INDIANA TOLL ROAD
CONCESSION AND LEASE
AGREEMENT

dated as of

_____, _____, 200__

by and between

THE INDIANA FINANCE AUTHORITY

and

_____

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THIS INDIANA TOLL ROAD CONCESSION AND LEASE AGREEMENT (this "Agreement") is made and entered into as of this _____ day of _____, _____ (the "Effective Date") by and between the Indiana Finance Authority, a public body politic and corporate of the State of Indiana (the "IFA"), and _____ (the "Concessionaire"), a [_____], organized and existing under the laws of the State of [_____].

RECITALS

WHEREAS, the IFA owns the Toll Road (as defined herein); and

WHEREAS, pursuant to, and under the terms and conditions contained in, that certain legislation adopted by the Indiana General Assembly at **[specify statutory reference for applicable legislation]** (the "Toll Road Legislation"), the IFA is authorized to enter into the Transaction (as defined herein); and

WHEREAS, the Concessionaire desires to lease the Toll Road from the IFA and to obtain a grant from the IFA of a license and franchise to provide toll road services in connection therewith, all as hereinafter provided; and

WHEREAS, the IFA desires to lease the Toll Road to the Concessionaire and grant the Concessionaire a license and franchise to provide toll road services in connection therewith, all as hereinafter provided.

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

ARTICLE 1.
DEFINITIONS AND INTERPRETATION

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

"AA-Compensation" has the meaning ascribed thereto in Section 14.1(b)

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

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

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

"AAA Rules" has the meaning ascribed thereto in Section 19.4.

"Additional Coverages" has the meaning ascribed thereto in Section 13.2(j).

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

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

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

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

"Affiliate" when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with such specified Person, and a Person shall be deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (it being understood and agreed, for the avoidance of doubt, that for purposes of this definition, a managed fund or trust shall be deemed to be an Affiliate of the Person managing such fund or trust).

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

"Applicable Percentage ISP Increase" shall mean the greater of (a) two percent (2%) or (B) the percentage increase, measured to the current Measurement Date from the immediately preceding Measurement Date, of the Index.

"Approval," "Approved," "Approves," "Approved by the IFA," "Approved by the State similar expressions mean approved or consented to by the IFA or the State in accordance with the provisions of Section 1.15.

"Assigned Toll Road Contracts" means those Toll Road Contracts that are set forth on Schedule 2.1(b) and Schedule 7.3.

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

"Audit" and similar expressions mean, with respect to any matter or thing relating to the Toll Road, the Toll Road Operations or this Agreement, the performance by or on behalf of the IFA of such reviews, investigations, inspections and audits relating to such matter or thing as the IFA may determine, in its reasonable determination, to be necessary in the circumstances, conducted in each case in accordance with applicable U.S. industry accepted practices, if any.

"Authorization" means any approval, certificate of approval, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, permit,

notarization, special lease or other requirement of any Person that applies to all or any part of the Toll Road or the Toll Road Operations.

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

"Breakage Costs" means any breakage costs, make-whole premium payments or other prepayment amounts (including Debt premiums) that are required to be paid by the Concessionaire with respect to Leasehold Mortgage Debt as a result of the early repayment of such debt prior to its scheduled maturity date.

"Business Day" means any day that is neither a Saturday, a Sunday nor a day observed as a holiday by either the State of Indiana or the U.S. government.

"Capital Improvement Projects" has the meaning ascribed thereto in Section 4.1(a).

"Cash Deposit" has the meaning ascribed thereto in Section 2.3(a).

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

"Change in Control" means, with respect to any Person, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, either (i) a change in ownership so that 50% or more of the direct or indirect voting or economic interests in such Person is transferred to a Person or group of Persons acting in concert, (ii) the power directly or indirectly to direct or cause the direction of management and policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to a Person or group of Persons acting in concert or (iii) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person; *provided, however*, that notwithstanding anything to the contrary set forth in this definition, (A) clause (i) and (ii) above shall apply to transactions in shares of a publicly traded company or to other transactions involving a publicly traded company only if they cause such company to no longer be a publicly traded company, (B) transfers of direct or indirect ownership interests in the Concessionaire or the Operator (as applicable) between or among Persons that are Affiliates shall not constitute a "Change in Control" for the purposes of this Agreement, (C) transfers of shares of the Concessionaire or its parent pursuant to an initial public offering on the NYSE, NASDAQ, London Stock Exchange or comparable securities exchange shall not constitute a "Change in Control" for purposes of this Agreement, (D) transfers of direct or indirect ownership interests in the Concessionaire by any Equity Participant or its beneficial owner(s) to any other Person shall not constitute a "Change in Control" so long as one or more of the Equity Participants or its beneficial owner(s) having a direct or indirect ownership interest in the Concessionaire as of the Effective Date retains, in the aggregate, 50% or more of the rights to elect directors, officers and managers of the Concessionaire, (E) transfers of direct or indirect ownership interests in the Concessionaire to a Qualified Person shall not constitute a "Change in Control", (F) any change of ownership that is attributable to a Lease permitted hereunder shall not constitute a "Change in Control" and (G) the creation of a trust or any other transaction or arrangement which is solely a transfer of all or part of the Concessionaire's economic interest under this Agreement to another

entity shall not constitute a "Change in Control" so long as no "Change in Control" occurs with respect to the Concessionaire and the Concessionaire remains obligated under this Agreement and such transaction does not result in a "Change in Control" of the Operator.

"Change of Law" means (a) the adoption of any Law after the Effective Date, or (b) any change in any Law or in the interpretation or application thereof by any Governmental Authority after the Effective Date.

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

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

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

"Comparable Highway" means a divided four or more lane controlled access interstate quality highway with interchanges, interstate quality bridges or combination or portion thereof.

"Compensation Event" means (i) any applicable entry on the Toll Road by the IFA pursuant to Section 3.7(a)(iv) through Section 3.7(a)(vii), (ii) the Concessionaire's compliance with or the implementation of any IFA Directive or any modified or changed Operating Standard (as contemplated by Section 6.3(b)) or the occurrence of an Adverse Action, (iii) an event described by Section 2.5(i), (iv) the placement in service of a Competing Highway as contemplated in Section 14.1(e), (v) a "Delay Event" of the type described in clauses (iv) through (vi) in the definition thereof, or (vi) any other event the occurrence of which under the terms of this Agreement requires the payment of the Concession Compensation.

"Competing Highway" means any newly-constructed Comparable Highway which is built by or on behalf of the State during the Term and at least twenty (20) continuous miles of which is within ten (10) miles of the Toll Road. In addition, the existing US 20 shall be considered a "Competing Highway" if, on or before the fifty-fifth (55th) anniversary of the Closing Date, it is expanded or improved by or on behalf of the State so that it becomes a Comparable Highway and at least twenty (20) continuous miles of such highway (all of which is Comparable Highway and none of which was Comparable Highway on the Effective Date) is within ten (10) miles of the Toll Road. The existing US 20 shall not be considered a "Competing Highway" notwithstanding any future improvement and/or expansion to make it a Comparable Highway so long as the improvement or expansion which makes it otherwise a Competing Highway is not completed prior to the fifty-fifth (55th) anniversary of the Closing Date.

"Concession Compensation" means compensation payable by the IFA to the Concessionaire in order to restore the Concessionaire to the same economic position the Concessionaire would have enjoyed if such Compensation Event had not occurred, which compensation shall equal to the sum of (i) all Losses (including increased operating, capital and maintenance costs but excluding any costs and expenses that the Concessionaire would otherwise expend or incur in order to comply with this Agreement or in the ordinary course of the performance of the Toll Road Operations or the carrying on of business in the ordinary course) that are reasonably attributable to such Compensation Event plus (ii) the losses of the

Concessionaire's present and future Toll Road Revenues that are reasonably attributable to such Compensation Event. Any Concession Compensation payable with respect to Losses or lost Toll Road Revenues that will not occur until the future shall not be payable until actually suffered or incurred. If the Concessionaire is required to provide its own capital with respect to compliance with or implementation of an IFA Directive or a modified or changed Operating Standard, then the Concession Compensation, shall, in addition to the components described above, take into account the actual cost to the Concessionaire of such capital and include a then applicable market-based rate of return thereon.

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

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

"Concessionaire Interest" means the interest of the Concessionaire in the Toll Road created by this Agreement and the rights and obligations of the Concessionaire under this Agreement.

"Concessionaire Request" means a written request in respect of the Toll Road prepared by or on behalf of the Concessionaire and addressed to the IFA seeking to (i) make a fundamental change in the dimensions, character, quality, location or position of any material part of the Toll Road or otherwise make a capital change of or to the Toll Road or (ii) implement an Expansion; *provided, however,* that a Concessionaire Request need not be submitted in connection with operations, maintenance, repair or overhaul of the Toll Road in the ordinary course or any other aspects of Toll Road Operations permitted or reserved to the Concessionaire under this Agreement, including any modification or change to the Operating Standards pursuant to Section 6.2 or the implementation of electronic tolling pursuant to Section 7.2(a).

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

"Contractor" means, with respect to a Person, any contractor, with whom such Person contracts to perform work or supply materials or labor in relation to the Toll Road, including any subcontractor of any tier, supplier or materialman directly or indirectly employed pursuant to a subcontract with a Contractor. For the avoidance of doubt, the Operator shall be a Contractor of the Concessionaire.

"Defending Party" has the meaning ascribed thereto in Section 12.4(c).

"Delay Event" means (i) an event of Force Majeure, (ii) a failure to obtain, or delay in obtaining, any Authorization from a Governmental Authority (provided that such failure or delay could not have been reasonably prevented by technical and scheduling measures of the Concessionaire), (iii) a Change of Law, (iv) a delay caused by the performance of works carried out by a Governmental Authority or any utility or railway operator, (v) a failure by the IFA to perform or observe any of its covenants or obligations under this Agreement or (vi) a delay caused by the presence in, on, under or around the Toll Road Lands of Hazardous Substances, which in each case results in or would result in a delay or interruption in the performance by the

Concessionaire of any obligation under this Agreement; *provided, that* such delay or the cause thereof is neither specifically dealt with in this Agreement nor arises by reason of (A) the negligence or misconduct of the Concessionaire or its Representatives, (B) any act or omission by the Concessionaire or its Representatives in breach of the provisions of this Agreement, (C) except as contemplated by Section 5.1, lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire, (D) except to the extent such events constitute an event of Force Majeure, any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Concessionaire or its Representatives to supply materials or services for or in connection with the Toll Road Operations or any strike, labor dispute or labor protest caused by or attributable to any act (including any pricing or other price or method of operation) or omission of the Concessionaire or its Representatives, (E) except to the extent such events constitute an event of Force Majeure, any weather conditions (including any flooding) whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced or (F) the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of Toll Revenues or in the number of vehicles using the Toll Road.

"Delay Event Dispute Notice" has the meaning ascribed thereto in Section 15.1(e).

"Delay Event Notice" has the meaning ascribed thereto in Section 15.1(e).

"Delay Event Remedy" has the meaning ascribed thereto in Section 15.1(d).

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

"Designated Senior Person" means such senior executive within each Party's respective organization who is designated from time to time by each Party for the purposes of Article 19.

"Direct Claim" means any Claim by an Indemnified Party against an Indemnifier that does not result from a Third Party Claim.

"Document" has the meaning ascribed thereto in Section 1.15(c).

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

"Eligible Investments" means any one or more of the following obligations or securities: (i) direct obligations of, and obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America; (ii) demand or time deposits, federal funds or bankers' acceptances issued by any Institutional Lender (provided that the commercial

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

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

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

"Engineering Firm" means an engineering firm selected by the Concessionaire and reasonably acceptable to the IFA.

"Environment" means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air.

"Environmental Laws" means any Laws applicable to the Toll Road regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health, the Environment or Hazardous Substances.

"Equity Participant" means any Person who holds any capital stock of the Concessionaire.

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

"Expansion" means the building, erection, construction, installation, alteration, modification or replacement of any structure, facility or other improvement of any kind on the Toll Road Land or any part thereof or on Additional Lands acquired pursuant to Section 5.4 or Section 5.5 (excluding any modifications or improvements made in the ordinary course of business and any matters contemplated by the Operating Standards).

"Force Majeure" means any event beyond the reasonable control of the Concessionaire that delays or interrupts the performance by the Concessionaire of its obligations hereunder, including an intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by

civil or military authorities, condemnation or confiscation of property or equipment by any Governmental Authority (other than the State or any local, city or county government authority in the State), strike or labor disturbance (other than as set forth in sub-clause (iv) below), nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, earthquake, riot or other public disorder, epidemic, quarantine restriction, stop-work order or injunction issued by a Governmental Authority (other than the State or any local, city or county government authority in the State) of competent jurisdiction, governmental embargo, or, for purposes of the Mandatory Expansion Projects, inability to obtain required permits or approvals from any Governmental Authority at the relevant time, provided that such event neither is otherwise specifically dealt with in this Agreement nor arises by reason of (i) the negligence or misconduct of the Concessionaire or its Representatives, (ii) any act or omission by the Concessionaire or its Representatives in breach of the provisions of this Agreement, (iii) except as contemplated by Section 5.1, lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire, (iv) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Concessionaire or its Representatives to supply materials or services for or in connection with the Toll Road Operations or any strike, labor dispute or labor protest caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Concessionaire or its Representatives or (v) any weather conditions (including any flooding) whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced, except tornadoes and similar catastrophic weather conditions encountered or experienced at or in the vicinity of the Toll Road or (vi) the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of Toll Revenues or in the number of vehicles using the Toll Road.

"Government Agreement" has the meaning ascribed thereto in Section 3.12.

"Governmental Authority" means any court, federal, state, local or foreign government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority.

"Governor" means the Governor of Indiana or another State official acting under the direction and pursuant to the authority of the Governor.

"Hazardous Substance" means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, subject waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation).

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

"IFA" means the Indiana Finance Authority, or any successor thereto or replacement thereof.

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

"IFA Directive" means a written order or directive prepared by or on behalf of the IFA or the State directing the Concessionaire, to the extent permitted hereby, to (i) add or perform work in respect of the Toll Road in addition to that provided for in this Agreement, including work related to the integration of the Toll Road with any Expansion performed by or on behalf of the IFA or the State and not otherwise required hereunder, (ii) dispense with, delete or change the dimensions, character, quantity, quality, description, location or position of any part of the Toll Road or the Toll Road Operations or make other changes to the Toll Road or the Toll Road Operations or (iii) implement an Expansion; *provided, however,* that no such order or directive may in any event order or direct the Concessionaire to do any act that could reasonably be expected to violate any applicable Law or cause the Concessionaire to fail to be in compliance with this Agreement.

"IFA's Option" has the meaning ascribed thereto in Section 18.8(a).

"Indemnified Party" means any Person entitled to indemnification under this Agreement.

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

"Indemnity Payment" has the meaning ascribed thereto in Section 12.7.

"Index" means the "Consumer Price Index - U.S. City Averages for all Urban Consumers, All Items" (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics; *provided, however,* that if the Index is changed so that the base year of the Index changes, the Index shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics; *provided, further,* that if the Index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

"Information" means any and all information relating to the Toll Road Operations, including (i) income statements, balance sheets, statements of cash flow and changes in financial position, details regarding Toll Road Revenues (including information regarding the collection thereof), operating income, expenses, capital expenditures and budgeted operating results relating to the Toll Road Operations, (ii) all certificates, correspondence, data (including test data), documents, facts, files, information, investigations, materials, notices, plans, projections, records, reports, requests, samples, schedules, statements, studies, surveys, tests, test results, traffic information (including volume counts, classification counts, origin and destination data, speed and travel time information and vehicle jurisdiction data) analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by the Toll System, the Concessionaire or any of its Representatives in connection with the Toll Road or the Toll Road Operations and (iii) proper, complete and accurate books, records, accounts and documents of the Concessionaire relating to

the Toll Road Operations, including any Information that is stored electronically or on computer-related media; *provided, however,* that nothing in this Agreement shall require the disclosure by any Party of Information that is protected by attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to the other Party.

"Institutional Lender" means (A) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects, (B) any (i) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of a state of the United States, (iii) pension fund, foundation or university or college endowment fund, (iv) entity which is formed for the purpose of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the Securities Act, (v) Person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the Securities Act within one year of its making (provided that an entity described in this clause (B) shall only qualify as an Institutional Lender if it is subject to the jurisdiction of state and federal courts in the State in any actions), (C) any "qualified institutional buyer" as defined under Rule 144(A) under the Securities Act or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms or (D) any other financial institution or entity designated by the Concessionaire and Approved by the IFA (provided that such institution or entity, in its activity under this Agreement, shall be acceptable under then current guidelines and practices of the State); *provided, however,* that each such entity (other than entities described in clause (B)(iv), and clause (C) of this definition) or combination of such entities if the Institutional Lender shall be a combination of such entities shall have individual or combined assets, as the case may be, of not less than $1 billion; *provided, further,* that an entity described in clause (B)(iv) of this definition shall have assets of not less than $100 million.

"ISP" means the Indiana State Police, its successors or any other public law enforcement service provider permitted to assume the responsibilities of the Indiana State Police.

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

"Lease" means an arrangement that has been Approved by the IFA pursuant to which all or a portion of the Concessionaire Interest is sold or transferred by the Concessionaire to a Lessor and leased back to the Concessionaire for a period that ends on or prior to the scheduled End Date; *provided that* to the extent that such arrangement is substantially in the form of this Agreement, the Approval of the IFA shall not be required.

"Lease Year" means (1) if the Closing Date occurs on the first day of a calendar month, the 12-month period beginning on the Closing Date or (ii) if the Closing Date does not occur on the first day of a calendar month, the period from the Closing Date through the end of the

calendar month in which the Closing Date occurred and the next succeeding 12-month period and, in either case of clause (i) or (ii), each succeeding 12-month period.

"Leasehold Mortgage" means any Lease, indenture, mortgage, deed of trust or other security agreement or arrangement, including a securitization transaction with respect to Toll Revenues, encumbering any or all of the Concessionaire Interest, in each case that satisfies all of the conditions in Section 18.1.

"Leasehold Mortgagee" means the holder or beneficiary of a Leasehold Mortgage, including the Lessor in a Lease or Leveraged Lease.

"Leasehold Mortgage Debt" means any bona fide debt (including principal, accrued interest, and customary and reasonable lender or financial insurer, agent and trustee fees, costs, premiums, expenses and reimbursement obligations with respect thereto and including all payment obligations under interest rate hedging agreements with respect thereto and reimbursement obligations with respect thereto to any financial insurer) or an assignment in connection with a securitization transaction secured by a Leasehold Mortgage and granted to a Person pursuant to an agreement entered into prior to the occurrence of the Adverse Action or IFA Default giving rise to the payment of amounts for or in respect of termination under this Agreement. For purposes of determining Toll Road Concession Value, Leasehold Mortgage Debt shall not include (i) debt from an Affiliate of the Concessionaire or the Operator, unless such debt is on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith and is not subordinated with respect to the payment of principal or interest to debt of another secured lender (except to the extent such Affiliate lender is participating in a public or private offering of subordinated Leasehold Mortgage Debt with other lenders that are not Affiliates); (ii) any increase in debt to the extent such increase is the result of an agreement or other arrangement entered into after the Concessionaire was aware (or should have been aware, using reasonable due diligence) of the prospective occurrence of an event giving rise to the payment of the Toll Road Concession Value; or (iii) any debt with respect to which the Leasehold Mortgagee did not provide the IFA with notice of its Leasehold Mortgage in accordance with the Leasehold Mortgagee Notice Requirements. Notwithstanding anything to the contrary set forth in this definition, except with respect to debt incurred or committed on or prior to the Closing Date, all of which incurred or committed debt shall be deemed to be Leasehold Mortgage Debt, Leasehold Mortgage Debt shall not include any new debt incurred or committed following the Closing Date (it being understood and agreed by the parties hereto that any capitalization of interest or accretion of principal or other committed increases on any debt incurred or committed on or prior to the Closing Date shall not constitute new debt) unless (A) the Concessionaire has provided the IFA with a written appraisal (at the Concessionaire's expense and by an independent third party appraiser described under "Toll Road Concession Value") of the fair market value of the Concessionaire Interest at the time of the incurrence or commitment of such new debt, and (B) such appraisal confirms the aggregate amount of Leasehold Mortgage Debt after giving effect to the incurrence or commitment of any such new debt) is not in excess of the fair market value of the Concessionaire Interest set forth in such appraisal at the time of incurrence or commitment of such new debt *provided* that any capitalization of interest or accretion of principal or other committed increases on any debt set forth in such appraisal shall constitute Leasehold Mortgage Debt to the extent such debt constitutes Leasehold Mortgage Debt on the date such appraisal is given; and *provided, further*,

that the Parties agree that notwithstanding the requirements of the foregoing sub-clauses (A) and (B), the amount of Rent paid at closing shall be deemed to constitute the fair market value of the Toll Road for a period of six months after the Closing Date and, as such, no appraisal shall be required within such six-month period.

"Leasehold Mortgagee Notice Requirements" means the delivery by a holder or beneficiary of a Leasehold Mortgage to the IFA, not later than 10 Business Days after the execution and delivery of such Leasehold Mortgage by the Concessionaire, of a true and complete copy of the executed original of such Leasehold Mortgage, together with a notice containing the name and post office address of the holder or beneficiary of such Leasehold Mortgage.

"Leasehold Mortgagee's Notice" has the meaning ascribed thereto in Section 18.8(a).

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

"Letter of Credit" means an irrevocable, unconditional, commercial letter of credit, in favor of the IFA, in form and content reasonably acceptable to the IFA, payable in U.S. dollars upon presentation of a sight draft and a certificate confirming that the IFA has the right to draw under such letter of credit in the amount of such sight draft, without presentation of any other document, statement or authorization, which letter of credit (i) is issued by a commercial bank or trust company that is a member of the New York Clearing House Association and that has a current credit rating of Al or better by Standard & Poor's Ratings Services and an equivalent credit rating by another nationally recognized rating agency (or an equivalent credit rating from at least two nationally recognized rating agencies if the named rating agency ceases to publish ratings) (or such other commercial bank or trust company reasonably acceptable to the IFA prior to the submission of the letter of credit), and (ii) provides for the continuance of such letter of credit for a period of at least one year or as otherwise provided in this Agreement. The office for presentment of sight drafts specified in the Letter of Credit shall be located at a specified street address within the City of Indianapolis. For the avoidance of doubt, the obligations of the account party during the Term to reimburse the issuer for draws under the Letter of Credit may be secured by a Leasehold Mortgage.

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

segments between interchanges, ramps, ramp junctions with the mainline and crossroad, and weave zones).

"Leveraged Lease" means a Lease in which the Lessor has borrowed a portion of the purchase price of the interest in the Concessionaire Interest acquired by the Lessor and granted to the lenders of those funds a security interest in that interest.

"LOC" has the meaning ascribed thereto in Section 2.3.

"Loss" means, with respect to any Person, any loss, liability, damage, penalty, charge or out-of-pocket and documented cost or expense actually suffered or incurred by such Person, but excluding any special, indirect and consequential damages and any contingent liability until such liability becomes actual.

"M./W.B.E.s" has the meaning ascribed thereto in Section 11.6.

"Mandatory Expansion Projects" has the meaning ascribed thereto in Section 5.5(a).

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

"Measurement Date" shall mean the Closing Date and each June 30 thereafter.

"Minimum LOS" has the meaning ascribed thereto in Section 5.5(b).

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

"Notice Period" has the meaning ascribed thereto in Section 12.4(b).

"Offsets" has the meaning ascribed thereto in Section 12.11(a).

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

"Operating Agreements and Plans" has the meaning ascribed thereto in Section 3.14.

"Operating Standards" means the standards, specifications, policies, procedures and processes that apply to the operation, maintenance, rehabilitation and tolling of, and capital improvements to, the Toll Road set forth on Schedule 2, including any plans submitted by the Concessionaire to IFA pursuant to the Operating Standards. To the extent that any term or provision set forth in Schedule 2 or incorporated by reference in Schedule 2 conflicts with any term or provision specified in this Agreement, then such term or provision of this Agreement shall govern and shall supersede any such conflicting term or provision.

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

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

"Per Capita Nominal GDP" means the "U.S. Annual Per Capita Gross Domestic Product (in current dollars)" (not seasonally adjusted) as published by the U.S. Department of Commerce, Bureau of Economic Analysis, it being understood that for purposes of using such indicator at a specific point in time, the "U.S. Annual Per Capita Gross Domestic Product (in current dollars)" (not seasonally adjusted) published by the U.S. Department of Commerce, Bureau of Economic Analysis for the calendar year immediately preceding such specific point in time is to be used, *provided, however,* that if the measurement of Per Capita Nominal GDP is discontinued or revised during the Term, such other indicator or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Per Capita Nominal GDP had not been discontinued or revised.

"Permitted Concessionaire Encumbrance" means, with respect to the Toll Road: (i) any Encumbrance that is being contested in accordance with Section 3.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (ii) any (A) lien or security interest for obligations not yet due and payable to a Contractor or other Person, (B) any statutory lien, deposit or other non-service lien or (C) lien, deposit or pledge to secure mandatory statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature, any of which are incurred in the ordinary course of business of the Toll Road Operations and either (A) not delinquent or (B) which are being contested by the Concessionaire in accordance with Section 3.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's, or other like Encumbrances arising in the ordinary course of business of the Toll Road or the Concessionaire's performance of its obligations hereunder, and either (A) not delinquent or (B) which are being contested by the Concessionaire in accordance with Section 3.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iv) any right reserved to or vested in any Governmental Authority by any statutory provision; (v) any other Encumbrance permitted hereunder (including any Leasehold Mortgage (and financing statements relating thereto) and any Encumbrance created in connection with any financing permitted hereunder and any Encumbrance granted in connection with an Expansion); (vi) liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance, social security and other governmental rules and that do not in the aggregate materially impair the use, value or operation of the Toll Road;

(vii) any Encumbrances created, incurred, assumed or suffered to exist by the State or any Person claiming through it; (viii) any reasonable restriction on future uses of the Toll Road Land arising in connection with the remediation or release of Hazardous Substances; and (ix) any amendment, extension, renewal or replacement of any of the foregoing.

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

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

"Qualified Person" means any Person that is (a) listed on the Qualified Persons Letter to be provided by the Concessionaire to the IFA and accepted by the IFA prior to Closing, and/or (b) (i) domiciled in, or organized under the laws of, the United States of America, Canada, Australia, any member state of the European Union, or the country in which the transferor is organized or domiciled (and, in the case in which the Qualified Person is organized or domiciled in a country other than the United States of America, it or its Affiliates are authorized to do business in the United States of America) and (ii) is an investor that is a "qualified institutional buyer" as defined in Rule 144A under the Securities Act purchasing for its own account.

"Qualified Persons Letter" means a letter from the Concessionaire to the IFA setting forth a list of Persons to be qualified as "Qualified Persons" which list was accepted by the IFA prior to the Closing.

