect, receive and use the same as provided hereinabove so long as no Event of Default has occurred and is continuing; provided, further, that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any such subsequent assignment by Mortgagor shall be subject to the rights of Mortgagee hereunder.

(F) FIXTURES AND PERSONAL PROPERTY. TOGETHER WITH a security interest in (i) all personal property and fixtures now or hereafter acquired by Mortgagor and affixed to or located on the property described in paragraphs (A), (B) and (C) hereof which, to the fullest extent permitted by law shall be deemed fixtures and a part of the real property, (ii) all articles of personal property now or hereafter acquired by Mortgagor and all materials delivered to the property described in paragraphs (A), (B) and (C) hereof for use in any activity, including construction, being conducted thereon, and owned by Mortgagor; (iii) and all contract rights, general intangibles actions and rights in action now or hereafter acquired by Mortgagor pertaining to the Mortgaged Property, including all rights to insurance proceeds, and (iv) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing. Mortgagor (as "Debtor") hereby grants to Mortgagee (as "Secured Party"), for the benefit of itself and the other Lenders, a security interest in all fixtures, rights in action and personal property described herein. The addresses for Debtor and Secured Party from which the information about the security interest herein may be obtained is set forth on page 1 of this Mortgage. Mortgagor will, within ten (10) days after written demand, pay all reasonable out-of-pocket costs and reasonable out-of-pocket expenses of filing financing statements, continuation statements, partial releases, and termination statements as are necessary or as Mortgagee may reasonably request to establish and maintain the validity and priority of the security interest of Mortgagee, or any modification thereof, and all reasonable costs and reasonable out-of-pocket expenses of any searches reasonably required by Mortgagee. Mortgagee may exercise any or all of the remedies of a secured party available to it under the Uniform Commercial Code as enacted from time to time in the State of Indiana (the "UCC") with respect to such property, and it is expressly agreed in accordance with the provisions of the UCC, thirty (30) days' notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Mortgagee may at its option dispose of the collateral in accordance with Mortgagee's rights and remedies in respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the UCC.

SOME OF THE ITEMS OF MORTGAGED PROPERTY DESCRIBED HEREIN ARE GOODS THAT ARE OR ARE TO BECOME FIXTURES RELATED TO THE LAND DESCRIBED HEREIN, AND IT IS INTENDED THAT, AS TO THOSE GOODS, THIS MORTGAGE SHALL BE EFFECTIVE AS A FIXTURE FINANCING STATEMENT FILED AS A FIXTURE FILING FROM THE DATE OF ITS FILING FOR RECORD IN THE REAL ESTATE RECORDS OF THE COUNTY IN WHICH THE FIXTURE IS LOCATED. INFORMATION CONCERNING THE SECURITY INTEREST CREATED BY THIS INSTRUMENT MAY BE OBTAINED FROM THE MORTGAGEE, AS SECURED PARTY, OR THE MORTGAGOR, AS DEBTOR, AT THE ADDRESSES FIRST SHOWN ABOVE.

Everything referred to in paragraphs (A), (B), (C), (D), (E), and (F) hereof and any additional property hereafter acquired by Mortgagor which is subject to the Lien of this Mortgage is herein referred to as the "Mortgaged Property."

Notwithstanding anything to the contrary in any of the foregoing paragraphs (A), (B), (C), (D), (E) and (F): (i) any and all amounts paid or distributed by the Mortgagor in accordance with Section 7.6 of the First Lien Financing Agreement or Sections 4.01 and 4.06(b) of the Depository Agreement shall be free of, and not subject to, this Mortgage, (ii) any and all assets or property sold, conveyed, transferred, assigned or otherwise disposed of by the Mortgagor to the extent permitted under Section 7.1 of the First Lien Financing Agreement and any other provision of the Financing Documents shall be free of, and not subject to, this Mortgage and (iii) any and all Excluded Assets shall be free of, and not subject to, this Mortgage and the term "Mortgaged Property" (and all terms used therein) shall exclude Excluded Assets.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and permitted assigns, to its own proper use and benefit on behalf of the Lenders and the other Secured Parties, subject, however, to the Permitted Liens and the terms and conditions thereof, and the terms and conditions in this Mortgage, the other Financing Documents, and in the Concession Agreement, and Mortgagor does hereby bind itself, its successors and permitted assigns, to warrant and defend the leasehold interest and title, as applicable, to the Mortgaged Property, in each case subject to Permitted Liens and the terms of the Financing Agreement, to Mortgagee against every Person whomsoever lawfully claiming or to claim the same or any part thereof;

PROVIDED, HOWEVER, that if all Secured Obligations to be paid or performed under the Financing Documents have been paid and performed in full (other than contingent Obligations), then upon the happening of all of such events, the Mortgagee shall release and terminate the Mortgage and all security interests and Liens granted hereby as set forth below. Upon the Mortgagee's receipt of the Administrative Agent's written signed notice (the "Lien Termination Notice") that the events set forth in the first sentence of this paragraph have occurred, the Mortgagee shall forthwith cause to be assigned, transferred and delivered, against receipt but without any recourse, warranty or representation whatsoever, other than as to the release of the Mortgagee's Lien thereon and the absence of any continuing Lien arising by, through or under the Mortgagee, any remaining Mortgaged Property and moneys received by the Mortgagee in respect of the Mortgaged Property, to or on the order of the Mortgagor. Provided the Mortgagee has received the Lien Termination Notice, the Mortgagee, upon payment of its reimbursable fees and expenses (including reasonable attorney's fees and expenses to which it is entitled under the Financing Documents), shall execute and deliver to the Mortgagor, at the Mortgagor's expense, such documentation as the Mortgagor shall prepare and request to evidence such termination or expiration and release the Liens created under this Mortgage, including termination statement(s) for any financing statement on file with respect to the Mortgaged Property. In addition, the Mortgage and all security interests and Liens created hereby shall be released with respect to any portion of the Mortgaged Property that is sold, transferred or otherwise disposed of in compliance with the terms and conditions of the Financing Documents. Notwithstanding the foregoing, this Mortgage shall continue to be effective or be reinstated and relate back to such time as though this Mortgage had always been in effect, as the case may be, if at any time any amount received by the Mortgagee or any other

Secured Party in respect of the Secured Obligations is rescinded or must otherwise be restored or returned by the Mortgagee or other Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Mortgagor or any other Person or upon the appointment of any intervenor or conservator of, or trustee or similar official for the Mortgagor or any other Person or any substantial part of its properties, or otherwise, all as though such payments had not been made.

ARTICLE ONE
COVENANTS OF MORTGAGOR

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1.01 Performance of Secured Obligations, Mortgage, Etc. Mortgagor shall perform, observe and comply with all provisions hereof and will promptly pay (without duplication) all of the reasonable sums reasonably required to be paid by Mortgagor under this Mortgage and of every other instrument securing the Secured Obligations hereunder when payment shall become due, all, except as provided in the First Lien Financing Agreement, without deduction or credit for taxes or other similar charges paid by Mortgagor, all as set forth in the First Lien Financing Agreement.

1.02 Transfer of Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee (such consent not to be unreasonably withheld), and except as permitted by the First Lien Financing Agreement and subject to the terms and provisions of the Concession Agreement, further assign the Toll Revenues or other income from the Mortgaged Property, or further encumber, sell, convey or transfer any interest in, or any part of, the Mortgaged Property, or enter into any agreement or do any act to amend, modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof.

1.03 Further Assurances. At any time and from time to time, upon Mortgagee's reasonable written request, Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded or filed and from time to time as necessary to be rerecorded or refiled at such time and in such offices and places as are necessary or as the Mortgagee may reasonably request, any and all such further mortgages, instruments of further assurance, financing statements, continuation statements, certificates and other documents as Mortgagee may reasonably consider necessary in order to effectuate or complete in accordance with the First Lien Financing Agreement or the other Financing Documents, or perfect, or to continue and preserve the obligations of Mortgagor under the First Lien Financing Agreement and this Mortgage, and the Lien of this Mortgage as a first and prior Lien upon all of the Mortgaged Property, subject to Permitted Liens whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor to do so, Mortgagee may, at the reasonable expense of Mortgagor, make, execute, record, file, re-record or refile any and all such mortgages, instruments, financing statements, continuation statements, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

1.04 After Acquired Property. The Lien of this Mortgage will automatically attach, without further act, to all of Mortgagor's right, title and interest in and to any after-acquired property located in or on, or attached to, or used in connection with or with the operation of, the Mortgaged Property or any part thereof (in each case excluding the Excluded Assets).

1.05 Leases Affecting Mortgaged Property. Mortgagor shall comply in all material respects with and observe its obligations as landlord under all leases and subleases affecting the Mortgaged Property or any part thereof, except where the failure to so perform would not reasonably be expected to result in a Material Adverse Effect. If any such lease or sublease is a Material ITR Contract, Mortgagor, if reasonably requested in writing by Mortgagee, shall furnish promptly to Mortgagee executed copies of such lease or sublease, or any amendment to such lease, now existing or hereafter created.

1.06 Expenses. In accordance with Section 11.3 of the First Lien Financing Agreement, Mortgagor shall pay or reimburse Mortgagee for all reasonable costs and reasonable out-of-pocket charges and expenses, disbursements incurred or paid by Mortgagee (including reasonable attorney's fees and paralegal fees, appraisal costs, environmental audit costs, other necessary professional fees, court reporter's fees, and court costs) in documenting, perfecting, securing, or enforcing Mortgagee's rights hereunder as provided in the First Lien Financing Agreement. The amounts so incurred or paid by Mortgagee, together with interest thereon at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness secured by the Lien of this Mortgage.

ARTICLE TWO DEFAULTS

2.01 Event of Default. The term Event of Default, wherever used in this Mortgage, shall mean an "Event of Default" as defined in the First Lien Financing Agreement.

2.02 Mortgagee's Power of Enforcement. In addition to the terms and conditions of the other Financing Documents, if an Event of Default shall have occurred and is continuing, Mortgagee may, to the extent permitted under the other Financing Documents, either with or without entry or taking possession, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy: (a) to accelerate the maturity date of the Loans and declare any or all of the Secured Obligations to be immediately due and payable as provided in Section 8.2 of the First Lien Financing Agreement; (b) to immediately foreclose this Mortgage or to specifically enforce its provisions with respect to any of the Secured Obligations, pursuant to the statutes in such case made and provided, and to sell, as an entirety or in separate lots or parcels at the option of Mortgagee, the Mortgaged Property, in accordance with the requirements and procedures provided by said statutes or under the judgment or decree of a court of competent jurisdiction; and (c) to pursue any other remedy available to it. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as the Mortgagee may determine. Further, Mortgagee shall be entitled to all of its reasonable costs and reasonable out-of-pocket expenses, including attorneys' fees, as provided in the First Lien Financing Agreement and in Section 1.06 of this Mortgage.

2.03 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred and is continuing, Mortgagor, upon written demand of Mortgagee, to the extent permitted under and subject to the terms and conditions of the First Lien Financing Agreement, the other Financing Documents and the Concession Agreement, shall forthwith surrender to Mortgagee the actual possession, and if and to the extent permitted by law, the Financing Documents and the Concession Agreement, Mortgagee itself, or by such officers or agents as it may appoint, with or without notice, and without releasing Mortgagor from any of its obligations hereunder, may enter and take possession of all the Mortgaged Property, and may exclude Mortgagor and its agents and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor, and perform such acts and things as are necessary or as the Mortgagee may reasonably request to inspect, investigate, assess and protect the security hereof.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Mortgagee's written demand, subject to the terms and conditions hereof and of the other Financing Documents, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Mortgagee along with all books, papers and accounts of Mortgagor, to the entry of which judgment or decree Mortgagor hereby specifically consents.

(c) Upon entering upon or taking of possession, subject to the terms and conditions of the other Financing Documents, Mortgagee may, to the extent permitted by the Concession Agreement, hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time:

- (i) make all reasonably necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon;
- (ii) insure or keep the Mortgaged Property insured;
- (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor, with respect to the same; and
- (iv) enter into agreements with others to exercise the powers herein granted Mortgagee;

all as Mortgagee in its reasonable judgment from time to time may determine; and Mortgagee may collect and receive all Toll Revenues and other income, revenues, rents, issues and profits of the same, including those past due as well as those accruing thereafter; and shall apply the monies so received by Mortgagee in accordance with Section 2.09 below. With respect to any security interest in personal property granted by Mortgagor to Mortgagee under this Mortgage, in the event of a conflict between the terms and provisions of this Mortgage and the terms of the Security Agreement, the terms and provisions of the Security Agreement shall govern as to such personal property interests.

If Mortgagee has taken possession of the Mortgaged Property in accordance with this Mortgage, Mortgagee may retain possession of the Mortgaged Property until all Secured Obligations then due under any of the terms of this Mortgage or the other Financing Documents shall have been paid and all defaults made good, and shall thereafter surrender possession of such Mortgaged Property to Mortgagor. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.04 Leases. Mortgagee, at its option, is authorized to foreclose this Mortgage in accordance with its terms and the laws of the State of Indiana subject to the rights of any tenants or subtenants of the Mortgaged Property, and the failure to make any such tenants or subtenants defendants in any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.05 Purchase by Mortgagee. Subject to the terms and conditions set forth herein and in the other Financing Documents, upon any such foreclosure sale, Mortgagee, on behalf of the Secured Parties, may bid for and purchase the Mortgaged Property and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such rights in its own absolute right without further accountability. Mortgagee may bid on the Mortgaged Property at the foreclosure sale and shall be entitled to a credit for the Secured Obligations and/or foreclosure judgment in the manner set forth under the laws of the State of Indiana.

2.06 Waiver of Appraisal, Valuation, Stay, Extension, and Redemption Laws. Mortgagor agrees, to the full extent permitted by law that neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the Lien hereof or appraised for the purpose of reducing any deficiency judgment obtained by Mortgagee against Mortgagor and agrees that Mortgagee or any court having jurisdiction to foreclose such Lien may sell the Mortgaged Property in part or as an entirety. Mortgagor further waives, to the full extent permitted by law, the right to petition for the appointment of appraisers following foreclosure for the purpose of seeking to reduce a deficiency judgment or for any other reason.

2.07 Receiver. If an Event of Default shall have occurred and is continuing, Mortgagee, to the extent permitted by law and without regard to the value, adequacy, or occupancy of the security, shall be entitled as a matter of right, subject to the terms of the other Financing Documents, to the appointment of a receiver to enter upon and take possession of the Mortgaged Property and to collect all Toll Revenues and other rents, revenues, issues, income, products and profits thereof and apply the same as the court may direct. Subject to the terms of the Financing Documents, the receiver shall have all rights and powers permitted under the laws of the State of Indiana and such other powers as the court making such appointment shall confer.

The expenses, including reasonable receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect the Toll Revenues, rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such Toll Revenues, rents, issues and profits actually received by Mortgagee, whether received pursuant to this paragraph or paragraph (E) in the definition of "Mortgaged Property". Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as secured party hereunder to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to, Mortgagee.

2.08 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, any Person, partnership or corporation guaranteeing or endorsing any of Mortgagor's obligations, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as are necessary or Mortgagee may reasonably request in order to have its claims allowed in such proceedings for the entire amount due and payable by Mortgagor under the First Lien Financing Agreement, this Mortgage and any other Financing Document, at the date of the institution of such proceedings.

2.09 Application of Proceeds. Except as otherwise expressly provided in this Mortgage, the Mortgagee shall apply all Proceeds received by the Mortgagee in respect of any sale of, collection from, or other realization upon, all or any part of the Mortgaged Property, after deducting all reasonable costs and reasonable out-of-pocket expenses of every kind incurred in connection therewith or incidental to the safekeeping or care of any Mortgaged Property or in any way relating to the Mortgaged Property or the rights of the Mortgage hereunder (including reasonable fees and disbursements) as provided in Section 4.01 of the Collateral Agency Agreement.

2.10 Deficiency. If the proceeds of, or other realization upon, the Mortgaged Property by virtue of the exercise or remedies under this Mortgage are insufficient to cover the reasonable costs and reasonable out-of-pocket expenses of such exercise and the payment in full of the Secured Obligations (other than contingent Obligations), the Mortgagor shall, subject to Section 11.10 of the First Lien Financing Agreement, remain liable for any deficiency.

2.11 Delay or Omission; No Waiver. No delay or omission of Mortgagee or of any holder of the Loans or any other Secured Party to exercise any right, power or remedy accruing upon any Event of Default and during the continuance thereof shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Subject to the terms of the Financing Documents, every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

2.12 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then

existing, or impair any rights, powers or remedies consequent thereon. If Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Concession Agreement, this Mortgage or any other instrument securing the Secured Obligations; (d) releases any part of the Mortgaged Property from the Lien of this Mortgage or any other instrument securing the Secured Obligations; (e) consents to the filing of any map, plat or replat of the Land; (f) consents to the granting of any easement on the Land; or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the Lien or any charge hereof; no such act or omission shall release, discharge, modify, change or affect the Secured Obligations, or the obligations of any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, cosigner, endorser, surety or guarantor. No such act or omission shall preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in the other Financing Documents or in an instrument or instruments executed by Mortgagee, shall the Lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Mortgagee, without notice to any Person, is hereby authorized and empowered to deal with any such transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

2.13 Discontinuance of Proceeding; Position of Parties Restored. If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then and in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had occurred or had been taken.

2.14 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Mortgagee under this Mortgage, the First Lien Financing Agreement or any other instrument securing the Secured Obligations, is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, the First Lien Financing Agreement or any other instrument securing the Secured Obligations or now or hereafter existing at law, in equity or by statute.

ARTICLE THREE MISCELLANEOUS PROVISIONS

3.01 Successors and Assigns Included in Parties. Whenever one of the parties hereto is named or referred to herein, the successors and permitted assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

3.02 Addresses for Notices, Etc. Any notice, report, demand or other instrument authorized or required to be given or furnished under this Mortgage to Mortgagor or Mortgagee shall be deemed given or furnished in accordance with the provisions of the Collateral Agency Agreement (with the Mortgagor being referred to as “Borrower” and the Mortgagee being referred to as “First Lien Collateral Agent” under the Collateral Agency Agreement).

3.03 Headings. The headings of the articles, sections, paragraphs and subdivision of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

3.04 Invalid Provisions to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in this Mortgage shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein shall be in no way affected, prejudiced or disturbed thereby.

3.05 Changes, etc. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought with Mortgagor acting pursuant to the Collateral Agency Agreement as the First Lien Administrative Agent thereunder.

3.06 Governing Law. This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with reference to the laws of the State of Indiana excluding the principles thereof governing conflicts of law.

3.07 Default Rate. The “Default Rate” shall be as provided in respect of overdue amounts payable by the Borrower in Section 2.2(b) of the First Lien Financing Agreement.

3.08 First Lien Financing Agreement Provisions Control. To the extent that the terms of this Mortgage conflict with or provide additional restrictions or prohibitions on actions or conditions otherwise permitted under any other Financing Document, the terms of such Financing Document shall control and override such contrary provisions of this Mortgage.

3.09 Partial Foreclosure. In the event the Mortgaged Property is comprised of more than one parcel of real property, Mortgagor hereby waives any right to require Mortgagee to foreclose or exercise any of its other remedies against all of the Mortgaged Property as a whole or to require Mortgagee to foreclose or exercise such remedies against one portion of the Mortgaged Property prior to the foreclosure or exercise of said remedies against other portions of the Mortgaged Property.

3.10 Future Advances. Notwithstanding anything contained in this Mortgage or the other Financing Documents to the contrary, this Mortgage shall secure in addition to the Secured Obligations and any other indebtedness or obligations specifically secured by the express terms of this Mortgage (i) any future obligations and advances made from time to time after the date hereof and all other amounts now or hereafter payable by Mortgagor to Mortgagee in its capacity as Collateral Agent, or advanced by Mortgagee in its capacity as Collateral Agent

for the account, or on behalf, of Mortgagor, or the Mortgaged Property, to the same extent as if the future obligations and advances were made on the date of execution of this Mortgage up to a maximum amount of [_____]Dollars (\$[_____])¹ (whether made as part of the obligations secured hereby, made at the option of Mortgagee, made after a reduction to a zero (0) or other balance, or made otherwise); and (ii) future modifications, extensions and renewals of any such Secured Obligations secured by this Mortgage. Pursuant to IND. CODE §32-29-1-10, the Lien of this Mortgage with respect to any future advances, modifications, extensions, and renewals referred to herein and made from time to time shall have the same priority to which this Mortgage otherwise would be entitled as of the date this Mortgage is executed and recorded without regard to the fact that any such future advance, modification, extension, or renewal may occur after this Mortgage is executed.

3.11 Representations, Warranties and Covenants Regarding the Concession Agreement.

(a) If an Event of Default shall have occurred and is continuing that arises out of the failure by the Mortgagor to comply with any covenant or condition imposed upon or assumed by it as concessionaire under the Concession Agreement, without waiving or releasing the Mortgagor from any of its obligations hereunder, the Mortgagee, after giving prior written notice to the Mortgagor, may (but shall not be obligated to) take any action the Mortgagee deems necessary to cure such non-compliance by the Mortgagor, subject to and in accordance with the terms of the Concession Agreement and the other Financing Documents. Upon receipt by the Mortgagee from the IFA of any written notice of default by Mortgagor thereunder, Mortgagee may rely thereon and take any action, subject to the provision of the Concession Agreement and the other Financing Documents, to cure such default.

(b) Upon the occurrence and during the continuance of an Event of Default, Mortgagor hereby expressly grants to Mortgagee (to the extent permitted under the Concession Agreement), and agrees that Mortgagee shall have the absolute and immediate right (to the extent permitted under the Concession Agreement), to enter in and upon the Land or any part thereof to such extent and as often as Mortgagee, in its sole but reasonable discretion, deems necessary, in order to cure (to the extent permitted under the Concession Agreement) any default by Mortgagor under the Concession Agreement. Mortgagee, after giving five (5) days' prior written notice to Mortgagor, may pay and expend such reasonable sums of money as Mortgagee deems necessary for such purpose, and Mortgagor hereby agrees to pay to Mortgagee, promptly after written request, all such sums so paid and expended by Mortgagee, together with interest thereon from the date of such expenditure to the date of repayment at the Default Rate. All sums so paid and expended by Mortgagee, and the interest thereon shall be added to and be secured by the Lien of this Mortgage.

(c) Mortgagee (i) shall, simultaneously with the providing of any notice of the occurrence of a default under this Mortgage to Mortgagor, provide a copy of such notice to the IFA at the address specified in Section 7.03 of the Concession Agreement, and (ii) acknowledges that it has received a true and complete copy of the Concession Agreement and hereby agrees to be bound by the terms and provisions in Section 18.8 thereof.

¹ Amount to be confirmed.

(d) The representation and warranty set forth in Section 5.7 of the First Lien Financing Agreement is hereby incorporated by reference in this Mortgage.

3.12 Additional Provisions.

(a) [Reserved].

(b) Maturity Date. The stated maturity date of the Secured Obligations is [_____].

(c) Secured Obligations under Mortgage. Mortgagor shall pay the Secured Obligations secured hereby in accordance with their terms and will perform and comply with all of the terms and provisions of the First Lien Financing Agreement and other Financing Documents.

(d) Waiver of Right of Redemption. Nothing herein is intended to constitute a waiver of Mortgagor's and Mortgagee's rights under IND. CODE § 32-29-7-5, it being agreed that the parties may mutually consent to such waiver as discussed therein in a separate written instrument.

(e) Notwithstanding anything herein to the contrary, (a) in no event shall the Mortgaged Property include and Mortgagor shall not be deemed to have granted a security interest in, any of its right, title or interest (i) in any copyright, mark, patent and/or other intellectual property if the grant of such security interest shall constitute or result in the abandonment of, invalidation of or rendering unenforceable any of its right, title or interest therein; or (ii) in any license, contract or agreement to which Mortgagor is a party or any of its rights or interests thereunder, to the extent, but only to the extent, that such a grant would, under the terms of such license, contract or agreement, or otherwise, result in a breach or termination of the terms of, or constitute a default under or termination of any such license, contract or agreement (other than to the extent that, as to clause (i) or (ii), any such term would be rendered ineffective pursuant to Section 9-406 of the UCC of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); provided that the Mortgagor agrees to use all reasonable efforts to obtain all requisite consents to enable such Mortgagor to provide a security interest in such asset and, in any event, immediately upon the ineffectiveness, lapse or termination of any such provision, the Mortgaged Property shall include, and Mortgagor shall be deemed to have granted a security interest in, all such rights and interests as if such provision had never been in effect.

(f) Counterparts. This Mortgage may be executed in any number of original counterparts and in multiple originals to facilitate recording of an original in each of the counties in which the Mortgaged Property is located, each of which shall be effective upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year above first written.

MORTGAGOR:

ITR CONCESSION COMPANY LLC

By: _____

Printed: _____

Title: _____

By: _____

Printed: _____

Title: _____

ACKNOWLEDGMENT

STATE OF)
) ss.:
COUNTY OF)

Before me, a Notary Public in and for said County and State, personally appeared _____, as the _____ of ITR CONCESSION COMPANY LLC, a Delaware limited liability company, who acknowledged the execution of the foregoing Leasehold Mortgage, Security Agreement and Financing Statement (Fixture Filing) for and on behalf of said limited liability company.

Witness my hand and notarial seal this ____ day of _____, 201__.

NOTARY PUBLIC (Signature)

Notary Public (Printed)

My Commission Expires: _____

My County of Residence is: _____

ACKNOWLEDGMENT

STATE OF)
) ss.:
COUNTY OF)

Before me, a Notary Public in and for said County and State, personally appeared _____, as the _____ of ITR CONCESSION COMPANY LLC, a Delaware limited liability company, who acknowledged the execution of the foregoing Leasehold Mortgage, Security Agreement and Financing Statement (Fixture Filing) for and on behalf of said limited liability company.

Witness my hand and notarial seal this ____ day of _____, 201__.

NOTARY PUBLIC (Signature)

Notary Public (Printed)

My Commission Expires: _____

My County of Residence is: _____

MORTGAGEE:

[_____], as Collateral Agent

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF)
) ss.:
COUNTY OF)

Before me, a Notary Public in and for said County and State, personally appeared [____], as the [____] of [____], a national banking association, who acknowledged the execution of the foregoing Leasehold Mortgage, Security Agreement and Financing Statement (Fixture Filing) for and on behalf of said [____].

Witness my hand and notarial seal this [____] day of June, 201__.

NOTARY PUBLIC (Signature)

Notary Public (Printed)

My Commission Expires: _____

My County of Residence is: _____

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

[_____] , Esq.

This instrument was prepared by and after recording should be returned to: [_____].

SCHEDULE 1

RECORDING INFORMATION OF MEMORANDUM OF LEASE

Recorded [_____], 201__, as Document No. _____.

Exhibit E-3

Form of New First Lien Pledge Agreement

MEMBERSHIP INTEREST PLEDGE AGREEMENT

between

ITR CONCESSION COMPANY HOLDINGS LLC,
as Pledgor

and

[_____],
as Collateral Agent, on behalf of the Secured Parties

Dated as of [_____]

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
Section 1.01. Definitions.....	1
ARTICLE II PLEDGE.....	1
Section 2.01. Grant	2
Section 2.02. Perfection	2
Section 2.03. Delivery of Additional Pledged Collateral	3
Section 2.04. Secured Obligations	3
Section 2.05. Termination; Release of Pledged Collateral	3
ARTICLE III REPRESENTATION AND WARRANTIES	4
Section 3.01. Pledged Membership Interests	4
Section 3.02. No Outstanding Warrants Options, Etc	4
Section 3.03. Perfection	4
Section 3.04. Organization, Etc	4
Section 3.05. Legal Owner.....	5
Section 3.06. Power to Pledge	5
Section 3.07. Enforceability.....	5
Section 3.08. No Governmental Approvals	5
Section 3.09. No Conflicts	5
Section 3.10. No Proceedings	5
Section 3.11. LLC Agreement	5
ARTICLE IV COVENANTS	6
Section 4.01. Additional Membership Interests.....	6
Section 4.02. No Transfer	6
Section 4.03. No Liens.....	6
Section 4.04. No Change in Name, Etc	6
Section 4.05. Preservation and Maintenance	6
Section 4.06. Governmental Consent.....	6
Section 4.07. Maintenance of Perfected Security Interest; Further Assurances	6
Section 4.08. No Amendments	7
ARTICLE V DISTRIBUTIONS, VOTING RIGHTS, ETC.	7
Section 5.01. Distributions and Voting Rights Prior to Event of Default	7
Section 5.02. Distributions and Voting Rights After Event of Default	7

ARTICLE VI REMEDIES	8
Section 6.01. Remedies Upon Event of Default	8
Section 6.02. Private Sale	9
Section 6.03. Application of Proceeds.....	9
ARTICLE VII ATTORNEY-IN-FACT	9
Section 7.01. Appointment	9
Section 7.02. Performance in Lieu of Pledgor.....	10
Section 7.03. Duty of the Collateral Agent.....	11
Section 7.04. Authority of the Collateral Agent	11
Section 7.05. Role of the Collateral Agent	11
Section 7.06. Absence of Fiduciary Relation.....	11
ARTICLE VIII MISCELLANEOUS	12
Section 8.01. Amendments	12
Section 8.02. Waivers	12
Section 8.03. Notices	12
Section 8.04. Successors and Assigns.....	13
Section 8.05. Counterparts.....	13
Section 8.06. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial	13
Section 8.07. Captions	13
Section 8.08. Severability	13
Section 8.09. Entire Agreement	14
Section 8.10. Expenses	14
Section 8.11. No Other Obligations.....	14

Schedules

Schedule 1	Pledged Membership Interests
Schedule 2	Organization of Pledgor

MEMBERSHIP INTEREST PLEDGE AGREEMENT

This MEMBERSHIP INTEREST PLEDGE AGREEMENT (this “Agreement”), dated as of [____], is made between ITR CONCESSION COMPANY HOLDINGS LLC, a Delaware limited liability company (the “Pledgor”), and [____], in its capacity as collateral agent for the benefit of and as representative of the Secured Parties (in such capacity, the “Collateral Agent”).

RECITALS

A. The Pledgor is the sole member of ITR Concession Company LLC (the “Company”), a Delaware limited liability company, pursuant to the terms of that certain Limited Liability Company Agreement of the Company, dated as of January 19, 2006 (as amended, supplemented and /or otherwise modified from time to time, the “LLC Agreement”).

B. The Lenders (as defined below) have agreed to enter into the First Lien Financing Agreement, dated as of the date hereof (the “First Lien Financing Agreement”), by and among the Company, as the Borrower, certain lenders party thereto (the “Lenders”), and Wilmington Trust, National Association, as the Administrative Agent, on the terms and subject to the conditions set forth therein.

C. Simultaneously with the execution of this Agreement, the Company, the Administrative Agent for and on behalf of the Financing Parties, the second lien administrative agent thereunder, the Collateral Agent and the second lien collateral agent thereunder have entered into that certain Collateral Agency and Intercreditor Agreement (the “Collateral Agency Agreement”), dated as of the date hereof, pursuant to which [____] has been appointed Collateral Agent with respect to this Agreement and the other Security Documents.

D. It is a condition precedent to the Closing Date under the First Lien Financing Agreement that the Pledgor shall have executed and delivered this Agreement to the Collateral Agent.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficient which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. All capitalized terms used herein but not otherwise defined herein shall have the respective meanings given to such terms in Appendix A to the First Lien Financing Agreement. The Rules of Interpretation set forth in such Appendix A shall govern this Agreement.

ARTICLE II PLEDGE

Section 2.01. Grant. The Pledgor, as collateral security for the prompt payment in full when due (whether at stated maturity, upon acceleration, on any optional or mandatory prepayment date or otherwise) and performance of any and all of the Secured Obligations (as defined below), hereby collaterally assigns, pledges and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest (subject to Permitted Liens) in all of its respective right, title and interest in and to the following property, whether now owned or hereafter acquired (collectively, the “Pledged Collateral”):

(a) its limited liability company interests in the Company and all options, warrants and rights to purchase limited liability company interests in the Company and any security certificates or other documents, instruments or certificates representing its limited liability company interests in the Company and, subject to Section 5.01, all dividends, distributions, cash, securities, instruments and other property from time to time paid, payable or otherwise distributed in respect of or in exchange for all or any part of its limited liability company interests in the Company and all proceeds thereof (the “Pledged Membership Interests”);

(b) without affecting the obligations of Pledgor under any provision prohibiting that action under any Financing Document, in the event of any consolidation or merger of Borrower in which Borrower is not the surviving Person, all ownership interests of any class or character in the successor Person (unless that successor Person is Pledgor itself) formed by or resulting from such consolidation or merger;

(c) the LLC Agreement and all amendments, supplements, substitutions and renewals of the LLC Agreement;

(d) any Indebtedness owed to the Pledgor by the Company from time to time, including any instruments (as such term is defined in the UCC) or payment intangibles (as such term is defined in the UCC) evidencing or relating to such Indebtedness; and

(e) all proceeds, products and accessions of and to any and all of the foregoing, including, without limitation, “proceeds” as defined in Section 9-102(a)(64) of the UCC, including whatever is received upon any sale, exchange, collection or other disposition of any of the Pledged Membership Interests, and any property into which any of the Pledged Membership Interests are converted, whether cash or non-cash proceeds, and any and all other amounts paid or payable under or in connection with any of the Pledged Membership Interests;

provided, however, that any and all amounts distributed or paid to the Pledgor in accordance with Section 7.6 of the First Lien Financing Agreement and Sections 4.01 and 4.06(b) of the Depository Agreement shall be free of the Lien of this Agreement (without further action or consent).

Section 2.02. Perfection. The Pledgor shall file, or shall cause to be filed, such financing statements and continuation statements in such offices as are or shall be necessary or as the Collateral Agent may reasonably determine to be appropriate to create, perfect and establish the priority of liens granted by this Agreement in any and all of the Pledged Collateral, or to enable the Collateral Agent to exercise its remedies, rights, powers and privileges under this

Agreement. The Pledgor shall promptly (and in any event, within ten (10) Business Days) deliver to the Collateral Agent any certificates or instruments evidencing the Pledged Collateral, which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment, where applicable, in blank, and accompanied by any required transfer tax stamps, all in form and substance reasonably satisfactory to the Collateral Agent.

Section 2.03. Delivery of Additional Pledged Collateral. Subject to Section 5.01, the Pledgor agrees that it will, upon obtaining any additional Pledged Collateral, including, any additional equity interest in the Company issued in respect of any new equity investment or other consideration of any kind from the Pledgor, or any additional or substitute certificates or any other equity interests, whether as an addition to, in substitution for or exchange for any Pledged Collateral, hold such Pledged Collateral in trust for the Collateral Agent, segregate such Pledged Collateral from other property or funds of the Pledgor, and promptly (and in any event, within ten (10) Business Days) deliver to the Collateral Agent the certificates or instruments evidencing such additional Pledged Collateral, which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment, where applicable, in blank, and accompanied by any required transfer tax stamps, all in form and substance reasonably satisfactory to the Collateral Agent.

Section 2.04. Secured Obligations. This Agreement secures, in accordance with the provisions hereof, and the property described in Section 2.01 above is collateral security for, the payment and performance in full when due, whether at stated maturity, by acceleration or otherwise (without duplication), (a) the Secured Obligations under the Financing Documents and any Hedging Agreements; (b) the performance by the Member of the agreements set forth herein; (c) all payments made or expenses reasonably incurred by the Collateral Agent or any other Secured Party under and in accordance with this Agreement, the First Lien Financing Agreement or the other Financing Documents, including reasonable attorneys' fees and legal expenses, in the exercise, preservation or enforcement of any of the rights, powers or remedies of the Collateral Agent or any other Secured Party, or in the enforcement of the obligations of the Pledgor, hereunder, to the extent reimbursable under the Financing Documents; and (d) any renewals, continuations or extensions of any of the foregoing under the Financing Documents (all of which are referred to herein as the "Secured Obligations").

Section 2.05. Termination; Release of Pledged Collateral. This Agreement shall create continuing security interests in the Pledged Collateral and shall remain in full force and effect for the benefit of the Secured Parties until all Secured Obligations (other than contingent Obligations) to be paid or performed under the Financing Documents have been paid and performed in full. Upon the happening of all of such events, the security interests granted hereby shall automatically terminate and upon the Collateral Agent's receipt of the Administrative Agent's written signed notice (the "Lien Termination Notice") that the events set forth in the first sentence of this Section 2.05 have occurred, the Collateral Agent shall promptly cause to be assigned, transferred and delivered, against receipt but without any recourse, warranty or representation whatsoever (other than the absence of any continuing Lien arising by, through or under the Collateral Agent) any remaining Pledged Collateral and moneys received in respect of the Pledged Collateral, to or to the order of the Pledgor. Provided the Collateral Agent has received the Lien Termination Notice, the Collateral Agent shall, upon payment of its reasonable

out-of-pocket fees and expenses, if any, by the Borrower to the extent reimbursable and otherwise then due and payable (including reasonable attorneys' fees and expenses to which it is entitled under the Financing Documents), execute and deliver to the Pledgor, at the Borrower's expense, such documentation as the Pledgor shall reasonably request and prepare to evidence such termination or expiration and release the liens created under this Agreement, including termination statement(s) for any financing statement on file with respect to the Pledged Collateral. The security interests created hereby shall be automatically released with respect to any portion of the Pledged Collateral that is sold, transferred or otherwise disposed of in compliance with the terms and conditions of the Collateral Agency Agreement, the First Lien Financing Agreement and the other Security Documents.

ARTICLE III REPRESENTATION AND WARRANTIES

The Pledgor hereby represents and warrants as of the date hereof, as follows:

Section 3.01. Pledged Membership Interests. As of the Closing Date, the Pledged Membership Interests pledged hereunder by the Pledgor constitute 100% percent of the issued and outstanding limited liability company interests in the Company. The Pledged Membership Interests as of the Closing Date are listed on Schedule 1 attached hereto.

Section 3.02. No Outstanding Warrants Options, Etc. There are no outstanding warrants, options or other rights to purchase, or other agreements outstanding with respect to, or property that is now or hereafter convertible into, or that requires the issuance or sale of, any Pledged Membership Interests.

Section 3.03. Perfection. The pledge of the Pledged Collateral pursuant to this Agreement, the delivery of the Pledged Collateral to the Collateral Agent, the retention of the Pledged Collateral by the Collateral Agent, and the completion of the filings in accordance with Section 2.02 shall create a valid and perfected security interest in the Pledged Collateral in favor of the Collateral Agent for the ratable benefit of the Secured Parties prior to all other Liens (except for Permitted Liens) to secure the payment of the Secured Obligations.

Section 3.04. Organization, Etc.

(a) The Pledgor is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Delaware, and it has all requisite organizational power and authority to own its assets and to transact the business in which it is now engaged in.

(b) Schedule 2 attached hereto correctly sets forth the Pledgor's full and correct legal name, type of organization, jurisdiction of organization and organizational number, if any, as of the Closing Date.

(c) The Pledgor has not previously (except as permitted hereunder) (i) changed its location (as defined in Section 9-037 of the UCC), (ii) changed its name, or (iii) become a "new debtor" (as defined in the UCC) with respect to a currently effective security agreement entered into by another Person.

Section 3.05. Legal Owner. The Pledgor is the legal and beneficial owner of the Pledged Collateral free and clear of any Lien except for Permitted Liens.

Section 3.06. Power to Pledge. The Pledgor has the full organizational power and authority to pledge all of the Pledged Collateral pursuant to this Agreement and to execute and deliver this Agreement and perform its obligations hereunder.

Section 3.07. Enforceability. The execution, delivery and performance by the Pledgor of this Agreement have been duly authorized by all necessary organizational action of the Pledgor, and this Agreement is the legal, valid, and binding obligation of the Pledgor, enforceable against the Pledgor in accordance with its terms, except as enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditor's rights and general principles of equity.

Section 3.08. No Governmental Approvals. No authorization, approval, or other action by, and no notice to or filing with, any Governmental Authority or regulatory body (other than that which has been made or obtained) is required for the pledge by the Pledgor of the Pledged Collateral pursuant to this Agreement or for the execution, delivery or performance by the Pledgor of this Agreement and the transactions contemplated hereby, except in any such case where any failure to obtain the same would not reasonably be expected to have a Material Adverse Effect.

Section 3.09. No Conflicts. The execution, delivery, and performance by the Pledgor of this Agreement and the transactions contemplated hereby do not and will not (1) contravene the Pledgor's charter documents; (2) violate or cause the Pledgor to violate any material applicable law which violation could reasonably be expected to have a Material Adverse Effect; (3) cause or result in a breach of or constitute a default under any indenture or loan or credit agreement to which the Pledgor or the Company is a party or by which it or its respective properties may be bound or affected except for any breach or default that could not reasonably be expected to have a Material Adverse Effect; or (4) result in, or require, the creation or imposition of any Lien upon or with respect to any of the properties now owned or hereafter acquired by the Pledgor or the Company (except the Liens created by this Agreement or other Permitted Liens).

Section 3.10. No Proceedings. There is no pending or, to the Actual Knowledge of the Pledgor, threatened in writing action or proceeding at law or in equity against the Pledgor before any court, arbitrator or any other Governmental Authority which would, individually or in the aggregate, materially adversely affect the ability of the Pledgor to perform its obligations under this Agreement.

Section 3.11. LLC Agreement. The LLC Agreement contains the entire agreement between the parties thereto with respect to the subject matter thereof and is in full force and effect in accordance with its terms. There exists no material violation or default under the LLC Agreement by the Pledgor. The Pledgor has not knowingly waived or released any of its material rights under or otherwise consented to a material departure from the terms and provisions of the LLC Agreement.

ARTICLE IV COVENANTS

So long as any Secured Obligations are outstanding (other than contingent Obligations), the Pledgor covenants and agrees as follows, unless otherwise consented to in writing by the Collateral Agent (acting pursuant to the Collateral Agency Agreement):

Section 4.01. Additional Membership Interests. The Pledgor shall (i) cause the Company not to issue any limited liability company interests or other equity interests or other securities in addition to, or in substitution for, the Pledged Membership Interests, except to the Pledgor; (ii) upon its acquisition thereof, pledge hereunder in accordance with Article II any and all Pledged Collateral required to be pledged hereunder; and (iii) promptly deliver to the Collateral Agent all written notices received by it with respect to the Pledged Collateral.

Section 4.02. No Transfer. The Pledgor shall not sell, assign, transfer, convey, or otherwise dispose of, or grant any option or warrant with respect to, any of the Pledged Collateral, except to the extent permitted under the First Lien Financing Agreement and the other Financing Documents.

