

EXECUTION VERSION

Dated as of December 20, 2007

NORTHWEST PARKWAY LLC,
as the Borrower

The SENIOR LENDERS Party Hereto

THE ROYAL BANK OF SCOTLAND PLC,
as the Administrative Agent

SENIOR LOAN AGREEMENT



FRESHFIELDS BRUCKHAUS DERINGER LLP

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SUPPLIED TO WILLIAM IM ON 12 FEB 13 23:04:59 GMT

THIS SENIOR LOAN AGREEMENT (this *Agreement*) is dated as of December 20, 2007 and made between:

- (1) **NORTHWEST PARKWAY LLC**, a Delaware limited liability company (the *Borrower*);
- (2) **EACH FINANCIAL INSTITUTION** signatory to this Agreement identified as a “Senior Lender” on the signature pages to this Agreement or that may from time to time become a “Senior Lender” pursuant to the terms of this Agreement (the *Senior Lenders*); and
- (3) **THE ROYAL BANK OF SCOTLAND PLC**, in its capacity as administrative agent for the Senior Lenders hereunder (the *Administrative Agent*).

RECITALS:

- (A) The Borrower has entered into the Concession Agreement (as hereinafter defined), pursuant to which the Borrower has leased the Parkway (as hereinafter defined) from the Authority (as hereinafter defined) and has obtained the rights, licenses and privileges to operate, maintain and toll the Parkway in connection therewith, as provided in the Concession Agreement.
- (B) The Borrower, the Guarantor, the Lead Arranger, the Administrative Agent and the respective lenders party thereto are party to a Senior Bridge Facility Agreement dated as of November 21, 2007 (the *Senior Bridge Facility Agreement*) under which senior term loans were made to the Borrower in an aggregate principal amount of \$315,000,000, the proceeds of which were used to finance part of the lease and concession payment made to the Authority by the Borrower under Sections 2.1(a) and 20.16(a) of the Concession Agreement.
- (C) The Borrower has requested that the Senior Lenders make available to it a senior term loan in an aggregate principal amount not exceeding \$249,000,000, the proceeds of which, together with the proceeds of the Guaranteed Loan Agreement (as hereinafter defined), will be used by the Borrower to repay the principal amount outstanding under the Senior Bridge Facility Agreement; and a senior liquidity facility in an aggregate principal amount of up to \$150,000,000, the proceeds of which will be used by the Borrower to fund interest, fees and other financing costs associated with the obligations of the Borrower under the Concession Agreement, to fund transfers to the Maintenance Reserve Accounts and Debt Service Reserve Account (each as hereinafter defined) and to provide liquidity for the ongoing operations of the Borrower.
- (D) The Senior Lenders are prepared to extend such credit upon the terms and conditions hereof.

IT IS AGREED as follows:

1. DEFINITIONS

1.1 Defined Terms

As used in this Agreement, the following terms have the meanings specified below:

ABR, when used in reference to any Senior Loan or Borrowing, refers to whether such Senior Loan, or the Senior Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

Adjusted LIBO Rate means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period **multiplied by** (b) the Statutory Reserve Rate.

Administrative Agent has the meaning ascribed to such term in the Preamble above.

Administrative Questionnaire means an administrative questionnaire in a form supplied by the Administrative Agent.

Affiliate means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the specified Person.

Aggregate Senior Liquidity Facility Commitment means \$150,000,000.

Aggregate Senior Term Loan Commitment means \$249,000,000.

Agreement has the meaning ascribed to such term in the Preamble above.

Alternate Base Rate means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day **plus** 1/2 of 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

Annual Operating Budget means the annual operating budget submitted by the Borrower to the Administrative Agent pursuant to Section 5.4(a) and approved (or deemed approved) in accordance with the terms thereof.

Applicable Margin means, for each day, the following rates per annum with respect to any Senior Loan:

- (a) from the Closing Date until the day immediately preceding the third anniversary of the Closing Date, 1.05%;
- (b) from the third anniversary of the Closing Date until the day immediately preceding the sixth anniversary of the Closing Date, 1.1%; and

(c) from the sixth anniversary of the Closing Date until the Final Maturity Date, 1.25%.

Applicable Percentage means with respect to any Senior Lender in respect of any indemnity claim under Section 9.3(c) arising out of an action or omission of the Administrative Agent under this Agreement, the percentage of the total Commitments or Senior Loans of all Classes hereunder represented by the aggregate amount of such Senior Lender's Commitments or Senior Loans of all Classes hereunder.

Applicable Rate means, for any day, a rate per annum equal to 40% of the prevailing Applicable Margin.

Appointment Letter means the letter agreement, dated as of the date hereof, between the Administrative Agent and the Hedging Bank.

Approved Fund means (a) a CLO and (b) with respect to any Senior Lender that is a fund which invests in whole or in material part in bank loans and similar extensions of credit, any other fund that invests in whole or in material part in bank loans and similar extensions of credit and is administered or managed by the same investment adviser as such Senior Lender or by an Affiliate of such investment adviser.

Assignment and Assumption means an assignment and assumption entered into by a Senior Lender and an assignee (with the consent of any party whose consent is required by Section 9.4), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

Authority means the Northwest Parkway Public Highway Authority.

Authorized Signatory has the meaning ascribed to such term in Section 4.1(k).

Base Case Model means the financial model approved by the Model Auditor forecasting the revenues and expenses relating to the Parkway for time periods, and based upon assumptions and methodology agreed to by the Borrower and the Lead Arranger.

Board means the Board of Governors of the Federal Reserve System of the United States of America.

Borrower has the meaning ascribed to such term in the Preamble above.

Borrowing means Senior Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Eurodollar Senior Loans, as to which a single Interest Period is in effect.

Borrowing Request means a request by the Borrower for a Borrowing in accordance with Section 2.3 in the form attached hereto as Exhibit B and signed by an Authorized Signatory.

Business Day means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; **provided** that, when used in connection with a Eurodollar Senior Loan, the term **Business Day** shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

Calculation Date means each March 1, June 1, September 1 and December 1 occurring after the Closing Date, **provided** that the first Calculation Date shall be March 1, 2008.

Calculation Period means (a) a period of twelve (12) months ending on a Calculation Date and (b) for the purposes of the calculation of the Interest Coverage Ratio only, each shorter period commencing on the Closing Date and ending on a Calculation Date.

Capital Expenditures means expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one year which are capitalized in accordance with GAAP.

Capital Lease Obligations of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

Capital Project means (a) any Required Capital Improvement or (b) any project to repair or restore any loss or damage to any portion of the Parkway for which the aggregate cost is expected to exceed \$5,000,000.

Change in Control means (a) a "Change In Control" as such term is defined in the Concession Agreement (other than in accordance with Article 17 of the Concession Agreement), (b) the Guarantor directly or indirectly (i) ceasing to Control the Borrower, subject to customary, limited minority protections, (ii) ceasing to have the right to receive 40% or more of any distributions made by the Borrower or (iii) otherwise ceasing to be the owner of Membership Interests representing 40% or more of the issued and outstanding Membership Interests, or (c) the Guarantor directly or indirectly transferring any legal or beneficial interest in the Borrower during the period from the Syndication Launch Date until the earlier of the end of the Syndication Period and June 21, 2008, **provided** that, if the Guarantor has notified the Administrative Agent in writing prior to the Syndication Launch Date of an upcoming transfer (which notice shall include the identity of the transferee and the percentage interest being transferred), then the Guarantor may transfer such interest during the two week period following the Syndication Launch Date on the terms set forth in such notice to the Administrative Agent so long as the transfer is otherwise in compliance with paragraphs (a) and (b) above.

Change in Law means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement (except for changes in the rate of any Tax on, or determined by reference to, net income or net profits) or (c) compliance by any Senior Lender (or, for purposes of Section 2.13(b), by any lending office of such Senior Lender or by such Senior Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

Class, when used in reference to any Senior Loan or Borrowing, refers to whether such Senior Loan, or the Senior Loans comprising such Borrowing, are Senior Term Loans or Senior Liquidity Facility Loans, and, when used in reference to any Commitment, refers to whether such Commitment is Senior Term Loan Commitment or a Senior Liquidity Facility Commitment.

CLO means any entity (whether a corporation, partnership, trust or otherwise) that is engaged in making, purchasing, holding or otherwise investing in whole or in material part in bank loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a Senior Lender or an Affiliate of such Senior Lender

Closing Date means the date on which the conditions specified in Section 4 are satisfied (or waived in accordance with Section 9.2).

Code means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

Collateral means all real and personal property which is subject to the security interests or Liens granted by the Borrower under any of the Security Documents, including (a) the Collateral, as defined in Section 2.1 of the Security Agreement; (b) the Membership Interests, including the Proceeds thereof; and (c) the Property, as defined in the Leasehold Mortgage.

Collateral Agency Agreement means the Collateral Agency and Account Agreement, dated as of the date hereof, among the Borrower, the Administrative Agent, the Collateral Agent and the Securities Intermediary.

Collateral Agent means The Royal Bank of Scotland plc, or any Person appointed to replace such Person with the authority to exercise and perform the rights and duties of the Collateral Agent under the Security Documents. The Collateral Agent shall at all times be an Institutional Lender as such term is defined in the Concession Agreement.

Commitment means a Senior Term Loan Commitment or a Senior Liquidity Facility Commitment, or any combination thereof (as the context requires).

Concession Agreement means the Northwest Parkway Concession and Lease Agreement, dated as of August 29, 2007, by and between Authority and the Borrower, as supplemented and amended by the First Amendment to Northwest Parkway Concession and Lease Agreement, dated as of November 21, 2007, by and between the Authority and the Borrower.

Concessionaire Interest has the meaning ascribed to such term in the Concession Agreement.

Consent and Agreement means each of (a) the consent among the Authority, the Borrower and the Collateral Agent to be delivered on the Closing Date substantially in the form of Exhibit E hereto, and (b) any consent and agreement entered into by any Material Project Participant with respect to a Material Project Contract pursuant to the requirements of this Agreement in the form of Exhibit F hereto or such other form as the Administrative Agent may approve.

Construction Period means any period during which the Borrower or a contractor is performing any construction, procurement or engineering work with respect to a Capital Project.

Contest Claim means any Tax, assessment, fee, government charge or levy or any Lien or other claim or payment of any nature.

Contractual Currency has the meaning ascribed to such term in Section 9.15(a).

Control means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **Controlling** and **Controlled by** have meanings correlative thereto.

Control Agreement means each of (a) the deposit account control agreement dated as of the date hereof, between the Collateral Agent and the initial Deposit Account Bank with respect to the Deposit Accounts, (b) each deposit account control agreement substantially in the form of the Control Agreement attached to the Collateral Agency Agreement as Exhibit A with a successor Deposit Account Bank, and (c) each securities account control agreement with a successor Securities Intermediary in form and substance satisfactory to the Administrative Agent.

CPI 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, it being understood that for purposes of using such indicator at a specific point in time, the “Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items” (not seasonally adjusted) published by the U.S. Department of Labor, Bureau of Labor Statistics, for the calendar year immediately preceding such specific point in time is to be used; 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.

Debt Service Reserve Account means the “Debt Service Reserve Account” established and created in the name of the Borrower pursuant to Section 5.1 of the Collateral Agency Agreement.

Default means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

Deposit Account Bank has the meaning ascribed to such term in Section 5.1 of the Collateral Agency Agreement.

Deposit Accounts means the Operating Account and the Local Collections Accounts.

dollars or \$ refers to lawful money of the United States of America.

Enhancement Factor means one plus the result of dividing (a) the undrawn Senior Liquidity Facility Commitments as at the Final Maturity Date under the Lenders’ Base Case by (b) the sum of the Mandatory Debt Service from the Closing Date to the Final Maturity Date as projected under the Lenders’ Base Case.

Environmental Claim means any notice, claim or demand (collectively, a *claim*) by any person alleging or asserting liability for investigatory costs, cleanup or other remedial costs, legal costs, environmental consulting costs, governmental response costs, damages to natural resources or other property, personal injuries, fines or penalties related to (a) the presence, or release into the environment, of any Hazardous Material at any location, whether or not owned by the person against whom such claim is made, or (b) any violation of, or alleged violation of, or liability arising under any Environmental Law. The term **Environmental Claim** shall include, without limitation, any claim by any person or Governmental Authority for investigation, enforcement,

cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law, and any claim by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief under any Environmental Law.

Environmental Laws means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

Environmental Liability means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities, and including any Lien filed against any property covered by the Leasehold Mortgage or any part of the Leasehold Estates (as defined in the Leasehold Mortgage) thereunder in favor of any governmental entity), of the Borrower directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

ERISA means the Employee Retirement Income Security Act of 1974, as amended from time to time.

ERISA Affiliate means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

ERISA Event means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

Escrow Agreement means the escrow agreement dated as of November 21, 2007 entered into between the Borrower, the Authority and Wells Fargo Bank, National Association as escrow agent.

Eurodollar, when used in reference to any Senior Loan or Borrowing, refers to whether such Senior Loan, or the Senior Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

Event of Default has the meaning ascribed to such term in Section 7.

Event of Loss means (a) any loss or destruction of, damage to or casualty relating to all or any part of the Parkway or (b) any condemnation or other taking (including by eminent domain) of all or any part of the Parkway or the Concessionaire Interest.

Excess Amount means the amount by which the aggregate of any partial prepayment or repayment and any Previous Unapplied Amount exceeds the Hedging Prepayment Minimum Amount.

Exchange Act means the Securities Exchange Act of 1934, as amended from time to time.

Excluded Taxes means, with respect to the Administrative Agent, any Senior Lender, or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) capital, net worth or similar taxes, income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction or any political subdivision thereof under the laws of which such recipient is organized, resident or otherwise conducts business, or in which its principal office is located or, in the case of any Senior Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction or political subdivision thereof in which the Borrower is located, (c) in the case of a Foreign Senior Lender (other than an assignee pursuant to a request by the Borrower under Section 2.17(b)), any withholding tax that at the time such Foreign Senior Lender becomes a party to this Agreement or designates a new lending office is imposed on amounts payable to such Foreign Senior Lender, except to the extent that such Foreign Senior Lender or its assignor (if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts (but only to the extent of such additional amounts) from the Borrower with respect to such withholding tax pursuant to Section 2.15(a), (d) in the case of a Senior Lender, withholding taxes attributable to such Senior Lender's failure to comply with Section 2.15(e), but only while such failure continues and only to the extent compliance would have reduced the amount required to be withheld, and (e) any taxes that would not have been imposed but for a connection between such person and the jurisdiction imposing such taxes (other than a connection arising solely by reason of this Agreement or any other Senior Loan Document).

Federal Funds Effective Rate means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

Fee Letter means the letter agreement between the Administrative Agent, the Lead Arranger and the Borrower, dated as of the date hereof, with respect to certain fees payable in connection with the credit facilities contemplated by the Finance Documents.

Final Maturity Date means the date that is ten (10) years after the Closing Date; **provided** that if such date is a day other than a Business Day, the Final Maturity Date shall be the next succeeding Business Day unless such next succeeding Business Day falls in the next calendar month, in which case the Final Maturity Date shall be the immediately preceding Business Day.

Finance Documents means the Senior Loan Documents, the Guaranteed Loan Agreement, the Guaranteed Lender Subordination Agreement and the Related Party Subordination Agreement.

Foreign Senior Lender means any Senior Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

GAAP means generally accepted accounting principles in the United States of America.

Governmental Approvals means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority, including siting and operating permits and licenses and any of the foregoing under any applicable Environmental Law, that are required for the leasing, operation, rehabilitation, maintenance or use of the Parkway or any part thereof.

Governmental Authority means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

Governmental Rule means any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing having the force of law by, any Governmental Authority, which is applicable to the Parkway or any part thereof, whether now or hereafter in effect.

Guarantee of or by any Person (the **guarantor**) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the **primary obligor**) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; **provided** that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

Guarantee Fee means the fee, if any, payable by the Borrower to the Guarantor in consideration of its agreement to act as guarantor under the Guaranteed Loan Agreement.

Guaranteed Lender Subordination Agreement means the subordination agreement, dated as of the date hereof, between the Borrower and the Secured Parties.

Guaranteed Lenders means the guaranteed lenders party to the Guaranteed Loan Agreement.

Guaranteed Loan has the meaning ascribed to such term in the Guaranteed Loan Agreement.

Guaranteed Loan Agreement means an agreement, dated as of the date hereof, between the Borrower, the Guarantor, the Administrative Agent and the Guaranteed Lenders, under which the Guaranteed Lenders agree to make available a guaranteed loan of up to \$60,000,000.

Guarantor means Brisa Auto-Estradas de Portugal S.A.

Hazardous Materials means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

Hedging Agreements means (a) the hedging agreement dated as of the Closing Date entered into by the Borrower and The Royal Bank of Scotland plc and (b) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank in form and substance satisfactory to the Administrative Agent and the Borrower, for a Hedging Transaction permitted in accordance with Section 5.15.

Hedging Banks means The Royal Bank of Scotland plc and one or more Senior Lenders (or Affiliates thereof) party from time to time to a Hedging Agreement, and their respective successors and permitted assigns.

Hedging Obligations means, collectively, the payment of (a) all scheduled amounts payable to the Hedging Banks by the Borrower, as the fixed-rate payor, under the Hedging Agreements (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), net of all scheduled amounts payable to the Borrower by such Hedging Banks as floating-rate payor, under the Hedging Agreements, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Borrower to the Hedging Banks under such Hedging Agreements; **provided** that Hedging Obligations shall not include Hedging Termination Obligations. For avoidance of doubt, the calculations of Hedging Obligations payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

Hedging Prepayment Minimum Amount means \$5,000,000.

Hedging Termination Obligations means the aggregate amount of (i) Hedging Obligations payable to the Hedging Banks by the Borrower under the Hedging Agreements, as the fixed rate payor, upon the early unwind of all or a portion of the Hedging Agreements, net of all amounts payable to the Borrower by such Hedging Banks, as floating-rate payor thereunder, plus (ii) any penalty payments or other payments in the form of unwind fees payable in connection with an early unwind under the Hedging Agreements. For avoidance of doubt, the calculations of

Hedging Termination Obligations payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

Hedging Transaction means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” or “collar” transaction, interest rate future, interest rate option or hedging transaction.

Indebtedness means, with respect to any Person, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property (with a value in excess of \$100,000) owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

Indemnified Taxes means Taxes other than Excluded Taxes.

Indemnitee has the meaning ascribed to such term in Section 9.3(b).

Index Debt means the senior, unsecured, long term indebtedness for borrowed money of the Guarantor that is not guaranteed by any other Person or subject to any other credit enhancement.

Inflation Factor means, for any calendar year (the test year), the quotient obtained by dividing (a) the CPI Index for the test year minus the CPI Index for the calendar year immediately preceding the test year, by (b) the CPI Index for the calendar year immediately preceding the test year.

Insurance Consultant means Willis North America, Inc. or such other nationally recognized insurance consultant as the Administrative Agent (acting at the direction of the Required Senior Lenders) shall designate.

Insurance Proceeds has the meaning ascribed to such term in Section 5.13(c).

Interest Coverage Ratio means, as at any Calculation Date, the ratio of (a) Net Cash Flow to (b) Mandatory Debt Service, in each case for the preceding Calculation Period.

Interest Election Request means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.5 in the form attached hereto as Exhibit C and signed by an Authorized Signatory.

Interest Payment Date means (a) with respect to any ABR Senior Loan and any Eurodollar Senior Loan for which the Interest Period is 12 months, each Semi-Annual Date, (b) with respect to any Eurodollar Senior Loan, the last day of the Interest Period applicable to the Borrowing of which such Senior Loan is a part, and (c) in each case, the Final Maturity Date.

Interest Period means with respect to any Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six (or, if available to all Senior Lenders, 12) months thereafter, as the Borrower may elect; **provided** that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

Lead Arranger means RBS Securities Corporation d/b/a RBS Greenwich Capital, in its capacity as lead arranger of the credit facilities contemplated by the Finance Documents.

Leasehold Mortgage means, together or individually as the context may require, (a) the Leasehold Deed of Trust to Public Trustee, Security Agreement, Financing Statement and Fixture Filing, dated as of the date hereof, by the Borrower to the Public Trustee of Adams County, Colorado for the benefit of the Collateral Agent acting on behalf of the Secured Parties, (b) the Leasehold Deed of Trust to Public Trustee, Security Agreement, Financing Statement and Fixture Filing, dated as of the date hereof, by the Borrower to the Public Trustee of Boulder County, Colorado for the benefit of the Collateral Agent acting on behalf of the Secured Parties, and/or (c) the Leasehold Deed of Trust to Public Trustee, Security Agreement, Financing Statement and Fixture Filing, dated as of the date hereof, by the Borrower to the Public Trustee of Broomfield County, Colorado for the benefit of the Collateral Agent acting on behalf of the Secured Parties.

Lenders' Base Case means the traffic and revenue forecast approved by S&P in connection with the satisfaction of the condition precedent described in Section 4.1(b).

LIBO Rate means, with respect to any Eurodollar Borrowing for any Interest Period, the rate per annum equal to the rate determined by Administrative Agent to be the offered rate as calculated by the British Bankers' Association and obtained through a nationally recognized service such as Reuters (the **Service**) (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period (rounded upwards, if necessary, to the next 1/16 of 1%), as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the LIBO Rate with respect to such Eurodollar Borrowing for such Interest Period shall be the arithmetic average of the rates (rounded upwards, if necessary, to the next 1/16 of 1%) at which dollar deposits of \$5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office

of the Reference Senior Lender in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

Lien means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

Local Collections Accounts means the “Local Collections Accounts” established and created in the name of the Borrower pursuant to Section 5.1 of the Collateral Agency Agreement.

Loss Proceeds Account means the “Loss Proceeds Account” established and created in the name of the Borrower pursuant to Section 5.1 of the Collateral Agency Agreement.

Maintenance Reserve Account means the “Maintenance Reserve Account” established and created in the name of the Borrower pursuant to Section 5.1 of the Collateral Agency Agreement.

Major Maintenance means all reasonably necessary periodic major overhaul and repair (i.e., excluding any maintenance or repair of a routine or ordinary course nature) of all or any part of the Parkway, excluding any Capital Project, that is (a) required to be performed in accordance with the Concession Agreement and (b) categorized as Capital Expenditures (**provided** that any such costs that are not categorized as Capital Expenditures shall be Operating Expenses).

Mandatory Debt Service means, for any period, the sum of (a) all interest on the Senior Loans payable by the Borrower during such period, (b) all fees payable by the Borrower to the Senior Lenders, the Administrative Agent and the Collateral Agent during such period, and (c) any payments constituting net Hedging Obligations payable by the Borrower (or less net amounts payable to the Borrower) during such period.

Material Adverse Effect means a material adverse effect on one or more of the following: (a) the Parkway; (b) the business, assets, operations or condition (financial or otherwise) of the Borrower; (c) the ability of the Borrower to perform its material obligations under any Senior Loan Document or any Material Project Contract in accordance with the terms of such Senior Loan Document or Material Project Contract; (d) the ability of any Material Project Participant to perform its material obligations under any Material Project Contract to which it is a party in accordance with the terms of such Material Project Contract; (e) the enforceability of the material rights of, or material benefits available to, the Secured Parties under any Senior Loan Document; or (f) the value of a material portion of the Collateral or the validity, enforceability, perfection or priority of the material liens or security interests granted to the Collateral Agent pursuant to the Security Documents.

Material Project Contract means (a) the Concession Agreement, (b) the Escrow Agreement, (c) any Operating Agreement that the Borrower may enter into after the date hereof with an Operator (as defined in the Concession Agreement) that is not an Affiliate of the Borrower requiring payments by the Borrower in excess of \$1,500,000 per annum (adjusted upwards annually for the Inflation Factor) and (d) any other contract or agreement entered into from time to time with

respect to the operation or use of the Parkway requiring payments by the Borrower in excess of \$3,000,000 per annum (adjusted upwards annually for the Inflation Factor).

Material Project Participant means each of the Borrower, the Authority, and any other Person party to a Material Project Contract (and any guarantor of such Person's obligations thereunder).

Maximum Annual Senior Liquidity Facility Loan Amount means, for each year, the amount identified in Exhibit D as the "Maximum Senior Liquidity Facility Loan Amount" for the relevant year.

Member Pledge Agreement means the Pledge Agreement, dated as of the date hereof, by the Members in favor of the Collateral Agent granting a first-priority security interest in their Membership Interests of the Borrower.

Members means Northwest Parkway Holdings LLC and CCR-USA LLC, and any other holder of Membership Interests.

Membership Interests means the limited liability company interests in the Borrower.

Minimum Aggregate Outstanding Senior Liquidity Facility Commitment means, on any given day, the amount identified in Exhibit D as the "Minimum Aggregate Outstanding Senior Liquidity Facility Commitment" for the period in which such day falls.

Model Auditor means KPMG LLP or such replacement auditor as the Administrative Agent (acting at the direction of the Required Senior Lenders) shall designate.

Moody's means Moody's Investors Service, Inc.

Mult employer Plan means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

Net Cash Flow means, in respect of any period, (a) aggregate Project Revenues received during such period, less (b) the Operating Expenses paid during such period and any transfers made (or projected to be made) from the Revenue Account to the Maintenance Reserve Account in accordance with Section 5.2(b) of the Collateral Agency Agreement during such period.

Note means a promissory note issued by the Borrower in favor of a Senior Lender evidencing Senior Loans made by such Senior Lender, in form and substance satisfactory to such Senior Lender.

Operating Account means the "Operating Account" established and created in the name of the Borrower pursuant to Section 5.1 of the Collateral Agency Agreement.

Operating Agreement has the meaning ascribed to such term in the Concession Agreement.

Operating Expenses means any and all of the following expenses paid or payable by or on behalf of the Borrower: all operation, maintenance, management and promotion costs incurred in relation to the Parkway, consumables, payments under any operating lease, payments pursuant to the agreements for the management, operation and maintenance of the Parkway, Taxes, insurance (all costs associated with obtaining, administering and maintaining the insurance coverages required to be paid by (or the cost of which is contractually passed through to) the Borrower

pursuant to the Senior Loan Documents, the Guaranteed Loan Agreement and/or the Concession Agreement (including the costs of premiums and deductibles and brokers' expenses payable by or on behalf of the Borrower)), costs and fees attendant to the obtaining and maintaining in effect the Governmental Approvals relating to operation or maintenance of the Parkway payable during such period, management fees, security, police services, payments under the Concession Agreement for services of the Authority and reasonable legal, accounting and other professional fees attendant to any of the foregoing items payable during such period, but exclusive of (i) Major Maintenance costs, Capital Expenditure associated with Capital Projects and payments on Indebtedness (whether or not constituting Mandatory Debt Service) and (ii) any amounts payable by the Borrower to a Member or any Affiliate of a Member, including the Guarantee Fee. Operating Expenses do not include non-cash charges, such as depreciation, amortization or other bookkeeping entries of a similar nature.

Operator has the meaning ascribed to such term in the Concession Agreement.

Other Revenues has the meaning ascribed to such term in the Concession Agreement.

Other Taxes means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Finance Document, or from the execution, delivery or enforcement of, or otherwise with respect to, any Finance Document.

Parkway has the meaning ascribed to such term in the Concession Agreement.

Parkway Concession Value has the meaning ascribed to such term in the Concession Agreement.

Parkway Contract means, at any time, any agreement to which the Borrower is a party relating to the ownership, leasing, operation, maintenance or use of the Parkway.

Parkway Revenues means revenues for the use of the Parkway or any part thereof, including Toll Revenues and Other Revenues.

Participant has the meaning ascribed to such term in Section 9.4(e).

Patriot Act has the meaning ascribed to such term in Section 9.11.

PBGC means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

Permitted Authority Encumbrance has the meaning ascribed to such term in the Concession Agreement.

Permitted Concessionaire Encumbrance has the meaning ascribed to such term in the Concession Agreement.

Permitted Contest Conditions means a contest, pursued in good faith, challenging the enforceability, validity, interpretation, amount or application of any Governmental Rule, Contest Claim, Tax or other matter (legal, contractual or other) by appropriate proceedings timely instituted if (a) the Borrower diligently pursues such contest, (b) the Borrower establishes adequate cash reserves with respect to the contested claim, and (c) such contest (i) could not

reasonably be expected to have a Material Adverse Effect, and (ii) does not involve any material risk or danger of any criminal or unindemnified civil liability being incurred by the Administrative Agent, the Collateral Agent or any of the Senior Lenders.

Permitted Investments means: (a) direct obligations of the United States, or of any agency of the United States, or obligations guaranteed as to principal and interest by the United States or any agency of the United States, rated at least “AAA” by S&P and maturing not more than one year from the date of acquisition by the Borrower, (b) commercial paper rated (on the date of acquisition by the Borrower) A-1 or P-1 by S&P or Moody’s, respectively, maturing in not more than one year from the date of acquisition by the Borrower, (c) time or certificates of deposit issued by any bank which has combined capital and surplus and undivided profits of at least \$1,000,000,000 and has outstanding unsecured short-term indebtedness that is rated A-1 or better by S&P or P-1 or better by Moody’s, or issued by the Collateral Agent (whether it is a bank or not, but so long as it meets the requirements set forth above in this clause (c)) and maturing in not more than one year from the date of acquisition by the Borrower, (d) repurchase agreements fully secured by obligations described in clause (a) above with any bank meeting the requirements specified in clause (c) above with maturities not in excess of 30 days, (e) a money market fund or a qualified investment fund (including any such fund for which the Collateral Agent or any Affiliate thereof acts as an advisor, administrator, servicing agent, custodian, subcustodian or manager, notwithstanding that (A) the Collateral Agent or an Affiliate of the Collateral Agent charges and collects fees and expenses from such funds for services rendered (**provided** that such charges, fees and expenses are on terms consistent with terms negotiated at arms’ length) and (B) the Collateral Agent charges and collects fees and expenses for services rendered, pursuant to the applicable agreement) rated A-1 or better by S&P or P-1 or better by Moody’s and (f) the Hedging Obligations (to the extent the same constitute investments). Notwithstanding the foregoing, the tenor of any investment referred to above shall be no greater than the date on which the funds invested are necessary to meet any payment obligations for which such funds were reserved.