"Rating Agency" means any of Duff & Phelps, Inc., Standard & Poor's Corporation, Moody's Investors Service, Inc. or Fitch Investors Service, Inc. or any of their respective successors.

"Rent" has the meaning ascribed thereto in Section 2.1. For the avoidance of doubt, the term "Rent" includes (x) rent for the lease referred to in Section 2.1(b)(i), (v) a fee for the grant of the Concession referred to in Section 2.1(b)(ii), and (z) consideration for the conveyance referred to in Section 2.1(b)(iii).

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

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

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

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

"Restoration" has the meaning ascribed thereto in Section 13.3(a).

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

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

"Rural Area" means a geographic area through which the Toll Road runs that is not an Urban Area.

"Securities Act" means the U.S. Securities Act of 1933, as amended.

"Short Form Lease" has the meaning ascribed thereto in Section 2.6.

"State" means the executive and legislative branches of the government of the State of Indiana (or any department, agency or instrumentality thereof).

"Tax" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs duties, permit fees, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind whatsoever payable, levied, collected, withheld or

assessed at any time, including any interest, penalty or addition thereto, whether disputed or not, including in each case utility rates or rents.

"Tax Benefit" has the meaning ascribed thereto in Section 12.10(c).

"Term" means the term of the lease and concession referred to in Section 2.1.

"Termination Damages" has the meaning ascribed thereto in Section 14.2(a).

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

"Through Trip" means a trip of the entire length of the Toll Road, in either direction.

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

"Title Commitment" has the meaning ascribed thereto in Section 2.4(a)(iv).

"Toll Revenues" has the meaning ascribed thereto in Section 7.3(a).

"Toll Road" means (i) the Toll Road Land and (ii) the Toll Road Facilities.

"Toll Road Assets" means the personal property of the IFA used in connection with operations at the Toll Road set forth on Schedule 2.1(a).

"Toll Road Bonds" means (i) the Indiana Toll Road Finance Authority Toll Road Revenue Refunding Bonds, Series 1985, issued in the aggregate principal amount of $256,970,000 dated September 1, 1985, (ii) the Indiana Toll Road Finance Authority Toll Road Revenue Refunding Bonds, Series 1987 dated February 15, 1987, issued in the aggregate principal amount of $184,745,000 and (iii) the Indiana Transportation Finance Authority Toll Road Lease Revenue Refunding Bonds, Series 1996 dated October 1, 1996, issued in the aggregate principal amount of $134,795,000.

"Toll Road Concession Value" means, at any given date, the fair market value of the Concessionaire Interest (determined without regard to the effect of the relevant Adverse Action or IFA Default) at the time of the occurrence of the relevant Adverse Action or IFA Default and taking into account reasonably foreseeable improvements to the Toll Road and the operations, traffic and revenues thereof, as determined pursuant to a written appraisal by an independent third party appraiser that is nationally recognized in appraising similar assets and that is acceptable to the IFA and the Concessionaire; *provided, however*, that the Toll Road Concession Value shall in no event be less than the amount of all Leasehold Mortgage Debt and any Breakage Costs related to the prepayment or satisfaction thereof on the End Date. If the Parties fail to agree upon such a single appraiser within 30 days after a Party requests the appointment thereof, then the IFA and the Concessionaire shall each appoint an independent third party appraiser and both such appraisers shall be instructed jointly to select a third independent third party appraiser to make the appraisal referred to above. The parties shall each pay 50% of the costs and expenses of any appraisal.

"Toll Road Contracts" means the agreements to which the IFA or the State is a party relating to the operations of the Toll Road, including the Assigned Toll Road Contracts.

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

"Toll Road Land" means those parcels of real property legally described in the Title Commitment and any land used for an Expansion contemplated hereunder, including all parcels of real property necessary for Toll Road Operations.

"Toll Road Legislation" has the meaning ascribed thereto in the recitals to this Agreement.

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

"Toll Road Revenues" has the meaning ascribed thereto in Section 7.3(a).

"Toll Road Services" means the services to be provided to the public by the Concessionaire in its capacity as grantee of the Concession under the Agreement.

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

"Tolling Regulation" means the requirements with respect to the tolling of the Toll Road set forth on Schedule 7.1.

"Traffic Study" has the meaning ascribed thereto in Section 5.5(b).

"Transaction" has the meaning ascribed thereto in Section 2.1.

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

"Transferee" has the meaning ascribed thereto in Section 17.1(a).

"Urban Area" means an area through which the Toll Road runs that lies within an Adjusted Urban Area Boundary, as set forth in the most recent Adjusted Urban Area Boundary maps approved by the Federal Highway Administration, the State and the applicable local government officials. Any area through which the Toll Road runs that is designated an Urban Area as of the Effective Date or at the time a Traffic Study is conducted shall thereafter be considered to be an Urban Area for purposes of this Agreement. As of the Effective Date, the following Toll Road mileposts are located in an Urban Area: milepost 0 through milepost 27, milepost 71.6 through milepost 81.5 and milepost 89.5 through milepost 93.0.

"Vendor" means any third party under contract or agreement (whether written or oral) with the Concessionaire to provide goods or services on the Toll Road to the users of the Toll Road.

"Vendor Revenues" has the meaning ascribed thereto in Section 7.3(a).

Section 1.2. Number and Gender. In this Agreement words in the singular include the plural and vice versa and words in one gender include all genders.

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

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

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

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

Section 1.7. Meaning of Discretion. In this Agreement, the word "discretion" with respect to any Person, unless specifically modified, means the sole and absolute discretion of such Person.

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

Section 1.9. Consents and Approvals. Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

Section 1.10. Trade Meanings. Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

Section 1.11. Laws. Provisions required by any existing or future Law to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either Party, this Agreement will be amended to make the

insertion; *provided, however,* that in no event will the failure to insert any such provision before or after this Agreement is signed prevent the enforcement of such provision. Unless specified otherwise, references to a Law are considered to be a reference to (i) the Law as it may be amended from time to time, (ii) all regulations and rules pertaining to or promulgated pursuant to such Law and (iii) all future Laws pertaining to the same or similar subject matter. Nothing in this Agreement shall fetter or otherwise interfere with the right and authority of the State to enact, administer, apply and enforce any Law. Except for Adverse Actions or if compensation or other relief is otherwise available or provided for pursuant to applicable Law or this Agreement, the Concessionaire shall not be entitled to claim or receive any compensation or other relief whatsoever as a result of the enactment, administration, application or enforcement any Law by the State.

Section 1.12. Currency. Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

Section 1.13. Generally Accepted Accounting Principles. All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with then generally accepted accounting principles in the United States of America, consistently applied.

Section 1.14. Calculation of Time. For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m. (Indianapolis time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Indianapolis time) on the next Business Day.

Section 1.15. Approvals, Consents and Performance by the IFA and the State.

(a) *Procedures.* Wherever the provisions of this Agreement require or provide for or permit an approval or consent by the IFA or the State of or to any action, Person, document, budget, list, plan or other matter contemplated by this Agreement, the following provisions shall apply: (i) such request for approval or consent must (1) contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, (2) clearly set forth the matter in respect of which such approval or consent is being sought, (3) form the sole subject matter of the correspondence containing such request for approval or consent, and (4) state clearly that such approval or consent is being sought; (ii) the IFA shall (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or is subject to the discretion of the IFA), within such time period set forth herein (or if no time period is provided, within 45 days, subject to the IFA's right to extend such period for an additional 15 days) after the giving of a notice by the Concessionaire requesting an approval or consent, advise the Concessionaire by notice either that it consents or approves or that it withholds its consent or approval, in which latter case it shall set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by the IFA acting reasonably, of the information or documentation provided; (iii) if the responding notice mentioned in clause (ii) of this Section 1.15(a) indicates that the

IFA does not approve or consent, the Concessionaire may take whatever steps may be necessary to satisfy the objections of the IFA set out in the responding notice and, thereupon, may resubmit such request for approval or consent from time to time and the provisions of this Section 1.15 shall again apply until such time as the approval or consent of the IFA is finally obtained; (iv) if the disapproval or withholding of consent mentioned in clause (iii) of this Section 1.15(a) is subsequently overruled, such approval or consent shall be deemed to have been given on the date of the final determination of such overruling; and (v) for the avoidance of doubt, any dispute as to whether or not a consent or approval has been unreasonably withheld, conditioned or delayed shall be resolved in accordance with the provisions of Article 19.

(b) *Authority of the IFA.* Wherever this Agreement provides that an act is to be taken or performed or approval or consent is to be given by the IFA, in addition to the IFA, such act may be taken or performed or approval or consent may be given by the Governor, or by the Director of the State agency to which the Governor has delegated such authority and the Concessionaire may rely thereon in all respects.

(c) *Approved Documents.* Subject to the other provisions hereof, wherever in this Agreement an approval or consent is required with respect to any document, proposal, certificate, plan, drawing, specification, contract agreement, budget, schedule, report or other written instrument whatsoever (a "Document"), following such Approval such Document shall not be amended, supplemented, replaced, revised, modified, altered or changed in any manner whatsoever without obtaining a further Approval in accordance with the provisions of this Section 1.15.

ARTICLE 2.
THE TRANSACTION; CLOSING; CONDITIONS PRECEDENT; COVENANTS

Section 2.1. Grant of Lease. Upon the terms and subject to the conditions of this Agreement, effective at the Time of Closing, (a) the Concessionaire shall pay the IFA the exact amount of $_____ in cash (the "Rent") and (b) the IFA shall (i) demise and lease the Toll Road Land and the Toll Road Facilities to the Concessionaire free and clear of Encumbrances other than Permitted IFA Encumbrances for and during the term (the "Term") commencing on the Closing Date and expiring on the seventy-fifth (75th) anniversary of the Closing Date (or such later date as required pursuant to the terms of this Agreement in connection with the occurrence of any Delay Events), unless terminated earlier as herein provided, (ii) grant the Concessionaire an exclusive franchise and license for and during the Term to provide Toll Road Services, and in connection therewith to operate, manage, maintain, rehabilitate and toll the Toll Road for Highway Purposes and otherwise in accordance with and pursuant to this Agreement, and (iii) assign, transfer and otherwise convey to the Concessionaire or cause the relevant State agency to assign, transfer, and otherwise convey to the Concessionaire each of the Toll Road Assets and Assigned Toll Road Contracts, and the Concessionaire shall accept each such demise, lease, grant, assignment, transfer and conveyance (collectively, the "Transaction").

Section 2.2. Closing.

(a) The closing of the Transaction (the "Closing") shall take place on June 30, 2006 or such other date agreed to in writing by the IFA and the Concessionaire (the "Closing Date"). The Closing shall be held at the offices of Ice Miller LLP, One American Square, Suite 3100, Indianapolis, Indiana 46282-0200 or such other place agreed to in writing by the IFA and the Concessionaire. At the Time of Closing, the Concessionaire shall deliver or cause to be delivered to the IFA same-day funds by wire transfer in the amount of the Rent (less the amount of any Cash Deposit (plus interest thereon) that the Concessionaire previously paid pursuant to Section 2.3(a)) in full payment for the Concessionaire Interest, and upon receipt of such payment the Transaction shall be effective. Upon receipt of the funds described in the preceding sentence, the IFA shall immediately cancel and return the LOC, if any, in accordance with the Concessionaire's instructions.

(b) All charges, costs and expenses with respect to Assumed Liabilities shall be prorated between the IFA and the Concessionaire as of the time of Closing on the Closing Date based upon the actual number of days in the month and a 365-day year (and the hours elapsed during the day on the Closing Date) and the required payment resulting from such proration shall be added to or subtracted from the Rent accordingly. If final prorations cannot be made at the Closing for any item being prorated under this Section 2.2(b), then the IFA and the Concessionaire shall allocate such items on a fair and equitable basis as soon as revenue statements, invoices or bills are available, with final adjustment to be made as soon as reasonably possible after the Closing Date. The IFA and the Concessionaire shall have reasonable access to, and the right to inspect and audit, the other's books to confirm the final prorations.

Section 2.3. Deposit.

(a) The IFA acknowledges receipt from the Concessionaire of cash (the "Cash Deposit") or one or more Letters of Credit with a term of at least 180 days from the date hereof (the "LOC"), in an aggregate amount equal to 10% of the Rent, to be held by the IFA for the sole purpose described in clause (b) below. The IFA shall deposit any Cash Deposit with a Depositary, which shall invest such amount in Eligible Investments pending Closing.

(b) If the IFA terminates this Agreement pursuant to Section 2.4(d)(iv), then the IFA shall be entitled to (x) retain any Cash Deposit and all interest earned thereon or (y) without notice to the Concessionaire, immediately draw the full amount of the LOC upon presentation of a sight draft and a certificate confirming that the IFA has the right to draw under the LOC in the amount of such sight draft, and the IFA shall be entitled to retain all of the proceeds of the LOC; in each case, as the sole remedy or right of the IFA against the Concessionaire hereunder (provided that this limitation shall not apply in the event of fraud or intentional misrepresentation), *provided, however,* that if this Agreement is terminated for any other reason, the IFA shall return any Cash Deposit and all interest earned thereon or deliver, in accordance with the Concessionaire's reasonable instructions, the LOC and agree to cancel the LOC, in each case, immediately following any such termination (provided that this limitation shall not apply in the event of fraud or intentional misrepresentation). Except in cases involving fraud or willful breach by the Concessionaire, the right of the IFA to

retain the Cash Deposit or draw the LOC is intended to be, and shall constitute, liquidated damages, and any payment thereof to the IFA shall terminate the IFA's rights and remedies in all respects.

(c) At Closing, upon the satisfaction of the conditions set forth in Section 2.4(a), (b) and (c), the IFA shall be entitled to withdraw the Cash Deposit as a credit against the Rent.

Section 2.4. Conditions Precedent; Termination.

(a) *Conditions for the Benefit of the Concessionaire.* The Concessionaire shall be obliged to complete the Closing only if each of the following conditions has been satisfied in full at or before the Time of Closing, unless waived by the Concessionaire: (i) the representations and warranties of the IFA set forth in Section 9.1 shall be true and correct, in all material respects, on and as of the date hereof and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except (1) that representations and warranties that by their terms are applicable only as of the date of this Agreement or some other date need be true and correct only as of such date and (2) for failures of representations and warranties to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have a Material Adverse Effect; (ii) the IFA shall not be in material breach of any material covenant on its part contained in this Agreement which is to be performed or complied with by the IFA at or prior to the Time of Closing; (iii) the IFA shall have arranged for the deposit of funds from the Rent sufficient to provide for the payment, in full, of all obligations payable from and secured by the Toll Revenues or the Toll Road and outstanding at the Time of Closing (including all outstanding Toll Road Bonds) in such a manner that such obligations shall be legally defeased on the Closing Date and no longer treated as outstanding under the documents under which such obligations were issued and are secured and the IFA shall have provided to the Concessionaire evidence reasonably satisfactory to it that any and all security interests and collateral securing any such obligations will be released in full as of the Time of Closing; (iv) the IFA shall have obtained and delivered to the Concessionaire, at the expense of the Concessionaire, a commitment for an ALTA (1992) Owner's policy of title insurance showing the IFA in title to the Toll Road, subject only to Permitted IFA Encumbrances and Permitted Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (iv) or clause (vii) of the definition of the term "Permitted Concessionaire Encumbrances") (the "Title Commitment"); (v) the Tolling Regulation shall have become effective; (vi) the IFA shall have delivered to the Concessionaire (A) a legal opinion of counsel to the IFA, in substantially the form attached hereto as Schedule 2.4(a), and (B) the estoppel certificate contemplated by Section 10.2; and (vi) the Lease Agreement, dated September 1, 1985, between IFA and the Indiana Department of Transportation regarding the operation and maintenance of the Toll Road shall have been terminated and have no further force and effect.

(b) *Conditions for the Benefit of the IFA.* The IFA shall be obliged to complete the Closing only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived by the IFA: (i) all representations and warranties of the Concessionaire in Section 9.2 shall be true and correct, in all material respects, on and as of the date hereof at and as of the Time of Closing with the same force and effect as if

made at and as of such time and date except (1) that representations and warranties that by their terms are applicable only as of the date of this Agreement or some other date need be true and correct only as of such date and (2) for failures of representations and warranties to be true or correct that individually or in the aggregate, have not had and are not reasonably likely to have a Material Adverse Effect on the ability of the Concessionaire to consummate the transactions contemplated hereby or perform its obligations hereunder; (ii) the Concessionaire shall not be in material breach of any material covenant on its part contained in this Agreement which is to be performed or complied with by the Concessionaire at or prior to the Time of Closing; (iii) the Concessionaire or the Operator shall have interviewed (or shall have given each employee the opportunity to be interviewed) in good faith for employment with the Operator following the Closing all Persons currently employed at the Toll Road who have applied for such positions; and (iv) the Concessionaire shall have delivered to the IFA a legal opinion of counsel to the Concessionaire, in substantially the form attached hereto as Schedule 2.4(b).

(c) *Mutual Conditions.* The IFA and the Concessionaire shall be obliged to complete the Closing only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived by both the IFA and the Concessionaire: (i) there shall be no preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction or other legal restraint or prohibition enjoining or preventing the consummation of the Transaction; and (ii) there shall be no action taken, or any Law enacted, entered, enforced or deemed applicable to the Transaction by any Governmental Authority of competent jurisdiction that makes the consummation of the Transaction illegal.

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

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

(ii) by either the IFA or the Concessionaire, upon notice to the other Party, if (A) any Governmental Authority of competent jurisdiction shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the Transaction, and such order, decree, ruling or other action has become final and nonappealable; *provided, however,* that the right to terminate this Agreement under this Section 2.4(d)(ii) shall not be available to any Party whose failure to comply with any provision of this Agreement has been the cause of, or resulted in, such action or (B) the Closing shall not have occurred as of 11:59 P.M. (Indianapolis time) on June 30, 2006;

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

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

(e) *Effect of Termination.* In the event of termination of this Agreement by either the IFA or the Concessionaire as provided in Section 2.4(d), this Agreement shall forthwith become void and there shall be no liability or obligation on the part of the IFA or the Concessionaire or their respective Representatives, except as set forth in Section 2.3(b), this Section 2.4(e), Article 12, Article 19 and Article 20 and except that no Party shall be relieved or released from any liabilities or damages arising out of its breach of this Agreement (subject to Section 2.3(b) in connection with the IFA's termination of this Agreement pursuant to Section 2.4(d)(iv). In the event that the Concessionaire terminates the Agreement pursuant to Section 2.4(d)(iii), the IFA will compensate the Concessionaire for all of the out-of-pocket costs incurred by the Concessionaire after the Effective Date in connection with the transactions contemplated by this Agreement, including, without limitation, the costs associated with the unwinding of any hedging instruments entered into in connection with the prospective financing of the Rent. In the event of termination pursuant to Section 2.4(d)(i), (ii) or (iii), the Cash Deposit shall be returned to Concessionaire, and to the extent the deposit is in the form of an LOC, the return to the Concessionaire of such LOC marked canceled.

Section 2.5. Covenants.

(a) *Cooperation.* From the date hereof up to the Time of Closing, the Parties shall cooperate with each other in order to permit the Closing to be consummated on the Closing Date.

(b) *Reasonable Efforts.* From the date hereof up to the Time of Closing, each Party shall use all reasonable efforts (i) to take, or cause to be taken, all actions necessary to comply promptly with all legal requirements which may be imposed on such Party to consummate the Transaction as promptly as practicable, and (ii) to obtain (and to cooperate with the other Party to obtain) any Consent of any Governmental Authority or any other public or private third party which is required to be obtained or made by such Party in connection with the consummation of the Transaction. Each Party shall promptly cooperate with and promptly furnish information to the other in connection with any such efforts by, or requirement imposed upon, any of them in connection with the foregoing.

(c) *Injunctions.* If any Governmental Authority of competent jurisdiction issues a preliminary or permanent injunction or temporary restraining order or other order before the Time of Closing which would prohibit or materially restrict or hinder the Closing, each Party shall use all reasonable efforts to have such injunction, decree or order dissolved or otherwise eliminated as promptly as possible and, in any event, prior to the Time of Closing. Any and all costs incurred by any Party pursuant to any action taken in accordance with this clause (c) shall be borne by the Party in respect of which such injunction, restraining order or other order has been entered.

(d) *Operation of the Toll Road.* From the date hereof up to the Time of Closing, the IFA shall cause the Toll Road to be operated in the ordinary course in a manner consistent with past practice and shall use all reasonable efforts to preserve the goodwill of the Toll Road and to maintain good business relationships with customers, suppliers and others having business dealings with the Toll Road, to maintain the Toll Road Assets in normal operating condition and repair in accordance with past practice (ordinary wear and tear excepted), to perform in all material respects all of its obligations under the Assigned Toll Road Contracts, not to enter into any material additional agreements that would be Assigned Toll Road Contracts, not to incur any indebtedness or Encumbrances that are not satisfied by the Closing Date (or retained by the IFA as an Excluded Liability after the Closing Date), and to cause the Toll Road to be operated in all material respects in accordance with all applicable Laws (except to the extent any non-compliance is being contested in good faith by appropriate proceedings), all to the end that the Toll Road as a going concern shall be unimpaired and leased to the Concessionaire at the Closing in a condition not materially worse than the condition as of the date hereof. It is understood and agreed that the IFA shall, up to and including the Time of Closing, be entitled to all of the cash or cash equivalents in or generated by the Toll Road. Without limiting the foregoing, the IFA shall not terminate, amend, modify or agree to a waiver of the terms of any Assigned Toll Road Contract or any Authorization related to the Toll Road after the date of this Agreement and before the Time of Closing (or in the case of any Assigned Toll Road Contract that has not been assigned or transferred to the Concessionaire as contemplated herein, before such assignment or transfer is completed) without the Concessionaire's consent, which shall not be unreasonably withheld, conditioned or delayed.

(e) *Policies of Insurance.* The IFA shall cause all applicable policies of insurance maintained in respect of the Toll Road to be continued in force from the date hereof up to the Time of Closing. At the Time of Closing, all such policies of insurance shall terminate and the Concessionaire shall be responsible for obtaining insurance for the Toll Road in accordance with the terms of this Agreement.

(f) *Disclosure of Changes.*

(i) From the date hereof up to the Time of Closing, each Party shall immediately disclose to the other Party any matter which becomes known to it which is inconsistent in any material respect with any of the representations or warranties contained in Article 9; and

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

(g) *Access to Information.* From the date hereof up to the Time of Closing, but subject to confidentiality obligations binding on the IFA with respect to any Person (provided that the same shall have been disclosed to the Concessionaire so that it can

evaluate the same and its impact), the IFA shall (i) give the Concessionaire and its Representatives reasonable access during normal business hours and on reasonable notice to the Toll Road, subject to the IFA's and State's policies and regulations regarding safety and security, (ii) permit the Concessionaire and its Representatives to make such inspections as they may reasonably request and (iii) to furnish the Concessionaire and its Representatives with such financial and operating data and other information that is available with respect to the Toll Road as they may from time to time reasonably request. The Concessionaire shall hold and will cause its Representatives to hold in strict confidence all documents and information concerning the Toll Road to the extent and in accordance with the terms and conditions of the confidentiality agreement between the IFA and _____ dated as of _____, 2005. After the Closing Date, the Concessionaire shall at the request of the IFA, provide reasonable assistance with respect to claims or actions brought by or against third parties based upon events or circumstances concerning the Toll Road and in that regard the Concessionaire shall (A) provide reasonable assistance in the collection of information or documents and (B) make the Concessionaire's employees available when reasonably requested by the IFA.

(h) *Transition.* From the date hereof up to the Time of Closing, the Parties shall cooperate with each other to ensure the orderly transition of control, custody, operation, management, maintenance, rehabilitation and tolling of the Toll Road at the Time of Closing. At the request of the Concessionaire, the IFA will provide (or cause to be provided by the State) to the Concessionaire, for up to eighteen (18) months following the Closing, the services of any employee whose primary responsibilities relate to the Toll Road who does not become an employee of the Concessionaire and remains with the IFA or the State (or the services of other IFA or State employees who are assigned for such purpose). All such services shall be provided for an amount equal to the actual cost to the IFA (or the State as the case may be), including employment costs and related overhead expenses allocable to such employees, as reasonably determined by the IFA, which amount shall be billed to the Concessionaire as soon as reasonably practicable following the end of each month and shall be payable by the Concessionaire within 30 days of receipt of any such statement, and upon such other reasonable terms and conditions as the IFA and the Concessionaire shall agree. During the Term, the Concessionaire and the Operator shall give employment preference for positions with the Toll Road to Indiana residents who are qualified for the position (as determined in the sole discretion of the Concessionaire or the Operator, as the case may be) and willing to accept the position on the terms being offered.

(i) *Casualty Loss Prior to Closing.* If prior to the Time of Closing, a material casualty loss, destruction or damage to any part of the Toll Road has occurred and this Agreement has not been terminated under Section 2.4(d), then the IFA at its option shall (i) promptly and diligently repair and rebuild the affected parts of the Toll Road to restore them to at least the same condition in which they were before the occurrence of such casualty loss, destruction or damage, (ii) if the affected parts of the Toll Road cannot prior to the Closing Date be repaired and/or rebuilt to restore them to the same condition in which they were before the occurrence of such casualty loss, the IFA shall make such repairs or restoration as can reasonably be completed prior to the Closing Date and prior to the Closing Date shall have provided to Concessionaire a plan for the completion of such repairs or restoration efforts following the Time of Closing at IFA's expense and subject to the

Concessionaire's reasonable approval and shall then complete such repairs or restoration in accordance with such plan (iii) authorize the Concessionaire to repair and rebuild the affected parts of the Toll Road, in which event the IFA shall assign to the Concessionaire all insurance and other proceeds payable by third-party insurers or other third parties in respect of such casualty loss, destruction or damage and enforce (with the cooperation of the Concessionaire) all of its rights, remedies and privileges under any applicable insurance policies with third-party insurers, provided that, to the extent that such proceeds are not sufficient to repair and rebuild the affected parts of the Toll Road and restore such affected parts to at least the same condition in which they were before the occurrence of the casualty loss, destruction or damage then the IFA shall reimburse the Concessionaire for the difference. The IFA shall pay the Concessionaire all Concession Compensation with respect to any repair or restoration required by this Section 2.5(i).

Section 2.6. Short Form Lease. At the Time of Closing, the Parties shall execute and deliver a short form lease (the "Short Form Lease") in a form reasonably agreed to by them, which they shall record in the Offices of the Recorders of each of Lake County, Porter County, LaPorte County, St. Joseph County, Elkhart County, LaGrange County and Steuben County. To the extent that changes are made to this Agreement with respect to the Term, leased property or other material matters set forth in the recorded Short Form Lease, the Parties shall execute, deliver and record an amendment to the recorded Short Form Lease reflecting such changes. The Parties agree not to record this Agreement itself.