Section 4.03. No Liens. The Pledgor shall not create, incur, assume, or suffer to exist any Lien on the Pledged Collateral (except for Permitted Liens), except as may be granted pursuant to this Agreement.

Section 4.04. No Change in Name, Etc. Except upon fifteen (15) days' prior written notice to the Collateral Agent and the Administrative Agent, the Pledgor shall not change its name, identity or organizational structure to such an extent that any financing statement filed in connection with this Agreement would become misleading or change its jurisdiction of organization.

Section 4.05. Preservation and Maintenance. The Pledgor shall preserve and maintain its limited liability company existence and good standing in the jurisdiction of its formation, and not merge or consolidate with any Person.

Section 4.06. Governmental Consent. Each consent of any Governmental Authority and each other Person which may be required in connection with the enforcement of this Agreement and any transfer of the Pledged Collateral contemplated hereby is in full force and effect, is final and not subject to appeal. No other such consent is required to be obtained by the Pledgor in connection with the execution and delivery of, and performance by, the Pledgor of its respective obligations, and the exercise of its rights, under the Financing Documents to which it is a party, except in any such case where any failure to obtain the same would not reasonably be expected to have a Material Adverse Effect.

Section 4.07. Maintenance of Perfected Security Interest; Further Assurances. Subject to the terms of the Financing Documents, the Pledgor agrees that at any time and from time to time, at the reasonable expense of the Borrower, the Pledgor will promptly execute, file and deliver all financing statements, continuation statements, termination statements and other instruments and documents, and take all further action as are necessary, or that the Administrative Agent may reasonably request, in order to perfect, protect and maintain the

security interest granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies pursuant to the terms hereof with respect to any Pledged Collateral. The Pledgor shall defend, at the Borrower's reasonable expense, the Collateral Agent's right, title, special property, and security interest in and to the Pledged Collateral against the claims of any Person that has instituted, or made a non-frivolous threat in writing of, any proceeding, judicial or otherwise, claiming an interest therein adverse to the Secured Parties in any material respect unless such Pledged Collateral is subject to any Permitted Liens. The Collateral Agent shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office or otherwise perfecting or maintaining the perfection of any security interest in the Pledged Collateral under this Section 4.07.

Section 4.08. No Amendments. The Pledgor shall not agree to (i) amend, terminate, cancel or otherwise modify the LLC Agreement or (ii) waive any default under or breach of, or release any right, interest or entitlement arising under, any provision of the LLC Agreement, in each case, which would materially adversely affect the perfection of the security interests of the Collateral Agent in the Pledged Collateral or any rights of the Collateral Agent hereunder.

ARTICLE V DISTRIBUTIONS, VOTING RIGHTS, ETC.

Section 5.01. Distributions and Voting Rights Prior to Event of Default. So long as no Event of Default shall have occurred and be continuing and the Borrower has not received prior written notice from the Collateral Agent stating its intention to exercise its rights and remedies under Section 5.02, the Pledgor shall be entitled to (i) receive and retain, and to utilize free and clear of the Lien of this Agreement, any and all cash and other distributions paid in respect of the Pledged Membership Interests, and (ii) exercise any and all voting and other consensual rights pertaining to the Pledged Membership Interests or any part thereof for any purpose not inconsistent with the terms of this Agreement or any other Financing Document; provided, however, that the Pledgor shall not exercise or refrain from exercising any such right if such action would result in any violation of any provision of any of the Financing Documents.

Section 5.02. Distributions and Voting Rights After Event of Default.

(a) Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent shall notify the Collateral Agent in writing that an Event of Default has occurred and is continuing (a "Default Notice") and promptly thereafter the Collateral Agent shall, if so instructed by the Administrative Agent in the Default Notice, provide the Pledgor with prior written notice prohibiting the Pledgor from exercising the rights and powers of a holder of the Pledged Membership Interests, at which time (and until such time that such Event of Default has been cured or waived) all such rights and powers of the Pledgor shall cease immediately, and the Collateral Agent shall thereupon have the right to exercise any all rights and powers, including voting rights, and enforce any and all remedies available to the Secured Parties related to the Pledged Collateral, including foreclosure thereof, in accordance with instructions from the Administrative Agent delivered pursuant to Section 8.2(a)(ii) of the First Lien Financing Agreement, all without liability except to account for property actually received

by it or any loss resulting from its gross negligence, bad faith or willful misconduct; provided, however, that the Collateral Agent shall have no duty to the Pledgor to exercise any such right or power and shall not be responsible for any failure to do so or delay in so doing.

(b) In order to permit the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all distributions which it may be entitled to receive hereunder, (A) the Pledgor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all such proxies and other instruments as the Collateral Agent may from time to time reasonably request, and (B) without limiting the effect of clause (A) above, the Pledgor grants to the Collateral Agent an irrevocable proxy to vote the Pledged Membership Interests and to exercise all other rights, powers, privileges and remedies to which a holder of the Pledged Membership Interests would be entitled (including giving or withholding written consents of members or other holders of equity interests, calling special meetings of members or other holders of equity interests and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Membership Interests on the record books of the Company) by any other Person (including the Company or any officer or agent thereof), upon the occurrence and during the continuation of an Event of Default and upon receipt by the Borrower of prior written notice from the Collateral Agent and which proxy shall terminate only at such time as the earlier of such Event of Default is cured or waived or repayment in full of the Secured Obligations other than the contingent Obligations.

ARTICLE VI REMEDIES

Section 6.01. Remedies Upon Event of Default. Subject to Article VIII of the First Lien Financing Agreement and the terms of the Collateral Agency Agreement:

(a) Upon the occurrence and during the continuation of an Event of Default and receipt by the Collateral Agent of a Default Notice, the Collateral Agent may, upon written notice, exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing, or relating to the Secured Obligations, all rights and remedies with respect to the Pledged Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where such rights, remedies, powers and privileges are asserted) and such additional rights, remedies, powers and privileges to which a secured party is entitled under the laws in effect in any jurisdiction where any rights, remedies, powers and privileges in respect of this Agreement or the Pledged Collateral may be asserted, including the right, to the maximum extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Collateral as if the Collateral Agent were the sole and absolute owner of the Pledged Collateral (and the Pledgor agrees to take all such action as may be appropriate to give effect to such right). Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement, or notice of any kind (except any notice required by law referred to below), to or upon the Pledgor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in accordance with the terms of the Default Notice in such circumstances, upon ten (10) Business Days' prior written notice to

the Pledgor of the time and place, with respect to all or any part of the Pledged Collateral which shall then be or shall thereafter come into the possession, custody or control of the Collateral Agent or any of their respective agents, sell, lease, assign, give option or options to purchase, or otherwise dispose of all or any part of such Pledged Collateral (or contract to do any of the foregoing), at such place or places as the Collateral Agent deems best, for cash, for credit or for future delivery (without thereby assuming any credit risk) and at public or private sale, without demand of performance or notice of intention to effect any such disposition or of time or place of any such sale (except such notice as is required above or by applicable statute and cannot be waived), and the Collateral Agent or any other Person may be the purchaser, lessee or recipient of any or all of the Pledged Collateral so disposed of at any public sale (or, to the extent permitted by law, at any private sale) and thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise) of the Pledgor, any such demand, notice and right or equity being hereby expressly waived and released. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned.

(b) The proceeds of, and other realization upon, the Pledged Collateral by virtue of the exercise of remedies under this Section 6.01 shall be applied in accordance with Section 6.03.

Section 6.02. Private Sale. The Collateral Agent shall incur no liability as a result of the sale, lease or other disposition of all or any part of the Pledged Collateral at any private sale pursuant to Section 6.01 conducted in a commercially reasonable manner. The Pledgor hereby waives (to the extent permitted by applicable law) any claims against the Collateral Agent arising by reason of the fact that the price at which the Pledged Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Collateral Agent accepts the first offer received and does not offer the Pledged Collateral to more than one offeree.

Section 6.03. Application of Proceeds. Except as otherwise expressly provided in this Agreement, the Collateral Agent shall apply all Proceeds received by the Collateral Agent in respect of any sale of, collection from, or other realization upon, all or any part of the Pledged Collateral, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the safekeeping or care of any Pledged Collateral or in any way relating to the Pledged Collateral or the rights of the Collateral Agent and any other Secured Party hereunder (including reasonable fees and disbursements, in each case to the extent permissible under the Financing Documents), as provided in Section 4.01 of the Collateral Agency Agreement.

ARTICLE VII ATTORNEY-IN-FACT

Section 7.01. Appointment. The Pledgor hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power of substitution, as

its true and lawful attorney-in-fact for the purpose of carrying out the provisions of this Agreement and taking any action and executing any documents or instruments that the Collateral Agent may deem necessary or is reasonably required by the Administrative Agent to accomplish the purposes of this Agreement, to perfect, preserve the validity (so long as an Event of Default is continuing), perfection and priority of, and enforce any lien granted by this Agreement and, after the occurrence and during the continuation of an Event of Default and upon receipt by the Borrower of prior written notice from the Collateral Agent, to exercise its rights, remedies, powers and privileges under this Agreement. This appointment as attorney-in-fact is irrevocable and coupled with an interest until this Agreement is terminated and the security interests created thereby are released. Without limiting the generality of the foregoing, the Collateral Agent shall be entitled under this Agreement to do any of the following if an Event of Default has occurred and is continuing:

(a) ask, demand, collect, sue for, recover, receive and give receipt and discharge for amounts due and to become due under and in respect of all or any part of the Pledged Collateral;

(b) file any claims or take any action or proceeding in any court of law or equity that the Collateral Agent may deem necessary or is reasonably required by the Administrative Agent for the collection of all or any part of the Pledged Collateral;

(c) execute, in connection with any sale or disposition of the Collateral pursuant to Section 6.01 or 6.02 hereof, any endorsements, assignments, bills of sale or other instruments of conveyance or transfer with respect to all or any part of the Pledged Collateral;

(d) pay or discharge Taxes and Liens levied or placed on the Pledged Collateral upon receipt by the Borrower of five (5) Business Days' prior written notice from the Collateral Agent;

(e) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Pledged Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes; and

(f) do, at the Collateral Agent's option and the Borrower's reasonable expense, at any time, from time to time, all acts and things that the Collateral Agent deems necessary to protect, preserve, or realize upon the Pledged Collateral and the Collateral Agent's and the other Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as the Pledgor might do.

Anything in this Section 7.01 to the contrary notwithstanding, the Collateral Agent agrees that it shall not exercise any right under the power of attorney provided for in this Section 7.01 unless an Event of Default shall have occurred and be continuing and upon receipt by the Borrower of prior written notice from the Collateral Agent.

Section 7.02. Performance in Lieu of Pledgor. Upon the occurrence and during the continuation of an Event of Default and upon receipt by the Borrower of prior written notice from the Collateral Agent, the Collateral Agent, without releasing the Pledgor from any obligation, covenant or condition hereof, itself may (but shall not be obligated to) make any

payment or perform, or cause the performance of, any such obligation, covenant, condition or agreement or any other action in such manner and to such extent as the Collateral Agent may deem necessary to protect, perfect or continue the perfection of the security interest granted under this Agreement. Any reasonable costs or expenses incurred by the Collateral Agent in connection with the foregoing shall be payable by the Borrower to the Collateral Agent promptly following written demand therefor.

Section 7.03. Duty of the Collateral Agent. The Collateral Agent shall be accountable only for amounts that it receives as a result of the exercise of the powers granted to it by this Agreement. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Pledged Collateral in its possession shall be to deal with it in the same manner as it deals with similar property for its own account and as otherwise required by Article 9 of the UCC. None of the Collateral Agent, the other Secured Parties, or any of their respective officers, directors, employees, or agents shall be liable for failure to demand, collect, or realize upon any Pledged Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Pledged Collateral upon the request of the Pledgor or any other Person or to take any other action whatsoever with regard to any Pledged Collateral. The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Pledged Collateral, and shall not impose any duty upon the Collateral Agent or any other Secured Party to exercise any such powers. The Collateral Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their respective officers, directors, employees, or agents shall be responsible to the Pledgor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

Section 7.04. Authority of the Collateral Agent. The Pledgor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment, or other right or remedy provided for hereunder or resulting or arising out of this Agreement shall be governed by the provisions contained in this Agreement and other Financing Documents.

Section 7.05. Role of the Collateral Agent. The rights, duties, liabilities and immunities of the Collateral Agent and its appointment and replacement hereunder shall be governed by the provisions contained in this Agreement and the Collateral Agency Agreement.

Section 7.06. Absence of Fiduciary Relation. The Collateral Agent undertakes to perform or to observe only such of its agreements and obligations as are specifically set forth in this Agreement or any other Financing Document to which it is a party, and no implied agreements, covenants or obligations with respect to the Pledgor, any Affiliate of the Pledgor or any other party to any Financing Document to which the Pledgor is a party shall be read into this Agreement against the Collateral Agent or any of the other Secured Parties; neither the Collateral Agent nor any of the other Secured Parties in its and their capacity as such is a fiduciary of and shall not owe or be deemed to owe any fiduciary duty to the Pledgor, any affiliate of any of the Pledgor or any other party to any other Financing Document to which the Pledgor is a party, except as otherwise specifically required by applicable law.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.01. Amendments. Any term, covenant, agreement or condition of this Agreement may be amended or waived only by the instrument in writing signed by the Pledgor and the Collateral Agent (acting pursuant to the Collateral Agency Agreement); provided, however, that only the Collateral Agent, as provided herein, may waive any of its rights under any provision of this Agreement; no consent to any departure by the Pledgor therefrom shall be effective unless in writing signed by the Collateral Agent (acting pursuant to the Collateral Agency Agreement), and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 8.02. Waivers.

(a) The waiver (whether expressed or implied) by the Collateral Agent of any breach of the terms or conditions of this Agreement, and the consent (whether expressed or implied) of any Secured Party shall not prejudice any remedy of the Collateral Agent or any other Secured Party in respect of any continuing or other breach of the terms and conditions hereof, and shall not be construed as a bar to any right or remedy which the Collateral Agent or any other Secured Party would otherwise have on any future occasion under this Agreement.

(b) No failure to exercise nor any delay in exercising, on the part of the Collateral Agent or any other Secured Party of any right, power or privilege under this Agreement shall operate as a waiver thereof; further, no single or partial exercise of any right, power or privilege under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. All remedies hereunder and under the other Security Documents are cumulative and are not exclusive of any other remedies that may be available to a party, whether at law, in equity, or otherwise.

Section 8.03. Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or by electronic means (i.e., “pdf” or “tif”)), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, when delivered by electronic transmission, when confirmed by sender’s receipt of acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement) or, in the case of notice given by mail, private courier, overnight delivery service or facsimile, when received, addressed as follows, or to such other address as may be hereafter notified in accordance with this Section 8.03 by the respective parties hereto:

The Pledgor:

[_____]
[_____]
[_____]
Attention: [_____]

The Collateral Agent:

[_____]
[_____]
[_____]
Attention: [_____]
Telephone: [_____]
Facsimile: [_____]

Notwithstanding anything to the contrary contained herein, each such notice, instruction, direction, request or other communication so given to the Collateral Agent shall be effective only upon actual receipt.

Section 8.04. Successors and Assigns.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(b) Nothing contained in this Agreement or any other Security Document is intended to limit the right of any Financing Party to assign, transfer, or grant participations in its rights in its respective Obligations and Financing Documents in accordance with Section 11.4 of the First Lien Financing Agreement.

Section 8.05. Counterparts. This Agreement may be executed in any number of counterparts by facsimile or other electronic means, including by “.pdf” attached to an email, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

Section 8.06. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed in the State of New York. Each of the parties hereto hereby irrevocably (a) consents and submits to the non-exclusive jurisdiction of any New York state court sitting in New York County, New York or any federal court of the United States sitting in the Southern District of New York, as any party may elect in any suit, action or proceeding arising out of or relating to this Agreement and (b) WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH ANY OF THE PARTIES HERETO ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

Section 8.07. Captions. The headings of the several articles and sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 8.08. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

Section 8.09. Entire Agreement. This Agreement, together with any other agreement executed in connection with this Agreement, is intended by the parties as a final expression of their agreement as to the matters covered by this Agreement and is intended as a complete and exclusive statement of the terms and conditions of such agreement.

Section 8.10. Expenses. The Pledgor agrees to pay or to reimburse the Collateral Agent for all reasonable out-of-pocket costs and expenses (including reasonable attorney's fees and expenses of one counsel) that may be incurred by the Collateral Agent in accordance with this Agreement in any effort to enforce any of the obligations of the Pledgor in respect of the Pledged Collateral or in connection with (a) the preservation of the liens on, or the rights of the Secured Parties to the Pledged Collateral pursuant to this Agreement or (b) any actual or attempted sale, lease, disposition, exchange, collection, compromise, settlement or other realization in respect of, or care of, the Pledged Collateral, including all such reasonable costs and expenses (and reasonable attorney's fees and expenses) incurred in any bankruptcy, reorganization, workout or other similar proceeding, to the extent made in accordance with the terms hereof.

Section 8.11. No Other Obligations. The Pledgor shall have no obligations or liabilities under the First Lien Financing Agreement or any other Financing Document other than this Agreement, and shall not be obligated or liable for the Obligations except to the extent of the Pledged Collateral hereunder.

(Signatures Follow on Next Page)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

ITR CONCESSION COMPANY HOLDINGS LLC,
as Pledgor

By: _____

Name:

Title:

By: _____

Name:

Title:

[_____] ,
as Collateral Agent

By: _____
Name:
Title:

Schedule 1

Pledged Membership Interests

<u>Pledgor</u>	<u>Membership Interests</u>
ITR Concession Company Holdings LLC	100% of the membership interests in ITR Concession Company LLC, a Delaware limited liability company, represented by a Certificate of Interest No. [1] ¹ .

¹ ITR to confirm.

Schedule 2

Organization of Pledgor

Pledgor's Legal Name:

ITR Concession Company Holdings LLC

Type, Jurisdiction of Organization and Organizational Number, if any:

Limited liability company organized under the laws of the State of Delaware

Organizational Number: 4092775

Exhibit E-4

Form of New Second Lien Security Agreement

SECURITY AGREEMENT

Dated as of [_____],

between

ITR CONCESSION COMPANY LLC,
as Borrower

and

[_____],
as Collateral Agent, on behalf of the
Secured Parties

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS	1
Section 1.01. Certain Defined Terms.....	1
ARTICLE II THE COLLATERAL	5
Section 2.01. Collateral.....	5
Section 2.02. Grant	7
Section 2.03. Intellectual Property.....	7
Section 2.04. Perfection	7
Section 2.05. Instruments.....	8
Section 2.06. Use of Collateral	8
Section 2.07. Rights and Obligations.....	8
Section 2.08. Priority.	9
Section 2.09. Termination.....	9
ARTICLE III REPRESENTATIONS AND WARRANTIES.....	10
Section 3.01. Name; Jurisdiction of Organization; Chief Executive Office.....	10
Section 3.02. Title.....	10
Section 3.03. Intellectual Property.....	10
Section 3.04. Deposit Accounts; Securities Accounts	11
Section 3.05. Commercial Tort Claims.....	11
Section 3.06. Inventory and Equipment.....	11
ARTICLE IV COVENANTS	11
Section 4.01. No Transfer Restriction.....	11
Section 4.02. Preservation and Protection of Security Interests	11
Section 4.03. Maintenance of Perfected Security Interest; Further Documentation.....	13
Section 4.04. Changes in Jurisdiction of Organization, Name, Etc	13
Section 4.05. Further Assurances.....	13
ARTICLE V REMEDIES.....	14
Section 5.01. Events of Default, Etc	14
Section 5.02. Private Sale	15
Section 5.03. Application of Proceeds	15
Section 5.04. Deficiency	16
Section 5.05. Assignment of Governmental Approvals.....	16
ARTICLE VI THE COLLATERAL AGENT.....	16
Section 6.01. Appointment as Attorney-in-Fact	16
Section 6.02. Performance in Lieu of Borrower	17

Section 6.03. Duty of the Collateral Agent.....	18
Section 6.04. Authority of the Collateral Agent	18
Section 6.05. Agreements as to Concession Agreement.....	18
Section 6.06. Role of the Collateral Agent	19
ARTICLE VII MISCELLANEOUS PROVISIONS	19
Section 7.01. Amendments	19
Section 7.02. Waivers	19
Section 7.03. Notices	19
Section 7.04. Successors and Assigns.....	20
Section 7.05. Counterparts	20
Section 7.06. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial	21
Section 7.07. Captions	21
Section 7.08. Severability	21
Section 7.09. Entire Agreement	21
Section 7.10. Expenses	21
Section 7.11. Limitation of Recourse	21

Schedules

Schedule 1	Organization and Chief Executive Office of Borrower
Schedule 2	Assigned Agreements
Schedule 3	[Intentionally Omitted]
Schedule 4	Material Intellectual Property
Schedule 5	Deposit Accounts and Securities Accounts
Schedule 6	Commercial Tort Claims
Schedule 7	Location of Inventory and Equipment

SECURITY AGREEMENT

This SECURITY AGREEMENT (this “Agreement”), dated as of [____], is made by and between ITR CONCESSION COMPANY LLC, a Delaware limited liability company (the “Borrower”), and [____], in its capacity as collateral agent for the benefit of and as representative of the Secured Parties (in such capacity, the “Collateral Agent”).

RECITALS

A. The Lenders (as defined below) have agreed to enter into the Second Lien Financing Agreement, dated as of the date hereof (the “Second Lien Financing Agreement”), by and among the Borrower, certain lenders party thereto (the “Lenders”), and Wilmington Trust, National Association, as the Administrative Agent, on the terms and subject to the conditions set forth therein.

B. Simultaneously with the execution of this Agreement, the Borrower, the Administrative Agent for and on behalf of the Financing Parties, the first lien administrative agent thereunder, the Collateral Agent and the first lien collateral agent thereunder have entered into that certain Collateral Agency and Intercreditor Agreement, dated as of the date hereof (the “Collateral Agency Agreement”), pursuant to which [____] has been appointed Collateral Agent with respect to this Agreement and the other Security Documents.

C. It is a condition precedent to the Closing Date under the Second Lien Financing Agreement that the Borrower shall have executed and delivered this Agreement to the Collateral Agent.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Borrower hereby agrees with the Collateral Agent as follows:

ARTICLE I DEFINITIONS

Section 1.01. Certain Defined Terms.

(a) All capitalized terms used herein but not otherwise defined herein shall have the respective meanings given to such terms in Appendix A to the Second Lien Financing Agreement. The Rules of Interpretation set forth in Appendix A to the Second Lien Financing Agreement shall govern this Agreement.

(b) In addition to the terms defined in the Second Lien Financing Agreement, the preamble and the recitals, the following terms used herein shall have the respective meanings set forth below:

“Accounts” has the meaning assigned to the term “accounts” in the Uniform Commercial Code.

“Assigned Agreements” has the meaning assigned to such term in Section 2.01(p), hereof.

“Bank” has the meaning assigned to the term “bank” in the Uniform Commercial Code.

“Chattel Paper” has the meaning assigned to the term “chattel paper” in the Uniform Commercial Code.

“Certificated Security” has the meaning assigned to the term “certificated security” in the Uniform Commercial Code.

“Collateral” has the meaning assigned to that term in Section 2.01 hereof.

“Commercial Tort Claim” has the meaning assigned to the term “commercial tort claim” in the Uniform Commercial Code.

“Control” has, with respect to Deposit Accounts, Investment Property, Electronic Chattel Paper and Letter-of-Credit Rights, the respective meaning assigned to the term “control” in the Uniform Commercial Code.

“Copyright Collateral” shall mean all Copyrights, whether now owned or hereafter acquired by the Borrower.

“Copyrights” shall mean, collectively, (a) all copyrights, copyright registrations and applications for copyright registrations, (b) all renewals and extensions of all copyrights, copyright registrations and applications for copyright registration and (c) all rights, now existing or hereafter coming into existence, (i) to all income royalties, damages and other payments (including in respect of all past, present or future infringements) now or hereafter due or payable under or with respect to any of the foregoing, (ii) to sue for all past, present and future infringements with respect to any of the foregoing and (iii) otherwise accruing under or pertaining to any of the foregoing throughout the world.

“Deposit Accounts” has the meaning assigned to the term “deposit accounts” in the Uniform Commercial Code.

“Documents” has the meaning assigned to the term “documents” in the Uniform Commercial Code.

“Electronic Chattel Paper” has the meaning assigned to the term “electronic chattel paper” in the Uniform Commercial Code.

“Equipment” has the meaning assigned to the term “equipment” in the Uniform Commercial Code.

“Excluded Asset” shall mean (a) any property of the Borrower (i) to the extent that the terms of any contract, license, agreement, instrument or other document constituting, evidencing, governing or giving rise to such property validly prohibits the creation by the Borrower of a security interest therein, (ii) to the extent that any Governmental Rule prohibits the creation by

the Borrower of a security interest therein, or (iii) that would be rendered invalid, abandoned, void or unenforceable by reason of its being included as part of the Collateral (in each case, other than to the extent that any such term or restriction would be rendered ineffective pursuant to applicable law, including Section 9-406, 9-407, 9-408 or 9-409 of the UCC), (b) any and all amounts paid or distributed by the Borrower in accordance with Section 7.6 of the Second Lien Financing Agreement and Sections 4.01 and 4.06(b) of the Depositary Agreement shall be free of the Lien of this Agreement, (c) any and all assets or property sold, conveyed, transferred, assigned or otherwise disposed of by the Borrower to the extent permitted under Section 7.1(b) of the Second Lien Financing Agreement or any other provision of the Financing Documents, (d) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant, attachment or enforcement of a security interest therein would, under applicable federal law, impair the registrability of such applications or the validity or enforceability of registrations issuing from such applications, (e) any Equipment that is subject to a purchase money Liens securing Permitted Debt or Liens under a Capital Lease permitted under the Second Lien Financing Agreement to the extent the documents relating to such purchase money lien or Capital Lease would not permit such Equipment to be subject to the Security Interests created hereby; (f) Motor Vehicles and other assets subject to certificates of title (other than to the extent a Lien thereon can be perfected by the filing of a financing statement under the UCC); and (g) any Deposit Account holding accounts that are specifically and exclusively payroll accounts and escrow, trust or employee benefit accounts (including but not limited to 401(k) trust accounts and pension accounts).

“Fixtures” has the meaning assigned to the term “fixtures” in the Uniform Commercial Code.

“General Intangibles” has the meaning assigned to the term “general intangibles” in the Uniform Commercial Code.

“Goods” has the meaning assigned to the term “goods” in the Uniform Commercial Code.

“Instruments” has the meaning assigned to the term “instruments” in the Uniform Commercial Code.

“Intellectual Property” shall mean all Copyright Collateral, all Patent Collateral and all Trademark Collateral, together with (a) all inventions, processes, production methods, proprietary information, know-how and trade secrets; (b) all licenses or user or other agreements granted to the Borrower with respect to any of the foregoing, in each case whether now or hereafter owned or used (to the extent assignable); (c) all information, customer lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, recorded knowledge, surveys, engineering reports, test reports, manuals, materials standards, processing standards, performance standards, catalogs, computer and automatic machinery software and programs; (d) all field repair data, sales data and other information relating to sales or service of products now or hereafter manufactured; (e) all accounting information and all media in which or on which any information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data; (f) all Governmental Approvals now held or hereafter obtained by the Borrower in

respect of any of the foregoing (to the extent assignable); and (g) all causes of action, claims and warranties now owned or hereafter acquired by the Borrower in respect of any of the foregoing. It is understood that Intellectual Property shall include all of the foregoing owned or acquired by the Borrower.

“Inventory” has the meaning assigned to the term “inventory” in the Uniform Commercial Code.

“Investment Property” has the meaning assigned to the term “investment property” in the Uniform Commercial Code.

“Letter-of-Credit Rights” has the meaning assigned to the term “letter-of-credit rights” in the Uniform Commercial Code.

“Material Intellectual Property” shall mean Intellectual Property owned by or licensed by the Borrower and material to the Borrower’s business.

“Motor Vehicles” shall mean motor vehicles, tractors, trailers and other like property, whether or not the title to any such property is governed by a certificate of title or ownership.

“Patent Collateral” shall mean all Patents, whether now owned or hereafter acquired by the Borrower.

“Patents” shall mean, collectively, (a) all patents and patent applications, (b) all reissues, divisions, continuations, renewals, extensions and continuations-in-part of all patents or patent applications and (c) all rights, now existing or hereafter coming into existence, (i) to all income, royalties, damages, and other payments (including in respect of all past, present and future infringements) now or hereafter due or payable under or with respect to any of the foregoing, (ii) to sue for all past, present and future infringements with respect to any of the foregoing and (iii) otherwise accruing under or pertaining to any of the foregoing throughout the world, including all inventions and improvements described or discussed in all such patents and patent applications.

“Payment Intangible” has the meaning assigned to the term “payment intangible” in the Uniform Commercial Code.

“Proceeds” has the meaning assigned to the term “proceeds” in the Uniform Commercial Code.

“Securities Accounts” has the meaning assigned to the term “securities accounts” in the Uniform Commercial Code.

“Securities Intermediary” has the meaning assigned to the term “securities intermediary” in the Uniform Commercial Code.

“Security” has the meaning assigned to the term “security” in the Uniform Commercial Code.

“Security Entitlement” has the meaning assigned to the term “security entitlement” in the Uniform Commercial Code.

“Software” has the meaning assigned to the term “software” in the Uniform Commercial Code.

“Trademark Collateral” shall mean all Trademarks, whether now owned or hereafter acquired by the Borrower. Notwithstanding the foregoing, Trademark Collateral shall not include any Trademark which would be rendered invalid, abandoned, void or unenforceable by reason of its being included as part of the Trademark Collateral.

“Trademarks” shall mean, collectively, (a) all trade names, trademarks and service marks, logos, trademark and service mark registrations and applications for trademark and service mark registrations, (b) all renewals and extensions of any of the foregoing and (c) all rights, now existing or hereafter coming into existence, (i) to all income, royalties, damages and other payments (including in respect of all past, present and future infringements) now or hereafter due or payable under or with respect to any of the foregoing, (ii) to sue for all past, present and future infringements with respect to any of the foregoing and (iii) otherwise accruing under or pertaining to any of the foregoing throughout the world, together, in each case, with the product lines and goodwill of the business connected with the use of, or otherwise symbolized by, each such trade name, trademark and service mark.

“Uniform Commercial Code” or “UCC” shall mean the Uniform Commercial Code as in effect in any applicable jurisdiction from time to time.

ARTICLE II THE COLLATERAL

Section 2.01. Collateral. For the purposes of this Agreement, all rights, title and interest of Borrower in, to and under all assets of Borrower, wherever located, whether now owned or at any time hereafter acquired by the Borrower or in which the Borrower now has or at any time in the future may acquire any right, title or interest, including all rights, title and interest of Borrower in, to and under the following, is collectively referred to as the “Collateral”:

- (a) all Accounts (including all Project Accounts);
- (b) all Deposit Accounts;
- (c) all Instruments;
- (d) all Documents;
- (e) all Chattel Paper, including all Electronic Chattel Paper;
- (f) all Inventory;
- (g) all Equipment;

- (h) all Fixtures;
- (i) all Goods not covered the preceding clauses of this Section 2.01;
- (j) all Letter-of Credit Rights;
- (k) all Intellectual Property;
- (l) all Investment Property (including all Securities Accounts);
- (m) all Commercial Tort Claims described on Schedule 6;

(n) all Payment Intangibles, Software and General Intangibles (including the Concession Agreement, the Omnibus Services Agreement and the other Material ITR Contracts, if any, and the other agreements and documents specified on the attached Schedule 2) and all other contracts, agreements, leases and other similar instruments related to the Indiana Toll Road or the business and operations of the Borrower and all amounts payable to the Borrower under any material agreement (such material agreements, including the Concession Agreement, the Omnibus Services Agreement, the other Material ITR Contracts, if any, and all other contracts, agreements, leases and other similar instruments, collectively, the “Assigned Agreements”) not covered by the preceding clauses (a) through (m) of this Section 2.01;

(o) to the extent assignable, all Governmental Approvals required or obtained in connection with the use, rehabilitation, operation or maintenance of the Indiana Toll Road and/or in connection with any transactions contemplated by the Financing Documents;

(p) to the extent assignable, any present or future right, title or interest of the Borrower under any insurance, indemnity, warranty or guaranty in respect of the Indiana Toll Road or the business and operations of the Borrower and any rents, revenues, incomes, profits, proceeds of insurance or other rights to compensation in respect of the Indiana Toll Road;

(q) all Proceeds and products in whatever form of all or any part of the other Collateral, including all rents, profits, income and benefits and all proceeds of insurance and all condemnation awards and all other compensation for any event of loss with respect to all or any part of the other Collateral (together with all rights to recover and proceed with respect to the same), and all accessions to, substitutions for and replacements of all or any part of the other Collateral; and

(r) all other personal property and fixtures of the Borrower, whether now owned or hereafter existing or hereafter acquired or arising, or in which the Borrower may have an interest, and wheresoever located, whether or not of a type which may be subject to a security interest under the UCC, and any replacements, renewals, or substitutions for any of the foregoing or additional tangible or intangible personal property hereafter acquired by the Borrower.

Notwithstanding anything to the contrary in the foregoing, to the extent that any property of the Borrower is, at any time, an Excluded Asset, and only at such time, this Agreement shall not constitute a grant of a Lien on, such Excluded Assets and such Excluded Assets shall not

constitute Collateral for any purpose hereunder and shall be excluded from all defined terms used in "Collateral".

Section 2.02. Grant.

(a) Grant to Collateral Agent. The Borrower, as collateral security for the prompt payment in full when due (whether at stated maturity, upon acceleration, on any optional or mandatory prepayment date or otherwise) and performance of any and all of the Secured Obligations (as defined below), hereby collaterally assigns, mortgages, pledges and grants to the Collateral Agent, for the benefit of the Secured Parties, a continuing second priority security interest (subject to first priority Liens granted under the First Lien Financing Agreement and Permitted Liens) in, all of the Borrower's right, title and interest in, to and under the Collateral.

(b) Obligations Secured. The security interests of the Collateral Agent on behalf of the Secured Parties under this Agreement secure (i) the Secured Obligations under the Financing Documents and Hedging Agreements (if any); (ii) all payments made or expenses reasonably incurred by the Collateral Agent or any other Secured Party under this Agreement, the Second Lien Financing Agreement or the other Financing Documents and the Hedging Agreements, including reasonable attorneys' fees and legal expenses, in the exercise, preservation or enforcement of any of the rights, powers or remedies of the Collateral Agent or any other Secured Party, or in the enforcement of the obligations of the Borrower, hereunder, to the extent reimbursable under the Financing Documents, in each case, in accordance with the terms of the Financing Documents; and (iii) any renewals, continuations or extensions of any of the foregoing under the Financing Documents (all of which are referred to herein as the "Secured Obligations").

Section 2.03. Intellectual Property. For the purpose of enabling the Collateral Agent to exercise its rights, remedies, powers and privileges under Section 6.01 hereof at such time or times as the Collateral Agent is lawfully entitled to exercise those rights, remedies, powers and privileges, and for no other purpose, the Borrower hereby grants to the Collateral Agent, to the extent assignable, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to the Borrower) to use, assign, license or sublicense any of the Intellectual Property of the Borrower, together with reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout of those items.

Section 2.04. Perfection.

(a) Subject to the terms of the Financing Documents, the Borrower authorizes the Administrative Agent to prepare for execution by the Collateral Agent and/or cause the filing of such financing statements, continuation statements and other documents in such offices as are or shall be necessary or as the Administrative Agent reasonably may determine to be appropriate to create, perfect and establish the priority of the Liens granted by this Agreement in any and all of the Collateral, to preserve the validity, perfection or priority of the Liens granted by this Agreement in any and all of the Collateral, or to enable the Collateral Agent to exercise its remedies, rights, powers and privileges under this Agreement. Concurrently with the execution and delivery of this Agreement, the Borrower shall (i) deliver to the Collateral Agent any and all

Instruments, endorsed or accompanied by such instruments of assignment and transfer in such form and substance as the Administrative Agent may reasonably request, (ii) cooperate with the Administrative Agent in obtaining, and take such other actions as are necessary or that the Administrative Agent may reasonably request in order for the Collateral Agent to obtain Control with respect to all Deposit Accounts, Investment Property, Electronic Chattel Paper (other than Electronic Chattel Paper representing amounts in the aggregate for the Borrower of less than \$2,500,000), and Letter-of-Credit Rights (other than Letter-of-Credit Rights representing amounts in the aggregate for the Borrower of less than \$2,500,000) included in the Collateral, including (to the extent requested by the Collateral Agent) (A) in the case of any Deposit Account for which the Collateral Agent is not the Bank at which such Deposit Account is maintained, causing the relevant Bank to enter into a Control Agreement or such other similar agreement that the Administrative Agent may reasonably accept and (B) in the case of any Security Entitlement, causing the relevant Securities Intermediary to enter into a Control Agreement or such other similar agreement that the Administrative Agent may reasonably accept and (iv) take all such other actions, and authenticate or sign and file or record such other records or instruments, as are necessary or as the Administrative Agent may reasonably request to perfect and establish the priority of the Liens granted by this Agreement in any and all of the Collateral or to enable the Collateral Agent to exercise its remedies, rights, powers and privileges under this Agreement. Notwithstanding the foregoing, nothing contained herein shall require Borrower to take any action to challenge the validity or priority of any Permitted Lien or to grant a security interest in any Excluded Asset.

(b) The Borrower acknowledges that it is not authorized to file any amendment or termination statement with respect to any financing statement relating to any security interest granted hereunder without the prior written consent of the Collateral Agent and agrees that it will not do so without the prior written consent of the Administrative Agent, subject to the Borrower's rights under Section 9-509(d)(2) of the UCC; provided that, the Borrower shall be so entitled to file such amendments or termination statements following the termination hereof.

Section 2.05. Instruments. So long as no Event of Default has occurred and is continuing and the Borrower has not received prior written notice from the Collateral Agent including details of the Event of Default, the Borrower may retain for collection in the ordinary course of business any Instruments obtained by it in the ordinary course of business, and the Collateral Agent shall, promptly upon the request, and at the expense of the Borrower, make appropriate arrangements for making any Instruments pledged by the Borrower available to the Borrower for purposes of presentation, collection or renewal. Any such arrangement shall be effected, to the extent deemed appropriate by the Collateral Agent, against a trust receipt or like document.

Section 2.06. Use of Collateral. So long as no Event of Default is occurred and is continuing, the Borrower shall be entitled to use and possess the Collateral subject to the terms of the Second Lien Financing Agreement and the rights, remedies, powers and privileges of the Collateral Agent under Articles V and VI hereof.

Section 2.07. Rights and Obligations.

(a) No reference in this Agreement to proceeds or to the sale or other disposition of the Collateral shall authorize the Borrower to sell or otherwise dispose of any Collateral except to the extent otherwise expressly permitted by the terms of the Second Lien Financing Agreement and the other Financing Documents. The Collateral Agent shall not be required to take steps necessary to preserve any rights against prior parties to any part of the Collateral.

(b) Notwithstanding anything to the contrary herein, the Borrower shall remain liable to perform its duties and obligations under each of the Assigned Agreements and, unless expressly assumed by the Collateral Agent, its permitted assigns or designee, any other agreements included in the Collateral in accordance with their respective terms to the same extent as if this Agreement had not been executed and delivered. The exercise by the Collateral Agent of any right, remedy, power or privilege in respect of this Agreement shall not release the Borrower from any of its duties and obligations under such Assigned Agreements, unless expressly assumed by the Collateral Agent, its permitted assigns or designee, and any other agreements unless expressly assumed by the Collateral Agent in writing. The Collateral Agent shall not have any duty, obligation or liability under such Assigned Agreement, unless expressly assumed by the Collateral Agent, its permitted assigns or designee, or other agreement or in respect of any Governmental Approval included in the Collateral by reason of this Agreement or any other Financing Document, nor shall the Collateral Agent be obligated to perform any of the duties or obligations of the Borrower under any such Assigned Agreement or other agreement or any such Governmental Approval or to take any action to collect or enforce any claim (for payment) under any such Assigned Agreement or agreement or Governmental Approval.

(c) No Lien granted by this Agreement in the Borrower's right, title and interest in and to any Assigned Agreement, other agreement, or Governmental Approval shall be deemed to be a consent by the Collateral Agent to any such Assigned Agreement, other agreement or Governmental Approval.

Section 2.08. Priority. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Collateral Agent hereunder are subject to the provisions of the Collateral Agency Agreement. In the event of any conflict between the terms of the Collateral Agency Agreement and this Agreement, the terms of the Collateral Agency Agreement shall govern and control.

Section 2.09. Termination. This Agreement shall create continuing security interests in the Collateral and shall remain in full force and effect for the benefit of the Secured Parties until all Secured Obligations (other than contingent Obligations) to be paid or performed under the Financing Documents have been paid and performed in full. Upon the happening of all of such events, the security interests granted hereby shall automatically terminate and upon the Collateral Agent's receipt of the Administrative Agent's written signed notice (the "Lien Termination Notice") that the events set forth in the first sentence of this Section 2.09 have occurred, the Collateral Agent shall forthwith cause to be assigned, transferred and delivered, against receipt but without any recourse, warranty or representation whatsoever, other than as to the release of the Collateral Agent's Lien thereon and the absence of any continuing Lien arising by, through or under the Collateral Agent, any remaining Collateral and moneys received in respect of the

Collateral, to or on the order of the Borrower. Provided the Collateral Agent has received the Lien Termination Notice, the Collateral Agent, upon payment of its fees and expenses, if any, then due and payable (including reasonable attorney's fees and expenses to which it is entitled under the Financing Documents), shall execute and deliver to the Borrower, at the Borrower's expense, such documentation as the Borrower shall prepare and reasonably request to evidence such termination or expiration and release the Liens created under this Agreement, including termination statement(s) for any financing statement on file with respect to the Collateral. The security interests created hereby shall be released with respect to any portion of the Collateral that is sold, transferred or otherwise disposed of in compliance with the terms and conditions of the Financing Documents. Notwithstanding the foregoing, this Agreement shall continue to be effective or be reinstated and relate back to such time as though this Agreement had always been in effect, as the case may be, if at any time any amount received by the Collateral Agent or any other Secured Party in respect of the Secured Obligations is rescinded or must otherwise be restored or returned by the Collateral Agent or other Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any other Person or upon the appointment of any intervenor or conservator of, or trustee or similar official for the Borrower or any other Person or any substantial part of its properties, or otherwise, all as though such payments had not been made.

ARTICLE III REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants each of the following to the Secured Parties as of the date hereof:

Section 3.01. Name; Jurisdiction of Organization; Chief Executive Office.

