

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

TIFIA LOAN AGREEMENT

For Up to [Maximum Principal Amount of Loan]

With

[BORROWER]

For the

**[_____ PROJECT]
(TIFIA – 200_____)**

Dated as of _____

THIS FORM OF A TIFIA CREDIT AGREEMENT FOR A DIRECT LOAN SETS FORTH KEY TERMS AND CONDITIONS THAT ARE TYPICALLY REQUIRED FOR EXECUTION OF A TIFIA CREDIT AGREEMENT WHERE THE SENIOR DEBT IS A BANK DEBT FACILITY. THIS DOCUMENT CANNOT ANTICIPATE, HOWEVER, ALL TERMS THAT MUST BE NEGOTIATED BETWEEN THE PARTIES. IF A PROJECT IS APPROVED FOR TIFIA CREDIT ASSISTANCE, THE STRUCTURE OF THE TIFIA CREDIT ASSISTANCE AND THE LOAN AGREEMENT WILL BE BASED ON THE FINAL FINANCIAL PLAN AND NEGOTIATED TERMS AND CONDITIONS WITH THE BORROWER, AND IS SUBJECT TO FINAL APPROVAL BY USDOT.

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TIFIA LOAN AGREEMENT

THIS TIFIA LOAN AGREEMENT (this “Agreement”), dated as of [Effective Date], by and between [**BORROWER**], a [_____] created under the laws of [_____] with an address of [_____] (the “Borrower”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Federal Highway Administration, an agency of the United States of America, with an address of 1200 New Jersey Avenue, S.E., Washington, DC 20590 (the “TIFIA Lender”),

PREAMBLE:

WHEREAS, the Congress of the United States of America has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health and welfare of the people of the United States and, in furtherance thereof, has enacted the Transportation Infrastructure Finance and Innovation Act of 1998 (“TIFIA”), § 1501 *et seq.* of Public Law 105-178 (as amended by the Public Law 105-206 and Public Law 109-59) (the “Act”), as codified as 23 U.S.C. § 601, *et seq.*; and

WHEREAS, 23 U.S.C. §603 of the Act authorizes the TIFIA Lender to enter into agreements with one or more obligors to make secured loans; and

WHEREAS, the Borrower has requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$[Maximum Principal Amount of TIFIA Loan] (the “TIFIA Loan”) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to an application for TIFIA credit assistance dated [_____] and entitled [_____] (the “Application”); and

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the Note (as defined herein) in accordance with the terms and provisions hereof and thereof; and

WHEREAS, the TIFIA Lender has entered into this Agreement in reliance upon, among other things, [the Traffic and Revenue Study (as defined herein)][*Insert name of any other report, such as a feasibility study or an independent engineer’s report, on which the TIFIA Lender is relying*] and the Base Case Projections (as defined herein) delivered by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the TIFIA Lender as follows:

SECTION 1. Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement. Any term used in this Agreement which is defined by reference to any other agreement shall continue to have the meaning specified in such agreement on the date hereof whether or not such agreement remains in effect. [Definitions will be conformed to the structure of financing, the principal contract documents, and related parties on a project-by-project basis]

“Accreted Value” means with respect to any Capital Appreciation Bonds (i) as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the [Supplemental Resolution] authorizing such Capital Appreciation Bonds.

“Act” means the Act as defined in the preamble hereto.

“Additional Project Contracts” means any contract, agreement, letter of intent, understanding or instrument entered into by the Borrower after the execution and delivery of this Agreement, providing for the design, construction, testing, start-up, safety, financial services, operation or maintenance of the Project, or otherwise relating to the Project; provided, however, that a contract or agreement shall not constitute an Additional Project Contract if it (i) is entered into (A) in the ordinary course of business in connection with the furnishing of goods or the performance of services or (B) for necessary Project-related expenditures, (ii) commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower in one contract or a series of related contracts of, no more than \$1,000,000 in the aggregate for any such contract or series of related contracts and (iii) is for a term not exceeding two years.

“Additional Senior Obligations” means any borrowings or indebtedness permitted, or not prohibited, under Section 16(b) of this Agreement and under the Senior Loan Agreement, other than the Initial Senior Obligations.

“Administrative Agent” means _____ in its capacity as administrative agent for the Senior Lenders under the Initial Senior Loan Agreement, and any successor administrative agent or trustee acting for the Senior Lenders and appointed pursuant to the terms of a Senior Loan Agreement.

“Administrator” means the Administrator of the FHWA.

“Affiliate” of a particular Person means, at any time, (a) any other Person directly or indirectly Controlling, Controlled by, or under common Control with, such Person and (b) any Person beneficially owning or holding, directly or indirectly, 10% or more of any class of securities having ordinary voting power for the election of directors or other members of the governing body of a corporation or other Person, or 10% or more of any partnership or other ownership interests having ordinary voting power for the election of directors or other members of the governing body of a corporation or any other Person.

“Agreement” has the meaning provided in the preamble hereto.

[**“Annual Operating Budget”** means the Annual Operating Budget approved by the TIFIA Lender.]

“Anticipated Loan Disbursement Schedule” means the schedule set forth as Exhibit B to this Agreement, as such schedule may be amended from time to time pursuant to Section 4.

“Appreciated Value” means with respect to any Deferred Income Bond as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the Supplemental Resolution authorizing such Deferred Income Bond.

“Bank Lending Margin” means (a) in respect of the Initial Senior Loan Agreement, the “Applicable Margin” as defined in the Initial Senior Loan Agreement and (b) in respect of any Additional Senior Obligations, a comparable interest rate margin payable on such Additional Senior Obligations.

“Bankruptcy Related Event” means (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its debts, or of a substantial part of the assets of the Borrower, under any Insolvency Law, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower for a substantial part of the assets of the Borrower, and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or (b) the Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of the assets of the Borrower, or (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, or (v) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, or (vi) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (vii) take any action for the purpose of effecting any of the foregoing; or (c) (i) all or a substantial part of the Collateral (other than Equity Interests) shall be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Senior Obligations, or (ii) all or a substantial part of the Collateral (other than the Equity Interests) shall be transferred pursuant to a sale or disposition of such Collateral in lieu of foreclosure; or (d) (i) all or a substantial part of the Equity Interests shall be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Senior Obligations, or (ii) all or a substantial part of the Equity Interests shall be transferred pursuant to a sale or disposition of such Collateral in lieu of foreclosure, if in either such case such action or exercise of rights or remedies results in any release or impairment of the Liens of the Collateral Agent in the Collateral (other than the Equity Interests) granted for the benefit of the TIFIA Lender or (e) the Collateral Agent shall transfer, pursuant to directions issued by the Administrative Agent, funds or deposit in any of the Project Accounts upon the occurrence and during the continuation of an Event of Default under the Senior Loan Documents for application to the prepayment or repayment of any principal amount of the Senior Obligations pursuant to Article V of the

Collateral Agency Agreement or otherwise (other than any transfer from any Project Account to another Project Account and any disposition of funds pursuant to and in accordance with Article V of the Collateral Agency Agreement).

“Base Case Financial Model” means a financial model prepared by the Borrower and approved by the Model Auditor forecasting the revenues and expenditures of the Project for time periods through the final maturity of the TIFIA Loan and based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender which shall be provided to the TIFIA Lender as a fully functional Microsoft Excel – based financial model.

“Base Case Financial Plan” has the meaning set forth in Section 21(a).

“Base Case Projections” means the initial forecast for the Project prepared as of the Effective Date using the Base Case Financial Model.

“Bond Resolution” means any trust agreement, trust indenture, bond resolution or similar document or set of documents, entered into in replacement of, in substitution for, in whole or in part, the initial or any subsequent Senior Loan Agreement and pursuant to which Permitted Debt is issued to finance or refinance the Project.

“Borrower” has the meaning provided in the preamble hereto.

“Borrower Fiscal Year” shall mean (a) as of the Effective Date, a fiscal year of the Borrower commencing on [_____] of any calendar year and ending on [_____] of [such year][the immediately succeeding calendar year] or (b) such other fiscal year as the Borrower may hereafter adopt with the prior written consent of the TIFIA Lender.

“Borrower Related Party” means, individually or collectively, _____.

“Borrower’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 25.

“Borrower’s Traffic Consultant” means initially [_____] and shall include any replacement traffic consultant firm which shall be selected from a list jointly maintained by the Senior Lender and the Borrower and approved by the TIFIA Lender.

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York, [the city and state in which the Project is located] or [the city and state in which the Collateral Agent is located].

“Calculation Date” means each Semi-Annual Payment Date occurring after the Effective Date.

“Calculation Period” means a 12-month period ending on the day prior to a Calculation Date.

“Capital Appreciation Bonds” means any Permitted Debt hereafter incurred as to which interest is payable only at the maturity or prior redemption of such Permitted Debt.

“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.

“Capitalized Interest Period” means the period beginning on the Effective Date and ending on the day prior to the Debt Service Payment Commencement Date.

“Change of Control” means (a) a change in ownership so that 50% or more of the direct or indirect voting interests as of the Effective Date in any Borrower Related Party are transferred, (b) the power directly or indirectly to direct or cause the direction of management and policy of any Borrower Related Party, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred, (c) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of any Borrower Related Party, in each case whether accomplished through a single transaction or a series of related or unrelated transactions, and whether accomplished directly or indirectly; provided, however, that the following shall not constitute a Change of Control:

(i) A change in possession of the power to direct or control the management of a Borrower Related Party or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(ii) A change in possession of the power to Control the management of the Borrower Related Party or a material aspect of its business due solely to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of the Borrower Related Party, unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency;

(iii) An upstream reorganization or transfer of direct or indirect interests in the Borrower Related Party so long as there occurs no change in the entity with ultimate power to Control or cause the Control of the management of such person;

(iv) The exercise of preferred or minority equity holder veto or voting rights (whether provided by applicable law or by the Borrower Related Party’s organizational documents) over major business decisions of the Borrower Related Party; or

(v) Transfers of direct or indirect ownership interests in the Borrower Related Party (as applicable) between or among Persons that are under common Control.

“Collateral” means (a) all real and personal property of any person that is subject to the security interests or Liens created pursuant to any of the Security Documents, including all of the assets and property of the Borrower (except as set forth below), real or personal, tangible or intangible, whether now existing or hereafter constructed or acquired, including, without limitation, the Borrower’s rights in and to the following: (a) all Project Revenues, (b) all accounts, general intangibles and contract or other rights to receive Project Revenues whether existing at the Effective Date or thereafter acquired, and the proceeds thereof and all other general intangibles of the Borrower, including without limitation all rights under the Equity Funding Agreement, the Equity Funding Guarantee, and all Principal Project Contracts now existing or hereafter entered into, (c) all assignable permits and other governmental approvals, (d) any leasehold interest in the Project or in any real property used by the Project, (e) proceeds of insurance policies to the extent not used to repair or rebuild the Project or compensate third party liability claims and proceeds of completion bonds and other guarantees of performance of contractors under the Construction Agreements and any other Principal Project Contract to the extent not used to complete the construction of the Project or to pay any amounts payable to the [public authority] under the Concession Agreement, and (f) all revenues, funds and accounts under the Senior Loan Documents, including the proceeds of Additional Senior Obligations, including the investments thereof, together with any other collateral securing the Senior Obligations and all other deposit accounts of the Borrower, (b) all membership interests in the Borrower owned directly by Borrower Related Parties, and (c) all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the foregoing [This definition will be conformed to the final structure of the financing].

“Collateral Agent” has the meaning provided in the Collateral Agency Agreement.

“Collateral Agency Agreement” means [_____].

“Concession Agreement” means the agreement between [*the public authority granting the concession*] and the Borrower, dated as of [_____], which grants the Borrower the right to perform the design, construction, financing, operation and/or maintenance of the Project and the right to [collect tolls from the users of the Project][receive compensation for such work].

“Control” means, in relation to any Person, (a) the power to (i) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of such Person, (ii) appoint or remove all, or the majority, of the board of directors or other equivalent officers of such Person, or (iii) give directions with respect to the operating and financial policies of such Person which the directors or other equivalent officers of such Person are obliged to comply with, or (b) the holding on more than one-half of the issued and voting capital of such person (excluding any part of that

capital that carries not right to participate beyond a specified amount in a distribution of either profits or capital); *provided that* **“Controlling”** and **“Controlled”** have corresponding meanings.

“Construction Agreements” means [_____].

“Construction Contractors” means [_____].

“Construction Period” means [_____].

“Construction Schedule” means [_____], as the same may be amended from time to time.

“Covenant Default” has the meaning set forth in Section 19(a)(ii).

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 200__ as the base period.

“Credit Facility” means any letter of credit, standby bond purchase agreement, line of credit, policy of bond insurance, surety bond, guarantee or similar instrument, or any agreement relating to the reimbursement of any payment thereunder (or any combination of the foregoing), which is obtained by the Borrower and is issued by a financial institution, insurance provider or other Person and which provides security or liquidity in respect of any Permitted Debt.

“Debt Service Payment Commencement Date” means the fifth (5th) anniversary of the Substantial Completion Date or, if such date does not fall on a Semi-Annual Payment Date, then the Debt Service Payment Commencement Date shall be the first Semi-Annual Payment Date to occur prior to the fifth (5th) anniversary of the Substantial Completion Date.

“Debt Service Reserve Account” means the Debt Service Reserve Account established and maintained pursuant to the Collateral Agency Agreement for purposes of complying with Section 16(n) hereof.

“Debt Service Reserve Required Balance” means [_____].

“Default Rate” has the meaning set forth in Section 6.

“Deferred Income Bond” means any Permitted Debt (a) as to which interest accruing thereon prior to the applicable Interest Commencement Date of such Permitted Debt is (i) compounded on each Valuation Date for such Deferred Income Bond and (ii) payable only at the maturity or prior redemption of such Permitted Debt and (b) as to which interest accruing after the applicable Interest Commencement Date is payable on the first interest payment date immediately succeeding the Interest Commencement Date and thereafter on the dates specified in or determined pursuant to the Supplemental

Resolution authorizing the Permitted Debt. For the purposes of receiving payment of the redemption price if a Deferred Income Bond is redeemed prior to maturity, the principal amount of a Deferred Income Bond shall be deemed to be its Appreciated Value.

“Development Default” shall have the meaning set forth in Section 19(a)(iii).

“Discretionary Capital Expenditures” means any Capital Expenditures that are not Required Capital Expenditures or Major Maintenance Costs but which have been certified as to reasonableness by the Lender’s Technical Advisor.

“Effective Date” means the date of this Agreement.

“Eligible Project Costs” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, including any payments made by the Borrower pursuant to the Concession Agreement, prior Project expenditures for the three-year period preceding the application date, and the costs set forth below:

(a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(b) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

(c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

“Equity Contributions” means the contributions or loans by the Equity Sponsor pursuant to the Equity Funding Agreement.

“Equity Credit Support Trigger Event” has the meaning set forth in Section 16(p) hereof.

“Equity Funding Agreement” means [_____].

“Equity Funding Guarantee” means [_____].

“Equity Funding Guarantors” means [_____].

“Equity Interests” means the membership interests or other equity interests in the Borrower.

“Equity Sponsor” means [_____].

“Event of Default” shall have the meaning set forth in Section 19.

“Extendible Maturity Bonds” means bonds the maturity of which may be extended in accordance with the applicable Bond Resolution.

“FHWA” means the Federal Highway Administration, an agency of USDOT.

“FHWA Division Office” means [_____].

“FHWA Division Oversight Agreement” means the agreement between the FHWA Division Office and [insert applicable state transportation agency] attached as Exhibit F and incorporated herein.

“Final Maturity Date” means [_____] or the last Payment Date occurring no later than 35 years after the date of Substantial Completion, whichever date is earlier.

“Financial Plan” means (i) the updated financial plan to be delivered within 30 days after the Effective Date in accordance with Section 21(a) and (ii) any updates thereto required pursuant to such Section.

“Fixed Level Payment” has the meaning provided in Section 9(f).

“Floater/Inverse Floater Debt” means Permitted Debt which bears interest at a Variable Interest Rate (or a multiple of a Variable Interest Rate) and with respect to which each of the following conditions is met: (a) such Permitted Debt is issued concurrently in two halves of equal principal amount of floating interest rate Permitted Debt and inverse floating rate Permitted Debt, with each half bearing a Variable Interest Rate (or multiple of a Variable Interest Rate), (b) such Permitted Debt and such other Permitted Debt, unless linked to bear a fixed rate of interest, are required to remain outstanding in equal principal amounts at all times, and (c) the net effect of such equal principal amounts and Variable Interest Rates (or multiples of Variable Interest Rates) is at all times a fixed interest rate to the Issuer or the Borrower.

“GAAP” means generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time to time in the United States of America.

“Government” means the United States of America and its departments and agencies.

“Government Obligations” means (a) direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the Government, (b) bonds, debentures or notes issued by any of the following Federal Agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by an agency of the United States of America or Person controlled or supervised by and acting as an instrumentality of the United States of America pursuant to authority granted by the

Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated.

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“Governmental Authority” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including, without limitation, the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“Hedge Documents” has the meaning provided in Section 16(u)(ii).

“Hedging Acquisition Account” has the meaning set forth in the Collateral Agency Agreement.