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

Section 2.8. Intended Treatment for Federal and State Income Tax Purposes. This Agreement is intended for U.S. federal and state income tax purposes to be a sale of the Toll Road Facilities and Toll Road Assets to the Concessionaire and the grant to the Concessionaire of an exclusive franchise and license for and during the Term to provide Toll Road Services within the meaning of sections 197(d)(1)(D) and (E) of the Internal Revenue Code of 1986, as amended, and sections 1.197-2(b)(8) and (10) of the Income Tax Regulations thereunder.

ARTICLE 3.
TERMS OF THE LEASE

Section 3.1. Quiet Enjoyment; Present Condition.

(a) *Quiet Enjoyment.* The IFA agrees that if the Concessionaire shall perform all obligations and make all payments as provided hereunder, the Concessionaire shall, at all times during the Term, be entitled to and shall have the quiet possession and enjoyment of the Toll Road and the rights and privileges granted to the Concessionaire hereunder, subject to the provisions contained in this Agreement. The IFA acknowledges and agrees that the quiet possession and enjoyment of the Toll Road includes, without limitation, the IFA, the State or any local, city or county government authority in the State refraining from taking any action with respect to any of the ingress and egress ramps and roadways along the Toll

Road that would materially adversely affect Toll Road Operations for an extended period of time, except in accordance with Section 3.7(a) below. The IFA and the Concessionaire acknowledge that the Concessionaire's rights to operate the Toll Road as a public highway and charge tolls thereon are subject to the right of the IFA, in accordance with the terms of this Agreement, to monitor compliance with this Agreement to ensure that the Toll Road is used and operated as required by this Agreement. Any entry by the IFA or the State onto the Toll Road required or permitted under this Agreement shall not constitute a reentry, trespass or a breach of the covenant for quiet enjoyment contained in this Agreement. The IFA shall, at all times during the Term, defend its title to the Toll Road, the Concessionaire's leasehold interest in and to the Toll Road and the rights granted to the Concessionaire hereunder, or any portion thereof, against any Person claiming any interest adverse to the IFA, the State or the Concessionaire in the Toll Road, or any portion thereof, except where such adverse interest arises as a result of the act, omission, negligence, misconduct or violation of Law of the Concessionaire, its Affiliates or their respective Representatives.

(b) *Present Condition.* Except with respect to the completion of any repairs or restoration by the IFA pursuant to clause (ii) of Section 2.5(i) and except as specifically set forth in Section 3.2(d), Section 4.1(a) and Section 9.1, the Concessionaire understands, agrees and acknowledges that the Concessionaire (i) by the execution of this Agreement, agrees to accept the Toll Road "AS IS" at the Time of Closing and (ii) has inspected the Toll Road and is aware of its condition and acknowledges that the IFA neither has made nor is making any representation or warranty, express or implied, regarding the condition of the Toll Road (or any part thereof) or its suitability for the Concessionaire's proposed use.

Section 3.2. Toll Road Operations.

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

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

(c) *Assumed Liabilities.* The Concessionaire agrees to assume and discharge or perform when due, all debts, liabilities and obligations whatsoever relating to the Toll Road or the Toll Road Operations that occur, arise out of or relate to, or are based on facts or actions occurring, during the Term, but only to the extent such debts, liabilities or obligations do not arise from or relate to any breach by the IFA of any covenant, representation or warranty set forth in this Agreement (collectively, the "Assumed

Liabilities"); *provided, however,* that the Assumed Liabilities shall not include, and the IFA shall perform and discharge as and when due, any debts, liabilities and obligations (i) with respect to the IFA's obligations under this Agreement, (ii) arising out of Toll Road Operations prior to the Time of Closing, (iii) relating to the defeasance of any Toll Road Bonds or any other debt or obligations related to the Toll Road and incurred by the IFA or the State prior to the Time of Closing, (iv) with respect to Toll Road Contracts that are not Assigned Toll Road Contracts, (v) under any Environmental Law arising out of or relating to the ownership, operation or condition of the Toll Road at any time prior to the Time of Closing or any Hazardous Substance or other contaminant that was present on or migrated or escaped from the Toll Road Land or otherwise existed at any time prior to the Time of Closing and including, but not limited to, any debts, liabilities, and obligations related to the remediation of those certain specified environmental conditions set forth on Schedule 3.2 and any pre-existing conditions prior to the Time of Closing the manifestation of which occurs following the Time of Closing, and (vi) relating to design defects of the Toll Road committed prior to the Time of Closing (collectively, the "Excluded Liabilities").

(d) *Remediation Works.* The IFA hereby agrees to promptly implement and complete all remediation works set forth on Schedule 3.2 and discharge all debts, obligations and liabilities (including remedial measures related thereto) described in sub-clause (v) of clause (c) above and promptly pay all amounts related thereto. The obligation set forth in the preceding sentence shall not be subject to the limitations set forth in Section 12.9. The IFA hereby agrees to coordinate the implementation of such remediation work and its obligations with respect thereto with the Concessionaire. The IFA shall (i) use its best efforts to not materially interfere with the Toll Road Operations in the implementation and completion of such remediation works and discharge of debts, obligations and liabilities, and (ii) in its completion of such works and discharge of debts, obligations and liabilities, comply with all relevant Environmental Laws. If the IFA fails to implement or complete any of the remediation works contemplated herein or discharge the debts, obligations and liabilities contemplated in sub-clause (v) of clause (c) above, the Concessionaire, at its sole discretion, shall have the right to perform such work at the sole cost and expense of the IFA. In addition, the IFA shall pay to the Concessionaire any Concession Compensation in respect thereof, upon demand.

Section 3.3. Operator.

(a) *Engagement.* The Toll Road Operations shall, at all times during the Term, be under the direction and supervision of an active operator with the expertise, qualifications, experience, competence, skills and know-how to perform the Toll Road Operations in accordance with this Agreement (an "Operator") who may be the Concessionaire itself or any of its Affiliates. The Operator on the first day of the Term shall be the Concessionaire unless the Concessionaire has designated another Person to be the Operator and has provided specified information about such Person in writing to the IFA prior to the execution of this Agreement. The Concessionaire shall not engage or appoint a replacement Operator, unless the IFA has Approved such Operator (based upon a determination in accordance with Section 3.3(b)); *provided, however,* that a Change in Control of an Operator shall be deemed to be the appointment of a replacement Operator. The Operator shall at all times be subject to the direction, supervision and control (by ownership, contract or otherwise) of the

Concessionaire, and any delegation to an Operator shall not relieve the Concessionaire of any obligations, duties or liability hereunder. For purposes of this Agreement any and all acts or omissions of the Operator shall be deemed the acts or omissions of the Concessionaire, even if such acts or omissions were not reasonably foreseeable or were grossly negligent or willful on the part of the Operator. The Concessionaire shall immediately notify the IFA upon the termination or resignation of an Operator. Any agreement between the Concessionaire and any Operator shall by its terms terminate without penalty at the election of the IFA upon three Business Days' notice to such Operator upon the termination of this Agreement or at the election of the Operator upon three Business Days' notice to the IFA upon the termination of this Agreement. The Operator shall have no interest in or rights under this Agreement or the Toll Road unless the Operator is the Concessionaire itself.

(b) *Approval.* The IFA's Approval of a proposed replacement Operator may be withheld if the IFA reasonably determines that the engagement of such proposed Operator is prohibited by applicable Law or such proposed Operator is not capable of performing the Toll Road Operations in accordance with this Agreement, which determination may be based upon, or take into account, one or more of the following factors: (i) the financial strength and integrity of the proposed Operator, its direct or indirect beneficial owners and each of their respective Affiliates; (ii) the capitalization of the proposed Operator; (iii) the experience of the proposed Operator in operating toll roads and highways and performing other projects; (iv) the background and reputation of the proposed Operator, its direct or indirect beneficial owners, 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); (v) the proposed terms of the engagement of the Operator; and (vi) such other factor or factors as the State reasonably determines to be relevant, *provided* that (A) such factors shall be consistent with the terms of this Agreement and applicable Law, (B) such factors do not constitute an Adverse Action and (C) the IFA shall notify the Concessionaire of any such factors. The IFA shall have the right to reasonably condition its Approval of a proposed replacement Operator. Any disputes between the IFA and the Concessionaire with respect to the appointment or replacement of the Operator shall be settled in accordance with the provisions of Article 19. Notwithstanding the foregoing, in the event that, upon termination or resignation of the Operator a replacement Operator acceptable to the IFA has not been appointed, the Concessionaire shall have the right to appoint, for a period not to exceed six months, an interim Operator to operate the Toll Road until a permanent Operator can be selected pursuant to this Agreement. This interim Operator may be selected without approval by the IFA so long as the Concessionaire can demonstrate that the interim Operator meets the following criteria: (1) the interim Operator has experience in operating toll roads similar to the Toll Road; and (2) the interim Operator has a tangible net worth of at least $50 million.

Section 3.4. Authorizations; Qualifications.

(a) *Compliance.* The Concessionaire shall obtain, comply with, promptly renew and maintain in good standing all Authorizations, *provided, however,* that if the Concessionaire is, at any time during the Term, required to obtain any Authorization from a Governmental

Authority that the IFA was not required to obtain in connection with its operation of the Toll Road prior to the Time of Closing, the IFA shall use its reasonable efforts to assist the Concessionaire in obtaining such Authorization.

(b) *Qualifications.* The Concessionaire shall, at all times during the Term, maintain in full force and effect its existence and all qualifications necessary to carry on its business pertaining to the Toll Road Operations, including all material rights, franchises, licenses, privileges and qualifications required in connection with the Toll Road Operations.

Section 3.5. No Encumbrances.

(a) *By the Concessionaire.* The Concessionaire shall not do any act or thing that will create any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the Toll Road and shall promptly remove any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the Toll Road, unless the Encumbrance came into existence as a result of an act of or omission by the IFA, the State or any municipality therein or a Person claiming through any of them which in turn was not caused by an act or omission of the Concessionaire. The Concessionaire shall not be deemed to be in default hereunder if the Concessionaire continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof, by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance, provided that the Concessionaire has given (i) advance notification to the IFA that it is the intent of the Concessionaire to contest the validity or collection thereof and (ii) a satisfactory indemnity to the IFA or deposit with the IFA a Letter of Credit, indemnity bond, surety bond, cash or Eligible Investment reasonably satisfactory to the IFA in an amount equal to the amount of the claim or Encumbrance, plus such interest and penalties, court costs, or other charges as the IFA may reasonably estimate to be payable by the Concessionaire at the conclusion of such contest or as is required to provide insurance over any potential Encumbrance; *provided, however,* that in the event such Letter of Credit, cash or Eligible Investment shall be so deposited, the same shall be held until such claim or other Encumbrance shall have been released and discharged and shall thereupon be returned to the Concessionaire, less any amounts expended by the IFA or the State to procure such release or discharge, or any loss, cost, damage, reasonable attorneys' fees or expense incurred by the IFA or the State by virtue of the contest of such Encumbrance.

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

(c) *Removal.* Each Party, if requested by the other Party and at such other Party's costs and expense, shall use its reasonable efforts to assist such other Party in attempting to remove any Encumbrance that has come into existence as a result of an act of or omission by such other Party.

Section 3.6. Single Purpose Covenants. The Concessionaire shall, at all times during the Term, (i) be formed and organized solely for the purpose of owning the Concessionaire Interest and using, possessing, leasing, operating and otherwise dealing with the Toll Road (and carrying out any incidental activities thereto), (ii) not engage in any business unrelated to clause (i) above, (iii) not have any assets other than those related to its activities in accordance with clauses (i) and (ii) above, (iv) maintain its own separate books and records and its own accounts, in each case which are separate and apart from the books and records and accounts of any other Person; *provided, however*, that the Concessionaire's assets may be included in a consolidated financial statement of a direct or indirect shareholder of the Concessionaire if inclusion on such consolidated financial statement is required to comply with the requirement of generally accepted accounting principles of the relevant jurisdiction, but only if (1) such consolidated financial statement shall be appropriately footnoted to the effect that the Concessionaire's assets are owned by the Concessionaire and that they are being included on the consolidated financial statement of such shareholder only to comply with the requirements of generally accepted accounting principles of the relevant jurisdiction, and (2) such assets shall be listed on the Concessionaire's own separate balance sheet, (v) hold itself out as being a Person, separate and apart from any other Person, (vi) not commingle its funds or assets with those of any other Person, (vii) conduct its own business in its own name, (viii) except as noted in clause (iv) above, maintain separate financial statements and file its own tax returns (to the extent required by applicable Law), (ix) pay its own debts and liabilities when they become due out of its own funds, (x) observe all corporate, limited partnership or limited liability company, as applicable, formalities and do all things necessary to preserve its existence, (xi) pay the salaries of its own employees, if any, and maintain a sufficient number of employees in light of its contemplated business operations, (xii) not guarantee or otherwise obligate itself with respect to the debts of any other Person, or hold out its credit as being available to satisfy the obligations of any other Person, (xiii) not acquire obligations of or securities issued by its shareholders, partners or members, as applicable, (xiv) allocate fairly and reasonably shared expenses, including any overhead for shared office space, (xv) use separate stationery, invoices and checks, (xvi) except as expressly permitted hereby or by any Leasehold Mortgage or in connection in the ordinary course of business of the Toll Road, not pledge its assets for the benefit of any other Person or make any loans or advances to any other Person, (xvii) correct any known misunderstanding regarding its separate identity, (xviii) maintain adequate capital in light of its contemplated business operations and (xix) have organizational documents which comply with the requirements set forth in this Section 3.6.

Section 3.7. Rights of the IFA and State to Access and Perform Work on the Toll Road.

(a) *Reservation of Rights.* The IFA reserves (for itself, the State and their respective Representatives, as well as grantees, tenants, mortgagees, licensees and others claiming by, through or under the IFA or the State) and shall, at all times during the Term, have the right to enter the Toll Road and each and every part thereof at all reasonable times and upon

reasonable prior notice: (i) to inspect the Toll Road or determine whether or not the Concessionaire is in compliance with its obligations under this Agreement or applicable Law pursuant to Section 8.3; (ii) if a Concessionaire Default then exists, to make any necessary repairs to the Toll Road and perform any work therein pursuant to Section 16.1(b)(iii); (iii) in the event of an actual or reported emergency, danger, circumstance, event or action that is reasonably believed by the IFA or its designee to have caused (or to present the imminent potential to cause) either (A) injury to individuals or damage to property or (B) an impairment to the continuous operation of the Toll Road as a public highway, and if the IFA in its sole discretion determines that the Concessionaire is not then taking all necessary steps to rectify or deal therewith, then the IFA or its designee shall be authorized to immediately and without notice take such actions as it determines may be necessary to rectify such emergency, danger, circumstance or event or to restore the operation of the Toll Road; (iv) to design, construct, operate, manage, maintain, repair and rehabilitate any existing or future roads, streets or highways (other than the Toll Road) adjacent to, above or under the Toll Road in accordance with the terms set forth in this Agreement; (v) to use the Toll Road for all purposes not inconsistent with the rights granted to the Concessionaire in this Agreement (including any purpose not reasonably related to the generation of Toll Road Revenues); (vi) at its own cost and expense to (A) install, design, manage, maintain, inspect, repair and rehabilitate any existing or future utilities or similar services or safety measures, including, but not limited to, Project Hoosier SAFE-T, (whether provided by the IFA, the State or third parties) in, on, along, under, across, over or through the Toll Road (including water and sewer lines, power transmission lines, fiber optic cable, surveillance equipment and other communications) provided that the IFA shall not be required to reimburse the Concessionaire with respect to the use of Toll Road Facilities for such services or measures to the extent they do not materially interfere with the use of such Toll Road Facilities for Toll Road Operations, (B) grant easements and rights on the Toll Road for the benefit of suppliers or owners of any such utilities, services or measures and (C) use the Toll Road in connection with any such installation, design, management, maintenance, repair or rehabilitation (provided that notwithstanding the foregoing, the Concessionaire shall have the right, at all times during the Term, to install, design, manage, maintain, repair and rehabilitate utilities or other services for its own account (and not for lease, resale or service to third parties) to the extent that the said utilities or services are necessary for the Toll Road Operations); (vii) to perform any actions taken to address releases of Hazardous Substances to the Environment occurring prior to the time of Closing; (viii) to perform any activities related to the completion of the remediation projects listed on Schedule 3.2; and (ix) to, solely in accordance with the terms hereof, do any other act or thing that the IFA or the State may be obligated to do pursuant to the terms of this Agreement or have a right to do under this Agreement; *provided, however,* that the IFA shall use reasonable efforts to minimize interference with the Toll Road Operations in connection with any entry on the Toll Road pursuant to this Section 3.7(a). The IFA shall pay to the Concessionaire the Concession Compensation, upon demand by the Concessionaire, resulting from any entry or action on the Toll Road pursuant to clauses (iv), (v), (vi), (vii) and (viii) and, to the extent applicable pursuant to the terms of this Agreement, clause (ix)of this Section 3.7(a).

(b) *Access Rights.* The IFA, the State and their Representatives, during the progress of any work referred to in this Section 3.7, at no cost to the IFA, the State or their Representatives, shall have all necessary easement and access rights and may keep and store

at the Toll Road all necessary materials, tools, supplies, equipment, sheds, mobile trailers and other vehicles, in a reasonably neat and orderly fashion, in material compliance with all Laws (including Environmental Laws), and so as to not unreasonably interfere with the Concessionaire's conduct of Toll Road Operations. To the extent that the IFA or the State undertakes work or repairs under this Section 3.7 or any other provision of this Agreement, such work or repairs shall be commenced and diligently completed in a good and workmanlike manner, in accordance with any applicable Operating Standards and in such a manner as not to unreasonably interfere with the conduct of business in or use of such space to the extent reasonably possible without incurring any additional cost.

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

Section 3.8. Coordination.

(a) *Utility Coordination.* The Concessionaire shall be responsible for coordinating or ensuring the coordination of all Toll Road Operations with utilities and Persons having service lines, pipelines, transmission lines and other equipment, cables, systems and other apparatus in, on, under, over or adjacent to the Toll Road, in each case at the sole cost and expense of such utilities or other Persons. The Concessionaire shall cause provision to be made for the removal or temporary or permanent relocation and restoration of utilities and other services and any lines, equipment, cables, systems and other apparatus that intersect, interfere with, interface with or otherwise affect the Toll Road Operations and shall arrange for temporary rights of entry and access to utilities and other services to be made available that are necessary in connection with the Toll Road Operations or as may exist under this Agreement or applicable Law, in each case at the sole cost and expense of such utilities or other Persons. The IFA shall cooperate with the Concessionaire with respect to its obligations under this Section 3.8(a).

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

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

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

Section 3.10. Payment of Taxes. Except as otherwise provided herein, the Concessionaire shall pay when due all Taxes that are or become payable in respect of periods during the Term in respect of the operations at, occupancy of, or conduct of business in or from the Toll Road and fixtures or personal property included in the Toll Road Facilities. The IFA reserves the right, without being obligated to do so, to pay the amount of any such Taxes not timely paid by the Concessionaire, and the amount so paid by the IFA shall be deemed additional rent hereunder, due and payable by the Concessionaire immediately upon written demand by the IFA. The Concessionaire shall have the right to contest in good faith the validity or amount of any Taxes which it is responsible to pay under this Section 3.10, provided that (i) the Concessionaire has given prior notice to the IFA of each such contest, (ii) no contest by the Concessionaire may involve a reasonable possibility of forfeiture or sale of the Toll Road, and (iii) upon the final determination of any contest by the Concessionaire, if the Concessionaire has not already done so, the Concessionaire shall pay the amount found to be due, if any, together with any costs, penalties and interest. For avoidance of doubt, the Concessionaire shall not be liable for, and the IFA shall indemnify and hold the Concessionaire harmless from and against, any (A) property Tax imposed by the State, or any local, city or county government authority in the State, on the owner or lessee of the Toll Road Land or any fixtures or improvements thereto, (B) any sales, use or similar Tax imposed by the State or any local, city or county government authority in the State, on the Rent or the Toll Road Revenues or (C) any transfer, stamp, deed recording or similar tax payable by reason of the execution and delivery of this Agreement or the Short Form Lease or the recording of the Short Form Lease.

Section 3.11. Utilities. The Concessionaire shall pay when due all charges (including all applicable Taxes and fees) for gas, electricity, light, heat, power, telephone, water and other utilities and services used in the Toll Road Operations or supplied to the Toll Road during the Term. Upon request of the IFA, the Concessionaire shall forward to the IFA, within 15 days following the respective due dates, official receipts, photocopies thereof, or other evidence satisfactory to the IFA, acting reasonably, of the payment required to be made by the Concessionaire in accordance with this Section 3.11. The IFA shall offer to furnish to the Concessionaire for purposes of the Toll Road Operations any utilities that the IFA or the State is voluntarily and directly furnishing to other commercial users in the immediate vicinity of the Toll Road at such time, on rates and other terms as are applicable to other similarly situated

commercial users of such utilities, as may be amended from time to time; *provided, however*, that the IFA shall have no obligation or responsibility to furnish the Concessionaire with any other utilities and makes no representations or warranties as to the availability of any utilities. The IFA does not warrant that any utility services will be free from interruptions caused by war, insurrection, civil commotion, riots, acts of God, government action, terrorism, repairs, renewals, improvements, alterations, strikes, lockouts, picketing, whether legal or illegal, accidents, inability to obtain fuel or supplies or any other causes, and any such interruption of utility services shall never be deemed an Adverse Action or an eviction or disturbance of the Concessionaire's use and possession of the Toll Road or any part thereof, or render the IFA liable to the Concessionaire for damages or, unless the same constitutes a Delay Event, relieve the Concessionaire from performance of the Concessionaire's obligations under this Agreement. The IFA shall convey all legal rights and easements related to utilities services to the Concessionaire to the extent necessary for the Concessionaire to operate the Toll Road.

Section 3.12. Negotiations with Governmental Authorities. Prior to entering into any agreement with any Governmental Authority in connection with the Toll Road Operations (a "Government Agreement") that extends or could extend beyond the Term or pursuant to which the IFA or the State may incur any liability whatsoever thereunder, the Concessionaire shall submit such Government Agreement for Approval by the IFA (which Approval may be withheld, delayed or otherwise conditioned in the discretion of the IFA) prior to the execution and delivery thereof (except with respect to Government Agreements the absence of which may cause the Concessionaire or Toll Road Operations to fail to be in compliance with applicable Law or the terms of this Agreement, in which case the Concessionaire may enter into such Government Agreement upon notice to the IFA provided that the Concessionaire indemnifies the IFA for any Losses relating thereto). If the Concessionaire wishes the IFA to be a party to a Government Agreement, in the place and stead of, or in addition to, the Concessionaire, then the Concessionaire must provide notice of the proposed terms of such Government Agreement to the IFA for the IFA's Approval and all costs and expenses incurred by the IFA in connection with or related to such Government Agreement shall be borne by the Concessionaire.

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

Section 3.14. Assignment of Operating Agreements and Plans. At the request of the IFA, the Concessionaire shall collaterally assign to the IFA, in form and substance satisfactory to the IFA, acting reasonably, all of the right, title and interest of the Concessionaire in, to and under all or any of the Operating Agreements and all present and future specifications, plans, software (including source code), drawings, information and documentation in relation to the Toll Road Operations (collectively, the "Operating Agreements and Plans") as collateral security to the IFA for the observance and performance by the Concessionaire of its covenants and obligations under this Agreement. The Concessionaire covenants that all of the right, title and interest of the Concessionaire in, to and under all Operating Agreements and Plans entered into

or created after the Time of Closing shall be collaterally assignable to the IFA for the purposes of this Section 3.14. The IFA acknowledges that the Operating Agreements and Plans may also be assigned as security to a Leasehold Mortgagee and that each of the IFA and such Leasehold Mortgagee shall be entitled to use the Operating Agreements and Plans in enforcing their respective security as hereinafter provided. Without limiting the generality of the foregoing, but subject to the IFA's assumption of liabilities under the Operating Agreements and Plans, the IFA shall be entitled to use the Operating Agreements and Plans in each of the following events: (i) if the IFA terminates this Agreement without a concession agreement being granted to a Leasehold Mortgagee or nominee thereof pursuant to the provisions of Article 18; and (ii) if the IFA elects to use the Operating Agreements and Plans to remedy a Concessionaire Default under this Agreement. Notwithstanding the foregoing, in the event that any such Leasehold Mortgagee has entered into possession or is diligently enforcing and continues to diligently enforce its security, whether by way of appointment of a receiver or receiver and manager, foreclosure or power of sale in accordance with Article 18, or otherwise, and is using the Operating Agreements and Plans in respect of the Toll Road Operations, the IFA shall not be entitled to use the Operating Agreements and Plans in enforcing its security, it being acknowledged that any assignment of the Operating Agreements and Plans to a Leasehold Mortgagee shall have priority over any assignment of the Operating Agreements and Plans to the IFA and the IFA shall cooperate with the Concessionaire and the Leasehold Mortgagee in connection with ensuring such priority, including without limitation that the IFA shall execute and deliver to the Leasehold Mortgagee a customary intercreditor and subordination agreement acknowledging such priority. The Concessionaire shall promptly deliver to the IFA, at the sole cost and expense of the Concessionaire, forthwith after completion or execution and delivery, a copy of each item of the Operating Agreements and Plans.

Section 3.15. Name.

(a) The name designated for the Toll Road is the "Indiana East West Toll Road" and such name may not be changed by the Concessionaire without the prior Approval of the IFA, which Approval may be withheld, delayed or otherwise conditioned in the discretion of the IFA.

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

(c) The IFA grants to the Concessionaire a non-exclusive, non-transferable, royalty-free license during the Term to use the names "Indiana Toll Road" or "Indiana East West Toll Road" together with all existing and future developed logos and marks used in connection with the Toll Road Operations, solely in connection with the performance of the

Concessionaire's obligation and exercise of rights under this Agreement. The Concessionaire may grant sublicenses of the same to the Operator and to Vendors.

Section 3.16. Engagement of Police.

(a) *Required Level of Police Service.* The IFA covenants that following the Time of Closing, the ISP will provide traffic patrol and traffic law enforcement services on the Toll Road at the same level as the State provides on streets and roadways owned by the State or the IFA, which shall, in no event, be less than that provided on the Toll Road as of the Closing Date, and, in connection therewith, the ISP shall be empowered and shall use its best efforts to enforce all applicable Laws within the ISP's jurisdiction. The IFA shall be responsible for paying the ISP for the delivery of such services and Concessionaire shall pay to the IFA the quarterly amount determined in accordance with Section 3.16(b), below, to reimburse the IFA for the cost of such services; *provided that*, the Concessionaire shall become a third party beneficiary with full enforcement rights (or the IFA shall enforce the Concessionaire's third party beneficiary rights) to any arrangement or agreement between the ISP and the IFA related to the Toll Road. Payment by the Concessionaire shall be on a quarterly basis, commencing on the first quarter following the Closing Date, with payment due on the first Business Day of such quarter. The Concessionaire acknowledges that ISP police officers serving the Toll Road may provide other police services in the general vicinity of the Toll Road pursuant to ISP direction, provided that such other services do not unreasonably interfere with the level of police services to be provided on the Toll Road. In addition, the Concessionaire shall have the right, at its discretion, to contract with the ISP for enhanced levels of ISP service for the control of traffic for special events, construction or maintenance activities, predicted peak traffic patterns or as otherwise needed (and in each case, at the Concessionaire's expense) or may obtain such services from another entity, subject to the IFA's Approval. The failure of the Concessionaire to negotiate an agreement acceptable to Concessionaire with respect to such enhanced levels of services shall not constitute an Adverse Action or Delay Event. In addition the Concessionaire acknowledges that the IFA or State, at its own expense, may provide additional patrol and law enforcement services on the Toll Road at such times and for as long as it determines in its sole discretion.