Permitted Liens means (a) Liens created pursuant to the Senior Loan Documents; (b) Liens, deposits or pledges incurred or created in the ordinary course of business or under applicable Governmental Rules in connection with or to secure the performance of leases, contracts, statutory obligations or appeal bonds, not exceeding \$1,500,000 in the aggregate at any one time; (c) if the Borrower at any time has any employees, Liens, pledges or deposits under worker’s compensation, unemployment insurance or other social security legislation (other than ERISA); (d) mechanics’, materialmen’s, workers’, repairmen’s, employees’, warehousemen’s, carriers’ or other like Liens arising in the ordinary course of business or under applicable Governmental Rules securing obligations incurred in connection with the Parkway which are not yet due or which are adequately bonded or which are being contested pursuant to the Permitted Contest Conditions; (e) Liens for taxes, assessments or governmental charges either secured by a bond reasonably acceptable to the Administrative Agent and the Required Senior Lenders or which are not yet due or which are being contested pursuant to the Permitted Contest Conditions; (f) Liens arising out of judgments or awards fully covered by insurance or with respect to which an appeal or proceeding for review is being prosecuted pursuant to the Permitted Contest Conditions; (g) Permitted Authority Encumbrances (other than (i) Permitted Authority Encumbrances specified in clause (vii) of the definition of the term Permitted Authority Encumbrance in the Concession Agreement unless such Liens are otherwise permitted hereunder and (ii) any amendment referred to in clause (ix) of the term Permitted Authority Encumbrance in the Concession Agreement that has not been approved in writing by the Administrative Agent and the Required Senior Lenders to

the extent any such approval is required); (h) Permitted Concessionaire Encumbrances (other than Permitted Concessionaire Encumbrances specified in clause (vii) of the definition of the term Permitted Concessionaire Encumbrance in the Concession Agreement unless such Liens are otherwise permitted hereunder), (i) Permitted Title Exceptions, (j) any Lien disclosed to the Administrative Agent in writing prior to the date hereof and (k) any purchase-money Lien granted to a Person financing the purchase of equipment if the Indebtedness relating thereto is permitted under Section 6.1(c) and such Lien encumbers only the specific goods or equipment so purchased.

Permitted Title Exceptions means (i) current real property taxes not delinquent, (ii) such exceptions to title, liens and encumbrances of record which appear in the final Title Policy accepted by the Administrative Agent and the Senior Lenders in connection with the initial Borrowing, and (iii) such exceptions to title as are otherwise approved in writing by the Administrative Agent with the approval of the Required Senior Lenders.

Person means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

Plan means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

Pledge Agreements means, collectively, (a) the Member Pledge Agreement, and (b) any pledge agreements executed and delivered after the Closing Date by any additional or substituted Member pursuant to which such additional or substituted Member shall grant to the Collateral Agent for the benefit of the Secured Parties a security interest in the Membership Interests held at any time by such Member.

Previous Unapplied Amount means the amount of any partial prepayment or repayment of the Senior Loans which was less than the Hedging Prepayment Minimum Amount and in relation to which no reduction in the notional amount of the Hedging Transactions was made.

Prime Rate means the rate of interest per annum announced from time to time by The Royal Bank of Scotland plc as its prime rate in effect at its principal office; each change in the Prime Rate shall be effective from and including the date such change is announced as being effective.

Proceeds means “proceeds” as such term is defined in the UCC or under other relevant law and, in any event, shall include, but shall not be limited to, (i) any and all proceeds of, or amounts (in whatsoever form, whether cash, securities, property or other assets) received under or with respect to, any insurance, indemnity, warranty or guaranty payable to the Borrower from time to time, and claims for insurance, indemnity, warranty or guaranty effected or held for the benefit of the Borrower, in each case with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever, whether cash, securities, property or other assets) made or due and payable to the Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any person acting under color of Governmental Authority), and (iii) any and all other amounts (in any form whatsoever, whether cash, securities, property or other assets) from time to time paid or

payable under or in connection with any of the Collateral (whether or not in connection with the sale, lease or other disposition of the Collateral).

Project Accounts means, collectively, the Securities Accounts and the Deposit Accounts.

Project Life Cover Ratio means, for the period commencing on the Closing Date and ending on the 50th anniversary of the Closing Date, the ratio of (a) the present value of the future Net Cash Flow forecast for such specified period using the Base Case Model discounted at the quarterly discount rates reflected in the Base Case Model for such specified period, to (b) the full aggregate amount of the Senior Term Loan Commitments and the Senior Liquidity Facility Commitments.

Project Revenues means, for any period (without duplication), all revenue received by or on behalf of the Borrower during such period, including but not limited to Parkway Revenues, amounts earned in respect of Permitted Investments, interest paid in respect of any Project Accounts, proceeds from any business interruption insurance, and any other receipts otherwise arising or derived from or paid or payable in respect of the Parkway, but excluding any payments constituting net Hedging Obligations payable to the Borrower (or less net amounts payable by the Borrower) during such period, proceeds of borrowings (including any Borrowing of any of the Senior Loans), equity contributions to the Borrower, proceeds of condemnation proceedings and asset sales to the extent that such proceeds are not reinvested in replacement property, insurance payments other than proceeds from business interruption insurance and extraordinary or non-recurring revenues.

Projected Interest Coverage Ratio means, as of any Calculation Date, the ratio of (a) Net Cash Flow to (b) Mandatory Debt Service, in each case as reasonably projected by the Borrower consistent with the actual results then in effect for the 12-month period commencing on such Calculation Date.

Property means any right or interest in or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including cash, securities, accounts and contract rights.

Reference Senior Lender means The Royal Bank of Scotland plc (or its applicable lending office, as the case may be).

Register has the meaning ascribed to such term in Section 9.4(c).

Related Parties means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

Related Party Subordination Agreement means the subordination agreement, dated as of the date hereof, between the Borrower, the Guarantor the Members, the Collateral Agent and the Administrative Agent.

Releases means with respect to any Hazardous Material, any release, spill, emission, emanation, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of such Hazardous Material into the indoor or outdoor environment, including, without limitation, the movement of such Hazardous Material through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata.

Required Capital Improvements means any capital improvements which the Borrower is required to carry out pursuant to the terms of the Concession Agreement.

Required Senior Lenders means, at any time, Senior Lenders having outstanding Senior Loans and unused Commitments representing more than 60% of the aggregate principal amount of all Senior Loans outstanding and unused Commitments at such time.

Restricted Payment means (a) all payments or distributions by the Borrower on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other acquisition by the Borrower of, any portion of any Membership Interest and (b) all payments (in cash, property of the Borrower or obligations) of principal of, interest on and other amounts with respect to, or other payments on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other acquisition by the Borrower of, any Indebtedness referred to in Section 6.1(e) and (c) all payments (in cash, property of the Borrower or obligations) in respect of the Guarantee Fee.

Revenue Account means the "Revenue Account" established and created in the name of the Borrower pursuant to Section 5.1 of the Collateral Agency Agreement.

S&P means Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc.

Secured Parties means, collectively, the Collateral Agent, the Administrative Agent, the Securities Intermediary, the Senior Lenders, the Hedging Banks and the Guaranteed Lenders.

Securities Accounts means the Revenue Account, the Maintenance Reserve Account, the Debt Service Reserve Account, the Loss Proceeds Account and the Special Equity Pass-Through Account.

Securities Intermediary means The Bank of New York, in its capacity as securities intermediary under the Collateral Agency Agreement, or any Person appointed to replace such Person with the authority to exercise and perform the rights and duties of the Securities Intermediary under the Collateral Agency Agreement.

Security Agreement means the Security Agreement dated as of the date hereof between the Borrower and the Collateral Agent for the benefit of the Secured Parties.

Security Documents means the Collateral Agency Agreement, the Security Agreement, the Leasehold Mortgage, the Pledge Agreements, each Control Agreement, each Consent and Agreement and each other document or instrument from time to time pursuant to which a lien or security interest is granted or perfected.

Semi-Annual Date means the 21st day in each June and December during the period between the Closing Date and the Final Maturity Date; **provided** that if any such date is a day other than a Business Day, the relevant Semi-Annual Date shall be the next succeeding Business Day unless such next succeeding Business Day falls in the next calendar month, in which case the relevant Semi-Annual Date shall be the immediately preceding Business Day.

Senior Bridge Facility Agreement has the meaning ascribed to such term in Recital (B) above.

Senior Financing Parties means, collectively, the Administrative Agent, the Senior Lenders, both individually and acting by and through the Administrative Agent, and the Hedging Banks.

Senior Lenders has the meaning ascribed to such term in the Preamble above.

Senior Liquidity Facility Availability Period means the period from and including the Closing Date to the earliest to occur of (a) the Final Maturity Date, (b) the date on which the undrawn Senior Liquidity Facility Commitments are reduced to zero, (c) the date of termination of the Aggregate Senior Liquidity Facility Commitments and (d) the day on which the Senior Loans outstanding at such time are repaid or prepaid in full.

Senior Liquidity Facility Commitment means, with respect to each Senior Liquidity Facility Lender, the commitment of such Senior Liquidity Facility Lender to make Senior Liquidity Facility Loans to the Borrower pursuant to Section 2.1(b), in the amounts as follows:

Senior Liquidity Facility Lender	Senior Liquidity Facility Commitment
The Royal Bank of Scotland plc	\$150,000,000

or in the amounts set forth in the Assignment and Assumption pursuant to which such Senior Liquidity Facility Lender becomes a party hereto, as applicable.

Senior Liquidity Facility Lender means each Senior Lender that has a Senior Liquidity Facility Commitment or that holds a Senior Liquidity Facility Loan.

Senior Liquidity Facility Loans means the loans made pursuant to Section 2.1(b).

Senior Loan Documents means this Agreement, any Notes, the Security Documents, the Hedging Agreements, the Fee Letter, the Appointment Letter and each other document or instrument effecting the transactions contemplated by the aforementioned agreements (but excluding the Guaranteed Loan Agreement and the Guaranteed Lender Subordination Agreement and the Related Party Subordination Agreement).

Senior Loans means the Senior Term Loans and/or the Senior Liquidity Facility Loans.

Senior Obligations means, as at any date, the sum, computed without duplication, of the following: (a) the aggregate outstanding principal amount of the Senior Loans plus all accrued interest (whether arising or incurred before or after any bankruptcy of the Borrower) on such amount, plus (b) all Hedging Obligations and Hedging Termination Obligations payable by the Borrower to any Hedging Bank, plus (c) all other amounts from time to time payable by the Borrower under the Senior Loan Documents plus accrued interest on such amounts, plus (d) any and all obligations of the Borrower and the Members, as applicable, to the Administrative Agent, the Collateral Agent, the Securities Intermediary, any Hedging Bank or any Senior Lender for the performance of their respective agreements, covenants or undertakings under the Senior Loan Documents, plus (e) any amounts (including protective advances, insurance premiums, licensing fees, recording and filing fees, and Taxes (other than Excluded Taxes)) the Administrative Agent, the Collateral Agent, the Securities Intermediary, any Hedging Bank or the Senior Lenders expend on behalf of the Borrower because the Borrower fails to make any payment when required under the terms of any Senior Loan Document or any Material Project Contract, plus (f)

all amounts required to be paid under an indemnification, cost reimbursement or similar provision in any Senior Loan Document.

Senior Term Loan Commitment means, with respect to each Senior Term Loan Lender, the commitment of such Senior Term Loan Lender to make Senior Term Loans to the Borrower pursuant to Section 2.1(a), in the amounts as follows:

Senior Term Loan Lender	Senior Term Loan Commitment
The Royal Bank of Scotland plc	\$249,000,000

or in the amounts set forth in the Assignment and Assumption pursuant to which such Senior Term Loan Lender becomes a party hereto, as applicable.

Senior Term Loan Lender means each Senior Lender that has a Senior Term Loan Commitment or that holds a Senior Term Loan.

Senior Term Loans means the loans made pursuant to Section 2.1(a).

Solvent means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital. Unless otherwise provided under applicable law, the amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

Special Equity Pass-Through Account means the "Special Equity Pass-Through Account" established and created in the name of the Borrower pursuant to Section 5.1 of the Collateral Agency Agreement.

Statutory Reserve Rate means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Senior Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Senior Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

Subsidiary means, with respect to any Person (the parent) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

Survey means the cover sheet and Sheet Numbers 1 through 12 entitled "Lease Area Northwest Parkway" prepared by Western States Surveying, Inc., having an issue date of August 28, 2007 and last plotted on August 29, 2007 in form, scope and substance reasonably satisfactory to the Required Senior Lenders, showing the fee ownership parcels, the multi-use easement parcels, the existing road right-of-way and the existing railroad right-of-way included within and constituting the Parkway and such additional matters as may be reasonably required by the Required Senior Lenders.

Syndication Launch Date means the date on which general syndication for the Transaction is launched as notified by the Lead Arranger to the Guarantor.

Syndication Period means the period commencing on the Syndication Launch Date and ending on the date on which the Administrative Agent and its Affiliates hold not more than 10% of the aggregate Commitments and Senior Loans outstanding under this Agreement and not more than 40% of the aggregate commitments and loans outstanding under the facility in the Guaranteed Loan Agreement.

Taxes means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

Technical Advisor means Halcrow, Inc. or such other nationally recognized firm of consultants and engineers specializing in toll roads as the Administrative Agent (acting at the direction of the Required Senior Lenders) shall designate with the prior written consent of the Borrower (not to be unreasonably withheld or delayed, and **provided** that no such consent shall be required upon the occurrence and during the continuance of a Default).

Termination Damages has the meaning ascribed to such term in the Concession Agreement.

Title Company means Stewart Title or such other title insurance company approved by the Administrative Agent to insure the priority of the Liens under the Leasehold Mortgage.

Title Policy means, individually and collectively, (a) an ALTA Loan Policy of Title Insurance (6/17/06) in respect of the Parkway (with ALTA Endorsement 13.1) in an amount of \$50,000,000, in form and substance satisfactory to the Administrative Agent, deleting standard exceptions 1 – 4 and including (i) ALTA 9 endorsement coverage, (ii) affirmative Endorsement 103.1 coverage, (iii) contiguity Endorsement 116.4 and "survey-same-as" Endorsement 116.1, (iv) ALTA 8.1 endorsement coverage, and (v) ALTA 21 endorsement coverage and (b) any additional policy of title insurance issued for any subsequently acquired real property interests related to the Parkway.

Toll Cash Deposit Account means the “Toll Cash Deposit Account” established and created in the name of the Borrower pursuant to Section 5.1 of the Collateral Agency Agreement.

Toll Revenues has the meaning ascribed to such term in the Concession Agreement.

Transactions means the execution, delivery and performance by the Borrower of this Agreement and the other Senior Loan Documents, the borrowing of Senior Loans and the use of the proceeds thereof.

Traffic Advisor means Halcrow Group Limited or such other nationally recognized firm of consultants and engineers specializing in toll roads as the Administrative Agent (acting at the direction of the Required Senior Lenders) shall designate with the prior written consent of the Borrower (not to be unreasonably withheld or delayed, and provided that no such consent shall be required upon the occurrence and during the continuance of a Default).

Traffic Advisor's Base Case means the traffic and revenue forecast calculated by the Traffic Advisor, referred to as the “Alternative Base Case Revenue Forecast” in its report dated December 20, 2007.

Type, when used in reference to any Senior Loan or Borrowing, refers to whether the rate of interest on such Senior Loan, or on the Senior Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

Uniform Commercial Code or ***UCC*** means the Uniform Commercial Code as in effect from time to time in any applicable jurisdiction.

Withdrawal Liability means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

1.2 Classification of Senior Loans and Borrowings

For purposes of this Agreement, Senior Loans may be classified and referred to by Class (e.g., a ***Senior Liquidity Facility Loan***) or by Type (e.g., a ***Eurodollar Senior Loan***) or by Class and Type (e.g., a ***Eurodollar Senior Liquidity Facility Loan***). Borrowings also may be classified and referred to by Class (e.g., a ***Senior Liquidity Facility Loan Borrowing***) or by Type (e.g., a ***Eurodollar Borrowing***) or by Class and Type (e.g., a ***Eurodollar Senior Liquidity Facility Loan Borrowing***).

1.3 Terms Generally

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be

construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

1.4 Accounting Terms; GAAP

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; **provided** that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Senior Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

2. THE CREDITS

2.1 The Commitments

- (a) **Senior Term Loans.** Subject to the terms and conditions set forth herein, each Senior Term Loan Lender severally agrees to make one Senior Term Loan to the Borrower on the Closing Date in a principal amount not exceeding its Senior Term Loan Commitment. Amounts borrowed as Senior Term Loans and subsequently repaid or prepaid may not be reborrowed.
- (b) **Senior Liquidity Facility Loans.** Subject to the terms and conditions set forth herein, each Senior Liquidity Facility Lender severally agrees to make available one or more Senior Liquidity Facility Loans to the Borrower during the Senior Liquidity Facility Availability Period in a principal amount not exceeding its Senior Liquidity Facility Commitment. Amounts borrowed as Senior Liquidity Facility Loans and subsequently repaid or prepaid may not be reborrowed.

2.2 Senior Loans and Borrowings

- (a) **Obligations of Senior Lenders.** Each Senior Loan shall be made as part of a Borrowing consisting of Senior Loans of the same Class and Type made by the Senior Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Senior Lender to make any Senior Loan required to be made by it shall not relieve any other Senior Lender of its obligations hereunder; **provided** that the Commitments of the Senior Lenders are several and no Senior Lender shall be responsible for any other Senior Lender's failure to make Senior Loans as required.

- (b) **Type of Senior Loans.** Subject to Sections 2.5(e) and 2.12, each Borrowing shall be comprised entirely of ABR Senior Loans or Eurodollar Senior Loans as the Borrower may request in accordance herewith. Each Senior Lender at its option may make any Eurodollar Senior Loan by causing any domestic or foreign branch or Affiliate of such Senior Lender to make such Senior Loan; **provided** that (i) any exercise of such option shall not affect the obligation of the Borrower to repay such Senior Loan in accordance with the terms of this Agreement and (ii) the making of such Eurodollar Senior Loan, through such domestic or foreign branch or Affiliate of such Senior Lender will not result in any increased withholding or similar taxes or any other increased cost of borrowing payable by the Borrower.
- (c) **Minimum Amounts; Limitation on Number of Borrowings.**
- (i) The Senior Term Loan shall be drawn in a single Borrowing on the Closing Date in an amount equal to the Aggregate Senior Term Loan Commitment.
 - (ii) The Borrower shall not be entitled to make Senior Liquidity Facility Loan Borrowings (A) on the Closing Date or (B) more frequently than once per calendar month. Each Senior Liquidity Facility Loan Borrowing shall be in a minimum aggregate amount of \$1,000,000 or a larger multiple of \$100,000 in excess thereof, except for the last Senior Liquidity Facility Loan Borrowing Date, which shall be in an amount equal to the undrawn amount of the Aggregate Senior Liquidity Facility Commitment. The cumulative drawings under the Senior Liquidity Facility Loans in any one year shall at no time exceed the applicable Maximum Annual Senior Liquidity Facility Loan Amount.
 - (iii) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount of \$1,000,000 or a larger multiple of \$100,000 in excess of \$1,000,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount equal to \$1,000,000 or a larger multiple of \$100,000 in excess of \$1,000,000. Borrowings of more than one Type may be outstanding at the same time; **provided** that there shall not at any time be more than a total of five Eurodollar Borrowings outstanding.
- (d) **Limitations on Lengths of Interest Periods.** Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert to or continue as a Eurodollar Borrowing if the Interest Period requested with respect thereto would end after the Final Maturity Date.

2.3 Requests for Borrowings

To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of the initial Borrowing on the Closing Date (irrespective of whether it is an ABR Borrowing or a Eurodollar Borrowing), not later than 11:00 a.m., New York City time, on the Closing Date; (b) in the case of any Eurodollar Borrowing thereafter, not later than 11:00 a.m., New York City time, three Business Days before the date of the proposed Borrowing and (c) in the case of any ABR Borrowing thereafter, not later than 11:00 a.m., New York City time, one Business Day before the date of the proposed Borrowing. Each such telephonic

Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or facsimile to the Administrative Agent of a written Borrowing Request. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.2:

- (a) whether the requested Borrowing is to be a Senior Term Loan Borrowing or a Senior Liquidity Facility Loan Borrowing;
- (b) the aggregate amount of the requested Borrowing;
- (c) the date of such Borrowing, which shall be a Business Day;
- (d) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;
- (e) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";
- (f) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.4; and
- (g) where the requested Borrowing is to be a Senior Liquidity Facility Loan Borrowing, the uses for which the Borrower requires such Borrowing, which the Borrower shall represent, are in accordance with Section 2.6(b).

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Senior Lender of the details thereof and of the amount of such Senior Lender's Senior Loan to be made as part of the requested Borrowing.

2.4 Funding of Borrowings

- (a) **Funding by Senior Lenders.** Each Senior Lender shall make each Senior Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 1 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Senior Lenders. The Administrative Agent will make such Senior Loans available to the Borrower by promptly crediting the amounts so received, in like funds, as designated by the Borrower in the applicable Borrowing Request.
- (b) **Presumption by the Administrative Agent.** Unless the Administrative Agent shall have received notice from a Senior Lender prior to the proposed date of any Borrowing that such Senior Lender will not make available to the Administrative Agent such Senior Lender's share of such Borrowing, the Administrative Agent may assume that such Senior Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Senior Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the

applicable Senior Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Senior Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Senior Loans. If such Senior Lender pays such amount to the Administrative Agent, then such amount shall constitute such Senior Lender's Senior Loan included in such Borrowing.

2.5 Interest Elections

- (a) **Elections by the Borrower.** Each Borrowing shall initially be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Senior Lenders holding the Senior Loans comprising such Borrowing, and the Senior Loans comprising each such portion shall be considered a separate Borrowing.
- (b) **Notice of Elections.** To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.3 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery, electronic mail or facsimile to the Administrative Agent of a written Interest Election Request.
- (c) **Information in Interest Election Requests.** Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.2:
 - (i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) of this Section 2.5(c) shall be specified for each resulting Borrowing);
 - (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;
 - (iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

- (iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

- (d) **Notice by the Administrative Agent to Senior Lenders.** Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Senior Lender of the details thereof and of such Senior Lender's portion of each resulting Borrowing.
- (e) **Failure to Elect; Events of Default.** If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Senior Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

2.6 Use of Proceeds

- (a) **Senior Term Loans.** The proceeds of the Senior Term Loans will be used only to repay principal amounts outstanding under the Senior Bridge Facility Agreement.
- (b) **Senior Liquidity Facility Loans.** The proceeds of the Senior Liquidity Facility Loans may only be used for the following purposes:
 - (i) payment of interest, fees and other financing costs associated with the Senior Loans and/or the Senior Loan Documents;
 - (ii) payment of fees payable with respect to the Guaranteed Loan Agreement in accordance with the Fee Letter after the Closing Date but on or prior to December 31, 2007; and
 - (iii) to the extent that there are insufficient funds in the Revenue Account to pay such amounts in full when due:
 - (A) payment of Operating Expenses;
 - (B) transfers to Maintenance Reserve Account; and
 - (C) transfers to the Debt Service Reserve Account.

2.7 Termination of the Commitments

(a) Scheduled Termination.

- (i) The Senior Term Loan Commitments shall terminate at 5:00 p.m., New York City time, on December 21, 2007.
- (ii) The Senior Liquidity Facility Commitments shall terminate at 5:00 p.m., New York City time on
 - (A) on December 21, 2007, if the Closing Date has not occurred at or before such time; and
 - (B) otherwise, the last day of the Senior Liquidity Facility Availability Period.

- (b) **Voluntary Termination or Reduction.** The Borrower may at any time terminate, or from time to time reduce, the Senior Liquidity Facility Commitments; **provided** that (i) each partial reduction of the Senior Liquidity Facility Commitments pursuant to this Section shall be in an amount that is \$1,000,000 or a larger multiple of \$100,000 in excess of \$1,000,000 and (ii) at the end of each calendar year during the Senior Liquidity Facility Availability Period, the undrawn Senior Liquidity Facility Commitments shall be equal to or greater than the Minimum Aggregate Outstanding Senior Liquidity Facility Commitment. There shall be no premium or penalty applicable to any termination or reduction of Senior Liquidity Facility Commitments.
- (c) **Effect of Termination or Reduction.** Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Senior Lenders in accordance with their respective Commitments of such Class.

2.8 Repayment of Senior Loans; Evidence of Debt

- (a) **Repayment.** The Borrower hereby unconditionally promises to repay the aggregate outstanding principal amount of the Senior Loans to the Administrative Agent, for the account of the Senior Lenders, on the Final Maturity Date.
- (b) **Manner of Payment.** Prior to any repayment or prepayment of any Borrowings hereunder, the Borrower shall select the Borrowing or Borrowings to be repaid or prepaid, as the case may be, and shall notify the Administrative Agent as required pursuant to Section 2.9(e); **provided** that each repayment of Borrowings shall be applied to repay any outstanding ABR Borrowings before any other Borrowings. If the Borrower fails to make a timely selection of the Borrowing or Borrowings to be repaid or prepaid, such payment shall be applied, first, to pay any outstanding ABR Borrowings and, second, to other Borrowings. Each payment of a Borrowing shall be applied ratably to the Senior Loans included in such Borrowing.
- (c) **Maintenance of Loan Accounts by Senior Lenders.** Each Senior Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness

of the Borrower to such Senior Lender resulting from each Senior Loan made by such Senior Lender, including the amounts of principal and interest payable and paid to such Senior Lender from time to time hereunder.

- (d) **Maintenance of Loan Accounts by the Administrative Agent.** The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Senior Loan made hereunder, the Type thereof, and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Senior Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Senior Lenders and each Senior Lender's share thereof. In the event of any discrepancy between the loan accounts maintained by the Senior Lenders under paragraph (c) above and the loan accounts maintained by the Administrative Agent pursuant to this paragraph (d), such recordation by the Administrative Agent, absent manifest error, shall govern. Further, the entries made in the accounts maintained pursuant to paragraph (c) or (d) of this Section shall, absent manifest error, be *prima facie* evidence of the existence and amounts of the obligations recorded therein; **provided** that the failure of any Senior Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Senior Loans in accordance with the terms of this Agreement.
- (e) **Promissory Notes.** Any Senior Lender may request that Senior Loans of any Class made by it be evidenced by a Note. In such event, the Borrower shall prepare, execute and deliver to such Senior Lender a Note payable to such Senior Lender (or, if requested by such Senior Lender, to such Senior Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Senior Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 9.4) be represented by one or more Notes in such form payable to the payee named therein (or, if requested by the payee, to such payee and its registered assigns).

2.9 Prepayment of Senior Loans

- (a) **Terms of All Prepayments.** There shall be no premium or penalty applicable to any prepayment of Senior Loans, other than amounts payable under Section 2.14, if any, and any payments, if any, with respect to Hedging Termination Obligations. Any prepayment pursuant to Section 2.9(b) or Section 2.9(c) shall be made simultaneously with, and is conditioned upon, prepayment under any Hedging Agreement then in effect sufficient to cause the Borrower to be in compliance with the requirements of Section 5.15(a) after giving effect to the prepayment contemplated by this Section 2.9.
- (b) **Optional Prepayments.** The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to the requirements of this Section. The Borrower may prepay the Senior Loans in part by incurring new Indebtedness; **provided** that such new Indebtedness meets the following conditions:
 - (i) the new Indebtedness shall rank *pari passu* with the Senior Loans and the outstanding Commitments;

- (ii) the new Indebtedness shall receive and the outstanding Senior Loans shall retain a final investment grade rating from S&P or Moody's;
- (iii) the final maturity date of the new Indebtedness shall not occur before the date that is one year after the expiry of the last Hedging Agreement to expire; and
- (iv) the lenders or providers of the new Indebtedness enter into intercreditor agreements with the Senior Lenders which are in form and substance satisfactory to the Senior Lenders,

provided that where the incurrence of the new Indebtedness results in the interest rate in respect of a notional amount in excess of 100% of the aggregate of the outstanding Senior Loans and the new Indebtedness (to the extent such new Indebtedness bears interest at a floating rate) being hedged, the Borrower shall reduce the notional amount of its interest rate hedge to 100% of the aggregate of the outstanding Senior Loans and the new Indebtedness (to the extent such new Indebtedness bears interest at a floating rate) within 90 days of the incurrence of such Indebtedness.

(c) **Mandatory Prepayments.** The Borrower will prepay the Senior Loans as follows:

- (i) Any full or partial payment by the Authority of the Parkway Concession Value or Termination Damages under the Concession Agreement shall be applied to prepay the Senior Loans and to pay all other Senior Obligations due and payable under the Senior Loan Documents immediately upon receipt of such payment.
- (ii) Any amount of Concession Compensation (as defined in the Concession Agreement) paid to the Concessionaire by the Authority in a lump sum payment (rather than in the form of any Compensation Remedy (as defined in the Concession Agreement)) in respect of actual and estimated net losses of Toll Revenues (as defined in the Concession Agreement) shall be applied to prepay the Senior Loans and to pay all other Senior Obligations due and payable under the Senior Loan Documents immediately upon receipt of such payment.
- (iii) If the Borrower (or the Collateral Agent on behalf of the Borrower) receives insurance, condemnation or other proceeds in respect of an Event of Loss (other than proceeds involving less than \$5,000,000 in the aggregate as to such Event of Loss) and either:
 - (A) such proceeds exceed the amount required to repair, restore or rebuild the affected portion of the Parkway to the condition existing prior to the happening of such Event of Loss (such an amount to be agreed upon after consultation with the Insurance Consultant and the Technical Advisor); or
 - (B) the affected portion of the Parkway:
 - (I) cannot be repaired, restored or rebuilt (and the Authority agrees that it cannot be repaired, restored or rebuilt and the application

of the proceeds in prepayment hereunder is permitted in accordance with the Concession Agreement); or

- (II) under the Concession Agreement, this Agreement or applicable Governmental Rules or Governmental Approvals, is not required to be repaired, restored or rebuilt (and the Borrower elects not to so repair or restore),

in either case, such excess proceeds or such proceeds, as applicable, shall be applied to prepay the Senior Loans and to pay all other Senior Obligations due and payable under the Senior Loan Documents upon the first Semi-Annual Date after the determination of such circumstances and the calculation of the applicable prepayment amount.