“Hedging Agreement” means (a) the ISDA Master Agreement(s) and the related schedules and confirmations, to be entered into by the Borrower and a Hedging Bank prior to the first disbursement of funds hereunder and (b) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank for a Hedging Transaction, in each case either similar in form and substance in all material respects with the Hedging Agreement entered into with the initial Hedge Providers, or otherwise acceptable to the TIFIA Lender.

“Hedging Banks” means (a) the initial Hedge Providers and their respective successors and assigns and (b) thereafter, any other Qualified Hedge Provider that becomes a party to a Hedging Agreement and their respective successors and assigns.

“Hedging Obligations” means, collectively, the payment of (a) all scheduled amounts payable to the Hedging Banks by the Borrower 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, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Borrower to the Hedging Banks under such Hedging Agreements, net of all other indebtedness, fees, indemnities and other amounts payable by the Hedging Banks to the Borrower under such Hedging Agreements; provided, that Hedging Obligations shall not include Hedging Termination Obligations. For the avoidance of

doubt, all calculations of such amounts 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 payable to the Hedging Banks by the Borrower 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 upon the early unwind of all or a portion of such Hedging Agreements. For the avoidance of doubt, all calculations of such amounts 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”, “collar” or “floor” transaction, interest rate future, interest rate option or other hedging arrangement.

“Independent Engineer” means _____, or any replacement engineering firm which shall be selected by the Borrower and approved by the TIFIA Lender.

“Initial Qualified Hedge” means the initial Qualified Hedge entered into on or prior to the Effective Date.

“Initial Senior Loan Agreement” means [_____].

“Initial Senior Obligations” means the obligations of the Borrower under the Initial Senior Loan Agreement.

“Insolvency Laws” means the United States Bankruptcy Code, 11 U.S.C. §101 et seq., as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership or similar law now or hereafter in effect.

“Intercreditor Agreement” means the Subordination and Intercreditor Agreement dated as of the date hereof among the Administrative Agent, the TIFIA Lender and the Collateral Agent and any replacements, amendments or supplements thereto.

“Interest Commencement Date” means, with respect to any particular Deferred Income Bond, the date determined by the Supplemental Resolution after which interest accruing on such Bond shall be payable on the first interest payment date succeeding such Interest Commencement Date and periodically thereafter on the dates determined pursuant to such Supplemental Resolution.

“Interest Period” means, at any time that interest on any Senior Obligations is scheduled to be paid on a date other than a Semi-Annual Payment Date of any year, the period commencing from the preceding Interest Payment Date and ending on the next following Interest Payment Date.

“Interim Payment Date” means any day occurring during the Payment Period that (i) is a date on which interest on or principal of Senior Obligations is payable and (ii) is not a Semi-Annual Payment Date.

“Investment Grade Rating” means a rating assigned by a Nationally Recognized Rating Agency which is no lower than BBB minus or Baa3.

“Issuer” means the Governmental Authority that issues, or provides for the issuance of Permitted Debt pursuant to the Bond Resolution.

“Joinder Agreement” means an agreement in the form of Exhibit A to the Collateral Agency Agreement pursuant to which any holder of Additional Senior Obligations or any Hedging Bank agrees to become a Secured Party (as such term is defined therein) bound by the terms and conditions of the Collateral Agency Agreement and the Intercreditor Agreement.

“Lenders’ Technical Advisor” means [_____] or any replacement engineering firm which shall be selected by the Senior Lender and the Borrower and approved by the TIFIA Lender.

“Lenders’ Traffic Consultant” means [_____] or any replacement traffic consultant firm, which shall be selected by the Senior Lender and the Borrower and approved by the TIFIA Lender.]

“Lenders’ Traffic and Revenue Study” means the _____, dated _____, prepared for the Lender by the Lenders’ Traffic Consultant, and any amendments, supplements or updates thereto.

“Letter of Credit Facility” means [_____].

“Level Payment Commencement Date” means the Payment Date following the end of the _____ (_____) consecutive Payment Period.

“Level Payment Period” means the period commencing on the Level Payment Commencement Date and ending on the Final Maturity Date (or on such earlier date as the TIFIA Loan shall be paid in full).

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), or preference, priority or other security agreement of any kind or nature whatsoever, including, without limitation, any sale-leaseback arrangement, any conditional sale or other title retention agreement, 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 law.

“Loan Amortization Schedule” means the Loan Amortization Schedule attached as Appendix Two to the Note, a copy of which is attached hereto as Exhibit A, delivered pursuant to Section 9(h), as amended from time to time in accordance with Section 7 and Section 9(h).

“Loan Underwriting Rate” means _____ [for any period, the sum of the long-term fixed swap rate plus the swap margin plus the Bank Lending Margin].

“Major Maintenance” means all reasonably necessary periodic major overhaul and repair (excluding any maintenance or repair of a routine or ordinary course nature) of the Project, equipment and systems that is required to be performed in accordance with the Concession Agreement or otherwise in respect of the Project.

“Major Maintenance Costs” means all Capital Expenditures relating to Major Maintenance.

“Major Maintenance Reserve Account” has the meaning provided in the Senior Loan Agreement.

“Material Adverse Effect” means a material adverse change in (a) the Project or the business, property or financial condition of the Borrower or any [Member][Equity Sponsor][Borrower Related Party], (b) the ability of the Borrower to perform or comply with any of its material obligations under the Senior Loan Documents or the TIFIA Loan Documents or the Principal Project Contracts to which it is a party, (c) the validity, perfection or priority of the Liens on the Collateral in favor of the Collateral Agent or (d) the TIFIA Lender’s rights or benefits available under this Agreement.

“Member” means _____.

“Misrepresentation Default” has the meaning provided in Section 19(a)(iv).

“Model Auditor” means _____ or any other Person, acceptable to the TIFIA Lender and the Borrower, acting as model auditor from time to time.

“Nationally Recognized Rating Agency” means Standard & Poor’s Rating Group, Moody’s Investors Services, Inc., Fitch Ratings or another nationally recognized statistical rating organization, identified by the Securities and Exchange Commission.

“Net Cash Flow” means, with respect to any period, an amount equal to (a) all Project Revenues received by the Borrower during such period, minus (b) the sum of the following (without duplication):

(i) all Operations and Maintenance Expenses paid during such period (solely to the extent such amounts are not included in Project Revenues received by the Borrower);

(ii) all Major Maintenance Costs (to the extent not funded from amounts deposited in the [Major Maintenance Reserve Account]) paid during such period;

(iii) all Capital Expenditures paid during such period (excluding Capital Expenditures paid with the proceeds of any Senior Obligations or Equity Contributions made during such period); and

(iv) deposits to the [Major Maintenance Reserve Account] during such period under the terms of the Collateral Agency Agreement.

“**Note**” means the Promissory Note delivered by the Borrower in substantially the form of Exhibit A.

“**Operations and Maintenance Expenses**” means all actual cash maintenance and operation costs (excluding costs of capital expenditures) incurred and paid (or if applicable forecast to be incurred and paid) in connection with the operation and maintenance of the Project in any particular calendar or Borrower Fiscal Year or period to which said term is applicable, including payments made pursuant to the Concession Agreement, payments for taxes, insurance, consumables, advertising, marketing, payments under real property agreements pursuant to which the Borrower has rights in the Project, payments pursuant to the agreements for the management, operation or maintenance of the Project, reasonable legal fees and expenses paid by the Borrower in connection with the management, maintenance or operation of the Project, fees paid in connection with obtaining, transferring, maintaining or amending any approvals from any Governmental Authority, costs incurred in connection with the performance of environmental mitigation work to be carried out by the Borrower, amounts required for the acquisition of any Qualified Hedge or for deposits into any account maintained in accordance with the Collateral Agency Agreement for such purposes and reasonable general and administrative expenses, but exclusive in all cases of noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

“**Other Loan Documents**” has the meaning set forth in Section 19(a)(vi).

“**Other Material Indebtedness**” has the meaning set forth in Section 19(a)(v).

“**Outstanding TIFIA Loan Balance**” means the aggregate principal amount drawn by the Borrower and then outstanding with respect to the TIFIA Loan, as determined in accordance with Section 7.

“**Partially Subordinated Hedge**” means a Qualified Hedge, some or all of the Hedging Termination Obligations of which are subordinate to the payment of principal of and interest on Senior Obligations and, other than Hedging Termination Obligations described in clause _____ of paragraph (__) of Section ____ of the Collateral Agency Agreement, are subordinate to the payment of the principal of and interest on the TIFIA Loan and are paid in accordance with Section ____ of the Collateral Agency Agreement.

“**Payment Date**” means each Semi-Annual Payment Date or Interim Payment Date.

“**Payment Default**” has the meaning set forth in Section 19(a)(i).

“Payment Period” means any period of six months that ends on a Payment Date, commencing with the six-month period ending on the Debt Service Payment Commencement Date.

“Permitted Debt” means:

- (a) the Senior Obligations;
- (b) the TIFIA Loan;
- (c) reimbursement obligations in respect of letters of credit, and other financial obligations, arising under the Principal Project Contracts or any other agreement executed by the Borrower in connection with the Project that are payable as Project Costs, Eligible Project Costs, or Operations and Maintenance Expenses and that do not in the aggregate have face amounts exceeding \$5,000,000 (inflated annually by CPI);
- (d) purchase money obligations or capitalized leases incurred to finance discrete items of equipment not comprising an integral part of the Project that are payable as Operations and Maintenance Expenses and that do not in the aggregate have annual debt service or lease payment obligations exceeding \$500,000 (inflated annually by CPI);
- (e) trade accounts payable (other than for borrowed money) so long as such trade accounts payable are payable not later than 90 days after the respective goods are delivered or the respective services are rendered;
- (f) fully subordinated debt for Project Costs payable from monies released from the [Surplus Account] on terms and conditions acceptable to the TIFIA Lender;
- (g) working capital loans that are payable as Operations and Maintenance Expenses, provided that the principal amount of such loans shall not exceed \$6 million (inflated annually by CPI) in the aggregate at any time and shall be repaid within three years; and
- (h) indebtedness incurred in respect of Qualified Hedges.

“Permitted Hedging Termination” means the early termination, in whole or in part, of any Hedging Transaction (a) at the request of the Borrower as a result of a determination by the Borrower that such (or any part of such) Hedging Transaction is no longer necessary or required under the terms of this Agreement or (b) pursuant to the terms of any Hedging Agreement evidencing such Hedging Transaction with provides for the notional amount of such Hedging Transaction to amortize or otherwise be reduced from time to time.

“Permitted Investments”* means (with respect to the investment of the proceeds of the TIFIA Loan or any construction or reserve account established and maintained pursuant to the Collateral Agreement):

- (a) Government Obligations,
- (b) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America,
- (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or
- (d) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real part in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.

“Permitted Liens” means:

- (a) Liens imposed pursuant to the TIFIA Loan Documents;
- (b) Liens imposed pursuant to the Senior Loan Documents;
- (c) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 16(w);
- (d) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 16(w);
- (e) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, and other social security laws or regulations;
- (f) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

* May also include such additional investments as shall conform with Nationally Recognized Rating Agency guidelines.

(g) judgment liens in respect of judgments that do not constitute an Event of Default under Section 19(a)(vii);

(h) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary of the Borrower;

(i) any Lien on any property or asset of the Borrower existing on the date hereof and set forth in **Schedule III**; provided that (i) such Lien shall not apply to any other property or asset of the Borrower and (ii) such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(j) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien shall not apply to any other property or assets of the Borrower and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof; and

(k) purchase money security interests in real property, improvements thereto or equipment hereafter acquired (or, in the case of improvements, constructed) by the Borrower, provided that (i) such security interests secure indebtedness for borrowed money permitted by Section 16(a), (ii) such security interests are incurred, and the indebtedness secured thereby is created, within 90 days after such acquisition (or construction), (iii) the indebtedness secured thereby does not exceed the fair market value of such real property, improvements or equipment at the time of such acquisition (or construction) and (iv) such security interests do not apply to any other property or assets (other than accessions to such real property, improvements or equipment) of the Borrower.

“**Person**” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“**Pledge Agreements**” means [_____].

“**Principal Project Contracts**” means [*insert all relevant project contracts on a project-by-project basis*].

“**Project**” means [*insert description of the project*].

“**Project Account**” means [_____].

“**Project Budget**” means the budget for the Project in the aggregate amount of \$[_____] attached to this Agreement as **Schedule I** showing a summary of all Eligible

Project Costs and the estimated sources and uses of funds for the Project, as amended from time to time with the approval of the TIFIA Lender.

“Project Costs” means (a) the costs paid or incurred (to the extent paid, such costs shall be reimbursed to the Person who paid such costs) or to be paid or incurred by the Borrower in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and financing costs, provided such costs were expended no earlier than *[insert date that is three years prior to the TIFIA Application]*; (b) amounts, if any, required by the Senior Loan Agreement to be paid into any fund or account upon the incurrence of Senior Obligations; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) on any indebtedness of the Borrower (other than the TIFIA Loan) incurred for the Project, including capitalized interest on the Senior Obligation; (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower other than to the extent such amounts constitute direct or indirect costs unallowable to the Borrower and its contractors under 18 C.F.R. Part 31; and (e) the repayment of obligations incurred by the Borrower, the proceeds of which obligations were used to pay items (a) through (d) of this definition.

“Project Revenues” means (a) all income, tolls, revenues, rates, fees, charges, rentals, or other receipts derived by or related to the operation or ownership of the Project including all amounts from joint development or leasing of air space lease rights, (b) any revenues assigned to the Borrower and proceeds of the sale or other disposition of all or any part of the Project, and (c) all income derived from Permitted Investments.

“Put Bonds” means Permitted Debt which by its terms may be tendered by and at the option of the holder thereof for payment prior to the stated maturity or redemption date thereof either (a) by the Issuer or the Borrower and by the Person and/or from the source specified in a Supplemental Resolution or (b) without recourse to the Issuer or the Borrower, by the Person and/or from the source specified in a Supplemental Resolution; provided, however, that such payment by the Issuer or the Borrower shall in any events be required to be supported by a Credit Facility.

“Qualified Hedge” means, to the extent from time-to-time permitted by law, with respect to Permitted Debt any Hedging Transaction entered into with a Qualified Hedge Provider and meeting the requirements of Section 16(u).

“Qualified Hedge Provider” means (a) the initial Hedge Providers and (b) an entity, other than any Affiliate of the Borrower, whose senior long term obligations, other senior unsecured long term obligations, financial program rating, counterparty rating, or claims paying ability, or whose payment obligations under an interest rate exchange agreement are guaranteed by an entity whose senior long term debt obligations, other senior unsecured long term obligations, financial program rating, counterparty rating, or claims paying ability, are rated at the time of the execution of the Hedging Agreement at

least as high as the second highest Rating Category of any Nationally Recognized Rating Agency then maintaining a rating for the Qualified Hedge Provider.

“Rate Covenant [or Rate Coverage Test] (as applicable)” shall have the meaning set forth in Section 16(o).

“Rating Category” or **“Categories”** means one of the generic rating categories of a Nationally Recognized Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

“Related Documents” means the Senior Loan Documents, the TIFIA Loan Documents, the Intercreditor Agreement, the Hedging Agreements, the Equity Funding Agreement, the Equity Funding Guarantee and the Principal Project Contracts.

“Remedial Plan” has the meaning set forth in Section 19(a)(iii).

“Required Capital Expenditures” means Capital Expenditures certified by the Borrower to the Collateral Agent to be required to be made under the Concession Agreement, but excluding any Major Maintenance Costs.

“Requisition” has the meaning provided in Section 4.

“Secretary” means the United States Secretary of Transportation.

“Secured Obligations” means the Senior Obligations, the TIFIA Obligations, the Hedging Obligations and the Hedging Termination Obligations.

“Secured Parties” means the Collateral Agent, the Administrative Agent, the Senior Lenders, the TIFIA Lender and the Hedging Banks.

“Security Agreement” means [_____].

“Security Documents” means [_____].

“Semi-Annual Payment Date” means each June 30 and December 31 or if such day is not a Business Day, then the Business Day preceding such June 30 or December 31.

“Senior Debt Service” means, with respect to the Senior Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Senior Obligations accruing and payable during such period. In determining the principal amount of Senior Obligations due in such period (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization), payment shall be assumed to be made in accordance with any amortization schedule established for such Senior Obligations, including any scheduled redemption of Permitted Debt on the basis of Accreted Value or Appreciated Value, as applicable, and for such purpose the redemption payment shall be deemed a principal payment.