(b) *Budget for ISP Service.* For the period beginning on the Closing Date and ending June 29, 2007, the Concessionaire shall annually reimburse the IFA $6,000,000.00 payable in advance in equal quarterly installments on the first Business Day of each calendar quarter. Commencing on June 30, 2007 and on each Measurement Date thereafter, the IFA shall be permitted to increase the annual payment from the Concessionaire by the Applicable Percentage ISP Increase, which increase shall be effective as of each relevant Measurement Date and shall remain in effect until the day immediately preceding the next Measurement Date.

(c) *Enforcement Activities.* Except as permitted herein, the Concessionaire shall not engage, or otherwise permit the engagement of, private security services to provide traffic patrol or traffic law enforcement services on the Toll Road; *provided, however,* that the Concessionaire may utilize private security forces or passive devices to identify toll violators and to protect Toll Revenues collected, accumulated and transferred for deposit. The Concessionaire shall have the right to contract with the ISP for the apprehension of toll

violators (at the Concessionaire's expense), or the Concessionaire may obtain toll enforcement services from another entity, subject to the IFA's Approval. The Concessionaire may enforce all private rights and civil remedies, and the IFA shall use its reasonable efforts (at the Concessionaire's expense) to assist in the establishment of fines and similar remedies at the state and local level for toll violations, trespass upon the Toll Road and other infringements upon the Concessionaire's rights or benefits, which fines and similar remedies shall be designed to constitute an effective disincentive against toll violations and trespass. The IFA shall cause the ISP to cooperate with the Concessionaire's efforts to enforce the collection of tolls from toll violators and to comply with the obligations set forth in Schedule 7.1.

(d) *Police Powers.* The Concessionaire acknowledges that the ISP is empowered to enforce all applicable Laws on the Toll Road. No provision of this Agreement is intended to surrender or waive any police powers of the State or any Governmental Authority (including the ISP), and all such police powers are hereby expressly reserved.

(e) *Payment to the ISP.* On the Closing Date, the Concessionaire shall pay the ISP $5,000,000.00 for purposes of providing the ISP with funds for the capital improvements and equipment described on Schedule 3.16(e) and relating to ISP's provision of law enforcement services along the Toll Road as described in Section 3.16(a), above.

ARTICLE 4.
CAPITAL IMPROVEMENTS

Section 4.1. IFA's Duties.

(a) *Completion of Existing Projects.* The IFA, with reasonable diligence, and at its sole cost and expense, shall complete (or cause the completion of) those capital improvement projects in accordance with the contracts described in Schedule 4.1 (collectively, the "Capital Improvement Projects") in a good and workmanlike manner, and the Concessionaire shall use its reasonable efforts to cooperate with the IFA in connection therewith, *provided, that* the IFA shall perform any such work in a manner that shall (a) not unduly interfere with Toll Road Operations or the ability of the Concessionaire to generate Toll Revenues and (b) otherwise comply with the terms of this Agreement (including the Operating Standards). The IFA shall assign, transfer and otherwise convey to the Concessionaire all of the IFA's right, title and interest in, to and under any warranty or any other provision that inures to the IFA's benefit related to the contracts described in Schedule 4.1. The IFA shall not be obligated to pay Concession Compensation with respect to the completion of such Capital Improvement Projects by the IFA, except to the extent that such work was performed in a manner which unduly interfered with Toll Road Operations or did not otherwise comply with the terms of this Agreement.

(b) *Control of the Capital Improvement Projects.* The IFA shall have complete control of the Capital Improvement Projects and shall effectively direct and supervise the Capital Improvement Projects and shall promptly enforce all contracts with respect thereto in accordance with their respective terms. The IFA shall be solely responsible for coordinating the various parts of the Capital Improvement Projects.

Section 4.2. Concessionaire's Duties. The Concessionaire's capital improvement obligations shall include those specific capital improvements set forth on Schedule 5.5 and the capital improvements required to be completed by the Concessionaire during the Term in accordance with the terms of this Agreement. The IFA at its option may cancel or postpone the commencement of any of these projects by giving prior notice to the Concessionaire and, to the extent that such notice shall have been provided to the Concessionaire following the date on which the Concessionaire shall have incurred any liabilities or commitments with respect to such projects, the IFA shall be required to pay Concession Compensation to the Concessionaire in connection therewith upon demand from the Concessionaire. The Concessionaire's obligation to perform such capital improvement requirements shall be subject to the issuance by the IFA and the State of any and all Authorizations required by the IFA or the State with respect thereto and the IFA and the State agree not to unreasonably withhold, condition or delay the issuance of any such Authorizations.

ARTICLE 5.
MODIFICATIONS

Section 5.1. IFA Directives. The IFA may, at any time during the Term, issue an IFA Directive to the Concessionaire. Subject to the IFA making available to the Concessionaire sufficient funds to perform the work required to implement such IFA Directive and any other amount constituting Concession Compensation payable in connection with such IFA Directive at or before the time payment for such work is required to be made (or, if the IFA does not provide such funds, other sources of financing for such work being reasonably available), and the Concessionaire having obtained (with the cooperation of the IFA) all relevant Authorizations from all relevant Governmental Authorities required for the relevant work, the Concessionaire shall perform the work required to implement such IFA Directive in a timely manner and in accordance with a budget mutually agreed upon by the IFA and Concessionaire, and, except as provided in Section 5.5, below, the IFA shall pay to the Concessionaire the Concession Compensation with respect thereto. If the Concessionaire fails to implement any such IFA Directive, after completion of the procedures described in Section 19.3, IFA shall have the right to perform the work required to implement such IFA Directive, *provided, that* (i) the IFA shall perform any such work in a manner that shall (a) not unduly interfere with the operation of the Toll Road or the generation of Toll Revenues and (b) adhere to the requirements of this Agreement (including the Operating Standards) and (ii) the IFA shall pay to the Concessionaire any Concession Compensation in respect thereof.

Section 5.2. Concessionaire Requests. If the Concessionaire wishes at any time during the Term to undertake an Expansion or make another fundamental change in the dimensions, character, quality, location or position of any material part of the Toll Road, then the Concessionaire may submit to the IFA, for the IFA's Approval, a Concessionaire Request with respect to such Expansion or other change. The Concessionaire shall be responsible for all amounts required to implement an Approved Concessionaire Request. No Concessionaire Request shall be implemented unless and until such Concessionaire Request has been Approved by the IFA; *provided, however,* that such Approval may be withheld, delayed or otherwise conditioned in the discretion of the IFA if the Expansion requires the acquisition or condemnation of Additional Lands or other property by the IFA or the State.

Section 5.3. Performance of Modifications. The Concessionaire shall ensure that IFA Directives and Approved Concessionaire Requests are performed in a good and workmanlike manner and diligently complied with and implemented in such manner that the costs and delays relating thereto are minimized. Without limiting the generality of the forgoing, the Concessionaire shall comply, to the extent not inconsistent with the implementation of the relevant IFA Directive or Approved Concessionaire Request, with the provisions of the Operating Standards with respect to the manner in which IFA Directives and Approved Concessionaire Requests are implemented.

Section 5.4. Acquisition or Condemnation by State of Additional Lands.

(a) *Requested by Concessionaire.* If the Concessionaire requires Additional Lands for the purpose of an Expansion that is Approved pursuant to the terms of this Agreement, it shall submit a request to the IFA for Approval (which may be withheld in its discretion) describing the lands required, the estimated amount and such other particulars as are reasonably necessary. Promptly upon receipt of such notice and further information, if requested, the IFA shall by notice advise the Concessionaire if the IFA Approves of such request and agrees to request the State to initiate the proceedings to arrange for the acquisition or condemnation of such Additional Lands. The IFA shall not Approve such a request without also agreeing to arrange for the acquisition or condemnation of Additional Lands contemplated by such request. In connection with the foregoing, it is agreed that the Approval of any request by the Concessionaire to acquire or condemn Additional Lands for an Expansion also may be given or withheld in the discretion of the State. If the State Approves the request, the IFA shall take such additional actions as may be reasonably necessary to initiate and diligently pursue to completion the proceedings necessary for the acquisition or condemnation of Additional Lands and such Expansion. In such event, subject to Section 3.10 and Section 12.1, all reasonable costs and expenses, including all judgments and settlements in condemnation, all awards of compensation, costs and litigation expenses, all awards of damages, all reasonable costs incurred in prosecuting the condemnation action, including the cost of all legal and support services and the fees of all witnesses, shall be borne by the Concessionaire and the IFA shall not be obligated to take any action until the Concessionaire has deposited with the IFA sufficient funds for the payment of such costs and expenses.

(b) *Required by IFA.* If the IFA requires the construction of an Expansion pursuant to the terms of this Agreement, the IFA shall take such additional actions as may be reasonably necessary to initiate and diligently pursue to completion the proceedings necessary for the acquisition or condemnation of Additional Lands and such Expansion. The Concessionaire's obligation to complete any such Expansion shall be subject to the completion of the proceedings described in the preceding sentence and the issuance by the State of the Authorizations required by the State with respect to any such Expansion (including the acquisition and condemnation of Additional Lands, as applicable). In such event, subject to Section 12.2, all costs and expenses in respect of such acquisition or condemnation of Additional Lands for an Approved Expansion, including all judgments and settlements in condemnation, all awards of compensation, costs and litigation expenses, all awards of damages, all costs incurred in prosecuting the condemnation action, including the cost of all legal and support services and the fees of all witnesses, shall be borne by the IFA.

(c) *Transfer.* Any lands acquired pursuant to in this Section 5.4 shall be deemed to be part of the Toll Road Land subject to this Agreement at no additional rent. In connection with the foregoing, the Concessionaire shall, and shall cause any Leasehold Mortgagee to, execute such instruments as may be reasonably requested or required by the IFA to give effect to the foregoing, and the Concessionaire shall bear the applicable cost.

Section 5.5. Exceptions to Section 5.1.

(a) *Mandatory Expansion Projects.* Notwithstanding the provisions of Section 5.1, above, the projects described in Schedule 5.5 (the "Mandatory Expansion Projects") shall be undertaken by the Concessionaire at its sole cost and expense in accordance with the schedule set forth in Schedule 5.5.

(b) *Congestion Relief.*

(i) *Traffic Study.* On or before July 1 of each year of the Term (commencing July 1, 2007) the Concessionaire shall provide the IFA with a written study completed by a nationally recognized and independent traffic consultant mutually acceptable to the Parties which study will be solely prepared for the purpose of describing the Level of Service on the Toll Road for the current year and project the Level of Service on the Toll Road for the following seven year period (the "Traffic Study"). The Traffic Study shall measure current and estimated future traffic volumes (using the methodology described in Section 5.5(b)(i)(A) and (B), below) on each element of the Toll Road in each direction (if applicable), including mainline segments between interchanges, ramps, ramp junctions with the mainline and crossroad, and weave zones.

(A) On those elements of the Toll Road for which continuous hourly vehicle classification traffic counts are not available for each hour of the year, Level of Service shall be determined based on vehicle classification counts for a 48-hour period at each such element. Traffic counting for this purpose will not take place during periods of abnormally high or low travel conditions on the Toll Road, nor during an atypical traffic demand period of time, nor during a non-routine event that contributes to increased traffic volume (which would include events such as sporting events or concerts, holidays, traffic accidents or periods of heavy snow or ice accumulation). Counting will continue uninterrupted through 48 hours. The 48-hour counts will be seasonally adjusted for month of actual count using the seasonal adjustment factors published annually by the Indiana Department of Transportation and used by the Indiana Department of Transportation in its own project design and management. The seasonal adjustment factors will be reasonably determined based on the average seasonal fluctuation determined over the previous five year period. The IFA will provide the seasonal adjustment factors upon request from the Concessionaire. LOS will be determined for each element in each direction (if applicable) based on (1) the average of the two highest a.m. volumes measured during the 48-hour period for such element in each direction (if applicable) and (2) the average of the two highest p.m. volumes measured during the 48-hour period for such element in each direction (if applicable).

(B) On those elements of the Toll Road for which continuous (24 hours per day, 7 days per week, 52 weeks per year) vehicle classification volume data is available, Level of Service shall be determined based on the 60th highest hourly volume of the year (which is determined as the 30th highest a.m. peak hour of the year and the 30th highest p.m. peak hour of the year). The hour measurements will be taken in each direction (if applicable) for each element. The LOS for an element in a given direction (if applicable) will be equal to the LOS at the 30th highest a.m. peak hour or the LOS at the 30th highest p.m. peak hour, whichever is lower. Solely for purposes of illustration, if an element in a given direction had an LOS of LOS A based on the 30th highest a.m. peak hour and an LOS of LOS B based on the 30th highest p.m. peak hour, then the LOS of such element in that direction would be LOS B.

(ii) *Minimum LOS.* The minimum acceptable LOS ("Minimum LOS") shall be LOS D for elements of the Toll Road located in Urban Areas and LOS C for elements of the Toll Road located in Rural Areas.

(A) If the Traffic Study indicates that the current (determined as of the date of the Traffic Study) Level of Service at any element of the Toll Road has fallen to a LOS below the Minimum LOS, the Concessionaire shall have 180 days following delivery of the Traffic Study to the IFA to deliver a proposal to the IFA (setting forth recommendations for expanding traffic lanes, adding additional lanes or other actions) to improve the Level of Service of such location to the Minimum LOS or better. Improvement shall be required only with respect to the direction in which the LOS of the element has fallen to a LOS below the Minimum LOS. If the IFA approves such recommendations (such approval not unreasonably to be withheld) the proposal will be considered an Approved Concessionaire Request and it shall be carried out by the Concessionaire in accordance with its terms. If the Concessionaire does not submit a proposal to improve the Level of Service within the aforesaid 180 day period, or if the IFA does not agree that the Concessionaire's proposal would adequately improve the Level of Service, the IFA may make its own proposal to improve the Level of Service to the Minimum LOS or better and, unless the Concessionaire disputes the IFA's proposal within 60 days following its delivery to the Concessionaire, the IFA's proposal will be considered an Approved Concessionaire Request and it shall be carried out by the Concessionaire in accordance with its terms. Any dispute between the parties shall be resolved utilizing the procedures set forth in Article 19. The Concessionaire shall award all construction contracts to improve the LOS of such locations to the Minimum LOS on the later of (i) the fourth anniversary of the date on which the proposal to improve the LOS has been agreed upon by the Concessionaire and the IFA or determined following the procedures set forth in Article 19 or (ii) the date on which all Additional Lands necessary to implement such proposal have been acquired or the necessary rights of way have been obtained.

(B) If the Traffic Study indicates that the Level of Service at any element of the Toll Road will fall to the Minimum LOS or below at any future

time during the period included in the forecast set forth in such Traffic Study, then within 180 days of the delivery of the Traffic Study to the IFA, the Concessionaire shall deliver a proposal for improving the Level of Service at such location to the Minimum LOS or better. Improvement shall be required only with respect to the direction of the element in which the LOS is projected to fall to the Minimum LOS or below. If the Concessionaire does not submit a proposal or if the IFA does not agree that such proposal will improve the LOS within the necessary period of time (such agreement not unreasonably to be withheld), the IFA may make its own proposal to improve the LOS by the necessary date. Any dispute by the parties with respect to such proposals will be resolved utilizing the procedures set forth in Article 19. The proposal ultimately accepted by the parties (whether as submitted by the Concessionaire, by the IFA or as determined following resolution under Article 19) shall be deemed an Approved Concessionaire Request and it shall be carried out by the Concessionaire in accordance with its terms. The Concessionaire shall award all construction contracts to improve the LOS of such locations to the Minimum LOS on the last to occur of (i) the fourth anniversary of the date on which the proposal to improve the LOS has been agreed upon by the Concessionaire and the IFA or determined following the procedures set forth in Article 19 or (ii) the date on which all Additional Lands necessary to implement such proposal have been acquired or the necessary rights of way have been obtained or (iii) December 31 of the year in which the Traffic Study projects that the LOS at such location will fall to a level below the Minimum LOS (provided that the most recent Traffic Study indicates that the Level of Service at such element is below the Minimum LOS at such time).

(iii) Additional *Land; Improvements After End of Term.* Notwithstanding the provisions of Section 5.5(b)(ii) above, the Concessionaire shall be obligated to construct additional traffic lanes pursuant to this Section 5.5(b) only to the extent that the Toll Road has sufficient expansion capacity for the addition of such lanes without construction of multi-level lanes or substantial modification of interchanges and similar works. If the expansion of existing lanes or the addition of lanes on the Toll Road would be feasible if Additional Lands were acquired, then at the IFA's option, the State shall acquire such Additional Lands and the Expansion made possible as a result of such acquisition shall be considered an Approved Concessionaire Request and it shall be carried out by the Concessionaire in accordance with its terms, except that 50% of the costs incurred to acquire such Additional Lands shall be borne by the IFA. In addition, notwithstanding Section 5.5(b)(ii) above, the Concessionaire shall not be obligated to make or fund any improvements on the Toll Road following expiration of the Term to address a projected decline of service below the Minimum LOS that will not occur until after expiration of the Term. In the event that the IFA determines that it is necessary to commence an Expansion prior to the end of the Term to prevent a decline of Level of Service to a LOS below the Minimum LOS that is not projected to occur during the Term, then such Capital Improvement Project shall be considered an IFA Directive.

(c) *Concessionaire Contribution to IFA Directives.* The Concessionaire shall contribute to the cost of an IFA Directive, proportionately, taking into account the costs of

such IFA Directive and the net increase in Toll Revenues directly attributable to such IFA Directive (after taking into account any and all costs attributable to the implementation of such IFA Directive (including, without limitation, any and all financing costs attributable thereto and applicable Taxes)), but in no event in excess of the costs of such IFA Directive, to the extent such IFA Directive results directly in an increase in Toll Road Revenues received by the Concessionaire. The IFA shall have the right at any time after the third anniversary of the completion of an IFA Directive and prior to the tenth anniversary of such completion date at its own expense to commission a study conducted by a nationally recognized and independent appraiser or other expert reasonably acceptable to the Concessionaire, which study shall consider the actual additional Toll Road Revenues realized since the completion date of the IFA Directive, the projected additional revenues to be realized as a result of such IFA Directive, during the remaining Term, and a capitalization rate consistent with then prevailing market rates applied to comparable investments. The IFA shall provide to the Concessionaire all other relevant data used in the procurement of such study and the matters contemplated therein. If the Concessionaire does not agree with the conclusion of such study or any such other materials, it shall so notify the IFA in writing no later than thirty (30) Business Days following its receipt of the notice from the IFA, accompanied by any studies, analyses or other background information used by the Concessionaire in reaching its determination. The parties shall resolve any disagreement utilizing the procedures set forth in Article 19. The IFA shall be entitled to reimbursement of the costs of the written study should the decision of the arbitrators affirm the IFA's conclusions. Notwithstanding anything to the contrary set forth in this clause (c), to the extent that any contribution by the Concessionaire is based on Toll Road Revenues that have not yet been received by the Concessionaire, the Concessionaire shall not be required to make any such contribution until such time as such amounts have been received.

ARTICLE 6.
OPERATING STANDARDS

Section 6.1. Compliance with Operating Standards. The Concessionaire shall, at all times during the Term, and cause the Toll Road Operations to, comply with and implement the Operating Standards in all material respects (including any changes or modifications to the Operating Standards made pursuant to the terms of this Agreement). The Concessionaire shall have in place procedures that are reasonably designed to achieve compliance with the Operating Standards. The IFA and the Concessionaire agree that the Operating Standards shall be construed flexibly in light of their objectives. The Operating Standards shall not be deemed to be violated by occasional or incidental acts or omissions, including any occasional or incidental failure to comply with specific requirements set forth in the Operating Standards. Without limitation on the generality of the foregoing, any failure to meet specific time limits, durations or frequencies set forth in the Operating Standards shall not constitute a violation, provided that any such failure is not inconsistent with procedures that are reasonably designed to achieve compliance with the requirements set forth in the Operating Standards. Except as specifically set forth herein, the Concessionaire shall perform all work required to comply with and implement the Operating Standards in all material respects (including the capital improvements described therein) as part of the Toll Road Operations and at its sole cost and expense.

Section 6.2. Proposed Operating Standards. If the Concessionaire, at its cost and expense, wishes to implement and use operating standards other than the Operating Standards, the Concessionaire must provide notice of such proposed operating standards to the IFA for the IFA's Approval, which Approval shall not unreasonably be withheld or delayed. In addition to the information required by Section 1.15, but without duplication or conflict with the terms hereof, the Concessionaire's proposed operating standards must be accompanied by an explanation of the Concessionaire's rationale for making its proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that the Concessionaire's proposed operating standards are reasonably designed to achieve the objectives of the applicable Operating Standards. The IFA may request any additional supporting information, certificates, reports, studies, investigations and other materials as are reasonably required by the IFA to determine if the Concessionaire's proposed operating standards are reasonably designed to achieve the objectives of the applicable Operating Standards. Until the IFA provides its Approval for the implementation of the Concessionaire's proposed operating standards, the Concessionaire shall not implement the proposed operating standards and shall implement and comply with the Operating Standards. The Concessionaire's proposed operating standards shall be deemed incorporated into the Operating Standards upon Approval by the IFA in accordance with the terms hereof. If the IFA refuses to Approve any proposed operating standards and the Concessionaire disagrees with such refusal, the Concessionaire may submit the matter to arbitration under the provisions of Article 19.

Section 6.3. Modified Operating Standards.

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

(b) If during the Term, the IFA is of the opinion that a modification or change to the Operating Standards is necessary or desirable but such modification or change is not subject to Section 6.3(a), the IFA may upon notice to the Concessionaire modify or change the Operating Standards; *provided, however,* that the IFA shall pay to the Concessionaire the Concession Compensation with respect thereto at the time such modification or change is implemented. At the IFA's request, the Concessionaire shall perform all work required to implement and shall comply with all such modifications and changes, and in no event shall the Concessionaire be excused from compliance with any such modification or change. The

IFA shall have the right to undertake the work necessary to ensure implementation of and compliance with any such modification or change to the Operating Standards; *provided, however,* that to the extent that such work is undertaken by the IFA, the Concessionaire shall pay to the IFA within 10 Business Days following written demand therefor, or the IFA may offset from amounts owing to the Concessionaire in connection with such modification or change, the costs of the portion of the work performed in order to comply with the Operating Standards existing immediately prior to such modification or change, and the IFA shall be responsible only for the incremental costs of the additional work required in order to implement such proposed modification or change to the Operating Standards and, without duplication with the foregoing, the Concession Compensation with respect to such modification or change.

ARTICLE 7.
TOLLING; REVENUES

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

Section 7.2. Electronic Tolling System.

(a) *Obligation to Implement.* The Concessionaire shall implement a barrier-controlled electronic tolling system reasonably acceptable to the IFA with respect to at least two lanes (in each direction) of the Toll Road on or before the second (2nd) anniversary of the Closing Date; *provided, however*, that such lanes can continue to provide concurrent manual operations.

(b) *Cooperation by the IFA.* The IFA will cooperate with the Concessionaire in the implementation and enforcement of an electronic tolling system when implemented by the Concessionaire pursuant to Section 7.2(a). Such cooperation shall include assisting the Concessionaire in the negotiation of any reasonably necessary agreements with all relevant Governmental Authorities. In addition, the IFA shall use its best efforts to cause any agency of the State that is in charge of issuing permits to users of the Toll Road to inform such users, to the extent applicable, of their need to obtain the relevant electronic tags in order to utilize the Toll Road.

Section 7.3. Revenues.

(a) *Toll Road Revenues.* The Concessionaire shall, at all times during the Term, have the right, title, entitlement and interest in all revenues (i) charged by or on behalf of the Concessionaire in respect of vehicles using the Toll Road during the Term, including revenues collected through an electronic tolling system ("Toll Revenues") and (ii) generated pursuant to the lease agreements listed on Schedule 7.3 or otherwise from any other leases or agreements from Vendors or any of the Assigned Toll Road Contracts (collectively, "Vendor Revenues" and together with Toll Revenues, "Toll Road Revenues").

(b) *Other Revenues.* All sources of revenues and activities generating revenues other than Toll Road Revenues, including revenues from mass transit facilities, permit fees payable to the State and not reflected in the financial statements described in Section 9.1(h), the sale of alcohol, the installation of utilities or similar services and safety measures (including water and sewer lines, power transmission lines, fiber optic cable, surveillance equipment and other communications) and the erection of billboards and other forms of advertisement, shall be controlled by, and the property of, the State or the IFA, as applicable, and, subject to Section 3.7(a), the Concessionaire shall have no right, title, entitlement or interest therein whatsoever.

(c) *Use of Toll Revenues.* The Concessionaire shall use all Toll Revenues for debt service related to the Toll Road and for the costs necessary for the proper operation and maintenance of the Toll Road (including reconstruction, resurfacing, restoration and rehabilitation of the Toll Road in compliance with the requirements of this Agreement) prior to making any distribution of such Toll Revenues to any holder of an equity interest in the Concessionaire.

(d) *Vendors.*

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

(ii) The Concessionaire shall not enter into any material agreement or contract with a Vendor without the prior Approval of the IFA (which Approval shall not be unreasonably or arbitrarily withheld, conditioned or delayed); *provided, however*, that the Approval of the IFA shall not be required to the extent that such agreement or contract is for services of the type currently contemplated in Schedule 7.3. In requesting Approval of the IFA in addition to the requirements of Section 1.15, above, the Concessionaire shall inform the IFA in writing about the identity of the Vendor and the exact nature of the goods or services to be provided by the Vendor. No agreements shall extend beyond the Term unless (a) such extension has been Approved by the IFA and (b) such agreement shall be assignable to the IFA. At the request of the IFA, and with 60 days prior written notice, the Concessionaire shall, to the extent permitted by the terms of the relevant agreement, terminate its agreement with any Vendor if the IFA determines that such Vendor would not be qualified to conduct business with the IFA or any other agency of the State *provided, that,* the IFA shall have provided the Concessionaire with Concession Compensation, if any, related to such termination and the Concessionaire's efforts in securing a suitable replacement for such Vendor.

ARTICLE 8.
REPORTING; AUDITS; INSPECTIONS

Section 8.1. Reports.