- (iv) On each Semi-Annual Date, the Borrower shall prepay the Senior Loans as provided in clause "Seventh" of Section 5.2(b) of the Collateral Agency Agreement.
- (d) **Application.** Prepayments pursuant to this paragraph shall be applied ratably among the Classes of Senior Loans in accordance with the respective sums at such time of the aggregate amount of the outstanding Senior Loans of such Class (if any), to prepay the Senior Loans of such Class, **provided** that a necessary portion of the amount available for prepayment shall be applied to satisfy the Hedging Termination Obligations, if any, that are required to be paid by the Borrower under the Senior Loan Documents in connection with a reduction in the notional amount of Hedging Transactions.
- (e) **Notices, Etc.** The Borrower shall notify the Administrative Agent by telephone (promptly confirmed in writing) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the relevant Senior Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of a Borrowing of the same Type as provided in Section 2.2, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Senior Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.11 and shall be made in the manner specified in Section 2.10(c).
- (f) **Certain Exempted Payments.** Notwithstanding anything to the contrary in this Agreement, the Borrower shall be entitled to apply equity contributions received from the Members (whether as a result of the issuance of Membership Interests or in the form of unsecured Indebtedness incurred in accordance with Section 6.1(e)) and deposited into the Special Equity Pass-Through Account for the purposes of:

- (i) prepaying the Guaranteed Loan in whole or in part in accordance with Section 2.9(a) of the Guaranteed Loan Agreement;
- (ii) paying interest due to the Guaranteed Lenders under the Guaranteed Loan Agreement; or
- (iii) within 60 days of the Closing Date (or, for one particular payment, within 180 days of the Closing Date), reimbursing any Member or any Affiliate of any Member for, or to provide the Borrower funds to pay, costs and expenses incurred by such Person in connection with the Northwest Parkway project,

provided that the Borrower shall notify the Administrative Agent and the Collateral Agent of its intention to make such a payment and the amount and purpose thereof, at least three Business Days in advance of the date on which it intends to make such payment.

2.10 Fees

- (a) **Commitment Fee.** The Borrower agrees to pay to the Administrative Agent, for the pro rata account of each Senior Liquidity Facility Lender, a commitment fee, which shall accrue at the Applicable Rate on the undrawn and uncanceled amount of the Senior Liquidity Facility Commitment of each Senior Liquidity Facility Lender during the period from and including the Closing Date to and including the last day of the Senior Liquidity Facility Availability Period. Accrued commitment fees shall be payable in arrears on each Semi-Annual Date and on the Final Maturity Date, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).
- (b) **Administrative Agent Fees.** The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.
- (c) **Payment of Fees.** All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, other than in the case of fees payable solely for account of the Administrative Agent, to the Senior Liquidity Facility Lenders. Fees paid shall not be refundable under any circumstances.

2.11 Interest

- (a) **ABR Senior Loans.** The Senior Loans comprising each ABR Borrowing shall bear interest at a rate per annum equal to the Alternate Base Rate.
- (b) **Eurodollar Senior Loans.** The Senior Loans comprising each Eurodollar Borrowing shall bear interest at a rate per annum equal to the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing **plus** the Applicable Margin.
- (c) **Default Interest.** Notwithstanding the foregoing, if any principal of or interest on any Senior Loan or any fee or other amount payable by the Borrower hereunder is not paid

when due, whether upon acceleration, by mandatory prepayment or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Senior Loan, 2% **plus** the rate otherwise applicable to such Senior Loan as provided above or (ii) in the case of any other amount, 2% **plus** the rate applicable to ABR Senior Loans as provided in paragraph (a) of this Section.

- (d) **Payment of Interest.** Accrued interest on each Senior Loan shall be payable in arrears on each Interest Payment Date for such Senior Loan; **provided** that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Senior Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Borrowing prior to the end of the current Interest Period therefor, accrued interest on such Borrowing shall be payable on the effective date of such conversion.
- (e) **Computation.** All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

2.12 Alternate Rate of Interest

If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

- (a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or
- (b) if such Borrowing is of a particular Class of Senior Loans, the Administrative Agent is advised by the Required Senior Lenders of such Class that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Senior Lenders (or Senior Lender) of making or maintaining their Senior Loans (or its Senior Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Senior Lenders by telephone or facsimile as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Senior Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

2.13 Increased Costs

(a) **Increased Costs Generally.** If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Senior Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); or
- (ii) impose directly or indirectly on any Senior Lender any other condition affecting this Agreement or Eurodollar Senior Loans made by such Senior Lender,

and the result of any of the foregoing shall be to increase the cost to such Senior Lenders of making or maintaining any Eurodollar Senior Loan (or of maintaining its obligation to make any such Senior Loan) or to increase the cost to such Senior Lender or to reduce the amount of any sum received or receivable by such Senior Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Senior Lender such additional amount or amounts as will compensate such Senior Lender for such additional costs incurred or reduction suffered.

- (b) **Capital Requirements.** If any Senior Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Senior Lender's capital or on the capital of such Senior Lender's holding company, if any, as a consequence of this Agreement or the Senior Loans made by such Senior Lender to a level below that which such Senior Lender or such Senior Lender's holding company could have achieved but for such Change in Law (taking into consideration such Senior Lender's policies and the policies of such Senior Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Senior Lender such additional amount or amounts as will compensate such Senior Lender or such Senior Lender's holding company for any such reduction suffered.
- (c) **Certificates from Senior Lenders.** A certificate of a Senior Lender setting forth the amount or amounts necessary to compensate such Senior Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Senior Lender the amount shown as due on any such certificate within 20 days after receipt thereof.
- (d) **Delay in Requests.** Failure or delay on the part of any Senior Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Senior Lender's right to demand such compensation; **provided** that the Borrower shall not be required to compensate a Senior Lender pursuant to this Section for any increased costs or reductions incurred more than six months prior to the date that such Senior Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Senior Lender's intention to claim compensation therefor; **provided further** that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof.

2.14 Break Funding Payments

In the event of (a) the payment of any principal of any Eurodollar Senior Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Senior Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Senior Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any Eurodollar Senior Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.17(b), then, in any such event, the Borrower shall compensate each Senior Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Senior Loan, the loss to any Senior Lender attributable to any such event shall be deemed to include an amount determined by such Senior Lender to be equal to the excess, if any, of (i) the amount of interest that such Senior Lender would pay for a deposit equal to the principal amount of such Senior Loan for the period from the date of such payment, conversion, failure or assignment to the last day of the then current Interest Period for such Senior Loan (or, in the case of a failure to borrow, convert or continue, the duration of the Interest Period that would have resulted from such borrowing, conversion or continuation) if the interest rate payable on such deposit were equal to the Adjusted LIBO Rate for such Interest Period, **over** (ii) the amount of interest that such Senior Lender would earn on such principal amount for such period if such Senior Lender were to invest such principal amount for such period at the interest rate that would be bid by such Senior Lender (or an affiliate of such Senior Lender) for dollar deposits from other banks in the eurodollar market at the commencement of such period. A certificate of any Senior Lender setting forth any amount or amounts that such Senior Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Senior Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

2.15 Taxes

- (a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Senior Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; **provided** that if the Borrower shall be required by law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or Senior Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.
- (b) **Payment of Other Taxes by the Borrower.** In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law, **provided** that the Borrower shall not be required to pay (or otherwise have an indemnity obligation for) Other Taxes that would not have been imposed but for a transfer or assignment by the Administrative Agent or any Senior Lender, other than a transfer or assignment pursuant to a request by the Borrower under Section 2.17(b), of all or part of its rights and obligations hereunder or under any other Senior Loan Document or a sale of

a participation in all or a portion of its rights and obligations under any other Senior Loan Document.

- (c) **Indemnification by the Borrower.** The Borrower shall indemnify the Administrative Agent, the Lead Arranger and each Senior Lender within 20 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent, the Lead Arranger or such Senior Lender (as the case may be), and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Senior Lender, the Lead Arranger or the Administrative Agent on its own behalf or on behalf of a Senior Lender, shall be conclusive absent manifest error; **provided** that the Borrower shall not be required to provide indemnification under this paragraph for any payment made more than six months prior to the date that such certificate is delivered.
- (d) **Evidence of Payments.** As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment, if any, or other evidence of such payment reasonably satisfactory to the Administrative Agent.
- (e) **Status of Lenders.** Any Foreign Senior Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located or is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement or any Senior Loan Document shall, on or before the date on which it becomes a party to this Agreement or such other Senior Loan Document, on or before the date on which such Foreign Senior Lender changes its applicable lending office (if applicable), and at the time or times prescribed by applicable law, or as reasonably requested by the Borrower, deliver to the Borrower (with a copy to the Administrative Agent), such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate. In addition, any Senior Lender, if requested by the Borrower, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not such Senior Lender is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing, each Senior Lender shall deliver to the Borrower (with a copy to the Administrative Agent) (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Senior Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower, but only if such Senior Lender is legally entitled to do so), whichever of the following is applicable:
 - (i) two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN (or successor thereto) claiming eligibility for benefits of an income tax treaty to which the United States is party;

- (ii) two accurate and complete original signed copies of Internal Revenue Service Form W-8ECI (or successor thereto);
 - (iii) in the case of a Foreign Senior Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, a certificate to the effect that such Foreign Senior Lender is not a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business and two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN (or successor thereto);
 - (iv) two accurate and complete original signed copies of Internal Revenue Service Form W-9 (or successor thereto) establishing an exemption from backup withholding; or
 - (v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made.
- (f) **Tax Benefits.** If the Borrower pays any additional amount under this Section 2.15 to a Senior Lender or to the Administrative Agent and such Senior Lender or Administrative Agent determines in its reasonable discretion that it is entitled to receive or realize in connection therewith any refund or any reduction of, or credit against, its tax liabilities (a **Tax Benefit**), such Senior Lender or Administrative Agent shall pay to the Borrower an amount that the Senior Lender or Administrative Agent shall, in its reasonable discretion, determine is equal to the benefit obtained by the Senior Lender or Administrative Agent as a consequence of such Tax Benefit; **provided** that (i) the Borrower, upon the written request of the Senior Lender or the Administrative Agent, agrees to repay such amount to the Senior Lender or the Administrative Agent in the event the Senior Lender or Administrative Agent is required to repay such amount to a Governmental Authority and (ii) nothing in this Section 2.15(f) shall require the Senior Lender or Administrative Agent to disclose any confidential or proprietary information to the Borrower.
- (g) **Contest.** If the Borrower determines in good faith that a reasonable basis exists for contesting an Indemnified Tax or Other Tax, the relevant Senior Lender or the Administrative Agent, as applicable, shall cooperate with the Borrower in challenging such Indemnified Tax or Other Tax at the Borrower's expense and if requested by the Borrower in writing; provided, however, that no Senior Lender or the Administrative Agent shall be required to take any action hereunder which, in the reasonable discretion of such Senior Lender or Administrative Agent, would cause such Senior Lender or Administrative Agent or its applicable lending office to suffer a material economic, legal or regulatory disadvantage.

2.16 Payments Generally; Pro Rata Treatment; Sharing of Set-offs

- (a) **Payments by the Borrower.** The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees, or under Section 2.13, 2.14 or 2.15, or otherwise) or under any other Senior Loan Document (except to the extent

otherwise provided therein) prior to 1:00 pm, New York City time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent as it shall direct in writing except as otherwise expressly provided in the relevant Senior Loan Document, and except that payments pursuant to Sections 2.13, 2.14, 2.15 and 9.3 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder or under any other Senior Loan Document (except to the extent otherwise provided therein) shall be made in dollars.

- (b) **Application of Insufficient Payments.** If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, to pay interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, to pay principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.
- (c) **Pro Rata Treatment.** Except to the extent otherwise provided herein: (i) each Borrowing of a particular Class shall be made from the relevant Senior Lenders, each payment of commitment fee under Section 2.9(f) in respect of the Senior Liquidity Facility Commitments shall be made for account of the Senior Liquidity Facility Lenders, and each termination or reduction of the amount of the Commitments of a particular Class under Section 2.7 shall be applied to the respective Commitments of such Class of the relevant Senior Lenders, pro rata according to the amounts of their respective Commitments of such Class; (ii) each Borrowing of any Class shall be allocated pro rata among the relevant Senior Lenders according to the amounts of their respective Commitments of such Class (in the case of the making of Senior Loans) or their respective Senior Loans of such Class (in the case of conversions and continuations of Senior Loans); (iii) each payment or prepayment of principal of Senior Loans of any Class by the Borrower shall be made for account of the relevant Senior Lenders pro rata in accordance with the respective unpaid principal amounts of the Senior Loans of such Class held by them; and (iv) each payment of interest on Senior Term Loans and Senior Liquidity Facility Loans by the Borrower shall be made for account of the relevant Senior Lenders pro rata in accordance with the amounts of interest on such Senior Loans then due and payable to the respective Senior Lenders.
- (d) **Sharing of Payments by Senior Lenders.** If any Senior Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Senior Loans resulting in such Senior Lender receiving payment of a greater proportion of the aggregate amount of its Senior Loans and accrued interest thereon then due than the proportion received by any other Senior Lender, then the Senior Lender receiving such greater proportion shall purchase (for cash at face

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

- (e) **Presumptions of Payment.** Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Senior Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Senior Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Senior Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Senior Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.
- (f) **Certain Deductions by the Administrative Agent.** If any Senior Lender shall fail to make any payment required to be made by it pursuant to Section 2.4(b) or 2.16(a), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Senior Lender to satisfy such Senior Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

2.17 Mitigation Obligations; Replacement of Senior Lenders

- (a) **Designation of a Different Lending Office.** If any Senior Lender requests compensation under Section 2.13, or if the Borrower is required to pay any additional amount to any Senior Lender or any Governmental Authority for the account of any Senior Lender pursuant to Section 2.15, then such Senior Lender shall use reasonable efforts to designate a different lending office for funding or booking its Senior Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Senior Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.13 or 2.15, as the case may be, in the future and (ii) would not subject such Senior Lender to any unreimbursed cost or expense and would not otherwise be

disadvantageous to such Senior Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Senior Lender in connection with any such designation or assignment.

- (b) **Replacement of Senior Lenders.** If any Senior Lender requests compensation under Section 2.13, or if the Borrower is required to pay any additional amount to any Senior Lender or any Governmental Authority for the account of any Senior Lender pursuant to Section 2.15, or if any Senior Lender defaults in its obligation to fund Senior Loans hereunder, then the Borrower may, at its sole expense, upon notice to such Senior Lender and the Administrative Agent, require such Senior Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.4), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Senior Lender, if a Senior Lender accepts such assignment); **provided** that (i) the Borrower shall have received the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed), (ii) such Senior Lender shall have received payment of an amount equal to the outstanding principal of its Senior Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.13, or payments required to be made pursuant to Section 2.15, such assignment will result in a reduction in such compensation or payments. A Senior Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Senior Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

3. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Senior Lenders that:

3.1 Organization; Powers

- (a) The Borrower (i) is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and (ii) is qualified to do business in the State of Colorado and any other jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary. The Borrower has full power and authority to conduct its business as now conducted and as proposed to be conducted by it and to execute, deliver and perform its obligations under the Concession Agreement and any other Material Project Contract to which it is a party and the Senior Loan Documents to which it is a party.
- (b) As of the Closing Date, the only Members are Northwest Parkway Holdings LLC and CCR-USA LLC and all of the Membership Interests are beneficially owned and controlled by such Members free and clear of all Liens other than the Liens of the Member Pledge Agreement and any Lien disclosed to the Administrative Agent in writing prior to the date hereof.

- (c) The Borrower has not engaged in any business other than the acquisition and ownership of the Concessionaire Interest pursuant to the Concession Agreement and the activities related or incidental thereto. The Borrower has no obligations or liabilities other than those directly related to the conduct of such business. The Borrower does not own any shares of stock or other ownership interests, of record or beneficially, in any Person.

3.2 Authorization; Enforceability

- (a) All necessary limited liability company action on the part of the Borrower that is required to authorize the execution, delivery and performance by the Borrower of the Concession Agreement, any other Material Project Contract to which it is a party and the Finance Documents to which it is a party has been duly and effectively taken.
- (b) Each of the Concession Agreement, any other Material Project Contract to which it is a party and the Finance Documents to which it is a party has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

3.3 Government Approvals; Conflicts

None of the Concession Agreement, any Material Project Contract or the Finance Documents (a) requires any consent or approval of, registration or filing with, or any other action by, any Governmental Authority to be obtained by or on behalf of the Borrower, except for such as have been obtained or made and are in full force and effect, (b) will violate any applicable law or regulation in any material respect or the charter, by laws or other organizational documents of the Borrower or certificate of formation, or limited liability agreement, or, to the best of the Borrower's knowledge, any order of any Governmental Authority, (c) will violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower, as applicable, or any of its assets, or give rise to a right thereunder to require any payment to be made by the Borrower, and (d) except for Liens created under the Security Documents, results in or will result in, or requires, the creation or imposition of any Lien on any asset of the Borrower.

3.4 Financial Condition

- (a) The most recent financial statements of the Borrower delivered to the Administrative Agent (other than the pro forma statement provided on or prior to the Closing Date) have been prepared in conformity with GAAP and present fairly, in all material respects, the financial condition of the Borrower as of the date thereof. All material liabilities, direct and contingent, of the Borrower are either disclosed in such balance sheets or have been disclosed in writing by the Borrower to the Administrative Agent and each of the Senior Lenders prior to the delivery thereof to the Administrative Agent and there are no undisclosed material liabilities, direct or contingent, of the Borrower which have accrued since the date of such financial statements or such disclosure.

- (b) Since the date of the balance sheet included with the most recent financial statements delivered to the Administrative Agent, no event has occurred, and no condition exists, that has had, or could reasonably be expected to have, a Material Adverse Effect.
- (c) The Base Case Model discloses all material assumptions made in the preparation thereof. The Base Case Model and all sensitivity cases prepared by or on behalf of the Borrower were prepared in good faith and represent reasonable projections as of the date hereof and the Closing Date

3.5 Intellectual Property

The Borrower owns, or is licensed to use, all trademarks, trade names, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower does not, to the best of the Borrower's knowledge, infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

3.6 Litigation and Environmental Matters

- (a) **Actions, Suits and Proceedings.** There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority now pending against or, to the best of the Borrower's knowledge, threatened against or affecting the Borrower (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve this Agreement or the Transactions.
- (b) **Environmental Matters.** (i) To the best of the Borrower's knowledge, the use, operation, maintenance, repair and implementation of the Parkway has not violated any Environmental Laws except to the extent that violation could not reasonably be expected to have a Material Adverse Effect; (ii) there are no facts, circumstances, conditions or occurrences regarding the Borrower or, to the best of the Borrower's knowledge, the Parkway that could reasonably be expected to give rise to any Environmental Claims that could reasonably be expected to have a Material Adverse Effect; (iii) there are no past, pending or threatened Environmental Claims against the Borrower or, to the best of the Borrower's knowledge, against or involving the Parkway that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect, and (iv) neither the Borrower nor, to the best of the Borrower's knowledge, any other Person, has used, released, discharged, generated or stored any Hazardous Materials at, on or under the Parkway or any other location that have migrated thereto from the Parkway or the underlying real property, and there are no Hazardous Materials used or presently at, on or under the Parkway, except in compliance in all material respects with applicable Environmental Laws.

3.7 Compliance with Laws and Agreements

The Borrower is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate,

could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

3.8 Investment Company Status

The Borrower is not an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940.

3.9 Taxes; Tax Status

- (a) **Taxes.** The Borrower has timely filed or caused to be filed all material Tax returns and reports required to have been filed by it and has paid or caused to be paid all material Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Person has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.
- (b) **Tax Status.** The Borrower has not filed an election pursuant to Treasury Regulation 301.7701-3(c) to be treated as an association taxable as a corporation.

3.10 ERISA

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

3.11 Disclosure

None of the reports, financial statements, certificates or other information furnished by or on behalf of the Borrower to the Administrative Agent, the Lead Arranger or any Senior Lenders hereunder (as modified or supplemented by other information so furnished) taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; **provided** that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

3.12 Material Agreements and Liens

- (a) **Material Agreements.** (i) Each of the Concession Agreement and any other Material Project Contract is in full force and effect, has not been terminated or cancelled and has not been entered into, amended or otherwise modified except in accordance with the terms of the Senior Loan Documents; (ii) the Borrower is in compliance with its obligations under the Concession Agreement and with its material obligations under the other Material Project Contracts, (iii) the Borrower has not given or received any notice of default under the Concession Agreement or any other Material Project Contract and, to the best of the Borrower’s knowledge, no default exists thereunder, except, with respect to periods after the Closing Date, for such defaults that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. As of the date

hereof, the Concession Agreement and the Escrow Agreement are the only Material Project Contracts.

- (b) **Liens.** Upon the execution and delivery thereof, the Security Documents will be effective to create, in favor of the Collateral Agent, legally valid and enforceable Liens on the Collateral. On or prior to the Closing Date, all necessary recordings and filings have been or are being recorded and filed, and all required Control Agreements have been obtained, such that the Liens created by the Security Documents constitute first-priority perfected Liens on the Collateral, subject only to applicable Permitted Liens.

3.13 No Default or Event of Default

No Default or Event of Default has occurred or is continuing.

3.14 Solvency

As at the date hereof, the Borrower is Solvent.

3.15 No Events of Force Majeure

No event of force majeure or other event or condition exists with respect to the Borrower or, to the best of the Borrower's knowledge, with respect to the Authority or any other Material Project Participant, which, as of the date this representation is given or repeated, (a) permits or requires any Material Project Participant to cancel, suspend or terminate its performance under any Material Project Contract to which it is a party in accordance with the terms thereof or (b) could excuse any such party from liability for non-performance thereunder, which cancellation, suspension, termination or non-performance could reasonably be expected to have a Material Adverse Effect.

3.16 Information Memorandum

Subject to the written approval of the Borrower (which shall not be unreasonably withheld or delayed) of the final form of any information memorandum (including the appendices thereto), the Borrower shall, on the date which the Lead Arranger (or the Administrative Agent on its behalf) specifies pursuant to a notice to the Borrower as the expected date for completion of syndication of the Senior Loan facilities hereunder, be deemed to represent and warrant for the benefit of the Senior Lenders and the Administrative Agent that: (a) the factual written information provided by or on behalf of the Borrower contained in such information memorandum is, at that date, taken as a whole, true, correct and complete in all material respects; **provided** that no representation or warranty is being made as to any forecasts, projections, opinions or other forward-looking statements except that all opinions, forecasts, projections and other forward-looking statements in such information memorandum prepared by or on behalf of the Borrower were prepared in good faith and were based on assumptions believed by the Borrower to be reasonable at the time made, and (b) since the date on which such information was supplied, no event or circumstance has occurred which would render any of the information referred to above misleading or inaccurate in any material respect at that date.

3.17 *Pari Passu* Ranking

The Senior Loan Documents and the Senior Obligations evidenced thereby are and will at all times be direct and unconditional general obligations of the Borrower, and rank and will at all times rank in right of payment and otherwise senior to all other Indebtedness of the Borrower, whether now existing or hereafter outstanding, except as expressly permitted under this Agreement.

3.18 Foreign Assets Control Regulations

- (a) Neither the borrowing by the Borrower hereunder nor its use of the proceeds of the Senior Loans will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.
- (b) Neither the Borrower nor any Member (i) is a Person described or designated in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control or in Section 1 of the Anti-Terrorism Order or (ii) engages in any dealings or transactions with any such Person. The Borrower and the Members are in compliance, in all material respects, with the Patriot Act.
- (c) No part of the proceeds from the borrowing of the Senior Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, assuming in all cases that such Act applies to the Borrower.

3.19 Insurance Coverage

Effective from the Closing Date, all insurance required to be maintained by the Borrower under Section 5.13 and under the Concession Agreement and any other Material Project Contract to which the Borrower is a party has been obtained and is in full force and effect. Effective from the Closing Date, all premiums due and payable in connection therewith have been paid.

3.20 Title

Effective from the Closing Date, the Borrower has a valid leasehold interest in the real property comprising the Parkway pursuant to the Concession Agreement, and has good title or a valid leasehold interest in and to all other property that the Borrower purports to own or lease, in each case, free and clear of all Liens and other exceptions to title other than the Permitted Liens. No mortgage or financing statement or other instrument or recordation covering all or any part of the Collateral has been filed except such as has been filed in favor of the Collateral Agent. No portion of the real property subject to the Leasehold Mortgage is located in an area that has been identified by the Secretary of Housing and Urban Developments as an area having special flood hazards within the meaning of the National Flood Insurance Act of 1968, except for the Rock Creek drainage basin located east of the Colorado State Highway 287 interchange area (the flooding of which could not be reasonably expected to have a Material Adverse Effect).

4. CONDITIONS

4.1 Conditions Precedent to Initial Borrowing

The occurrence of the Closing Date and the obligation of each Senior Lender to advance Senior Loans hereunder on or from such date are subject to the satisfaction (or waiver, in accordance with Section 9.2) of the following conditions precedent, **provided** that all documents to be delivered in accordance with this Section 4.1 shall be in form and substance satisfactory to the Administrative Agent and, where specified, the Senior Lenders:

- (a) **Documents to be Delivered.** The following documents shall have been duly authorized, executed and delivered by the parties thereto (such parties shall include, but not be limited to, the Borrower, the Members, the Administrative Agent, the Collateral Agent, and the Senior Lenders), shall be in full force and effect and originals thereof shall have been delivered to the Administrative Agent and the Borrower:
 - (i) (A) a counterpart of this Agreement signed and delivered on behalf of each party hereto or (B) written evidence satisfactory to the Administrative Agent (which may include facsimile transmission of a signed signature page to this Agreement) that such party has signed and delivered a counterpart of this Agreement;
 - (ii) a Note in favor of each Senior Lender requesting a Note, each in a principal amount equal to that Senior Lender's Commitment;
 - (iii) the Fee Letter;
 - (iv) the Collateral Agency Agreement;
 - (v) the Leasehold Mortgage;
 - (vi) each Consent and Agreement;
 - (vii) the Security Agreement;
 - (viii) the Member Pledge Agreement;
 - (ix) the Control Agreement(s);
 - (x) the Hedging Agreements;
 - (xi) the Appointment Letter;
 - (xii) the Guaranteed Loan Agreement;
 - (xiii) the Guaranteed Lender Subordination Agreement; and
 - (xiv) the Related Party Subordination Agreement.

- (b) **Model Auditor's Certificate.** The Administrative Agent shall have received a certificate from the Model Auditor, attaching the Base Case Model showing:
- (i) on the basis of the Lenders' Base Case (and the revenues projected therein):
 - (A) a minimum Project Life Cover Ratio of 1.4 to 1 or better;
 - (B) the Enhancement Factor shall be equal to 1.4;
 - (C) without prejudice to the remedies of the Senior Lenders set out in Section 7.2, that the Senior Loans will be fully repaid prior to the 33rd anniversary of the Closing Date if the Senior Lenders do not exercise such remedies; and
 - (D) an average Interest Coverage Ratio of 0.50 to 1 for the period from the Closing Date to the Final Maturity Date; and
 - (ii) on the basis of the Traffic Advisor's Base Case (and the revenues projected therein):
 - (A) an Interest Coverage Ratio of 1.1 to 1 on the 11th anniversary of the Closing Date; and
 - (B) without prejudice to the remedies of the Senior Lenders set out in Section 7.2, that the Senior Loans will be fully repaid prior to 25th anniversary of the Closing Date if the Senior Lenders do not exercise such remedies.
- (c) **Initial Budget.** The Administrative Agent shall have received an operating budget for 2008, in form and substance satisfactory to the Technical Advisor, showing in reasonable detail all projected Project Revenues and Operating Expenses (identifying separately Capital Expenditures), debt service and other related items for such period on a monthly basis, accompanied by a certificate by an Authorized Signatory of the Borrower certifying that, as of the Closing Date and after giving effect to the borrowing of the initial Senior Loans under this Agreement, the Borrower has no liabilities other than liabilities under the Finance Documents, the Concession Agreement and the other Parkway Contracts.
- (d) **Pro Forma Balance Sheet.** The Administrative Agent shall have received a certified copy of a pro forma balance sheet setting forth the assets and liabilities of the Borrower as of the Closing Date.
- (e) **Concession Agreement and Other Material Contracts; Governmental Approvals.** The Administrative Agent shall have received a true, correct and complete copy of (i) the Concession Agreement (for avoidance of doubt, this reference includes all exhibits, schedules, attachments and other materials incorporated therein and any amendments thereto), (ii) the Escrow Agreement, (iii) each other Material Project Contract and (iv) each Governmental Approval, together with a certificate by an Authorized Signatory of the Borrower certifying as of the Closing Date that (A) each such copy of each such Material Project Contract and Governmental Approval is a true, complete and correct

copy thereof and each such Material Project Contract and Governmental Approval is in full force and effect, and (B) the Borrower is not in default of any of its obligations thereunder and, to the best of the Borrower's knowledge, the other party or parties to such Material Project Contract are not in default of its or their obligations thereunder.