(a) Schedule 1 attached hereto correctly sets forth the Borrower's full and correct legal name, type of organization, jurisdiction of organization, organizational identification number, if any, chief executive office and principal place of business and mailing address as of the date of this Agreement.

(b) The Borrower has not (except as permitted hereunder) (i) changed its location (as defined in Section 9-307 of the Uniform Commercial Code); (ii) previously changed its name except as set forth on Schedule 1 or (iii) previously become a "new debtor" (as defined in the Uniform Commercial Code) with respect to a currently effective security agreement entered into by another Person except as set forth on Schedule 1.

Section 3.02. Title. The Borrower has legal title to, leasehold interest in or rights to use the Collateral in which it purports to grant a lien pursuant to this Agreement, and the Borrower has full organizational power and authority to grant the security interests in and to the Collateral under this Agreement.

Section 3.03. Intellectual Property.

(a) Schedule 4 attached hereto sets forth all Material Intellectual Property of the Borrower on the date hereof. As of the date hereof, the Material Intellectual Property set

forth on such schedule constitutes all of the intellectual property rights necessary to conduct its business.

(b) On the date hereof, all Material Intellectual Property owned by the Borrower is valid, subsisting, unexpired and enforceable (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law), has not been adjudged invalid and has not been abandoned and, to the best knowledge of the Borrower, the use thereof in the business of the Borrower does not infringe, in any material respect, the intellectual property rights of any other Person.

Section 3.04. Deposit Accounts; Securities Accounts. The only Deposit Accounts or Securities Accounts maintained by the Borrower on the date hereof are those set forth on Schedule 5 attached hereto and no additional Deposit Accounts or Securities Accounts shall be established by the Borrower without the prior written consent of the Collateral Agent (acting at the direction of the Administrative Agent) or otherwise in accordance with the terms of the Financing Documents.

Section 3.05. Commercial Tort Claims. To the best of the Borrower's knowledge, the only existing or potential Commercial Tort Claims of the Borrower existing on the date hereof (regardless of whether the amount, defendant, or other material facts can be determined and regardless of whether such Commercial Tort Claim has been asserted, threatened, or has otherwise been made known to the obligee thereof or whether litigation has been commenced for such claims) are those for which a claim reasonably valued in excess of \$2,500,000 has been made.

Section 3.06. Inventory and Equipment. On the date hereof, the Borrower's material Inventory and Equipment (other than mobile goods, Inventory or Equipment in transit in the ordinary course of business, in possession of employees in the ordinary course of business or out for repair or refurbishment) are kept at the locations specified on Schedule 7 attached hereto.

ARTICLE IV COVENANTS

So long as any Secured Obligations are outstanding, the Borrower covenants and agrees as follows, unless otherwise consented to in writing by the Collateral Agent (acting pursuant to the Collateral Agency Agreement):

Section 4.01. No Transfer Restriction. The Borrower shall not enter into any agreement or undertaking restricting the right or ability of the Borrower or the Collateral Agent to sell, assign, or transfer any Collateral except to the extent not prohibited by the Financing Documents.

Section 4.02. Preservation and Protection of Security Interests. The Borrower shall:

(a) upon the acquisition, following the date of this Agreement, by the Borrower of any Certificated Securities, Instruments, Deposit Accounts, other Investment Property, Electronic Chattel Paper, or Letter-of Credit Rights promptly (x) take such action with

respect to that Collateral as is specified for that type of Collateral in Section 2.04 hereof and (y) take all such other actions, and authenticate or sign and file or record such other records or instruments, as are necessary or as the Collateral Agent may reasonably request to create, perfect and establish the priority of the liens granted by this Agreement in any and all such Collateral, to preserve the validity, perfection or priority of the liens granted by this Agreement in any and all of such Collateral or to enable the Collateral Agent to exercise its remedies, rights, powers and privileges under this Agreement, including using commercially reasonable efforts to obtain such material agreements from third parties as the Administrative Agent shall deem necessary in connection with the preservation, perfection, or enforcement of any of its rights hereunder;

(b) upon the Borrower's acquiring, or otherwise becoming entitled to the benefits of, any Copyright (or copyrightable material), Patent (or patentable invention), Trademark (or associated goodwill) or other Intellectual Property or upon or prior to the Borrower's filing, either directly or through the Collateral Agent, any licensee or any other designee, of any application with any Governmental Authority for any Copyright, Patent, Trademark or other Intellectual Property, in each case after the date of this Agreement, execute and deliver on or before the first Business Day of the month following the first full month after any such acquisition, such contracts, agreements and other instruments as the Administrative Agent may reasonably request to create, perfect and establish the priority of the liens granted by this Agreement in that and any related Intellectual Property (provided that no filing shall be required with respect to Intellectual Property that does not constitute Material Intellectual Property);

(c) promptly give notice to the Collateral Agent upon the initiation of any Commercial Tort Claim valued in excess of \$2,500,000 and authorize the Collateral Agent to amend Schedule 6 hereto, without any further action or consent from the Borrower, to include any such Commercial Tort Claim as Collateral hereunder; and

(d) whether with respect to Collateral as of the date of this Agreement or Collateral in which the Borrower acquires rights in the future, from time to time at the Borrower's expense, authorize, give, authenticate, execute, deliver, file or record any and all financing statements, notices, contracts, agreements or other records or instruments, obtain any and all Governmental Approvals, and third party consents in accordance with the Second Lien Financing Agreement (including any consent of any licensor, lessor or other Person obligated on any Collateral), obtain waivers from mortgagees and landlords in form and substance reasonably satisfactory to the Administrative Agent in accordance with the Second Lien Financing Agreement, execute any agreement, or deliver any Collateral to the Collateral Agent, in form and substance reasonably satisfactory to the Administrative Agent, in each case, in order to provide the Collateral Agent with control with respect to Collateral in order for the Collateral Agent to obtain, for the benefit of the Secured Parties, a perfected security interest in such Collateral, and take all such other actions, as are necessary or as the Administrative Agent may reasonably request to create, perfect and establish the priority of the liens granted by this Agreement in any and all of the Collateral, to preserve the validity, perfection or priority of the liens granted by this Agreement in any and all of the Collateral or to enable the Collateral Agent to exercise its remedies, rights, powers and privileges under this Agreement, including (to the extent required in order to effect the creation or the perfection of the security interests required to the granted hereunder with respect to the Collateral or to enable the Collateral Agent to exercise its remedies,

rights, powers and privileges under this Agreement) causing any or all Securities to be transferred into the name of the Collateral Agent or its nominee upon the request of the Collateral Agent (and the Collateral Agent agrees that if any Security is transferred into its name or the name of its nominee, the Collateral Agent shall thereafter promptly give to the Borrower copies of any notices and communications received by it with respect to such Security);

provided that nothing contained in this Section 4.02 shall require Borrower to take any action to challenge the validity or priority of any Permitted Lien or to grant a security interest in any Excluded Asset.

Section 4.03. Maintenance of Perfected Security Interest; Further Documentation.

(a) The Borrower shall maintain the security interests created by this Agreement as perfected security interests and shall defend such security interests against the claims and demands of all Persons that have instituted, or made a non-frivolous threat in writing of, any proceeding, judicial or otherwise, claiming an interest therein adverse to the Secured Parties in any material respect unless such interest is subject to any Permitted Liens.

(b) Within thirty (30) days following the end of each fiscal year, the Borrower shall furnish to the Collateral Agent, upon request, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral, all in reasonable detail; provided, however, that if an Event of Default has occurred and is continuing then the Borrower shall furnish such statements and reports to the Collateral Agent from time to time as the Collateral Agent may reasonably request.

(c) At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of the Borrower, the Borrower shall promptly and duly record, or cause to be recorded, such further instruments and documents and take such further action as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including the filing of any financing or continuation statement under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby in each case to the extent the Borrower is permitted to do so.

Section 4.04. Changes in Jurisdiction of Organization, Name, Etc. Except upon fifteen (15) days' prior written notice to the Collateral Agent and delivery to the Collateral Agent and the Administrative Agent of copies of all additional executed and filed financing statements and other documents as are necessary or reasonably requested by the Administrative Agent to maintain the validity, perfection and priority of the security interests provided for herein, the Borrower shall not change its jurisdiction of organization or change its name, identity, or organizational structure to such an extent that any financing statement filed in connection with this Agreement would become misleading under the UCC.

Section 4.05. Further Assurances. The Borrower, at its own cost and expense, and from time to time promptly following the reasonable written request of the Administrative Agent, shall execute and deliver such further documents and do such other acts and things as may be necessary or the Administrative Agent may reasonably request in order fully to effect the

purposes of this Agreement and the other Security Documents, and the transactions contemplated hereby and thereby; provided that nothing contained in this Section 4.05 shall require Borrower to take any action to challenge the validity or priority of any Permitted Lien or to grant a security interest in any Excluded Asset.

ARTICLE V
REMEDIES

Section 5.01. Events of Default, Etc. Subject to Article VIII of the Second Lien Financing Agreement and the terms of the Collateral Agency Agreement:

Upon the occurrence and during the continuation of an Event of Default, the Collateral Agent may, upon prior written notice, exercise, for the benefit of and on behalf of the Secured Parties, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing, or relating to the Secured Obligations, all rights and remedies with respect to the Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where such rights, remedies, powers and privileges are asserted) and such additional rights, remedies, powers and privileges to which a secured party is entitled under the laws in effect in any jurisdiction where any rights, remedies, powers and privileges in respect of this Agreement or the Collateral may be asserted, including the right, to the maximum extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral as if the Collateral Agent were the sole and absolute owner of the Collateral (and the Borrower agrees to take all such action as may be appropriate to give effect to such right). Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement, or notice of any kind (except any notice required by law referred to below) to or upon the Borrower or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith do any of the following:

(a) require Borrower to, and Borrower shall, assemble the Collateral owned by it at such place or places, reasonably convenient to both the Collateral Agent and the Borrower, designated in the Collateral Agent's request;

(b) make any reasonable compromise or settlement it deems desirable with respect to any of the Collateral and may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, all or any part of the Collateral;

(c) in its name or in the name of the Borrower or otherwise, demand, sue for, collect and receive any money or property at any time payable or receivable on account of or in exchange for all or any part of the Collateral, but shall be under no obligation to do so; and

(d) upon thirty (30) days' prior written notice to the Borrower of the time and place, with respect to all or any part of the Collateral which shall then be or shall thereafter come into the possession, custody or control of the Collateral Agent or any of its respective agents, sell, lease, assign, give option or options to purchase, or otherwise dispose of all or any part of such Collateral (or contract to do any of the foregoing), at such place or places as the Collateral Agent deems best, for cash, for credit or for future delivery (without thereby assuming any credit

risk) and at public or private sale (except such notice as is required above or by applicable statute and cannot be waived), and the Collateral Agent or any other Person may be the purchaser, lessee or recipient of any or all of the Collateral so disposed of at any public sale (or, to the extent permitted by law, at any private sale) and thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise) of the Borrower, any such demand notice and right or equity being hereby expressly waived and released. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned.

The proceeds of, and other realization upon, the Collateral by virtue of the exercise of remedies under this Section 5.01 shall be applied in accordance with Section 5.03.

Section 5.02. Private Sale.

(a) The Collateral Agent shall incur no liability as a result of the sale, lease or other disposition of all or any part of the Collateral at any private sale pursuant to Section 5.01 conducted in a commercially reasonable manner. The Borrower hereby waives (to the extent permitted by applicable law) any claims against the Collateral Agent arising by reason of the fact that the price at which the Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Collateral Agent accepts the first offer received and does not offer the Collateral to more than one offeree.

(b) The Borrower recognizes that, by reason of certain prohibitions contained in the Securities Act of 1933 and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Collateral, to limit purchasers to those who will agree, among other things, to acquire the Collateral for their own account, for investment and not with a view to distribution or resale. The Borrower acknowledges that any such private sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Collateral for the period of time necessary to permit the respective issuer of such Collateral to register it for public sale. To the extent permitted by applicable law, the Borrower hereby specifically waives all rights of redemption, stay or appraisal which it has or may have under any applicable law now existing or hereafter enacted in connection with such sale. The Borrower authorizes the Collateral Agent, at any time and from time to time, to execute, in connection with a disposition of any Collateral pursuant to the provisions of this Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to such Collateral.

Section 5.03. Application of Proceeds. Except as otherwise expressly provided in this Agreement, the Collateral Agent shall apply all Proceeds received by the Collateral Agent in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral, after deducting all reasonable costs and expenses of every kind incurred in connection therewith

or incidental to the safekeeping or care of any Collateral or in any way relating to the Collateral or the rights of the Collateral Agent and any other Secured Party hereunder (including reasonable fees and disbursements, in each case to the extent permissible under the Financing Documents) as provided in Section 4.01 of the Collateral Agency Agreement.

Section 5.04. Deficiency. If the proceeds of, or other realization upon, the Collateral by virtue of the exercise of remedies under Section 5.01 hereof are insufficient to cover the costs and expenses of such exercise and the payment in full of the Secured Obligations, the Borrower shall, subject to Section 11.10 of the Second Lien Financing Agreement, remain liable for any deficiency.

Section 5.05. Assignment of Governmental Approvals. Subject to the Concession Agreement, the Borrower shall, upon the occurrence and during the continuation of an Event of Default and upon receipt by the Borrower of prior written notice from the Collateral Agent, at the request of the Collateral Agent, contemporaneously with and at any other time following any foreclosure by the Collateral Agent on any part of the Collateral, assign, transfer or otherwise furnish to the Collateral Agent or to any transferee of the interest of the Collateral Agent (solely to the extent so assignable or transferable), all of the Borrower's rights and interest in, to and under all Governmental Approvals, including all offsets (including environmental credits and offsets), allowances and similar rights issued under or in connection with applicable law. At the request of the Collateral Agent upon the occurrence and during the continuance of an Event of Default following collection, enforcement, foreclosure, sale, lease, license or other disposition by the Collateral Agent on or with respect to the Collateral, the Borrower agrees to use all commercially reasonable efforts to assist, to the extent possible and in compliance with the Concession Agreement, the Collateral Agent in renewing or extending in the name of the Collateral Agent (or any other Person) or otherwise obtaining the benefits of all of the Governmental Approvals and other rights referred to in the immediately preceding sentence to the extent that such Governmental Approvals and other rights shall not be assignable or transferable.

ARTICLE VI THE COLLATERAL AGENT

Section 6.01. Appointment as Attorney-in-Fact. The Borrower hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact for the purpose of carrying out the provisions of this Agreement and taking any action and executing any documents or instruments as may be necessary or is reasonably required by the Administrative Agent to accomplish the purposes of this Agreement, to perfect, preserve the validity, perfection and priority of, and enforce any lien granted by this Agreement and, after the occurrence and during the continuance of an Event of Default, and upon receipt by the Borrower of prior written notice from the Collateral Agent, to exercise its rights, remedies, powers and privileges under this Agreement. This appointment as attorney-in-fact is irrevocable and coupled with an interest until this Agreement is terminated and the security interests created hereby are released. Without limiting the generality of the foregoing, the Collateral Agent shall be entitled under this Section 6.01 to do any of the following upon the occurrence of and during the continuation of any Event of Default and,

except where noted otherwise, upon receipt by the Borrower of prior written notice from the Collateral Agent:

(a) ask, demand, collect, sue for, recover, receive and give receipt and discharge for amounts due and to become due under and in respect of all or any part of the Collateral;

(b) receive, endorse and collect any Accounts, Chattel Paper, Instruments or General Intangibles;

(c) file any claims or take any action or proceeding in any court of law or equity as may be necessary or is reasonably required by the Administrative Agent for the collection of all or any part of the Collateral;

(d) execute, in connection with any sale or disposition of the Collateral pursuant to Section 5.01 or Section 5.02 hereof, any endorsements, assignments, bills of sale or other instruments of conveyance or transfer with respect to all or any part of the Collateral;

(e) enforce the rights of the Borrower under any provision of any Assigned Agreement to the extent permitted thereunder and under the terms of this Agreement;

(f) pay or discharge Taxes and Liens levied or placed on the Collateral upon receipt by the Borrower of five (5) Business Days' prior written notice from the Collateral Agent;

(g) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes; and

(h) do, at the Collateral Agent's option and at the Borrower's expense, at any time, from time to time, all acts and things as are necessary to protect, preserve, or realize upon the Collateral and the Collateral Agent's and the other Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as the Borrower might do.

Anything in this Section 6.01 to the contrary notwithstanding, the Collateral Agent agrees that it shall not exercise any right under the power of attorney provided for in this Section 6.01 unless an Event of Default shall have occurred and be continuing and upon receipt by the Borrower of prior written notice from the Collateral Agent.

Section 6.02. Performance in Lieu of Borrower. Upon the occurrence and during the continuation of an Event of Default and upon receipt by the Borrower of prior written notice from the Collateral Agent, the Collateral Agent, without releasing the Borrower from any obligation, covenant or condition hereof, itself may (but shall not be obligated to) make any payment or perform, or cause the performance of, any such obligation, covenant, condition or agreement or any other action in such manner and to such extent as may be necessary to protect, perfect or continue the perfection of the security interest granted under this Agreement. Any reasonable out-of-pocket costs or expenses incurred by the Collateral Agent in connection with

the foregoing shall be payable by the Borrower to the Collateral Agent promptly following demand therefor in writing.

Section 6.03. Duty of the Collateral Agent. The Collateral Agent shall be accountable only for amounts that it receives as a result of the exercise of such powers granted to it by this Agreement. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as it deals with similar property for its own account and as otherwise required by Article 9 of the UCC. None of the Collateral Agent, the Financing Parties or any of their respective officers, directors, employees, or agents shall be liable for failure to demand, collect, or realize upon any Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of the Borrower or any other Person or to take any other action whatsoever with regard to any Collateral except as specifically provided hereunder. The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral on behalf of the Secured Parties, as to a second priority security interest in such Collateral (subject to Permitted Liens), and shall not impose any duty upon the Collateral Agent or any Financing Party to exercise any such powers. The Collateral Agent and the Financing Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their respective officers, directors, employees, or agents shall be responsible to the Borrower for any act or failure to act hereunder, except for their own gross negligence, bad faith or willful misconduct. Nothing contained in this Agreement shall create an obligation on the part of the Collateral Agent to verify the accuracy or continued accuracy of the representations or warranties, or compliance or continued compliance with, the covenants contained in Articles III or IV hereof. The Collateral Agent shall have no obligation to give any notice pursuant to any of the terms of this Agreement unless the relevant Authorized Officer of the Collateral Agent has actual knowledge of facts that would permit the giving of such notice.

Section 6.04. Authority of the Collateral Agent. The Borrower acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment, or other right or remedy provided for hereunder or resulting or arising out of this Agreement shall, as between the Collateral Agent and the other Secured Parties, be governed by the provisions contained in this Agreement and the other Financing Documents.

Section 6.05. Agreements as to Concession Agreement.

(a) The Collateral Agent shall, simultaneously with the providing of any notice of the occurrence of an Event of Default under this Agreement to the Borrower, provide a copy of such notice to the IFA pursuant to the IFA Consent.

(b) The Collateral Agent acknowledges that it has received a true and complete copy of the Concession Agreement and hereby agrees to be bound by the terms and provisions in Section 18.8 thereof.

Section 6.06. Role of the Collateral Agent. The rights, duties, liabilities and immunities of the Collateral Agent and its appointment and replacement hereunder shall be governed by the provisions contained in this Agreement and the Collateral Agency Agreement.

ARTICLE VII
MISCELLANEOUS PROVISIONS

Section 7.01. Amendments. Any term, covenant, agreement or condition of this Agreement may be amended or waived only by an instrument in writing signed by the Borrower and the Collateral Agent (acting pursuant to the Collateral Agency Agreement); provided, however, that only the Collateral Agent, as provided herein, may waive any of its rights under any provisions of this Agreement, and no consent to any departure by the Borrower therefrom shall be effective unless in writing signed by the Collateral Agent (acting pursuant to the Collateral Agency Agreement), and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 7.02. Waivers.

(a) The waiver (whether expressed or implied) by the Collateral Agent of any breach of the terms or conditions of this Agreement, and the consent (whether expressed or implied) of any Secured Party shall not prejudice any remedy of the Collateral Agent or any Financing Party in respect of any continuing or other breach of the terms and conditions hereof, and shall not be construed as a bar to any right or remedy which the Collateral Agent or any Financing Party would otherwise have on any future occasion under this Agreement.

(b) No failure to exercise nor any delay in exercising, on the part of the Collateral Agent or any Financing Party of any right, power or privilege under this Agreement shall operate as a waiver thereof; further, no single or partial exercise of any right, power or privilege under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. All remedies hereunder and under the other Security Documents are cumulative and are not exclusive of any other remedies that may be available to a party, whether at law, in equity, or otherwise. The application of the Collateral to satisfy the Secured Obligations pursuant to the terms hereof shall not operate to release the Borrower from its obligations until payment in full of any deficiency has been made in cash.

Section 7.03. Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or by electronic means (i.e., “pdf” or “tif”)), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, when delivered by electronic transmission, when confirmed by sender’s receipt of acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement) or, in the case of notice given by mail, private courier, overnight delivery service or facsimile, when received, addressed as follows, or to such other address as may be hereafter notified in accordance with this Section 7.03 by the respective parties hereto:

The Borrower:

ITR Concession Company LLC

[_____]

[_____]

Attention: [_____]

Telephone: [_____]

Facsimile: [_____]

The Collateral Agent:

[_____]

[_____]

[_____]

[_____]

Attention: [_____]

Telephone: [_____]

Facsimile: [_____]

The IFA:

Indiana Finance Authority
One North Capital, Suite 900
Indianapolis, Indiana 46204
Attention: Public Finance Director

with a copy to:

[_____]

Notwithstanding anything to the contrary contained herein, each such notice, instruction, direction, request or other communication so given to the Collateral Agent shall be effective only upon actual receipt.

Section 7.04. Successors and Assigns.

(a) This Agreement shall be binding upon and inure to the benefit of the Collateral Agent and the Borrower and their respective successors and permitted assigns.

(b) Nothing contained in this Agreement or any other Security Document is intended to limit the right of any Secured Party to assign, transfer, or grant participations in its rights in its Obligations and Financing Documents in accordance with Section 11.4 of the Second Lien Financing Agreement.

Section 7.05. Counterparts. This Agreement may be executed in any number of counterparts by facsimile or other electronic means, including by “.pdf” attached to an email, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

Section 7.06. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed in the State of New York. Each of the parties hereto hereby irrevocably (a) consents and submits to the non-exclusive jurisdiction of any New York state court sitting in New York County, New York or any federal court of the United States sitting in the Southern District of New York, as any party may elect in any suit, action or proceeding arising out of or relating to this Agreement and (b) WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH ANY OF THE PARTIES HERETO ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

Section 7.07. Captions. The headings of the several articles and sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 7.08. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

Section 7.09. Entire Agreement. This Agreement, together with any other agreement executed in connection with this Agreement (including the Collateral Agency Agreement), is intended by the parties as a final expression of their agreement as to the matters covered by this Agreement and such other agreements and is intended as a complete and exclusive statement of the terms and conditions of such agreement.

Section 7.10. Expenses. The Borrower agrees to pay or to reimburse the Collateral Agent promptly but no later than thirty (30) days' after written notice (including a reasonable level of detail) for all reasonable out-of-pocket costs and expenses (including reasonable attorney's fees and expenses of one counsel) that may be incurred by the Collateral Agent in accordance with this Agreement in any effort to enforce any of the obligations of the Borrower in respect of the Collateral or in connection with (a) the preservation of the liens on, or the rights of the Secured Parties to the Collateral pursuant to this Agreement or (b) any actual or attempted sale, lease, disposition, exchange, collection, compromise, settlement or other realization in respect of, or care of the Collateral, including all such reasonable costs and expenses (and reasonable attorney's fees and expenses) incurred in any bankruptcy, reorganization, workout or other similar proceedings made in accordance with the terms hereof.

Section 7.11. Limitation of Recourse. These shall be full recourse to the Borrower and all of its assets and properties for the liabilities of the Borrower under this Agreement and the other Financing Documents, but, subject to the provisions of the following sentence, in no event shall any Affiliate of the Borrower (collectively, the "Non-Recourse Parties"), or any officer, director or holder of any interest in the Borrower or any other Non-Recourse Party, be personally liable or obligated for such liabilities and obligations of the Borrower, except as may be specifically provided in any other Financing Document to which such Non-Recourse Party is a party. Nothing herein contained shall limit or be construed to (i) release any Non-Recourse Party

from liability for its fraudulent actions or misappropriation of funds by it or its willful misconduct, or from any of its obligations or liabilities under any Financing Document executed by such Non-Recourse Party in its individual capacity in connection with any Financing Document, (ii) limit or impair the exercise of remedies with respect to any Collateral or (iii) require the Collateral Agent or any other Secured Party to indemnify the Non-Recourse Parties for liabilities or claims that may be independently asserted by third parties against them. The provisions of this Section 7.11 shall survive the termination of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first written above.

ITR CONCESSION COMPANY LLC, as Borrower

By: _____
Name:
Title:

By: _____
Name:
Title:

[_____], as Collateral Agent

By: _____
Name:
Title:

Schedule 1

Organization and Chief Executive Office of Borrower

Borrower's Legal Name, Type and Jurisdiction of Organization, and Organizational Identification Number:

ITR Concession Company LLC, a Delaware limited liability company

Organizational Number: 4092779

Borrower's Chief Executive Office and Mailing Address:

[_____]
[_____]

Schedule 2

Assigned Agreements

[_____]

Schedule 3

[Intentionally Omitted]

Schedule 4

Material Intellectual Property

To the extent that the term or phrase “Material Intellectual Property” includes permits and/or Governmental Approvals, such permits and Governmental Approvals are incorporated into this Schedule 4 by reference.

[_____]

Schedule 5

Deposit Accounts And Securities Accounts

Securities Accounts

- (1) Proceeds Account
- (2) Operating Account
- (3) First Lien Debt Service Payment Account
- (4) Second Lien Debt Service Payment Account
- (5) Debt Service Reserve Account
- (6) Loss Proceeds Account
- (7) Distribution Account
- (8) Collections Account
- (9) Reimbursement Account

Schedule 6

Commercial Tort Claims

None.

Schedule 7

[Location of Inventory and Equipment¹]²

INDIANA A TOLL ROAD BUILDING REPLACEMENT COST – 2005							
RQAW Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS			
Bldg. No	MP	Description	Qty.	Unit	Unit Price	Total	
45-1	4.6	Lake Maintenance	6385	SF	33.47	213,714	
45-2	0.3	Small Storage Building	301	SF	12.56	3,782	
45-3	1.1	“A” New 291’ Tunnel	1st	2450	SF	115.78	283,662
		Toll Plaza Utility Building	B	1640	SF	61.37	100,649
			M.Pit	525	SF	46.03	24,163
45-4	1.1	Toll Booth “D”	50	SF	666.38	33,319	
45-5	1.1	Toll Booth “D”	50	SF	666.38	33,319	
45-6	1.1	Toll Booth “D”	50	SF	666.38	33,319	
45-7	1.1	Toll Booth “D”	50	SF	666.38	33,319	
45-8	1.1	Toll Booth “D”	50	SF	666.38	33,319	
45-9	1.1	Stairwell Cover	200	SF	50.14	10,029	
45-10	1.1	Toll Booth “D”	50	SF	666.38	33,319	
45-11	1.1	Toll Booth “C”	75	SF	538.48	40,386	
45-12	1.1	Toll Booth “D”	50	SF	666.38	33,319	
45-13	1.1	Toll Booth “D”	50	SF	666.38	33,319	
45-14	1.1	Toll Booth “D”	50	SF	666.38	33,319	
45-15	1.1	Stairwell Cover	200	SF	50.14	10,029	
45-16	1.1	Plaza Canopy	2360	SF	69.72	164,546	
45-17	4.6	Maintenance Building	3050	SF	86.47	263,731	
45-17B	4.6	Lake Maintenance	5000	SF	86.47	432,346	
45-18	4.6	Gas Shanty	11	SF	70.12	771	
45-19	4.7	150 Tunnel	1st	1312	SF	131.10	172,009
		Toll Plaza Utility Building	B	437	SF	76.71	33,520
45-20	4.7	Toll Booth #1 - Old	35	SF	1,123.82	39,334	
45-21	4.7	Toll Booth #2 - Old	35	SF	1,123.82	39,334	
45-22	4.7	Canopy	1133	SF	46.03	52,147	
45-23	4.7	Small Storage	155	SF	12.56	1,948	
45-24	4.7	Toll Plaza Utility Building (Will be replaced 2004)	301	SF	122.73	36,942	
45-25	4.7	Toll Booth “A”	75	SF	534.75	40,107	
45-26	4.7	Toll Booth “C”	75	SF	534.75	40,107	
45-27	4.7	Toll Plaza Canopy	440	SF	69.72	30,678	
45-28	10.1	“B” 190’ Tunnel	1st	2100	SF	115.78	243,139
		Toll Plaza Utility Building	B	1431	SF	61.37	87,822
		Toll Plaza Utility Building	1.PH	525	SF	46.03	24,163
45-29	10.1	Toll Booth “D”	50	SF	666.38	33,319	
45-30	10.1	Toll Booth “D”	50	SF	666.38	33,319	
45-31	10.1	Toll Booth “D”	50	SF	666.38	33,319	
45-32	10.1	Stair Covering	103	SF	101.85	10,490	
45-33	10.1	Toll Booth “D”	50	SF	666.38	33,319	
45-34	10.1	Toll Booth “D”	50	SF	666.38	33,319	
45-35	10.1	Toll Booth “D”	50	SF	666.38	33,319	

¹ Identification of Buildings Based upon the Estimate of Replacement Cost of Building - 2005, Prepared by RQAW for the Indiana Department of Transportation Toll Road Division.

² ITR to review and update as necessary.

INDIANA A TOLL ROAD BUILDING REPLACEMENT COST – 2005						
RQAW Corporation						
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS		
Bldg. No	MP	Description	Qty.	Unit	Unit Price	Total
45-36	10.1	Stair Covering	89	SF	117.87	10,491
45-37	10.1	East Canopy @ MP 10	2375	SF	69.72	165,592
45-38	10.1	West Canopy @ MP 10	1890	SF	69.72	131,776
45-39	13.5	Old (79' Tunnel) 1st	1312	SF	131.10	172,009
		Toll Plaza Utility Building B	437	SF	76.71	33,520
45-40	13.5	Toll Booth Type "D" (Closed and Removed)	50	SF	0.00	0
45-41	13.5	Toll Booth Type "A" (Closed and Removed)	75	SF	0.00	0
45-42	13.5	Toll Booth Type "D" (Closed and Removed]	50	SF	0.00	0
45-43	13.5	Toll Booth Type "D" (Closed and Removed)	50	SF	0.00	0
45-44	13.5	Small Storage Building	144	SF	12.56	1,809
45-45	13.5	Enclosed -Walkway (New) (Closed and Removed)	1496	SF	0.00	0
45-46	13.5	New E.B. Exit Toll Plaza Canopy (Closed and Removed)	2600	SF	0.00	0
45-47	13.5	New E.B. Entry Toll Plaza Canopy (Closed and Removed)	2600	SF	0.00	0
45-48	16.7	New (387' Tunnel) "B" 1st	2205	SF	115.78	255,296
		Toll Plaza Utility Building B	1503	SF	61.37	92,241
		M.Pit	552	SF	46.03	25,406
45-49	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-50	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-51	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-52	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-53	16.7	Stair Cover W.B.	103	SF	109.33	11,261
45-54	16.7	Stair Cover E.B.	89	SF	126.53	11,261
45-55	16.7	Toll Booth "C"	75	SF	534.75	40,107
45-56	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-57	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-58	16.7	Toll Booth "D"	50	SF	666.38	33,319
45-59	16.7	Stair Cover E.B.	115	SF	97.91	11,260
45-60	16.7	New Toll Plaza Canopy W.B.	5200	SF	69.72	362,559
45-61	16.7	New Toll Plaza Canopy E.B.	5200	SF	69.72	362,559
45-62	16.7	Old Toll Plaza 1st	1312	SF	131.10	172,009
		Utility Building (98' Tunnel) B	437	SF	76.71	33,520
45-63	16.7	Trailer (Garage Style Storage)	576	SF	20.00	11,520
45-64	20.8	"B" New Toll Plaza 1st	2100	SF	115.78	243,139
		Utility Building (312 Tunnel) B	1431	SF	61.37	87,822
		M.Pit	525	SF	46.03	24,163
45-65	20.8	Toll Booth "D"	50	SF	666.38	33,319
45-66	20.8	Toll Booth "D"	50	SF	666.38	33,319
45-67	20.8	Toll Booth "D"	50	SF	666.38	33,319
45-68	20.8	Stairwell Cover	91	SF	122.04	11,106
45-69	20.8	Stairwell Cover	98	SF	113.32	11,105
45-70	20.8	Toll Booth "D"	50	SF	666.38	33,319
45-71	20.8	Toll Booth "A"	75	SF	534.54	40,091
45-72	20.8	Toll Booth "D"	50	SF	666.38	33,319
45-73	20.8	Stairwell Cover	89	SF	124.78	11,105
45-74	20.8	E.B. Canopy (New)	3300	SF	69.72	264,947
45-75	20.8	W.B. Canopy (New)	3800	SF	69.72	264,947
45-76	20.8	Old Abandoned-Utility Building (98' Tunnel)			0.00	0
Toll Plaza	1.0	Communication Tower	1	SF	13,735.41	13,735
Toll Plaza	10.0	Communication Tower	1	SF	18,012.80	18,013
Toll Plaza	13.0	Communication Tower	1	SF	21,439.75	21,440

INDIANA A TOLL ROAD BUILDING REPLACEMENT COST – 2005						
RQAW Corporation						
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS		
Bldg. No	MP	Description	Qty.	Unit	Unit Price	Total
Toll Plaza	17.0	Communication Tower	1	SF	26,589.39	26,589
Toll Plaza	21.0	Communication Tower	1	SF	21,875.31	21,875
					Subtotal	6,263,435

INDIAN A TOLL ROAD BUILDING REPLACEMENT COST – 2005							
RQAW Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS			
Bldg. No	MP	Description		Qty.	Unit	Unit Price	Total
64-1	21.7	Old Service Area* Restaurant 1-S	1st	19054	SF	115.78	2,206,080
			B	7000	SF	61.37	429,597
64-2	21.7	New Service Area Fuel 1-S		900	SF	35.00	31,500
64-3	21.7	New Service Area Fuel Canopy 1-S		2472	SF	23.70	58,580
64-4	21.7	New Service Area Fuel Canopy 1-S		1392	SF	23.70	32,987
64-5	21.7	Old Service Area Restaurant 1-N*	1st	19054	SF	115.78	2,206,080
			B	7000	SF	61.37	429,597
64-6	21.7	Service Area Fuel		1	EA	28,537.31	28,537
				9	EA	693.99	6,246
64-7	21.7	Service Area Canopy		2472	SF	23.70	58,580
64-8	21.7	Service Area Canopy		1392	SF	23.70	32,987
64-8	21.7	Salt Storage		7850	SF	33.47	262,749
64-9	21.7	litel Hut		198	SF	122.73	24,301
64-10	21.7	Small Storage Building (Replaces an existing building)		768	SF	15.35	11,785
64-11	23.5	Maintenance Building M-I		15019	SF	86.47	1,298,681
64-12	23.5	Large Storage Building		5000	SF	15.35	76,727
64-12B	23.5	Storage Pole Building		5000	SF	15.35	76,727
64-13	23.5	Gas Shanty		11	SF	70.12	771
64-14	23.8	Toll Plaza Utility Building Type "C"	1st	1650	SF	115.78	191,038
			B	927	SF	61.37	56,891
			M.pit	300	SF	46.03	13,808
64-15	23.8	Toll Booth "B"		75	SF	534.75	40,107
64-16	23.8	Toll Booth "B"		75	SF	534.75	40,107
64-17	23.8	Toll Plaza Canopy		2625	SF	69.72	183,023
64-18	24.1	"A" Utility Building	1st	2450	SF	115.78	283,662
			M.Pit	1640	SF	61.37	100,649
				525	SF	46.03	24,163
64-19	24.1	Toil Booth "D"		50	SF	666.38	33,319
64-20	24.1	Toll Booth "D"		50	SF	666.38	33,319
64-21	24.1	Toll Booth "B"		75	SF	534.75	40,107
64-22	24.1	Toll Booth "B"		75	SF	534.75	40,107
64-23	24.1	Toll Booth "B"		75	SF	534.75	40,107
64-24	24.1	Stairwell Cover		70	SF	141.03	9,872
64-25	24.1	Toll Booth "C"		75	SF	534.75	40,107
64-26	21.7	Toll Booth "D"		50	SF	666.17	33,308
64-27	24.1	Toll Booth "D"		50	SF	666.38	33,319
64-28	24.1	Toll Booth "D"		50	SF	666.38	33319
64-29	24.1	Toll Booth "D"		50	SF	666.38	33319
64-30	24.1	Toll Booth "D"		50	SF	666.38	33,319
64-31	24.1	Stairwell Cover		88	SF	112.18	9,872
64-32	24.1	New Toll Plaza Canopy E.B.		3600	SF	69.72	251,003
64-33	24.1	New Toll Plaza Canopy W.B.		6800	SF	69.72	474,116
64-	24.1	Portage Toll Plaza Ticket Storage Building		480	SF	40.00	19,200
64-34	30.9	Old Toll Plaza Utility Building	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
64-35	30.9	Old Toll Booth		41	SF	959.36	39,334
64-36	30.9	Old Toll Booth		41	SF	959.36	39,334
64-37	30.9	Small Storage Building		132	SF	12.56	1,659
64-38	30.9	Old Toll Plaza Canopy		1133	SF	46.03	52,147

INDIAN A TOLL ROAD BUILDING REPLACEMENT COST – 2005						
RQAW Corporation						
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS		
Bldg. No	MP	Description	Qty.	Unit	Unit Price	Total
64-39	30.9	Old Toll Plaza	41	SF	928.36	38,063
64-40	30.9	Old Toll Plaza	41	SF	928.36	38,063
SA-1	21.7	Communication Tower	1	EA	55,532.36	55,532
MB-1	23.5	Communication Tower	1	EA	19,374.61	19,375
MB-1	23.5	Communication Tower	1	EA	31,776.93	31,777
Toll Plaza	31.0	Communication Tower	1	EA	37,067.93	37,068
Toll Plaza	23.8	Communication Tower	1	EA	30,749.00	30,749
Subtotal						9,952,299

INDIANA TOLL ROAD BUILDING REPLACEMENT COST – 2005							
RQAW Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS			
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total	
46-1	37.1	Large Storage Building	5018	SF	15.35	77,003	
46-1B	37.2	Offices (Former House)	1926	SF	50,00	96,300	
46-2	37.5	Salt Storage SA-2S	6720	SF	33.59	225,711	
46-2B	37.5	Three (3) Double Vault Toilet Units (N, 2S)	3	SF	19,000.00	57,000	
46-3	37.5	Large Storage Building SA-2S	900	SF	15.35	13,811	
46-4	37.5	Litel Hut (New) Fiber Optic Building	197	SF	122.73	24,178	
46-5	38.9	Toll Plaza Utility Building & Tunnel 62.5'	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
46-6	38.9	Toll Booth (Old)	41	SF	959.36	39,334	
46-7	38.9	Toll Booth (Old)	41	SF	956.18	39,203	
46-8	38.9	Canopy (Old)	1133	SF	46.03	52,147	
46-9	38.9	Small Storage Building	132	SF	12.56	1,659	
46-10	37.5	Gas Shanty	14	SF	55.08	771	
46-11	41.6	Telecommunications Relay "A"	161	SF	122.73	19,760	
46-12	49.2	Toll Plaza Utility Building (Old)	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
46-13	49.2	Toll Booth (Old)	41	SF	959.36	39,334	
46-14	49.2	Toll Booth (Old)	41	SF	959.36	39,334	
46-15	49.2	Toll Booth (Old)	41	SF	959.36	39,334	
46-16	49.2	Small Storage Building	132	SF	12.56	1,659	
46-17	49.2	Canopy (Old)	1607	SF	46.03	73,963	
46-18	51.9	Maintenance Building M-2	20219	SF	86.47	1,748,320	
46-19	51.9	Pole Barn @ M-2 Large Storage Building	5148	SF	15.35	78,998	
46-19B	51.9	Pole Barn @ M-2 Large Storage Building	5000	SF	15.00	75,000	
46-20	51.9	Well House @ M-2 (Should be demolished)	68	SF	11.34	771	
46-21	51.9	Salt Storage @ M-2	7850	SF	33.47	262,749	
46-22	51.9	Gas Shanty @ M-2	19	SF	40.59	771	
46-23	51.9	Small Storage @ M-2	23	SF	12.54	289	
46-23B	51.9	Paint Booth Building	1440	SF	120.00	172,800	
46-24	55.9	Service Area Restaurant SA-3S	1st	15823	SF	96.56	1,527,893
			B	9626	SF	44.62	429,558
46-25	55.9	Sewage Treatment Plant @ SA-3S	1158	SF	166.51	192,815	
46-26	55.9	Trickling Filter @SA-3S	4140	SF	18.64	77,150	
46-27	55.9	Water Treatment Plant "B" Well @ SA-3S	92	SF	419.18	38,564	
46-28	55.9	Small Storage @SA-3S	71	SF	12.56	892	
46-29	55.9	Litel Hut @ SA-3S Fiber Optic Building	197	SF	122.73	24,178	
46-30	55.9	Service Area Fuel @ SA-3S	750	SF	40.00	30,000	
46-31	55.9	Gas Canopy @ SA-3S	2472	SF	23.70	58,580	
46-32	55.9	Diesel Canopy @ SA-3S	1392	SF	23.70	32,987	
46-33	55.9	Service Area Restaurant @ SA-3N'	1st	14578	SF	94.92	1,383,694
			B	9626	SF	44.62	429,558
46-34	55.9	Water Treatment Plant Well House "A" @ SA-3N	743	SF	207.63	154,269	
46-35	55.9	Service Area Fuel Building @ SA-3N	750	SF	40.00	30,000	
46-36	55.9	Service Area Canopy @ SA-3N Gas Island	2472	SF	23.70	58,580	
46-37	55.9	Service Area Canopy Diesel @ SA-3N	1392	SF	23.70	32,987	
46-38	55.9	Small Storage @ SA-3N	71	SF	12.56	892	
Toll Plaza	39.0	Communication Tower	1	EA	21,875.31	21,875	
Toll Plaza	49.0	Communication Tower	1	EA	7,382.56	7,383	
	51.9	Communication Tower (State Police)	1	EA	30,000.00	30,000	