(a) *Traffic Characteristics Reports.* In addition to any other traffic or traffic-related reports required pursuant to this Agreement, the Concessionaire shall provide to the IFA a

quarterly traffic characteristics report providing the following details in a format specified by the IFA: (i) traffic volume forecasts for each type of classification of vehicle for the next three months, (ii) current Level of Service for each mile of the Toll Road as well as projected changes in Levels of Service during the coming 12 months, (iii) traffic volume forecasts for the entire Reporting Year and (iv) actual traffic counts for each month in the preceding quarterly period. The Concessionaire shall provide such reports to the IFA within 20 Business Days following the end of each calendar quarter of each Reporting Year.

(b) *Incident Management, Notifications and Reports.* The Concessionaire shall promptly notify the IFA of all emergencies, and promptly notify the IFA of all accidents and incidents occurring on or at the Toll Road, and of all claims made by or against the Concessionaire, or potential claims that the Concessionaire reasonably expects to make against, or to be made against it by, third parties. In addition, the Concessionaire shall provide to the IFA a quarterly report of all such occurrences, including the following details in a format specified by the IFA: (i) type of incident (e.g., bodily injury, death or property damage) and summary of each such incident, (ii) classification of incident (e.g., road-related, barrier hit, right-of-way or other), (iii) number of incidents by type and classification, (iv) costs to correct incidents by type and classification, (v) claims made by the Concessionaire and revenue received by type and classification and (vi) claims made against the Concessionaire and losses incurred or losses claimed by type and classification. The Concessionaire shall provide such report to the IFA within 30 Business Days following the end of each calendar quarter of each Reporting Year.

(c) *Environmental Incident Report.* The Concessionaire shall report to the IFA, on a per occurrence basis, the discharge, dumping, spilling (accidental or otherwise) of any reportable quantity, as defined under applicable Environmental Law, of Hazardous Substances and the location at which the incident has occurred, the time, the agencies involved, the damage that has occurred and the remedial action taken. The Concessionaire shall provide such report to the IFA within seven Business Days following the occurrence of each incident or such shorter time period as may be required pursuant to applicable Law.

(d) *Financial Reports.* Until the End Date, the Concessionaire shall deliver to the IFA (1) within 60 days of the end of each six-month period following the first day of each Reporting Year, a copy of the unaudited balance sheets of the Concessionaire at the end of each such six-month period and the related unaudited statements of income, changes in equity and cash flows for such six-month period, in a manner and containing information consistent with the Concessionaire's current practices and (ii) within 120 days after the end of each Reporting Year a copy of the audited balance sheets of the Concessionaire at the end of each such Reporting Year, and the related audited statements of income, changes in equity and cash flows for such Reporting Year, including in each case the notes thereto, together with the report thereon of the independent certified public accountants of the Concessionaire, in each case in a manner and containing information consistent with the Concessionaire's current practices and certified by the Concessionaire's chief financial officer that such financial statements fairly present in all material respects the financial condition and the results of operations, changes in equity and cash flows of the Concessionaire as at the respective dates of and for the periods referred to in such financial statements, all in accordance with generally accepted accounting principles in the United States consistently

applied. Such financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements.

Section 8.2. Information.

(a) *Furnish Information.* At the request of the IFA, the Concessionaire shall, at the Concessionaire's cost and expense and at any and all reasonable times during the Term: (i) make available or cause to be made available (and, if requested by the IFA, furnish or cause to be furnished) to the IFA all Information relating to the Toll Road Operations, this Agreement or the Toll Road as may be specified in such request and as shall be in the possession or control of the Concessionaire or its Representatives, and (ii) permit the IFA, after giving 10 Business Days' prior notice to the Concessionaire (which notice shall identify the persons the IFA requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview), to discuss the obligations of the Concessionaire under this Agreement with any of the directors, chief executive officer and chief financial officer of the Concessionaire, the Operator or their respective Representatives, for the purpose of enabling the IFA to determine whether the Concessionaire is in compliance with this Agreement and applicable Law.

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

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

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

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

(c) *Tests.* The IFA and its Representatives shall, with the prior consent of the Concessionaire (which shall not be unreasonably withheld, conditioned or delayed) be entitled, at the sole cost and expense of the IFA, and at any time and from time to time, to perform or cause to be performed any test, study or investigation in connection with the Toll Road or the Toll Road Operations as the IFA may determine to be reasonably necessary in the circumstances and the Concessionaire, at the cost and expense of the Concessionaire, shall, and shall cause its Representatives to, furnish the IFA or its Representatives with every reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations. For the avoidance of doubt, in connection with the foregoing the IFA and its Representatives shall, with the prior consent of the Concessionaire (which shall not be unreasonably withheld, conditioned or delayed), be entitled to install machines, equipment, systems, monitors, counters and other devices in, on, under, over or adjacent to the Toll Road to permit and facilitate any test, study, monitor, review or investigation of or relating to the Toll Road Operations to the extent that the same does not materially interfere with the Toll Road Operations.

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

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

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

not create or impose any requirement, liability, covenant, agreement or obligation (including an obligation to provide other assistance, services or Approvals) on the IFA or its Representatives not otherwise created or imposed pursuant to the express provisions of this Agreement.

Section 8.5. Reimbursement of Costs. Except as otherwise provided herein, the Concessionaire shall reimburse the IFA for all costs and expenses reasonably incurred by the IFA during the Term (including employment costs and related overhead expenses allocable thereto, as reasonably determined by the IFA based on the time expended by the employees who render such services to the IFA) in monitoring the Toll Road Operations and the Concessionaire's compliance with its obligations and duties hereunder (including any Audits, tests, reviews or exams of the Toll Road, the Toll Road Operations (or any part thereof), any information or the proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of the Concessionaire or its Representatives required or permitted to be provided or undertaken hereunder); *provided, however,* that the aggregate amount payable by the Concessionaire pursuant to this Section 8.5 and any other provision set forth in this Agreement that requires the Concessionaire to reimburse the IFA for costs and expenses incurred in connection with the matters set forth in this Agreement (including, without limitation, Section 8.3(b) but excluding payments described in Section 3.16) shall not exceed $150,000 per calendar year, Adjusted for Inflation.

ARTICLE 9.
REPRESENTATIONS AND WARRANTIES

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

(a) *Organization.* The IFA is an independent public instrumentality of the State exercising essential public functions and is organized under Indiana Code 4-4-10.9 and 4-4-11 et seq.

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

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

(d) *Title.* The IFA has good and sufficient title to the Toll Road necessary for the Toll Road Operations pursuant to this Agreement, subject only to Permitted IFA Encumbrances and Permitted Concessionaire Encumbrances (other than the Permitted

Concessionaire Encumbrances specified in clause (iv) or clause (vii) of the definition of the term "Permitted Concessionaire Encumbrances"). Subject to any and all Permitted IFA Encumbrances and Permitted Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (iv) or clause (vii) of the definition of the term "Permitted Concessionaire Encumbrances") existing at the Time of Closing, there is no recorded or unrecorded agreement, contract, option, commitment, right, privilege or other right of another binding upon, or which at any time in the future may become binding upon, the IFA to sell, transfer, convey, subject to lien, charge, grant a security interest in, or in any other way dispose of or materially encumber the Toll Road. The recorded or unrecorded restrictions, exceptions, easements, rights of way, reservations, limitations, interests and other matters that affect title to the Toll Road (or any portion thereof) do not materially adversely affect the Concessionaire's ability to operate the Toll Road in accordance with the terms hereof. No portion of the Toll Road Land lies within any flood hazard areas as defined by the Federal Emergency Management Agency through its National Flood Insurance Program as reflected on either the Flood Hazard Boundary Map or Flood Insurance Rate Map, as amended from time to time. Following defeasance of the outstanding Toll Road Bonds pursuant to Section 2.4(a), no indebtedness for borrowed money of the IFA or the State will be secured by any interest in the Toll Road and no Person will have any claim or right to, or interest in, any income, profits, rents, tolls or revenue derived from or generated with respect to the Toll Road (other than the Concessionaire under this Agreement and any claims, rights or interests granted by or otherwise relating to the Concessionaire).

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

(f) *Consents.* No Consent is required to be obtained by the IFA from, and no notice or filing is required to be given by the IFA to or made by the IFA with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by the IFA of this Agreement or the consummation of the transactions contemplated hereby.

(g) *Compliance with Law; Litigation.* The IFA has operated and is operating the Toll Road in compliance, in all material respects, with all applicable Laws and the IFA is not in breach of any applicable Law that would have a Material Adverse Effect on the operations of the Toll Road. There are no Authorizations from any Governmental Authority necessary for the operation of the Toll Road as currently being operated. There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the IFA's knowledge, threatened against the IFA, which would have a Material Adverse Effect on (i) the operations of the Toll Road or (ii) the validity or enforceability of this Agreement.

(h) *Financial Statements.* The financial statements of the Toll Road, dated as of June 30, 2003, June 30, 2004 and June 30, 2005, fairly present the financial position and results of operations of the Toll Road as of the dates and for the periods stated in such financial statements in accordance with generally accepted accounting principles, as applied to governmental units, consistently applied.

(i) *Assigned Toll Road Contracts.* Each Assigned Toll Road Contract is in full force and effect and has been made available for review by the Concessionaire. The IFA or the State is not in material breach of its obligations under any Toll Road Contract, including any Assigned Toll Road Contract, and no act or event has occurred which, with notice or lapse of time, or both, would constitute a material breach thereof, and to the knowledge of the IFA or the State no other party to any Assigned Toll Road Contract is in material breach of its obligations under any Toll Road Contract, and no act or event has occurred with respect to any such party, which with notice or lapse of time, or both, would constitute a material breach thereof. Except for those Toll Road Contracts contemplated by Section 4.1, the Assigned Toll Road Contracts are all of the material contracts and agreements (i) to which the IFA or the State is a party that relate to the Toll Road Operations or (ii) that bind the Toll Road in any material respect, except that the Assigned Toll Road Contracts do not include those contracts and agreements to which the IFA or the State is a party involving the provision of goods and services that are used in connection with the Toll Road Operations as well as by various other State agencies and departments.

(j) *Insurance Policies.* All insurance policies set forth on Schedule 9.1(j) are in full force and effect with respect to the period between the date hereof and the Time of Closing.

(k) *Absence of Changes.* Since June 30, 2005, there has not been any transaction or occurrence that has resulted or is reasonably likely to result in a Material Adverse Effect.

(l) *Brokers.* Except for Goldman, Sachs & Co., whose fees will be paid by the IFA, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the IFA who might be entitled to any fee or commission from IFA in connection with the transactions contemplated by this Agreement.

(m) *Accuracy of Information.* To the knowledge of the IFA, the factual and past historical information regarding the Toll Road and its operations, that the IFA provided to the Concessionaire in the virtual data room at www.IntraLinks.com was accurate in all material respects at the time such information was provided.

(n) *Toll Road Bonds Outstanding.* The amount of Toll Road Bonds that will be defeased but not redeemed immediately following the Closing Date will not exceed $30,000,000.00. No indebtedness the interest on which is exempt from federal income Tax was issued to finance the Toll Road other than the Toll Road Bonds.

(o) *Enactment of Toll Road Legislation.* The Indiana General Assembly has duly adopted the Toll Road Legislation and such Toll Road Legislation is in full force and effect;

(p) *Effect of Toll Road Legislation.* The Toll Road Legislation (A) does not contain any provision that is materially adverse to the financial condition, assets, properties,

operations or prospects of the Toll Road Operations or the rights of the Concessionaire pursuant to this Agreement, (B) fully exempts the Concessionaire from the payment of any property Taxes that are attributable to ownership of all or any part of the Toll Road or its rights pursuant to this Agreement, (C) provides a moral obligation on the part of the State to provide the funds necessary in order to enable the IFA to comply with its payment obligations pursuant to this Agreement, and (D) expressly authorizes the IFA to grant to the Concessionaire, on behalf of the State, an exclusive franchise and license to provide Toll Road Services in accordance with the terms set forth herein.

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

(a) *Organization.* The Concessionaire is duly organized, validly existing and in good standing under the laws of the state of its organization. The capital stock of the Concessionaire (including options, warrants and other rights to acquire capital stock) is owned by the Persons set forth in the written certification that the Concessionaire delivered to the IFA prior to the date hereof.

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

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

(d) *No Conflicts.* The execution and delivery of this Agreement by the Concessionaire, the consummation of the transactions contemplated hereby and the performance by the Concessionaire of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Concessionaire under (i) any applicable Law, (ii) any material agreement, instrument or document to which the Concessionaire or any Equity Participant is a party or by which it is bound or (iii) the articles, bylaws or governing documents of the Concessionaire and each of the Equity Participants.

(e) *Consents.* No Consent is required to be obtained by the Concessionaire or any Equity Participant from, and no notice or filing is required to be given by the Concessionaire or any Equity Participant to or made by the Concessionaire or any Equity Participant with, any Person (including any Governmental Authority) in connection with the execution and delivery by the Concessionaire of this Agreement or the consummation of the transactions

contemplated hereby, except for such consents which have been obtained and notices which have been given as of the date hereof.

(f) *Compliance with Law; Litigation.* The Concessionaire is not in breach of any applicable Law that could have a Material Adverse Effect on the operations of the Toll Road. Neither the Concessionaire nor, to its knowledge, any Affiliate of the Concessionaire is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of Persons with which the State may not do business under applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. Without limiting the generality of the foregoing, the Concessionaire (on its behalf and on behalf of its principals, agents and, to its knowledge, Affiliates) affirms that, except for de minimis and nonsystematic violations, it and they have not violated the terms of (i) IC 24-4.7 (Telephone Solicitation of Consumers), (ii) IC 24-5-12 (Telephone Solicitations, or (iii) IC 24-5-14 (Regulation of Automatic Dialing Machines) in the previous three hundred sixty-five (365) days. There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Concessionaire's knowledge, threatened against the Concessionaire or any Equity Participant, which would have a Material Adverse Effect on (i) the transactions contemplated by this Agreement or (ii) the validity or enforceability of this Agreement.

(g) *Operator.* To the extent the Operator is not the Concessionaire or an Affiliate of the Concessionaire, the Concessionaire shall cause the Operator to deliver to the IFA at Closing an Officer's Certificate in form and substance acceptable to the IFA in which the Operator represents and warrants as follows: (i) the Operator is duly organized, validly existing and in good standing under the laws of the state of its organization; (ii) the capital stock of the Operator (including options, warrants and other rights to acquire capital stock) is owned by the Persons set forth in the written certification that the Concessionaire delivered to the IFA prior to the date hereof; (iii) the Operator has the power and authority to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in connection with its engagement by the Concessionaire; (iv) the Operator has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the Toll Road Operations in accordance with this Agreement; and (v) the Operator is not in breach of any applicable Law that would have a Material Adverse Effect on the operations of the Toll Road. The Concessionaire shall not be obligated to indemnify the IFA under Article 12 of this Agreement for any breach of a representation or warranty included in an Officer's Certificate delivered by the Operator so long as the Operator agrees to provide such indemnification on terms consistent with the provision of Article 12.

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

Section 9.3. Non-Waiver. No investigations made by or on behalf of any Party at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the other Party in this Agreement or pursuant to this Agreement. No waiver by a Party of any condition, in whole or in part, shall operate as a waiver of any other condition.

Section 9.4. Survival.

(a) *IFA's Representations and Warranties.* The representations and warranties of the IFA contained in Section 9.1 shall survive and continue in full force and effect for the benefit of the Concessionaire as follows: (i) as to the representations and warranties contained in Sections 9.1(a) through 9.1(g), inclusive, without time limit; and (ii) as to all other matters, for a period of 24 months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing in accordance with Section 20.1, prior to the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.

(b) *Concessionaire's Representations and Warranties.* The representations and warranties of the Concessionaire contained in Section 9.2 shall survive and continue in full force and effect for the benefit of the IFA as follows: (i) as to the representations and warranties contained in Sections 9.2(a) through 9.2(f), inclusive, without time limit; and (ii) as to all other matters, for a period of 24 months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing in accordance with Section 20.1, before the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.

ARTICLE 10.
FINANCE OBLIGATIONS

Section 10.1. Concessionaire's Obligations. Except with respect to the IFA's funding of costs and expenses related to IFA's obligations under Section 4.1 or IFA Directives as contemplated by Section 5.1 and Section 5.5, the Concessionaire shall be responsible for obtaining any financing for the performance of its obligations under this Agreement, which financing shall comply with all requirements of this Agreement.

Section 10.2. IFA's Obligations. The IFA shall, to the extent consistent with applicable Law and at the sole cost and expense of the Concessionaire, cooperate with the Concessionaire with respect to documentation reasonably necessary to obtain, maintain and replace financing for the performance of the obligations of the Concessionaire hereunder. The IFA's cooperation may include reviewing, approving and executing documents which substantiate the terms of this Agreement (including, without limitation any consents and agreements necessary to confirm that the debt evidenced by the relevant financing constitutes Leasehold Mortgage Debt) and making information and material available to the Concessionaire's lenders to facilitate financing to the

extent permitted by applicable Law and contractual obligations with third parties and to the extent the IFA considers reasonable in the circumstances. If requested to do so by the Concessionaire, the IFA shall, at the sole cost and expense of the Concessionaire, use its reasonable efforts to cause Katz, Sapper & Miller, LLP, (or the IFA's then independent public accountants), to consent to the use and inclusion of certain financial information regarding the Toll Road in connection with the Concessionaire's public or private offering of securities, as the case may be. In addition, the IFA shall, promptly upon the request of the Concessionaire or any Leasehold Mortgagee, execute, acknowledge and deliver to the Concessionaire, or any of the parties specified by the Concessionaire, standard consents and estoppel certificates with respect to this Agreement which may be qualified to the best of the knowledge and belief of a designated representative of the IFA. Nothing herein shall require the IFA to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with or in violation of any applicable Law or the provisions of this Agreement. Nothing in this Agreement shall prohibit or prevent the IFA from issuing bonds or entering into additional obligations to finance IFA Directives and leasing the resulting improvement to the Concessionaire (provided that no rent or other charge shall be imposed on the Concessionaire with respect to such lease and any and all works or improvements resulting from such IFA Directive shall be for the sole use of the Concessionaire in accordance with this Agreement). The IFA acknowledges and agrees that any new debt or other obligations undertaken by the IFA after the Effective Date may not be secured by any of the Toll Road Land, the Toll Road Facilities or the Toll Road Assets, in a manner which triggers a default under the terms of a Leasehold Mortgage.

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

ARTICLE 11.
COMPLIANCE WITH LAWS

Section 11.1. Compliance with Laws. The Concessionaire must at all times at its own cost and expense observe and comply with, in all material respects, and cause the Toll Road Operations to observe and comply with, in all material respects, all applicable Laws now existing or later in effect that are applicable to it or such Toll Road Operations, including those Laws expressly enumerated in this Article 11, and those that may in any manner apply with respect to the performance of the Concessionaire's obligations under this Agreement; *provided, that* the Concessionaire shall be entitled to receive Concession Compensation, upon demand, in the event that any Law enacted following the Time of Closing by the State is being applied in a discriminatory fashion against the Concessionaire. The Concessionaire must notify the IFA within seven days of receiving notice from a Governmental Authority that the Concessionaire may have violated any of the above.

Section 11.2. Non-Discrimination.

(a) *Federal Non-Discrimination Laws.* The Concessionaire shall comply with all applicable federal Laws regarding non-discrimination, including: (i) the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq. (1981); (ii) the Civil Rights Act of 1991, P.L. 102-166; (iii) Executive Order Number 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000(e) note, as amended by Executive Order Number 11375, 32 Fed. Reg. 14,303 (1967) and by Executive Order Number 12086, 43 Fed. Reg. 46,501 (1978); (iv) the Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); (v) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 (1967); (vi) the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); and (vii) the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (1990).

(b) *State Non-Discrimination Laws.* Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Concessionaire and its Contractors shall not discriminate against any employee or applicant for employment in the Toll Road Operations. The Concessionaire and its Contractors shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry.

Section 11.3. Maintaining a Drug Free Workplace

(a) The Concessionaire hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Concessionaire will give written notice to the IFA within ten (10) days after receiving actual notice that the Concessionaire or an employee of the Concessionaire has been convicted of a criminal drug violation occurring in the Concessionaire's workplace.

(b) The Concessionaire certifies and agrees that it will provide a drug-free workplace by:

(i) Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Concessionaire's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

(ii) Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Concessionaire's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

(iii) Notifying all employees in the statement required by subparagraph (i) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Concessionaire of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

(iv) Notifying in writing the IFA within ten (10) days after receiving notice from an employee under subdivision (iii)(2) above, or otherwise receiving actual notice of such conviction;

(v) Within thirty (30) days after receiving notice under subdivision (iii)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

(vi) Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (i) through (v) above.

Section 11.4. Ethics and Conflict of Interest Requirements.

(a) *Ethics.* The Concessionaire and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004 and Executive Order 05-12, dated January 10, 2005.

(b) *Conflict of Interest.*

(i) As used in this section:

(A) "Immediate family" means the spouse and the unemancipated children of an individual.

(B) "Interested party" means:

(1) The individual executing this Agreement;

(2) An individual who has an interest of three percent (3%) or more of Concessionaire; or

(3) Any member of the immediate family of an individual specified under subdivision (1) or (2).

(ii) Concessionaire has an affirmative obligation under this Agreement to disclose to the IFA when an Interested Party is or becomes an employee of the State. The obligation under this section extends only to those facts that Concessionaire knows or reasonably could know.

Section 11.5. Non-Collusion and Acceptance. The Concessionaire attests, subject to the penalties for perjury, that no employee, representative, agent or officer of the Concessionaire, directly or indirectly, to the best of the Concessionaire's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay any sum of money or other

consideration for the execution of this Agreement other than that which is expressly set forth in this Agreement.

Section 11.6. MBE/WBE Requirements. The Concessionaire shall comply with the requirements of IC 4-13-16.5 and 25 IAC 5 to maximize the utilization of minority and women business enterprises ("M./W.B.E.s") in the procurement and contracting processes. The Concessionaire agrees to a goal for participating minority business enterprises of 6% and women's business enterprises of 6%. All M/WBEs must be certified by the Indiana Department of Administration, Minority and Women Business Enterprises Division. This policy shall be stated in all contracts related to the Toll Road, circulated to all employees of the Concessionaire in affected departments, and made known to minority and women business enterprises.

Section 11.7. Buy Indiana Presumption. The Concessionaire agrees to the goal of awarding contracts representing at least ninety percent (90%) of its aggregate annual expenditures for construction (including all construction mandated under Article 5 of this Agreement), repairs and maintenance of the Toll Road, compliance with IFA Directives and performance of Approved Concessionaire Requests to "Indiana businesses" as such term is defined in IC 5-22-15-20.5.

Section 11.8. Telephone Solicitation. As required by IC 5-22-3-7, the Concessionaire, on its behalf and on behalf of its principals and Affiliates agrees that neither it nor they shall violate the terms of IC 24-4.7 during the Term, even if IC 24-4.7 is preempted by federal law.

ARTICLE 12.
INDEMNIFICATION

Section 12.1. Indemnification by the Concessionaire. To the extent permitted by Law, the Concessionaire shall indemnify and hold harmless the IFA, the State and each of its Representatives from and against any Losses actually suffered or incurred by the IFA, the State or any such Representative, based upon, arising out of, related to, occasioned by or attributable to (i) any failure by the Concessionaire, its Affiliates or their respective Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, subject to Section 9.4(b), any breach by the Concessionaire of its representations or warranties set forth herein, (ii) any Assumed Liabilities, (iii) any tax or mortgage recording charge attributable to any Transfer of the Concessionaire Interest or any part thereof (other than the initial Transfer made by the IFA) or (iv) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the Concessionaire, its Affiliates or their respective Representatives in connection with this Agreement, any Transfer of the Concessionaire Interest or any part thereof or any other matter affecting the Toll Road; *provided, however,* that, except with respect to Claims resulting from Third Party Claims, Claims are made in writing within a period of three years from the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations.

Section 12.2. Indemnification by the IFA. To the extent permitted by Law, the IFA shall indemnify and hold harmless the Concessionaire, its Affiliates and each of its Representatives against and from any Losses actually suffered or incurred by the Concessionaire,

its Affiliates or any such Representative, based upon, arising out of, related to, occasioned by or attributable to (i) any failure by the IFA or its Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, subject to Section 9.4(a), any breach by the IFA of its representations or warranties set forth herein, (ii) any Excluded Liabilities, or (iii) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the IFA or its Representatives in connection with this Agreement, or any other matter affecting the Toll Road; *provided, however,* that, except with respect to Claims resulting from Third Party Claims, Claims are made in writing within a period of three years of the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations.

Section 12.3. Agency for Representatives. Each of the IFA and the Concessionaire agrees that it accepts each indemnity in favor of any of its Representatives or Affiliates, as applicable, as agent and trustee of that Representative and/or Affiliate, as applicable, and agrees that each of the IFA and the Concessionaire may enforce an indemnity in favor of its Representatives and/or Affiliate, as applicable, on behalf of that Representative and/or Affiliate, as applicable.

Section 12.4. Third Party Claims.

(a) *Notice of Third Party Claim.* If an Indemnified Party receives notice of the commencement or assertion of any Third Party Claim, the Indemnified Party shall give the Indemnifier reasonably prompt notice thereof, but in any event no later than 30 days after receipt of such notice of such Third Party Claim. Such notice to the Indemnifier shall describe the Third Party Claim in reasonable detail (and include a copy of any complaint or related documents) and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Indemnified Party.

(b) *Defense of Third Party Claim.* The Indemnifier may participate in or assume the defense of any Third Party Claim by giving notice to that effect to the Indemnified Party not later than 30 days after receiving notice of that Third Party Claim (the "Notice Period"). The Indemnifier's right to do so shall be subject to the rights of any insurer or other Party who has potential liability in respect of that Third Party Claim. The Indemnifier agrees to pay all of its own expenses of participating in or assuming each defense. The Indemnified Party shall co-operate in good faith in the defense of each Third Party Claim, even if the defense has been assumed by the Indemnifier and may participate in such defense assisted by counsel of its own choice at its own expense. If the Indemnified Party has not received notice within the Notice Period that the Indemnifier has elected to assume the defense of such Third Party Claim, the Indemnified Party may assume such defense, assisted by counsel of its own choosing and the Indemnifier shall be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Indemnified Party with respect to such Third Party Claim.

(c) *Assistance for Third Party Claims.* The Indemnifier and the Indemnified Party will use all reasonable efforts to make available to the Party which is undertaking and controlling the defense of any Third Party Claim (the "Defending Party"), (i) those employees whose assistance, testimony and presence is necessary to assist the Defending

Party in evaluating and in defending any Third Party Claim, and (ii) all documents, records and other materials in the possession of such Party reasonably required by the Defending Party for its use in defending any Third Party Claim, and shall otherwise co-operate with the Defending Party. The Indemnifier shall be responsible for all reasonable expenses associated with making such documents, records and materials available and for all expenses of any employees made available by the Indemnified Party to the Indemnifier hereunder, which expense shall not exceed the actual cost to the Indemnified Party associated with such employees.