In calculating Senior Debt Service for any future period (except as otherwise specifically provided herein):

(a) any Permitted Debt bearing interest at a Variable Interest Rate in respect of which the Issuer or the Borrower has entered into a Qualified Hedge shall be deemed to bear interest at the Bank Lending Margin plus (i) during the period for which such Qualified Hedge is in effect, at the fixed rate on the Qualified Hedge and (ii) during all other times for the period, at the Loan Underwriting Rate;

(b) to the extent the requirements of Section 16(u) have been waived so that paragraph (a) of this definition no longer applies, any Variable Interest Rate Bonds shall be deemed to bear interest at all times prior to the maturity date thereof for which the interest rate payable thereon has not yet been determined shall be the rate which is the highest 12-month rolling average of one-month LIBOR over the past ten years preceding the date of calculation plus the Bank Lending Margin, provided that if such index is no longer published, the index to be used shall be that index which the TIFIA Lender, in consultation with the Borrower, determines most closely replicates it;

(c) any Put Bonds outstanding during such period which by their terms are not required to be paid by the Issuer or the Borrower upon tender by the holder thereof shall be assumed to mature on the stated maturity date thereof;

(d) any Put Bonds outstanding during such period which by their terms are required to be paid by the Issuer or the Borrower upon tender by the holder thereof shall be assumed to mature on the earliest to occur of (i) the stated maturity date thereof, (ii) the date provided in an applicable Supplemental Resolution, or (iii) if the Credit Facility securing such Put Bonds expires within six months or less of the date of calculation and has not been renewed or replaced, the expiration date of such Credit Facility;

(e) the principal amount of any Put Bonds tendered for payment by the Issuer or the Borrower which are required to be paid by the Issuer or the Borrower which have not yet been purchased in lieu of such payment by the Issuer or the Borrower shall be deemed to mature on the date required to be paid pursuant to such tender;

(f) subject to the provisions of the Supplemental Resolution authorizing any Extendible Maturity Bonds, Extendible Maturity Bonds outstanding during such period shall be deemed to mature on the later of the stated maturity date or the date to which such stated maturity date has been extended; and

(g) the principal and/or interest portion (whether by redemption or otherwise) of Capital Appreciation Bonds and Deferred Income Bonds shall be the Accreted Value and Appreciated Value thereof, respectively, due and payable during such period.

“Senior Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of Net Cash Flow for such Calculation Period to Senior Debt Service for such Calculation Period.

“Senior Lender” means collectively the financial institution or institutions or Governmental Authority (or any agent or trustee acting on behalf of any of the foregoing) providing the Senior Loan under the Senior Loan Agreement, initially [_____]

“Senior Obligations” means the Initial Senior Obligations and any Additional Senior Obligations between the Borrower and the Senior Lender pursuant to the Senior Loan Agreement.

“Senior Loan Agreement” means the Initial Senior Loan Agreement and any other loan agreement or similar document entered into by the Borrower in connection with the incurrence of Additional Senior Obligations incurred in addition to, in replacement of, in substitution for, or in connection with a refinancing of the indebtedness incurred pursuant to the Initial Senior Loan Agreement or any subsequent Senior Loan Agreement.

“Senior Loan Documents” means the Senior Loan Agreement, the Security Documents, any agreements and documents executed by the Borrower in connection with hedging arrangements entered into pursuant to or in connection with the Senior Loan Agreement, and all other agreements, instruments and documents executed and delivered pursuant or in connection with any of the foregoing.

“Servicer” means such entity or entities as the TIFIA Lender shall designate from time-to-time to perform, or assist the TIFIA Lender in performing, certain duties hereunder.

“State” means [_____].

“Subordinated Hedging Termination Obligations” means Hedging Termination Obligations under the Hedging Agreements other than those arising as a result of a Permitted Hedging Termination or as a result of a tax or illegality event or upon failure of the Borrower to pay any Hedging Obligations when due.

“Subsequent Qualified Hedge” has the meaning provided in Section 16(u)(iii).

“Subsidiary” means, with respect to any Person (herein referred to as the “parent”), any corporation, limited liability company, partnership association or other business entity of which more than 50% of the securities or other ownership interests having ordinary voting power is, or with respect to which rights to control management (pursuant to any contract or other agreement or otherwise) are, at the time as of which any determination is being made, owned, controlled, or held by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent.

“Substantial Completion” means the opening of the Project to vehicular or passenger traffic or a comparable event.

“Substantial Completion Date” has the meaning provided in Section 21(a).

“Supplemental Resolution” means any resolution, indenture, agreement or similar document which supplements or amends the Bond Resolution and which sets forth the pricing and other financial and related terms of Permitted Debt.

“Termination Compensation” has the meaning assigned to such term in the Concession Agreement.

“TIFIA Debt Service” means for any period the sum of the Mandatory Debt Service and Scheduled Debt Service for such period (in each case whether or not any of such amounts were actually paid for such period and whether or not, in the case of Scheduled Debt Service, such amount was actually required to be paid for such period under the provisions of Section 9 hereof).

“TIFIA Interest Rate” has the meaning provided in Section 6.

“TIFIA Lender” has the meaning provided in the preamble hereto.

“TIFIA Lender’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 26 and the Administrator.

“TIFIA Loan” means the secured loan made by the TIFIA Lender to the Borrower hereunder, pursuant to the Act, in a principal amount not to exceed [_____] (excluding capitalized interest), to be used to pay Eligible Project Costs.

“TIFIA Loan Documents” means this Agreement, the Note, [the Security Documents, the Intercreditor Agreement, the Equity Funding Agreement and the Equity Funding Guarantee].

“TIFIA Mandatory Debt Service” means (a) with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date and on or prior to the Level Payment Commencement Date, principal and/or interest unconditionally required to be paid on the TIFIA Loan on such Payment Date pursuant to Section 9(c), and (b) with respect to any Payment Date occurring during the Level Payment Period, the entire amount of each Fixed Level Payment required to be paid pursuant to Section 9(f).

“TIFIA Revenue Share Amount” means, with respect to any prepayment to be made pursuant to Section 16(s), an amount equal to _____ [to be negotiated with Borrower, if the Borrower elects not to have level debt service payments beginning in year 11 from the date of substantial completion, the intent of the negotiated revenue sharing arrangement to prepay TIFIA principal is to retire the TIFIA debt earlier if the Project performs better than the base case financial projections].

“TIFIA Scheduled Debt Service” means, with respect to any Payment Date occurring after the Debt Service Payment Commencement Date and prior to the Level Payment Commencement Date, the principal portion of the Outstanding TIFIA Loan Balance scheduled to be paid on such Payment Date, in each case as shown on Exhibit G in accordance with the provisions of Section 9(d), but required to be paid on such

Payment Date only upon satisfaction of the condition specified in the proviso to the first sentence of such Section 9(d).

“Total Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of Net Cash Flow for such Calculation Period to the sum of (a) Senior Debt Service for such Calculation Period and (b) TIFIA Debt Service for such Calculation Period.

[**“Traffic and Revenue Study”** means the Final Traffic and Revenue Study for the Project, dated [____], prepared for the Borrower by the Borrower’s Traffic Consultant, and any amendments, supplements or updates thereto.]

“Uncontrollable Force” means any cause beyond the control of the Borrower, including but not limited to: (a) a tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage; or act of God provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“Uniform Commercial Code” means the Uniform Commercial Code, as in effect from time to time in the State.

“USDOT” means the United States Department of Transportation.

“Valuation Date” means (a) with respect to any Capital Appreciation Bonds, the date or dates set forth in the Supplemental Resolution authorizing such Bonds on which specific Accreted Values are assigned to the Capital Appreciation Bonds and (b) with respect to any Deferred Income Bonds, the date or dates on or prior to the Interest Commencement Date set forth in the Supplemental Resolution authorizing such Bonds on which specific Appreciated Values are assigned to the Deferred Income Bonds.

“Variable Interest Rate” means a variable interest rate to be borne by any Permitted Debt. The method of computing such variable interest rate shall be specified in the Senior Loan Agreement pursuant to which such Permitted Debt is incurred. Such Senior Loan Agreement shall also specify either (i) the particular period or periods of time for which each value of such variable interest rate shall remain in effect or (ii) the time or times upon which any change in such variable interest rate shall become effective.

“Variable Interest Rate Bonds” means Permitted Debt which bears a Variable Interest Rate but does not include any Permitted Debt for which the interest rate has been fixed during the remainder of the term thereof to maturity; provided, however, that

Permitted Debt bearing a Variable Interest Rate shall not be deemed Variable Interest Rate Bonds if (a) the Issuer or the Borrower has entered into a Qualified Hedge with respect to such Permitted Debt during the period for which such Qualified Hedge is in effect, or (b) such Permitted Debt constitutes Floater/Inverse Floater Debt; provided further that Permitted Debt bearing a fixed rate of interest shall be deemed Variable Interest Rate Bonds to the extent that the Issuer or the Borrower has entered into a Qualified Hedge pursuant to which the Borrower or Issuer is obligated to pay a floating rate of interest and receives a fixed rate of interest and shall be deemed to bear interest at the lesser of the rate determined pursuant to paragraph (a) of the definition of the term Senior Debt Service or the maximum interest rate, if any, payable pursuant to such Qualified Hedge.

“Variable Interest Rate Senior Loans” means any Senior Obligations under a Senior Loan Agreement that accrue interest at a Variable Interest Rate.

SECTION 2. Interpretation. Unless the context shall otherwise require, the words “hereto”, “herein”, “hereof” and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to sections, subsections, and provisions are to the applicable sections, subsections and provisions of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time-to-time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 36 and signed by a duly authorized representative of such party.

SECTION 3. TIFIA Loan Amount. The principal amount of the TIFIA Loan shall not exceed \$[]; provided, however, in no event shall the maximum principal amount of the TIFIA Loan disbursed by the TIFIA Lender, together with the amount of any other credit assistance provided under the Act, exceed the lesser of 33% of Eligible Project Costs or, if the TIFIA Loan does not receive an Investment Grade Rating, the amount of the Initial Senior Obligations. TIFIA Loan proceeds shall be disbursed from time-to-time in accordance with Section 4.

SECTION 4. Disbursement Conditions. TIFIA Loan proceeds shall be disbursed solely to pay directly for, or to reimburse the Borrower for its prior payment of, Eligible Project Costs incurred in connection with the Project. Each disbursement of the TIFIA Loan shall be made pursuant to a requisition and certification (a “Requisition”) in the form set forth in

Appendix One to **Exhibit D** submitted by the Borrower to, and approved by, the TIFIA Lender, all in accordance with the procedures of Exhibit D and subject to the conditions set forth therein and the additional conditions set forth below in this Section 4. No disbursements of TIFIA Loan proceeds shall be made on or after the date that is one year after the Substantial Completion Date.

Subject to the last paragraph of this Section 4, copies of each Requisition shall be delivered to the TIFIA Lender, the FHWA TIFIA Joint Program Office (HCFT-1), the Servicer and the [appropriate USDOT field office] on or before the first day of each month for which a disbursement is requested, or the next succeeding Business Day if such first day is not a Business Day. If the TIFIA Lender shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the 15th day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such 15th day is not a Business Day. Express TIFIA Lender approval or denial shall be substantially in the form annexed hereto as **Appendix Three** to **Exhibit D**. In no event shall disbursements be made more than once each month. At the time of any disbursement, the sum of all prior disbursements of TIFIA Loan proceeds and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current year set forth in the Anticipated Loan Disbursement Schedule, as the same may be amended from time to time.

The Borrower may amend the Anticipated Loan Disbursement Schedule by submitting revisions to the TIFIA Lender no later than thirty days prior to the proposed effective date thereof, a revised Schedule, together with a detailed explanation of the reasons for such revisions. Such revised Schedule shall become effective upon the TIFIA Lender's approval thereof, which approval shall not be unreasonably withheld.

As a condition to each disbursement of the TIFIA Loan, the Borrower shall provide the TIFIA Lender with evidence satisfactory to the TIFIA Lender that prior thereto, or simultaneously therewith, a pro rata disbursement of Senior Obligation proceeds [and Equity Contributions] has occurred.

SECTION 5. Term. The term of the TIFIA Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier or later date as all amounts due or to become due to the TIFIA Lender hereunder have been paid.

SECTION 6. Interest Rate. The interest rate with respect to the TIFIA Loan (the "TIFIA Interest Rate") shall be [____] % per annum. Interest will be computed on the Outstanding TIFIA Loan Balance (as well as on any past due interest) from time-to-time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed and will be compounded semi-annually; provided, however, in the event of a Payment Default, the Borrower shall pay interest on any overdue amount from its due date to the date of actual payment at the Default Rate.

SECTION 7. Outstanding TIFIA Loan Balance and Revisions to Exhibit G and the Loan Amortization Schedule. (a) The Outstanding TIFIA Loan Balance will be (i) increased on each occasion on which the TIFIA Lender shall disburse loan proceeds hereunder, by the amount of such disbursement of loan proceeds, (ii) increased on each occasion on which interest on the

TIFIA Loan is capitalized pursuant to the provisions of Section 9 hereof, by the amount of interest so capitalized and (iii) decreased upon each payment or prepayment of the principal amount of the TIFIA Loan, by the amount of principal so paid. The TIFIA Lender may in its discretion at any time and from time-to-time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding TIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error. Upon any determination of the Outstanding TIFIA Loan Balance, the TIFIA Lender may, but shall not be obligated to, make applicable revisions to Exhibit G and the Loan Amortization Schedule pursuant to Section 9 and in such event shall provide the Borrower with a copy of such Exhibit G and Loan Amortization Schedule as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents. The Loan Amortization Schedule, as of the date hereof, has been determined based on the Anticipated Loan Disbursement Schedule in effect on the Effective Date.

(b) The TIFIA Lender shall make applicable revisions to Exhibit G and the Loan Amortization Schedule pursuant to Section 9 (i) as of the Debt Service Payment Commencement Date, (ii) upon any prepayment of the TIFIA Loan and (iii) on the date not later than thirty days prior to the Level Payment Commencement Date; provided that in no event shall the TIFIA Mandatory Debt Service due on the Debt Service Payment Commencement Date be revised or altered. Upon any such revisions the TIFIA Lender shall provide the Borrower with copies of such Exhibit G and Loan Amortization Schedule as revised, but no failure to provide or delay in providing the Borrower with such copies shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents. Each of Exhibit G and the Loan Amortization Schedule, as of the Effective Date, has been determined based on the Anticipated Loan Disbursement Schedule in effect on the Effective Date.

SECTION 8. Security and Priority; Flow of Funds.

(a) As security for the TIFIA Loan, the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Collateral Agent, Liens on the Collateral in accordance with the provisions of the Security Documents. The TIFIA Loan shall be secured by the Liens on the Collateral subordinate, during any period when an Event of Default described in Section 19(a)(xi) has not occurred, only (except as otherwise required by law) to the Lien on the Collateral of the Senior Obligations, Hedging Obligations and Hedging Termination Obligations other than Subordinated Hedging Termination Obligations. Upon the occurrence and continuance of an Event of Default described in Section 19(a)(xi), the TIFIA Loan shall be secured by a first priority security interest in the Collateral on a parity with the Senior Obligations and the Hedging Obligations and Hedging Termination Obligations under the Hedging Agreements other than Subordinated Hedging Termination Obligations.

(b) Except to the extent otherwise provided in paragraph (a) of this Section, clauses (i) and (j) of the definition of Permitted Liens or as may be entitled to priority as a matter of law, the items pledged in said paragraph are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created hereby, and all corporate action on the part of the Borrower to that end has been duly and validly taken.

(c) The Borrower shall not use Project Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 and the Collateral Agency Agreement and shall not apply any portion of the Project Revenues in contravention of this Agreement or the Senior Loan Documents.

(d) Amounts on deposit in the [Project] [Construction] Account during the period on and prior to one year after the Substantial Completion Date and amounts on deposit in the Debt Service Reserve Account established under the Collateral Agency Agreement shall be held uninvested or invested in Permitted Investments. Any investments will mature or be redeemable at the election of the holder on or prior to the related Payment Date in amounts sufficient to make such payment.

(e) The _____ Agreement provides that all Project Revenues shall, subject to Section _____ of such Agreement, be applied substantially in the following order of priority, as more fully described, and in accordance with the requirements specified, in Section _____ of the _____ Agreement:

- (i) Operations and Maintenance Expenses;
- (ii) Mandatory Capital Expenditures;
- (iii) fees, administrative costs and other expenses of the Senior Lenders, the Administrative Agent, the Collateral Agent and the TIFIA Lender;
- (iv) Interest portion of Senior Debt Service and Hedging Obligations;
- (v) Principal portion due of Senior Debt Service and Hedging Termination Obligations under Hedging Agreements incurred upon termination of any Hedging Agreements (other than Partially Subordinated Hedge) or in respect of tax or illegality events or upon failure of the Borrower to pay any Hedging Obligations when due;
- (vi) The interest portion of TIFIA Debt Service
- (vii) The principal portion of TIFIA Debt Service;
- (viii) Debt Service Reserve Amount;
- (ix) Major Maintenance Reserve Account (to the extent necessary to fund so that the balance therein equals the requirement therefor) [to the extent required by the Senior Loan Documents];
- (x) Deposits to Hedging Acquisition Account, if any;
- (xi) Discretionary Capital Expenditures due and payable; and
- (xii) Voluntary prepayments of Senior Loans and related Hedging Termination Obligations; and

(xiii) Deposits into the Distribution Account (as defined in the Collateral Agency Agreement).

[While the priority of deposits and name of accounts in the flow of funds will be negotiated based on the specifics of each transaction, certain of the priorities set out above reflect TIFIA standard provisions.]

(f) As long as any Secured Obligations are incurred in accordance with the provisions of this Agreement and remain outstanding, the TIFIA Lender agrees that it shall enter into another intercreditor agreement with or for the benefit of the Secured Parties, and another collateral agency agreement with or for the benefit of the Secured Parties, provided that such agreements contain substantially the same terms, conditions and provisions as the Intercreditor Agreement and the Collateral Agency Agreement as supplemented by any Joinder Agreement and shall provide a copy of any amendment to any such agreement to the Borrower promptly following the execution thereof by the TIFIA Lender.

SECTION 9. Payment of Principal and Interest.

(a) The Borrower agrees to pay the principal of and interest on the TIFIA Loan by making payments in accordance with the provisions of this Agreement and the Collateral Agency Agreement on each Payment Date and on each other date (including, without limitation, the Final Maturity Date and any date on which payment thereof is due by reason of the acceleration of the maturity of the TIFIA Loan) on which payment thereof is required to be made hereunder.