INDIANA TOLL ROAD BUILDING REPLACEMENT COST – 2005						
RQAW Corporation						
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS		
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total
MB-2	51.9	Communication Tower	1	EA	78,054.68	78,055
SA-3	55.9	Communication Tower	1	EA	48,127.96	48,128
					Subtotal	8,279,297

INDIANA TOLL ROAD BUILDING REPLACEMENT COST -2005							
RQAW Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS			
Bldg. No	MP	Description	Qty.	Unit	Unit Price	Total	
71-1	71.6	Telecommunications Relay "B"	161	SF	122.73	19,760	
71-2	72.4	Old Toll Plaza Utility Building S.B. WX	1st	1425	SF	131.10	186,824
			B	475	SF	76.71	36,435
71-3	72.4	Toll Booth #1 (Old) @ S.B. WX	37	SF	1,063.09	39,334	
71-4	72.4	Toll Booth #1 (Old) @ S.B. WX	37	SF	1,063.09	39,334	
71-5	72.4	Toll Booth #1 (Old) @ S.B. WX	37	SF	1,063.09	39,334	
71-5B	72.4	Toll Booth Old South Bend West	37	SF	1,063.09	39,334	
71-6	72.4	Canopy @ S.B. WX (Old)	1250	SF	46.03	57,532	
71-7	72.9	State Police ISP - Dist. 11	5953	SF	115.78	689,241	
71-7B	72.9	S. P. Evidence Storage Building	576	SF	40.00	23,040	
71-8	72.9	Gas Shanty @ ISP - Dist. 11	18	SF	42.84	771	
71-9	72.9	Loader Storage Building SA-4N	500	SF	15.35	7,673	
71-10	72.9	Litel Hut @SA-4N Fiber Optic Building	197	SF	122.73	24,178	
71-11	72.9	Salt Storage @SA-4N/Gas Shanty @SA-4N	7850	SF	33.47	262,749	
71-12	72.9	Gas Shanty @SA-4N	5	SF	154.23	771	
71-13	72.9	Engineering Trailer @SA-4N	125	SF	123.40	15,425	
71-14	76.6	Toll Plaza Utility Building (Old)	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
71-15	76.6	Toll Booth SB/ND	41	SF	959.36	39,334	
71-16	76.6	Toll Booth SB/ND	41	SF	959.36	39,334	
71-17	76.6	Toll Booth Canopy	1133	SF	46.03	52,147	
71-18	76.6	Small Storage Building	132	SF	12.56	1,659	
71-19	76.6	Toll Booth SB/ND	41	SF	928.36	38,063	
71-20	76.6	Temporary Toll Booth	17	SF	90.71	1,542	
71-21	76.6	Temporary Toll Booth	17	SF	90.71	1,542	
71-22	76.6	Temporary Toll Booth	17	SF	90.71	1,542	
71-23	76.6	Temporary Toil Booth	17	SF	90.71	1,542	
71-24	82.9	Toll Plaza Utility Building (New) "C"	1st	1650	SF	115.78	191,038
			B	927	SF	61.37	56,891
			M.Pit	300	SF	46.03	13,808
71-25	82.9	Toll Booth Type "B"	75	SF	534.75	40,107	
71-26	82.9	Toll Booth Type "B"	75	SF	534.75	40,107	
71-26B	82.9	Toll Booth Type "B"	75	SF	534.75	40,107	
71-27	82.9	Toll Booth Canopy	2625	SF	69.72	183,023	
71-28	87.0	Administration Building	51803	SF	115.78	5,997,772	
71-29	87.0	Large Storage Building (Closed and Removed)	0	SF	0.00	0	
71-30	87.0	Gas Shanty	17	SF	45.36	771	
71-31	87.0	Small Storage Building	132	SF	12.56	1,659	
ISP #11	72.9	Communication Tower	1	EA	7,712.38	7,712	
Toll Plaza	77.0	Communication Tower	1	EA	26,153.83	26,154	
Toll Plaza	83.0	Communication Tower	1	EA	13,735.41	13,735	
Admin.	87.0	Communication Tower Admin. Bldg	1	EA	75,000.00	75,000	
71-34	87.0	Toll Ticket Storage Building	2048	SF	15.35	31,427	
Subtotal						8,583,281	

INDIANA TOLL ROAD BUILDING REPLACEMENT COST – 2005						
RQAW Corporation						
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205 IV				By: JF5		
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total
20-1	87.1	Maintenance Building M 3 Central Facility	13149	SF	129.30	1,700,166
20-2	87.1	Salt Storage @ M 3 Salt Dome	7850	SF	33.47	262,749
20-3	87.1	Pole-Barn large Storage Bldg Pole Barn West	5148	SF	15.35	78,998
20-4	87.1	Gas Shanty @ M 3 Fuel	19	SF	40.59	771
20-5	87.1	Engineering Trailing M 3 Pole Barn East	4900	SF	73.86	361,923
20-5B	87.1	Haz-Mat Storage Shed	100	SF	35.00	3,500
20-6	87.2	Sign Shop	5418	SF	86.47	468,490
20-7	87.8	Outbuilding @ Lake Albert Paint Booth	1440	SF	75.00	108,000
20-7B	87.8	New Structure is Open Pavilion	576	SF	30.00	17,280
20-8	90.0	Service Area Restaurant SA 5S* Toll Maintenance 1st	1500	SF	130.00	195,000
		B	0	SF	0.00	0
20-9	90.0	Service Area Fuel @ SA 5S Elkhart Maint.	18600	SF	210.00	3,906,000
20-9B	90.0	Fuel Building	1000	SF	40.00	40,000
20-10	90.0	Service Area Canopy @ Gas Island SA-5S Shed Behind Sign Shop	150	SF	30.00	4,500
20-11	90.0	Service Area Canopy & Diesel Canopy SA-5S	1392	SF	23.70	32,987
20-12	90.0	Water Treatment Plant "A" Well House @ SA-5S (Closed & Rem.)	743	SF	0.00	0
20-13	90.0	Sewage-Treatment Plant Lift Station @SA 5S (No longer exists)			0.00	0
20-14	90.0	Incinerator @ SA 5S (Closed and Removed)	297	SF	0.00	0
20-15	90.0	Service Area Restaurant @ SA-5N 1st	16246	SF	97.06	1,576,841
		B	9626	SF	44.62	429,558
20-16	90.0	Service Area Fuel @ SA-5N	11000	SF	50.00	50,000
20-17	90.0	Service Area Canopy @ SA-5N Gas Pumps	2472	SF	23.70	58,580
20-18	90.0	Service Area Canopy @ SA-5N Diesel Pumps	1392	SF	23.70	32,987
20-19	90.0	Water-Treatment Plant "B" Well @ SA 5N (Closed and removed)	92	SF	0.00	0
20-20	90.0	Litel Building @ SA-5N Fiber Optic Building	197	SF	122.73	24,178
20-21	90.0	Incinerator @ SA 5N (Closed and Removed)	297	EA	0.00	0
20-22	91.8	Toll Plaza Utility Building (old) 1st	1312	SF	131.10	172,009
		B	437	SF	7671	33,520
20-23	91.8	Toll Booth (Old)	41	SF	959.36	39,334
20-23B	91.8	Toll Booth (Old)	41	SF	959.36	39,334
20-24	91.8	Toll Booth (Old)	41	SF	959.36	39,334
20-25	91.8	Toll Booth Canopy	133	SF	46.03	52,147
20-26	91.8	Small Storage Building	132	SF	12.56	1,659
	96.0	Main Utility Building		SF		
	96.0	Toll Booth Type "B"	75	SF	517.47	38,810
	96.0	Toll Booth Type "B"	75	SF	517.47	38,810
	96.0	Toll Booth Type "B"	75	SF	517.47	38,810
	96.0	Toll Booth Type "B"	75	SF	517.47	38,810
	96.0	Generator and Storage Building (20 x 24)	480	SF	110.00	52,800
	96.0	Small Communication Tower	1	EA	24,317.00	24,317
20-27	99.0	Salt Storage Building	6386	SF	33.47	213,747
20-28	99.0	Small Storage Building (Replaces existing bldg.)	768	SF	15.35	11,785
20-29	99.0	Gas Shanty	25	SF	30.84	771
20-30	101.2	Toll Plaza Utility Building New "B" 1st	1650	SF	115.78	191,038
		B	927	SF	61.37	56,891
		M.Pit	300	SF	46.03	13,808

INDIANA TOLL ROAD BUILDING REPLACEMENT COST – 2005							
RQAW Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205 IV				By: JF5			
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total	
20-31	101.2	Toll Booth Type "B"	75	SF	534.75	40,107	
20-32	101.2	Toll Booth Type "B"	75	SF	534.75	40,107	
20-33	101.2	Toll Booth Canopy (New)	2625	SF	69.72	183,023	
20-34	107.1	Toll Plaza Utility Building (Old)	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
20-35	107.1	Toll Booth (Old)	41	SF	959.36	39,334	
20-36	107.1	Toll Booth (Old)	41	SF	959.36	39,334	
20-37	107.1	Toll Booth (Old)	1133	SF	46.03	52,147	
20-38	107.1	Small Storage Building	132	SF	12.56	1,659	
20-39	108.0	Large Storage Building Vault Toilet Unit	1	SF	19,000.00	19,000	
20-40	108.0	Large Storage Building Vault Toilet Unit	1	SF	19,000.00	19,000	
20-41	108.0	Litel Hut Building @ 6N Fiber Optic Building	197	SF	122.73	24,178	
SA-5	90.0	Communication Tower	1	EA	72,808.51	72,809	
Toll Plaza	92.0	Communication Tower	1	EA	25,129.88	25,130	
Toll Plaza	101.0	Communication Tower	1	EA	25,129.88	25,130	
Toll Plaza	107.0	Communication Tower	1	EA	17,117.55	17,118	
Subtotal						11,253,846	

Indiana Toll road building replacement cost - 2005							
RQAW Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS			
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total	
44-1	114.4	Storage Pole Bam	5200	SF	0.00	0	
44-2	114.4	Pole Building Large Storage Building	4992	SF	15.35	76,604	
44-3	114.4	Salt Storage Building	7850	SF	33.47	262,749	
44-4	114.4	Gas Shanty @ M-4	19	SF	40.59	771	
	114.4	Pain Booth Structure (Closed)	1440	SF	0.00	0	
44-5	120.5	Toll Plaza Utility Building (Old)	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
44-6	120.5	Toll Booth (Old)	41	SF	959.36	39,334	
44-7	120.5	Toll Booth Old	41	SF	959.36	39334	
44-8	120.5	Toll Booth Canopy (Old)	1133	SF	46.03	52,147	
44-9	120.5	Small Storage Building	132	SF	12.56	1,659	
44-9B	125.6	Travel Plaza 7S East bound Building Maint. Pole Bldg.	5000	SF	14.85	74,250	
44-9C	125.6	Travel Plaza 7S Eastbound Large Commun. Tower	1	EA	70,455.00	70,455	
44-9D	125.6	Travel Plaza 7N Westbound 2 ea. Env. Rented. Equip. Sheds	240	SF	50.00	12,000	
44-10	123.7	Small Storage Building (Demolished)	337	SF	0.00	0	
44-11	125.8	Service Area Restaurant SA-75 *	1st	15216	SF	95.78	1,457,330
			B	9626	SF	44.62	429,558
44-12	125.8	Service Area Fuel Building	900	SF	50.00	45,000	
44-13	125.8	Service Area Gas Canopy	2472	SF	23.70	58,580	
44-14	125.8	Service Area Diesel Canopy	1392	SF	23.70	32,987	
44-15	125.8	Incinerator (Floor and roof) (Demolished)	786	SF	0.00	0	
44-16	125.8	Litel Hut @SA-7S Fiber Optic Building	197	SF	122.73	24,178	
44-17	125.8	Water Treatment Plant "A" Well @ SA-7S	725	SF	76.71	55,612	
44-18	125.8	Sewage Treatment Plant @ SA-7S	1158	SF	166.51	192,815	
44-19	125.8	Tridding Filler @ SA-7S	4140	SF	18.64	77,150	
44-20	125.8	Sand Filter Building @ SA-7S (demolished)	101	EA	0.00	0	
44-21	125.8	Sand Filter Rings @ SA-7S (demolished)	5185	EA	0.00	0	
44-22	125.8	Service Area Restaurant @SA-7N*	1st	15216	SF	95.78	1,457,330
			B	9626	SF	44.62	429,558
44-23	125.8	Service Area Fuel @ SA-7N		SF	50.00	45,000	
44-24	125.8	Service Area Canopy & Gas Island SA-7N		SF	23.70	58,580	
44-25	125.8	Service Area Canopy @ Diesel Island SA-7N		SF	2370	32,987	
44-26	125.8	"B" Well House @ SA-7N	92	SF	76.71	7,057	
44-27	125.8	Incinerator @SA-7N (Demolished)	297	SF	0.00	0	
MS-4	114.4	Communication lower		EA	85,457.91	85,458	
Toll Plaza	121.0	Communication Tower	1	EA	12,240.29	12,240	
					Subtotal	5,336,251	

INDIAN TOLL ROAD BUILDING REPLACEMENT COST- 2005							
RQAWC Corporation							
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS			
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total	
76-1	137.5	Maintenance Building M-5	15019	SF	86.47	1,298,681	
76-2	137.5	Large Storage Building #1 @ M-5 Pole Building	2220	SF	63.82	141,686	
76-3	137.5	Salt Storage Building	7850	SF	33.47	262,749	
76-4	137.5	Gas Shanty #1 @M-5	18	SF	42.84	771	
76-5	137.5	Gas-Shanty (Demolished)	20	SF	0.00	0	
76-6	137.5	Large-Storage-#2-@M-5 (Demolished)	5148	SF	0.00	0	
76-6B	137.5	Storage Pole Barn	5000	SF	14.85	74,250	
76-6C	137.5	Storage Pole Barn	5000	SF	14.85	74,250	
76-6D	137.5	Steuben Maint Paint Booth Structure	1440	SF	75.00	108,000	
76-7	143.9	Toll Plaza Utility Building (Old)	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
76-8	143.9	Toll Booth #1 (Old)	41	SF	959.36	39,334	
76-9	143.9	Toll Booth #2	41	SF	959.36	39,334	
76-9B	143.9	Toll Booth	41	SF	928.36	38,063	
76-9C	143.9	Toll Booth	41	SF	928.36	38,063	
76-10	143.9	Toll Booth Canopy (Demolished)	1607	SF	0.00	0	
76-11	143.9	Small Storage Building	132	SF	12.56	1,659	
	143.9	Communication Tower Structure	1	EA	24,317.00	24,317	
76-12	145.7	Service Area Restaurant @ SA-8S*	1st	16918	SF	97.79	1,654,454
			B	7000	SF	61.37	429,597
76-13	145.7	Service Area Fuel Building @ SA-8S	900	SF	50.00	45,000	
76-14	145.7	Service Area Canopy @ Gas Island SA-8S	2472	SF	23.70	58,580	
76-15	145.7	Service Area Canopy @ Diesel Island SA-8S	1392	SF	23.70	32,987	
76-16	145.7	Lift Station	1	EA	409,497.44	409,497	
76-17	145.7	Trickling Filter @ SA-8S (No longer exists)			0.00	0	
76-18	145.7	Water Treatment Plant "B" Well (abandoned) SA-8S (Demolished)	92	SF	0.00	0	
76-19	145.7	Service Area Restaurant @ SA-8N*	1st	1608	SF	96.90	1,560,883
			B	7000	SF	61.37	429,597
76-20	145.7	Service Area Fuel Building @SA-8N	900	SF	50.00	45,000	
76-21	145.7	Service Area Canopy @ Gas Island SA-8N	2472	SF	23.70	58,580	
76-22	145.7	Service Area Canopy @ Diesel Island SA-8N	1392	SF	23.70	32,987	
76-23	145.7	Litel Hut Building Fiber Optic Building	197	SF	122.73	24,178	
76-24	145.7	Water Treatment Plant "A" Well House SA-8N	725	SF	76.71	55,612	
76-24B	145.7	Addition to Bldg. is a Pole Barn to Enclose Drinking Water Tanks	700	SF	14.84	10,388	
76-25	145.7	Water Treatment Plant "C" Well House SA-8N	160	SF	192.82	30,850	
76-26	153.0	Toll Plaza Utility Building (Old)	1st	1312	SF	131.10	172,009
			B	437	SF	76.71	33,520
76-26B	153.0	Ticket Storage Garage Style	480	SF	40.00	19,200	
76-27	153.0	Toll Booth #1	41	SF	959.36	39,334	
76-28	153.0	Toll Booth #2	41	SF	959.36	39,334	
76-29	153.0	Toll Booth #3	41	SF	959.36	39,334	
76-30	153.0	Toll Booth #4	41	SF	959.36	39,334	
76-31	153.0	Toll Booth #5	41	SF	959.36	39,334	
76-32	153.0	Toil Booth #6	41	SF	959.36	39,334	
76-33	153.0	Toll Booth #7	41	SF	959.36	39,334	
76-33B	153.0	Toll Booth #8	41	SF	928.36	38,063	
76-33C	153.0	Toll Booth #9	41	SF	928.36	38,063	
76-34	153.0	Toll Booth Canopy	3455	SF	46.03	159,019	

INDIAN TOLL ROAD BUILDING REPLACEMENT COST- 2005						
RQAWC Corporation						
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS		
Bldg. No.	MP	Description	Qty.	Unit	Unit Price	Total
76-35	153.0	Small Storage Building	132	SF	12.56	1,659
76-36	156.4	Salt Storage Building	6385	SF	33.47	213,714
76-37	156.4	Small Storage Building	302	SF	12.56	3,795
MB-5	137.5	Communication Tower	1	EA	48,127.96	48,128
Toll Plaza	144.0	Communication Tower	1	EA	48,969.20	48,969
Toll Plaza	153.0	Communication Tower	1	EA	31,782.69	31,783
foil Plaza	156.4	Communication Tower	1	EA	97,067.28	97,067
Subtotal						8,405,201

INDIANA TOLL ROAD BUILDING REPLACEMENT COST – 2005				
RQAW Corporation				
4755 Kingsway Drive, Suite 400, Indianapolis, IN 46205				By: JFS
County	Milepost to Milepost	Description	Subtotal	Grand Total
Lake	0.3 - 21	Buildings and Communication Towers	\$6,263,435	
Porter	21.7-30.9	Buildings and Communication Towers	\$9,952,299	
LaPorte	37.5 - 55.9	Buildings and Communication Towers	\$8,279,297	
St. Joseph	71.6-87	Buildings and Communication Towers	\$8,583,281	
Elkhart	87.1 -108	Buildings and Communication Towers	\$11,253,846	
LaGrange	114.4 -125.8	Buildings and Communication Towers	\$5,336,254	
Steuben	137.5-156.4	Buildings and Communication Towers	\$8,405,201	
				\$58,073,612

Exhibit E-5

Form of New Second Lien Leasehold Mortgage

ITR CONCESSION COMPANY LLC,

as Mortgagor

to

[_____], as Collateral Agent
for the benefit of the Secured Parties,

as Mortgagee

**LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND
FINANCING STATEMENT (FIXTURE FILING)**

Date: [_____],

PROPERTY LOCATION:

State of Indiana
Counties of Lake, Porter, LaPorte, St. Joseph, Elkhart,
LaGrange, and Steuben

THIS INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL PROPERTY RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF UCC FINANCING STATEMENTS (FIXTURE FILINGS) UNDER THE NAMES OF MORTGAGOR, AS “DEBTOR”, AND MORTGAGEE, AS “SECURED PARTY”.

This Instrument Was Prepared By and After Recording Return To:

[_____]

[_____]

[_____]

Attention: [_____], Esq.

**LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND
FINANCING STATEMENT (FIXTURE FILING)**

THIS LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (FIXTURE FILING) (this "Mortgage") is made as of this [____] day of [____], by ITR CONCESSION COMPANY LLC, a Delaware limited liability company (the "Mortgagor"), whose address is [____], in favor of [____] (the "Mortgagee"), in its capacity as Collateral Agent on behalf of those certain "Lenders" and other "Secured Parties", as such terms are defined in that certain Second Lien Financing Agreement (defined below), whose address is [____]. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Second Lien Financing Agreement. The Rules of Interpretation set forth in Appendix A to the Second Lien Financing Agreement shall govern this Mortgage.

WITNESSETH:

WHEREAS, this Mortgage secures the Secured Obligations under that certain Second Lien Financing Agreement, dated as of [____], among the Mortgagor, as the Borrower, certain lenders party thereto from time to time, and [____], as the Administrative Agent (as amended, supplemented and/or otherwise modified from time to time, the "Second Lien Financing Agreement"), and all other Secured Obligations (as defined in the Security Agreement) under the Security Agreement and the other Financing Documents, and pursuant to which Second Lien Financing Agreement, the Lenders have, subject to the conditions and provisions therein contained, agreed to provide the Loans.

NOW, THEREFORE, (a) to secure the performance by Mortgagor of all Secured Obligations and (b) for and in consideration of the sum of One and No/100 (\$1.00) Dollar paid by Mortgagee to Mortgagor this date, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor, subject to the Permitted Liens, mortgages and warrants unto Mortgagee, its successors and permitted assigns, for the benefit of itself and the Lenders and the other Secured Parties all right, title and interest of Mortgagor in, to and under the Mortgaged Property (as defined below):

THE MORTGAGED PROPERTY

(A) THE LEASEHOLD ESTATE. All of Mortgagor's leasehold estates, leasehold interests and rights in and to that certain real property situated in the counties of Lake, Porter, LaPorte, St. Joseph, Elkhart, LaGrange and Steuben in the State of Indiana, more particularly described on Exhibit A attached hereto (the "Land"), and referred to as the "Toll Road Land" in that certain Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006, between the Indiana Finance Authority and Mortgagor, as amended by that certain First Amendment to Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006, that certain Second Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of June 29, 2006, that certain Third Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of August 10, 2007, that certain Fourth Amendment

to the Indiana Toll Road Concession and Lease Agreement, dated as of February 5, 2008, that certain Fifth Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of November 1, 2010, and [_____] (as may be further amended, amended and restated, supplemented and/or modified, collectively, the “Concession Agreement”) (such leasehold estates, interests and rights, collectively, the “Leasehold Estate”), together with all rights, benefits, privileges, and interests of Mortgagor as Concessionaire under the Concession Agreement (such rights, benefits, privileges, and interests of Mortgagor referred to in the Concession Agreement as the “Concessionaire Interest”), together with all additions to and modifications, extensions and renewals of the Concession Agreement, all credits, deposits, options, privileges, and rights thereunder or thereto, and all other further, additional or greater estate, right, title or interest of Mortgagor in, to, and under or derived from the Land, the Concession Agreement and the Leasehold Estate. Certain of the terms of the Concession Agreement are set forth in a Memorandum of Lease, dated as of even date herewith, and recorded immediately prior to the recording of this Mortgage in each of the counties of Lake, Porter, LaPorte, St. Joseph, Elkhart, LaGrange, and Steuben in the State of Indiana.

(B) THE IMPROVEMENTS. TOGETHER WITH (i) all buildings, structures, facilities and improvements of every nature whatsoever now or hereafter situated on the Land and leased to the Mortgagor, including the Toll Road Facilities and the Toll System (collectively, the “Toll Road Facilities”), and (ii) all fixtures, machinery and equipment of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Toll Road Facilities, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing (the “Improvements”).

(C) EASEMENTS OR OTHER INTERESTS. TOGETHER WITH all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Land, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same, including all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B) and (C) hereof or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in paragraphs (A), (B) and (C) hereof or any part thereof, and all refunds of taxes or assessments levied against all or any portion of the Mortgaged Property (as defined below).

(D) ASSIGNMENT OF RENTS. TOGETHER WITH all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof, including the Toll Revenues, to be applied against the Secured Obligations pursuant to the terms of the Collateral Agency Agreement and the Depositary Agreement; provided, however, that permission is hereby given to Mortgagor so long as no

Event of Default has occurred and is continuing, to collect and receive and use such rents, royalties, issues, profits, revenue (including the Toll Revenues), income and other benefits as they become due and payable. The foregoing assignment shall be fully operative without any further action on the part of either party and specifically Mortgagee shall be entitled, at its option upon the occurrence and during the continuation of an Event of Default, to all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof for application in accordance with the terms of the Collateral Agency Agreement and the Depositary Agreement, whether or not Mortgagee takes possession of the property described in paragraphs (A), (B) and (C) hereof. Upon any such Event of Default and so long such Event of Default is continuing, the permission given to Mortgagor to collect, receive and use such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable shall terminate upon prior written notice and such permission shall not be reinstated until such Event of Default shall have been cured or waived. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, royalties, issues, profits, revenue, income or other benefits to the indebtedness and other sums secured hereby, shall cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

(E) ASSIGNMENT OF LEASES. TOGETHER WITH all right, title and interest of Mortgagor in and to any and all leases, subleases, licenses and occupancy agreements now or hereafter on or affecting the property described in paragraphs (A), (B) and (C) hereof, together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals, royalties, profits, revenue, income, rights and other benefits under any such lease, sublease, license or occupancy agreement, and all licenses and agreements relating to the management, leasing or operation of the Mortgaged Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Mortgaged Property or any portion thereof, whether such licenses or agreements are now existing or entered into after the date hereof (collectively, the "Leases" or each a "Lease"). The foregoing assignment of any Lease shall not be deemed to impose upon Mortgagee any of the obligations or duties of Mortgagor provided in any such Lease, and Mortgagor agrees to fully perform all obligations of the lessor under all such Leases, except where the failure to so perform would not reasonably be expected to result in a Material Adverse Effect. Upon Mortgagee's reasonable request, Mortgagor agrees to send to Mortgagee a list of all material Leases covered by the foregoing assignment. Mortgagee shall have the right, at any time and from time to time, to notify any lessee under a Lease in writing, with a copy to Mortgagor, of the rights of Mortgagee as provided by this paragraph. From time to time, upon request of Mortgagee, Mortgagor shall specifically assign to Mortgagee as additional security hereunder, by an instrument in writing in such form as may be approved by Mortgagee, all right, title and interest of Mortgagor in and to any and all Leases now or hereafter on or affecting the Mortgaged Property, together with all security therefor and all monies payable thereunder, subject to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Lease.

This instrument constitutes an absolute and present assignment of the rents, royalties, issues, profits, revenue, income and other benefits, including the Toll Revenues, from the Mortgaged Property, subject, however, to the conditional permission given to Mortgagor to

collect, receive and use the same as provided hereinabove so long as no Event of Default has occurred and is continuing; provided, further, that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any such subsequent assignment by Mortgagor shall be subject to the rights of Mortgagee hereunder.

(F) FIXTURES AND PERSONAL PROPERTY. TOGETHER WITH a security interest in (i) all personal property and fixtures now or hereafter acquired by Mortgagor and affixed to or located on the property described in paragraphs (A), (B) and (C) hereof which, to the fullest extent permitted by law shall be deemed fixtures and a part of the real property, (ii) all articles of personal property now or hereafter acquired by Mortgagor and all materials delivered to the property described in paragraphs (A), (B) and (C) hereof for use in any activity, including construction, being conducted thereon, and owned by Mortgagor; (iii) and all contract rights, general intangibles actions and rights in action now or hereafter acquired by Mortgagor pertaining to the Mortgaged Property, including all rights to insurance proceeds, and (iv) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing. Mortgagor (as "Debtor") hereby grants to Mortgagee (as "Secured Party"), for the benefit of itself and the other Lenders, a security interest in all fixtures, rights in action and personal property described herein. The addresses for Debtor and Secured Party from which the information about the security interest herein may be obtained is set forth on page 1 of this Mortgage. Mortgagor will, within ten (10) days after written demand, pay all reasonable out-of-pocket costs and reasonable out-of-pocket expenses of filing financing statements, continuation statements, partial releases, and termination statements as are necessary or as Mortgagee may reasonably request to establish and maintain the validity and priority of the security interest of Mortgagee, or any modification thereof, and all reasonable costs and reasonable out-of-pocket expenses of any searches reasonably required by Mortgagee. Mortgagee may exercise any or all of the remedies of a secured party available to it under the Uniform Commercial Code as enacted from time to time in the State of Indiana (the "UCC") with respect to such property, and it is expressly agreed in accordance with the provisions of the UCC, thirty (30) days' notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Mortgagee may at its option dispose of the collateral in accordance with Mortgagee's rights and remedies in respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the UCC.

SOME OF THE ITEMS OF MORTGAGED PROPERTY DESCRIBED HEREIN ARE GOODS THAT ARE OR ARE TO BECOME FIXTURES RELATED TO THE LAND DESCRIBED HEREIN, AND IT IS INTENDED THAT, AS TO THOSE GOODS, THIS MORTGAGE SHALL BE EFFECTIVE AS A FIXTURE FINANCING STATEMENT FILED AS A FIXTURE FILING FROM THE DATE OF ITS FILING FOR RECORD IN THE REAL ESTATE RECORDS OF THE COUNTY IN WHICH THE FIXTURE IS LOCATED. INFORMATION CONCERNING THE SECURITY INTEREST CREATED BY THIS INSTRUMENT MAY BE OBTAINED FROM THE MORTGAGEE, AS SECURED PARTY, OR THE MORTGAGOR, AS DEBTOR, AT THE ADDRESSES FIRST SHOWN ABOVE.

Everything referred to in paragraphs (A), (B), (C), (D), (E), and (F) hereof and any additional property hereafter acquired by Mortgagor which is subject to the Lien of this Mortgage is herein referred to as the "Mortgaged Property."

Notwithstanding anything to the contrary in any of the foregoing paragraphs (A), (B), (C), (D), (E) and (F): (i) any and all amounts paid or distributed by the Mortgagor in accordance with Section 7.6 of the Second Lien Financing Agreement or Sections 4.01 and 4.06(b) of the Depositary Agreement shall be free of, and not subject to, this Mortgage, (ii) any and all assets or property sold, conveyed, transferred, assigned or otherwise disposed of by the Mortgagor to the extent permitted under Section 7.1 of the Second Lien Financing Agreement and any other provision of the Financing Documents shall be free of, and not subject to, this Mortgage and (iii) any and all Excluded Assets shall be free of, and not subject to, this Mortgage and the term "Mortgaged Property" (and all terms used therein) shall exclude Excluded Assets.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and permitted assigns, to its own proper use and benefit on behalf of the Lenders and the other Secured Parties, subject, however, to the Permitted Liens and the terms and conditions thereof, and the terms and conditions in this Mortgage, the other Financing Documents, and in the Concession Agreement, and Mortgagor does hereby bind itself, its successors and permitted assigns, to warrant and defend the leasehold interest and title, as applicable, to the Mortgaged Property, in each case subject to Permitted Liens and the terms of the Financing Agreement, to Mortgagee against every Person whomsoever lawfully claiming or to claim the same or any part thereof;

PROVIDED, HOWEVER, that if all Secured Obligations to be paid or performed under the Financing Documents have been paid and performed in full (other than contingent Obligations), then upon the happening of all of such events, the Mortgagee shall release and terminate the Mortgage and all security interests and Liens granted hereby as set forth below. Upon the Mortgagee's receipt of the Administrative Agent's written signed notice (the "Lien Termination Notice") that the events set forth in the first sentence of this paragraph have occurred, the Mortgagee shall forthwith cause to be assigned, transferred and delivered, against receipt but without any recourse, warranty or representation whatsoever, other than as to the release of the Mortgagee's Lien thereon and the absence of any continuing Lien arising by, through or under the Mortgagee, any remaining Mortgaged Property and moneys received by the Mortgagee in respect of the Mortgaged Property, to or on the order of the Mortgagor. Provided the Mortgagee has received the Lien Termination Notice, the Mortgagee, upon payment of its reimbursable fees and expenses (including reasonable attorney's fees and expenses to which it is entitled under the Financing Documents), shall execute and deliver to the Mortgagor, at the Mortgagor's expense, such documentation as the Mortgagor shall prepare and request to evidence such termination or expiration and release the Liens created under this Mortgage, including termination statement(s) for any financing statement on file with respect to the Mortgaged Property. In addition, the Mortgage and all security interests and Liens created hereby shall be released with respect to any portion of the Mortgaged Property that is sold, transferred or otherwise disposed of in compliance with the terms and conditions of the Financing Documents. Notwithstanding the foregoing, this Mortgage shall continue to be effective or be reinstated and relate back to such time as though this Mortgage had always been in effect, as the case may be, if at any time any amount received by the Mortgagee or any other

Secured Party in respect of the Secured Obligations is rescinded or must otherwise be restored or returned by the Mortgagee or other Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Mortgagor or any other Person or upon the appointment of any intervenor or conservator of, or trustee or similar official for the Mortgagor or any other Person or any substantial part of its properties, or otherwise, all as though such payments had not been made.

ARTICLE ONE
COVENANTS OF MORTGAGOR

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1.01 Performance of Secured Obligations, Mortgage, Etc. Mortgagor shall perform, observe and comply with all provisions hereof and will promptly pay (without duplication) all of the reasonable sums reasonably required to be paid by Mortgagor under this Mortgage and of every other instrument securing the Secured Obligations hereunder when payment shall become due, all, except as provided in the Second Lien Financing Agreement, without deduction or credit for taxes or other similar charges paid by Mortgagor, all as set forth in the Second Lien Financing Agreement.

1.02 Transfer of Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee (such consent not to be unreasonably withheld), and except as permitted by the Second Lien Financing Agreement and subject to the terms and provisions of the Concession Agreement, further assign the Toll Revenues or other income from the Mortgaged Property, or further encumber, sell, convey or transfer any interest in, or any part of, the Mortgaged Property, or enter into any agreement or do any act to amend, modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof.

1.03 Further Assurances. At any time and from time to time, upon Mortgagee's reasonable written request, Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded or filed and from time to time as necessary to be rerecorded or refiled at such time and in such offices and places as are necessary or as the Mortgagee may reasonably request, any and all such further mortgages, instruments of further assurance, financing statements, continuation statements, certificates and other documents as Mortgagee may reasonably consider necessary in order to effectuate or complete in accordance with the Second Lien Financing Agreement or the other Financing Documents, or perfect, or to continue and preserve the obligations of Mortgagor under the Second Lien Financing Agreement and this Mortgage, and the Lien of this Mortgage as a first and prior Lien upon all of the Mortgaged Property, subject to Permitted Liens whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor to do so, Mortgagee may, at the reasonable expense of Mortgagor, make, execute, record, file, re-record or refile any and all such mortgages, instruments, financing statements, continuation statements, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

1.04 After Acquired Property. The Lien of this Mortgage will automatically attach, without further act, to all of Mortgagor's right, title and interest in and to any after-acquired property located in or on, or attached to, or used in connection with or with the operation of, the Mortgaged Property or any part thereof (in each case excluding the Excluded Assets).

1.05 Leases Affecting Mortgaged Property. Mortgagor shall comply in all material respects with and observe its obligations as landlord under all leases and subleases affecting the Mortgaged Property or any part thereof, except where the failure to so perform would not reasonably be expected to result in a Material Adverse Effect. If any such lease or sublease is a Material ITR Contract, Mortgagor, if reasonably requested in writing by Mortgagee, shall furnish promptly to Mortgagee executed copies of such lease or sublease, or any amendment to such lease, now existing or hereafter created.

1.06 Expenses. In accordance with Section 11.3 of the Second Lien Financing Agreement, Mortgagor shall pay or reimburse Mortgagee for all reasonable costs and reasonable out-of-pocket charges and expenses, disbursements incurred or paid by Mortgagee (including reasonable attorney's fees and paralegal fees, appraisal costs, environmental audit costs, other necessary professional fees, court reporter's fees, and court costs) in documenting, perfecting, securing, or enforcing Mortgagee's rights hereunder as provided in the Second Lien Financing Agreement. The amounts so incurred or paid by Mortgagee, together with interest thereon at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness secured by the Lien of this Mortgage.

ARTICLE TWO DEFAULTS

2.01 Event of Default. The term Event of Default, wherever used in this Mortgage, shall mean an "Event of Default" as defined in the Second Lien Financing Agreement.

2.02 Mortgagee's Power of Enforcement. In addition to the terms and conditions of the other Financing Documents, if an Event of Default shall have occurred and is continuing, Mortgagee may, to the extent permitted under the other Financing Documents, either with or without entry or taking possession, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy: (a) to accelerate the maturity date of the Loans and declare any or all of the Secured Obligations to be immediately due and payable as provided in Section 8.2 of the Second Lien Financing Agreement; (b) to immediately foreclose this Mortgage or to specifically enforce its provisions with respect to any of the Secured Obligations, pursuant to the statutes in such case made and provided, and to sell, as an entirety or in separate lots or parcels at the option of Mortgagee, the Mortgaged Property, in accordance with the requirements and procedures provided by said statutes or under the judgment or decree of a court of competent jurisdiction; and (c) to pursue any other remedy available to it. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as the Mortgagee may determine. Further, Mortgagee shall be entitled to all of its reasonable costs and reasonable out-of-pocket expenses, including attorneys' fees, as provided in the Second Lien Financing Agreement and in Section 1.06 of this Mortgage.

2.03 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred and is continuing, Mortgagor, upon written demand of Mortgagee, to the extent permitted under and subject to the terms and conditions of the Second Lien Financing Agreement, the other Financing Documents and the Concession Agreement, shall forthwith surrender to Mortgagee the actual possession, and if and to the extent permitted by law, the Financing Documents and the Concession Agreement, Mortgagee itself, or by such officers or agents as it may appoint, with or without notice, and without releasing Mortgagor from any of its obligations hereunder, may enter and take possession of all the Mortgaged Property, and may exclude Mortgagor and its agents and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor, and perform such acts and things as are necessary or as the Mortgagee may reasonably request to inspect, investigate, assess and protect the security hereof.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Mortgagee's written demand, subject to the terms and conditions hereof and of the other Financing Documents, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Mortgagee along with all books, papers and accounts of Mortgagor, to the entry of which judgment or decree Mortgagor hereby specifically consents.

(c) Upon entering upon or taking of possession, subject to the terms and conditions of the other Financing Documents, Mortgagee may, to the extent permitted by the Concession Agreement, hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time:

- (i) make all reasonably necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon;
- (ii) insure or keep the Mortgaged Property insured;
- (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor, with respect to the same; and
- (iv) enter into agreements with others to exercise the powers herein granted Mortgagee;

all as Mortgagee in its reasonable judgment from time to time may determine; and Mortgagee may collect and receive all Toll Revenues and other income, revenues, rents, issues and profits of the same, including those past due as well as those accruing thereafter; and shall apply the monies so received by Mortgagee in accordance with Section 2.09 below. With respect to any security interest in personal property granted by Mortgagor to Mortgagee under this Mortgage, in the event of a conflict between the terms and provisions of this Mortgage and the terms of the Security Agreement, the terms and provisions of the Security Agreement shall govern as to such personal property interests.

If Mortgagee has taken possession of the Mortgaged Property in accordance with this Mortgage, Mortgagee may retain possession of the Mortgaged Property until all Secured Obligations then due under any of the terms of this Mortgage or the other Financing Documents shall have been paid and all defaults made good, and shall thereafter surrender possession of such Mortgaged Property to Mortgagor. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.04 Leases. Mortgagee, at its option, is authorized to foreclose this Mortgage in accordance with its terms and the laws of the State of Indiana subject to the rights of any tenants or subtenants of the Mortgaged Property, and the failure to make any such tenants or subtenants defendants in any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.05 Purchase by Mortgagee. Subject to the terms and conditions set forth herein and in the other Financing Documents, upon any such foreclosure sale, Mortgagee, on behalf of the Secured Parties, may bid for and purchase the Mortgaged Property and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such rights in its own absolute right without further accountability. Mortgagee may bid on the Mortgaged Property at the foreclosure sale and shall be entitled to a credit for the Secured Obligations and/or foreclosure judgment in the manner set forth under the laws of the State of Indiana.

2.06 Waiver of Appraisal, Valuation, Stay, Extension, and Redemption Laws. Mortgagor agrees, to the full extent permitted by law that neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the Lien hereof or appraised for the purpose of reducing any deficiency judgment obtained by Mortgagee against Mortgagor and agrees that Mortgagee or any court having jurisdiction to foreclose such Lien may sell the Mortgaged Property in part or as an entirety. Mortgagor further waives, to the full extent permitted by law, the right to petition for the appointment of appraisers following foreclosure for the purpose of seeking to reduce a deficiency judgment or for any other reason.

2.07 Receiver. If an Event of Default shall have occurred and is continuing, Mortgagee, to the extent permitted by law and without regard to the value, adequacy, or occupancy of the security, shall be entitled as a matter of right, subject to the terms of the other Financing Documents, to the appointment of a receiver to enter upon and take possession of the Mortgaged Property and to collect all Toll Revenues and other rents, revenues, issues, income, products and profits thereof and apply the same as the court may direct. Subject to the terms of the Financing Documents, the receiver shall have all rights and powers permitted under the laws of the State of Indiana and such other powers as the court making such appointment shall confer.

The expenses, including reasonable receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect the Toll Revenues, rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such Toll Revenues, rents, issues and profits actually received by Mortgagee, whether received pursuant to this paragraph or paragraph (E) in the definition of "Mortgaged Property". Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as secured party hereunder to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to, Mortgagee.

2.08 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, any Person, partnership or corporation guaranteeing or endorsing any of Mortgagor's obligations, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as are necessary or Mortgage may reasonably request in order to have its claims allowed in such proceedings for the entire amount due and payable by Mortgagor under the Second Lien Financing Agreement, this Mortgage and any other Financing Document, at the date of the institution of such proceedings.

2.09 Application of Proceeds. Except as otherwise expressly provided in this Mortgage, the Mortgagee shall apply all Proceeds received by the Mortgagee in respect of any sale of, collection from, or other realization upon, all or any part of the Mortgaged Property, after deducting all reasonable costs and reasonable out-of-pocket expenses of every kind incurred in connection therewith or incidental to the safekeeping or care of any Mortgaged Property or in any way relating to the Mortgaged Property or the rights of the Mortgage hereunder (including reasonable fees and disbursements) as provided in Section 4.01 of the Collateral Agency Agreement.

2.10 Deficiency. If the proceeds of, or other realization upon, the Mortgaged Property by virtue of the exercise or remedies under this Mortgage are insufficient to cover the reasonable costs and reasonable out-of-pocket expenses of such exercise and the payment in full of the Secured Obligations (other than contingent Obligations), the Mortgagor shall, subject to Section 11.10 of the Second Lien Financing Agreement, remain liable for any deficiency.