- (f) **Capital Contribution.** Evidence that the Borrower has received or shall simultaneously receive net cash proceeds of not less than \$266,557,251 representing a capital contribution to the Borrower.
- (g) **Borrowing under the Guaranteed Loan Agreement.** Evidence that the Borrower has requested, and shall simultaneously make, a borrowing of the full amount available under the Guaranteed Loan Agreement.
- (h) **Repayment of the Senior Bridge Facility.** Evidence that the Borrower has irrevocably undertaken to, and shall simultaneously, repay the full amount of its borrowings under the Senior Bridge Facility Agreement, together with any interest, fees and other amounts due in accordance with the terms of the Senior Bridge Facility Agreement.
- (i) **Legal Opinions.** The following legal opinions, in the case of clauses (i) through (iv), addressed to the Administrative Agent, the Senior Lenders, the Hedging Banks and the Guaranteed Lenders, and in the case of clause (iv), addressed to the Administrative Agent and the Guaranteed Lenders, and in each case, dated the Closing Date:
 - (i) a legal opinion from Chadbourne & Parke LLP, special New York counsel to the Borrower;
 - (ii) a legal opinion from Grimshaw & Harring, P.C., special Colorado counsel to the Borrower;
 - (iii) a legal opinion from Icenogle, Norton, Smith & Blieszner, P.C., counsel to the Authority;
 - (iv) a legal opinion from Squire, Sanders & Dempsey LLP, special Florida counsel to CCR-USA LLC; and
 - (v) a legal opinion from Vieira de Almeida & Associados, special Portuguese counsel to Brisa Auto-Estradas de Portugal, S.A., with respect to the Guaranteed Loan Agreement.
- (j) **Corporate Documents.** Such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Borrower, the Members and the Guarantor, the authorization of the Senior Loans and the Guaranteed Loans and any other legal matters relating to the Borrower, the Members and the Guarantor, this Agreement, the Senior Loans or the Guaranteed Loans.
- (k) **Incumbency.** A certificate from each of the Borrower, the Guarantor and each Member appropriately signed and dated as of the Closing Date, as to the incumbency and specimen signature of each natural Person authorized to execute and deliver this Agreement, the other Finance Documents and any instruments or agreements required

hereunder to which the Borrower, the Guarantor and each Member, as the case may be, is a party, including various certificates to be delivered pursuant to this Section 4.1 (each such Person, an **Authorized Signatory**).

- (l) **Officer's Certificate.** A certificate, dated the Closing Date and signed by an Authorized Signatory, confirming compliance with the conditions set forth in clauses (c) and (d) of Section 4.2.
- (m) **Security Interests.**
 - (i) All filings and recordings necessary to perfect the security interests contemplated to be granted to the Collateral Agent for the benefit of the Secured Parties with the priority contemplated hereby and by the Security Documents shall have been made or shall be made concurrently.
 - (ii) The results of recent Uniform Commercial Code search reports (including in each applicable county in the States of Colorado and Delaware), search reports for appropriate real property registries and Tax lien, judgment and litigation search reports in each relevant jurisdiction with respect to the Borrower and each Member, such searches revealing no Liens on any of the Collateral except for Permitted Liens.
 - (iii) The Collateral Agent shall have received all limited liability company membership interest certificates or other similar written evidence representing all of the Membership Interests, duly indorsed in blank or accompanied by undated instruments of transfer thereof duly executed in blank.
- (n) **Title Insurance.** The Administrative Agent shall have received (i) the Title Policy, (ii) the Survey and (iii) proof of payment to the Title Company of (A) all expenses and premiums of the Title Company in connection with the issuance of the Title Policy and (B) an amount equal to the recording and stamp taxes payable in connection with recording the Leasehold Mortgage in the appropriate county land office(s).
- (o) **Insurance.**
 - (i) The Administrative Agent shall have received: (i) a certificate or certificates from the Borrower's independent insurance broker(s) certifying that the policies of insurance required to be in effect under the Concession Agreement and the policies of insurance required to be in effect under this Agreement have been issued to the insureds named in the Concession Agreement and this Agreement (as applicable), are in full force and effect and comply with the insurance requirements set forth in the Concession Agreement and this Agreement (as applicable), and all premiums due thereon have been paid in full and (ii) a certificate from the Insurance Consultant to the effect that all insurance policies required to be maintained by the Borrower under Section 5.13 are in full force and effect, the premiums due thereon have been paid, and that such policies otherwise conform with the requirements specified on Exhibit G and in the Concession Agreement (including the requirements that such insurance shall not be subject to cancellation without prior notice to the Administrative Agent, that

the Secured Parties be named as additional insureds and that the Collateral Agent be named as the loss payee).

- (ii) The Administrative Agent shall have received a report from the Insurance Consultant and which confirms that the insurance program for the Borrower and the Parkway adequately protects the Secured Parties' interests and on which the Secured Parties are entitled to rely.
- (p) **Rating.** Written confirmation from Moody's and S&P to the Administrative Agent that the Borrower has obtained a final rating of at least Baa3 by Moody's and at least BBB- by S&P with respect to the Senior Loans.
- (q) **Project Accounts.** The Project Accounts required under the Collateral Agency Agreement shall have been established to the satisfaction of the Administrative Agent, and the Borrower shall have executed and delivered all relevant documents to be entered into with the Collateral Agent with respect to the establishment of the Project Accounts and the Maintenance Reserve Account and the Debt Service Reserve Account shall each have been or shall simultaneously be funded up to the required target balance in accordance with the Collateral Agency Agreement.
- (r) **No Injunction or Illegality.** (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 (as defined in the Concession Agreement) and (ii) there shall be no action taken, or any Law (as defined in the Concession Agreement) enacted, entered, enforced or deemed applicable to the Transaction (as defined in the Concession Agreement) by any Governmental Authority (as defined in the Concession Agreement) of competent jurisdiction that makes the consummation of the Transaction (as defined in the Concession Agreement) illegal.
- (s) **Concession Agreement.** The Administrative Agent shall have received from the Borrower a certificate signed by an Authorized Signatory confirming that (i) Closing (as defined in the Concession Agreement) has occurred, (ii) the Parkway Bonds (as defined in the Concession Agreement) have been repaid in full in such a manner that such obligations have been legally defeased and are no longer treated as outstanding under the documents under which the Parkway Bonds were issued and are secured, and the Administrative Agent shall have received evidence reasonably satisfactory to it that any and all such security interests and collateral securing the Parkway Bonds have been released in full.
- (t) **Know-Your-Customer Matters.** The Administrative Agent shall have received, at least two Business Days prior to the Closing Date, all documentation and other information required by regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the Patriot Act.
- (u) **Technical Advisor's Reports.** The Administrative Agent shall have received one or more reports from the Technical Advisor regarding the outcome of its technical due diligence of the Parkway and its analysis of the historical traffic data and traffic forecasts for the Parkway.

- (v) **No Material Adverse Effect.** No event has occurred, and no condition exists, that has had, or could reasonably be expected to have, a Material Adverse Effect.
- (w) **Other Documents.** Such other documents as the Administrative Agent may reasonably request.
- (x) **Payment of fees and expenses.** The Borrower shall have paid all such fees, expenses and other consideration as the Borrower shall have agreed to pay or deliver to any Senior Lender or an affiliate thereof or the Administrative Agent or the Lead Arranger in connection herewith on the Closing Date.

The Administrative Agent shall notify the Borrower and the Senior Lenders in writing of the Closing Date.

4.2 Conditions Precedent to each Borrowing

The obligation of each Senior Lender to make a Senior Loan on the occasion of any Borrowing is subject to the satisfaction of the following conditions; **provided** that, with respect to any Senior Liquidity Facility Loan Borrowing, where any condition set out in paragraphs (b) through (d) below may be satisfied through the receipt of such Borrowing, such condition shall be deemed satisfied for the purposes of such Borrowing:

- (a) **Borrowing Request.** The Administrative Agent shall have timely received a Borrowing Request for the Borrowing.
- (b) **Payment of Fees, etc.** The Borrower shall have paid (or shall simultaneously pay with proceeds of such Borrowing) all fees, costs and other expenses and all other amounts then due and payable pursuant to this Agreement.
- (c) **Representation and Warranties.** The representations and warranties pertaining to the Borrower or any Member contained in Section 3 or any other Senior Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Borrowing, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date.
- (d) **No Default or Event of Default.** No Default or Event of Default shall have occurred and be continuing or shall occur as a result of the Borrowing.

The Borrowing shall be deemed to constitute a representation and warranty by the Borrower as to the matters specified in paragraphs (c) and (d) of this Section 4.2.

5. AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Senior Loan and all fees payable hereunder shall have been paid in full, the Borrower covenants and agrees with the Senior Lenders as set out in this Section 5.

5.1 Financial Statements and Other Information

- (a) The Borrower will furnish to the Administrative Agent and each Senior Lender:
- (i) as soon as available and in any event within 120 days after the end of each fiscal year of the Borrower, the audited balance sheet and related statements of operations, Members' equity and cash flows of the Borrower as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by an independent public accountant of recognized national standing (without a "going concern" or like qualification or exception and without any material qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower in accordance with GAAP consistently applied;
 - (ii) as soon as available and in any event within 60 days after the end of each of the first three quarterly fiscal periods of each fiscal year of the Borrower, unaudited statements of income, Members' equity and cash flows of the Borrower for such period and for the period from the beginning of the respective fiscal year to the end of such period, and the related balance sheet as at the end of such period, setting forth in each case in comparative form the corresponding figures for the corresponding period in the preceding fiscal year, accompanied by a certificate of an Authorized Signatory of the Borrower, which certificate shall state that such financial statements fairly present in all material respects the financial condition and results of operations and cash flows of the Borrower, in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments);
 - (iii) concurrently with any delivery of financial statements under clause (i) or (ii) of this Section 5.1(a), a certificate of an Authorized Signatory of the Borrower (A) certifying whether to such Person's knowledge, a Default or Event of Default has occurred and, if a Default or Event of Default has occurred, specifying the nature thereof and any action taken or proposed to be taken with respect thereto and (B) if any change has occurred in GAAP or in the application thereof since the date of the most recent audited financial statements of the Borrower previously delivered to the Administrative Agent that has had an effect on the financial statements accompanying such certificate, specifying the effect of such change; and
 - (iv) concurrently with any delivery of financial statements under clause (i) of this Section 5.1(a), a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default (which certificate may be limited to the extent required by accounting rules or guidelines).
- (b) The Borrower will provide to the Administrative Agent:
- (i) no later than three Business Days prior to each date on which funds are proposed to be withdrawn from a Project Account or transferred from a Project Account to

another Project Account in accordance with the Collateral Agency Agreement, a certificate of an Authorized Signatory of the Borrower setting forth the information required to enable the Collateral Agent to effect transfers and withdrawals from the Project Accounts contemplated under the Collateral Agency Agreement to be made on such date, such certification to be substantially in the form of Exhibit F hereto or any other form requested or approved by the Administrative Agent (acting reasonably);

- (ii) no later than fifteen (15) Business Days after each Calculation Date, (A) a certificate of an Authorized Signatory of the Borrower certifying as to the Interest Coverage Ratio for the Calculation Period most recently ended, together with reasonably detailed information and calculations attached thereto supporting such certification, such certification to be substantially in the form of Exhibit G hereto or any other form requested or approved by the Administrative Agent (acting reasonably); and (B) a certificate of an Authorized Signatory of the Borrower certifying as to the Projected Interest Coverage Ratio for the 12-month period following such Calculation Date, together with reasonably detailed projections supporting such certification, such certification to be substantially in the form analogous to Exhibit H, *mutatis mutandis*, or any other form requested or approved by the Administrative Agent (acting reasonably);
 - (iii) concurrently with the delivery thereof to the Collateral Agent, a copy of each certificate, request, direction or notice delivered by the Borrower to the Collateral Agent; and
 - (iv) concurrently with the delivery thereof to the Authority, a copy of each environmental incident report pursuant to Section 8.1(c) of the Concession Agreement.
- (c) Promptly after any request therefor, the Borrower shall provide such additional information regarding the Borrower, the Parkway, the Material Project Contracts, and the business affairs and financial condition of the Borrower as the Administrative Agent may reasonably request.

5.2 Notices of Material Events

- (a) The Borrower shall promptly deliver to the Administrative Agent (i) notice of any of the following actions taken under the Concession Agreement and (ii) copies of any of the following notices given or received by it under the Concession Agreement (capitalized terms used in this Section 5.2(a) and not otherwise defined herein shall have the meanings set forth in the Concession Agreement):
- (i) notice of the occurrence of any Authority Default or Adverse Action;
 - (ii) notice of any event giving rise to the prospective entitlement to any Concession Compensation or any payment of the Parkway Concession Value or Termination Damages by the Authority, promptly after the Borrower has determined to make a claim for such payment;

- (iii) notice of the receipt of payment of any Concession Compensation or the exercise of any Compensation Remedy or any payment of Parkway Concession Value or Termination Damages by the Authority;
 - (iv) notice of any Authority Directive issued by the Authority pursuant to the Concession Agreement;
 - (v) notice of the occurrence of any Delay Events in the event the Concessionaire intends to delay or be relieved of performing its obligations under the Concession Agreement (together with a description thereof and an estimate of its expected duration);
 - (vi) notice of modification of required insurance coverage pursuant to Section 13.2(m) of the Concession Agreement;
 - (vii) notice of any event or occurrence or information received by the Borrower that indicates any progress with respect to the construction of any part of the Remainder (as defined in the Concession Agreement), including the delivery of any Notice to Proceed (as defined in the Concession Agreement) in respect thereof; and
 - (viii) any other material notice or communication given to or received from the Authority in connection with the Concession Agreement.
- (b) The Borrower shall, as soon as practicable and in any event within five Business Days (or such other period as is specified below) after the Borrower obtains knowledge of any of the following, give written notice to the Administrative Agent of:
- (i) any Default or (within two Business Days after the Borrower obtains knowledge thereof) any Event of Default;
 - (ii) any loss or damage to the Parkway for which the aggregate cost of repair or restoration is expected to exceed \$1,000,000 or that is expected to result in any part of the Parkway being substantially unavailable for traffic for a period of seven days, or any series of losses or damage to the Collateral (whether or not related) during any 12-month period in excess of \$5,000,000 in the aggregate;
 - (iii) the filing or commencement by the Authority or any other Governmental Authority of any action, suit or other proceeding for the condemnation or other taking (including by eminent domain) of the Parkway or the Concessionaire Interest or any portion thereof having an estimated value in excess of \$1,000,000, or any series of such actions or proceedings during any 12-month period in excess of \$5,000,000 in the aggregate;
 - (iv) the filing or commencement of any action, suit or other proceeding by or before any arbitrator or Governmental Authority (i) involving claims against the Borrower or the Parkway in excess of \$1,000,000, (ii) seeking any injunctive, declaratory or other equitable relief that, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or (iii) instituted for

the purpose of revoking, terminating, suspending, withdrawing, modifying or withholding any Governmental Approval (the loss of which could reasonably be expected to result in a Material Adverse Effect) or Material Project Contract;

- (v) any dispute, litigation, arbitration, mediation, investigation or proceeding which may exist at any time that relates to the Borrower, the Authority or any other party to a Material Project Contract, to the extent such dispute, litigation, investigation or proceeding involves the Parkway and could reasonably be expected to result in a Material Adverse Effect;
- (vi) any notice of event of default or termination given or received under any Material Project Contract, or any amendment of, supplement to or other modification of any Material Project Contract or any event, circumstance or occurrence which might lead the Borrower or any other party thereto to terminate any Material Project Contract;
- (vii) (A) any event of force majeure (howsoever called) or any event that could reasonably be expected to become an event of force majeure under a Material Project Contract or any other event entitling a party thereto to suspend performance of any obligation thereunder; (B) any current or foreseeable situation of a material delay in the fulfillment, defective fulfillment or failure to fulfill any of the Material Project Contracts, in each case together with a description thereof and an estimate of its expected duration;
- (viii) any notice of the occurrence of any event giving rise (or that could reasonably be expected to give rise) to a claim under any insurance policy required to be maintained with respect to the Parkway of more than \$1,500,000, with copies of any document relating thereto (including copies of any such claim) in the possession or control of the Borrower;
- (ix) any sale or other disposition of the assets, equipment or other property of the Borrower with a fair market value of not less than \$1,500,000 in the aggregate with respect to one transaction or a series of transactions (excluding any lease of parking spaces for a period of more than one year), or the adoption by the Borrower of any plan to take any such action;
- (x) the appointment of any Operator pursuant to Section 3.3 of the Concession Agreement, or the adoption by the Borrower of any plan to appoint any Operator;
- (xi) any event or circumstance that has occurred that could be expected to result in material liability of Borrower under ERISA or under the Code with respect to any pension plan;
- (xii) any Lien or claim against all or any material part of the Collateral (other than Permitted Liens);
- (xiii) any written notice to the Borrower indicating that any material Governmental Approval will not be granted or renewed, or will not be granted or renewed in time to allow continued operation of the Parkway in compliance with all material

Governmental Rules, or will be granted or renewed on terms materially more burdensome than proposed, or will be terminated, revoked or suspended; or the filing or commencement of any action, suit or other proceeding seeking any of the foregoing;

- (xiv) any event, condition or circumstance affecting any of the Material Project Participants that could reasonably be expected to impair the ability of such Person to perform its obligations under the related Material Project Contract which could reasonably be expected to have a Material Adverse Effect; and
- (xv) any other event, condition or circumstance that could reasonably be expected to have a Material Adverse Effect.

5.3 Quarterly Operating Reports

Not later than 90 days after the end of each fiscal quarter of the Borrower, the Borrower will deliver to the Administrative Agent an operating report showing (i) the operating data for the Parkway for the previous quarter and for the year to date, including total Project Revenues for the Parkway, total Operating Expenses incurred, total Major Maintenance costs incurred and details of the traffic data and traffic policy, (ii) any variances for such periods between the actual Project Revenues and the budgeted Project Revenues and the actual Operating Expenses and Major Maintenance costs incurred and the budgeted Operating Expenses and Major Maintenance costs (in each case as shown in the Annual Operating Budget), together with a narrative explanation of the reasons for any such variance of 10% or more of aggregate Operating Expenses and Major Maintenance costs for such fiscal quarter (or variances of 20% or more with respect to any line item), (iii) any event or condition that did or could over time cause a Material Adverse Effect and (iv) if an Event of Default exists, such other operating information as the Administrative Agent may reasonably request. Such report shall also include a summary of the reports provided to the Authority regarding accidents and incidents occurring on or at the Parkway and environmental incident reports regarding the discharge, dumping or spilling of any reportable quantity of Hazardous Materials on or at the Parkway.

5.4 Annual Operating Budget; Project Forecast

- (a) Not less than 30 days before the commencement of each calendar year, the Borrower shall submit to the Administrative Agent and the Technical Advisor for their review an operating plan and a budget and a pro forma income and cash flow statements of the Borrower (collectively, an **Annual Operating Budget**), in each case in the form of the initial budget delivered on or prior to the Closing Date or any other form reasonably acceptable to the Administrative Agent and including details of the projected Major Maintenance costs and projected Capital Expenditures for Required Capital Improvements or otherwise for the following four-year period. Each Annual Operating Budget shall specify in reasonable detail all projected Project Revenues and Operating Expenses, as well as projected Major Maintenance costs and Capital Expenditures to be incurred in connection with any Capital Project or otherwise for such period on a monthly basis.
- (b) The Administrative Agent shall have a period of 30 days after receipt to approve or disapprove the proposed Annual Operating Budget, **provided** that (i) the Administrative

- Agent shall not disapprove the proposed Annual Operating Budget unreasonably if the Technical Advisor has certified in writing that the proposed Annual Operating Budget is acceptable, (ii) the Administrative Agent shall set forth its disapproval in writing specifying in reasonable detail its reasons for such disapproval and (iii) if no such written disapproval in accordance with the foregoing is provided within the time period specified above, then the proposed Annual Operating Budget shall be deemed approved. Notwithstanding the foregoing, if the proposed Annual Operating Budget provides for aggregate expenditures for the applicable annual period not exceeding 100% of the greater of (1) the expenditures set forth in the immediately preceding Annual Operating Budget that had been approved (or deemed approved pursuant to this sentence) in accordance with this Section 5.4(b) and (2) the expenditures projected for such period in the Base Case Model, then such proposed Annual Operating Budget shall not be subject to the foregoing approval process and shall be deemed approved for all purposes hereof.
- (c) If the proposed Annual Operating Budget is disapproved by the Administrative Agent in accordance with the foregoing, then (i) the Operating Expenses for the Annual Operating Budget shall equal the amount set forth for such costs in the most recent approved Annual Operating Budget multiplied by the sum of one (1) plus the Inflation Factor for the most recently available period (**provided** that if the CPI Index for any year is negative, then the Operating Expenses for the Annual Operating Budget shall equal the amount set forth for such costs in the most recent approved Annual Operating Budget), and (ii) the Capital Expenditures for such Annual Operating Budget shall be equal to the amount as reasonably budgeted by the Borrower with respect to any Required Capital Improvements scheduled to be paid during the relevant period plus (without duplication) any projected Major Maintenance costs for such period as contemplated by the Base Case Forecast.
 - (d) The Borrower shall operate the Parkway substantially in accordance with the Annual Operating Budget except in the event of emergencies and except as reasonably necessary to comply with the requirements of the Concession Agreement or applicable Governmental Rules. The Borrower shall have the right to make expenditures in respect of Operating Expenses, as well as projected Major Maintenance costs, without any consent or approval of the Administrative Agent, the Technical Advisor or any other Person if such costs do not exceed an amount equal to 120% of the aggregate amount budgeted for the aggregate costs in the applicable Annual Operating Budget. Any expenditures in excess of such amount shall require the approval of the Administrative Agent, **provided** that no such approval shall be required for (i) reasonably unforeseen expenditures to the extent necessary to pay for compliance with Authority Directives (as defined in the Concession Agreement) and (ii) reasonably unforeseen expenditures to the extent necessary to cause the Parkway to be in compliance with applicable mandatory Governmental Rules or to take necessary steps in respect of an emergency.

5.5 Construction Reports

During any Construction Period, the Borrower shall furnish to the Administrative Agent and the Technical Advisor a monthly progress report, not later than 20 days after the end of the preceding calendar month during such Construction Period, setting forth (a) an assessment of the overall construction progress of any ongoing Capital Projects since the date of the last report, stating whether the construction is proceeding on schedule and according to the agreed construction

budget and specifying the likelihood of any delays or cost overruns or any possibility of accelerating construction, and setting forth a reasonable estimate as to the completion date for the applicable work, (b) a description of any material problems (including cost overruns, if any) encountered or anticipated in connection with such work, and (c) a discussion or analysis of such other matters related to any Capital Project as the Administrative Agent may reasonably request.

5.6 Books and Records; Inspection of Property; Management Information and Cost Control Systems

The Borrower shall maintain or cause to be maintained appropriate logs, books, records and accounts in which full, true and correct entries in accordance with GAAP, consistently applied, shall be made of all of its dealings and transactions, and the Borrower shall permit representatives of the Administrative Agent and the Technical Advisor and their respective representatives to visit and inspect its properties (including the Parkway), to examine all of the Borrower's logs, books, records and accounts, to make copies and memoranda thereof, and to discuss its affairs, finances and accounts with its principal officers, engineers and independent accountants, all at such times during business hours, upon reasonable prior notice, and at such intervals as the Administrative Agent or the Required Senior Lenders may reasonably request. The representatives of the Administrative Agent and the Required Senior Lenders (with prior notice to the Administrative Agent) shall have the right to inspect the Parkway from time to time upon reasonable advance notice (during business hours) to the Borrower. Each such inspection pursuant to this Section 5.6 shall be conducted so as not to interfere with the operation or maintenance of the Parkway and shall be subject to the Borrower's safety and insurance programs, and any such party making an inspection shall comply with (i) the reasonable request of the Borrower to maintain the confidentiality of any information identified by the Borrower in writing to the recipient thereof as confidential and received as a result of such inspection, and (ii) the provisions concerning confidentiality in the Senior Loan Documents. The Borrower shall at all times maintain or cause to be maintained adequate management information and cost control systems.

5.7 Operations and Maintenance

The Borrower shall maintain and preserve, or cause to be maintained and preserved, the Parkway and its other properties in good repair, working order and condition, and shall operate and maintain, or cause to be operated and maintained, the Parkway in accordance with the requirements of the Concession Agreement and in compliance in all material respects with applicable Governmental Rules and Governmental Approvals, terms of its insurance policies, and prudent practices in the toll road industry in similar areas.

5.8 Tolls

The Borrower shall increase the level of tolls on the Parkway in accordance with the assumptions in the Base Case Model, unless the Administrative Agent (in consultation with the Technical Advisor) agrees otherwise in writing (such agreement not to be unreasonably withheld or delayed).

5.9 Material Project Contracts

The Borrower shall (a) duly and punctually perform and observe all of its covenants and obligations contained in the Concession Agreement and all of its material covenants and obligations contained in each other Material Project Contract, (b) subject to Section 6.8(a), take all reasonable and necessary action to prevent the termination or cancellation of the Concession Agreement or any other Material Project Contract in accordance with the terms of such Material Project Contract or otherwise (except for the expiration of any Material Project Contract in accordance with its terms and not as a result of a breach or default thereunder) and (c) enforce against the relevant Material Project Participant each covenant or obligation of the Concession Agreement or such other Material Project Contract, as applicable, in accordance with its terms, except (in each case under clauses (a) through (c) above, but solely with respect to Material Project Contracts other than the Concession Agreement), to the extent that failure to do any of the foregoing could not reasonably be expected to have a Material Adverse Effect.

5.10 Government Approvals

The Borrower shall at all times obtain and maintain in full force and effect all Governmental Approvals necessary for the leasing, operation, rehabilitation, maintenance, tolling and use of the Parkway, except where the failure to maintain such Governmental Approvals could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.11 Compliance with Laws and Permits

The Borrower shall comply or cause compliance with, and shall ensure that the Parkway is operated in compliance in all material respects with, all Governmental Rules, including Environmental Laws, and Governmental Approvals, except where any failure to comply could not reasonably be expected to have a Material Adverse Effect.

5.12 Maintenance of Legal Status

The Borrower shall at all times preserve and maintain in full force and effect (i) its legal existence as a limited liability company and its good standing under the laws of the State of Delaware; (ii) its qualification to do business in (A) the State of Colorado and (B) each other jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business as conducted or proposed to be conducted makes such qualification necessary and, with respect to this clause (B), where the failure to be so qualified, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (iii) all material rights, franchises, privileges and consents necessary for the maintenance of its existence and the leasing, operation, rehabilitation, maintenance and use of the Parkway and (iv) title to all property it purports to own (except for property the Borrower is entitled to dispose of in accordance with Section 6.4(b)).

5.13 Insurance

- (a) The Borrower shall maintain at its own expense the insurance policies required to be maintained pursuant to the Concession Agreement and, to the extent more comprehensive in type or higher in amount, the insurances set forth in Exhibit G from time to time, and

shall furnish to the Administrative Agent certificates of all such insurance and, upon becoming available, certified copies of the insurance policies.

- (b) The Borrower shall comply in all material respects with all insurance requirements set forth in Exhibit G, the Concession Agreement and any other Material Project Contract and enforce the obligations of all Persons to such Material Project Contracts with respect to the insurance requirements set forth in such agreements. The Borrower shall notify the Administrative Agent that premiums have been paid promptly after such payment, and shall provide reasonable evidence of such payment.
- (c) Except for proceeds of workers' compensation, employees' liability, automobile liability, builders' all risk liability and general liability insurance, proceeds of the insurance policies provided or obtained by or on behalf of the Borrower related to the Parkway shall be required to be paid by the respective insurers directly to the Loss Proceeds Account, except for (i) proceeds of business interruption or anticipated loss in revenue insurance and (ii) proceeds of casualty insurance that are less than \$5,000,000 in respect of a single casualty or a series of related casualties, which proceeds are to be paid to the Revenue Account (and in the case of such proceeds of casualty insurance shall be applied to pay for or reimburse the costs of repair or restoration of the affected property, unless the Administrative Agent agrees otherwise). If any insurance proceeds that are required under the preceding sentence to be paid to the Loss Proceeds Account (the **Insurance Proceeds**) are received by the Borrower or any other Person, such Insurance Proceeds shall be received in trust for the Collateral Agent, shall be segregated from other funds of the recipient, and shall be forthwith paid into the Loss Proceeds Account, in the same form as received (with any necessary endorsement). If any business interruption or anticipated loss in revenue insurance proceeds required under the preceding sentence to be paid to the Revenue Account are received by the Borrower or any other Person, such proceeds shall be forthwith paid into the Revenue Account, in the same form as received (with any necessary endorsement) and applied in accordance with the Collateral Agency Agreement.

5.14 Taxes

The Borrower shall timely pay and discharge all income and other material Taxes and other assessments and governmental charges or levies imposed upon it or the Parkway prior to the date on which penalties, fines or interest attach thereto; **provided** that the Borrower may permit any such Tax, assessment, charge or levy to remain unpaid if it meets the Permitted Contest Conditions. The Borrower will make all commercially reasonable efforts to maintain its status as a "pass-through" entity for federal and Colorado income tax purposes.

5.15 Hedging Agreements

- (a) On the Closing Date, the Borrower shall enter into a Hedging Transaction with each Hedging Bank, pursuant to the terms of a Hedging Agreement with a term of 20 years (on terms agreed between the Hedging Bank and the Borrower), implementing an interest rate swap establishing a fixed interest rate, in respect of an initial notional amount approximately equal to the amount of the Senior Term Loan, which notional amount will vary over time in accordance with the Hedging Agreement. In the event that at any time the amount of the Senior Loans exceeds the notional amount of the Hedging

Transactions, the Borrower shall be entitled to enter into one or more further Hedging Transactions in order to implement an interest rate swap establishing a fixed interest rate in respect of such additional amount.

- (b) The Borrower shall, from time to time, reduce the notional amount of Hedging Transactions by an amount equal to the sum of the Hedging Prepayment Minimum Amount and any Excess Amount where:
 - (i) any partial prepayment or repayment of the Senior Loans occurs; and
 - (ii) (A) the amount of such partial prepayment equals or exceeds the Hedging Prepayment Minimum Amount; or
 - (B) the aggregate of the amount of any such partial prepayment or repayment and any Previous Unapplied Amount equals or exceeds the Hedging Prepayment Minimum Amount.
- (c) The Borrower shall not enter into any Hedging Transactions other than as provided in Section 5.15(a).
- (d) The Borrower shall not, without the prior written consent of the Administrative Agent and the Required Senior Lenders, cancel or terminate any Hedging Agreements.