(d) *Settlement of Third Party Claims.* If an Indemnifier elects to assume the defense of any Third Party Claim as provided in Section 12.4(b), the Indemnifier shall not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense of such Third Party Claim. However, if the Indemnifier fails to take reasonable steps necessary to defend diligently such Third Party Claim within 30 days after receiving notice from the Indemnified Party that the Indemnified Party bona fide believes on reasonable grounds that the Indemnifier has failed to take such steps, the Indemnified Party may, at its option, elect to assume the defense of and to compromise or settle the Third Party Claim assisted by counsel of its own choosing and the Indemnifier shall be liable for all reasonable costs and expenses paid or incurred in connection therewith. The Indemnified Party shall not settle or compromise any Third Party Claim without obtaining the prior written consent of the Indemnifier unless such settlement or compromise is made without any liability to, and does not require any action on the part of, the Indemnifier (other than the payment of money).

Section 12.5. Direct Claims. Any Direct Claim shall be asserted by giving the Indemnifier reasonably prompt notice thereof, but in any event not later than 60 days after the Indemnified Party becomes aware of such Direct Claim. The Indemnifier shall then have a period of 30 days within which to respond in writing to such Direct Claim. If the Indemnifier does not so respond within such 30 day period, the Indemnifier shall be deemed to have rejected such Claim, and in such event the Indemnified Party may submit such Direct Claim to the dispute resolution process set forth in Article 19.

Section 12.6. Failure to Give Timely Notice. A failure to give timely notice as provided in this Article 12 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, a Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise directly and materially damaged as a result of such failure. However, this Section 12.6 shall have no effect whatever on the survival provisions set out in Section 9.4 and the rights of the Parties with respect thereto.

Section 12.7. Reductions and Subrogation. If the amount of any Loss incurred by an Indemnified Party at any time subsequent to the making of an indemnity payment hereunder (an "Indemnity Payment") is reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including Taxes) or premiums incurred in connection therewith), together with interest thereon from the date of payment thereof at the Bank Rate, shall promptly be repaid by the Indemnified Party to the

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

Section 12.8. Payment and Interest. All amounts to be paid by an Indemnifier hereunder shall bear interest at a rate per annum equal to the Bank Rate, calculated annually and payable monthly, both before and after judgment, from the date that the Indemnified Party disbursed funds, suffered damages or losses or incurred a loss, liability or expense in respect of a Loss for which the Indemnifier is liable to make payment pursuant to this Article 12, to the date of payment by the Indemnifier to the Indemnified Party.

Section 12.9. Limitation on Certain Claims. No Claim may be made by the Concessionaire, its Affiliates or the Concessionaire's Representatives against the IFA under Section 12.2 for the breach of any representation or warranty made or given by the IFA in Section 9.1 unless (i) the Loss suffered or incurred by the Concessionaire, its Representatives or its Affiliates in connection with such breach is in excess of $20,000 and (ii) the aggregate of all Losses suffered or incurred by the Concessionaire, its Representatives or its Affiliates in connection with breaches of representations and warranties in Section 9.1 exceeds $4,000,000 in the aggregate, in which event the amount of all such Losses in excess of such amount may be recovered by the Concessionaire, its Representatives or its Affiliates; *provided, however,* that the maximum aggregate liability of the IFA to the Concessionaire, its Representatives or its Affiliates in respect of such Losses shall not exceed 50% of the Rent; *provided, further,* that this Section 12.9 shall not apply to Claims for claims of breach of representation or warranties in Section 9.1(a), (b), (c), (d), (e), (f) or (g) or to claims for fraud, intentional misrepresentation or intentional breach of the representations or warranties in Section 9.1.

Section 12.10. Other Matters.

(a) To the extent permissible by applicable law, the Concessionaire waives any limits to the amount of its obligations to defend, indemnify, hold harmless or contribute to any sums due under any Losses, including any claim by any employee of Concessionaire, that may be subject to the Indiana Workers Compensation Act (IC 22-3-1-1 et seq).

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

(c) *Losses Net of Taxes.* In addition, the amount of Losses to be paid hereunder shall be paid by the Indemnifier without reduction for any "Tax Benefits" (as defined below) available to the Indemnified Party. However, to the extent that the Indemnified Party

recognizes Tax Benefits as a result of any Losses, the Indemnified Party shall pay the amount of such Tax Benefits to the Indemnifier as such Tax Benefits are actually recognized by the Indemnified Party. For this purpose, the Indemnified Party shall be deemed to recognize a tax benefit ("Tax Benefit") with respect to a taxable year if, and to the extent that, the Indemnified Party's cumulative liability for Taxes through the end of such taxable year, calculated by excluding any Tax items attributable to the Losses (as well as any indemnification payment received with respect thereto) from all taxable years, exceeds the Indemnified Party's actual cumulative liability for Taxes through the end of such taxable year, calculated by taking into account any Tax items attributable to the Losses (as well as any indemnification payment received with respect thereto) for all taxable years (to the extent reasonably permitted by relevant Tax law and treating such Tax items as the last items claimed for any taxable year). For purposes of calculating the Tax Benefit, the Indemnified Party shall include the Indemnified Party and its Affiliates.

Section 12.11. Offset Rights; Limitations on Certain Damages.

(a) Any other provision herein notwithstanding, each Party's obligations under this Agreement are subject to, and each Party shall have the benefit of, all defenses, counterclaims, rights of offset or recoupment or other claims and rights, including the right to deduct payments due to the other Party hereunder (collectively, "Offsets") which such Party may have at any time against such other Party (or any of their respective successors and assigns) or any transferee or assignee of any such other Party's rights as against such Party or any part thereof or interest therein, whether the claim or right of such Party relied upon for such purpose is matured or unmatured, contingent or otherwise, and no transfer or assignment of this Agreement or any other obligation of such other Party, or of any rights in respect thereof, pursuant to any plan of reorganization or liquidation or otherwise shall affect or impair the availability to each Party of the Offsets. Without limiting the generality of the forgoing, if (a) the Concessionaire is the Indemnified Party and (b) the IFA agrees that it is obligated to indemnify the Concessionaire hereunder, or such obligation has been determined pursuant to the procedures set forth in Article 19 and (c) the amount of the Loss with respect to which the Concessionaire is entitled to indemnification has either been agreed to by the IFA or determined pursuant to the procedures set forth in Article 19 and (d) such Loss remains unpaid by the IFA for 180 days following the date that the IFA acknowledges its obligation to pay such Loss, or such obligation was determined pursuant to Article 19, as the case may be, then the Concessionaire may at its option, reduce any obligations of the Concessionaire to expand or make capital improvements to the Toll Road pursuant to Section 5.5 by an amount equal to, in the aggregate, the amount of such Loss.

(b) In no event shall any Party be liable to the other Party under this Agreement for exemplary, consequential, indirect or punitive damages (except for claims for fraud or for intentional misrepresentation or intentional breach and provided that this limitation on consequential damages shall not be applicable to the Concessionaire's rights of recovery for lost Toll Road Revenue as part of Concession Compensation and the Toll Road Concession Value), nor shall a Party be obligated to indemnify any other Party or any other Person with respect to any Losses or damages caused by the fraud of such other Party or Person.

(c) Except in a termination of this Agreement pursuant to Section 2.4(d), Section 14.2 or Section 16.2, or in cases involving fraud or intentional misrepresentation subject to all of the terms and conditions hereof, the provisions of this Article 12 shall constitute the sole and exclusive right and remedy available to any Party hereto for any actual or threatened breach of this Agreement by any party hereto, including a breach of any representation, warranty, covenant or agreement contained herein.

Section 12.12. Survival. This Article 12 shall remain in full force and effect in all circumstances and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by any termination or rescission of this Agreement by any Party.

ARTICLE 13.
INSURANCE

Section 13.1. Insurance Coverage Required. The Concessionaire shall provide and maintain at the Concessionaire's own expense, or cause to be maintained, during the Term and during any time period following expiration if the Concessionaire is required to return and perform any additional work, the insurance coverages and requirements specified below, as applicable, insuring the Toll Road and all Toll Road Operations (the "Required Coverages") to the extent such coverages are commercially available.

(a) *Workers' Compensation and Employer's Liability.* The Concessionaire shall provide Workers' Compensation Insurance, as prescribed by applicable Law, covering all employees who agree to provide a service under this Agreement and Employer's Liability Insurance coverage with limits of not less than $500,000 each accident or illness.

(b) *Commercial General Liability (Primary and Umbrella).* The Concessionaire shall provide Commercial General Liability Insurance or equivalent with limits of not less than $75,000,000 per occurrence for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to, the following: all premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, terrorism (if available) and contractual liability (with no limitation endorsement). The IFA and the State are to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.

(c) *Automobile Liability (Primary and Umbrella).* When any motor vehicles (owned, non-owned or hired) are used in connection with work to be performed, the Concessionaire shall provide or cause to be provided Automobile Liability Insurance with limits of not less than $10,000,000 per occurrence for bodily injury and property damage. The IFA and the State are to be named as an additional insured on a primary, non-contributory basis.

(d) *Builder's Risk.* When the Concessionaire undertakes any construction, maintenance or repairs to the Toll Road, including improvements and betterments pursuant to this Agreement, the Concessionaire shall provide or cause to be provided, All Risk Builder's Risk Insurance at replacement cost for materials, supplies, equipment, machinery

and fixtures that are or will be part of the Toll Road Coverage shall include, but not be limited to, the following: right to partial occupancy, boiler and machinery, earth movement, flood, business income, valuable papers and other consequential loss, when applicable. The IFA and the State shall be named as an additional insured and, subject to the claims of any Leasehold Mortgagee, a loss payee.

(e) *Professional Liability.* When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors or omissions shall be maintained with limits of not less than $2,000,000. Any contractual liability exclusion applying to the policy shall not apply to the extent the professional would otherwise be liable for loss under the policy in the absence of a contract. When policies are renewed or replaced, the policy retroactive date shall coincide with, or precede, start of work in connection with this Agreement.

(f) *Property.* The Concessionaire shall obtain All Risk Property Insurance at full replacement cost, covering all loss, damage or destruction to the Toll Road, including improvements and betterments; *provided, however,* that the limits of such coverage may be based on a probable maximum loss analysis, subject to the IFA's approval of such probable maximum loss analysis by an independent third party that is reasonably acceptable to the IFA. Coverage shall include, but not be limited to, the following: equipment breakdown, flood, earth movement, collapse, water including overflow, leakage, sewer backup or seepage, utility interruption, debris removal, business ordinance or law for increased cost of construction, extra expense, boiler and machinery, valuable papers and, if available, terrorism. Coverage shall also include business income for the period of Restoration. The IFA and the State are to be named as an additional insured. Subject to the claims of any Leasehold Mortgagee, the IFA and the State and the Depositary are to be named as loss payees. The Concessionaire shall be responsible for any loss or damage to property of the IFA or State at full replacement cost. The Concessionaire shall be responsible for all loss or damage to personal property (including, but not limited to, materials, fixtures/contents, equipment, tools and supplies) of the Concessionaire unless caused by the IFA, the State or their Representatives.

(g) *Pollution Legal Liability.* Pollution Legal Liability Insurance shall be provided covering bodily injury, property damage and other losses caused by pollution conditions occurring during the Term with limits of not less than $5,000,000 per occurrence. Coverage shall include, but not be limited to, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date shall, if practicable, coincide with or precede, start of work in connection with this Agreement. The IFA and the State are to be named as an additional insured.

(h) *Railroad Protective Liability.* When any work is to be done adjacent to or on railroad or transit property, the Concessionaire shall provide or require the Contractors to provide, with respect to the operations that the Concessionaire or Contractors perform, Railroad Protective Liability Insurance in the name of the applicable railroad or transit entity. The policy shall have limits of not less than $2,000,000 per occurrence and $6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

Section 13.2. Additional Requirements.

(a) *Evidence of Insurance.* The Concessionaire shall deliver or cause to be delivered to the IFA certificates of insurance evidencing the Required Coverages on or before the Closing Date, and shall provide or cause to be provided, not less than 60 days prior to expiration of the then current coverages, Renewal Certificates of Insurance, or such similar evidence, if such coverages have an expiration or renewal date occurring during the Term. The receipt of any certificate does not constitute agreement by the IFA that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the IFA to obtain certificates or other insurance evidence from the Concessionaire shall not be deemed to be a waiver by the IFA. The Concessionaire shall advise all insurers of provisions of this Agreement regarding insurance. Non-conforming insurance shall not relieve the Concessionaire of the obligation to provide insurance as specified herein unless conforming insurance is not commercially available. Except as otherwise expressly set forth herein, each Required Coverage may be reviewed by the IFA for compliance with the terms of this Agreement. Each Required Coverage shall be signed by the insurer responsible for the risks insured against or by the insurer's authorized representative. All Required Coverages shall be placed with insurers reasonably acceptable to, the IFA; *provided, that* all such insurers, at a minimum, shall have a rating of A(VII) or better by A.M. Best Company (unless the IFA consents to waive this requirement).

(b) *Notice of Cancellation, Material Change or Violation.* All Required Coverages shall, to the extent commercially available in the market, with the Concessionaire using its reasonable best efforts, provide for 90 days (or in the case of cancellation for the non-payment of premiums, 10 days) prior written notice to be given to the IFA by the insurer in the event coverage is substantially changed, canceled or non-renewed. The IFA shall be permitted (but not obligated) to pay any delinquent premiums before the cancellation date specified by the insurer in any notice of cancellation for non-payment of premium in order to maintain such coverage in full force and effect and the Concessionaire shall reimburse the IFA for any delinquent premiums paid by the IFA on written demand without any days of grace and without prejudice to any other rights and remedies of the IFA hereunder. The Concessionaire shall not cancel, terminate, materially change to the detriment of the IFA or replace any Required Coverage.

(c) *Deductibles.* All Required Coverages may contain commercially reasonable deductibles or self-insured retentions not to exceed amounts reasonably acceptable to the IFA. Any and all deductibles or self-insured retentions on Required Coverages shall be borne by the Concessionaire or its Contractors.

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

(e) *Waiver of Subrogation by Insurers.* Each of the Required Coverages shall include a waiver by the insurer of its rights of subrogation against the IFA, the State, their employees, elected officials, agents or representatives.

(f) *No Limitation as to Concessionaire Liabilities.* The Concessionaire expressly understands and agrees that any coverages and limits furnished by the Concessionaire shall in no way limit the Concessionaire's liabilities and responsibilities specified within this Agreement or by Law, except as specifically provided herein.

(g) *No Contribution by IFA.* The Concessionaire expressly understands and agrees that any insurance or self insurance programs maintained by the IFA shall not contribute with insurance provided by the Concessionaire under this Agreement.

(h) *Insurance Not Limited by Indemnification.* The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of Law.

(i) *Insurance Requirements of Contractors.* The Concessionaire shall require in each contract with any Contractor or subtenant (where such Contractor or subtenant is not covered by the Required Coverages) that such Contractor or subtenant obtain coverages reasonably comparable to the Required Coverages that are reasonably appropriate in their limits and other terms and conditions to the nature of the contract with the Contractor or subtenant. Such coverages shall insure the interests of the IFA, the State, their employees, elected officials, agents and representatives, the Concessionaire and any other Contractors or subtenants in respect of the applicable work being performed and shall be subject to the same (or comparable) coverage and administrative requirements as are imposed on the Concessionaire pursuant to this Agreement. When requested to do so by the IFA, the Concessionaire shall provide or cause to be provided to the IFA Certificates of Insurance with respect to such insurance coverages or such other evidence of insurance, acceptable in form and content to the IFA.

(j) *Other Insurance Obtained by Concessionaire.* If the Concessionaire or its Contractors or subtenants desire coverages in addition to the Required Coverages, the Concessionaire and each Contractor or subtenant shall be responsible for the acquisition and cost of such additional coverages. If the Concessionaire or its Contractors or subtenants obtain any property, liability or other insurance coverages in addition to the Required Coverages ("Additional Coverages"), then the Concessionaire or its Contractors shall (i) notify the IFA as to such Additional Coverages, (ii) provide the IFA with any documentation relating to the Additional Coverages, including Certificates of Insurance, that the IFA reasonably requests and (iii) at the IFA's election, cause the IFA, the State, their employees, elected officials, agents and representatives to be named as additional insureds under such Additional Coverages.

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

(l) *IFA's Right to Modify.* The IFA shall have the right to modify, delete, alter or change insurance coverage requirements set forth in this Section 13.2 to reflect known and established material changes in insurance coverages for Comparable Highways or operations

comparable to the Toll Road Operations or known and established material changes in insurance exposures associated with the Toll Road, provided that the Concessionaire shall not have any obligation to procure or maintain at its cost any additional insurance unless an independent insurance consultant shall have delivered to the Concessionaire its opinion to the effect that the additional coverages are required pursuant to the above-stated criteria and such additional coverages are commercially available at reasonable rates. Notwithstanding anything to the contrary herein, if any insurance (including the limits or deductibles thereof) required to be maintained under this Agreement shall not be available at commercially reasonable rates in terms of cost of premium and amount of deductibles, the Concessionaire shall have the right to request that the IFA consent to waive such requirement. Any such waiver shall be effective only so long as such insurance shall not be available at commercially reasonable rates, provided that during the period of such waiver, the Concessionaire maintains the maximum amount of such insurance otherwise available at commercially reasonable rates.

(m) *All Required Coverages.* All Required Coverages shall be "occurrence" based policies, except for Professional Liability insurance and Pollution Legal Liability insurance.

Section 13.3. Damage and Destruction.

(a) *Obligations of Concessionaire.* If all or any part of any of the Toll Road shall be destroyed or damaged during the Term in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen, the Concessionaire shall: (i) give the IFA notice thereof promptly after the Concessionaire receives actual notice of such casualty; (ii) at its sole cost and expense, except in the case of a Delay Event, in which case the provisions of Section 15.1 apply, whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restorations, replacement and rebuilding (the "Casualty Cost"), proceed diligently to repair, restore or rebuild the same to the condition existing prior to the happening of such fire or other casualty (any such activity being a "Restoration") at a cost not less than the Casualty Cost; and (iii) deposit all insurance proceeds received by the Concessionaire in connection with any Restoration with a Depositary; *provided, however,* that if at any time the Casualty Cost exceeds the net insurance proceeds actually deposited with the Depositary, then the Concessionaire shall also deposit with the Depository such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds (collectively, with any interest earned thereon, the "Restoration Funds"); *provided, further,* that the procedures of this clause (iii) of this (a) shall only apply to casualty events in which the cost of Restoration exceeds $1,000,000.

(b) *Rights of IFA.* If (i) the Concessionaire shall fail or neglect to commence the diligent Restoration of the Toll Road or the portion thereof so damaged or destroyed, (ii) having so commenced such Restoration shall fail to diligently complete the same in accordance with the terms of this Agreement or (iii) prior to the completion of any such Restoration by the Concessionaire, this Agreement shall expire or be terminated in accordance with the terms of this Agreement, the IFA may, but shall not be required to, complete such Restoration at the Concessionaire's expense and shall be entitled to be paid

out of the Restoration Funds, but such payment shall not limit the Concessionaire's obligation to pay the IFA's reasonable Restoration expenses, less amounts received by the IFA from such Restoration Funds. In any case where this Agreement shall expire or be terminated prior to the completion of the Restoration, the Concessionaire shall (x) account to the IFA for all amounts spent in connection with any Restoration which was undertaken, (y) pay over or cause the Depositary to pay over to the IFA, within 30 days after demand therefor, the remainder, if any, of the Restoration Funds received by the Concessionaire prior to such termination or cancellation and (z) pay over or cause the Depositary to pay over to the IFA, within 30 days after receipt thereof, any Restoration Funds received by the Concessionaire or the Depositary subsequent to such termination or cancellation. The Concessionaire's obligations under this Section 13.3(b) shall survive the expiration or termination of this Agreement.

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

(i) prior to commencing any Restoration, the Concessionaire shall furnish the IFA with an estimate of the cost of such Restoration, prepared by an architect or engineer;

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

(iii) the amount of any installment to be paid to the Concessionaire shall be (A) the product of (x) the total Restoration Funds and (y) a fraction, the numerator of which is the cost of labor and materials theretofore incurred by the Concessionaire in the Restoration and the denominator of which is the Casualty Cost, less (B) all payments theretofore made to the Concessionaire out of the Restoration Funds and less (C) 10% of the amount determined by the calculation described in clauses (A) and (B) of this

Section 13.3(c)(iii), except that no amounts due shall be withheld for architects' or engineers' fees or permitting or other governmental fees in connection with the Restoration or with respect to each Contractor upon the final completion of each such Contractor's respective work, provided that the unapplied portion of the funds held by the Depositary are sufficient to complete the Restoration; *provided, however,* that all disbursements to the Concessionaire shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and Contractors to the extent that such disbursements are customary in the industry and provided that the unapplied portion of the funds held by the Depositary are sufficient to complete the Restoration; and

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

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

(i) at the time of making such payment, no Concessionaire Default exists;

(ii) the Restoration shall be carried out under the supervision of the architect or engineer, and there shall be submitted to the Depositary and the IFA the certificate of such architect or engineer stating that (A) the materials and other items which are the subject of the requisition have been delivered to the Toll Road (except with respect to requisitions for advance deposits permitted under Section 13.3(c)(iii)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's or other liens have been claimed, except for any mechanic's lien for claims that will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (provided that a release of such lien is delivered to the Depositary in accordance with Section 13.3(c)(ii), (B) the sum then requested to be withdrawn either has been paid by the Concessionaire or is due and payable to Contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (C) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Restoration Funds or has been made out of the Restoration Funds received by the Concessionaire, (D) the sum then requested does not exceed the value of the services and materials described in the certificate, (E) the work relating to such requisition has been performed in accordance with this Agreement, (F) the balance of the Restoration Funds held by the Depositary will be sufficient upon completion of the Restoration to pay for the same in

full, and stating in reasonable detail an estimate of the cost of such completion and (G) in the case of the final payment to the Concessionaire, the Restoration has been completed in accordance with this Agreement.

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

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

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

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

ARTICLE 14.
ADVERSE ACTIONS

Section 14.1. Adverse Action.

(a) An "Adverse Action" shall occur if the IFA, the State, or any local, city or county government authority in Indiana, takes action at any time during the Term (including enacting any Law) and the effect of such action is reasonably expected (i) to be principally borne by the Concessionaire or principally by private operators of toll roads in Indiana; (ii) to have a Material Adverse Effect on the fair market value of the Concessionaire Interest, except where such action is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of the Adverse Action) or such action is otherwise permitted under this Agreement and (iii) is not mandated by action of the United States Government (or any agency thereof); *provided, however,* that neither an increase in Taxes not directed solely at the Concessionaire, the Toll Road or the users of the Toll Road nor Taxes with respect to which the IFA is indemnifying the Concessionaire pursuant to Section 3.10 shall be an Adverse Action.

(b) If an Adverse Action occurs, the Concessionaire shall have the right to (i) be paid by the IFA the Concession Compensation with respect thereto (such Concession Compensation, the "AA-Compensation") or (ii) terminate this Agreement and be paid by the IFA the Toll Road Concession Value, in either case by giving notice in the manner described in Section 14.1(c).

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

(d) If the Concessionaire has elected to exercise its right to AA-Compensation, the IFA shall pay the amount of Concession Compensation claimed to the Concessionaire within 60 days following the date of receipt of the AA-Notice, or if a AA-Dispute Notice has been given, then not later than 60 days following the date of determination of the AA-Compensation (together with interest at the rate set forth in Section 20.10 from the date of receipt of the AA-Dispute Notice to the date on which payment is made), *provided that*, subject to the right of the Concessionaire to receive interest at the rate set forth in Section 20.10 on the payment owed by the IFA from the date of receipt of the AA-Dispute Notice to the date on which payment is made, the IFA may defer any such payment for an additional 120 days if the IFA determines, in its discretion, that such additional period is necessary in order to obtain financing or otherwise to obtain the necessary funds to make such a payment.

(e) The development, redevelopment, construction, maintenance, modification or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of Toll Revenues or in the number of vehicles using the Toll Road shall not constitute an Adverse Action. The opening of a Competing Highway shall constitute a Compensation Event with respect to which Concession Compensation shall be payable on or before March 15 in an amount equal to the actual decrease in net income suffered by the Concessionaire during the preceding calendar year as a sole and direct result of the Competing Highway.

Section 14.2. Termination.

(a) If the Concessionaire has elected to exercise its right to terminate this Agreement in connection with an Adverse Action pursuant to Section 14.1, this Agreement, subject to Section 14.3, shall terminate 60 days following the date of receipt of the AA-Notice by the

IFA, and the IFA shall pay an amount equal to the aggregate of (i) the Toll Road Concession Value as of the date of termination, plus (ii) without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a direct result of such termination (excluding Breakage Costs), plus (iii) the Concession Compensation calculated for the period between the date of the Adverse Action and the date of termination, less (iv) any insurance or condemnation proceeds received by the Concessionaire in respect of all or any portion of the Toll Road as a result of the occurrence of such Adverse Action (collectively, the "Termination Damages") to the Concessionaire on the Reversion Date or, if the Termination Damages are determined on a date subsequent to the Reversion Date, then not later than 60 days following the date of determination of the Termination Damages (together with interest at the rate set forth in Section 20.10 from the Reversion Date to the date on which payment is made), *provided that*, subject to the right of the Concessionaire to receive interest at the rate set forth in Section 20.10 on the payment owed by the IFA from the Reversion Date until the date on which payment is made, the IFA may defer any such payment for a 180 days if the IFA reasonably determines that such additional period is necessary in order to obtain financing to make such a payment; *provided, however,* that any amounts received by the Concessionaire or any Leasehold Mortgagee from any insurance policies payable as a result of damage or destruction to the Toll Road that has not been remedied prior to the Reversion Date, shall, to the extent not used to remedy such effects, be deducted from the amount payable by the IFA to the Concessionaire so long as the IFA has not received any such amounts pursuant to Article 13.

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

(c) No AA-Notice given by the Concessionaire to the IFA in which the Concessionaire states that it elects to exercise its right of termination of this Agreement shall be valid for any purpose unless the Concessionaire has first obtained and delivered to the IFA the written consent of the Leasehold Mortgagee to such AA-Notice.

(d) The IFA shall use its best efforts to lease or borrow against the Toll Road or its other assets to finance any obligation to pay the Toll Road Concession Value. If the IFA lacks sufficient funds to satisfy such obligation or any other obligation of the IFA under this Agreement itself, it shall, subject to the review and approval of the State budget director and budget committee as to the calculation of the amount of any such deficiency, certify to the State General Assembly the amount of any such deficiency. This Agreement constitutes a moral obligation of the State to pay any obligations of the IFA under this Agreement to the extent the IFA is unable to pay such obligations itself. Nothing in this Section 14.2(d) shall diminish or release the IFA from its obligations under this Agreement, or alter or modify any of its obligations under this Agreement, to pay the Toll Road Concession Value, notwithstanding its inability to lease or borrow against the Toll Road or obtain appropriation from the State. The IFA hereby agrees that any obligation it may have pursuant to this Agreement for the payment of money, including, without limitation, any obligation of the IFA to pay the Toll Road Concession Value, shall be payable from any funds or assets of the IFA which are legally available.