2.11 Delay or Omission; No Waiver. No delay or omission of Mortgagee or of any holder of the Loans or any other Secured Party to exercise any right, power or remedy accruing upon any Event of Default and during the continuance thereof shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Subject to the terms of the Financing Documents, every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

2.12 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then

existing, or impair any rights, powers or remedies consequent thereon. If Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Concession Agreement, this Mortgage or any other instrument securing the Secured Obligations; (d) releases any part of the Mortgaged Property from the Lien of this Mortgage or any other instrument securing the Secured Obligations; (e) consents to the filing of any map, plat or replat of the Land; (f) consents to the granting of any easement on the Land; or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the Lien or any charge hereof; no such act or omission shall release, discharge, modify, change or affect the Secured Obligations, or the obligations of any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, cosigner, endorser, surety or guarantor. No such act or omission shall preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in the other Financing Documents or in an instrument or instruments executed by Mortgagee, shall the Lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Mortgagee, without notice to any Person, is hereby authorized and empowered to deal with any such transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

2.13 Discontinuance of Proceeding; Position of Parties Restored. If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then and in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had occurred or had been taken.

2.14 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Mortgagee under this Mortgage, the Second Lien Financing Agreement or any other instrument securing the Secured Obligations, is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, the Second Lien Financing Agreement or any other instrument securing the Secured Obligations or now or hereafter existing at law, in equity or by statute.

ARTICLE THREE MISCELLANEOUS PROVISIONS

3.01 Successors and Assigns Included in Parties. Whenever one of the parties hereto is named or referred to herein, the successors and permitted assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

3.02 Addresses for Notices, Etc. Any notice, report, demand or other instrument authorized or required to be given or furnished under this Mortgage to Mortgagor or Mortgagee shall be deemed given or furnished in accordance with the provisions of the Collateral Agency Agreement (with the Mortgagor being referred to as “Borrower” and the Mortgagee being referred to as “Second Lien Collateral Agent” under the Collateral Agency Agreement).

3.03 Headings. The headings of the articles, sections, paragraphs and subdivision of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

3.04 Invalid Provisions to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in this Mortgage shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein shall be in no way affected, prejudiced or disturbed thereby.

3.05 Changes, etc. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought with Mortgagor acting pursuant to the Collateral Agency Agreement as the Second Lien Administrative Agent thereunder.

3.06 Governing Law. This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with reference to the laws of the State of Indiana excluding the principles thereof governing conflicts of law.

3.07 Default Rate. The “Default Rate” shall be as provided in respect of overdue amounts payable by the Borrower in Section 2.2(b) of the Second Lien Financing Agreement.

3.08 Second Lien Financing Agreement Provisions Control. To the extent that the terms of this Mortgage conflict with or provide additional restrictions or prohibitions on actions or conditions otherwise permitted under any other Financing Document, the terms of such Financing Document shall control and override such contrary provisions of this Mortgage.

3.09 Partial Foreclosure. In the event the Mortgaged Property is comprised of more than one parcel of real property, Mortgagor hereby waives any right to require Mortgagee to foreclose or exercise any of its other remedies against all of the Mortgaged Property as a whole or to require Mortgagee to foreclose or exercise such remedies against one portion of the Mortgaged Property prior to the foreclosure or exercise of said remedies against other portions of the Mortgaged Property.

3.10 Future Advances. Notwithstanding anything contained in this Mortgage or the other Financing Documents to the contrary, this Mortgage shall secure in addition to the Secured Obligations and any other indebtedness or obligations specifically secured by the express terms of this Mortgage (i) any future obligations and advances made from time to time after the date hereof and all other amounts now or hereafter payable by Mortgagor to Mortgagee in its capacity as Collateral Agent, or advanced by Mortgagee in its capacity as Collateral Agent

for the account, or on behalf, of Mortgagor, or the Mortgaged Property, to the same extent as if the future obligations and advances were made on the date of execution of this Mortgage up to a maximum amount of [_____]Dollars (\$[_____])¹ (whether made as part of the obligations secured hereby, made at the option of Mortgagee, made after a reduction to a zero (0) or other balance, or made otherwise); and (ii) future modifications, extensions and renewals of any such Secured Obligations secured by this Mortgage. Pursuant to IND. CODE §32-29-1-10, the Lien of this Mortgage with respect to any future advances, modifications, extensions, and renewals referred to herein and made from time to time shall have the same priority to which this Mortgage otherwise would be entitled as of the date this Mortgage is executed and recorded without regard to the fact that any such future advance, modification, extension, or renewal may occur after this Mortgage is executed.

3.11 Representations, Warranties and Covenants Regarding the Concession Agreement.

(a) If an Event of Default shall have occurred and is continuing that arises out of the failure by the Mortgagor to comply with any covenant or condition imposed upon or assumed by it as concessionaire under the Concession Agreement, without waiving or releasing the Mortgagor from any of its obligations hereunder, the Mortgagee, after giving prior written notice to the Mortgagor, may (but shall not be obligated to) take any action the Mortgagee deems necessary to cure such non-compliance by the Mortgagor, subject to and in accordance with the terms of the Concession Agreement and the other Financing Documents. Upon receipt by the Mortgagee from the IFA of any written notice of default by Mortgagor thereunder, Mortgagee may rely thereon and take any action, subject to the provision of the Concession Agreement and the other Financing Documents, to cure such default.

(b) Upon the occurrence and during the continuance of an Event of Default, Mortgagor hereby expressly grants to Mortgagee (to the extent permitted under the Concession Agreement), and agrees that Mortgagee shall have the absolute and immediate right (to the extent permitted under the Concession Agreement), to enter in and upon the Land or any part thereof to such extent and as often as Mortgagee, in its sole but reasonable discretion, deems necessary, in order to cure (to the extent permitted under the Concession Agreement) any default by Mortgagor under the Concession Agreement. Mortgagee, after giving five (5) days' prior written notice to Mortgagor, may pay and expend such reasonable sums of money as Mortgagee deems necessary for such purpose, and Mortgagor hereby agrees to pay to Mortgagee, promptly after written request, all such sums so paid and expended by Mortgagee, together with interest thereon from the date of such expenditure to the date of repayment at the Default Rate. All sums so paid and expended by Mortgagee, and the interest thereon shall be added to and be secured by the Lien of this Mortgage.

(c) Mortgagee (i) shall, simultaneously with the providing of any notice of the occurrence of a default under this Mortgage to Mortgagor, provide a copy of such notice to the IFA at the address specified in Section 7.03 of the Concession Agreement, and (ii) acknowledges that it has received a true and complete copy of the Concession Agreement and hereby agrees to be bound by the terms and provisions in Section 18.8 thereof.

¹ Amount to be confirmed.

(d) The representation and warranty set forth in Section 5.7 of the Second Lien Financing Agreement is hereby incorporated by reference in this Mortgage.

3.12 Additional Provisions.

(a) Priority. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Mortgagor pursuant to this Mortgage and the exercise of any right or remedy by the Mortgagor hereunder are subject to the provisions of the Collateral Agency Agreement. In the event of any conflict between the terms of the Collateral Agency Agreement and this Mortgage, the terms of the Collateral Agency Agreement shall govern and control.

(b) Maturity Date. The stated maturity date of the Secured Obligations is [_____].

(c) Secured Obligations under Mortgage. Mortgagor shall pay the Secured Obligations secured hereby in accordance with their terms and will perform and comply with all of the terms and provisions of the Second Lien Financing Agreement and other Financing Documents.

(d) Waiver of Right of Redemption. Nothing herein is intended to constitute a waiver of Mortgagor's and Mortgagee's rights under IND. CODE § 32-29-7-5, it being agreed that the parties may mutually consent to such waiver as discussed therein in a separate written instrument.

(e) Notwithstanding anything herein to the contrary, (a) in no event shall the Mortgaged Property include and Mortgagor shall not be deemed to have granted a security interest in, any of its right, title or interest (i) in any copyright, mark, patent and/or other intellectual property if the grant of such security interest shall constitute or result in the abandonment of, invalidation of or rendering unenforceable any of its right, title or interest therein; or (ii) in any license, contract or agreement to which Mortgagor is a party or any of its rights or interests thereunder, to the extent, but only to the extent, that such a grant would, under the terms of such license, contract or agreement, or otherwise, result in a breach or termination of the terms of, or constitute a default under or termination of any such license, contract or agreement (other than to the extent that, as to clause (i) or (ii), any such term would be rendered ineffective pursuant to Section 9-406 of the UCC of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); provided that the Mortgagor agrees to use all reasonable efforts to obtain all requisite consents to enable such Mortgagor to provide a security interest in such asset and, in any event, immediately upon the ineffectiveness, lapse or termination of any such provision, the Mortgaged Property shall include, and Mortgagor shall be deemed to have granted a security interest in, all such rights and interests as if such provision had never been in effect.

(f) Counterparts. This Mortgage may be executed in any number of original counterparts and in multiple originals to facilitate recording of an original in each of the counties in which the Mortgaged Property is located, each of which shall be effective upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year above first written.

MORTGAGOR:

ITR CONCESSION COMPANY LLC

By: _____

Printed: _____

Title: _____

By: _____

Printed: _____

Title: _____

ACKNOWLEDGMENT

STATE OF)
) ss.:
COUNTY OF)

Before me, a Notary Public in and for said County and State, personally appeared _____, as the _____ of ITR CONCESSION COMPANY LLC, a Delaware limited liability company, who acknowledged the execution of the foregoing Leasehold Mortgage, Security Agreement and Financing Statement (Fixture Filing) for and on behalf of said limited liability company.

Witness my hand and notarial seal this ____ day of _____, 201__.

NOTARY PUBLIC (Signature)

Notary Public (Printed)

My Commission Expires: _____

My County of Residence is: _____

ACKNOWLEDGMENT

STATE OF)
) ss.:
COUNTY OF)

Before me, a Notary Public in and for said County and State, personally appeared _____, as the _____ of ITR CONCESSION COMPANY LLC, a Delaware limited liability company, who acknowledged the execution of the foregoing Leasehold Mortgage, Security Agreement and Financing Statement (Fixture Filing) for and on behalf of said limited liability company.

Witness my hand and notarial seal this ____ day of _____, 201__.

NOTARY PUBLIC (Signature)

Notary Public (Printed)

My Commission Expires: _____

My County of Residence is: _____

MORTGAGEE:

[_____], as Collateral Agent

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF)
) ss.:
COUNTY OF)

Before me, a Notary Public in and for said County and State, personally appeared [____], as the [____] of [____], a national banking association, who acknowledged the execution of the foregoing Leasehold Mortgage, Security Agreement and Financing Statement (Fixture Filing) for and on behalf of said [____].

Witness my hand and notarial seal this [____] day of June, 201__.

NOTARY PUBLIC (Signature)

Notary Public (Printed)

My Commission Expires: _____

My County of Residence is: _____

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

[_____] , Esq.

This instrument was prepared by and after recording should be returned to: [_____].

SCHEDULE 1

RECORDING INFORMATION OF MEMORANDUM OF LEASE

Recorded [_____], 201__, as Document No. _____.

Exhibit E-6

Form of New Second Lien Pledge Agreement

MEMBERSHIP INTEREST PLEDGE AGREEMENT

between

ITR CONCESSION COMPANY HOLDINGS LLC,
as Pledgor

and

[_____] ,
as Collateral Agent, on behalf of the Secured Parties

Dated as of [_____]

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	1
Section 1.01. Definitions.....	1
ARTICLE II PLEDGE.....	1
Section 2.01. Grant	2
Section 2.02. Perfection	2
Section 2.03. Delivery of Additional Pledged Collateral	3
Section 2.04. Secured Obligations	3
Section 2.05. Termination; Release of Pledged Collateral	3
ARTICLE III REPRESENTATION AND WARRANTIES	4
Section 3.01. Pledged Membership Interests	4
Section 3.02. No Outstanding Warrants Options, Etc	4
Section 3.03. Perfection	4
Section 3.04. Organization, Etc	4
Section 3.05. Legal Owner.....	5
Section 3.06. Power to Pledge	5
Section 3.07. Enforceability.....	5
Section 3.08. No Governmental Approvals	5
Section 3.09. No Conflicts	5
Section 3.10. No Proceedings	5
Section 3.11. LLC Agreement	6
ARTICLE IV COVENANTS	6
Section 4.01. Additional Membership Interests.....	6
Section 4.02. No Transfer	6
Section 4.03. No Liens.....	6
Section 4.04. No Change in Name, Etc	6
Section 4.05. Preservation and Maintenance	6
Section 4.06. Governmental Consent.....	6
Section 4.07. Maintenance of Perfected Security Interest; Further Assurances	7
Section 4.08. No Amendments	7
ARTICLE V DISTRIBUTIONS, VOTING RIGHTS, ETC.	7
Section 5.01. Distributions and Voting Rights Prior to Event of Default	7
Section 5.02. Distributions and Voting Rights After Event of Default	7

ARTICLE VI REMEDIES	8
Section 6.01. Remedies Upon Event of Default	8
Section 6.02. Private Sale	9
Section 6.03. Application of Proceeds.....	9
ARTICLE VII ATTORNEY-IN-FACT	10
Section 7.01. Appointment	10
Section 7.02. Performance in Lieu of Pledgor.....	11
Section 7.03. Duty of the Collateral Agent.....	11
Section 7.04. Authority of the Collateral Agent	11
Section 7.05. Role of the Collateral Agent	11
Section 7.06. Absence of Fiduciary Relation.....	11
ARTICLE VIII MISCELLANEOUS	12
Section 8.01. Amendments	12
Section 8.02. Waivers	12
Section 8.03. Notices	12
Section 8.04. Successors and Assigns.....	13
Section 8.05. Counterparts.....	13
Section 8.06. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial	13
Section 8.07. Captions	13
Section 8.08. Severability	13
Section 8.09. Entire Agreement	14
Section 8.10. Expenses	14
Section 8.11. No Other Obligations.....	14

Schedules

Schedule 1	Pledged Membership Interests
Schedule 2	Organization of Pledgor

MEMBERSHIP INTEREST PLEDGE AGREEMENT

This MEMBERSHIP INTEREST PLEDGE AGREEMENT (this “Agreement”), dated as of [____], is made between ITR CONCESSION COMPANY HOLDINGS LLC, a Delaware limited liability company (the “Pledgor”), and [____], in its capacity as collateral agent for the benefit of and as representative of the Secured Parties (in such capacity, the “Collateral Agent”).

RECITALS

A. The Pledgor is the sole member of ITR Concession Company LLC (the “Company”), a Delaware limited liability company, pursuant to the terms of that certain Limited Liability Company Agreement of the Company, dated as of January 19, 2006 (as amended, supplemented and /or otherwise modified from time to time, the “LLC Agreement”).

B. The Lenders (as defined below) have agreed to enter into the Second Lien Financing Agreement, dated as of the date hereof (the “Second Lien Financing Agreement”), by and among the Company, as the Borrower, certain lenders party thereto (the “Lenders”), and Wilmington Trust, National Association, as the Administrative Agent, on the terms and subject to the conditions set forth therein.

C. Simultaneously with the execution of this Agreement, the Company, the Administrative Agent for and on behalf of the Financing Parties, the first lien administrative agent thereunder, the Collateral Agent and the first lien collateral agent thereunder have entered into that certain Collateral Agency and Intercreditor Agreement (the “Collateral Agency Agreement”), dated as of the date hereof, pursuant to which [____] has been appointed Collateral Agent with respect to this Agreement and the other Security Documents.

D. It is a condition precedent to the Closing Date under the Second Lien Financing Agreement that the Pledgor shall have executed and delivered this Agreement to the Collateral Agent.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficient which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. All capitalized terms used herein but not otherwise defined herein shall have the respective meanings given to such terms in Appendix A to the Second Lien Financing Agreement. The Rules of Interpretation set forth in such Appendix A shall govern this Agreement.

ARTICLE II PLEDGE

Section 2.01. Grant. The Pledgor, as collateral security for the prompt payment in full when due (whether at stated maturity, upon acceleration, on any optional or mandatory prepayment date or otherwise) and performance of any and all of the Secured Obligations (as defined below), hereby collaterally assigns, pledges and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a security interest (subject to Permitted Liens) in all of its respective right, title and interest in and to the following property, whether now owned or hereafter acquired (collectively, the “Pledged Collateral”):

(a) its limited liability company interests in the Company and all options, warrants and rights to purchase limited liability company interests in the Company and any security certificates or other documents, instruments or certificates representing its limited liability company interests in the Company and, subject to Section 5.01, all dividends, distributions, cash, securities, instruments and other property from time to time paid, payable or otherwise distributed in respect of or in exchange for all or any part of its limited liability company interests in the Company and all proceeds thereof (the “Pledged Membership Interests”);

(b) without affecting the obligations of Pledgor under any provision prohibiting that action under any Financing Document, in the event of any consolidation or merger of Borrower in which Borrower is not the surviving Person, all ownership interests of any class or character in the successor Person (unless that successor Person is Pledgor itself) formed by or resulting from such consolidation or merger;

(c) the LLC Agreement and all amendments, supplements, substitutions and renewals of the LLC Agreement;

(d) any Indebtedness owed to the Pledgor by the Company from time to time, including any instruments (as such term is defined in the UCC) or payment intangibles (as such term is defined in the UCC) evidencing or relating to such Indebtedness; and

(e) all proceeds, products and accessions of and to any and all of the foregoing, including, without limitation, “proceeds” as defined in Section 9-102(a)(64) of the UCC, including whatever is received upon any sale, exchange, collection or other disposition of any of the Pledged Membership Interests, and any property into which any of the Pledged Membership Interests are converted, whether cash or non-cash proceeds, and any and all other amounts paid or payable under or in connection with any of the Pledged Membership Interests;

provided, however, that any and all amounts distributed or paid to the Pledgor in accordance with Section 7.6 of the Second Lien Financing Agreement and Sections 4.01 and 4.06(b) of the Depository Agreement shall be free of the Lien of this Agreement (without further action or consent).

Section 2.02. Perfection. The Pledgor shall file, or shall cause to be filed, such financing statements and continuation statements in such offices as are or shall be necessary or as the Collateral Agent may reasonably determine to be appropriate to create, perfect and establish the priority of liens granted by this Agreement in any and all of the Pledged Collateral, or to enable the Collateral Agent to exercise its remedies, rights, powers and privileges under this

Agreement. The Pledgor shall promptly (and in any event, within ten (10) Business Days) deliver to the Collateral Agent any certificates or instruments evidencing the Pledged Collateral, which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment, where applicable, in blank, and accompanied by any required transfer tax stamps, all in form and substance reasonably satisfactory to the Collateral Agent.

Section 2.03. Delivery of Additional Pledged Collateral. Subject to Section 5.01, the Pledgor agrees that it will, upon obtaining any additional Pledged Collateral, including, any additional equity interest in the Company issued in respect of any new equity investment or other consideration of any kind from the Pledgor, or any additional or substitute certificates or any other equity interests, whether as an addition to, in substitution for or exchange for any Pledged Collateral, hold such Pledged Collateral in trust for the Collateral Agent, segregate such Pledged Collateral from other property or funds of the Pledgor, and promptly (and in any event, within ten (10) Business Days) deliver to the Collateral Agent the certificates or instruments evidencing such additional Pledged Collateral, which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment, where applicable, in blank, and accompanied by any required transfer tax stamps, all in form and substance reasonably satisfactory to the Collateral Agent.

Section 2.04. Secured Obligations. This Agreement secures, in accordance with the provisions hereof, and the property described in Section 2.01 above is collateral security for, the payment and performance in full when due, whether at stated maturity, by acceleration or otherwise (without duplication), (a) the Secured Obligations under the Financing Documents and any Hedging Agreements; (b) the performance by the Member of the agreements set forth herein; (c) all payments made or expenses reasonably incurred by the Collateral Agent or any other Secured Party under and in accordance with this Agreement, the Second Lien Financing Agreement or the other Financing Documents, including reasonable attorneys' fees and legal expenses, in the exercise, preservation or enforcement of any of the rights, powers or remedies of the Collateral Agent or any other Secured Party, or in the enforcement of the obligations of the Pledgor, hereunder, to the extent reimbursable under the Financing Documents; and (d) any renewals, continuations or extensions of any of the foregoing under the Financing Documents (all of which are referred to herein as the "Secured Obligations").

Section 2.05. Priority. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Collateral Agent hereunder are subject to the provisions of the Collateral Agency Agreement. In the event of any conflict between the terms of the Collateral Agency Agreement and this Agreement, the terms of the Collateral Agency Agreement shall govern and control.

Section 2.06. Termination; Release of Pledged Collateral. This Agreement shall create continuing security interests in the Pledged Collateral and shall remain in full force and effect for the benefit of the Secured Parties until all Secured Obligations (other than contingent Obligations) to be paid or performed under the Financing Documents have been paid and performed in full. Upon the happening of all of such events, the security interests granted hereby shall automatically terminate and upon the Collateral Agent's receipt of the Administrative

Agent's written signed notice (the "Lien Termination Notice") that the events set forth in the first sentence of this Section 2.06 have occurred, the Collateral Agent shall promptly cause to be assigned, transferred and delivered, against receipt but without any recourse, warranty or representation whatsoever (other than the absence of any continuing Lien arising by, through or under the Collateral Agent) any remaining Pledged Collateral and moneys received in respect of the Pledged Collateral, to or to the order of the Pledgor. Provided the Collateral Agent has received the Lien Termination Notice, the Collateral Agent shall, upon payment of its reasonable out-of-pocket fees and expenses, if any, by the Borrower to the extent reimbursable and otherwise then due and payable (including reasonable attorneys' fees and expenses to which it is entitled under the Financing Documents), execute and deliver to the Pledgor, at the Borrower's expense, such documentation as the Pledgor shall reasonably request and prepare to evidence such termination or expiration and release the liens created under this Agreement, including termination statement(s) for any financing statement on file with respect to the Pledged Collateral. The security interests created hereby shall be automatically released with respect to any portion of the Pledged Collateral that is sold, transferred or otherwise disposed of in compliance with the terms and conditions of the Collateral Agency Agreement, the Second Lien Financing Agreement and the other Security Documents.

ARTICLE III REPRESENTATION AND WARRANTIES

The Pledgor hereby represents and warrants as of the date hereof, as follows:

Section 3.01. Pledged Membership Interests. As of the Closing Date, the Pledged Membership Interests pledged hereunder by the Pledgor constitute 100% percent of the issued and outstanding limited liability company interests in the Company. The Pledged Membership Interests as of the Closing Date are listed on Schedule 1 attached hereto.

Section 3.02. No Outstanding Warrants Options, Etc. There are no outstanding warrants, options or other rights to purchase, or other agreements outstanding with respect to, or property that is now or hereafter convertible into, or that requires the issuance or sale of, any Pledged Membership Interests.

Section 3.03. Perfection. The pledge of the Pledged Collateral pursuant to this Agreement, the delivery of the Pledged Collateral to the Collateral Agent, the retention of the Pledged Collateral by the Collateral Agent, and the completion of the filings in accordance with Section 2.02 shall create a valid and perfected security interest in the Pledged Collateral in favor of the Collateral Agent for the ratable benefit of the Secured Parties prior to all other Liens (except for Permitted Liens) to secure the payment of the Secured Obligations.

Section 3.04. Organization, Etc.

(a) The Pledgor is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Delaware, and it has all requisite organizational power and authority to own its assets and to transact the business in which it is now engaged in.

(b) Schedule 2 attached hereto correctly sets forth the Pledgor's full and correct legal name, type of organization, jurisdiction of organization and organizational number, if any, as of the Closing Date.

(c) The Pledgor has not previously (except as permitted hereunder) (i) changed its location (as defined in Section 9-037 of the UCC), (ii) changed its name, or (iii) become a "new debtor" (as defined in the UCC) with respect to a currently effective security agreement entered into by another Person.

Section 3.05. Legal Owner. The Pledgor is the legal and beneficial owner of the Pledged Collateral free and clear of any Lien except for Permitted Liens.

Section 3.06. Power to Pledge. The Pledgor has the full organizational power and authority to pledge all of the Pledged Collateral pursuant to this Agreement and to execute and deliver this Agreement and perform its obligations hereunder.

Section 3.07. Enforceability. The execution, delivery and performance by the Pledgor of this Agreement have been duly authorized by all necessary organizational action of the Pledgor, and this Agreement is the legal, valid, and binding obligation of the Pledgor, enforceable against the Pledgor in accordance with its terms, except as enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditor's rights and general principles of equity.

Section 3.08. No Governmental Approvals. No authorization, approval, or other action by, and no notice to or filing with, any Governmental Authority or regulatory body (other than that which has been made or obtained) is required for the pledge by the Pledgor of the Pledged Collateral pursuant to this Agreement or for the execution, delivery or performance by the Pledgor of this Agreement and the transactions contemplated hereby, except in any such case where any failure to obtain the same would not reasonably be expected to have a Material Adverse Effect.

Section 3.09. No Conflicts. The execution, delivery, and performance by the Pledgor of this Agreement and the transactions contemplated hereby do not and will not (1) contravene the Pledgor's charter documents; (2) violate or cause the Pledgor to violate any material applicable law which violation could reasonably be expected to have a Material Adverse Effect; (3) cause or result in a breach of or constitute a default under any indenture or loan or credit agreement to which the Pledgor or the Company is a party or by which it or its respective properties may be bound or affected except for any breach or default that could not reasonably be expected to have a Material Adverse Effect; or (4) result in, or require, the creation or imposition of any Lien upon or with respect to any of the properties now owned or hereafter acquired by the Pledgor or the Company (except the Liens created by this Agreement or other Permitted Liens).

Section 3.10. No Proceedings. There is no pending or, to the Actual Knowledge of the Pledgor, threatened in writing action or proceeding at law or in equity against the Pledgor before any court, arbitrator or any other Governmental Authority which would, individually or in the aggregate, materially adversely affect the ability of the Pledgor to perform its obligations under this Agreement.

Section 3.11. LLC Agreement. The LLC Agreement contains the entire agreement between the parties thereto with respect to the subject matter thereof and is in full force and effect in accordance with its terms. There exists no material violation or default under the LLC Agreement by the Pledgor. The Pledgor has not knowingly waived or released any of its material rights under or otherwise consented to a material departure from the terms and provisions of the LLC Agreement.

ARTICLE IV COVENANTS

So long as any Secured Obligations are outstanding (other than contingent Obligations), the Pledgor covenants and agrees as follows, unless otherwise consented to in writing by the Collateral Agent (acting pursuant to the Collateral Agency Agreement):

Section 4.01. Additional Membership Interests. The Pledgor shall (i) cause the Company not to issue any limited liability company interests or other equity interests or other securities in addition to, or in substitution for, the Pledged Membership Interests, except to the Pledgor; (ii) upon its acquisition thereof, pledge hereunder in accordance with Article II any and all Pledged Collateral required to be pledged hereunder; and (iii) promptly deliver to the Collateral Agent all written notices received by it with respect to the Pledged Collateral.

Section 4.02. No Transfer. The Pledgor shall not sell, assign, transfer, convey, or otherwise dispose of, or grant any option or warrant with respect to, any of the Pledged Collateral, except to the extent permitted under the Second Lien Financing Agreement and the other Financing Documents.

Section 4.03. No Liens. The Pledgor shall not create, incur, assume, or suffer to exist any Lien on the Pledged Collateral (except for Permitted Liens), except as may be granted pursuant to this Agreement.

Section 4.04. No Change in Name, Etc. Except upon fifteen (15) days' prior written notice to the Collateral Agent and the Administrative Agent, the Pledgor shall not change its name, identity or organizational structure to such an extent that any financing statement filed in connection with this Agreement would become misleading or change its jurisdiction of organization.

Section 4.05. Preservation and Maintenance. The Pledgor shall preserve and maintain its limited liability company existence and good standing in the jurisdiction of its formation, and not merge or consolidate with any Person.

Section 4.06. Governmental Consent. Each consent of any Governmental Authority and each other Person which may be required in connection with the enforcement of this Agreement and any transfer of the Pledged Collateral contemplated hereby is in full force and effect, is final and not subject to appeal. No other such consent is required to be obtained by the Pledgor in connection with the execution and delivery of, and performance by, the Pledgor of its respective obligations, and the exercise of its rights, under the Financing Documents to which it is a party, except in any such case where any failure to obtain the same would not reasonably be expected to have a Material Adverse Effect.

Section 4.07. Maintenance of Perfected Security Interest; Further Assurances. Subject to the terms of the Financing Documents, the Pledgor agrees that at any time and from time to time, at the reasonable expense of the Borrower, the Pledgor will promptly execute, file and deliver all financing statements, continuation statements, termination statements and other instruments and documents, and take all further action as are necessary, or that the Administrative Agent may reasonably request, in order to perfect, protect and maintain the security interest granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies pursuant to the terms hereof with respect to any Pledged Collateral. The Pledgor shall defend, at the Borrower's reasonable expense, the Collateral Agent's right, title, special property, and security interest in and to the Pledged Collateral against the claims of any Person that has instituted, or made a non-frivolous threat in writing of, any proceeding, judicial or otherwise, claiming an interest therein adverse to the Secured Parties in any material respect unless such Pledged Collateral is subject to any Permitted Liens. The Collateral Agent shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office or otherwise perfecting or maintaining the perfection of any security interest in the Pledged Collateral under this Section 4.07.

Section 4.08. No Amendments. The Pledgor shall not agree to (i) amend, terminate, cancel or otherwise modify the LLC Agreement or (ii) waive any default under or breach of, or release any right, interest or entitlement arising under, any provision of the LLC Agreement, in each case, which would materially adversely affect the perfection of the security interests of the Collateral Agent in the Pledged Collateral or any rights of the Collateral Agent hereunder.

ARTICLE V DISTRIBUTIONS, VOTING RIGHTS, ETC.

Section 5.01. Distributions and Voting Rights Prior to Event of Default. So long as no Event of Default shall have occurred and be continuing and the Borrower has not received prior written notice from the Collateral Agent stating its intention to exercise its rights and remedies under Section 5.02, the Pledgor shall be entitled to (i) receive and retain, and to utilize free and clear of the Lien of this Agreement, any and all cash and other distributions paid in respect of the Pledged Membership Interests, and (ii) exercise any and all voting and other consensual rights pertaining to the Pledged Membership Interests or any part thereof for any purpose not inconsistent with the terms of this Agreement or any other Financing Document; provided, however, that the Pledgor shall not exercise or refrain from exercising any such right if such action would result in any violation of any provision of any of the Financing Documents.

Section 5.02. Distributions and Voting Rights After Event of Default.

(a) Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent shall notify the Collateral Agent in writing that an Event of Default has occurred and is continuing (a "Default Notice") and promptly thereafter the Collateral Agent shall, if so instructed by the Administrative Agent in the Default Notice, provide the Pledgor with prior written notice prohibiting the Pledgor from exercising the rights and powers of a holder of the Pledged Membership Interests, at which time (and until such time that such Event

of Default has been cured or waived) all such rights and powers of the Pledgor shall cease immediately, and the Collateral Agent shall thereupon have the right to exercise any all rights and powers, including voting rights, and enforce any and all remedies available to the Secured Parties related to the Pledged Collateral, including foreclosure thereof, in accordance with instructions from the Administrative Agent delivered pursuant to Section 8.2(a)(ii) of the Second Lien Financing Agreement, all without liability except to account for property actually received by it or any loss resulting from its gross negligence, bad faith or willful misconduct; provided, however, that the Collateral Agent shall have no duty to the Pledgor to exercise any such right or power and shall not be responsible for any failure to do so or delay in so doing.

(b) In order to permit the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all distributions which it may be entitled to receive hereunder, (A) the Pledgor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all such proxies and other instruments as the Collateral Agent may from time to time reasonably request, and (B) without limiting the effect of clause (A) above, the Pledgor grants to the Collateral Agent an irrevocable proxy to vote the Pledged Membership Interests and to exercise all other rights, powers, privileges and remedies to which a holder of the Pledged Membership Interests would be entitled (including giving or withholding written consents of members or other holders of equity interests, calling special meetings of members or other holders of equity interests and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Membership Interests on the record books of the Company) by any other Person (including the Company or any officer or agent thereof), upon the occurrence and during the continuation of an Event of Default and upon receipt by the Borrower of prior written notice from the Collateral Agent and which proxy shall terminate only at such time as the earlier of such Event of Default is cured or waived or repayment in full of the Secured Obligations other than the contingent Obligations.

ARTICLE VI REMEDIES

Section 6.01. Remedies Upon Event of Default. Subject to Article VIII of the Second Lien Financing Agreement and the terms of the Collateral Agency Agreement:

(a) Upon the occurrence and during the continuation of an Event of Default and receipt by the Collateral Agent of a Default Notice, the Collateral Agent may, upon written notice, exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing, or relating to the Secured Obligations, all rights and remedies with respect to the Pledged Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where such rights, remedies, powers and privileges are asserted) and such additional rights, remedies, powers and privileges to which a secured party is entitled under the laws in effect in any jurisdiction where any rights, remedies, powers and privileges in respect of this Agreement or the Pledged Collateral may be asserted, including the right, to the maximum extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Collateral as if the Collateral Agent were the sole and absolute owner of the Pledged Collateral (and the Pledgor agrees to take all

such action as may be appropriate to give effect to such right). Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement, or notice of any kind (except any notice required by law referred to below), to or upon the Pledgor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in accordance with the terms of the Default Notice in such circumstances, upon ten (10) Business Days' prior written notice to the Pledgor of the time and place, with respect to all or any part of the Pledged Collateral which shall then be or shall thereafter come into the possession, custody or control of the Collateral Agent or any of their respective agents, sell, lease, assign, give option or options to purchase, or otherwise dispose of all or any part of such Pledged Collateral (or contract to do any of the foregoing), at such place or places as the Collateral Agent deems best, for cash, for credit or for future delivery (without thereby assuming any credit risk) and at public or private sale, without demand of performance or notice of intention to effect any such disposition or of time or place of any such sale (except such notice as is required above or by applicable statute and cannot be waived), and the Collateral Agent or any other Person may be the purchaser, lessee or recipient of any or all of the Pledged Collateral so disposed of at any public sale (or, to the extent permitted by law, at any private sale) and thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise) of the Pledgor, any such demand, notice and right or equity being hereby expressly waived and released. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned.

(b) The proceeds of, and other realization upon, the Pledged Collateral by virtue of the exercise of remedies under this Section 6.01 shall be applied in accordance with Section 6.03.

Section 6.02. Private Sale. The Collateral Agent shall incur no liability as a result of the sale, lease or other disposition of all or any part of the Pledged Collateral at any private sale pursuant to Section 6.01 conducted in a commercially reasonable manner. The Pledgor hereby waives (to the extent permitted by applicable law) any claims against the Collateral Agent arising by reason of the fact that the price at which the Pledged Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Collateral Agent accepts the first offer received and does not offer the Pledged Collateral to more than one offeree.

Section 6.03. Application of Proceeds. Except as otherwise expressly provided in this Agreement, the Collateral Agent shall apply all Proceeds received by the Collateral Agent in respect of any sale of, collection from, or other realization upon, all or any part of the Pledged Collateral, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the safekeeping or care of any Pledged Collateral or in any way relating to the Pledged Collateral or the rights of the Collateral Agent and any other Secured Party hereunder (including reasonable fees and disbursements, in each case to the extent permissible under the Financing Documents), as provided in Section 4.01 of the Collateral Agency Agreement.

**ARTICLE VII
ATTORNEY-IN-FACT**

Section 7.01. Appointment. The Pledgor hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact for the purpose of carrying out the provisions of this Agreement and taking any action and executing any documents or instruments that the Collateral Agent may deem necessary or is reasonably required by the Administrative Agent to accomplish the purposes of this Agreement, to perfect, preserve the validity (so long as an Event of Default is continuing), perfection and priority of, and enforce any lien granted by this Agreement and, after the occurrence and during the continuation of an Event of Default and upon receipt by the Borrower of prior written notice from the Collateral Agent, to exercise its rights, remedies, powers and privileges under this Agreement. This appointment as attorney-in-fact is irrevocable and coupled with an interest until this Agreement is terminated and the security interests created thereby are released. Without limiting the generality of the foregoing, the Collateral Agent shall be entitled under this Agreement to do any of the following if an Event of Default has occurred and is continuing:

(a) ask, demand, collect, sue for, recover, receive and give receipt and discharge for amounts due and to become due under and in respect of all or any part of the Pledged Collateral;

(b) file any claims or take any action or proceeding in any court of law or equity that the Collateral Agent may deem necessary or is reasonably required by the Administrative Agent for the collection of all or any part of the Pledged Collateral;

(c) execute, in connection with any sale or disposition of the Collateral pursuant to Section 6.01 or 6.02 hereof, any endorsements, assignments, bills of sale or other instruments of conveyance or transfer with respect to all or any part of the Pledged Collateral;

(d) pay or discharge Taxes and Liens levied or placed on the Pledged Collateral upon receipt by the Borrower of five (5) Business Days' prior written notice from the Collateral Agent;

(e) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Pledged Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes; and

(f) do, at the Collateral Agent's option and the Borrower's reasonable expense, at any time, from time to time, all acts and things that the Collateral Agent deems necessary to protect, preserve, or realize upon the Pledged Collateral and the Collateral Agent's and the other Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as the Pledgor might do.

Anything in this Section 7.01 to the contrary notwithstanding, the Collateral Agent agrees that it shall not exercise any right under the power of attorney provided for in this Section 7.01 unless an Event of Default shall have occurred and be continuing and upon receipt by the Borrower of prior written notice from the Collateral Agent.

Section 7.02. Performance in Lieu of Pledgor. Upon the occurrence and during the continuation of an Event of Default and upon receipt by the Borrower of prior written notice from the Collateral Agent, the Collateral Agent, without releasing the Pledgor from any obligation, covenant or condition hereof, itself may (but shall not be obligated to) make any payment or perform, or cause the performance of, any such obligation, covenant, condition or agreement or any other action in such manner and to such extent as the Collateral Agent may deem necessary to protect, perfect or continue the perfection of the security interest granted under this Agreement. Any reasonable costs or expenses incurred by the Collateral Agent in connection with the foregoing shall be payable by the Borrower to the Collateral Agent promptly following written demand therefor.

Section 7.03. Duty of the Collateral Agent. The Collateral Agent shall be accountable only for amounts that it receives as a result of the exercise of the powers granted to it by this Agreement. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Pledged Collateral in its possession shall be to deal with it in the same manner as it deals with similar property for its own account and as otherwise required by Article 9 of the UCC. None of the Collateral Agent, the other Secured Parties, or any of their respective officers, directors, employees, or agents shall be liable for failure to demand, collect, or realize upon any Pledged Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Pledged Collateral upon the request of the Pledgor or any other Person or to take any other action whatsoever with regard to any Pledged Collateral. The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Pledged Collateral, and shall not impose any duty upon the Collateral Agent or any other Secured Party to exercise any such powers. The Collateral Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their respective officers, directors, employees, or agents shall be responsible to the Pledgor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

Section 7.04. Authority of the Collateral Agent. The Pledgor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment, or other right or remedy provided for hereunder or resulting or arising out of this Agreement shall be governed by the provisions contained in this Agreement and other Financing Documents.

Section 7.05. Role of the Collateral Agent. The rights, duties, liabilities and immunities of the Collateral Agent and its appointment and replacement hereunder shall be governed by the provisions contained in this Agreement and the Collateral Agency Agreement.

Section 7.06. Absence of Fiduciary Relation. The Collateral Agent undertakes to perform or to observe only such of its agreements and obligations as are specifically set forth in this Agreement or any other Financing Document to which it is a party, and no implied agreements, covenants or obligations with respect to the Pledgor, any Affiliate of the Pledgor or any other party to any Financing Document to which the Pledgor is a party shall be read into this Agreement against the Collateral Agent or any of the other Secured Parties; neither the Collateral Agent nor any of the other Secured Parties in its and their capacity as such is a fiduciary of and

shall not owe or be deemed to owe any fiduciary duty to the Pledgor, any affiliate of any of the Pledgor or any other party to any other Financing Document to which the Pledgor is a party, except as otherwise specifically required by applicable law.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.01. Amendments. Any term, covenant, agreement or condition of this Agreement may be amended or waived only by the instrument in writing signed by the Pledgor and the Collateral Agent (acting pursuant to the Collateral Agency Agreement); provided, however, that only the Collateral Agent, as provided herein, may waive any of its rights under any provision of this Agreement; no consent to any departure by the Pledgor therefrom shall be effective unless in writing signed by the Collateral Agent (acting pursuant to the Collateral Agency Agreement), and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 8.02. Waivers.

(a) The waiver (whether expressed or implied) by the Collateral Agent of any breach of the terms or conditions of this Agreement, and the consent (whether expressed or implied) of any Secured Party shall not prejudice any remedy of the Collateral Agent or any other Secured Party in respect of any continuing or other breach of the terms and conditions hereof, and shall not be construed as a bar to any right or remedy which the Collateral Agent or any other Secured Party would otherwise have on any future occasion under this Agreement.

(b) No failure to exercise nor any delay in exercising, on the part of the Collateral Agent or any other Secured Party of any right, power or privilege under this Agreement shall operate as a waiver thereof; further, no single or partial exercise of any right, power or privilege under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. All remedies hereunder and under the other Security Documents are cumulative and are not exclusive of any other remedies that may be available to a party, whether at law, in equity, or otherwise.

Section 8.03. Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or by electronic means (i.e., “pdf” or “tif”)), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, when delivered by electronic transmission, when confirmed by sender’s receipt of acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement) or, in the case of notice given by mail, private courier, overnight delivery service or facsimile, when received, addressed as follows, or to such other address as may be hereafter notified in accordance with this Section 8.03 by the respective parties hereto:

The Pledgor:

[_____]
[_____]

[_____]
Attention: [_____]

The Collateral Agent:

[_____]
[_____]
[_____]
Attention: [_____]
Telephone: [_____]
Facsimile: [_____]

Notwithstanding anything to the contrary contained herein, each such notice, instruction, direction, request or other communication so given to the Collateral Agent shall be effective only upon actual receipt.

Section 8.04. Successors and Assigns.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(b) Nothing contained in this Agreement or any other Security Document is intended to limit the right of any Financing Party to assign, transfer, or grant participations in its rights in its respective Obligations and Financing Documents in accordance with Section 11.4 of the Second Lien Financing Agreement.

Section 8.05. Counterparts. This Agreement may be executed in any number of counterparts by facsimile or other electronic means, including by “.pdf” attached to an email, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

Section 8.06. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed in the State of New York. Each of the parties hereto hereby irrevocably (a) consents and submits to the non-exclusive jurisdiction of any New York state court sitting in New York County, New York or any federal court of the United States sitting in the Southern District of New York, as any party may elect in any suit, action or proceeding arising out of or relating to this Agreement and (b) WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH ANY OF THE PARTIES HERETO ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

Section 8.07. Captions. The headings of the several articles and sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 8.08. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable

law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

Section 8.09. Entire Agreement. This Agreement, together with any other agreement executed in connection with this Agreement, is intended by the parties as a final expression of their agreement as to the matters covered by this Agreement and is intended as a complete and exclusive statement of the terms and conditions of such agreement.