(b) Capitalized Interest Period. No payment of the principal of or interest on the TIFIA Loan is required to be made during the Capitalized Interest Period. On each June 30 and December 31 occurring during the Capitalized Interest Period, interest accrued in the six month period ending immediately prior to such date on the TIFIA Loan shall be capitalized and added to the Outstanding TIFIA Loan Balance. Within 30 days after the end of the Capitalized Interest Period, the TIFIA Lender shall give written notice to the Borrower stating the Outstanding TIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other TIFIA Loan Documents.

(c) Payment of TIFIA Mandatory Debt Service. On each Payment Date occurring on or after the Debt Service Payment Commencement Date and on or prior to the Level Payment Commencement Date, the Borrower shall pay TIFIA Mandatory Debt Service in the amount of interest on the TIFIA Loan equal to the amount set forth on Exhibit G hereto which payments shall be made in accordance with Section 9(e); provided that if such Payment Date is an Interim Payment Date, the amount payable shall be as calculated in Section 9(e)(ii). On each Payment Date commencing on the Level Payment Commencement Date, the Borrower shall pay TIFIA Mandatory Debt Service in the amount of 100% of the amount of principal of and interest on the TIFIA Loan due and payable as of such date as set forth on Exhibit G, which payments shall be made in accordance with Section 9(e); provided that if such Payment Date is an Interim Payment Date, the amount payable shall be as calculated in Section 9(e)(ii).

(d) Payment of TIFIA Scheduled Debt Service. On each Payment Date after the Debt Service Payment Commencement Date and continuing until the Level Payment Commencement Date, the Borrower shall pay TIFIA Scheduled Debt Service on the TIFIA Loan for each Payment Period in the amount set forth on Exhibit G hereto, which payments shall be made in accordance with Section 9(e); provided that if such Payment Date is an Interim Payment Date, the amount payable shall be calculated in Section 9(e)(iii); and provided further, however, that the Borrower's obligation to pay TIFIA Scheduled Debt Service on any Payment Date shall be applicable only if and to the extent that funds shall be available therefor on such date in accordance with the provisions of Section ____ of the Collateral Agency Agreement. To the extent that the aggregate amount of TIFIA Scheduled Debt Service actually paid during any Payment Period for the TIFIA Loan in accordance with the provisions hereof shall be less than the aggregate amount of the TIFIA Scheduled Debt Service for such period determined as provided above, then the unpaid portion of such TIFIA Scheduled Debt Service shall be deferred and shall be part of the Outstanding TIFIA Loan Balance that is due and payable over the remaining life of the TIFIA Loan from the Level Payment Commencement Date to the Final Maturity Date. Exhibit G shall not be revised on each such Payment Date.

(e) Dates and Amounts of Payment. The Borrower shall make payments of TIFIA Mandatory Debt Service and TIFIA Scheduled Debt Service on each Payment Date commencing with the Debt Service Payment Commencement Date, as follows:

(i) If Senior Obligations have any payment of principal or interest due on any Interim Payment Date after the Debt Service Payment Commencement Date, the Borrower shall promptly notify the Servicer and the TIFIA Lender thereof in writing, identifying the period covered by such Interest Period and the interest payment date on which interest on or principal of the Senior Obligations for such Interest Period is due and payable.

(ii) The amount of TIFIA Mandatory Debt Service due and payable on any Payment Date occurring during any Payment Period shall be equal to the aggregate amount of TIFIA Mandatory Debt Service for such Payment Period as shown on Exhibit G, as the same may be revised as provided in Section 7(b), multiplied by a fraction, the numerator of which is equal to the number of months contained in the Interest Period ending on such Payment Date and the denominator of which is equal to 6.

(iii) Subject to the proviso to the first sentence of Section 9(d), the amount of TIFIA Scheduled Debt Service due and payable on any Payment Date occurring during any Payment Period shall be equal to the aggregate amount of TIFIA Scheduled Debt Service for such Payment Period as shown on Exhibit G, as the same may be revised as provided in Section 7(b) (determined in accordance with the provisions of Section 9(d)), multiplied by a fraction, the numerator of which is equal to the number of months contained in the Interest Period ending on such Payment Date and the denominator of which is equal to 6.

(iv) Notwithstanding the foregoing provisions of this Section 9(e) or any other provision of this Agreement, at any time when no Senior Obligations shall be outstanding, or when no Senior Obligations shall be outstanding other than a Senior

Obligations with respect to which principal and interest are payable on Semi-Annual Payment Dates, then TIFIA Mandatory Debt Service and TIFIA Scheduled Debt Service hereunder shall each be payable only on each Semi-Annual Payment Date occurring during the Payment Period. In the event that an Interim Payment Date is other than a monthly date, the method for determining the method for calculating interim payments shall be determined at such time by the parties hereto.

(f) Fixed Level Payments. On each Payment Date occurring during the Level Payment Period for the TIFIA Loan, the Borrower shall make level payments of principal and interest (each a “Fixed Level Payment”), each of which payments shall be approximately equal in amount. The amount of the Fixed Level Payment shall be calculated as of the first day of the Level Payment Commencement Date in such manner that the Outstanding TIFIA Loan Balance of the TIFIA Loan as of such date shall be reduced to \$0 on the Final Maturity Date (assuming that interest accrues during such period on the principal balance of such TIFIA Loan at the rate per annum set forth in Section 6 in the absence of an Event of Default, that all Fixed Level Payments are made in a timely manner during such period, and that no additional payments of principal or interest on the TIFIA Loan are made during such period); provided that (i) the amount payable on the first Payment Date occurring during a Level Payment Period shall be appropriately adjusted in the event that the duration of the period from the commencement of the Level Payment Period to such first Payment Date shall be less than six months, and (ii) there shall be due and payable on the Final Maturity Date of the TIFIA Loan (or on any earlier date on which the maturity of the TIFIA Loan shall be accelerated pursuant to the provisions of Section 19) all amounts of principal and interest not otherwise paid pursuant to the provisions of this Agreement. Within 30 days prior to the beginning of the Level Payment Period for the TIFIA Loan, the TIFIA Lender shall give written notice to the Borrower of the amount of the related Fixed Level Payment (including any adjustment in respect of the first such payment), which amount shall be deemed conclusive absent manifest error. To the extent that any prepayments of the TIFIA Loan shall be made during the Level Payment Period in addition to the Fixed Level Payments, such prepayments shall be applied to the remaining Outstanding TIFIA Loan Balance and the resulting Fixed Level Payments shall be recalculated as provided in Section 10(c) and reflected in a revised Exhibit G.

[It should be noted that alternative TIFIA payment structures may be negotiated with the Borrower and that such structures would be included in the Term Sheet executed between the TIFIA Lender and the Borrower]

(g) Manner of Payment. Payments under this Agreement and the Note shall be made by wire transfer on or before each Payment Date in immediately available funds in accordance with payment instructions provided by a TIFIA Lender’s Authorized Representative pursuant to Section 36, as modified in writing from time-to-time by a TIFIA Lender’s Authorized Representative.

(h) Note; Adjustments to Loan Amortization Schedule. As evidence of the Borrower’s obligation to repay the TIFIA Loan, the Borrower shall issue and deliver to the TIFIA Lender, on or prior to the Effective Date, the Note substantially in the form of **Exhibit A**, attached hereto and incorporated herein by reference, having a maximum principal amount of \$[_____] (subject to increase or decrease as herein provided) and bearing interest at the

rate set forth in Section 6. The TIFIA Lender is hereby authorized to enter on the grid attached to such Note as **Appendix One**, attached hereto and incorporated herein by reference, the amount of each disbursement made under this Agreement and to amend the Loan Amortization Schedule from time-to-time in accordance with Section 7 hereof. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Appendix One** to the Note and the Loan Amortization Schedule shall be conclusive evidence thereof.

SECTION 10. Prepayment.

(a) Mandatory. The Borrower shall prepay the TIFIA Loan in whole or in part, without penalty or premium, in the amounts and at the times required pursuant to the provisions of Section 16(b)(iv)(1), 16() [TIFIA Revenue Sharing] and 16() [Termination Compensation]. Each such prepayment shall be accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(b) Optional. The Borrower may prepay the TIFIA Loan in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in principal amounts of \$1,000,000 or any integral multiple thereof), at any time or from time-to-time, without penalty or premium, by paying to the TIFIA Lender such principal amount of the TIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment. Each prepayment of the TIFIA Loan shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the TIFIA Lender. In the case of any partial prepayment, such written notice shall be delivered to the TIFIA Lender not less than 10 days or more than 30 days prior to the date set for prepayment.

(c) General. Notice having been given as provided in Section 10(b), the principal amount of the TIFIA Loan stated in such notice or the whole thereof, as the case may be, shall become due and payable on the prepayment date stated in such notice, together with interest accrued and unpaid to the prepayment date on the principal amount then being prepaid. The amount of principal and interest due and payable as a result of a mandatory or optional prepayment shall be paid (i) in case the entire unpaid balance of the principal of the Note is to be prepaid, upon presentation and surrender of such Note evidencing the obligation to repay such TIFIA Loan to the Borrower or its representative at the principal office of the TIFIA Lender, and (ii) in case only part of the unpaid balance of principal of such Note is to be prepaid, the TIFIA Lender may make a notation on the Note indicating the amount of principal of and interest on such Note then being prepaid. All such partial prepayments of principal shall be applied to the remaining Outstanding TIFIA Loan Balance and the remaining Fixed Level Payments will be recalculated to be an amount sufficient to amortize the remaining Outstanding TIFIA Loan Balance at the TIFIA Interest Rate over the period ending on the Final Maturity Date and the resulting Fixed Level Payments will be reflected in a revised Exhibit G, and the TIFIA Lender shall, and is hereby authorized by the Borrower to, make the appropriate notations thereof on **Appendix One** to the Note and to revise the Loan Amortization Schedule in accordance herewith. Absent manifest error such TIFIA Lender notations and revisions shall be conclusive. If said moneys shall not have been so paid on the prepayment date, such principal amount of

such Note shall continue to bear interest until payment thereof at the rate provided for in Section 6.

SECTION 11. Compliance With Concession Agreement. [Reserved]

SECTION 12. Compliance with Laws. The Borrower covenants to require its contractors and subcontractors to abide by all applicable federal and State laws. The list of federal laws attached as **Exhibit E** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The FHWA Division Office has oversight responsibility for ensuring compliance with all applicable provisions of federal law. Pursuant to 23 U.S.C. § 106(e) and the FHWA Division Oversight Agreement, [insert responsible party] will be responsible for certain Project oversight activities. The Borrower agrees to cooperate with [insert responsible party] and the FHWA Division Office in carrying out their duties under the Agreements. The Borrower agrees that there will be no irreversible or irretrievable commitment of resources, including but not limited to physical construction, before all state and/or federal environmental permits required for commencement of construction of the relevant portion of the Project are finalized and approved by the appropriate resource agencies. In the event that an environmental permit that has not been obtained is required after construction has begun, the Borrower shall take immediate steps to acquire that permit. If the Borrower begins construction before all required permits have been obtained, the Borrower shall assume the risk of any loss associated therewith.

SECTION 13. Conditions Precedent. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective and the TIFIA Lender shall have no obligation to disburse any loan proceeds to the Borrower until each of the following conditions precedent shall have been satisfied:

(a) The Borrower shall have duly executed and delivered to the Collateral Agent each of the Security Documents to be executed by the Borrower and the Note, each in form and substance satisfactory to the TIFIA Lender and the Collateral Agent. Each of the Equity Sponsors shall have duly executed and delivered to the Collateral Agent a Pledge Agreement with respect to its ownership interest in the Borrower, together with the stock certificates or other certificates (if any) evidencing such ownership interests and appropriate stock powers or other transfer documents duly executed in blank, in each case in form and substance satisfactory to the TIFIA Lender and the Collateral Agent.

(b) Counsel to the Borrower and [each Member] shall have rendered to the TIFIA Lender legal opinions in substantially the form attached hereto as Exhibit [I] and swap counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions in substantially the form attached hereto as Exhibit [J].

(c) The Borrower shall have provided a certificate as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters substantially in the form attached hereto as Exhibit C.

(d) The Borrower shall have provided to the TIFIA Lender's satisfactory evidence that the Project has satisfied the applicable planning and programmatic requirements of 23 U.S.C. §§134 and 135.

(e) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction, not later than 14 days prior to Effective Date, of the assignment by a Nationally Recognized Rating Agency of an Investment Grade Rating to the Initial Senior Obligations and the rating on the TIFIA Loan.

(f) The Borrower shall have delivered to the TIFIA Lender a certificate designating the Borrower's Authorized Representative and such person's position and incumbency and a certificate of the Borrower to the effect that the insurance requirements of Section 16(h) have been satisfied as of the Effective Date.

(g) The Initial Senior Loan Agreement, the Intercreditor Agreement, the other Senior Loan Documents and the initial Hedging Agreements shall have been executed by each of the parties thereto and delivered to the TIFIA Lender, each in form and substance satisfactory to the TIFIA Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived.

(h) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that the funds forecasted to be available under the Base Case Projections will be sufficient to complete the Project.

(i) The Borrower shall have delivered an original fully executed counterpart (or a certified copy) of the Traffic and Revenue Study in form and substance acceptable to the TIFIA Lender [and the Lenders' Traffic Consultant]. A traffic audit shall have been conducted of the Traffic and Revenue Study and any updates thereto by [_____]. Such traffic audit shall have been completed to the satisfaction of the TIFIA Lender, and shall have been performed at the expense of the Borrower.

(j) The Borrower shall have provided to the TIFIA Lender certified copies of the Principal Project Contracts and such agreements shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender.

(k) The Borrower shall have provided to the TIFIA Lender executed copies of the Equity Funding Agreement and the Equity Funding Guarantee, and such agreements shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender.

(l) The Borrower shall have provided certified copies of all available agreements related to the acquisition or control of any Project right-of-way to be acquired with the proceeds of the TIFIA Loan.

(m) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that it has all necessary, permits and governmental approvals necessary to commence construction.

(n) The Borrower shall have delivered to the TIFIA Lender a certified schedule acceptable to the TIFIA Lender demonstrating that the projected Project Revenues shall be sufficient to meet the Loan Amortization Schedule and meet the requirements of the Rate Covenant or Rate Coverage (as applicable) contained in Section 16(o) hereof.

(o) The Borrower shall have delivered to the Collateral Agent copies of UCC-1 Financing Statements covering the Collateral, satisfactory to the TIFIA Lender and the Collateral Agent in form and substance, that have been filed with the Secretary of State of the State and with the [Secretary of State of the State of Borrower Incorporation], which the parties intend shall notify third parties of Collateral Agent's interest in the Project Revenues.

(p) The Borrower shall have made arrangements satisfactory to the TIFIA Lender to pay to the TIFIA Lender, within 30 Business Days after the Effective Date, the reasonable fees and expenses of the TIFIA Lender's counsel and financial advisor and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof.

(q) The Borrower shall have provided evidence of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.).

(r) The TIFIA Lender shall have delivered its initial TIFIA Lender's Authorized Representative certificate.

(s) The Borrower shall also have delivered such other agreements, documents, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender, including, but not limited to, evidence that all other Project funding requirements have been met (including evidence of other funding sources or funding commitments and evidence of the closing of the Senior Obligations).

(t) The Borrower shall have obtained a Data Universal Number System number with the federal Central Contractor Registry.

SECTION 14. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that as of the date of the execution of this Agreement and, as to each of the representations and warranties below other than those contained in clauses (b) and (i) of this Section, as of each date on which any disbursement of the TIFIA Loan is made:

(a) The Borrower is a [_____] duly organized, validly existing and in good standing under the laws of [_____] , has full legal right, power and authority to enter into the Related Documents then in existence, to execute the Note, and to carry out and consummate all transactions contemplated by hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents.

(b) As of the Effective Date, the officers of the Borrower executing the Related Documents to which the Borrower is a party, are duly and properly in office and fully authorized to execute the same.

(c) Each of the TIFIA Loan Documents has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the

Borrower enforceable in accordance with its terms, except as such enforceability (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (B) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated in the Related Documents and the fulfillment of or compliance with the terms and conditions of the Related Documents will not, in any material respect, conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) by the Borrower of any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

(e) No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority required as of the date hereof is necessary in connection with the execution and delivery by the Borrower of the Related Documents, the consummation of any transaction contemplated by the Related Documents, or the fulfillment of or compliance with the Borrower of the terms and conditions of the Related Documents, except as have been obtained or made and as are in full force and effect.

(f) There is no action, suit, proceeding, inquiry or investigation before or by any court or other Governmental Authority, pending, or to the knowledge of the Borrower after reasonable inquiry and investigation, threatened against or affecting the Borrower or the assets, properties or operations of the Borrower which are likely to have a Material Adverse Effect. The Borrower is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any other Governmental Authority, which default would be reasonably likely to have a Material Adverse Effect.

(g) The Security Documents establish, in favor of the Collateral Agent for the benefit of the TIFIA Lender, the valid and perfected Liens on the Collateral which they purport to create; such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Collateral except as provided in the Intercreditor Agreement or to the extent such other Liens are entitled to priority as a matter of law and the Borrower is not in breach of any covenants set forth in Section 16(c) of this Agreement and the Security Documents with respect thereto.