5.16 Project Accounts

- (a) The Borrower shall at all times maintain the Project Accounts in accordance with the Collateral Agency Agreement and the other Senior Loan Documents. The Borrower shall not maintain any securities accounts or bank accounts other than the Project Accounts.
- (b) At all times the Borrower shall cause all Project Revenues and, except as expressly provided elsewhere in the Senior Loan Documents, all other amounts received by the Borrower to be remitted to the Revenue Account or the Local Collections Accounts and request or make only such payments out of the Project Accounts as permitted by the Collateral Agency Agreement and the other Senior Loan Documents.
- (c) The Borrower shall at all times from and after the Closing Date be a party to a services agreement with a third party credit card payment processor to process credit card, debit card and check purchases for the use of the Parkway and a services agreement with a Person approved by the Administrative Agent to count all cash Project Revenues (**provided** that the Borrower may count all such cash Project Revenues itself so long as the Borrower provides evidence reasonably satisfactory to the Administrative Agent that it has established appropriate safeguards and procedures) and shall use a reputable armored carrier service for all cash Project Revenues to be collected on each Business Day and delivered by such armored carrier to the Deposit Account Bank for deposit to the Toll Cash Deposit Account. Each such agreement shall contain terms and provisions reasonably satisfactory to the Administrative Agent.

5.17 Security Interests

- (a) The Borrower shall preserve and maintain the security interests granted under the Security Documents in full force and effect (including the priority thereof), and take all action reasonably necessary to attempt to assign to the Collateral Agent all right, title and interest in and to any additional material agreements relating to the Parkway or any other assets or properties of the Borrower and perfect the security interest therein and, promptly after acquiring any material interest in real property not covered by the Leasehold Mortgage, to execute and record a supplement to the Leasehold Mortgage subjecting such real property interest to the Leasehold Mortgage.
- (b) Without limiting the obligations of the Borrower under Section 6.8(b), if the Borrower shall at any time acquire any material Property, promptly upon such acquisition, the Borrower shall:
 - (i) to the extent such Property is not subject to the Liens created by the applicable Security Documents, execute, deliver and record or register, as applicable, an appropriate security agreement, pledge, mortgage or other instrument, or a supplement to one or more then-existing Security Documents, satisfactory in form and substance to the Administrative Agent, subjecting such Property to the Liens created by each applicable Security Document; and
 - (ii) ensure that the Lien on such Property will be a legal, valid and enforceable Lien pursuant to the terms of the Security Documents, prior and superior to all other Liens other than Permitted Liens.

5.18 Event of Loss

- (a) If any loss or damage to the Parkway occurs that is reasonably estimated by the Borrower to cost more than \$5,000,000 to restore, repair, replace or rebuild, unless the Borrower elects not to restore such property and such restoration is not required under the Concession Agreement (in which event such proceeds shall be applied to a mandatory prepayment of the Senior Loans in accordance with Section 2.9(c)), the Borrower shall promptly (and in any event within 60 days after the occurrence of the Event of Loss) deliver to the Administrative Agent and the Technical Advisor a written description of the restoration plan with respect to such loss or damage, setting forth the scope and schedule thereof and the anticipated budget therefor, in each case in reasonable detail and providing such information relating thereto as reasonably requested by the Administrative Agent. The Technical Advisor, acting reasonably, shall confirm the reasonableness of such restoration plan.
- (b) The Borrower shall deliver to the Administrative Agent and the Technical Advisor (i) complete and correct copies of each procurement and other contract relating to the Capital Project carrying out such restoration plan; (ii) a certificate of the Insurance Consultant to the effect that all insurance policies maintained by the Borrower with respect to such Capital Project conform with the requirements specified in Exhibit G and in the Concession Agreement; and (iii) satisfactory evidence that each of the Governmental Approvals required to be obtained for such Capital Project has been obtained or can be obtained in the normal course of business as and when required

without significant delay. The Borrower shall also provide such additional information or documentation with respect to such Capital Project as may be reasonably requested by the Administrative Agent.

- (c) Each withdrawal and disbursement of funds on deposit in the Loss Proceeds Account to pay for the cost of the applicable Capital Project shall be approved by the Technical Advisor, acting reasonably. In connection therewith, the Borrower shall provide to the Administrative Agent and the Technical Advisor (i) invoice(s) as appropriate, as to the proposed payments from such funds, (ii) financial information demonstrating compliance with the budget for such Capital Project, and (iii) a certificate of an Authorized Signatory of the Borrower certifying that the funds available to the Borrower in the Loss Proceeds Account and Project Revenues or other amounts available to the Borrower pursuant to a binding commitment are sufficient to complete construction of such Capital Project.
- (d) With respect to an Event of Loss, to the extent possible and to the extent of the Borrower's rights therein, the Collateral Agent shall receive a perfected security interest in the Borrower's rights, title and interest in and to all construction, procurement and other contracts relating to the Capital Project for such restoration and the assets and work constituting such Capital Project, subject only to Permitted Liens. To the extent requested by the Administrative Agent, the Administrative Agent shall receive mechanic's lien waivers from contractors, subcontractors and suppliers in relation to such Capital Project for payments made or to be made with respect to such Capital Project.

5.19 Environmental Management Plan

Within 90 days after the Closing Date, the Borrower shall deliver to the Administrative Agent and the Technical Advisor an environmental management plan as described in Section 6.3 of the report of the Technical Advisor dated December 2007, which management plan shall be reasonably satisfactory to the Administrative Agent (in consultation with the Technical Advisor).

5.20 State Highway 128 Extension

Prior to the satisfaction of the Beltway Accession Requirements (as defined in the Concession Agreement), the Borrower shall provide to the Administrative Agent such information as the Administrative Agent may reasonably request regarding the financing of the contribution to be made by the Borrower to the cost of the State Highway 128 Extension (as defined in the Concession Agreement) in accordance with Section 5.5 of the Concession Agreement.

6. NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Senior Loan and all fees payable hereunder have been paid in full, the Borrower covenants and agrees with the Senior Lenders as set out in this Section 6.

6.1 Indebtedness

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

- (a) Indebtedness created under the Finance Documents;

- (b) Hedging Transactions permitted under Section 5.15;
- (c) purchase money obligations incurred to finance discrete items of equipment not comprising an integral part of the Parkway that extend to only the equipment being financed, so long as such Indebtedness does not exceed (i) the purchase price paid for such equipment (plus applicable fees, costs and expenses associated with such financings) or (ii) an aggregate amount of \$2,000,000;
- (d) current accounts payable arising, interest thereon and accrued expenses incurred, in the ordinary course of business which are payable in accordance with customary practices and which are not overdue by more than 90 days (unless subject to Permitted Contest Conditions);
- (e) unsecured Indebtedness incurred in connection with the funding of capital contributions in accordance with Section 4.1(f) or otherwise (**provided** that all of such Indebtedness shall be payable to the Members or Affiliates of the Members), fully subordinated to the payment in full of the Senior Obligations pursuant to the Related Party Subordination Agreement;
- (f) Indebtedness incurred in accordance with Section 2.9(b);
- (g) the accrued amount of the Guarantee Fee from time to time, **provided** that the payments of such amount shall at all times be fully subordinated to the payment in full of the Senior Obligations pursuant to the Related Party Subordination Agreement;
- (h) new Indebtedness incurred for the purposes of financing the payment to be made by the Borrower to the Authority in accordance with Section 5.5 of the Concession Agreement, **provided** that such new Indebtedness meets either:
 - (i) the following conditions:
 - (A) such new Indebtedness shall rank *pari passu* with the Senior Loans and any undrawn Commitments;
 - (B) such new Indebtedness shall receive a final investment grade rating from S&P or Moody's;
 - (C) the final maturity date of such new Indebtedness shall not occur before the Final Maturity Date; and
 - (D) the lenders or providers of such new Indebtedness enter into intercreditor agreements with the Senior Lenders which are in form and substance satisfactory to the Required Senior Lenders; or
 - (ii) **provided** that the Index Debt shall be rated at least BBB- by S&P and at least Baa3 by Moody's, the following conditions:
 - (A) such new Indebtedness shall:

- (I) to the extent such new Indebtedness is not guaranteed by the Guarantor, be subordinated to the Senior Loans and any undrawn Commitments (but senior to the loans under the Guaranteed Loan Agreement), on terms acceptable to the Required Senior Lenders which reflect prevailing market practice with regard to the subordination of third-party lenders; and
- (II) to the extent such new Indebtedness is guaranteed by the Guarantor:
 - (aa) be subordinated to the Senior Loans and any undrawn Commitments on terms acceptable to the Required Senior Lenders which reflect prevailing market practice with regard to the subordination of third-party lenders; and
 - (bb) rank *pari passu* with the loans outstanding under the Guaranteed Loan Agreement, and the lenders or providers of such new Indebtedness enter into intercreditor agreements with the Guaranteed Lenders which are in form and substance satisfactory to the Required Guaranteed Lenders (as defined in the Guaranteed Loan Agreement);

and

- (B) the final maturity date of such new Indebtedness shall not occur before the final maturity date of the Guaranteed Loan Agreement.

6.2 Liens

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

6.3 Conduct of Business

The Borrower shall not engage at any time in any business other than the financing, leasing, operation, maintenance, rehabilitation and use of the Parkway as contemplated by the Finance Documents, Section 3.6 of the Concession Agreement, and the other Material Project Contracts and activities incidental thereto.

6.4 Fundamental Changes

- (a) The Borrower shall not (i) enter into any transaction of merger, amalgamation or consolidation, change its form of organization or its business, or liquidate, wind up or dissolve itself, or suffer any liquidation or dissolution, (ii) convey, sell, lease, assign, transfer or otherwise dispose of all or substantially all of its property, assets or business, whether now owned or hereafter acquired or any asset the disposition of which (if not

- promptly replaced) could reasonably be expected to cause a Material Adverse Effect, (iii) purchase, lease or acquire any assets other than assets required in connection with the operation and maintenance of the Parkway as contemplated by the Concession Agreement and the Finance Documents (including assets in the ordinary course of business reasonably required in connection with the operation of the Parkway or Capital Expenditures in the applicable Annual Operating Budget), or (iv) acquire any equity interest in any Person, except as provided in Section 6.5.
- (b) The Borrower shall not convey, sell, lease, transfer or otherwise dispose of, in one transaction or a series of transactions, any assets in excess of \$1,000,000 per year in the aggregate except:
- (i) sales or other dispositions of obsolete, worn out or defective equipment that is promptly replaced by the Borrower with suitable substitute equipment of substantially the same character and quality and at least equivalent useful life and utility except to the extent that the failure to replace such equipment could not reasonably be expected to have a Material Adverse Effect;
 - (ii) sales or other dispositions of equipment or other property in the ordinary course of the business of the Borrower in accordance with the Concession Agreement, the Material Project Contracts and the Senior Loan Documents; and
 - (iii) sales, transfers or other dispositions of Permitted Investments in accordance with the terms of the Senior Loan Documents.
- (c) The Borrower shall not change its name or its fiscal year without the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed).
- (d) The Borrower shall not admit any additional Members or issue or agree to issue any Membership Interests or grant options or warrants or similar rights to subscribe for any Membership Interests to any Person except to the existing Members in connection with contribution of additional equity capital by such Member, in each case, without the prior written consent of the Required Senior Lenders, except that the Borrower may issue additional Membership Interests to one or more Affiliates of the Members without such consent if (i) (A) such Person executes and delivers a pledge agreement in the form of the Member Pledge Agreement (or such other form as is reasonably acceptable to the Administrative Agent), granting to the Collateral Agent for the benefit of the Secured Parties a security interest in all of such Person's interests in the Borrower, (B) such security interest is perfected by control within the meaning of Article 9 of the Uniform Commercial Code, and (C) such Person causes to be delivered to the Secured Parties an opinion of counsel in form and substance reasonably satisfactory to the Administrative Agent as to such matters related to such pledge agreement and such security interest as the Administrative Agent may reasonably request, (ii) such Person is a "United States person" within the meaning of section 7701(a)(30) of the Code, (iii) such Person becomes a passive member in the Borrower and exercises no control (as contemplated by the definition of the term "Affiliate"), (iv) no Change in Control results from such admission, and (v) to the extent such Membership Interests are issued for cash consideration, the proceeds of the payment of such consideration are deposited into the Revenue Account.

This Section 6.4(d) shall not apply in respect of transfers of Membership Interests by any Member, **provided** that any transfer of Membership Interests shall be subject to the conditions imposed on the transferring Member by the relevant Pledge Agreement.

- (e) The Borrower shall not have any Subsidiaries.
- (f) The Borrower shall not permit any material supplement, modification or amendment of its organizational documents that is materially adverse to the Senior Lenders.

6.5 Investments and Loans

The Borrower shall not make any investment or capital contribution to, or purchase stocks, bonds, notes or other securities of, or make an advance or any extend credit to, or make any other investment in, any other Person, other than Permitted Investments.

6.6 Restricted Payments

The Borrower shall not, directly or indirectly, make or agree to make any Restricted Payment.

6.7 Transactions with Affiliates

The Borrower shall not enter into any agreement or arrangement with any Member or any Affiliate of the Borrower or of any Member unless such transaction is entered into in the ordinary course of business, on terms no less favorable to the Borrower than the Borrower would obtain in a comparable arm's-length transaction with a person that is neither a Member nor an Affiliate of the Borrower or a Member.

6.8 Material Project Contracts

- (a) The Borrower shall not cancel, terminate, assign, materially amend or modify (and, to the extent within its control, shall not permit the other party or parties thereto to do so), or waive timely performance by the other party of any material covenants under, (i) the Concession Agreement or the Escrow Agreement or (ii) any other Material Project Contract; **provided** that in the case of clause (ii) only, (A) any such termination shall be permitted if a binding replacement contract is entered into within 60 days that provides the same or better economic benefits to the Borrower and does not expose the Borrower to any greater risks or liability, and (B) any such amendment, modification or waiver shall be permitted if such amendment, modification or waiver could not reasonably be expected to result in a Material Adverse Effect.
- (b) The Borrower shall not, without the prior written consent of the Administrative Agent and the Required Senior Lenders, enter into any Material Project Contract. In connection therewith, the Borrower, the relevant Material Project Participant, the Collateral Agent and the Administrative Agent shall enter into a Consent and Agreement substantially on the terms and provisions set forth in Exhibit F hereto or upon such other terms and provisions as are reasonably satisfactory to the Administrative Agent.

6.9 Hazardous Material

- (a) The Borrower will not cause any Releases of Hazardous Materials at, on or under the Parkway except in compliance in all material respects with all Governmental Rules and required insurance policies.
- (b) In the event of any Release of Hazardous Materials at, on or under the Parkway by any other Person in violation of Governmental Rules, the Borrower will contain, remediate, clean up or remove or cause to be contained, remediated, cleaned-up or removed from the Parkway, or other location, as the case may be, such Hazardous Materials to the extent required to be contained, remediated, cleaned-up or removed by the Borrower pursuant to any Governmental Rule; except to the extent that any failure to comply with any of the above cannot reasonably be expected to result in a Material Adverse Effect.

6.10 No Filing of Tax Election

The Borrower shall not file an election pursuant to Treasury Regulation 301.7701-3(c) to be treated as an association taxable as a corporation.

7. EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default

Each of the following events shall constitute an *Event of Default*:

- (a) the Borrower shall fail to pay any principal of any Senior Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;
- (b)
 - (i) the Borrower shall fail to pay any interest on any Senior Loan or any fee payable under this Agreement or under any other Senior Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five or more Business Days; or
 - (ii) the Borrower shall fail to pay any other amount (other than an amount referred to in clause (a) or (b)(i) of this Section 7.1) under this Agreement or under any other Senior Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of ten or more Business Days;
- (c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Member in or in connection with this Agreement or any other Senior Loan Document to which it is a party or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Senior Loan Document or any amendment or modification hereof or thereof, shall prove to have been incorrect in any material respect when made or deemed made, unless in each such case any errors are remedied within ten days after the earlier of (i) the Administrative Agent's written notice thereof to

the Borrower and the relevant Member and (ii) the Borrower otherwise obtaining notice thereof;

- (d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Sections 2.6, 5.2(a), 5.11, 5.12, 5.13, 5.19 6.1, 6.2, 6.4 or 6.6, or any provisions of the Leasehold Mortgage or any Member shall default in the performance of any of its obligations contained in Section 4.3 of the Pledge Agreement, unless in each such case such failure or default is remedied within ten days after the earlier of (i) the Administrative Agent's written notice thereof to the Borrower or the relevant Member and (ii) the Borrower or the relevant Member otherwise obtaining notice thereof;
- (e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Section 7.1) or any other Senior Loan Document or any Member shall fail to observe or perform any covenant, condition or agreement contained in any Pledge Agreement (other than those specified in clause (d) of this Section 7.1) and such failure shall continue unremedied for a period of 30 or more days after notice thereof from the Administrative Agent (given at the request of any Senior Lender) to the Borrower; **provided** that such 30 day period shall be extended if such failure may be cured but cannot reasonably be cured within such period of 30 days, and the Borrower begins to cure such failure within such 30-day period and thereafter proceeds with all due diligence to cure such failure, **provided further** that such 30-day period shall not be extended beyond 90 days in aggregate;
- (f) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for a period of 60 or more days or an order or decree approving or ordering any of the foregoing shall be entered;
- (g) the Borrower shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (f) of this Section, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;
- (h) the Borrower shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;
- (i) the Borrower abandons all or a material part of the Parkway or its activities to operate or maintain the Parkway, which abandonment shall be deemed to have occurred if the

Borrower fails, except in the case of force majeure or otherwise without reasonable cause, to operate the Parkway for a period of 15 consecutive days;

- (j) a final judgment is entered against the Borrower in an amount exceeding \$10,000,000 or which is otherwise reasonably likely to result in a Material Adverse Effect, and such judgment remains unsatisfied without any procurement of a stay of execution within 30 days after the date of entry of judgment or is not adequately covered by insurance or a performance bond for a period of 30 days;
- (k) an ERISA Event shall have occurred that, in the opinion of the Required Senior Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;
- (l) a Change in Control shall occur;
- (m) a “Concessionaire Default” shall have occurred under, and as defined in, the Concession Agreement, the Authority shall have notified the Borrower that the Borrower is in default under the Concession Agreement and either:
 - (i) with respect to a Concessionaire Default that has arisen under Section 16.1(a)(i) or Sections 16.1(a)(iii) to 16.1(a)(vii) of the Concession Agreement, the Borrower fails to remedy such Concessionaire Default within 60 days after such notice; or
 - (ii) with respect to a Concessionaire Default that has arisen under Section 16.1(a)(ii) of the Concession Agreement, either:
 - (A) the Borrower fails to deliver the written work plan in accordance with Section 16.1(b)(i) of the Concession Agreement within 30 days after such notice; or
 - (B) the Authority fails to Approve (as defined in the Concession Agreement) such work plan by a date that is not less than 15 days before the 60th day after such notice; or
 - (C) the Borrower fails in any material respect to comply with such approved work plan and fails to cure such failure within 30 days of the Authority notifying the Borrower of such failure; or
 - (iii) with respect to any Concessionaire Default, the Authority obtains an injunction or other equitable relief with respect to such Concessionaire Default as contemplated by Section 16.1(b)(iv) of the Concession Agreement or distrains against the Borrower’s goods located on the Parkway as contemplated by Section 16.1(b)(vi) of the Concession Agreement, and such injunction or other equitable relief or such distraint results in a Material Adverse Effect;
- (n) funds on deposit in any Project Account are used or withdrawn other than for the purposes specified or as expressly permitted in the Senior Loan Documents, unless both

- (i) such is caused by an administrative error and (ii) is remedied within five Business Days after the Borrower obtains actual knowledge thereof;
- (o) a casualty, loss or damage event or a condemnation, expropriation or nationalization event of all or substantially all of the Parkway occurs;
- (p) any Governmental Approval necessary for the execution, delivery and performance of the Senior Loan Documents (other than those Governmental Approvals required by the Finance Parties) or the Concession Agreement or, to the extent the ineffectiveness or disappearance of any Material Project Contract would be reasonably likely to have a Material Adverse Effect, any other Material Project Contracts, or for the leasing and operation of the Parkway is terminated or ceases to be in full force or is not obtained, maintained, or complied with, unless such failure is remedied within 30 days after the earlier of (i) the Administrative Agent's written notice thereof to the Borrower and (ii) the Borrower otherwise obtaining notice thereof, or such longer period, not exceeding 120 days, as is reasonably necessary under the circumstances to remedy such failure;
- (q) the Borrower or any Material Project Participant fails to perform or observe any material term or obligation in any Material Project Contract and, in each case, such event could reasonably be expected to result in a Material Adverse Effect, unless such failure is remedied within 30 days after the earlier of (i) the Administrative Agent's written notice thereof to the Borrower and (ii) the Borrower otherwise obtaining notice thereof, or, with respect to any such failure that is not reasonably capable of being remedied within 30 days, such longer period, not exceeding 120 days, as is reasonably necessary under the circumstances to remedy such failure, **provided** that any event with respect to such a Material Project Participant other than the Authority shall not be deemed an Event of Default if during the grace period specified above the Borrower has replaced such Material Project Participant with a substitute Material Project Participant pursuant to a Material Project Contract entered into in compliance with the terms of this Agreement;
- (r) (i) the Concession Agreement or any other Material Project Contract ceases to be valid and binding and in full force and effect or is terminated prior to its expiration date, other than as permitted in accordance with Section 6.8(a), (ii) any material provision of the Concession Agreement or any other Material Project Contract is declared null and void or is contested in a legal proceeding, (iii) the Borrower or any Material Project Participant denies further liability or obligation under the Concession Agreement or any other Material Project Contract except upon fulfillment of all of its obligations thereunder, or (iv) it shall become unlawful for the Borrower or any Material Project Participant to perform or comply with one or more of its material obligations under any Material Project Contract; **provided** that any such event with respect to a Material Project Contract other than the Concession Agreement shall not be an Event of Default if the Borrower has, within 30 days after the earlier of (x) the occurrence of such relevant circumstance and (y) notice thereof being given to the Borrower by the Administrative Agent (or, with respect to any such event that is not reasonably capable of being remedied within 30 days, such longer period, not exceeding 120 days, as is reasonably necessary under the circumstances to remedy such event), entered into, in compliance with the terms of this Agreement, a binding substitute agreement to replace the affected Material Project Contract (or the relevant provisions thereof); or

- (s) the Liens created by the Security Agreement over any material Property of the Borrower shall at any time not constitute a valid and perfected Lien on the Collateral intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required herein or therein) in favor of the Collateral Agent, free and clear of all other Liens (other than Liens permitted under Section 6.2 or under the Security Agreement);
- (t) the Liens created by the Leasehold Mortgage or any Pledge Agreement shall at any time not constitute a valid and perfected Lien on the Collateral intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required herein or therein) in favor of the Collateral Agent, free and clear of all other Liens (other than Liens permitted under Section 6.2 or under the Leasehold Mortgage or the Pledge Agreement, as the case may be); or
- (u) except for expiration in accordance with its terms, any of the Security Documents shall for whatever reason be terminated or cease to be in full force and effect, or the enforceability thereof shall be contested by the Borrower.

7.2 Remedies

- (a) If an Event of Default occurs and is continuing, then the Administrative Agent may and, at the request of the Required Senior Lenders, the Administrative Agent shall by notice to the Borrower, take one or more of the following actions:
 - (i) by notice to the Borrower, declare the Commitments to be terminated, whereupon the same shall forthwith terminate;
 - (ii) declare the entire unpaid principal amount of the Senior Loans (together with all accrued and unpaid interest thereon and any other amount then due under the Senior Loan Documents) and all other Senior Obligations to be forthwith due and payable, whereupon such amounts shall become and be forthwith due and payable, without presentment, demand, protest, or notice of any kind, all of which are hereby expressly waived by the Borrower; and/or
 - (iii) instruct the Collateral Agent to foreclose on any or all of the Collateral and/or proceed to enforce all remedies available to the Administrative Agent (or Collateral Agent) pursuant to the Senior Loan Documents or otherwise.

Notwithstanding the foregoing, if an Event of Default referred to in Section 7.1(f) or 7.1(g) shall occur with respect to the Borrower, automatically and without notice the actions described in clauses (i) and (ii) above shall be deemed to have occurred. In the case of any Event of Default, in addition to the rights and remedies set forth above and the rights and remedies set forth in any Security Document, the Administrative Agent and the Collateral Agent shall each have the right to exercise any and all rights and remedies available to them and the Secured Parties under applicable law or in equity, including the right to (x) exercise the rights of the Secured Parties in respect of the Material Project Contracts and under any Consent and Agreement with respect thereto, (y) exercise any and all rights of a secured creditor with respect to the Collateral and (z) obtain the appointment of a receiver or comparable remedy with respect to the Parkway.

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

8. ADMINISTRATIVE AGENT

8.1 Appointment and Authorization of Administrative Agent

Each Senior Financing Party hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Senior Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Senior Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Senior Loan Document, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Senior Financing Party or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Senior Loan Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Senior Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Governmental Rule. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

8.2 Delegation of Duties

The Administrative Agent may execute any of its duties under this Agreement or any other Senior Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that Administrative Agent selects unless such selection is finally determined to have been grossly negligent or involved willful misconduct on the Administrative Agent's part.

8.3 Liability of Administrative Agent

None of the Administrative Agent, its officers, directors, employees, agents, attorneys-in-fact and Affiliates shall (a) be liable for any action taken or omitted to be taken by any of them under or in

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

8.4 Reliance by Administrative Agent

The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Members), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under any Senior Loan Document unless it shall first receive such advice or concurrence of the Required Senior Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Senior Financing Parties against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Senior Loan Document in accordance with a request or consent of the Required Senior Lenders (or such greater number of Senior Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Senior Lenders.

8.5 Notice of Default

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Senior Financing Parties, unless the Administrative Agent shall have received written notice from a Senior Financing Party or the Borrower referring to this Agreement, describing such Default and stating that such notice is a "notice of default." The Administrative Agent will notify the Senior Financing Parties of its receipt of any such notice. The Administrative Agent shall take such action with respect to such Default as may be directed by the Required Senior Lenders (or such other number or percentage of Senior Lenders as shall be necessary under the circumstances as provided in Section 9.2); **provided** that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking

such action, with respect to such Default as it shall deem advisable or in the best interest of the Financing Parties.

8.6 Credit Decision; Disclosure of Information

Each Senior Financing Party acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representation or warranty to it, and that no act by the Administrative Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of the Borrower or the Members or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates to any Senior Financing Party as to any matter, including whether the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates have disclosed material information in their possession. Each Senior Financing Party represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower, and all applicable bank or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Senior Financing Party also represents that it will, independently and without reliance upon the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Senior Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower. Except for notices, reports and other documents expressly required to be furnished to the Financing Parties by the Administrative Agent herein, the Administrative Agent shall not have any duty or responsibility to provide any Senior Financing Party with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Borrower or any of its Affiliates which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

8.7 Indemnification

The Senior Lenders agree to indemnify the Administrative Agent, the Collateral Agent and the Securities Intermediary (to the extent not reimbursed under Section 7.1 or 7.2 of the Collateral Agency Agreement or Section 9.3, as applicable, but without limiting the obligations of the Borrower under such Section 6.5 or Section 6.6 of the Collateral Agency Agreement or Section 9.3, as applicable) ratably in accordance with the aggregate principal amount of the Senior Loans held by the Senior Lenders (or, if no Senior Loans are at the time outstanding, ratably in accordance with their respective Commitments), for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against such Person (including by any Senior Lender) including, without limitation, any Environmental Claims or other obligations or liabilities arising under any Environmental Law arising out of or by reason of any investigation or any way relating to or arising out of this Agreement or any other Senior Loan

Document or any other documents contemplated by or referred to in this Agreement or in the other Senior Loan Documents or the transactions contemplated by this Agreement (including the costs and expenses which the Borrower is obligated to pay under Section 7.1 of the Collateral Agency Agreement or Section 9.3, as applicable) or the enforcement of any of the terms of this Agreement or of the other Senior Loan Documents or of any such other documents. The undertaking in this Section shall apply before and after judgment and shall survive termination of the Commitments, the payment of all Senior Obligations and the resignation of the Administrative Agent, the Collateral Agent or the Securities Intermediary, as applicable.

8.8 Administrative Agent in Its Individual Capacity

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

8.9 Collateral Agency Agreement; Security Documents

Each Senior Financing Party hereby authorizes the Administrative Agent and the Collateral Agent to execute and deliver the Collateral Agency Agreement and each Security Document (to the extent such Person is intended to be a party thereto) on behalf of such Senior Financing Party and agrees that, upon such execution and delivery, such Senior Financing Party shall be bound by the terms and provisions thereof as if such Senior Financing Party was a signatory thereto. Each Senior Financing Party further authorizes the Administrative Agent to exercise such powers and discretion under each such agreement as are delegated to the Administrative Agent by the terms thereof, together with such powers and discretion as are reasonably incidental thereto. As to matters not expressly provided for in the Collateral Agency Agreement, the Administrative Agent and the Collateral Agent shall not be required to exercise any discretion or take any action, but each shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Senior Lenders; **provided** that neither the Administrative Agent nor the Collateral Agent shall be required to take any action that exposes it to personal liability or that is contrary to the Senior Loan Documents or applicable Governmental Rules.

8.10 Successor Administrative Agent

The Administrative Agent may resign as Administrative Agent upon 30 days' notice to the Senior Lenders. If the Administrative Agent resigns under this Agreement, the Required Senior Lenders shall appoint from among the Senior Lenders a successor administrative agent for the Senior Lenders, which successor administrative agent shall be consented to by the Borrower at all times

other than during the existence of a Default (which consent of the Borrower shall not be unreasonably withheld or delayed). If no successor administrative agent is appointed prior to the effective date of the resignation of the Administrative Agent, the Administrative Agent may appoint, after consulting with the Senior Lenders and the Borrower, a successor administrative agent from among the Senior Lenders. Upon the acceptance of its appointment as successor administrative agent hereunder, the Person acting as such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term "Administrative Agent" shall mean such successor administrative agent, and the retiring Administrative Agent's appointment, powers and duties as Administrative Agent shall be terminated. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 8 and Section 9.3 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement. If no successor administrative agent has accepted appointment as Administrative Agent by the date which is 30 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Senior Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Senior Lenders appoint a successor agent as provided for above.