Section 8.10. Expenses. The Pledgor agrees to pay or to reimburse the Collateral Agent for all reasonable out-of-pocket costs and expenses (including reasonable attorney's fees and expenses of one counsel) that may be incurred by the Collateral Agent in accordance with this Agreement in any effort to enforce any of the obligations of the Pledgor in respect of the Pledged Collateral or in connection with (a) the preservation of the liens on, or the rights of the Secured Parties to the Pledged Collateral pursuant to this Agreement or (b) any actual or attempted sale, lease, disposition, exchange, collection, compromise, settlement or other realization in respect of, or care of, the Pledged Collateral, including all such reasonable costs and expenses (and reasonable attorney's fees and expenses) incurred in any bankruptcy, reorganization, workout or other similar proceeding, to the extent made in accordance with the terms hereof.

Section 8.11. No Other Obligations. The Pledgor shall have no obligations or liabilities under the Second Lien Financing Agreement or any other Financing Document other than this Agreement, and shall not be obligated or liable for the Obligations except to the extent of the Pledged Collateral hereunder.

(Signatures Follow on Next Page)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

ITR CONCESSION COMPANY HOLDINGS LLC,
as Pledgor

By: _____

Name:

Title:

By: _____

Name:

Title:

[_____] ,
as Collateral Agent

By: _____
Name:
Title:

Schedule 1

Pledged Membership Interests

<u>Pledgor</u>	<u>Membership Interests</u>
ITR Concession Company Holdings LLC	100% of the membership interests in ITR Concession Company LLC, a Delaware limited liability company, represented by a Certificate of Interest No. [1] ¹ .

¹ ITR to confirm.

Schedule 2

Organization of Pledgor

Pledgor's Legal Name:

ITR Concession Company Holdings LLC

Type, Jurisdiction of Organization and Organizational Number, if any:

Limited liability company organized under the laws of the State of Delaware

Organizational Number: 4092775

Exhibit E-7

Form of Depository Agreement

DEPOSITARY AGREEMENT

among

ITR CONCESSION COMPANY LLC

as the Borrower,

WILMINGTON TRUST, NATIONAL ASSOCIATION,

as the First Lien Administrative Agent on behalf of
the First Lien Lenders,

[____],

as the Second Lien Administrative Agent on behalf of
the Second Lien Lenders,

[____],

as the First Lien Collateral Agent on behalf of
the First Lien Secured Parties,

and

[____],

as the Second Lien Collateral Agent on behalf of
the Second Lien Secured Parties,

and

[____],

as Depositary Bank

Dated as of [_____]

ARTICLE I DEFINITIONS AND OTHER MATTERS.....	2
1.03 Uniform Commercial Code.....	9
ARTICLE II THE DEPOSITARY BANK AND THE ESTABLISHMENT OF THE COLLATERAL ACCOUNTS.....	9
2.01 Depository Bank.....	9
2.02 The Collateral Accounts.	13
2.03 Grant of Lien on Collateral Accounts-Secured Parties.....	15
2.04 Bank Statements.....	15
ARTICLE III PROVISIONS APPLICABLE TO COLLATERAL ACCOUNTS.....	15
3.01 Permitted Investments.....	15
3.02 Withdrawal and Transfer Procedure.	18
3.03 Transfer of Amounts.	21
3.04 Trigger Event.	21
3.05 Distribution of Collateral Proceeds.....	22
3.06 Disposition of Collateral Accounts upon Discharge of First Lien Obligations.....	22
ARTICLE IV THE COLLATERAL ACCOUNTS.....	22
4.01 Proceeds Account.....	22
4.02 Operating Account.....	26
4.03 First Lien Debt Service Payment Account.....	26
4.04 Second Lien Debt Service Payment Account.	26
4.05 Debt Service Reserve Account.	27
4.06 Distribution Account.....	28
4.07 Loss Proceeds.....	29
4.07 Loss Proceeds.....	30
ARTICLE V [RESERVED]	31
ARTICLE VI THE DEPOSITARY BANK	31
6.01 General.....	31
6.02 Reliance by Depository Bank.....	31
6.03 Court Orders.....	32
6.04 Resignation or Removal.....	33
6.05 Exculpatory Provisions.	33
6.06 Fees; Expenses.....	35
ARTICLE VII MISCELLANEOUS.....	35
7.01 Controlling Party.....	36
7.02 No Waiver; Remedies Cumulative.	36

7.03	Notices.	36
7.04	Amendments.	38
7.05	Benefit of Agreement; Successors and Assigns.....	38
7.06	Third-Party Beneficiaries.....	38
7.07	Counterparts.....	38
7.08	Effectiveness.	38
7.09	Entire Agreement.	38
7.10	Severability.	39
7.11	Conflict with Other Agreements.....	39
7.12	Scope of Liability.....	39
7.13	Governing Law	39
7.14	Consent to Jurisdiction.....	40
7.15	WAIVER OF JURY TRIAL.....	41
7.16	Service of Process.....	41
7.17	Termination.....	41
7.18	Reinstatement.....	41
7.19	Attorney-In-Fact.	42
7.20	Patriot Act Compliance.....	42

SCHEDULE I ACCOUNT NAMES AND NUMBERS
SCHEDULE II SCHEDULE OF DEPOSITARY BANK FEES

EXHIBIT A FORM OF WITHDRAWAL/TRANSFER CERTIFICATE

DEPOSITARY AGREEMENT

DEPOSITARY AGREEMENT (this “**Depositary Agreement**”), dated as of [____], is made by and among **ITR CONCESSION COMPANY LLC**, a Delaware limited liability company (the “**Borrower**”); **WILMINGTON TRUST, NATIONAL ASSOCIATION**, in its capacity as administrative agent on behalf of the First Lien Lenders (in such capacity, the “**First Lien Administrative Agent**”); [____], in its capacity as administrative agent on behalf of the Second Lien Lenders (in such capacity, the “**Second Lien Administrative Agent**”); [____], in its capacity as collateral agent on behalf of the First Lien Secured Parties (in such capacity, the “**First Lien Collateral Agent**”); and [____], in its capacity as collateral agent on behalf of the Second Lien Secured Parties (in such capacity, the “**Second Lien Collateral Agent**”); and [____], as Depositary Bank (“**Depositary Bank**”).

RECITALS

A. Pursuant to the First Lien Financing Agreement, dated as of the date hereof (the “**First Lien Financing Agreement**”) among the Borrower, the financial institutions party thereto from time to time (the “**First Lien Lenders**”) and the First Lien Administrative Agent, the First Lien Lenders party thereto have agreed to provide certain loans to the Borrower on the terms and subject to the conditions set forth therein.

B. Pursuant to the Second Lien Financing Agreement, dated as of the date hereof (the “**Second Lien Financing Agreement**”) among the Borrower, the financial institutions party thereto from time to time (the “**Second Lien Lenders**”) and the Second Lien Administrative Agent, the Second Lien Lenders party thereto have agreed to provide certain loans to the Borrower on the terms and subject to the conditions set forth therein.

C. The Borrower, the First Lien Administrative Agent, the Second Lien Administrative Agent, the First Lien Collateral Agent and the Second Lien Collateral Agent have entered into that certain Collateral Agency and Intercreditor Agreement, dated as of the date hereof (the “**Collateral Agency Agreement**”), which sets forth, among other things, their respective intercreditor rights.

D. It is a condition precedent to the effectiveness of the First Lien Financing Agreement and the Second Lien Financing Agreement that the parties hereto shall have executed and delivered this Depositary Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valid consideration, the receipt and adequacy of which is hereby expressly acknowledged, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS AND OTHER MATTERS

1.01 Definitions.

Unless otherwise defined herein, terms defined in Section 1.01 of the Collateral Agency Agreement as of the date hereof are used herein (including the introductory paragraph and recitals of this Depositary Agreement) as defined therein. In addition, for purposes of this Depositary Agreement, the following terms shall have the following meanings:

“**Administrative Agent**” means the First Lien Administrative Agent and/or the Second Lien Administrative Agent, as the context requires.

“**Agent**” means the First Lien Administrative Agent, the First Lien Collateral Agent, the Second Lien Administrative Agent and/or the Second Lien Collateral Agent, as the context requires.

“**Applicable Cash Sweep Percentage**” means (a) prior to the Discharge of First Lien Obligation, the “Applicable Cash Sweep Percentage” as defined in the First Lien Financing Agreement and (b) after the Discharge of First Lien Obligation, the “Applicable Cash Sweep Percentage” as defined in the Second Lien Financing Agreement.

“**Authorized Officer**” has the meaning specified in the Collateral Agency Agreement.

“**Borrower**” has the meaning assigned to such term in the introductory paragraph hereof.

“**Cash Sweep**” means, as of any Payment Date, the Applicable Cash Sweep Percentage for such Payment Date multiplied by the applicable Excess Cash as of such Payment Date.

“**Closing Date**” has the meaning specified in the Collateral Agency Agreement.

“**Collateral Accounts**” has the meaning assigned to such term in Section 2.02.

“**Collateral Agency Agreement**” has the meaning assigned to such term in Recital C hereof.

“**Collateral Documents**” has the meaning specified in the Collateral Agency Agreement.

“**Concession Agreement**” means that certain Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006, by and between the IFA and the Borrower, as amended by that certain First Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006, that certain Second Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of June 29, 2006, that certain Third Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of August 10, 2007, that certain Fourth Amendment to the Indiana Toll Road

Concession and Lease Agreement, dated as of February 5, 2008, and that certain Fifth Amendment to the Indiana Toll Road Concession and Lease Agreement, dated as of November 1, 2010.

“**Collections Account**” means bank account no. [_____] established by the Borrower with [_____] or any replacement account therefor established pursuant to Section [___] of the applicable Control Agreement.

“**Concessionaire Interest**” has the meaning specified in the Concession Agreement.

“**Control Account Bank**” means [_____] or any successor or assign.

“**Control Agreement**” means each of (a) the control agreement, dated [_____] among the Borrower, the Collateral Agent and [_____] with respect to the Collections Account, (b) the control agreement, dated [_____] among the Borrower, the Collateral Agent and [_____] with respect to the [Reimbursement Account and (c) each control agreement substantially in the form of the Control Agreement attached to the Financing Agreements as Exhibit H, with a successor Control Account Bank.

“**Controlling Party**” means (i) at all times prior to the Discharge of First Lien Obligations (as confirmed in writing to the Depository Bank by the First Lien Collateral Agent), the First Lien Collateral Agent (for the benefit of the First Lien Secured Parties) and (ii) thereafter, the Second Lien Collateral Agent (for the benefit of the Second Lien Secured Parties).

“**Debt Service Coverage Ratio**” or “**DSCR**” shall have the meaning assigned to the term “Debt Service Coverage Ratio” in the Collateral Agency Agreement.

“**Debt Service Reserve Account**” has the meaning assigned to such term in Section 2.02(a)(v).

“**Default**” means any event or occurrence, which, with the passage of time or the giving of notice or both, would become an Event of Default.

“**Default Permitted Investment**” means (a) clause [___] of the definition of “Permitted Investment” or (b) such other Permitted Investment that Borrower designates in writing to Depository Bank and the Controlling Party as the “Default Permitted Investment” from time to time.

“**Depository Agreement**” has the meaning assigned to such term in the introductory paragraph hereof.

“**Depository Bank**” has the meaning assigned to such term in the introductory paragraph hereof.

“**Depository Collateral**” has the meaning assigned to such term in Section 2.03.

“**Discharge of First Lien Obligations**” shall have the meaning specified in the Collateral Agency Agreement.

“**Distributable Cash**” means any funds maintained in the Distribution Account.

“**Distribution Account**” has the meaning assigned to such term in Section 2.02(a)(vii).

“**Distribution Conditions**” means, with respect to any Restricted Payment pursuant to Section 4.06(b)(i), the following conditions:

(a) no Event of Default exists at the date of such Restricted Payment and no Event of Default shall occur as a consequence of making the Restricted Payment;

(b) all amounts required to be funded or applied pursuant to Section 4.01(b) have been funded or applied, including all amounts required to be on deposit in the Debt Service Reserve Account and all amounts required to be applied in accordance with Sections 4.01(b)(vi) and 4.01(b)(vii);

(c) the Debt Service Coverage Ratio, calculated for the most recent twelve calendar month period ending on the date such Restricted Payment is to be made [for which financial statements are available], is equal to or greater than 1.5:1.0 as of such date such Restricted Payment is to be made; and

(d) the First Lien Administrative Agent (with a copy to Second Lien Administrative Agent) or, after Discharge of First Lien Obligations, the Second Lien Administrative Agent, has received a certificate from the Borrower certifying that each of the foregoing conditions has been satisfied as of the date of such Restricted Payment and setting forth the Debt Service Coverage Ratio calculations described in clause (c) above.

“**Event of Default**” has the meaning specified in the Collateral Agency Agreement.

“**Event of Loss**” means (a) any loss or destruction of, damage to or casualty relating to all or any part of the Indiana Toll Road or (b) any condemnation or other taking (including by eminent domain) of all or any part of the Indiana Toll Road or the Concessionaire Interest.

“**Event of Loss Proceeds**” has the meaning assigned to such term in Section 4.02(a).

“**Excess Cash**” means, as of any Payment Date, amounts remaining, on deposit in the Proceeds Account after giving effect to the payment, in full, of the amounts, or establishment of reserves for payment of the amounts, described in clauses First through Fifth of Section 4.01(b).

“**Excess DSR Amount**” has the meaning assigned to such term in Section 4.05(b).

“**Executed Withdrawal/Transfer Certificate**” has the meaning assigned to such term in Section 3.02(b).

“**Financing Agreements**” means, collectively, the First Lien Financing Agreement and the Second Lien Financing Agreement.

“**Financing Documents**” means, collectively, the First Lien Documents and the Second Lien Documents.

“**First Lien Collateral Agent**” has the meaning assigned to such term in the introductory paragraph hereof.

“**First Lien Debt Payment Deficiency**” has the meaning assigned to such term in Section 4.05(c)(i).

“**First Lien Debt Service Payment Account**” has the meaning assigned to such term in Section 2.02(a)(iii).

“**First Lien Debt Service**” means, for the Borrower and for any period, all obligations for principal and interest payments and any fees, expenses or other charges, including fees and Agent fees, due or payable in respect of the First Lien Loans and other First Lien Obligations.

“**First Lien Documents**” shall have the meaning specified in the Collateral Agency Agreement.

“**First Lien Financing Agreement**” has the meaning assigned to such term in Recital A hereof.

“**First Lien Maturity Date**” means the “Maturity Date” as defined in and under the First Lien Financing Agreement.

“**First Lien Lenders**” has the meaning assigned to such term in Recital A hereof.

“**Fiscal Year**” means the calendar year unless changed in accordance with the terms of the Member LLC Agreement.

“**Indiana Toll Road**” has the meaning specified in the Collateral Agency Agreement.

“**Insurance Proceeds**” has the meaning assigned to such term in Section 4.07(a).

“**Loss Proceeds**” has the meaning assigned to such term in Section 4.07(a).

“**Loss Proceeds Account**” has the meaning assigned to such term in Section 2.02(a)(vi).

“**Loss Proceeds Instruction**” has the meaning assigned to such term in Section 4.07(a).

“**Mandatory Debt Service**” means, on any Payment Date, (a) prior to the Discharge of First Lien Obligations, an amount equal to the interest and principal in respect of the First Lien Loans projected to become due by the first anniversary of such Payment Date (excluding, for the avoidance of doubt, (i) any balloon payment of principal with respect to the First Lien Loans due on the Maturity Date of such First Lien Loans, and (ii) any

projected payment of the First Lien Loans from a Cash Sweep); and (b) after the Discharge of First Lien Obligations, an amount equal to interest and principal in respect of the Second Lien Loans projected to become due by the first anniversary of such Payment Date (excluding, for the avoidance of doubt, (i) any balloon payment of principal with respect to the Second Lien Loans due on the Maturity Date of such Second Lien Loans, and (ii) any projected payment of the Second Lien Loans from a Cash Sweep).

“**Maturity Date**” means (a) with respect to the First Lien Loans, the First Lien Maturity Date and (b) with respect to the Second Lien Loans, the Second Lien Maturity Date.

“**Member**” means ITR Concession Company Holdings LLC, a Delaware limited liability company, and any other holder of Membership Interests.

“**Member LLC Agreement**” means that certain Amended and Restated Limited Liability Company Agreement of ITR Concession Company Holdings LLC, dated as of [____], entered into by and among the members party thereto

“**Membership Interests**” means the limited liability company interests of the Borrower.

“**Monthly Date**” means the last Business Day of each month following the date of Closing.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Officer’s Certificate**” means a certificate, in form and substance reasonably satisfactory to the Agent to whom the certificate is provided, executed and delivered by an Authorized Officer of the Borrower and setting forth the applicable certification(s) required hereunder.

“**Operating Account**” has the meaning assigned to such term in Section 2.02(a)(ii).

“**Payment Date**” means (a) each March 31, June 30, September 30 and December 31 occurring during the Loan Period (as defined in each Financing Agreement), and (b) the Maturity Date.

“**Permitted Investments**” means: (a) marketable direct obligations of the United States of America; (b) marketable obligations directly and fully guaranteed as to interest and principal by the United States of America; (c) demand deposits with the Depository Bank, and time deposits, certificates of deposit and banker’s acceptances issued by (i) the Depository Bank, so long as its long-term debt securities are rated “A” or better by S&P and “A2” or better by Moody’s, or (ii) any member bank of the Federal Reserve System which is organized under the laws of the United States of America or any political subdivision thereof having a combined capital and surplus of at least \$500 million and having long-term unsecured debt securities rated “A” or better by S&P and “A2” or better by Moody’s; (d) commercial paper or tax-exempt obligations given the highest rating by S&P and Moody’s; (e) obligations of the Depository Bank meeting the requirements of clause (c) above or any other bank meeting the requirements of clause (c) above, in

respect of the repurchase of obligations of the type as described in clauses (a) and (b) above, provided, that such repurchase obligations shall be fully secured by obligations of the type described in said clauses (a) and (b) above, and the possession of such obligations shall be transferred to, and segregated from other obligations owned by, the Depository Bank or such other bank; (f) a money market fund or a qualified investment fund (including any such fund for which the Depository Bank or any Affiliate thereof acts as an advisor or manager) given one of the two highest long-term ratings available from S&P and Moody's; (g) eurodollar certificates of deposit issued by the Depository Bank meeting the requirements of clause (c) above or any other bank meeting the requirements of clause (c) above; and (h) any investment permitted under the Concession Agreement. In no event shall any cash be invested in any obligation, certificate of deposit, acceptance, commercial paper or instrument which by its terms matures more than ninety (90) days after the date of investment, unless the Depository Bank or a bank meeting the requirements of clause (c) above shall have agreed to repurchase such obligation, certificate of deposit, acceptance, commercial paper or instrument at its purchase price plus earned interest within no more than ninety (90) days after its purchase hereunder. With respect to any rating requirement set forth above, if the relevant issuer is rated by either S&P or Moody's, but not both, then only the rating of such rating agency shall be utilized for the purpose of this definition.

"Permitted Tax Distribution" has the meaning assigned to such term in Section 4.01(b)(v).

"Permitted Tax Distribution Amount" means, with respect to each Fiscal Year ending after the Closing Date, an amount equal to the excess of (i) the product of (x) the taxable income of the Borrower attributable the Quarterly Period and all prior Quarterly Periods in such Fiscal Year, based upon (A) information returns filed by Holdings, as amended or adjusted to date, and (B) in the case of periods for which Holdings has not yet filed information returns, according to Holdings' reasonable good faith estimate, multiplied by (y) the highest effective combined U.S. federal, state and local income tax rate applicable during such Fiscal Year to a natural person residing in New York, NY, taxable at the highest marginal U.S. federal, New York State and New York City income tax rates (after giving effect to the U.S. federal income tax deduction for such state and local income taxes and taking into account the effects of Internal Revenue Code Sections 67 and 68), over (ii) distributions previously made by the Borrower pursuant to the foregoing clause (i) with respect to such Fiscal Year; provided that, in no case will there be any distribution of any amount attributable to the implementation of the Financing Documents.

"Proceeds Account" has the meaning assigned to such term in Section 2.02(a)(i).

"Put Election Loans" has the meaning specified in the First Lien Financing Agreement.

"Quarterly Period" means the time periods described in Internal Revenue Service Publication 509, and any amendments thereto, for calendar year taxpayers.

“Reimbursement Account” means bank account no. [_____] established by the Borrower with [_____] or any replacement account therefor established pursuant to Section [___] of the applicable Control Agreement.

“Remedies Direction” means a written notice and instruction to Depository Bank from Controlling Party (and with respect to the First Lien Collateral Agent, acting as directed by the Required First Lien Secured Parties in accordance with the Collateral Agency Agreement and with respect to the Second Lien Collateral Agent, acting as directed by the Required Second Lien Secured Parties in accordance with the Collateral Agency Agreement), to take the actions specified therein with respect to an Event of Default which has occurred and is continuing.

“Required Lenders” means (a) prior to the Discharge of First Lien Obligations, the Required First Lien Secured Parties, and (b) after the Discharge of First Lien Obligations, the Required Second Lien Secured Parties.

“Restricted Payment” means any of the following payments or other actions made by the Borrower, whether made directly or indirectly: (a) make or declare any dividend or other distribution (in cash, property or obligation) to the Member or otherwise on account of, any Membership Interest; (b) make any purchase, redemption, retirement or acquisition of, any Membership Interest; (c) make any voluntary payment on, redeem, repurchase or defease any Indebtedness subordinated in right of payment of the Borrower except at its stated maturity or otherwise in accordance with the terms of the applicable intercreditor agreement governing such debt; or (d) make investments not otherwise permitted by the Secured Obligations Documents.

“Second Lien Collateral Agent” has the meaning set forth in the introductory paragraph hereto.

“Second Lien Debt Service” means, for the Borrower and for any period, all obligations for principal and interest payments and any fees, expenses or other charges, including fees and Agent fees, due or payable in respect of the Second Lien Loans and other Second Lien Obligations.

“Second Lien Debt Service Payment Account” has the meaning assigned to such term in Section 2.02(a)(iv).

“Second Lien Documents” shall have the meaning specified in the Collateral Agency Agreement.

“Second Lien Financing Agreement” has the meaning assigned to such term in Recital B hereof.

“Second Lien Lenders” has the meaning assigned to such term in Recital B hereof.

“Second Lien Maturity Date” means the “Maturity Date” as defined in and under the Second Lien Financing Agreement.

“**Secured Obligations Documents**” has the meaning specified in the Collateral Agency Agreement.

“**S&P**” means Standard & Poor’s Rating Service or any successor thereto.

“**Technical Adviser**” means [_____] or any other nationally recognized engineering firm as the relevant Administrative Agent (acting at the direction of the Required Lenders) shall designate in consultation with the Borrower.

“**Trigger Event**” means any Event of Default has occurred and is continuing.

“**Trigger Event Date**” has the meaning assigned to such term in Section 3.04(a).

“**Trigger Event Notice**” has the meaning assigned to such term in Section 3.04(a).

“**Withdrawal Date**” means any Withdrawal Date or any other date pursuant to which funds are expressly required or permitted to be withdrawn from a Collateral Account in accordance herewith.

“**Withdrawal/Transfer Certificate**” means a certificate substantially in the form of Exhibit A hereto and delivered by Borrower pursuant to Section 3.02.

1.02 **Interpretation.**

- (a) Principles of Construction. The principles of construction set out in Section 1.03 of the Collateral Agency Agreement shall apply to this Depository Agreement as if set out herein.
- (b) Withdrawals to Occur on a Business Day. In the event that any withdrawal, transfer or payment to or from any Collateral Account contemplated under this Depository Agreement shall be required to be made on a day that is not a Business Day, such withdrawal, transfer or payment shall be made on the next succeeding Business Day.

1.03 **Uniform Commercial Code.**

As used herein, the term “UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York. All terms defined in the UCC shall have the respective meanings given to those terms in the UCC, except where the context otherwise requires.

ARTICLE II

**THE DEPOSITARY BANK AND THE
ESTABLISHMENT OF THE COLLATERAL ACCOUNTS**

2.01 **Depository Bank.**

- (a) Acceptance of Appointment of Depositary Bank. [_____] is hereby appointed to act as Depositary Bank, and [_____] hereby agrees to act as Depositary Bank under the express terms of this Depositary Agreement. Each of First Lien Administrative Agent, Second Lien Administrative Agent, First Lien Collateral Agent, Second Lien Collateral Agent and Borrower hereby acknowledges that Depositary Bank shall act solely as Depositary Bank under the express terms of this Depositary Agreement. Depositary Bank is, and shall act as, a “securities intermediary” (within the meaning of Section 8-102(a)(14)(ii) of the UCC) with respect to the Collateral Accounts and pursuant to this Depositary Agreement.
- (b) Collateral Accounts Established. Depositary Bank acknowledges, confirms and agrees that it has established the Collateral Accounts as set out in Section 2.02(a), which shall be maintained in the name of Borrower (but the parties hereto agree that the Collateral Accounts shall be under the exclusive “control” (within the meaning of Section 8-106(d) of the UCC) of the Controlling Party at all times until the termination of this Depositary Agreement).
- (c) Confirmation and Agreement. Borrower and Depositary Bank, as applicable, acknowledge, confirm and agree that, as of the Closing Date and as of each date on which any Collateral Account is established pursuant to this Depositary Agreement:
- (i) the parties hereto intend that each Collateral Account be a “securities account” (within the meaning of Section 8-501 of the UCC) in respect of which Depositary Bank is the securities intermediary;
 - (ii) Borrower is the “entitlement holder” (within the meaning of Section 8-102(a)(7) of the UCC) of all “security entitlements” (within the meaning of Section 8-102(a)(17) of the UCC) carried in or credited to the Collateral Accounts;
 - (iii) all property delivered to Depositary Bank pursuant to this Depositary Agreement will be promptly credited to a Collateral Account as directed by the Borrower or, after a Trigger Event, the Controlling Party;
 - (iv) all “financial assets” (within the meaning of Section 8-102(a)(9) of the UCC) in registered form or payable to or to the order of and credited to any Collateral Account shall be registered in the name of, payable to or to the order of, or specially indorsed to, Depositary Bank or in blank, or credited to another securities account maintained in the name of Depositary Bank;
 - (v) the Depositary Bank shall comply with all written instructions (including instructions directing the disposition of funds or financial assets) and/or “entitlement orders” (within the meaning of Section 8-102(a)(8) of the UCC) originated by the Controlling Party, acting in accordance with the Collateral Agency Agreement, with respect to any Collateral Account

(who shall act in accordance with the requirements of this Depository Agreement) without further consent of the Borrower;

- (vi) Depository Bank shall not change the name or account number of any Collateral Account without the prior written consent of the Controlling Party and Borrower, except for changes due to internal system modifications or other internal reorganization of account numbers or names by the Depository Bank, prior to which the Depository Bank shall provide at least five (5) Business Days' prior written notice to the Controlling Party and Borrower; and
 - (vii) To the extent that the Collateral Accounts are not considered "securities accounts" (within the meaning of Section 8-501(a) of the UCC) or a financial asset forming the basis of a security entitlement, the Collateral Accounts shall be "deposit accounts" (as defined in Section 9-102(a)(29) of the UCC) to the extent a security interest can be granted and perfected under the UCC in the Collateral Accounts as deposit accounts, which Controlling Party shall maintain with the Depository Bank acting not as a securities intermediary but as a "bank" (within the meaning of Section 9-102(a)(8) of the UCC). In such circumstance, the Borrower shall be the "customer" of the Depository Bank (within the meaning of Section 9-104(a)(3) of the UCC) with respect to the Collateral Accounts. The Depository Bank shall credit the Collateral Accounts with all receipts of interest, dividends and other income received with respect to amounts on deposit in the Collateral Accounts (if any). The Depository Bank shall administer and manage the Collateral Accounts in compliance with all the terms applicable to the Collateral Accounts pursuant to this Depository Agreement. To the extent the Collateral Accounts are "deposit accounts" under the UCC, the Depository Bank hereby agrees to comply with any and all instructions originated by the Controlling Party directing disposition of funds and all other Depository Collateral in the Collateral Accounts without any further consent of Borrower.
- (d) Financial Assets Election. Each of the parties to the Depository Agreement agrees that each item of property (whether cash, a security, an instrument or obligation, share, participation, interest or other property whatsoever) credited to any Collateral Account shall be treated as a financial asset under Article 8 of the UCC.
- (e) Entitlement Orders; Control. The parties to this Depository Agreement hereby agree that until Depository Bank's obligations under this Depository Agreement shall terminate in accordance with Section 7.17 hereof, the Controlling Party, shall have "control" (within the meaning of Section 8-106(d) of the UCC) of Borrower's security entitlements with respect to the financial assets credited to the Collateral Accounts.

- (f) Degree of Care; Liens. Depository Bank shall exercise the same degree of care in administering the funds held in the Collateral Accounts and the investments purchased with such funds in accordance with the terms of this Depository Agreement as Depository Bank exercises in the ordinary course of its day-to-day business in administering other funds and investments for its own account and as required by applicable law. Depository Bank shall perform its obligations hereunder in accordance with generally accepted banking industry standards. Subject to the parenthetical contained in the last sentence of Section 2.01(g), Depository Bank shall not grant or suffer to exist any Lien, pledge or security interest in any financial asset that is the subject of any security entitlement that is the subject of this Depository Agreement (other than Liens arising under the Collateral Documents) and shall, if any such Lien, pledge or security interest shall nevertheless be created as a result of any wrongful action or inaction of the Depository Bank, cause the prompt release or discharge of the same.
- (g) Subordination of Lien; Waiver of Set-Off. In the event that Depository Bank has or subsequently obtains by agreement, operation of law or otherwise a Lien in any Collateral Account, any security entitlement carried therein or credited thereto or any financial asset that is the subject of any such security entitlement, Depository Bank agrees that such Lien shall (except to the extent provided in the parenthetical contained in the last sentence of this Section 2.01(g)) be subordinate to the Liens of the Secured Parties. The financial assets standing to the credit of the Collateral Accounts will not be subject to deduction, set-off, banker's lien, or any other right in favor of any Person other than Controlling Party and, subject to the terms of this Depository Agreement, the other Secured Parties, Borrower (except for the right of the Depository Bank to set off amounts in the Collateral Accounts to the extent of (i) unpaid fees and expenses of the Depository Bank referred to in Section 6.06 and (ii) returned items and chargebacks either for uncollected checks or other items of payment and transfers previously credited to one or more of the Collateral Accounts, and Borrower and any Agent hereby authorize Depository Bank to debit the relevant Collateral Account(s) for such amounts).
- (h) No Other Agreements. None of Depository Bank, any Agent, or Borrower have entered or will enter into, or otherwise become bound by, any agreement (including under which it agrees with any Person other than each Agent to comply with entitlement orders, including instructions directing the disposition of funds, originated by such Person) with respect to any Collateral Account or any cash balance, security entitlements or any financial assets carried in or credited to any Collateral Account, other than this Depository Agreement and the other Secured Obligations Document.
- (i) Notice of Adverse Claims. Depository Bank hereby represents that, except for the claims and interests of each Agent and Borrower in each of the Collateral Accounts, Depository Bank, as of the Closing Date, has no knowledge of, and has received no written notice of any claim to, or interest in, any Collateral Account or in any security entitlement or financial asset carried therein or credited thereto.

If any Person (other than Controlling Party) asserts any Lien against any Collateral Account or in any cash balance, security entitlement or financial asset carried therein or credited thereto, and if Depository Bank has notice of such assertion, Depository Bank will promptly notify in writing each Agent and Borrower thereof.

- (j) Rights and Powers of First Lien Collateral Agent. The rights and powers granted to First Lien Collateral Agent by the First Lien Secured Parties have been granted in order to perfect the Lien of the First Lien Secured Parties in the Collateral Accounts and the security entitlements and financial assets carried therein or credited thereto.
- (k) Rights and Powers of Second Lien Collateral Agent. The rights and powers granted to Second Lien Collateral Agent by the Second Lien Secured Parties have been granted in order to perfect the Lien of the Second Lien Secured Parties in the Collateral Accounts and the security entitlements and financial assets carried therein or credited thereto.

2.02 The Collateral Accounts.

- (a) Establishment of Collateral Accounts. As of the Closing Date, Depository Bank has established the following segregated collateral accounts at its offices located in New York, New York bearing the names and account numbers identified in Schedule I (such accounts, collectively, the “**Collateral Accounts**”) (and it is the intent of the parties hereto that each such Collateral Account be a securities account) each of which shall be maintained at all times by Depository Bank until the termination of this Depository Agreement in accordance with Section 7.17 (unless this Depository Agreement or the other Collateral Documents otherwise expressly contemplates closure of such Collateral Account prior to the date of the termination of this Depository Agreement, including Section 4.01):
 - (i) the Proceeds Account (the “**Proceeds Account**”);
 - (ii) the Operating Account (the “**Operating Account**”);
 - (iii) the First Lien Debt Service Payment Account (the “**First Lien Debt Service Payment Account**”);
 - (iv) the Second Lien Debt Service Payment Account (the “**Second Lien Debt Service Payment Account**”);
 - (v) the Debt Service Reserve Account (the “**Debt Service Reserve Account**”);
 - (vi) the Loss Proceeds Account (the “**Loss Proceeds Account**”); and
 - (vii) the Distribution Account (the “**Distribution Account**”).

- (b) Account Names and Numbers. The names and account numbers of the Collateral Accounts established hereunder on or prior to the Closing Date are set out on Schedule I. Depository Bank shall advise the Agents and Borrower in writing of the account name and number of any Collateral Account established hereunder by Borrower, if any, after the Closing Date.
- (c) No Other Accounts. Borrower shall not open or maintain or cause to be opened or maintained with any bank or other financial institution any deposit, savings, securities or other account other than the Collateral Accounts and the Collections Account and Reimbursement Account.
- (d) Collateral Account Property; Collateral Accounts Constitute Collateral.
 - (i) Each Collateral Account and all amounts from time to time held in such Collateral Account shall be subject to the Lien of First Lien Collateral Agent for the benefit of the First Lien Secured Parties, and to the Lien of Second Lien Collateral Agent for the benefit of the Second Lien Secured Parties, as set forth in the Collateral Agency Agreement.
 - (ii) All items of property (whether cash, a security, an instrument or obligation, share, participation, interest or other property whatsoever) from time to time held in each Collateral Account shall constitute the property of Borrower. Each Collateral Account and all such amounts from time to time held in such Collateral Account shall be held and maintained by Depository Bank for and on behalf of Borrower and the Agents for the purposes and on the express terms set out in this Depository Agreement. All such amounts shall constitute a part of the Depository Collateral (as defined below) and shall not constitute payment of any Secured Obligations or any other obligations of Borrower until expressly applied thereto in accordance with the provisions of this Depository Agreement or the Collateral Agency Agreement, as applicable.
- (e) Jurisdiction of the Depository Bank. The Borrower, the First Lien Collateral Agent, the Second Lien Collateral Agent, the First Lien Administrative Agent, the Second Lien Administrative Agent and the Depository Bank agree that, for purposes of the UCC, notwithstanding anything to the contrary contained in any other agreement relating to the establishment and operation of the Collateral Accounts, the Depository Bank's jurisdiction (within the meaning of Section 8-110(e) of the UCC) with respect to the Collateral Accounts (and, if the Collateral Accounts are determined to be deposit accounts, the "bank's jurisdiction" for the purposes of Article 9 of the UCC) is the State of New York.
- (f) Standing Instructions. Borrower and the Controlling Party hereby irrevocably instruct and authorize Depository Bank to deposit funds (promptly upon receipt thereof) into, and transfer funds among and withdraw funds from, the Collateral Accounts in accordance with the terms of this Depository Agreement.

2.03 **Grant of Lien on Collateral Accounts-Secured Parties.**

As collateral security for the prompt and complete payment when due of the Secured Obligations, Borrower has, pursuant to each of the First Lien Security Agreement and Second Lien Security Agreement, collaterally assigned, granted and pledged to First Lien Collateral Agent (on behalf of and for the benefit of the First Lien Secured Parties) and the Second Lien Collateral Agent (on behalf of and for the benefit of the Second Lien Secured Parties), a security interest in (a) each Collateral Account; and (b) all cash, investments, investment property, securities or other property at any time on deposit in or credited to any Collateral Account, including all income or gain earned thereon and any proceeds thereof held in such Collateral Account (subject, in each such case, to Permitted Liens) (the “**Depository Collateral**”).

2.04 **Bank Statements.**

Depository Bank shall furnish Borrower and the Agents with periodic cash transaction statements which include detail for all investment transactions effected by the Depository Bank or brokers selected by Borrower and the Controlling Party. Borrower and each of the Agents hereby elect to have such statements delivered via the Depository Bank’s **[online system]** and upon electing such service, paper statements will be provided only upon request of Borrower or any Agent. Borrower and each Agent shall provide any reasonable information to the Depository Bank which is needed to establish such person with access to the Depository Bank’s on-line system. Borrower and each Agent waives the right to receive brokerage confirmations of security transactions effected by the Depository Bank as they occur, to the extent permitted by law. Borrower and each Agent further understands that trade confirmations for securities transactions effected by the Depository Bank will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

ARTICLE III

PROVISIONS APPLICABLE TO COLLATERAL ACCOUNTS

3.01 **Permitted Investments.**

(a) **Permitted Investments.**

- (i) Pending the application of funds in accordance with Articles III and IV, funds held in any Collateral Account shall be invested and reinvested by Depository Bank upon written direction of Borrower (which may be in the form of a standing instruction with a written copy of such direction to be delivered to the Controlling Party) only in Permitted Investments, and with respect to those amounts next anticipated to be transferred or withdrawn, having a scheduled maturity no later than such next anticipated cash withdrawal or transfer from such Collateral Account; provided, however, that: (1) upon the receipt by Depository Bank of a Trigger Event Notice and unless otherwise directed therein, or (2) in the event of any failure by Borrower to so direct Depository Bank in

writing on or prior to the day on which any funds are (x) received by Depository Bank or (y) transferred between Collateral Accounts in accordance with this Depository Agreement as to the investment of such funds, such investments and reinvestments shall be made by Depository Bank in the Default Permitted Investment, or if this Permitted Investment is not available for any reason, Depository Bank shall so notify Borrower and the First Lien Administrative Agent or, following the Discharge of First Lien Obligations, the Second Lien Administrative Agent, in writing and the Controlling Party agrees that the Depository Bank shall invest or reinvest such funds in such Permitted Investments of the type referred to in clause (f) of the definition of “Permitted Investments” as the Controlling Party, at the direction of the Required Lenders, directs until Borrower designates a specific replacement Permitted Investment. All funds in a Collateral Account that are invested pursuant to this Section 3.01(a) shall be deemed to be held in such Collateral Account for purposes of this Depository Agreement and shall constitute part of the Collateral. Borrower shall bear all risk of loss of capital from investments in Permitted Investments.

- (ii) The Depository Bank shall have no obligation to invest or reinvest the funds held in any Collateral Account if deposited with the Depository Bank after 1:00 p.m. (New York time) on such day of deposit. Instructions received after 1:00 p.m. (New York time) will be treated as if received on the following day. Any interest or income received on such investment of funds shall become part of the relevant Collateral Account and any losses incurred on such investment or reinvestment of funds shall be debited against the relevant Collateral Account. The Depository Bank shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the funds. It is agreed and understood that the entity serving as Depository Bank may earn fees associated with the investments outlined above in accordance with the terms of such investments. In no event shall the Depository Bank be deemed an investment manager or adviser in respect of any selection of investments hereunder. It is understood and agreed that the Depository Bank or its affiliates are permitted to receive additional compensation that could be deemed to be in the Depository Bank’s economic self-interest for (1) serving as investment adviser, administrator, shareholder servicing agent, custodian or sub-custodian with respect to certain of the investments, (2) using affiliates to effect transactions in certain investments and (3) effecting transactions in investments.

(b) Liability of Agent and Depository Bank.

- (i) Neither Depository Bank nor any Agent shall have any duty to determine whether any investment or reinvestment of monies in any Collateral Account satisfies the criteria set out in the definition of “Permitted Investment”.

- (ii) Neither Depository Bank nor any Agent shall be liable for any loss resulting from any investment in any Permitted Investment or the sale, disposition, redemption or liquidation of such investment or by reason of the fact that the proceeds realized in respect of such sale, disposition, redemption or liquidation were less than that which might otherwise have been obtained, except to the extent of the gross negligence, willful misconduct, bad faith or unlawful acts of any Agent or Depository Bank (or their respective related parties) (as determined by a final non-appealable order of a court of competent jurisdiction).
- (c) Liquidation to Make Disbursements. If and when cash is required for the making of any transfer, disbursement or withdrawal in accordance with Articles III and IV, Borrower shall cause Permitted Investments held in the applicable Collateral Account to be sold or otherwise liquidated into cash (without regard to maturity) as and to the extent necessary in order to make such transfers, disbursements or withdrawals required pursuant to Articles III and IV by giving written notice of such sale or liquidation to Depository Bank. In the event any such investments are redeemed prior to the maturity thereof, neither Depository Bank nor any Agent shall be liable for any loss or penalties relating thereto, except to the extent of the gross negligence, willful misconduct or unlawful acts of any Agent or Depository Bank (as determined by a final non-appealable order of a court of competent jurisdiction).
- (d) Income from Investments. The proceeds earned from the investment of monies in any Collateral Account in Permitted Investments shall be deposited by Depository Bank into the Proceeds Account on or before the second (2nd) Business Day following the month in which such interest, gain or other amount is earned and received; provided that for the avoidance of doubt, such proceeds shall consist of interest, gain and other amounts received in respect of an investment of principal and not the principal itself. Any interest, gain or other amount of income earned on Permitted Investments shall be for the account of Borrower for income tax purposes.
- (e) Taxes, Etc. The Depository Bank does not have any interest in the funds held in any Collateral Account but is serving as escrow holder only and having only possession thereof. Without duplication of Borrower's obligations under Section 6.06, Borrower shall pay or reimburse the Depository Bank upon request for any transfer taxes or other taxes relating to the funds held in the Collateral Account incurred in connection herewith and shall indemnify and hold harmless the Depository Bank for any amounts that it is obligated to pay in the way of such taxes. Any payments of income from a Collateral Account shall be subject to withholding regulations then in force with respect to United States taxes. Borrower will provide the Depository Bank with appropriate W-9 forms for tax identification number certifications, or W-8 forms for non-resident alien certifications. It is understood that the Depository Bank shall only be responsible for income reporting with respect to income earned on the Collateral Account and will not be responsible for any other reporting.