(h) Neither the Borrower nor any Borrower Related Party is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered in substantially the form of **Exhibit C**.

(i) As of the Effective Date, the representations, warranties and certifications of the Borrower set forth in this Agreement and the Principal Project Contracts and all information provided by the Borrower to the TIFIA Lender when taken as a whole and after giving effect to any updates, remain true and accurate.

(j) The Borrower has complied, with respect to the Project, with all applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.).

(k) The Project has been included in the metropolitan transportation improvement program for [_____], in the State transportation plan and the approved State transportation improvement program to the extent required by 23 U.S.C. §602(a)(1).

(l) The obligations of the Borrower under the Senior Loan Agreement have received an Investment Grade Rating from at least one Nationally Recognized Rating Agency, and written evidence of such rating has been provided to the TIFIA Lender prior to the Effective Date, and to the knowledge of the Borrower, no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(m) Upon execution and delivery of this Agreement and the Note, the Borrower is not in default in any material respect under the terms hereof or thereof and no event has occurred or condition exists which, with due notice or lapse of time or both, would constitute an Event of Default.

(n) All authorizations, consents, approvals, licenses, permits and reviews required as of the Effective Date for the undertaking and completion by the Borrower of the Project have been obtained or effected and are in full force and effect and there is no basis for the revocation of any such authorization, consent, commitments or approval.

(o) The Principal Project Contracts which have been executed and delivered are all in full force and effect, the Borrower is not in default under any of such agreements or contracts, and to the knowledge of the Borrower no party to any of such agreements or contracts is in default thereunder, except as, in either case, could not reasonably be expected to have a Material Adverse Effect.

SECTION 15. Representations and Warranties of TIFIA Lender. The TIFIA Lender represents and warrants that:

(a) The TIFIA Lender has all requisite power and authority to make the TIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) The Related Documents to which it is a party have been duly authorized, executed and delivered by TIFIA Lender, and are legally valid and binding agreements of the TIFIA Lender, enforceable in accordance with their terms.

(c) The officers of the TIFIA Lender executing each of the Related Documents to which the TIFIA Lender is a party is duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

SECTION 16. Borrower Covenants. The Borrower hereby covenants and agrees that:

(a) Permitted Indebtedness. Except for Permitted Debt, the Borrower shall not issue or incur indebtedness of any kind. Prior to the incurrence of Permitted Debt described in clauses (a) and (d) of the definition thereof, the Borrower shall provide a certificate to the TIFIA Lender certifying that such proposed Additional Senior Obligations, purchase money obligations or capitalized leases, as applicable, are authorized pursuant to this Section 16(a) and, in the case of Additional Senior Obligations, specifying the subparagraph(s) of Section 16(b) under which such indebtedness is authorized.

(b) Additional Senior Obligations. The Borrower shall not incur Additional Senior Obligations except as otherwise provided herein. Additional Senior Obligations may be incurred, provided that no Event of Default under the Senior Loan Agreement or this Agreement has occurred and is continuing, each lender of any such Additional Senior Obligations (or an agent or trustee acting on its behalf) at the time of execution of any documentation with respect thereto, shall become a party to and be bound by the Intercreditor Agreement as a Senior Lender thereunder and such Additional Senior Obligation is incurred in order to:

(i) complete the construction of the Project or to comply with obligations under the Principal Project Contracts, so long as the Borrower certifies to the Senior Lender and the TIFIA Lender, and the Independent Engineer (or Lenders' Technical Advisor, as applicable) confirms, that the additional investment is necessary and that the proceeds, together with other funds available to complete the Project, are expected to be sufficient to complete the construction of the Project; provided that the aggregate amount of Additional Senior Obligations incurred pursuant to this paragraph (b) may not, without the prior written consent of the TIFIA Lender, exceed \$[] million [(exceed 5% of the maximum principal amount of the Initial Senior Obligations)];

(ii) refurbish, upgrade, modify, expand or add to the Project so long as such Additional Senior Obligations have an Investment Grade Rating and the Borrower certifies to the TIFIA Lender, and the Independent Engineer confirms, that (1) [there will be no fundamental change in the use of the Project,] (2) the proceeds of such Additional Senior Obligations, together with other funds available, shall be sufficient for the proposed purpose, (3) the additional investment is not expected to have a Material Adverse Effect, and (4) the Total Debt Service Coverage Ratio for each Calculation Period during the term of the TIFIA Loan is not less than [1.15] (based on a certified revenue forecast [prepared by the Borrower's Traffic Consultant]);

(iii) refinance the Senior Obligations, so long as (1) such Additional Senior Obligations have an Investment Grade Rating, (2) the net proceeds thereof (after deducting any deposits required to satisfy the Debt Service Reserve Required Balance and costs of issuance not to exceed 2% of the principal amount of such Additional Senior Obligations) do not exceed the principal amount of the Senior Loan outstanding and

being refinanced and (3) Senior Debt Service, after the incurrence of such Additional Senior Obligations, in each year of the remaining term of the TIFIA Loan is forecast to be less than the Senior Debt Service forecast for such year in the Base Case Projections; and

(iv) add to, refinance or replace the existing Senior Loan for purposes not covered in clauses (a), (b) and (c) above, so long as (1) at least 50% of the net proceeds (after repayment of any outstanding Senior Loan refinanced with such Additional Senior Loan and after any deposits required to satisfy the Debt Service Reserve Required Balance, certain payments to the [applicable public entity] required under the Concession Agreement (other than concession payments), and costs of issuance not to exceed 2% of the principal amount of such Additional Senior Obligations) of each such Additional Senior Obligations is used to prepay the TIFIA Loan, (2) the Additional Senior Obligations have an Investment Grade Rating and (3) the Total Debt Service Coverage Ratio, after giving effect to such Additional Senior Obligations, is forecast to be [1.25] or more for each year of the remaining term of the TIFIA Loan (based on actual revenues for the prior 12 month period and a certified revenue forecast [prepared by the Traffic Consultant]). Subject to the above provisions, the remaining balance of such net proceeds of any such Additional Senior Obligations may, at the option of the Borrower, be distributed to the Equity Sponsors.

(c) Securing Liens. The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Collateral (whether now existing or hereafter arising) granted to the Collateral Agent for the benefit of the TIFIA Lender, pursuant to the Security Documents, or intended so to be granted pursuant to the Security Documents, or which the Borrower may become bound to grant and the Collateral is and will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with the Liens created by the Security Documents, other than as permitted by such documents or by this Agreement, and all corporate action on the part of the Borrower to that end shall be duly and validly taken at such times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Collateral granted pursuant to the Security Documents and all the rights of the Collateral Agent for the benefit of the TIFIA Lender under the Security Documents against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(d) Copies of Documents. The Borrower shall furnish to the TIFIA Lender a copy of any offering document and cash flow projections prepared in connection with the incurrence of any Permitted Debt, prior to the incurrence of any such Permitted Debt, as well as copies of any continuing disclosure documents, in each case prepared or filed in connection with the applicable rules of the Securities and Exchange Commission, in each case promptly following the preparation or filing thereof.

(e) Use of Proceeds. The Borrower shall use the proceeds of the TIFIA Loan only to pay, or to reimburse the Borrower for, Eligible Project Costs.

(f) Prosecution of Work. The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, including, without limitation, the provisions of Section 19(a)(iii) hereof, and in accordance with the highest standards of Borrower's industry, using its best efforts at all times.

(g) Operations and Maintenance. The Borrower shall operate and maintain the Project in a reasonable and prudent manner and shall maintain the Project in good repair, working order and condition and in accordance with the requirements of the Concession Agreement. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises and authorizations material to the conduct of its business, and comply in all material respects with all applicable laws, rules, regulations, orders, decrees, judgments or administrative decisions, whether now in effect or hereafter enacted, of any Governmental Authority having jurisdiction over the Borrower or its assets or operations (including, without limitation, the National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.) and all other federal, state and local laws, rules, regulations, orders, decrees, judgments and administrative decisions relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters).

(h) Insurance. The Borrower shall at all times maintain insurance on the Project, with responsible insurers, as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties in accordance with the requirements of the Concession Agreement and the Senior Loan Documents, as applicable.

(i) Notice. The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence, give the TIFIA Lender notice of any of the following events, setting forth details of such event:

(i) Events of Default: any Event of Default or any event which, given notice or the passage of time or both, would constitute an Event of Default;

(ii) Litigation: the filing of any actual litigation, suit or action, or the delivery to the Borrower of any written claim, which could reasonably be expected to have a Material Adverse Effect; and

(iii) Other Adverse Events: the occurrence of any other event or condition, which could reasonably be expected to result in a Material Adverse Effect.

(j) Remedied Action. Within 30 calendar days after the Borrower learns of the occurrence of an event specified in Section 16(i), the Borrower's Authorized Representative shall provide a statement setting forth the actions the Borrower proposes to take with respect thereto.

(k) No Lien Extinguishment or Adverse Amendments. Borrower shall not, without the prior written consent of the TIFIA Lender, either (i) extinguish the Liens on the Collateral, except as provided under the Collateral Agency Agreement and other Security

Documents, (ii) amend, modify or supplement any Related Document in a manner that could adversely affect the TIFIA Lender in connection with the TIFIA Loan or (iii) terminate, assign, amend or modify, or waive timely performance by _____ [Concession grantor] or any other party of material covenants under, the Concession Agreement or any other Principal Project Contract except for termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender copies of any proposed amendments to any Related Document at least 30 days prior to the effective date thereof.

(l) Maintain Legal Structure. The Borrower shall maintain its existence as _____, a _____ under the laws of _____.

(m) Annual Rating. The Borrower shall, [commencing in _____], no later than the last Business Day of _____ of each year over the term of the TIFIA Loan, at no cost to the TIFIA Lender, provide to the TIFIA Lender a private rating on the Senior Obligations and the TIFIA Loan by a Nationally Recognized Rating Agency.

(n) Debt Service Reserve Account. The Borrower shall maintain the Debt Service Reserve Account in an amount equal to the Debt Service Reserve Required Balance in accordance with the provisions of the Collateral Agency Agreement. Amounts in the Debt Service Reserve Account shall be made available to ensure the timely payment of Senior Debt Service on the Senior Loan. The Borrower may replace all or a portion of the required balance thereof, in accordance with the terms of the Collateral Agency Agreement, with an irrevocable letter of credit, insurance policy or similar instrument provided by a financial institution with a long-term credit rating in one of the top two Rating Categories.

(o) Rate Covenant (or Rate Coverage). The Borrower shall, subject to the remainder of this paragraph, fix, charge and collect rates and charges such that Net Cash Flow in any year shall be projected to produce (i) a Senior Debt Service Coverage Ratio at least equal to 1.25 in such year and (ii) a Total Debt Service Coverage Ratio at least equal to 1.1 in such year (the “Rate Coverage Test”). If the Borrower determines that Net Cash Flow may be inadequate to comply with the Rate Coverage Test for any year, or if audited financial statements show that the Rate Coverage Test was not satisfied for any year, the Borrower shall (a) engage the Borrower’s Traffic Consultant to review and analyze the operations of the Project and recommend actions regarding revising the rates, changing the methods of operations or other actions to increase the Net Cash Flow as to satisfy the Rate Covenant and (b) either implement the Traffic Auditor’s recommendation or undertake an alternative plan that the Traffic Auditor agrees is likely to generate equivalent or greater Net Cash Flow than the Traffic Auditor’s recommended actions; provided, that the Borrower shall not be required to take any action that may result in a breach by the Borrower of its obligations under the Concession Agreement. [Covenant to be modified to be a Rate Coverage Test or comparable provision depending on the tolling provisions under the Concession Agreement.]

(p) Equity Contribution, Equity Credit Support Trigger Events and Related Provisions. [Conform to Equity Contribution provisions from negotiated Term Sheet]

(q) No Prohibited Liens. The Borrower will not create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except Permitted Liens, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof.

(r) Equity Distributions from Surplus Funds. There shall be no distribution of any kind of surplus funds to the Borrower or any Equity Sponsor unless and until all TIFIA Debt Service (mandatory and scheduled) is current for the prior Calculation Period. During the period of deferred principal and interest, currently accruing interest must be paid prior to making any distribution.

The Borrower shall not permit or receive distributions prior to the occurrence of Substantial Completion.

No distributions of any kind shall be made unless the Borrower certifies as of the relevant distribution date that:

(i) no Event of Default or an Event of Default which may exist with due notice or the passage of time or both, has occurred and is continuing, and no event of default under the Senior Loan Agreement, or an event of default which may exist with due notice or the passage of time or both under the Senior Loan Agreement, has occurred and is continuing;

(ii) no breach of the covenants and agreements contained in Sections 16(g) and 16(aa) then exists;

(iii) no Payment Default or default in respect of the payment of Senior Debt Service shall have occurred and be continuing, and all TIFIA Debt Service and Senior Debt Service for all Payment Dates occurring during the six-month period ending on such Calculation Date shall have been paid (whether or not then required to have been paid under the provisions of Section 9);

(iv) the Debt Service Reserve Account is fully funded;

(v) the Borrower is not insolvent and would not be rendered insolvent by the making of such proposed distribution; and

(vi) the Total Debt Service Coverage Ratio (i) for the most recent Calculation Period ending on or prior to the distribution date is equal to at least 1.20 and (ii) projected for the Calculation Period ending on the first anniversary of the last day of such most recent Calculation Period is projected to equal at least 1.20. **[This coverage test has been a TIFIA requirement in past transactions. The required coverage test will be dependent on the final transaction structure]**

(s) Revenue Sharing Prepayment. On the fifteenth day of each _____ (or on the next Business Day if such date is not Business Day) on and after _____, the Borrower shall cause the TIFIA Loan to be prepaid by an amount equal to the lesser of (i) the amount remaining in the Proceeds Account (as defined in the Collateral Agency Agreement) after giving

effect to the payments in clauses FIRST through _____ of Section _____ of the Collateral Agency Agreement on such date, and (ii) the TIFIA Revenue Share Amount.

(t) Copies of Additional Project Contracts. The Borrower shall provide a copy of each Additional Project Contract to the TIFIA Lender promptly after execution thereof.

(u) Hedging. (i) To protect against fluctuations in interest rates, the Borrower shall make arrangements for a Qualified Hedge to be in place and maintained at all times with respect to the Senior Obligations during any period in which the Senior Obligations bear interest at a Variable Interest Rate. The initial Qualified Hedge must have an aggregate stated notional amount of not less than 98% of the aggregate principal amount of the Variable Interest Rate Senior Obligations projected to be outstanding during the term of the Qualified Hedges and have a stated maturity or termination date not earlier than [the final maturity date] of the Initial Senior Obligations. The Borrower, at all times when the TIFIA Loan is outstanding, shall have in full force and effect Qualified Hedges with an aggregate notional amount of not less than 98% of the aggregate principal amount of the Variable Interest Rate Senior Obligations projected by the Borrower from time to time to be outstanding during the term of the TIFIA Loan and (x) at least [75%] of the notional amount of such Qualified Hedges shall be subject to a Qualified Hedge with a stated maturity or termination date not earlier than the final maturity date of the TIFIA Loan and (y) the notional amount of the balance of such Qualified Hedges shall be subject to a Qualified Hedge with a stated maturity or termination date of at least one year.

(ii) Each Qualified Hedge shall provide for a fixed interest rate or interest rate cap resulting in fixed payment amounts payable by the Borrower which, when taken together with the Bank Lending Margin, shall be a rate which is less than or equal to the Loan Underwriting Rate. The Borrower's obligations to pay (a) any payments required in connection with the acquisition of a Qualified Hedge to assure that the fixed interest rate to be paid by the Borrower or interest rate cap provided to the Borrower under the Qualified Hedge, together with the Bank Lending Margin, shall be at or below the Loan Underwriting Rate, (b) Hedging Obligations and (c) Hedging Termination Obligations shall be from the sources and in the priority specified in the Collateral Agency Agreement. Each Qualified Hedge shall be secured and documented on terms and conditions substantially similar to the terms and conditions of the Initial Qualified Hedge unless otherwise approved by the TIFIA Lender (the "Hedge Documents"). The Borrower shall ensure that, as of the day following the termination date of any Qualified Hedge, either (a) a Subsequent Qualified Hedge (as defined below) is in full force and effect to the extent the Senior Obligations bear interest at a Variable Interest Rate or (b) the Variable Interest Rate Senior Obligations have been converted to a fixed rate, in each case in accordance with this Agreement and the Senior Loan Agreement.

(iii) Any Qualified Hedge entered into subsequent to the Initial Qualified Hedge (a "Subsequent Qualified Hedge") shall (1) commence no later than the termination date of the Qualified Hedge which is terminating and terminate no earlier than the date which is the first (1st) anniversary of the effective date of such Subsequent

Qualified Hedge or (2) commence no later than the termination date of the existing Qualified Hedge and terminate no earlier than the final maturity date of the Variable Interest Rate Senior Obligations.

(iv) No later than thirty days prior to the Borrower seeking any bids from any Qualified Hedge Provider for a Subsequent Qualified Hedge, the Borrower shall obtain the written consent of the TIFIA Lender to the effect that the process for selecting a Subsequent Qualified Hedge is a competitive process designed to obtain a fair market price and to avoid conflicts of interest. At the time the Subsequent Qualified Hedge is priced, the Borrower shall provide to the TIFIA Lender a certificate from a qualified third party acceptable to the TIFIA Lender to the effect that either the underlying LIBOR based fixed rate or the price of acquiring a Subsequent Qualified Hedge is a fair price based on the interest rate market at the time such Qualified Hedge is priced.