(e) Payment of the entire sum of Termination Damages or the AA-Compensation, as the case may be, by the IFA to the Concessionaire, shall constitute full and final satisfaction of all amounts that may be claimed by the Concessionaire for and in respect of the occurrence of the Adverse Action and, upon such payment, the IFA and the State shall be released and forever discharged by the Concessionaire from any and all liability in respect of such Adverse Action.

Section 14.3. Right of IFA to Remedy an Adverse Action. If the IFA wishes to remedy the occurrence of an Adverse Action, the IFA shall give notice thereof to the Concessionaire within 30 days following the date of receipt of the AA-Notice. If the IFA gives such notice it must remedy the Adverse Action within 180 days following the date of receipt of the AA-Notice or, if a AA-Dispute Notice has been given, within 180 days following the final award pursuant to Article 19 to the effect that an Adverse Action occurred. If the IFA remedies the occurrence of an Adverse Action within the applicable period of time, the right of the Concessionaire shall be limited to a claim for AA-Compensation with respect to such Adverse Action.

Section 14.4. Other Actions by Governmental Authorities. In the event that any Governmental Authority (other than the IFA, the State, or any local, city or county government in Indiana) proposes to take any action at any time during the Term (including enacting any Law) and the effect of such action is reasonably expected (i) to be principally borne by the Concessionaire and other private toll road operators in Indiana and not by others and (ii) to have a material adverse effect on the fair market value of the Concessionaire Interest, except where such action is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of an Adverse Action or such action by any such other Governmental Authority), then at the request of the Concessionaire the IFA shall use its reasonable efforts to oppose and challenge such action by any such other Governmental Authority; *provided, however,* that all reasonable out-of-pocket costs and expenses incurred by the IFA in connection with such opposition or challenge shall be borne by the Concessionaire.

ARTICLE 15.
DELAY EVENTS; FORCE MAJEURE REMEDY

Section 15.1. Delay Events.

(a) If the Concessionaire is affected by a Delay Event, it shall give notice within 10 Business Days following the date on which it first became aware (or should have been aware, using all reasonable due diligence) of the said Delay Event to the IFA (provided that in the case of the same Delay Event being a continuing cause of delay, only one notice shall be necessary), which notice shall include (i) a statement of which Delay Event the claim is based upon, (ii) details of the circumstances from which the delay arises and (iii) an estimate of the delay in the performance of obligations under this Agreement attributable to the said Delay Event and information in support thereof, if known at that time. The IFA shall, after receipt of the said notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the IFA may reasonably consider necessary.

(b) The Concessionaire shall notify the IFA within 10 Business Days following the date on which it first became aware (or should have been aware, using all reasonable due diligence) that a Delay Event has ceased.

(c) Subject to the Concessionaire giving the notice required in Section 15.1(a), a Delay Event shall excuse the Concessionaire from whatever performance is prevented by the Delay Event referred to in such notice for such appropriate number of Business Days as the IFA and the Concessionaire jointly determine, or require the payment of Concession Compensation by the IFA as jointly determined, each acting reasonably. If the IFA and the Concessionaire cannot agree upon the period of extension, then either Party shall be entitled to refer the matter to the dispute resolution procedure in Article 19. This Section 15.1(c) shall not excuse the Concessionaire from the performance and observance under this Agreement of all obligations and covenants not affected by the Delay Event or prevent the IFA or its designee from exercising its rights under Section 3.7, above. Notwithstanding the occurrence of a Delay Event, the Concessionaire shall continue its performance and observance under this Agreement of all of its obligations and covenants to the extent that it is reasonably able to do so and shall use its reasonable efforts to minimize the effect and duration of the Delay Event. Nothing herein shall permit or excuse noncompliance with a change to applicable Laws.

(d) If a Delay Event occurs that has the effect of (i) causing physical damage or destruction to the Toll Road that results in the Toll Road being substantially unavailable for Highway Purposes or (ii) suspending toll collection on the Toll Road, and such effect continues for a period in excess of 120 days and has a Material Adverse Effect on the fair market value of the Concessionaire Interest, and insurance policies payable (or that should have been payable but for the breach of an obligation to take out and maintain such insurance policy by the Concessionaire) or condemnation or other similar proceeds are insufficient to restore the Concessionaire to the same economic position as it would have been had such event not occurred, then, notwithstanding Section 2.1, the Concessionaire shall have the right to increase the tolls in accordance with applicable law and the provisions of Article 7 or extend the Term for a period of time that would be sufficient so to compensate the Concessionaire and to restore it to the same economic position as it would have been in had such Delay Event not occurred (a "Delay Event Remedy"), which time period shall not exceed the length of time in which all or a material part of the Toll Road was substantially unavailable for Highway Purposes or in which toll collection for all or a material part was suspended. The IFA shall be obligated to assist the Concessionaire in any administrative process necessary in order to effect a toll increase required by this provision.

(e) If the Concessionaire elects to exercise the right to the Delay Event Remedy, the Concessionaire shall give notice ("Delay Event Notice") to the IFA within 30 days following the date on which the Concessionaire first became aware of its right to the Delay Event Remedy occurring setting forth (i) the details of the Delay Event and its effect on either causing physical damage or destruction to the Toll Road that results in the Toll Road being substantially unavailable for Highway Purposes or suspending toll collection on the Toll Road, (ii) the amount claimed as compensation to restore the Concessionaire to the same economic position as it would have been in had such Delay Event not occurred (including the details of the calculation thereof) and (iii) the details of the relationship between such

compensation and the Delay Event Remedy that it proposes. The IFA shall, after receipt of the Delay Event Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the IFA may reasonably consider necessary. If the IFA wishes to dispute the occurrence of a Delay Event or the Delay Event Remedy claimed in the Delay Event Notice, the IFA shall give notice of dispute (the "Delay Event Dispute Notice") to the Concessionaire within 30 days following the date of receipt of the Delay Event Notice stating the grounds for such dispute, and if neither the Delay Event Notice nor the Delay Event Dispute Notice has been withdrawn within 30 days following the date of receipt of the Delay Event Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 19.

(f) In addition to the matters provided in clauses (a) through (e) above, the Concessionaire shall be entitled to receive, upon demand therefor, Concession Compensation for any Delay Event that constitutes a Compensation Event.

ARTICLE 16.
DEFAULTS; LETTERS OF CREDIT

Section 16.1. Default by the Concessionaire.

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

(i) if the Concessionaire fails to comply with, perform or observe (x) any material obligation, covenant, agreement, term or condition in this Agreement (provided that the failure to comply with the provisions of Section 11.6 or Section 11.7, shall not constitute a Concessionaire Default), or (y) the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19, and such failure, in respect of clauses (x) and (y), continues unremedied for a period of 90 days following notice thereof (giving particulars of the failure in reasonable detail) from the IFA to the Concessionaire or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the IFA, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the IFA, acting reasonably and (C) such failure is in fact cured within such period of time;

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

(iii) if the Concessionaire (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 11 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the Concessionaire files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future

U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Concessionaire, or of all or any substantial part of its properties or of the Toll Road or any interest therein, or (D) takes any corporate action in furtherance of any action described in this Section 16.1(a)(iii);

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

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

(b) *Remedies of the IFA Upon Concessionaire Default.* Upon the occurrence and during the continuance of a Concessionaire Default, the IFA may, by notice to the Concessionaire with a copy to the Leasehold Mortgagee in accordance with the terms hereof, declare the Concessionaire to be in default and may, subject to the provisions of Articles 18 and 19, do any or all of the following as the IFA, in its discretion, shall determine:

(i) the IFA may terminate this Agreement by giving 60 days' prior notice to the Concessionaire upon the occurrence of (A) a Concessionaire Default that consists of a failure to comply with, perform or observe any Operating Standard if such Concessionaire Default creates a material danger to the safety of Toll Road Operations or a material impairment to the Toll Road or to the continuing use of the Toll Road for transportation purposes or (B) any other Concessionaire Default; *provided, however,* that the Concessionaire shall be entitled to cure a Concessionaire Default pursuant to Section 16.1(a)(i) by providing the IFA with a written work plan within such 60-day period outlining the actions by which the Concessionaire will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final award in accordance with Article 19 that the Concessionaire failed to perform or observe, which work plan is Approved by the IFA, but any failure of the Concessionaire to comply in any material respect with such Approved work plan following 60 days' notice of such failure from the IFA to the Concessionaire shall be deemed to be a Concessionaire Default described in Section

16.1(a)(i) and the entitlement of the Concessionaire to cure such Concessionaire Default by the delivery of an Approved work plan shall not apply thereto; *provided further*, that the IFA shall not exercise the remedy provided in this subsection (i) if the Concessionaire Default consists solely of a violation of Section 11.2, Section 11.3, Section 11.4 or Section 11.8 (but any such violation shall nonetheless subject the Concessionaire to such fines or penalties otherwise applicable to such violation as they may be imposed by the appropriate Governmental Authority).

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

(iii) subject to the cure rights of the Mortgagee as set forth in Section 18.3, the IFA may cure the Concessionaire Default (but this shall not obligate the IFA to cure or attempt to cure a Concessionaire Default or, after having commenced to cure or attempted to cure a Concessionaire Default, to continue to do so), and all costs and expenses reasonably incurred by the IFA in curing or attempting to cure the Concessionaire Default, together with an administrative fee equal to 15% of such costs and expenses, shall be payable by the Concessionaire to the IFA within three Business Days of written demand; *provided, however,* that (A) the IFA shall not incur any liability to the Concessionaire for any act or omission of the IFA or any other Person in the course of remedying or attempting to remedy any Concessionaire Default (other than as a result of negligence or willful misconduct) and (B) the IFA's cure of any Concessionaire Default shall not affect the IFA's rights against the Concessionaire by reason of the Concessionaire Default;

(iv) the IFA may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concessionaire Default (provided that specific performance, injunctive relief and other equitable remedies shall not be available with respect to noncompliance with Sections 11.6 and 11.7);

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

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

(vii) subject to the rights of the Leasehold Mortgagee under the Leasehold Mortgage, the IFA may close any and all portions of the Toll Road; and

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

Section 16.2. Defaults by the IFA.

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

(i) if the IFA fails to comply with or observe (x) any material obligation, covenant, agreement, term or condition in this Agreement (other than an Adverse Action) or (y) the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19 and such failure continues unremedied for a period of 60 days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the IFA or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the IFA has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (A) it is proceeding with all due diligence to cure or cause to be cured such failure, and (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably and (C) such failure is in fact cured within such period of time;

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

(iii) if the IFA (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 11 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the IFA files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the IFA, or of all or any substantial part of its properties (in each case, to the extent applicable to a municipality), or (D) takes any action in furtherance of any action described in this Section 16.2(a)(iii) ; or if within 90 days after the commencement of any proceeding against the IFA seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within 90 days after the appointment, without the consent or acquiescence of the IFA, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of IFA or of all or any substantial part of its properties (in each case, to the extent applicable to a municipality), such appointment has not been vacated or staved on appeal or otherwise,

or if, within 90 days after the expiration of any such stay, such appointment has not been vacated.

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

(i) the Concessionaire is entitled to terminate this Agreement by giving 60 days' prior notice to the IFA; *provided, however*, that the IFA shall be entitled to cure an IFA Default pursuant to Section 16.2(a)(i) by providing the Concessionaire with a written work plan within such 60-day period outlining the actions by which the IFA will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirement or directive of the final award in accordance with Article 19 that the IFA failed to perform or observe, which work plan is approved by the Concessionaire (which approval shall not be unreasonably withheld, delayed or conditioned), but any failure of the IFA to comply in any material respect with such approved work plan following 60 days' notice of such failure from the Concessionaire to the IFA shall be deemed to be an IFA Default described in Section 16.2(a)(i) and the entitlement of the IFA to cure such IFA Default by the delivery of an approved work plan shall not apply thereto; and upon such termination the IFA shall be obligated to pay to the Concessionaire the Toll Road Concession Value plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination;

(ii) the Concessionaire is entitled to exercise any of its rights and remedies at law or in equity;

(iii) the Concessionaire is entitled to seek to recover its Losses and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt; and

(iv) the Concessionaire is entitled to exercise any of its other rights and remedies provided for hereunder.

The IFA shall use its best efforts to lease or borrow against the Toll Road or its other assets to finance any obligation to pay the Toll Road Concession Value. To the extent that the IFA lacks sufficient funds to satisfy such obligation itself, it shall, subject to the review and approval of the State budget director and budget committee as to the calculation of the amount of any such deficiency, certify to the State General Assembly the amount of any such deficiency. Nothing in this Section 16.2(b) shall diminish or release the IFA from its obligations under this Agreement, or alter or modify any of its obligations under this Agreement, to pay the Toll Road Concession Value, notwithstanding its inability to lease or borrow against the Toll Road or obtain appropriation from the State. The IFA hereby agrees that any obligation it may have pursuant to this Agreement for the payment of money, including, without limitation, any

obligation of the IFA to pay the Toll Road Concession Value, shall be payable from any funds or assets of the IFA which are legally available.

Section 16.3. Letters of Credit.

(a) The Concessionaire shall deliver no later than the first day of the Lease Year that is five years prior to the final Lease Year of the Term, a Letter of Credit in the amount then to be calculated equal to the amount that the Engineering Firm reasonably determines is appropriate to cover all costs of capital improvements for the remainder of the Term as set forth in the Capital Improvement Program included in the Operating Standards.

(b) Such Letter of Credit shall be replaced on every anniversary of such Lease Year until the date that is three years after (i) the expiration of the Term and (ii) such time as there being no unresolved disputes with respect to the Concessionaire complying with, performing or observing any obligation, covenant, agreement, term or condition in this Agreement with a Replacement Letter of Credit in the amount of the undrawn balance of such Letter of Credit plus the amount of interest that would have been earned on such balance if invested for the next 12-month period at the Bank Rate. Upon the occurrence of a Concessionaire Default (or if there is a dispute as to the occurrence of a Concessionaire Default, upon the final decision of the arbitral panel pursuant to Article 19 that a Concessionaire Default has occurred), the IFA shall have the right (in addition to all other rights and remedies provided in this Agreement, but with the understanding that any other monetary damages that the IFA may recover will be reduced by the amount so drawn, and without the IFA's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform and whether or not this Agreement is thereby terminated), with three Business Days' prior notice to the Concessionaire, to draw against such Letter of Credit or any replacement thereof, upon presentation of a sight draft and a certificate confirming that the IFA has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the IFA with respect to such Concessionaire Default.

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

and (ii) the date of the Replacement Letter of Credit shall be its date of issuance. The expiry date of the Replacement Letter of Credit, as referred to in the opening paragraph of such Replacement Letter of Credit, shall be not earlier than one year later than the expiry date of the Letter of Credit being replaced.

(d) If this Agreement is terminated by the IFA prior to the expiration of the Term as a result of a Concessionaire Default, the IFA shall have the right (in addition to all other rights and remedies provided in this Agreement and without the IFA's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform), with three Business Days' prior notice to the Concessionaire, to draw against any Letter of Credit, upon presentation of a sight draft and a certificate confirming that the IFA has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the IFA pursuant to the terms of this Agreement.

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

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

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

(h) In lieu of any Letter of Credit to be provided by the Concessionaire pursuant to the terms of this Section 16.3, the Concessionaire shall, at the Concessionaire's sole discretion, have the option to provide a surety bond or other similar form of security or to deposit with a Depositary for the benefit of the IFA, as collateral security, cash or Eligible

Investments in an amount equal to the amount of such Letter of Credit at the time of such deposit. Such Depositary shall invest and reinvest such amounts in Eligible Investments at the discretion of the IFA, provided that earnings thereon shall be paid to the Concessionaire. If, at any time during the Term, the IFA would have the right to draw any amount on a Letter of Credit for which the Concessionaire has substituted cash or Eligible Investments pursuant to this Section 16.3(h), the Depositary shall pay such amount to the IFA from such cash deposit or Eligible Investments in accordance with the terms of this Section 16.3 and all rights and remedies of the IFA and the Concessionaire with respect to such cash deposits or Eligible Investments, if any, shall be the same as those provided in this Section 16.3 with respect to any Letter of Credit; *provided, however*, that the certification that would have been provided by the IFA with the sight draft had cash or Eligible Investments not been so substituted shall be made to the Depositary and delivered to the Depositary together with the IFA's written demand for payment.

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

Section 16.4. Consequences of Termination or Reversion. Upon the termination of this Agreement prior to the end of the Term and concurrently with the payment of any amounts due to the Concessionaire as a result of such termination (including, without limitation, the payment described in Section 16.2(b)(i)), notwithstanding any claims the Parties may have against each other and subject to Section 16.2(b)(iii) and Article 18, the following provisions shall apply:

(i) the Concessionaire shall, without action whatsoever being necessary on the part of the IFA, well and truly surrender and deliver to the IFA the Toll Road (including all improvements on the Toll Road Land comprising the Toll Road Facilities), the Toll Road Assets and all tangible and intangible personal property (including inventories) located on the Toll Road or used in connection with the Toll Road Operations (except in the case of a termination pursuant to Section 13.3(b)) in good order, condition and repair (reasonable wear and tear excepted), determined reasonably in accordance with the then applicable Operating Standards, free and clear of all Encumbrances other than (w) Permitted Concessionaire Encumbrances set forth in clause (iv) or (vii) of the definition of that term, (x) Permitted IFA Encumbrances affecting title to the Toll Road existing at the Time of Closing, (y) those created by or suffered to exist or consented to by the IFA or any Person claiming through it, and (z) with respect to any property added to the Toll Road after the Time of Closing, title defects affecting such property in existence on the date such property is added to the Toll Road;

(ii) the Concessionaire hereby waives any notice now or hereafter required by Law with respect to vacating the Toll Road on the Reversion Date;

(iii) the IFA shall, as of the Reversion Date, assume full responsibility for the Toll Road Operations, and as of such date, the Concessionaire shall have no liability or responsibility for the provision of Toll Road Services or the performance of Toll Road Operations occurring after such date;

(iv) the Concessionaire shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to but not including the Reversion Date, and the IFA shall be liable for all costs, expenses and amounts incurred in connection with the Toll Road Operations on and after the Reversion Date;

(v) the IFA shall have the option by providing notice to the Concessionaire of requiring that the Concessionaire assign, without warranty or recourse to the Concessionaire, all of its right, title and interest in, to and under all or any of the Operating Agreements then in effect (including any Assigned Toll Road Contracts then in effect) and all Authorizations to the IFA or its designee for the remainder of their respective terms; *provided, however,* that if the IFA exercises such option, the right, title and interest of the Concessionaire in, to and under such Operating Agreements and Authorizations shall be assigned to the IFA or its nominee as of the Reversion Date and the Concessionaire shall surrender the Toll Road to the IFA and shall cause all Persons claiming under or through the Concessionaire to do likewise, and the IFA shall assume in writing, pursuant to an assumption agreement satisfactory to the Concessionaire, the Concessionaire's obligations under the Operating Agreements that arise in respect of, or relate to, any period of time falling on and after the Reversion Date; *provided, further,* that if the IFA does not exercise such option, the Concessionaire shall, unless the IFA has granted to a Leasehold Mortgagee or its nominee a new concession agreement containing the same provisions as are contained in this Agreement, take such steps as are necessary to terminate the Operating Agreements;

(vi) all plans, drawings, specifications and models prepared in connection with construction at the Toll Road and in the Concessionaire's possession and all "as-built" drawings shall become the sole and absolute property of the IFA, and the Concessionaire shall promptly deliver to the IFA all such plans, drawings, specifications and models and all such "as-built" drawings (but may keep copies of those plans, drawings, specifications and models that were developed by the Concessionaire or its Representatives);

(vii) the Concessionaire, at its sole cost and expense, shall promptly deliver to the IFA copies of all records and other documents relating to the Toll Road Revenues that are in the possession of the Concessionaire or its Representatives and all other then existing records and information relating to the Toll Road as the IFA, acting reasonably, may request;

(viii) the Concessionaire shall execute and deliver to the IFA a quitclaim deed in recordable form or other release or other instrument reasonably required by the IFA or its title insurer to evidence such expiration or termination,

(ix) the Concessionaire shall assist the IFA in such manner as the IFA may reasonably require to ensure the orderly transition of control, operation, management, maintenance, rehabilitation and tolling of the Toll Road, and shall, if appropriate and if requested by the IFA, take all steps as may be necessary to enforce the provisions of the Operating Agreement pertaining to the surrender of the Toll Road;

(x) the IFA and the Concessionaire shall make appropriate adjustments, including adjustments relating to any Operating Agreements assigned to the IFA, tolls, fees and other similar charges collected on and after the Reversion Date that are incurred prior to the Reversion Date, and utilities, and any adjustments and payment therefore shall be made by the appropriate Party on the Reversion Date, but shall be subject to readjustment if necessary because of error in matters such as information, calculation, payments and omissions that are identified within the period of 180 days following the Reversion Date; *provided, however,* that the IFA and the Concessionaire acknowledge that certain adjustments or readjustments may have to be made when a third party provides to the IFA or the Concessionaire a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended; and

(xi) if this Agreement is terminated as a result of an Adverse Action, the payment by the IFA to the Concessionaire of the amounts required under Article 14 or Article 19 shall constitute full and final settlement of any and all Claims the Concessionaire may have against the IFA for and in respect of the termination of this Agreement and upon such payment, the Concessionaire shall execute and deliver all such releases and discharges as the IFA may reasonably require to give effect to the foregoing.

This Section 16.4 shall survive the expiration or any earlier termination of this Agreement.

Section 16.5. Termination Other Than Pursuant to Agreement. If this Agreement is terminated by the IFA other than pursuant to Section 16.1 or is canceled, rescinded or voided during the Term for any reason over the objection and without action by the Concessionaire, any Leasehold Mortgagee and their respective Affiliates, the IFA shall pay to the Concessionaire the Toll Road Concession Value as of the date of such termination, cancellation, rescinding or voiding, plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a direct result of such termination, cancellation, rescinding or voiding. The IFA hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof and shall not, in any event, have the right to terminate this Agreement for convenience.

ARTICLE 17.
RESTRICTIONS ON TRANSFERS

Section 17.1. Transfers by the Concessionaire.

(a) The Concessionaire shall not Transfer, or otherwise permit the Transfer of, any or all of the Concessionaire Interest to or in favor of any Person (a "Transferee"), unless (i) the IFA has Approved (based upon a determination in accordance with Section 17.1(b)) such proposed Transferee (unless it is a Leasehold Mortgagee permitted under Article 18) and (ii) the proposed Transferee (unless it is a Leasehold Mortgagee permitted under Article 18) enters into an agreement with the IFA in form and substance reasonably satisfactory to the IFA, acting reasonably, wherein the Transferee acquires the rights and assumes the obligations of the Concessionaire and agrees to perform and observe all of the obligations and covenants of the Concessionaire under this Agreement. Any Transfer made in violation of the foregoing provision shall be null and void ab initio and of no force and effect.

(b) The IFA's Approval of a proposed Transferee may be withheld if the IFA reasonably determines that the proposed Transfer is prohibited by applicable Law or such proposed Transferee is not capable of performing the obligations and covenants of the Concessionaire under this Agreement, which determination may be based upon, or take into account, one or more of the following factors: (i) 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; (ii) the capitalization of the proposed Transferee; (iii) the experience of the proposed Transferee or the Operator to be engaged by the proposed Transferee in operating toll roads or highways and performing other projects; (iv) 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 (v) the Operator engaged by the proposed Transferee.

(c) No Transfer of all or any of the Concessionaire Interest (except a Transfer to a Leasehold Mortgagee upon its exercise of remedies under the Leasehold Mortgage and a subsequent transfer to the Leasehold Mortgagee's transferee that has been approved under Section 17.1(b)) shall be made or have any force or effect if, at the time of such Transfer there has occurred and is continuing a Concessionaire Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute a Concessionaire Default.

(d) A Change in Control of the Concessionaire shall be deemed to be a Transfer of the Concessionaire Interest for purposes of the foregoing provisions.

Section 17.2. Assignment by the IFA. The IFA shall have the right to Transfer any or all of the IFA's interest in the Toll Road and this Agreement, provided that it shall be jointly and severally liable with the Transferee for the performance and observance of the obligations and covenants of the IFA under this Agreement and any agreement entered into by the IFA under this

Agreement (including agreeing directly with any Leasehold Mortgagee to be bound by the agreement entered into in accordance with Section 18.3) and that any such Transfer by the IFA shall not materially limit or reduce any of the Concessionaire's other rights, benefits, remedies or privileges under this Agreement. Without limiting the generality of the foregoing the Concessionaire acknowledges and agrees that any action that may be taken under this Agreement by the IFA may be taken by the State or by any agency or department thereof and that any action taken by the State or any agency or department thereof shall be deemed to have been taken by the IFA for purposes of this Agreement; *provided that* the State or any such other agency shall comply with the obligations of the IFA as set forth in this Agreement and under applicable Law.

ARTICLE 18.
LENDER'S RIGHTS AND REMEDIES

Section 18.1. Leasehold Mortgages. The Concessionaire shall have the right, at its sole cost and expense, to grant one or more (subject to Section 18.7) Leasehold Mortgages, if at the time any such Leasehold Mortgage is executed and delivered to the Leasehold Mortgagee, no Concessionaire Default exists unless any such Concessionaire Default will be cured pursuant to Section 18.3 in connection with entering into such Leasehold Mortgage, and upon and subject to the following terms and conditions:

(a) a Leasehold Mortgage may not cover any property of, or secure any debt issued or guaranteed by, any Person other than the Concessionaire, but, for the avoidance of doubt, may cover shares or equity interest in the capital of the Concessionaire and any cash reserves or deposits held in the name of the Concessionaire;

(b) no Person other than an Institutional Lender shall be entitled to the benefits and protections accorded to a Leasehold Mortgagee in this Agreement; *provided, however,* that lessors and lenders to the Concessionaire (and lenders to a Leasehold Mortgagee that is a Lessor) may be Persons other than Institutional Lenders so long as any Leasehold Mortgage securing the loans made by such Persons is held by an Institutional Lender acting as collateral agent or trustee;

(c) no Leasehold Mortgage or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against any or all of the Concessionaire Interest shall extend to or affect the fee simple interest in the Toll Road, the IFA's interest hereunder or its reversionary interest and estate in and to the Toll Road or any part thereof;

(d) the IFA shall have no liability whatsoever for payment of the principal sum secured by any Leasehold Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and, except for violation by the IFA of express obligations set forth herein, the Leasehold Mortgagee shall not be entitled to seek any damages or other amounts against the IFA for any or all of the same;

(e) the IFA shall have no obligation to any Leasehold Mortgagee in the enforcement of the IFA's rights and remedies herein and by Law provided, except as expressly set forth in

this Agreement and unless such Leasehold Mortgagee has provided the IFA with notice of its Leasehold Mortgage in accordance with the Leasehold Mortgagee Notice Requirements;

(f) each Leasehold Mortgage shall provide that if the Concessionaire is in default under the Leasehold Mortgage and the Leasehold Mortgagee gives notice of such default to the Concessionaire, then the Leasehold Mortgagee shall give notice of such default to the IFA;

(g) subject to the terms hereof, all rights acquired by a Leasehold Mortgagee under any Leasehold Mortgage shall be subject and subordinate to all of the provisions of this Agreement and to all of the rights of the IFA hereunder;

(h) while any Leasehold Mortgage is outstanding, the IFA shall not agree to any amendment or modification of this Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Leasehold Mortgagee or agree to a voluntary surrender or termination of this Agreement by the Concessionaire without the consent of the Leasehold Mortgagee, which consent shall not be unreasonably withheld, delayed or conditioned;

(i) notwithstanding any enforcement of the security of any Leasehold Mortgage, the Concessionaire shall remain liable to the IFA for the payment of all sums owing to the IFA under this Agreement and the performance and observance of all of the Concessionaire's covenants and obligations under this Agreement; and

(j) a Leasehold Mortgagee shall not, by virtue of its Leasehold Mortgage, acquire any greater rights or interest in the Toll Road than the Concessionaire has at any applicable time under this Agreement, other than such rights or interest as may be granted or acquired in accordance with Section 18.3, Section 18.4 or Section 18.5.