3.02 **Withdrawal and Transfer Procedure.**

- (a) Maintenance of Funds in Accounts; Withdrawals. Until withdrawn or transferred pursuant to and in accordance with this Depositary Agreement, including to make Permitted Investments, any amounts deposited into a Collateral Account (other than income from investments transferred to the Proceeds Account pursuant to Section 3.01(d)) shall be held in such Collateral Account. All withdrawals and transfers from any Collateral Account shall be made in accordance with the provisions of Articles III and IV.
- (b) Withdrawal/Transfer Certificate. Except as otherwise expressly provided herein, Borrower shall not be entitled to request withdrawals or transfers of monies from any Collateral Account without having provided a Withdrawal/Transfer Certificate authorizing such withdrawal and/or transfer. Withdrawals or transfers from any Collateral Account (except as otherwise expressly provided herein) shall be made by Depositary Bank following receipt of (and in accordance with) a Withdrawal/Transfer Certificate signed by Borrower and countersigned by the Controlling Party, the First Lien Administrative Agent or the Second Lien Administrative Agent, as applicable (an “**Executed Withdrawal/Transfer Certificate**”). Each Withdrawal/Transfer Certificate shall request withdrawals and transfers to and from Collateral Accounts in the amounts, at the times and in order of priority set out in Article IV. Depositary Bank may rely on any such certificate that purports to be so signed, and shall have no duty whatsoever to investigate whether any such signature is genuine or authorized.
- (c) Delivery to Agents and Form of Withdrawal/Transfer Certificate. On the Closing Date and no later than 1:00 p.m. (New York time) three (3) Business Days prior to each Withdrawal Date and the date of each other withdrawal expressly required or permitted under this Depositary Agreement, Borrower shall deliver to the First Lien Administrative Agent (with a copy to the Second Lien Administrative Agent) for purposes of any withdrawal or transfer on the next succeeding Withdrawal Date (unless no withdrawal or transfer is anticipated in respect of such Withdrawal Date) a Withdrawal/Transfer Certificate signed by an Authorized Officer of Borrower specifying:
- (i) each Collateral Account from which a withdrawal or transfer is requested and, in the case of any transfer, the relevant Collateral Account(s) to which, and/or other Person(s) to whom, such transfer is to be made;
 - (ii) the amount requested to be withdrawn or transferred from each such Collateral Account (and the calculation thereof, if required, in accordance with the relevant provisions of Article IV);
 - (iii) the relevant Withdrawal Date on which such withdrawal or transfer is to be made;

- (iv) the purpose for which the amount so withdrawn or transferred is to be applied (if not evident from the nature of the payment or identity of the intended payee); and
 - (v) all other information required to be provided in such Withdrawal/Transfer Certificate under, or to evidence compliance with, the relevant provisions of Articles III and IV.
- (d) Agent's Review of Certificates; Delivery to Depository Bank.
- (i) In the event that, prior to the relevant Withdrawal Date, (x) the First Lien Administrative Agent or, with respect to any transfer from the Loss Proceeds Account, the First Lien Collateral Agent or (y) following the Discharge of First Lien Obligations, the Second Lien Administrative Agent or, with respect to any transfer from the Loss Proceeds Account, the Second Lien Collateral Agent, shall determine that (A) any amounts specified in a Withdrawal/Transfer Certificate (or an amended Withdrawal/Transfer Certificate) have been incorrectly calculated; and/or (B) such Withdrawal/Transfer Certificate (or an amended Withdrawal/Transfer Certificate) does not conform to the form required hereunder; and/or (C) such Withdrawal/Transfer Certificate (or an amended Withdrawal/Transfer Certificate) is inconsistent with, or otherwise fails to satisfy the requirements of, the provisions of this Depository Agreement and/or the First Lien Financing Agreement, as applicable, (x) the First Lien Administrative Agent or, with respect to any transfer from the Loss Proceeds Account, the First Lien Collateral Agent (with a copy to the First Lien Administrative Agent) or (y) following the Discharge of First Lien Obligations, the Second Lien Administrative Agent or, with respect to any transfer from the Loss Proceeds Account, the Second Lien Collateral Agent (with a copy to the Second Lien Administrative Agent), in each case shall notify the Borrower in writing promptly but in no case later than the second (2nd) Business Day following its receipt of such Withdrawal/Transfer Certificate and may either: (A) return such Withdrawal/Transfer Certificate (or such amended Withdrawal/Transfer Certificate) to Borrower with its determinations noted thereon; or (B) with Borrower's agreement, make such corrections necessary to satisfy the requirements of this Depository Agreement and/or the First Lien Financing Agreement, as applicable. In the event that (x) the First Lien Administrative Agent or, with respect to any transfer from the Loss Proceeds Account, the First Lien Collateral Agent or (y) following the Discharge of First Lien Obligations, the Second Lien Administrative Agent or, with respect to any transfer from the Loss Proceeds Account, the Second Lien Collateral Agent, makes any revisions to a Withdrawal/Transfer Certificate as described above, it shall promptly provide a copy of the same, as so revised, to Borrower. Either (x) the First Lien Administrative Agent or, with respect to any transfer from the Loss Proceeds Account, the First Lien Collateral Agent or (y) following the

Discharge of First Lien Obligations, the Second Lien Administrative Agent or, with respect to any transfer from the Loss Proceeds Account, the Second Lien Collateral Agent, will endeavor to (A) agree and complete the final form Withdrawal/Transfer Certificate (or any amended or corrected Withdrawal/Transfer Certificate), and (B) deliver such certificate to Depository Bank, no later than 11:00 a.m. (New York time) one (1) Business Day prior to the Withdrawal Date to which such certificate relates.

- (ii) The First Lien Administrative Agent or Second Lien Administrative Agent, and the First Lien Collateral Agent or the Second Lien Collateral Agent (if required), shall countersign any accepted Withdrawal/Transfer Certificate (or any amended or corrected Withdrawal/Transfer Certificate), and furnish a copy of such Executed Withdrawal/Transfer Certificate (or such amended or corrected certificate) to Depository Bank and Borrower by 11:00 a.m. (New York time) at least one (1) Business Day prior to the proposed Withdrawal Date and instruct Depository Bank to implement such Executed Withdrawal/Transfer Certificate (or such amended or corrected certificate) in accordance with Section 3.02(e) and the other provisions of this Depository Agreement.
 - (iii) Nothing in this Section 3.02(d) shall preclude any Agent from consulting with Borrower, any Secured Party, or any consultant or expert advisor in making its determinations with respect to the accuracy of any Withdrawal/Transfer Certificate (or any amended or corrected Withdrawal/Transfer Certificate).
- (e) Implementation of Withdrawal/Transfer Certificate. Except as otherwise provided in this Depository Agreement, following receipt of an Executed Withdrawal/Transfer Certificate, Depository Bank shall receive, pay or transfer the amount(s) specified in such Withdrawal/Transfer Certificate, as set forth in Section 3.02(d)(ii) by initiating such payment or transfer not later than 1:00 p.m. New York time on the Withdrawal Date set out in such Withdrawal/Transfer Certificate, for such payment or transfer (or if such certificate or notice is not received by Depository Bank by 12:30 p.m. New York time of the Business Day that is at least one (1) Business Day prior to such Withdrawal Date, by 1:00 p.m. New York time on the next succeeding Business Day following delivery of such Withdrawal/Transfer Certificate to Depository Bank).
- (f) Failure of Borrower to Submit Withdrawal/Transfer Certificate. Notwithstanding any other provision of this Depository Agreement to the contrary, if at any time Borrower fails to timely submit or cause to be timely submitted an Executed Withdrawal/Transfer Certificate to Depository Bank for the withdrawal, transfer or payment of amounts to any Collateral Account or Person, the Controlling Party hereby agrees that (x) prior to the Discharge of First Lien Obligations, the First Lien Administrative Agent and (y) thereafter, the Second Lien Administrative Agent may (but shall not be obligated to) notify Borrower of such failure. If

Borrower fails to submit or cause to be submitted an Executed Withdrawal/Transfer Certificate to Depository Bank for such withdrawal, transfer or payment within one (1) Business Day after such notice, the Controlling Party hereby agrees that the First Lien Administrative Agent or Second Lien Administrative Agent, as applicable, may direct Depository Bank in writing (with a copy to Borrower) to effect such withdrawal, transfer or payment, as the case may be. If First Lien Administrative Agent or Second Lien Administrative Agent, as applicable, so directs Depository Bank in writing, Depository Bank shall comply with such direction as promptly as possible without any further consent, or notice to, Borrower.

3.03 **Transfer of Amounts.**

Amounts improperly or inadvertently deposited into any Collateral Account shall be transferred by Depository Bank upon written instructions of the Borrower (at any time prior to a Trigger Event) or (a) prior to the Discharge of the First Lien Obligations, the First Lien Administrative Agent or (b) thereafter, the Second Lien Administrative Agent, into the correct Collateral Accounts. The Depository Bank shall, as soon as reasonably practicable, provide a copy of such instructions to each other party to this Agreement. Any withdrawals and transfers hereunder shall only be made to the extent that sufficient funds are then available (including as Permitted Investments) in the Collateral Account from which such withdrawal is to be made.

3.04 **Trigger Event.**

- (a) **The Trigger Event Date.** Notwithstanding anything in this Depository Agreement to the contrary, on and after receipt by Depository Bank of written notice (such notice, the “**Trigger Event Notice**”) from the Controlling Party (with a copy of such notice to be delivered by the Controlling Party to each other Agent and Borrower simultaneously with the delivery thereof to Depository Bank) certifying to Depository Bank that a Trigger Event has occurred and is continuing (the date of Depository Bank’s receipt of such notice, the “**Trigger Event Date**”): (i) no transfer or withdrawal of funds from any Collateral Account shall be requested by Borrower or implemented by Depository Bank pursuant to any Withdrawal/Transfer Certificate or otherwise until further notice, and (ii) such funds shall be retained in the applicable Collateral Account for application by Depository Bank in accordance with a Remedies Direction. The Controlling Party, acting in accordance with the Collateral Agency Agreement, shall have the right to rescind any Trigger Event Notice by providing written notice to Depository Bank of its decision to rescind the Trigger Event Notice, and upon and after receipt of such notice, the Trigger Event (including the Trigger Event Date and all Remedies Directions delivered in connection with such Trigger Event) shall, for all purposes of this Depository Agreement, be deemed to not have occurred or been given. The Controlling Party shall, as soon as reasonably practicable, provide a copy of such rescission notice to Borrower and the other Agents.

- (b) Accounting. Promptly upon receipt of a Trigger Event Notice (but no later than two (2) Business Days after such receipt), Depository Bank shall render an accounting to the other Agents and Borrower of all monies in the Collateral Accounts as of the Trigger Event Date. Such accounting may be satisfied by delivery to the Agents and Borrower of the most recently available bank statement for such Collateral Account (including any electronically available statement) and a transaction or activity report for each Collateral Account covering the period from the closing date of the last statement through the delivery date thereof.

3.05 **Distribution of Collateral Proceeds.**

- (a) Priority of Payments. Upon the occurrence and during the continuation of a Trigger Event and following delivery of a Remedies Direction to Depository Bank in connection with the sale, disposition or other realization, collection or recovery of any amounts in the Collateral Accounts, the Controlling Party shall instruct Depository Bank in writing to apply the proceeds of such sale, disposition, or other realization, collection or recovery toward the payment of the Secured Obligations in the order of priority set forth in Section 4.01 of the Collateral Agency Agreement.
- (b) Borrower Remains Liable for Deficiency. It is understood that Borrower shall remain liable to the extent of any deficiency between the amount of the proceeds of the Depository Collateral and any other Collateral and the aggregate of the sums referred to in clauses *first* through *fifth* of Section 4.01 of the Collateral Agency Agreement.

3.06 **Disposition of Collateral Accounts upon Payment of Secured Obligations.**

Upon the Discharge of First Lien Obligations and the Discharge of Second Lien Obligations, the Controlling Party shall direct Depository Bank in writing to, and Depository Bank shall, disburse or cause to be disbursed any amounts on deposit in the Collateral Accounts to Borrower as instructed in writing by Borrower or as otherwise required by applicable law (and subject to Section 6.03 and Section 7.17). This Section 3.06 shall survive the termination or expiration of this Depository Agreement.

ARTICLE IV

THE COLLATERAL ACCOUNTS

4.01 **Proceeds Account.**

- (a) Deposits to Proceeds Account. The Borrower shall deposit, and shall cause third parties that would otherwise make payments directly to the Borrower (by giving directions to such third parties or entering into suitable arrangements with such third parties) to deposit, into the Proceeds Account each of the following upon receipt thereof, and the Depository Bank shall deposit any such amounts received directly by it into the Proceeds Account upon receipt thereof:

- (i) all Project Revenues received by the Borrower;
- (ii) the net available amount of the proceeds of the sale of property or assets by the Borrower;
- (iii) all amounts required to be transferred to the Proceeds Account from any other Collateral Accounts in accordance with the terms of this Depositary Agreement;
- (iv) all equity contributions made to the Borrower by Member or any of its Affiliates; and
- (v) all other amounts received by the Borrower on or after the Closing Date and not expressly required to be deposited to another Account pursuant to this Depositary Agreement;

provided that casualty, condemnation and other proceeds required to be prepaid pursuant to Section 2.5(c) of the applicable Financing Agreement shall not be required to be deposited into the Proceeds Account but shall instead be deposited in the Loss Proceeds Account. If any of the amounts required to be deposited into the Proceeds Account pursuant to clauses (i) to (v) above are received by the Borrower, the Borrower shall hold such payments in trust for the Depositary Bank and shall promptly remit such payments to the Depositary Bank for deposit into the Proceeds Account, in the form received, with any necessary endorsements.

- (b) Disbursements from Proceeds Account. Funds in the Proceeds Account shall be disbursed by Depositary Bank in accordance with an Executed Withdrawal/Transfer Certificate as submitted in accordance with Section 3.02(b), as applicable, in each such case, as specified in the applicable Withdrawal/Transfer Certificate in the order of priority specified in clauses (i) through (viii) below (via wire transfer or by internal transfer between Accounts, if applicable), to the extent that funds are then available in the Proceeds Account and not segregated in a separate account thereof or otherwise earmarked for any specific purpose expressly provided for herein in the following order of priority, all in accordance with such Withdrawal/Transfer Certificate and this Depositary Agreement:
 - (i) *First*, on each Monthly Date, withdraw and transfer, as set forth in such Withdrawal/Transfer Certificate, from the Proceeds Account to the Operating Account an amount sufficient to pay Operating Expenses and permitted expenditures pursuant to the then applicable Annual Operating Budget, if any, then due and payable or reasonably expected to be due within the next thirty (30) days (taking into account any permitted variances and other variances caused by certain emergencies, events of loss covered by insurance, compliance with laws and the Concession Agreement and costs that are passed through to the extent permitted under the Concession Agreement);

- (ii) *Second*, on each Monthly Date and after giving effect to the withdrawals and transfers specified in clause (i) above, withdraw and transfer, as set forth in such Withdrawal/Transfer Certificate, from the Proceeds Account an amount sufficient to pay (x) (1) fees and expenses of the First Lien Administrative Agent, First Lien Collateral Agent, the Depository Bank and any other relevant agents then due and payable or reasonably expected to become due and payable within the next thirty (30) days in connection with the First Lien Loans and thereafter, (2) fees and expenses of the Second Lien Administrative Agent, Second Lien Collateral Agent and any other relevant agents then due and payable or reasonably expected to become due and payable within the next thirty (30) days in connection with the Second Lien Loans and (y) scheduled payments of the Put Election Loans, if any, then due and payable will be transferred to the applicable payees;
- (iii) *Third*, on each Payment Date and after giving effect to the withdrawals and transfers specified in clauses (i) through (ii) above, withdraw and transfer, as set forth in such Withdrawal/Transfer Certificate, from the Proceeds Account, (x) an amount equal to interest, principal and any other amounts then due and payable in respect of the First Lien Loans (less the balance then available in the First Lien Debt Service Payment Account) and thereafter, (y) an amount equal to any Hedging Obligations (as defined in the First Lien Financing Agreements) which are then due and payable, if any, on a *pro rata* basis, from the Proceeds Account to the First Lien Debt Service Payment Account;
- (iv) *Fourth*, on each Payment Date and after giving effect to the withdrawals and transfers specified in clauses (i) through (iii) above, withdraw and transfer, as set forth in such Withdrawal/Transfer Certificate, from the Proceeds Account, (x) an amount equal to interest, principal and any other amounts then due and payable in respect of the Second Lien Loans (less the balance then available in the Second Lien Debt Service Payment Account) and thereafter, (y) an amount equal to any Hedging Obligations (as defined in the Second Lien Financing Agreements) which are then due and payable, if any, on a *pro rata* basis, from the Proceeds Account to the Second Lien Debt Service Payment Account;
- (v) *Fifth*, (x) on each Payment Date and after giving effect to the withdrawals and transfers specified in clauses (i) through (iv) above, withdraw and transfer, as set forth in such Withdrawal/Transfer Certificate, from the Proceeds Account to the Debt Service Reserve Account, the amount (if any) necessary to fund the Debt Service Reserve Account so that the amount then on deposit in or credited to the Debt Service Reserve Account equals the Mandatory Debt Service at such time and (y) on each Payment Date and after giving effect to the withdrawals and transfers specified in clauses (i) through (iv) above and clause (x) above, withdraw and transfer, as set forth in such Withdrawal/Transfer Certificate, from the Proceeds

Account to the Member, the Permitted Tax Distribution Amount for the payment of taxable income of the Borrower then due and payable or reasonably expected to be due within the next Quarterly Period (“**Permitted Tax Distribution**”);

- (vi) *Sixth*, on each Payment Date prior to the Discharge of First Lien Obligations and after giving effect to the withdrawals and transfers specified in clauses (i) through (v) above, withdraw and transfer, as set forth in such Withdrawal/Transfer Certificate, an amount equal to the Cash Sweep shall be applied to the prepayment of *first*, any interest and principal, on a *pro rata* basis, and *second*, any other amounts, in each case then outstanding in respect of the First Lien Loans and other First Lien Obligations;
 - (vii) *Seventh*, on each Payment Date after the Discharge of First Lien Obligations and after giving effect to the withdrawals and transfers specified in clauses (i) through (vi) above, withdraw and transfer, as set forth in such Withdrawal/Transfer Certificate, an amount equal to the Cash Sweep shall be applied to the prepayment of *first*, any interest and principal, on a *pro rata* basis, and *second*, any other amounts, in each case then outstanding in respect of the Second Lien Loans and other Second Lien Obligations;
 - (viii) *Eighth*, on each Payment Date (or such later date) after giving effect to the withdrawals and transfers specified in clauses (i) through (v) above and before the Discharge of First Lien Obligations, clause (vi) above and after the Discharge of First Lien Obligations, clause (vii) above, withdraw and transfer, as set forth in such Withdrawal/Transfer Certificate, from the Proceeds Account to the Distribution Account all remaining available amounts on deposit in the Proceeds Account.
- (c) On any Payment Date or any other date permitted for payment as set forth above, if the amount required to be withdrawn and transferred from the Proceeds Account pursuant to any applicable clause of Section 4.01(b) exceeds the amount then on deposit in or credited to the Proceeds Account after the withdrawals and transfers made pursuant to all applicable preceding clauses are completed, the amount on deposit in or credited to the Proceeds Account at the time of application pursuant to such clause shall be transferred pro rata to each of the Persons specified in such clause based on the respective amounts owed to such Persons pursuant to such clause, as shall be set forth in the applicable Withdrawal/Transfer Certificate.
- (d) Notwithstanding the foregoing, after and during the continuation of a Trigger Event, the First Lien Collateral Agent (at the direction of the Required First Lien Secured Parties) shall pay such amounts that are due and owing to any Persons entitled thereto in accordance with Section 4.01 of the Collateral Agency Agreement.

4.02 Operating Account.

- (a) Deposits into Operating Account. Funds shall be deposited into the Operating Account in accordance with Section 4.01(b)(i) and as otherwise specified in this Depositary Agreement.
- (b) Disbursements from Operating Account. Following receipt by the Depositary Agent of a Withdrawal/Transfer Certificate delivered by the Borrower in accordance with Section 3.02(c) detailing the amounts and Persons to be paid, the Depositary Agent shall transfer funds in the Operating Account to any Person to whom a payment is due, or will be due prior to the next Monthly Date, in respect of Operating Expenses and permitted expenditures as, when and to the extent specified in such Withdrawal/Transfer Certificate.

4.03 First Lien Debt Service Payment Account.

- (a) Deposits into First Lien Debt Service Payment Account. Funds shall be deposited into the First Lien Debt Service Payment Account in accordance with Section 4.01(b)(iii) and as otherwise specified in this Depositary Agreement.
- (b) Disbursements from First Lien Debt Service Account. Following receipt by the Depositary Agent of a Withdrawal/Transfer Certificate delivered by the Borrower in accordance with Section 3.02(c) detailing the amounts and Persons to be paid, the Depositary Agent shall transfer funds in the First Lien Debt Service Payment Account to First Lien Administrative Agent, for the account of the First Lien Lenders, to pay the amounts described in Section 4.01(b)(iii) that are payable pursuant to the First Lien Financing Agreement, as and to the extent specified in such Withdrawal/Transfer Certificate; provided that, if the Borrower fails to deliver a Withdrawal/Transfer Certificate pursuant to this Section 4.03(b) on any date on which any amounts described in this Section 4.03(b) are due and payable under the First Lien Financing Agreement, the Depositary Agent shall transfer funds to pay such amounts from the First Lien Debt Service Payment Account in accordance with written instructions received from the First Lien Administrative Agent.

4.04 Second Lien Debt Service Payment Account.

- (a) Deposits into Second Lien Debt Service Payment Account. Funds shall be deposited into the Second Lien Debt Service Payment Account in accordance with Section 4.01(b)(iv) and as otherwise specified in this Depositary Agreement.
- (b) Disbursements from Second Lien Debt Service Account. Following receipt by the Depositary Agent of a Withdrawal/Transfer Certificate delivered by the Borrower in accordance with Section 3.02(c) detailing the amounts and Persons to be paid, the Depositary Agent shall transfer funds in the Second Lien Debt Service Payment Account to Second Lien Administrative Agent, for the account of the Second Lien Lenders, to pay the amounts described in Section 4.01(b)(iv) that are

payable pursuant to the Second Lien Financing Agreement, as and to the extent specified in such Withdrawal/Transfer Certificate; provided that, if the Borrower fails to deliver a Withdrawal/Transfer Certificate pursuant to this Section 4.04(b) on any date on which any amounts described in this Section 4.04(b) are due and payable under the Second Lien Financing Agreement, the Depository Agent shall transfer funds to pay such amounts from the Second Lien Debt Service Payment Account in accordance with written instructions received from the First Lien Administrative Agent (with a copy provided to First Lien Administrative Agent).

4.05 **Debt Service Reserve Account.**

- (a) Deposits into Debt Service Reserve Account. Funds shall be deposited into the Debt Service Reserve Account in accordance with Section 4.01(b)(v) and as otherwise specified in this Depository Agreement
- (b) Disbursements of Excess Amounts from Debt Service Reserve Account. At any time that the funds then on deposit in or credited to the Debt Service Reserve Account are greater than the Mandatory Debt Service at such time (an “Excess DSR Amount”), the Depository Agent shall transfer an amount of funds up to such Excess DSR Amount from the Debt Service Reserve Account (i) as a Permitted Tax Distribution to the extent any amounts so distributed for the next Quarterly Period was less than the Permitted Tax Distribution Amount for such Quarterly Period, and (ii) to the Proceeds Account (to the extent any Excess DSR Amount remains after the funding in clause (i) above), in each case, as specified in an Officer’s Certificate (acknowledged as to receipt by the Controlling Party) certifying as to the amount of such Excess DSR Amount.
- (c) Disbursements to Pay Debt Service. If the funds on deposit in or credited to the Proceeds Account, the First Lien Debt Service Payment Account or the Second Lien Debt Service Payment Account are not anticipated to be, or are not, sufficient (after transfer of amounts to the First Lien Debt Service Payment Account or the Second Lien Debt Service Payment Account in accordance with Sections 4.01(b)(iv), 4.01(b)(v) and 4.08) and application of such amounts as provided in Section 4.03(b) to pay:
 - (i) all First Lien Debt Service then due and payable under the First Lien Financing Agreement (any such shortfall, a “First Lien Debt Payment Deficiency”), then the Depository Bank (at the direction of the Borrower pursuant to a Withdrawal/Transfer Certificate or, if the Borrower has not so delivered a Withdrawal/Transfer Certificate by 1:00 p.m. (New York City time) on the Business Day on which such amounts were due and not paid, the First Lien Collateral Agent, with such directions to set forth the First Lien Debt Payment Deficiency and the Persons entitled to receive payment of such deficiency and the amounts payable to each such Person), shall withdraw from the Debt Service Reserve Account and immediately transfer to the First Lien Administrative Agent, for the account of the First

Lien Lenders, cash in an amount equal to the applicable portion of the First Lien Debt Payment Deficiency (or, if less, the aggregate amount of funds then on deposit in or credited to the Debt Service Reserve Account) for application FIRST (x) to that portion of the First Lien Debt Payment Deficiency that is attributable to interest and fees then due and payable under the First Lien Financing Agreement and SECOND, to that portion of the First Lien Debt Payment Deficiency that is attributable to principal then due and payable under the First Lien Financing Agreement; and

- (ii) after the First Lien Debt Service then due and payable has been paid in full, all Second Lien Debt Service then due and payable under the Second Lien Financing Agreement (any such shortfall, a “Second Lien Debt Payment Deficiency”), then the Depositary Agent (at the direction of the Borrower pursuant to a Withdrawal/Transfer Certificate or, if the Borrower has not so delivered a Withdrawal/Transfer Certificate by 1:00 p.m. (New York City time) on the Business Day on which such amounts were due and not paid, the Second Lien Collateral Agent, with such directions to set forth the Second Lien Debt Payment Deficiency and the Persons entitled to receive payment of such deficiency and the amounts payable to each such Person), shall withdraw from the Debt Service Reserve Account and immediately transfer to the Second Lien Administrative Agent, for the account of the Second Lien Lenders, cash in an amount equal to the applicable portion of the Second Lien Debt Payment Deficiency (or, if less, the aggregate amount of funds then on deposit in or credited to the Debt Service Reserve Account) for application FIRST (x) to that portion of the Second Lien Debt Payment Deficiency that is attributable to interest and fees then due and payable under the Second Lien Financing Agreement and SECOND, to that portion of the Second Lien Debt Payment Deficiency that is attributable to principal then due and payable under the Second Lien Financing Agreement.

4.06 **Distribution Account.**

- (a) Deposits into Distribution Account. Funds shall be deposited into the Distribution Account in accordance with Section 4.01(b)(viii) and as otherwise specified in this Depositary Agreement
- (b) Disbursements from Distribution Account.
 - (i) The amounts on deposit in or credited to the Distribution Account shall remain on deposit therein or credited thereto until the date on which the Distribution Conditions are certified by the Borrower to be satisfied, unless otherwise applied in accordance with Section 4.06(b)(ii) or 4.08 or if the Borrower elects to transfer such funds to another Collateral Account. The proposed date of distribution to be specified by the Borrower shall be within fifteen (15) business days after a Payment Date.

- (ii) If amounts remain undisbursed in the Distribution Account for twenty-four (24) consecutive months due to Borrower's failure to satisfy any condition set forth in sub-clauses (a) and (b) of the definition of "Distribution Conditions", then on each Payment Date thereafter until such time as such conditions have been satisfied, one hundred percent (100%) of amounts held in the Distribution Account shall be transferred to the Proceeds Account.

4.07 **Loss Proceeds.**

- (a) Borrower shall deposit into the Loss Proceeds Account all amounts and the Net Cash Proceeds (as defined in the Financing Agreements) (including instruments) received from any insurance policy (excluding workers' compensation, employees' liability and general liability insurance) required to be maintained by Borrower under the Financing Agreements or that Borrower otherwise maintains ("**Insurance Proceeds**"). Borrower shall deposit into the Loss Proceeds Account all amounts and the Net Cash Proceeds (including instruments) (other than Insurance Proceeds) received in respect of any Event of Loss ("**Event of Loss Proceeds**", and together with Insurance Proceeds, "**Loss Proceeds**"). Unless applied to a mandatory prepayment of the Loans in accordance with the Financing Agreements, any Insurance Proceeds received by any Agent or any other Secured Party directly (as loss payee or additional insured as provided in Section 6.12(c) of the First Lien Financing Agreement or in Section 6.12(c) of the Second Lien Financing Agreement), and any Event of Loss Proceeds received directly by any Agent or any other Secured Party, shall be deposited by such Agent or such Secured Party into the Loss Proceeds Account to be applied in accordance with the provisions of this Section 4.07. To the extent that application of Loss Proceeds pursuant to this Section 4.07 shall require the withdrawal and transfer of funds from the Loss Proceeds Account or other Collateral Account, Borrower shall direct Depositary Bank to make such withdrawal or transfer pursuant to an Executed Withdrawal/Transfer Certificate, or in the alternative (particularly in the case of withdrawals for capital expenditures), pursuant to a written direction of the Controlling Party, at the direction of the Required Lenders (a "**Loss Proceeds Instruction**"). The Controlling Party shall, as soon as reasonably practicable, provide a copy of any such Loss Proceeds Instruction to Borrower.
- (b) To the extent a mandatory prepayment is required in accordance with the Financing Agreements, all Loss Proceeds shall be applied *pro rata* to the prepayment of the First Lien Loans in accordance with Section 2.5(c) of the First Lien Financing Agreement and, after the Discharge of First Lien Obligations, to the prepayment of the Second Lien Loans in accordance with Section 2.5(c) of the Second Lien Financing Agreement pursuant to a written direction of the Controlling Party (on instructions from the Required First Lien Secured Parties) or the Second Lien Collateral Agent (on instructions from the Required Second Lien Secured Parties).

- (c) To the extent the Borrower elects to restore, repair, replace or rebuild the property in accordance with Section 6.17 of the First Lien Financing Agreement and, after the Discharge of First Lien Obligations, Section 6.17 of the Second Lien Financing Agreement, the Borrower shall be entitled to withdraw amounts from the Loss Proceeds Account from time to time in accordance with the plan for such restoration, repair, replacement or rebuilding delivered pursuant to Section 6.17 of the applicable Financing Agreement and pursuant to Executed Withdrawal/Transfer Certificates.
- (d) If, after the repair, replacement, rebuilding or restoration of the Indiana Toll Road contemplated by this Section 4.07 and the payment of all related costs and expenses in respect thereof, there are any Loss Proceeds in the Loss Proceeds Account and the Controlling Party (on instructions of the Required Lenders) in consultation with the Technical Adviser, reasonably determines that the Indiana Toll Road will be able to operate at a level consistent with the assumptions in the Base Case Model, such excess Loss Proceeds may be transferred to the Proceeds Account pursuant to an Executed Withdrawal/Transfer Certificate in accordance with Section 3.02. In the absence of such determination by the Controlling Party (acting on instructions of Required Lenders), or to the extent the Required Lenders do not approve the application of such Loss Proceeds, such excess Loss Proceeds shall be treated as an optional prepayment under the Financing Agreements and applied, *pro rata* to the First Lien Obligations in accordance with Section 2.5(b) of the First Lien Financing Agreement pursuant to a written direction of the First Lien Administrative Agent and, after the Discharge of First Lien Obligations, applied, *pro rata* to the Second Lien Obligations in accordance with Section 2.5(b) of the Second Lien Financing Agreement pursuant to a written direction of the Second Lien Administrative Agent.
- (e) If a Trigger Event shall have occurred and be continuing, then notwithstanding any provisions of this Section 4.07 to the contrary, the Loss Proceeds (including any Permitted Investments made with such proceeds, which shall be liquidated in such manner as the Controlling Party shall deem reasonable and prudent under the circumstances) may be applied by the Controlling Party pursuant to the Collateral Agency Agreement, upon written direction to Depositary Bank (i) to cure such Trigger Event (and any Loss Proceeds remaining thereafter shall be applied as provided in this Section 4.07) or (ii) to pay the Secured Obligations in connection with exercise of remedies pursuant to Article 8 of the First Lien Financing Agreement and Article 8 of the Second Lien Financing Agreement, if applicable, and Section 3.01 of the Collateral Agency Agreement and as set forth in Section 3.05.

4.08 **Invasion of Accounts.**

One (1) Business Day prior to any Business Day on which disbursements are required to be made from the Proceeds Account, Operating Account, the First Lien Debt Service Payment Account or the Second Lien Debt Service Payment Account in accordance with Section 4.01, 4.02, 4.03, or 4.04, respectively, if the amounts on deposit therein or credited thereto are

not sufficient to make such disbursements, the Depository Agent shall transfer funds as follows to the Proceeds Account, Operating Account, the First Lien Debt Service Payment Account or the Second Lien Debt Service Payment, as applicable, in only the amount necessary to cover such insufficiency:

- (a) FIRST, from the Proceeds Account; and
- (b) SECOND, to the extent amounts in the Proceeds Account are insufficient for such purpose, from the Distribution Account.

provided that, to the extent funds to be transferred pursuant to clauses (a) and (b) above are not sufficient to cover all insufficiencies in the Proceeds Account, Operating Account, the First Lien Debt Service Payment Account or the Second Lien Debt Service Payment Account, as applicable, such funds shall be transferred, FIRST, to the Operating Account, SECOND, to the First Lien Debt Service Payment Account to pay the amounts described in Section 4.01(b)(iii) and THIRD, to the Second Lien Debt Service Payment Account to pay the amounts described in Section 4.01(b)(iv).

ARTICLE V

[RESERVED]

ARTICLE VI

THE DEPOSITARY BANK

6.01 General.

Except as set forth in Section 6.04 and in the proviso below, the provisions of this Article VI are solely for the benefit of each Agent, Depository Bank and the other Secured Parties and, except to the extent expressly provided in this Article VI, and without prejudice to or derogating from Borrower's rights and remedies under this Depository Agreement and each other Secured Obligations Document, Borrower shall have no rights or obligations under this Article VI against Depository Bank, any Agent or any other Secured Party except as set forth in Section 6.04; provided that Depository Bank shall be liable to Borrower for the Depository Bank's (or its related parties') gross negligence, bad faith, willful misconduct or unlawful acts as finally determined by a non-appealable order from a court of competent jurisdiction. Whether or not therein expressly so provided, every provision of this Depository Agreement relating to the conduct or affecting the eligibility of or affording protection to Depository Bank shall be subject to the provision of this Article VI. The duties, responsibilities and obligations of Depository Bank shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied against the Depository Bank.

6.02 Reliance by Depository Bank.

Depository Bank shall be entitled to rely upon any certificate, direction, instruction, notice or other communication of or from an authorized officer or representative of Borrower, the First Lien Administrative Agent, the First Lien Collateral Agent, the Second Lien Administrative Agent or the Second Lien Collateral Agent or any other relevant certificate, direction, instruction, notice, communication or document (including any telecopy) believed by it in good faith to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons, and shall have no liability for its actions taken thereupon, except to the extent of Depository Bank's willful misconduct, gross negligence, bad faith or unlawful acts as finally determined by a non-appealable order from a court of competent jurisdiction. Depository Bank shall have no duty or obligation to verify, investigate, ascertain or determine whether any certificate, direction, instruction, notice, communication or document provided to Depository Bank contains accurate information or whether any individual signing such certificate, direction, instruction, notice, communication or document has the authority such individual purports to have. Depository Bank shall be fully justified in failing or refusing to take any action under this Depository Agreement (a) if such action would, in the opinion of Depository Bank, be contrary to applicable law or the terms of this Depository Agreement, (b) if such action is not specifically provided for in this Depository Agreement and it shall not have received any such advice or concurrence of any Agent or Borrower as it deems appropriate or (c) if, in connection with the taking of any such action that would constitute an exercise of remedies under this Depository Agreement, it shall not first be indemnified to its satisfaction or as required by this Depository Agreement against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Depository Bank shall in all cases be fully protected in acting, or in refraining from acting, under this Depository Agreement in accordance with any Executed Withdrawal/Transfer Certificate, any Remedies Direction or other instruction of Borrower, the First Lien Administrative Agent, the First Lien Collateral Agent, the Second Lien Administrative Agent or the Second Lien Collateral Agent (in each case to the extent such Person is expressly authorized hereunder to direct Depository Bank to take or refrain from taking such action), and such action taken or failure to act pursuant thereto shall be binding upon Borrower, the Agents and the Secured Parties. In the event that Depository Bank is required to perform any action on a particular date only following the delivery of an officer's or representative's certificate or other document, Depository Bank shall be fully justified in failing to perform such action if it has not first received such officer's or representative's certificate or other document and shall be fully justified in continuing to fail to perform such action until such time as it has received such officer's or representative's certificate or other document.

6.03 **Court Orders.**

Depository Bank is hereby authorized to obey and comply with all writs, orders, judgments or decrees issued by any court or administrative agency affecting any money, documents or things held by Depository Bank. Depository Bank shall not be liable to any of the parties hereto or any other Secured Party, their successors, heirs or personal representatives by reason of Depository Bank's compliance with such writs, orders,

judgments or decrees, notwithstanding such writ, order, judgment or decree is later reversed, modified, set aside or vacated.

6.04 **Resignation or Removal.**

Subject to the appointment and acceptance of a successor Depository Bank as provided below, Depository Bank may resign at any time by giving thirty (30) days' prior written notice thereof to the parties hereto, and Depository Bank may be removed at any time with or without cause by the Controlling Party (acting at the direction of the Required Lenders), and, except upon the occurrence and continuation of a Trigger Event, Borrower. Upon any such resignation or removal, the Controlling Party (acting at the direction of the Required Lenders) shall have the right to appoint, with the consent of Borrower (unless a Trigger Event has occurred and is continuing), such consent not to be unreasonably withheld or delayed, a successor Depository Bank. Upon the acceptance of any appointment as Depository Bank hereunder by a successor Depository Bank, such successor Depository Bank shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Depository Bank, and the retiring Depository Bank shall be discharged from its duties and obligations hereunder. If no successor Depository Bank shall have been so appointed by the Required First Lien Secured Parties and shall have accepted such appointment within thirty (30) days following the delivery by Depository Bank of a notice of resignation, then the retiring Depository Bank, in its discretion, may tender into the custody of a court of competent jurisdiction all assets then held by it hereunder, and thereupon shall be discharged from its duties hereunder. After the retiring Depository Bank's resignation or removal hereunder as Depository Bank, the provisions of this Article VI shall continue in effect for its benefit in respect of any actions taken, suffered or omitted while it was acting as Depository Bank. Any corporation into which the Depository Bank may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Depository Bank shall be a party, or any corporation succeeding to all or substantially all the corporate trust or agency business of the Depository Bank, shall be the successor of the Depository Bank hereunder; provided that such corporation shall be otherwise eligible under this Article to act as a successor Depository Bank, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

6.05 **Exculpatory Provisions.**

- (a) Recitals; Value of Collateral; Etc. Neither Depository Bank nor any of its Affiliates shall be responsible to Borrower, any Agent or any other Secured Party for: (i) any recitals, statements, representations or warranties made by Borrower contained in this Depository Agreement or any other Secured Obligations Document or in any certificates or other document referred to or provided for in, or received by any Secured Party under, this Depository Agreement or any other Secured Obligations Document; (ii) the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Depository Agreement or any other Secured Obligations Document or any other document referred to or provided for herein or therein or the perfection, priority or validity of any of the

Liens created by the Collateral Documents; or (iii) any failure by Borrower to perform its obligations hereunder or thereunder.

- (b) Performance by Borrower; Etc. Depository Bank shall not be required to ascertain or inquire as to the performance by Borrower or any other Person of any of its obligations under any Financing Document or any other document or agreement contemplated hereby or thereby.
- (c) Initiation of Litigation, Etc. Depository Bank shall not be required to initiate or conduct any litigation or collection proceeding hereunder or under any other Financing Document.
- (d) Insurance and Taxes on Depository Collateral. Depository Bank shall not be liable or responsible for insuring the Depository Collateral or for the payment of taxes, charges, assessments or Liens upon the Depository Collateral.
- (e) Personal Liability of Depository Bank. Depository Bank shall not be liable for any action taken, suffered or omitted to be taken by it in connection with this Depository Agreement or any other Financing Document or pursuant to any instruction or direction given to it in accordance with the terms or in furtherance of this Depository Agreement or any other Financing Document unless arising out of its own gross negligence, willful misconduct or unlawful acts as finally determined by a non-appealable order from a court of competent jurisdiction. The Depository Bank may consult with legal counsel of its own choosing as to any matter relating to this Depository Agreement, and the Depository Bank shall not incur any liability in acting in good faith in accordance with any advice from such counsel.
- (f) Indemnification and Limitation of Liability. Borrower shall indemnify, defend and hold harmless the Depository Bank, and in their capacities as such, Depository Bank's respective officers, directors, shareholders, controlling persons, employees, agents and servants (collectively, the "Depository Indemnitees"), with respect to its performance under this Depository Agreement pursuant to the terms hereof. No provision of this Depository Agreement shall be construed to relieve Depository Bank from liability for its own grossly negligent action, its own grossly negligent failure to act, or its own willful misconduct or unlawful acts as finally determined by a non-appealable order from a court of competent jurisdiction. Depository Bank shall be under no liability to pay interest on any money received by it hereunder except as otherwise agreed with First Lien Administrative Agent (prior to the Discharge of First Lien Obligations) or Second Lien Administrative Agent (only after the Discharge of First Lien Obligations) or Borrower and except to the extent of income or other gain on investments that are deposits in or certificates of deposits or other obligations of Depository Bank in its commercial capacity and income or other gain actually received by Depository Bank on Permitted Investments. In no event shall the Depository Bank be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) other than

resulting from fraudulent acts of Depository Bank, irrespective of whether such Depository Bank has been advised of the likelihood of such loss or damage and regardless of the form of action. Without limiting the obligations of the Borrower hereunder and to the extent that the Borrower fails to indemnify the Depository Bank in accordance with the provisions of this Section 6.05(f), the Secured Parties will, severally, *pro rata* (calculated based on the amount of the Outstanding Amount owed to such Secured Party) indemnify the Depository Bank to the same extent (and subject to the same exceptions) as is required of the Borrower under this Section 6.05; provided, however, that none of the Secured Parties shall be liable to indemnify the Depository Bank for any liability arising from the Depository Bank's gross negligence, willful misconduct or bad faith. The provisions of this Section 6.05 shall survive the termination of this Depository Agreement or the resignation or removal of the Depository Bank.