(v) The Collateral Agent shall be granted a security interest in each Qualified Hedge and payments due under each Qualified Hedge in order to secure the Borrower's obligations to the TIFIA Lender under this Agreement. The Hedge Documents shall provide that all payments due thereunder to the Borrower shall be made directly to the Collateral Agent for deposit and disbursement in accordance with the Collateral Agency Agreement.

(vi) The Borrower shall neither terminate (other than Permitted Hedging Terminations), transfer nor consent to any transfer (other than to a Qualified Hedge Provider) of any existing Qualified Hedge without the TIFIA Lender's prior written consent as long as the Borrower is required to maintain a Qualified Hedge pursuant to this Agreement.

(vii) Hedge Deposits.

(A) The Borrower is required to make payments to the Collateral Agent (each a "Hedge Deposit") for deposit into the Hedging Acquisition Account established under the Collateral Agency Agreement (1) on the Calculation Date occurring twelve months prior to entering into each Subsequent Qualified Hedge with a remaining term of one year or less (a "Short Term Qualified Hedge") and (2) on each of the Calculation Dates occurring twelve and six months prior to entering into Subsequent Qualified Hedge with a remaining term of greater than one year (a "Long Dated Qualified Hedge").

(B) The Hedge Deposit for a Short Term Qualified Hedge shall be the mid-market amount estimated by the Borrower at that time to be necessary to purchase, at the scheduled termination of the then existing Qualified Hedge, a Subsequent Qualified Hedge obligating the Borrower to make payments based on a fixed rate of interest or interest rate cap equal to or less than the Loan Underwriting Rate minus the Bank Lending Margin for a period of one year or less having a notional amount equal to the principal amount of the Variable

Interest Rate Senior Obligations projected to be outstanding during the term of such Qualified Hedge.

(C) The first Hedge Deposit for a Long Dated Qualified Hedge shall be the mid-market amount estimated by the Borrower at that time to be necessary to provide one-half of the funds needed to purchase, at the scheduled termination of the then existing Qualified Hedge, a Subsequent Qualified Hedge obligating the Borrower to make payments based on a fixed rate of interest or interest rate cap equal to or less than the Loan Underwriting Rate minus the Bank Lending Margin for a period of greater than one (1) year having a notional amount equal to the principal amount of the Variable Interest Rate Senior Obligations projected to be outstanding during the term of such Qualified Hedge. The second Hedge Deposit for a Long Dated Qualified Hedge shall be the mid-market amount, if any, estimated by the Borrower at that time to be necessary, when added to the amount deposited for the first Hedge Deposit for a Long Dated Qualified Hedge, to purchase, at the scheduled termination date of the then existing Qualified Hedge, a Subsequent Qualified Hedge obligating the Borrower to make payments based on a fixed rate of interest or interest rate cap equal to or less than the Loan Underwriting Rate minus the Bank Lending Margin for a period of greater than one (1) year, having a notional amount equal to the principal amount of the Variable Interest Rate Senior Obligations projected to be outstanding during the term of such Qualified Hedge.

(D) For the purpose of determining the required Hedge Deposits, the Borrower shall provide the anticipated notional amounts of the Subsequent Qualified Hedge to a qualified third party who shall in turn calculate the amount of the Hedge Deposit in accordance with (vii) (B) and (C) above. The Borrower shall select, subject to the TIFIA Lender's approval, the qualified third party at least 15 days prior to the applicable Calculation Date.

1. The Borrower's obligation to make any Hedge Deposit payments shall be from the sources and in the priority specified in Sections [_____] of the Collateral Agency Agreement.
2. Provided that no Event of Default has occurred and is continuing, funds on deposit in the Hedging Acquisition Account shall be applied towards the purchase of a Subsequent Qualified Hedges. Any remaining balance in the Hedging Acquisition Account after such purchase which exceeds the amount required to satisfy the Hedge Deposit requirements in this clause (vii) shall be transferred to the Project Account, as provided in the Collateral Agency Agreement.

(v) No Prohibited Sale or Assignment. The Borrower shall not sell or assign its rights in and to the Project or its rights and obligations under this Agreement unless such sale or assignment is not expected to result in a Material Adverse Effect and is upon terms and conditions which are acceptable to the TIFIA Lender in its sole discretion.

(w) Material Obligations. The Borrower will pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall, to the extent required by GAAP on a consistent basis, set aside on its books adequate reserves with respect thereto.

(x) Transactions With Affiliates. The Borrower shall not sell or transfer any property or assets to, or purchase or acquire any property or assets of, or otherwise engage in any other material transactions with, any of its Affiliates, except transactions at prices and on terms and conditions not less favorable to the Borrower than fair market prices and on terms and conditions not less favorable to the Borrower than could be reasonably obtained on an arm's-length basis from unrelated third parties.

(y) Fiscal Year. The Borrower will not at any time adopt any fiscal year other than the Borrower Fiscal Year, except with the prior written consent of the TIFIA Lender.

(z) No Prohibited Business. The Borrower will not at any time engage in any business or activity other than the design, construction, operation and maintenance of the Project and activities incidental or related thereto.

(aa) No Prohibited Payments. The Borrower shall not at any time make (i) any distribution or other payment in respect of its outstanding general or limited partnership interests, or in respect of any repurchase or other acquisition thereof, or (ii) any payment of, interest on or other amounts in respect of any debt for borrowed money owed by the Borrower to any holder of an outstanding general or limited partnership interest in the Borrower, or (iii) any payment to any Affiliate of the Borrower or of any holder of a general or limited partnership interest in the Borrower (other than the reimbursement of out-of-pocket expenses incurred for the benefit of the Borrower in the ordinary course of business, and other than payments permitted pursuant to the provisions by subsection (x) of this Section 16), except that the Borrower may make distributions or payments described in clauses (i), (ii) and (iii) above (A) out of funds withdrawn from the Proceeds Account in accordance with the provisions of subsection (r) above and (B) out of the net proceeds of any Additional Senior Obligation incurred pursuant to the provisions of clause (iv) of Section 16(b) hereof to the extent permitted by the last sentence of such clause (iv).

(bb) Change of Control. The Borrower shall not permit a Change of Control to occur without the prior written consent of the TIFIA Lender, provided that, after the second anniversary of the Effective Date, the TIFIA Lender may withhold such consent only if (A) the proposed transfer is prohibited by applicable law or (B) the Person to whom control (as contemplated by the definition of the term "Change of Control" is proposed to be transferred is, in the judgment of the TIFIA Lender, not capable of performing the obligations and covenants of the Borrower under the Concession Agreement, which determination may be based upon, or take into account, one or more of the following factors: (1) the financial strength and integrity of the

proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (2) the capitalization of the proposed transferee; (3) the experience of the proposed transferee or the operations and maintenance contractor proposed to be engaged by such transferee in operating toll roads or highways and performing other projects; (4) the background and reputation of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects (and if the TIFIA Lender is not reasonably satisfied that the foregoing conditions are met, it may condition its consent on provision of reasonable additional security or other reasonable arrangements).

(cc) Major Maintenance Reserve. The Borrower shall cause the Major Maintenance Reserve Account (as defined in the Collateral Agency Agreement) to be funded in such amounts and under such conditions as are required by the Collateral Agency Agreement.

(dd) Concession Agreement. The Borrower (1) will use the proceeds of the TIFIA Loan only for Eligible Project Costs, (2) will comply with the Concession Agreement in all material respects and (3) shall not terminate the Concession Agreement without the TIFIA Lender's consent.

(ee) Termination Compensation. The Borrower shall prepay the TIFIA Loan immediately upon receipt of any Termination Compensation in an amount equal to the [net] proceeds thereof less the amount of such [net] proceeds required to be used to prepay the Senior Obligations pursuant to the Collateral Agency Agreement.

(ff) Operations and Maintenance Costs. The Borrower shall not increase in any year the amount of Operations and Maintenance Expenses by more than 10% over the amount shown for such expenditures in such year in the Base Case Financial Model, without the TIFIA Lender's prior written consent; provided, that no consent shall be required for (i) reasonably unforeseen expenditures to the extent necessary to pay for compliance with [Safety Compliance Orders] (as defined in the Concession Agreement) and (ii) reasonably unforeseen expenditures to the extent necessary to be made to cause the Project to be in compliance with applicable mandatory Governmental Authority.

SECTION 17. Indemnification. The Borrower shall indemnify the TIFIA Lender and any official, employee, agent or representative of the TIFIA Lender (each such Person being herein referred to as an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including, without limitation, the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution, delivery and performance of this Agreement or any of the Related Documents, (ii) the TIFIA Loan or the use of the proceeds thereof, or (iii) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation

to the Project; 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 nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower upon notice from such Indemnitee shall defend the same and such Indemnitee shall cooperate with the Borrower at the expense of the Borrower in connection therewith. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, 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 of the Related Documents, the TIFIA Loan and the other transactions contemplated hereby and thereby, or the use of the proceeds thereof. All amounts due to any Indemnitee under this Section shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section shall survive the payment or prepayment in full or transfer of the Note, the enforcement of any provision of this Agreement or the Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

SECTION 18. Sale of TIFIA Loan. The TIFIA Lender shall not sell the TIFIA Loan at any time prior to the date of Substantial Completion. After such date, the TIFIA Lender may sell the TIFIA Loan to another entity or reoffer the TIFIA Loan into the capital markets only in accordance with the provisions of this Section. Such sale or reoffering shall be on such terms as the TIFIA Lender shall deem advisable. However, in making such sale or reoffering the TIFIA Lender shall not change the terms and conditions of the TIFIA Loan without the prior written consent of the Borrower, which consent shall not be unreasonably withheld. The TIFIA Lender shall provide (i) at least 60 days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower to the effect that the TIFIA Lender is considering the sale or reoffering of the TIFIA Loan and (ii) at least 30 days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower confirming TIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section shall not (i) obligate the TIFIA Lender to sell nor (ii) provide the Borrower with any rights or remedies in the event the TIFIA Lender, for any reason, does not sell the TIFIA Loan. The TIFIA Lender and the Borrower agree that for so long as any Senior Obligations or Hedging Agreements remain outstanding, the provisions contained in Section 8(a) hereof and in the Collateral Agency Agreement with respect to the TIFIA Lender's right to a first priority security interest in the Collateral upon the occurrence and continuance of a Bankruptcy Related Event shall be of no force or effect following the complete sale of the TIFIA Loan to a commercial entity. However should an assignment or sale be made to a federal government agency or instrumentality, the federal government shall retain the right to a first priority security interest in the Collateral upon the occurrence and continuance of any Bankruptcy Related Event.

SECTION 19. Events of Default and Remedies. (a) An Event of Default shall exist under this Agreement if:

(i) Payment Default. The Borrower shall fail to pay any of the principal amount of or interest on the TIFIA Loan (including, without limitation, Scheduled Debt Service, if any, required to have been paid pursuant to the provisions of Section 9, and any mandatory prepayment required pursuant to the provisions of Section 10(a) but excluding any TIFIA Scheduled Debt Service deferred in accordance with Section 9(d), but only to the extent such deferral is due to insufficient funds, when and as the payment thereof shall be required under this Agreement or the Note or on the Final Maturity Date (each a “Payment Default”); or

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the Note or any other TIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within 30 days after receipt by the Borrower from the TIFIA Lender of written notice thereof; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such 30-day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause (ii) if and so long as within such 30-day period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured; or

(iii) Development Default. A Development Default (as defined in the Concession Agreement) shall occur (a “Development Default”). In each such case the TIFIA Lender may: (i) suspend the disbursement of TIFIA Loan proceeds under this Agreement; and (ii) pursue such other remedies as provided in this Section 19. If so requested in connection with a Development Default, the Borrower shall immediately repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the TIFIA Loan Documents shall prove to have been false or misleading in any material respect when made; or

(v) Acceleration of Senior Obligations or Other Material Indebtedness. Any acceleration shall occur of the maturity of the Senior Loan or of any other indebtedness of the Borrower in an aggregate principal amount equal to or greater than \$500,000 (inflated annually by CPI) that is senior to, or in parity with, the TIFIA Loan in right of payment or in right of security (“Other Material Indebtedness”), or any such Senior Obligations or Other Material Indebtedness shall not be paid in full upon the final maturity thereof; or

(vi) Cross Default. (A) Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the Senior Loan Documents, or made in or delivered pursuant to the documents (the “Other Loan Documents”) under which any Other Material Indebtedness shall be created or incurred, shall prove to be false or misleading in any material respect (each a “Misrepresentation Default”), or any default shall occur in respect of the performance of any covenant, agreement or obligation of the Borrower under the Senior Loan Documents or the Other

Loan Documents, and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in the Senior Loan Documents or the Other Loan Documents (as the case may be) with respect to such default (each a “Covenant Default”), if the effect of such Misrepresentation Default or Covenant Default shall be to permit the immediate acceleration of the maturity of any or all of the Senior Obligations or the Other Material Indebtedness (as the case may be), and, in the case of any such Misrepresentation Default or Covenant Default, the Borrower shall have failed to cure such Misrepresentation Default or Covenant Default or to obtain an effective written waiver thereof within 30 days after receipt of written notice thereof from the TIFIA Lender; provided, however, that if such cure or waiver of such Misrepresentation Default or Covenant Default cannot reasonably be obtained within such 30-day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause (vi) if and so long as within such 30-day period the Borrower shall commence actions reasonably designed to obtain a cure or waiver thereof and shall diligently pursue such actions until such cure or waiver is obtained; or

(B) The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Related Document or any Related Document shall be terminated prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect, and the Borrower shall have failed to cure such default or to obtain an effective written waiver thereof, or to obtain an effective revocation of such termination (as the case may be), within 30 days after receipt of written notice thereof from the TIFIA Lender; provided, however, that if such cure or waiver or revocation (as the case may be) cannot reasonably be obtained within such 30-day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause if and so long as within such 30-day period the Borrower shall commence actions reasonably designed to obtain a cure or waiver of such default or a revocation of such termination (as the case may be) and shall diligently pursue such actions until such cure or waiver or revocation is obtained; or

(vii) Judgements. One or more judgments for the payment of money in an aggregate amount in excess of \$1,000,000 (inflated annually by CPI) and not otherwise covered by insurance shall be rendered against the Borrower and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment; or

(viii) Change of Control. A Change of Control shall occur other than a Change of Control for which the TIFIA Lender has given its consent in accordance with Section (16bb) hereof; or

(ix) Failure to Maintain Existence. The Borrower shall fail to maintain its existence as a [_____] under the laws of [_____]; or

(x) Failure to Make An Equity Contribution. Any Equity Contribution required to be made under the provisions of Section 16(p) or pursuant to the Equity Funding Agreement shall fail to be made at the time and in the amount so required; or

(xi) Occurrence of A Bankruptcy Related Event. A Bankruptcy Related Event shall occur; or

(xii) Project Abandonment. The Borrower shall abandon the Project; or

(xiii) Expiration or Termination of Concession Agreement or Project Lease. The Concession Agreement shall expire or be terminated (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason shall cease to be in full force and effect; or the Project Lease shall expire or be terminated (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason shall cease to be in full force and effect; or

(xiv) Cessation of Operations. Operation of the Project shall cease for a continuous period of not less than 180 days unless such cessation of operations shall occur by reason of an Uncontrollable Force and the Borrower shall have in force an insurance policy or policies under which the Borrower is entitled to recover substantially all Senior Debt Service, TIFIA Debt Service and costs and expenses of the Borrower during such cessation of operations.

(b) Upon the occurrence of an Event of Default described in clause (iii) of Section 19(a), all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall immediately be deemed terminated.

(c) Upon the occurrence of an Event of Default described in clause (x) of Section 19(a), the TIFIA Lender may direct the Collateral Agent to immediately draw on any letter of credit or other Credit Facility provided pursuant to Section 16(p) at the absolute and sole discretion of the TIFIA Lender in such amounts as is deemed necessary.

(d) (i) Upon the occurrence of any Event of Default described in clause (xi) of Section 19(a), all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated, and the unpaid principal amount of the TIFIA Loan, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the Note or the other TIFIA Loan Documents, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(ii) Upon the occurrence of any other Event of Default, the TIFIA Lender, by written notice to the Borrower, may (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan and (ii) declare the unpaid principal amount of the Note to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the Note or the other TIFIA Loan Documents, all without

presentment, demand, notice, protest or other requirements of any kind, all of which are hereby expressly waived.

(e) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the Note or the other TIFIA Loan Documents, and may prosecute any such judgment or final decree against the Borrower including confession of judgment by the Borrower against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the TIFIA Lender shall have all of the rights and remedies of a secured creditor under the Uniform Commercial Code and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by Borrower under this Agreement, the Note or the other TIFIA Loan Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the Note or the other TIFIA Loan Documents.

(f) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender may suspend or debar the Borrower from further participation in any Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

(g) No action taken pursuant to this Section shall relieve Borrower from its obligations pursuant to this Agreement, the Note or the other TIFIA Loan Documents, all of which shall survive any such action.

(h) Whenever any Event of Default hereunder shall have occurred and be continuing, the Borrower hereby confesses judgment in favor of the TIFIA Lender, absolutely and unconditionally, whereupon the TIFIA Lender may apply to any court of competent jurisdiction to render such judgment in favor of the TIFIA Lender, where permissible under applicable law.