9. MISCELLANEOUS

9.1 Notices

- (a) Except in the case of notices and other communications expressly permitted to be given by telephone or as otherwise provided in Section 9.1(b), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:
 - (i) if to the Borrower, to Northwest Parkway LLC, 3701 Northwest Parkway, Broomfield, Colorado 80023, (Telephone: (303) 533-1200, Facsimile: (303) 404-3049, email: pcosta@nwpsy.com), Attention: Pedro Costa;
 - (ii) if to the Administrative Agent, to The Royal Bank of Scotland plc (Facsimile No. (212) 401-1478; Telephone No. (212) 401-3558; email: gbmnaagency@rbs.com); and
 - (iii) if to a Senior Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.
- (b) Notices and other communications to the Senior Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; **provided** that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Senior Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; **provided** that approval of such procedures may be limited to particular notices or communications.

- (c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto (or, in the case of any such change by a Senior Lender, by notice to the Borrower and the Administrative Agent). All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt; **provided** that under no circumstances shall a voice mail or message left on a recipient's phone be deemed to be delivery of a notice.

9.2 Waivers; Amendments

- (a) **No Deemed Waivers; Remedies Cumulative.** No failure or delay by the Administrative Agent, or any Senior Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, and the Senior Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Senior Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Senior Lender may have had notice or knowledge of such Default at the time.
- (b) **Amendments.** Neither this Agreement nor any other Senior Loan Document nor any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Senior Lenders or by the Borrower and the Administrative Agent with the consent of the Required Senior Lenders; **provided** that no such agreement shall:
- (i) increase any Commitment of any Senior Lender without the written consent of such Senior Lender;
 - (ii) reduce the principal amount of any Senior Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Senior Lender affected thereby;
 - (iii) postpone the scheduled date of payment of the principal amount of any Senior Loan, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Senior Lender affected thereby;
 - (iv) alter the manner in which payments or prepayments of principal, interest or other amounts hereunder shall be applied as among the Senior Lenders or Types or Classes of Senior Loans, without the written consent of each Senior Lender;

- (v) change any of the provisions of this Section or the definition of the term “Required Senior Lenders” or any other provision hereof specifying the number or percentage of Senior Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Senior Lender;
- (vi) change the definition of the term “Secured Parties”, without the consent of each Secured Party; or
- (vii) amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent.

9.3 Expenses; Indemnity; Damage Waiver

- (a) **Costs and Expenses.** The Borrower shall pay:
 - (i) subject to any written agreements that may be in place from time to time with regard to expenses, all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the syndication of the credit facilities provided for herein, the preparation and administration of this Agreement and the other Senior Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated);
 - (ii) all out-of-pocket expenses incurred by the Administrative Agent, including the fees, charges and disbursements of any counsel for the Administrative Agent, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Senior Loan Documents, including its rights under this Section, or in connection with the Senior Loans made hereunder, including in connection with any workout, restructuring or negotiations in respect thereof; and
 - (iii) all costs, expenses, taxes (subject to Section 2.15), assessments and other charges incurred in connection with any filing, registration, recording or perfection of any security interest contemplated by any Security Document or any other document referred to therein.
- (b) **Indemnification by the Borrower.** The Borrower shall indemnify the Administrative Agent, the Lead Arranger and each Senior Lender, and each Related Party of any of the foregoing Persons (each such Person, an *Indemnatee*) against, and to hold each Indemnatee harmless from, any and all losses, claims, damages and liabilities and expenses related thereto (including the fees, charges and disbursements of any counsel for any Indemnatee), incurred by or asserted against any Indemnatee by any third party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Senior Loan or the

use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower, or any Environmental Liability related in any way to the Borrower, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnatee is a party thereto; **provided** that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. Without in any way limiting the obligations of the Borrower in Section 9.3(a), nothing in this Section 9.3(b) shall be deemed to give any Indemnatee any right to be reimbursed for the expenses of counsel incurred in connection with the entry into this Agreement or any agreement or instrument contemplated hereby, the consummation of the Transactions or any other transactions contemplated hereby or the enforcement or protection of its rights under this Agreement or the other Senior Loan Documents.

- (c) **Reimbursement by Senior Lenders.** To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent under paragraph (a) or (b) of this Section, each Senior Lender severally agrees to pay to the Administrative Agent, such Senior Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; **provided** that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent in its capacity as such.
- (d) **Waiver of Consequential Damages, Etc.** To the extent permitted by applicable law, the parties hereto shall each assert, and hereby waive, any claim on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby.
- (e) **Payments.** All amounts due under this Section shall be payable promptly after written demand therefor.

9.4 Successors and Assigns

- (a) **Assignments Generally.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Senior Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Senior Lender may assign or otherwise transfer any of its rights or obligations hereunder except in accordance with this Section (and any attempted assignment or transfer by any Senior Lender that is not in accordance with this Section shall be null and void). Save as provided in Section 9.17, nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Hedging Bank, the Collateral Agent or the

Related Parties of each of the Administrative Agent and the Senior Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Senior Lenders.**

(i) **Assignments Generally.** Subject to the conditions set forth in clause (ii) below, any Senior Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Senior Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower, **provided** that no consent of the Borrower shall be required for an assignment to (x) a Senior Lender, an Affiliate of a Senior Lender or an Approved Fund, (y) if an Event of Default under clause (a), (b), (f) or (g) of Section 7.1 shall have occurred and be continuing, any other assignee or (z) from the Closing Date until the end of the Syndication Period, any other assignee; and

(B) the Administrative Agent, **provided** that no consent of the Administrative Agent shall be required for an assignment of any Commitment to an assignee that is a Senior Lender with a Commitment immediately prior to giving effect to such assignment.

(ii) **Certain Conditions to Assignments.** Assignments by the Senior Lenders shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Senior Lender or an Affiliate of a Senior Lender or an assignment of the entire remaining amount of the assigning Senior Lender's Commitment or Senior Loans of any Class, the amount of the Commitment or Senior Loans of the assigning Senior Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, **provided** that no such consent of the Borrower shall be required if an Event of Default under clause (a), (b), (f) or (g) of Section 7.1 has occurred and is continuing;

(B) each partial assignment of any Commitment or Class of Senior Loans shall be made as an assignment of a proportionate part of all the assigning Senior Lender's rights and obligations under this Agreement in respect of such Commitment and Senior Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption in substantially the form of Exhibit A hereto, together with a processing and recordation fee of \$3,500;

- (D) the assignee, if it shall not already be a Senior Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax form mandated by Section 2.15(e); and
 - (E) in the case of an assignment to an Approved Fund, the assigning Senior Lender shall retain the sole right to approve any amendment, modification or waiver of any provision of this Agreement and the other Senior Loan Documents, **provided** that the Assignment and Assumption between such Senior Lender and such Approved Fund may provide that such Senior Lender will not, without the consent of such Approved Fund, agree to any amendment, modification or waiver that (I) requires the consent of each Senior Lender directly affected thereby pursuant to the first proviso to Section 9.2(b) and (II) directly affects such Approved Fund.
- (iii) **Effectiveness of Assignments.** Subject to acceptance and recording thereof pursuant to Section 9.4(c), from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Senior Lender under this Agreement, and the assigning Senior Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Senior Lender's rights and obligations under this Agreement, such Senior Lender shall cease to be a party hereto but shall continue to be entitled to the rights referred to in Sections 2.13, 2.15 (and subject to any continuing obligations thereof) and 9.3). Any assignment or transfer by a Senior Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Senior Lender of a participation in such rights and obligations in accordance with Section 9.4(e).
- (c) **Maintenance of Register by the Administrative Agent.** The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Senior Lenders, and the Commitment of, and principal amount of the Senior Loans owing to, each Senior Lender pursuant to the terms hereof from time to time (the **Register**). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Senior Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Senior Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Senior Lender, at any reasonable time and from time to time upon reasonable prior notice.
- (d) **Effectiveness of Assignments.** Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Senior Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Senior Lender hereunder), the processing and recordation fee referred to in Section 9.4(b) and

any written consent to such assignment required by Section 9.4(b), the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 9.4(d).

- (e) **Participations.** Any Senior Lender may, without the consent of the Borrower or the Administrative Agent sell participations to one or more banks or other entities (a **Participant**) in all or a portion of such Senior Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Senior Loans owing to it); **provided** that (i) such Senior Lender's obligations under this Agreement shall remain unchanged, (ii) such Senior Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Senior Lenders shall continue to deal solely and directly with such Senior Lender in connection with such Senior Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Senior Lender sells such a participation shall provide that such Senior Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; **provided** that such agreement or instrument may provide that such Senior Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.2(b) that affects such Participant. Subject to Section 9.4(f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.13, 2.14 and 2.15 to the same extent as if it were a Senior Lender and had acquired its interest by assignment pursuant to Section 9.4(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.8 as though it were a Senior Lender, **provided** such Participant agrees to be subject to Section 2.16(d) as though it were a Senior Lender hereunder.
- (f) **Limitations on Rights of Participants.** A Participant shall not be entitled to receive any greater payment under Section 2.13 or 2.15 than the applicable Senior Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Senior Lender if it were a Senior Lender shall not be entitled to the benefits of Section 2.15 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.15(e) as though it were a Senior Lender.
- (g) **Certain Pledges.** Any Senior Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Senior Lender, including any such pledge or assignment to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; **provided** that no such pledge or assignment of a security interest shall release a Senior Lender from any of its obligations hereunder or substitute any such assignee for such Senior Lender as a party hereto.
- (h) **No Assignments to the Borrower or Affiliates.** Anything in this Section to the contrary notwithstanding, no Senior Lender may assign or participate any interest in any Senior Loan held by it hereunder to the Borrower or any of its Affiliates without the prior consent of each Senior Lender.

9.5 Survival

All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Senior Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Senior Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Senior Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Sections 2.13, 2.14, 2.15, 8, 9.3 and 9.13 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Senior Loans and the Commitments or the termination of this Agreement or any provision hereof.

9.6 Counterparts; Integration; Effectiveness

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract between and among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

9.7 Severability

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

9.8 Right of Setoff

If an Event of Default shall have occurred and be continuing, each Senior Lender and its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness or obligations at any time owing by such Senior Lender or any Affiliates to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Senior Lender, irrespective of whether or not such Senior Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each

Senior Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Senior Lender may have.

9.9 Governing Law; Jurisdiction; Etc

- (a) **Governing Law.** This Agreement shall be construed in accordance with, and this Agreement and all matters arising out of or relating in any way whatsoever to this Agreement (whether in contract, tort or otherwise) shall be governed by, the law of the State of New York.
- (b) **Submission to Jurisdiction.** The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent or any Senior Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or its properties in the courts of any jurisdiction.
- (c) **Waiver of Venue.** The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 9.9(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.
- (d) **Service of Process.** Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.1. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

9.10 WAIVER OF JURY TRIAL

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER

PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.11 USA Patriot Act

Each Senior Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the ***Patriot Act***), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Senior Lender to identify the Borrower in accordance with the Patriot Act. The Borrower shall promptly provide such information upon request by any Senior Lender.

9.12 Headings

Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

9.13 Treatment of Certain Information; Confidentiality

- (a) **Treatment of Certain Information.** The Borrower acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to the Borrower (in connection with this Agreement or otherwise) by any Senior Lender or by one or more subsidiaries or affiliates of such Senior Lender and the Borrower hereby authorizes each Senior Lender to share any information delivered to such Senior Lender by the Borrower pursuant to this Agreement, or in connection with the decision of such Senior Lender to enter into this Agreement, to any such subsidiary or affiliate, it being understood that any such subsidiary or affiliate receiving such information shall be bound by the provisions of paragraph (b) of this Section as if it were a Senior Lender hereunder. Such authorization shall survive the repayment of the Senior Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.
- (b) **Confidentiality.** Each of the Administrative Agent and the Senior Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or under any other Senior Loan Document or any suit, action or proceeding relating to this Agreement or any other Senior Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this paragraph, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (vii) with the consent of the Borrower or (viii) to the extent such Information (A) becomes publicly

available other than as a result of a breach of this paragraph or (B) becomes available to the Administrative Agent or any Senior Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this paragraph, **Information** means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Administrative Agent or any Senior Lender on a nonconfidential basis prior to disclosure by the Borrower; **provided** that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

9.14 Independence of Covenants

All covenants and other agreements contained in this Agreement or any other Senior Loan Document shall be given independent effect so that, if a particular action or condition is not permitted by any of such covenants or other agreements, the fact that such action or condition would be permitted by an exception to, or otherwise be within the limitations of, another covenant or other agreement shall not avoid the occurrence of a Default or an Event of Default if such action is taken or such condition exists.

9.15 Contractual Currency

- (a) **Payment in Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement (the Contractual Currency). To the fullest extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the Senior Lenders, the Administrative Agent or the Lead Arranger, as applicable, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable, the Borrower will, to the fullest extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall.
- (b) **Judgments.** To the fullest extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered:
 - (i) for the payment of any amount owing under this Agreement; or
 - (ii) in respect of a judgment or order of another court for the payment of any amount described in Section 9.15(b)(i)

the Senior Lenders, the Administrative Agent or the Lead Arranger, as applicable, after recovery in full of the aggregate amount to which such party or parties are entitled pursuant to the judgment or order, will be entitled to receive immediately

from the Borrower the amount of any shortfall of the Contractual Currency received by such party or parties as a consequence of sums paid in such other currency if such shortfall arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which the Senior Lenders, the Administrative Agent or the Lead Arranger, as applicable, are able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by the Senior Lenders, the Administrative Agent or the Lead Arranger, as applicable. The term "rate of exchange" includes any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

9.16 Interest Rate Limitation

Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Senior Loan, together with all fees, charges and other amounts which are treated as interest on such Senior Loan under applicable law (collectively the **Charges**), shall exceed the maximum lawful rate (the **Maximum Rate**) which may be contracted for, charged, taken, received or reserved by the Senior Lender holding such Senior Loan in accordance with applicable law, the rate of interest payable in respect of such Senior Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Senior Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Senior Lender in respect of other Senior Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Senior Lender.

9.17 Limited Recourse

No Secured Party shall have any claim, remedy or right to proceed against any Member, or any of their Affiliates (other than the Borrower) or any shareholder, member, partner, manager, officer, employee, director or agent of any Member or any such Affiliate (a **Non-Recourse Party**) for the payment of any principal, premium or interest on the Senior Loans or for any claim based thereon or arising out of any agreement, certificate, representation, covenant or warranty made by the Borrower herein or in any other Finance Document; **provided** that (a) nothing in this Section 9.17 shall limit in any way any rights of the Secured Parties relating to (i) any representations made by a Non Recourse Party, in any certificate or letter delivered by such Non-Recourse Party or given by such Non-Recourse Party in any Finance Document to which such Non-Recourse Party is a party (ii) any undertaking agreed to by such Non-Recourse Party which is set forth in any Finance Document to which such Non-Recourse Party is a party or (iii) the exercise of remedies with respect to any limited liability company or other equity interest in the Borrower or any other Collateral; and (b) the foregoing limitations shall not apply with respect to any claim based on willful misconduct or fraud.

9.18 Rating Agencies

If the rating system of Moody's or S&P shall change or if either such rating agency shall cease to be in the business of rating corporate debt obligations, the Borrower and the Senior Lenders shall negotiate in good faith to amend relevant sections in this Agreement to reflect such changed rating system or the unavailability of ratings from such rating agency.

SUPPLIED TO WILLIAM IM ON 12 FEB 13 23:04:59 GMT

IN WITNESS WHEREOF, the each of the parties hereto has caused this Senior Loan Agreement to be duly executed and delivered by its officer or officers thereunto duly authorized as of the date first above written.

The Borrower

NORTHWEST PARKWAY LLC

By: Northwest Parkway Operations LLC,
Its Operating Manager

By: 

Name: *VICTOR FALLO SAGRO LIMA*

Title: Authorized Signatory

By: _____

Name:

Title: Authorized Signatory

The Senior Lenders

THE ROYAL BANK OF SCOTLAND PLC

By: _____

Name:

Title:

SENIOR LOAN AGREEMENT

IN WITNESS WHEREOF, the each of the parties hereto has caused this Senior Loan Agreement to be duly executed and delivered by its officer or officers thereunto duly authorized as of the date first above written.

The Borrower

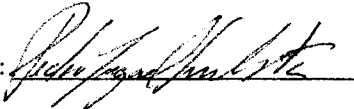
NORTHWEST PARKWAY LLC

By: Northwest Parkway Operations LLC,
Its Operating Manager

By: _____

Name:

Title: Authorized Signatory

By: 

Name: *PEDRO MIGUEL SENEDO DA SILVA COSTA*

Title: Authorized Signatory

The Senior Lenders

THE ROYAL BANK OF SCOTLAND PLC

By: _____

Name:

Title:

SENIOR LOAN AGREEMENT

IN WITNESS WHEREOF, the each of the parties hereto has caused this Senior Loan Agreement to be duly executed and delivered by its officer or officers thereunto duly authorized as of the date first above written.

The Borrower

NORTHWEST PARKWAY LLC

By: Northwest Parkway Operations LLC,
Its Operating Manager

By: _____

Name:

Title: Authorized Signatory

By: _____

Name:

Title: Authorized Signatory

The Senior Lenders

THE ROYAL BANK OF SCOTLAND PLC

By: _____


Name: CARLOS ARMANDO REMEN

Title: VICE PRESIDENT

SENIOR LOAN AGREEMENT

The Administrative Agent

THE ROYAL BANK OF SCOTLAND PLC,
as Administrative Agent

By: 
Name: CARLOS ADAM ROMAN
Title: VICE PRESIDENT

SUPPLIED TO WILLIAM IM ON 12 FEB 13 23:04:59 GMT

SENIOR LOAN AGREEMENT

EXHIBIT A**ASSIGNMENT AND ASSUMPTION**

THIS ASSIGNMENT AND ASSUMPTION (the *Assignment and Assumption*) is dated as of the Effective Date set forth below and is entered into by and between:

- (1) [the][each] Assignor identified in item 1 below ([the][each, an] *Assignor*); and
- (2) [the][each] Assignee identified in item 2 below ([the][each, an] *Assignee*).

It is understood and agreed that the rights and obligations of [the Assignors][the Assignees] hereunder are several and not joint. Capitalized terms used but not defined herein shall have the meanings given to them in the Senior Loan Agreement identified below (as amended, the *Senior Loan Agreement*), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Senior Loan Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below:

- (a) all of [the Assignor's][the respective Assignors'] rights and obligations in [its capacity as a Senior Lender][their respective capacities as Senior Lenders] under the Senior Loan Agreement and any other Finance Document to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below; and
- (b) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Senior Lender)][the respective Assignors (in their respective capacities as Senior Lenders)] against any Person, whether known or unknown, arising under or in connection with the Senior Loan Agreement and the other Finance Documents, governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (a) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] Assigned Interest).

Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: _____

2. Assignee[s]: _____

[for each Assignee, indicate [Affiliate][Approved Fund] of [*identify Senior Lender*]

3. Borrower: Northwest Parkway LLC
4. Administrative Agent: The Royal Bank of Scotland plc, as the administrative agent under the Senior Loan Agreement
5. Senior Loan Agreement: The Senior Loan Agreement dated as of December [●], 2007 among Northwest Parkway LLC, the Senior Lenders and The Royal Bank of Scotland plc as Administrative Agent.
6. Assigned Interest[s]:

Assignor[s]	Assignee[s]	Facility Assigned	Aggregate Amount of Commitment/ Loans for all Lenders	Amount of Commitment/ Loans Assigned	Percentage Assigned of Commitment/ Loans	CUSIP Number
			\$	\$	%	
			\$	\$	%	
			\$	\$	%	

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR[S]

[NAME OF ASSIGNOR]

By: _____
Title:

ASSIGNEE[S]

[NAME OF ASSIGNEE]

By: _____
Title:

Consented to and Accepted:

THE ROYAL BANK OF SCOTLAND PLC,
as Administrative Agent

By _____

Title:

[Consented to and Accepted:

NORTHWEST PARKWAY LLC¹]

By: Northwest Parkway Operations, LLC,
Its Operating Manager

By: _____

Name:

Title: Authorized Signatory

By: _____

Name:

Title: Authorized Signatory]

¹ Only required where the conditions to Section 9.4(b)(i)(A) of the Senior Loan Agreement are met.
SENIOR LOAN AGREEMENT

ANNEX 1 TO EXHIBIT A

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION**1. REPRESENTATIONS AND WARRANTIES****1.1 Assignor[s]**

[The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Senior Loan Agreement or any other Finance Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Finance Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Affiliates or any other Person obligated in respect of any Finance Document or (iv) the performance or observance by the Borrower, any of its Affiliates or any other Person of any of their respective obligations under any Finance Document.

1.2. Assignee[s]

[The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Senior Lender under the Senior Loan Agreement and the other Finance Documents, (ii) it meets all the requirements to be an assignee under Section 9.4 of the Senior Loan Agreement (subject to such consents, if any, as may be required under Section 9.4(b) of the Senior Loan Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Senior Loan Agreement and the Guaranteed Lender Subordination Agreement as a Senior Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Senior Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Senior Loan Agreement and the other Finance Documents, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 5.1 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Senior Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Senior Loan Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the][any] Assignor or any other Senior Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Senior Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Finance Documents are required to be performed by it as a Senior Lender.

2. Payments

From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions

This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

SUPPLIED TO WILLIAM IM ON 12 FEB 13 23:04:59 GMT

EXHIBIT B**FORM OF BORROWING REQUEST**

Date: December [●], 2007

The Royal Bank of Scotland plc
in its capacity as Administrative Agent (the *Administrative Agent*)
The Royal Bank of Scotland plc
101 Park Avenue - 6th Floor
New York, NY 10178

Attention: Yolette Salnave

By Facsimile to: 212-401-1478

Borrowing Request – Northwest Parkway LLC/Senior Loan Agreement

Ladies and Gentlemen:

We refer to the agreement (as from time to time amended, varied, supplemented or otherwise modified, the *Senior Loan Agreement*) dated as of December 20, 2007 and made between Northwest Parkway LLC, the Senior Lenders and The Royal Bank of Scotland plc as Administrative Agent.

This is a Borrowing Request. In this Borrowing Request, all capitalized terms used herein shall, except where the context requires otherwise and except where otherwise defined herein, have the meaning as set out in the Senior Loan Agreement.

1. BORROWING REQUEST

In accordance with the Senior Loan Agreement and pursuant to Section 2.3 thereof, we hereby request that a Borrowing of the [Senior Term Loan/Senior Liquidity Facility] be made as follows:

- (c) Requested Borrowing Date: [_____];
- (d) Requested Borrowing Amount: [_____] (the *Requested Borrowing Amount*); and
- (e) Requested Type of Borrowing: [Eurodollar Borrowing/ABR Borrowing],
- (f) [Requested Length of Interest Period: [one month/two months/three months/six months/12 months]]

it being understood that to the extent that the Borrower fails to specify whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing pursuant to paragraph (c) above, then the requested Borrowing shall be an ABR Borrowing.

2. ACCOUNT DETAILS

[*SENIOR TERM LOAN*: The Administrative Agent is hereby instructed to apply the Requested Borrowing Amount in repayment of the loans made by The Royal Bank of Scotland plc under the Senior Bridge Facility Agreement]

OR

[*SENIOR LIQUIDITY FACILITY LOAN*: The Administrative Agent is hereby instructed to send by wire transfer of immediately available funds in the Requested Borrowing Amount to the Revenue Account.]

Yours faithfully,

NORTHWEST PARKWAY LLC

By: Northwest Parkway Operations, LLC,
Its Operating Manager

By: _____
Name:
Title: Authorized Signatory

By: _____
Name:
Title: Authorized Signatory

EXHIBIT C**FORM OF INTEREST RATE ELECTION**

Date: [●]

The Royal Bank of Scotland plc
in its capacity as Administrative Agent (the *Administrative Agent*)
The Royal Bank of Scotland plc
101 Park Avenue - 6th Floor
New York, NY 10178

Attention: Yolette Salnave

By Facsimile to: 212-401-1478

Interest Election Request – Northwest Parkway LLC/Senior Loan Agreement

Ladies and Gentlemen:

We refer to the agreement (as from time to time amended, varied, supplemented or otherwise modified, the *Senior Loan Agreement*) dated as of December 20, 2007 and made between Northwest Parkway LLC, the Senior Lenders and The Royal Bank of Scotland plc as Administrative Agent.

This is an Interest Election Request. In this Interest Election Request, all capitalized terms used herein shall, except where the context requires otherwise and except where otherwise defined herein, have the meaning as set out in the Senior Loan Agreement.

In accordance with the Senior Loan Agreement and pursuant to Section 2.5 thereof, we hereby request that the interest rate applicable to the Borrowing made under the [Senior Term Loan/Senior Liquidity Facility] identified below be converted as follows:

- (g) The Borrowing to which this Interest Election Request applies: [Senior Term Loan/Senior Liquidity Facility]
 - (h) Effective Date of Election: [●] (the *Effective Date of Election*)
 - (i) Amount of the Borrowing to which the Interest Election Request applies: US\$[●]
 - (j) Requested Type of Borrowing: [Eurodollar/ABR]
 - (k) Requested length of Interest Period: [one month/two months/three months/six months/twelve months],
- (the *Conversion*).

Yours faithfully,

NORTHWEST PARKWAY LLC

By: Northwest Parkway Operations, LLC,
Its Operating Manager

By: _____
Name:
Title: Authorized Signatory

By: _____
Name:
Title: Authorized Signatory

SUPPLIED TO WILLIAM IM ON 12 FEB 13 23:04:59 GMT

EXHIBIT D**SENIOR LIQUIDITY FACILITY LOAN PARAMETERS**

Period	Maximum Annual Senior Liquidity Facility Loan Amount	Minimum Aggregate Outstanding Senior Liquidity Facility Commitments
Closing Date to and including December 31, 2008	\$26,000,000	\$150,000,000
2009	\$24,600,000	\$150,000,000
2010	\$22,800,000	\$150,000,000
2011	\$22,600,000	\$128,300,000
2012	\$20,600,000	\$108,500,000
2013	\$20,800,000	\$88,500,000
2014	\$21,100,000	\$68,600,000
2015	\$22,900,000	\$46,100,000
2016	\$23,800,000	\$22,600,000
January 1, 2017 to and including the Final Maturity Date	\$23,800,000	N/A

EXHIBIT E**FORM OF AUTHORITY CONSENT**

THIS CONSENT (this *Consent*) is dated as of December [●], 2007 and made between

- (1) **NORTHWEST PARKWAY PUBLIC HIGHWAY AUTHORITY**, a body corporate and political subdivision of the State of Colorado created pursuant to the Establishing Contract for the Northwest Parkway Public Highway Authority by and between the City and County of Broomfield, a Colorado city and county, the County of Weld, a body politic and corporate and political subdivision of the State of Colorado, and the City of Lafayette, a Colorado municipal corporation, dated as of June 2, 1999, as amended and the Public Highway Authority Law, title 43, article 4, part 5, Colorado Revised Statutes, (the *Authority*);
- (2) **NORTHWEST PARKWAY LLC**, a Delaware limited liability company (the *Borrower*); and
- (3) **THE ROYAL BANK OF SCOTLAND PLC**, as Collateral Agent (together with its successors in such capacity, the *Collateral Agent*).

RECITALS:

- (A) The Authority and the Borrower have entered into the Northwest Parkway Concession and Lease Agreement dated as of August 29, 2007 and the First Amendment to Northwest Parkway Concession and Lease Agreement dated as of November 21, 2007 (such Northwest Parkway Concession and Lease Agreement, as amended and supplemented pursuant to the terms of such First Amendment to Northwest Parkway Concession and Lease Agreement and as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the *Concession Agreement*), pursuant to which the Borrower has leased the Northwest Parkway (the *Parkway*) from the Authority and has obtained the rights and privileges to operate, maintain and toll the Parkway in connection therewith, all as provided in the Concession Agreement;
- (B) The Authority, Wells Fargo, National Association as Escrow Agent, and the Borrower have entered into the Escrow Agreement, dated as of November 21, 2007 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the *Escrow Agreement*);
- (C) The Borrower, Brisa Auto-Estradas de Portugal S.A. as guarantor, the Administrative Agent (as defined below) and the respective lenders party thereto have entered into a senior bridge facility agreement dated as of November 21, 2007 (the *Senior Bridge Facility Agreement*) under which senior term loans were made to the Borrower in an aggregate principal amount of \$315,000,000, the proceeds of which were used to finance part of the lease and concession payment made to the Authority by the Borrower under Sections 2.1(a) and 20.16(a) of the Concession Agreement;

- (D) The Borrower has entered into a senior loan agreement dated as of December 20, 2007 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the **Senior Loan Agreement**) among the Borrower, the senior lenders party thereto (the **Senior Lenders**) and The Royal Bank of Scotland plc, as Administrative Agent (together with its successors in such capacity, the **Administrative Agent**), pursuant to which the Senior Lenders have agreed to advance (i) a senior term loan on the "Closing Date" as defined in the Senior Loan Agreement (the **Refinancing Closing Date**) to repay, together with the Guaranteed Loan (as defined below), the principal amount outstanding under the Senior Bridge Facility Agreement (the **Senior Term Loan**) and (ii) senior loans to finance interest, fees and other costs associated with the obligations of the Borrower under the Concession Agreement (the **Senior Liquidity Facility Loans** and, together with the Senior Term Loan, the **Senior Loans**);
- (E) The Borrower has entered into hedging agreements dated December 20, 2007 with The Royal Bank of Scotland plc in its capacity as Hedging Bank (together with its successors and assigns in such capacity, the **Hedging Banks**), pursuant to which the Borrower has established a fixed interest rate for a portion of the Senior Loans (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the **Hedging Agreements**);
- (F) The Borrower has entered into an guaranteed loan agreement dated as of December 20, 2007 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the **Guaranteed Loan Agreement** and, together with the Senior Loan Agreement, the **Loan Agreements**) among the Borrower, the lenders party thereto (the **Guaranteed Lenders** and, together with the Senior Lenders, the **Lenders**), Brisa Auto-Estradas de Portugal S.A. as guarantor, and the Administrative Agent, pursuant to which the Guaranteed Lenders have agreed to advance a term loan on the Refinancing Closing Date to repay, together with the Senior Term Loan, the principal amount outstanding under the Senior Bridge Facility Agreement (the **Guaranteed Loan** and, together with the Senior Loans, the **Loans**);
- (G) The Borrower, the Administrative Agent and the Collateral Agent have entered into a collateral agency and account agreement dated as of December 20, 2007 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the **Collateral Agency Agreement**), pursuant to which the Collateral Agent has agreed to act as collateral agent for itself, the Administrative Agent, the Senior Lenders, the Hedging Banks and the Guaranteed Lenders (collectively, the **Secured Parties**);
- (H) The Borrower has granted or will concurrently with the execution of this Consent grant in favor of the Collateral Agent, for the benefit of the Secured Parties, security interests and mortgage liens encumbering all of the Borrower's properties and assets, including the Concessionaire Interest, pursuant to a security agreement dated as of December 20, 2007 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the **Security Agreement**) and a leasehold mortgage dated as of the Refinancing Closing Date (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, and together with the Security Agreement, the **Leasehold Mortgage**), as collateral security for the Borrower's payment and other obligations (collectively, the **Obligations**) under the Loan Agreements, the Hedging Agreements, the Leasehold Mortgage, any promissory note

issued by the Borrower in favor of a Lender evidencing Loans made by such Lender, and each other document or instrument effecting the transactions contemplated by the aforementioned agreements (collectively, the ***Finance Documents***); and

- (I) It is a condition precedent to the making of the initial disbursements under the Loan Agreements that the Authority shall have executed and delivered this Consent, which is the consent referred to in Sections 10.2 and 18.1(j) of the Concession Agreement, and the Authority is willing to give this Consent in reliance in part upon the representations of the Borrower set out herein and the representations of the Collateral Agent set out in Exhibit A hereto.