- (g) Agents. The Depository Bank may employ a custodian, agent, nominee or delegate to transact or concur in transacting any business and to do or concur in doing any acts required to be done by the Depository Bank (including the receipt and payment of money) and shall not be responsible for the misconduct or negligence (except for gross negligence, willful misconduct, bad faith or unlawful acts as determined by a non-appealable order from a court of competent jurisdiction) of any such agent appointed with due care.
- (h) Force Majeure. The Depository Bank shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Depository Bank (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

6.06 **Fees; Expenses.**

Depository Bank shall be compensated for its services hereunder in accordance with the Schedule II attached hereto (it being understood and agreed that the ["Annual Administration Fee"] referred to therein shall be payable on the Closing Date and on each anniversary thereof). Borrower agrees to pay or reimburse all reasonable and documented out-of-pocket expenses of Depository Bank (including reasonable and documented fees and expenses for one outside legal counsel in respect of, or incident to, the administration or enforcement of any of the provisions of this Depository Agreement or in connection with any amendment, waiver or consent relating to this Depository Agreement. Borrower shall not be liable for the fees and expenses of any other third party advisor of the Depository Bank without Borrower's prior written consent.

ARTICLE VII

MISCELLANEOUS

7.01 **Controlling Party.**

The actions of, and remedies available to, the Controlling Party shall be governed by the Collateral Agency Agreement.

7.02 **No Waiver; Remedies Cumulative.**

No failure or delay on the part of any party hereto or any Secured Party in exercising any right, power or privilege hereunder and no course of dealing between parties hereto shall impair any such right, power or privilege or operate as a waiver thereof. No single or partial exercise by any party hereto or any Secured Party of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. The rights, powers and remedies provided herein are cumulative and not exclusive of any rights, powers or remedies which any party thereto would otherwise have.

7.03 **Notices.**

- (a) Unless otherwise expressly provided herein, (and subject to paragraphs (b) and (c) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

If to Depositary Bank:

[_____]
Telephone: [_____]
Facsimile: [_____]
E-mail: [_____]

If to First Lien Administrative Agent:

[_____]
Telephone: [_____]
Facsimile: [_____]
Email: [_____]

If to First Lien Collateral Agent:

[_____]
Telephone: [_____]
Facsimile: [_____]
Email: [_____]

If to Second Lien Administrative Agent:

[_____]
Telephone: [_____]
Facsimile: [_____]
Email: [_____]

If to Second Lien Collateral Agent:

[_____]
Telephone: [_____]
Facsimile: [_____]
Email: [_____]

If to Borrower:

[_____]
Telephone: [_____]
Facsimile: [_____]
Email: [_____]

- (b) Any documents, certificates or communications hereunder may be transmitted and/or signed by facsimile or other electronic means, including by “.pdf” attached to an email. The effectiveness of any such documents and signatures shall, subject to applicable Governmental Rules, have the same force and effect as manually-signed originals and shall be binding on the parties thereto. The Depository Bank may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document, “.pdf” or signature.
- (c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the Borrower and the Depository Bank. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and, if given in accordance with this Section, shall be effective (i) on the date of personal delivery (if by personal delivery), (ii) on the date of transmission, as confirmed by a printed confirmation of successful transmission if by facsimile transmission or if by electronic transmission, as confirmed by sender’s receipt of acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), (iii) if sent from and to the United States, on the Business Day following deposit with a nationally recognized overnight courier or shipping service (if by nationally recognized overnight courier or shipping service), (iv) if sent from the United States abroad or if sent from outside the

United States to the United States, on the third (3rd) Business Day following deposit with an internationally recognized overnight courier or shipping service (if by internationally recognized courier or shipping service), (v) if sent from and to the United States, on the third (3rd) Business Day after mailing (if by registered mail) or (vi) if sent from the United States abroad or if sent from outside the United States to the United States, on the fifth (5th) Business Day (if by registered mail).

7.04 **Amendments.**

This Depositary Agreement may be amended or modified only by an instrument in writing signed by each of the parties hereto and otherwise in accordance with Section 5.03 of the Collateral Agency Agreement.

7.05 **Benefit of Agreement; Successors and Assigns.**

This Depositary Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto and for the benefit of the Secured Parties; provided, however, that Borrower may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Agents (and any assignment in violation thereof shall be void) and the Required Lenders, and Depositary Bank may not assign this Depositary Agreement except in accordance with its resignation or removal under Section 6.04.

7.06 **Third-Party Beneficiaries.**

The covenants contained herein are made solely for the benefit of the parties hereto and the Secured Parties, and successors and assigns of such parties as specified herein, and shall not be construed as having been intended to benefit any other third-party not a party to this Depositary Agreement.

7.07 **Counterparts.**

This Depositary Agreement may be executed in one or more duplicate counterparts and by different parties on different counterparts, each of which shall constitute an original, but all of which shall constitute a single contract and when signed by all of the parties listed below shall constitute a single binding agreement. Delivery of an executed counterpart of a signature page of this Depositary Agreement by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Depositary Agreement.

7.08 **Effectiveness.**

This Depositary Agreement shall be effective on the date first above written.

7.09 **Entire Agreement.**

This Depositary Agreement and the other Secured Obligations Documents, including the documents referred to herein and therein, constitute the entire agreement and understanding of the parties hereto (it being understood that Depositary Bank is not a party to and has no obligations under the Secured Obligations Documents other than this Depositary Agreement), and supersede any and all prior agreements and understandings, written or oral, of the parties hereto relating to the subject matter hereof.

7.10 **Severability.**

If any provision of this Depositary Agreement is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law: (a) the other provisions of this Depositary Agreement shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the parties hereto as nearly as may be possible; and (b) the invalidity or unenforceability of any provision of this Depositary Agreement in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

7.11 **Conflict with Other Agreements.**

Except as otherwise expressly provided herein, the parties agree that in the event of any conflict between the provisions of this Depositary Agreement (or any portion thereof) and the provisions of any other or any other agreement (other than the Collateral Agency Agreement and Financing Agreements) now existing or hereafter entered into, the provisions of this Depositary Agreement shall control with respect to the rights and obligations of the Depositary Bank. Except as otherwise expressly provided herein, and in any event except with respect to the duties, obligations, rights, benefits, privileges and protections of the Depositary Bank, in the event of any conflict between the provisions of this Depositary Agreement and the provisions of the Collateral Agency Agreement and the Financing Agreements, the provisions of the Collateral Agency Agreement and the Financing Agreements shall control. In the event that in connection with the establishment of any of the Collateral Accounts with Depositary Bank, Borrower shall enter into any agreement, instrument or other document with Depositary Bank which has terms that are in conflict with or inconsistent with the terms of this Depositary Agreement, the terms of this Depositary Agreement shall control.

7.12 **Scope of Liability.**

Section 11.10 of the First Lien Financing Agreement is incorporated into this Depositary Agreement by reference, *mutatis mutandis*, as if fully set out in this Depositary Agreement.

7.13 **Governing Law.**

THIS DEPOSITARY AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS DEPOSITARY AGREEMENT AND THE TRANSACTIONS CONTEMPLATED

HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

7.14 **Consent to Jurisdiction.**

(a) Each party hereto irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, in any way relating to this Depositary Agreement or the transactions relating hereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Depositary Agreement shall affect any right that the Agents may otherwise have to bring any action or proceeding relating to this Depositary Agreement against the Borrower or its property in the courts of any jurisdiction.

(b) Nothing herein shall in any way be deemed to limit the ability of the Agents to serve any such process or summonses in any other manner permitted by applicable law.

(c) Each party hereto irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Depositary Agreement in any court referred to in clause (a) of this Section 7.14. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

7.15 **WAIVER OF JURY TRIAL.**

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DEPOSITARY AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS DEPOSITARY AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

7.16 **Service of Process.**

Each party to this Depositary Agreement irrevocably consents to service of process in the manner provided for notices in Section 7.03. Nothing in this Depositary Agreement will affect the right of any party to this Depositary Agreement to serve process in any other manner permitted by law.

7.17 **Termination.**

Upon the Discharge of First Lien Obligations, the First Lien Collateral Agent shall execute and deliver to Borrower, at Borrower's expense, upon such termination such Uniform Commercial Code termination statements and other release documentation as shall be reasonably requested by Borrower to effect the termination and release of the First Liens created under this Depositary Agreement. Upon the payment in full of all Secured Obligations, this Depositary Agreement shall (except as otherwise expressly set out herein) terminate and be of no further force and effect. The First Lien Collateral Agent, to the extent it has any interest remaining, and the Second Lien Collateral Agent shall execute and deliver to Borrower, at Borrower's expense, upon such termination such Uniform Commercial Code termination statements and other release documentation as shall be reasonably requested by Borrower to effect the termination and release of all Liens created under this Depositary Agreement. The security interest created hereby shall also be released automatically with respect to any portion of the Collateral Accounts, the proceeds thereof or other Collateral that is transferred or otherwise disposed of in compliance with the terms and conditions of the Financing Documents. Any remaining amounts in the Collateral Accounts shall be distributed to the Borrower accordingly. This Section 7.17 shall survive the termination of this Depositary Agreement.

7.18 **Reinstatement.**

This Depositary Agreement and the obligations of Borrower hereunder shall continue to be effective or be automatically reinstated, as the case may be, if (and to the extent that) at any time payment and performance of Borrower's obligations hereunder, or any part thereof, is rescinded or reduced in amount, or must otherwise be restored or returned by any Secured Party. In the event that any payment or any part thereof is so rescinded, reduced, restored or returned, such obligations shall be reinstated on the same terms and conditions applicable thereto prior to the payment of the rescinded, reduced, restored or returned amount, and shall be deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned. This Section 7.18 shall impose no duty or obligation on Depositary Bank, and is intended solely to govern the relationship among and between the Secured Parties and Borrower.

7.19 **Attorney-In-Fact.**

For the purposes of allowing the Agents to exercise their rights and remedies upon the occurrence and during the continuance of a Trigger Event, Borrower irrevocably constitutes and appoints, upon the occurrence and during the continuance of a Trigger Event, each Agent and any officer or agent thereof, with full power of substitution as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Borrower and in the name of Borrower or in its own name, for the purpose of carrying out the terms of this Depositary Agreement, to take any appropriate action and to execute any document or instrument that may be necessary or desirable to accomplish the purposes of this Depositary Agreement. Upon the occurrence and continuance of a Trigger Event, the Controlling Party shall promptly inform Depositary Bank and Borrower in writing that a Trigger Event has occurred and is continuing and that each such Agent is exercising remedies under this Section 7.19. This power of attorney is coupled with an interest.

7.20 **Patriot Act Compliance.**

The parties hereto acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the Patriot Act) requires all financial institutions to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. Each party hereto agrees that it will provide to the Depositary Bank such information as it may request, from time to time, in order for the Depositary Bank to satisfy the requirements of the USA PATRIOT Act, including the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account, and formation documents such as articles of incorporation or other identifying documents.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, each of the parties hereto has caused this Depositary Agreement to be duly executed by its duly authorized officers or representatives as of the date first above written.

ITR CONCESSION COMPANY LLC,
a Delaware limited liability company

By: _____
Name:
Title:

[____],
as Depositary Bank

By: _____
Name:
Title:

[_____] as First Lien Collateral Agent

By: _____
Name:
Title:

[_____] as Second Lien Collateral Agent

By: _____
Name:
Title:

[____],
As First Lien Administrative Agent

By: _____
Name:
Title:

[_____] as Second Lien Administrative Agent

By: _____
Name:
Title:

Schedule I
to Depository Agreement

ACCOUNT NAMES AND NUMBERS

<u>COLLATERAL ACCOUNTS</u>	<u>ACCOUNT NO.</u>
<u>ACCOUNT NAME</u>	
Proceeds Account	[_____]
Operating Account	[_____]
First Lien Debt Service Payment Account	[_____]
Second Lien Debt Service Payment Account	[_____]
Debt Service Reserve Account	[_____]
Loss Proceeds Account	[_____]
Distribution Account	[_____]

Wire Instructions:

Pay To: [_____]
ABA No.: [_____]
A/C No.: [_____]
A/C Name: [_____]
Ref: [_____]

Schedule II
to Depositary Agreement

Schedule of Depositary Bank Fees

[see attached]

Exhibit A
to Depositary Agreement

[FORM OF WITHDRAWAL/TRANSFER CERTIFICATE]¹

Date of this Withdrawal/Transfer Certificate: [_____] ²
Withdrawal Date: [_____] ³

Via electronic mail: [_____]

[_____] ,
as Depositary Bank
[_____]
Facsimile: [_____]

Re: ITR Concession Company LLC

Ladies and Gentlemen:

This Withdrawal/Transfer Certificate is delivered to you pursuant to Section 3.02 of the Depositary Agreement (the “**Depositary Agreement**”), dated as of [_____], among ITR Concession Company LLC, a Delaware limited liability company (“**Borrower**”), [_____], as First Lien Administrative Agent, [_____], as Second Lien Administrative Agent, [_____], as First Lien Collateral Agent, [_____], as the Second Lien Collateral Agent and [_____], as Depositary Bank (“**Depositary Bank**”). Reference is also made to the Collateral Agency and Collateral Agency Agreement (the “**Collateral Agency Agreement**”), dated as of [_____], among Borrower, the First Lien Administrative Agent, the Second Lien Administrative Agent, the First Lien Collateral Agent, and the Second Lien Collateral Agent. Capitalized terms used but not defined herein shall have the respective meanings assigned thereto in the Depositary Agreement (or, if not defined therein, in Section 1.1 of the Collateral Agency Agreement).

Borrower hereby requests the sums indicated in Annex 1 hereto (the “**Withdrawal**”) be paid or transferred from the Collateral Accounts as set forth in Annex 1 hereto.

¹ Certificate should be completed by Borrower and delivered to First Lien Administrative Agent for review no later than [1:00 p.m.] (New York time) [one or three] Business Days, as applicable, prior to the requested withdrawal date pursuant to Section 3.02(c) of the Depositary Agreement.

² Certificate should be signed by Borrower, countersigned by First Lien Administrative Agent and delivered to Depositary Bank no later than [11:00 a.m.] (New York time) the [one] Business Day prior to the Withdrawal Date to which this certificate relates pursuant to Section 3.02(d) of the Depositary Agreement.

³ Insert the Withdrawal Date or other Withdrawal Date to which this Withdrawal/Transfer Certificate relates.

Borrower hereby represents and warrants that Borrower is entitled, pursuant to the Depository Agreement and the First Lien Financing Agreement, to request the Withdrawal in the manner, at the times and in the amounts set forth in this Withdrawal/Transfer Certificate.

Borrower certifies that all attachments to this Withdrawal/Transfer Certificate that are required to be annexed hereto pursuant Section 3.02 of the Depository Agreement are attached hereto.

Faithfully yours,

ITR CONCESSION COMPANY LLC,
a Delaware limited liability company

By: _____

Name:

Title:

Approved by:

[____],
as the First Lien Administrative Agent

By: _____

Name:

Title:

[Approved by:

[____],
as the First Lien Collateral Agent

By: _____

Name:

Title:]⁴

⁴ Note: To be included for withdrawals and transfers from the Loss Proceeds Account.

Annex 1
to Withdrawal/Transfer Certificate

Withdrawals/Transfers from Proceeds Account

Withdrawal Date	Amount to be Withdrawn /Transferred	Name of Payee	Account to which Payment is to be Made	Purpose/Description
			Pay To: ABA No.: Account No.: Credit To: Reference:	
			Pay To: ABA No.: Account No.: Credit To: Reference:	

Annex 1
to Withdrawal/Transfer Certificate

Withdrawals/Transfers from Operating Account

Withdrawal Date	Amount to be Withdrawn /Transferred	Name of Payee	Account to which Payment is to be Made	Purpose/Description
			Pay To: ABA No.: Account No.: Credit To: Reference:	
			Pay To: ABA No.: Account No.: Credit To: Reference:	

Annex 1
to Withdrawal/Transfer Certificate

Withdrawals/Transfers from First Lien Debt Service Payment Account

Withdrawal Date	Amount to be Withdrawn /Transferred	Name of Payee	Account to which Payment is to be Made	Purpose/Description
			Pay To: ABA No.: Account No.: Credit To: Reference:	
			Pay To: ABA No.: Account No.: Credit To: Reference:	

Annex 1
to Withdrawal/Transfer Certificate

Withdrawals/Transfers from Second Lien Debt Service Payment Account

Withdrawal Date	Amount to be Withdrawn /Transferred	Name of Payee	Account to which Payment is to be Made	Purpose/Description
			Pay To: ABA No.: Account No.: Credit To: Reference:	
			Pay To: ABA No.: Account No.: Credit To: Reference:	

Annex 1
to Withdrawal/Transfer Certificate

Withdrawals/Transfers from Loss Proceeds Account

Withdrawal Date	Amount to be Withdrawn /Transferred	Name of Payee	Account to which Payment is to be Made	Purpose/Description
			Pay To: ABA No.: Account No.: Credit To: Reference:	
			Pay To: ABA No.: Account No.: Credit To: Reference:	

Exhibit F

Confirmation Order Findings of Fact and Conclusions of Law

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
)	Chapter 11
)	
ITR CONCESSION COMPANY LLC, <i>et al.</i> , ¹)	Case No. 14-34284 (PSH)
)	
Debtors.)	(Jointly Administered)
)	

CONFIRMATION ORDER FINDINGS OF FACT AND CONCLUSIONS OF LAW²

A. Jurisdiction and Venue.

1. On the Petition Date, the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors were and are qualified to be debtors under section 109 of the Bankruptcy Code. Venue in the Northern District of Illinois was proper as of the Petition Date and continues to be proper. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2). The Bankruptcy Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1334, and the Bankruptcy Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Judicial Notice.

2. The Bankruptcy Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the clerk of the Bankruptcy Court and/or its duly appointed agent, including all pleadings and other documents Filed, all orders entered, and all evidence and arguments made, proffered, or adduced at the hearings held before the Bankruptcy Court during the pendency of the Chapter 11 Cases (including the Confirmation Hearing). Resolutions of any objections to Confirmation explained on the record at the Confirmation Hearing are hereby incorporated by reference. All entries on the docket of the Chapter 11 Cases shall constitute the record before the Bankruptcy Court for purposes of the Confirmation Hearing.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: ITR Concession Company LLC (0293); ITR Concession Company Holdings LLC (0285); and Statewide Mobility Partners LLC (1312). The location of the Debtors’ service address for the purposes of these chapter 11 cases is: c/o ITR Concession Company LLC, 205 North Michigan Avenue, Suite 2510, Chicago, Illinois 60601.

² Capitalized terms used but not otherwise defined herein have the meanings given to them in the *Joint Prepackaged Plan of Reorganization of ITR Concession Company LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code (with Technical Modifications)*, dated October 14, 2014 [Docket No. 134] (as amended, modified, or supplemented from time to time, the “Plan”), or the Disclosure Statement (as defined in the Plan), as applicable.

C. Transmittal and Mailing of Materials; Notice.

3. Due, adequate, and sufficient notice of the Disclosure Statement, the Plan, the Plan Supplement, the Confirmation Hearing, and the provisions set forth in Article VIII of the Plan, including the release, exculpation, and discharge provisions set forth in Article VIII of the Plan, along with all deadlines for voting on or objecting to the Plan, has been given to all known Holders of Claims or Interests, all parties that requested notice in accordance with Bankruptcy Rule 2002, all parties to Unexpired Leases and Executory Contracts, and all applicable taxing authorities, in each case in compliance with Bankruptcy Rules 2002, 3017, 3019, and 3020(b) and the *Order (A) Scheduling a Combined Disclosure Statement Approval and Confirmation Hearing, (B) Establishing a Plan and Disclosure Statement Objection Deadline and Related Procedures, (C) Approving the Solicitation Procedures, (D) Approving the Combined Hearing Notice and the Cure Notice, and (E) Directing That a Meeting of the Creditors Not Be Convened* [Docket No. 81] (the “Scheduling Order”), and such transmittal and service were appropriate, adequate, and sufficient. Adequate and sufficient notice of the Confirmation Hearing and other dates, deadlines, and hearings described in the Scheduling Order was given in compliance with the Bankruptcy Rules and the Scheduling Order, and no other or further notice is or shall be required.

D. Adequacy of the Disclosure Statement.

4. The Disclosure Statement (a) contains information sufficient to satisfy the disclosure requirements of all applicable nonbankruptcy law, rules, and regulations, including the Securities Act, (b) contains “adequate information” (as defined in section 1125(a) and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated by the Plan, and (c) is approved in all respects. The filing of the Disclosure Statement with the clerk of the Bankruptcy Court satisfied Bankruptcy Rule 3016(b).

E. Solicitation.

5. Prior to the Petition Date, the Plan, the Disclosure Statement, the Ballots, and the Class 3 Master Ballot and, subsequent to the Petition Date, the Confirmation Hearing notice, were transmitted and served in compliance with the Bankruptcy Code, including sections 1125 and 1126 thereof, the Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, and the Local Rules. The forms of the Ballots or Class 3 Master Ballot, as applicable, adequately addressed the particular needs of the Chapter 11 Cases and were appropriate for Holders of Claims in Class 3 and Holders of Interests in Class 7, the only Classes entitled under the Plan to vote to accept or reject the Plan.

6. The period during which the Debtors solicited acceptances to the Plan was a reasonable period of time for Holders of Claims or Interests entitled to vote on the Plan to make an informed decision to accept or reject the Plan. In particular, (a) the Plan and the Disclosure Statement (including the Ballots) were transmitted to all Holders of Class 3 Claims or Class 7 Interests, (b) sufficient and reasonable time and notice were prescribed for the solicitation of such Holders of Claims or Interests, (c) the Ballots submitted by the Holders of Class 3 Claims and the Holders of Class 7 Interests were submitted by the Holders of record of the such Claims or Interests as of September 10, 2014 (as identified in the Solicitation Packages, the “Voting

Record Date”), and (d) the establishment and notice of the Voting Record Date was appropriate and reasonable. In accordance with section 1126(f) of the Bankruptcy Code, the Debtors were not required to solicit votes from the Holders of Claims or Interests in Unimpaired Classes, which are conclusively presumed to have accepted the Plan.

7. As described in and as evidenced by the voting certification and the notice affidavits, the transmittal and service of the Plan, the Disclosure Statement, the Ballots, the Class 3 Master Ballot, the Confirmation Hearing notice, and publication of such Confirmation Hearing notice (collectively, the “Solicitation”) was timely, adequate, and sufficient under the circumstances. The solicitation of votes on the Plan complied with the solicitation procedures set forth in the Solicitation Procedures (as defined in the Scheduling Order), was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and complied with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable rules, laws, and regulations. The Debtors, the Reorganized Debtors, the Consenting Interest Holders, and the Consenting Secured Parties and all predecessors, successors and assigns, subsidiaries, Affiliates, managed accounts or funds, current and former officers, directors, principals, members, partners, shareholders, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, advisory board members and other professionals of the foregoing and their respective heirs, executors, estates, servants, and nominees that may have solicited votes on the Plan or participated in the formulation of the Plan, participated in good faith, complied with the applicable provisions of the Bankruptcy Code, and, therefore, are entitled to the protections of section 1125(e) of the Bankruptcy Code.

F. Burden of Proof.

8. The Debtors, as proponents of the Plan, have satisfied their burden of proving the elements of section 1129(a) of the Bankruptcy Code by a preponderance of the evidence, the applicable evidentiary standard. The Bankruptcy Court also finds that the Debtors have satisfied the elements of section 1129(a) of the Bankruptcy Code by clear and convincing evidence.

G. Bankruptcy Rule 3016(a) Compliance.

9. The Plan is dated and identifies the proponents thereof, as required by Bankruptcy Rule 3016(a).

H. Compliance with the Requirements of Section 1129 of the Bankruptcy Code.

10. The Plan complies with all requirements of section 1129 of the Bankruptcy Code as follows.

a. Section 1129(a)(1)–Compliance of the Plan with Applicable Provisions of the Bankruptcy Code.

11. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1121, 1122, 1123, and 1125 of the Bankruptcy Code.

b. Standing.

12. Each Debtor has standing to file a plan and the Debtors, therefore, have satisfied section 1121 of the Bankruptcy Code.

c. Proper Classification.

13. Pursuant to sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Article III of the Plan designates Classes of Claims and Interests, other than Administrative Claims, Accrued Professional Compensation Claims, and Priority Tax Claims, which are not required to be classified. As required by section 1122(a) of the Bankruptcy Code, each Class of Claims or Interests contains only Claims or Interests substantially similar to the other Claims or Interests within that Class.

d. Specification of Unimpaired Classes.

14. Pursuant to section 1123(a)(2) of the Bankruptcy Code, Article III of the Plan specifies all Classes of Claims and Interests that are not Impaired.

e. Specification of Treatment of Impaired Classes.

15. Pursuant to section 1123(a)(3) of the Bankruptcy Code, Article III of the Plan specifies the treatment of all Classes of Claims and Interests that are Impaired.

f. No Discrimination.

16. Pursuant to section 1123(a)(4) of the Bankruptcy Code, Article III of the Plan provides the same treatment for each Claim or Interest within a particular Class, unless the Holder of a particular Claim or Interest has agreed to less favorable treatment with respect to such Claim or Interest.

g. Plan Implementation.

17. Pursuant to section 1123(a)(5) of the Bankruptcy Code, the Plan provides adequate and proper means for the Plan's implementation, including the Sale Transaction or the Reorganization Transaction and the Restructuring Transactions contemplated thereby. Immediately upon the Effective Date, sufficient Cash and other consideration provided under the Plan will be available to make all payments required to be made on the Effective Date pursuant to the terms of the Plan. Moreover, Article IV and various other provisions of the Plan specifically provide adequate means for the Plan's implementation.

h. Voting Power of Equity Securities; Selection of Officer, Director, or Trustee under the Plan.

18. The New Organizational Documents comply with sections 1123(a)(6) and 1123(a)(7) of the Bankruptcy Code.

i. Impairment/Unimpairment of Classes of Claims and Equity Interests.

19. Pursuant to section 1123(b)(1) of the Bankruptcy Code, Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 4 (General Unsecured Claims), Class 5 (Intercompany Claims), and Class 6 (Intercompany Interests) are Unimpaired under the Plan and Class 3 (Senior Secured Claims) and Class 7 (Statewide Interests) are Impaired under the Plan.

j. Assumption and Rejection of Executory Contracts and Unexpired Leases.

20. In accordance with section 1123(b)(2) of the Bankruptcy Code, under Article V.A of the Plan, on the Effective Date, except as otherwise provided in the Plan, all Executory Contracts or Unexpired Leases (including, for the avoidance of doubt, the Restructuring Support Agreement, which will be assumed and deemed to be assumed as of the Confirmation Date) will be deemed assumed, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than any Executory Contract or Unexpired Lease that: (a) is identified on the Rejected Executory Contract and Unexpired Lease List; (b) previously was assumed, assumed and assigned, or rejected by the Debtors; (c) is the subject of a motion to assume, or to assume and assign, Executory Contracts or Unexpired Leases that is pending on the Effective Date; (d) is subject to a motion to reject an Executory Contract or Unexpired Lease pursuant to which the requested effective date of such assumption is after the Effective Date; or (e) is to be assumed by the Debtors or assumed and assigned by the Debtors in connection with the Restructuring Transactions. The Debtors' assumption and assignment of any Executory Contract or Unexpired Lease in accordance with Article V of the Plan satisfies the requirements of section 365(b) of the Bankruptcy Code and, accordingly, the requirements of section 1123(b)(2) of the Bankruptcy Code. Notwithstanding anything herein to the contrary, the Debtors shall assume or assume and assign the Concession Agreement solely in accordance with Article IV.N of the Plan.

21. The Debtors have exercised reasonable business judgment in determining whether to reject, assume, or assume and assign each of their Executory Contracts and Unexpired Leases under the terms of the Plan. Each pre-Confirmation or post-Confirmation rejection, assumption, or assumption and assignment of an Executory Contract or Unexpired Lease pursuant to Article V of the Plan will be legal, valid, and binding upon the applicable Debtor and all other parties to such Executory Contract or Unexpired Lease, as applicable, all to the same extent as if such rejection, assumption, or assumption and assignment had been effectuated pursuant to an appropriate order of the Court entered before the Confirmation Date under section 365 of the Bankruptcy Code. Each Executory Contract and Unexpired Lease to be rejected, assumed, or assumed and assigned is deemed to be an executory contract or an unexpired lease, as applicable.

22. Notwithstanding anything to the contrary herein, the Concession Agreement shall be assumed or assumed and assigned, as applicable, by the Concessionaire as of the Effective Date solely in accordance with Article IV.N of the Plan. The effectiveness of such assumption or assumption and assignment, as applicable, shall require the Concessionaire to (a) cure, or provide adequate assurance that the Concessionaire will cure, any existing monetary or nonmonetary defaults under the Concession Agreement that may have arisen at any time before the Effective Date (whether or not the IFA has or will have provided formal notice thereof) and

that would be required to be cured in accordance with section 365(b)(1)(A) and section 365(b)(1)(B) of the Bankruptcy Code as of the Effective Date (or promptly thereafter), and (b) provide adequate assurance of future performance from and after the Effective Date of the Plan to the extent required under section 365(b)(1)(C) or section 365(f)(2)(B) of the Bankruptcy Code, subject to the respective rights of the Debtors, the Committee of Secured Parties, and the IFA set forth in paragraphs 3 and 4 of the IFA Stipulation.

k. Settlement of Claims and Causes of Action.

23. Each settlement and compromise pursuant to and in connection with the Plan or incorporated by reference into the Plan (including the IFA Stipulation) complies with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

24. Pursuant to Bankruptcy Rule 9019 and section 363 of the Bankruptcy Code and in consideration for the distributions and other benefits provided under the Plan: the compromise and settlement provisions of the Plan (including the IFA Stipulation) constitute good-faith compromises; are in the best interests of the Debtors, the Estates, and all Holders of Claims and Interests; and are fair, equitable, and reasonable. All such compromises and settlements are substantively fair in consideration of the following factors: (a) the balance between the litigation's possibility of success and the settlement's future benefits; (b) the likelihood of complex and protracted litigation and risk and difficulty of collecting on the judgment; (c) the proportion of creditors and parties in interest that support the settlement; (d) the competency of counsel reviewing the settlement; (e) the nature and breadth of releases to be obtained by officers and directors; and (f) the extent to which the settlement is the product of arm's-length bargaining.

l. Cure of Defaults.

25. Article V of the Plan provides for the satisfaction of default claims associated with each Executory Contract and Unexpired Lease (other than the Concession Agreement, which the Debtors shall assume or assume and assign solely in accordance with Article IV.N of the Plan) to be assumed in accordance with section 365(b)(1) of the Bankruptcy Code. The cure amounts identified in the Notices to Counterparties of Executory Contracts and Unexpired Leases, which the Debtors served upon each counterparty to an Executory Contract or an Unexpired Lease with one or more of the Debtors, as evidenced by an affidavit of service Filed with the Bankruptcy Court [Docket No. 130], and any amendment thereto, as applicable, represent the amount, if any, that the Debtors or the Reorganized Debtors or any of their respective successors and assigns, as applicable, proposes to pay in full and complete satisfaction of such default claims. Disputed cure amounts will be determined in accordance with the procedures set forth in Article V of the Plan and applicable bankruptcy and nonbankruptcy law (other than any cure amounts with respect to the Concession Agreement, which shall be determined in accordance with Article IV.N of the Plan). As such, the Plan provides that the Debtors and the Reorganized Debtors and their respective successors and assigns, as applicable, will cure, or provide adequate assurance such Entity will cure, any defaults under any Executory Contract or Unexpired Lease to be assumed or assumed and assigned under the Plan, in each case in compliance with section 365(b)(1) of the Bankruptcy Code. Thus, the Plan complies with section 1123(d) of the Bankruptcy Code.

m. Other Appropriate Provisions.

26. The Plan's other provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code, including provisions for (a) distributions to Holders of Claims and Interests, (b) objections to Claims, (c) procedures for resolving disputed, contingent, and unliquidated Claims, (d) cure amounts, (e) procedures governing cure disputes, and (f) indemnification obligations.

n. Section 1129(a)(2)–Compliance of Plan Proponents with Applicable Provisions of the Bankruptcy Code.

27. The Debtors, as proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(2) of the Bankruptcy Code, including sections 1125 and 1126 of the Bankruptcy Code and Bankruptcy Rules 3017, 3018, and 3019. In particular, the Debtors are proper debtors under section 109 of the Bankruptcy Code and proper proponents of the Plan under section 1121(a) of the Bankruptcy Code. Furthermore, the solicitation of acceptances or rejections of the Plan complied with the Scheduling Order and all applicable laws, rules, and regulations governing the adequacy of disclosure in connection with such solicitation and provided Holders of Claims or Interests with “adequate information” as defined in section 1125(a) of the Bankruptcy Code. Accordingly, the Debtors and their respective directors, officers, employees, agents, affiliates, and Professionals have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code.

o. Section 1129(a)(3)–Proposal of Plan in Good Faith.

28. The Debtors have proposed the Plan in good faith and not by any means forbidden by law. In determining that the Debtors proposed the Plan in good faith, the Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself, and the process leading to the Plan's formulation.

p. Section 1129(a)(4)–Bankruptcy Court Approval of Certain Payments as Reasonable.

29. Pursuant to section 1129(a)(4) of the Bankruptcy Code, the payments to be made for services or for costs in connection with the Chapter 11 Cases or the Plan are approved. The fees and expenses incurred by Professionals retained by the Debtors or the Committee of Secured Parties shall be payable according to the orders approving such Professionals' retentions and other applicable Bankruptcy Court orders (including the orders authorizing continued use of cash collateral), or as otherwise provided in the Plan.

q. Section 1129(a)(5)–Disclosure of Identity of Proposed Management, Compensation of Insiders, and Consistency of Management Proposals with the Interests of Creditors and Public Policy.

30. Pursuant to section 1129(a)(5) of the Bankruptcy Code, information concerning the persons proposed to serve, respectively, as the initial directors and officers of the Debtors after Confirmation has been fully disclosed to the extent available, and the appointment to, or

continuance in, such offices of such persons is consistent with the interests of Holders of Claims and Interests and with public policy.

r. Section 1129(a)(6)–Approval of Rate Changes.

31. Section 1129(a)(6) of the Bankruptcy Code does not apply because the Plan does not provide for rate changes by any of the Debtors.

s. Section 1129(a)(7)–Best Interests of Creditors and Interest Holders.

32. The evidence supporting the finding that no Holder of any Claim or Interest will receive less under the plan than a chapter 7 liquidation occurring on the Effective Date is reasonable. The methodology used and assumptions made in such liquidation analysis, as supplemented by the evidence proffered or adduced at or prior to, or in affidavits filed in connection with, the Confirmation Hearing, are reasonable. With respect to each Impaired Class, each Holder of an Allowed Claim or Allowed Interest in such Class has accepted the Plan or will receive under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount such Holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

t. Section 1129(a)(8)–Conclusive Presumption of Acceptance by Unimpaired Classes; Acceptance of the Plan by Each Impaired Class.

33. Certain Classes of Claims or Interests are Unimpaired and are deemed conclusively to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. In addition, both of the two Impaired Classes that were entitled to vote have voted to accept the Plan. Thus, the Plan satisfies section 1129(a)(8) of the Bankruptcy Code.

u. Section 1129(a)(9)–Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code.

34. The treatment of Administrative Claims and Priority Tax Claims under Article II of the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

v. Section 1129(a)(10)–Acceptance by at Least One Impaired Class.

35. At least one Impaired Class has voted to accept the Plan. Accordingly, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

w. Section 1129(a)(11)–Feasibility of the Plan.

36. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. Based upon the evidence proffered or adduced at, or prior to, or in affidavits filed in connection with, the Confirmation Hearing, the Plan is feasible and Confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtors or any successor to the Debtors under the Plan. Furthermore, the Debtors, the Reorganized Debtors, or any successor to the Debtors under the Plan, as applicable, will have adequate assets to satisfy their respective obligations under the Plan.

x. Section 1129(a)(12)–Payment of Bankruptcy Fees.

37. Article XIII.C of the Plan provides for the payment of all fees payable under 28 U.S.C. § 1930(a) in accordance with section 1129(a)(12) of the Bankruptcy Code.

y. Section 1129(a)(13)–Retiree Benefits.

38. The Plan does not modify any retiree benefit plans subject to section 1129(a)(13) of the Bankruptcy Code.

z. Section 1129(a)(14)–Domestic Support Obligations.

39. No judicial or administrative order or statute requires the Debtors to pay any domestic support obligations, and therefore, section 1129(a)(14) of the Bankruptcy Code does not apply to the Plan.

aa. Section 1129(a)(15)–The Debtors Are Not Individuals.

40. The Debtors are not individuals, and therefore, section 1129(a)(15) of the Bankruptcy Code does not apply to the Plan.

bb. Section 1129(a)(16)–No Applicable Nonbankruptcy Law Regarding Transfers.

41. Each Debtor that is a corporation is a moneyed, business, or commercial corporation or trust, and therefore, section 1129(a)(16) of the Bankruptcy Code does not apply to the Plan.

cc. Section 1129(b)–Confirmation of Plan Over Rejection of Impaired Classes.

42. No Class of Claims or Interests has rejected or is deemed to reject the Plan. Therefore, section 1129(b) of the Bankruptcy Code does not apply to the Plan.

dd. Section 1129(c)–Confirmation of Only One Plan.

43. The Plan is the only plan that has been filed in the Chapter 11 Cases. Accordingly, the Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code.

ee. Section 1129(d)–Principal Purpose Not Avoidance of Taxes.

44. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

ff. Section 1129(e)–Small Business Case.

45. Section 1129(e) does not apply because the Chapter 11 Cases do not qualify as small business cases under the Bankruptcy Code.

I. Modifications to the Plan.

46. On September 21, 2014, the Debtors Filed the Plan. On October 14, 2014, the Debtors Filed certain immaterial, technical modifications to the Plan (collectively, the “Plan Modifications”) and provided notice thereof to all affected parties in interest. Under the circumstances, the form and manner of notice of the Plan Modifications were appropriate and adequate and no other or further notice of the Plan Modifications is necessary or required.

47. Except as provided for by law, contract, or prior order of the Bankruptcy Court, the Plan Modifications made since the commencement of solicitation do not adversely affect the recovery on account of any Claim or Interest under the Plan. Notice of the Plan Modifications, the Filing of the Plan as modified by the Plan Modifications, and the disclosure of the Plan Modifications on the record at the Confirmation Hearing constitute due and sufficient notice of the Plan Modifications. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do the Plan Modifications require that Holders of Claims and Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan as modified by the Plan Modifications constitutes the Plan submitted for Confirmation.

48. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims or Interests that voted to accept the Plan or that are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified by the Plan Modifications.

49. The Plan as modified by the Plan Modifications fully complies with sections 1122 and 1123 of the Bankruptcy Code. The Debtor has complied with section 1125 with respect to the Disclosure Statement and the Plan. The requirements of section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 have been satisfied.

J. Satisfaction of Confirmation Requirements.

50. Based upon the foregoing, the Plan satisfies the requirements for plan confirmation set forth in section 1129 of the Bankruptcy Code.

K. Implementation.

51. All documents necessary to implement the Plan, including those contained in the Plan Supplement, and all other relevant and necessary documents, to the extent such documents have been Filed, executed, or effected as of the Confirmation Date, have been negotiated in good faith and at arm’s length and shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and shall not be in conflict with any federal or state law.

L. Releases and Discharges.

52. The releases and discharges of Claims and Causes of Action described in the Plan, including releases by the Debtors and by Holders of Claims or Interests, constitute good-faith compromises and settlements of the matters covered thereby. Such compromises and settlements

were made in exchange for consideration, are in the best interest of Holders of Claims or Interests, are fair, equitable, reasonable, and are integral elements of the resolution of the Chapter 11 Cases in accordance with the Plan. Each discharge, release, indemnification, and exculpation provision set forth in the Plan: (a) is within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), 1334(b), and 1334(d); (b) is an essential means of implementing the Plan pursuant to section 1123(a)(6) of the Bankruptcy Code; (c) is an integral element of the transactions incorporated into the Plan; (d) confers material benefit on, and is in the best interests of, the Debtors, their estates, and their creditors; (e) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties in interest in the Chapter 11 Cases with respect to the Debtors; (f) is consistent with sections 105, 1123, 1129, and all other applicable provisions of the Bankruptcy Code; and (g) given and made after due notice and opportunity for hearing. Furthermore, the injunction set forth in Article VIII.F is an essential component of the Plan, the fruit of long-term negotiations, and achieved by the exchange of good and valuable consideration that will enable unsecured creditors to realize distributions in the Chapter 11 Cases.

M. Confirmation Hearing Exhibits.

53. All of the exhibits presented at the Confirmation Hearing have been properly received into evidence and are a part of the record before the Bankruptcy Court.

N. Objections to Confirmation of the Plan.

54. Any and all objections to Confirmation have been withdrawn, settled, overruled, or otherwise resolved.

O. Good Faith in Sale Process.

55. The procedures for the Sale Transaction set forth in the Plan, including in Article IV.D, are designed to implement a good-faith marketing and sale process.

P. Retention of Jurisdiction.

56. The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XII of the Plan and section 1142 of the Bankruptcy Code.

Exhibit G

Reorganization Transaction Steps Memorandum

Restructuring Transaction Steps

In the event that the Special Committee terminates the Debtors' competitive sale process and the Debtors seek to consummate the Reorganization Transaction, the Restructuring Transactions will be effectuated as follows:

On the Effective Date, the following actions will be deemed to occur in the following order:

1. All Allowed Class 3 Senior Secured Claims shall be cancelled for no consideration to the extent that they exceed the fair market value of the consideration for such Senior Secured Claims provided for in the Plan.
2. Reorganized Holdings will issue the Senior Secured Party Equity Distribution to Holders of Allowed Class 3 Senior Secured Claims, and the Reorganized Concessionaire will either enter into the New Loans (if any) or the New Third-Party Financing and then distribute any proceeds of the New Loans or New Third-Party Financing, as applicable, to Holders of Allowed Class 3 Senior Secured Claims, both in exchange for the remainder of such Senior Secured Claims.
3. To the extent that the Holders of Statewide Interests make the Put Election, the Debtors will distribute to such Holders their Pro Rata share of the Put Election consideration in exchange for such Holders' Statewide Interests and Statewide's Holdings Interests shall be reduced accordingly on a Pro Rata basis. To the extent that the Holders of Statewide Interests do not make the Put Election, Reorganized [Holdings] will issue the Statewide Interest Equity Distribution to Statewide in exchange for Statewide's remaining Holdings Interests (if any).