SECTION 20. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Project-related transactions (including collection of Project Revenues, and any other revenues attributable to the Project, and TIFIA Loan requisitions received and disbursements made with regard to the Project), so that audits may be performed to ensure compliance with and enforcement of this Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the TIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) So long as the TIFIA Loan or any portion thereof shall remain outstanding and until five years after the TIFIA Loan shall have been paid in full, the TIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any of the locations or properties of the Borrower, to examine its books of account and records, to make copies and extracts

therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts with, and to be advised as to the same by, its officers and employees (and the officers and employees of the Equity Sponsor) and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the TIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this 20(b) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the TIFIA Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the TIFIA Lender in connection with the TIFIA Lender's exercise of its rights under this Section 20(b) at any time when an Event of Default shall have occurred and be continuing.

(c) The Borrower shall maintain and retain all files relating to the Project and the TIFIA Loan until five years after the later of the date on which (1) all rights and duties hereunder and under the Note (including payments) have been fulfilled and necessary audits have been performed and (2) any litigation relating to the Project, the TIFIA Loan or this Agreement is finally resolved. The Borrower shall provide the TIFIA Lender in a timely manner all records and documentation relating to the Project that the TIFIA Lender may reasonably request from time to time.

(d) The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (i) all reports or other written materials sent to any Nationally Recognized Rating Agency that has provided, or is being requested to provide, a rating on any indebtedness of the Borrower, (ii) all notices and other written communications received by it from the Senior Lender, (iii) all reports, notices and other written materials required to be sent to the Senior Lender under the Senior Loan Agreement, including, without limitation, all such notices relating to any of the Construction Agreements.

SECTION 21. Financial Plan, Statements, and Reports.

(a) The Borrower shall provide to the TIFIA Lender, within 30 days after the Effective Date and annually thereafter not later than 60 days after the beginning of each Borrower Fiscal Year, a Financial Plan. The Financial Plan submitted within 30 days after the Effective Date ("the Base Case Financial Plan") should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model. The Financial Plan shall be prepared in accordance with recognized financial reporting standards, such as those in the "Guide for Prospective Financial Information" of the American Institute of Certified Public Accountants, and shall be in form and substance satisfactory to the TIFIA Lender.

(i) The Financial Plan shall include: (1) a Certificate signed by the Borrower's Authorized Representative demonstrating that annual projected Project Revenues shall be sufficient to meet the Loan Amortization Schedule and to meet the Rate Covenant established pursuant to Section 16(o), and (2) an electronic copy of the updated "base case" financial model of the operation of the Project for the period from inception thereof through the Final Maturity Date, in substantially the form heretofore provided to the TIFIA Lender, based upon assumptions and projections with respect to

the revenues, expenses and other financial aspects of the Project which shall reflect the prior experience and current status of the Project, and the expectations of management with respect to the Project, as of the most recent practicable date prior to the delivery of such model.

(ii) For the period through Substantial Completion, the Financial Plan shall: (1) provide the current estimate of the total cost of the Project and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss reasons for and implications of the cost changes, and include a summary table showing the history of Project Costs by major activity or category since the Base Case Financial Plan and the preceding Financial Plan; (2) provide the current schedule and implementation plan for completing the Project, including a date on which Substantial Completion is expected to occur (the “Substantial Completion Date”), identify major milestones for each phase of the Project and compare current milestone dates with milestone dates in the Base Case Financial Plan and the preceding Financial Plan, and discuss reasons for changes in Project milestones; (3) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the preceding Financial Plan, discuss reasons for and implications of the funding changes, and include a summary table showing the history of Project funding since the Base Case Financial Plan and the preceding Financial Plan; (4) provide an updated cash flow schedule showing annual cash needs versus available revenue and funding to meet those needs and identify any potential revenue and funding shortfalls, addressing contingency measures that will or may be taken to address any shortfalls; (5) based on the updated cash flow schedule, provide projected debt service coverage ratios for the Senior Obligations and the TIFIA Loan through the Final Maturity Date; (6) provide cost containment strategies and risk mitigation plans that have been or may be implemented to address factors that are affecting or could affect the scheduled completion or financial viability of the Project; (7) provide the total value of approved changes in project design or scope, and provide a listing of each individual change valued at \$5,000,000 or more, setting forth the rationale or need for the proposed change and describing the impact of such change on the Project; and (8) contain, in form and substance satisfactory to the TIFIA Lender, a written narrative report on the progress of design, permitting, acquisition and construction of the Project since the Base Case Financial Plan and the preceding Financial Plan, describing in reasonable detail all significant activities concerning Project status including any material matters that may affect the future performance of the Borrower’s obligations under this Agreement and the causes thereof.

(iii) For the period following Substantial Completion until repayment of the TIFIA Loan in full, the Financial Plan shall: (1) provide an updated cash flow schedule showing annual cash inflows (Project Revenues, interest and other income) and outflows (operating costs, capital costs, Senior Debt Service, TIFIA Loan repayments, replenishment of reserves and other uses) with a narrative identifying any potential revenue or funding shortfall and discussing contingency measures that will or may be taken to address any shortfalls; (2) provide current and estimated amounts of revenues received and the amounts deposited into each fund and account held under the Collateral Agency Agreement and the amount disbursed from such funds and accounts and the balance in each of the funds and accounts; (3) provide an updated schedule of actual and

projected Project Revenues, showing actual and projected coverage ratios for the Senior Obligations and the TIFIA Loan; [(4) provide a schedule of current toll rates and planned increases;] and [(4)] include a written narrative report explaining any variances in costs or revenues since the Base Case Financial Plan and the preceding Financial Plan and describing in reasonable detail any material matters that may affect the future performance of the Borrower's obligations under this Agreement and the causes thereof to include, but not limited, traffic and revenue reports, operational contracts, and third-party transactions.

(b) Not later than ninety (90) days following the date of Substantial Completion, the Borrower shall provide the TIFIA Lender with a final written narrative report, summarizing all significant activities and events, since the initial Financial Plan, affecting the operation, maintenance, financing, or management of the project in a form reasonably satisfactory to the TIFIA Lender. Such report shall include an updated cash flow schedule and currently projected Total Debt Service Coverage Ratios.

(c) For the period through Substantial Completion, the Borrower shall provide the TIFIA Lender with written notification, before instituting any increase or decrease of the overall Project Costs in an amount equal to or greater than \$2,500,000, setting forth the nature of the proposed increase or decrease and estimating the impact of such increase or decrease on the capital costs, operating costs, and the Financial Plan. The Borrower's notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project and does not materially impair the TIFIA Lender's security.

(d) The Borrower shall furnish, [and shall cause each of its Affiliates to furnish,] to the TIFIA Lender:

(i) As soon as available, but no later than sixty (60) days after the end of each semi-annual period of each fiscal year, an unaudited income statement and balance sheet as of the end of such period and the related unaudited statements of operations and changes in member capital and of cash flow of such Person for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, certified by the chief executive officer or chief financial officer of such Person as fairly stating in all material respects the financial condition of such Person as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments); and

(ii) as soon as available, but no later than 120 days after the end of each fiscal year of such Person, a copy of the audited income statement and balance sheet of such Person as of the end of such fiscal year and the related audited statements of operations, changes in member capital and of cash flow of such Person for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm of national standing selected by such Person and which, in the case of the Borrower, is reasonably acceptable to the TIFIA Lender.

All such financial statements with respect to the Borrower shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP (or in the case of non-U.S. Persons, substantially equivalent principles) applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(e) The Borrower shall furnish to the TIFIA Lender, together with each delivery of annual audited or interim unaudited financial statements of the Borrower pursuant to Section 21(d), a certificate signed by the Borrower's Authorized Representative stating whether or not, during the annual or semi-annual period (as the case may be) covered by such financial statements, there occurred any Event of Default or event which, with notice or lapse of time or both, would become an Event of Default, and, if any such Event of Default or other event shall have occurred during such period, the nature of such Event of Default or other event and the actions that the Borrower has taken or intends to take in respect thereof.

SECTION 22. Project Oversight and Monitoring.

(a) Project Development, Design and Construction. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) development, including but not limited to environmental compliance, design, right-of-way acquisition, and construction of the Project. [Applicable state agency] shall be responsible for administering construction oversight of the Project in accordance with the Concession Agreement. [Applicable state agency's] oversight of Project development, environmental compliance, design, right-of-way acquisition, and construction monitoring shall be conducted pursuant to the FHWA Division Oversight Agreement, which may be amended from time to time upon mutual agreement of [applicable state agency] and FHWA, or when so required by federal statute or otherwise required by the United States Congress. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing the TIFIA Lender with such reports, documentation or other information as shall be requested by the TIFIA Lender, or its agents, including any independent engineer reports, documentation or information.

(b) Reporting. The Borrower shall furnish to the TIFIA Lender during the Construction Period the following:

(i) Monthly Construction Progress Report. On or before the last Business Day of any calendar month during the Construction Period, a report executed by a Borrower's Authorized Representative (A) of the amount of Project Costs expended since the Effective Date as well as during the preceding calendar month and the amount of Project Costs estimated to be required to complete the Project, (B) providing an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule, (C) specifying the Substantial Completion Date, (D) providing a detailed description of all material problems (including but not limited to actual and anticipated cost and/or schedule overruns, if any) encountered or anticipated in connection with the construction of the Project since the date of the last report, together with an assessment of how such problems may impact the Construction Schedule and the

meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems, (E) specifying the delivery status of major equipment and the effect, if any, that the anticipated delivery dates of such equipment has on the overall Construction Schedule, (F) specifying any proposed or pending change orders, (G) specifying any material changes or deviations from the Borrower's land procurement plans or schedule, and (H) a discussion or analysis of such other matters related to the Project as the TIFIA Lender may reasonably request. The Borrower shall respond, and use commercially reasonable efforts to cause the Construction Contractors to respond, to the TIFIA Lender's inquiries regarding such report, the construction of the Project and any Construction Contractor's performance of its obligations under the Construction Agreement to which it is a party.

(ii) Construction Contractor Reports. During the Construction Period, promptly after receipt thereof, a copy of each report delivered by each Construction Contractor to the Borrower pursuant to the Construction Agreement to which it is a party.

(iii) Traffic and Operating Report. For the period commencing after the Substantial Completion Date, deliver to the TIFIA Lender, not later than ninety (90) days after the end of each financial quarter, a traffic and operating report showing (1) the operating data for the Project for the previous financial quarter, including total Project Revenues received and total Operations and Maintenance Expenses and Capital Expenditures incurred, (2) the variances for such period between the Project Revenues actually received and the budgeted Project Revenues as shown in the Annual Operating Budget, together with a brief narrative explanation of the reasons for any such variance of [20%] or more, and (3) the variances for such period between the actual Operation and Maintenance Expenses incurred and the budgeted Operations and Maintenance Expenses as shown in the Annual Operating Budget, together with a brief narrative explanation of the reasons for any such variance of [20%] or more.

(iv) Permits. Promptly after the receipt or filing thereof, as the case may be (but in no event later than thirty (30) days after such receipt or filing), a copy of (A) each Governmental Approval or other consent or approval obtained by the Borrower, or obtained by any Construction Contractor and delivered to the Borrower pursuant to any Construction Agreement after the Effective Date, and (B) each filing made by the Borrower with any Governmental Authority (including [*the counterparty to the Concession Agreement*]) with respect to a Governmental Approval, except such as are routine or ministerial in nature.

(c) Project Operations. For the period following Substantial Completion, the TIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project's operations and to require reporting on the operation and management of the Project and to provide copies of any contracts relating to the operation, maintenance and safety services for the Project as may be required from time to time. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing the TIFIA Lender with such reports, documentation, or other information as shall be requested by the TIFIA Lender. In the event that the TIFIA Lender retains a financial oversight advisor under contract with the TIFIA Lender, which decision shall be within the sole discretion

of the TIFIA Lender, to carry out the provisions of this Section, the full cost of such monitoring shall be borne by the Borrower. Any costs incurred by the TIFIA Lender for such monitoring shall be promptly reimbursed by the Borrower upon demand therefor in the form of an invoice reasonably acceptable to the Borrower.

SECTION 23. No Personal Recourse. No official, employee or agent of the TIFIA Lender or the Borrower or any Person executing this Agreement or any of the other TIFIA Loan Documents shall be personally liable on this Agreement or such other TIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof, except that nothing in this Section shall be construed to relieve any Equity Sponsor of the Borrower from any liability it may incur under this Agreement or any of the other TIFIA Loan Document by reason of its status as such Equity Holder.

SECTION 24. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the United States or the TIFIA Lender, solely by virtue of the TIFIA Loan, and the Borrower agrees to indemnify and hold the above Federal parties harmless, to the extent permitted by law and in accordance with Section 17, from any lawsuit or claim arising in law or equity solely by reason of the TIFIA Loan, and that no third party creditor or creditors of the Borrower shall have any right against the TIFIA Lender with respect to the TIFIA Loan made pursuant to this Agreement.

SECTION 25. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

SECTION 26. TIFIA Lender's Authorized Representative. The TIFIA Lender shall at all times have appointed a TIFIA Lender's Authorized Representative by designating such Person or Persons from time to time to act on the TIFIA Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the TIFIA Lender.

SECTION 27. Servicer. The TIFIA Lender has designated [_____], as the initial Servicer hereunder and under the Note. The TIFIA Lender may from time to time designate another entity or entities to perform, or assist the TIFIA Lender in performing, the duties of the Servicer or specified duties of the TIFIA Lender under this Agreement and the Note. The TIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the TIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the TIFIA Lender shall have delegated to such Servicer. The TIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the Note.

SECTION 28. Fees and Expenses.

(a) Commencing in Federal Fiscal Year (FFY) [____] and continuing thereafter each year throughout the term of the TIFIA Loan Agreement, the Borrower shall pay to the Lender a loan servicing fee on or before the 15th of [November]. The TIFIA Lender shall establish the amount of this annual fee, and the Servicer shall notify the Borrower of the amount, at least 30 days before payment is due.

In establishing the amount of the fee, the TIFIA Lender will adjust the previous year's base amount utilizing the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100, or its successor(s), published by the Bureau of Labor Statistics, or its successor(s). For the FFY [____] calculation, the TIFIA Lender will use the FFY [____] base amount of \$[____] which applies to other TIFIA borrowers, as the previous year's base amount. The TIFIA Lender will calculate the percentage change in the CPI-U, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year's base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year's base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

(b) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time-to-time on and after the date hereof for any and all fees, costs, charges and expenses incurred by it (including the reasonable fees, costs and expenses of counsel and other advisors) in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the other TIFIA Loan Documents and the transactions hereby and thereby contemplated, including without limitation, reasonable attorneys', engineers', and planning fees and professional costs, including all such fees, costs and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other TIFIA Loan Documents;

(ii) any amendment or requested amendment of, or waiver or consent or requested waiver or consent under or with respect to, this Agreement or any of the other TIFIA Loan Documents, or advice in connection with the administration of this Agreement or any of the other TIFIA Loan Documents or the rights of the TIFIA Lender thereunder; and

(iii) any work-out, restructuring or similar arrangement of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents during the pendency of one or more Events of Default.

The obligations of the Borrower under this Section shall survive the payment or prepayment in full or transfer of the Note, the enforcement of any provision of this Agreement or the other TIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring or similar arrangement.

SECTION 29. Amendments and Waivers. No amendment, modification, termination or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

SECTION 30. Governing Law. This Agreement shall be governed by the federal laws of the United States if and to the extent such federal laws are applicable and the internal laws of the State of New York, if and to the extent such federal laws are not applicable.

SECTION 31. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 32. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the TIFIA Lender.

SECTION 33. Remedies Not Exclusive. No remedy conferred herein or reserved to the TIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SECTION 34. Delay or Omission Not Waiver. No delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the TIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender.

SECTION 35. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

SECTION 36. Notices; Payment Instructions. Notices hereunder shall be effective upon receipt and shall be given by certified mail, return receipt requested, or by other delivery service providing evidence of receipt to:

If to TIFIA Lender TIFIA Joint Program Office (HCFT-1)
Federal Highway Administration
Room E64-302
1200 New Jersey Avenue, SE
Washington, DC 20590
Attention: Mark Sullivan

with copies to: Federal Highway Administration
[State] Division Office
[Address]
Attention: Division Administrator

Servicer (at address provided below)

If to Borrower: [Name]
[Address]
Attention:

If to Servicer:

With copies to: [Insert relevant parties]

Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative with respect to notices to the Borrower or by a TIFIA Lender's Authorized Representative with respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the Note in accordance with the payment instructions hereafter provided by a TIFIA Lender's Authorized Representative, as modified from time-to-time by a TIFIA Lender's Authorized Representative.

SECTION 37. Effectiveness. This Agreement shall be effective on the Effective Date.