NOW THEREFORE, in consideration of good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. DEFINITIONS

All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Concession Agreement.

2. CONSENT TO ASSIGNMENT

2.1 Concession Agreement

The Authority hereby consents to the pledge and assignment of, and the granting of the lien and security interest in, the Concessionaire Interest by the Borrower to the Collateral Agent, for the benefit of the Secured Parties, pursuant to the Leasehold Mortgage and subject to the terms and conditions of the Concession Agreement.

2.2 Escrow Agreement

The Authority hereby consents to the pledge and assignment of all of the Borrower's right, title and interest in, to and under the Escrow Agreement by the Borrower to the Collateral Agent for the benefit of the Secured Parties pursuant to the Security Agreement.

3. ADDITIONAL CONSENTS AND AGREEMENTS

3.1 Leasehold Mortgage Requirements

The Authority hereby acknowledges and confirms that (i) the Leasehold Mortgage is a "Leasehold Mortgage" as defined and used in the Concession Agreement; (ii) the Collateral Agent constitutes a "Leasehold Mortgagee" as defined and used in the Concession Agreement; and (iii) the Loans and other Obligations of the Borrower arising from time to time under the Loan Agreements or any other Finance Document constitute "Leasehold Mortgage Debt" as defined and used in the Concession Agreement.

3.2 Leasehold Mortgagee Notice Requirements; Copies of Notices by the Authority

- (a) The Authority hereby acknowledges and confirms that the Collateral Agent has delivered to the Authority a copy of the Leasehold Mortgage and a notice containing the name and post office address of the Collateral Agent, and that such actions have duly provided the Authority with notice in accordance with the Leasehold Mortgagee Notice Requirements.
- (b) Copies of notices to the Collateral Agent as provided in Section 18.2 of the Concession Agreement shall be given to the Collateral Agent at its address specified in Section 6.1 below (or any subsequent change of address given to the Authority by the Collateral Agent pursuant to Section 6.1).
- (c) The Authority shall deliver, concurrently with the delivery thereof to the Borrower, a duplicate or copy of each material notice, request or demand made or received pursuant to the Escrow Agreement to the Collateral Agent at its address specified in Section 6.1 below (or any subsequent change of address given to the Authority by the Collateral Agent pursuant to Section 6.1).

3.3 Leasehold Mortgage Provisions

The Authority acknowledges and confirms that the Leasehold Mortgage contains provisions satisfying the requirements of Sections 18.1(f), 18.8(e) and 18.8(f) of the Concession Agreement.

3.4 Rights of Collateral Agent

- (a) **Rights under the Concession Agreement.** The Authority hereby acknowledges, undertakes and confirms that the Collateral Agent shall have all the rights, privileges, benefits and protections expressly granted to a Leasehold Mortgagee pursuant to the Concession Agreement until such time as the Collateral Agent gives written notice to the Authority that all Obligations of the Borrower under the Loan Agreements and other Finance Documents have been paid in full and the Leasehold Mortgage has been discharged, including, without limitation, the right to enforce directly against the Authority all obligations of the Authority under the Concession Agreement and otherwise to exercise all remedies thereunder available to a Leasehold Mortgagee.
- (b) **Rights under the Escrow Agreement.** The Authority hereby acknowledges the right (but not the obligation) of the Collateral Agent, on behalf of the Secured Parties, or any assignee or designee of the Collateral Agent to exercise any and all rights of the Borrower under the Agreement, including, without limitation, the right to exercise all remedies under the Escrow Agreement and to make all demands, give all notices, and take all actions permitted to be made by the Borrower under the Escrow Agreement.

3.5 Restoration Procedures

In connection with any Restoration of the Parkway, the Authority acknowledges and agrees that the Loan Agreements may impose upon the Borrower requirements and procedures that are in addition to the requirements and procedures set forth in the Concession Agreement so long as such additional requirements and procedures do not cause the Borrower to contravene the procedures set forth in the Concession Agreement.

3.6 Assumption by the Authority of the Obligations upon termination for Adverse Action or Authority Default

Without prejudice to Sections 14.2 and 16.2 of the Concession Agreement, the Authority hereby acknowledges, undertakes and confirms that, in the event that:

- (a) the Borrower elects to terminate the Concession Agreement:
 - (i) due to the occurrence of an Adverse Action in accordance with Section 14.2 of the Concession Agreement; or
 - (ii) for Authority Default in accordance with Section 16.2 of the Concession Agreement; and
- (b) the amount of termination compensation that the Authority is able to pay to the Borrower on the Reversion Date in accordance with Section 14.2(d) of the Concession Agreement or, as the case may be, Section 16.2 (last paragraph) of the Concession Agreement is insufficient to pay or repay fully the outstanding amount of the Loans and the other Obligations,

the Authority shall:

- (A) undertake to pay all outstanding amounts due in respect of the Loans and all other Obligations (including such amounts as may fall due after the Reversion Date);
- (B) grant a first-ranking security interest in the Parkway and all revenues (including toll revenues) that the Authority may receive in respect of its operation of the Parkway; and
- (C) undertake to set tolls over the Parkway at a level sufficient to generate toll revenues for the Authority that will allow the Authority to repay the amounts referred to in paragraph (A) above by a cash sweep of excess cash over proper operation and maintenance expenses, within a reasonable period of time determined by the Secured Parties,

in each case, in favor of the Secured Parties, and shall, on or before the Reversion Date, enter into appropriate instruments evidencing the obligations set out in paragraphs (A) through (C) above, in form and substance reasonably satisfactory to the Collateral Agent (acting at the direction of the Secured Parties).

3.7 Depositary

The Authority acknowledges and confirms that for the purposes of Section 13.3(a) of the Concession Agreement, the Depositary shall be The Bank of New York.

4. PAYMENTS BY THE AUTHORITY UNDER THE CONCESSION AGREEMENT

Unless otherwise directed by the Collateral Agent in writing, the Authority agrees to pay all amounts payable by the Authority to the Borrower under the Concession Agreement, including but not limited to any Concession Compensation, Termination Damages, AA-Compensation, the Parkway Concession Value or any purchase price payable pursuant to Section 18.8 of the Concession Agreement, on the date when due, directly to the Revenue Account maintained pursuant to the Collateral Agency Agreement (ABA # [____], Account # [____], Reference to [____] Revenue Account). The Authority will make all such payments without deduction for any counterclaim, defense, or setoff except as expressly permitted by the Concession Agreement.

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the Authority

The Authority hereby represents and warrants to the Collateral Agent as of the date hereof and as of the Closing Date that:

- (a) The Authority has no notice of any previous assignment by the Borrower of all or any part of the Concessionaire Interest, or any interest under the Concession Agreement or under the Escrow Agreement.
- (b) The Authority has no knowledge of any facts entitling the Authority to any claim, counterclaim, offset or defense against the Borrower in respect of the Concession Agreement or the Escrow Agreement, and there exists no dispute between the Borrower and the Authority in respect of the Concession Agreement or the Escrow Agreement.

5.2 Representations and Warranties of the Borrower

The Borrower hereby represents and warrants to the Authority and directs the Authority as follows:

- (a) The indebtedness secured by the Leasehold Mortgage is *bona fide* debt that has been granted to the Borrower by a Person other than an Affiliate of the Borrower.
- (b) The Leasehold Mortgage does not cover any property of, or secure any debt issued by, any Person other than the Borrower (provided that the foregoing does not restrict any separate security interest granted by the members of the Borrower in the membership interests of the Borrower or in any subordinated indebtedness extended by such member). For the avoidance of doubt, the property of the Borrower covered by the Leasehold Mortgage includes cash reserves or deposits held by the Collateral Agent for the benefit of the Borrower and the beneficiaries of the Leasehold Mortgage.
- (c) To the best knowledge of the Borrower, no event has occurred that constitutes, or with notice or the passage of time might constitute, an Adverse Action or Authority Default.
- (d) To the best knowledge of the Borrower, no event has occurred that constitutes, or with notice or the passage of time might constitute, a Concessionaire Default.

- (e) The Concessionaire, for itself and its successors and permitted assigns, hereby irrevocably directs the Authority to make payments owed by the Authority to the Borrower as provided in Section 4.
- (f) Execution and delivery of the Leasehold Mortgage by the Borrower will not cause the Authority to become party to a "prohibited tax shelter transaction" within the meaning of Section 4965 of the Internal Revenue Code of 1986.

6. MISCELLANEOUS

6.1 Notices

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 Authority:

Executive Director
Northwest Parkway Public Highway Authority
3701 Northwest Parkway
Broomfield, Colorado 80023
Telephone: (303) 533-1202
Facsimile: (303) 404-3049

with copies to:

Icenogle, Norton, Smith & Blieszner, P.C.
821 17th Street, Suite 600
Denver, Colorado 80202-3040
Telephone: (303) 292-6400
Facsimile: (303) 292-6401
Attn: T. Edward Icenogle, Esq.

and

Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
Telephone: (312) 701-8597
Facsimile: (312) 706-8397
Attn: John R. Schmidt, Esq.

- (b) in the case of the Borrower:

Northwest Parkway LLC
3701 Northwest Parkway
Broomfield, CO 80023
Attention: Pedro Costa

Telephone: (303) 533-1200
 Facsimile: (303) 404-3049
 email: pcosta@nwpsy.com

(c) in the case of the Collateral Agent:

The Royal Bank of Scotland plc
 in its capacity as Collateral Agent
 The Royal Bank of Scotland plc
 101 Park Avenue - 6th Floor
 New York, NY 10178

Attention: Yolette Salnave
 By Facsimile to: 212-401-1478

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.

6.2 Governing Law

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

6.3 Headings

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 Severability

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

6.5 Irrevocability of Consent

This Consent shall be irrevocable in all respects, except in the event that the representations and warranties set forth in Section 5.2 above are determined to be false in a material respect; **provided**, however, that this Consent shall not be effective with respect to any amendment or other modification to the Leasehold Mortgage unless the Authority gives its written approval to such amendment or modification.

6.6 Successors and Assigns

This Consent shall be binding upon the Authority and its successors and assigns and shall inure to the benefit of the Collateral Agent and the Borrower, their successors and assigns (provided that, in the case of the Collateral Agent, any such successor or assign is an Institutional Lender as defined in the Concession Agreement and that, in the case of the Borrower, such assignment is permitted in accordance with the terms of the Concession Agreement or the Escrow Agreement, as the case may be) and, in connection with execution and delivery of a new concession and lease agreement of the Parkway pursuant to, and subject to the conditions of, Section 18.5 of the Concession Agreement, its designee or nominee (provided that such designee or nominee either is controlled by the Collateral Agent or is Approved by the Authority as Transferee under Section 17.1 of the Concession Agreement).

SUPPLIED TO WILLIAM IM ON 12 FEB 13 23:04:59 GMT

IN WITNESS WHEREOF, the Authority has caused this Consent to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

The Authority

NORTHWEST PARKWAY PUBLIC HIGHWAY AUTHORITY

By: _____

Name:

Title:

The Borrower

NORTHWEST PARKWAY LLC

By: Northwest Parkway Operations LLC,
Its Operating Manager

By: _____

Name:

Title: Authorized Signatory

By: _____

Name:

Title: Authorized Signatory

The Collateral Agent

THE ROYAL BANK OF SCOTLAND PLC,
as Collateral Agent

By: _____

Name:

Title:

**EXHIBIT A
TO THE
CONSENT OF THE AUTHORITY**

CERTIFICATE OF COLLATERAL AGENT

In connection with the Consent (the **Consent**) between the Northwest Parkway Public Highway Authority (the **Authority**), Northwest Parkway, LLC, a Delaware limited liability company (the **Borrower**) and The Royal Bank of Scotland plc, as Collateral Agent (together with its successors in such capacity, the **Collateral Agent**) being entered into as of the date hereof pursuant to the terms of the Northwest Parkway Concession and Lease Agreement dated August 29, 2007 and the First Amendment to Northwest Parkway Concession and Lease Agreement dated as of November 21, 2007 (such Northwest Parkway Concession and Lease Agreement, as amended and supplemented pursuant to the terms of such First Amendment to Northwest Parkway Concession and Lease Agreement and as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the **Concession Agreement**), the Collateral Agent hereby represents and agrees as follows (terms used herein have the same meaning as set forth in the Consent and the Concession Agreement):

1. Attached hereto are true and complete copies of the Leasehold Mortgage delivered by the Borrower to the Authority.
2. For the purposes of the Leasehold Mortgagee Notice Requirements, the address of the Collateral Agent is as follows:

The Royal Bank of Scotland plc
in its capacity as Collateral Agent
The Royal Bank of Scotland plc
101 Park Avenue - 6th Floor
New York, NY 10178

Attention: Yolette Salnave
By Facsimile to: 212-401-1478

3. The Collateral Agent is an Institutional Lender as set forth in subparagraph (b)(ii) of the definition of the term "Institutional Lender" in the Concession Agreement.

Date: December , 2007

The Royal Bank of Scotland plc,

By: _____
Name:
Title:

EXHIBIT F**FORM OF CONSENT AND AGREEMENT
(MATERIAL PROJECT CONTRACTS)**

THIS CONSENT AND AGREEMENT (the *Consent*) is dated as of [●], 200[●] and made by:

(1) [●] (the *Consenting Party*);

and acknowledged and agreed to by

(2) **NORTHWEST PARKWAY LLC**, a Delaware limited liability company (the *Borrower*);

(3) **THE ROYAL BANK OF SCOTLAND PLC**, as Administrative Agent (the *Administrative Agent*); and

(4) **THE ROYAL BANK OF SCOTLAND PLC**, as Collateral Agent (together with its successors in such capacity, the *Collateral Agent*) on behalf of the Secured Parties (as defined below).

RECITALS:

(A) The Consenting Party and the Borrower have entered into the [●], dated as of [●], 200[●] (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the *Assigned Agreement*);

(B) The Northwest Parkway Public Highway Authority and the Borrower have entered into the Northwest Parkway Concession and Lease Agreement dated as of August 29, 2007 and the First Amendment to Northwest Parkway Concession and Lease Agreement dated as of November 21, 2007 (such Northwest Parkway Concession and Lease Agreement, as amended and supplemented pursuant to the terms of such First Amendment to Northwest Parkway Concession and Lease Agreement and as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the *Concession Agreement*), pursuant to which the Borrower has leased the Northwest Parkway (the *Parkway*) from the Authority and has obtained the rights and privileges to operate, maintain and toll the Parkway in connection therewith, all as provided in the Concession Agreement;

(C) The Borrower has entered into a senior loan agreement dated as of December 20, 2007 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the *Senior Loan Agreement*) among the Borrower, the senior lenders party thereto (the *Senior Lenders*), the Hedging Banks (as defined below) and The Royal Bank of Scotland plc, as Administrative Agent, pursuant to which the Senior Lenders have agreed to advance to the Borrower (i) a senior term loan (the *Senior Term Loan*) and (ii) further senior loans to finance interest, fees and other financing costs

- associated with the obligations of the Borrower under the Concession Agreement (the **Senior Liquidity Facility Loans** and, together with the Senior Term Loan, the **Senior Loans**);
- (E) The Borrower has entered into hedging agreements dated December 20, 2007 with certain of the Senior Lenders or their affiliates (such Senior Lenders or their affiliates in such capacity, the **Hedging Banks**), pursuant to which the Borrower has established a fixed interest rate for a portion of the Senior Loans (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the **Hedging Agreements**);
 - (F) The Borrower has entered into a guaranteed loan agreement dated as of December 20, 2007 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the **Guaranteed Loan Agreement** and, together with the Senior Loan Agreement, the **Loan Agreements**) among the Borrower, the lenders party thereto (the **Guaranteed Lenders** and, together with the Senior Lenders, the **Lenders**), Brisa Auto-Estradas de Portugal S.A. as guarantor, and the Administrative Agent, pursuant to which the Guaranteed Lenders have agreed to advance a term loan to the Borrower (the **Guaranteed Loan** and, together with the Senior Loans, the **Loans**);
 - (G) The Borrower, the Administrative Agent and the Collateral Agent have entered into a collateral agency and account agreement dated as of December 20, 2007 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the **Collateral Agency Agreement**), pursuant to which the Collateral Agent has agreed to act as collateral agent for itself, the Administrative Agent, the Senior Lenders, the Hedging Banks and the Equity Lenders (collectively, the **Secured Parties**);
 - (H) The Borrower and the Collateral Agent have entered into a security agreement dated as of December 20, 2007 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the **Security Agreement**), pursuant to which the Borrower has agreed to pledge, assign and transfer, as collateral security for its obligations under the Loan Agreements and the Hedging Agreements, all of its right, title and interest in, to and under the Assigned Agreement, including all of its right to receive payment and all payments due and to become due to the Borrower under or with respect to the Assigned Agreement, to the Collateral Agent, for the benefit of the Secured Parties; and
 - (I) It is a requirement under the Financing Documents that the parties hereto execute and deliver this Consent.

NOW THEREFORE, in consideration of good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. DEFINITIONS

All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Senior Loan Agreement.

2. CONSENT TO ASSIGNMENT

The Consenting Party hereby consents to the pledge and assignment of all of the Borrower's right, title and interest in, to and under the Assigned Agreement by the Borrower to the Collateral Agent for the benefit of the Secured Parties pursuant to the Security Agreement.

3. AGREEMENTS

3.1 Exercise of Rights

The Consenting Party hereby acknowledges the right (but not the obligation) of the Collateral Agent, on behalf of the Secured Parties, or any assignee or designee of the Collateral Agent to exercise any and all rights of the Borrower under the Agreement, including, without limitation, the right to enforce directly against the Consenting Party all obligations of the Consenting Party under the Assigned Agreement and otherwise to exercise all remedies thereunder and to make all demands, give all notices, and take all actions permitted to be made by the Borrower under the Assigned Agreement.

3.2 Right to Cure

The Consenting Party shall not cancel or terminate the Assigned Agreement, or suspend its performance or any of its obligations thereunder, on account of any failure, default or breach of the Borrower, or any other event or condition, without first giving written notice of such default to the Collateral Agent or its assignee or designee and affording such party thirty (30) days beyond the period of time afforded the Borrower under the Assigned Agreement to perform any obligation required of the Borrower or necessary and proper to cure such default; *provided* that if the nature of the default is such that the same cannot be cured within such time period or if in order to effect such cure the Collateral Agent or its assignee or designee must obtain possession of the Borrower's properties, the Consenting Party shall allow such longer time period as is required so long as such party is diligently pursuing a cure to such default (including, in the event that possession of the Borrower's properties is required to enable the Collateral Agent or its assignee or designee to cure such default, so long as such party is seeking to obtain such possession by applicable legal process or otherwise).

3.3 Limitation on Amendments and Termination

The Consenting Party shall not, without the prior written consent of the Collateral Agent, (a) enter into any material amendment, supplement, change order, variance or other modification of the Assigned Agreement, or (b) except as expressly permitted by the Assigned Agreement, terminate the Assigned Agreement. The Collateral Agent hereby agrees for the benefit of the Borrower to grant such consent for any amendment, supplement, change order, variance, modification or termination of the Assigned Agreement that is permitted or consented to by the Administrative Agent or the requisite number of the Lenders in accordance with the terms of the Loan Agreement.

3.4 Substitute Owner

In the event that the Collateral Agent or its assignee or designee succeeds to all of the Borrower's interest under the Assigned Agreement, whether by foreclosure or otherwise, and assumes all of the obligations of the Borrower thereunder and cures any outstanding defaults, such party (the *Substitute Owner*) shall be substituted for the Borrower under the Assigned Agreement and the

Consenting Party shall recognize the Substitute Owner as the successor to the Borrower under the Assigned Agreement and will continue to perform its obligations under such Assigned Agreement; **provided** that the Consenting Party has determined in its reasonable judgment that the Substitute Owner has the financial capability to perform the Borrower's obligations under the Assigned Agreement.

3.5 Replacement Contract

In the event of any actual or deemed rejection of the Assigned Agreement in a bankruptcy or insolvency proceeding involving the Borrower, the Consenting Party shall, upon the request of the Collateral Agent, enter into a new agreement with the Collateral Agent or its assignee or designee, which new agreement shall be for the balance of the term and the obligations and services remaining to be performed under the Assigned Agreement before giving effect to such rejection and shall contain the same terms, conditions and provisions as the Assigned Agreement; **provided** that the Consenting Party has determined in its reasonable judgment that the Collateral Agent or such assignee or designee, as applicable, has the financial capability to perform the Borrower's obligations under the new agreement.

3.6 No Obligations

Nothing herein shall require the Collateral Agent or its assignee or designee to perform any of the Borrower's obligations or cure any default under the Assigned Agreement except during any period in which the Collateral Agent or its assignee or designee is a Substitute Owner pursuant to Section 3.4 or has entered into a replacement agreement pursuant to Section 3.5, in which case the obligations of such party shall be no more than that of the Borrower under the Assigned Agreement.

3.7 Right to Assignment

The Collateral Agent or its assignee or designee shall have the right to assign any interest it may have as a Substitute Owner pursuant to Section 3.4 or as a party to a replacement agreement pursuant to Section 3.5 to any person or entity who assumes in writing the obligations under such agreement, and the Collateral Agent or its assignee or designee shall be relieved of all obligations arising under such agreement upon such assignment and assumption; **provided** that the Consenting Party has determined in its reasonable judgment that such person or entity has the financial capability to perform the Borrower's obligations that have been assigned to them. The Consenting Party hereby agrees to be bound by any such assignment and assumption.

4. COPIES OF MATERIAL NOTICES

The Consenting Party shall deliver to the Collateral Agent concurrently with the delivery thereof to the Borrower, a duplicate or copy of each material notice, request or demand made or received pursuant to the Assigned Agreement.

5. PAYMENTS UNDER THE ASSIGNED AGREEMENTS

If instructed to do so by the Collateral Agent in writing, the Consenting Party will pay all amounts thereafter payable by it under the Assigned Agreement directly to the Collateral Agent, on behalf of the Secured Parties, pursuant to the payment provisions in the Assigned Agreement to such person or account as shall be specified from time to time by the Collateral Agent to the Consenting Party in writing. The Consenting Party will make all such payments without any

offset, abatement, withholding or reduction except as permitted by the Assigned Agreement.

By its acceptance and agreement to this Consent, the Borrower, for itself and its successors and permitted assigns, consents to the making by the Consenting Party of payments as provided in the previous paragraph.

6. REPRESENTATIONS AND WARRANTIES OF THE CONSENTING PARTY

The Consenting Party hereby represents and warrants as follows:

6.1 Organization

The Consenting Party is a [] duly created and validly existing under the laws of the State of [], and has all requisite power and authority to enter into and to perform its obligations under the Assigned Agreement and this Consent, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

6.2 Authorization

The execution, delivery and performance by the Consenting Party of the Assigned Agreement and the Consent have been duly authorized by all necessary action on its part and do not and will not require any approval or consent of any person or entity, except approvals or consents which have previously been obtained.

6.3 Execution and Delivery; Binding Agreements

Each of the Assigned Agreement and this Consent is in full force and effect, has been duly executed and delivered on behalf of the Consenting Party by its appropriate officers, and constitutes the legal, valid and binding obligation of the Consenting Party, enforceable against the Consenting Party in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

6.4 Litigation

There is no litigation, action, suit, proceeding or investigation pending or, to the best of the Consenting Party's knowledge after due inquiry, threatened against the Consenting Party before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (a) could adversely affect the Approvals (as such term is defined in Section 5.6), or (b) could have a material adverse effect on the ability of the Consenting Party to perform its obligations under the Assigned Agreement or this Consent.

6.5 Compliance with Other Instruments, Etc.

The execution and delivery by the Consenting Party of the Assigned Agreement and this Consent and the performance by the Consenting Party of the Assigned Agreement and this Consent and the consummation of the transactions contemplated hereby and thereby will not result in any violation of, breach of or default under any term of its formation or governance documents, or of any contract or agreement to which it is a party or by which it or its property is bound, or of any

license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation applicable to it, except for any such violations which, individually or in the aggregate, would not adversely affect the performance by the Consenting Party of its obligations under the Assigned Agreement and this Consent.

6.6 Government Consent

No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any person, board or body, public or private (collectively, the **Approvals**), is required to be obtained by the Consenting Party in connection with the performance of the Assigned Agreement or this Consent or the consummation of the transactions contemplated hereunder and thereunder, except that which have been previously obtained.

6.7 No Default or Amendment

The Consenting Party is not in default of any of its obligations under the Assigned Agreement. The Consenting Party has complied with all conditions precedent to its obligations to perform under the Assigned Agreement. To the best of the Consenting Party's knowledge, no event or condition exists which would, either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Consenting Party or the Borrower to terminate or suspend its obligations under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner.

6.8 No Previous Assignments

The Consenting Party has no notice of, and has not consented to, any previous assignment by the Borrower of all or any part of its rights under the Assigned Agreement.

7. MISCELLANEOUS.

7.1 Notices

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the party or parties to whom such notice is addressed, shall refer on their face to the Assigned Agreement (although failure to so refer shall not render any such notice of communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to the Consenting Party, to The Royal Bank of Scotland plc, [●], Attention: [●], Telephone: [●], Facsimile: [●], (b) if to the Collateral Agent, to The Royal Bank of Scotland plc, [●], Attention: [●], Telephone: [●], Facsimile: [●], and (c) to such other address or addressee as any such party may designate by notice given pursuant hereto.

7.2 Governing Law

This Consent shall be governed by and construed in accordance with the laws of the State of New York.

7.3 WAIVER OF JURY TRIAL

THE CONSENTING PARTY AND THE COLLATERAL AGENT, ON ITS OWN BEHALF AND ON THE BEHALF OF ANY ASSIGNEE, SUCCESSOR OR DESIGNEE

AND THEIR RESPECTIVE PERMITTED SUCCESSORS AND ASSIGNS HEREUNDER, AND EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS CONSENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS CONSENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

7.4 Headings

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

7.5 Severability

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

7.6 Amendment, Waiver

Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Consenting Party, the Borrower and the Collateral Agent, on behalf of the Secured Parties.

7.7 Successors and Assigns

This Consent shall be binding upon the Consenting Party and its permitted successors and assigns and shall inure to the benefit of the Borrower, the Collateral Agent, on behalf of the Secured Parties, its permitted assignees, designees and their respective permitted successors and assigns, and any holder of any debt that amends, restates or refinances the debt of the Borrower relating to the Financing Documents.