(k) each Leasehold Mortgagee, the IFA and the Concessionaire shall enter into a consent agreement in a form acceptable to all parties whereby all parties consent to the assignment of the Leasehold Mortgage to an agent in connection with the financing of the Leasehold Mortgage; *provided that*, such consent agreement shall be in a customary form and shall include the rights and protections provided to the Leasehold Mortgages in this Agreement.

Section 18.2. Notices to Leasehold Mortgagees. Whenever a Leasehold Mortgage exists as to which the IFA has been provided notice by the holder thereof in accordance with the Leasehold Mortgagee Notice Requirements, the IFA shall, simultaneously with providing the Concessionaire any required notice under this Agreement, provide a copy of such notice to such Leasehold Mortgagee, and no such notice to the Concessionaire shall be effective against the Leasehold Mortgagee until a copy thereof is duly provided to such Leasehold Mortgagee at its address specified in its notice given to the IFA in accordance with the Leasehold Mortgagee Notice Requirements (or any subsequent change of address notice given to IFA pursuant to the requirements of Section 20.1).

Section 18.3. Leasehold Mortgagee's Right to Cure. The Leasehold Mortgagee shall have a period of 30 days with respect to any Concessionaire Default beyond any cure period

expressly provided to the Concessionaire herein, in which to cure or cause to be cured any such Concessionaire Default; *provided, however,* that such 30 day period shall be extended if the Concessionaire Default may be cured but cannot reasonably be cured within such period of 30 days, and the Leasehold Mortgagee begins to cure such default within such 30-day period (or if possession is necessary in order to effect such cure, the Leasehold Mortgagee commencing by the filing of the appropriate legal action to foreclose the liens of the Leasehold Mortgage and take possession of the Toll Road within such period) and thereafter proceeds with all due diligence to cure such Concessionaire Default (including by proceeding with all due diligence to effect such foreclosure and during such foreclosure action (to the extent practicable) and thereafter to effect such a cure) within a reasonable period of time acceptable to the IFA, acting reasonably; *provided, further,* that if a Leasehold Mortgagee's right to cure a Concessionaire Default has not expired, and the Leasehold Mortgagee is acting to cure such Concessionaire Default in accordance with this Section 18.3 then the IFA shall not exercise its right to terminate this Agreement by reason of such Concessionaire Default. In furtherance of the foregoing, the IFA shall permit the Leasehold Mortgagee and its Representatives the same access to the Toll Road as is permitted to the Concessionaire hereunder. The IFA shall accept any such performance by Leasehold Mortgagee as though the same had been done or performed by the Concessionaire. Any payment to be made or action to be taken by a Leasehold Mortgagee hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Leasehold Mortgagee if such payment is made or action is taken by a nominee, agent or assignee of the rights of such Leasehold Mortgagee.

Section 18.4. Rights of the Leasehold Mortgagee.

(a) Subject to the provisions of this Agreement, a Leasehold Mortgagee may (i) enforce any Leasehold Mortgage in any lawful way, (ii) acquire the Concessionaire Interest in any lawful way or (iii) take possession of and manage the Toll Road in any lawful way and manage the Toll Road. Upon foreclosure of (or without foreclosure upon exercise of any contractual or statutory power of sale under such Leasehold Mortgage or a deed in lieu) and subject to the provisions of Article 17 (applied to the Leasehold Mortgagee as if it were the Concessionaire), a Leasehold Mortgagee may Transfer the Concessionaire Interest; *provided, however,* that no Transfer by a Leasehold Mortgagee shall be effective unless the Transfer is made in accordance with Section 17.1. Any Person to whom the Leasehold Mortgagee Transfers the Concessionaire Interest (including such Leasehold Mortgagee) shall take the Concessionaire Interest subject to any of the Concessionaire's obligations under this Agreement.

(b) Except as provided in Section 18.3, unless and until a Leasehold Mortgagee (i) forecloses or has otherwise taken ownership of the Concessionaire Interest or (ii) has taken possession or control of the Concessionaire Interest, whether directly or by an agent as a mortgagee in possession or a receiver or receiver and manager has taken possession or control of the Concessionaire Interest by reference to the Leasehold Mortgage, the Leasehold Mortgagee shall not be liable for any of the Concessionaire's obligations under this Agreement or be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except by way of security. If the Leasehold Mortgagee itself or by an agent or a receiver or a receiver and manager is the owner, or is in control or possession of, the Concessionaire Interest, it shall be bound by all liabilities and obligations of the

Concessionaire under this Agreement (including the obligation to engage an Operator). Once the Leasehold Mortgagee goes out of possession or control of the Concessionaire Interest or Transfers the Concessionaire Interest to another Person in accordance with the provisions of this Agreement, the Leasehold Mortgagee shall cease to be liable for any of the Concessionaire's obligations under this Agreement accruing thereafter and shall cease to be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except, if the Leasehold Mortgage remains outstanding, by way of security.

Section 18.5. IFA's Termination of this Agreement; New Agreement.

(a) Without prejudice to the rights of a Leasehold Mortgagee under Section 18.3, if this Agreement is terminated prior to the expiration of the Term due to a Concessionaire Default (in which case the IFA shall notify the Leasehold Mortgagee of such termination) or if this Agreement is rejected or disaffirmed pursuant to any bankruptcy Law or proceeding or other similar Law or proceedings affecting creditors' rights generally with respect to the bankruptcy proceeding relating to the Concessionaire, the IFA agrees to enter into a new concession and lease agreement of the Toll Road with the Leasehold Mortgagee (or its designee or nominee, provided that such designee or nominee either is controlled by the Leasehold Mortgagee or is Approved by the IFA as Transferee under Section 17.1) for the remainder of the original stated Term upon all of the covenants, agreements, terms, provisions and limitations of this Agreement (the "New Agreement"), effective as of the date of such termination, but only on and subject to the satisfaction of all of the following requirements and conditions: (i) such Leasehold Mortgagee commits in writing to the IFA, in a notice delivered to the IFA, within 30 days after the IFA delivers the termination notice to Leasehold Mortgagee (or, if later, upon the termination of any cure period granted to the Leasehold Mortgagee pursuant to Section 18.3) or within 10 days after the effective date of such rejection or disaffirmance, as the case may be, that the Leasehold Mortgagee (or its designee or nominee) will enter into the New Agreement, which notice is accompanied by a copy of such New Agreement, duly executed and acknowledged by the Leasehold Mortgagee (or its designee or nominee); (ii) the Leasehold Mortgagee (or its designee or nominee) pays or causes to be paid to the IFA, at the time of the execution and delivery of the New Agreement, all amounts which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Agreement but for such termination; (iii) provided the IFA furnishes a statement or invoice for such costs the Leasehold Mortgagee pays or causes to be paid to IFA all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by the IFA in connection with such defaults and termination, the recovery of possession from the Concessionaire, and in connection with the preparation, execution and delivery of the New Agreement and related agreements and documents specified in such statement or invoice; (iv) such Leasehold Mortgagee (or its designee or nominee), at the time of such written request, cures all defaults under this Agreement (curable by the payment of money) existing immediately prior to the termination of this Agreement, or, if such defaults cannot be cured by the payment of money, such Leasehold Mortgagee (or its designee or nominee) commits to the IFA in the New Agreement to proceed both promptly and diligently, upon the execution of the New Agreement, to cure all such other defaults and, if possession is necessary in order to cure such other Concessionaire Defaults, to proceed both promptly and

diligently to obtain the possession required to cure any such other defaults (and such cure shall be a covenant in the New Agreement).

(b) Nothing contained in this Section 18.5 shall be deemed to limit or affect the IFA's interest in and to such Toll Road upon the expiration of the Term of the New Agreement. The provisions of this Section 18.5 shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 18.5 were a separate and independent contract made by the IFA, the Concessionaire and the Leasehold Mortgagee and, if the Leasehold Mortgagee satisfies the conditions to a New Agreement from the effective date of such termination of this Agreement to the date of execution and delivery of the New Agreement, Leasehold Mortgagee may use and enjoy the leasehold estate created by this Agreement without hindrance by the IFA, but only on and subject to the terms and provisions of this Agreement. It is being understood and agreed by the Parties that the Concessionaire shall not have any obligations under the New Agreement.

Section 18.6. Right to Arbitration. In each case specified in this Agreement in which resort to arbitration is authorized, the Leasehold Mortgagee shall have the right and privilege if an event of default under the Leasehold Mortgage then exists and notice has been given to the IFA as contemplated by Section 18.1(f), in the Concessionaire's name, place and stead, to obtain and participate in such arbitration upon notice to the IFA in accordance with Article 19, provided that the Leasehold Mortgagee agrees to be bound by the decision of the arbitration panel.

Section 18.7. Recognition by the IFA of Leasehold Mortgagee. Notwithstanding anything in this Agreement to the contrary, if there is more than one Leasehold Mortgagee, only that Leasehold Mortgagee, to the exclusion of all other Leasehold Mortgagees, whose notice was earliest received by the IFA pursuant to the Leasehold Mortgagee Notice Requirements, shall have the rights as a Leasehold Mortgagee under this Article 18, unless such Leasehold Mortgagee has designated in writing another Leasehold Mortgagee to exercise such rights.

Section 18.8. IFA's Right to Purchase Leasehold Mortgage.

(a) If any default by the Concessionaire has occurred under a Leasehold Mortgage, or any act, condition or event has occurred which would permit a Leasehold Mortgagee to declare all or part of the indebtedness secured by a Leasehold Mortgage to be immediately due and payable (or, in the case of a Leasehold Mortgagee that is a Lease, to terminate the Lease), then the IFA shall have 30 days after the date on which such Leasehold Mortgagee shall serve notice upon the IFA in writing ("Leasehold Mortgagee's Notice") that such Leasehold Mortgagee intends to commence proceedings to foreclose the Leasehold Mortgage or, in the case of Leasehold Mortgagee that is a Lessor to terminate the Lease (stating the calculation of the purchase price pursuant Section 18.8(c)), during which 30-day period the IFA shall have the right and option (the "IFA's Option") to purchase from all Leasehold Mortgagees their Leasehold Mortgages, upon the terms and subject to the conditions contained in this Section 18.8.

(b) The IFA's Option shall be exercised by written notice served upon the Concessionaire and all Leasehold Mortgagees within such 30-day period. Time shall be of the essence as to the exercise of the IFA's Option. If the IFA's Option is duly and timely

exercised, the IFA shall purchase and all Leasehold Mortgagees shall assign their Leasehold Mortgages to the IFA (or its designee) on the date which is 60 days after the date on which Leasehold Mortgagee's Notice is served upon the IFA. The closing shall take place at a mutually convenient time and place.

(c) The purchase price payable by the IFA shall be 100% of the aggregate amounts secured by such Leasehold Mortgages (including interest, fees, premiums, costs and expenses (including attorneys' fees)) as of the closing date of the purchase to the extent such amounts relate to the Concessionaire Interest (or, in the case of a Lease, the full amount (without reduction by the value of the Lessor's interest in the Toll Road) payable by the Concessionaire upon an event of default thereunder). The purchase price shall be paid in full in cash at closing by wire transfer or other immediately available funds. The purchase price shall be paid by the IFA to each respective Leasehold Mortgagee, to be applied by the Leasehold Mortgagee to the indebtedness secured by the Leasehold Mortgage held by such Leasehold Mortgagee, subject to the priorities of lien of such Leasehold Mortgages.

(d) At the closing and upon payment in full of the purchase price, each Leasehold Mortgagee shall assign its Leasehold Mortgage to the IFA, together with any security interest held by it in the Concessionaire's leasehold interest in the Toll Road, without recourse, representations, covenants or warranties of any kind, provided that such Leasehold Mortgages and security interests shall be deemed modified to secure the amount of the aggregate purchase price paid by the IFA to all Leasehold Mortgagees (rather than the indebtedness theretofore secured thereby) payable on written demand, with interest and upon the other items referred to in this Section 18.8(d). Each such assignment shall be in form for recordation or filing, as the case may be. The IFA shall be responsible for paying any Taxes payable to any Governmental Authority upon such assignment. Such assignment shall be made subject to such state of title of the Toll Road as shall exist at the date of exercise of the IFA's Option.

(e) Any Leasehold Mortgage shall contain an agreement of the Leasehold Mortgagee to be bound by the provisions of this Section 18.8.

(f) The IFA shall have the right to receive all notices of default under any Leasehold Mortgage, but the IFA shall not have the right to cure any default under any Leasehold Mortgage, except to the extent provided in this Section 18.8.

ARTICLE 19.
DISPUTE RESOLUTION

Section 19.1. Scope. Any dispute arising out of, relating to, or in connection with this Agreement, including any question as to whether such dispute is subject to arbitration, shall be resolved as set forth in this Article 19.

Section 19.2. Informal Dispute Resolution Procedures. The Parties shall attempt in good faith to resolve such dispute within 15 days. If the Parties are unable to resolve the dispute within 15 days, upon written notice by either Party to the other, the dispute shall be referred to the Designated Senior Person of each Party. The Designated Senior Persons shall negotiate in

good faith to resolve the dispute, conferring as often as they deem reasonably necessary, and shall gather and furnish to each other all information pertinent to the dispute. Statements made by representatives of the parties during the Dispute Resolution mechanisms set forth in this Section 19.2 and documents specifically prepared for such Dispute Resolution mechanisms shall be considered part of settlement negotiations and shall not be admissible in evidence in any arbitration or other litigation proceeding without the mutual consent of the Parties.

Section 19.3. Mediation. Mediation of a dispute under this Agreement may not be commenced until the earlier of: (i) such time as both of the Designated Senior Persons, after following the procedures set forth in Section 19.2, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) 15 Business Days after the notice referring the dispute to the Designated Senior Persons, pursuant to Section 19.2. If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through mediation. The Mediator shall be an attorney in good standing with the Indiana Supreme Court who is registered with the Indiana Supreme Court Commission for Continuing Legal Education as a civil mediator. The Parties shall attempt, in good faith to agree on a Mediator. If the Parties cannot so agree within fifteen (15) days after it is determined that the Designated Senior Persons cannot resolve the dispute, the Parties jointly shall petition the Judge of the Elkhart Circuit Court to order a list of five qualified mediators from which the Parties shall strike. The claiming Party shall strike first. After striking is complete, the remaining individual shall serve as Mediator. In the event the Mediator selected by striking is unable or unwilling to serve or is otherwise disqualified, the previously stricken mediators shall be designated in inverse order until a mediator is selected. Mediation shall be regarded as settlement negotiations as provided in Rule 2.11 of the Indiana Rules of Alternative Dispute Resolution.

Section 19.4. Arbitration. Unless the Parties otherwise agree, if mediation as set forth in Section 19.3 does not resolve the dispute within thirty (30) Business days from the date the Mediator is selected or such longer period as the Parties may mutually agree, the dispute shall be exclusively and finally settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules") in effect at the time of execution of this Agreement as modified or supplemented by this Article 19. Either Party may initiate the arbitration, as provided in the AAA Rules, no later than 45 days after the date the Mediator is selected. If the Parties mutually agree to extend the period for mediation, the 45 day period for the initiation of arbitration shall be extended for an equal period of time. The place of arbitration shall be Indianapolis, Indiana unless the Parties agree otherwise.

The arbitration panel shall determine the rights and obligations of the Parties in accordance with the substantive laws of the State of Indiana without regard to conflicts of laws principles thereof. Except as agreed by the Parties, the arbitration panel shall have no power to alter or modify any terms or provisions of this Agreement, or to render any award that, by its terms or effects, would alter or modify any term or provision of this Agreement. The arbitration panel shall have no power or jurisdiction to award punitive damages.

The arbitration panel shall be composed of three arbitrators, one to be selected by the IFA, one to be selected by the Concessionaire and the third (who shall act as chairman of the panel) to be selected by the two previously-selected arbitrators. Each arbitrator shall be a lawyer admitted to

practice law for a minimum of fifteen years who is in good standing in the State of his or her admission. If the two previously-selected arbitrators cannot agree on the selection of the third arbitrator, the Chief Judge of the United States Court of Appeals for the judicial circuit in which Indianapolis is located shall select the third arbitrator. A Party may contact potential arbitrators in the course of selecting its Party appointed arbitrator for the purpose of determining qualification, potential conflicts, availability, hourly rates and related matters. However, once the arbitration panel has been composed, the arbitrators shall act as neutrals and not as party arbitrators, and no Party shall engage in any *ex parte* communication with any member of the arbitration panel. The arbitration proceeding shall be recorded by a court reporter mutually satisfactory to the Parties.

The parties shall be entitled to discover all documents and information reasonably necessary for a full understanding of any legitimate issue raised in the arbitration. The Parties may use all methods of discovery available under the Federal Rules of Civil Procedure subject to time limits set by the arbitration panel. Each Party shall be entitled to take five (5) depositions in addition to expert depositions and such additional depositions as may be permitted by the arbitration panel. Prior to the deposition of any expert witness, the party proposing to call such a witness shall provide a full and complete report by the expert, together with the expert's calculations and other data by which the expert reached any opinions concerning the subject matter of the arbitration. The report shall be provided no more than ten (10) days prior to the date set forth in the expert witness's deposition.

Each Party shall bear its own attorney fees, expenses, and costs. The award shall be a reasoned award within the meaning of Rule 42 of the AAA Rules and shall set forth findings of fact and conclusions of law. The award shall include interest at the Bank Rate from the date of any breach or violation of this Agreement as determined in the arbitration award until paid in full. The award shall be in writing and state the reasons upon which it is based. The award shall be final and binding on the Parties.

Judgment on the award may be entered by any court with jurisdiction.

The Federal Arbitration Act, 9 U.S.C. § 1 et seq., shall govern any arbitration conducted pursuant to this Section 19.4. In addition to the grounds for modifying or correcting the award set forth in § 11 of the Act, the Court may modify or correct the award to the extent the Arbitrators' erred in their findings as to Indiana law and such error materially affected the arbitration award.

Section 19.5. Provisional Remedies. No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager in connection with the collection and retention of Toll Revenues.

Section 19.6. Tolling. If a Party receiving a notice of default under this Agreement contests, disputes or challenges the propriety of such notice by making application to the dispute

resolution procedure in this Article 19, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final award.

Section 19.7. Technical Arbitration.

(a) *Informal Dispute Resolution by Engineering Firm.* The Parties may agree to submit any engineering or technical dispute under this Agreement to the Engineering Firm, which submission may be made without submitting the engineering or technical dispute to engineering arbitration pursuant to Section 19.7(b) or to the dispute resolution process described in Sections 19.2 through 19.4. The Engineering Firm shall determine any unresolved disputed items within three Business Days of the submission of such dispute to the Engineering Firm, unless the Engineering Firm has good cause to extend such date for determination. The Parties shall each bear their own costs with respect to the submission of such dispute to the Engineering Firm and shall bear equally the cost of the Engineering Firm with respect to such dispute. The Engineering Firm's award shall be in writing and state the reasons upon which it is based. The decision of the Engineering Firm shall be final and binding on the Parties, unless either Party expressly reserves the right, at the time of the submission of the engineering or technical dispute to the Engineering Firm, to submit the dispute to engineering arbitration pursuant to Section 19.7(b) or to the dispute resolution process described in Sections 19.2 through 19.4.

(b) *Engineering Arbitration.* The Parties may agree to submit any engineering or technical dispute under this Agreement to engineering arbitration, which submission may be made without submitting the engineering or technical dispute to the Engineering Firm pursuant to Section 19.7(a) or to the dispute resolution process described in Sections 19.2 through 19.4. Such engineering arbitration shall be conducted by an independent engineering arbitrator, which shall be an engineering firm with nationally recognized engineering experience related to Comparable Highways and that is acceptable to the IFA and the Concessionaire (and if the Parties fail to agree upon the independent engineering arbitrator within five Business Days after the Parties agree to submit the dispute to engineering arbitration, then the IFA and the Concessionaire shall each appoint an independent engineering arbitrator and both such arbitrators shall be instructed to select a third independent engineering arbitrator to conduct the engineering arbitration). Such submission shall be in the form of written statements of position by one or both of the Parties, which statements shall be provided to both the other Party and the independent engineering arbitrator, with each Party having an opportunity to respond to such written statements of the other Party and any requests for statements or information by the independent engineering arbitrator, including in-person meetings; *provided, however,* that all such submissions by a Party shall be made within 10 Business Days of appointment of the independent engineering arbitrator and, notwithstanding any provision herein to the contrary, any unresolved disputed items shall be determined by the independent engineering arbitrator within seven Business Days of receipt by the independent engineering arbitrator of the Parties' submissions of information unless such independent engineering arbitrator has good cause to extend such date for determination. The Parties shall each bear their own costs with respect to the arbitration of any such engineering dispute and shall bear equally the cost of retaining such independent engineering arbitrator. The independent engineering arbitrator's

award shall be in writing and state the reasons upon which it is based. The independent engineering arbitrator's award shall be final and binding on the Parties.

ARTICLE 20.
MISCELLANEOUS

Section 20.1. Notice. All notices, other communications and approvals required or permitted by this Agreement shall be in writing and shall be delivered, sent by certified or registered mail (return receipt requested and postage prepaid), addressed as follows:

(a) in the case of the IFA:

Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, Indiana 46204
Attention: Public Finance Director

with a copy to:

Ice Miller LLP
One American Square
Suite 3100
Indianapolis, IN 46282-0200

(b) in the case of the Concessionaire:

_____
_____
_____
_____

with a copy to:

_____
_____
_____
_____

or such other persons or addresses as either Party may from time to time designate by notice to the other. A notice, other communication or approval shall be deemed to have been sent and received (i) on the day it is delivered, or if such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or approval shall be deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by U.S. registered mail.

Section 20.2. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements,

negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties acknowledge and agree (i) that each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) that the provisions and language of this Agreement have been fully negotiated and (iii) that no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other.

Section 20.3. Amendment. This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties.

Section 20.4. Waiver of Rights. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

Section 20.5. Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof. If any provision of this Agreement or the application thereof to any Person or circumstances is held or deemed to be or determined to be invalid, inoperative or unenforceable in any particular case in any particular jurisdiction or jurisdictions because it conflicts with any other provision or provisions hereof or of any applicable Law, or public policy, or for any other reason, (i) such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever, and (ii) the Parties shall negotiate in good faith to amend this Agreement to implement the provisions set forth herein. If the Parties cannot agree on an appropriate amendment, either Party may refer the matter for determination pursuant to the dispute resolution procedure in Article 19. If, by means of the dispute resolution procedure, the Parties are unable, as a result of applicable Law, to resolve the matter in a manner that effectively entitles the IFA to have the same rights, after the aforesaid determination of invalidity or unenforceability as before, the IFA shall have the right to enact, and cause to come into force, any Law to provide for the same or substantially the same rights as were determined to be invalid or unenforceable.

Section 20.6. Governing Law. This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the State of Indiana (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).

Section 20.7. Submission to Jurisdiction. Subject to Article 19, any action or proceeding against the Concessionaire relating in any way to this Agreement may be brought and enforced in the federal or state courts in the State of Indiana in the County of Marion, and the Concessionaire hereby irrevocably submits to the jurisdiction of such courts with regard to any such action or proceeding, and irrevocably waives, to the fullest extent permitted by applicable Law, any objection it may have now or hereafter have to the laying of venue of any such action or proceeding in such courts and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Service of process on the IFA may be made, either by registered or certified mail addressed as provided for in Section 20.1 or by personal delivery on the Public Finance Director of the IFA at the address specified in Section 20.1. Service of process on the Concessionaire may be made either by registered or certified mail addressed as provided for in Section 20.1 or by delivery to the Concessionaire's registered agent for service of process in the State of Indiana. If the Concessionaire is presented with a request for documents by any administrative agency or with a *subpoena duces tecum* regarding any documents which may be in its possession by reason of this Agreement, the Concessionaire shall give prompt notice to the Public Finance Director of the IFA with a copy to the General Counsel of the IFA, in each case at the address specified for the IFA in Section 20.1. The IFA may contest such process by any means available to it before such records or documents are submitted to a court or other third party; *provided, however,* that the Concessionaire shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency or required by Law, unless the *subpoena* or request is quashed or the time to produce is otherwise extended.

Section 20.8. Further Acts. The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution and/or delivery of this Agreement.

Section 20.9. Costs. Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

Section 20.10. Interest. Any amount not paid when due under this Agreement shall bear interest at a variable nominal rate per annum equal on each day to the Bank Rate then in effect plus 3%, from the date such payment is due until payment and both before and after judgment.

Section 20.11. Inurement and Binding Effect. This Agreement shall inure to the benefit of the Parties and their respective permitted successors and assigns and be binding upon the Parties and their respective successors and assigns.

Section 20.12. No Partnership or Third Party Beneficiaries. Except as expressly provided herein to the contrary (including with respect to such rights as are expressly granted to each Leasehold Mortgagee pursuant to this Agreement), nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the IFA and the Concessionaire, nor shall any term or provision hereof be

construed in any way to grant, convey or create any rights or interests to any Person not a Party to this Agreement.

Section 20.13. Cumulative Remedies. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Section 20.14. Counterparts; Facsimile Execution. This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each Party and delivered to all Parties. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission. Such Party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

[Intentionally Left Blank]

IN WITNESS WHEREOF, the IFA and the Concessionaire each has caused this Agreement to be duly executed as of the day and year first above written.

INDIANA FINANCE AUTHORITY

By: _____

Printed: _____

Title: _____

CONCESSIONAIRE

By: _____

Printed: _____

Title: _____