SECTION 38. Termination. This Agreement shall terminate upon payment in full by the Borrower of the TIFIA Loan, provided, however, that the indemnification requirements of Section 17, the reporting and record keeping requirements of Section 20(b) and (c) and the payment requirements of Section 28 shall survive the termination of this Agreement as provided in such sections.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

[BORROWER]

By: _____

Name: _____

Title: _____

**UNITED STATES DEPARTMENT OF
TRANSPORTATION**

By: _____

Name: _____

Title: _____

SCHEDULE I

PROJECT BUDGET

[To be provided by Borrower]

FORM OF PROMISSORY NOTE

[BORROWER NAME]

[_____]PROJECT

(TIFIA Project Number)

PROMISSORY NOTE

Maximum Principal Amount: \$ [Maximum Amount of TIFIA Loan]

Effective Date: _____

Due: _____

[BORROWER], a limited _____ under the laws of the State of [_____] (the “Borrower”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Federal Highway Administrator, or its assigns (the “TIFIA Lender”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “Disbursements”) made by the TIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the TIFIA Loan Agreement referred to below, being hereinafter referred to as the “Outstanding Principal Sum”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the below-referenced TIFIA Loan Agreement. Each Disbursement made by the TIFIA Lender to the Borrower pursuant to the TIFIA Loan Agreement and each prepayment made on account of the Outstanding Principal Sum, shall be recorded by or on behalf of the TIFIA Lender and endorsed on the grid attached hereto as **Appendix One** in accordance with the terms of the TIFIA Loan Agreement, which is hereby made a part hereof. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with **Appendix Two**, as revised from time to time in accordance with the TIFIA Loan Agreement, until paid in full. Such **Appendix Two** shall be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the TIFIA Loan Agreement. Payments hereon are to be made in accordance with Section 36 of the TIFIA Loan Agreement as the same become due. Principal of and interest on this Note shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America which at the date of payment is legal tender for the payment of public and private debts.

This Note has been executed under and pursuant to a TIFIA Loan Agreement, dated as of the date hereof, between the TIFIA Lender and the Borrower (the “TIFIA Loan Agreement”) and is issued to evidence the obligation of the Borrower under the TIFIA Loan Agreement to repay

the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the TIFIA Loan Agreement for all details relating to the Borrower's obligations hereunder. All capitalized terms used in this Note and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement.

This Note shall be subject to mandatory prepayment in accordance with the TIFIA Loan Agreement.

This Note may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the TIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of \$[1,000,000] or any integral multiple thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the Note in accordance with the TIFIA Loan Agreement.

Payment of the obligations of the Borrower under this Note is secured pursuant to a Security Agreement and certain Pledge Agreements and other Security Documents referred to in the TIFIA Loan Agreement.

The obligations of the Borrower under this Note, the TIFIA Loan Agreement and the other TIFIA Loan Documents referred to therein are subordinated in right of security to certain senior indebtedness of the Borrower, in the manner and to the extent provided in an [Intercreditor Agreement of even date herewith among the TIFIA Lender, the Administrative Agent and the Collateral Agent. [insert other parties as relevant]]

On each payment due date, payments hereon are to be made in the manner and at the place specified by the TIFIA Lender.

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

All acts, conditions and things required by the Constitution and laws of the State of New York to happen, exist, and be performed precedent to and in the issuance of this Note have happened, exist and have been performed as so required. This Note is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State of New York shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, [BORROWER] has caused this Note to be executed in its name and its seal to be affixed hereto and attested by its duly authorized officer, all as of the Effective Date set forth above.

[BORROWER]

(SEAL)

By _____

Name: _____

Title: _____

ATTEST:

Secretary

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns and transfers unto

(Please Insert Social Security or other identifying number of Assignee(s)):

the within note and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B

ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

<u>Borrower Fiscal Year</u>	<u>Amount</u>
	\$

EXHIBIT C

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS—
PRIMARY COVERED TRANSACTIONS**

The Borrower certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three-year period preceding the Effective Date had one or more public transactions (Federal, State or local) terminated for cause or default.

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement, dated as of [Dated Date], between the TIFIA Lender and the Borrower, as the same may be amended from time to time.

Dated: _____

[BORROWER]

By: _____

EXHIBIT D

REQUISITION PROCEDURES

This Exhibit D sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of TIFIA Loan proceeds to pay directly for, or reimburse the Borrower for, Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through 4 set out the circumstances in which the TIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the TIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the TIFIA Lender under the TIFIA Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the TIFIA Lender to take actions including, but not limited to, administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the TIFIA Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of TIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the TIFIA Lender, in accordance with Section 36 of the Agreement, of a Requisition, in form and substance satisfactory to the TIFIA Lender and completed and executed by a duly authorized representative of the Borrower. The form of Requisition is attached as Appendix One to this Exhibit D. Supporting documentation should be submitted with the requisition.

The TIFIA Lender agrees to promptly send to the Borrower in accordance with Section 36 of the Agreement, an acknowledgement of receipt of each Requisition in the form attached as Appendix Two to this Exhibit D setting forth the date of receipt by the TIFIA Lender of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the TIFIA Lender. All disbursement requests must be received by the TIFIA Lender at or before 5:00 P.M. (EST) on the first Business Day of a calendar month in order to obtain disbursement by the fifteenth day of such calendar month or, if either such day is not a Business Day, the next succeeding Business Day. If a Requisition is approved by the TIFIA Lender, the TIFIA Lender will notify the Borrower of such approval and of the amount so approved.

Section 2. Rejection. A Requisition may be rejected by the TIFIA Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative; or
- (c) submitted after prior disbursement of all proceeds of the TIFIA Loan; or

(d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid and the most recent certificate of the Lender’s Technical Advisor.

The TIFIA Lender will notify the Borrower of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified in (a) or (b) above must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the TIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the TIFIA Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the TIFIA Lender, after telephonic notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount. The TIFIA Lender will confirm correction of the error, to the Borrower, in writing.

Section 4. Withholding. The TIFIA Lender shall be entitled to withhold approval of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds if:

(a) the Borrower

(i) fails to pay any principal or interest on the TIFIA Loan when the same is due and payable; or

(ii) applies TIFIA Loan proceeds for purposes other than payment of, or reimbursement for, Eligible Project Costs which have been the subject of an approved disbursement request hereunder; or

(iii) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or

(iv) An Event of Default under the TIFIA Loan Agreement shall have occurred and be continuing;

(b) the Borrower

(i) fails to construct the Project in a manner consistent with plans, specifications, engineering reports or facilities plans previously submitted to and approved by the TIFIA Lender, or with good engineering practices, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by the Borrower with applicable federal or local law pertaining to the Project, or with the terms and conditions of the TIFIA Loan Agreement; or

(ii) fails to observe or comply with any applicable federal or local law, or any term or condition of the TIFIA Loan Agreement; or

(iii) fails to deliver documentation evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the TIFIA Loan Agreement; and such failure continues for a period of more than thirty (30) days following written notice from the TIFIA Lender to the Borrower, the TIFIA Lender shall be entitled to withhold, from any Requisition received after such thirty (30) day period has expired, and until such failure is cured or corrected, an amount determined by the TIFIA Lender (in its sole discretion) to be adequate for the cure or correction of such failure, which amount shall be stated in such notice; provided, that if the nature of the failure is such that it cannot reasonably be cured or corrected within such thirty (30) day period, the TIFIA Lender shall not withhold any disbursement by reason of such failure if the Borrower commences cure or correction within such thirty (30) day period and thereafter diligently completes such cure or correction within a further reasonable time period.

The foregoing notwithstanding, if, as of the date of such notice from the TIFIA Lender, the balance of the TIFIA Loan proceeds remaining to be disbursed is less than the amount determined by the TIFIA Lender to be adequate for the cure or correction of such failure, the TIFIA Lender may immediately withhold all further disbursement of TIFIA Loan proceeds until such failure is cured or corrected within the time period specified by the preceding paragraph.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

United States Department of Transportation
c/o Director, TIFIA Joint Program Office (HCFT-1)
Federal Highway Administration
Room E64-302
1200 New Jersey Avenue, SE,
Washington, DC 20590

Federal Highway Administration
[State] Division Office
[Address]
Attention: Division Administrator

[Loan Servicer]
[Address]
[Attention]

Re: [] PROJECT (TIFIA # [])

Ladies and Gentlemen:

Pursuant to Section 4 of the TIFIA Loan Agreement, dated as of [Dated Date] (the “TIFIA Loan Agreement”), by and between [BORROWER](the “Borrower”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Federal Highway Administrator (the “TIFIA Lender”), we hereby request disbursement in the amount of \$_____ for Eligible Project Costs. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number _____.
2. The requested date of disbursement is [_____ 15, ____][_____ __, __, which is the first Business Day following _____ 15, ____].
3. The amounts previously disbursed under the TIFIA Loan Agreement aggregate \$_____ and the amounts previously disbursed under the Senior Loan Agreement aggregate \$_____.

4. The amounts hereby requisitioned have been incurred by or on behalf of the Borrower for Eligible Project Costs, and such amounts, together with the amounts set forth in paragraph 3 above, will not exceed as of the requested disbursement date 33% of reasonably anticipated Eligible Project Costs.
5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the TIFIA Loan, and the amount of this Requisition together with the sum of all disbursements of TIFIA Loan proceeds made and to be made for the current year will not exceed the cumulative disbursements through the end of the current year as set forth in the Anticipated Loan Disbursement Schedule.
6. All amounts requisitioned hereunder are for Eligible Project Costs which have not been paid for or reimbursed by any previous disbursement from TIFIA Loan proceeds.
7. All documentation evidencing the Eligible Project Costs to be paid for or reimbursed by the disbursement has been delivered by the Borrower at the times and in the manner specified by the TIFIA Loan Agreement.
8. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to and approved by the TIFIA Lender and with good engineering practices.
8. The Borrower is in compliance with all of the terms and conditions of the TIFIA Loan Agreement and the Senior Loan Agreement and there does not currently exist an Event of Default under the TIFIA Loan Agreement or an event of default under the Senior Loan Agreement or any event which with the giving of notice or the passage of time or both would constitute such an Event of Default or event of default.
9. Prior to or simultaneously herewith the undersigned has requisitioned a pro rata amount of Senior Loan proceeds under the Senior Loan Agreement.
10. A copy of the most recent certificate of the Borrower regarding the required equity contribution pursuant to any Senior Obligations Agreement has been delivered to each of the above named addresses.
11. A copy of the most recent certificate of the Lender's Technical Advisor delivered pursuant to Section [____] of the Initial Senior Loan Agreement has been delivered to each of the above named addressees.
12. A copy of the monthly construction progress report pursuant to Section 22 (b)(i) of the TIFIA Loan Agreement for the month preceding the date of the applicable Requisition has been delivered to each of the above named addresses.
13. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1), to the extent the Government deems appropriate.

- 14. A copy of this requisition has been delivered to each of the above named addressees.
- 15. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.
- 16. [Add wire instructions for Collateral Agent.]

Date: _____

Borrower's Authorized Representative

Name: _____

Title: _____

APPENDIX TWO TO EXHIBIT D

**FORM OF ACKNOWLEDGMENT OF RECEIPT OF
REQUISITION FOR DISBURSEMENT OF TIFIA LOAN PROCEEDS**

[Borrower name and address]

Re: Receipt of Requisition for Disbursement of TIFIA Loan Proceeds

Ladies and Gentlemen:

Pursuant to Section 4 of the TIFIA Loan Agreement, dated as of [Dated Date], by and between [Borrower] (the “Borrower”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Federal Highway Administrator (the “TIFIA Lender “), the undersigned authorized representative of the TIFIA Lender hereby acknowledges receipt of the attached Requisition for Disbursement of TIFIA Loan Proceeds (the “Requisition”) from the Borrower. In connection therewith, we hereby represent and certify the following:

1. The date of receipt of the Requisition is _____.
2. Unless this Requisition is denied, disbursement shall be made on or before _____.

Date:

TIFIA Lender’s Authorized Representative

Name: _____

Title: _____

APPENDIX THREE TO EXHIBIT D

[APPROVAL/DISAPPROVAL] OF THE TIFIA LENDER

(To be delivered to the Borrower)

Requisition Number _____ is [approved] [approved in part]³ [not approved]⁴ by the TIFIA Lender (as defined herein) pursuant to Section 4 of the TIFIA Loan Agreement, dated as of [Dated Date], by and between [Borrower] (the “Borrower”) and the United States Department of Transportation, acting by and through the Federal Highway Administrator (the “TIFIA Lender “).

Any determination, action or failure to act by the TIFIA Lender with respect to the Requisition set forth above, including but not limited to the withholding of a disbursement, shall be at the TIFIA Lender’s sole discretion, and in no event shall the TIFIA Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES DEPARTMENT OF
TRANSPORTATION**, acting by and through the
Federal Highway Administrator

By: _____
TIFIA Lender’s Authorized Representative

Name: _____

Title: _____

Dated: _____

³ Those portions of the requisitions that are approved and those portions that are not approved are described in Schedule A attached hereto, with explanations for items not approved.

⁴ Attached hereto as Exhibit A are reasons for denial of approval.

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION**

COMPLIANCE WITH LAWS

The Borrower agrees to abide by any and all applicable Federal and state laws. The following list of Federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive. The Borrower shall require that its contractors and subcontractors comply with applicable laws:

- (i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. §§ 12101 et seq.; 28 C.F.R. § 35; 29 C.F.R. § 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000d et seq.) and United States Department of Transportation regulation, 49 C.F.R. Part 21;
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601 et seq.), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (29 C.F.R. §§ 1625-27, 1630; 28 C.F.R. § 35; 41 C.F.R. § 60; and 49 C.F.R. § 27);
- (v) Restrictions governing the use of Federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 C.F.R. § 20);
- (vi) The Clean Air Act, as amended (42 U.S.C. §§ 1857 et seq., as amended by Pub. L. 91-604);
- (vii) The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.);
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq., as amended by Pub. L. 92-500);
- (ix) The environmental mitigation requirements and commitments made by the Borrower that result in TIFIA Lender's approval of the Final Environmental Impact Statement (issued pursuant to 42 U.S.C. § 4332(2)(C)) and issuance of the Record of Decision for the Project;
- (x) The Endangered Species Act, 16 U.S.C. §1531, et seq.
- (xi) 23 U.S.C. §138 [49 U.S.C. §303]

- (xii) The health and safety requirements set forth in 23 C.F.R. § 635.108;
- (xiii) The prevailing wage requirements set forth in 42 U.S.C. § 276a, 23 U.S.C. § 113, as supplemented by 29 C.F.R. Part 5, 23 C.F.R. §§ 635.117(f), 635.118 and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;
- (xiv) The Buy America requirements set forth in Section 165 of the Surface Transportation Assistance Act of 1982 and implementing regulations (23 C.F.R. § 635.410);
- (xv) The requirements of 23 U.S.C. §§ 101 et seq. and 23 C.F.R.; and
- (xvi) The applicable requirements of 49 C.F.R. Part 26 relating to the Disadvantaged Business Enterprise program.

EXHIBIT F

FHWA DIVISION OVERSIGHT AGREEMENT

EXHIBIT G

MANDATORY AND SCHEDULED TIFIA DEBT SERVICE

EXHIBIT H

FORM OF OPINION OF COUNSEL TO BORROWER AND EACH MEMBER

An opinion of the counsel of the Borrower, dated the Effective Date, to the effect that: (a) the Borrower and each [Member] is duly formed, validly existing and in good standing under the laws of _____; (b) the Borrower and each [Member] has all requisite corporate power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Security Documents to which it is a party; (c) the execution and delivery by the Borrower and each [Member] of, and the performance of their respective obligations under, the Security Documents to which it is a party, have been duly authorized by all necessary corporate action; (d) the Borrower and each [Member] has duly executed and delivered each Security Document to which it is a party and each such Security Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms (e) no authorization, consent or other approval of, or registration, declaration or other filing with any governmental authority of the United States or of the States of New York or [States where Project is located] is required on the part of the Borrower or any [Member] for the execution and delivery by such party of, and the performance of such party, for the operating and maintenance of the Project; (f) the execution and delivery by the Borrower and each [Member] of, and compliance with the provisions of the Security Documents do not (i) violate the articles or certificate of incorporation or by-laws, (ii) violate the law of the United States of America or New York or [State where Project is located] or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Borrower or any [Member] is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower or any [Member] presently is subject; (g) [perfected security interest opinion]; (h) none of the Borrower or any [Member] is an investment company required to register under the Investment Company Act of 1940, as amended and (i) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower or any [Member] by or before any court, arbitrator or any other governmental authority in connection with the Security Documents that are pending.

EXHIBIT I

FORM OF OPINION OF SWAP COUNSEL TO BORROWER

An opinion of swap counsel to the Borrower, dated as of the effective date of any Hedging Agreement, to the effect that: (a) the Borrower is duly formed, validly existing and in good standing under the laws of _____; (b) the Borrower has all requisite corporate power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Hedging Agreement and the confirmation; (c) the execution and delivery by the Borrower of, and the performance of its obligations under, the Hedging Agreement and the confirmation have been duly authorized by all necessary corporate action; (d) the Borrower has duly executed and delivered the Hedging Agreement and the confirmation and the Hedging Agreement and confirmation constitute the legal, valid and binding obligations of the Borrower; enforceable against the Borrower in accordance with their respective terms; (e) no authorization, consent or other approval of, or registration, declaration or other filing with any governmental authority of the United States or of the States of New York or [States where Project is located] is required on the part of the Borrower for the execution and delivery by the Borrower of, and the performance of such party, for the execution, performance and delivery of the Hedging Agreement and confirmation or its obligations thereunder; and (f) the execution and delivery by the Borrower of, and compliance with the provisions of the Hedging Agreement and confirmation do not (i) violate its articles or certificate of incorporation or by-laws, (ii) violate the law of the United States of America or New York or [State where Project is located] or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower presently is subject.