7.8 Further Assurances

The Consenting Party hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

7.9 Counterparts

This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

[_____] ,
as Consenting Party

By: _____
Name: _____
Title: _____

Accepted and Agreed to:

NORTHWEST PARKWAY LLC

By: Northwest Parkway Operations, LLC,
Its Operating Manager

By: _____
Name: _____
Title: Authorized Signatory

By: _____
Name: _____
Title: Authorized Signatory

THE ROYAL BANK OF SCOTLAND PLC,
as Administrative Agent

By: _____
Name: _____
Title: _____

THE ROYAL BANK OF SCOTLAND PLC,
as Collateral Agent

By: _____
Name: _____
Title: _____

EXHIBIT G**INSURANCE REQUIREMENTS****1. OPERATING INSURANCES**

- 1.1. The Borrower shall obtain and maintain, and shall cause other applicable parties (including any Operator (as defined in the Concession Agreement) and any material subcontractors) to maintain, from the Closing Date (or other relevant commencement date) for the benefit of the Borrower, the Secured Parties, the Authority and other specified contractual parties under the Concession Agreement (where applicable), the types of insurance set forth below, in form reasonably acceptable to the Administrative Agent (in consultation with the Insurance Consultant), with insurance carriers authorized to do business in the State of Colorado and rated "A (size 7)" or better by A.M. Best's Insurance Guide and Key Ratings, or other insurance companies of recognized responsibility satisfactory to the Administrative Agent (in consultation with the Insurance Consultant):
- (a) Workers' Compensation Insurance, and Employer's Liability insurance, with a limit of not less than U.S. \$500,000 for each accident or illness or disease, disability benefits insurance and such other forms of insurance which the Borrower or any Operator is required by law, providing statutory benefits, other states, covering loss resulting from injury, sickness, disability or death of the employees of Borrower. Deductibles shall be acceptable to the Administrative Agent (in consultation with the Insurance Consultant);
 - (b) Commercial General Liability Insurance on an "occurrence" policy form or comparable claims-first-made form, including coverage for property damage and bodily injury for premises/operations, explosion, collapse and underground hazards, products/completed operations, broad form property damage, blanket contractual liability (with no limitation endorsement to the extent commercially available), terrorism (to the extent commercially available), separation of insureds, independent contractor's and personal injury, for the Borrower and any Operator with primary coverage limits of no less than U.S.\$1,000,000 for injuries or death to one or more persons or damage to property resulting from any one occurrence and a U.S.\$2,000,000 annual aggregate limit. Deductibles to be acceptable to the Administrative Agent (in consultation with the Insurance Consultant);
 - (c) Automobile Liability Insurance (Primary and Umbrella), including coverage for owned, non-owned and hired automobiles for both bodily injury and property damage and containing appropriate no fault insurance provisions or other endorsements in accordance with state legal requirements, with limits of no less than U.S.\$5,000,000 per accident with respect to bodily injury, property damage or death. Deductibles to be acceptable to the Administrative Agent (in consultation with the Insurance Consultant);
 - (d) Umbrella / excess liability insurance (in excess of clauses (b) through (c)) of not less than U.S.\$40,000,000 per occurrence and in the aggregate. Such coverages shall be on a per occurrence policy form or comparable claims first made form and shall not contain endorsements which restrict coverages as set forth in clauses (b), (c) and which are provided in the underlying policies;

- (e) All Risk Property Insurance in the amount not less than full replacement cost or a blanket loss limit equal to the maximum foreseeable loss (subject to the approval of the Borrower, the required Senior Lenders and the Authority prior to the Closing Date and biannually thereafter that such limit is sufficient to protect the respective contractual parties' insurable interests), including a full replacement cost endorsement (no co-insurance) with no deduction for depreciation, providing, without limitation: (i) coverages against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, terrorism (certified and non-certified limits in amounts acceptable to the Administrative Agent (in consultation with the Insurance Consultant)), sabotage, malicious mischief, aircraft, vehicles, smoke, other risks from time to time included under "all risk" or "extended coverage" policies, earthquake, flood (provided, however, that earthquake coverages may be subject to an annual aggregate limit of not less than 25% of the full replacement cost of the largest location and flood coverages may be subject to an annual aggregate limit of not less than 25% of the full replacement cost of the largest location, collapse, sinkhole, subsidence, collapse, water including overflow, leakage, sewer backup or seepage, and such other perils as the Borrower and the Required Senior Lenders, after consultation with their respective insurance consultants and any Operator, may from time to time require to be insured, with an agreed sublimit for on-site clean-up and/or debris removal required as a result of the occurrence of an insured risk; with a per occurrence limit sufficient to cover replacement cost of property at risk (where an exposure exists); (iv) extra expense insurance; and (v) machinery breakdown coverage on a "comprehensive" basis including breakdown and repair with limits not less than the full replacement cost of the insured objects. Policy shall include increased cost of construction coverage, debris removal and building ordinance coverage. All sublimits relating to such coverages to be in amounts acceptable to the Administrative Agent (in consultation with the Insurance Consultant).
- (f) A separate business interruption insurance limit on an "all risk" basis as set forth in the previous paragraph, and with a period of indemnification (following the waiting period) sufficient to cover business income less non-continuing expenses at the Closing Date and at each renewal and as specified by the Borrower and the Administrative Agent. The Borrower shall, or shall cause any Operator to, also maintain or cause to be maintained contingent time element coverage (if an exposure exists) on an all risk basis and, if applicable. Business and contingent interruption coverage shall have a waiting period of not greater than 30 days. The service interruption deductible shall not be greater than 72 hours.
- (g) Pollution Legal Liability Insurance shall be provided covering bodily injury, property damage and other losses caused by pollution conditions with limits of not less than \$5,000,000 per occurrence. Coverage shall include, but not be limited to environmental cleanup, remediation and disposal. A claims-made policy which is not renewed or replaced shall have an extended reporting period of two years.
- (h) When any work is to be done adjacent to or on railroad or transit property, the Borrower and/or any Operator shall provide or require its contractors to provide, with respect to the operations that the Borrower and/or any Operator 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.

All of the foregoing policies shall include increased cost of construction coverage, debris removable, and building ordinance coverage to pay for loss of “undamaged” property which may be required to be replaced due to enforcement of local, state, or federal ordinances and other applicable Laws subject with sublimits acceptable to the Administrative Agent (in consultation with the Insurance Consultant).

All of the foregoing policies referred to in clauses (a) through (h) may have deductibles of not greater than U.S.\$100,000 for bodily injury and physical damage per occurrence.

- 1.2 Each of the Borrower, the Secured Parties, the Authority shall be named as additional insureds on a primary, non-contributory basis for any liability arising under or in connection with the Concession Agreement and the Finance Documents and, subject to the Secured Parties’ claims, as loss payees under each of the policies of insurance obtained by any Operator in accordance with the Concession Agreement.
- 1.3 The Borrower shall provide or shall cause any Operator to provide, as applicable, the Secured Parties and the Authority original Certificates of Insurance and Renewal Certificates of Insurance (and all endorsements thereto required under the Finance Documents) evidencing the insurance coverages referred to in this Exhibit G pursuant to and in accordance with the requirements (including the time periods) referred to in the Concession Agreement, in each case, to enable the Borrower to comply with its obligations under the Concession Agreement. The Borrower shall, or shall cause any Operator to, advise all insurers of provisions of the Concession Agreement and the Finance Documents regarding insurance.
- 1.4 The Borrower shall, or shall cause any Operator to, ensure that all insurance providers have the required rating for insurance providers set out in this Section and otherwise in the Finance Documents.
- 1.5 The Borrower shall, or shall cause any Operator to, ensure that all policies required to be obtained and maintained pursuant to this Schedule shall be endorsed to provide the Secured Parties, the Borrower and the Authority with 60 days’ prior written notice of any expiration (if such coverages have an expiration or renewal date occurring during the Term (as defined in the Concession Agreement)), cancellation, reduction, or material change in the insurance coverage relating thereto.
- 1.6 The Borrower shall, or shall cause any Operator to, ensure that all insurance coverages which any Operator is required to take out and maintain or cause to be maintained in accordance with Section 5.13 and this Exhibit G (including umbrella/excess liability insurance) contain a term to the effect that the companies issuing the insurance policies have agreed to waive all rights of subrogation against the Secured Parties (including the Administrative Agent and the Collateral Agent), the Borrower and the Authority. To the extent that the waiver of subrogation will preclude the assignment of any such claim to the extent of such recovery, by subrogation (or otherwise), to an insurance company (or other Person), the Borrower shall, or shall cause any Operator to, give written notice of the terms of such waiver to each insurance company which has issued, or which may issue in the future, any such policy of insurance (if such notice is required by the insurance policy) and shall cause each such insurance policy to be properly endorsed by the issuer thereof to, or to otherwise contain one or more provisions that, prevent the invalidation of the insurance coverage provided thereby by reason of such waiver.

- 1.7 The Borrower shall, or shall cause any Operator to, require in each contract with any subcontractor or subtenant (where such contractor or subtenant is not covered by the insurance coverages maintained in accordance with Section 5.13 and this Exhibit G) that such subcontractor or subtenant obtain coverages reasonably comparable to the insurance coverages referred to in this Schedule that are reasonably appropriate in their limits and other terms and conditions to the nature of the contract with the subcontractor or subtenant. Such coverages shall comply with the requirements of Section 13.2(i) of the Concession Agreement and the Finance Documents. When requested to do so, the Borrower shall, or shall request any Operator to, provide or cause to be provided to the Administrative Agent Certificates of Insurance with respect to such insurance coverages or such other evidence of insurance, acceptable in form and content to the Administrative Agent (in consultation with the Insurance Consultant).
- 1.8 The Borrower acknowledges and shall cause any Operator to acknowledge the Authority's right to modify the insurance coverages required under the Concession Agreement and the Required Senior Lenders' right to modify the insurance coverages required under the Finance Documents, in each case, which modifications shall apply equally to the insurance coverages required to be obtained and maintained by any Operator and shall cause any such Operator to agree to comply with such modifications as if required by the Borrower under this Agreement.

2. CONSTRUCTION WORKS

- 2.1 For the length of any period during which the Borrower and/or Operator undertakes any construction, maintenance or repairs to the Parkway, including improvements and betterments pursuant to the Concession Agreement, the Borrower and/or Operator 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 Parkway. 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 Collateral Agent, on behalf of the Secured Parties, shall be named as loss payee.
- 2.2 When any architects, engineers, construction managers or other professional consultants perform work in connection with the Concession 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, if practicable, shall coincide with, or proceed, start of work in connection with this Agreement. A claims-made policy which is not renewed or replaced shall have an extended reporting period of 2 years.
- 2.3 When material contractors or subcontractors perform work in connection with the Parkway, they shall also maintain workers compensation and employers liability in accordance with statutory requirements, general liability, automobile liability and umbrella liability (or a combination thereof) of not less than \$5,000,000 per occurrence and in the annual aggregate. Unless otherwise covered in the Commercial General Liability policy, the contractor engaged to perform the improvements shall also maintain Contractors' Pollution Insurance in amounts of not less than \$1,000,000 per occurrence and in the annual aggregate.

- 2.4 All policies provided by contractors shall provide Additional Insured endorsements, permit a waiver of subrogation and be primary for the benefit of the Borrower, the Secured Parties, the Operator and any other contractual parties specified in the Concession Agreement. 60 days written notice of cancellation (10 for non-payment of premium) of such policies is to be afforded to the Operator, the Borrower and the Secured Parties.

3. GENERAL

3.1 Insurance Not Available At Commercially Reasonable Rates

In the event any insurance (including the limits or deductibles thereof) hereby required to be maintained shall not be reasonably available at commercially reasonable rates in the commercial insurance market for properties of a similar type and location as the Parkway properties, the Borrower shall first attempt to procure substitute insurance coverage that is the most equivalent to the required coverage and that is available on commercially reasonable terms and rates. If no such substitute insurance is available at commercially reasonable rates, then the Administrative Agent shall not withhold its agreement to waive such requirement to the extent the maintenance thereof is not so available; **provided** that (a) the Borrower shall first request any such waiver in writing, which request shall be accompanied by written report(s) prepared by an independent insurance broker certifying that such insurance is not reasonably available at commercially reasonable rates in the commercial insurance market for projects of a similar type and location as the Project (and, in any case where the required amount is not so available, certifying as to the maximum amount which is so available) and explaining in detail the basis for such conclusions; (b) at any time after the granting of any such waiver, but not more often than once per year, the Administrative Agent may request in writing, and the Borrower shall furnish to the Administrative Agent within fifteen (15) days after such request, supplemental report(s) reasonably acceptable to the Administrative Agent from such insurance broker updating its prior reports and reaffirming such conclusion; (c) any such waiver shall be effective only so long as such insurance shall not be reasonably available at commercially reasonable rates in the commercial insurance market for properties of a similar type and location as the Parkway and in any event for a period not longer than one year (unless extended or renewed pursuant to the procedures set forth in this section, including the satisfaction of the conditions in this proviso); and (d) any such waiver shall not absolve the Borrower of its obligation to comply with the requirements of the Concession Agreement. Any waiver contemplated by this section shall be in writing signed by the Administrative Agent and the Borrower.

3.2 Endorsements

Policies issued pursuant hereto, including any Operator's policies, shall contain the following or equivalent unless waived by Administrative Agent in accordance with the Senior Loan Agreement.

All policies of liability insurance required to be maintained by the Borrower or the Operator shall be endorsed as follows: (a) to name the Borrower or any Operator, as applicable, and its respective officers and employees as named insureds, and to name the Administrative Agent, and the Secured Parties and their respective officers and employees as additional insureds; (b) to provide a severability of interests; and (c) to provide that the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by the Administrative Agent and Secured Parties.

3.3 Waiver of Subrogation

The Borrower hereby waives and will cause the Operator to waive any and every claim for recovery from the Secured Parties, the Administrative Agent and the Collateral Agent for any and all loss or damage covered by any of the insurance policies to be maintained under the Finance Documents to the extent that such loss or damage is recovered under any such policy. Inasmuch as the foregoing waiver will preclude the assignment of any such claim to the extent of such recovery, by subrogation (or otherwise), to an insurance company (or other Person), the Borrower shall or shall cause the Operator to give written notice of the terms of such waiver to each insurance company which has issued, or which may issue in the future, any such policy of insurance (if such notice is required by the insurance policy) and shall cause each such insurance policy to be properly endorsed by the issuer thereof to, or to otherwise contain one or more provisions that, prevent the invalidation of the insurance coverage provided thereby by reason of such waiver. Insurer to provide that there shall be no recourse against any Secured Party for payment of premiums or other amounts with respect thereto.

3.4 Additional Provisions

- (a) **Loss Notification.** The Borrower shall promptly notify, or shall cause any Operator to promptly notify the Administrative Agent and the Collateral Agent of any Casualty Event likely to give rise to a claim under the physical damage and business interruption insurance policies for an amount in excess of \$1,000,000.
- (b) **Payment of Loss Proceeds.** The all-risk, property, machinery, physical damage and business interruption and any construction or other applicable first party insurance policies shall include a standard lender's loss payable endorsement (or other acceptable endorsement) in favor of the Collateral Agent and shall name the Collateral Agent as sole loss payee.

The loss payable endorsement described in the previous paragraph shall contain non-vitiation language reasonably acceptable to the Administrative Agent (in consultation with the Insurance Consultant) which shall provide that in the event that any of the insureds performs a vitiating act that might otherwise void coverage, the coverage will remain in full force and effect for the benefit of the Secured Parties.

- (d) **Loss Adjustment and Settlement.** A loss under any of the first party policies (including property, machinery, and business interruption) shall be adjusted with the insurance companies, including the filing in a timely manner of appropriate proceedings, by the Borrower, subject to the approval of the Administrative Agent and the Collateral Agent (which approval shall not be unreasonably withheld or delayed) if such loss is in excess of \$1,000,000. In addition, the Borrower may in its reasonable judgment consent to the settlement of any loss, provided that in the event that the amount of the loss exceeds \$5,000,000 the terms of such settlement are approved by the Administrative Agent and the Collateral Agent (which approval shall not be unreasonably withheld or delayed) and any other parties to the Concession Agreement.

In the event that the Borrower fails in a timely and appropriate manner (as reasonably determined by the Administrative Agent and the Collateral Agent) to take any steps necessary or reasonably requested by the Administrative Agent or the Collateral Agent to collect from any insurers for any loss covered by any insurance required to be maintained by this Exhibit G, the Administrative Agent and the Collateral Agent shall have the right to make all proofs of loss, adjust all claims and/or receive all or any part of the proceeds of the foregoing insurance policies, either in its own name or the name of the Borrower; provided, however, that the Borrower shall, upon the Administrative Agent's or the Collateral Agent's request and at the Borrower's own cost and expense, make all proofs

of loss and take all other steps necessary or reasonably requested by the Administrative Agent or the Collateral Agent, as the case may be, to collect from insurers for any loss covered by any insurance required to be obtained by this Exhibit G.

- (f) **Policy Cancellation and Change.** All policies of insurance required to be maintained pursuant to this Exhibit G shall be endorsed so that if at any time they should be canceled, or coverage be reduced in any manner, such cancellation or reduction shall not be effective as to the Secured Parties for 60 days, except for non-payment of premium which shall be for 10 days, after receipt by the Administrative Agent of written notice from such insurer (or the Borrower's insurance broker) of such cancellation or reduction. Such policy provisions shall also provide that in the event the Insured fails to pay the premium, the Collateral Agent and the Administrative Agent shall have the right (but not the obligation) to pay the premium and continue coverage on behalf of the secured parties. Suspension of coverage for machinery breakdown for specific equipment due to the insurers exercising a suspension clause will be immediate but the Borrower or its insurance broker shall provide immediate written notification as soon as coverage is suspended.
- (g) **Miscellaneous Policy Provisions.** The all-risk, property, machinery and business interruption insurance policies shall (i) not include any annual or term aggregate limits of liability or clause requiring the payment of an additional premium to reinstate the limits after loss except as regards the insurance applicable to the perils of flood, earth movement, and (subject to agreement with the Administrative Agent and the Collateral Agent) sabotage and terrorism, (ii) include the Administrative Agent and the Collateral Agent as additional insured on behalf of the Secured Parties in all policies (where permitted by applicable law), and (iii) include a clause requiring the insurer to make final payment on any claim within 90 days after the submission of proof of loss and its acceptance by the insurer.
- (h) **Separation of Interests.** All liability policies shall insure the interests of the Secured Parties regardless of any breach or violation by the Borrower, or any other Person of warranties, declarations or conditions contained in such policies, or any action or inaction of the Borrower. This provision may be satisfied through the use of an acceptable multi-insured endorsement.
- (i) **Reinstatement or Replacement of Limits.** In the event that the insurance policies for this transaction are also insuring other assets that are not part of this transaction, in the event that limits or sub limits (including any aggregated limits or sub limits) are eroded due to losses at other locations, the Borrower shall immediately have the limits or sub limits reinstated or replaced for the benefit of the assets in this transaction.
- (j) **Evidence of Insurance.** On the Closing Date and on an annual basis upon each policy anniversary, the Borrower shall furnish the Administrative Agent and the Collateral Agent with (i) certification of all required insurance marked "premium paid" or accompanied by other evidence of payment reasonably satisfactory to the Administrative Agent (in consultation with the Insurance Consultant) and (ii) a schedule of the insurance policies held by or for the benefit of the Borrower and required to be in force by the provisions of this Exhibit G. Such certification shall be executed by each insurer or by an authorized representative of each insurer where it is not practical for such insurer to execute the certificate itself. Such certification shall identify carriers, the type of insurance, the insurance limits and the policy term. The schedule of insurance shall include the name of the insurance company, policy number, type of insurance, major limits of liability and expiration date of the insurance policies. Upon reasonable prior

- written request, the Borrower and will, and will cause any Operator to, (i) permit the Administrative Agent and the Collateral Agent to inspect copies of all insurance policies at the office of the Borrower during normal business hours and (ii) furnish the Administrative Agent and the Collateral Agent with copies of all binders and cover notes or other evidence of such insurance relating to the insurance required to be maintained hereunder, provided that after the occurrence of any Default or any Event of Default, upon request, the Borrower will furnish the Administrative Agent and the Collateral Agent with copies of the portions of all insurance policies relating to the Parkway.
- (k) **Reports.** Concurrently with the furnishing of the certification referred to in paragraph (j) above, the Borrower shall furnish the Administrative Agent and the Collateral Agent with a letter from its insurance broker, signed by an officer of the insurance broker, stating that in the opinion of the insurance broker, the insurance then carried or to be renewed is in accordance with the terms of this Exhibit G. Such report shall not be subject to any non-customary qualification with respect to the scope of review or the information made available.
- (l) **Failure to Maintain Insurance.** In the event the Borrower fails, or fails to cause to be maintained the full insurance coverage required by this Exhibit G, the Administrative Agent or the Collateral Agent, upon 60 days' prior notice (unless the aforementioned insurance would lapse within such period, in which event notice should be given as soon as reasonably possible) to the Borrower of any such failure, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same. All amounts so advanced therefor by the Administrative Agent or the Collateral Agent shall become an additional Senior Obligation of the Borrower, and the Borrower shall forthwith pay such amounts to the Administrative Agent, together with interest thereon at the post-default rate specified in the Senior Loan Agreement from the date so advanced until fully paid.
- (m) **No Duty of Secured Parties or Agents to Verify or Review.** No provision of this Schedule or any provision of any Finance Document shall impose on the Administrative Agent, the Collateral Agent or any Secured Party any duty or obligation to verify the existence or adequacy of the insurance coverage maintained pursuant to this Exhibit G, nor shall the Administrative Agent, the Collateral Agent or any Secured Party be responsible for any representations or warranties made by or on behalf of the Borrower to any insurance company or underwriter. Any failure on the part of the Administrative Agent, the Collateral Agent or any Secured Party to pursue or obtain the evidence of insurance required by this Agreement and/or failure of the Administrative Agent, the Collateral Agent or any Secured Party to point out any non-compliance of such evidence of insurance shall not constitute a waiver of any of the insurance requirements in this Agreement.
- (n) **Foreclosure.** In the event of a foreclosure on or other transfer of title to the Collateral to the Secured Parties or any of them under any Finance Document in extinguishment in whole or in part of the Senior Obligations and/or the Guaranteed Obligations (as defined in the Guaranteed Loan Agreement), all right, title and interest of the Borrower in and to the insurance policies then in force concerning the Parkway and all proceeds payable thereunder shall thereupon vest in the Administrative Agent or the purchaser at such foreclosure or other transferee in the event of such other transfer of title.
- (o) **Notice of Injurious Exposure to Conditions.** It is agreed that failure of any agent, servant, or employee of the insured other than the owner, partner of any partnership, or an officer of the insured to notify the company of any occurrence of which he has

knowledge shall not invalidate the insurance afforded by this policy as respects the named insured and additional insureds.

- (p) **No Coinsurance.** All insurance coverage shall be on a “no coinsurance or self-insurance/replacement cost” basis and in such form (including the form of the loss payable clauses) as shall be acceptable to the Administrative Agent (in consultation with the Insurance Consultant).
- (q) **Claims Made Forms.** In the event that any policy is written on a “claims made” basis and such policy is not renewed or the retroactive date of such policy is to be changed, the Borrower shall obtain for each such policy or policies the broadest basic and supplemental extended reporting period coverage or “tail” reasonably available in the commercial insurance market for each such policy or policies and shall provide Administrative Agent and the Collateral Agent with proof that such basic and supplemental extended reporting period coverage or “tail” has been obtained.
- (r) **Maintenance of Contractual Obligations.** The Borrower shall comply, and shall cause any Operator to comply, at all times with the insurance requirements in any Material Project Contract, unless such requirements have been waived in writing by the contractual counterparty.

EXHIBIT H**FORM OF FUNDS TRANSFER CERTIFICATE**

The Royal Bank of Scotland plc
101 Park Avenue - 6th Floor
New York, NY 10178

Attention: Yolette Salnave

THIS FUNDS TRANSFER CERTIFICATE is delivered pursuant to (i) the Senior Loan Agreement dated as of December 20, 2007 (the **Senior Loan Agreement**), among Northwest Parkway LLC (the **Borrower**), the Senior Lenders and The Royal Bank of Scotland plc, as Administrative Agent for the Senior Lenders (the **Administrative Agent**), and (ii) the Collateral Agency and Account Agreement dated as of December 20, 2007 among the Borrower, the Administrative Agent, and The Royal Bank of Scotland plc, in its capacity as collateral agent (in such capacity, the **Collateral Agent**) and The Bank of New York, in its capacity as Securities Intermediary.

All capitalized terms used but not defined herein shall have the meanings specified in the Senior Loan Agreement.

The Borrower hereby requests that the Collateral Agent cause to be made the following transfers on [INSERT DATE]² for the following purposes and in the following order of priority:

[SELECT APPROPRIATE CLAUSES FROM AMONG (A) THROUGH (F) BELOW. NOTE: TRANSFERS DESCRIBED IN CLAUSES (A)(i) AND (A)(ii) BELOW MAY BE MADE PURSUANT TO A REQUISITION IN THE FORM OF EXHIBIT D TO THE COLLATERAL AGENCY AGREEMENT RATHER THAN THIS FUNDS TRANSFER CERTIFICATE.]

(A) Transfers from the Revenue Account (Account # 272070):

- (i) on each Monthly Funding Date (as defined in the Collateral Agency Agreement) an amount equal to the Operating Expenses to the Operating Account (account # 5110014734 in the name of Northwest Parkway LLC with Vectra Bank Colorado (ABA No. [●])) for the payment of Operating Expenses which are due and payable on such date or projected to become due and payable prior to the next succeeding Monthly Funding Date;
- (ii) on each Monthly Funding Date (or on any other date when due), to the Administrative Agent, an amount equal to all fees, costs, charges and other amounts then due and payable to the Administrative Agent, Deposit Account Bank, Securities Intermediary or the Collateral Agent under any of the Senior Loan Documents;

² With respect to clause (v) below as regards Fifth clause of Section 5.2(b) of the Collateral Agency Agreement, insert the appropriate date on which payment described therein is due. With respect to clauses (B) through (F) below, insert the date on which payment is requested.

- (iii) on each Interest Payment Date and on each other date on which the following amounts shall be payable, to the Administrative Agent, an amount equal to (i) all interest on the Senior Loans and all fees (other than those referred to in item (ii) above), and other amounts then due and payable to the Senior Lenders under the Senior Loan Agreement (other than principal of the Senior Loans, or principal payable pursuant to Section 2.9 of the Senior Loan Agreement) and (ii) all Hedging Obligations then due and payable under the Hedging Agreements to the Hedging Banks;
- (iv) on each date on which such amounts are payable, to the Administrative Agent, an amount equal to any amount payable pursuant to Sections 2.9(c)(i) or 2.9(c)(ii) of the Senior Loan Agreement and to the payment of any Hedging Termination Obligations payable in connection with such prepayment;
- (v) on each Semi-Annual Date, to the Maintenance Reserve Account if the Maintenance Reserve Account Balance is less than the Required Maintenance Reserve Balance as of such date, an amount equal to the excess of such Required Maintenance Reserve Balance over such Maintenance Reserve Account Balance;
- (vi) on each Semi-Annual Date, to the Debt Service Reserve Account an amount which, together with all funds on deposit therein or credited thereto, is equal to all interest on the Senior Loans and all fees payable by the Borrower under the Senior Loan Documents during the period commencing on such Semi-Annual Date and ending on the second Semi-Annual Date thereafter; and
- (vii) on each Semi-Annual Date, the balance in the Revenue Account after giving effect to the paragraphs First through Sixth on such Semi-Annual Date shall be applied to the prepayment of the Senior Loans, provided that if the Interest Coverage Ratio for the Calculation Period most recently ended as of such Semi-Annual Date is in excess of 1.75 to 1, an amount equal to the lesser of (i) such a portion of such balance as, if deducted from the amount of Net Cash Flow used in the calculation of the Interest Coverage Ratio, would result in an Interest Coverage Ratio of 1.75 to 1, or (ii) the amount of interest and fees then due and payable under the Guaranteed Loan Agreement, shall be applied in payment of interest and fees then due and payable to the Guaranteed Lenders under the Guaranteed Loan Agreement, and the remainder shall be applied in prepayment of the Senior Loans.

In the event that amounts on deposit in the Revenue Account are insufficient to pay in full the amounts specified under items (i) through (vii) above, the Collateral Agent shall obtain instructions from the Administrative Agent as to the transfer of funds from another Project Account to pay such remaining amounts in accordance with the Collateral Agency Agreement.

- (B) [Transfer from Loss Proceeds Account (Account # 272073): [insert instructions, including exact wire instructions]]
- (C) [Transfer from the Debt Service Reserve Account (Account # 272072): [insert instructions]]

The Borrower certifies to the Collateral Agent and the Administrative Agent that the applicable conditions under Section 2 of the Collateral Agency Agreement for the foregoing payments and transfers have been satisfied. The Borrower further confirms and certifies to the Administrative Agent and to the Collateral Agent for the benefit of each Secured Party that:

- [(a) the amounts being transferred above for the purpose of paying Operating Expenses or Major Maintenance costs are being made net of any available funds for the applicable purposes on deposit in the Operating Account;
- (b) the amounts being transferred above to pay Operating Expenses are for expenses reflected in the current Annual Operating Budget or otherwise permitted under Section 5 of the Loan Agreement or required under the Concession Agreement, and
- (c) as of the date of this Funds Transfer Certificate, no Event of Default has occurred and is continuing[, except [*DESCRIBE ANY SUCH EVENT AND THE STEPS, IF ANY, BEING TAKEN TO CURE*]].

All transfers of funds to the Administrative Agent are to be paid as follows:

Dated: , 200[●]³

NORTHWEST PARKWAY LLC

By: _____

Name:

Title:

Approved by:⁴

THE ROYAL BANK OF SCOTLAND PLC,
as Administrative Agent

BY: _____

³ To be provided to the Administrative Agent for approval at least five (5) Business Days prior to the applicable transfer date. No approval of the Administrative Agent is required for transfers described in clauses (A)(i), (A)(ii) and (C).

⁴ No approval of the Administrative Agent is required for transfers described in clauses (A)(i), (A)(ii) and (C).

EXHIBIT I**FORM OF RATIO CERTIFICATE**

The Royal Bank of Scotland plc
 101 Park Avenue - 6th Floor
 New York, NY 10178

Attention: Yolette Salnave

Re: **Interest Coverage Ratio**

This Certificate is delivered pursuant to Section 5.1(b)(ii) of the Senior Loan Agreement dated as of December 20, 2007 (the *Senior Loan Agreement*), among Northwest Parkway LLC (the *Borrower*), the Senior Lenders and Hedging Banks party thereto and The Royal Bank of Scotland plc, as Administrative Agent (the *Administrative Agent*).

All capitalized terms used but not defined herein shall have the meanings specified in the Senior Loan Agreement.

I hereby certify to the Administrative Agent on behalf of the Borrower as follows:

1. I am an Authorized Officer of the Borrower and am familiar with the financial statements and financial affairs of the Borrower. I am authorized to execute this Certificate on behalf of the Borrower.
2. I have not become aware of any Default or Event of Default that has occurred and is continuing, [except [*DESCRIBE ANY SUCH EVENT AND THE STEPS, IF ANY, BEING TAKEN TO CURE*]].
3. The following are true and correct computations, to the best of my knowledge, as of [●], 200[●], of the Interest Coverage Ratio for the Calculation Period most recently ended:
 1. Project Revenues for the 12-month period ending on the applicable Calculation Date \$ _____
 2. Operating Expenses paid during such 12-month period \$ _____
 3. Major Maintenance costs paid during such 12-month period (other than Major Maintenance costs funded by insurance proceeds (other than business interruption)) \$ _____
 4. Item 1 minus Item 2 minus Item 3 \$ _____
 5. Mandatory Debt Service for such 12-month period \$ _____
 6. Interest Coverage Ratio (ratio of Item 4 to Item 5) _____:1

4. The following are good faith and reasonable computations, to the best of the Borrower's knowledge, and consistent with actual results, as of [●], 200[●], of the Projected Interest Coverage Ratio for the Calculation Period to commence on such date:

Insert here projections for the next 12-month period in the same form as used for results for past 12-month period in paragraph 3 above

IN WITNESS WHEREOF, the Borrower has caused this Certificate to be executed and delivered by a duly authorized officer on this ____ day of _____, 200[●]⁵.

NORTHWEST PARKWAY LLC
as Borrower

By: _____
Name:
Title:

⁵ To be provided to the Administrative Agent no later than fifteen (15) Business Days after each Calculation Date.